

*Interpretation***1 Interpretation**

- (1) This section applies for the purposes of sections 2 to 8.
- (2) “Relevant publisher” means a person (other than a broadcaster) who publishes—
  - (a) a newspaper or magazine containing news-related material, or
  - (b) a website containing news-related material (whether or not related to a newspaper or magazine).
- (3) For the purposes of subsection (2)—
  - “broadcaster” means—
    - (a) the holder of a licence under the Broadcasting Act 1990 or 1996,
    - (b) the British Broadcasting Corporation, or
    - (c) Sianel Pedwar Cymru;
  - “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.
- (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) The reference in subsection (4)(d) to a claim made in respect of the misuse of private information does not include a reference to a claim made by virtue of section 13 of the Data Protection Act 1998 (damage or distress suffered as a result of a contravention of a requirement of that Act).
- (6) The reference in subsection (4)(f) to a claim made in respect of harassment is a reference to a claim made under the Protection from Harassment Act 1997.
- (7) “Approved regulator” means a body recognised as a regulator of relevant publishers.
- (8) 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 bodies for the purpose of regulating relevant publishers.

- (9) 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.

*Exemplary damages*

**2 Awards of exemplary damages**

- (1) This section applies where –
- (a) a relevant publisher is a defendant to a relevant claim,
  - (b) the events giving rise to the claim arose out of activities carried on for the purposes of, or in connection with, the publication of any material (whether or not the material was in fact published), and
  - (c) 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 time of the events giving rise to the claim.
- (3) Where the court is not prevented from making an award of exemplary damages by subsection (2), 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
  - (b) may do so only under this section.
- (4) Exemplary damages may be awarded under this section only if they are claimed.
- (5) 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.
- (6) Exemplary damages may be awarded under this section whether or not another remedy is granted.
- (7) 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.

**3 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 2.
- (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 time of the events giving rise to the claim;
  - (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 purposes of ensuring –
  - (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.
- (6) This section is not to be read as limiting the power of the court to take account of any other circumstances it considers relevant to its decision.

#### **4 Amount of exemplary damages**

- (1) This section applies where the court decides to award exemplary damages under section 2.
- (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 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 2 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.
- (4) If the court awards exemplary damages under section 2 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 2 to one or more of the persons affected, no later claim may be made for exemplary damages as regards the conduct.

## **6 Multiple defendants**

- (1) Any liability of two or more persons for exemplary damages awarded under section 2 is several (and not joint or joint and several).
- (2) Subsection (1) has effect subject to the law relating to—
  - (a) vicarious liability;
  - (b) 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.

### *Aggravated damages*

## **7 Awards of aggravated damages**

- (1) This section applies where—
  - (a) a relevant publisher is a defendant to a relevant claim,
  - (b) the conduct complained of arose out of activities carried on for the purposes of, or in connection with, the publication of any material (whether or not the material was in fact published), and
  - (c) 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.

### *Costs*

## **8 Awards of costs**

- (1) This section applies where—
  - (a) a relevant publisher is a defendant to a relevant claim, and

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- (b) the conduct complained of arose out of activities carried on for the purposes of, or in connection with, the publication of any material (whether or not the material was in fact published).
- (2) The court may take account of these matters in deciding any question relating to an award of costs in the proceedings—
    - (a) if membership of an approved regulator was available to the defendant at the time of the conduct complained of, whether the defendant was a member at that time;
    - (b) if the defendant was a member at that time, whether a party to the proceedings refused to make use of an arbitration scheme of the approved regulator;
    - (c) if the defendant was not a member at that time, the reasons for the defendant not being a member.
  - (3) For the purposes of subsection (2)(b), a party refuses to make use of an arbitration scheme of an approved regulator if—
    - (a) at the time of the conduct complained of, the approved regulator had arrangements in place for an arbitration scheme under which the claim could have been referred for determination by an arbitrator appointed under the scheme, but
    - (b) the party refused to agree to the claim being so referred.
  - (4) If the court takes account of the matter mentioned in subsection (2)(b), the court must give the party concerned an opportunity to be heard about the reasons for the refusal.
  - (5) This section is not to be read as limiting any power to make rules of court.