Article by **Andrew Willan, Dispute Resolution Solicitor at Payne Hicks Beach**, first published online in Spear's on 8 May 2018 and reproduced with kind permission
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It's not quite the end of libel

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The recent drop in libel hearings doesn't signify the end of defamation — a new type of claims are pouring in instead, writes Andrew Willan

Research conducted by Thomson Reuters has found that the number of defamation cases in the courts of England and Wales fell to a record low of 49 last year, down from 86 three years ago. What can be read into this research?

While this is an attention-grabbing statistic, the first point to make is that the findings appear to be based solely on claims that reach court hearings (as opposed to those that are issued).

This research does not augur the demise of libel claims. Our experience is that claims about false and libellous publications, at least at the pre-action stage, are as prevalent as ever. Ordinarily, the vast majority of claims will settle pre-action without the need to issue proceedings at all and, indeed, many issued claims will settle long before they actually wend their way before a judge. These statistics are perhaps best served with a pinch of salt.

Seasoning aside though, what is not in doubt is that the legal landscape has changed remarkably in recent years as it seeks to keep pace with the rapidly developing ways we consume and divulge both news and details of our private lives. Certain trends have undoubtedly emerged in the way individuals now seek to address issues concerning their reputation and privacy.

Traditionally, defamation was seen as the first port of call for celebrities and HNWs seeking to protect their reputations. But for many claimants today the traditional libel claim is no longer the weapon of choice, having been replaced by claims, most notably, in data protection and privacy.

A defamation claim can often present very particular challenges. In many cases, it will not be obvious whether a statement is defamatory despite the fact that it is clearly

inaccurate. Moreover, the need to show serious harm or a likelihood of serious harm (which arrived in 2014 courtesy of the Defamation Act 2013) has raised the bar for claimants.

Contrast this with claims under the Data Protection Act 1998. Under this statute, a claimant may sue simply on the basis that the processing of data is inaccurate.

Indeed, the data protection regime goes further still, providing sufficient latitude for there to be an actionable claim even where the material processed is true. Not only must data controllers ensure the accuracy of data, they can also be held to have mishandled data where the processing is excessive or irrelevant, or where it has been kept for longer than is necessary.

In this sense, data protection laws provide added flexibility for claimants. And if a data controller falls foul of their obligations, they can be required to cease processing the data and pay damages.

The much publicised 'right to be forgotten' (which stems from a 2014 decision of the European Court of Justice and is soon to be codified by the General Data Protection Regulation coming into force in the UK on 25 May) provides individuals with another useful tool. Given the predominance of certain search engines (and in particular Google) in the habits of internet browsers, the erasure of search results that contain inaccurate or unlawful data can be an equally effective means for individuals to protect their reputation without the need to bring court proceedings.

Traditional libel actions still have their place in spite of what the statistics might suggest. But the armoury of potential claimants has undoubtedly expanded by the advent of privacy and data protection laws. From a claimant’s perspective, you might argue that this additional firepower is vital given the extent to which inaccurate and unlawful information is now able to seep into both traditional and social media. It is perhaps no surprise that what is said to keep the major newspaper publishers awake at night, above all else, is data protection.

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