



Neutral Citation Number: [2011] EWHC 3197 (QB)

Case No: HQ10D04868

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/12/2011

Before :

THE HONOURABLE MR JUSTICE TUGENDHAT

Between :

Nigel Waterson
- and -
(1) Stephen Lloyd MP
(2) Rebecca Carr

Claimant

Defendant

Desmond Browne QC & David Hirst (instructed by Irwin Mitchell LLP) for the Claimant
Richard Rampton QC & Ian Helme (instructed by Goodman Derrick LLP) for the
Defendant

Hearing dates: 22 November 2011

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.

Michael Tugendhat

THE HONOURABLE MR JUSTICE TUGENDHAT

Mr Justice Tugendhat :

1. In this libel action Mr Waterson, who was Member of Parliament for Eastbourne between 1992 and 2010, sues his successor, now Mr Lloyd MP and Ms Carr (together “the Defendants”). She was Mr Lloyd’s agent in the period up to and during the General Election held on 6 May 2010. It is not in dispute that, amongst the literature widely distributed by and on behalf the Defendants, on several different occasions, there are a number of documents consisting of a single folded sheet which had the appearance of a free local newspaper. One is headed “SUSSEX COURIER Your Free Local Newspaper New Issue, March 2010”. That is the first publication complained of. Another, issued in April and May 2010, is headed “EASTBOURNE AND WILLINGDON EXPRESS”. That is the second publication complained of.
2. In early 2010 it was common knowledge that the latest possible polling day for a general election would be 6 May 2010.

THE MODE OF TRIAL AND THE APPLICATIONS

3. Each party has applied to the court for an order that judgment be entered summarily in his or their favour. The main questions that I am asked to answer are: what is the meaning of each of the two publications Mr Waterson complains of? In respect of each, is it a statement of fact, or a comment or opinion?
4. It is common ground that the trial of this action should be by judge alone. It follows that I am able to entertain the applications for summary judgment that each of the parties makes, and to determine the meaning of the words complained of as the trial of a preliminary issue.
5. The Defendants do not plead a defence of truth (or justification, as it often called). That means that if I find that either or both of the publications complained of is defamatory, and is a statement of fact, then there is no defence, and I must enter judgment for Mr Waterson.
6. On the other hand, if I find that the publications are comment (or opinion) Mr Rampton submits that the Defendants are bound to succeed, and so that I should enter judgment for the Defendants. But in response to the Defendants’ application, Mr Browne submits that there is a further issue that I cannot resolve at this hearing, so I should not in any event enter judgment for the Defendants.

THE FIRST PUBLICATION COMPLAINED OF

7. In the “Sussex Courier” on the front page and in a typeface 4 centimetres high there was printed the headline “EXPENSES SCANDAL MP FACES DEFEAT”. Underneath there is the text in three columns each of about twelve lines said to be “by Jonathan Walsh Chief Political Correspondent”. Mr Waterson does not complain of the first five paragraphs (these explain why it is said he was facing defeat). He does complain of the three following paragraphs on that page, which read as follows:

“The Borough of Bromley is where Mr Waterson and his family live, more than sixty miles from his constituents.

Taxpayers have paid almost £70,000 during the last four years towards the cost of Mr Waterson's Kent family home. The MP also claimed for food, cleaning, utility bills and over £1000 to have his garage re-decorated at the taxpayers' expense.

Mr Waterson has also claimed for the cost of glossy brochures, featuring the photo – opportunities for his visits to Eastbourne”.

8. There is a further passage complained of on the second page of the “Sussex Courier” under the title “Expenses Scandal: Eastbourne Residents Speak Out”.

The words complained of reads:

“Local residents have delivered their verdict on the MPs' expenses scandal.

Eastbourne Conservative MP Nigel Waterson has come under fire in recent months for his own scandalous expenses claim.

Mr Waterson claimed almost £70,000 for the mortgage on his large family home in Kent, which is over 60 miles away from his constituents.

He also claimed over £1000 to have his garage re-decorated.

It is clear that Mr Waterson's expenses claim has upset many people in Eastbourne”.

9. There then follow two paragraphs of which Mr Waterson does not complain. Under these there are what are presented as “Latest letters to the paper Eastbourne Herald” (the Eastbourne Herald really is a local newspaper). Mr Rampton submits that the words complained of must be viewed in the context of those quotations. They read as follows:

[1] “The electorate is fed up with the entire House of Commons, our MP included... It is time for Eastbourne to vote for a new Member of Parliament”.

[2] “Why does Mr Waterson need a large house in Beckenham?”

[3] “I for one would prefer my local MP to live in Eastbourne full-time and offer us taxpayers value for money. Eastbourne deserves more than second best and perhaps it's time we got it”.

[4] “Why are you allowed to claim £70,000 of taxpayers' money for the mortgage on your home in Beckenham, Kent... why are you allowed to claim taxpayers' money to fund your ‘Sea Views’ magazine”? ...you do not seem to enjoy mixing with the ordinary voter”.

10. Mr Waterson attributes to the words set out in para 8 above both a natural and ordinary meaning, and an innuendo meaning. An innuendo meaning is the technical term for a meaning that would only be understood by a reader who knows facts not stated in the words complained of (in this case those facts are set out in paras 8(1) to (3) of the Particulars of Claim), and the reader interprets the words in the light of those facts. The meanings Mr Waterson attributes to the words are as follows (the numbers refer to his Particulars of Claim, and the underlining indicates a proposed amendment which is not opposed):

“7. In their natural and ordinary meaning the words complained of in paragraph 6 above meant and were understood to mean that the Claimant’s conduct in making the various expenses claims listed had given rise to legitimate outrage, and that the cause of such scandal was his grave abuse for his own financial advantage of the Parliamentary rules governing such claims.

8. Further, or in the alternative, the words complained of in paragraph 6 above meant and were understood to mean that the Claimant was one of a number of notorious Members of Parliament, whose conduct had rightly become a subject of recent scandal, because their claims were unlawful and/or in breach of the Parliamentary rules, or such that they were liable to repay the amounts they had received.

Particulars of Innuendo

- 8(1) In or about July 2009 the Daily Telegraph published over a number of days details of expenses claims made by individual Members of Parliament between 2004 and 2009. The details published became an unprecedentedly notorious matter of national scandal, and it emerged that a very large number of Members of Parliament had made unlawful claims or claims for payment to which they were not entitled under the Parliamentary rules or claims which though within the rules were essentially were improper.
- 8(2) As the scandal increased, on 19 May 2009 the Prime Minister asked Sir Thomas Legg to investigate MPs’ claims, and on 19 June 2009 Scotland Yard announced that a number of MPs would face criminal charges of false accounting.
- 8(3) Following the articles in the Daily Telegraph a large number of MPs of all parties repaid monies to which they had not been entitled, either voluntarily or as a result of rulings by Sir Thomas Legg.
- 8(4) The above facts and matters were known to a very large but unquantifiable proportion of the readers of the words complained of”.

THE SECOND PUBLICATION COMPLAINED OF

11. There are three passages complained of in the "Eastbourne and Willingdon Express". They are as follows:

On page 2:

Under the heading "Courier Comment: It's Time for Change"

"We've seen the scandal of MPs abusing their expenses"

Under the headline "Eastbourne Needs a New MP"

"Local Residents were angry to discover that Nigel Waterson claimed £70,000 in just four years for his large Kent family home, sixty miles from his constituents..."

Under the headline "NIGEL WATERSON'S ROLL OF SHAME"

"In just four years claimed £70,000 for his family home sixty miles away in Kent".

On page 4:

Under the headline "IT'S A TWO HORSE RACE"

"Voting Labour here in Eastbourne and Willingdon will just let our expenses scandal MP off the hook".

12. The meaning which Mr Waterson attributes to those words in their natural and ordinary meaning is:

"10(1) The Claimant's conduct in making an expenses claim in relation to his home in Kent was a shameful abuse of the Parliamentary rules for his own advantage, and had given cause for legitimate public indignation and anger, and

10 (2) He would escape his just deserts for such scandalous conduct in relation to his expenses, unless the electorate voted for the First Defendant".

13. Mr Waterson also pleads in respect of the second publication an innuendo meaning in the same terms as that pleaded in respect of the "Sussex Courier".
14. It is common ground that the MPs' expenses scandal was very widely discussed in 2009 and 2010. There is no dispute as to the facts set out in the Particulars of Innuendo (set out in para 8 of the Particulars of Claim), so far as they go. It is also accepted by the Defendants that the £1000 was not just for painting the garage, but for the house as well as the garage.

THE DEFENCES

15. But Mr Rampton for the Defendants points to further facts which are also not in dispute. On 5 February 2010 the Director of Public Prosecutions had named three MPs who would be facing criminal charges in respect of their expenses claims, namely Mr Morley, Mr Chaytor and Mr Devine. He submits that people who knew that would also know that Mr Waterson was not one of that number. And extensive details of expenses claims by MPs had been printed in the Daily Telegraph newspaper. It is not necessary to set those matters out in more detail.
16. In any event for the purposes of the present application, the parties agree that I must assume that the Particulars of Innuendo would at a trial (if there were to be one) be proved to be true, and to be matters that were widely known to members of households in Eastbourne, to all of whom, it is said, these publications were distributed.
17. The Defendants admit that the words complained of were widely distributed to the electors of Eastbourne. The main case for the Defendants is that the words complained of in each of the two publications were honest comment. The meaning which the Defendants attribute to the words complained of is the same in respect of each of the two publications. They set out their case in their Defence as follows:

“10. The words complained of constituted honest comment on a matter of public interest, namely, the generosity of the Parliamentary expenses system as it was at the time of publication, the use that the claimant had made of that system while he was MP for Eastbourne and the anger and resentment that those matters were apt to cause, and had caused, amongst voters and taxpayers.

Particulars of Comment

10.1 The comment expressed by the words complained of in their natural and ordinary meaning and in their proper context was that Claimant's conduct in exploiting the expenses system to help purchase and maintain a large house in Kent, sixty miles from his constituency, at considerable expense to the taxpayer, and in maintaining his family home there in preference to Eastbourne, was scandalous and such as to cause legitimate anger, resentment and criticism, with the result that it would be no more than the Claimant deserved if he lost his seat in the forthcoming General Election for those reasons (amongst others)”.

18. There is no dispute that the words complained of were on a matter of public interest.

MR WATERSON'S REPLY

19. Mr Browne submits that even if the words complained of are comment, the Defendants are not entitled to summary judgment because there is an issue as to the honesty of their belief in what they published. In particular, he submits that there are highly relevant facts that they omitted to include in the publications complained of.

These facts are that Mr Waterson's expenses claims had been the subject of three investigations, and he has not been the subject of criticism in any of them.

20. The first investigation Mr Browne refers to is that by the media, and in particular by the Daily Telegraph. The Daily Telegraph listed his claims (as it listed the claims of very many MPs) but made no criticisms of Mr Waterson. Nor did any other national media publisher criticise his claims. Secondly, Mr Waterson was a subject of an investigation within his own political party, the Conservative Party, and no criticisms were made of him about the legitimacy of his claims. Finally, there was a review by Sir Thomas Legg. He is the very distinguished retired Civil Servant who had been appointed in June 2009 to determine the validity of payments of the Additional Costs Allowance ("ACA") made to MPs during the period April 2004 to March 2009, and to recommend any repayments which MPs should make. The test that Sir Thomas applied is set out in his report as follows:

"Against this background whilst most ACA payments appeared to have been valid, a considerable number of them (a) could not initially be judged valid or invalid, in the absence of the necessary supporting evidence; or (b) were invalid because they breached specific Green Book rules; or (c) were invalid because they breached the essential requirement of propriety ..." (emphasis added).

21. Sir Thomas Legg wrote in his report under the name of Mr Waterson:

"Mr Waterson has no issues".

22. These matters are pleaded by Mr Waterson in his Reply. I understand that they are not disputed as matters of fact, although the Defendants do dispute that these facts are relevant to the issues in question.

23. Mr Waterson further pleaded in the Reply, and it not as I understand it in dispute, that:

"7.6.(F) The Claimant's expenses claims were typical and unexceptional for an MP at the time, whether a Liberal Democrat MP, Conservative or otherwise in 2008/09. The Claimant's aggregate expenses claims of £158,162 placed him 222nd of 647 MP's, and 357th out of 647 in relation to claims under the ACA. In 2007/08 the Claimant's aggregate claims were the 183rd highest at 645 MPs and in 2006/07, 371st highest of 645 MPs (source: The Guardian/mysociety.org)..."

24. In support of Mr Waterson's case that the Defendants had no honest belief in the comment or opinion (if it was comment or opinion and not a statement of fact), he pleads the following:

"12.1 In 2001, under the First Defendant's predecessor as candidate, Eastbourne Liberal Democrats had undertaken in their promotional literature a similar election smear campaign to that of 2010, namely that the Claimant was from somewhere else and lived somewhere else – in that instance that he was

from London. In 2001 the Claimant had the same property designations as in 2010 with his main home the Eastbourne house and his second home the Beckenham house.

12.2 In 2001 the Eastbourne Liberal Democrats were censured by correspondents to the *Eastbourne Herald* for the factually incorrect statement that the Claimant did not live locally in Eastbourne and were forced to withdraw the statement (s) and admit the Claimant did live in the constituency.

12.3 In view of the foregoing, in 2009/2010, the Defendants and each of them knew or reasonably ought to have known that the Beckenham house was in the London Borough of Bromley and that it was misleading and disingenuous to claim, as they repeatedly did, that the Claimant lived in Kent. The Claimant had made no attempt to hide the fact that he maintained a second home in London in order to attend Parliament”.

25. The Defendants have each made a witness statement. In relation to the plea of malice made against them in the Reply each of them stated as follows:

“6. I confirm that at the time of the publications I knew, or knew in general terms, the following facts:

- (1) The relevant rules governing expense claims – a copy of which is exhibited to the Claimant’s Reply (Defence paragraph 10.17 and Reply paragraph 7.1);
- (2) The purchase by the Claimant and his wife, Dr Barbara Judge, of the property in Eastbourne known as Thatched Cottage in February 2000 (“the Eastbourne Property”) (Defence paragraph 10.22 and Reply paragraph 7.2.1);
- (3) The purchase by the Claimant and his wife of a large detached four bedroom property in Beckenham (“the Beckenham Property”) in August 2003 (Defence paragraph 10.23 and Reply paragraph 7.2.2);
- (4) That the Beckenham Property is some 57 miles from the constituency (Reply paragraph 7.2.3);
- (5) The Claimant’s wife and two children spend the working week at the Beckenham Property (Reply paragraphs 7.2.4 (B) and (G);
- (6) That the Claimant’s wife worked in London (Defence paragraph 10.25.1 and Reply 7.2.4 (A);
- (7) The Claimant’s two children attended school in Bromley (which is near to Beckenham) (Defence paragraph 10.25.2 and Reply paragraph 7.2.4 (B);

- (8) The Claimant and his wife were registered on the 2009 electoral role in Beckenham, as well as Eastbourne (Defence paragraph 10.25.3 and Reply 7.2.4 (C));
 - (9) The Claimant normally spent Sunday, Monday and Tuesday/Wednesday nights at the Beckenham Property (Reply paragraph 7.2.4 (E));
 - (10) That, for the purposes of the Additional Costs Allowance ("ACA"), the Claimant designated the Eastbourne Property as his "main home" and the Beckenham Property as his "second home";
 - (11) The Claimant's expenses under ACA for the period 1 April 2004 to 31 March 2008 totalled £93,428 (or £23,357 annually);
 - (12) This included (Defence 10.28.6 and Reply 7.3 and 7.3.2):
 - (a) £65,532 in respect of mortgage interest for the Beckenham Property (as the Claimant's designated second home);
 - (b) £7,909 in respect of Council Tax for the Beckenham property;
 - (c) £2,200 utility bills for the Beckenham property;
 - (d) £4,200 food bills for the Beckenham property;
 - (e) £3,300 cleaning bills for the Beckenham property; and
 - (f) £4,475 service and maintenance bills for the Beckenham property (of which £1,000 are attributable to the exterior of the Beckenham Property and the doors of the garage to that property).
7. I further confirm that I did honestly believe at the time of the publications, and still believe today that the opinions stated in those publications were entirely correct, and that it was a scandal that Mr Waterson had a second family home in Kent upon which he claimed very significant amounts from the taxpayer to cover mortgage interest repayments and other expenses".

SUBMISSIONS

26. There was no dispute as to the applicable law. Although there are a number of well-known definitions of the legal meaning of the word "defamatory", the definition that is applicable to the present dispute is the definition used by Sir Thomas Bingham, MR in *Skuse v Granada Television Limited* [1996] EMLR 278 at 286 where he said:

"A statement should be taken to be defamatory if it would tend to lower the plaintiff in the estimation of right-thinking members of society generally or would be likely to affect a person adversely in the estimation of reasonable people generally."

27. In deciding what meaning the publications complained of bear the court should adopt the same test as it applies in deciding what meaning words are capable of bearing. It was again common ground that 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 paragraph 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."

28. Mr Rampton emphasises principle (5) from *Jeynes*: particularly in point in the present case is the requirement that the words be read in their context, and that they be read as a whole so that the meaning cannot be taken for example simply from a headline: *Charleston v Newsgroup Newspapers Limited* [1995] 2 AC 65. Taken in their context (that is including the matters set out in para 9 above) he submits that the "scandal" which is referred to in the "Sussex Courier", both on page 1 and on page 2, is simply that "the Claimant has been allowed to claim £70,000 of taxpayers money for the mortgage on his home in Beckenham".
29. Mr Rampton submits that there is no suggestion of any other scandal, such as a breach of the rules or impropriety short of a breach of the rules.
30. Both Mr Rampton and Mr Browne illustrate what is meant by some other scandal as being at the very least what Eady J set out in *Lait v Evening Standard Limited (No 1)* [2010] EWHC 642 at para 8:

"In the light of all that has taken place over the past 12 months, it is in my judgment unreal to suggest that readers would not think the worst of a Member of Parliament who had taken advantage of (or "milked") the expenses system simply because he or she had stayed within the letter of the law or the rules".

31. Similarly in respect of the second publication complained of Mr Rampton submits the "scandal" and "abuse" referred to is confined to the criticism that Mr Waterson had

claimed £70,000 from the taxpayer for a home that was 60 miles from the constituency. There is no room, he submits, for any suggestion that those claims constituted a breach of any rules. Such an interpretation would be exorbitant and unnatural, open only to someone of an unreasonably suspicious cast of mind who would strain to find a defamatory allegation of fact where none was made.

32. As to the innuendo meanings, Mr Rampton submits that they take the matter no further. Since, as he submits, there is nothing in any of the words complained of to suggest that the Claimant might fall into any of the categories described in the Particulars of Claim at para 8 (1)-(3) and 11(1)-(3), even readers who knew those facts could not reasonably assign the Claimant's conduct to any of those categories.
33. In brief, he submits, the scandal referred to in the publications complained of is no more than the mere fact of Mr Waterson having made a claim for any repayment at all that included sums in respect of mortgage interest and decoration of his own property.
34. Mr Rampton relies on the fact that in the second publication complained of, underneath the title, there is printed in very small print "Printed and Delivered at No Cost to the Taxpayer Paid for Entirely by Volunteer Contributions". The "Sussex Courier" also bears at the bottom of the fourth page in small print "Printed by... Published and Promoted by R. Carr on behalf of S L Lloyd (Liberal Democrats), ...". So he submits that no readers would be fooled by these obvious spoofs into believing that they were reading a real newspaper. They are obviously party political leaflets. There had also been editions of the "Eastbourne & Willingdon News" distributed in August 2009, December 2009 and February 2010, so readers would have been familiar with the spoof format and recognised it as such.
35. The *Jeynes* case sets out the court's approach to deciding what words mean. There is also guidance as to the approach the court should adopt in distinguishing statements of fact on the one hand, from comment or opinion on the other hand.
36. It is common ground that what a defendant has to prove in order to succeed in a defence of comment is what has recently been restated by the Supreme Court as follows in *Spiller v Joseph* [2010] UKSC 53, [2011] 1 AC 852. At paras 3 and 105 the Supreme Court approved an earlier statement of the law by Lord Nicholls and corrected it to read as follows (so far as material):

"16. ... First, the comment must be on a matter of public interest. ...

17. Second, the comment must be recognisable as comment, as distinct from an imputation of fact. If the imputation is one of fact, a ground of defence must be sought elsewhere, for example, justification or privilege. Much learning has grown up around the distinction between fact and comment. For present purposes it is sufficient to note that a statement may be one or the other, depending on the context. Ferguson J gave a simple example in the New South Wales case of *Myerson v. Smith's Weekly* (1923) 24 SR (NSW) 20, 26:

'To say that a man's conduct was dishonourable is not comment, it is a statement of fact. To say that he did certain specific things and that his conduct was dishonourable is a statement of fact coupled with a comment.'

18. Third, the comment must be based on facts which are true or protected by privileged.... If the facts on which the comment purports to be founded are not proved to be true or published on a privilege occasion, the defence of fair comment is not available.

19. Fourth, the comment must explicitly or implicitly indicate, at least in general terms, the facts on which it is based.

20. Finally, the comment must be one which could have been made by an honest person, however prejudiced he might be, and however exaggerated or obstinate his views: It must be germane to the subject-matter criticised. Dislike of an artist's style would not justify an attack upon his morals or manners. But a critic need not be mealy-mouthed in denouncing what he disagrees with. He is entitled to dip his pen in gall for the purposes of legitimate criticism:

21. These are the outer limits of the defence. The burden of establishing that a comment falls within these limits, and hence within the scope of the defence, lies upon the defendant who wishes to rely upon the defence."

37. Mr Browne relies on these principles, and on the following further statements of the law:
- i) "...the objective test for fair comment is concerned with whether the defendant is able to show that a hypothetical person could honestly express the relevant comment on the facts pleaded and/or proved *by the defendant*... If the claimant, by way of rebuttal, proves truly exculpatory circumstances which negate the suspicious circumstances raised by the defendant, that will undermine the accuracy of the factual substratum for the comment. The defendant would therefore fail...": *Branson v Bower (No 2)* [2002] QB 737 para [38]-[39]
 - ii) "It is not comment ... grossly to misrepresent the conduct of a public man, and then to hold him up to execration for his alleged wrongdoing": *Christie v Robertson* (1889) 10 NSWLR 157, 163 cited in *Gatley on Libel and Slander 11th ed* para 12.14.
38. Neither counsel submitted that it makes any difference to the present case that this libel action is brought on publications distributed in the context of a hard fought general election. Mr Browne submitted that the public interests to which the law must give effect are well explained in the judgment of Judge Loucaides in *Lindon, Otchakovsky-Laurens and July v. France* - 21279/02 [2007] ECHR 836; (2008) 46 EHRR 35:

"The main argument in favour of protecting freedom of expression, even in cases of inaccurate defamatory statements, is the encouragement of uninhibited debate on public issues. But the opposite argument is equally strong: the suppression of untrue defamatory statements, apart from protecting the dignity of individuals, discourages false speech and improves the overall quality of public debate through a chilling effect on irresponsible journalism. Moreover, such debates may be suppressed if the potential participants know that they will have no remedy in the event that false defamatory accusations are made against them. The prohibition of defamatory speech also eliminates misinformation in the mass media and effectively protects the right of the public to truthful information. Furthermore, false accusations concerning public officials, including candidates for public office, may drive capable persons away from government service, thus frustrating rather than furthering the political process".

39. False statements may be an interference with free elections, as is recognised in the Representation of the People Act 1983 s.106. Such statements discourage electors from voting for candidates they might otherwise have voted for, if they had not been misled. Neither counsel suggested that the importance of distinguishing fact from opinion was different in the context of an election, as opposed to any other context.
40. Mr Browne identifies a number of features of the two publications that lead to the conclusion that the passages complained of would not reasonably be understood as meaning that the scandal is the mere fact of making the claims for mortgage interest and costs of decoration pursuant to a scandalous system. And he points to reasons for understanding that they are statements of fact, not comment or opinion.
41. In the "Sussex Courier" there is a general reference to "the MPs' expenses scandal", which includes all the forms which the scandal has taken, including those MPs whose claims were unlawful in the sense of criminal, those MPs whose claims were in breach of the rules and those MPs criticised by their parties and by Sir Thomas Legg so that they made voluntary repayments. The alternative, innuendo, meaning is pleaded to cover the possibility that it might be argued that these facts were not so generally known to readers in Eastbourne that the law requires it to be proved that some readers had that knowledge.
42. There are the repeated references in the "Sussex Courier" to the amounts that Mr Waterson has claimed (£73,000 for his mortgage interest and £1,000 allegedly to have his garage painted), with no indication that it is the mere fact of any such expenses being claimed that is the scandal. There is the repetition of the fact that the home in respect of which the claims were made is a home in Kent 60 miles from the constituency. These statements can only be factual and are said to be part of the scandal.
43. The passages in the "Sussex Courier" are presented in the style in which newspapers present news pieces, as opposed to comment pieces. There are no indications that the word scandal is attributed to anyone who might have expressed such an opinion, for example there are no quotation marks around the word where it appears. Page 2 is laid

out like a real newspaper, with the left hand column clearly identified as a comment piece, whereas the passages complained of are in what looks like a news piece.

44. In the "Eastbourne & Willingdon Express" there is again a general statement about MPs: "the scandal of MPs abusing their expenses". The word "abuse" in that context does not convey the meaning that might be conveyed by words which referred to MPs merely using a system that was itself a scandal. Abuse can only connote a breach of the rules or worse. This is emphasised by the words that "our expenses scandal MP" would be "let off the hook". And again there are the statements that can only be factual as to the amounts claimed, and the location of the house "in Kent" and it being "60 miles from his constituents".
45. Mr Browne submitted that reasonable readers would include many who would be fooled by the spoofs, and believe they were reading a real free newspaper. In any event, for it to be of any help to the Defendants to rely on the documents as spoofs, the court would have to find that there were no readers who were fooled. That is most unlikely.

DECISIONS ON MEANING

46. In my judgment the submissions of Mr Browne are to be preferred, for all the reasons that he gives.
47. I have no hesitation reaching this conclusion. On the contrary, I found difficulty in following how a reasonable reader in the circumstances specified in *Jeynes* could be expected to understand the "scandal" in question to be confined to the mere fact that Mr Waterson made a claim in respect of a mortgage and decoration. The scandal referred to would reasonably be understood as meaning, and in my judgment does mean in each publication, that Mr Waterson was himself guilty of abuse of the Parliamentary rules for his own financial advantage, as more fully set out in each of the natural and ordinary meanings and innuendo meanings which Mr Waterson attributes to the two publications that he complains of. These meanings are plainly defamatory (as is not in dispute), and in my judgment they are plainly statements of fact. There is no attempt by the writers to distinguish what can only be factual statements (such as the amounts of the claims, and the location of the house in Kent) from matters of comment or opinion.
48. The court is not required in a case such as this to choose between the meanings advanced by each of the parties. The court must come to its own conclusion as to what the words complained of mean. In the present case I conclude that the meanings attributed to the words complained of by Mr Waterson are the meaning that those publications do bear.
49. For the avoidance of doubt, I accept that it would have been possible for the Defendants to do what Mr Rampton submits that they did. It would have been possible to identify the scheme applicable to MPs' expenses, to have expressed the opinion that it was a scandalous scheme, to state that Mr Waterson had made claims under the scheme entirely lawfully, and to express the opinion that nevertheless it was wrong for him to have made the claims. But I do not accept that a reasonable reader would understand that that is what the Defendants achieved in the publications Mr Waterson complains of.

50. It follows that I must enter summary judgment in favour of Mr Waterson on liability, for damages or other relief to be determined later, if not agreed.
51. It also follows that I do not have to consider whether I would have entered judgment for the Defendants at this stage, if I had accepted the submission of Mr Rampton that the publications complained of were comment.
52. Readers of this judgment will appreciate that the Defendants accept that Mr Waterson had a home in the Eastbourne constituency. They also accept that the second home which he had with his family in Kent was a home in the London Borough of Bromley, which is close enough to Westminster to have enabled him to attend Parliament conveniently (particularly late at night), and for his wife to attend the hospital where she works at Great Ormond Street. They also accept that since Parliament sits at Westminster, it is necessary for MPs to have a place to stay near to Westminster, in addition to a home in the constituency, where the constituency is not itself in London. A reader of the publications complained of might not have understood that the Defendants did accept all these things. But it was for Mr Waterson to choose what to complain about. I have dealt in this judgment with the matters which he has complained about, and am not concerned with matters which he has not complained about.

CONCLUSION

53. For the reasons given above, judgment will be entered for Mr Waterson on the issue of liability, and issues as to the relief to be given will be determined separately, if not agreed.

