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In the words of Lord Justice Lawton, intrinsic to the role of the media is bringing to light “ the fraudulent and the scandalous” (Dodd and Hanna 2012). The media has a historic role of exposing deceit, and has a duty to the public to hold the guilty to account. However, the law must strike a balance between the freedom of the media, with protecting “ an individual’s personal and professional reputation from unjustified attack” (Dodd and Hanna 2012). The Defamation Act 2013 has arguably favoured defendants, and is still widely perceived as a force for good in increasing the scope of the media’s freedom of expression. In seeking to understand whether further reform is needed, it is integral to consider some of the major changes initiated by the Defamation Act, and the success of its mediation between Articles 8 and 10 of the European Convention on Human Rights. Arguably the most significant aspect of the Defamation Act cushioning the media, is the serious harm threshold which works as a deterrent to trivial claims. The test, in section 1(1), details, “ a statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant”.

Over the years several cases have tested the meaning of this, with Cooke v MGN Ltd (2014) demonstrating the pressures on claimants to meet the serious harm threshold. Bean J isolated the importance of an online apology made by the defendants which worked to abate the poor impression of the claimant. This case favourably demonstrates to publishers that the serious harm test is flexible and an “ accessible apology” may counter a defamatory statement. The media is further safeguarded by the widely held perception of the serious harm test as a significant hurdle that must be overcome

before a claim can gather traction. In Ames v The Spamhaus Project Ltd (2015) Warby J held that serious harm is better dealt with by way of preliminary issue; this ruling paved the way for defence lawyers to similarly advise clients to raise serious harm at the outset in a case. For media organisations this means that the claimant's mettle can be tested, and costs can be minimised by disposing of a claim at the early stages before publishers incur substantial costs drafting a defence.

However, the serious harm threshold has been substantially tested in recent years, with many arguing the bar has been lowered in favour of the privacy rights of claimants. Lachaux v Independent Print Ltd (2017) is a landmark case in which Warby J judged, " Libel is no longer actionable without proof of damage…It is now necessary to prove as a fact on the balance of probabilities that serious reputational harm has been caused by, or is likely to result in future from, the publication complained of.

" Most significantly, Warby J ruled that an inference of serious reputational harm was sufficient, a judgment held by the Court of Appeal. Many media organisations perceive this ruling as at odds with parliament's original intentions for the serious harm threshold; namely to diminish trivial claims, and buttress media's freedom of expression. However by eschewing the stipulation of " actual harm", the consideration of inference will significantly shorten the staying period from the date of publication up to the trial. During this period in which harm is ordinarily assessed, the level of damage suffered by the claimant may be influenced by a variety of factors fundamentally outside the control of both parties i.

e. the publication of analogous allegations, and virulent social media discussion of the case. Such eventualities have the potential to be more damaging to the defendant, so in this respect inference of harm may work to curtail further reputational harm to the claimant, and mounting legal costs for both parties.