

# The injustice of a law where even winners are losers

THE ENGLISH law of libel is a game played on an unlevel playing field between two sides of unequal strengths, often refereed eccentrically and producing a result that has nothing to do with fairness, justice or right. Of its many curious aspects, none is more ridiculous than this: the defamed party does not have to prove that his or her reputation has actually suffered. The law requires only that the words complained of tend to lower the claimant's reputation; not that they have in fact done so.

It's not necessary to call a witness to say: "I used to think he was a splendid chap, but since reading that *Daily Star* article I now consider him a terrible person." It's as if, in a personal injuries case, the claimant could argue that "I wasn't hurt at all in the accident, but I'm demanding compensation because it was the kind of accident in which I might have been injured."

Add to that absurdity a few more injustices: there is no legal aid for libel, so only the rich can afford it; the rules of evidence favour a dishonest claimant over a media attempting to

expose wrongdoing; and the system of assessing compensation, by way of a jury, verges on the random.

*Reputations Under Fire* is a rollickingly enjoyable account of the most sensational and interesting libel cases of the past dozen or so years. It is also a constant reminder of the law's failings. David Hooper is one of the country's most respected libel solicitors; he was the lawyer in many of the cases he describes.

Though it's fun to read the details, the overall message is depressing. Unworthy claimants get huge sums - far more for libels that hardly dent their reputation than they would get if per-



## FRIDAY BOOK

**Reputations Under Fire: winners and losers in the libel business**

by David Hooper  
(Little, Brown, £25)

manently disabled. Bullies such as Robert Maxwell use the libel laws to threaten anyone who might be writing the truth. At the same time, victims who have genuinely suffered from media lies land up with nothing.

The list of people whose lives have been damaged by libel litigation is long and sad. Even many apparent winners are, in the long run, losers. *Corona-*

*tion Street* star Bill Roache handsomely won his claim after *The Sun* called him boring and unpopular; it resulted in his bankruptcy. Lord Aldington gained the largest ever damages award from a jury - £1,500,000 against Count Nikolai Tolstoy, who had called him a war criminal. He received not a penny and the case has blighted his declining years.

Dr Malcolm Smith's life was ruined after a jury assessed his compensation for slander, over a false accusation of sexual harassment, at £150,000. He got nothing, and lost his savings, house and medical practice in trying to meet his legal costs.

Hooper's first lively tales from the libel courts (*Public Scandal, Odium and Contempt*) appeared in 1984. The landscape of libel has altered greatly since, even if the rampant egos, stubbornness and greed have not changed much. The end of the Eighties saw the last outrageous awards - Lord Aldington's £1.5m; Elton John's £1m over allegations of orgies with rent boys (*The Sun* paid before the case reached court); Yorkshire Ripper wife Sonia

Sutcliffe's £600,000 against *Private Eye*, later shown to have been obtained by her lies; and Jeffrey Archer's dubious £500,000.

The backlash began in the Nineties. The appeal court was given the power to reduce excessive jury awards. A trial judge became entitled to guide the jury on amounts of compensation, instead of being limited to ludicrous hints that a libel might be worth "a nice holiday, but not a new house". The new Defamation Act is likely to make the settlement of libel disputes quicker and cheaper. Lawyers taking cases on a "no win, no fee" basis opens the door slightly to people who could not previously think about going to law.

All these developments may mean more libel actions being started, but fewer reaching trial; and with far lower damages. Sadly, from the point of view of public entertainment, there will be fewer flamboyant characters strutting the stages of our courtrooms. The golden age of libel is over, and there may not be enough material for David Hooper's third collection.

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