

Protecting your Rights

(Advice produced by Russell Jones and Walker Solicitors)

Defamation

What do the Fund Rules Say?

Federation funds held by the Joint Central Committee may on such terms and conditions as may be specified by that Committee in the circumstances of a particular case, be used to defray legal charges incurred by a member or former member of the Federation arising out of any step taken by him with the prior approval of that Committee (given for the purposes here of) in connection with an action for libel or slander which he has brought or contemplates bringing in respect of a statement or alleged statement which appears to the Committee –

- a. to relate to his conduct as a member of a police force, or
- b. to disparage him in the office of constable or otherwise to cast doubt upon his fitness to be a member of a police force.

In all cases where support is given to a member it will only be approved by the Joint Central Committee and action shall normally be taken through the solicitors to the Police Federation.

Please note that the authority of the Deputy General Secretary to the Joint Central Committee is needed before any work on a defamation case is undertaken at the expense of Federation Funds.

What is defamation?

- a. an allegation is defamatory if it lowers you in the estimation of right thinking members of society generally.
- b. a libel is a written or permanent allegation, eg. Newspaper article, TV or radio broadcast.
- c. A slander is a spoken allegation

What do you need to prove to bring a claim?

- a. that the words complained of are defamatory of you; and
- b. that they have been published to third parties, i.e. someone other than you; and
- c. that you are either named or otherwise identifiable from the words complained of.

Burden of proof?

You are presumed to be of good character; it is for the person who made the allegations to prove they are true or that they satisfy one of the other defences.

What defences are available to a claim in defamation?

- a. the words complained of are incapable of bearing a defamatory meaning;
- b. you cannot be identified from the words complained of
- c. the words complained of are true;
- d. the words complained of are fair comment, i.e. they are clearly expressions of opinion on matters of public interest based on a true factual background. The test is: could a fair minded person honestly express that opinion on the proved facts?
- e. The words complained of are absolutely privileged. Public policy protects defamatory allegations made in certain situations, e.g. statements made in judicial or quasi-judicial proceedings; fair and accurate reports of such proceedings; statements made and documents created in the course of a police criminal investigation;
- f. The words complained of attract qualified privilege. If a statement is made pursuant to a legal, social or moral duty to a person who has a corresponding interest or duty to receive it then it is protected by this defence, e.g. a complaint about a police officer made to his or her senior officer; a reference provided about a former employee for a new employer; a media report on a matter of public interest provided the journalist can prove he acted responsibly. There are constantly developing legal criteria about what constitutes responsible journalism in such cases, but perhaps the most important is – did the journalist put the allegations to the person accused and then did he record and publish his responses?
- g. Innocent dissemination – in other words, the person was not the author, editor or publisher of the statement complained of, he took reasonable care in relation to its publication and he did not know, and had no reason to

believe, that what he did caused or contributed to the publication of a defamatory statement. This defence is particularly relevant for Internet Service Providers (ISPs).

Can these defences be defeated?

You can defeat the defences of fair comment or qualified privilege if you can demonstrate the maker of the words complained of was "actuated by malice". In relation to qualified privilege, this means the defendant did not believe the words complained of were true or he published the words recklessly without considering whether they were true or not, or he had some other dominant improper motive for publishing them. In relation to fair comments, you will have to show the defendant did not genuinely hold the view he expressed, in other words, in making the defamatory comment, he acted dishonestly.

What remedies can you recover by taking a defamation action?

- a. Damages – principally intended to compensate the claimant for the harm done to his reputation by the defamation publication.
- b. Injunction – to restrain the defendant from further publishing the allegations complained of in future.

NB: Obtaining an injunction in defamation is difficult – the Court is very reluctant to interfere in a matter which should be left to the jury, and is mostly unlikely to grant an injunction if it appears one of the defences outlined above will be advanced.

- C. Legal costs – the successful party usually gets an order that his costs be paid by the unsuccessful party.

It is important to be aware that one cannot include a claim for an apology in defamation proceedings. An apology has to be a negotiated term as part of a settlement. One way in which a public apology can be made is by means of a statement read in open Court (which can then be reported with absolute privilege.) Alternatively, depending on where the libel appeared, one can try and negotiate the publication of an apology in a newspaper, or a letter of apology, or an apology posted on an internet web site. In rare cases, one might be able to secure an apology broadcast on TV or radio.

Guidance for Police Federation Officials who are approached by a member with a possible claim for defamation.

If in doubt, feel free to give Russell Jones and Walker's defamation department a call to talk it through.

In all cases, act swiftly – time is always of the essence in defamation claims.

NB There is a one year limitation period for bringing an action in defamation from the date of publication – and it is very difficult to get any extension of time from the Court.

Try and obtain the following from the member to submit with the completed Form CZ which you send to the Deputy General Secretary's Office at Police Federation Headquarters.

- a. a copy of the publication complained of;
- b. a brief letter or statement explaining the factual background;
- c. if the publication does not name the member, then we need an explanation as to why the member can be identified from the words complained of and, ideally, the names and contact details of witnesses who read the publication and who, without prompting, identified the member from it;
- d. details of the damage caused to the member by the publication;
- e. copies of any other essential documents.

What if the media are still pursuing the story?

In this case, it may be necessary to engage in some press relations or reputation management. Russell Jones and Walker is experienced in dealing with such situations so we can help either by advising or taking on responsibility for dealing with the media. The key points to follow are:-

- a. make sure only one nominated individual deals with the media;
- b. decide at the outset whether communication with the media will be over the telephone or in press conferences, or whether it will be by way of prepared press statements. The danger with the former is lack of control. Press statements are the safe option;
- c. ensure that all comments to the media are authorised and approved by the member;
- d. other than in very rare cases, do not respond to media enquiries with "no comment", it is far preferable to prepare a press release since the media will be ill-advised not to include it in any story they then publish.
- e. If it is a large story, it may be worth engaging professional PR help; once again, Russell Jones and Walker can assist with this.

- f. Finally, always make sure you have established whether you are speaking on or off the record. Assume that anything you say will be used to make sure you are fully briefed and fully prepared before any media comment or interview