

UNION MEDIA - DEFAMATION CODE OF PRACTICE

INTRODUCTION

1. The publication of defamatory material in any format including Internet notice boards or websites could place the ICU at risk of substantial legal proceedings. The College does not wish to interfere with the freedom of expression enjoyed by ICU and its publications. However, it does require some safeguards to be in place to enable a speedy response to an allegation that defamatory material has been published. In setting out this procedure the College looks to balance freedom of expression within the law against the substantial liability which can be occasioned by suits for defamation.

2. This Code of Practice attempts to summarise briefly the law of defamation. However the law is more complex than this and subject to change by statute or the courts, nor is it a substitute for proper legal advice.

3. This procedure shall only be used in relation to potentially defamatory statements in the Union Media and for no other purpose.

WHAT IS DEFAMATION?

4. Defamation is defined as "the publication of a statement which tends to lower a person in the estimation of right-thinking members of society generally." The "statement" can be words, visual images or some other method of signifying meaning. Defamation takes two forms, libel and slander. Libel involves (amongst other things) writing or printing a defamatory statement. Slander is speech or gestures of a defamatory nature.

WHAT ARE THE DEFENCES TO A CLAIM OF DEFAMATION?

5. **Justification.** This will only apply if there is evidence that will stand up in a court of law that can prove that what has been said is true. The burden in law is upon the publication to prove truth. Simply putting 'allegedly' at the start of a statement does not necessarily stop it from being defamatory. It must also be noted that simply repeating a defamatory statement that has already been published elsewhere is considered to be a separate act of defamation in itself and is further actionable in the courts.

6. **Fair Comment.** The argument that a statement was an honestly held opinion on a matter of public interest, without malice (set out in paragraph 8) can also be used as a defence against a defamation claim. Unlike qualified privilege (explained below), fair comment is not limited to those with a "duty" to publish. The "public interest" includes matters "as such as to affect people at large, so that they may legitimately be interested in, or concerned at, what it going on; or what may happen to them or others;". Fair comment covers only comment, not statements of fact, and must be based upon facts which are true or privileged.

7. **Privilege.**

a. There are times when complete freedom of speech, without any risk of

defamation action, is in the public interest. Privilege can be “absolute” or “qualified”. Absolutely privileged statements include statements in Parliament, Parliamentary reports, statements made in UK judicial proceedings, fair and accurate contemporaneous reports of judicial proceedings in the United Kingdom and UN tribunals and communications by ministers of other officers of state in the court or official duty.

b. Qualified privilege may only be exercised in the absence of malice (set out in paragraph 8 below), and upon “any occasion when the person who makes a communication has an interest or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is made has a corresponding interest or duty to receive it.” An element of reciprocity is essential, however if “a publication related to a matter of public interest, ... the reciprocal duty and interest could be found even where publication was by a newspaper to a section of the public or the public at large.” In the leading case of *Times Newspapers v Reynolds*, ten factors to be taken into account in considering qualified privilege were set out:

- (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.
- (6) The urgency of the matter. News is often a perishable commodity.
- (7) Whether comment was sought from the plaintiff. He may have information others do not possess or have not disclosed. An approach to the plaintiff will not always be necessary.
- (8) Whether the article contained the gist of the plaintiff'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.

c. Qualified privilege also applies to the fair and accurate reporting of domestic or foreign legislatures, courts, inquiries, international conferences, public registers, commissions and other such bodies, subject to conditions as set out in the Defamation Act 1996.

8. **Malice.** For the defences of fair comment and qualified privilege to succeed, it is essential that the statement be made without malice. Malice means any dishonest or improper motive. If a person has made a comment based on facts they knew to be untrue, or commented upon facts recklessly without caring whether they were true or not, or made a comment about someone simply to discredit them, then this would constitute malice, and they would not be able to claim “fair comment” or “qualified privilege” as their defence.
9. **Accepted offer of Amends.** The person or body defamed has accepted an apology or offer of amends.
10. **Consent.** The person defamed consented clearly and unequivocally to the publication of the defamatory statement.

PROCEDURE

11. If, in the opinion of the College Secretary or, in his absence, another member of the College Management Board, defamatory material has been published in any form in the ICU managed student media, the ICU President shall be contacted and will authorise and arrange for the removal of the offending material immediately pending further investigation. In the event of the ICU President being unavailable, any Deputy President may arrange for the removal of the offending material from distribution.

12. Where a complaint is directed in the first instance to the ICU President, he or she will notify the College Secretary, or in the College Secretary’s absence, another member of the College’s Management Board immediately for further advice.

13. Where there is a dispute over the existence of defamatory material (for example, where the author or editor of the publication in question believes that the material is not defamatory due to the existence of a defence), the material in question shall be removed for the protection of the College and ICU while the College Secretary consults an arbitrator for guidance.

14. The arbitrator will normally be the Pro-Rector (Educational Quality) or his or her nominee, and shall act independently. If the arbitrator is under a conflict of interest the Rector shall appoint another independent arbitrator. The arbitrator must provide the College Secretary, editor and ICU President with an opportunity for comment prior to making any decision.

15. The arbitrator shall come to a decision within 7 days of the complaint, or within 14 days with the approval of the Rector. Should the arbitrator feel that legal advice is necessary, the opinion of the College’s Solicitors shall be sought. The arbitrator’s decision shall be final and shall be divulged in full with reasons to all relevant parties.

16. If the arbitrator finds defamatory material to have been published, the publication shall be withdrawn and may only be re-issued with the defamatory material withdrawn or redacted. If the arbitrator finds there to have been no published defamatory material, then the the ICU may request that the College consider what measures, if any, are appropriate to remedy any financial loss suffered by the ICU publication affected.

17. Any members of the College who are found to have deliberately published defamatory material will be dealt with under the relevant College or Union disciplinary procedures.

18. The Union Court is responsible under the Constitution as an independent part of the Union responsible among other things for dealing with complaints about Union publications, in a role equivalent to that of the Press Complaints Commission, such complaints possibly including defamatory material (though material need not be defamatory to breach the PCC Code). However, given the potentially swift dissemination of Union publications and potential liability of the College, this procedure shall be established in addition to any rights and remedies available in the Union Court.