

A quick guide to libel laws in England and Wales

Libel laws in England and Wales are notoriously complicated and restrictive. Sense About Science launched our campaign to Keep Libel Laws out of Science in June 2009, when we became aware of the extent to which our libel laws were chilling scientific discussion and open debate. We were surprised to hear how our libel laws were chilling discussion in so many different areas, but coming to the libel laws as scientists, we had a steep learning curve. We were helped in this by many fantastic lawyers and experts, and we thought we should share what we have learnt.

Our libel laws will be changing soon: because of the huge groundswell of public support for libel reform, the Government has published a draft defamation bill – the first attempt to reform our libel laws in over a century. In the meantime...

Defamation, slander and libel – what's the difference?¹

- **Defamation** is the term applied to all public statements that can damage the reputation of another individual or party.
- **Slander** is defamation in an impermanent form, and usually refers to speech.
- **Libel** is defamatory material in a permanent recorded form - in a newspaper, a book, on a TV or radio programme, a website, a blog, a drawing, or even a letter sent from one individual to another.

Where did the libel laws come from?

English libel law was invented by the judges of the Queen's Bench as an alternative to duelling, to allow gentlemen to defend their reputations without resorting to violence. Like trespass and negligence, libel is a form of civil law. Civil law is concerned with the rights and duties of citizens, unlike criminal law, which addresses offences against society, such as murder or assault.

Problems with the libel laws have been recognised for centuries – the *Guardian's* first ever editorial in 1821 included a call for libel law reform.¹ Supporters for libel reform over the years have included EM Forster and HG Wells in the 1920s.

How does the law develop?

Laws are made by Parliament. Prior to the Government's recent draft defamation bill, the last attempts by Parliament to reform the libel laws were through acts in 1952 and 1996. Laws also develop through the influence of past judgements in court: this is known as common law. Each judgement sets a precedence and in most areas of law, the influence of one ruling tends to be diluted by many other rulings. However, in libel law, few cases make it to trial and only three judges currently hear libel cases in England and Wales. This has meant relatively few opportunities for common law to develop, and a small number of rulings have had a disproportionately large influence on the shape of the law. As a result, problems with out-of-date laws endure.

Costs are high

Damages awarded in libel cases are capped at £200,000⁵. However costs incurred in a libel trial can be extremely high and the losing party is required to pay the winner's costs as well as their own. This means that individuals and organisations can face bankruptcy if they take on and lose a libel action^{10, 11}. So why are costs in libel trials so high?

- Complicated libel laws mean cases are rarely resolved quickly, ratcheting up costs.
- Libel trials are heard in London before the High Court, and need specialist lawyers. City legal rates are extremely high in comparison to rates in a county court.
- In cases fought under 'no win no fee' Conditional Fee Arrangements (CFAs), lawyers of the winning party can charge what are known as 'Success Fees' and up to double their fees.

Research by Oxford University has shown that libel cases in England and Wales are 140 times more expensive than their counterparts in Europe¹⁰ and costs can run into the millions. The 2010 Jackson Review⁵ identified that the average cost for the twenty most expensive trials was over £750,000, whilst the most expensive libel action in England and Wales cost in excess of three million pounds.

Even if a defendant wins their case they are unlikely to recover all their costs – let alone compensation for loss of time and earnings. It is hardly surprising that many threatened with libel are unwilling to take on the huge risks involved.

CASE STUDY^{6,9}: Science journalist Ben Goldacre was sued for libel in 2007 along with the *Guardian*, over an article in which he criticised the activities of vitamin pill salesman Matthias Rath. Rath was promoting vitamin pills as a cure for AIDS in South Africa and denouncing conventional therapies as toxic and harmful. Although Rath eventually dropped his libel suit, the case cost the *Guardian* £535,000 to defend and lasted 19 months. Only £365,000 of this was ever recovered from Rath which meant that for Goldacre and the *Guardian*, the cost of winning was £170,000: only slightly less than the cost of the average house!

Libel laws are out of date

The internet has irreversibly changed the way we access and publish information, but with parliament last modifying our libel laws in 1996 and our current definition of a publication dating from 1848, development of the libel laws has not kept up. It may be clear to us that an investigative report in a newspaper and anonymous comments on a blog are very different in nature, but under current libel laws, both are held to the same conditions. Website hosts and internet service providers are forced to assume editorial responsibilities in the same manner as traditional outlets such as newspapers and magazines.

A ruling made in 1848 states that libel suits can be brought for a year after material is published. However, when it comes to online writing, each click on an article or download of a webpage is defined as a new publication. This means that all online writing remains potentially liable as long as it is accessible. Newspapers and journals are forced to consider the libel laws when making their archives available online, as they are technically re-publishing material. As a result, many editors leave gaps in their archives where material is controversial.