

# PRACTICE DIRECTION - DEFAMATION CLAIMS

## THIS PRACTICE DIRECTION SUPPLEMENTS PART 53

### GENERAL

1. This practice direction applies to defamation claims.

### STATEMENTS OF CASE

- 2.1 Statements of case should be confined to the information necessary to inform the other party of the nature of the case he has to meet. Such information should be set out concisely and in a manner proportionate to the subject matter of the claim.
- 2.2
  - (1) In a claim for libel the publication the subject of the claim must be identified in the claim form.
  - (2) In a claim for slander the claim form must so far as possible contain the words complained of, and identify the person to whom they were spoken and when.
- 2.3
  - (1) The claimant must specify in the particulars of claim the defamatory meaning which he alleges that the words or matters complained of conveyed, both
    - (a) as to their natural and ordinary meaning; and
    - (b) as to any innuendo meaning (that is a meaning alleged to be conveyed to some person by reason of knowing facts extraneous to the words complained of).
  - (2) In the case of an innuendo meaning, the claimant must also identify the relevant extraneous facts.
- 2.4 In a claim for slander the precise words used and the names of the persons to whom they were spoken and when must, so far as possible, be set out in the particulars of claim, if not already contained in the claim form.
- 2.5 Where a defendant alleges that the words complained of are true he must –
  - (1) specify the defamatory meanings he seeks to justify; and
  - (2) give details of the matters on which he relies in support of that allegation.
- 2.6 Where a defendant alleges that the words complained of are fair comment on a matter of public interest he must –

- (1) specify the defamatory meaning he seeks to defend as fair comment on a matter of public interest; and
  - (2) give details of the matters on which he relies in support of that allegation.
- 2.7 Where a defendant alleges that the words complained of were published on a privileged occasion he must specify the circumstances he relies on in support of that contention.
- 2.8 Where a defendant alleges that the words complained of are true, or are fair comment on a matter of public interest, the claimant must serve a reply specifically admitting or denying the allegation and giving the facts on which he relies.
- 2.9 If the defendant contends that any of the words or matters are fair comment on a matter of public interest, or were published on a privileged occasion, and the claimant intends to allege that the defendant acted with malice, the claimant must serve a reply giving details of the facts or matters relied on.
- 2.10
  - (1) A claimant must give full details of the facts and matters on which he relies in support of his claim for damages.
  - (2) Where a claimant seeks aggravated or exemplary damages he must provide the information specified in rule 16.4(1)(c).
- 2.11 A defendant who relies on an offer to make amends under section 2 of the Defamation Act 1996, as his defence must-
  - (1) state in his defence –
    - (a) that he is relying on the offer in accordance with section 4 (2) of the Defamation Act 1996; and
    - (b) that it has not been withdrawn by him or been accepted , and
  - (2) attach a copy of the offer he made with his defence.

## **COURT'S POWERS IN CONNECTION WITH AN OFFER OF AMENDS**

- 3.1 Sections 2 to 4 of the Defamation Act 1996 make provision for a person who has made a statement which is alleged to be defamatory to make an offer to make amends. Section 3 provides for the court to assist in the process of making amends.
- 3.2 A claim under section 3 of the Defamation Act 1996 made other than in existing proceedings may be made under CPR Part 8 –
  - (1) where the parties agree on the steps to make amends, and the sole purpose of the claim is for the court to make an order under section 3(3) for an order that the offer be fulfilled ; or
  - (2) where the parties do not agree–

- (a) on the steps to be taken by way of correction, apology and publication (see section 3(4));
- (b) on the amount to be paid by way of compensation (see section 3(5));  
or
- (c) on the amount to be paid by way of costs (see section 3(6)).

(Applications in existing proceedings made under section 3 of the Defamation Act 1996 must be made in accordance with CPR Part 23)

- 3.3 (1) A claim or application under section 3 of the Defamation Act 1996 must be supported by written evidence.
- (2) The evidence referred to in paragraph (1) must include–
- (a) a copy of the offer of amends;
  - (b) details of the steps taken to fulfil the offer of amends;
  - (c) a copy of the text of any correction and apology;
  - (d) details of the publication of the correction and apology;
  - (e) a statement of the amount of any sum paid as compensation;
  - (f) a statement of the amount of any sum paid for costs;
  - (g) why the offer is unsatisfactory.
- (3) Where any step specified in section 2(4) of the Defamation Act 1996 has not been taken, then the evidence referred to in paragraph (2)(c) to (f) must state what steps are proposed by the party to fulfil the offer of amends and the date or dates on which each step will be fulfilled and, if none, that no proposal has been made to take that step.

## **RULING ON MEANING**

- 4.1 At any time the court may decide –
- (1) whether a statement complained of is capable of having any meaning attributed to it in a statement of case;
  - (2) whether the statement is capable of being defamatory of the claimant;
  - (3) whether the statement is capable of bearing any other meaning defamatory of the claimant.
- 4.2 An application for a ruling on meaning may be made at any time after the service of particulars of claim. Such an application should be made promptly.

(This provision disapplies for these applications the usual time restriction on making applications in rule 24.4.1).

- 4.3 Where an application is made for a ruling on meaning, the application notice must state that it is an application for a ruling on meaning made in accordance with this practice direction.
- 4.4 The application notice or the evidence contained or referred to in it, or served with it, must identify precisely the statement, and the meaning attributed to it, that the court is being asked to consider.

(Rule 3.3 applies where the court exercises its powers of its own initiative)

(Following a ruling on meaning the court may exercise its power under rule 3.4)

(Section 7 of the Defamation Act 1996 applies to rulings on meaning)

## SUMMARY DISPOSAL

- 5.1 Where an application is made for summary disposal, the application notice must state –
  - (1) that it is an application for summary disposal made in accordance with section 8 of the Defamation Act 1996.
  - (2) the matters set out in paragraph 2(3) of the practice direction to Part 24; and
  - (3) whether or not the defendant has made an offer to make amends under section 2 of the Act and whether or not it has been withdrawn.
- 5.2 An application for summary disposal may be made at any time after the service of particulars of claim.

(This provision disapplies for these applications the usual time restriction on making applications in rule 24.4.1).

- 5.3 (1) This paragraph applies where –
  - (a) the court has ordered the defendant in defamation proceedings to agree and publish a correction and apology as summary relief under section 8(2) of the Defamation Act 1996; and
  - (b) the parties are unable to agree its content within the time specified in the order.
- (2) Where the court grants this type of summary relief under the Act, the order will specify the date by which the parties should reach agreement about the content, time, manner, form and place of publication of the correction and apology.
- (3) Where the parties cannot agree the content of the correction and apology by the date specified in the order, then the claimant must prepare a summary of the judgment given by the court and serve it on all the other parties within 3 days following the date specified in the order.

- (4) Where the parties cannot agree the summary of the judgment prepared by the claimant they must within 3 days of receiving the summary –
  - (a) file with the court and serve on all the other parties a copy of the summary showing the revisions they wish to make to it; and
  - (b) apply to the court for the court to settle the summary.
- (5) The court will then itself settle the summary and the judge who delivered the judgment being summarised will normally do this.

## STATEMENTS IN OPEN COURT

- 6.1 This paragraph only applies where a party wishes to accept a Part 36 offer, Part 36 payment or other offer of settlement in relation to a claim for –
  - (1) libel;
  - (2) slander.
- 6.2 A party may apply for permission to make a statement in open court before or after he accepts the Part 36 offer or the Part 36 payment in accordance with rule 36.8 (5) or other offer to settle the claim.
- 6.3 The statement that the applicant wishes to make must be submitted for the approval of the court and must accompany the notice of application.
- 6.4 The court may postpone the time for making the statement if other claims relating to the subject matter of the statement are still proceeding.

(Applications must be made in accordance with Part 23)

## TRANSITIONAL PROVISION RELATING TO SECTION 4 OF THE DEFAMATION ACT 1952

- 7. Paragraph 3 of this practice direction applies, with any necessary modifications to an application to the court to determine any question as to the steps to be taken to fulfil an offer made under section 4 of the Defamation Act 1952.

(Section 4 of the Defamation Act 1952 is repealed by the Defamation Act 1996. The commencement order bringing in the repeal makes transitional provision for offers which have been made at the date the repeal came into force)