

# REVIEW



**#Defamation trending  
in UK - avoiding social  
media slander**



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## #Defamation trending in UK - avoiding social media slander

Defamation is a broad term, covering both libel and slander, and is concerned with the publishing of derogatory, disparaging, or insulting comments that are likely to harm the reputation of the victim. Whilst libel (written defamation) has historically been the more prevalent act complained of by claimants, the advancement of sound and video equipment has seen an increase in the immortalising of slander, which generally concerns more transient forms of defamation, such as spoken word or gestures.

The Isle of Man is no stranger to all forms of defamation, with the somewhat geographically imposed rumour mill seemingly ever turning. The growth and prevalence of social media mean that news that was previously passed through word of mouth is now shared through written posts on Facebook, Twitter or many other platforms. Unlike rumours passed verbally in markets or pubs and then onwards, posts on social media are written and tend to be permanent. In recent months, they have featured in local court cases, particularly in the criminal forum.

As the use of social media platforms grows then so does defamation as a legal practice area. It is still finding its place in a social landscape experiencing an overwhelming surge of online activity, combined with an ever-evolving society of warring opinions, "political correctness" and censorship. Posting what you believe to be an opinion on a public forum and seeking to fall back on the Human Rights Act-bestowed freedom

of self-expression will not necessarily justify one's actions, nor absolve one's liability in civil proceedings. The law allows for fair compensation to those who have suffered due to defamatory comments, but what do you actually have to prove to be successful?

### The Elements of Defamation

A statement must be made, the words of which are defamatory in nature. There is no categorical definition as to what constitutes a defamatory statement, given the wide spectrum of expression and the subjective nature of people taking offence. Each statement will be judged on a case-by-case basis where the Court would consider the test of whether the statement "lowers a person in the estimation of right thinking members of society".

A second element to defamation is that the statement must have caused or be likely to cause serious harm to the target's reputation. Additionally, the statement must have been published to a third party by the defamer. For example, defamatory statements contained in Tweets would qualify (and be libellous). If these elements are present there is potential for a claim for defamation.

If a Claimant can establish that they have been the victim of defamatory statements, there are a number of remedies that can be sought:-

- Damages (injury to feelings/demonstrable financial loss);
- Injunctive relief – preventing the Defendant

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- from posting about the Claimant again and/or taking down the initial post complained of;
- In certain circumstances, the Court can facilitate an official retraction of the defamatory statement.

There are a number of defences available, such as that of “honest opinion”, or “truth”. Whilst at face value, these defences sound relatively simple, their application to each individual situation is likely to be more complex than first glance would suggest and it would be advisable to seek advice before attempting to assert any such defence before a Court.

### Recent Updates

There have been a number of high profile defamation UK cases in recent months:-

- The very well-publicised dispute between Rebecca Vardy and Coleen Rooney saw the two engaged in an Instagram feud, which ended in Coleen Rooney accusing Rebecca Vardy of leaking information about her private life to the press. This case reiterated the three-tier test for assessing the severity of the defamatory statement, as well as provided guidance as to how social media posts should be interpreted in a legal setting. The Court found that elaborate analysis is to be avoided, instead favouring interpreting the meaning and intention of the statement at face value. At a preliminary hearing, parts of Mrs Rooney’s defence were thrown out, with the substantive hearing to be held in 2022.

- 8 Out of 10 Cats and Count Down personality Rachel Riley was similarly embroiled in a defamation suit with the author of a news article concerning debates held between Ms Riley and a number of her Twitter followers in 2019. These conversations were concerning the recent anti-Semitism scandal that afflicted the Labour Party. The article alleged that Ms Riley had incited abuse and harassment against one particular follower with whom she was engaged in debate. This case dealt with a number of potential defences to defamation actions and in particular, the defence of the allegations being truthful. The Court, in refuting this defence, noted that defendants who are wishing to rely upon the “truth” defence must establish that the statement contained sufficient proof that the allegations were true and that the statement is adequately particular, as opposed to merely hinting at vague “facts”.
- The appropriate level of damages for serious accusations was examined in the Irish case concerning TV personality Christian Jessen, best known for his role as consultant doctor on the popular Channel 4 show Embarrassing Bodies, after he Tweeted defamatory content regarding rumours of Irish Minister Arlene Foster’s alleged infidelity. Given Ms Foster’s position and strong religious views, the various aggravating factors present led the Court to award £125,000 in compensation.

As highlighted above, the growing presence of social media in today’s society has caused defamation law to develop in tandem and

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just as quickly. It is essential when using social media to be wary about the things posted. A recent case involving a solicitor's office and a dissatisfied client saw a negative review on the company's Google review page result in the award of £25,000 in favour of the solicitor's office, as the Court was satisfied that the firm had seen a fall in enquiries as a result of the negative post.

The line between opinion and defamation is often blurred, ever more so in today's social and political climate with temperance being key to navigating this new forum.

*This article does not constitute legal advice. Specific advice should be sought for any given circumstances. This article was written by Advocate Joe Burrows. Please contact M&P Legal at [law@mplegal.im](mailto:law@mplegal.im) or 01624 695800 if you have any enquiries.*

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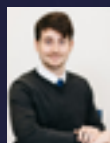
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