IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST
[2020] EWHC 2797 (QB)

Claim No. QB-2019-003661

Royal Courts of Justice
Strand
London, WC2A 2LL

Monday, 5th October 2020

Before:

MR JUSTICE NICKLIN

(By Telephone Hearing)

B E T W E E N :

MICHAEL WARD — Claimant

- and -

(1) ASSOCIATED NEWSPAPERS LIMITED
(2) MAIL ON SUNDAY — Defendants

THE CLAIMANT appeared in Person.

MS C. EVANS QC and MS C. HAMER (instructed by Reynolds Porter Chamberlain LLP) appeared on behalf of Defendants.

J U D G M E N T

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MR JUSTICE NICKLIN:

1. This is a claim for libel and malicious falsehood. It was commenced by Claim Form dated 16 October 2019 and attached Particulars of Claim. The Claimant is Michael Ward. He complains of a statement published on the website Byline.com on 5 March 2019 ("the Byline Article"). Mr Ward has sued two Defendants, but the Second Defendant is the title of a newspaper published by the First Defendant ("the Defendant").

2. The Byline Article was a report of a claim for judicial review that had been brought against the Secretary of State for Digital, Culture, Media & Sport, challenging the government's decision not to proceed with Part 2 of the Leveson Inquiry. On 13 February 2019, May J refused the Claimant permission to bring his claim for judicial review: [2019] EWHC 3493 (Admin). Reference should be made to that decision to understand the claim brought by the Claimant, but it is fair to record, as May J did, that the substantial issue raised in his application for judicial review, that of substantive legitimate expectation, had effectively been decided by the earlier case of ***R (Jefferies) -v- The Secretary of State for the Home Department* [2018] EWHC 3239 (Admin)**.

3. The Byline Article was published in the following terms with paragraph numbers added in square brackets.

> **Mail on Sunday Journalists Accused of Burgling House and Bribing Witnesses, High Court Hears**
>
> *Ex-Mail on Sunday Finance Editor Lawrence Lever allegedly stole businessman's documents. Alleged victim Michael Ward later convicted of Fraud. But he claims Ex-Mail on Sunday City Editor Clive Wolman allegedly paid prosecution witnesses to lie. Mail on Sunday say allegations have 'no merit.'*
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> [1] **The *Mail on Sunday* newspaper was involved in a conspiracy to pervert the course of justice, the High Court has heard.**
>
> [2] One of its journalists was accused of burgling a Belgravia property to steal documents for a story - and then bribing a prosecution witness.
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> [3] Another editor was alleged to have paid money in a bid to get a witness to lie under oath.
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> [4] The allegations were made by former businessman Michael Ward, who is campaigning to get the second part of the Leveson Inquiry reinstated.
>
> [5] Mr. Ward said that the *Mail on Sunday* illegally targeted him in a plot to undermine libel proceedings which he had launched against the Rothermere-owned paper.
>
> [6] A spokesman for the *Mail on Sunday* said Mr. Ward's claims had no merit, and had been officially rejected by two criminal courts, and separately by an official body.

[7] Leveson Part 2 was cancelled by the government one year ago, in March last year.

[8] However, last month on Wednesday February 13th Mr. Ward asked the High Court for permission to Judicially Review the decision taken by the Secretary of State for Digital, Culture, Media and Sport.

[9] The judge in the hearing, The Hon. Mrs Justice May, refused him permission to take his case forward, but not before Mr. Ward had outlined a series of extraordinary allegations which he claimed amounted to 'serious press abuse' which then led to a criminal 'miscarriage of justice' which in turn 'destroyed his career.'

[10] The story started in 1987 when Mr. Ward, a Cambridge university graduate, founded a company called European Leisure.

[11] Between May and July 1991, he said that the *Mail on Sunday* published a series of articles alleging that he'd been involved in financial misconduct, promising Mr. Ward, who had become Chairman of the company, to sue publishers Associated News for libel.

[12] After reading the articles, Mr. Ward said that in July 1991, the Department of Trade and Industry (DTI) commenced an inquiry into share dealings, followed by a Serious Fraud Office (SFO) probe nine months later.

[13] Mr Ward told the court that while he was preparing his defence, the then *Mail on Sunday*'s Finance Editor Lawrence Lever got into his house in Chester Square, Belgravia, and stole his files.

[14] In a legal document presented to the court, Mr Ward - who was arguing his own case in the Queen's Bench Division - wrote:

[a] *'From the earliest days of the SFO investigation, the claimant (Mr. Ward) started to discover evidence of serious criminal and other misconduct being perpetrated by the Mail on Sunday in the shadows of the SFO investigation.*

[b] *'The newspaper was corrupting the SFO investigation in order to ensure the claimant was charged and convicted and, thereby, escape the writs for libel which the claimant had launched.*

[c] *'For example, the claimant's defence documents, including private business and personal records upon which the claimant was intending to rely in the proceedings, were stolen and destroyed by the newspaper.'*

[15] The Statement of Facts continued:

[a] *'On the first occasion, the Finance Editor of the Mail on Sunday Lawrence Lever, broke into the claimant's home when the claimant was abroad, forcing open the claimant's filing cabinet in his study.*

[b] *'On the second occasion, the Mail on Sunday's City Editor, Clive Wolman, paid a decorator working in the claimant's house telling him to bleed the house of every document he could find.'*

[16] Neither Mr. Wolman or Mr. Lever, who no longer work for the *Mail on Sunday*, were in court to dispute what Mr. Ward had written in his Statement of Facts.

[17] This is because Mr Ward's case was being brought against the Government for cancelling Leveson 2, not the *Mail on Sunday*, which he was claiming was an example of press abuse which should have been investigated by Lord Leveson.

[18] It was for this reason, he claimed, that the Government had conspired to cancel Leveson 2, in a bid to 'conceal' his 'travesty of a case' from being aired in a public forum.

[19] The *Mail on Sunday* said Mr Ward's claims had been repeatedly rejected over the last 24 years.

[20] Byline Investigates emailed Mr Wolman and Mr Lever this story, and offered them a right-of-reply.

[21] But no comment from either has yet been received.

[22] Following a three-year investigation by the SFO, the criminal case went to trial in 1995.

[23] However, Mr. Ward claimed he could not adequately defend himself because his paperwork had been stolen by the *Mail on Sunday*.

[24] In addition, he claimed that key prosecution witnesses were paid by the *Mail on Sunday*.

[25] A legal document stated:

[a] *'Wolman and Lever paid money to their agents, telling them to lie under oath.*

[b] *'The claimant discovered that the Mail on Sunday was bribing witnesses with secret payments in cash.*

[c] *'Witnesses were being encouraged by the Mail on Sunday to lie under oath at any future trial.*

[d] *'The Mail on Sunday was feeding false allegations into third party witness statements in return for additional secret cash payments.*

[e] *'It was also offering special 'conviction bonuses' to witnesses in return for securing the claimant's conviction.*

[f] *'The newspaper swore a false witness statement of its own for the SFO, making up allegations about the claimant it well knew were untrue as well as devastatingly prejudicial towards the claimant.*

[g] *'The newspaper was leaking unauthorised confidential information about the course of the SFO inquiry to witnesses, encouraging them to turn against the claimant who, the newspaper told the witnesses, was bound to be convicted.*

[h] *'Potential defence witnesses were being harassed and threatened by the newspaper.*

[i] *'In short, the Mail on Sunday was orchestrating a conspiracy to pervert the course of justice against the claimant.'*

[26] Mr. Ward produced to the court, a newspaper article from *The Independent* dated 14th September 1995, which claimed that a principal witness in his fraud trial was paid £4000 by Clive Wolman.

[27] In the article, the witness - a painter and decorator Brook Anderson who allegedly helped the *Mail on Sunday* - was quoted as saying: 'He (Clive Wolman) said it (the money) didn't really matter. No one would find out.'

[28] Despite his claims, Mr. Ward was eventually convicted at two different trials at Southwark Crown Court in 1995 of conspiracy to defraud in the course of a takeover bid, and of lying to the SFO and procuring a false receipt.

[29] He served two prison sentences, and claimed that his career was destroyed.

[30] However, in the civil court last month he said that he'd been fighting for 24 years to expose the 'juggernaut' of 'press abuse' which lead onto a 'miscarriage of justice.'

[31] But the court heard that he had been unsuccessful to date, losing at the Court of Appeal to overturn his convictions - and later an investigation by the Criminal Cases Review Commission had also not found in his favour.

[32] Mr. Ward had hoped to reboot his campaign for justice at the Leveson Inquiry in 2012, highlighting the *Mail on Sunday*'s alleged conspiracy.

[33] However, he had been advised by that 'complex' case maybe better suited to the second part of the Leveson Inquiry, which would concentrate on the relationships between the press and the police.

[34] But when this was cancelled last year, he felt indignant and was asking the court to overturn former DCMS minister Matt Hancock's decision.

[35] Both the DCMS and the Home Department were represented at the Administrative Court by barrister David Pievsky and a solicitor.

[36] In his skeleton argument, Mr Pievsky wrote that Mr. Ward's case should be refused permission for three reasons.

[37] Firstly, he said the claim was 'badly out of time' after Mr. Ward filed his documents three months late on 18th June last year.

[38] Secondly, Mr Pievsky said that a previous judicial review to overturn Leveson's cancellation failed in November last year.

[39] In that case - brought by retired schoolteacher Christopher Jefferies, who'd been defamed by the tabloid press during a police investigation, and others - Mr Pievsky said that the Division Court had 'comprehensively rejected' arguments to reopen the public inquiry.

[40] Mr Pievsky said: 'It concluded that the government's decision not to proceed with Leveson 2 was not unfair or an abuse of ... legitimate expectations.'

[41] Mr. Ward argued that the DCMS decision was 'irrational', and taken in 'bad faith', claiming that his case was 'so big' that the government had deliberately conspired to keep it out of its decision-making process.

[42] However, Mr. Pievsky rejected this with his third point.

[a] He added: *'Any internal document establishing or even suggesting that there were undisclosed or improper reason for the decision ... would have been found and disclosed.*

[b] *'The claimants various criticisms of the Solicitor General and the SFO and others involved in the criminal proceedings ... against the claimant have no bearing on whether the March 2018 decision concerning the Leveson Inquiry was unlawful.*

[c] Mr. Pievsky added: *'If he has evidence of that, and/or that the press were to blame for his conviction which were unjust, the remedy lies elsewhere.'*

[43] The judge, The Hon. Mrs Justice May, concluded that Mr. Ward did not have 'arguable grounds to challenge the Secretary of State's decision' - or that he'd been given a legitimate expectation that Leveson 2 would happen.

[44] She also said that there was no bad faith on behalf of the government arising from an improper conspiracy.

[45] The Hon. Mrs Justice May said that she had struggled with Mr Ward's claim that his case was so very significant that it must have been suppressed by the government.

[46] She said that she 'could not accept' that it was much bigger than the cases that had been heard at the Jefferies Judicial Review.

[47] For those reasons, The Hon. Mrs Justice May, concluded: 'I refuse permission.'

[48] Mr Ward was ordered to pay court costs of £1987.00.

[49] A *Mail on Sunday* spokesman: 'Mr Ward's claims were raised and rejected at the trial, some 24 years ago, where he was convicted of financial crimes. They have subsequently been examined and rejected again at the Court of Appeal and by the Criminal Cases Review Commission. There is no merit in Mr Ward's allegations.'

4. It is an unusual fact in this case, but potentially of some significance to Mr Ward's claim, that a draft of the complete Byline Article was sent to the Defendant before publication. The Defendant was invited to provide any comment it had on Mr Ward's allegations, as Byline intended to report them. The final paragraph of the Byline Article, paragraph 49, was the comment that the Defendant provided for the publication in the Byline Article (the "Mail on Sunday Statement").

5. In his Particulars of Claim, Mr Ward sets out his case as to the meaning to the Mail on Sunday Statement, as published in the Byline Article, in the following:

"30. The meaning of the sentence ***'Mr Ward's claims were raised and rejected at the trial, some 24 years ago, where he was convicted of financial crimes'*** is that, as matters of fact, at his trial in 1995, the Claimant had referred to these same claims concerning the Mail on Sunday's misconduct as were recited in the Byline.com article; that there had been an examination of these claims either by the judge or by the jury (or both); and that the claims had been found to be factually incorrect and untrue.

31. The meaning of the sentence ***'They have subsequently been examined and rejected again at the Court of Appeal and by the***

Criminal Cases Review Commission' is that, as matters of fact, at his appeal to the Court of Appeal in 1997, the Claimant had referred to these same claims concerning the *Mail on Sunday*'s misconduct as were recited in the Byline.com article; that there had been an examination of these claims by the Court of Appeal; and that the claims had been found to be factually incorrect and untrue. In the same way, when requesting the Criminal Cases Review Commission in 2000-2005 to refer his case to the Court of Appeal, the Claimant, as matters of fact, had referred to these same claims concerning the *Mail on Sunday*'s misconduct as were recited in the Byline-com article; that there had been an examination of these claims by the Commission; and that the claims had been found to be factually incorrect and untrue.

32. The meaning of the *sentence* ***'There is no merit in Mr Ward's allegations...'*** is that, as matters of fact, there is no truth in any of the allegations concerning the *Mail on Sunday*'s misconduct as were recited in the Byline.com article. The allegations were legally and factually baseless, without foundation, groundless, false, and spurious.

33. The meaning of the Statement taken as a whole (and the meaning which an ordinary reader would have taken away) from ***'Mr Ward's claims were raised and rejected at the trial, some 24 years ago, where he was convicted of financial crimes. They have subsequently been examined and rejected again at the Court of Appeal and by the Criminal Cases Review Commission. There is no merit in Mr Ward's allegations'*** is that, as matters of fact, the allegations the Claimant advanced concerning the *Mail on Sunday*'s misconduct as recited in the Byline.com article had been proven to be untrue by various tribunals and public bodies, and that the *Mail on Sunday* '<u>did not do the things which the claimant had alleged'.</u>

.....

39. In their natural and ordinary meaning, the words in the *Mail on Sunday*'s Statement (*'Mr Ward's claims were raised and rejected at the trial, some 24 years ago, where he was convicted of financial crimes. They have subsequently been examined and rejected again at the Court of Appeal and by the Criminal Cases Review Commission. There is no merit in Mr Ward's allegations.'*):

    A. were defamatory of the Claimant

    B. meant and were understood to mean that the Claimant had lied to the Divisional Court by making claims and allegations concerning the *Mail on Sunday* which he knew to be untrue

C. meant and were understood to mean that the Claimant had lied to courts and tribunals on past occasions as well as to public bodies."

6. In support of his claim for libel, Mr Ward contends that the publication of the Mail on Sunday Statement, in the context of the Byline Article, has "severely damaged" and caused serious harm to his reputation. In support of his claim for malicious falsehood, Mr Ward has set out both particulars of falsity and malice in his Particulars of Claim. I need not set out these particulars. None of them individually is challenged. The case on malice is premised on the alleged actual knowledge of falsity, recklessness and an alleged dominant improper motive.

7. No Defence has yet been served. After a series of consent orders extending the time for the Defence, on 27 February 2020, the Defendant issued an application notice seeking the following orders:

   a. That the claim be struck out pursuant to CPR 3.4(2)(a) and/or (b) on the grounds that the Particulars of Claim discloses no reasonable grounds for bringing the claim, and is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings.

   b. That the Defendant be granted summary judgment against the Claimant on the claim pursuant to CPR 24.2 on the grounds that (a) the Claimant has no real prospect of succeeding with the claim; and (b) there is no other compelling reason why the case should be disposed of at a trial;

   c. Further or alternatively, if necessary, that there be a trial of the following preliminary issues pursuant to CPR 3.1(2)(i)(j) and paragraph 6 of CPR PD53B and, if permission for the trial is granted, that the trial follow on immediately from permission being granted and be heard at the same hearing as the applications in paragraphs [a] and [b] above:

      i. The natural and ordinary meaning of the Defendant's statement complained of in the context of the [Byline Article] ... and

      ii. whether the statement is defamatory of the Claimant at common law.

8. In the application notice, the reasons in support of the first two applications were stated as follows:

"1. The claim (in libel and malicious falsehood) amounts to an abuse of the court's process because it is a collateral attack on final decisions adverse to Claimant made by a court of competent jurisdiction, namely:

   i. the conviction of the Claimant by a jury sitting at Southwark Crown Court on 10 February 1995 of the following offences: (a) one count of conspiracy to defraud at common law, and (b) three counts of theft; for which the Claimant received a sentence of two years imprisonment and seven years disqualification as a director (following a successful Attorney-General's 'undue leniency' appeal on 21 March 1997; and

ii. the conviction of the Claimant by a jury sitting at Southwark Crown Court on 27 September 1995 of the following offences: (a) one count of making a false or misleading statement contrary to s.2(14)(a) Criminal Justice Act 1987, and (b) one count of causing the falsification of a document, contrary to s.2(16) Criminal Justice Act 1987, for which the Claimant received a sentence of 12 months' imprisonment; and

iii. the Claimant's appeal and application for permission to appeal respectively against the above convictions and his sentence in the second case was dismissed on 25 March 1997 and 6 June 1997.

2. Further or alternatively, the Claimant has no real prospect of establishing serious harm or the likelihood of it, as required by s.1 Defamation Act 2013; and/or special damage or damage (if alleged) pursuant to s.3 Defamation Act 1952; and/or the claim amounts to an abuse of the court's process pursuant to the ***Jameel v Dow Jones*** doctrine.

   i. The Defendant will rely on (i) s.13 Civil Evidence Act 1968 (as amended by s.12(1) Defamation Act 2013) as conclusive evidence that the Claimant committed the offences referred to in paragraph (1) above, and (ii) s.8(3) Rehabilitation of Offenders Act 1974.

   ii. The sting of the Claimant's allegations against the Defendant, which was the focus of the Byline Article, was that the *Mail on Sunday* had been involved in a conspiracy to pervert the course of justice in the criminal proceedings against the Claimant, which had led to the Claimant's being wrongly convicted on the above counts and suffering a miscarriage of justice (**the Claimant's allegation**).

   iii. The Claimant's allegation, as to which the Defendant's statement complained of in paragraph 49 of the Byline Article was a response, has been repeatedly rejected and/or held to be unsupported by the evidence of in 25 years since the Claimant was convicted, including by the Criminal Court of Appeal and the Criminal Cases Review Commission. Specifically, the Claimant's individual allegations of misconduct by the *Mail on Sunday*'s journalists, as set out in the Byline Article, have not been found to substantiate his allegation of perversion of the course of justice or miscarriage of justice.

   iv. The Claimant's allegation has also been the subject (directly and indirectly) of unsuccessful judicial review challenges by the Claimant, on 25 May 2005 and 13 February 2019.

   v. By repeatedly seeking, and failing, over the last 24 years to challenge the correctness of his convictions on the ground that they were the result of a conspiracy to pervert the course of justice which involved the *Mail on Sunday*, the Claimant has himself intended and ensured that his criminal convictions, and their underlying circumstances, have remained in the public domain until the present day.

   vi. In all these circumstances:

1. the Claimant's reputation was irreparably harmed by the convictions and he has no real prospect of satisfying s.1(1) Defamation Act 2013; and/or

2. he has no real prospect of showing that he has suffered actual pecuniary damage or probable pecuniary damage pursuant to s.3 Defamation Act 1952; and/or

3. the Claimant cannot complain of a loss of reputation which is the foreseeable consequence of his own actions in committing the criminal offences in question and/or giving them long term publicity; and/or

4. the Claimant could not achieve anything of value in pursuing the claim and the proceedings would be pointless, wasteful of costs and court resources and an unjustified infringement of the Defendant's Article 10 European Convention right to freedom of expression.

3. Further or alternatively:

i. The Defendant's statement complained of in paragraph 49 of the Byline Article constituted a legitimate and proportionate public reply to the Claimant's defamatory public attack upon the Defendant which had accused it, with the benefit of the absolute privilege attaching to the Claimant's submissions to the High Court, of conspiring to pervert the course of justice in the criminal proceedings and causing him to suffer a miscarriage of justice.

ii. The Claimant has no real prospect of showing that the Defendant was malicious in providing its statement in reply for publication in the Article."

9. The Defendant's Application Notice was supported by a Witness Statement from the Defendant's solicitor, Keith Mathieson, dated 27 February 2020. The exhibits to that witness statement fill three ring binders. In his statement Mr Mathieson says that the grounds for the Defendant's application will be "*developed in submissions*", but he says this by way of summary:

a. The Claimant's claim amounts to an abuse of process of this court as it is a collateral attack on final decisions of a court of competent jurisdiction, namely the Claimant's convictions.

b. Further or alternatively, the Claimant has no real prospect of establishing serious harm or the likelihood of it, as required by s.1 Defamation Act 2013; and/or special damage or damage pursuant to s.3 Defamation Act 1952 (if alleged) and/or the claim amounts to an abuse of the court's process pursuant to ***Jameel***.

c. Further or alternatively, the Mail on Sunday Statement was a legitimate and proportionate public reply to the Claimant's defamatory public attack on the Defendant made in the Administrative Court. Therefore it is protected by qualified privilege and the Claimant has no real prospect of showing that the Defendant's relevant officers or agents were malicious.

10. The comprehensive and wide-ranging attack made by the Defendant on the Claimant's claim has, perhaps understandably, led him to file a witness statement in answer that runs to 338 paragraphs, and itself occupies a further ring binder. On any view, the factual and legal issues raised on this application are complex. The Defendant's applications take on the proportions of a small trial, albeit without witnesses giving evidence or any of the pre-trial stages. They would represent a heavy burden for a legally-represented party. Mr Ward is acting in person.

11. At the hearing I sought to establish the applications that are being pursued and the order in which I should determine them. Ms Evans QC, on behalf of the Defendant, agreed the court should determine be following applications in this order:

    a. Should Mr Ward's claim be struck out or dismissed as an abuse of process on the ground that it is a collateral attack on the final decisions of a court of competent jurisdiction, namely Mr Ward's criminal conviction?

    b. Should the Defendant be granted summary judgment on the defamation claim on the basis that Mr Ward has no real prospect of demonstrating serious harm to reputation under s.1 Defamation Act 2013?

    c. Should the Defendant be granted summary judgment on the defamation claim on the basis that publication is protected by reply to attack qualified privilege and Mr Ward has no real prospect of demonstrating malice?

    d. Should the Defendant be granted summary judgment on the malicious falsehood claim on the basis that Mr Ward has no real prospect of demonstrating malice?

    e. Should the Defendant be granted summary judgment on the malicious falsehood claim on the grounds that, as Mr Ward has not included any claim for special damage in his particulars of claim, he has no real prospect of relying successfully upon s.3(1) Defamation Act 1952?

    f. If any part of Mr Ward's claim remains, should the court strike out the remaining part on the ground that allowing the claim to proceed would amount to an abuse of process within the principle embodied in the decision in ***Jameel***?

A: Should Mr Ward's claim be struck out or dismissed as an abuse of process on the ground that is a collateral attack on the final decisions of a court of competent jurisdiction, namely Mr Ward's criminal convictions?

12. The Defendant contends that Mr Ward's claim is a collateral attack on his criminal convictions in 1995 and, by extension, the decision of the Court of Appeal refusing his appeal against those convictions.

13. The principal authority on which Miss Evans has relied is ***Amin -v- Director General of the Security Service*** **[2015] EWCA (Civ) 653**. The Court of Appeal dismissed an appeal against a decision striking out a civil claim for damages for alleged ill treatment during the claimant's detention and interrogation in Pakistan. The claimant had been prosecuted and convicted of conspiring to cause an explosion. During his criminal trial, the claimant had applied to stay the indictment as an abuse of process on the grounds of the alleged complicity of British officers in his interrogation. He also challenged the admissibility of admissions made during interview. Both applications were refused by the trial judge, and

rulings given. The claimant appealed, challenging these two rulings, and also on other grounds, but the Court of Appeal dismissed his appeal. In his subsequent civil claim, the claimant alleged that he had been unlawfully detained by ISI for 10 months, during which he was tortured. Although he did not allege that any British officers had mistreated him, the appellant did allege that they had been complicit in his detention, torture and subsequent deportation to the United Kingdom, as a result of their cooperation with ISI and the Pakistani integrators.

14. The defendants in the claim sought to strike out the civil claim, contending that it was an abuse of process of the court for the claimant to issue proceedings seeking to re-open issues that had already been decided by the trial judge at the criminal trial. Irwin J allowed the application, struck out the Particulars of Claim and dismissed the claim. In his judgment, he noted that complicity on the part of British officers lay at the heart of the claim, both because it was an essential element in any claim to hold the respondents vicariously liable and because it was an essential element in establishing a causative link between the personal acts or omissions of the defendants and any harm suffered by the claimant. Irwin J was satisfied, having considered the allegations made in the particulars of claim and the findings made by the trial judge at the claimant's criminal trial, that they overlapped entirely. At his criminal trial, the judge had roundly rejected the allegation that British officers had been complicit in any wrongdoing by Pakistani officers. The proceedings were, in his view, an attempt to challenge the judge's rulings and thereby the appellant's conviction by collateral means and thus constituted an abuse of process.

15. Moore-Bick LJ, giving the judgment of the Court of Appeal, in [10]–[19] and [44]–[46], reviewed the authorities on collateral attack and abuse of process that had followed from the house of Lords decision from ***Hunter v Chief Constable of the West Midlands Police* [1982] AC 529**, in which Lord Diplock, at p.536C-D, had described the court's power to control abuse of process as follows:

> "... the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people."

16. Moore-Bick LJ said this:

> [13] "In ***Hunter***'s case their Lordships were in no doubt that the whole purpose of the civil proceedings was to undermine the appellants' convictions with a view to putting pressure on the Home Secretary to release them, but it has since been established that an improper motive is not necessary in order for subsequent proceedings to constitute an abuse of process. In ***Smith -v- Linskills* [1996] 1 WLR 763** the claimant, who had been convicted of an offence of aggravated burglary, brought proceedings against his solicitors seeking damages on the grounds that their negligent preparation of his defence had resulted in his conviction. As in the present case, the claimant contended that the issues raised by his claim were different from those that arose at his trial, but that did not prevent the proceedings from constituting an abuse of process. Sir Thomas Bingham M.R. giving the judgment of the court said at page 768H:

'Mr. Andrew Nicol, for Mr. Smith, argues that the issue in the present proceedings is not the same issue as was decided in the Crown Court. To an extent this is so. In the Crown Court the question was whether, applying the criminal standard of proof, Mr. Smith was shown to have committed the crime with which he was charged. In the present proceedings the issue is whether his former solicitor handled his defence negligently. It is, however, plain that the thrust of his case in these proceedings is that if his criminal defence had been handled with proper care he would not, and should not, have been convicted. Thus the soundness or otherwise of his criminal conviction is an issue at the heart of these proceedings. Were he to recover substantial damages, it could only be on the basis that he should not have been convicted. Even if he were to establish negligence, he could recover no more than nominal damages at best if the court were to conclude that even if his case had been handled with proper care he would still have been convicted. It follows, in our judgment, that these proceedings do involve a collateral attack upon the decision of the Crown Court. We understand Lord Diplock, by "collateral," to have meant an attack not made in the proceedings which gave rise to the decision which it is sought to impugn; not, in other words, an attack made by way of appeal in the earlier proceedings themselves.'

…

[15] In ***Arthur J S Hall & Co -v- Simons*** **[2002] 1 AC 615** their Lordships were concerned with the question whether the advocate's immunity from suit should be retained. Since immunity applied to criminal as well as civil proceedings, it was appropriate to consider the extent to which the principle in ***Hunter***'s case provided an adequate safeguard against actions for negligence against their lawyers by those convicted of criminal offences. None of their Lordships doubted the correctness of the principle in ***Hunter***'s case and it is worth noting that Lord Hoffmann, with whom Lord Browne-Wilkinson, Lord Hutton and Lord Millett agreed, thought that when considering abuse of process there was a relevant distinction between criminal and civil proceedings resulting from the scope and application of the procedures for challenging decisions reached at trial. He said at page 706A:

'It follows that in my opinion it would ordinarily be an abuse of process for a civil court to be asked to decide that a subsisting conviction was wrong. This applies to a conviction on a plea of guilty as well as after a trial. The resulting conflict of judgments is likely to bring the administration of justice into disrepute. The arguments of Lord Diplock in the long passage which I have quoted from ***Saif Ali -v- Sydney Mitchell & Co*** **[1980] AC 198, 222-223** are compelling. The proper procedure is to appeal, or if the right of appeal has been exhausted, to apply to the Criminal Cases Review

> Commission under section 14 of the 1995 Act. I say it will ordinarily be an abuse because there are bound to be exceptional cases in which the issue can be tried without a risk that the conflict of judgments would bring the administration of justice into disrepute. ***Walpole -v- Partridge & Wilson*** **[1994] QB 106** was such a case'."

17. In [19], Moore-Bick LJ also referred to the case of ***Secretary of State for Trade and Industry -v- Bairstow*** **[2004] Ch 1** and said this:

> "[That] is another case in which the question of abuse of process arose in a purely civil context. Having considered the line of authority to which I have referred Sir Andrew Morritt V.C. said:
>
> '[38] In my view, these cases establish the following proposition:
>
> (a) A collateral attack on an earlier decision of a court of competent jurisdiction may be but is not necessarily an abuse of the process of the court.
>
> (b) If the earlier decision is that of a court exercising a criminal jurisdiction then, because of the terms of ss. 11 to 13 Civil Evidence Act 1968, the conviction will be conclusive in the case of later defamation proceedings but will constitute prima facie evidence only in the case of other civil proceedings ...
>
> (c) If the earlier decision is that of a court exercising a civil jurisdiction then it is binding on the parties to that action and their privies in any later civil proceedings.
>
> (d) If the parties to the later civil proceedings were not parties to or privies of those who were parties to the earlier proceedings then it will only be an abuse of the process of the court to challenge the factual findings and conclusions of the judge or jury in the earlier action if (i) it would be manifestly unfair to a party to the later proceedings that the same issues should be relitigated or (ii) to permit such relitigation would bring the administration of justice into disrepute."

18. In my judgment, the terms of s.13 Civil Evidence Act 1968 are of some importance. The section provides as follows:

> "(1) In an action for libel or slander in which the question whether the plaintiff did or did not commit a criminal offence is relevant to an issue arising in the action, proof that, at the time when that issue falls to be determined, he stands convicted of that offence shall be conclusive evidence that he committed that offence; and his conviction thereof shall be admissible in evidence accordingly.
>
> (2) In any such action as aforesaid in which by virtue of this section the plaintiff is proved to have been convicted of an offence, the contents of any document which is admissible as evidence of the conviction, and the contents of the information, complaint, indictment or charge-sheet

> on which he was convicted, shall, without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based, be admissible in evidence for the purpose of identifying those facts."

19. To the extent, therefore, that the Defendant contends that Mr Ward's libel claim is a collateral attack on his criminal convictions from 1995, s.13 presents something of an obstacle to his being able to do so. Insofar as Mr Ward's convictions were to be relevant to any issue to be decided in these proceedings, in the libel action, s.13 provides that they are conclusive proof of his guilt of the offences for which he was convicted. Adjusting the facts to demonstrate the point, if the Mail on Sunday Statement had said: "Mr Ward has been guilty of conspiracy to defraud and theft", then in any claim for libel brought on that statement, the Defendant would be able to rely upon his convictions as conclusive evidence that he had committed that offence. Unless s.8 of the Rehabilitation of Offenders Act 1974 was engaged, the libel action would not therefore present any opportunity for the Claimant to mount a collateral attack on those convictions.

20. The actual terms of the Mail on Sunday Statement did not allege that Mr Ward was guilty of the offences of which he had been previously convicted. Although meaning has not been determined, it is tolerably clear that the Mail on Sunday Statement was making a statement about Mr Ward's recent attempt to obtain permission to bring judicial review proceedings, challenging the refusal by the government to implement Stage 2 of the Leveson Inquiry. The statement was expressly responding to the claims Mr Ward had made against the Defendant in the course of his application for permission and identified in the Byline Article.

21. In his evidence, Mr Mathieson has sought to demonstrate that, in his second criminal trial, Mr Ward had relied upon some of the allegations he had made against journalists employed or engaged by the Defendant. Mr Ward did not give evidence in his second criminal trial, so the evidence put before the jury to support his allegations against journalists was limited. I have read HHJ Rivlin QC's summing-up from the second trial. The charges in the second trial were quite narrow. Mr Ward was charged with (1) making a false statement during an interview by the SFO, and (2) causing the falsification of a document. In respect of the first count, the real issue for the jury, as appears from the summing-up, was whether Mr Ward knew that the statement was false when he made it in his SFO interview. In respect of the second count, the allegedly falsified document was a letter dated 23 June 1992, relating to the alleged purchase of the contents of a flat in Drayton Gardens for some £89,000. It appears that it was common ground, at the trial, that the letter had indeed been falsified by Brooke Anderson and Lynne Russell. The prosecution's case was that Mr Ward had caused them to falsify the letter. The judge summarised Mr Ward's case to the jury in the following terms:

> "The defence, on the other hand, say: No. This document had nothing to do with the defendant at all; and, referring to page 1, it was the product of an exercise in 1992 when Brooke Anderson was for payment providing the *Mail on Sunday* newspaper, and Mr Wolman of that paper, in particular, with information about the defendant. The defence say that in a very dishonest excess zeal, Mr Anderson got his friend, Lynn Russell, to provide this receipt in the hope by doing so it would increase the chances of him getting more money out of the Mail on Sunday. They say, that is the defence say, that the defendant knew nothing about this document at all."

Summing-up the issue for the jury, the judge said this:

> "Again, you may think that there is then the simple issue to which I have referred: Have the prosecution made you sure that the defendant was in fact behind and indeed caused the obtaining of this admittedly untrue document? If they have, the defendant is guilty. If they have not proved that so that you are sure about it, if you think that the defendant may not have committed that offence then, of course, you will find him not guilty."

22. Mr Anderson had given evidence against Mr Ward directly implicating him with the falsification of the letter. The Judge described Mr Anderson having been the subject of a "massive attack" on his credibility. The Judge directed the jury in the following terms:

> "In this case Mr Trollope on behalf of Mr Ward has very importantly drawn a number of matters to your attention in this regard. He has analysed and compared Mr Anderson's own account to you and the Serious Fraud Office. He has also analysed and compared Mr Anderson's accounts to you with things that are said by him on the tape recordings. Mr Trollope has drawn your attention to a number of glaring and obvious inconsistencies between what Mr Anderson had to say on one occasion and what he had to say on another occasion.
>
> Then, to go on Mr Trollope has drawn to your attention inconsistencies between the evidence of Mr Anderson and other witnesses who have given evidence in this case. For example, Miss Russell herself or Mr Wolman, who was the City Editor of the *Mail on Sunday* or the Detective Constable who has given evidence. As you will remember Mr Trollope has furthermore directed your attention to certain dramatic passages in the tape recordings where you can hear Mr Anderson talking about, for example, being fed information by the *Mail on Sunday* which he turned into evidence or the other dramatic passage to which particular reference has been made where Mr Anderson referred to the truth and his ideas of the truth, that is on the last tape; and I shall remind you of that.
>
> Mr Trollope has suggested a motive for Mr Anderson to tell lies. In the first place he suggests there is a financial motive in that if he told lies about Mr Ward he might be rewarded by the Mail on Sunday. Says, Mr Trollope, he, Mr Anderson, still hopes to benefit financially from these lies when the trial is over. Then, another motive is suggested for perpetrating and continuing these lies before you namely, the fear that he, Mr Anderson, might otherwise be accused of wasting police time.
>
> What should your proper approach be to the evidence of Mr Anderson? In the first place, you should, as I have indicated, approach his evidence with special care. You should look first to see if there is any [quite] independent evidence which tends to support the evidence of Mr Anderson and to implicate the defendant in these crimes. If there is such independent evidence then that, of course, may reflect upon your views of Mr Anderson's credibility. Credibility simply means the confidence which you may have in the truthfulness of his account. If, in your judgment, there is no such independent evidence then of course you will only act on Mr Anderson's evidence, if having taken [into] account [it must mean] the strong words of caution I have given you, you are nevertheless quite sure that he has been telling you the truth in this court.

> Is there any evidence which is quite independent of Mr Anderson's evidence which is capable of supporting his evidence about the defendant and implicating the defendant in these offences? The answer is: Yes, there is. Although, as I have indicated, it is for you to assess it and for you to decide what you make of it. We will be looking at this evidence in greater detail at a later stage, but let me tell you here and now what that evidence is. First Counts 1, 2 and Count 3 particularly number 1. The note in the defendant's own handwriting ... is capable of amounting to independent corroboration or support of what Mr Anderson has had to say."

23. I would therefore summarise the scope of the criminal trial as follows. In relation to the count of falsification of the letter, Mr Ward sought to rely upon Mr Anderson having a financial motive to lie in his evidence. The Judge directed the jury that they had to consider the challenge to Mr Anderson's credibility, but it was for them to assess the evidence as a whole, and that, depending on their view of the evidence, there was independent evidence suggesting that Mr Ward had been behind the falsification of the document. In his summing-up, the Judge put it like this:

> "You have heard a deal about the press. Very strong criticism and complaint has been made on the defendant's behalf that Mr. Anderson went to a newspaper; and the newspaper in question, the *Mail on Sunday*, in effect paid him and Mr. Ward's ex-wife for information and for documentation. It is said that there are writs for defamation -- that is libel -- outstanding against the *Mail on Sunday*; and that both the newspaper and Mr. Anderson have a financial interest in this trial ending in a conviction.
>
> These are all points perfectly properly made on Mr. Ward's behalf. Of course, you are entitled to consider them in light of the evidence which you have heard and to take them into account. If you believe them to be well made then, of course, you will have regard to them when you come to consider whether you accept the evidence which Mr. Anderson and Mr. Woolman have given you in this case. But if, having taken these matters into account as you have been asked to by Mr. Trollope, you are, nevertheless, sure that the case is made out and that the defendant is proved to be guilty of any of these charges, then you must not let all the talk about newspapers and money deflect you from your duty to return true verdicts."

24. The conviction of Mr Ward was not a determination by the jury that the claims made against Mr Anderson and Mr Wolman during the trial were false. They were matters that had been raised as having a bearing on the credibility of the prosecution witnesses. There was, as the Judge identified, independent evidence capable of implicating Mr Ward and/or corroborating the evidence of Mr Anderson. The jury could have considered that the allegations against Mr Anderson were, or may have been, true yet still have convicted Mr Ward. The trial judge in summing-up said this:

> "We all know that many crimes and criminals are exposed either by people giving information to newspapers or giving information to the police. Newspapers do sometimes pay for that information and the police do sometimes pay for that information. The whole idea of informants may be very unattractive but informants are, I am afraid, a very necessary and important part of the criminal justice system. If someone has truly committed a crime it might be very galling for them to be exposed by someone they

> thought they could trust, it might be worse for them to learn that they have made money out of it, but that is hard luck ....
>
> So, if this defendant has, in fact, committed any of these offences, you should not be affected at all by the criticisms which you have heard about Mr. Anderson or The Mail on Sunday acting, I think the word was 'unethically'. Crime is not cricket and a person who commits crime should not be able to escape conviction by complaining that those who have exposed his crime have, in effect, not been playing cricket."

25. Mr Ward sought leave to appeal against conviction and sentence from the second trial. The key ground of appeal related to the relationship between the principal prosecution witnesses and the *Mail on Sunday*. On 6 June 1997, the Court of Appeal Criminal Division (McCowan LJ, Kay J and HHJ Myerson QC) refused his application. Giving the judgment of the Court, Kay J summarised the argument on behalf of Mr Ward as follows:

> "The evidential background to this point is that Anderson agreed in evidence that he had been offered money by The Mail on Sunday for his story. He said that a figure of £12,000 had been mentioned. He had been paid £4,000, and there was a possibility of more. He realised, he said, that whether or not he would get any more [money] would depend upon whether there was a conviction in the case. He also agreed that he had lied to the Serious Fraud Office and told them that he only received about £500. He said that he had done that at the prompting of Mr Woolman of the *Mail on Sunday*, who had also told the police that Anderson had been paid £500 and who wanted Anderson to keep in line with that account.
>
> The position of the *Mail on Sunday* had to be borne in mind. As a result of their articles, the applicant had started libel proceedings against the newspaper. It clearly would have served the interest of that paper if the applicant was to be convicted. Indeed, although the applicant chose not to give evidence, this was the line of defence adopted on his behalf.
>
> It was said that the *Mail on Sunday* had, with the assistance of Anderson, set up the applicant so as to justify their actions in taking property from his home and so as to assist them in the libel proceedings arising from their articles which were on-going. Thus, it was suggested that Anderson, for financial reward, had made up the false story of the sale to Lynn Russell without the knowledge of the applicant and led the applicant to believe that it was a true account. So that in passing on the information to the Serious Fraud Office, he was unaware that he was misleading anyone. The letter which gave rise to count 2 it was suggested had been written at the request of Anderson and then forward to the Serious Fraud Office so as to implicate the applicant further in the matter entirely without the knowledge of the applicant.
>
> [Counsel for Mr Ward] contends that the situation of a witness being paid money concerning his evidence and being left with the understanding that, whether or not he would receive any more depended upon whether the applicant was convicted or not, was something which was quite repugnant to our system of criminal justice. With that comment, we have no difficulty in agreeing.

> There can be no doubt that Mr. Trollope QC, who appeared at the trial, made, and was fully justified in making, considerable criticism of this situation. [Counsel for Mr Ward] however, contends that there was a duty on the trial judge not merely to remind the jury of this criticism, but to endorse it."

The judge then quoted the section of the trial judge's summing-up that I have set out in [24] above, and continued:

> "We understand the criticisms of this passage to have three distinct features. First, there was a duty on the judge to go further and himself condemn what had happened. As to that, the judge made reference to the submissions of defence counsel and commended them as being perfectly properly made. We do not believe that there was any requirement for him to go further than that. Counsel had made the points forcefully. It was for the jury to consider them, and the judge was making clear that they were points that deserved consideration. That, we consider in all the circumstances, sufficient.
>
> Secondly, it is said that the judge was asking the jury to decide if the applicant was guilty first and then to consider these points. Reliance is placed on that part which reads: 'So, if the defendant has, in fact, committed any of these offences, you should not be affected at all by the criticisms'. However, the judge made clear at the outset that they should have regard to those matters in deciding whether or not the applicant was guilty. Having said that, he went on to make clear that once they were sure of guilt, they should not be deflected from their duty by their feelings about the way in which the newspaper had behaved. We can see nothing wrong in that approach.
>
> Thirdly, it is said that the passage could read as a defence of the conduct of the *Mail on Sunday*. We do not read it in that way at all. We consider that the jury would have been left realising that if, having reflected on these important matters, they were persuaded of guilt, these matters then became irrelevant to their verdict. That properly stated the legal situation and was a point legitimately made by the judge."

26. Properly analysed, the Court of Appeal's decision in refusing permission to appeal does not amount to any adjudication on the merits of Mr Ward's claims regarding the actions of the *Mail on Sunday* or its journalists. It was a decision limited to rejecting criticism of the trial judge's summing-up. The Court of Appeal no more determined whether Mr Ward's allegations against the journalists were true than was the case in the original criminal trial.

27. Reliance has also been placed by Ms Evans on subsequent unsuccessful efforts by Mr Ward to persuade the Criminal Cases Review Commission (CCRC) to refer his convictions back to the Court of Appeal. Although certainly worthy of respect and careful consideration, decisions of the CCRC are not decisions of the Court and do not fall within the policy that protects court decisions from collateral attack.

28. What these decisions, and indeed the complaints that Mr Ward has made to other individuals and organisations, demonstrate is what May J recognised when she gave judgment in the judicial review claim brought by Mr Ward:

> "Now, some 25 years after his conviction, Mr Ward remains convinced that he was subject to a gross miscarriage of justice, at the heart of which were the criminal activities of journalists who stole documents from his home,

> taped conversations and wrote lies about him. Mr Ward appears to have pursued every avenue over the years in trying to have his complaints examined and dealt with, to no avail. It is not difficult to understand therefore that when the government at the time announced the Leveson Inquiry into the activities of the press, Mr Ward welcomed it. He saw it as, at last, the opportunity for him to expose the activities of journalists and others whom he said had caused him to lose so much so many years before. As he put it in one of the many documents I have read for the purposes of this application, his sense of injustice does not diminish with time."

29. I am wholly unpersuaded that Mr Ward's action is a collateral attack on his criminal convictions and should be struck out as an abuse of process. His convictions, and subsequent review in the Court of Appeal, did not represent or amount to any form of determination of his allegations against the *Mail on Sunday* and its journalists. Claims of misconduct were made in the criminal trial as a basis for challenging the credibility of the evidence provided by Anderson and Wolman, but there was independent evidence that the jury could have accepted as demonstrating Mr Ward's guilt. Unlike the case in ***Amin***, the allegations Mr Ward made against the journalists were not the subject of any judicial ruling or determination in the course of the trial and they were not inevitably determined as part of the jury's verdict. As HHJ Rivlin QC directed the jury, the allegations made against the journalists could be true, and yet other evidence might nevertheless make them sure of Mr Ward's guilt. As Ms Evans accepts, at its highest, the Defendant's submission is that Mr Ward's civil claim could only represent an indirect attack on the criminal conviction.

30. In Mr Ward's current civil claim, the soundness or otherwise of his conviction does not appear likely to be an issue in the proceedings. Even taking the broader view required by ***Amin***, [44], these civil proceedings do not amount in substance to an attempt to undermine his convictions. For the reasons I have explained, in the libel claim, insofar as Mr Ward's convictions become relevant at all, s.13 Civil Evidence Act 1968 is a solid impediment to the Court being asked to decide that they were wrong. Investigation of Mr Ward's allegations as to the journalists' conduct, if that is where this civil action leads, is not a collateral attack on Mr Ward's convictions and certainly not one that would justify dismissal of this action as an abuse of process. At best, even if Mr Ward's claim in this respect were to be wholly successful, it might potentially provide grounds for disquiet over journalistic misconduct in connection with a criminal trial.

31. In ***Johnson v Gore Wood*, [2002] AC 1**, Lord Bingham said [22C]:

> "The rule of law depends upon the existence and availability of courts and tribunals to which citizens may resort for the determination of differences between them which they cannot otherwise resolve. Litigants are not without scrupulous examination of all the circumstances to be denied the right to bring a genuine subject of litigation before the court ..."

32. Lord Bingham, following that quote, immediately recognised that examination of a claim might lead to the conclusion that it was an abuse of process, but this statement is a reminder of the fundamental starting point. I will go on to consider whether Mr Ward's claim ought to be dismissed for other reasons unconnected with the alleged abuse of process in a collateral attack. It should, however, be noted that the claim he brings arises because the Defendant chose to make the Mail on Sunday Statement in the terms it did, knowing it was liable to be published, as subsequently it was. The Defendant could have chosen to say and publish nothing by way of response. In that respect, the statement was gratuitous, but it was quite deliberate. It is clear from the evidence of Mr Mathieson that the terms of the Mail on

Sunday Statement were considered carefully. If the publication of the Mail on Sunday Statement is *prima facie* tortious, then it appears to me that Mr Ward can ask the Court to resolve the dispute. I refuse to dismiss Mr Ward's claim as an abuse of process on the grounds of collateral attack.

B: Should the Defendant be granted summary judgment on the defamation claim on the basis that Mr Ward has no real prospect of demonstrating serious harm to reputation under s.1 Defamation Act 2013?

33. s.1(1) of the Defamation Act 2013 provides:

> "A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant."

34. The relevant principles that I apply are set out in ***Turley -v- Unite the Union*** **[2019] EWHC 3547 (QB)** [107]–[109], drawing upon the decision of the Supreme Court in ***Lachaux -v- Independent Print Ltd*** **[2020] AC 612**. I also derive assistance from ***Alsaifi -v- Trinity Mirror plc*** **[2017] EWHC 2873 (QB)** [84]–[95], with necessary modification following the Supreme Court's decision in ***Lachaux***.

35. In his witness statement, Mr Mathieson states that the Defendant does not accept the meaning pleaded by Mr Ward is borne by the statement in the proper context of the full article. Mr Mathieson adds:

> "The Defendant will if necessary contend that the [Mail on Sunday Statement] in its proper context meant that the Claimant had been unable to accept the correctness of his convictions in 1995 and had waged an obsessional and delusional campaign ever since which included an accusation against the *Mail on Sunday* of involvement in a conspiracy to pervert the course of justice in his trials and of causing a miscarriage of justice, an accusation which has been repeatedly rejected in the course of his appeals and challenges to it and was accordingly without merit."

36. Although the court's determination of meaning, as a preliminary issue, was originally included in the Application Notice, this is not an application that has been pursued, either in Mr Mathieson's witness statement or in Ms Evans' written or oral submissions. Indeed, in her written submissions, Ms Evans stated that the Defendant does not consider it necessary to pursue that application.

37. It is unsatisfactory, to say the least, particularly where the opposing party is a litigant in person, to raise a potentially significant application in an Application Notice which is ultimately not pursued. The determination of meaning as a preliminary issue is something that can be of real value and importance in defamation claims (see the discussion in ***Morgan -v- Associated Newspapers*** **[2018] EMLR 25** [8]-[10], and ***Bokova -v- Associated Newspapers*** **[2019] QB 861** [9]–[10]).

38. The Defendant not having sought the Court's determination of meaning, the position is that the Court approaches the striking out application and the summary judgment application on the basis that the meaning pleaded by Mr Ward is a meaning that there is a real prospect that the Court might find the words bear. Certainly, I am not persuaded that Mr Ward's meaning is fanciful. Ms Evans did not submit that the Mail on Sunday Statement in the context of the Byline Article was incapable of bearing a meaning that is defamatory of Mr Ward. In determining the Defendant's summary judgment application, I should assume in

Mr Ward's favour that he will succeed at trial in establishing his pleaded meaning. Put in the language of CPR Part 24, to succeed in the application for summary judgment on the point of serious harm, the Defendant must show that, in this meaning, Mr Ward had no real prospect of demonstrating serious harm to reputation: ***Alsaifi*** [86].

39. Ms Evans' submissions on behalf of the Defendant appear to be, in essence, that Mr Ward's previous convictions have so comprehensively damaged his reputation that, as a matter of fact, he has no real prospect of demonstrating serious harm that has been (or is likely to be) caused by the publication of the Mail on Sunday Statement in the context of the Byline Article.

40. In my judgment, an important point in Mr Ward's favour is the fact that his convictions are spent. That is a statutory recognition of the principle of rehabilitation. As a matter of practical reality, as well as a fundamental principle of law, save for the commission of particularly grave crimes, people are not consigned for eternity to the status of outlaw as a result of criminal convictions.

41. More importantly, the Defendant has not produced any evidence that Mr Ward's reputation has, as a matter of fact, been so permanently tarnished that it deprives him of any real prospect of demonstrating that the publication of *ex hypothesi* defamatory allegations have caused him serious reputational harm. If the Defendant is going to rely on this point, then it will ultimately fall be to assessed at trial on a consideration of the evidence. Is it not suitable for summary judgment. Mr Ward's pleaded meaning contains an allegation of serious dishonesty. On the evidence that has been presented (or rather the lack of it), I am not persuaded that Mr Ward has no real prospect of satisfying the requirements of section 1. I refuse the application for summary judgment on that basis.

C: Should the Defendant be granted summary judgment on the defamation claim on the basis that the publication is protected by reply to attack qualified privilege and Mr Ward has no real prospect of demonstrating malice?

D: Should the Defendant be granted summary judgment on the malicious falsehood claim on the basis that Mr Ward has no real prospect of demonstrating malice?

42. I can deal with these two applications together, as they both depend upon the contention that Mr Ward has no real prospect of demonstrating that the Mail on Sunday Statement was published maliciously.

43. Malice is an essential ingredient of his cause of action for malicious falsehood, and the Defendant contends it will also effectively dispose of the claim for libel. That is because, for the reasons explained in the Application Notice and Mr Mathieson's witness statement, the Defendant contends that it could rely upon a defence of reply to attack qualified privilege - the attack being the allegations made by Mr Ward in the judicial review claim that came before May J - and Mr Ward has no real prospect of demonstrating malice to defeat that defence.

44. As summarised in the textbook ***Duncan & Neill on Defamation*** (**4th edition**), at §§17.25 and 17.26:

> "A defamatory attack made publicly gives its victim a right to reply publicly. In doing so, the victim is entitled to make statements defamatory of his attacker, including statements impugning the attacker's credibility and motives. Provided that such statements are fairly relevant to a rebuttal of the

attack and that the ambit of their dissemination does not significantly exceed that of the original attack, their publication will be the subject of qualified privilege."

45. Malice, whether as part of the cause of action for malicious falsehood or raised as an answer to a defence of qualified privilege in a defamation action, has the same meaning: ***Spring -v- Guardian Assurance plc* [1993] 2 All ER 273**. A defendant will be guilty of malice "*if he is actuated by some improper motive, and knowledge or recklessness as to the falsity of the statement will be virtually conclusive as to malice*" (*Gatley* §21.8).

46. As I have already noted, Mr Ward's pleaded case on malice is on all three bases: improper motive; knowledge of falsity or recklessness as to falsity. A complaint that the Defendant makes about Mr Ward's statement of case is that he did not identify the individual(s) at the Defendant involved in the publication of the Mail on Sunday Statement he alleges was/were malicious. A principle, often overlooked by claimants, is that malice cannot be proved by amalgamating the states of minds of individuals within an organisation: ***Webster v British Gas Services Ltd.* [2003] EWHC 1188 (QB)** [30]. However, the Defendant does not advance any attack on the individual particulars of malice as set out in the particulars of claim, beyond complaining generally that he has not properly identified the individuals who he says are malicious. No doubt, the Defendant recognises that this failure is capable of being cured by amendment.

47. In his witness statement, Mr Mathieson says this about the circumstances in which the Mail on Sunday Statement came to be published as part of the Byline Article:

> "64. ... on 26 February 2019, Byline contacted John Wellington, Managing Editor of the Mail on Sunday with an email headed 'RIGHT OF REPLY - MICHAEL WARD ALLEGATIONS - HIGH COURT (the 'Byline email').
>
> 65. The Byline email stated that *'Byline investigates intends to publish the story written below'* and invited the Defendant to *'comment on the allegations made by Mr. Ward in the High Court'*. The story in the body of the email included the full run of copy which was eventually published in the Article. Significantly, it included the Claimant's Allegation that *'The Mail on Sunday newspaper was involved in a conspiracy to pervert the course of justice, the High Court has heard',* which was highlighted in its first sentence. The draft copy went on to outline a number of the specific allegations that the Claimant had made (once again) against the Defendant's journalism and two of its former journalists in the Administrative Court.
>
> 66. A statement in response was drafted by Mr Wellington on 26 February 2019 and was approved by Peter Wright, editor emeritus of Associated Newspapers' titles, on the same day. Before drafting, approving and authorising the statement, Mr Wellington and Mr Wright internally discussed the history of the matter including by reference to the copious letters the Defendant had received from the Claimant concerning his allegations against Mail on Sunday since his convictions, and particularly since the inception of the Leveson Inquiry which had generated any (sic) even greater amount. The purpose of the statement was to answer the Claimant's defamatory

> public attack on [the] *Mail on Sunday* and its former journalists, made in open court, which were to be published in the Article.
>
> 67. The two former journalists about whom the Claimant made allegations in open court ceased working for the Defendant in 1995. None of the editorial staff who were involved in drafting, approving or authorising the statement had any personal involvement in the original matter (either in relation to the Claimant's libel claims from 1992, or in relation to the claims made by the Claimant against two former journalists between 1991 and 1997)."

48. The emails referred to by Mr Mathieson have been exhibited to his witness statement. They show that the requests from Byline for a comment were sent by email to John Wellington, the managing editor of the *Mail on Sunday*, at 11:27 on 26 February 2019. The email contained no deadline for receipt of comments. Mr Wellington replied by email sent at 19:30 on 26 February 2019. The only additional information provided by Mr Mathieson is that the terms of the Mail on Sunday Statement were approved by Peter Wright. No further detail is provided about the process that led to the Mail on Sunday Statement being provided on the record for publication by Byline in answer to Mr Ward's allegations.

49. In her skeleton argument, Ms Evans submitted that Mr Ward had no real prospect of demonstrating malice because:

> "... none of the current editorial staff at the Defendant, who were involved in providing or approving the reply had any direct personal involvement in the original matter or libel complaints brought by the Claimant [and so] it is ... inconceivable that ... the Claimant has any prospect of showing that the Defendant was malicious in providing its statement in reply for publication in the Article."

50. On careful analysis, those submissions seem to me to involve a *non sequitur*. As a result of having been provided with a complete copy of what Byline intended to publish in its report of the judicial review proceedings, those invited to provide a response on the Defendant's behalf knew in detail what allegations Mr Ward had made: see the article, [14]–[15], and [24]–[27]. As Mr Ward makes clear in his submissions, and indeed in his Particulars of Claim, the Mail on Sunday Statement stated that: "*Mr Ward's claims were raised and rejected at the trial some 24 years ago*". It is unclear to me on the evidence I have how, if none of the current editorial staff of the Defendant had any direct involvement in the original matter, anyone was in a position to make this statement. Separately, Mr Ward contends that it is false, and would have been known to be false, that the claims had been rejected at the trial, and that they had also been "*examined and rejected by the Court of Appeal*". Finally, how, if none of the current editorial staff at the Defendant had any direct involvement in the original matter, could the person(s) providing the Mail on Sunday Statement believe that it was true there was "*no merit*" in Mr Ward's allegations.

51. In answer to these points, Ms Evans submitted that, as set out in paragraph 66 of Mr Mathieson's witness statement, there had been discussion between Mr Wright and Mr Wellington about the terms of the response that the Defendant would provide, including consideration of "the copious letters the Defendant had received from the Claimant concerning his allegations against [the] *Mail on Sunday* since his convictions and … since the inception of the Leveson Inquiry".

52. Mr Ward referred to me to his Particulars of Claim in which he has set out correspondence, from as far back as 2012, written both to Mr Wright and to Mr Wellington, as well as other individuals, in which he points to his indication that there had been no examination of these various matters. As I have already indicated, there is no particular challenge to any of the particulars of malice or falsity as set out in Mr Ward's Particulars of Claim. The fundamental challenge that is advanced against the plea of malice is simply that, assessed overall, he has no real prospect of establishing malice.

53. At the moment I am not prepared to dispose summarily of Mr Ward's case of malice against the Defendant on this basis. I am not satisfied with the evidence that has been provided by the Defendant. It appears to me that in additionl to Mr Ward's pleaded case, there is a tenable argument, relying upon the evidence from Mr Mathieson, that, as no one who was involved in the drafting and publishing of the Mail on Sunday Statement had any personal involvement with the claims made by Mr Ward against two former journalists between 1991 and 1997 those who published the Mail on Sunday Statement were in no position to know whether the statement, "*there is no merit in Mr Ward's claims*", was true or not. It may be that an investigation was carried out, but the response was sent within 8 hours of the request. It may be that an investigation had previously been carried out into Mr Ward's claims. However, it is not clear, on the evidence, on what basis Mr Wellington and/or Mr Wright were satisfied that there was no merit in Mr Ward's claims. I am satisfied, on the basis of what Mr Ward has set out in his Particulars of Claim relating to previous correspondence, that there is a tenable basis upon which to say that there is, or was, ground to believe that there was no basis for Mr Wellington and/or Mr Wright to be satisfied as to the truth of the statements that they ultimately published in the Mail on Sunday Statement. As the evidence presently stands, it requires further investigation. I am satisfied that in his Particulars of Claim Mr Ward has raised a *prima facie* case that the statement that Mr Ward's allegations have been rejected at his criminal trial and it has subsequently been "examined and rejected" by the Court of Appeal was not accurate. Anyone who had carried out an investigation into Mr Ward's allegations was unlikely to have reached that conclusion.

54. For these reasons, I am not satisfied that Mr Ward has no real prospect of proving malice. Mr Ward, however, should not underestimate the difficulty of proving malice in cases like this. It requires clear evidence that demonstrates that identifiable person(s) at the Defendant, who participated in publication, had the necessary state of mind. Ultimately, he may fail in demonstrating this. Nevertheless, at this stage, I am not satisfied that this is a candidate for summary judgment. Some evidence has been provided about the process of providing the Mail on Sunday Statement to Byline, but, as I have set out, to some extent this raises more questions than it answers.

55. I will direct that Mr Ward should, in the draft Amended Particulars of Claim that I will direct him to produce, make clear in his Particulars of Malice which individual(s) at the Defendant are alleged to be malicious and the facts relied upon.

E: Should the Defendant be granted summary judgment on the malicious falsehood claim on the grounds that, as Mr Ward has not included any claim for special damage, he has no real prospect of relying successfully on s.3(1) of the Defamation Act 1952?

56. In order to succeed in a claim for malicious falsehood Mr Ward will either have to demonstrate that publication caused him special damage, or that he is relieved of the requirement to show special damage by bringing his claim within the terms of s.3 of the Defamation Act 1952. The relevant principles are set out in ***Tinkler -v- Ferguson* [2020] 4 WLR 89**:

“43. A claimant in a claim for malicious falsehood can be relieved of the obligation to prove pecuniary damage, if he can bring his claim within s.3(1) Defamation Act 1952, which provides:

‘In an action for … malicious falsehood, it shall not be necessary to allege or prove special damage -

(a) if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff and are published in writing or other permanent form, or

(b) if the said words are calculated to cause pecuniary damage to the plaintiff in respect of any office, profession, calling, trade or business held or carried on by him at the time of the publication.’

44. As to damages in malicious falsehood:

(i) A claimant can recover general damages under s.3(1) Defamation Act 1952 if s/he can show that the alleged false statements were more likely than not to cause him pecuniary damage: ***Cruddas -v- Calvert*** **[2013] EWHC 2298 (QB)** [195] *per* Tugendhat J; ***Niche Products Ltd -v- MacDermid Offshore Solutions LLC*** **[2014] EMLR 9** [14(1)] *per* Birss J.

(ii) Pecuniary damage is financial loss or damage capable of being estimated in money (as opposed to compensated in money, e.g. general damages in defamation): ***Niche Products*** [39].

(iii) If the claimant’s claim falls within s.3(1) Defamation Act 1952, the fact that s/he cannot demonstrate actual financial loss does not mean that the Court must award only nominal damages: ***Joyce -v- Sengupta*** **[1993] 1 WLR 337, 346H-347C** *per* Sir Donald Nicholls V-C; ***Niche Products*** [14(2)]; but the size of the award will necessarily be dependent upon the established impact of the publication of the falsehood and may, in some cases, be only modest: ***Fielding -v- Variety Incorporated*** **[1967] 1 QB 841**.

iv) The Court of Appeal in ***Joyce -v- Sengupta*** (p.349A-B) left open the question of whether damages for hurt feelings could be awarded in a malicious falsehood action, but subsequently in ***Khodaparast -v- Shad*** **[2000] 1 WLR 619** held that, if the claimant establishes an entitlement to damages for malicious falsehood, either on proof of special damage or by reason of s.3(1), then the award of general damages may reflect injury to the claimant’s feelings: [42] *per* Stuart-Smith LJ.

v) Harm to the claimant’s reputation cannot form part of the basis of an award of damages for malicious falsehood: ***Khodaparast*** p.631H *per* Otton LJ; ***Joyce -v- Sengupta*** p.348F-G *per* Sir Donald Nicholls V-C; and ***Niche Products*** [39].

> 45. Since the hearing in this case, I have handed down judgment in ***Peck -v- Williams Trade Supplies Limited*** **[2020] EWHC 966 (QB)** in which I considered the tort of malicious falsehood and reviewed the role played by s.3(1) in such actions ([12]-[15]). For present purposes, the important principles are that, even where s.3(1) is relied upon, a claimant must be able to show that the damage suffered by him flowed directly from the untruth of the statements of which he complains, i.e. that the damage complained of is attributable to and caused by the falsehood: [13]. Difficult questions of causation of damage can arise in many cases: see discussion in ***Niche Products*** [48]. At the pleading stage, the claimant must identify (a) the nature of the loss which it is alleged the falsehoods caused; and (b) the mechanism by which s/he contends that loss is likely to have been sustained: ***Tesla Motors Ltd -v- BBC*** **[2013] EWCA Civ 152** [37]; ***Niche Products*** [35], [45]."

57. Mr Ward's current Particulars of Claim do not contain a claim for special damage, and nor do they set out a pleaded case on the basis of his reliance on s.3(1) Defamation Act 1952. In his witness statement, filed in response to the application by the Defendant, Mr Ward has included a section headed "Special Damage". In this section, Mr Ward sets out how he is likely to be caused financial loss by publication of the Mail on Sunday Statement, in the context of the Byline Article. In summary, he says that he has, for the last 25 years, been campaigning for more effective press regulation. His advocacy for change is, in part, based upon his own experience. Mr Ward states that he has been advised by his agent that there is considerable money to be made by him in giving lectures on the topic. He has also written the first draft of a book, and he says that a reputable publisher has expressed interest in the book which includes "*a forensic account of the Mail on Sunday's misconduct in my case*". Mr Ward states that he was expecting to raise further money in support of this book project following the hearing in his review claim in February 2019. He contends that as a result of this publication, and particularly the allegation of dishonesty and the baselessness of his claims, the whole credibility of his account has now been called into question.

58. Under the Defendant's Part 24 Application, I have to consider whether the Defendant has demonstrated that Mr Ward has no real prospect of succeeding with reliance upon s.3(1) Defamation Act 1952. In other words, that he has no real prospect of showing that the publication of the Mail on Sunday Statement, in the context of the Byline Article, was more likely than not to cause him pecuniary damage. I cannot be so satisfied at this early stage. On the contrary, I am satisfied that Mr Ward has at this stage set out a coherent explanation of (a) the nature of the loss which it is alleged the falsehood has caused him and (b) the mechanism by which he contends that loss is likely to have been sustained. Ultimately, whether he succeeds in demonstrating those matters is a matter that will depend upon the meaning(s) the Court finds the Mail on Sunday Statement to bear and the evidence produced as to the likelihood of the publication of such meaning(s) causing pecuniary damage. I refuse the Defendant's Part 24 Application in relation to s.3(1) Defamation Act 1952.

59. Mr Ward's current explanation of his case as to damage or s.3(1) Defamation Act 1952 is not presently set out in his statement of case. It should be. I will direct that when he is supplying the draft/Amended Particulars of Claim, he must incorporate what he has stated on this point in his Witness Statement in answer to the Defendant's Application. In other words, he must make clear the matters upon which he relies in support of his reliance upon s.3(1) Defamation Act 1952.

F: If any part of Mr Ward's claim remains, should the court strike out the remaining part on the ground that allowing the claim to proceed would amount to an abuse of process within the principle expounded in *Jameel*?

60. I set out the principles of the ***Jameel*** jurisdiction to dismiss claims as an abuse of process in the decision of decision of ***Alsaifi v Trinity Mirror plc*** **[2019] EMLR 1** [36]–[42], and ***Tinkler*** [46]–[48].

61. I have dismissed the Defendant's separate bases upon which it sought to strike out or dismiss Mr Ward's claim.

62. No defence has been filed. Mr Mathieson's witness statement contains some indication of the defences upon which the Defendant may consider relying. No costs information has been provided by Mr Mathieson. I do not criticise the failure to provide that information; at the stage this action has reached, any costs estimates would have been so speculative as to the shape of the action as to make any them almost worthless. However, precisely for these reasons defendants should consider carefully, before launching applications to dismiss an action for ***Jameel*** abuse, whether there is a realistic prospect of the Court granting such application when the proceedings are at such an early stage and have not yet reached the conclusion of statements of case.

63. As I noted in ***Alsaifi*** [44]–[45]:

> "[44] At the heart of any assessment of whether a claim is *Jameel* abusive is an assessment of two things: (1) what is the value of what is legitimately sought to be obtained by the proceedings; and (2) what is the likely cost of achieving it?
>
> [45] But it is clear from ***Sullivan*** that this cannot be a mechanical assessment. The Court cannot strike out a claim for £50 debt simply because, assessed against the costs of the claim, it is not 'worth' pursuing. Inherent in the value of any legitimate claim is the right to have a legal wrong redressed. The value of indicating legal rights - as part of the rule of law - goes beyond the worth of the claim. The fair resolution of legal disputes benefits not only the individual litigant but society as a whole."

64. The position in ***Alsaifi*** is similar to the position in this case. In assessing the value of the Claimant's claim, the starting point is that the Defendant has failed to strike out or dismiss Mr Ward's claim. At this stage, therefore, the Court is satisfied that he has a viable claim for defamation and malicious falsehood arising from the publication of the Mail on Sunday Statement in the context of the Byline Article. Whether he succeeds ultimately will be a matter for later determination in this claim. Were this not the case, of course the Defendant would not need to seek recourse to the ***Jameel*** jurisdiction to strike out the claim. The Court should only prevent the Claimant from pursuing this claim in the exercise of his legal right on a clear and compelling basis. The Defendant has not done so. It is impossible at this stage to conclude that it would be impossible to fashion any procedure by which the claim can be adjudicated on in a proportionate way and/or that what Mr Ward seeks to achieve could only be achieved at a wholly disproportionate cost. At this stage, I do not have a clear basis on which to assess either the issues that will require resolution in this case or the likely cost of doing so. For those reasons, the ***Jameel*** application is dismissed.

65. For the reasons that I have set out in this judgment, therefore, I refuse the Defendant's application.

CERTIFICATE

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