



## **Further things to think about when considering an arbitration claim**

*This summary is not legal advice and is provided solely to give general information on the remit of the pilot scheme. You must not rely upon this information in deciding whether or not to bring a claim and should consider obtaining legal advice.*

### **What types of claim is IPSO arbitration available for?**

IPSO arbitration is available for claims relating to:

The publication of certain statements that cause you harm:

- Defamation (Libel and Slander)
- Malicious falsehood

The publication or use of information that is confidential or private:

- Breach of confidence
- Misuse of private information
- Data protection

The unacceptable behaviour of journalists or photographers:

- Harassment

### **What types of claim can IPSO arbitration not deal with?**

The scheme does not handle claims relating to alleged criminal activity.

The pilot scheme rules do not allow the arbitrator to prevent the publication of new material. However, if your claim relates to material that has already been published, the arbitrator may prevent the re-publication of that material if they find against the publisher.

### **Public interest defences**

The descriptions below refer to public interest defences. A public interest defence might apply, for example, where the publisher can show that publication was necessary in order to expose negligence, wrongdoing or hypocrisy.

### **Defamation**

A defamatory statement is one that seriously harms the reputation of a person or organisation; it is not simply a statement that is untrue. It is important to note that whilst you may feel that your reputation has been damaged by the publication, it is the arbitrator who will ultimately determine this issue.

To bring a defamation claim you must be able to show that the statement:

- has caused, or is likely to cause, you serious harm

- refers to you (i.e. you are somehow identified as the subject of the statement)
- has been published to a third person.

However, if the publisher can show that the statement is substantially true it will be a defence to your claim. The publisher may also defend the claim by showing that the statement is not presented as fact but as an honest opinion.

A publisher may seek to defend your claim if the statement complained about was published as part of a fair and accurate report of:

- a debate in parliament
- a court case
- a public meeting
- a press conference
- an academic conference

In certain circumstances, reports concerning information and statements given in such situations are protected from defamation claims because of the need to hold open and frank debates which inform the public. This protection provides a defence in relation to statements which might otherwise be defamatory if they were published under different circumstances.

### **Malicious falsehood**

To bring a claim for malicious falsehood you must show that the statement was:

- untrue
- published maliciously
- that you have suffered financial loss.

Unlike with defamation, you do not need to show that the statement was damaging to your reputation, provided it has caused financial harm. For example, a report stating that a person has retired, when they have not, is not damaging to their reputation, but may result in a loss of business.

In general, a statement is considered to be malicious if it can be shown that the person publishing it knew it was untrue or that it was published in order to cause harm. A claim will not be successful where information is published mistakenly and without malice.

### **Breach of confidence**

Breach of confidence relates to the unauthorised publication of confidential information.

A claimant must show that:

- the information itself was confidential (i.e. sensitive, non-trivial information that was not previously available to the public)
- the information was originally provided in circumstances which created an obligation of confidence (i.e. as part of a contractual or personal relationship)
- the unauthorised use of the information caused harm (whether financial, social or emotional).

If a publisher receives confidential information, and recognises it as confidential, they are generally under a duty not to publish it. However, a publisher may defend the claim by showing that it was in the public interest to publish the information.

### **Misuse of private information**

Everyone has the right to privacy. In order to establish that the right to privacy applies in any given case the person making the claim must show they had a reasonable expectation of privacy regarding the information that was published. Where the right to privacy does apply, it will be balanced against the publisher's right to free expression. Neither is automatically given greater weight over the other and the balance will be determined on the facts in each case.

The following factors are often taken into account in privacy cases:

- the location in which the reported activity or behaviour occurred
- the nature of the information (such as whether it relates to a person's health or a personal relationship)
- whether family members or other third parties might be adversely affected by the publication
- whether the matter involves the privacy of a child or a vulnerable person
- how the information was obtained
- whether publication contributed to a public debate of general interest to society.

A publisher may be able to defend the publication of private material if it can show that it was in the public interest. A publisher can also successfully defend a claim by showing that the information published was already in the public domain.

### **Data protection**

The use of personal data is regulated by the Data Protection Act 1998. Data handlers (including newspaper and magazine publishers) are required to keep private information which they process safe (i.e. they must maintain the privacy of the information). The 1998 Act also seeks to prevent anyone from obtaining personal data without consent.

A publisher may defend a data protection claim by showing that:

- the data was published in a fair way, having been supplied by an authorised person for the purposes of publication
- they had a reasonable belief that they would have been given permission to publish
- the publication or gathering of the data was justified in order to produce journalistic material, the publication of which was in the public interest.

### **Harassment**

Protection from harassment is provided under the Protection from Harassment Act 1997. The Act does not mention journalism or photography specifically but does make it an offence to pursue a "course of conduct" which a reasonable person would consider to be harassment. The behaviour complained about must have occurred on more than one occasion before it is deemed harassment.

A publisher may defend a harassment claim by demonstrating that the conduct was:

- pursued to detect or prevent crime
- pursued to comply with an obligation under law
- reasonable in the particular circumstances of the case.