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Sent: 18 May 2016 19:38
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Name: Tom Brown

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Subject: Defamation

Message:

Response to Scottish Law Commission discussion paper on defamation and the possible need for changes, given the 2013 Defamation Act passed in England and Wales:

The need for reviewing and modernizing the law of defamation in Scotland is self-evident to anyone practicing journalism as a profession. Not least because of disturbing developments in which cost-cutting managements are over-riding and dispensing with the traditional safeguards for sourcing, checking facts, ensuring accuracy and establishing public interest as opposed to tabloid-style prurience.

In any case, it is hard to see why anyone would object to having the defences of truth, honest opinion and publication on a matter of public interest enshrined in statute and for those claiming to be victims of defamation to have to show they have suffered serious harm. The advent of social media, blogging and Internet publication also demands that Scottish law be updated.

[Paragraph deleted as confidential]

The principles of justifiable truth and fair comment should be the same across jurisdictions and similarly with provable damage to reputation, financial loss and public opprobrium caused by a defamation.

In cases involving mass-circulation newspapers and other media outlets which originate in London and are widely published in Scotland, the law should be comparable and applicable on both sides of the border; even more so in Internet cases where jurisdictions outside the UK may be used as refuges from legal action.

Freedom of information is too precious a principle to jettison in the way that is happening under existing law. For a practical journalist, nothing is more frustrating than being unable to publish a well-founded and accurate story because of restrictive laws in this country when that same story is receiving wide attention and comment everywhere else, and is freely available to those where to seek it out on the Internet.

There have now been numerous cases of 'celebrities' gagging the British media even when the stories affecting them are already in the public domain. If the story is untrue or causes disproportionate harm, their remedy should be the time-honoured 'publish and be damned' and then seek punitive damages and apologies in the public courts.

[Remainder of response deleted as confidential]