

Defamation Claims in UK Require Proof of “Serious Harm”

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The English courts have traditionally been a popular forum for defamation claims, not least because English law allows even non-residents who have minimal reputation in the UK to sue for defamation in the English courts and be awarded substantial damages. English law is seen as favouring the protection of reputation over the protection of freedom of expression, certainly when compared with the approach of the law in the

United States, which places a much higher weight on free speech concerns.
Consequently, the UK media is frequently ‘in the docks’ having to defend itself against
defamation claims usually brought by celebrities, politicians and others in the public eye.

Recent developments, however, appear to have raised the bar for claimants.

In a decision on 12 June, 2019, the UK Supreme Court gave its first authoritative interpretation to the latest development in the legislation in this area, the Defamation Act 2013. The act introduced a new threshold requirement to defamation claims that the claimant has suffered “serious harm” to his or her reputation. In its ruling, the Supreme Court noted that the act brought about “a new threshold of serious harm which did not previously exist”.

In order to succeed in a defamation claim in the UK, a claimant now needs to establish: (i) the “publication” of a statement, (ii) that the statement was about the claimant, (iii) that the statement was defamatory to the claimant, and (iv) that the defamatory statement met the threshold of “serious harm”, that is, that publication of the statement has caused, or is likely to cause, serious harm to the reputation of the claimant.

An additional limb to the “serious harm” test applies where the claimant is a body that trades for profit. Defamation laws in the UK allow not only living individuals but also legal entities to bring claims for the harm caused to their reputation. When such an entity trades for profit, the legislation provides that “serious harm” will only be caused, or be likely to be caused, if the body suffers serious financial loss.

The case before the Supreme Court in which the serious harm requirement was interpreted, was brought against two London newspapers, the Evening Standard and the Independent. The case related to a series of articles published by the newspapers in 2014 about the claimant’s divorce. The Supreme Court concluded that the defamatory articles had caused serious harm to the claimant’s reputation. The Court said that what amounts to “serious harm” is a question of fact which can only be established by considering the impact that a defamatory statement is shown to have. This, the Court explained, depends on a combination of the “inherent tendency” of the words to cause harm and the actual impact or likely impact of the words on the persons the words were communicated to. The Court took the view that account should be taken not only of the damage that claimant’s reputation may suffer in respect of people who already knew him but also the impact on those who may get to know him at some point in the future.

Although the Supreme Court found in the claimant’s favour, the case is seen as a positive step for the media, as the decision confirms that the threshold requirement is a significant hurdle for claimants and a real change to the law.