



Courts and Tribunals Judiciary

SUMMARY

(1) Zoë Harcombe PhD & (2) Dr Malcolm Kendrick -v- (1) Associated Newspapers Limited & (2) Barney Calman
[2024] EWHC 1523 (KB): Mr Justice Nicklin
25 June 2024

*[References in square brackets are to paragraphs in the judgment of the Court.
Definitions used in this summary are the same as used in the Judgment]*

1. The Court has today handed down judgment (“the Judgment”) following the trial of various preliminary issues in the Claimants’ libel against Associated Newspapers Limited.
2. The Articles that gave rise to this claim for libel were published on 3 March 2019. There was a News Article, published on page 2 of the newspaper, and a more substantial Main Article and Editorial, published on pages 47-50 ([6]). The Articles were also published online ([8]).
3. The Articles, as they appeared in the print edition are set out in Annex 1 of the judgment. The text of the Articles is set out in Annex 2 to the judgment.
4. Several paragraphs of the Articles included reference to comments made by the then Secretary of State for Health and Social Care, Matt Hancock (“the Hancock Statement”) (highlighted in red in Annex 1). Other paragraphs referred to a paper produced by the London School of Hygiene and Tropical Medicine (“the LSHTM Paper”) (highlighted in green in Annex 2).
5. In answer to the Claimants’ claim, the Defendants have relied upon substantive defences of (a) honest opinion ([20]-[22]); (b) truth ([23]-[24]); (c) reporting privilege under s.15 Defamation Act 1996 (in respect of the Hancock Statement) ([25]-[26]); (d) reporting privilege under s.6 Defamation Act 2013 (in respect of the LSHTM Paper) ([27]-[28]); and public interest, pursuant to s.4 Defamation Act 2013 ([29]-[30]). In response, and in answer to the privilege defences relied upon by the Defendants, the Claimants have alleged that the Defendants were malicious ([32]-[34]).

The preliminary issues

6. The order directing the trial of preliminary issues was made on 10 February 2022 ([35]-[36]).
7. The Court has made clear the parameters of the exercise of determining these preliminary issues: what the Court is and is not resolving ([40]-[41]). Importantly, the Court is not determining in this judgment “*who is ‘right’ in the statin debate*” ([40(1)]).
8. For the reasons explained in the Judgment the Court has resolved the preliminary issues as follows:

- (a) Issues 1.1 and 1.2 – none of the reports of the Hancock Statement, included in the Articles, is privileged: see [134]-[176] and [477]-[478]. Although the Court found that the Hancock Statement was a statement issued for the information of the public by the Secretary of State for Health and Social Care ([471]), the report of the Hancock Statement was neither fair nor accurate ([477]). The Judge held ([168]-[169]):

“The Hancock Statement was a comment by Mr Hancock, as Health Secretary, on the general issue of misinformation about statins and the risks that such misinformation posed. Neither Mr Calman, nor anyone at the First Defendant involved in publication of the Articles could have failed to appreciate that. As I have found, neither Mr Hancock nor his office were aware that his statement was going to be used in an article that was going to make serious allegations against three, named, individuals.

The treatment of the Hancock Statement, in the News Article (headline, [1], [2] and [5]), would have given readers the clear impression that Mr Hancock, as Health Secretary, apparently in full knowledge of the allegations contained in the Article, had “*thrown his weight behind a Mail on Sunday campaign*” and made a “*passionate*” public statement denouncing the Claimants (and Dr Malhotra) for their “*pernicious lies*” (a particularly memorable phrase that was repeated in the Main Article ([15]). As the Defendants knew, he had done no such thing.”

The Judge found that ([176]):

“... the way in which the Hancock Statement was used was seriously misleading and gave an entirely false impression of whether Mr Hancock had criticised the three individuals (he had not).”

- (b) Issue 1.3 – was resolved by agreement between the parties – see [37].
- (c) Issue 1.4 – save for paragraph 48 of the Main Article, which is not privileged, the parts of the Articles that reported the LSHTM Paper are privileged: see [497]-[500].
- (d) Issue 1.5 – insofar as it arises, the Claimants’ allegation of malice fails: see [501]-[503]. The Judge held [503]:

“... malice is a serious allegation, akin to dishonesty. It is not to be made in litigation as an expedient. In this judgment, although I have criticised some of the decisions Mr Calman made, I am quite sure that he approached his task honestly. As perhaps the Claimants should readily appreciate, there is a material difference between being mistaken and being dishonest. Mr Calman is not dishonest, and given the malice plea he has had to face, it is right that I say so clearly.”

- (e) Issue 1.6 – the public interest defence fails and is dismissed for all publications. The Court found that the Defendants had demonstrated that the Articles were published on a matter of public interest ([404]-[406]), and that Mr Calman believed that publishing the Articles was in the public interest ([407]-[408]). Nevertheless, the Judge has found that the Defendants have failed to demonstrate that this belief was, in all the circumstances, reasonable ([409]-[461], particularly [456]-[461])

- (f) Issue 1.7 – the News Article and the Health Section (the Main Article and the Editorial) in the Print Publication are to be regarded as a single publication: see [511]-[513].
- (g) Issue 1.8 – Online Publication 2 and Online Publication 1 are not to be regarded as a single publication: see [538]-[542].
- (h) Issue 1.9 – The Court's determination of the natural and ordinary defamatory meaning of the relevant publications is set out in [516], [532] and [550]. The Judge held that the Articles, as they appeared in the print edition of *The Mail on Sunday*, bore the following natural and ordinary meaning ([516]):
- (1) each Claimant had repeatedly made the following public statements, knowing each statement was false:
 - (a) that cholesterol is not a cause of heart disease;
 - (b) that lowering cholesterol with statins produces only a negligible benefit for patients prescribed statins;
 - (c) that the medical establishment (including pharmaceutical companies, charities, doctors, researchers and universities) has covered up the true extent of the side effects of statins; and
 - (d) that the medical establishment has conspired to silence the Claimants to ensure as many people as possible take statins, in order to boost profits for the statin industry.
 - (2) there were strong grounds to suspect that each Claimant had made these knowingly false statements motivated by the hope that s/he would benefit from doing so either financially or from enhanced status; and
 - (3) the direct effect of the publication of these knowingly false statements by the Claimant was (a) to cause a very large number of people not to take prescribed statin medication; and (b) thereby to expose them to a serious risk of a heart attack or stroke causing illness, disability or death; and
 - (4) in consequence, each Claimant was rightly to be condemned as a pernicious liar, for whom there was a special place in hell, whose lies, deadly propaganda, insidious fake news, scare stories, and crackpot conspiracy theories, had recklessly caused a very large number of people, like Colin, for whom the proven benefits of taking statins were demonstrated by indisputable scientific evidence, to stop taking them risking needless deaths and causing harm on a scale that was worse than the infamous MMR vaccine scandal.
- (i) Issue 1.10 – Online Publication 2 bears the innuendo meaning set out in [545].
- (j) Issue 1.11 – The Court's decision on fact or opinion in respect of each publication is set out in [517], [533] and [551]. For the print publication of the Articles, meanings (1)-(3) were an allegation of fact, and meaning (4) an expression of opinion: [517].
- (k) Issue 1.12 – Mr Calman did not hold the opinions that the Court has found the publications to bear: - see [559]-[560].

9. Although, subject to any appeal, this judgment disposes of the preliminary issues that were tried, it is not the final resolution of the claim. Potentially, there remain defences upon which the Defendants rely that may require resolution at a further trial and, if ultimately successful in their claim, remedies.

Next steps

10. The Judgment has been handed down remotely. The parties will have a period of time to reflect on the decision and have been invited to agree consequential directions. If necessary, a hearing will be fixed at which any dispute as to the consequential directions can be resolved.

NOTE: This summary is provided to help in understanding the Court's decision. It does not form part of the judgment. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: www.judiciary.uk, <https://caselaw.nationalarchives.gov.uk> and www.bailii.org