

## The Key to a Successful Outcome Is to Act Immediately

With the ever-increasing use of social media, reputations can be damaged or destroyed by a news story, or by a competitor, or disgruntled/vexatious customers, employees, influencers and brand ambassadors, in a matter of seconds.

These claims can be very high-profile but, managed quickly and effectively from the outset, can often be dealt with successfully and cost-effectively. This checklist is for individuals and companies to consider, whether they be accused of defaming another or experiencing a threat to their own reputation, to ensure that the matter is managed properly from the outset.

### What Is Defamation?

- ✓ The publication of words or other material to a third party – publication can be permanent (libel), such as in newspapers or online; or temporary (slander), such as spoken word or gestures
- ✓ Something that adversely affects a company's or a person's reputation in the estimation of right thinking members of society
- ✓ Something that has caused (libel/slander), or is likely to cause (libel), serious harm to the reputation of the claimant – for a business, "serious harm" equates to "serious financial loss"

## I Have Been Accused of Defamation: What Next?

- ✓ **Check the facts** – Did you say what is being alleged? Is it defamatory?
- ✓ **Is there a defence?**  
For example:
  - Truth
  - Honest opinion
  - Public interest
  - Privilege
- ✓ **Be pragmatic if you have no or a weak defence** – Sometimes an apology, swift removal/correction of the offending material and payment of compensation and/or legal costs and expenses is all that is needed.
- ✓ **What is your exposure?** Assess the extent of the risks posed by the claim, to determine the ideal resolution strategy.
- ✓ **Is a third party more culpable?**  
If you knowingly or unknowingly repeated/published someone else's defamatory material, can you direct the claimant to or seek a contribution to any sums you pay out, from the originator?

## A Defamatory Statement Has Been Published About Me: What Next?

- ✓ **Identify the perpetrator** – A person, company, website operator, author, editor or publishing company involved in publishing the material can be sued in defamation.
- ✓ **Assess what damage is being caused** – Gather evidence that shows how the publication is damaging your reputation and causing financial loss, in the UK and globally.
- ✓ **Letter before action** – Should be sent to the perpetrator in accordance with the Defamation Pre-Action Protocol, to prevent the initial publication, or demanding the removal of the defamatory material, and requesting undertakings not to repeat the defamation, and compensation as required.
- ✓ Whilst it is rare to be able to obtain an injunction to prevent the publication of defamatory material, it may be possible to persuade a publisher not to publish in advance of publication. Consideration should also be given to alternative claims where an injunction may be easier to obtain.
- ✓ "Take down" notices to third-party publishers
- ✓ PR strategy
- ✓ Review internal policies, procedures and contracts as applicable

## What Are the Alternatives to Defamation Claims?

- ✓ **Is there a breach of confidence?** Has confidential data or information been disclosed or used without permission? For example, trade secrets, customer data, personal data, etc.
- ✓ **Is there a breach of the right to privacy?** Has private and non-trivial data or information about an individual been disclosed without permission, causing that individual distress? For example, information about an individual's personal relationships, medical history, family and home life, etc. Has there been a breach of the Data Protection Act/GDPR?
- ✓ **Malicious falsehood, negligent misstatement or harassment** – Could be alternative or additional claims. It may also be possible to bring contractual or employment tribunal claims against a perpetrator.



## Privilege

**Whether a defamatory statement has been made about you/your company, or you/your company has been accused of defamation, it is important to act quickly to seek to manage the situation, and potentially to establish legal professional privilege.**

If communications and documents (including emails and text messages) are produced that discuss the merits of, or issues surrounding, a claim, they may be disclosable to another party or the court unless they can be considered to be covered by legal privilege.

“Legal advice privilege” attaches to confidential communications/ documents passing between a client and lawyer (including an in-house lawyer) created for the dominant purpose of seeking/ obtaining legal advice.

“Litigation privilege” protects documents and communications passing between a lawyer and client, or either of them and a third party, where litigation is pending/contemplated and the litigation is the document’s sole or dominant purpose.

All parties have a duty to ensure that all relevant documents are preserved. This includes all electronic documents, which will often require a business’ IT team to implement a “do not delete” policy for the duration of proceedings.

**Squire Patton Boggs provides a multidisciplinary approach to reputation management issues. Peter Lees leads the defamation team across the UK, with the team working collaboratively to best suit the needs of clients with multijurisdictional issues. Lees is supported by senior associate Mariyam Harunah. IP specialist Carlton Daniel and litigator Stephen Sampson are key practitioners.**

“Able to offer reputation management advice alongside full range commercial law firm offering.”

“A well-rounded team with very good legal knowledge and skills.”

“Highly responsive, practical, pragmatic advice”

*The Legal 500, 2022*

Our cross-jurisdictional reputation management team (including Matthew Kirk, international affairs adviser, former global external affairs director, Vodafone, and former ambassador to Finland) has been involved in a number of high-profile cases and can assist clients with reputation/brand management issues, defamation claims, advice on competitive advertisements, managing disgruntled or vexatious employees and other third parties, and dealing with dissatisfied customers.

## Recent Experience

- Advising a leading supplier to the NHS in respect of claims for malicious falsehood trademark infringement and copyright infringement.
- Advising a Championship football club in respect of an article published in the national press.
- Advising a multinational drinks producer and retailer in respect of a potential claim arising from a product liability complaint.
- Advising a national recruitment company regarding defamatory and harassing social media posts by ex-employees.
- Advising a property developer in respect of potential claims for defamation and malicious falsehood relating to an aborted sale of a development.
- Acting to ensure the removal of an MP’s defamatory social media post regarding an environmental issue.
- Advising a client in respect of the defamation risks associated with publishing an internal investigation.
- Advising a retailer in respect of defamatory videos posted on social media that alleged aggressive enforcement of COVID-19 safety regulations.
- Advising a client regarding potential claims for defamation, misuse of private information and data protection breaches in respect of social media posts regarding an ongoing criminal investigation.
- Advising a publisher in respect of the risks of publishing a story concerning QAnon conspiracy recruits.
- Advising a Middle East-based client regarding potential claims for defamation across numerous jurisdictions.
- Advising a manufacturing client regarding a national press investigation concerning emissions data.

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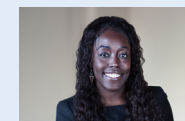


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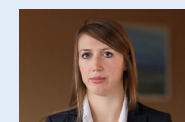


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