Neutral Citation Number: [2009] EWHC 398 (QB)

Case No: HQ05X00542

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 4 March 2009

Before :

THE HONOURABLE MR JUSTICE EADY

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Between :

PRINCE RADU OF HOHENZOLLERN **Claimant**

- and -

(1) MARCO HOUSTON
(2) SENA-JULIA PUBLICATUS LIMITED **Defendants**

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James Price QC (instructed by **Carter-Ruck**) for the **Claimant**
Stephen Cogley (instructed by **Blake Lapthorn**) for the **Defendants**

Hearing dates: 19-20 February 2009

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Judgment

Mr Justice Eady:

1. This litigation has an unhappy and drawn out history. The publication took place in the magazine *Royalty Monthly* in September 2004. After proceedings were issued, time was taken up over security for costs, with a visit to the Court of Appeal. There was eventually a trial in November 2007, limited to the defence of privilege, on which the Claimant succeeded. The relevant background is to be found in my judgment on that occasion: [2007] EWHC 2735 (QB). There was a further visit to the Court of Appeal challenging the ruling on privilege, which failed for the reasons explained in the judgment handed down in July 2008: [2008] EWCA Civ 921.

2. Following the first trial, I directed on 23 November 2007 that a properly particularised pleading should be served in January 2008, supporting the defence of justification. This was to take account of the rulings I had given on the defamatory meanings in the words complained of. No doubt because of the delay over the second appeal, that timetable was not complied with and the defence was eventually served on 22 September 2008.

3. A date had been obtained to resolve the outstanding issues in October last year, but that was vacated and the trial is now due to take place in June 2009 (i.e. nearly five years after publication). I understand that the Defendants wish that there should be trial by jury. If so, that is a factor which only serves to underline the need for clarity, economy and efficiency in identifying the issues. In any event, the case needs to be focused on what are left as the "real issues" between the parties and confined to the evidence which is necessary and proportionate for achieving a fair result. Not only is that in accordance with the underlying philosophy of the CPR, but it had already been made clear in the Court of Appeal that this was to be the approach adopted in defamation cases: see *Polly Peck Ltd v Trelford* [1986] QB 1000 and *Rechem International Ltd v Express Newspapers*, The Times, 19 June 1992.

4. It is right to say that the pleading of the defence of justification has, over the last few months, been shifting and chaotic. I was told that this is explicable in part through a reluctance to spend money but, if so, it is a clear example of false economy. Even Mr Cogley, their counsel, has described the pleading as "not resplendent with clarity". (He has only become involved in the pleading process very recently.) Where I would disagree with him is in his assessment that it was merely "over-particularised". There is an obvious difference between excessive particulars and material which is simply confusing and irrelevant.

5. I must now resolve the Claimant's application to strike out large tracts of the defence, which was developed by Mr Price QC who has recently come into the case for the first time. He has had to deal with a swiftly moving target, since the version of the defence originally under attack was that served on 22 September. It changed significantly on 29 January of this year and, again, 36 hours before the hearing, when further extensive amendments were served on the Claimant's advisers. Realistically, they have done their best to address the latest attempt in the short time available, without taking points about inadequate notice.

6. Mr Price's central criticisms of the latest document are, first, that the pleading contains a good deal of irrelevant, embarrassing and prejudicial material that needs to be excised (especially so if there is to be trial by jury) and, secondly, that in important

respects the pleading lacks crucial particulars identifying how it is said that his client was dishonest. The allegations are very serious indeed and there is clearest duty upon any litigant who chooses to allege fraud and forgery to let the "accused" know with complete frankness the case he has to meet. This should be done "with the particularity of an indictment": *Hickinbotham v Leach* (1842) 10 M & W 361.

7. I should add that where a plea of justification contains irrelevant and embarrassing material, its inclusion cannot be justified on the rather lame ground that it is "part of the factual matrix", as the Defendants contend.

8. When asked to rule on the matter in November 2007, the meanings I found the words to bear are as follows:

> "A. That there is a very strong case against the Claimant, which he has so far failed convincingly to refute, to the following effect:
>
> (i) that the Claimant was not granted a title or rank by the *Fürst* and that his claims to the contrary are false and dishonest;
>
> (ii) that he is dishonestly relying on a document, namely the *Urkunde*, in support of his claims, although it is not genuine, and indeed contains a forged signature purporting to be that of the *Fürst*;
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> (iii) that he has used a rank to which he is not entitled in order to deceive people into according him access to social circles and to particular official roles including NATO committees to which he would otherwise not be admitted, and also for monetary gain;
>
> (iv) that he has created a security risk because what he has done has exposed him to blackmail;
>
> (v) that having been told (by some unspecified person) that the *Fürst* had no power to grant a title by German law, the Claimant shifted his stance and falsely claimed to have been adopted by the Hohenzollerns.
>
> B. That the Claimant is guilty of having been an officer in the Securitate secret police under the regime of the Communist dictator Ceaucescu."

9. Mr Price points to a number of elementary principles which need to be complied with in a plea of justification, not for reasons simply of formality or discipline, but rather because of the need for fairness and transparency.

10. First, it is necessary to set out the facts relied upon clearly and succinctly, although not the evidence by which they are to be proved.

11. Secondly, one should only plead justification if one has reasonable evidence to support the defence or reasonable grounds for supposing that sufficient evidence will be available at trial: *McDonald's Corporation v Steel* [1995] EMLR 527, 535.

12. Thirdly, where dishonesty is pleaded, it is necessary to give particulars of the dishonest state(s) of mind alleged.

13. Fourthly, if a defendant seeks to justify "grounds to suspect" (sometimes referred to as a *Chase* level two meaning: *Chase v News Group Newspapers Ltd* [2002] EWCA Civ 1772), he must comply with the disciplines identified in *Musa King v Telegraph Corporation* [2004] EMLR 23 – not least by (i) identifying the conduct of the particular claimant said to have founded the suspicion, and (ii) not seeking to shift the burden of proof on to the claimant (for fuller discussion see *Gatley on Libel and Slander*, 11th edn, at paras 11.6 and 29.10).

14. Fifthly, it is not permitted to introduce reams of newspaper articles (whether on liability or damages) to show that third parties have made defamatory allegations about the claimant in the past: see *Associated Newspapers Ltd v Dingle* [1964] AC 371.

15. Sixthly, there is nothing in Lord Woolf's general observations in *McPhilemy v Times Newspapers Ltd* [1999] 3 All ER 775 that should be taken to sanction any relaxation of the basic rule that a claimant is entitled to know the case he has to meet; nor would it justify postponing that entitlement to the later stage of proceedings when witness statements are exchanged. For a few years after *McPhilemy* was reported, people from time to time argued that it provided a warrant for keeping their case up their sleeves until exchange. That was long ago, however, recognised to be a misunderstanding. Inevitably, if a new case is revealed when statements are served, the Claimant will have to look into it and respond in a further round of evidence. This is certainly not in accordance with the overriding objective.

16. Against the background of these well known propositions, I must now turn to the detailed criticisms of the most recent version of the defence.

17. I will address first the pleading directed to the Securitate allegation (contained in paragraphs 6.26 to 6.28).

18. Mr Price recognises that there is now, at last, a formulation which enables his client to respond, by way of a reply, and to prepare for trial. The link with Ceaucescu obviously required particulars to be pleaded relating to a period before December 1989, when he was deposed and executed. Until recently, the earliest definite link pleaded was from 1992. It is now going to be alleged that the Claimant was a member of the organisation from 1984. The suggestion is that he was charged with a sexual offence and then coerced into working for the Securitate, first as an "informer" and later as a "collaborator". Curious though it sounds, it is part of the Defendants' case now to establish that "collaborators" were "members of, and paid and trained by, the Securitate".

19. Mr Price is prepared to deal with this allegation, provided full particulars are supplied of the charge relating to a sexual offence and what became of it. Furthermore, particulars are required of the allegation that "the Claimant's specific role was to compromise men". I agree that this information should be supplied. Otherwise, apart from entering a bare denial, the Claimant cannot effectively meet the case. For example, who assigned him this "role" and which men is he said to have "compromised" and by what means? Subject to that, this would be an adequate plea on which to go to trial.

20. The remaining nine lines of paragraph 6.26 should not be allowed to go forward as presently pleaded. It is self-evident that the Claimant could not deal with the allegation " … that he, when threatening an individual in 2003, himself referred to the fact that he was a former Securitate Officer". Either the occasion in question, and the "individual" concerned, should be identified or the plea must go.

21. There is another allegation to this effect:

> "As at 1997 the Claimant personally was concerned as to the fact that he had been an officer as a result of the attention being paid to him by the Romanian Press in view of his increasing contact with the Romanian Royal Household, and sought informal advice as to how to deal with this situation."

The problems with this are obvious.

22. The Claimant has recently established that reference was being made to a letter he had written to a Mr Ricci in December 1997. This was when the First Defendant, in his third witness statement, produced what he described as the letter, albeit without identifying the source or making clear that it was supposed to be a copy. This information was supplied only on 17 February, shortly after 9.30 pm. This was despite the fact that the document had been, I was informed, in the Defendants' solicitor's possession since April 2005. During the course of the hearing, the Claimant's advisers produced what was said to be the original of the letter, together with the envelope in which it had been posted. The paragraph relied upon in the "copy" produced by Mr Houston, apparently containing an admission by the Claimant that he had been in the Securitate, was simply not to be found in the "original" put forward by the Claimant. His case is, therefore, very simple; namely, that whatever document Mr Houston was relying upon was a forgery.

23. Mr Cogley submits, not unreasonably, that I should not assume that the "original" put forward is in fact genuine, however convincing it may appear at first sight, since both it and the "copy" produced by Mr Houston require to be examined by at least one expert. That may be so, but it is fair, even at this stage, to characterise the document relied upon by Mr Houston as questionable, to say the least. Mr Price submits, accordingly, that it would be inappropriate to plead this allegation, at least for the moment, because it would not be in accordance with counsel's duty (as, for example, summarised in *McDonald's Corporation v Steel*, cited above). Mr Cogley is not daunted, on the other hand, and is content to include it in the final version of the defence which he is going away to draft. That must be a matter for his own judgment. For my part, I cannot imagine placing reliance on a document while it is subject to such serious challenge.

24. Mr Price points out that if the "original" is itself a forgery, it must either have been created in Romania and sent over to England in time for court on 19 February within a matter of hours or, alternatively, created in anticipation of the Defendants' case.

25. It is quite clear that somebody is attempting to mislead the court and, until the matter is finally resolved, no doubt with the assistance of experts, it is inappropriate to mount a plea of fraud based on such a document. Indeed, as and when this issue is finally resolved, it may well be that there will be a more fundamental application based on abuse of process. It could be that there has been an attempt to pervert the course of justice but, if so, the relevant culprit is probably outside the jurisdiction.

26. Meanwhile, it is clearly going to be necessary for a full explanation to be provided to the court in a witness statement, setting out as much as is known about Mr Houston's "copy" and its origins. Likewise, the authenticity of the "original" produced on the Claimant's behalf will need to be confirmed by him.

27. Paragraph 6.26.1 of the defence is a clear attempt to reverse the burden of proof. It refers to the Claimant's "failure" to refute allegations contained in a newspaper article in 2002 to the effect that he was connected with the Securitate. Plainly that as a formula is unacceptable. It is true that, as it happens, there is reference in the defamatory meanings, as found by me in November 2007 and recited above, to the expression "which he has so far failed convincingly to refute", but of course the real defamatory sting lies in the allegations themselves rather than in the failure to refute. The fact that words complained of contain such a comment does not provide a warrant for reversing the burden of proof. Unfortunately, this misunderstanding has permeated numerous other parts of the defence in which newspaper allegations are merely regurgitated and reliance placed on the Claimant's "failure" to refute them. (In any event, it is alleged that what he failed to refute were the "strong grounds to suspect". These have to be pleaded by the Defendant. It could not conceivably serve to justify the allegation merely to set out third party allegations and rely upon a failure to refute *those*.)

28. It is thus clear, in my judgment, that paragraph 6.26.1 must be struck out.

29. Paragraph 6.26.2 should also come out because it refers to a document alleged to have been found in the safe of a Communist official when it was opened in the course of the December 1989 revolution. The document is alleged to refer to the Claimant as "a supportive person". The Defendants may be able to establish the underlying proposition at the trial, but it cannot be accepted that documents purporting to be the official documents of a corrupt and disreputable regime can be taken to speak for themselves. In any event, it is clear from the decision in *Musa King* that even "grounds to suspect" cannot be supported merely by reference to the allegations or beliefs of third parties. *A fortiori* with a direct allegation of guilt (or *Chase* level one).

30. Paragraph 6.26.3 is also defective because it relies upon the unspecified "function" in the autumn of 2003.

31. As to paragraph 6.27, this is also tainted by reference to the "copy" exhibited to Mr Houston's witness statement of the Claimant's letter of December 1997. It is suggested that the Claimant's role, in his activities on behalf of the Securitate, involved "monitoring" of the "culture and arts people" in the county of Iasi. Subject

to further particularisation, which is plainly required so that the Claimant is enabled to deal with the matter properly, this plea is in general terms unobjectionable.

32. Paragraph 6.28 contains a series of rather confused allegations about an apartment in Bucharest. It is said that the Claimant was provided with the use of, or was given, the apartment in consequence of or in connection with "his said activities"; that is to say, presumably, his "monitoring" of the "culture and arts people". The suggestion appears to be that the Claimant gave consideration for the apartment "ostensibly" in the region of US $5,000 and that this was either not genuine at all or, if genuine, represented a token gesture "to clothe the transaction with the apparent attributes of an arm's length transaction". This is somewhat confusing, since the allegation is also made that the apartment was used for intelligence purposes and/or as a "safe house" (i.e. not, apparently, as a private residence for the Claimant). Provided the position is clarified, the Defendants' allegation may be properly pleadable.

33. I must now return to the primary allegation in the defence to the effect that there are "strong grounds to suspect" that the Claimant has been using a bogus title and, what is more, purporting to authenticate it by reference to the forged *Urkunde*. It emerged, in the course of the hearing for the first time, that what the Defendants really wish to justify is a *Chase* level one meaning to the effect that the Claimant actually did this – rather than merely that there were "strong grounds to suspect". It is, of course, somewhat unusual in that defendants are normally seeking to persuade the court that the words complained of bear a lower meaning rather than a higher one. That does not matter, however, in the present circumstances and, if the Defendants wish to allege guilt rather than suspicion, they should be permitted to do so. It is fair to say, nonetheless, that it was only on the second day of the hearing that this dawned on either Mr Price or myself.

34. If this is to be identified as "the real issue between the parties", it becomes even more apparent how stark and simple it actually is. All the Defendants need to establish is that the *Fürst* never granted the Claimant a title in the first place; that this was a fact of which the Claimant was always well aware; and that he was a party, relatively late in the day, to forging the *Urkunde* in order to deceive people into believing that the grant had been genuine.

35. From the pleading before the court at the outset of the hearing, it seemed to Mr Price and myself that it was only being alleged that the Claimant became aware that his title was "bogus" upon receipt of the letter of 5 July 2004, written by the son of the *Fürst* and alleged to have been sent to the Claimant. As it happens, he denies receiving the letter. It was also said that, having been rumbled at that stage, the Claimant then set about the task of arranging for the *Urkunde* to be forged, between 5 July and 4 August 2004, in order to bolster his claim. No earlier knowledge was pleaded. In the course of the hearing, however, it emerged that it was being alleged that he had known from the outset that he had not been granted any title in 1999 and that he had somehow changed his stance by pretending to have been adopted, thereby seeking in some way to justify his title by other means, prior to the early summer of 2001. (Why he felt the need to change his stance at that stage, and how the change could have assisted him, are matters left in the air.)

36. The significance of this date is that he is alleged to have then told two women at an embassy party in Washington that he had been adopted and, what is more, offered to

sell them a title through the mechanism of *their* being adopted (by someone unspecified). It is a somewhat curious notion, since these ladies were well into their sixties at the time, but it is by no means unpleadable as an allegation. What is unclear, however, is whether it is said that the Claimant realised at some point between 1999 and 2001 that he could not legally hold such a title, and for that reason chose to alter his stance (as alleged in the magazine), or whether it is being suggested that he was aware from the outset that he had never been granted a title (in which case, of course, it would not be necessary for him to change his stance at all).

37. What I believe finally emerged, however, on the second day of the hearing, is that Mr Cogley and his client wish to allege that it was a false claim from the start and that the *Urkunde* was manufactured, out of desperation, ready for presentation to the press conference held in Bucharest on 4 August 2004. If the Defendants wish to allege this, they should plainly be allowed to do so. It is unfortunate that there has been such obfuscation in their pleading, over the course of several years, that this basic fact only emerged on 20 February 2009. The adoption of such a case would plainly simplify the pleading process and "the real issue between the parties" could be identified in a succinct and straightforward way. I offered this suggestion to Mr Cogley, I hope constructively, but he wished to retain the existing pleading by way of a fall-back position – in other words, against the possibility that he fails to establish actual "guilt" at trial, so as to maintain the opportunity of suggesting that there were nonetheless "strong grounds to suspect".

38. This requires a little analysis. That "fall-back position" would only be necessary on the hypothesis that the fact-finding tribunal ultimately concludes that the Claimant believed, at least for a period of time, that he had genuinely been granted a title. If not, it would be quite superfluous. On the other hand, on that hypothesis, the facts relied upon in support of the plea of "strong grounds for suspicion" would need to be geared to that scenario (in a way that the currently pleaded particulars are not). What would be necessary would be to demonstrate that there are "strong grounds to suspect" that something drew his attention to the fact that the title was not, after all, genuine despite the fact that *ex hypothesi* he had previously believed that it was. A defence so structured would need to be rather different from that now before the court. I indicated during the course of the hearing that I would give Mr Cogley an opportunity to go away and think out the defence afresh; it is clear that even the latest (17 February) draft does not convey the message he wishes to present.

39. At one point during the hearing, it seemed as though there would be no point in my adjudicating upon the present defence and that all that would be necessary would be to give Mr Cogley one final "go" at expressing what was intended. Nevertheless, Mr Price asked that the court should give a clear ruling on the "final" draft as it stood. Otherwise, he apprehended, the new draft might be in danger of regurgitating some of the earlier fallacies. This seemed to me to be something to which he was clearly entitled. Accordingly, I shall attempt to explain the respects in which the draft before the court (i.e. that of 17 February) was embarrassing and defective.

40. The most obvious blunder, as I have already indicated, was the incorporation into the pleading of rafts of newspaper articles – on the basis that the Claimant had "failed" to refute them convincingly. The court's rejection of that device, being an attempt to reverse the burden of proof, requires no further explanation. That disposes of the lengthy paragraph 6.16 of the defence. But Mr Price's criticisms did not stop there.

41. The allegation that the Claimant was a party to the forging of the *Urkunde*, serious as it is, requires particularity. Even if it is not determinative, the resolution of this issue is at least going to be greatly assisted by the deployment of expert evidence. It is to be hoped that it might ultimately prove that a joint expert could be appointed but, given the background to this litigation, that may be somewhat optimistic. At all events, the least that the Claimant is entitled to is a full explanation of the tell-tales in the body of the *Urkunde* itself that demonstrate its falsity. This is a very specialist area of expertise and, insofar as the heraldic contents and layout of the document are supposed to give the game away, the Claimant will need to identify those matters for consideration by such expert as he selects. It is said, for example, that the Hohenzollern crest is portrayed in the wrong form and in the wrong place on the document. This needs to be fully explained. That requires particularisation of paragraphs 6.7, 6.17 and 6.18 of the defence.

42. The recently added paragraphs 6.1 to 6.3 represent the essence, as it now appears, of the Defendants' case. They simply set out that the title was never granted and that the *Urkunde* is a false instrument. Mr Price therefore makes no substantive complaint about these.

43. There then follow some allegations about the *Fürst*'s statements to the effect that he granted no such title, as well as those of his eldest son Karl Friedrich Erbprinz von Hohenzollern (Prince Karl). Insofar as these are relied upon to demonstrate that the Claimant had the challenge to his title drawn to his attention, they are legitimate in support of the "fall-back" plea that there were reasonable grounds to suspect that, at some point prior to publication of the magazine, he became aware that his title was not, after all, genuine. Nevertheless, in that context, it is important to remember the principles set out in *Musa King* to the effect that it is not legitimate to rely on post-publication events in support of a plea of "grounds to suspect". That is because, as was explained, there is an analogy with the defence of fair comment – such that, in both these contexts, the matter has to be assessed as at the date of publication. This requires fundamental surgery to paragraphs 6.4 and 6.5 of the defence.

44. It is alleged in various parts of the defence, not least in paragraph 6.9, that the Claimant has benefited, financially and otherwise, from his use of the princely title. Although subsidiary to the primary allegation, if these matters are to be pursued it is important to distinguish between advantages obtained from the use of the title as such, on the one hand, and the ordinary consequences of being married to Princess Margarita (for example, by acceptance in royal and other social circles) or from being selected on his own merits. After all, the former Prime Minister of Romania, Mr Nastase, defended him as a man of ability and good character, when he came under attack in the media, and it is surely possible that some of his diplomatic and other representative appointments by the Romanian government were made because of his own personal qualities and/or because he was married to Princess Margarita (rather than being explicable by reference to a title, which one would not ordinarily expect to carry much weight in a republic). These matters need to be addressed, insofar as they are of any significance, although the "real issue" between the parties is whether the Claimant adopted a "bogus" title rather than the nature of the benefits he thereby secured. Paragraph 6.9 of the defence, for example, requires amendment.

45. Another point of contention between counsel at the hearing was the significance, or otherwise, of the press conference held in Bucharest on 4 August 2004. Mr Price

boldly submits that it has no significance at all in relation to the issues now remaining, although it was naturally canvassed in some detail in the judgment relating to qualified privilege. That is because the Defendants were relying upon their reporting of that conference in the magazine shortly afterwards.

46. So far as justification is concerned, the only potential significance to be attached to the press conference is that it thereby came to the Claimant's attention (if he was not already aware of it) that the *Fürst* was denying that he had authorised the grant of the title used by the Claimant. If it can be demonstrated that either or both of the two Americans who participated in the conference, Mr Carlson and Mr Johnson, were representatives of the *Fürst* for this purpose, what they said could be admissible. Their own views and statements, however, would otherwise not be relevant. They could have no direct knowledge.

47. In any event, it has to be remembered that it is the Defendants' case that the Claimant knew perfectly well, from the time he first used the title, that he had no right to do so; alternatively, that he had been informed by the letter of 5 July 2004. Against that background, Mr Price characterised the proceedings at the press conference as simply a "red herring".

48. It will be necessary to see how the matter is pleaded, if at all, in the new revised defence that is shortly to be produced. This is relevant to paragraphs 6.10 and 6.12 of the defence. As to paragraph 6.11, this is simply another attempt to shift the burden on to the Claimant on the basis of his failure to produce any convincing refutation of the allegations made at the press conference. It is unacceptable for reasons which I have already explained.

49. Paragraphs 6.12 to 6.15 address themselves to the letter of 5 July 2004. Mr Price has no objection to reliance upon that letter, in support of the "fall-back" position, in that it would have drawn the Claimant's attention to the fact that the *Fürst* was, at least at that stage, denying the Claimant's right to use the princely title. The only issue is as to whether or not the Claimant received the letter. He denies this and, in those circumstances, it is necessary for the Defendants to set out the facts relied upon in support of the proposition that he must have received it. If the publication had taken place within this jurisdiction, there would be ordinary presumptions about the letter having arrived, for example, within two days of being committed to the first class post. Comparable particulars are required of the posting of the 5 July letter, wherever it took place. This is, of course, a relatively minor point in the Defendants' case.

50. Paragraphs 6.20 to 6.22 and 6.24 consist of a series of further allegations about the benefits conferred on the Claimant by use of the princely title. I have already addressed this. As a pleading, it will suffice, although it is difficult to see how such important posts could be assigned on the basis of a mere title (as opposed to a genuine belief on the Prime Minister's part as to the Claimant's personal qualities).

51. In relation to paragraph 6.23, it succumbs to the vice of quoting a series of articles published in the media from paragraphs 6.23.1 to 6.23.9. These are clearly objectionable for the reasons already explained.

52. Rather confusingly, paragraph 6.23 also involves the allegation that the Claimant attempted to pass on a title, in exchange for money, to the two women in Washington.

Mr Price does not object to this allegation as such, provided it is properly particularised. One would have thought that it could not be pleaded without statements from the two women concerned, although Mr Cogley declines to reveal whether he has any such statements. He invites trust in his professional judgment as to whether or not this is appropriate to plead. What is necessary is to set out the best particulars of what the Claimant actually said to the women concerned. Mr Cogley points out that they are relatively elderly, but I cannot see that this makes any difference. If that is a problem, it can be dealt with either by the introduction of written statements or by evidence through video link. That is no excuse for lack of particularity. It is not clear, for example, who it is said would "adopt" these ladies or what title they would acquire as a result. I would have thought that greater clarity was required. The allegations appear again in paragraph 6.23.10, following a list of newspaper articles, and that is subject to the same criticism. Mr Price described it, not unfairly, as "a bit of a mish mash".

53. Since Mr Cogley acknowledges the need to re-plead, it seems to me that the appropriate order to make at this stage is simply to strike out the plea of justification as a whole. Any new pleading can then be addressed on its merits.

54. I record that it was finally made clear, during the hearing, that the Defendants no longer wish to pursue the defence of fair comment. That should therefore also be deleted.