Conference of England LMC representatives – 23 November 2018

JOINT BMA and GPDF DEFAMATION STATEMENT

Members of the Conference of England LMC representatives are asked to read the following statement and to act accordingly.

An individual making a public statement on behalf of the BMA, its GP Committee (including subcommittees) and/or GPDF needs to be aware of the potential pitfalls of the law of defamation. In general, a defamatory statement is one which

“tends to lower an individual’s reputation in the eyes of right thinking members of society, or which would cause him to be shunned or bring him into hatred, ridicule or contempt, or which tends to discredit him in his profession or trade.”

There are two forms of defamation - libel and slander. Libel is the publication in permanent form of a defamatory statement. Slander is its publication in transitory form. So, to give examples, typically slander is spoken unrecorded word, whereas libel includes the written form such as hard copy or electronic communications, but also spoken words that are recorded, for instance in video form, or even in a voice recording such as potentially on a voicemail. An individual can bring proceedings for libel in the absence of any proof of loss. Proceedings for slander, however, can only generally be brought if loss can be shown although there are limited exceptions such as the slander of an individual in his profession.

There are a number of defences to a claim of defamation these include:

(a) Justification - being able to show that what was said is true
(b) fair comment on a matter of public interest - the honest expression of opinion, and #
(c) privilege - a statement fairly made in the discharge of a public or private duty.

An action for defamation can only be brought in the High Court. Legal aid is not available and proceedings are notoriously expensive.

Where it is necessary to mention individuals or organisations, great care should be taken to ensure that no gratuitous or unsustainable comment is made, this being so whether the discussion is on or off the record. Great care must also be taken to ensure that where an issue regarding an individual or organisation is the subject of rumour, it is not given weight or authority by being publicised by the BMA or GPDF to the detriment of that individual or organisation’s reputation. Similarly unsubstantiated comment should not be made about individuals and organisations.

Internet Postings

There is a common misconception that because of the informal and accessible nature of the Internet, different rules apply. The position is, quite simply, that the author of material posted over the Internet is every bit as liable in defamation as the author of off-line material.

Publication of defamatory material takes place once it has been posted on the Internet. It is not necessary for an aggrieved person to prove that anyone has actually read the material. There is the added danger that the material can be accessed anywhere in the world enabling anybody who is aggrieved to sue in that country as well as here.

Website hosts may also be liable, along with the author, for publishing defamatory material if they
have been made aware of its presence on a website and have failed to remove it within a reasonable period of time. People who hide behind anonymous postings will find that the website hosts can be required to disclose the identity of the author.

**Electronic Communications**

Under the Data Protection Act (DPA) data subjects are entitled to request the disclosure of information held on them by the BMA or GPDF. The DPA extends not only to electronic files (including external and internal email correspondence and including activity tracking) but to some manual files as well. The BMA and GPDF are legally obliged to provide the information requested. To avoid the risk of a claim for defamation, it is extremely important that all recorded information relating to individuals is accurately and properly expressed. Anything which could be regarded as offensive, insulting and defamatory must be avoided unless approved by the BMA’s Legal Department or other professional lawyers.

The best practical advice is that any reference to an individual or an organisation should be made in measured terms after a careful appraisal of the evidence available with legal advice being sought where appropriate. If this advice is followed there should be no difficulties with respect to defamation.

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