

## Reputation Protection Part 1: What You Need to Know

The protection of both personal and corporate reputations is increasingly important in a modern, globally connected society.

Lies travel fast online and, whether the victim is a private individual, a public figure, or a corporate body, it is important to act quickly and decisively to mitigate the effects of potentially damaging defamatory statements.

A “defamatory statement” is a false statement of fact that exposes a person or business to hatred, ridicule, or contempt, and causes, or is likely to cause, serious harm to their reputation. “Defamation” is an umbrella term covering libel (lasting forms of publication, such as written statements) and slander (more transient, normally spoken comments).

As an introduction to reputation protection, the more commonly held myths and misconceptions around Defamation are set out and corrected, below:

***Comments posted on social media accounts, such as Twitter and Facebook, are less serious or damaging than those found elsewhere, offline***

*Untrue*

The courts have confirmed that the liability for making defamatory comments online, on social media or on other websites, is the same as for those made offline.

Do not be deceived by the informality of social media or the perceived ephemeral nature of its posts and comments.

A damaging comment appearing on social media can present a considerable danger as re-tweets and the sharing of content allows a defamatory statement to reach a potentially large, international audience. It is therefore important to take action without delay when damaging content is discovered.

Action against defamatory content can include: the forced takedown of offending comments online; the unmasking of an ‘anonymous’ offender; and the issuing of a claim for financial compensation for distress and loss suffered. The precise remedies available in case will vary as each case turns on its facts.

If you believe you have been defamed either online, or offline, Child & Child can provide robust strategic legal advice and assist in the important initial steps to be taken before contact is made with any other party.

***Expensive litigation is the only way to obtain an apology***

*Untrue*

Litigation is not the only way; in fact, most defamation cases are settled before a claim is issued. The potentially high legal costs in a defamation claim provide a

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powerful incentive for both sides of the dispute to reach settlement at an early stage.

Further, settlements achieved outside of court can be more advantageous to a defamed victim than any potential judgment or order made at trial. A court cannot order one party to apologise to the other, for example, so a victim seeking an apology is likely to be better served exploring an out-of-court settlement. Such a settlement could include potentially: financial compensation; payment of legal costs; the publication of a retraction; a correction; and an apology.

Careful consideration needs to be given at the outset of any dispute as to what, as the defamed party, you want to achieve. Child & Child can then advise how strategically it may be possible to achieve those aims.

***If I say it's my "honest opinion", I can say anything, no matter how damaging. I have freedom of speech!***

*Untrue*

The author of a damaging defamatory comment cannot simply seek to qualify it with a "...in my honest opinion" to escape potential liability.

Whilst in certain cases it may be possible to raise 'honest opinion' (formally known as "fair comment") as a successful defence to a defamation claim, there are very strict criteria that must be met, including:

- An objective assessment of whether the statement in question can reasonably be inferred to be an opinion;
- The statement must have indicated the basis of the opinion; and
- The opinion must have been one which an honest person could have held at the time based upon existing facts.

In fact, even if the above criteria were to be met by a defendant, the defence can still be defeated if it can be proven they did not genuinely hold that opinion.

Great care should be taken when making any statement that you consider could potentially be taken to be defamatory of another party. Therefore, if there is any uncertainty, it is recommended that legal advice is obtained: a lawyer specialising in Defamation law can be instructed to review and proof-read the proposed statement or content before it's made public.

## **Legal Advice**

If you have been the subject of abusive, harassing and/or defamatory behaviour, it is recommended that you seek legal advice as a matter of urgency. Child & Child is ready to advise in relation to the above issues and the potential legal remedies available.

**William Charlesworth**

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

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*The law relating to Defamation 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.*