

# Libel & Defamation

Latest Updates and Guidance

# 3 things to remember

- Libel can be very, very expensive
- Proof not truth
- Never respond without thinking carefully
- Applicability: England + Wales; Scotland largely similar



If in doubt, check it out

- These slides will guide you about what the areas of risk are but this is a very complex area of the law
- If you think you may fall foul of the law ask for advice BEFORE printing – in the first instance from ALDC, your Campaign staffer or the HQ Compliance Officers.

# Potential legal issues



- Data Protection Act 1998
- Defamation – new law in Defamation Act 2013
- Representation of the People Act 1983, Section 106
- Privacy/Misuse of Private Information



# Imprints

- All leaflets/letters etc must have an imprint.
- Must appear on either first or last side of a document. If single sided, imprint should be on that side.
- Recommended wording:

Printed by [name and address of printer]. Published and promoted by [name of agent] on behalf of [name of candidate] (Liberal Democrats), both at [office address used in appointment of agent form].

# Data Protection Act 1998



- If “personal data” about a person is used improperly, liability can arise and compensation might be due.
- Personal data is data which identifies somebody, including their political views.
- Personal data must be used fairly – normally there is no problem if the data is used in a manner which the person has consented to.
- Where there is no consent, the person using the data may be able to avoid liability by using a statutory defence (e.g. showing that **the data was used for the protection of the ‘vital interests’ of the person concerned**).
- Example: we dealt with a complaint by a person whose picture was used in promotional literature without consent – the person concerned complained at being represented (wrongly) as a Lib Dem supporter.

# Data protection – get consent!

- Necessary for surveys, reply slip, petitions – anything where people are supplying data
- Standard script as follows:

If you return this [survey/slip] the Liberal Democrats and their elected representatives may use the information you've given to contact you, some of these contacts may be automated. You can always opt out of these communications at any time by contacting us.



# Defamation

- Defamation is about **people's or companies'** reputation
  - Libel: permanent form (e.g. leaflet, website)
  - Slander: temporary form (e.g. speech)
  - Technical differences but in practice little different
  - Other legal action – e.g. trade libel – can be very tricky: watch out for people whose business may be hit





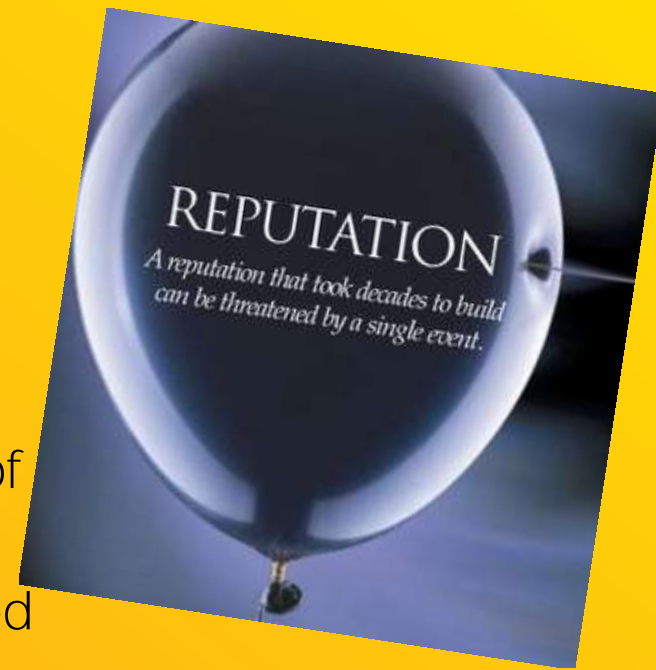
# What gets you into trouble?



- Intention is irrelevant
- Publishing defamatory words without having a clear mind of applicable defences is playing with fire. If in doubt, ask.
- Defamatory + Actionable + Action taken + insufficient apology/retraction = trouble
- A commercial decision may need to be taken to settle even unmeritorious complaints

# What is defamatory?

- It's defamatory if it meets **one** of these tests:
  - Does it lower the person in the estimation of right-thinking people generally?
  - Does it hold the person up to ridicule, hatred and contempt?
  - Does it make people shun or avoid the person?
- New for 2014: a person now has to show that the defamation has caused or is likely to cause serious harm to his/her reputation.
- **For a company or business, “serious harm”** to its reputation is tested by reference to whether serious financial loss has been caused or is likely to be caused.



# It's not just words...



# Using the tests

- What do the words mean to an ordinary person?
- Readers can read between the lines.  
**The Court said “*Why is Lord McAlpine trending? \*innocent face\**”**  
was obviously defamatory
- It can be a fine line, but vulgar abuse/insults are not defamatory (but are not being encouraged)



# Most importantly...

» Important

» Important

» Important

- “**ALLEGEDLY**” does not offer you any protection
- The risk for you is the same whether you say it yourself, or say that someone else has said it.

# Is it actionable?

- Questions to ask yourself about the statement:
  - Who is it about?
  - Do they have a reputation in this jurisdiction?
  - Did you publish it?
  - Is it defamatory of them?
  - Can you prove it is true?
  - Might it be opinion?
  - Might it be privileged?



# Who is it about?

- **Someone's reputation can only be damaged if the statement can be understood to be about them**
  - References to big groups (e.g. all Labour councillors in Yorkshire) are safer
  - References without names, including juxtaposition, can be dangerous and even lead to more than one person being defamed
- Corporations can usually sue though councils can't
- The dead can't sue





# Reputation here?



- Someone has to have a reputation in this jurisdiction to be able to bring an action here.
- **That doesn't mean they have to live** here, but they do have to be known here and have substantial links here.
- If someone is truly notorious, they may not be able to sue anyway.



# Did you publish it?

- Publication must be made to someone who **isn't the person about whom the allegation is made.**
- One-to-one conversations or emails with the person concerned are not actionable as there **is no "publication"**
- **If you didn't intend for anyone else to read something,** the question is usually one of reasonable care



# Is it true?

- Substantial truth is a defence: Section 2, Defamation Act 2013.
- It is for the publisher to prove that something is true. This is very important to bear in mind.
- **You don't have to prove everything is true** – only the crux of the meaning of what you said.



# Is it honest opinion?



- Generally: were you expressing your opinion as opposed to stating fact? Did you honestly hold that opinion?
- BUT: a very complicated defence in practice and often the distinction between fact and comment is finely **balanced** (e.g. **Stephen Lloyd's case** against Nigel Waterson – successful outcome, but had to go to the Court of Appeal to get the right result)
- AND: the law has now changed again with section 3 of the Defamation Act 2013

# Is it privileged?

- Generally: was publication on an occasion that the law protects as special or particular?
- BUT: again, can be a very complicated defence in practice (e.g. the recent case against Lord Triesman)
- AND: the law has now changed in part again with sections 4,6 and 7 of the Defamation Act 2013



# Is it privileged?

- Absolute privilege: things that are said in Parliament or in Court, and *some* reports of the same
- Qualified privilege covers:
  - Reports of Parliament and Court and other public or quasi-public bodies
  - Accurate and impartial accounts of disputes which are in the public interest
  - Public interest investigative reporting
- Qualified privilege is defeated by malice: i.e. if the statement was motivated by an improper factor (e.g. doing injury to the claimant) or if the author of the statement did not have an honest belief that the statement was true

# Has action been taken?

If something is defamatory and actionable, someone still has to **take action** ...

- Pragmatic assessment of risks
- Threatening letters are often a bluff
- Letters should be replied to and not ignored
- **Complainant usually can't force the timetable**



# Apologies/retractions

- An apology or retraction may not be sufficient to end the matter
- NEVER agree to one without first getting legal advice
  - You must ensure that any apology is given with written agreement that no further legal action will follow
- Always give an initial holding reply.



# Representation of the People Act 1983, Section 106

- Under s.106 any person who:
  - a. before or during an election
  - b. for the purpose of affecting the return of any candidate of the election

makes or publishes any FALSE STATEMENT of FACT in relation to the **candidate's personal character or conduct** shall be guilty of an illegal practice, unless it can be shown these were reasonable grounds for believing, and the author did believe, that the statement was true.

N.B. It is difficult in practice to identify if a statement is about the personal conduct/character of an individual as opposed to their political conduct/character.



# Misuse of private information (Part 1)

- Article 8(1) of European Convention on Human Rights – everyone (including a politician) has the right to respect for his private and family life
- Tension with Article 10 – Right to Freedom of expression
- While there is judicial support for freedom of political expression, and politicians are expected to be more tolerant of comments about them, this does not mean that anything goes

# Misuse of private information (Part 2)

- Unauthorised use of private information about a person can lead to a claim for damages and/or an injunction.
- To be actionable the information must be of a type that meant the person concerned had a reasonable expectation that the information would be kept private.
- **“Reasonable expectation of privacy” is determined by** considering factors such as (1) what is the relationship between the parties; (2) what is the nature of the information itself (i.e. details of health, finance, personal relationships etc are more likely to be protected.)
- Disclosure of private information can be justified in some cases (and liability avoided) – e.g. was it in the public interest to reveal the information?