



Neutral Citation Number: [2007] EWHC 3063 (QB)

Case No: HQ06X02739

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 20/12/2007

Before :

**THE HON. MR JUSTICE EADY**

Between :

**Shahid Malik**

**Claimant**

- and -

**Newspost Ltd**  
**Danny Lockwood**  
**Jonathan Scott**

**Defendants**

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**Adam Wolanski and Victoria Jolliffe** (instructed by **Bindman & Partners**) for the Claimant  
**Jonathan Crystal** (instructed by **Fox Hayes**) for the Defendants

Hearing dates: 12th to 23rd November 2007

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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**Mr Justice Eady:**

1. At the close of the evidence in this case, I was invited to rule on a number of matters, including the defence of privilege. Mr Wolanski, for the Claimant, submitted that there was no need to obtain any finding of fact from the jury, since I could proceed on the assumption that the very limited issues of fact relating to privilege would be resolved in the Defendants' favour. It was his case that, on that assumption, the Claimant was entitled to judgment on that defence. I so ruled on 20 November and now give my reasons.
2. The Claimant is Mr Shahid Malik, who was elected member of Parliament for Dewsbury and Mirfield at the general election held in May 2005. He is also a minister at the Department of Overseas Development. He sues the Defendants in respect of a letter published in the edition of the Dewsbury Press for 12 May and a follow up article on 19 May 2006. The First Defendant, Newspost Ltd, is the publisher and the Second Defendant, Mr Lockwood, the editor of the newspaper, which is published weekly in and around Dewsbury with a circulation of approximately 17,000. The third Defendant is Mr Jonathan Scott, who was a Conservative councillor standing for re-election in the Dewsbury South ward in the local elections on 4 May 2006. He was on that occasion unsuccessful and was troubled by aspects of the campaign of the Labour Party leading up to the election. He expressed those concerns in the letter published on 12 May and subsequently gave an interview to Mr Martin Shaw, a senior reporter of the newspaper who, with Mr Lockwood, had founded the Dewsbury Press in 2002. The interview covered much the same ground as the letter.
3. It is necessary at this point to set out the words complained of. First, the letter:

“Dear Sir

The local election results in Dewsbury last week may have been a personal triumph for the victorious candidates involved but these results did nothing to enhance our local democracy or indeed the reputation of our town.

The election results have now created a position whereby our communities are polarised and divided as never before.

The defeat of Labour's Eric Firth at the hands of the BNP and both my defeat in Dewsbury South (as a result of the tactics of extreme elements within the ethnic community) and that of Kingsley Hill in Dewsbury West to the same tactics, robbed our town of three committed, hard working individuals.

The same cannot be said of the Labour MP Shahid Malik in my view. I witnessed first hand in my election in Dewsbury South the physical intimidation and verbal abuse handed out to me by his cohorts.

Malik's men behaved so badly that a permanent police presence was required for the whole of the day at the polling station in Saville Town. Malik's Asian ethnic entourage

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behaved no better than the BNP thugs they purport to be so offended by.

Malik and the BNP have by their politics and style managed to create huge divisions and resentment in our local communities and the prospects for harmonious community cohesion in Dewsbury in the near future are very poor indeed.

I predicted that if Shahid Malik was elected in Dewsbury we would see the same divisions and community tensions that transpired while he was active in Burnley and that the BNP would become firmly established in Dewsbury.

The challenge for the majority indigenous population and the right thinking decent members of the ethnic minority population is to ensure Malik's brand of politics does not contaminate our town any further and that he along with the BNP are driven out at the next general election.

Make no mistake, as far as I can see, Malik is a left wing extremist, obsessed by the BNP, political correctness and his own vanity.

In essence, Malik's agenda is no different to that of the BNP themselves. Malik convinced local Asian voters to vote for Labour candidates in both Dewsbury South and Dewsbury West on the grounds that those candidates were 'Muslim brothers'.

The election in both Dewsbury West and Dewsbury South was not fought on the issues but on race, in my view and personal experience, and the results bear that theory out.

The local media, police, local authority departments and the mainstream political parties themselves can all help with sending Mr Malik back to Lancashire where he belongs, by exposing Malik and his dangerous and unwanted style of politics for what it is and by refusing to co-operate with either him or the BNP in the future.

For my part, I will ensure the Conservative Party get organised properly over the next three years across Dewsbury and that a huge war chest is built up of financial and human resources so that once the general election comes we can rid our town of both these extreme elements."

4. The article of 19 May was in these terms:

**“ ‘A crossroads in relations’**

**LAST week former Dewsbury South Conservative councillor Jonathan Scott spoke out over threats, intimidation and “dirty politics” in the local election campaign. He said the aggressive electioneering by Labour was directed by Dewsbury and Mirfield MP Shahid Malik and was aimed at ensuring the Asian community voted en masse for their “Muslim brothers”. Here he tells news editor MARTIN SHAW of how those tactics are fuelling unrest and racial tensions.**

AS A hardened political street fighter former councillor Jonathan Scott has developed a thick skin and relishes the rough and tumble of an election campaign.

However what happened on polling day in the heart of Dewsbury’s Asian community left him angry and concerned for community relations in the town.

Mr Scott believes Labour’s tactics on May 4 goes beyond what is acceptable, even in the murky world of politics.

He and Tory councillor Khizar Iqbal were out canvassing in Saville Town when an Asian Labour activist came up to him and called him a “white racist thug”.

The man was threatening and intimidating – and the intimidation continued throughout the day outside the polling station at the Saville Town Community Centre in Orchard Street.

Groups of young Labour supporters circled Mr Scott and Coun Iqbal in cars, slowing down and glaring as they passed by time and time again.

One man stopped and beckoned over Mr Scott, then told him menacingly: “remember my face, you will be seeing it later”.

Mr Scott, a Tory councillor in Dewsbury South for two years, is not easily frightened. On the surface these threats sound like the work of playground bullies.

But there is a sinister under-current which threatens to undermine the integrity of the ballot and trust in the political system.

“What we had in Saville Town are Labour gangs - and gangs is what they are – with clear intent to intimidate and undermine our campaign,” said Mr Scott.

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“They were outside the polling station all day and went round in packs. They were circling round the polling station and everyone was stopped and spoken to.

“There are strict rules that election tellers can only communicate with a voter on the way out of a polling station but these people were meeting and greeting in the street.

“The teller was told three times by the returning officer and three times by the police not to conduct his activities in the way he was doing. One of Malik’s men responded by saying: ‘We can do what we like.’

“What is clear is that if we had gone down with 40 or 50 white people and stood outside Saville Town Community Centre and done exactly the same as the Labour party there would have been a physical standoff, if not a physical confrontation. It could easily have gotten out of control.”

Mr Scott said the election should mark a watershed in local politics and added: “the overall flavour of the day was that I almost felt like an alien in my own country. It was a feeling I have never had before. I felt I was unwanted and unwelcome.”

Mr Scott said there was a perception in the white community that the Asian vote was “corruptible or for sale”.

“What we have is an ethnic community which has, wrongly in my view, been labelled with Islamic militancy and activity and been tainted up and down the country with postal voting and electoral fraud and it is totally unacceptable and inappropriate for mature politicians and their cohorts to behave like this and there is an issue we need to address.”

Mr Scott said a candidate’s race should never be an issue in an election but Labour – and Mr Malik – had made it so.

“There is a small minority – a youthful, arrogant, cocky element – who are bringing the ethnic community into disrepute and tainting their reputation,” he said.

“I don’t believe the majority of the Asian community is racist but believe there is a small element working within it that is. Direct experience of working within the community tells me that.

“There is a small element in the Asian community who are very comfortable living in a ‘community within a community’ who don’t want to be progressive or forward thinking.

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“I am a political operator of 20 years’ experience and I can cope with the personal stuff they throw at me – be it true or untrue – but I have never experienced the situation where my ethnicity has been an issue because I have never made anybody else’s an issue.”

**Minority**

Mr Scott said the Asian community must act now against the minority which threatened to fuel unrest.

“Like-minded, decent members of the Asian community, who are classed as the majority, must take a stand and start to question the actions and activities of these people and bring about change.

“There is a collective obligation on us as politicians, the local authority, the police and the media to clean up our politics.

“We have to go back to a time when we allowed people to vote without interference on polling day.

All parties have ‘knocked up’ for years when they knock on doors and check whether people who said they would vote for them have been to the ballot box but that is very different to gangs turning up at their homes and physically taking them to vote, not leaving it to them to decide whether they want to exercise their vote.

“That is the difference between the two communities and the two parties.”

Mr Scott said all parties should meet in the autumn, ahead of next year’s elections, to decide a way forward, agree electoral rules and stick to them.

Mr Scott said there was widespread resentment in the Asian community in Saville Town over the war in Iraq yet the local community continues to vote labour in droves.

“You have to ask why that is. I know from talking to them that their biggest concern is the Iraq war and that is down to Labour.

“People should vote on the issues, not on race, but in Dewsbury West (where Labour’s Mumtaz Hussain won) and Dewsbury South (where Labour’s Masood Ahmed beat Mr Scott) that’s not what happened.

“Had Karam Hussain (Lib Dem) stood in Dewsbury West or Khizar Iqbal (Con) in Dewsbury South they would have won.

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“All that matters in Saville Town is Iraq yet Labour does not pay the price at the ballot box.

“It is a matter of perception and we are at a crossroads in community relations and we must work to foster proper community cohesion and fight polarisation and division.

“I may have lost my seat but I respect the verdict of the electorate and this is not sour grapes in any way at all.

“There has to be a debate about these issues. We cannot keep sticking our heads in the sand and pretend everything is going to be all right.””

5. The Claimant has pleaded the natural and ordinary meanings in respect of those publications compendiously, as follows:

“4.1 The Claimant organised and directed gangs of Asian thugs to disrupt the voting in the Dewsbury South council elections and to threaten and intimidate voters, and is therefore guilty of serious criminal offences;

4.2 The Claimant exhorted and put improper pressure upon voters to vote according to ethnic or religious affiliations rather than according to their own political views or other legitimate considerations, thereby knowingly fuelling unrest and causing tension and racial divisions within the community;

4.3 By reason of the above matters the Claimant is a racist and a dangerous extremist who is unfit to hold public office as an MP.”

6. The defence of privilege was argued on the basis of the principles set out in *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127. The defence comes before the court relatively infrequently, but the facts of this case differ in potentially significant respects from the situations covered in the handful of authorities in which *Reynolds* has so far been discussed. First, it is clear that neither of the publications sued upon could remotely be classified as investigative journalism; yet it has been said more than once that it is this form of journalism which the defence is intended to protect or promote.
7. Secondly, the question has not previously been addressed as to how far (if at all) this form of privilege can be prayed in aid by a contributor, such as Mr Scott, who is not a journalist, nor performing the functions of a journalist even on an *ad hoc* basis. He submitted a reader’s letter, like any other correspondent, and was later interviewed as the source for the allegations said to be defamatory.
8. It might be thought, therefore, as a matter of first impression, that *Reynolds* privilege would have no application to either of the publications. Yet, it is necessary to have regard to the broader issues of public policy upon which are founded not only the defence now associated with the *Reynolds* case, but also the closely related public

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interest privilege previously applied from time to time on the basis of *Adam v Ward* [1917] AC 309.

9. Sometimes, it may be in the public interest for allegations to be generally disseminated through the media by means which cannot be labelled as investigative (or indeed any other form of) journalism. It is possible to conceive of circumstances where it is the information itself, and the public interest in receiving it, that is important rather than the means of conveying it. In such a case, some or all of the public policy considerations identified in *Reynolds* may well be engaged. Thus it obviously cannot be said that privilege must be ruled out of court altogether merely because these circumstances, in the respects I have identified, do not exactly match those discussed in earlier *Reynolds* cases. There must still be a form of public interest protection.
10. There is no doubt that the subject-matter of these publications is of public interest. Allegations of undermining the democratic process, including by intimidation, are very serious indeed. As is well established, however, that alone does not mean that it is in the public interest to publish *any* such allegations irrespective of their truth or falsity.
11. If a defendant is to be spared the burden of proving the truth of such defamatory imputations, and to avail himself of a public interest defence, certain conditions must be fulfilled. As Lord Nicholls explained, that is because the public interest itself requires that some filter must be applied to allegations which are liable to damage the reputations of those who are attacked and to undermine their rights under Article 8 of the European Convention on Human Rights: see *Reynolds* at p. 201 A-D. The public interest in protecting the reputation of those in public life has been emphasised also in Strasbourg on a number of occasions: see e.g. *Lindon v France* [2007] ECHR 836.
12. The question arises, therefore, what is the nature of the filter in circumstances falling outside the formulations of *Reynolds* privilege hitherto appearing in the decided cases.
13. It would presumably not be appropriate to express the criteria exactly as in *Adam v Ward*, but rather to assume that, if a publication can be shown to be in the public interest (irrespective of truth or falsity), then a social or moral duty to impart the information can be assumed. Nevertheless, there must be some safeguards in the interests of fairness and the protection of reputation.
14. So far as Mr Scott is concerned, he was simply making defamatory allegations directly – allegations which I have already ruled are, in all essential respects, factual in character rather than comment or opinion. There is no question of his merely *reporting* allegations. He was asserting them directly. There is no authority to support the proposition that he can do so to the world at large without having to prove that they were substantially true. No doubt he could have raised his concerns on a more limited basis which would, almost certainly, have attracted the protection of privilege – for example to the police, to the returning officer, or to the appropriate body within the Labour Party. But there is no comparable defence for simply making serious allegations of this kind to the general public.
15. As to the First and Second Defendants, on the other hand, there would no doubt be circumstances in which such allegations could be reported under the cloak of

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privilege, provided certain steps had first been taken; for example, obtaining a response from Mr Malik in advance of publication or carrying out other corroborative checks. Moreover, if both sides of the controversy were fairly and disinterestedly reported, there might be a *reportage* defence: see e.g. *Roberts v Gable* [2007] EMLR 16. The facts of the present case, however, do not fit into either of these forms of privilege.

16. One of the issues contemplated for determination by the jury was whether Mr Martin Shaw had tried to contact Mr Malik on his mobile telephone. I am prepared to assume that he did, although this is not accepted by Mr Malik. On Mr Shaw's own evidence, he did not leave a message or make any other attempt to establish contact (e.g. through his office in Dewsbury or that at Westminster). It seems clear in the light of the authorities that, in the case of allegations this serious, more determined attempts should have been made to give Mr Malik the chance to comment. No effort was made to give his side of the story at all. In my judgment, that is on the facts of this case fatal to the First and Second Defendants' plea of privilege: see e.g. *Reynolds* at 205 B-C and *Galloway v Telegraph Group Ltd* [2006] EMLR 221 at [75].
17. These are my reasons for rejecting the defences of privilege.