Neutral Citation Number: [2012] EWHC 693 (QB)

Case No: HQ11D04687

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/03/2012

Before :

THE HONOURABLE MR JUSTICE TUGENDHAT

- -

Between :

Charlotte Church	**Claimant**
- and -	
MGN Ltd	**Defendant**

- -
- -

Mr Sherborne (instructed by **Lee & Thompsons**) for the **Claimant**
Mark Warby QC (instructed by **Reynolds Porter Chamberlain**) for the **Defendant**

Hearing dates: 15 March 2012

- -

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.

.....

THE HONOURABLE MR JUSTICE TUGENDHAT

Mr Justice Tugendhat :

1. This libel action has given rise to two related applications made by the Defendant in its Application Notice dated 31 January 2012. The first is for a ruling on the meaning of the words complained of, pursuant to Practice Direction 53 para 4.1. The second is a novel application, made at the same time, that the application for a ruling on meaning be dealt with without a hearing, pursuant to CPR Part 23.8(c). I directed that there be an oral hearing of both matters.

2. Following submissions in relation to the ruling on meaning I announced my decision in open court that the statement complained of by the Claimant is capable of having the meaning attributed to it by her in her statement of case, and that the statement is capable of being defamatory of her. I said I would give my reasons later. I reserved judgment on the question whether I could or should have dealt with the matter without an oral hearing.

THE RULING ON MEANING

3. The Claimant is a well known professional singer, song-writer and television presenter. The Defendant is the publisher of The People, a national weekly tabloid newspaper which appears each Sunday and enjoys a very substantial circulation throughout England and Wales.

4. On page three of the issue of that newspaper dated Sunday 6 November 2011, and on its website, the Defendant published the following words about which the Claimant complains:

> "MARRYOKE
>
> Exclusive
>
> Charlotte proposes after pub karaoke session
>
> [1] Charlotte Church has proposed to her boyfriend Jonathan Powell during a boozy pub karaoke night.
>
> [2] The star belted out The Ronnettes' Be My Baby then slumped in a chair next to her man and gave him a huge kiss. She told him: "That was for you because I want you to be my baby. Will you marry me? "
>
> [3] He replied: "Yes but I don't want to be known as Mr Church".
>
> [4] The pair, both 25, then ordered bottles of champagne "one each" and celebrated into the early hours of last Saturday morning at the pub, the Robin Hood in Cardiff.
>
> [5] A friend said: "Jonathan was thrilled and Charlotte was very happy. She was singing I'm Getting Married in the Morning as we helped her to the taxi afterward."

> [6] Jonathan, a song-writer yet to find success, first met Charlotte in the pub which her aunt owns.
>
> [7] The couple have been dating for more than a year. She has children Ruby, 4 and Dexter 3, by rugby star Gavin Henson, 29 who she split from in May 2010".

5. There is a picture of the Claimant singing. But that was taken on a different occasion. It needs to be said at once (although this is irrelevant to anything that I have to decide), that there is no truth in the words complained of. Whoever the couple were who behaved as is described in the words complained of, they were not Charlotte Church or Jonathan Powell. As MGN has since acknowledged, they were performing elsewhere at the time.

6. Following exchanges of correspondence in accordance with the Pre-Action Protocol on Defamation, on 14 December 2011 the Claimant issued her claim form claiming damages for libel. In accordance with Practice Direction 53 para 2.3 the Particulars of Claim included the following:

> "In there natural and/or ordinary inferential meaning the words complained of meant and were understood to mean that the Claimant made an embarrassingly drunken spectacle of herself as she proposed to her boyfriend whilst singing karaoke in the Robin Hood pub in Cardiff in the early hours of Saturday, 29 October 2011".

7. The Practice Direction 53 at para 4.1 provides:

> "At any time the court may decide
>
> 1. whether a statement is capable of having any meaning attributed to it in a statement of case;
>
> 2. whether the statement is capable of being defamatory of the claimant;
>
> 3. whether the statement is capable of bearing any other meaning defamatory of the claimant".

8. Accordingly in the Application Notice of 31 January 2012 the Defendant asked for a ruling and order as follows:

> 1. "A ruling that the words complained of by the Claimant are not capable of defaming her in the meaning of which she complains in the Particulars of Claim or any other meaning which she might complain.
>
> 2. An order that the claim be dismissed accordingly …
>
> because the Defendant believes that the words complained of are incapable of bearing the alleged or any defamatory meaning about the Claimant… ".

9. The legal test to be applied on an application of this kind is well established. In deciding what meaning words are capable of bearing for the purposes of a libel action, the court must have in mind the guidance given in *Skuse v Granada Television*, summarised most recently by Sir Anthony Clarke MR in *Jeynes v News Magazines Limited* [2008] EWCA Civ 130 at para [14]:

> "The legal principles relevant to meaning … may be summarised in this way: (1) The governing principle is reasonableness. (2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. (3) Over-elaborate analysis is best avoided. (4) The intention of the publisher is irrelevant. (5) The article must be read as a whole, and any "bane and antidote" taken together. (6) The hypothetical reader is taken to be representative of those who would read the publication in question. (7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, "can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation…" …. (8) It follows that "it is not enough to say that by some person or another the words might be understood in a defamatory sense."'

10. Further, Mr Warby further submits (as is not in dispute) that there is a threshold of seriousness which must be passed before it can be said that words are defamatory. He adopts the formulation of the test of what is defamatory in *Thornton v Telegraph Media Group* [2010] EMLR 25 at para [95]:

> "it substantially affects in an adverse manner the attitude of other people towards him, or has a tendency so to do."

11. Mr Warby also relies on the passage *Dell'Olio v Associated Newspapers Ltd* [2011] EWHC 3472 (QB) which reads as follows:

> "27. The question is whether the words complained of are capable of substantially affecting (or tending to affect) in an adverse manner the attitude of other people towards this Claimant, whether in the meaning advanced by the Claimant, or in some other meaning.
>
> 28. I add the emphasis. The Claimant is very well known to the public, and has been for a number of years. The public position or character of a claimant is relevant to whether words complained of bear a defamatory meaning: Gatley on Libel and Slander 11th ed para 2.4." (emphasis original)

12. Mr Warby submits that to say of a person that they affectionately made a marriage proposal to their long term partner cannot be defamatory, and the fact that this is said to have been done in public cannot change that. He accepts that there is no doubt that the words complained of suggest that the Claimant was drinking, to the extent that she had to be helped into a taxi. But he submits that that is not defamatory either. She is

a well known celebrity and does not claim to be teetotal, or not to like drinking. There is no suggestion in the article that her behaviour was embarrassing to anyone.

13. Mr Sherborne draws attention to the number of references in the words complained of to drinking. They are in the first paragraph the word " boozy", in the second paragraph the word "slumped", in the fourth paragraph the words "Bottles of Champagne 'one each'", and in the fifth paragraph "she was singing I'm Getting Married in the Morning as we helped her to the taxi afterwards".

14. He also draws attention to the fact that the words complained of referred to the claimant as a "star". There was no need to say in what activity she was a star, because any reader of The People would already know who she is. The words complained of also include a statement that she and Mr Powell are both aged 25 and that she is the mother of two small children aged 4 and 3 years.

15. Mr Sherborne submits that in that context, including the invented word "Marryoke", the words complained of suggest that what, in that context would be, if true, the significant act of her asking him to marry her, had been demeaned by her doing so in the circumstances alleged. That is the defamatory sting. Of course, he accepts that it would not be defamatory if all that had been said was that she had made a proposal of marriage, or that she had done that in public.

16. Whether or not words complained of are defamatory depends on the context in which they appear. In my judgment the words complained of are clearly capable of bearing the meaning attributed to them by the Claimant in her Particulars of Claim. The behaviour described might not be defamatory if attributed to some other people, but to attribute such drunken behaviour to a star such as the Claimant is in my judgment clearly capable of defaming her.

17. The proceedings have not yet reached a stage where a Defence has been served, and so the time for any application to be made for trial to be by a judge sitting with a jury has not yet arrived. Unless and until it is determined that any trial should be by judge alone, it would be wrong for me to express any view as to what the words complained of actually meant, and I do not do so. Neither party has asked me to do that.

18. These are the reasons why I reached the decision that I announced at the hearing on the application for a ruling on meaning.

APPLICATIONS DEALT WITH WITHOUT A HEARING

19. This application was properly listed before a judge, for the reasons given by the editors of the White Book at note 53 PD. 36:

> "Although the wording of the rule [in Practice Direction para 4.1] on its face permits the applications [for a ruling on meaning] to be made to a Master or District Judge, the result cannot have been intended, in view of the fact that a ruling on meaning is substantive, not procedural, and binds the trial judge. The practice is therefore to list the application directly before the judge in charge of the jury list".

20. The CPR Part 23.8 provides that:

> "The court may deal with an application without a hearing if - (a) the parties agree as to the terms of the order sought; (b) the parties agree that the court should dispose of the application without a hearing, or (c) the court does not consider that a hearing would be appropriate"

21. A hearing in that rule means an oral hearing. It does not mean that the court does not hear any submissions from the parties. The alternative to a hearing is usually referred to as dealing with the matter on paper. When dealing with a matter on paper the court may receive such submissions, or it may not. Since the Application Notice also asked that the application be disposed of on paper without an oral hearing, the Defendant in this case did attach written submissions in support.

22. Many very important matters are dealt with under CPR Part 23.8. See the White Book (2012) note 23.8.1. Practice Direction 23A provides:

> "2.1 An application notice must, in addition to the matters set out in Rule 23.6… include:
>
> … (5) either a request for a hearing or a request that the application be dealt with without a hearing. …
>
> 2.2 On receipt of an application notice containing a request for a hearing the court will notify the applicant of the time and date for the hearing of the application.
>
> 2.3 On receipt of an application notice containing a request that the application be dealt with without a hearing, the application notice will be sent to a Master or district judge so that he may decide whether the application is suitable for consideration without a hearing.
>
> 2.4 Where the Master or district judge agrees that the application is suitable for consideration without a hearing, the court will so inform the applicant and the respondent and may give directions for the filing of evidence. (Rules 23.9 and 23.10 enable a party to apply for an order made without a hearing to be set aside or varied.)
>
> 2.5 Where the Master or district judge does not agree that the application is suitable for consideration without an oral hearing the court will notify the applicant and respondents of a time, date and place for the hearing of the application and may at the same time give directions as to the filing of evidence
>
> 2.6 If the application is intended to be made to a judge, the application notice should so state. In that case, paragraphs 2.3, 2.4 and 2.5 will apply as though references to the Master or district judge were references to a judge…

> 11.2 Where rule 23.8(c) applies the court will treat the application as if it were proposing to make an order on its own initiative."

23. In addition to giving directions for the filing of evidence where appropriate, in cases where the filing of written submissions would be appropriate the court could of course under its general case management powers also so direct.

24. Mr Sherborne submits that the wording of CPR Part 23.8(c) implies that a high threshold must be passed before the court can consider that a hearing would not be appropriate. Mr Warby submits that the terms of the rule are neutral.

25. In my judgment Mr Sherborne's submission is to be preferred. I reach this conclusion on the basis of the general rule that there be an oral hearing in public, to which CPR Part 23.8 is an exception.

26. In his submissions in support of his application for this matter to be dealt with without a hearing Mr Warby very properly drew the court's attention to a passage in note 23.8.1 of the White Book (2012) which is as follows:

> "Where rule 23.8(c) applies the court will treat the application as if it were proposing to make an order on its own initiative. The effect of para 11.2 here is to bring into play rule 3.3 (courts power to make order on its own initiative). The particular significance of this is that, where the court makes an order on an application, having dealt with it without a hearing on the basis of rule 23.8(c) the right to apply to the court to have the court set aside, varied or stayed conferred by rule 3.3(5) accrues to a party affected by the order. The fact that this consequence necessarily accrues is a matter that the court should consider in determining whether a particular application (whether made with or without notice, and whatever the wishes of the applicant) should be determined without a hearing (see further para 3.3.2 above)…."

27. CPR Part 3.3 includes the following:

> (1) Except where a rule or some other enactment provides otherwise, the court may exercise its powers on an application or on its own initiative….
>
> (4) The court may make an order of its own initiative, without hearing the parties or giving them an opportunity to make representations.
>
> (5) Where the court has made an order under paragraph (4)(a) a party affected by the order may apply to have it set aside, varied or stayed; and (b) the order must contain a statement of the right to make such an application".

28. The note in the White Book at 23.8.1 also includes the following:

> "On receipt of a without notice application the request for the matter to be disposed of on paper, the court should consider whether it is appropriate to dispose of the matter without a hearing. In *Collier v. Williams* [2006] EWCA Civ 20; [2006] 1 WLR 1945, CA, the Court of Appeal said (para 38) there is a danger in dealing with important applications on paper…"

29. As Mr Warby reminds me, on at least one occasion I have dealt with an application for a ruling on meaning without a hearing. But that was a case where the parties agreed that I should so dispose of the application, and the agreement followed a hearing in which I had been asked to determine other matters. See *Cook v Telegraph Media Group* [2011] EWHC 1143 (QB) at para 2.

30. The reason why Mr Warby submits that I should have dealt with this application without a hearing is that the court is obliged under CPR Part 1.2 to seek to give effect to the overriding objective when it exercises any power given to it by the rules or interprets any rules. The overriding objective includes dealing with a case in ways which are proportionate to the amount of money involved, the importance of the case, the complexity of the issues and allotting to the case an appropriate share of the courts resources. Moreover the cost of all litigation is a matter of great concern, since, if litigation is too costly, that amounts to a restriction on the right of a party to the determination of his or her civil rights to a hearing by a tribunal established by law. See Article 6 of the ECHR.

31. It is important that the court should consider every possible measure to keep the costs of litigation as low as is proportionate. It is for that reason that I invited the parties at this oral hearing to make submissions on Mr Warby's proposal that in applications for rulings on meaning there should be a more extensive use of CPR Part 23.8(c) than has hitherto been the practice.

32. MGN state that if the matter had been dealt with without a hearing as it requested its costs would have been a total of £3618 made up as follows: costs of drafting application notice and submissions (including counsel and solicitors) £2176; further costs following the court's response dated 2 February 2012 £1442.

33. It is not possible for me simply to compare those costs with the costs that have in fact been incurred, because MGN's Schedule of Costs submitted in the usual way for this application include the costs of the whole action. That was because, if MGN is to be entitled to its costs on the application, it will be because it has obtained the ruling on meaning that it seeks. And the effect of that would be that the whole action will be dismissed. The Schedule of the Claimant's costs for this application also includes other matters, namely the argument on whether the matter should be dealt with on paper. Nevertheless I accept that if the matter had been dealt with without a hearing, and if neither party had exercised its right to apply for an oral hearing, then the costs of hearing the matter without a hearing would have been less than the costs of dealing with it with a hearing.

34. However, Mr Sherborne submits that where the ruling is sought on a meaning pleaded by the claimant, since an adverse ruling will result in the dismissal of either the whole action (as in this case) or at least a part of it (in other more complicated cases), it is likely that in a great many if not all cases the claimant would exercise her right to an

oral hearing. A claimant who has gone so far as to serve Particulars of Claim would already have committed herself to significant expenditure in legal costs. And a claimant also has the benefit of the high threshold which must be satisfied before a court can hold that words complained of are not capable of bearing a meaning attributed to them by a party.

35. Mr Sherborne also submits that if the matter is to be dealt with without a hearing, in practice both parties will wish to submit written representations to the judge. Where there is to be an oral hearing the written submissions are prepared and submitted shortly before that hearing, and the advocate will attend the hearing ready to present oral submissions. If the written representations are to be submitted at an earlier stage, and if an adverse ruling by a judge is then to be the subject of an oral hearing, the advocate will have to prepare the case again. In some cases the extra preparation may not be extensive, in particular in a case as simple as this one. But in other cases, where the words complained of include extensive passages from a newspaper article or a book, or whenever there are more complicated legal issues than arise in the present case, the necessity for the advocate to prepare the case for a second hearing some time after the drafting of the written submissions will increase the costs.

36. There is a further complication arising out of Practice Direction 53 para 4.1(3). That requires the court to consider whether the statement complained of is capable of bearing any other meaning defamatory of the claimant. The choice of meanings to plead is one of the most important choices that a claimant makes. The reasons are discussed in *Dell'Olio* at para 30 and *Tesla Motors Limited v BBC* [2012] EWHC 310 at para 112. It is difficult and undesirable that a court should embark on that exercise without being able to invite submissions from the claimant. But in practice such an invitation can only be made at an oral hearing. A court may find that the claimant has attributed too high a meaning to the statement complained of, and be minded to rule that the statement is not capable of bearing that meaning, but nevertheless be minded to find that there is some lesser defamatory meaning which the statement might be capable of bearing. But the claimant may have no interest in pursuing such a lesser meaning. And the defendant's written submissions, if that is all that is before the court from the defendant, will not have addressed any meaning not advanced by the claimant. So unless the court can invite spontaneous submissions at the oral hearing it is unlikely that the court will be able effectively to carry out its obligation to consider whether the statement complained of is capable of bearing any other meaning defamatory of the claimant.

37. There is a further consideration. In deciding what meaning the words complained of are capable of bearing, the court is required to put itself in the position of the hypothetical reasonable reader of the words in question. The circumstances which can give rise to an action for defamation vary enormously. At one extreme the words complained of may be in a publication whose readership consists of expatriate citizens of another country. The words complained of may be in an e-mail sent to a small number of individuals who can be expected to understand abbreviations and references which would be incomprehensible to a more general readership: see e.g. *Modi v. Clarke* [2011] EWCA Civ 937 (where the statement was in an e-mail relating to the organisation of the sport of cricket). In other cases the hypothetical reader may be a person interested in financial matters (for example a reader of The Financial Times), or in matters relating to popular music, the arts or any number of other topics.

No court, whether it is a judge alone or a jury, can possibly be constituted by persons all of whom actually have the attributes of the hypothetical reader in all this vast range of different possible publications. In many cases even a jury of twelve will not contain anyone similar to the hypothetical reasonable reader.

38. It happens that in the present case the Claimant is so famous that she needs no introduction, and the subject matter of the words complained of, and how it relates to her professional career, would not present any judge with a difficulty in putting himself in the position of the hypothetical reasonable reader. But that is by no means the case with defamation actions generally. And even if the judge hearing the application for a ruling on meaning believes that he needs no assistance from the parties to put himself in the position of the hypothetical reasonable reader, he may be mistaken. The presence of advocates at an oral hearing enables him to check with them that there is not something significant which may have escaped him.

39. I am sympathetic to the aim of saving costs which MGN is seeking to achieve in asking for this and similar applications to be dealt with without hearing. But for all these reasons, I do not consider that that is likely to be appropriate save in a very limited number of cases, and then only subject to the principle of open justice discussed below.

40. It so happens that this is in fact one such case. When I read the papers and considered the application for the matter to be dealt with without a hearing, and considered the submissions for MGN (there were at that stage no submissions for the Claimant), my preliminary view was the same as the view that I reached after the hearing of submissions. However, it is not surprising that the Claimant should have wished for an oral hearing.

OPEN JUSTICE

41. There was no discussion at the hearing of the general principle of open justice. But following the circulation of this judgment in draft, in which I invited the parties to make further submissions on open justice, if so advised, Mr Warby did make further submissions in writing.

42. The principle of open justice as recognised by the common law is wider than the principle enshrined in Article 6 of the European Convention on Human Rights. It applies to all the business of the High Court, not just to those hearings in which there is to be a determination of the civil rights and obligations of a party, or a criminal charge against a party. It is enshrined in Senior Courts Act 1981 s.67 which provides:

> "Business in the High Court shall be heard and disposed of in court except insofar as it may, under this or any other Act, under rules of court or in accordance with the practice of the court be dealt with in chambers."

43. "Business" is wide enough to include all proceedings. The rules of court include CPR Part 39.2 which provides:

> "(1) the general rule is that a hearing is to be in public".

44. Since *Hodgson v Imperial Tobacco Limited* [1998]1WLR 1056 it has been recognised that applications heard in chambers in the Queens Bench Division are public proceedings in accordance with the principle of open justice. Reference is most commonly made to *Scott v Scott* [1913] AC 417. See the White Book (2012) Vol 2 paras 9A-250 to 252.

45. CPR Part 23.8(c) is another rule of court within the meaning of the Senior Courts Act 1981 s.67. A decision by a court to deal with an application without a hearing is in substance a decision to depart from the principle of open justice set out in that section. This explains why the Practice Direction para 11 gives the right to an oral hearing, by applying CPR Part 3.3(5).

46. Circumstances in which the court may derogate from the principles of open justice in relation to an oral hearing in court are set out in CPR 39.2(3). That rule reflects the case law set out in the notes to the Supreme Court Act 1981 (as it then was) s.67, in editions of the White Book before the CPR came into force. There are seven listed, and all but one of them relates to the purpose of the proceedings, and invites consideration of whether it is necessary and proportionate to hold a hearing in private. One example is because publicity would defeat the object of the hearing (para (a)). The only one of the instances listed where the test of necessity and proportionality could not be applied is:

> "(f) it involves uncontentious matters arising in the administration of trusts or in the administration of deceased person's estate."

47. That does not apply to an application for a ruling on meaning. And none of the other instances listed in CPR Part 29.2(3) are likely to apply.

48. The fact that a court deals with an application without an oral hearing does not preclude the taking of other measures to ensure open justice. The example Mr Warby cites is access to documents under CPR Part 5.4C(2), discussed in the White Book (2012) note 5.4C.10. However, giving access to all the court records is not normally done: *ABC Ltd v Y* [2010] EWHC 3176 (Ch).

49. And the court may give of a public judgment. In a case to which CPR Part 23.8 applies (including any case to which sub-rule (c) applies), a court will normally be bound to deliver a public judgment, in accordance with the guidance in *Hodgson*. It will normally be appropriate to have an open judgment in which the judge will rehearse in some detail the rival submissions, so that interested onlookers could follow. In principle the issue of meaning is to be largely "a matter of impression", leaving little room for detailed argument. But everything depends on the particular facts. If there has been little argument and few submissions, the judgment can say so. And sometimes, there may be hopeless applications, where the court might apply sub-rule (c) of its own motion, and where no one would be interested in the arguments or the outcome. But the principle of an open judgment should hold.

50. The requirement of open justice seems to me to support the submission of Mr Sherborne that applications for a ruling on meaning should normally be made at a hearing in open court.

CONCLUSION

51. For these reasons I do not consider that there are likely to be many cases where it would be appropriate to use CPR Part 23.8(c) for the determination of applications for a ruling on meaning pursuant to Practice Direction 53 para 4.1.

COSTS

52. The Claimant asks for her costs on the basis that she has won, and that in so far as costs have been expended on the issue of whether the matter should have been determined on paper, her arguments have prevailed.

53. The Defendant submits that the oral argument in the event achieved nothing, and alternative dispute resolution ("ADR") would have yielded the same result at low cost. The Defendant refers to CPR Part 44.3(4), (5)(a), (c) and (d), the Practice Direction, Pre Action Conduct. He relies on *Rolf v De Guerin* [2011] EWCA Civ 78; [2011] CP Rep 24 paras [41]-[48] in support of the proposition that where ADR is offered and no good reason is given for a refusal, the court may make no order for costs, notwithstanding that the party refusing ADR has achieved a measure of success.

54. CPR Part 44.3(4) and (5) provide that in deciding what order to make about the costs the court must have regard to the conduct of the parties, including: the extent to which the parties followed the Practice Direction (Pre-Action Conduct) or any relevant pre-action protocol.

55. The Pre-Action Protocol for Defamation includes:

> "3.7 The parties should consider whether some form of alternative dispute resolution procedure would be more suitable than litigation, and if so, endeavour to agree which form to adopt. …".

56. The Claimant complains of the failure of MGN to give a response to the letter of claim in accordance with para 3.4 of the Protocol. The Defendant complains that the Claimant has not complied with para 3.7 and 3.8.

57. I have read the pre-action exchanges of letters. In this application I am concerned only with the issue of meaning, not with any other issue, and in particular not with damages. The Letter of Claim was dated 9 November 2011. In its Letter of Response dated 17 November 2011 MGN confirmed that it would not re-publish the allegation complained of and proposed to publish a suitable correction, a draft of which they set out. But it did not accept that the words complained of were defamatory.

58. The Protocol at para 3.5 provides:

> "It is desirable for the Defendant to include in the Response to the Letter of Claim the meaning(s) he/she attributes to the words complained of."

59. The Letter of Response did not do that. The Claimant's solicitors pointed out this omission in their letter of 21 November, and asked MGN to set out the meaning upon which it relied.

60. On 6 January 2012 MGN wrote that, apart from damages, the

> "dispute between our clients is solely about meaning. This would therefore seem to be a sensible case for early resolution by means of a binding determination on meaning by an expert such as a libel silk. Such a procedure would be cheaper and quicker than a contested court application as it would be done on paper without a hearing (and, if you agree, without submissions) If the expert finds that the article does not bear the pleaded meaning and is not otherwise defamatory of your client, that will be an end of the matter".

61. On 9 January 2012 the Claimant's solicitors replied saying simply that she was not interested in resolving her claim in the manner MGN proposed. However, I note that the letter of 6 January 2012 does not include the meaning MGN attributes to the words complained of.

62. It was the letter of 9 January 2012 that prompted MGN to make the application for a hearing on paper. It invited the Claimant's agreement to this on 31 January, but the Claimant did not agree. In its Skeleton Argument for MGN dated the same day Mr Warby wrote that the ruling sought was that "the words are not capable of defaming the Claimant in the meaning complained of or at all". No alternative meaning was attributed to the words complained of. So the main issue from that point was not the meaning of the words complained of, but whether they were capable of being defamatory of the Claimant.

63. I have little material upon which to assess whether ADR would have been significantly cheaper where the issue is confined to whether words complained of are capable of being defamatory. In any event, since MGN has itself declined to define the issue on meaning in the Letter of Response, or subsequently, it is not best placed to complain of breaches of the Protocol by the Claimant. And in my judgment, the question whether the words complained of are capable of being defamatory is hardly an issue at all.

64. The order for costs will therefore be the normal order that MGN as unsuccessful party pay the costs of the Claimant. I make no separate order in relation to the argument as to whether the matter should have been determined without a hearing. The Defendant raised that issue, and failed on that too. The costs will be assessed summarily.