



### Decision gives greater freedom to the media

The Court of Appeal has dismissed a libel claim against a former BBC journalist, making it clear that defamation law is there to encourage serious journalism. Caroline Kean, partner and head of litigation, describes it as a "momentous victory" for the media.

Ex-police officer Michael Charman, backed by the Police Federation, had claimed that the book "Bent Coppers - The inside story of Scotland Yard's battle against police corruption", written by Graeme McLagan and published by Orion, libelled him by suggesting that there were "cogent grounds" of suspecting him of being involved in corruption.

In a unanimous decision, the Court of Appeal found that McLagan had taken steps to verify the story and that, as a result of his 'honesty, his expertise on the subject, his careful research and his painstaking evaluation of a mass of material', the book was protected by the "Reynolds" defence of qualified privilege. They also awarded the publisher its costs, which are likely to run to more than £1 million.

Kean says "This case is a momentous victory for publishers and for the media generally because it makes it clear that the defence of responsible journalism is available across the media. The court has confirmed that the purpose of English defamation law is to encourage serious journalism and not act as a hurdle."

It is the first time that the court has been asked to consider whether the test of "responsible journalism" can apply to a book. Kean says "It used to be said it only applied to newspapers because they were acting under time constraints - with a book, you can keep checking and checking so the defence could never apply. The court has said that of course it can apply to a book and that means, by implication, it can also apply to a television or film production company."

In the past, there was no special defence for journalism. "Then there was the case of *Reynolds v Times Newspapers Ltd* [2001] AC127, which said there are certain issues which are serious matters about which the public has a right to know. If a journalist has acted responsibly and done everything he or she genuinely can to check the information and has given the other side opportunity to comment, then, if they get something wrong on publication, they should still be protected from a libel claim."

However, what happened post-Reynolds was that the High Court - in every case except for one - treated the defence as a series of hurdles that a journalist had to get over, she says. "Famously called Lord Nicholls' ten tests, they were meant to be a guideline of what could be construed as responsible journalism. But the courts were saying "have you got over this test, have you got over that test", and you could get over nine and then the court would say "you didn't give the other side enough time to respond, so out you go."

However, the House of Lords took issue with that in *Wall Street Journal v Jameel* [2006] UKHL 44, involving an article on the financing of terror. The High Court and Court of Appeal found against the newspaper but the House of Lords ruled that the lower courts had been misinterpreting Reynolds and made it clear that the tests were designed to allow serious journalism to be published not act as a series of a hurdles. As Law Lord Baroness Hale said: "The defamation law should encourage serious journalism and I can't think of anything more serious - even, some would say, boring - than the Wall Street Journal."

Kean says "Some commentators have also said that the Reynolds defence can only apply if you are virtually neutral in what you write. However the Appeal Court has said that, provided the journalist has taken everything into account, they are entitled to have an opinion."

The case also raised the question of "reportage" as a defence. Kean explains "There are some authorities growing up that if you report the existence of a dispute but don't take sides, then you can have a defence of reportage. In this case, the court said McLagan had been a "bloodhound sniffing out a story", which constituted responsible journalism, as opposed to a "watchdog barking to alert us to the fact of the story", which would be reportage."

For further details see the LexisNexis Interview with Grania Langdon-Down - 12 October 2007.