

**PRACTICE DIRECTION 53B –
MEDIA AND COMMUNICATIONS CLAIMS**

This practice direction supplements Part 53

GENERAL

1. This practice direction applies to media and communications claims. (Rule 53.1 defines “media and communications claim”.)

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 they have to meet. Such information should be set out concisely and in a manner proportionate to the subject matter of the claim
(Part 16 and the accompanying practice direction contain requirements for the contents of statements of case.)
- 2.2 A claimant must in the particulars of claim give full details of the facts and matters on which they rely in support of any claim for damages.
(Rule 16.4(1)(c) requires a claimant seeking aggravated or exemplary damages to include in the particulars of claim a statement to that effect and the grounds for claiming such damages.)
- 2.3 A claimant who wishes to advance any positive case in response to any facts or matters raised in a defence must file and serve a reply.
(Rule 15.8 contains the requirements for filing and serving a reply.)

(Further requirements as to the statements of case in particular types of claim are set out at paragraphs 4, 8, 9 and 10 below.)

Statements in open court

- 3.1 This paragraph only applies where a party wishes to accept a Part 36 offer or other offer of settlement in relation to a claim for —
 - (1) libel;
 - (2) slander;
 - (3) malicious falsehood; or
 - (4) misuse of private or confidential information.
- 3.2 A party may apply for permission to make a statement in open court before or after the Part 36 offer or other offer to settle the claim is accepted.
- 3.3 The statement that the applicant wishes to make must be submitted for the approval of the court and must accompany the notice of application.
- 3.4 The court may postpone the time for making the statement if other claims relating to the subject matter of the statement are still proceeding.

DEFAMATION

Statements of case

- 4.1
 - (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 practicable identify the person or persons to whom the words were spoken and when.

- 4.2 The claimant must set out in the particulars of claim —
- (1) the precise words of the statement complained of, save where the length of the statement makes it impracticable to do so, in which case the words may be set out in a schedule annexed to the particulars of claim, or otherwise identified;
 - (2) when, how and to whom the statement was published. If the claimant does not know to whom the statement was published or it is impracticable to set out all such persons, then the particulars of claim must include all facts and matters relied upon to show (a) that such publication took place, and (b) the extent of such publication;
 - (3) the facts and matters relied upon in order to satisfy the requirement of section 1 of the Defamation Act 2013 that the publication of the statement complained of has caused or is likely to cause serious harm to the reputation of the claimant, or, in the case of a body that trades for profit, that it has caused or is likely to cause the body serious financial loss;
 - (4) the imputation(s) which the claimant alleges that the statement complained of conveyed, both —
 - (a) as to its natural and ordinary meaning; and
 - (b) by way of any innuendo meaning (that is, a meaning alleged to be conveyed to some person by reason of knowing facts extraneous to the statement complained of). In the case of an innuendo meaning, the claimant must also identify the relevant extraneous facts;
 - (5) full details of the facts and matters on which the claimant relies in support of the claim for damages. A claimant who seeks aggravated or exemplary damages must provide the information specified in rule 16.4(1)(c).
- 4.3 Where a defendant relies on the defence under section 2 of the Defamation Act 2013 that the imputation conveyed by the statement complained of is substantially true, they must—
- (1) specify the imputation they contend is substantially true; and
 - (2) give details of the matters on which they rely in support of that contention.
- 4.4 Where a defendant relies on the defence under section 3 of the Defamation Act 2013 that the statement complained of was a statement of honest opinion, they must -
- (1) specify the imputation they seek to defend as honest opinion; and
 - (2) set out the facts and matters relied on in support of their case that -
 - (a) the statement complained of indicated, in general or specific terms, the basis of the opinion; and
 - (b) an honest person could have held that opinion on the basis of any fact which existed at the time it was published or anything asserted to be a fact in a privileged statement published before the statement complained of.
- 4.5 Where a defendant alleges that the statement complained of was, or formed part of, a statement on a matter of public interest under section 4 of the Defamation Act 2013, they must —
- (1) specify the matter of public interest relied upon; and
 - (2) give details of all matters relied on in support of any case that they reasonably believed that publishing the statement was in the public interest.

- 4.6 Where a defendant alleges that the statement complained of was published on a privileged occasion, they must specify the circumstances they rely on in support of that contention.
- 4.7 Where a defendant relies on a defence under section 2 (truth), section 3 (honest opinion), or section 4 (publication on a matter of public interest) of the Defamation Act 2013, the claimant must serve a reply specifically admitting, not admitting, or denying that defence and setting out the claimant's case in response to each fact alleged by the defendant in respect of it.
- 4.8 (1) If the defendant contends that any of the statement complained of, or any part thereof, was honest opinion, or was published on a privileged occasion, and the claimant intends to allege that the defendant did not hold the opinion or acted with malice (as applicable), the claimant must serve a reply giving details of the facts or matters relied on.
- (2) If the defendant relies on any other defence, and the claimant intends to allege that the defence is not available because of the defendant's state of mind, the claimant must serve a reply giving details of the facts or matters relied on. This includes —
- (a) where a defendant relies on the defence under section 4 of the Defamation Act 2013 and the claimant intends to allege that the defendant did not reasonably believe that the publication was in the public interest;
- (b) where a defendant relies on the defence under section 4(2) of the Defamation Act 1996 (offer to make amends) and the claimant intends to allege that the defendant had the state of mind referred to in section 4(3) of the Defamation Act 1996.
- 4.9 A defendant who relies on an offer to make amends under section 2 of the Defamation Act 1996 as their defence must -
- (1) state in their defence -
- (a) that they are relying on the offer in accordance with section 4(2) of the Defamation Act 1996; and
- (b) that it has not been withdrawn by them or been accepted; and
- (2) attach a copy of the offer made with their defence.

Court's powers in connection with an offer of amends

- 5.1 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.
- 5.2 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.)

- 5.3 (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

Determination of meaning

- 6.1 At any time in a defamation claim the court may determine -
- (1) the meaning of the statement complained of;
 - (2) whether the statement is defamatory of the claimant at common law;
 - (3) whether the statement is a statement of fact or opinion.
- 6.2 An application for a determination of meaning may be made at any time after the service of particulars of claim. Such an application should be made promptly.
- 6.3 Where an application is made for a determination of meaning, the application notice must state that it is an application for a determination of meaning made in accordance with this practice direction.
- 6.4 An application made under this paragraph must be made to a Judge.
(Rule 3.3 applies where the court exercises its powers on its own initiative.)
(Following a determination of meaning the court may exercise its power under rule 3.4.)

Summary disposal

- 7.1 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; and
 - (2) the matters set out in paragraph 2(3) of Practice Direction 24

7.2 An application for summary disposal may be made at any time after the service of particulars of claim.

(This provision disappplies for these applications the usual time restriction on making applications in rule 24.4.)

- 7.3 (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.

MISUSE OF PRIVATE OR CONFIDENTIAL INFORMATION

8.1 In a claim for misuse of private information, the claimant must specify in the particulars of claim (in a confidential schedule if necessary to preserve privacy) —

- (1) the information as to which the claimant claims to have (or to have had) a reasonable expectation of privacy;
- (2) the facts and matters upon which the claimant relies in support of the contention that they had (or have) such a reasonable expectation;
- (3) the use (or threatened use) of the information by the defendant which the claimant claims was (or would be) a misuse; and
- (4) any facts and matters upon which the claimant relies in support of their contention that their rights not to have the specified information used by the defendant in the way alleged outweighed (or outweigh) any rights of the defendant to use the information in that manner.

8.2 In a claim for misuse of confidential information or breach of confidence, the claimant must specify in the particulars of claim (in a confidential schedule if necessary to preserve confidentiality) -

- (1) the information said to be confidential;

- (2) the facts and matters upon which the claimant relies in support of the contention that it was (or is) confidential information that the defendant held (or holds) under a duty or obligation of confidence;
- (3) the use (or threatened use) of the information by the defendant which the claimant claims was (or would be) a misuse of the information or breach of that obligation.

DATA PROTECTION

9. In any claim for breach of any data protection legislation the claimant must specify in the particulars of claim -
 - (1) the legislation and the provision that the claimant alleges the defendant has breached;
 - (2) any specific data or acts of processing to which the claim relates;
 - (3) the specific acts or omissions said to amount to such a breach, and the claimant's grounds for that allegation; and
 - (4) the remedies which the claimant seeks.

HARASSMENT

- 10.1 This paragraph applies to claims for harassment arising from publication or threatened publication via the media, online, or in speech.
- 10.2 Rule 65.28(1)(a) shall not apply, and the claim should be commenced under the Part 7 procedure.
- 10.3 The claimant must specify in the particulars of claim (in a schedule if necessary) the acts of the defendant alleged to constitute a course of conduct which amount to (and which were known or ought to have been known by the defendant to amount to) harassment, including specific details of any actual or threatened communications.
- 10.4 A defendant must in any defence specifically admit or deny each act alleged in the particulars of claim to constitute part of a course of conduct amounting to harassment.
(Rule 16.5 contains requirements as to the contents of defences.)