

# Defamation Act 2013 – section 4

Three key questions:-

- (1) Was the statement complained of a statement (or did it form part of a statement) on a matter of public interest?
- (2) If so, did the defendant believe that publishing the statement complained of was in the public interest?
- (3) If so, was that belief reasonable?

# Reynolds – the big decisions

House of Lords/Supreme Court:

- *Reynolds v Times Newspapers Limited* [1999] UKHL 45, [2001] 2 AC 127
- *Jameel v Wall Street Journal Europe Sprl* [2006] UKHL 44, [2007] 1 AC 359
- *Flood v Times Newspapers* [2012] UKSC 11, [2012] 2 AC 273

and, in the Privy Council:

- *Bonnick v Morris* [2002] UKPC 31, [2003] 1 AC 300

# The factors identified by Lord Nicholls in *Reynolds*

- (1) The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true.
- (2) The nature of the information, and the extent to which the subject-matter is a matter of public concern.
- (3) The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories.
- (4) The steps taken to verify the information.
- (5) The status of the information. The allegation may have already been the subject of an investigation which commands respect.

## ...the factors

- (6) The urgency of the matter. News is often a perishable commodity
- (7) Whether comment was sought from the [claimant. They] may have information others do not possess or have not disclosed. An approach to the [claimant] will not always be necessary.
- (8) Whether the article contained the gist of the [claimant's] side of the story.
- (9) The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact.
- (10) The circumstances of the publication, including the timing.

# The Nicholls factors (in *Reynolds*) and s4

- The matters identified by Lord Nicholls in *Reynolds* may be relevant to the outcome of a public interest defence.
- On the facts, the failure to comply with one or some of those factors may tell decisively against a defendant.
- The weight to be given to those factors, and any other relevant factors, would vary from case to case.
- Or, to put it another way, although they are not a checklist, that is “*not to deny*” that one or more of the Nicholls factors “*may well be relevant to whether the defendant’s belief was reasonable within the meaning of subsection (1)(b).*”



**Questions?**

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