

Article by **Dominic Crossley and Sarah Webb**, **Privacy and Media Law partners in the Dispute Resolution department at Payne Hicks Beach** first published at Wealth Adviser online on 16 July 2015

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Keeping up appearances

Dominic Crossley & Sarah Webb, Partners within Payne Hicks Beach's Privacy and Media Law Team, consider the implications of the UK's new Defamation Law for the international ultra-wealthy living in the UK...

Oscar Wilde famously remarked: “The only thing worse than being talked about is not being talked about”. For those whose careers require them to be in the public eye, this witticism continues to resonate. But for many, including the international ultra-wealthy who set up their homes in London and elsewhere in the UK, the scrutiny and glare of the UK and international media is anything but welcome.

But what can they do about it? Since the new Defamation Act 2013 which came into force in January 2014, new challenges face those seeking the protection of libel law. Section 9 of the Act has made it much more difficult for anyone to sue a person who is not domiciled in the United Kingdom or in another Member State or in a state which is part of the Lugano Convention. International publications can have a serious impact upon the UK based foreign communities. But even if a story is easily and widely available on the internet in England and Wales, it can now be much harder for somebody to bring an action against a media company or website based overseas.

Under Section 1 of the same Act, an individual now has the additional hurdle of having to show that a story is causing substantial harm. Publishers now argue that small inaccuracies should not be stopped or removed because of this rule. Can the complainant show substantial harm in respect of one particular article or part of an article even if it is untrue? So the threat of a libel action is diminished, but persistent inaccuracy can have a cumulative effect. Either the inaccuracy is repeated and commented on elsewhere or further inaccuracies can begin to cause substantial damage to reputation. In particular, credit agencies used by banks will often point to a series of articles to justify its rating.

There is more. Section 2 of the Act revises the defence of truth and is wider than the old defence of justification, now only requiring the Defendant to show “imputation conveyed is substantially true”. Section 3 has strengthened the defence of honest opinion on matters of public interest, covering comment pieces and analysis.

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But it is not all bad news. Well advised, there can be a mixture of practical, regulatory and legal steps to protect reputation from untrue and damaging publications. Even with the new hurdles of the Defamation Act, a reputable publication will usually be persuaded that clear inaccuracies should not be published and few would welcome a libel action when the story is sufficiently serious to merit it (it will often be a careful judgment deciding which articles cross the line). Privacy is becoming an increasingly powerful tool, with the additional merit of the availability of an injunction, not usually available in libel. Recent European and UK legislation have seen new utilisation in the Data Protection Act in relation to inaccurate, private or out of data information. This Act is being deployed in addition to defamation and privacy claims, but its most common utilisation is probably in complaints to Google for it to prevent its searches returning unwanted images in and articles.

Beyond legal action, companies should look to their corporate structure to ensure that it protects an individual from a commercial point of view and from a reputational point of view. Aggressive tax avoidance provisions can be attractive commercially, entirely legal but be damaging reputationally. Wealthy individuals are increasingly realising the need to have appropriate public relations in place even if it is not their wish to generate publicity. They should ensure that their online public profile is accurate and that they can put their messages across using a range of different methods and platforms when they need to. The message is: by being adequately prepared you can still protect your good reputation even in the complex legal and online world.



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