Neutral Citation Number: [2012] EWCA Civ 1382

Case Nos: A2/2012/0767 & A2/2012/0878

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE HONOURABLE MR JUSTICE BEAN
[2012] EWHC 483 (QB) & [2012] EWHC 756 (QB)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/10/2012

Before :

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
LORD NEUBERGER OF ABBOTSBURY
and
MR JUSTICE EADY

- -

(1)	**Between :**	
	Chris Lance Cairns	**Claimant/ Respondent**
	- and -	
	Lalit Modi	**Defendant/ Appellant**
(2)	**Between :**	
	KC	**Claimant/ Respondent**
	- and -	
	MGN Limited	**Defendant/ Appellant**

- -
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Andrew Caldecott QC and **Ian Helme** (instructed by **Collyer Bristow**) for **Mr Cairns**
Hugh Tomlinson QC and **Jonathan Price** (instructed by **Fladgate LLP**) for **Mr Modi**
James Dingemans QC and **Julien Foster** (instructed by **YVA Solicitors**) for **KC**
Desmond Browne QC (instructed by **MGN Legal Department**) for **MGN Ltd**

Hearing dates: 26 & 27 July 2012

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Judgment Approved by the court
for handing down
(subject to editorial corrections)

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The Lord Chief Justice of England and Wales:

1. We have all contributed to the judgment of the court.

Introduction

2. These conjoined hearings concern the amount of compensation awarded by Bean J in libel proceedings, but their facts could hardly be more different. *Cairns v Modi* involved a sustained attack on the professional reputation of a world-famous cricketer. The award came at the conclusion of a hotly contested trial in which the defendant maintained a plea of justification down to the moment of judgment, and caused even more aggravation to the claimant's feelings by the way the trial was conducted and by the additional adverse publicity generated. The Judge granted the defendant permission to appeal the award of £90,000. By contrast, *KC v MGN Ltd* involved a most unfortunate blunder by a newspaper which led to a false accusation that a man of good character had been convicted in the 1970s of raping a 14 year old girl. Fortunately he was, and remains anonymous, and after an early apology, the allegation was quickly withdrawn. The issue before the judge was the level of compensation to be awarded under s.3 of the Defamation Act 1996 following the newspaper's acknowledgment of error and offer of amends under the statutory regime. We granted the newspaper leave to appeal the award of £75,000.

3. We turn to the detail of the contrasting factual backgrounds of the appeals.

Cairns v Modi [2012] EWHC 756 (QB)

4. Mr Chris Cairns is a well known international cricketer who represented New Zealand on many occasions: an outstanding all rounder, he was captain of the national team for seven test matches. At the times material to this appeal, however, he was playing in the Indian Cricket League ("ICL"). Between November 2007 and November 2008 three tournaments were held by the ICL (known as "editions"). For each of those tournaments, Mr Cairns was engaged as captain of a team called the Chandigarh Lions.

5. The defendant in the claim, and now the appellant, is Mr Lalit Modi. He too is well known in the world of cricket. He was the Chairman and Commissioner of the Indian Premier League ("IPL") and Vice-President of the Board of Cricketing Control for India ("BCCI") and thus a man whose opinions were likely to be taken as being authoritative.

6. On 6 January 2010, Mr Modi published a message on the Twitter website with reference to Mr Cairns' period of playing in the ICL:

> "Chris Cairns removed from the IPL auction list due to his past record in match fixing. This was done by the Governing Council today."

That very day, Mr Modi was contacted by the cricketing website *Cricinfo* seeking confirmation of his Twitter message. He responded in these terms:

> "We have removed him from the list for alleged allegations as we have zero tolerance for this kind of stuff. The Governing Council has decided against keeping him on the list."

7. In consequence, an article was published on *Cricinfo* headed *There is No Place in the IPL for Chris Cairns*, repeating Mr Modi's allegation. Mr Cairns sued for libel in respect of both the Twitter message and the *Cricinfo* article. He was able to reach early terms of settlement with *Cricinfo*, resulting in payment of £7,000 in damages and approximately £8,000 in legal costs. By contrast, Mr Modi took the case to trial on a plea of justification. The reserved judgment of Bean J was handed down on 26 March 2012.

8. Bean J announced at paras [137]-[138] that he had awarded a sum of £15,000 specifically to reflect one aspect of aggravation; namely, the conduct of Mr Modi's former counsel in the conduct of the trial. This was added to the sum of £75,000 awarded in respect of all the other matters to be taken into account, resulting in a total of £90,000 damages.

9. A renewed application for permission to appeal on liability was rejected on 28 June by Laws and Rix LJJ. The present appeal by Mr Modi was thus confined to the issue of damages.

KC v MGN Ltd [2012] EWHC 483 (QB)

10. The appellant, MGN Ltd, is the publisher of *The People* newspaper. It was sued for libel by the respondent, who is the father of the child known as "Baby P". As is notorious, this child died in August 2007, just over a year after KC had separated from his mother. Later, she and two men were convicted of causing or permitting his death. As we have already noted, KC is a man of good character and was not in any way responsible for the ill treatment of his son or for the circumstances leading to his death.

11. It was originally as a result of an order made in the Family Division of the High Court, by Coleridge J on 12 November 2008, that restrictions were imposed for the protection of four other children. They included a prohibition on the publication of KC's name, address or photograph. Those restrictions were imposed also in relation to the present proceedings by Bean J and remain operative to this day – again for the protection of the children (not KC himself). They explain why, unusually, these libel proceedings have been brought on an anonymised basis.

12. It was on 19 September 2010 that a supplement was published to accompany the print edition of *The People* of that date entitled *Evil Women*. The supplement included an article about Baby P's mother, but it did not name or identify KC and the words complained of were never accessible online. The article contained the following allegations:

> "At just 16 [she] met the father of Peter – 17 years her senior – and the two were married in Haringey Civic Centre. Her new husband was a sex offender … Peter's real father had also reappeared and had begun to make frequent visits – something that would have set off alarm bells at Social Services as he had

> been convicted in the 1970s in Leicester for raping a 14 year old girl."

There is no doubt that these statements, as published in relation to KC, were completely untrue. It was said on behalf of the appellant that they were made as a result of a blunder. It was Baby P's maternal grandfather, not KC, who had committed the offence mentioned in the article.

13. Solicitors on behalf of KC wrote on 23 September 2010 complaining of what were plainly very serious allegations. They sought a retraction, an apology and damages for libel. The letter was promptly acknowledged and it was said that the matter would be looked into, and no further publication took place. A chasing letter was sent on 5 October 2010, seeking confirmation that nothing further would be published about KC in any of the MGN Ltd's publications. A telephone conversation took place on 7 October between Ms James, a lawyer acting on behalf of MGN Ltd, and the solicitor for KC. She followed up the telephone call with a letter to his solicitors. Both of these communications were on a "without prejudice save as to costs" basis. It seems that for some time after these communications the solicitors were preoccupied with care proceedings in relation to the other children and that this was the reason why they did not respond until a letter dated 10 November 2010. That period of delay was not in any way, therefore, attributable to MGN Ltd.

14. On 12 November, Mr Partington (the Deputy Secretary/Group Legal Director of Trinity Mirror Plc, the parent company of MGN Ltd) wrote to the solicitors, in Ms James' absence, and apologised on behalf of the newspaper for what had been published. He addressed each of their requirements and made an unqualified offer of amends in accordance with s.2 of the Defamation Act 1996.

15. Attempts were made to agree the wording of an apology and, although the parties were unable to reach agreement at that stage, MGN Ltd published the following unilateral apology in the issue of the newspaper dated 21 November 2010 on page 2:

> "Apology to Baby P's father
>
> On 19th September 2010 we published an article in a Crime Special Supplement entitled 'Tortured to death as mum turned a blind eye'. In that article we claimed that Baby P's father was a 'sex offender' and had 'been convicted in the 1970s in Leicester for raping a 14 year old girl'. We confirm that the allegations are without foundation and that Baby P's father has never been convicted of any criminal offences. We apologise to Baby P's father for making this error and for the very considerable distress and embarrassment our article caused."

16. There then followed open correspondence between the parties in an attempt to agree an appropriate amount of compensation. MGN Ltd wrote letters on 22 November and 1 December 2010 asking what sum by way of damages was required, having regard to the offer of amends and the published apology. There was no immediate response but, meanwhile, the offer of amends was accepted on 7 December 2010 by KC's solicitors.

17. An open offer of damages was made on MGN Ltd's behalf on 15 December (which was redacted in the copy of the letter placed before the court) but this was rejected. MGN Ltd then offered to discuss the amount of compensation either on the telephone or at a round table meeting.

18. It was only on 15 February 2011 that KC's solicitors made an open offer in respect of the amount of compensation that would be acceptable (again redacted). Three days later, MGN Ltd repeated its offer to hold a meeting to discuss the appropriate amount. The meeting in fact took place a month later, but it did not prove possible to reach agreement and it was in those circumstances that Bean J was asked to make an assessment in accordance with s.3(5) of the 1996 Act, which is in the following terms:

> "If the parties do not agree on the amount to be paid by way of compensation, it shall be determined by the court on the same principles as damages in compensation proceedings. The court shall take account of any steps taken in fulfilment of the offer and (so far as not agreed between the parties) of the suitability of the correction, the sufficiency of the apology and whether the manner of their publication was reasonable in the circumstances, and may reduce or increase the amount of compensation accordingly."

19. Following established practice, Bean J approached the matter in two stages. He first fixed a starting point figure of £150,000 and then made an appropriate reduction (assessed at 50%) to take account of all mitigating factors, including the willingness of MGN Ltd to use the offer of amends procedure. Thus he awarded KC £75,000, which is now challenged. The basis of criticism is not the percentage of the discount but the starting point, which it is said was excessive, to the extent that the court should interfere with it.

The issues raised on appeal in *Cairns v Modi*

(i) The need for proportionality in libel awards

20. Mr Tomlinson QC, representing Mr Modi on the appeal, made a broad submission that Bean J awarded a sum that was disproportionate and excessive in the light of what would appear to have been the relatively narrow scope of the original publication. It was greater than necessary to effect the legitimate purpose of compensation for the claimant and affording him appropriate vindication. *(Rantzen v Mirror Group Newspapers Ltd* [1994] QB 670, 696)

21. It is trite law that an award of compensation in a defamation action is required to serve one or more, and usually all, of three interlocking purposes. As it was put by Sir Thomas Bingham MR in *John v MGN Ltd* [1997] QB 586, 607E-F :

> "The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused."

22. These distinct features apply to every defamation case, but the emphasis to be placed on each will vary from case to case. Sometimes, for example, there may be relatively little demonstrable damage to reputation, but serious emotional distress; on other occasions, the need for public vindication will predominate; in yet other cases the financial consequences of damage to the reputation of the individual may represent the most serious feature.

23. In any case involving the assessment of compensation following a libel the essential question is indeed simply expressed: in the context of the principles identified in *John v MGN Limited*, how much loss and damage did the publication cause to its victim, and how is this to be reflected in monetary terms? True it is that, as Lord Hailsham pointed out in *Cassell v Broome* [1972] AC 1070-1, a sum of money is in some ways a rather crude means of vindicating an individual's reputation, and in *Kiam v MGN Limited* [2003] QB 281 at 301D, Sedley LJ referred to the "fiction that suffering can be translated into money" and recognised that for this reason "damages as a whole are arbitrary". But this is also true of the method of assessing general damages for personal injury: the overwhelming majority of claimants would prefer to forego any damages in exchange for their pre-accident health and fitness.

24. The process of assessing damages is not quasi-scientific, and there is rarely a single "right" answer. Nevertheless, it is virtually self-evident that in most cases publication of a defamatory statement to one person will cause infinitely less damage than publication to the world at large, and that publication on a single occasion is likely to cause less damage than repeated publication and consequent publicity on social media. By the same token, rapid publication of the withdrawal of a defamatory statement, accompanied by an apology, together with an admission of its falsity given as wide publicity as the original libel diminishes its impact more effectively than an apology extracted after endless vacillation while the libel remains in the public domain, unregretted and insidiously achieving greater credibility.

25. In *John v MGN Ltd* this court offered guidance about practical steps which might be adopted to assist in the assessment of damages. It was said, for example, that jurors could properly be informed as to earlier libel awards approved or substituted by this court, and also take into account brackets suggested by counsel or by the judge as appropriate to the facts before them. Hitherto, the convention had been to refrain from mentioning such figures to a jury. It was also suggested that reference could be made to the current conventional scale of compensatory damages being awarded in respect of pain and suffering in personal injury cases, not because there could be any precise correlation, but merely as one check on the reasonableness of any figure being considered as an award in libel proceedings. It has now become conventional also to recognise in effect a "ceiling" figure, allowing periodically for inflation, corresponding to the current maximum level of damages for pain and suffering and loss of amenity in personal injury cases. In 2002, in *Lillie & Reed v Newcastle City Council* [2002] EWHC 1600 (QB), it was taken to be approximately £200,000. A few months earlier, such a ceiling seems to have been recognised as appropriate by Simon Brown LJ (as he then was) in *Kiam v MGN Ltd* [2003] QB 281, 299E-F. The present equivalent, allowing for inflation, and without taking account of any uplift consequential on what are usually described as the Jackson reforms taking effect in April 2013, would be of the order of £275,000. These steps have made for greater consistency in and more predictable libel awards.

(ii) The scope of the tweet's publication

26. Mr Tomlinson suggested, and we agree, that it was a feature of the present case that the readership would almost certainly have been a specialist one, consisting of those with a particular interest in cricket. The Judge proceeded by consent to accept the figure of 65 as representing the approximate number of people who were the immediate publishees of the tweet. This was the median figure in the range agreed by expert witnesses. However, as Bingham LJ observed in *Slipper v BBC* [1991] 1 QB 283, 300, following similar comments made many years before by Lord Atkin in *Ley v Hamilton* [1935] 153 LT 384, 386:

> " … the law would part company with the realities of life if it held that the damage caused by publication of a libel began and ended with publication to the original publishee. Defamatory statements are objectionable not least because of their propensity to percolate through underground channels and contaminate hidden springs."

These considerations have been identified in Australian case law, where the convenient expression, "the grapevine effect" has been adopted: see e.g. *Crampton v Nugawela* [1996] NSWSC 651.

27. Mr Caldecott QC contended that with allegations of this scandalous nature it is likely nowadays that word will "percolate" by way of the Internet, and particularly in this case among those interested in cricket – not least because of the responsible position held by Mr Modi and the apparent authority of his words. Dealing with it generally, we recognise that as a consequence of modern technology and communication systems any such stories will have the capacity to "go viral" more widely and more quickly than ever before. Indeed it is obvious that today, with the ready availability of the world wide web and of social networking sites, the scale of this problem has been immeasurably enhanced, especially for libel claimants who are already, for whatever reason, in the public eye. In our judgment, in agreement with the judge, this percolation phenomenon is a legitimate factor to be taken into account in the assessment of damages.

(iii) The judge's approach towards the need for vindication

28. Libel damages are intended to compensate the victim rather than punish the perpetrator. Where the court wishes to take account of aggravation on the defendant's part in arriving at the appropriate sum, as in the case of *Cairns v Modi*, it is compensating the claimant for additional hurt to his feelings, or in the context of vindication, injury to his reputation, brought about by the defendant's conduct over and above that caused by the publication itself. As Lord Reid explained in *Cassell v Broome* at pp.1085-6:

> "Frequently in cases before *Rookes v Barnard*, when damages were increased in that way but were still within the limit of what could properly be regarded as compensation to the plaintiff, it was said that punitive, vindictive or exemplary damages were being awarded. As a mere matter of language that was true enough. The defendant was being punished or an

> example was being made of him by making him pay more than he would have had to pay if his conduct had not been outrageous. But the damages though called punitive were still truly compensatory: the plaintiff was not being given more than his due.

29. Mr Caldecott drew attention to how much the conduct of the trial on Mr Modi's behalf will have impacted, not only on Mr Cairns' feelings, but also on the need for vindication. In essence he submitted that by the time the trial had concluded the coverage given to the trial throughout the world hugely increased the need for vindication. It would thus be wholly artificial to proceed on the basis that Mr Cairns' reputation only needed to be restored among a limited number of readers. The serious allegations put in cross-examination and in the closing speech, on Mr Modi's behalf, make it necessary for him to be able to point, now and in the future, to an award of damages which carries conviction following such an onslaught. As Lord Hailsham explained in *Cassell v Broome*, at p1071B-C:

> "Such actions involve a money award which may put the plaintiff in a purely financial sense in a much stronger position than he was before the wrong. Not merely can he recover the estimated sum of his past and future losses, but, in case the libel, driven under ground, emerges from its lurking place at some future date, he must be able to point to a sum awarded by a jury sufficient to convince a by-stander of the baselessness of the charge."

30. Mr Tomlinson, by contrast, suggested that there is a reduced need for an element of vindication in the award once a reasoned judgment has been promulgated at the conclusion of a trial. In effect, the judgment in favour of Mr Cairns contained its own vindication. In this context we understood him to be arguing for a principle that damages should always be less, following a trial by a judge alone, than after the verdict of the jury, on the basis that the judge will provide a reasoned judgment explaining his conclusions which will, if the result is favourable to the claimant, vindicate him. We are disinclined to accept any such general principle. (See, for example, *Associated Newspapers Limited v Dingle* [1964] AC 371 at 400-1, 407, 408-9, 419, and the discussion in *Purnell v Business F1 Magazine Limited* [2008] 1 WLR 1 at paras 27-30, 39).

31. It is hardly necessary to expand on the reasons given by their Lordships in *Dingle*, but it is perhaps worthy of note that most lay observers or "bystanders" would be unlikely to read a detailed judgment and would be rather more interested to find out what sum the court, whether judge or jury, had awarded the claimant. Given the wholesale attack on Mr Cairns' reputation in the course of the trial, as reproduced in the media around the world, it is safe to assume that such a person would only be convinced by an award of some magnitude. Without adding to the judicial observations on this topic, we reject the submission that the present award should be reduced merely because Bean J's judgment contained express elements of vindication of Mr Cairns' reputation.

32. In any event it cannot be right in principle for a defendant to embark on a wholesale attack on the character of a claimant in a libel action heard by a judge without having

to face the consequences of the actual and potential damage done to the victim both in the forensic process and as a result of further publicity. There will be occasions when the judgment will provide sufficient vindication, but whether it does so is always a fact specific question. The judge will be well placed to assess whether the terms of the judgment do indeed provide sufficient vindication in the overall context of the case. In the present case, we think it unlikely that cricket fans will have downloaded the judgment of Bean J and read it with close attention. It is more likely, as in so many cases, that the general public (or rather, interested "bystanders" who need to be convinced) will be concerned to discover what might be called the "headline" result. What most people want to know, and that includes those who read the judgment closely, as Mr Caldecott submitted, is simply "how much did he get?"

33. The judge awarded £15,000 to take account of the conduct of the trial by the previous counsel instructed by Mr Modi. This represented an increase of 20% on the judge's starting figure of £75,000. This element of the award could have been addressed in the judgment as being as one of the factors taken into account in arriving at a global sum, but in the present case, because of the particular impact of the way in which the trial was conducted, presumably on the basis of Mr Modi's instructions, the judge decided to make specific and individual reference to this feature of the case. He was entitled to do so. Even allowing for the elements of vindication in the public judgment, this feature of the award was entirely proportionate.

(iv) Should the Judge have given a more detailed breakdown of the award?

34. The traditional approach to assessing damages in a libel action may perhaps conveniently be summed up in the words of Lord Herschell in *Bray v Ford* [1896] AC 44, 52 (which had been cited by Laws LJ in *Purnell*):

> "The damages cannot be measured by any standard known to the law; they must be determined by a consideration of all the circumstances of the case, viewed in the light of the law applicable to them. The latitude is very wide. It would often be impossible to say that the verdict was a wrong one, whether the damages were assessed at £500 or £1,000."

Now, of course, it is appropriate always to take into account the constraints of necessity and proportionality, as this court made clear in *Rantzen* and *John*.

35. Mr Tomlinson urged a more analytical reasoning process than previously thought appropriate. He referred to *Vento v West Yorkshire Police* [2003] ICR 318, allowing an appeal and cross-appeal from the Employment Appeal Tribunal in the context of sex and race discrimination. Three broad bands of compensation for injury to feelings were identified; namely, between £15,000 and £25,000 for the most serious cases, involving a lengthy campaign of discriminatory harassment; between £5,000 and £15,000 for serious cases not meriting an award in the highest band; and between £500 and £5,000 for less serious cases, involving an isolated act of discrimination. The tribunal's award of £65,000 had been seriously out of line and a fair award to cover the applicant's non-pecuniary loss was £18,000 for injury to feelings, £5,000 for aggravated damages and £9,000 for psychiatric damage.

36. Mr Tomlinson suggested that having regard to the need for consistency and proportionality a similarly analytical approach would be appropriate in the context of defamation. In *Vento* the court was seeking to establish a workable but consistent convention, tailored to meet the relatively new context of discrimination in the work place. The process of compensation in defamation cases is well established, and in any event is multi-layered, and in the overwhelming majority of cases goes well beyond the assessment of compensation for injury to feelings arising in discrimination cases.

37. We can foresee practical difficulties in adopting a comparably analytical approach in libel cases. Because there are the three elements of hurt feelings, injury to reputation and the need for vindication, there would arise almost infinite opportunities to appeal based on criticism of the judge's allocation of particular sums under these respective headings and for arguments that one of them ought to have received more or less monetary recognition relative to the others. It is not unrealistic to put forward three broad bands in the limited context of hurt feelings for discrimination in the workplace. By contrast, the combination of circumstances and the different features which fall for consideration in libel claims vary enormously and do not lend themselves to straightforward categorisation.

38. Having taken all relevant factors into account and weighed them against each other, the judge will normally arrive at a global figure by way of award.

(v) The limited impact of the *Cricinfo* settlement

39. Mr Tomlinson submitted that the award to Mr Cairns should have been reduced to take account of the £7,000 settlement in respect of the *Cricinfo* article. The judge did not expressly address this consideration in the context of s.12 of the Defamation Act 1952.

40. The source of the allegation contained in the *Cricinfo* article was, of course, Mr Modi. It would have been widely known among cricket followers that in the claim against him he intended to establish the truth of his allegations against Mr Cairns. The collapse of the *Cricinfo* website in those circumstances would hardly carry conviction as or achieve an effective vindication. Mr Cairns plainly needed an apology or a retraction from Mr Modi himself. Unfortunately, this was never forthcoming: indeed, in seeking to obtain permission to appeal on liability, Mr Modi continued to maintain the truth of the defamatory allegations and claimed that the judgment was "wrong".

(vi) Our conclusion on the appeal

41. We reject the criticisms of the judge's reasoning or of the total award based on a starting point of £75,000 with the £15,000 uplift directly linked to the conduct of the hearing. In our judgment they were proportionate to the seriousness of the allegation and its direct impact on Mr Cairns himself and will serve to vindicate his reputation. The appeal is accordingly dismissed.

The issues raised on appeal in *KC v MGN Ltd*

42. It is hard to exaggerate the seriousness of the publication of a false assertion that a man of good character has been convicted of the rape of a child. Nevertheless the assessment of damages consequent on the libel remains a fact specific decision, to be reached by reference to the principles identified in paragraphs 21-25. This particular case involves two distinct significant features. First, throughout the currency of the libel, for as long as it remained uncorrected, KC remained anonymous - as he does to this day. Second, the falsity of the allegation was recognised and publicly corrected at a very early stage. These are features which, notwithstanding the seriousness of the false allegation, Mr Browne QC, on behalf of the newspaper, submitted had been given insufficient weight in the judge's assessment of damages.

(i) The offer of amends regime

43. In the context of the offer of amends regime created by s.s 2-4 of the Defamation Act 1996, compensation is awarded on the same principle as libel damages at common law: s.3(5).

44. Naturally, however, one of the factors which is generally of particular significance in that statutory context is the very fact that an "offer of amends" has been made. As was noted in *Nail v News Group Newspapers Ltd* [2004] EMLR 20 at [35]-[36], at first instance, and adopted by this court on appeal, [2005] 1 All ER 1040 at [19]:

> "[35] The offer of amends regime provides, as it was supposed to, a process of conciliation. It is fundamentally important that when an offer has been made, and accepted, any claimant knows from that point on that he has effectively 'won'. He is to receive compensation and an apology or correction. In any proceedings which have to take place to resolve outstanding issues, there is unlikely to be any attack upon his character. The very adoption of the procedure has therefore a major deflationary effect upon the appropriate level of compensation. This is for two reasons. From the defendant's perspective he is behaving reasonably. He puts his hands up, and accepts that he has to make amends for his wrongdoing. As to the claimant, the stress of litigation has from that moment at least been significantly reduced."

The good sense of these observations is obvious.

45. When an offer of amends is made in accordance with the 1996 Act, litigation is usually avoided. Nevertheless it is not always possible for the parties to agree the level of compensation, which then must be decided by the court. The usual procedure is to take as the starting point the level of damages which would have been awarded without reference to the impact of the offer of amends, and then to discount as appropriate for it. In argument attention was drawn to the degree of artificiality of arriving at this notional starting point, when the absence of an apology would normally be regarded as an aggravating factor in the assessment. However the adoption of this two stage process is well established, and does not appear to have

given rise to any practical difficulties (see *Turner v News Group Newspapers Ltd* [2006] 1 WLR 3469 at (23 and 66)).

(ii) The relevance of KC's anonymity

46. Mr Browne's criticism of the judgment was primarily directed towards the starting point of £150,000, given KC's anonymity and the absence of any explicit indication of how it had been taken into account (if at all) in the context of the scale and impact of publication. Having cited several earlier decisions by way of comparison, the judgment continued [40]-[41]:

> " … The Claimant, no doubt, is not known personally or by sight to as many people as (for example) Sir Elton John, Esther Rantzen or Boris Berezovsky. Few people are. But it seems to me inconceivable that anyone who does know him personally could be unaware that he was the father of baby Peter Connelly. *(Part of this paragraph redacted)* For several years the highly publicised tragedy of Peter's death has dominated his life. There is no suggestion that he kept it to himself, and no reason why he should have. He is indeed a man of good character, but the fact that two items of personal information printed about him in the article were true would have added fuel to the suspicion of anyone who knew him and read the article that he might after all be the opposite of what he had seemed to be. As to his age, he was old enough to have committed rape in the late 1970s, and in any event a person's friends and acquaintances do not necessarily know his exact age.
>
> … with the possible exception of murder, or cruelly causing the death of a child in circumstances such as Peter's, it is difficult to think of any charge more calculated to lead to the revulsion and condemnation of a person's fellow citizens than the rape of a 14 year old girl. The 'no smoke without fire' point emphasised by Lord Hailsham in *Cassell v Broome* and by Eady J in *Angel v Stainton* applies with particular force. The nature of the accusation is in my judgment worse than in *Terluk* and far worse than in *Campbell-James*, *Houston*, *Nail* or *Angel*. The People has a circulation of about half a million copies and an estimated readership of 1,200,000. I consider that the appropriate starting point is £150,000."

47. "Baby P's father" is, as Mr Browne put it, simply a "descriptor". It is for KC to establish that some readers of the article would have been able to identify him as the person supposedly convicted of rape. Mr Dingemans QC argued that KC was widely known as "Baby P's father", and that potential readers of the article would know precisely to whom the article was referring. There was indeed evidence from some relatives, who contacted KC after publication of the article, and therefore plainly appreciated that it referred to him, but it is also clear that they, or most of them, would have been aware that the defamatory allegations were false. Nevertheless a number of them would have been troubled at the possibility that there might be some truth in the allegation, or, dealing with it broadly, "something in it", and some of them, of course,

would not have known that the allegation was false, and, given its nature would have been bound to react with a mixture of horror and disgust. In short, the article, as published, would have left some readers in no doubt that the article was referring to KC, and at least some of those who read it, would have thought ill of him as a result. To that extent Mr Dingemans' submission is right. Nevertheless it does not follow that a very substantial proportion of those who buy and read *The People* would have had the slightest idea of KC's identity, or his link with Baby P or the case which had caused so much public disquiet.

48. In our judgment there is a considerable force in Mr Browne's submission that the reasoning on which the assessment of compensation was based attached too much importance to the large circulation and readership figures for *The People*. That appears to be how the judge expressed himself in paragraph (41) where he directly linked the circulation and readership of the newspaper to his assessment of the appropriate starting point. On this basis the very limited nature and extent of publication as it might have impacted on the reputation of KC, who was and remained anonymous, was not given sufficient focus.

49. We have, of course, attached great weight to the evaluation of the starting point by the trial judge. We should not interfere unless satisfied that it was plainly wrong, or followed a misdirection. We have reflected on what we might reasonably describe as the wide parameters for damages in libel cases, and the highest level of awards which are currently considered appropriate. We have also reflected on the nature and extent of the personal injury which would culminate in an award of £150,000 for general damages. Such an award would reflect a moderately severe brain injury, with some lifelong disadvantageous consequences on the life and amenity of the claimant. If the circumstances of publication and the conduct of the defendant in this case had approximated to that of Mr Modi, with all the attendant publicity, directly and expressly repeating that KC was a sexual predator, and identifying him, or providing the means for his identification, an award of £150,000 would have been inadequate. However, given the limited number of those who might have read or heard of the false allegation made against him, and appreciate that it did indeed refer to him, the starting point was too high. We propose to reduce it to a level which, consistently with the limited publication and early apology, would nevertheless adequately reflect the abhorrent nature of the crime falsely alleged against KC and the damage done to and its impact on him. A proportionate figure for this purpose is £100,000.

50. There has been no argument before us that the 50% discount to allow for the offer of amends procedure, as adopted by the newspaper, was inappropriate. The offer of amends was made with reasonable promptitude in this case and the first apology published even earlier. KC therefore knew very soon after the date of publication that he was vindicated, and that this was bound to have "a major deflationary effect" on any award. We understand that this discount is as high as any discount so far selected by any judge exercising this jurisdiction. In our judgment it was appropriate. The result following the discount for the offer of amends under the statutory regime is that the starting point £100,000 will be reduced to an award of £50,000. To this extent the appeal is allowed.