

DEFAMATION

An officer concerned about a blog on the internet which damages his or her reputation would have a possible claim for defamation. A defamatory publication on the internet is a libel (as distinct from the spoken word which is a slander). This gives rise to a number of questions:

Is the blog defamatory of the officer?

The meaning of the blog must be defamatory of the officer to give rise to a claim. This means that the blog must lower the officer in the estimation of right thinking members of society generally.

Is the officer identifiable from the blog complained of?

No claim can be brought unless the officer is clearly identifiable from the blog. That does not necessarily mean he or she has to be named, but it must be possible to prove that any allegations complained of refer to him or her.

What does the blog say about the officer?

The meaning attributable to the blog is the meaning which would be reasonably understood by an ordinary person using their general knowledge and common sense. Sometimes a seemingly innocuous publication will carry a defamatory meaning to people who possess some special knowledge based on particular facts known to them but not to the general public. This is called an "innuendo" meaning and such meanings can be particularly relevant to the technical and complex area of policing.

What defences might defeat a libel claim?

If the publisher of the offending blog can prove that the meaning conveyed by the item is true in substance and in fact, this amounts to a complete defence known as 'justification'. This defence exists because clearly a claimant should not be entitled to compensation for damage to a reputation which he does not in fact possess.

A further defence is that of 'fair comment' which protects honest expressions of opinion on issues of public interest. If, for example, a police officer featured in a blog on the internet is the object of criticism which is clearly expressed as an opinion and not an assertion of fact, then the defence could be raised successfully if a fair minded person could honestly share the comments expressed on the basis of true and proven facts. The defence can be defeated if it is possible to show that the defendant acted maliciously. For the purposes of libel law, this means proving that the publisher knew the publication was false, or was reckless whether or not it was true, or had a dominant improper motive for publication.

A further important and technical defence is that of 'qualified privilege' which protects certain publications irrespective of whether they are true or fair provided they were not motivated by malice.

Qualified privilege can cover many different circumstances, but in relation to the posting of blogs on the internet, it is most likely to arise where a potential defendant claims that the blog was published pursuant to a legal, social or moral duty on a matter of public interest, to an audience who had a corresponding duty or interest in receiving the information. It would need unusual circumstances for this defence to be raised successfully in relation to a blog where no obvious duty exists, and where access to the blog is likely to be available to the world at large through the global nature of the internet. As with fair comment, a qualified privilege defence can be defeated if the claimant can provide the defendant acted maliciously.

Who is responsible for the publication?

The individual who wrote the blog and posted it on the internet can be liable for defamation. However, often it is not possible to identify the person responsible because the material will have been posted anonymously or the individual will have used an alias. In such circumstances it may be possible to obtain their details from the website administrators, but that is by no means certain. Unless the identity of the individual who posted the offending material can be ascertained, no claim against them can realistically be pursued. In addition, even if the poster of defamatory material can be identified, there may be commercial reasons which dictate that legal action against him may be futile.

Internet Service Providers ("ISPs"), who enable the information to appear on the internet, can also be held liable for defamatory publications. ISPs are not expected by the law to be aware of all the content which is on the websites that they facilitate. Due to the sheer volume of material they cannot practically be expected to police every item which appears. Consequently, the law will only hold an ISP liable after they have first been notified of a defamatory posting which they then fail to remove.

Can I get the blog removed?

As a first practical step, a letter or email demanding removal of the offending material should be sent to the website featuring the blog, to the ISP, and, if appropriate, also to the poster of the material. If the website and ISP are UK based, they will normally oblige (at least in the short term while they investigate the matter) to avoid the possibility of legal action. The situation is somewhat different if the website and the ISP are based outside the England & Wales jurisdiction. In such cases, although our law of defamation will apply to the publication of the material when it is downloaded in this jurisdiction, those responsible are likely to be in jurisdictions where the defamation laws are very different. Inevitably, taking action to deal with publications which emanate from overseas is more complicated and expensive (not least in relation to the service of proceedings). The large international companies such as Google tend to be quite responsive to legal concerns. However, small foreign-based ISPs present greater problems and to pursue one of these may be both frustrating and costly.

If correspondence fails to get the blog removed, one can consider legal action. The commercial and practical factors will now assume great importance when conducting the cost/benefit assessment of whether to proceed. The scope and seriousness of, and the damage caused by, the defamatory material will be key considerations. A claim may not be worth pursuing for pragmatic and cost reasons, even where the allegations are appalling, for example if the offending material was posted by an anonymous individual hosted by a South American ISP which has only attracted a handful of hits.

Is there a limitation period for legal action?

Yes - one must take Court action within 1 YEAR from the date of publication of defamatory material. However, on the internet, each time a blog is downloaded for reading it constitutes a fresh publication and consequently renews the limitation period. Inevitably, however, a new item tends to be read more frequently in the days or weeks immediately after it first appears, and in defamation law, one is expected to take action promptly against an attack on one's reputation.