

Are media companies becoming more reluctant to defend themselves against defamation claims?

∞ Proportion of defamation cases featuring celebrities continues to rise

Media companies appear to be becoming less willing to fight defamation court cases all the way to a verdict reveal statistics from Sweet & Maxwell, the legal information provider. According to their research 61% of all reported defamation cases over the last year resulted in a “statement in open court” up from 56% of cases last year and just 21% of cases in 2004/05.*

Statements in open court typically represent an acknowledgement of some kind of mistake by the party accused of publishing the defamatory statement. These statements are often requested by claimants as part of an early settlement between the parties to a defamation claim.

Media companies have argued that the increasing use of Conditional Fee Agreements (CFAs) by litigants in defamation cases makes the financial risks involved in defending a case all the way through the courts far too high.

CFAs enable lawyers to take libel cases against newspapers on a no-win, no-fee basis which means that if they win they can charge the losing side up to twice their normal hourly fee. This could mean a media company having to pay the costs of the other side’s lawyers at a rate of upto £800 an hour.

Defamation cases featuring celebrities

The research from Sweet & Maxwell also shows a steady increase in the share of cases featuring celebrities, which have almost doubled as a percentage of all reported cases from 17% in 2004-5 to 32% in 2007-8.

Sweet & Maxwell suggests that this increase reflects a strong appetite among consumers for celebrity stories from print, broadcast and online media. Competition to deliver this coverage can lead to factual errors being made which then prompt defamation claims.

Legal commentators also identify the difficulty of using the “Reynolds” defence in cases involving celebrities as a possible reason for the increase. Reynolds is a test of responsible journalism which may require the defendant to show that their story is in the public interest. When the alleged defamation concerns a celebrity rather than a politician, the defendant can be less able to make use of this “public interest” defence.

Sweet & Maxwell, a Thomson Reuters business (NYSE: TRI; TSX: TRI; LSE: TRIL; NASDAQ: TRIN), says that, overall, there has been a slight decline in the number of reported defamation cases in the last year down from 64 cases last year to 59 cases this year.

Jaron Lewis, Head of Media at Reynolds Porter Chamberlain LLP, the City law firm comments: “The number of libel cases continues to fall, even though there is now more media content published than ever before.”

“The media is now much more used to interacting with its audience and dealing with complaints as they arise. Also, media companies are now under more pressure than ever before to settle cases because of the potential costs of fighting a case through to trial.”

Jaron Lewis of Reynolds Porter Chamberlain also points out that a recent United Nations Human Rights Committee report had called for the UK to re-examine the use of Conditional Fee Agreements (CFAs) in defamation cases. The report had raised concerns that CFAs were leading publications to settle early without airing what may be valid defences.

Increase of statements in open court

	Number of statements in open court	Total number of reported defamation cases	Percentage of total
2007-8	36	59	61%
2006-7	36	64	56%
2005-6	28	74	38%
2004-5	14	66	21%

Number of cases involving celebrities

	Number of cases involving a celebrity	Total number of reported defamation cases	Percentage of total
2007-8	19	59	32%
2006-7	19	64	30%
2005-6	21	74	28%
2004-5	11	66	17%

Examples of cases over the last year involving celebrities

Hugh Grant & Elizabeth Hurley & Arun Nayar v Big Pictures & Eliot Press

Kate Garraway v MGN

Marco Materazzi v Express Newspapers

Will Smith v World Entertainment News & Media

Nicole Kidman v Telegraph Media Group

Samantha Janus v Sport Newspapers & Interactive World

Danielle Lloyd v MGN

David Hasselhoff v (1) Northern & Shell and (2) Northern & Shell North America

Victoria Beckham v Northern & Shell

Russell Edward Brand v Express Newspapers

*Figures drawn from Sweet & Maxwell’s Lawtel & Westlaw UK services. Westlaw UK & Lawtel have an archive of over 250,000 law reports and transcripts online.

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