

The report which is in question and of which the BBC would like to have sight was commissioned by you on a confidential basis for your own management and planning use.

Unfortunately it arrived while you were on holiday and for various reasons the BBC knows that it exists as does the Department of Health.

The report has been looked at by many people including a meeting of all the relevant management staff and consultant staff.

Errors of fact have been found in the report.

The report was supplied to you on a confidential basis.

You and I agree that it is in everyone's interests that the matter which is the subject of the report be debated properly because behind that thinking lies the reason why you commissioned the confidential report in the first place.

There is current worry that as it stands the report may be defamatory.

I have set out all these issues in separate paragraphs so that they can be identified as features that influence what I am about to say.

Defamation:

I have advised that James Wisheart should consult with the Medical Protection Society now so that he may be separately advised from the beginning in case there is a conflict of interest with the Trust. The reason for saying this is that if James Wisheart is the person about whom the defamatory material is concerned then he would be a potential Plaintiff. Potential Defendants would be the persons who wrote the report, the Trust and the BBC.

All four have a joint interest in making sure that no defamatory material is published. This applies equally to the BBC as it does to the Trust.

The Trust must have regard to its relationship with the authors of the report. I have no doubt that they would claim qualified privilege in the sense that they prepared the report for you on a confidential basis and without malice on a subject matter which was of concern to the business of the Trust. Publication by the authors to you therefore ought to be no problem.

The problem will be publication by the Trust and publication by the BBC of any defamatory matter.

Truth is a defence to defamation and that is a consideration that has to be taken into account. Wrong facts can be inconsistent with the truth