Ministry of JUSTICE

Defamation and the internet:
the multiple publication rule

Response to Consultation

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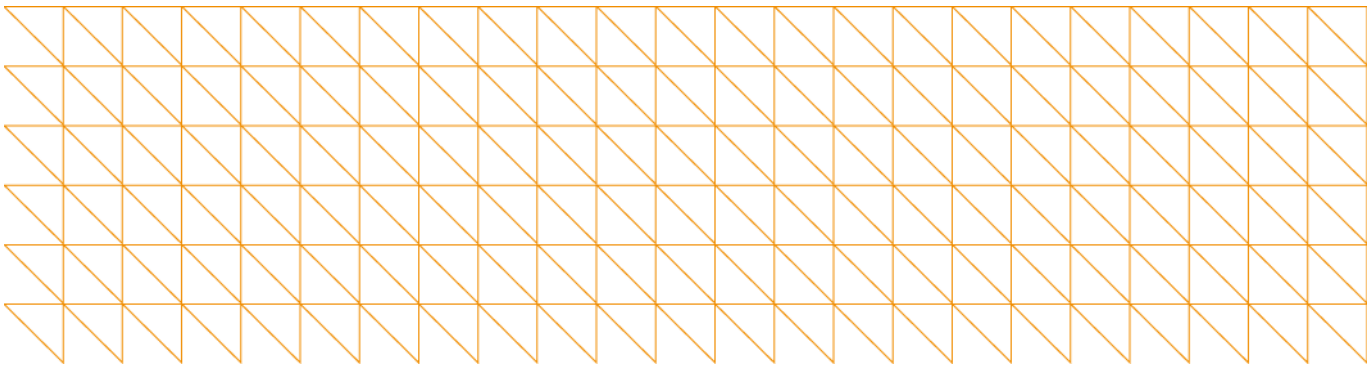

Ministry of JUSTICE

Defamation and the internet:

the multiple publication rule

Response to consultation carried out by the Ministry of Justice.

This information is also available on the Ministry of Justice website: www.justice.gov.uk

About this consultation

To:	Media organisations, the legal profession and others involved in defamation proceedings in England and Wales and all with an interest in this area.
Duration:	From 16 September 2009 to 16 December 2009
Enquiries (including requests for the paper in an alternative format) to:	Paul Norris Ministry of Justice 102 Petty France London SW1H 9AJ Tel: 020 3334 3220 Fax: 020 3334 4035 Email: paul.norris@justice.gsi.gov.uk

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Introduction and contact details

This document is the post-consultation report for the consultation paper, Defamation and the internet: the multiple publication rule.

It will cover:

- the background to the report
- a summary of the responses to the report
- a detailed response to the specific questions raised in the report
- the next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting **Paul Norris** at the address below:

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This report is also available on the Ministry's website: www.justice.gov.uk

Alternative format versions of this publication can be requested from civillawreform@justice.gsi.gov.uk

Background

The consultation paper, 'Defamation and the internet: the multiple publication rule[1]', was published on 16 September 2009. It invited comments on whether there is a need for reform of the law in relation to the multiple publication rule in defamation proceedings.

It is a longstanding principle of the civil law that each publication of defamatory material gives rise to a separate cause of action which is subject to its own limitation period (the "multiple publication rule"). Issues in relation to the multiple publication rule have become more prominent in recent years as a result of the development of online archives. It is now common for organisations, particularly the media, and individuals to make previously published material available to everyone through an online archive. The consultation paper therefore considered the operation of this rule and how any reform in this area might interact with the limitation period in defamation claims.

The consultation period closed on 16 December 2009 and this report summarises the responses and sets out the government's conclusions and next steps following the consultation.

A list of respondents is at Annex A.

[1] www.justice.gov.uk/consultations/docs/defamation-consultation-paper.pdf

Summary of responses

1. A total of 34 responses to the consultation paper were received. Of these, the largest group of respondents were the legal profession who accounted for 23% of the responses. 21% of responses came from individuals and 15% came from media organisations. There were also responses received from publishers' organisations, barristers, the judiciary, academics, campaigning organisations, an internet service provider and various other organisations.

2. The responses were analysed in order to gauge opinion as to whether the law in relation to the multiple publication rule required reform, and if so to consider how that would interact with the limitation period in defamation claims.

3. 55% of those who responded favoured the introduction of a single publication rule, as against 29% who favoured the retention of the multiple publication rule. 11% favoured the third option put forward in the paper, which was the retention of the multiple publication rule, whilst extending the defence of qualified privilege where a publisher is willing to place a notice on the archive.

4. There was general consensus among respondents that should any change to the law in this area be considered appropriate then it should apply to all forms of publication and not just to online archives.

5. Mixed views were expressed on issues around how a single publication rule could best work in practice and on the extent to which, where archived material was modified in order that the defamatory sting of an article had been altered, it should be considered as a new publication and therefore not afforded the protection of the single publication rule.

6. There was strong agreement over the limitation period in defamation cases. 81% of respondents that answered the relevant question agreed that should the multiple publication rule be retained the limitation period should remain unchanged as one year from the date of publication (with discretion to extend). 77% of respondents also agreed that even if a single publication rule were to be introduced the limitation period should remain as one year from the date of publication (with discretion to extend), on the basis that the discretion to extend would ensure that claimants' rights were protected.

7. A summary of specific responses to each question follows.

Responses to specific questions

1. **Question 1. Taking into account the arguments set out above, do you consider in principle that the multiple publication rule should be retained? If not, should a single publication rule be introduced? Please give reasons for your answers.**

   A total of 29 respondents answered this question. 10 of those agreed that the multiple publication rule should be retained, whereas 19 respondents favoured abolishing the multiple publication rule and replacing it with a single publication rule.

   The 10 respondents in favour of keeping the multiple publication rule were made up of claimant solicitors, barristers, claimant groups, an individual and an academic. There were a range of arguments put forward in these responses as to why the multiple publication rule should be retained.

   The most commonly used argument was that the current law is working without significant problems. One respondent pointed out that there is little judicial criticism of this rule and expressed the view that the starting point for the multiple publication rule (ie. each time defamatory publication occurs, defamation occurs) is a sound one. This respondent expressed the view that, simply because defamatory material is more easily republished on the internet, this does not justify a move away from the judicially established multiple publication rule.

   Another view that was expressed was that there is no pressing problem posed by the multiple publication rule at present and that there is a lack of hard evidence to show that the rule currently unfairly inhibits internet publishers. A claimant lawyer concurred with this view, stating that with the notable exception of the 'Loutchansky litigation', cases where the multiple publication rule becomes an issue are relatively rare. They argued that any prejudice suffered by archive publishers is therefore minimal, and outweighed by the need to give effect to the claimant's legal rights.

   Another respondent raised the differences in dealing with internet defamation as compared to dealing with defamation in traditional print publications. They indicated that it can often take longer than the one year limitation period to track down the originator of defamatory material online and it may then be repeated or republished elsewhere on the internet after the one year limitation period has expired. The view was expressed that in those circumstances a claimant could be left in a disadvantageous position as they would be unable to respond to a damaging republication of a defamatory statement following the expiration of the limitation period.

A further argument put forward in favour of the multiple publication rule was that old material may still have an adverse impact even if accessed many years after the original publication. One claimant solicitor expressed the view that reports of somebody being charged with an offence that they were later cleared of, may still have an adverse effect on that person's reputation years later. They argued that the ready availability and potentially wide distribution, even of old material, on the internet that is often not corrected means that the multiple publication rule is an important means by which claimants can defend their reputation.

Other respondents argued that a single publication rule is essentially a blunt instrument capable of giving rise to serious injustice as it would not have the flexibility that the multiple publication rule, developed through the common law, has. One respondent expressed the view that introducing a single publication rule would be contrary to the public interest as it would leave a claimant with no legal route by which to establish the falsehood of a defamatory allegation and no possibility of obtaining a final injunction to prevent its repetition.

The 19 respondents who favoured moving to a single publication rule were made up of media lawyers, publishers' organisations, media organisations, individuals, campaigning organisations, an internet service provider and other organisations.

The most common argument put forward by the majority of these respondents was that the multiple publication rule is outdated and is no longer appropriate for the 21st century media age. A number of respondents expressed the view that it creates open ended liability for online publishers who store information on their archives and therefore undermines the basis of the limitation period in defamation proceedings. These respondents indicated that it was their belief that a single publication rule would provide much needed legal certainty for publishers and would be less inhibitive of freedom of speech online.

One respondent argued that in the modern media environment it would be very unusual for a person not to be aware of defamatory content within the limitation period of one year, and if they were not, it would suggest that the material is not actually doing their reputation any damage in the first place. Another respondent pointed out that other countries seem to have workable defamation laws that do not require an open ended multiple publication rule.

There were also a number of respondents who questioned the definition of the term publication in this context. One suggested that to equate the serving of a web page to the publication of a book, or a newspaper, rather than to the rereading of a book or newspaper is illogical. Another suggested that a web page being read 1,000 times is only equivalent to a newspaper selling 1,000 copies. The newspaper would only be liable once, and the respondent argued that the same should apply to a web page. A further respondent agreed with this point and expressed the view that, each time a web page is served, it is served by the same original

single computer file, and therefore should not equate to a "new publication".

Concerns were also raised by a number of respondents about the commercial impact of the multiple publication rule. They argued that it creates the risk of permanently increasing injustice for publishers and that this disadvantages, in particular, small and medium sized publishing companies.

Among the 10 respondents in favour of retaining the multiple publication rule, two suggested that in order to restore the balance of the multiple publication rule and offer protection to both claimants and defendants an additional defence should be made available. These suggestions are referred to in detail under the summary of responses to Question 6.

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2. Question 2. If the multiple publication rule were to be retained should there be an obligation to place a notice on an archive once the person responsible has been notified that the material is subject to defamation proceedings?

A total of 27 respondents answered this question. Eight of those were in favour of an obligation to place a notice on an archive, whereas 13 opposed this proposal. Six other respondents did not come down strongly on either side, but put forward some points that would be need to be considered should such a proposal be taken forward.

The eight respondents in favour of the obligation to place a notice on an archive once the person responsible has been notified that the material is subject to defamation proceedings were made up of claimant solicitors, an academic, individuals, free speech campaigners and other organisations.

The main arguments that these respondents put forward in favour of this are that it would not be a particularly onerous requirement for archive holders, and therefore would be a proportionate requirement in order to alert anyone who should read the article in the future that the legality of the material was disputed. They argued that this was particularly appropriate in relation to online archives, as often this material remains very easily accessible through the medium of search engines and can be widely accessed for an indefinite time into the future.

One respondent also expressed the view that as the European Court of Human Rights raised this very issue in paragraph 47 of its judgment in *Times Newspapers Limited v United Kingdom*[2], then it was sensible that it be adopted in order to minimise the harm to the claimant's reputation and

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[2] [2009] EMLR 14

avoid misleading the public, by informing them that the legality of the article is under review.

The 13 respondents who were against there being an obligation to place a note on an archive once the person responsible becomes aware that the material is subject to defamation proceedings, were made up of media organisations, publishers' organisations, barristers, internet service providers, and solicitors both from the claimant side and the media side.

The main view expressed by this group of respondents was that the placing of a notice on an archive should be left to the discretion of the owner of that archive. They argued that to make this an obligation would be too rigid and would not provide the flexibility that is necessary to take account of the different sets of circumstances that may arise. It was also argued that most responsible publishers would already take whatever action they could to reduce the impact of an alleged defamation.

Another view that was expressed was that in some cases this would be an undue interference with the right to freedom of expression of the publisher. One respondent argued that such an obligation would be open to abuse, as it could lead to claimants forcing publishers to place notices on archives with regard to unmeritorious claims. For example, it was argued that in a case where the publisher is eventually able to prove that the story is true, the fact that the archive had previously been noted may lead to doubts about its veracity.

Other respondents expressed the view that whilst they did not feel there should be an obligation on the publisher to put such a note on their archive, a failure to do so should be considered when assessing damages to be awarded should the claimant's complaint be upheld.

Six respondents, made up of media organisations, publishers' organisations and individuals did not express a strong view either way on whether there should be an obligation on the publisher to place a note on the archive. However, they did raise a number of points that would need to be considered should any such obligation be introduced.

One respondent argued that once a publisher is made aware of a defamation claim then it should not be permitted to allow republication whether there had been a note placed on the archive or not. The view was also expressed that such an obligation would only work if it served to limit the potential liability of the person responsible. Another argued that such an obligation would not always remove the defamatory sting of an article, and therefore would only be of use in some cases. One argument put forward was that there should be some kind of recompense for the publisher if they have placed a note on an article whilst the defamation claim is ongoing and the article is then found not to be defamatory.

3. Do you agree that if a single publication rule were to be introduced, it should apply to all defamation proceedings, not just those relating to online publications?

A total of 25 respondents answered this question. 24 of them agreed that if a single publication rule were to be introduced, it should apply to all defamation proceedings and not just those relating to online publications. One respondent sought to differentiate between online publications and publications in print or broadcast media.

The 24 responses supporting the proposal included media organisations, both claimant and media lawyers, internet service providers, individuals, campaigning organisations, academics and other organisations. This group of respondents expressed the view that it would be illogical to differentiate between different forms of defamatory publication, and that for the clarity and consistency of the law any legislation introduced should apply to all forms of publication.

The one respondent that differentiated between online publication and traditional print and broadcast media, did so on the grounds of the ongoing nature of internet publication. This respondent argued that because search engines do not differentiate between "new" news and "old" news or between "traditional" news sources (for example the BBC or online versions of daily newspapers) and "new" media (for example blogs), there was a case for online publications being dealt with differently.

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4. If a single publication rule were introduced,

a) should it be made obligatory to remove or amend material held in other formats under the control of the same publisher in the event of a successful defamation action against the original publication of the material?

A total of 24 respondents answered this question. Fifteen of them agreed that it should be made obligatory to remove or amend material held in other formats under the control of the same publisher in the event of a successful defamation action against the original publication of the material. However, the other nine respondents disagreed with this position.

The 15 respondents who agreed that it should be obligatory included claimant solicitors, barristers, campaigning organisations, internet service providers, and individuals. The main views expressed by this group of respondents were that it is sensible to require that settlement of an action against a media organisation applies to publication in all forms, and that therefore a publisher should be required to remove or amend material held in all forms. However, some of these respondents also argued that

this did not require a legislative change as in practice when a defamatory action is lost, the court already often awards an injunction to prevent further publication in any form.

The nine respondents who disagreed that such an obligation should exist included media organisations, media lawyers, publishers' organisations and one claimant lawyer. Some of these respondents also made the point that this was unnecessary, as in practice often a court will already provide an injunction to prevent further publication. A number of these respondents also argued that requiring publications to be altered would distort or falsify the record as to what has been published.

b) should there be a provision that, where defamatory material is re-transmitted in a new format, the single publication rule would only protect the previous publisher and not the publisher of the new article?

A total of 22 respondents answered this question. Twelve of them agreed that there should be a provision that, where defamatory material is re-transmitted in a new format, the single publication rule would only protect the previous publisher and not the publisher of the new article. Four respondents believed that the single publication rule should protect both the previous publisher and the publisher of the new article. The remaining six respondents argued that the individual circumstances required consideration.

The first group of responses was made up of claimant solicitors, campaigning organisations, and some media organisations. The main view that this group of respondents expressed was that it would restrict claimants' rights too stringently if the single publication rule were to cover not only the original publisher, but also any subsequent publishers, or subsequent publications.

The four respondents who believed that the single publication rule should protect both the original publishers and the publisher of any new article argued that as long as the same article was involved, then the format in which it is published and the identity of the publisher are not relevant as the subject in question is the reputation of the claimant.

The remaining respondents put forward a range of views. One respondent argued that the idea seemed reasonable, but in practice would run into complications as to how to work out what is a new format, and hence what qualifies for the protection afforded to the original article by the single publication rule. Two respondents both expressed the view that this should be a matter left to the courts, and pointed out that the US courts have developed jurisprudence in such cases.

c) if neither of these are considered appropriate, how could claimants' interests be protected?

Only seven respondents answered this question. This group of respondents included claimant lawyers, media organisations and publishers' organisations.

Three respondents argued that the best way to protect claimant's rights would be through the discretion that is available in relation to the limitation period in defamation cases under section 32A of the Limitation Act 1980. One respondent argued that the only alternative to this was for a publisher to amend the material in such a way as to accept that it was untrue.

Two other respondents expressed the view that the best way to protect the claimant would be through an injunction which relates not to the form of publication or indeed to the publisher, but more to the words being complained of. Another respondent argued that the claimant's interests are best served by ensuring that the publisher applies the same weight to any retraction that is published as it did to the original article.

d) should the existing 'voluntary' obligations to correct inaccurate and misleading material be strengthened? If so, how should this be done?

17 respondents answered this question. Of these 11 did not believe that the current voluntary obligations under the Press Complaints Commission Code of Practice and provisions relating to broadcast media required strengthening. Three respondents felt that the obligations did require some strengthening and three further respondents did not directly address the question but did make general points relating to the issue.

The 11 respondents that did not believe the current obligations required strengthening included media lawyers, media organisations, barristers and claimant lawyers. The main argument that was put forward was that to strengthen them would take away some of the flexibility in the current system and would impose too rigid a structure on individual publishers. On respondent argued that such a change could be seen as making the publication of inaccurate material unlawful and that this would be contrary to Article 10 of the European Convention on Human Rights. Others expressed the view that the existing voluntary codes of practice seem to be working and therefore there was no justification for strengthening them.

The three responses that expressed the view that the code did require strengthening came from claimant lawyers. They argued that the voluntary

code is not working in practice because often it is being ignored and the Press Complaints Commission do not have strong enough powers to enforce the code.

Three further responses, from campaigning organisations and media trade organisations offered general comments in answer to the question. On respondent argued that this was a point that went further than the scope of this consultation paper and was more an issue of how best to regulate the internet. Another respondent argued for wholesale reform of the Press Complaints Commission, but again conceded that this was outside the scope of the consultation. A further view expressed was that an alternative to strengthening these obligations would be to propose fundamental reform of UK libel law, for example by shifting the burden of proof to the claimant.

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5. a) If a single publication rule were introduced, do you consider that the approach taken in the United States in respect of what constitutes a new publication of hard copy material would be workable? If not, what changes should be made?

This question relates to the position in the US, where it has been held that morning and afternoon editions of newspapers constitute separate publications, as do hardback and paperback editions of a book. However, although the same previously published article appearing in the next edition of a monthly magazine will be a separate publication, the reprinting of a magazine edition in response to public demand does not constitute a new publication.

A total of 22 respondents answered this question. Thirteen responses agreed that the United States approach would be workable, at least as a starting point, in terms of distinguishing what constitutes a new publication of hard copy material. However, nine respondents disagreed and argued that the United States approach would not be appropriate.

The 13 respondents who were in favour of using the United States approach to distinguish what constitutes a new publication included both media lawyers and some claimant lawyers, barristers, and campaigning organisations. Many of these respondents stopped short of arguing that the US approach was a perfect model. However, these respondents did express the view that it represented a good starting point for deciding what constitutes a new publication of hard copy material. One respondent argued that the United States approach demonstrates that “new publication” issues can be resolved in practice should a single publication rule be introduced. However, even among this group of respondents concerns were raised over the United States approach of treating early and late editions of newspapers or magazines as “new” publications.

The nine respondents who disagreed that the United States approach would be workable included individuals, barristers, claimant lawyers and other organisations. A number of these respondents argued that the United States approach dates back a number of years to before the growth of the internet and therefore would not be an appropriate starting point for a modern law in a fast changing media world. Respondents also argued that should the UK Government introduce a single publication rule it would be preferable to define what constitutes a "new" publication as precisely as possible.

b) Should online content that has been modified be regarded as a new publication?

A total of 21 respondents answered this question. Seventeen respondents expressed the view that it would depend entirely on the nature of the modification. Two respondents argued that modified online content should always be regarded as a new publication and two respondents argued that modified online content should not constitute a new publication.

The 17 respondents who argued that it should depend on the nature of the publication as to whether modified online content should be regarded as a new publication included claimant lawyers, media lawyers and media organisations. They expressed the view that this should only be the case if the modifications are "material" or if the modifications are directly relevant to the libel complained of or directly affect the "defamatory sting" of the article.

Two respondents argued that modified online content should always be regarded as a new publication, or else there was a risk that editors would find a way around the rules and arguments around whether the modifications directly affect the defamatory sting could cause unnecessary litigation.

Two further responses, both from individuals, argued that modifications should not constitute a new publication. One view that these respondents expressed was that the increase in user modified content on the internet, that can be modified numerous times, made it difficult to class each modification as constituting a new publication.

c) Are there any other issues that would need to be resolved in establishing a single publication rule? Please give reasons for your answers.

A total of nine respondents answered this question, of which six identified other issues. Four respondents argued that there was a remaining issue around hyper linking in relation to online content. They expressed the view that if some time after the expiry of the limitation period under the single publication rule, a new publisher doesn't re-publish, but hyper links in a blog or on a social networking site to the article, then it would need to be considered as to whether this would constitute a "new" publication.

One respondent raised issues around possible amendments to the limitation periods in defamation cases as a problem that would require resolution, and a further respondent raised the issue of jurisdiction in online cases. They argued that there would be problems around trying to apply any change to the UK law would apply to websites hosted in other countries.

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6. As an alternative to introducing a single publication rule, do you consider that the Defamation Act 1996 should be amended to extend the defence of qualified privilege to publications on online archives outside the one year limitation period for the initial publication, unless the publisher refuses or neglects to update the electronic version, on request, with a reasonable letter or statement by the claimant by way of explanation or contradiction? Please give reasons for your answer.

A total of 26 respondents answered this question. Fourteen of those opposed the defence of qualified privilege being extended for online archives in the way suggested in the consultation paper. Six respondents supported the proposal to some extent, but commented that their preference was for the introduction of a single publication rule.

Only four of the 26 respondents that answered this question were strongly in favour of this approach. Two respondents expressed the view that there were better alternative options to the introduction of the single publication rule than the extension of qualified privilege.

The 14 respondents that opposed the extension of the qualified privilege defence were made up of individuals, claimant solicitors, barristers, media organisations, the judiciary, a campaigning organisation, publishers' organisations and other organisations. One argument that was put forward both by individuals and claimant solicitors was that to extend qualified privilege purely for online archives might cause unfairness in that other forms of media, such as hard copy archives, would not have access to such protections. A further concern was raised by a claimant solicitor

and a barrister over what would constitute an “archive”. They queried whether, for example, archived social networking messages would be subject to the same protections as a newspaper’s online news archive and whether all online material over one year old should qualify for protection. One respondent also argued that it would be a departure from the principle of privilege, to afford the defence to those reporting on a matter that is not necessarily of public concern.

One media organisation also raised concerns about the practicality and workability of such a proposal. They questioned whether, as search engines archive material automatically and as many of the more popular online search engines are hosted abroad, any extension of the defence of qualified privilege under the law of England and Wales would be able to have an effect on such archives.

A further view that was expressed by five respondents was that if the proposal precluded the possibility of a claimant obtaining an injunction to prevent future publication then it would not be fair to claimants. Indeed, one barrister went further, suggesting that in cases of very serious libels this may be contrary to Articles 6 and 8 of the European Convention on Human Rights.

Of the six respondents who supported the proposal as a second option if a single publication rule is not introduced, there were varying levels of support. Most acknowledged in principle that the proposal may be a worthwhile second option, but expressed the view that they would need to see a more detailed examination of exactly how such an extension of the qualified privilege defence would work in practice. Two media trade organisations were forthright in reinforcing their view that the introduction of a single publication rule was the priority and that this proposal would be better in addition to the single publication rule, as opposed to as an alternative.

However, these respondents also raised some of the same concerns about the proposals as those who opposed the extension of qualified privilege. For example, a media trade organisation expressed the view that extending qualified privilege for online archives only could create inequality with other forms of archive, and another respondent expressed the view that the term “archive” would require careful definition.

The four responses that express support for the proposal came from two claimant solicitors, an individual and an internet service provider. One of the claimant solicitors expressed the view that they believed their clients would favour this approach as it would lead to compensation being claimed from the original publisher and not from a secondary publisher who holds the information in an online archive.

Another respondent expressed support for any rule that made it necessary for the media to publish corrections and apologies in a prominent manner on archived material. However, their view was that this would need to be mandatory and supported by effective enforcement

powers. They also raised concerns about the interpretation of the term "online archive." In their view, "online archives" are not comparable to traditional hard copy archives, as the function of search engines means that this material is often as easily accessible years after publication as it is when the material is originally published.

The internet service provider expressed the view that in principle the option appears workable, but that further information would be needed about how it would work in practice before they could give a more complete response. The individual respondent in favour of the proposal expressed the view that this would prevent "profit-motivated" legal actions against archive material, years after the original defamation has occurred.

Two responses put forward proposals for a new statutory defence as an alternative to extending qualified privilege. Both of these envisaged retaining the multiple publication rule and providing a defence which would have broadly the same effect as the proposal in relation to qualified privilege. There were some differences between the two suggestions, but both envisaged providing a defence which would protect publishers of archive material (whether online or hard copy) subject to them complying with a requirement on being notified either to remove the material in question or to attach a notice to the archive.

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7. Do you agree that if the multiple publication rule is retained, the limitation period should remain at one year from the date of publication (with discretion to extend)? If not, what limitation period would be appropriate and why?

A total of 27 respondents answered this question. Twenty-two respondents agreed that if the multiple publication rule were to remain then the limitation period should remain at one year from the date of publication, with discretion to extend. Two respondents argued that the limitation period should increase to three years from the date of knowledge with a ten year backstop from the date of publication, as suggested by the Law Commission. Three respondents argued that having any limitation period with the multiple publication rule was pointless as the rule allows the claimant to "restart the clock", and therefore re-iterated their view that the multiple publication rule should be abolished.

There were two different arguments among the 22 respondents that supported the retention of a one year limitation period. One group of these respondents argued that the limitation period is working well and therefore does not require changing and the other group argued that it would be illogical to extend the limitation period with the already "open ended" liability that the multiple publication rule allows for.

8. a) If a single publication rule were introduced, should the limitation period of one year run from the date of publication (with discretion to extend) or the date of knowledge (without discretion to extend)? If the latter, should there also be a ten year long-stop from the date of publication?

b) If you consider that an alternative approach would be appropriate, what should this be and why?

A total of 27 respondents answered this question. Twenty-one responses agreed that the limitation period for a single publication rule should be one year from the date of publication with discretion to extend. Six respondents preferred the option of a limitation period running from the date of knowledge.

The 21 respondents that agreed that the limitation period should run from the date of publication was made up of media organisations, individuals, claimant lawyers, campaigning organisations, a media lawyer, publishers' organisations, academics, internet service providers, barristers and other organisations. The main argument put forward by this group, was that one year from the date of publication provides a certainty that will benefit the operation of the law in practice. Several argued that to have a single publication rule, but then amend the limitation period to one year from the date of knowledge risked re-introducing the multiple publication rule by the back door. Some respondents expressed the view that using the date of publication would not be detrimental to claimant's rights because the discretion to extend would still exist and could be applied in cases where the claimant can prove that they could not reasonably have known about the publication within the one year limitation period.

The six respondents who preferred the date of knowledge as a trigger for the limitation period was made up of individuals and claimant solicitors. They argued that a single publication rule with a one year limitation period from the date of publication would be unduly restrictive to claimants and could infringe their rights. One respondent argued that the vast nature of the internet meant that there was a risk of an article coming to light long after the one year limitation period had expired.

Only one respondent provided further information in response to questions 9 to 15 on the initial impact assessment. These views have been incorporated into the revised assessment attached with the response paper.

Conclusion and next steps

1. We are grateful to all those who responded to the consultation paper for their views on this difficult issue. The Government recognises the need to strike a balance between the interests of claimants in being able to protect their reputation and those of defendants in being protected from potentially open-ended liability.

2. In addition to the comments received in response to this paper, the issue of the multiple publication rule has recently also received consideration by the Culture Media and Sport Select Committee in its report "Press Standards, Privacy and Libel" and by the Ministry of Justice Libel Working Group established to consider issues relating to the law of libel.

3. The Select Committee recommended that the Government should introduce a one year limitation period on actions brought in respect of publications on the internet, and that the limitation period should be capable of being extended if the claimant can satisfy the courts that he or she could not reasonably have been aware of the existence of the publication.

4. The Libel Working Group considered that there are two broad options for protecting a publisher from legal action outside the one year limitation period running from the date of first publication. Either a single publication rule could be introduced (with the court having discretion to extend the one year limitation period where appropriate) or the multiple publication rule could be retained but with a new exception (either extending the scope of qualified privilege or introducing a similar free-standing defence based on a notice requirement).

5. The group took the view that it is possible that different considerations should apply depending on whether allegedly defamatory material has been republished by the same (originating) publisher or by a different publisher. Whilst recognising that the decision was finely balanced, the majority of the group considered that a single publication rule (with discretion) should be the preferred option in circumstances where the republication of allegedly defamatory material is by the same publisher.

6. In relation to republication of the material by a different publisher, there was no consensus or majority view as to which of the options described above should be preferred.

7. With a new single publication rule, there were mixed views on the nature of the discretion that would be appropriate. Some of the group preferred

the option proposed by the Select Committee of allowing an extension where the claimant could show that he or she could not reasonably have been aware of the existence of the publication. Others saw merit in the broader discretion based on the interests of justice which was introduced in 2009 in Ireland, while others considered that the existing discretion in the Limitation Act 1980 should be retained.

8. In the light of the responses received to this consultation, and the views expressed by the Select Committee and the Libel Working Group, the Government considers on balance that it is appropriate in principle to introduce a single publication rule (with discretion to the court to extend the period as necessary). Further consideration will be given to the detailed provisions to govern the operation of the single publication rule.

Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact Julia Bradford, Ministry of Justice Consultation Co-ordinator, on 020 3334 4492, or email her at consultation@justice.gsi.gov.uk

Alternatively, you may wish to write to the address below:

Julia Bradford
Consultation Co-ordinator
Ministry of Justice
102 Petty France
London
SW1H 9AJ

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under the **Introduction and contact details** section of this paper at page 3.

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.

2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

3. **Clarity of scope and impac**t – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

6. **Responsiveness of consultation exercise**s – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

These criteria must be reproduced within all consultation documents.

Annex A – List of respondents

Media organisations

The Chartered Institute of Journalists

The Guardian Media Group

The Media Lawyers Association

The Newspaper Society

Times Newspapers Ltd

Legal profession

Berrymans Lace Mawer

Carter-Ruck Solicitors

Clifford Chance LLP

Field Fisher Waterhouse LLP

Foot Anstey Solicitors

Herbert Smith LLP

Olswang LLP

Schillings

Individuals

Mr Paul Bradshaw

Mr Mike Gale

Mr Ken Johnson

Mr Andrew Mackenzie

Dr Eoin O'Dell

Mr Mike Ross

Mr Simon Walker

Publishers organisations

BMJ Publishing Group Ltd

International Association of Scientific, Technical and Medical Publishers

PPA

The Publishers Association

Campaigning organisations

Index on Censorship & English PEN

Justice

Barristers

Chambers of Andrew Caldecott QC

Mr Justin Rushbrooke

Academics

Mr Charlie Beckett, Mr Andrew Murray and Mr Andrew Scott – The London School of Economics and Political Science

Members of the judiciary

Mr Justice Eady, Mr Justice Tugendhat and Mrs Justice Sharp

Internet Service Provider

Yahoo

Other organisations

Black Dog Group

Licensing Executives Society

The Media Law Resource Center

Produced by the Ministry of Justice

Alternative format versions of this report are available on request from 020 3334 3220.