

# Defamation



## Overview

Everybody's reputation is precious. The law of defamation operates to ensure that an individual can take action to vindicate their reputation if it is unjustly attacked. There are two types of defamation:

**Libel** - which covers 'permanent' publications such as written allegations, or allegations broadcast on the television, radio or on a website.

**Slander** - which covers spoken words or gestures.

## Do I have a claim for defamation?

You have a claim if you can prove that defamatory allegations about you have been published to a third party.

**When is an allegation defamatory?** - A defamatory statement is one which:

- Lowers you in the estimation of right-thinking members of society
- Disparages you in your business, trade, office or profession
- Exposes you to hatred, ridicule or contempt; or
- Causes you to be shunned or avoided.

The correct meaning to be attributed to a defamatory statement is often an important issue in a claim. The words complained of must be put in the full context of the publication and the issue of any 'hidden' meanings, apparent only to those with certain knowledge, must also be considered.

**Are you identifiable from the publication?** - When you are named or photographed in a publication, no issue of identification arises. However, even if you are unnamed, you may still be identifiable to some readers, for example, friends and relatives or work colleagues, who may be aware of the background circumstances or perhaps those who know you to hold a certain office referred to such as "Director of X Ltd" or "Chairperson of Y committee".

**Publication to a third party?** - No claim exists if defamatory allegations are made directly to you either verbally or in writing. You must be able to prove that the allegations have been published to at least one other individual.

To bring a Court action in defamation you must issue proceedings within 12 months from the date that the statement complained of was published.

## Available defences?

There are a number of potential defences to a claim for defamation but the following are the most commonly raised:

1. The words complained of do not bear a defamatory meaning
2. The claimant is not identifiable from the statement
3. The words complained of are true
4. The words are a matter of fair comment, in other words, that they are expressions of opinion based on a true factual background on a matter

of public interest. The test is whether a fair minded person could honestly express that opinion on the proved facts. It is possible to defeat this defence by showing that a defendant did not genuinely hold the view he expressed.

5. The words complained of are protected by absolute privilege. Absolute privilege is a public policy defence to enable society to function and allows complete freedom of speech in certain circumstances. This is particularly the case during judicial or quasi judicial proceedings, fair and accurate reports of such proceedings or statements and documents prepared in the course of a police investigation.
6. The words complained of attract qualified privilege. This defence protects individuals who can show that they have a duty to make the defamatory allegations to another person, who had a corresponding interest in receiving the information. This defence covers situations such as making a complaint about someone in their professional capacity, providing a reference to a new employer, or to a responsible journalist on a matter of public interest. This defence can be defeated if it can be shown that the publisher knew the words were untrue, was reckless as to their truth or had some other improper dominant motive.


## What might I recover?


A claimant who wins a defamation action can obtain the following remedies from the Court:

- Damages as compensation for the harm done to their reputation and their hurt feelings. The level of damages depends on the seriousness of the allegations and the behaviour of the parties involved.
- An injunction can be made which is a Court order preventing the defendant from publishing the same or similar defamatory allegations in the future. NB: The Court cannot order a defendant to apologise so this is usually an important part of any negotiations to try and resolve a claim by agreement.

## Contact Us

*Please feel free to discuss your own position and concerns.  
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