

THE TIMES

Law

Plebgate trial and the new defamation act

If the circumstances of this case happened again, how would the rights of the parties be affected by changes to the law?

Sarah Webb

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The wood-panelled splendour of Court 13 in the Royal Courts of Justice, with the judge sat high above the court, has been the scene of many “gladiatorial” battles: Jeffrey Archer being one of the most famous.

Andrew Mitchell’s trial against *The Sun* and, in turn, the police officer at the centre of the dispute claim against him — with its references of “plebeians and patricians” — must be the most unusual but, after the implementation of the new defamation act in January of this year, will it be the last?

It may seem strange that a cabinet minister can admit to using one four-letter word and lose his cabinet position over the dispute as to whether he used another one. The law has long held that profanities or abuse that convey no defamatory imputations are not actionable. Even if the words taken literally might be defamatory, the circumstances in which they are uttered make it plain that they do not reflect on the claimant’s character. So the “f” word is acceptable, but to call a police officer a “pleb” — with its modern-day connotations of class and ignorance — is not.

A further unusual feature of this case is that, having been libelled as Mr Mitchell maintains by *The Sun*, he, in stating his position in public and denying having used the words, so it is alleged, libelled the police officer at the centre of the original allegations, who has sued Mr Mitchell, taking full circle the allegation and counter-allegations.

The main changes to the law made in the act are that a claimant has to show the publication has caused or is likely to cause serious harm. Given that Mr Mitchell had to resign as a cabinet minister over this matter, he would have no difficulty in satisfying that test, nor would the police officer accused, as he alleges, by Mr Mitchell of lying.

The defence of truth that replaces the old defence of justification and the other statutory defences is, broadly, the same requiring the claimant to show that the imputation conveyed by the statement is substantially true. Rather more technical defences would also be unlikely to affect the arguments in this case and none of the parties are from outside the jurisdiction, so the “libel tourism” provision of the new act does not apply.

If the circumstances of this case ever happened again, the rights of the parties would be unaffected by the new act, which has had a significant effect on a number of claims, particularly business organisations that now have to show that the allegation has caused or is likely to cause serious financial loss. So the most serious claims, particularly for individuals, will not be affected by the new act. But given the cost and complexity of this case, I anticipate it will be a long time before Court 13 sees another like it.

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Andrew Mitchell arriving at Downing Street on his bike
PA/Press Association



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