

## **Limiting the Harm When a Relationship Ends**

When a relationship ends, it's not uncommon for an aggrieved party to try to inflict emotional or financial harm on the other.

Harm may be one or more of the following actions (or threatened actions):

- Statements Attacking a Reputation
- Disclosure of Secrets
- Breach of Privacy
- Hate mail and Offensive Messages
- Harassment, Trolling and Cyber-bullying
- Revenge Porn

This note is a high-level overview of the offences (both civil and criminal) the above actions may give rise to, and the remedies that a victim could potentially seek.

## **Offences and Remedies**

### **Statements Attacking a Reputation (Defamatory Statements)**

A false statement made about someone, particularly when made on social media, can spread quickly, threatening to destroy a reputation and even jeopardise future employment prospects.

If it can be shown that the damaging statement in question is 'defamatory', then there are potential remedies available to the damaged party.

A comment is defamatory if it is untrue and causes, or is likely to cause, serious harm to someone's reputation. "Defamation" is an umbrella term covering both libel (a statement in a permanent form, such as in writing) and slander (a more transient form, such as spoken words).

The potential remedies available at court for a defamed party include: financial compensation for emotional distress; a takedown of the offending statement from any online posting; and an injunction to prevent the comment being repeated in the same or similar terms. It may be possible to reach settlement with the other side before a trial however, in which case a settlement may include: an apology; a retraction of the statement; an undertaking not to repeat the same or similar comments; and a payment of compensation and legal costs.

The courts take the posting of damaging defamatory comments on social media very seriously, and in recent cases have confirmed that there is the same liability for Defamation online as with offline.

### **Disclosure of Secrets (Breach of Confidence)**

Over the course of a relationship parties will share with each other sensitive or secret information. At the end of the relationship, one side may disclose or threaten to disclose information which could cause serious harm or loss to the other.

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In these circumstances, it may be possible to bring a successful Breach of Confidence claim if a court is persuaded that there was a reasonable expectation that the information in question would remain confidential and the disclosure was unauthorised.

If the disclosure is threatened, it may be possible to seek an injunction from the court, which is an order preventing publication of the confidential information. However, it is critical that no time is lost in applying for an injunction, as if there is any delay, it may not be granted.

If the disclosure has already occurred, a court has the power to: make an order requiring its removal from the internet; grant an injunction preventing further disclosure and award financial compensation for emotional distress, in addition to any direct financial loss as a result of the wrongful disclosure.

## **Breach of Privacy (Misuse of Private Information)**

Breach of privacy cases commonly involve the disclosure of information about a person's private life, such as an affair. There are several factors for a court to consider when assessing whether there has been a breach of privacy, including whether there was a reasonable expectation of privacy.

A court will consider whether it could be argued that consent has been given for the disclosure or whether the disclosure contributes to a debate of "general public interest", which can constitute a defence to a claim.

The remedies available to a victim of a breach of privacy are the same as for a breach of confidence, including an injunction and compensatory damages.

## **Hate mail and Offensive Messages**

It is a criminal offence under The Malicious Communications Act 1988 for someone to send communications (including online messages or letters) that "*convey a threat, a grossly offensive or indecent message, or false information, if the intention of the sender is to cause distress or anxiety to the reader or recipient*".

It is also a criminal offence under Section 127 of the Communications Act 2003 to send a message that is "*false, grossly offensive, or of an indecent, obscene or menacing character*".

If hate mail or offensive messages are posted to social media, there are normally mechanisms to report such content on the platforms; however, the takedown of a single comment is unlikely to resolve the underlying issue. It is important to seek legal advice at the outset therefore, as a takedown request to the social media platform can form only part of a well-considered legal action against the perpetrator.

## **Harassment, Trolling and Cyber-bullying**

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Where someone is subjected to a course of conduct that causes them distress or alarm, it may give rise to a civil claim or criminal liability under the Law of Harassment. In recent times, harassment in the form of trolling or cyber-bullying has become more prominent and widespread.

Harassment is potentially a civil and a criminal offence. Under the provisions of the Protection from Harassment Act 1997, the victim of harassment may seek in a civil claim an injunction to restrain the offending individual and financial compensation in the form of damages, to compensate for anxiety and financial loss suffered.

## **Revenge Porn**

What is commonly referred to as 'Revenge Porn' has received considerable attention in recent times because of what the press often sees as a titillating issue. However, the unauthorised disclosure (or threatened disclosure) of private sexual photographs or film can cause considerable emotional, psychological and physical harm to a victim. In extreme cases, irreparable damage can be caused to a person's public and private life.

Under s.33 of the Criminal Justice and Courts Act 2015, it is criminal offence to disclose or disseminate a private sexual photograph or film without the consent of the individual who appears in it with the intention of causing that individual distress.

The law states that the above disclosure and dissemination may be by 'any means', which can include sharing not only through social media such as Twitter and Instagram, but also by email, WhatsApp and SMS messages (in addition to offline distribution).

The consequences are serious for those found guilty of this offence: upon conviction on indictment, a person is liable to imprisonment, or a fine, or both.

## **Legal Advice**

If you are the victim of any of the actions listed above, it's recommended that you seek legal advice as a matter of urgency. Child & Child is able to help by providing clear strategic advice on what can be done to prevent threatened actions and how it may be possible to mitigate the damage of actions already carried out.

## **Threats: Urgent Action**

If any of the actions are merely threatened at this time, or you fear they may occur, it may be possible to obtain an injunction (an order from the court) to prevent the offending party from carrying out their threat. However, one of the criteria for obtaining an injunction is that the party applying as acted without delay (a delay of even a couple of days may be too long), so it's vital to seek legal advice as soon as the threat is made, or it is feared it may be made.

**William Charlesworth**

*William Charlesworth is a dispute resolution lawyer at Child & Child, specialising in Reputation Protection. William has experience acting in complex claims for private individuals, public figures and companies.*

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*The law relating to Defamation and Harassment is complex and constantly developing. The purpose of this note is to assist in providing an overall understanding of the legal context within which such claims operate. This note is not intended as specific legal advice. Each case is judged on its own merits and, against its own particular set of facts.*

*If you have any questions, or you believe you require further guidance, then please contact William Charlesworth at [williamcharlesworth@childandchild.co.uk](mailto:williamcharlesworth@childandchild.co.uk) or on +44 (0) 207 201 1889.*