

Defamation and the Legal Dangers of Social Media

Harminder Sandhu managing director and head of Dispute Resolution considers the increase in defamation claims due to social media. At the press of a button a defamatory statement, a statement which seriously affects a person's reputation, can be accessed by anyone throughout the world. Too often people are failing to consider the consequences of their comments which are 'published' on LinkedIn, Facebook, Twitter etc.

In recent years there has been a focus on the internet providers as being responsible for defamatory statements as they encourage user generated content. However, reforms under the Defamation Act 2013 ('Act') have rebalanced the focus on those who actually make the alleged defamatory statement posted on blogs or social networking sites.

Defamatory comments are divided into two categories, libel and slander. Libel is the publication on a permanent form of a defamatory statement and slander is its publication in temporary form. It is generally accepted that defamatory comments on web pages are to be regarded as libel. However, there are instances where defamatory comments are posted on internet bulletin boards or chat rooms which are more analogous to slander than libel, due to their conversational nature.

In order to pursue a claim for defamation it is imperative that the claimant does so within the limitation period. The Act has implanted a new "single publication" rule which means that the cause of action accumulates from the date of the first publication to the public and terminates at the end of the one year limitation period. Any publication by the same publisher which is substantially the same from the first publication will not be actionable. However, the claimant can bring a new claim if another publisher publishes the defamatory comment. It is noteworthy that in all circumstance the court has discretion to extend the limitation period.

It is more difficult to make a case for slander than libel, not only because the burden of proof is higher but also because the claimant has to prove measurable financial loss. Conversely, libel claims only require that the comments have significantly affected your reputation.

This type of litigation can be time consuming, pressurised for the individual and costly for their business. We always recommend to our business clients that the service

provider (ISP) hosting the site and/or comment creator is immediately contacted with a request for the defamatory comment to be removed this provides an immediate solution. In most cases a robust letter will lead to the comments being withdrawn and an apology issued but it is possible to obtain injunctive relief if the losses incurred justify the formal action.

For further advice on any issues raised by this article please contact Harminder Sandhu, Hawkins Hatton Corporate Lawyers on hsandhu@hawkinshatton.co.uk or 01384 216840.