Case No: HQ11D02225

Neutral Citation Number: [2012] EWHC 483 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/03/2012

Before :

MR JUSTICE BEAN

Between :

"KC"	**Claimant**
- and -	
MGN Limited	**Defendant**

James Dingemans QC and Julien Foster (instructed by **YVA Solicitors**) for the **Claimant**
Heather Rogers QC (instructed by **Rhiannon James, MGN Legal Department**) for the **Defendant**

Hearing date: 27 February 2012

Judgment

Mr Justice Bean :

1. Peter Connelly was born on 1st March 2006. Four months later his parents separated and his mother Tracey began a relationship with a man called Steven Barker. Peter and his siblings then lived with their mother. On 3rd August 2007 Peter was found unconscious in his cot, and later died. He had suffered very serious injuries including a fractured spine and eight fractured ribs and had been appallingly neglected. In 2008 Tracey Connelly, Steven Barker and Barker's brother Jason Owen were convicted at the Central Criminal Court on a charge of causing or permitting the death of a child and sentenced by His Honour Judge Kramer QC to substantial terms of imprisonment. During the trial Peter's first name and surname were not made public. He was referred to simply as "Baby P".

2. The Claimant in this case is Peter's father. It is important to emphasise that he played no part whatever in the neglect and death of his son. It is also important to emphasise that he was and remains a man of entirely good character.

3. On Sunday 19 September 2010 The People published a 24 page supplement entitled "Evil Women". A page and a half focussed on Tracey Connelly. There were pictures of her, of Barker and Owen, and of baby Peter himself. The article also included the following:-

> "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."

4. Later in the article was the following paragraph:-

> "Peter's real father had also reappeared and had begun making 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."

5. It was true that the Claimant was 17 years older than Tracey Connelly. It was also true that they had been married in Haringey Civic Centre. But it was not true that the Claimant was a sex offender, nor that he had been convicted of the rape of a 14 year old girl.

6. The Claimant learned of the article in a telephone call from his uncle. Other friends rang him to ask whether the story was true. He believed "that everyone who has read the story will believe it to be true". He was, as he says in his witness statements, "shocked and upset beyond words". No attempt had been made to contact him to discover whether the statements were true or false and no explanation has to this day been given as to why that was not done.

7. The publication placed additional strain on the Claimant for this reason. He has other children. They lived with Tracey Connelly in 2007. Peter was first injured in December 2006: the Claimant offered to look after him but was not given the opportunity. Tracey Connelly had made false accusations of violence against him to Social Services. She also placed considerable obstacles in the way of his having proper contact with his children. Following a period in foster care the children were

the subject of an interim care order in the Claimant's favour in January 2009. At the time of the article in The People proceedings were still on foot in the Family Division to determine whether that placement should be permanent. The Claimant feared that the widely publicised allegation that he was a sex offender meant that his children might be taken from him. Happily they were not, and I was told that a permanent order in favour of the Claimant was made in March 2011.

8. On 23rd September 2010, four days after the article was published, YVA, solicitors for the Claimant, wrote a letter of complaint which was received by MGN on 27th September. The Defendants replied three days later saying that they were looking into the complaint and confirming that no further information regarding the Claimant would be published by The People pending its resolution. On 7th October 2010 Rhiannon James, a solicitor at MGN, telephoned the Claimant's solicitors and also wrote them a letter "without prejudice save as to costs".

9. There then followed a pause of just over a month during which the Claimant and his solicitors (who were also acting for him in the care proceedings) were preoccupied with those proceedings and also the possibility of a resumed inquest on Peter. On 10th November 2010 YVA sent a formal letter of claim seeking publication of an apology; an undertaking not to repeat the allegations; damages for injury to reputation, embarrassment and distress; a joint statement in open court; and costs. The letter enclosed a draft apology including this sentence "We confirm that Baby P's father is not a sex offender and he has not been convicted of any sex offence, or indeed any offences".

10. Marcus Partington of MGN replied on 12th November 2010. He apologised on behalf of The People and MGN Limited for their mistake in publishing what they did about the Claimant. He stated that they were "of course" prepared to publish an apology which could appear on Sunday 14th November if the wording could be agreed in time, though in the newspaper itself rather than the supplement which had been a "one off". He confirmed MGN's willingness to pay "a proper and suitable sum" by way of damages and asked how much the Claimant was seeking. He said that in his view it was not reasonable or proportionate for there to be a direct statement in open court. He added:-

> "I believe that it is implicit from this letter that we are, in effect, making an offer of amends pursuant to section 2 of the Defamation Act 1996 but I mention that we are so that there is no ambiguity about the position."

11. Mr Partington enclosed a suggested revision of the apology which had been drafted by YVA. This included the sentence "We confirm that that allegation was false and that Baby P's father has not been convicted of any sex offence." This wording was clumsy and unfortunate, since it conveyed the imputation that the Claimant had been convicted of something else. When this was pointed out MGN agreed to the wording "has not been convicted of any offence". A number of other detailed drafting points were exchanged over the next few days.

12. On Friday 19th November Mr Partington wrote with the wording which he intended to suggest to the editor of The People for publication. It was duly published in the newspaper on Sunday 21st November 2010. After referring to the allegations it read

"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 him".

13. At the same time as sending the final text of the apology on 19th November 2010 Mr Partington had repeated MGN's offer to make amends pursuant to Section 2 of the 1996 Act. On 7th December 2010 YVA accepted MGN's offer to make amends. But the parties were unable to reach agreement on the level of damages. An offer and counter-offer were made in open correspondence; the amounts have quite rightly been redacted in the bundle before me. A meeting between lawyers on both sides took place on 17th March 2011 but agreement was not reached. Proceedings were issued on 16th June 2011.

14. The Claimant has filed two witness statements. He was not asked to attend court for cross-examination and I therefore take what he says to be undisputed. Mr Partington filed a witness statement for the Defendants. He had been due to attend for cross-examination at the hearing on Monday 27th February 2012 but became ill over the weekend of 25th/26th. Ms Heather Rogers QC for MGN applied for his witness statement to be admitted as hearsay; Mr James Dingemans QC for the Claimant did not oppose this and I ordered accordingly. Mr Dingemans understandably did not seek an adjournment to cross-examine Mr Partington.

15. One reference in Mr Partington's witness statement has especially upset the Claimant: Mr Partington says that the error was to attribute the rape conviction to Peter Connelly's father, whereas it should have been his grandfather. The Claimant took this as a slur on *his* father, whereas it is common ground, and even before Mr Partington made his witness statement was already in evidence, that the 1970s sex offender was in fact Tracey Connelly's father. Mr Dingemans did not suggest that the ambiguity was deliberate, but in a sensitive case it was, like the first draft of the apology, somewhat unfortunate.

16. I should add a word about anonymity. In the Family Division proceedings Coleridge J made an order prohibiting publication of the Claimant's name or address, or any photograph of him, and made detailed orders prohibiting the publication of any information which would tend to identify his children. There is a proviso to that order relating to proceedings in open court unless the court sitting in public (as I have done) itself makes an order restricting publication. At the outset of the hearing before me I made an order prohibiting the publication of specified information emerging during the hearing. . The purpose both of Coleridge J's order and of my order is to protect not the Claimant but his children. Ms Rogers did not oppose my making such an order.

The two-stage assessment of compensation

17. It was common ground between counsel that in a case where an offer to make amends has been made and accepted, but the quantum of damages remains in issue, the judge should follow a two-stage process identified in two judgments of Eady J. In *Turner v MGN* [2005] EMLR 25 (where it was approved as "rational" by Keene LJ on appeal: [2006] 1 WLR 3469) he said at paragraph 45:-

> "The first stage is to identify the figure I should award at the conclusion of a hypothetical trial in which the Defendant had done nothing to aggravate the hurt to the Claimant's feelings (e.g. by pleading justification or by insulting cross-examination) and nothing to mitigate (e.g. by the publication of an apology). At the second stage I must consider to what extent, if at all, that figure should be discounted to give effect to any mitigating factors of which this Defendant is entitled to take advantage."

18. In *Nail v News Group Newspapers Ltd,* in a passage cited by May LJ in the Court of Appeal ([2005] 1 All ER 1040), Eady J had said the same thing in greater detail:-

> "I think it is more helpful to focus on what I would have been inclined to award for these libels following a trial (i.e. sitting as a Judge alone) in which there had been no significant aggravation (such as a plea of justification) and no significant mitigation (such as an apology). This is not a wholly artificial scenario. It might arise in various ways: for example, if there were a trial confined to meaning or qualified privilege (neither of which, at least in theory, adds further injury to the Claimant's reputation). I would tend to ask, having regard to the current conventional overall ceiling for damages or £200,000, what the particular libel is worth on that scale of gravity. I would then aim to make a significant reduction to take account not only of any actual apology but also of the very willingness of the defendant to use the offer of amends route. A defendant is then in those circumstances effectively laying down his arms and inviting meaningful negotiation over compensation and restoration of reputation."

19. In the same case May LJ said:

> "One principle on which damages are awarded in defamation proceedings is that they are assessed as at the point of assessment. Of necessity, they are not in fact assessed at the date of publication, nor are they notionally assessed then. A further consequent principle is that conduct of the defendant after the publication may aggravate or mitigate the damage and therefore the award. Each case depends on its own facts and this will apply to the determination of compensation under section 3(5). That said, if an early unqualified offer to make amends is made and accepted and an agreed apology is published, as in the present cases, there is bound to be substantial mitigation. The defendant has capitulated at an early stage without pleading any defence, has offered to make and publish a suitable correction and apology (and has in fact done so in agreed terms in the present cases) and has offered to pay proper compensation and costs, these to be determined by the court if they are not agreed – see sections 2(4), 3(5) and 3(6). The claimant knows that his reputation has been repaired to the full extent that that is possible. He is vindicated. He is relieved from the anxiety and costs risk of contested proceedings. His feelings must of necessity be assuaged, although they may still remained bruised (and he is still entitled to say so, if that is so). He can point to the agreed apology to show the world that the defamation is accepted to have been untrue and unjustified. There may be cases in which some of these features are absent, or in which their impact may be slight. An example could be

> if the defendant had offered and published a correction and apology, which the claimant had not agreed and which the court found to be unsuitable and insufficient – see section 3(5), second sentence. There may also be aggravating features, although the use of the procedure would generally suggest that there is unlikely to be significant aggravation after the making of the offer to make amends. "A healthy discount" may be a more colourful phrase than "substantial mitigation", but they mean the same thing. ……
>
> The adoption of the procedure will have what the judge referred to as a major deflationary effect upon the appropriate level of compensation because adopting the procedure is bound to result in substantial mitigation. I do think that the judge's use of the word "rewarded" in paragraph 41 is superficially open to misinterpretation. But there is no distinction in substance between a reduction in compensation on account of the substantial mitigation bound to result from the use of the procedure and a "reward" for using the procedure, *provided that the mitigating factors are not brought into play twice*." [emphasis added]

20. Counsel on both sides accepted that a two stage assessment was appropriate, but there was an issue of principle which divided them. Mr Dingemans submitted that the mitigation of the apology and admission of liability only comes into play at the second stage. Ms Rogers, however, argued that decisions in defamation cases where the offer of amends procedure has not been used should be treated with care. She pointed to May LJ's phrase "he is vindicated" in the above passage. The Defendants have admitted their error, apologised, and recognised the Claimant's good character; and he has thereby been vindicated already.

21. I cannot accept Ms Rogers' argument. It is inconsistent with the logic of the two stage process, and with the words I have italicised in the extract from May LJ's judgment in *Nail*. The apology and admission lead to a discount at stage two: whether one calls it "substantial mitigation", a "healthy discount" or a "reward" for using the procedure is perhaps a matter of semantics. But they do not lead to a discount at stage one as well. Ms Rogers accepted that MGN were not entitled to a double discount, but in my view to take the admission and apology into account at stage one would be to achieve a double discount in all but name.

Stage one of the assessment: the cases

22. As to the first stage, the factors to be taken into account in an award of damages following the trial of a defamation case are well established. The Court of Appeal in *John v MGN* [1997] QB 586 at 607 (a case decided in November 1995, before the passing of the Defamation Act 1996) said that the sum awarded 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. In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality the more serious it is likely to

> be. The extent of publication is also relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of damages to vindicate his reputation but the significance of this is much greater when the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place."

23. In *Cleese v Associated Newspapers* [2004] EMLR 3 Eady J said that the full circumstances of the case must be taken into account, including:-

> "….the gravity of the allegations, the scale of publication, the extent to which any readers believed the words to be true, [and] any impact upon the Claimant's feelings, reputation or career. There may be matters of aggravation or mitigation which also need to be put in the scales. … A fundamental point always to be remembered is that the purpose of such damages, and indeed compensation awarded under section 3(5), is compensatory and not punitive."

24. In the same case, after referring to the then maximum for general damages in a libel action of £200,000, he said that:-

> "… a generous margin needs to be left at the upper end of the scale to accommodate the more serious libels. Occasionally, there are bound to be examples of allegations so grave and devastating in their impact that the maximum will seem inadequate. The perceived advantage of imposing an upper limit, however, is that there is likely to be greater clarity and consistency."

25. In paragraph 35 of his judgment in *Cleese* Eady J, considering a suggested starting figure of £30,000, set out the various categories of personal injury which would then have attracted an award of that amount for pain, suffering, and loss of amenity in accordance with the Judicial Studies Board guidelines. Ms Rogers referred me to the current JSB figures for severe psychiatric injury or severe post-traumatic stress disorder, with maxima of £76,000 and £66,000 respectively. However, in *Terluk v Berezovsky* [2011] EWCA Civ 1534 the Court of Appeal accepted that *John v MGN* "was not intended to prescribe a sharp or precise correlation with damages for personal injuries", and rejected an argument that an award of £150,000 was excessive because in a personal injury context it would represent compensation for catastrophic injury. So, notwithstanding the eloquent dissenting judgment of Sedley LJ in *Kiam v MGN Ltd* [2003] QB 281, I have found it more useful to examine decisions in defamation cases.

26. One aspect of the law relating to compensation which does affect both personal injury and defamation cases, and which was not in dispute before me, is that previous benchmarks or cases cited as precedents must be updated to take account of inflation (*Heil v Rankin* [2001] QB 272). The sum of £200,000 stated to be the maximum for defamation cases in February 2003 in *Cleese* would now be £256,000, a little less than the current maximum guideline for personal injury general damages of £265,000. In

Al-Amoudi v Kifle [2011] EWHC 2037 (QB) in July 2011 Judge Parkes QC said that the practical ceiling for libel damages was perhaps £230-£240,000.

27. Starting at the top of the scale: in *Lillie and Reed v Newcastle City Council and others* [2002] EWHC 1600 (QB), following a six month trial before Eady J, two nursery workers were each awarded £200,000 (current value £264,000) for false accusations of sexual, physical and emotional abuse of children in their care. The accusations were reported nationally, and there were over 100 press articles about the case in the Newcastle Chronicle alone. The claimants had to flee their homes and jobs, go into hiding and change their names. Some of the defendants pleaded justification and maintained that plea throughout the trial. Eady J observed that "with the possible exception of murder, it is difficult to think of any charge more calculated to lead to the revulsion and condemnation of a person's fellow citizens than of the systematic and sadistic abuse of children". He said:

> "I am quite satisfied that each of the claimants [has] merited an award at the highest permitted level. Indeed, they have earned it several times over because of the scale, gravity and persistence of the allegations and of the aggravating factors."

28. The difficulty with this case as a precedent is that it is clear that Eady J would have awarded far more than £200,000 if it had not been for the cap imposed in *John v MGN*.

29. The claimant in *Veliu v Mazrekaj* [2007] 1 WLR 495 was accused of being implicated in the London terrorist bombings of 7 July 2005, in a Kosovan newspaper published less than a fortnight after the bombings took place. Its circulation among Albanian speakers in London was said to be numbered in thousands. Eady J assessed compensation at the first stage at £180,000 (current value £212,400).

30. In *Ghannouchi v Al-Arabiya* [2007] EWHC 2855 (QB) the claimant, a Tunisian exile, was accused in a programme broadcast to an audience in hundreds of thousands of being an extremist with links to Al-Qaeda. The defendant unsuccessfully contested jurisdiction, then appears to have taken no part in the trial. There was no apology and no offer of amends. According to Eady J "difficulties were placed in the claimant's path at every turn, with the result that this allegation has gone uncorrected for over two years": I interpret this observation as meaning that the defendant's conduct had to some extent aggravated the award which would otherwise have been made. He awarded £165,000 (current value £188,100).

31. The claimant in *Rantzen v Mirror Group Newspapers Ltd* [1994] QB 670 was a well-known television presenter and chairman of the "ChildLine" service for sexually abused children. Articles published in The People one Sunday accused her of keeping secret the fact that a teacher who had helped her to expose sexual abuse at a boys' school was himself an abuser, thereby putting children at risk (because her informant was still teaching) and being insincere and hypocritical. The defendants pleaded justification and fair comment. A jury award of £250,000 was reduced on appeal to £110,000 (current value £182,600). The Court of Appeal noted that while publication of the article and its aftermath had been a "terrible ordeal" for Miss Rantzen, she still had an extremely successful career as a broadcaster, and her work in combating child abuse had achieved wide acclaim. I bear in mind that this case was decided before

John v MGN, and that the Court of Appeal were not yet ready to accept the argument based on a comparison with the highest awards of general damages for personal injury.

32. In *Al-Amoudi v Kifle* the libel was published on an Ethiopian-based website and not taken down for several months. The Claimant, an Ethiopian billionaire, was accused of involvement in financing terrorism; of marrying his daughter at the age of 13 to an elderly and disabled senior member of the Saudi royal family as a form of gift; and hunting her down with a view to securing her execution in Saudi Arabia by flogging or stoning. Judge Parkes awarded him £175,000.

33. *Berezovsky v Terluk* was a decision of Eady J which was taken to the Court of Appeal (*Terluk v Berezovsky* [2011] EWCA Civ 1534). The defamatory statements were made in a Russian language television programme broadcast in the UK. Mr Berezovsky was accused of having offered Mr Terluk massive payments to tell a false story to help him (Mr Berezovsky) avoid extradition to Russia and obtain political asylum in the UK; and, when Mr Terluk refused to comply, of drugging him. Eady J awarded £150,000 (current value £157,500). Laws LJ described the award as "certainly a high one", but not "substantially" exceeding "the most that any jury could reasonably have thought appropriate". It is plain in the light of these comments that the Court of Appeal would themselves have awarded somewhat less, but not so much less that they felt bound to interfere with the award.

34. *Campbell-James v Guardian Newspapers* [2005] EMLR 24 involved an accusation against a "distinguished" Army officer that he had been involved in the systematic abuse and humiliation of inmates at the notorious Abu-Ghraib prison in Iraq. In fact, when the abuse at Abu-Ghraib took place, the Claimant was not even in Iraq. The Claimant was exposed to a real and long term security risk and would be unable to work in the Middle East again. His career was damaged and he also had to explain matters to his 12 year old son. Eady J took a starting point of £90,000 (current value £108,900).

35. *Houston v Smith* was a slander case. The claimant GP was accused by the defendant of having sexually harassed her. The accusation was made in front of only a few people in the practice waiting room; but, if found proved, could have ended the claimant's career. An award of £150,000 by a jury was reduced by the Court of Appeal to £50,000 (current value £83,000). Hirst LJ said that even the substituted figure of £50,000 was "at the very top of the range" and that "if the defendant had promptly apologised the appropriate sum would have been a very small fraction of £50,000". There are so many differences between that case and the present one, including what I would describe as the upward pressure of the jury's award, that I do not find it of any assistance. Nor, for similar reasons, is the award of £45,000 by a jury, upheld on appeal, in *Kiam v Neil (No.2)* [1996] EMLR 493 (accusation of insolvency against a well-known businessman, with an apology after three weeks).

36. In *Nail v News Group Newspapers Ltd* the Claimant was the subject of an article in the *News of the World*, with a distribution of 4 million copies, suggesting that he had progressed from eating dog meat to engaging in grubby sexual behaviour and being a heartless *prima donna*. Eady J took a starting point of £45,000 (current value £56,250), which was accepted by experienced leading counsel in the Court of Appeal, Mr Hugh Tomlinson QC, as being correct.

37. Finally, the claimant in *Angel v Stainton*, an 81 year old defence equipment supplier, was the subject of a libellous letter sent or copied to five influential recipients which suggested that he had received a prison sentence some years previously for illegal arms dealing. An unqualified offer of amends was made two months later. On the assessment of compensation Eady J held that the correct first stage figure to award was £40,000 (current value £47,200). He observed that "As to vindication, this is less important in a situation where there has been only limited publication and no evidence of any actual diminution in the claimant's reputation. Nevertheless, if I were to award only a modest sum of compensation in respect of an allegation of criminality, there would remain a real possibility that some people, coming to learn of the award, might think that there was no smoke without fire. As Lord Hailsham explained in *Cassell v Broome* [1972] AC 1027 at 1071C-D, 'in case the libel, driven underground, 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 bystander of the baselessness of the charge'".

Stage one: submissions and decision

38. Mr Dingemans submitted that the appropriate starting point (ie the stage one figure) should be £200,000. His skeleton argument says that "to print a false statement that a person is a sex offender and has raped a 14 year old child is appalling, but to say it of the Claimant because of the personal circumstance which made him newsworthy, and give accurate details about other parts of his background, causing him to fear that he would lose the other children and be subjected to violence, means that an appropriate starting point should be somewhere between *Ghannouchi* and *Veliu*. The starting point reflects the critical need to vindicate the Claimant's reputation."

39. Ms Rogers put forward a bracket for the starting point of £40,000 to £50,000. She argued that the impact of the libel was limited. She says that very few people knew (or know now) that the Claimant was the father of Baby P, and thus the person wrongly accused in the article. There is no evidence of anyone having been led to believe that he was or even contacting him to ask, beyond his uncle and a few friends telephoning him on the day of publication. His friends know him as a man of good character. He was not old enough to have committed the offence of rape in the 1970s.

40. The point which Mr Dingemans described as the jigsaw argument cannot succeed. 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.

41. Amending only slightly the observations of Eady J in *Lillie,* 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.

The second stage: the discount

42. In offer of amends cases where the two stage process has been applied the discount has so far never been less than a third (in *Veliu*) nor more than a half (in *Nail* and in *Bowman v MGN* [2010] EWHC 895 (QB)): it was 35% in *Campbell-James* and 40% in *Angel* and *Turner*. It must be said that it is difficult to ascertain the precise basis for the various figures, but that is equally true of discounts for contributory negligence in personal injury claims or for contributory conduct in unfair dismissal cases. The promptness or otherwise of the apology, its terms, and the prominence given to it are obviously relevant factors. So too, at least to some extent, is the treatment of the claimant in negotiations.

43. Mr Dingemans put forward a discount of 35%. Ms Rogers submitted that it should be not less than 50%, but that there was no reason why it should not be more than 50%.

44. Mr Dingemans argued that the Defendants delayed in dealing with the Claimant and in publishing the apology. I reject this submission. From 7 October to 10 November 2010 the ball was in the Claimant's court. The fact that his solicitors did not respond to MGN's letter of 7 October is not a criticism of him nor of his solicitors, but it cannot be a criticism of the Defendants either. The negotiations which took place in the second week of November, which took a little too long for an apology to be published in the 14 November edition, were reasonable both in duration and in the tone adopted by MGN. The apology published on 21 November 2010 was clear and unqualified, and effectively in the terms put forward by the Claimant's solicitors. It could not be in a supplement as well, since no relevant supplement was published that week, but it was placed prominently on page 2 of the newspaper.

45. I take the view that it would be wrong to reduce the discount because of what I have described as the clumsy and unfortunate first draft of the apology, or the ambiguous reference in Mr Partington's witness statement to Peter's grandfather.

46. It is important that an unqualified offer of amends should give the tortfeasor what May LJ described as a healthy discount, but not a discount so great as to lead to defendants libelling claimants with equanimity, knowing that they will be able to buy their way out of trouble with an apology. That, in my view, is why the stage 2 discount has so far never exceeded 50%; and why I find it difficult to think of circumstances in which it would or should. But in the light of the factors I have set out in paragraph 44 I consider that the appropriate discount in this case is one of 50%.

Conclusion

47. The result is that I assess the compensation due to the Claimant at £75,000.