



# Crime and Courts Act 2013

## 2013 CHAPTER 22

### PART 2

#### COURTS AND JUSTICE

##### *Publishers of news-related material: damages and costs*

#### **34 Awards of exemplary damages**

- (1) This section applies where—
  - (a) a relevant claim is made against a person (“the defendant”),
  - (b) the defendant was a relevant publisher at the material time,
  - (c) the claim is related to the publication of news-related material, and
  - (d) the defendant is found liable in respect of the claim.
- (2) Exemplary damages may not be awarded against the defendant in respect of the claim if the defendant was a member of an approved regulator at the material time.
- (3) But the court may disregard subsection (2) if—
  - (a) the approved regulator imposed a penalty on the defendant in respect of the defendant's conduct or decided not to do so,
  - (b) the court considers, in light of the information available to the approved regulator when imposing the penalty or deciding not to impose one, that the regulator was manifestly irrational in imposing the penalty or deciding not to impose one, and
  - (c) the court is satisfied that, but for subsection (2), it would have made an award of exemplary damages under this section against the defendant.
- (4) Where the court is not prevented from making an award of exemplary damages by subsection (2) (whether because that subsection does not apply or the court is permitted to disregard that subsection as a result of subsection (3)), the court—
  - (a) may make an award of exemplary damages if it considers it appropriate to do so in all the circumstances of the case, but

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*Changes to legislation: There are currently no known outstanding effects for the Crime and Courts Act 2013, Cross Heading: Publishers of news-related material: damages and costs. (See end of Document for details)*

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- (b) may do so only under this section.
- (5) Exemplary damages may be awarded under this section only if they are claimed.
- (6) Exemplary damages may be awarded under this section only if the court is satisfied that—
  - (a) the defendant's conduct has shown a deliberate or reckless disregard of an outrageous nature for the claimant's rights,
  - (b) the conduct is such that the court should punish the defendant for it, and
  - (c) other remedies would not be adequate to punish that conduct.
- (7) Exemplary damages may be awarded under this section whether or not another remedy is granted.
- (8) The decision on the question of—
  - (a) whether exemplary damages are to be awarded under this section, or
  - (b) the amount of such damages,
 must not be left to a jury.

#### **Commencement Information**

- II** Ss. 34-39 in force at 3.11.2015 by virtue of s. 61(7) of this Act (and see explanatory note to [S.I. 2015/1837](#))

### **35 Relevant considerations**

- (1) This section applies where the court is deciding whether the circumstances of the case make it appropriate for exemplary damages to be awarded under section 34.
- (2) The court must have regard to the principle that exemplary damages must not usually be awarded if, at any time before the decision comes to be made, the defendant has been convicted of an offence involving the conduct complained of.
- (3) The court must take account of the following—
  - (a) whether membership of an approved regulator was available to the defendant at the material time;
  - (b) if such membership was available, the reasons for the defendant not being a member;
  - (c) so far as relevant in the case of the conduct complained of, whether internal compliance procedures of a satisfactory nature were in place and, if so, the extent to which they were adhered to in that case.
- (4) The reference in subsection (3)(c) to “internal compliance procedures” being in place is a reference to any procedures put in place by the defendant for the purpose of ensuring that—
  - (a) material is not obtained by or on behalf of the defendant in an inappropriate way, and
  - (b) material is not published by the defendant in inappropriate circumstances.
- (5) The court may regard deterring the defendant and others from similar conduct as an object of punishment.

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- (6) This section is not to be read as limiting the power of the court to take account of any other matters it considers relevant to its decision.

**Commencement Information**

**I2** Ss. 34-39 in force at 3.11.2015 by virtue of s. 61(7) of this Act (and see explanatory note to [S.I. 2015/1837](#))

**36 Amount of exemplary damages**

- (1) This section applies where the court decides to award exemplary damages under section 34.
- (2) The court must have regard to these principles in determining the amount of exemplary damages—
- (a) the amount must not be more than the minimum needed to punish the defendant for the conduct complained of;
  - (b) the amount must be proportionate to the seriousness of the conduct.
- (3) The court must take account of these matters in determining the amount of exemplary damages—
- (a) the nature and extent of any loss or harm caused, or intended to be caused, by the defendant's conduct;
  - (b) the nature and extent of any benefit the defendant derived or intended to derive from such conduct.
- (4) The court may regard deterring the defendant and others from similar conduct as an object of punishment.
- (5) This section is not to be read as limiting the power of the court to take account of any other matters it considers relevant to its decision.

**Commencement Information**

**I3** Ss. 34-39 in force at 3.11.2015 by virtue of s. 61(7) of this Act (and see explanatory note to [S.I. 2015/1837](#))

**37 Multiple claimants**

- (1) This section applies where a relevant publisher—
- (a) is a defendant to a relevant claim, and
  - (b) is found liable to two or more persons in respect of the claim (“the persons affected”).
- (2) In deciding whether to award exemplary damages under section 34 or the amount of such damages to award (whether to one or more of the persons affected), the court must take account of any settlement or compromise by any persons of a claim in respect of the conduct.
- (3) But the court may take account of any such settlement or compromise only if the defendant agrees.

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- (4) If the court awards exemplary damages under section 34 to two or more of the persons affected, the total amount awarded must be such that it does not punish the defendant excessively.
- (5) If the court awards exemplary damages under section 34 to one or more of the persons affected, no later claim may be made for exemplary damages as regards the conduct.

#### **Commencement Information**

- I4** Ss. 34-39 in force at 3.11.2015 by virtue of s. 61(7) of this Act (and see explanatory note to [S.I. 2015/1837](#))

### **38 Multiple defendants**

- (1) Any liability of two or more persons for exemplary damages awarded under section 34 is several (and not joint or joint and several).
- (2) Subsection (1) has effect subject to the law relating to the liability of a partner for the conduct of another partner.
- (3) Where the liability of two or more persons for exemplary damages is several, no contribution in respect of the damages may be recovered by any of them under section 1 of the Civil Liability (Contribution) Act 1978.

#### **Commencement Information**

- I5** Ss. 34-39 in force at 3.11.2015 by virtue of s. 61(7) of this Act (and see explanatory note to [S.I. 2015/1837](#))

### **39 Awards of aggravated damages**

- (1) This section applies where—
  - (a) a relevant claim is made against a person (“the defendant”),
  - (b) the defendant was a relevant publisher at the material time,
  - (c) the claim is related to the publication of news-related material, and
  - (d) the defendant is found liable in respect of the claim.
- (2) Aggravated damages may be awarded against the defendant only to compensate for mental distress and not for purposes of punishment.
- (3) In this section, “aggravated damages” means damages that were commonly called aggravated before the passing of this Act and which—
  - (a) are awarded against a person in respect of the person's motive or exceptional conduct, but
  - (b) are not exemplary damages or restitutionary damages.
- (4) Nothing in this section is to be read as implying that, in cases where this section does not apply, aggravated damages may be awarded for purposes of punishment.

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### Commencement Information

- 16** Ss. 34-39 in force at 3.11.2015 by virtue of s. 61(7) of this Act (and see explanatory note to [S.I. 2015/1837](#))

## PROSPECTIVE

### 40 Awards of costs

- (1) This section applies where—
  - (a) a relevant claim is made against a person (“the defendant”),
  - (b) the defendant was a relevant publisher at the material time, and
  - (c) the claim is related to the publication of news-related material.
- (2) If the defendant was a member of an approved regulator at the time when the claim was commenced (or was unable to be a member at that time for reasons beyond the defendant's control or it would have been unreasonable in the circumstances for the defendant to have been a member at that time), the court must not award costs against the defendant unless satisfied that—
  - (a) the issues raised by the claim could not have been resolved by using an arbitration scheme of the approved regulator, or
  - (b) it is just and equitable in all the circumstances of the case to award costs against the defendant.
- (3) If the defendant was not a member of an approved regulator at the time when the claim was commenced (but would have been able to be a member at that time and it would have been reasonable in the circumstances for the defendant to have been a member at that time), the court must award costs against the defendant unless satisfied that—
  - (a) the issues raised by the claim could not have been resolved by using an arbitration scheme of the approved regulator (had the defendant been a member), or
  - (b) it is just and equitable in all the circumstances of the case to make a different award of costs or make no award of costs.
- (4) The Secretary of State must take steps to put in place arrangements for protecting the position in costs of parties to relevant claims who have entered into agreements under section 58 of the Courts and Legal Services Act 1990.
- (5) This section is not to be read as limiting any power to make rules of court.
- (6) This section does not apply until such time as a body is first recognised as an approved regulator.

### 41 Meaning of “relevant publisher”

- (1) In sections 34 to 40, “relevant publisher” means a person who, in the course of a business (whether or not carried on with a view to profit), publishes news-related material—
  - (a) which is written by different authors, and
  - (b) which is to any extent subject to editorial control.

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This is subject to subsections (5) and (6).

- (2) News-related material is “subject to editorial control” if there is a person (whether or not the publisher of the material) who has editorial or equivalent responsibility for—
  - (a) the content of the material,
  - (b) how the material is to be presented, and
  - (c) the decision to publish it.
- (3) A person who is the operator of a website is not to be taken as having editorial or equivalent responsibility for the decision to publish any material on the site, or for content of the material, if the person did not post the material on the site.
- (4) The fact that the operator of the website may moderate statements posted on it by others does not matter for the purposes of subsection (3).
- (5) A person is not a “relevant publisher” if the person is specified by name in Schedule 15.
- (6) A person is not a “relevant publisher” in so far as the person's publication of news-related material is in a capacity or case of a description specified in Schedule 15.
- (7) But a person who is not a “relevant publisher” as a result of paragraph 8 of that Schedule (micro-businesses) is nevertheless to be regarded as such if the person was a member of an approved regulator at the material time.

#### Commencement Information

I7 S. 41 in force at 3.11.2015 for specified purposes by S.I. 2015/1837, art. 2(a)

## 42 Other interpretative provisions

- (1) This section applies for the purposes of sections 34 to 41.
- (2) “Approved regulator” means a body recognised as a regulator of relevant publishers.
- (3) For the purposes of subsection (2), a body is “recognised” as a regulator of relevant publishers if it is so recognised by any body established by Royal Charter (whether established before or after the coming into force of this section) with the purpose of carrying on activities relating to the recognition of independent regulators of relevant publishers.
- (4) “Relevant claim” means a civil claim made in respect of any of the following—
  - (a) libel;
  - (b) slander;
  - (c) breach of confidence;
  - (d) misuse of private information;
  - (e) malicious falsehood;
  - (f) harassment.
- (5) For the purposes of subsection (4)—
  - (a) the reference to a claim made in respect of the misuse of private information does not include a reference to a claim made by virtue of [F1 Article 82 of the [F2 UK GDPR] or section 168 or 169 of the Data Protection Act 2018 (compensation for contravention of the data protection legislation) ];

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- (b) the reference to a claim made in respect of harassment is a reference to a claim made under the Protection from Harassment Act 1997.
- [<sup>F3</sup>(5A) In subsection (5)(a), “the UK GDPR” has the same meaning as in Parts 5 to 7 of the Data Protection Act 2018 (see section 3(10) and (14) of that Act).]
- (6) The “material time”, in relation to a relevant claim, is the time of the events giving rise to the claim.
- (7) “News-related material” means—
- (a) news or information about current affairs,
  - (b) opinion about matters relating to the news or current affairs, or
  - (c) gossip about celebrities, other public figures or other persons in the news.
- (8) A relevant claim is related to the publication of news-related material if the claim results from—
- (a) the publication of news-related material, or
  - (b) activities carried on in connection with the publication of such material (whether or not the material is in fact published).
- (9) A reference to the “publication” of material is a reference to publication—
- (a) on a website,
  - (b) in hard copy, or
  - (c) by any other means;
- and references to a person who “publishes” material are to be read accordingly.
- (10) A reference to “conduct” includes a reference to omissions; and a reference to a person's conduct includes a reference to a person's conduct after the events giving rise to the claim concerned.

#### Textual Amendments

- F1** Words in s. 42(5)(a) substituted (25.5.2018) by [Data Protection Act 2018 \(c. 12\)](#), s. 212(1), **Sch. 19 para. 181(2)** (with [ss. 117, 209, 210](#)); [S.I. 2018/625](#), reg. 2(1)(g)
- F2** Words in s. 42(5)(a) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 3 para. 24(2)** (with [Sch. 3 para. 112](#)); 2020 c. 1, Sch. 5 para. 1(1)
- F3** S. 42(5A) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 3 para. 24(3)** (with [Sch. 3 para. 112](#)); 2020 c. 1, Sch. 5 para. 1(1)

#### Commencement Information

- I8** S. 42 in force at 3.11.2015 for specified purposes by [S.I. 2015/1837](#), **art. 2(b)**

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