

Reforming Libel

What should a defamation bill contain?

At the 2010 general election all three main parties made a **manifesto commitment** to reform the libel laws to protect free expression. The Government will publish a draft defamation bill in March 2011.

Reform of libel law will require

- easier 'strike out' of trivial or inappropriate claims
- more effective and clearer defences
- modernisation to accommodate the internet
- rebalancing of the law to protect the ordinary individual or responsible publisher
- a reduction in costs (and therefore more equal access for all parties)

The measure of success will be

- whether there are fewer bullying and trivial cases
- whether the chill on free speech and publication on matters in the public interest is reduced
- whether there is improved protection for internet publication, including 'citizen publishing' and historical archives
- whether individual citizens who have been defamed by a malicious, reckless or irresponsible false allegation can gain an effective remedy

The combination of the law reforms set out below, alongside measures falling outside the proposed libel reform bill to reduce costs and improve access to justice would tackle the problems of

- the chill on free expression and the restrictions on citizens pursuing public interest discussions
- the outrageous costs of defending libel actions
- the poor reputation of our libel laws internationally

The problems with England's libel laws

England's libel laws are unfair, unnecessarily complicated and out of date. They stifle public debate worldwide. Citizens are paying a high price for a law that protects the wealthy and powerful from criticism, but offers little protection for people whose reputations are genuinely damaged.

- **The laws are unjust:** There is an imbalance against defendants; claimants can pursue actions where publication has caused them no substantial harm, and corporations can threaten expensive actions against individuals, NGOs and newspapers.
- **Defences in libel law are complicated and inadequate:** The available defences of justification and fair comment are complex, the courts are unpredictable when establishing what the defendant's words mean, and whether they are expressions of opinion or statements of fact. Hence, there is great uncertainty about whether a publisher will win if a good case is defended. Moreover, there is no reliable defence for discussion of matters in the public interest.

- **The laws are out of date:** The definition of 'publication' in English libel law means that each newspaper sold, and each visit to a website page, constitutes a fresh libel. This does not reflect the age of global communication and the internet. The current law makes Internet Service Providers and forum hosts liable for material they host, putting them in the position of judge and jury over content they may know nothing about.

- **The laws are stifling debate:** the complexity of the law means cases can take years to resolve; they are heard in the High Court and often cost more than £500,000 to fight. Rich organisations can exploit these high costs to force retractions of material they simply don't like, and cause people to censor information and opinions from the public domain.

Reforming the laws to protect free expression and the rights of the citizen critic requires fundamental changes, which can only be made by Parliament.

On 23rd March 2010, our Mass Lobby for Libel Reform filled the biggest Select Committee room in Parliament.



What a defamation bill should contain

1. Easier ‘strike out’ of trivial or inappropriate claims

1.1 Higher hurdles for launching a libel action

To avoid the expense (and the associated chill) of a libel action that falls below a reasonable threshold of likely harm in a jurisdiction covered by the courts of England and Wales.

For proceedings to be served, claimants should be required to show that publication in the jurisdiction is likely to cause serious harm to their reputation in England and Wales, given the extent of publication outside the jurisdiction.

2. Stronger defences

2.1 A statutory public interest defence which is clear and effective

To recognise the public interest in free debate about matters of power and responsibility, to protect the citizen journalist, to hasten resolution and to overcome the current restrictive, national-media oriented common law Reynolds defence.

It should be a defence that the publication, whether report or opinion, was on a matter of public interest. This defence would be defeated if the publication was malicious or reckless.

Any requirement of responsible publication must allow for the nature and context of the publication.

2.2 Fairer defence of justification (truth)

To resolve ambiguity in meaning, where the defendant claims the words are justified, in favour of permitting publication rather than punishing it.

The meaning of the words complained of should be one which the defendant reasonably intended; and which is likely to have been

perceived by the reader, rather than any possible meaning asserted by the claimant.

2.3 Strengthened defence of fair comment (honest opinion)

To replace the existing fair comment defence which is not well defined, and is overly complex.

The defendant should merely be required to hold the opinion honestly, based on one or more facts known at the time. The defence should cover all expressions of opinion.

2.4 Extension and updating of statutory qualified privilege

To ensure that the statute is up to date and consistently applies the principle of qualified privilege (which describes privileged communication where there is some protection from libel action – such as the fair and accurate reporting of parliamentary debates and the provision of timely information about court proceedings) in accordance with the need to protect the public interest in transparency.

Qualified privilege should include more international settings and meetings, including the proceedings of NGOs and scholarly research.



On 14th March 2010 our Big Libel Gig sold out the 1700 seat Palace Theatre.

3. Bringing the law into the internet age

3.1 Application of a single publication rule

To abolish the multiple publication rule where every download of online material represents a separate publication and to limit liability for archive material to one year from original publication.

The law should apply a single publication rule with a limitation period of one year from original publication, except in extraordinary circumstances where the interests of justice so demand.

3.2 Updated provisions for online services

To protect free speech in the context of self-publishing and the internet age, and to overcome the privatisation of censorship whereby service providers and forum hosts remove content published by others in response to a threat of libel action.

Claimants should be required to approach the author or primary publisher of the words complained of, where this is known, to seek correction or removal.

4. Preventing bullying by powerful complainants while enabling individual citizens to protect their reputation

4.1 Incorporate and extend the law as stated in Derbyshire County Council v Times Newspapers Ltd

To protect the freedom of citizens in a democracy to comment on and criticise bodies in a position of governance or regulatory authority.

Under existing law public authorities cannot sue in libel (unless the publication was malicious or reckless). This should be incorporated into the statute and extended to any organisation performing a public function, for example private companies providing security services to prisons.

4.2 Restrict the ability of companies and other non-natural persons to sue in libel

To stop the libel laws offering greater protection to those who already wield greatest influence in society and to prevent cases of libel bullying.

Incorporate malicious falsehood into the statute as a remedy in libel for all non-natural persons (i.e. companies and other organisations). Cases would succeed where the claimant shows that the publication of a defamatory false statement has or will cause actual financial harm and is reckless or malicious. Otherwise corporate claimants should be restricted to being able to set the record straight via the courts rather than pursue publishers for financial awards.

5. Measures lying outside a defamation bill

5.1 Reduce the cost of litigation in libel actions

To increase access to justice for claimants and defendants and to reduce the chill on free speech.

The Government's response to the Jackson Review of Civil Litigation Costs should reduce costs while retaining a viable conditional fee system. Other mechanisms include amending court and civil procedure rules so that libel actions are served in designated County Courts rather than in the High Court.

5.2 Develop alternatives for the settlement of disputes

To increase access to justice and enable rapid dispute resolution and remedy in cases of defamation. Claimants and defendants both suffer from prolonged expensive proceedings.

Alternative dispute resolution (ADR), regulator intervention and discursive remedies should be researched and developed.

We need libel laws that are just and in the public interest

The Libel Reform Campaign¹ has been calling for reform of England's libel laws to protect freedom of expression and the rights of the citizen critic against silencing by powerful interests. The Coalition Government has promised to publish a draft defamation bill in March 2011. The case for reform has been made by the public, by Parliament and by representatives of science, the arts and human rights:

- At the 2010 general election all three main parties made a manifesto commitment to reform the libel laws to protect free expression.
- 249 MPs, the majority of those eligible, signed EDM 423 on Libel Law Reform, making it the most popular new EDM during the last Parliament.²
- 21 peers contributed to the second reading debate on Lord Lester of Herne Hill's Private Members defamation bill.³
- Over 50,000 people signed a petition calling for reform of the libel laws in the public interest, thousands wrote to their MPs and hundreds came to a mass lobby of Parliament in March 2010, described by the former Justice Secretary Jack Straw as 'the biggest public meeting I've seen in Parliament for many years'.
- Hundreds of high profile figures including the Poet Laureate, the Astronomer Royal, Stephen Fry, Dara Ó Briain, Professor Richard Dawkins, Monica Ali, Alexei Sayle, Jonathan Ross, Professor Brian Cox and Jo Brand have publicised their support; commentators, performers, scientists and authors from over 30 countries have written and spoken on the need to reform our libel laws.

- Mumsnet, Amnesty UK, the NUJ, Which? and Facebook have joined medical Royal Colleges, publishing companies, human rights NGOs, scientific societies, internet service providers, patient and consumer groups to highlight the adverse effects of the libel laws on their members, and to add their voices to the campaign.⁴

The background to the case for reform

- The UN Committee on Human Rights reported in 2008 that England's libel laws affect freedom of expression worldwide on matters of public interest.⁵
- In 2010 President Obama introduced legislation to protect US citizens from the rulings of our courts.⁶
- A specially convened Ministry of Justice Working Group on libel reported in March 2010 that debates in the public interest are being chilled.⁷
- Senior judges, including the Lord Chief Justice of England and Wales and the Master of the Rolls, have criticised the current laws as likely to chill matters of public interest.⁸
- A Culture, Media and Sport Select Committee report in 2010 found that scientific and other discussions in the public interest were being adversely affected by the libel laws and recommended reform.⁹
- In July 2010 Justice Minister Lord McNally announced that the Government will bring forward a draft defamation bill in March 2011.

References and more information

1. In November 2009, after a year-long inquiry, the 'Free Speech Is Not For Sale' report was published by English PEN and Index on Censorship. In June 2009, Sense About Science launched the Keep Libel Laws out of Science campaign publicising libel threats against scientists such as Simon Singh and Peter Wilmschurst. In December 2009 the three charities came together to form the Libel Reform Campaign (www.libelreform.org) with the support of a cross-party parliamentary group convened by Dr Evan Harris.
2. EDM 423 Libel Law Reform: <http://edmi.parliament.uk/EDMi/EDMDetails.aspx?EDMID=39987>
3. Second Reading Debate of Lord Lester of Herne Hill's Private Members defamation bill on Friday 9th July 2010 in Hansard:
<http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/100709-0001.htm>
4. There is a list of organisations who have signed up to the campaign at:
<http://www.libelreform.org/who-supports-us>
5. The Human Rights Committee of the United Nations report on the International Covenant on Civil and Political Rights, 21st July 2008, said 'The law of libel has served to discourage critical media reporting on matters of serious public interest, adversely affecting the ability of scholars and journalists to publish their work ... The advent of the internet and the international distribution of foreign media also creates the danger that a State party's unduly restrictive libel law will affect freedom of expression worldwide on matters of valid public interest.'
<http://www.statewatch.org/news/2008/jul/uk-un-hr.pdf>
6. The SPEECH Act was signed into law in August 2010:
<http://www.fas.org/sgp/crs/misc/R41417.pdf>
7. The Ministry of Justice Libel Working Group report was published in March 2010:
<http://www.justice.gov.uk/publications/libel-working-group-report.htm>
8. The Lord Chief Justice of England and Wales, the Master of the Rolls and Lord Justice Sedley's written judgment in *BCA v Singh* published on 1st April 2010:
<http://www.senseaboutscience.org.uk/PDF/Judgement.pdf>
9. The House of Commons Culture, Media and Sport Select Committee report on 'Press standards, privacy and libel', 24th February 2010: <http://goo.gl/UulEw>

The Libel Reform Campaign is a coalition of English PEN, Index on Censorship and Sense About Science.



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An PDF version of this document is online at <http://www.libelreform.org>