

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

CLAIM NO: HQ08X00735

B E T W E E N:

(1) HARDCASH PRODUCTIONS LIMITED
(2) DAVID HENSHAW
(3) ANDREW SMITH
(4) JOHN MORATIEL
(5) KEVIN SUTCLIFFE

Claimants

-AND-

(1) CROWN PROSECUTION SERVICE
(2) CHIEF CONSTABLE OF WEST MIDLANDS POLICE

Defendants

STATEMENT IN OPEN COURT

Counsel for the Claimants: My Lord, I appear for the Claimants in this libel action. My learned friend Mr Earle appears for the Defendants.

On 15 January 2007, as part of its Dispatches current affairs series, Channel Four broadcast a programme titled "Undercover Mosque". The programme reported on the investigations of an undercover reporter who visited a number of mainstream Mosques and Islamic organisations in Britain. The programme stated that it had discovered extremism being preached in this country: "...an ideology of bigotry and intolerance spreading through Britain with its roots in Saudi Arabia".

The programme included footage which had been secretly filmed at a number of Mosques and Islamic organisations. The undercover filming featured extracts from the speeches of several speakers which contained extreme and offensive views about non-Muslims, women and gay people. The programme also contained excerpts from books, CDs and DVDs that had been purchased from these Islamic centres, and from websites which were connected to

the Mosques. The programme included a number of excerpts from preachers and teachers such as:

“Allah created the woman deficient”.

“...it takes two witnesses of a woman to equal the one witness of the man”.

“By the age of ten, it becomes an obligation on us to force her [young girls] to wear hijab, and if she doesn't wear hijab, we hit her”.

“...take that homosexual and throw him off the mountain”.

“Whoever changes his religion from Al Islam to anything else – kill him in the Islamic state”.

The views of experts from mainstream Islam were also included, as (where appropriate) were responses to the allegations made by the speakers and organisations who had been covertly filmed.

The programme was made for Channel Four by Hardcash Productions Limited, the First Claimant, an independent production company. David Henshaw, the Second Claimant, is the Managing Director of Hardcash and was Executive Producer of Undercover Mosque. Andrew Smith, the Third Claimant, was the Producer and Director and John Moratiel, the Fourth Claimant, was the Film Editor of the programme. Kevin Sutcliffe, the Fifth Claimant, is Channel 4's Deputy Head of News and Current Affairs and the Commissioning Editor with overall responsibility for the making and broadcast of the programme.

Following the broadcast of the programme, the West Midlands Police launched an investigation into whether there were grounds for prosecuting any of the people shown on the programme. On 26 March 2007, as part of its investigations, the West Midlands Police sought and obtained a production order from Birmingham Crown Court requiring Channel Four to provide the police with all footage relating to three people who had been shown in the programme that might provide evidence against the three individuals for offences including stirring up racial hatred, encouragement of terrorism, sedition and soliciting murder.

Having considered the available material, the CPS advised the West Midlands Police that there was insufficient evidence to provide a realistic prospect of convicting the three individuals shown in the programme. The West Midlands Police also asked the CPS to

consider whether any prosecution could be brought against Channel Four for broadcasting a programme including material likely to stir up racial hatred. The basis for this was the belief entertained by the West Midlands Police (shared by the CPS) that the editing of what the three speakers had said had distorted their meaning.

On 8 August 2007, the CPS having decided that no prosecution could be brought against the individuals shown in the programme or Channel Four, the CPS and the West Midlands Police issued a press release widely to the media. The statement, quoting the CPS reviewing lawyer, alleged that footage of the three speakers shown in the programme had been so “heavily edited” and taken out of context that it had “completely distorted” their meaning. Reference was made to the CPS having been asked to consider the institution of proceedings against Channel Four, which it advised against. The press release was also made available on the websites of both the West Midlands Police and the CPS.

These allegations – none of which had been put to Channel Four or any of the Claimants in these proceedings – were of the utmost seriousness to the Claimants. They were tantamount to an allegation that either through dishonesty or gross recklessness, the programme makers had, through their editing of the programme, given a completely distorted impression of what the speakers were saying, such as to expose the speakers to unnecessary criminal investigation.

The press release received very widespread publicity in newspaper and television reports, many of whom reported that Channel Four and the programme makers’ behaviour appeared to be yet another example of television “fakery”.

On 10 August 2007, the West Midlands Police lodged a complaint about the programme with the broadcasting regulator, Ofcom. The police stated that they were “concerned with matters of public reassurance and the reduction of crime and disorder in all communities in the West Midlands area”.

The West Midlands Police complained that:

- the programme had been subject to such an intensity of editing that those who had been featured in the programme had been misrepresented (creating an unfair, unjust and inaccurate perception of both some speakers and sections of the Muslim community within the West Midlands);

- the footage had been edited in a way that resulted in material being broadcast in a form so altered from the form originally delivered that it was “sufficient to undermine community cohesion”; and
- the programme was “likely to undermine feelings of public reassurance and safety of those communities in the West Midlands for which the Chief Constable has a responsibility”.

The West Midlands Police isolated five broadcast sequences as examples of instances where it said the editing process by the programme makers had led to a possible distortion of speakers’ comments. It transcribed these five instances and asked for a comparison to be made between the original unedited speech and the extracts that were actually broadcast in the programme.

On each occasion, the West Midlands Police highlighted what it called the “possible distortions as a result of editing”.

Ofcom duly investigated the complaint lodged by the West Midlands Police and reported its conclusions on 19 November 2007. Having reviewed the alleged “distortions” in the programme and considered the transmitted and untransmitted footage, Ofcom completely vindicated the programme makers and rejected all of the allegations of distortion made by the police. It concluded:

“Undercover Mosque was a legitimate investigation, uncovering matters of important public interest. Ofcom found no evidence that the broadcaster had misled the audience or that the programme was likely to encourage or incite criminal activity. On the evidence (including untransmitted footage and scripts), Ofcom found that the broadcaster had accurately represented the material it had gathered and dealt with the subject matter responsibly and in context.”

Regrettably, despite this public vindication of the programme makers, the West Midlands Police and the CPS did not remove the Press Release from their respective websites and neither did they of their own accord publish any retraction of the allegations they had wrongly made in Press Release which had received such widespread publicity in August 2007.

Happily, both Defendants now accept that the allegations of distortion that were made in the Press Release were incorrect. They are here by their solicitor today publicly to withdraw these allegations and to apologise for the fact that they were made. Both Defendants accept,

without reservation, the conclusions of Ofcom and accept that the programme accurately represented the material that had been gathered from the undercover filming.

As an indication of the sincerity of this apology and as recognition of the seriousness of allegations of “fakery” for professional journalists and broadcasters, both Defendants have agreed to pay substantial damages to the Claimants and to pay their legal costs. The Claimants will be donating the damages received to The Rory Peck Trust.

Solicitor for the Defendants: My Lord, on behalf of the Defendants, I accept all that has been said by my learned friend. The decision to issue the Press Release was made in good faith, albeit on a mistaken basis. Both the CPS and the West Midlands Police offer their sincere apologies to the Claimants for the damage and distress caused by the Press Release and the inevitable media coverage that this received.

Counsel for the Claimants: In light of that, all that remains is for me to ask your Lordship for permission to withdraw the record.

Signed:
Counsel for the Claimants

Signed:
Solicitor for the Defendants