

Reputation Protection Part 2: What You Need to Know

As an introduction to reputation protection, Part 1 of our information series considered some commonly held myths and misconceptions around the law of Defamation.

In this sequel, we correct further myths and misconceptions that may be dissuading or preventing defamed parties from enforcing their rights and protecting their reputations.

For the purposes of this note 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).

Myths and Misconceptions

Damaging and critical comments made about companies are allowed and are fair game for abuse

Untrue

In the same way that an individual has a right to protect their reputation by raising a defamation claim, a corporate body is entitled to do the same if untrue statements are made about it.

However, the threshold to bring a defamation claim for a “*body that trades for profit*” is higher than that for an individual: it must be the statement caused or is likely to cause “serious financial loss”. Each case turns on its own facts and “Serious financial loss” is fact specific and requires a subjective assessment in each case: an SME’s definition of serious financial loss will vary from that of a PLC, for example.

The higher threshold for companies has the effect of filtering out some Defamation claims however in a commercial context it may be possible to consider alternative or additional claims to Defamation, including:

- Passing Off - the attempt to pass-off one party’s goods/services as those of another, which causes damage to the original party’s reputation and trade; and
- Malicious Falsehood - commonly referred to as ‘Trade Libel’ and similar to a defamation claim, it is generally available where a reputational attack is made, normally by a competitor, with the deliberate intention of causing damage.

The facts of each case will determine the most appropriate claim to bring and remedy to seek. In the event of a reputational attack on a company, if it is to stand a chance of protecting its valuable reputation, swift action is required, guided by an informed legal strategy.

You can only be held liable for defamatory statements you write or post

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Untrue

In a judgment handed down in a recent case, the High Court found the former Chairman of a local branch of a political party liable for the publication of a defamatory tweet posted by someone else on the branch's Twitter account.

The defamatory tweet was posted by the branch's vice-chair, who it was found by the Court, was acting as an agent of the Chairman: authority had been delegated to him.

Previous cases of this nature focused on the liability of an employer for posts made by an employee in the course of their employment however, this case shows that liability may arise from the actions of an agent.

It is therefore important to consider who ultimately has control and responsibility over a corporate social media account; clear guidelines are also recommended as to its use.

If there is any uncertainty, Child & Child can assist in advising on an appropriate social media policy for your organisation.

Any comment or statement made about you that's abusive, offensive or makes you look bad is defamatory

Untrue

For an individual, a defamatory statement is one which meets strict criteria, including:

- It must be a 'false statement of fact'. If the statement is true, it cannot be defamatory. Simply because the statement causes you some discomfort, does not make it defamatory.

With regard to the truth of the statement, it is for the defendant (the author of the comments) to prove the statement they made is true in order to avoid liability. The law of Defamation assumes that a reputationally damaging claim is untrue, and the burden of proof, quite unusually, falls on the defendant, to prove their innocence.

- The law also requires that the statement in question causes, or is likely to cause, serious harm to your reputation. Serious harm is fact specific and quite a high threshold, so is not always reached. Serious allegations of criminal conduct for example, are clearly likely to meet the threshold of serious harm, but comments which merely cause some temporary embarrassment are unlikely to do so.

If it appears that the statement in question is unlikely to clear the defamatory threshold, it may be that the contents of the statement, or the way in which it was made, give rise to alternative legal claims:

- *Harassment* - it may be possible to raise a claim for harassment if the person making the statement has pursued a course of conduct which

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causes alarm or distress – if for example they are engaged in ‘trolling’ online; or

- *Malicious Communications Act* - If the statement conveys “a threat, a grossly offensive or indecent message, or false information” and was sent with the intention to cause distress or anxiety to the reader or recipient, that can constitute a criminal offence under the Malicious Communications Act 1988.

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 able to advise in relation to the above issues, providing clear advice in respect of the potential options and actions 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.

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 or on +44 (0) 207 201 1889.