From: Sameen Farouk
Sent: 18 June 2016 09:50
To: SLC info
Subject: libel reform

Good afternoon

I apologise for the delay in responding.

I would be grateful if the Law Commission may take the opportunity to take on board a few of my observations

- Defamation should be restricted specifically to cases where the victim is not a corporate entity. Many often make use of publicity officers or reputation management firms. Some are a little more aggressive than others. They have every right to protect their name or brand but they cannot do so in a way in which redress through the courts is lopsided and lengthy and thereby cuts off a free exchange of views
- I believe such claims should be made through a specialist court/tribunal where the person being sued has the right to bring in a counter-claim. In particular, the counter-claim must also be able to bring in a third party which may be where the matter of contention was itself published. This matters because the resolution to a dispute may be with the legal person publishing the claim which results in injury or harm to a firm
- I ask this because i want to see the courts relieved of this pressure. I also think it is important for the Law Commission to recognise that at least some of these claims are likely to emerge from social media or platforms for discussion online on news sites, particularly local newspapers. [*Remainder of paragraph deleted as confidential]*
- I think the Law Commission should seriously consider the "public interest" case and recognise that the defence of such claims may in some cases be contrived but in other cases, the person being sued may not be aware they can rely on it. Therefore, I would suggest that the party seeking defamation must be able to demonstrate that the public interest is not being served by allowing comments to go unchallenged through informal means and therefore why court action is necessary.
- The court should also seek to have a direction in order to reach its decisions on the basis of the information that the person had available to them at the time that they had made remarks which would cause serious injury. The question is what information would have been publicly available (outside of the firm or public body's own materials) that would or could have been used by a reasonable person. In doing so, the court is forced to look into whether such claims are being repeated elsewhere and prior to the person being sued.

I hope those comments are of assistance in your work

I understand that you will be obtaining feedback from the libel reform campaign. They will call for this.

- **The inclusion of a serious harm test** that discourages trivial claims that can chill free expression and inundate Scottish courts with 'vanity' cases;
- **The creation of a statutory public interest defence** that protects the publication of information that benefits public debate and informs civil society across Scotland;
- **Restricting corporate and public bodies suing for defamation**. Corporate bodies do not have a private life, personal identity or psychological integrity. In the spirit of a law to protect citizens and the rights of citizen critics, corporate bodies and associations should be restricted in their ability to sue for defamation;
- **A single publication rule** to replace the multiple publication rule, which currently counts every hit on a website as a new publication of the material on it and therefore a potential fresh cause of defamation action. A single publication rule best reflects communication in the digital age;
- **Defamation law to be brought up to date for the digital age**. The law as it stands makes internet service providers (ISPs), forum hosts and similar entities liable for material published by them/on them. The law should ask claimants to approach authors of material before ISPs become liable for it, to prevent ISPs being forced to take material down in the face of defamation threats.