

Article by **Hanna Basha**, **Dispute Resolution partner and privacy law specialist**, at **Payne Hicks Beach** first published online in Spear's on 26 September 2018 and reproduced with kind permission <https://www.spearswms.com/will-musk-cave/>

# SPEAR'S



Hanna Basha  
Partner, Dispute Resolution

## Will Elon Musk cave?

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*Vernon Unsworth has launched proceedings in defamation against Elon Musk in California, Hanna Basha reports*

In July this year, Vernon Unsworth was involved with the well-publicised rescue of the children stranded in the Tham Luang cave complex in Thailand. Elon Musk offered assistance to the rescue operation and engineers from his companies designed a small submarine. Unsworth (and others) thought the submarine would not work and Unsworth told Musk as much on Twitter.

Musk retaliated by calling Unsworth a “pedo guy” tweeting the comment to his 22.7 million Twitter followers. Unsworth hit back threatening a claim in defamation. Tesla shares reportedly fell by 4% and investors expressed concern over Musk’s ‘thin-skinned and short-tempered’ behaviour. Musk decided to apologise, conceding that the allegations were ‘spoken in anger’.

This was not an end to matters and Musk continued to receive criticism on Twitter for how he had handled the situation. Rather than stay silent, Musk tweeted: ‘you don’t think it’s strange he hasn’t sued me?’ Musk issued further insults resulting in Unsworth issuing proceedings in California.

An ever-increasing number of defamation claims involve publication on social media, and the posts often a greater circulation than traditional forms of media. Although the platforms encourage informal communication, allegations published on social media can and do cause harm to reputation. Whilst traditional publishers are used to fact checking and have experienced legal teams to mitigate any potential risk, those posting information on social media often do so without any journalistic or legal training.

Recent High Court Judgments have reinforced the message that people should take more care on social media. Social media posts are not exempt from the laws of defamation and damages can be substantial. A single tweet from an account with 65 followers, with a potential further reach of 1,000, resulted in damages of £90,000. Allegations published on nine blogs and in 12 tweets resulted in damages of £45,000.

in 2012, BBC's Newsnight broadcast a programme speculating about an unnamed leading politician from the Thatcher years abusing boys living in care. Sally Bercow published to her 56,000 followers: "Why is Lord McAlpine trending? \*innocent face\*". Accounting for context, the court found this tweet meant that Lord McAlpine "was a paedophile who was guilty of abusing boys living in care". Mrs Bercow paid damages of £15,000, although this sum was part of hundreds of thousands paid in damages to McAlpine by the BBC, ITV and other Twitter users.

The rise in claims relating to publication on social media has brought more disputes over jurisdiction. Here Unsworth is English, Musk lives in California and the dispute arose from events in Thailand.

Until the Defamation Act 2013, England was infamous for 'libel tourism'. By way of example, those from overseas could sue for defamation in the courts of England and Wales even where publication was limited in this jurisdiction or where the claimant had little connection with this jurisdiction. Following the 2013 Act, in order to bring a claim in the High Court in London against Musk, Unsworth will need to show that 'of all the places in which the statement complained of has been published, England and Wales is clearly the most appropriate place'. In undertaking such an assessment, the court would no doubt take account of the proceedings that have already been issued in California.

There are benefits to Unsworth proceeding in California. He would have faced difficulty serving a claim issued in England on Musk in California or indeed enforcing any judgment were he to be successful. On the other side of the coin, England is generally considered to be a jurisdiction which is more friendly towards claimants than the United States (where the position varies between states, but the First Amendment of the Constitution is generally strongly protected).

Whether proceedings are brought by Unsworth in the English court remains to be seen. We shall watch with interest.

*Hanna Basha is a Privacy and Media Law Partner at Payne Hicks Beach*