



MASTER OF
THE ROLLS

STATEMENT REGARDING DEFAMATION CASES

Background

During the passage of the Bill that became the Defamation Act 2013, Parliament discussed procedural changes to assist with the implementation of the legislation and the policy underlying it. The Civil Procedure Rule Committee (CPRC) has now made the rule changes. However, as these have not been as extensive as members of Parliament may have anticipated, I am issuing this statement to provide some clarification and reassurance to Parliament and others.

Concerns expressed in Parliament

During the passage of the legislation, a number of members with experience of defamation proceedings and with an interest in the topic spoke of the desirability of early resolution processes – for example enabling a judge to decide critical issues at the heart of a dispute at as early a stage as possible. This was in line with recommendations from (amongst others) Sir Charles Gray’s Early Resolution Procedure Group, and the Joint Committee on the Draft Defamation Bill, both of which were anxious to see early resolution and steps taken to encourage it and reduce costs.

The existing powers of the court

In addition to the new measures in the 2013 Act, there already exists a formidable array of powers which judges can use to achieve these goals.

Civil Procedure Rule 3 provides a judge with a wide range of options to intervene in cases and ‘call in’ parties at an early stage. For example in determining the order of issues to be dealt with, requiring parties to attend hearings and to “*dismiss or give judgment on a claim after a decision on a preliminary issue*”.

Rule 3.4 gives the court the power to strike out a claim as an abuse of process or where there are no reasonable grounds for bringing the claim. The rules also provide for courts to take into account compliance with pre-action protocols, a specialist protocol being in place for defamation cases - http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_def.

In addition, the pre-action protocol encourages the use of ADR (Alternate Dispute Resolution), another issue on which speakers in Parliamentary debates were keen to see an emphasis.

Rule changes made

The CPRC has considered and made amendments to the rules, in the light of a report from a Sub-Committee whose membership included specialist judges and practitioners. These amendments will take effect when the Act is brought into force.

In particular, a change has been made to Rule 26.11 to reflect the removal by the Act of the presumption to trial by jury in defamation cases. This will have the effect of giving judges greater scope to achieve early resolution. Previously some issues could not have been decided until a decision on whether there would be trial by jury had been taken.

The Government has consulted on proposals for costs protection in defamation and privacy claims to ensure that people of modest means can bring and defend proceedings (<https://consult.justice.gov.uk/digital-communications/costs-protection-in-defamation-and-privacy-claims>). The proposals were developed in consultation with the CPRC, which will be responsible for implementing any rule changes decided on in the light of the public consultation.

Conclusion

I am confident that the courts have the powers they need to ensure early resolution of defamation cases, and are fully aware of the importance of using these powers. The exercise of these powers will not be appropriate in every case, but it should be the aim wherever possible.

Early resolution is desirable in defamation and privacy cases, as in other areas of litigation, to sort out disputes quickly and economically.

It is particularly important in defamation cases, however, in view of the very high costs that can arise.

All of us – Parliament, Government, the Judiciary, the CPRC and everyone with an interest in this area of law – will want to see the effects of the Act and the new procedural framework on cases, and will expect to see earlier resolution of disputes than before.

The Rt Hon Lord Dyson
Master of the Rolls and Head of Civil Justice