



defamation and privacy news

a new era for free speech and publication?

The Queen's speech on Wednesday 9 May addressed proposals for the long-awaited reform of libel laws in the UK. The Defamation Bill is hailed by campaigners as necessary to bring about an end to costly jury trials and 'libel tourism'. The Bill addresses the threshold of harm test that claimants must satisfy, places the Reynolds defence on a statutory footing and implements the "single publication rule", amongst others issues.

The Defamation Bill caps off an interesting 12 months have for **defamation and privacy** lawyers, in which super injunctions hit the press, contempt of court has been given a new lease of life and damages of £90,000 have been awarded for defamatory allegations made on Twitter. The Defamation Bill will be enacted during this Parliamentary session and is seen as good news for journalists and publishers. There is, however, a risk that the proposed legislative changes could upset the delicate balance between existing case law.

The Defamation Bill comes soon after the recent case of *Flood v Times*, which has helpfully clarified the law relating to Reynolds privilege. Arguably, that decision will give greater clarity to the existing law than the legislative changes. In the Bill the Reynolds defence will be renamed the responsible publication on matter of public interest defence. We must wait to see whether the Government adopts the Joint Committee's recommendation that the Bill should expressly repeal the current common law position. The clarification given in the *Flood* will hopefully be used by the courts in interpreting this defence.

Much of the Defamation Bill codifies existing law, rather than introduces new elements.

After enactment of the Bill, to bring a claim a claimant will have to show they have suffered "serious harm" to their reputation as a result of defamatory remarks made. It is hoped that placing this test on a statutory footing this will prevent trivial and vexatious claims being brought. The Joint Committee initially proposed that claimants must demonstrate "serious and substantial harm" and we feel the Government has rightly recognised the difficulties (and the risk of unnecessary litigation) that may be caused by having both elements included and therefore it is proposed the test to refer to "serious harm" only. Whilst this test may still appear to be unduly raising the bar for claimants in comparison with the current requirements, we consider that the courts have always been alive to trivial claims and this change will therefore merely make clearer the existing principles. Crucially the Bill fails to address the mechanics for striking out claims, suggesting that parties should rely on the courts' powers of case management. This could prove to be a mistake given the current burden on the court system and in high litigation costs.

The single publication rule is another good result for publishers, bloggers and tweeters as it means the time limit for bringing defamation claims runs from the date of the first publication of the defamatory comments (if the statement that is republished is substantially the same as the first publication). This is an important development for those who, for example, maintain links to archived material on a website. However, the implication of internet publication remains one of the biggest gaps in the draft Bill and is a serious issue that needs to be addressed.

It is positive that Government is attempting to codify this challenging area of the common law but, unless the wording of the Bill is clarified, there is scope for unnecessary, complex and expensive satellite litigation relating to its meaning and interpretation. The Jackson review that addresses the 'elephant in the room' - on the cost of defamation proceedings - is also likely to have implications for the impact of the Bill, but that can wait for another time!

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