

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/05/2014

Before :

THE HONOURABLE MR JUSTICE TUGENDHAT

Between :

FIYAZ MUGHAL

- and -

TELEGRAPH MEDIA GROUP LIMITED

Claimant

Defendant

Ms Sara Mansoori and Mr Edward Craven (instructed by **Farooq Bajwa & Co Solicitors**)
for the **Claimant**

Mr David Price QC (of David Price Solicitors and Advocates) for the **Defendant**

Hearing dates: 30 April 2014

Judgment

Mr Justice Tugendhat:

1. This libel action arises out of the publication of an article in the Comment pages of the issue of the Daily Telegraph dated 15 June 2013. The words complained of were first published online the day before, and they remain accessible online today. The article refers to the murder of Drummer Lee Rigby on a street in Woolwich less than a month before, on 22 May.
2. The claim form was issued on 15 January 2014, which was after the Defamation Act 2013 came into force. The parties have not applied for trial by jury under the Senior Courts Act 1981 s.69(3) as amended, but have consented to an order that there be the trial of a preliminary issue in the action to determine the actual meaning of the words complained of. The order (as amended by agreement) is that the issue be whether the words pleaded in paragraph 3 of the Particulars of Claim bear the meanings pleaded in paragraphs 4, 5(a) and (b) of the Particulars of Claim and if so, whether they are defamatory of the Claimant.
3. However, the court is not bound to determine that the words complained of either do, or do not, bear meanings attributed to them by one or other party. The court at a trial must determine the actual meaning, and that may include a meaning contended for by

neither party, provided (amongst other things) that it is not more serious than the meaning contended for the by the Claimant. If the court decides that the words complained of are defamatory, it is good practice also to determine whether they are fact or are opinion (comment), and it may decide this question either before or after deciding whether or not the words are defamatory see *British Chiropractic Association v Singh* [2011] 1 WLR 133 at para [32]. In spite of the excessively narrow formulation of the consent order, the parties accept that the foregoing approach is the one I am entitled to adopt.

4. The Claimant runs an organisation called “Tell Mama”. He has been awarded the honour of being an Officer of the Order of the British Empire, or OBE. This honour is awarded to people having a major local role in any activity, including people whose work has made them known nationally in their chosen area. In the Particulars of Claim he describes himself as

“... the Director of Faith Matters UK, an interfaith and anti-extremist organisation which seeks to enhance dialogue between Muslims and sectors of the community. ‘Tell Mama’ is a project set up by Faith Matters and the Claimant for measuring and monitoring all forms of anti-Muslim attacks...”

5. The Defendant is the publisher of the *Daily Telegraph*.

THE WORDS COMPLAINED OF

6. The words complained of are included in an article, which is the largest piece on page 22 of the hard copy edition, under the heading “We are too weak to face up to the extremism in our midst... Despite the Woolwich outrage, David Cameron has failed to act against Islamist terrorism”. It reads as follows (with numbering added):

- 1) “It is less than a month since Drummer Lee Rigby was murdered in Woolwich, yet already the incident feels half-forgotten. In terms of the legal process, all is well. Two men have been charged. There will be a trial. No doubt justice will be done. But I have a sense that the horror felt at the crime is slipping away.
- 2) The media, notably the BBC, quickly changed the subject. After a day or two focusing on the crime itself, the reports switched to anxiety about the “Islamophobic backlash”. According to Tell Mama, an organisation paid large sums by the Government to monitor anti-Muslim acts, “the horrendous events in Woolwich brought it [Islamophobia] to the fore”. Tell Mama spoke of a “cycle of violence” against Muslims.
- 3) Yet the only serious violence was against a British soldier, who was dead. In The Sunday Telegraph, Andrew Gilligan brilliantly exposed the Tell Mama statistics – most of them referred merely to nasty remarks on the web rather than actual attacks, many were not verified, no reported attack had required medical attention, and so on. Yet the “backlash” argument has sailed on, with people shaking their heads gravely about the need to “reassure” Muslims. Tell

Mama equates “hate inspired by al-Qaeda” with the “thuggery and hate of the EDL [the English Defence League]”.

- 4) A trap is set here, inviting those of us who reject such statements, to defend the EDL. I do not. While not, in its stated ideology, a racist organisation like the BNP, the EDL has an air of menace. It must feel particularly unpleasant for Muslims when its supporters hit the streets. But the EDL is merely reactive. It does not – officially at least – support violence. It is the instinctive reaction of elements of an indigenous working class which rightly perceives itself marginalised by authority, whereas Muslim groups are subsidised and excused by it. Four days ago, six Muslim men were sentenced at the Old Bailey for a plot to blow up an EDL rally. The news was received quietly, though it was a horrifying enterprise. No one spoke of “white-phobia”. Imagine the hugely greater coverage if the story had been the other way round.
- 5) All journalists experience this disparity. If we attack the EDL for being racist, fascist and pro-violence, we can do so with impunity, although we are not being strictly accurate. If we make similar remarks about Islamist organisations, we will be accused of being racist ourselves. “Human rights” will be thrown at us. We shall also – this has happened to me more than once – be subject to “lawfare”, a blizzard of solicitors’ letters claiming damages for usually imagined libels. Many powerful people in the Civil Service, local government, politics and the police, far from backing up our attacks on extremism, will tut-tut at our “provocative” comments.
- 6) Much more important – from the point of view of the general public – you frequently find that Muslim groups like Tell Mama get taxpayers’ money (though, in its case, this is now coming to an end). You discover that leading figures of respectable officialdom share conference platforms with dubious groups. You learn that Muslim charities with blatantly political aims and Islamist links have been let off lightly by the Charity Commission. And you notice that many bigwigs in Muslim groups are decorated with public honours. Fiyaz Mughal, for example, who runs Tell Mama, has an OBE. Obviously it would be half-laughable, half-disgusting, if activists of the EDL were indulged in this way; yet they are, in fact, less extreme than some of those Muslims who are.
- 7) More than two years ago, David Cameron delivered an important speech in Munich when he emphasised that Islamist terrorism arises from the poisoning of young minds. He said that extremism does not have to be violent for it to be dangerous. If it stirs up hate and spreads lies, it rolls the pitch for violent action. He wanted the Government’s counter-terrorism Prevent programme reviewed in this light.

- 8) The results were initially good. Grants were cut and people were denied access. But there was too little follow-through within government, Civil Service or police. Although consistently tough himself, Mr Cameron has not persuaded others to be the same. Seeking a sop for Lady Warsi, whom he wanted to demote from the Tory chairmanship, he made her the “minister for faith and communities” without thinking of its consequences for his Munich agenda. This strange job, which gave her a foothold in two government departments, has made her a spokesman on these issues. Yet Lady Warsi is very slow to condemn Muslim sectarianism and has appeared on the platform of FOSIS, the federation of Muslim students which has repeatedly given house room to extremism. Five subsequently convicted terrorists have held office in Muslim student societies in British universities, yet the university authorities usually disclaim any responsibility.
- 9) Malcolm Grant is the president of University College London, whose student Islamic society was run by the “Underpants Bomber”, Umar Farouk Abdulmutallab. He resists the suggestion that he should prevent such extremism on his premises. Now, as well as UCL, Prof Grant manages to be chairman of NHS England. I predict a peerage very shortly, or at least a knighthood. I also predict that preachers of deadly hate will continue to operate easily in our universities under the banner of academic freedom. FOSIS encourages “community cohesion”, according to a universities spokesman.
- 10) I come back to the killing of Lee Rigby. This act of blatant, total barbarism on an English street in broad daylight shocked every decent person, but not quite enough. Almost as shocking as the bestial cruelty was the brazenness. When you saw young men with blood-soaked arms standing there and talking about what they said they had done, you knew that they would be arrested. But that was not as much comfort as it should have been. You also sensed that they had little fear: they felt that they almost had permission to act as they had done from a society too weak to make such an act unthinkable. They were, unfortunately, right to think that way.
- 11) In Britain today, extremists intuit that organised society is at a disadvantage to them. They understand that what makes them feel strong – the power of obnoxious ideas – is exactly what the authorities do not want to investigate and attack.
- 12) It is worrying, for example, that MI5 has a “behavioural sciences unit” to try to understand the psychology and anthropology of young terrorists, but no comparable unit studying ideology alone. It actually states on its website that the threat of subversion in Britain is “now [since the end of the Cold War] considered to be negligible”, and so it no longer investigates it. Intelligence agencies think in terms of state power, and they know that subversion by enemy states is not happening now. They have not adjusted to the

new reality – subversion that goes way beyond states, the capture of hearts and minds by evil.

13) This weekend, Nelson Mandela is gravely ill. When he was a boy, his teacher – whose name was Wellington – replaced his African first name with that of a British hero: he called him Nelson. It stuck. Anti-imperialist though he is, Mandela was educated with a profound respect for the British culture of parliamentary democracy. It became, in many respects, his model for a multiracial South Africa. It arose from good beliefs inculcated early in life. In our own country today, almost the opposite happens. In our state schools, in mosques, on the internet, in university gatherings, many young people are taught to detest the freedom in which they live. Just as surely as good teaching, bad teaching has its power. We refuse even to face it, let alone to stop it.”

7. The words complained of are, and are only, those in paragraph (6).

8. The meanings which the Claimant attributes to them are:

“4. In their natural and ordinary meaning ... that the Claimant is a Muslim extremist.

5 Further or alternatively, by way of innuendo ... that the Claimant is:

(a) more extremist in his views and actions than the far-right extremists who are activists within the English Defence League (“EDL”); and/or

(b) a hypocrite, as he falsely portrays himself as an individual who is anti-extremist”.

9. Both parties agree that the meanings in paras 4 and 5(a) can be taken together, and that meaning 5(b) is separate.

10. There are particulars of innuendo. But I need not set them out. It is common ground that I can proceed for present purposes on the assumption that the Claimant would prove at any trial that some readers of the words complained of had read articles published in the *Daily Telegraph*, and in other publications, in which the EDL activists are described as “far-right extremists”, and numerous reports that the Claimant has been claiming that Faith Matters is an organisation which works to reduce extremism.

11. No defence has been served. Mr Price for the Defendant submits that no reasonable reader would attribute to the words complained of the meanings contended for by the Claimant, or any meaning defamatory of the Claimant.

THE LAW

12. The law in this case is not contentious. Although there are a number of well-known definitions of the legal meaning of the word "defamatory", I shall take 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 [claimant] 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."

13. The principles governing a meaning application are as summarised by Sir Anthony Clarke MR in *Jeynes v News Magazines Limited* [2008] EWCA Civ 130 at [14]:

"(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) (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.'"

14. The natural and ordinary meaning may include implications or inferences which the ordinary reasonable and fair minded reader would draw. Principle (6) required the court to take account of the type of newspaper or website in question and of the characteristics of the individuals making up the likely readership. The *Daily Telegraph* is a broadsheet with an educated readership, interested in current affairs generally, and political issues in particular.
15. As Lord Phillips noted in *Spiller v Joseph* [2010] UKSC 53 at paras [77] and [78], under ECHR law, as under English defamation law, there is "little scope ... for restrictions on political speech or on debate on questions of public interest." He was referring to what the Court said in *Hrico v Slovakia* (2005) 41 EHRR 18, para 40g:

"There is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on questions of public interest (see *Sürek v. Turkey* (no. 1, no. 26682/95, § 61, ECHR 1999-IV). Moreover, the limits of acceptable criticism are wider as regards a public figure, such as a politician, than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his words and deeds by journalists and the public at large, and he must consequently display a greater degree of tolerance (see

Lingens v. Austria, judgment of 8 July 1986, Series A no. 103, p. 26, § 42, or *Incal v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, p. 1567, § 54).”

16. In *Waterson v Lloyd* [2013] EWCA Civ 136 at para [66] Laws LJ relates that dictum of Lord Phillips to *Jeynes* as follows:

“We are enjoined by *Jeynes v News Magazines Ltd* ... to avoid ‘over elaborate analysis’. I think this *dictum* has a particular resonance in the context of political speech.”

SUBMISSIONS

The Claimant

17. Ms Mansoori’s central submission is based on the juxtaposition of the three sentences:

“And you notice that many bigwigs in Muslim groups are decorated with public honours. Fiyaz Mughal, for example, who runs Tell Mama, has an OBE. Obviously it would be half-laughable, half-disgusting, if activists of the EDL were indulged in this way; yet they are, in fact, less extreme than some of those Muslims who are.”

18. She submits that the Claimant is the only individual identified in that passage as a decorated ‘bigwig’ (“Fiyaz Mughal ... who runs Tell Mama, has an OBE”). He is thus referred to as one of those Muslims who are compared with the ‘activists of the EDL’, and by comparison with whom the EDL are ‘less extreme’. In accordance with *Jeynes* principle (5) Ms Mansoori refers to the whole of the article in which the words complained of appear. In doing so she emphasises the repeated use of the words ‘extremism’ and ‘extremist’ in the title, and in the body of the article.
19. She submits that the Claimant is not a politician, and that the broader principle applicable to political speech does not apply here.
20. As to the meaning in paragraph 5(b), Ms Mansoori submits that that is derived from the contrast between the public statements of the Claimant portraying himself as an individual who is an anti-extremist and the words complained of.

The Defendant

21. Mr Price submits that the gist of the article as a whole is captured in the words of the Prime Minister reported in paragraph (7), immediately after the words complained of:

“Islamist terrorism arises from the poisoning of young minds.
... extremism does not have to be violent for it to be dangerous.
If it stirs up hate and spreads lies, it rolls the pitch for violent action.”

22. As he also expresses what he submits is the gist of the article, Islamist terrorism thrives in an environment where preferential treatment is given to those claiming to

represent Muslims. In paras (2) and (3) the article is critical of Tell Mama for, as the author alleges, misrepresenting the facts. The article includes:

“According to Tell Mama, an organisation paid large sums by the Government to monitor anti-Muslim acts, “the horrendous events in Woolwich brought it [Islamophobia] to the fore”. Tell Mama spoke of a “cycle of violence” against Muslims...”

23. Mr Price submits that the Claimant is not the only individual identified in the article. In paragraph (8), Lady Warsi is identified as a ‘bigwig’ who has been ‘decorated with public honours’. The article states that she:

“is very slow to condemn Muslim sectarianism and has appeared on the platform of FOSIS, the federation of Muslim students which has repeatedly given house room to extremism.”

24. Mr Price submits that the reasonable reader would not identify the Claimant as being referred to by the words “some of those Muslims who are”, in the last words of the words complained of. What the writer complains of concerning Tell Mama and the Claimant has been set out in paragraphs (2) and (3). So the reasonable reader will understand what is meant when the Claimant is referred to again in paragraph (6).

25. Mr Price submits that the meaning of hypocrisy is contrived. There is no suggestion that the views which the article attributes to the Claimant are not his sincere views. The criticism relates to their alleged effect on others.

26. In relation to both meanings Mr Price submits that they are clearly comment. He does not make that submission for the purposes of a defence of honest opinion. The question of a defence does not arise until the court has first found the words to be defamatory. Mr Price’s submission is that a finding that words are clearly comment may be relevant to the consideration of the question whether they are not defamatory: see *British Chiropractic Association v Singh*.

DISCUSSION

27. In my judgment this article does come within the scope of the principle that there is “little scope ... for restrictions on political speech or on debate on questions of public interest.” And a court determining meaning must have regard to that principle.
28. I accept the submission of Mr Price that the words complained of do not identify the Claimant as one of those Muslims who, when a comparison is made with EDL, shows that activists of EDL are less extreme. What the reasonable reader would understand is that, through Tell Mama, the Claimant has overstated two matters. He has overstated the extent to which violence against Muslims after the murders of Drummer Rigby is a backlash. And he has overstated the position in equating ‘hate inspired by al-Qaeda’ with the ‘thuggery and hate of the EDL’.
29. The meaning of the words complained of is not that the Claimant is more extreme in his views and actions than EDL, and it is not that he is a hypocrite. The words complained of are part of a public debate clearly identified as comment, or the opinion of the author, to the effect that the views that the Claimant expresses, and for

which he has received public honours, are not violent views, but are views which tend nevertheless to have dangerous consequences. That is not defamatory of the Claimant. The criticism is as to the effect of his views. It is not of his character.

30. Since in my judgment the meaning of the words complained of is dependent upon what is written about the Claimant in the earlier paragraphs of the article, in particular paragraphs (2) and (3), it follows that there is no separate meaning conveyed by those paragraphs which is more serious than the meaning conveyed by the words complained of. There is thus no meaning defamatory of the Claimant in the article as a whole.

CONCLUSION

31. For these reasons the words complained of do not bear the meanings attributed to them by the Claimant in the Particulars of Claim at paras 4 and 5, and they do not bear any other meaning defamatory of the Claimant.