

### Defamation in Sport – an update on the case of *Sheffield Wednesday v Hargreaves*

In bygone years, the strongly held convictions of dedicated football fans would be voiced over a post-match drink or through conversations at work on Monday mornings. However, in our digital age, a new method for debating the merits and demerits of the manager's tactics has emerged as a favourite in addition to these tried and trusted methods. This method is the use of the online forum. With only an Internet connection as a precondition, fans can post contributions to online forums at any time, from any place. However, online forums bring their own particular risks. The High Court decision in the case of *Sheffield Wednesday Football Club Limited & others v Neil Hargreaves* (18 October 2007) highlighted some of these risks.

First a brief recap on the law of defamation: defamation serves to protect your right not to have your reputation disparaged by defamatory statements made about you to third parties. It has its roots in a statute enacted in the thirteenth century. Hundreds of years of common law were reinforced by the enactment of the Defamation Act 1996. To bring an action for defamation, you must establish that the statement about which you seek to complain is: (1) a defamatory statement; (2) identifies you or refers to you; and (3) is published by the defendant to a third party. In order to constitute a defamatory statement the statement in question must be one which tends to lower your reputation generally in the estimation of right-thinking members of society. The term "libel" refers to the publication of a defamatory statement in a permanent form, e.g. through a posting to an online forum. This can be contrasted to the term "slander", which refers to the publication of a defamatory statement in a transitory form.

In the *Sheffield Wednesday* case, several fans posted content on a website ([www.owlstalk.co.uk](http://www.owlstalk.co.uk)) owned and operated by the defendant. Before posting content, fans registered as members of the forum and agreed not to use the forum to post defamatory content. Following certain disparaging comments posted by fans (generally targeted towards the management of the club), Sheffield Wednesday launched an action against the defendant in which they requested the disclosure of the identities of the fans who had posted the allegedly defamatory material. The High Court ordered the defendant, as website operator, to disclose the identity of five of the fans in question. (The case has resurfaced as Sheffield Wednesday has recently dropped its case against the five fans in question.) However, the High Court refused the request in respect of the remainder of the fans concerned, arguing that their postings bordered on the trivial and were little more than abusive in nature. In such circumstances, the court held that it would be disproportionate and unjustifiably intrusive to demand the defendant to disclose the identities of such fans.

The recent High Court decision of *Applause Store Productions Limited & Matthew Firsh v Grant Raphael* also considered allegedly defamatory material posted online. In this case, the defendant, a former school friend of the claimant, had posted allegedly defamatory material concerning the claimant on the popular online social networking site, Facebook. In finding for the claimant, the court awarded substantial damages (£22,000). The facts indicated that no more than five individuals had viewed the relevant posting but as the profile was available to the "London" network, it was held to be not only possible, but probable, that others had viewed the profile. This fact influenced the level of damages.

Both cases highlight the need to exercise caution in online postings. The sheer ease with which material can be posted online does not reduce the threat of being found to have published defamatory material. Web hosts should also bear in mind that, in the absence of a valid defence, they are likely to be implicated in the publication of defamatory statements. In such circumstances they should act quickly to suspend access to allegedly defamatory postings.

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