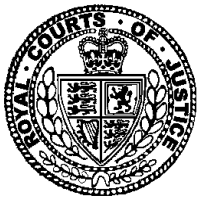

Neutral Citation Number: [2021] EWHC 1618 (QB)

Claim No: QB-2020-002443

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/06/2021

Before :

MR JUSTICE GRIFFITHS

- -

Between :

SHARON WEBB — **Claimant**

- and –

CLAIRE JONES — **Defendant**

- -
- -

David Mitchell (instructed by **Ison Harrison Solicitors**) for the **Claimant**
Kirsten Sjøvoll (instructed by **Carruthers Law**) for the **Defendant**

Hearing date: 9 June 2021

- -

Approved Judgment

The Honourable Mr Justice Griffiths :

1. The defendant is applying to strike out all or part of the claimant's Particulars of Claim.

2. The Application Notice was issued on 13 January 2021. It seeks:

> "An Order pursuant to CPR rr.3.4.2(a) and/or (b) and/or (c) and/or pursuant to the inherent jurisdiction of the Court:
>
> 1. That the Particulars of Claim be struck out in the entirety, alternatively that the following paragraphs of the Particulars of Claim be struck out, on the grounds set out at paragraph 2 below:
>
> 1.1 Paragraph 2
>
> 1.2 Paragraph 3(a)(b)(c)(d)(e)(f) and (g)
>
> 1.3 Paragraph 5
>
> 1.4 Paragraph 6
>
> 1.5 Paragraph 7
>
> 2. The grounds for striking out the Particulars of Claim in their entirety or alternatively striking out the paragraphs listed in 1 above are:
>
> 2.1 The Particulars of Claim are incorrectly pleaded in respect of publication.
>
> 2.2 The Particulars of Claim are embarrassing for want of particularity in respect of reference.
>
> 2.3 The Particulars of Claim are embarrassing for want of particularity in respect of publication.
>
> 2.4 The Particulars of Claim are embarrassing for want of particularity in respect of serious harm.
>
> 3. That the Claimant pays the Defendant's costs of and occasioned by the Defendant's application."

3. CPR 3.4 provides:

> **3.4— Power to strike out a statement of case**
>
> (1) In this rule and rule 3.5, reference to a statement of case includes reference to part of a statement of case.
>
> (2) The court may strike out a statement of case if it appears to the court—

> (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
>
> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
>
> (c) that there has been a failure to comply with a rule, practice direction or court order.
>
> (3) When the court strikes out a statement of case it may make any consequential order it considers appropriate."
>
> (…)
>
> (5) Paragraph (2) does not limit any other power of the court to strike out a statement of case."

The claim

4. The Claim Form was issued on 14 July 2020, followed by Particulars of Claim on 13 July 2020. There has been no amendment to the Particulars of Claim since then.

5. No Defence has been filed. Following a contested hearing before Master Davison, the defendant's time for service of a defence was extended pending the determination of her strike-out application.

6. The claim is for damages "for libel and harassment", interest, and an injunction to restrain publication of "the said or any similar words defamatory of the claimant" or "harassing the claimant".

The libel claim

7. The libel claim is based on Facebook postings by the defendant to a group called "Dodgy Horse Dealers" between 12 and 14 May 2020. The defendant was a member of this Facebook group. The claimant, at all material times, was not.

8. The defendant's postings were to a thread started by someone else at 8.16 pm on 12 May 2020 which said:

> "ANON POST
>
> "Has anyone had any dealings with Annie Raynor? Good or bad please."

9. I am told that none of the defendant's posts is now available on Facebook, having been deleted (as a result of the claimant's complaint) either by Facebook or by the defendant. The claimant says this has not been proved, although she does not seem to have any basis for disputing it.

10. For the purposes of the hearing, I was presented, therefore, with extracts in the form of multiple screenshots, focussing on those parts of the thread which included posts from

the defendant and dividing the selected screenshots around the seven particular posts by the defendant which were alleged to be defamatory of and actionable by the claimant. These extracts (which cover 156 pages in the bundle) were supplied by the claimant and appear to have been printed out within a day or so of the postings (the screenshots say that the posts are one day old).

11. In that context, which (because of the printouts) is not disputed, the claimant pleads her case as follows:

    i) She pleads that the Dodgy Horse Dealers group had approximately 16,000 members on 12 May 2020 (this is stated on the screenshots) and has some 18,000 now.

    ii) She set out the post (not from the defendant) which opened the thread, which I have quoted in para 8 above).

    iii) She then pleads seven of the defendant's posts to the thread, in sub-paragraphs (a) to (h) of para 3 of the Particulars of Claim, by verbatim quotation. These do not include all the defendant's posts to the thread.

    iv) She pleads that they were published "between 12 and 14 May 2020" and that they were "both false and defamatory of the Claimant".

    v) She defines all seven as "the Defamatory Statements".

    vi) She then pleads natural and ordinary meaning (para 6), serious harm (para 7), and damage, distress and injury to feelings (para 8) in respect of "the Defamatory Statements" as a whole, without distinguishing between any of them.

Challenges to the pleading of the libel claim

12. The issues raised by the defendant's application to strike out the libel claim are as follows:

    i) Are the "Defamatory Statements" a single publication?

    ii) Is the pleading of particulars of publication defective?

    iii) Is the pleading of extent of publication defective?

    iv) Is the pleading of reference to the claimant defective?

    v) Is the pleading of meaning defective?

    vi) Is the pleading of serious harm defective?

i) Are the "Defamatory Statements" a single publication?

13. The claimant says that it is permissible to plead her case as she does, grouping the "Defamatory Statements" together. She says that they were published close together in time (over the course of a couple of days or so), on a single thread.

14. The defendant says that they are separate publications and, as such must be pleaded separately in every respect, each being a separate cause of action.

15. I was referred to *Dee v Telegraph Media Group Ltd* [2010] EWHC 924 (QB) which concerned a newspaper front page and an article on the back page to which the front page splash referred for the "full story". Those were held to be a single publication for defamation purposes.

16. Giving judgment, Sharp J at para 20 cited Lord Bridge in *Charleston v News Group Newspapers Ltd* [1995] 2 AC 65, 71 when he said "I can well envisage also that questions might arise in some circumstances as to whether different items of published material relating to the same subject matter were sufficiently closely connected as to be regarded as a single publication". Sharp J then said (at para 29):

> "…in my view the key question in this context is whether the various items under consideration "were sufficiently closely connected as to be regarded as a single publication" – and this is so whether or not the items in the same publication are continuation pages or different items of published material relating to the same subject matter."

17. In *Monroe v Hopkins* [2017] 4 WLR 68, a libel claim was based on two tweets posted on Twitter by the defendant. The first tweet was timed at 7.20 pm. The second tweet was timed at 9.47 pm on the same day, by which time the first tweet had been deleted. The total number of tweets publicly passing between the claimant and the defendant on this occasion was seven, between 7.20 pm (when the first tweet said to be actionable was posted) and 10.30 pm on the same day. The following day, there was "extensive press coverage of the Twitter exchange" (paras 17-18). In that context, Warby J considered them together when determining meaning (under the heading "at para 25 "What did the tweets mean?", see also para 42). Although he also examined them individually, he read the second in conjunction with the first (paras 47-48). When considering extent of publication, he considered the tweets separately (paras 61-62). When considering seriousness of harm, he considered them together (para 70). Given the close proximity of the tweets in time, and the total of only seven tweets in the Twitter exchange as a whole, this conjoined (or at least cumulative) assessment is not at all surprising.

18. In *Poulter v Times Newspapers* [2018] EWHC 3900 (QB), a libel claim was based on two articles in a single edition of *The Sunday Times*, published in hard copy and online. They were both on the same page, but by different authors (paras 2-3). Nicklin J decided "the two print articles must be read together to ascertain meaning" (para 17) but the position was "different in relation to the online publication" (para 21). Since the two online articles were linked only by a "Related Links" hyperlink "at the foot of the relevant article" (para 24), "In my judgment the online articles are separate publications and I will determine the single meaning of each of the online articles" (para 27).

19. Referring to *Budu v BBC* [2010] EWHC 616 (QB), Nicklin J said at para 23 of *Poulter v Times Newspapers* [2018] EWHC 3900 (QB) (with emphasis in Nicklin J's original):

> "In my judgment, *Budu* is an example of the Court considering what, *on the facts,* the ordinary reasonable reader would be taken to have read together".

20. In *Sube v News Group Newspapers Ltd (No 2)* [2018] 1 WLR 5767 a libel action was based on 22 articles published in The Sun, Express and Daily Star newspapers "online and/or in print between 7 September and 1 November 2016" (para 2). Preliminary issues were heard "in relation to each of the articles complained of" (para 2). It is clear from an earlier judgment of Warby J in the same case that the claims were pleaded out fully and separately for each article: *Sube v News Group Newspapers Ltd (No 1)* [2018] EWHC 1234 (QB) at para 17.

21. In his second judgment, Warby J said at para 22 [2018] 1 WLR 5767, 5775C-E:

> "In some unusual circumstances, articles published at different times may be so interlinked that they can be considered in conjunction for some purposes, such as meaning, or reference (see, for instance, *Hayward v Thompson* [1982] 1 QB 47). But in general, for the purposes of assessing defamatory impact, a published article must be considered individually; it will not normally be appropriate or even possible to treat a number of articles as a single "statement" for the purpose of s 1, any more than it was at common law. It may, depending on the circumstances, be appropriate to take account of one or more previous articles as part of the context in which a given statement was published. But it is hard to see how the defamatory impact of one publication could be affected by the defamatory impact of a separate, later publication."

22. I was also referred to *Stocker v Stocker* [2020] AC 593, where the Supreme Court overturned a trial judge's decision on meaning in relation to "an exchange… on the Facebook website" (para 2). However, the words complained of were "He tried to strangle me", which must, therefore, have been words in a single Facebook post (para 1). I do not find in this case any guidance on whether multiple Facebook posts on a single thread should be regarded as a single publication for defamation purposes. It is, however, clear that, within a single post, "the ordinary reader of the Facebook post… does not splice the post into separate clauses, much less isolate individual words and contemplate their possible significance." (para 49). That is a different point.

23. The defendant did not start the thread. The thread which followed the opening post runs to over 150 pages with 382 comments and replies from multiple individuals. It is not possible to see them all at once. Nor is it possible to open them all at once. A person browsing the thread can see part only of it, and is prompted at various points to click, if they choose, and see a limited number of additional replies not currently visible.

24. The seven posts from the defendant which are said to be defamatory are far removed from the opening post, and are separated from each other. None of them appears, for example, on the same screenshot. There are also other posts from the claimant of which

no complaint is made. The entire print-out with which I have been provided runs to pp 162-317 of hearing bundle A, divided into sections in order to emphasise the position of each of the seven posts from the defendant which are the foundation of the action. None of them is hyperlinked to any other. They are set within contributions from a number of people which meanders to and fro. The whole thing is quite confusing.

25. The posters themselves say it is confusing at some points:

    i) At p 218 Jodie Johnston posts: "Ok, 37 minutes into reading all this (I'm bored) riddle me this ..... who's Annie? Who's Sharon? And who is Abbie? If they the same pretend person, then who is behind Annie/Sharon/ Abbie?! What other dodgy dealer page is this phantom an ad min of?? Thanks ...one very confused individual here, who's profile is actually me. I'm not Annie/Sharon/Abbie [emojis] oh and while we at it, the post says ANON POST. ... so who is Anne!!!" Another poster Kate Jemima Arkle replies "Amen to that" and Jodie Johnson then posts "I genuinely have no idea what's going on".

    ii) At p 221, Inga D'Arcy posts "Seems like Annie is admin on another dodgy dealer group, possibly a fake profile for someone else who is suspect (but not a dealer) and third lady is also admin of group and suspect (dealer). Maybe [emojis]". Jodie Johnston replies: "I appreciate your efforts to explain, however I feel like a 36yr old returning to school ..... I have no clue what you've just said .... even after 12 attempts of re-reading, 3 of those out loud to see if it made any difference .... nope [laughter emojis]".

    iii) At p 225, Kirsten Michelle Weir Stoddart posts "This is really weird. I'm confused."

26. I accept the test formulated by Sharp J in *Dee v Telegraph Media Group Ltd* [2010] EWHC 924 (QB) at para 29 (quoted in para 17 above). I ask myself "whether the various items under consideration were sufficiently closely connected as to be regarded as a single publication… whether or not the items in the same publication are continuation pages or different items of published material relating to the same subject matter." There is only one answer to that question, and it is "no". It is quite impossible to say that the seven Facebook posts complained of in this case should or even could be regarded as a single publication.

27. I am not making a decision as to all and any Facebook posts which may fall to be considered in other cases. But, on the facts of these posts, and this thread, it is obvious that these were separate publications and fell, therefore, to be dealt with individually in the pleading. That was not done.

28. Therefore, the pleading of them together, and for all purposes, as "the Defamatory Statements", is defective. It is "likely to obstruct the just disposal of the proceedings" within the meaning of CPR 3.4(2)(b). It is argued that it also has the consequence that various essential elements of the claim have not been pleaded in a way which discloses reasonable grounds for bringing the claim at all. To those elements I now turn.

ii) Is the pleading of particulars of publication defective?

29. The application notice takes this point in addition to its objections to the pleading of extent of publication, reference to the claimant, meaning, and serious harm.

30. Practice Direction 53B on Media and Communications Claims requires, at para 4.2(2), that the Particulars of Claim set out "when, how and to whom the statement was published".

31. In response, the claimant argues that para 3 of the Particulars of Claim sets out when the Defamatory Statements were published, namely between 12 May 2020 and 14 May 2020. I agree that this is sufficient to show that the claim is not time-barred and that, since posts are not timed in the print outs, and appear no longer to be available online, the claimant cannot be expected to be much more precise. I note that even the defendant "is no longer able to state with certainty the dates and times on which the various comments were published" although "they were not published at the same time or on the same date" and she "believes the publications took place on 12 May 2020 and 13 May 2020" (defendant's Response 3 to a Part 18 Request dated 20 April 2021).

32. I do consider that the lack of detail in the pleading, coupled with a failure to provide the print-outs before issue of proceedings, as required by para 3.2 of the Pre-Action Protocol for Media and Communication Claims, or at the same time as service of the Particulars of Claim, made the claimant's case unnecessarily obscure. It failed to provide the whole relevant context of the statements complained of. However, these print-outs have now been provided.

33. As to the question of "to whom" the statements were published, this is best dealt with in response to the next question.

iii) Is the pleading of extent of publication defective?

34. In *Jameel v Dow Jones & Co Inc* [2005] QB 946, the Court of Appeal struck out a defamation claim as an abuse of process when the extent of publication within the jurisdiction had been minimal and the damage to the claimant's reputation was insignificant, so that it was disproportionate and an abuse of process for the claim to proceed. The publication had been accessed by only five people within the jurisdiction. This gives rise to the modern law that an action for defamation can only proceed if there has been publication to a substantial number of people. It is a decision based on the proactive approach required by the overriding objective under the Civil Procedure Rules of dealing with cases justly, and keeping a proper balance between the Convention right to freedom of expression and the protection of individual rights.

35. In *Al Amoudi v Brisard* [2007] 1 WLR 113, Gray J defined "substantial" for these purposes as "sufficient readers of the publication to justify judgment" (at para 21). That case was based on two publications on a website, pleaded as being published "to a substantial but unquantifiable number of readers in this jurisdiction". Gray J rejected the submission that there is even a rebuttable presumption of law that an article placed on an internet website that is open to general access has been published to a substantial number of people within the jurisdiction (para 37). Internet publication was distinguished from publication in a newspaper or in a book in that respect (at para 22). The question of substantial publication was left to the jury.

36. Gray J referred also (at para 34) to his earlier decision in *Loutchansky v Times Newspapers (No 2)* [2001] EMLR 876, which accepted the possibility that publication, like other propositions, can be established "by inviting a tribunal to draw an inference from the platform of facts" - but only "if the underlying facts justify the inference being drawn" (paras 14-15 of *Loutchansky*).

37. Per Eady J in *Carrie v Tolkien* [2009] EWHC 29 (QB) at para 18:

> "It will not suffice merely to plead that the posting has been accessed "by a large but unquantifiable number of readers". There must be some solid basis for the inference."

In that case, the claim based on posting to an internet website (not a social media website or application) was struck out.

38. The burden of proving substantial publication, whether by inference or by evidence of fact, or by inference from a platform of facts, must depend, at least in part, on the nature of the medium in question. Social media are different from newspapers and books in this respect, because they are consumed differently.

39. Some of this is a matter of common experience of which one might take judicial notice but, since common experience in these matters changes rapidly as social media change, it is helpful that the current position was recently and authoritatively summarised by the Supreme Court in *Stocker v Stocker* [2020] AC 593 (a case about meaning), from which I quote the following particularly relevant passages (at paras 41-49) discussing the nature of social media browsing:-

> "41. The fact that this was a Facebook post is critical. The advent of the 21st century has brought with it a new class of reader: the social media user. The judge tasked with deciding how a Facebook post or a tweet on Twitter would be interpreted by a social media user must keep in mind the way in which such postings and tweets are made and read.
>
> 42. In *Monroe v Hopkins* [2017] EWHC 433 (QB); [2017] 4 WLR 68, Warby J at para 35 said this about tweets posted on Twitter:
>
> > "The most significant lessons to be drawn from the authorities as applied to a case of this kind seem to be the rather obvious ones, that this is a conversational medium; so it would be wrong to engage in elaborate analysis of a 140 character tweet; that an impressionistic approach is much more fitting and appropriate to the medium; but that this impressionistic approach must take account of the whole tweet and the context in which the ordinary reasonable reader would read that tweet. That context includes (a) matters of ordinary general knowledge; and (b) matters that were put before that reader via Twitter."

43. I agree with that, particularly the observation that it is wrong to engage in elaborate analysis of a tweet; it is likewise unwise to parse a Facebook posting for its theoretically or logically deducible meaning. The imperative is to ascertain how a typical (i.e. an ordinary reasonable) reader would interpret the message. That search should reflect the circumstance that this is a casual medium; it is in the nature of conversation rather than carefully chosen expression; and that it is pre-eminently one in which the reader reads and passes on.

44. That essential message was repeated in *Monir v Wood* [2018] EWHC (QB) 3525 where at para 90, Nicklin J said, "Twitter is a fast moving medium. People will tend to scroll through messages relatively quickly." Facebook is similar. People scroll through it quickly. They do not pause and reflect. They do not ponder on what meaning the statement might possibly bear. Their reaction to the post is impressionistic and fleeting. Some observations made by Nicklin J are telling. Again, at para 90 he said:

> "It is very important when assessing the meaning of a Tweet not to be over-analytical. … Largely, the meaning that an ordinary reasonable reader will receive from a Tweet is likely to be more impressionistic than, say, from a newspaper article which, simply in terms of the amount of time that it takes to read, allows for at least some element of reflection and consideration. The essential message that is being conveyed by a Tweet is likely to be absorbed quickly by the reader."

45. And Nicklin J made an equally important point at para 92 where he said (about arguments made by the defendant as to meaning), "… these points only emerge as a result of close analysis, or someone pointing them out. An ordinary reasonable reader will not have someone by his/her side making points like this."

46. A similar approach to that of Nicklin J had been taken by Eady J in dealing with online bulletin boards in *Smith v ADVFN plc* [2008] EWHC 1797 (QB) where he said (at paras 13 to 16):

> "13. It is necessary to have well in mind the nature of bulletin board communications, which are a relatively recent development. This is central to a proper consideration of all the matters now before the court.
>
> 14. … Particular characteristics which I should have in mind are that they are read by relatively few people, most of whom will share an interest in the subject-matter; they are rather like contributions to a casual conversation (the analogy sometimes being drawn with people chatting in a bar) which people simply note before moving on; they are often uninhibited,

> casual and ill thought out; those who participate know this and expect a certain amount of repartee or 'give and take'."
>
> (…)
>
> 49. I return to the ordinary reader of the Facebook post. Such a reader does not splice the post into separate clauses, much less isolate individual words and contemplate their possible significance…"

40. The pleaded case on whether the seven "Defamatory Statements" were published to a substantial number of people, so as not to be an abuse of process, is centred on paras 1 and 5 of the Particulars of Claim.

    i) Para 1 says:

    > "The Group was private. It had approximately 16,000 members on 12 May 2020 and presently has some 18,000 members"

    ii) Para 5 says:

    > "The Defamatory Statements remain online and accessible to all members of the Group"

41. That is an inadequate platform of facts from which to draw an inference of substantial publication. Obviously, not all of the members of the Group will be active. Not all of them will read every thread. Not all of them will read every post even on the threads they do read, particularly given the ramshackle and lengthy nature of the thread in question. A thread is unlikely to be read by anyone when it has ceased to be current, even if (which I am told is not, in fact, the case) it remains online and accessible. I have already pointed out the way in which every single post from the defendant alleged to be defamatory is not an opening post, but buried within a thread started by someone else to which there are many contributions over a period of days. The question is whether the pleaded case is capable of showing that those posts pass the substantial publication test. Merely stating the number of people who are members of the group, without more, does not achieve that. There also appears to be no basis for challenging the defendant's evidence that they do not, in fact, remain online (para 9 above).

42. The burden of proving substantial publication is on the claimant, and the claimant must plead the facts upon which she relies.

43. The only other potentially relevant passage of the Particulars of Claim, however, is in the "Particulars of Serious Harm" which say, at para 7(4):-

> "Following the Defamatory Statements a member of the Group called Kirsten Michelle Weir Stoddart posted the following comments:
>
> 'I have two wee kids and have just seen stuff about child sex abuse? Who is involved with this please as I don't want involved with them.'

> 'Can someone fill me in? Are my kids in danger through these groups? If perverts are involved I need to know because I'll leave all of them. I don't understand a lot of this.'"

44. Neither of these posts (which were separated from each other within the thread, at p 259 and p 288 of my bundle respectively) was a direct response to any of the seven posts from the defendant alleged to have been defamatory. Neither of them appeared to identify the claimant, by her own or any other name by which she might be known. This is emphasised by the phrase in the first, asking "Who is involved with this please…" None of the seven posts defined as "Defamatory Statements" by the defendant accused the claimant of "child sex abuse" or of being a "pervert". This is clear from the quotations from them pleaded in the Particulars of Claim.

45. These posts do not, therefore, form part of a platform of fact from which an inference that there was "substantial publication" can be drawn.

46. This demolishes the case for substantial publication on the face of the claimant's own pleading, and even before taking the point that it was, in any case, incorrect to treat "the Defamatory Statements" as one publication. The Particulars of Claim make no effort to show "substantial publication" of the seven statements individually.

47. The fact that a statement is visible on the internet is not enough to establish substantial publication: that is clear from the cases I have cited (in paras 34-37 above).

48. I would add that, in the light of the common experience of Facebook browsing summarised in *Stocker v Stocker* (para 39 above), it is also not enough that someone has read it. If the reading is so rapid and superficial as to leave no impression, or no more than a fleeting impression which is of no consequence, it is just as much an abuse of process, on the principles applied in *Jameel*, to base a defamation claim on that reader as if there had been no reader at all.

49. The Particulars of Claim do not address such evidence as may be obtainable of the extent to which anyone took any notice of the defendant's seven allegedly defamatory tweets, and it is clear that neither the claimant nor the defendant has any evidence which is not contained in the print-out of the (apparently now deleted) posts themselves. That evidence is helpfully and accurately summarised by the defendant (upon whom no burden lies), in the defendant's response to the Part 18 Request dated 20 April 2021, as follows (referring to each of the seven posts alleged to be defamatory by their position in paras 3(a)-(g) of the Particulars of Claim):-

> "a. Paragraph 3(a): no reactions. This is a reply to a post on the main thread by Facebook user *Georgie Jenkins*.
>
> b. Paragraph 3(b) one "shocked face" emoji. This is a reply to a post on the main thread by Facebook user *Katie Jemima Arkle*. There is one reply to this post. [The reply reads: "Claire Jones is she Sharon, Annie or mr Kipling this is all so confusing"]
>
> c. Paragraph 3(c) one "love" emoji reaction. This is not a reply to the main thread but a reply to another Facebook user *Juliet Clarke.* There is one reply to this post. [The reply reads: "They

> have used photos of my child in a post about me I've asked them to remove it with no prevail. It's disgusting that they are willing to do that. I want the photo removed considering legal action". It therefore does not respond to the defendant's reference to "criminal fraud charges"]
>
> d. Paragraph 3(d) no reaction. This does not appear on the main thread but is a reply to another Facebook user, *Janet Stevenson*. There is one reply to this post. [The reply reads "Claire Jones oh I see"]
>
> e. Paragraph 3(e) four "likes". This is a reply to the main thread. There are two replies to this post. [The replies read: "so are dodgy horse dealer sites run by dodgy dealers just asking as this is all getting confusing like who don't we trust?" to which the reply from another poster is "Natalie Roantree a couple of them are which I think is absolutely wrong in every way. How can they be unbiased when their best mate is being exposed? It's poor form in my opinion but I guess the flip side is they'll have some inside information that the likes of myself wouldn't have. Depends on how they use it though." These replies revert to the question of whether people are 'dodgy horse dealers' which is not the subject matter of this or any other allegedly defamatory statement by the defendant.]
>
> f. Paragraph 3(f) one "shocked face" emoji. There are two responses, which are not direct replies.
>
> g. Paragraph 3(g) no reactions or responses."

50. Since each of the seven posts is a separate publication and a separate cause of action, substantial publication must be pleaded and proved separately in respect of each. Not only has this not been done, the uncontroversial facts summarised by the defendant show that some of them had no reactions or responses at all, and the others achieved reactions from between one and four people. These included reactions requiring practically no effort at all, such as clicking on a "love" emoji.

51. It can rightly be said, to use the words of *Jameel* at para 69, that the game in this case is not worth the candle. Given the requirement of proving that the publication of each post was substantial enough to satisfy the requirements of the overriding objective and respecting Convention rights to freedom of speech, as established in *Jameel,* the Particulars of Claim disclose no reasonable grounds for bringing the claim. In the words of *Harris v Bolt Burdon* [2000] C.P. Rep. 70 at para 27, the claim is "absolutely unwinnable" on the question of substantial publication, and to allow it to go on "would simply be to allow more and more money to be spent… without any possible ultimate benefit to the claimant"; it is a case in which (quoting para 28 of *Harris*) she faces "inevitable defeat".

52. Not only do the Particulars of Claim disclose no reasonable grounds for bringing the claim (satisfying the strike-out test in CPR 3.4(2)(a)); it is also "an abuse of the court's process" (CPR 3.4(2)(b)). This is a case in which I can be certain, as a result of the lack

of substantial publication, either as pleaded or on the facts, that the claim is bound to fail (as required by the Court of Appeal in *Richards v Hughes* [2004] EWCA Civ 266 at para 22).

iv) Is the pleading of reference to the claimant defective?

53. The Particulars of Claim do not specifically address the extent to which each of the seven posts complained of identifies the claimant as the person referred to. It will be recalled that the thread upon which the posts appeared was about "Annie Rayner", not "Sharon Webb" (see para 8 above). I have already noted that the thread was not only long and ramshackle, but confusing, and that this was noted by some of the posters on the thread. In short, it is rarely obvious who exactly is being referred to and, when that it is obvious, it is not always obvious what exactly is being said about the person referred to. The conversation is all over the place.

54. It is therefore particularly important that the claimant should do what she has not done, and engages with the question of whether the claimant was personally identifiable in respect of each of the seven posts. Instead, she pleads them jointly as "the Defamatory Statements" and does not explicitly deal with identification even then. This is particularly important because the seven statements do not make the same point about the person in question. If only some turn out to be defamatory, the question will be whether *that* post referred to or would have been understood as referring to the claimant.

55. Adopting the (a) – (g) reference scheme to each of the seven posts applied by para 3 of the Particulars of Claim, and upon reading the words of each post as set out in that paragraph:

i) Post (a) refers only to "This nutter", giving no name.

ii) Post (b) refers to "Sharon aka Anni".

iii) Post (c) refers to "Sharon/Annie".

iv) Post (d) refers to "Sharon Webb. A known psychopath. Obviously has no job and loves to spend hours being nasty".

v) Post (e) refers to "Annie aka Sharon Webb. A struck off social worker for falsifying documents to have children removed from parents…" (etc).

vi) Post (f) refers to "Sharon Webb of Gloucestershire Children services… found to have fabricated records in a child abuse case putting the child and others at risk…" (etc)

vii) Post (g) says "A true Person would include a face. Fair enough to hide D.O.B. and address. Let's see your driving licence with you lovely face on it hear you go if you want to photos shop this Annie/ Sharon. Adding identity theft to your list of conviction"

56. Posts (d), (e) and (f) do refer to "Sharon Webb" and, although neither of these names is particularly uncommon or distinctive, post (f) is even more explicit with its reference to "Sharon Webb of Gloucestershire Children services".

57. The pleading of identification is defective but this is not an aspect of the case which might not be corrected by amendment, or that can be said to be bound to fail were amendment to be allowed, at least in respect of some of the statements complained of.

v) Is the pleading of meaning defective?

58. The pleading of meaning is obviously defective because it does not distinguish between the seven allegedly Defamatory Statements at all, although they clearly mean different things. Although context is relevant to meaning, that does not justify a plea which is not based on each of the seven publications at all.

59. Again, this is something that might be corrected by amendment, although the claimant has not come up with any proposal to amend so far. In her favour, I note that the application notice issued on 13 January 2021 did not raise a specific objection to the pleading of meaning.

vi) Is the pleading of serious harm defective?

60. Like substantial publication, serious harm must be pleaded and proved. It is a requirement of section 1(1) of the Defamation Act 2013 that a statement "has caused or is likely to cause serious harm to the reputation of the defendant."

61. This requires consideration of "the actual facts about its impact and not just… the meaning of the words": *Lachaux v Independent Print Ltd* [2020] AC 612 at para 12. Whether or not the statement "has caused" serious harm, within the meaning of the section, depends on a combination of the inherent tendency of the words "and their actual impact on those to whom they were communicated. The same must be true of the reference to harm which is "likely" to be caused.": *Lachaux* at para 14. Per Lord Sumption at para 16:

> "Suppose that the words amount to a grave allegation against the claimant, but they are published to a small number of people, or to people none of whom believe it, or possibly to people among whom the claimant had no reputation to be harmed. The law's traditional answer is that these matters may mitigate damages but do not affect the defamatory character of the words. Yet it is plain that section 1 was intended to make them part of the test of the defamatory character of the statement."

62. It is obvious that this is closely related to the issue I have already considered about whether there was substantial publication. Moreover, it seems to me that, although inference may have a place, any inference has to be justified by the facts (compare the the observations of Gray J in the context of substantial publication, which I cited in para 36 above), and to have "some solid basis" (see the dictum of Eady J in para 37 above). In this context, as on the question of substantial publication, the nature of social media and of its impact on those who use it will be relevant (paras 38 – 39 above).

63. Serious harm may be inferred, but only in an appropriate case. It is not to be assumed, and it certainly cannot be assumed only because the statement is seriously defamatory on its face, even if it is. There must be facts, and the facts must be pleaded, like any fact essential to a cause of action.

64. In *Lachaux v Independent Print Ltd* [2020] AC 612, per Lord Sumption at para 21:-

> "The judge's finding was based on a combination of the meaning of the words, the situation of Mr Lachaux, the circumstances of publication and the inherent probabilities. There is no reason why inferences of fact as to the seriousness of the harm done to Mr Lachaux's reputation should not be drawn from considerations of this kind. Warby J's task was to evaluate the material before him, and arrive at a conclusion on an issue on which precision will rarely be possible."

65. In the Particulars of Claim, the Particulars of Serious Harm are as follows:-

> "(1) The Claimant repeats paragraph 1(a) above regarding her professional reputation and standing [i.e. "The claimant was a retired social worker who continues to work in the field of palliative care"].
>
> (2) The Claimant repeats paragraphs 1(c) and 5 above in respect of the extent of publication which is continuing.
>
> (3) The Claimant repeats paragraphs 3 and 6 above regarding the gravity of the Defamatory Statements.
>
> (4) Following the Defamatory Statements a member of the Group called Kirsten Michelle Weir Stoddart posted the following comments:
>
> > 'I have two wee kids and have just seen stuff about child sex abuse? Who is involved with this please as I don't want involved with them.'
> >
> > 'Can someone fill me in? Are my kids in danger through these groups? If perverts are involved I need to know because I'll leave all of them. I don't understand a lot of this.'"

66. This discloses no reasonable grounds for the essential allegation of serious harm. Taking the four numbered points in turn:-

i) Para 1(a) contains no allegation of professional reputation or standing, other than stating that the claimant is a retired social worker and that "she continues to work in the field of palliative care" – which is also not obviously connected with statements about working with children or any of the seven statements upon which the claim is based.

ii) I have already decided that there is no basis in the pleading or in the facts for claiming substantial publication.

iii) Serious harm cannot be established by reference to the gravity of the defamatory statements alone.

iv) The posts of Ms Stoddart do not appear to relate to the defendant's allegedly defamatory statements at all: see paras 43-44 above.

67. The pleading of serious harm is both defective (because of its aggregation of seven separate publications into one indiscriminate plea) and lacking in substance.

68. There is no indication in the submissions on behalf of the claimant, or in the evidence, that this lack of substance can be rectified. The print outs of the thread, in which the seven statements are scattered, include few reactions of any sort to what she wrote, and those reactions that do not suggest, even potentially, that any of them "has caused or is likely to cause serious harm to the reputation of the defendant" as required by section 1(1) (see para 49 above). No doubt that is why none of them, except the posts of Ms Stoddart, are relied upon in the Particulars of Claim.

69. Most of the reactions consisted only of an emoji click. It is not clear from the reactions or any other evidence that the person reacting knew that the claimant was the person referred to, or knew who she was. It is vanishingly unlikely, on the only evidence available or obtainable, that the claimant's reputation in the real world was damaged at all in the eyes of anyone by these posts; let alone to an extent which could conceivably be characterised as serious harm. This was confused and confusing ephemeral internet chatter, down thread, and swiftly lost in the surrounding hubbub. It is exactly the sort of case that section 1 of the Defamation Act 2013 was designed to stop.

70. The action cannot succeed on this point; it has no prospects at all. It is bound to fail. For it to continue would defeat the overriding objective of dealing with cases justly and at proportionate cost, including allotting an appropriate share of the court's resources while taking into account the need to allot resources to other cases. It would strike the wrong balance between the parties' Convention rights, applying *Jameel*. It is an abuse of process.

71. The claimant's counsel did suggest that something might turn up in disclosure. That seems inconceivable. Either the claimant can produce such material, or she cannot. It is evident that, at present, she cannot. I do not see any reason to think it likely, or even possible, that something will turn up in disclosure from the defendant, who does not appear from the print-outs or other evidence to have known anyone on the thread outside her engagements with the Facebook group itself.

72. The claimant has emphasised in her evidence what she says is her own "suffering" (Webb 3 para 9). However, the issue is serious harm to reputation, and "unless serious harm to reputation can be established an injury to feelings alone, however grave, will not be sufficient": *Monroe v Hopkins* 4 WLR 68 per Warby J at para 67, citing *Sobrinho v Impresa Publishing SA* [2016] EWHC 66 (QB) at para 46.

73. This part of the claim is also, therefore, hopeless, and on that basis also it has to be struck out.

Striking out the libel claim

74. In the light of what I have said, paragraphs 3-8 of the Particulars of Claim must be struck out. Tinkering cannot solve the problems of the current pleading. In its present form, it discloses no reasonable grounds for bringing the claim (CPR 3.4(2)(a)); it is

both an abuse of process and likely to obstruct the just disposal of proceedings (CPR 3.4(2)(b)), and it fails to comply with the pleading requirements of para 4.2 of Practice Direction 53B in Media and Communications Claims (in breach of CPR 3.4(2)(c)). Not only has no fix been offered (in the form of any amendment at all), it seems that paras 3-8 of the Particulars of Claim would have to be discarded in any event, because they are based on the fundamental misconception that "the Defamatory Statements" can be treated and pleaded as one.

75. Therefore, I will strike out paras 3-8 of the Particulars of Claim. Without those paragraphs, there is no claim in defamation, and it follows that, if the matter stops there, the whole of the defamation claim has to be struck out (that is, paras 1-8, para 12 (in respect of the defamation claim), and para 14(1) of the Particulars of Claim, together with paras (1) – (3) of the prayer for relief at the end, insofar as they refer to the defamation claim).

76. It is suggested that, assuming that the harassment claim is not at risk (as to which, see below), it would be wrong to strike out the defamation claims because it will not stop the action as a whole. I do not agree. If a claim is doomed to fail, no more time, money or energy should be expended upon it. In fact, to allow a claim, which is proceeding in any event, to be weighed down by the baggage of a different, hopeless claim would, not only do no good, it would positively harm the efficient disposal of the case in accordance with the overriding objective. The surgical removal of a gangrenous limb can only improve the future of an otherwise healthy body.

77. That leaves open, however, the question of whether, following this strike out, the defamation claim should be put entirely at rest, or whether I should allow the claimant an opportunity to offer an amendment, so that, in an amended form, the defamation claim might, at least potentially, be allowed to continue. Before I turn to this question of a possible second chance, however, I will deal with the harassment claim.

The harassment claim

78. The application notice does not challenge the harassment claim. It is entirely directed at the defamation claim, although the Particulars of Claim plead the harassment claim as a separate cause of action to which different considerations will, of course, apply. The harassment claim is pleaded in paras 9-11, para 13, and para 14(2) of the Particulars of Claim. Those paragraphs are not challenged specifically in the application notice, which is addressed to paras 2-7 of the Particulars of Claim (see para 2 above).

79. The defendant's skeleton argument does, however, attack the harassment claim as well. It says (in para 58) that the harassment claim is largely based upon the claim in defamation, and upon "bare assertion". It also says (in para 59) that the harassment claim "is evidently secondary to the claim in libel", so that, to permit the harassment claim to continue in circumstances where the claim in defamation is struck out "would be disproportionate and an abuse of process".

80. This attack did not seem to me to hit home, because, although the harassment claim is indeed largely based upon the seven "Defamatory Statements", the technical requirements of a defamation claim, which I have considered and found to be wanting, are not requirements of a harassment claim. The falling away of the defamation claim

would not, in itself, require the statements to be discarded for the purposes of a harassment claim.

81. The particulars of the harassment claim are set out in para 9 of the Particulars of Claim as follows:-

> "(1) The Claimant repeats paragraph 3 a) to e) above [i.e. the first five allegedly Defamatory Statements on the Facebook thread].
>
> (2) Following her Defamatory Statements at paragraph 3 a) to e) the Defendant posted to the Group a screenshot of a private message which the Claimant had sent her as follows: 'I've been sent screenshots of some terrible and untrue allegations you are making about me. Why are you doing this?'
>
> (3) The Defendant next published the Defamatory Statement at paragraph 3 f) above.
>
> (4) The Defendant followed this by publishing two comments stating: 'Look at what gets sent to me' 'Was not sure which Sharon webb was the true identity as so many of them on Facebook but look what I got, she dug herself in that hole [2 x Face with tears of joy emoji]'
>
> (5) Next the Defendant again published the screenshot of the Claimant's private message set out at paragraph 9(2) above.
>
> (6) Following this the Defendant published the Defamatory Statement at paragraph 3 (g) above."

82. In written submissions filed at the end of the day of the hearing, with my permission, the defendant's case on striking out the harassment claim was developed further.

83. The defendant referred me to section 1 of the Protection from Harassment Act 1997, which provides:-

> "**1– Prohibition of harassment**
>
> (1) A person must not pursue a course of conduct—
>
> (a) which amounts to harassment of another, and
>
> (b) which he knows or ought to know amounts to harassment of the other.
>
> …
>
> (2) For the purposes of this section… the person whose course of conduct is in question ought to know that it amounts to … harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other."

84. The course of conduct must comprise "at least two occasions" (section 7(3)(a)).

85. The defendant relies on the definition of harassment for the purposes of a civil claim, as set out, for example, in *Hayes v Willoughby* [2013] UKSC 17 per Lord Sumption at para 1:

> "[Harassment is] an ordinary English word with a well understood meaning. Harassment is a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress."

86. The defendant submits that, in order to establish the elements necessary for a civil claim in harassment, a claimant must prove conduct on at least two occasions which is, objectively speaking, calculated to cause alarm or distress and is oppressive, and is unacceptable to such a degree that it would sustain criminal liability, citing *Majrowski v Guy's and St Thomas's NHS Trust* [2007] 1 AC 224 per Lord Nicholls at para 30:-

> "[Where] the quality of the conduct said to constitute harassment is being examined, courts will have in mind that irritations, annoyances, even a measure of upset, arise at times in everybody's day-to-day dealings with other people. Courts are well able to recognise the boundary between conduct which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the boundary from the regrettable to the unacceptable the gravity of the misconduct must be of an order which would sustain criminal liability under section 2"

87. When, as in this case, the harassment is said to have consisted of statements which might engage Convention rights to freedom of expression, the defendant referred me to the balancing exercise required by *Sube v News Group Newspapers* [2020] EMLR 25 (a summary judgment case) at paras 67-69.

88. There is force in these submissions and the harassment claim does appear to be weak. It is entirely based on the defendant's posts on the Dodgy Horse Dealers Facebook group, but none of them is addressed to the claimant and the claimant pleads that the group was private and that she was not a member of it.

89. When permitting the defendant to complete her submissions in writing on the day of the hearing, I allowed the claimant also to submit written submissions, sequential to and after consideration of the defendant's filing. This the claimant's counsel did, but he objected to a point not raised in the application notice being taken, and he also objected to any written submissions being filed at all, and said that he was hampered in responding to them by the need to attend to other professional commitments.

90. Although I have said there is force in the defendant's submissions on harassment, I think the claimant is entitled to object to them in circumstances when they are not supported by the terms of the application notice, especially when they were mostly developed after the conclusion of the hearing, when the claimant's counsel was too busy to address them as effectively as he would have wished.

91. I do not rule out a fresh application to strike out the harassment claim, if the defendant is so advised, although I can give no indication of whether or not it might succeed. However, the present application simply does not cover the submissions made on harassment, and I will not, therefore, accede to those submissions and strike out the harassment claim.

Another chance?

92. At the hearing, the claimant's position was that the striking out claim was misconceived; the correspondence and the claimant's application and skeleton argument had been considered by the claimant and her advisers and rejected; the criticisms of the Particulars of Claim were not well founded; the objections were merely technical; and the claimant knew the case she had to meet. On that basis, no amendment of the Particulars of Claim was offered, although the application notice was issued six months ago. That position was maintained throughout the hearing. No concessions were made. No amendment was offered. The points in the claimant's skeleton argument dated 7 June were rejected out of hand.

93. After the conclusion of the hearing, the claimant's counsel changed tack, and submitted by email that "If, contrary to her case, the court was minded to strike out any part of the particulars of claim, the claimant seeks the opportunity to amend. She will only be in a position to understand what, if any, amendment is required when she has seen the judgment."

94. He relied on *Duchess of Sussex v Associated Newspapers Ltd* [2020] EWHC 1058 (Ch) per Warby J at para 33(2) noting that "the Court has a discretion; it should consider whether the defect might be cured by amendment; if so, it may refrain from striking out and give an opportunity to make such an amendment".

95. The difficulty with this submission is the claimant's failure, not only to plead a case, but to suggest that there is any material available, or obtainable, which would support a case of substantial publication or serious harm at all (questions (iii) and (vi) above). These are essential requirements of a defamation claim. Without them, the case is unwinnable and has to be struck out. The absence of these elements means that the claims are "not worth the candle" (*Duchess of Sussex* at para 33(4), citing *Jameel*). Nothing has been put forward, either by way of draft amendment, or evidence, or submissions, to show how these gaps might be filled on the facts of this case.

96. Therefore, I do not see how these defects can be cured by amendment. The suggestion that something might be produced in response to this judgment seems to me both implausible (what difference would the judgment make to a lack of material?) and irregular (the burden is on the claimant to plead and prove a sustainable case, and it is not the function of the defendant or the court to provide a tutorial before the claimant's best efforts are made).

97. The claimant got off to a bad start by failing to comply with the pre-action protocol before issuing her proceedings. She continued by failing to provide particulars of the publication context in her pleading, or to do so by providing the print-outs in an accessible form until November 2020, three months after service of the Claim Form. The strike out application was preceded by correspondence offering an opportunity to amend the Particulars of Claim without a hearing, dated 27 November 2020, but this

was rejected. The claimant, meanwhile, harried the defendant for service of a defence to the defective pleading and, even when an extension of time until after this hearing had been granted by a Queen's Bench Master, the claimant's submissions to me have continued to complain that no defence has been filed, characterising it as "unreasonable conduct", "dilatoriness" and "stalling tactics". A lot of time, and a lot of money, has been expended while the claim remains in its current unsatisfactory state. The defendant has had to sell her home in order to fund her legal costs, and the claimant's response to that was to make an application for a freezing order which I dismissed, because the evidence did not support a real risk of dissipation. As Warby J noted in *Duchess of Sussex* at para 34: "…it is necessary to bear in mind the Court's duty actively to manage cases to achieve the overriding objective of deciding them justly and at proportionate cost". The manner in which the claimant's case has been conducted to date puts her in a poor position to ask for more time, or another chance.

98. But another chance would be pointless in any case. There seems to be no basis for the suggestion that the defects in the claimant's case are such as to be capable of cure by amendment. The defects are not merely defects of pleading (although they do include such defects). The case is defective because it lacks any substance in essential respects.

99. The defendant's application must, therefore, succeed, and the defamation claims will be struck out, leaving only the claims in harassment, which are not covered by the application notice.