

DEFAMATION ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 2: Truth

13. This section replaces the common law defence of justification with a new statutory defence of truth. The section is intended broadly to reflect the current law while simplifying and clarifying certain elements.
14. *Subsection (1)* provides for the new defence to apply where the defendant can show that the imputation conveyed by the statement complained of is substantially true. This subsection reflects the current law as established in the case of *Chase v News Group Newspapers Ltd*¹, where the Court of Appeal indicated that in order for the defence of justification to be available “the defendant does not have to prove that every word he or she published was true. He or she has to establish the “essential” or “substantial” truth of the sting of the libel”.
15. There is a long-standing common law rule that it is no defence to an action for defamation for the defendant to prove that he or she was only repeating what someone else had said (known as the “repetition rule”). *Subsection (1)* focuses on the imputation conveyed by the statement in order to incorporate this rule.
16. In any case where the defence of truth is raised, there will be two issues: i) what imputation (or imputations) are actually conveyed by the statement; and ii) whether the imputation (or imputations) conveyed are substantially true. The defence will apply where the imputation is one of fact.
17. *Subsections (2) and (3)* replace section 5 of the 1952 Act (the only significant element of the defence of justification which is currently in statute). Their effect is that where the statement complained of contains two or more distinct imputations, the defence does not fail if, having regard to the imputations which are shown to be substantially true, those which are not shown to be substantially true do not seriously harm the claimant’s reputation. These provisions are intended to have the same effect as those in section 5 of the 1952 Act, but are expressed in more modern terminology. The phrase “materially injure” used in the 1952 Act is replaced by “seriously harm” to ensure consistency with the test in section 1 of the Act.
18. *Subsection (4)* abolishes the common law defence of justification and repeals section 5 of the 1952 Act. This means that where a defendant wishes to rely on the new statutory defence the court would be required to apply the words used in the statute, not the current case law. In cases where uncertainty arises the current case law would constitute a helpful but not binding guide to interpreting how the new statutory defence should be applied.

¹ [2002] EWCA Civ 1772 at para 34.