



# Farore Law

- Mini Guide -

## DEFAMATION

### What is defamation?

Defamation is the act of unfairly harming somebody's reputation. Defamation can come under "libel" or "slander". **Libel** is the 'permanent' publication of defamatory comments, such as those published in print. **Slander** is their 'temporary' publication, such as comments made during a conversation.

### "Absolute privilege" – a defence to an allegation of defamation

Absolute privilege is one of several defences available to a person who is accused of defamation. It is known as a 'complete' defence, meaning that it will apply even if a person knowingly lied or acted maliciously in any way during the course of making a defamatory statement.

**It is not that there is a right to be malicious – rather, it is important that the independence of people in certain situations should be protected.**<sup>1</sup> For example, a person should feel free to make a comment about another person in court. The application of absolute privilege in this situation removes the fear of being sued for defamation.

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<sup>1</sup> *Bottomley v Brougham* [1908] 1 KB 584 (see Channell LJ at 587)

## Can the defence of absolute privilege apply to court allegations that are not yet public?

Absolute privilege applies to communications between solicitors and their clients in relation to intended or actual legal proceedings.<sup>2</sup> The privilege also attaches to written evidence provided by a witness. According to case law, this privilege extends to the proof (draft) of that evidence taken by a solicitor. It does not matter whether or not the proof is taken in the course of proceedings.<sup>3</sup>

In other words: when proceedings are contemplated but have not yet started, privilege can apply to statements made to a solicitor or other person taking a witness statement,<sup>4</sup> and to what was said during the course of an interview by a solicitor with a person who might or might not be able to be a witness<sup>5</sup>.

It has also been held that the privilege extends to statements made in a pleading,<sup>6</sup> and to instructions given by a party to their lawyer (or other person taking their proof) in preparation of a statement of claim (or similar document).<sup>7</sup> This means it is important for clients who wish to prevent or defend defamation proceedings that they only repeat allegations to third parties (and to the press) that are indicated in their pleaded cases or witness statements.

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<sup>2</sup> *Minter v Priest* [1930] All ER Rep 431

<sup>3</sup> *Lincoln v Daniels* [1962] 1 QB 237, Devlin J at 257-8

<sup>4</sup> *Watson v M'Ewan* [1905] AC 480; *Lincoln v Daniels* [1962] 1 QB 237 at 260

<sup>5</sup> *Beresford v White* (1914) 30 TLR 591

<sup>6</sup> *Lord Beauchamp v Sir R Croft* (1569) 3 Dyer 285

<sup>7</sup> *Lincoln v Daniels* [1962] 1 QB 237 at 260



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