Neutral Citation Number: [2021] EWHC 1994 (QB)

Case No: QB-2021-000325

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/07/2021

Before :

THE HONOURABLE MR JUSTICE SAINI

- -

Between :

PAUL BLACKLEDGE	**Claimant**
- and -	
PERSON(S) UNKNOWN BEING THE AUTHORS, EDITORS AND PUBLISHERS OF THE WEBSITE HTTPS://METOOUCU.BLOGSPOT.COM	**Defendant**

- -
- -

Ben Hamer (instructed by **Brett Wilson LLP**) for the **Claimant**
The Defendant did not attend and was not represented

Hearing dates: 13 July 2021

- -

Approved Judgment

.....

THE HONOURABLE MR JUSTICE SAINI

MR JUSTICE SAINI :

This judgment is in 6 parts as follows:

I. Overview

1. The Claimant, Paul Blackledge, is a senior and respected academic in the field of politics and ethics. He is the victim of a campaign of online abuse in the form a number of blog posts (in the form of articles) that have been posted on a Website by an unidentified Defendant. These articles make false and seriously defamatory allegations of sexual misconduct by the Claimant.

2. The Defendant has used the anonymity of the internet and social media to hide. The facts of this case are a striking example of how the internet and social media can be used to abuse and damage innocent individuals with apparent impunity. The particular allegations made in this case are of sexual misconduct by the Claimant of the most grave kind against a number of women (described by the author as "*survivors*"). The nameless blogger has cynically used the *#MeToo* debate as part of their strategy. The Claimant is said to be a sexual predator who is guilty of a series of serious sexual assaults, including rape, sustained bullying and intimidation. There has been widespread dissemination of this material. There can be little doubt that the allegations have caused the Claimant and his family substantial personal distress and have had an adverse impact upon his professional standing in the academic community.

3. This judgment is an assessment of damages and ancillary relief in the Claimant's claims in libel, harassment and for breach of the General Data Protection Regulation (GDPR) arising out of these posts. On 18 February 2021, the Claimant obtained judgment in default of acknowledgment of service and the Master directed by order dated 7 May 2021 that remedies were to be assessed at a later hearing and gave directions. The Master also gave the Claimant permission pursuant to CPR r.6.16 to serve the orders, notice of hearing, witness statement, application notice or other court document in these proceedings via the email address metooucu@protonmail.com. That has been done.

4. As described in more detail below, the Defendant's identity remains unknown. The Defendant has not responded to these proceedings and did not attend the hearing before me. On my invitation, I was addressed at the start of the hearing by Counsel for the Claimant on whether I should proceed with this hearing in absence of the Defendant under CPR 39.3(1). I was satisfied that I should do so, having had regard the helpful

guidance in Sloutsker v Romanova [2015] EWHC 2053 (QB) at [26] and Pirtek (UK) Limited v Robert Jackson [2017] EWHC 2834 (QB) at [20].

5. I came to this decision having concluded that the Defendant's right to freedom of expression is in issue and section 12 of the Human Rights Act 1998 applies. The Claimant seeks final injunctive relief and an order against Google LLC under section 13 of the Defamation Act 2013 requiring it, as a third party host, to remove the website which hosts the relevant blog. In my judgment, the Claimant has, within the constraints posed by the particular facts of anonymous internet publication of defamatory matter, taken all practical steps possible to notify the Defendant of both the originating process and this hearing. I will set out the procedural history which led me to this conclusion in more detail below in Section III.

6. The specific matters before me are: (i) the assessment of damages for libel and harassment; (ii) the injunction application; and (iii) the s.13 application. Since the damages claimed under data protection are accepted to be parasitic on the libel and harassment claim and wholly overlap with those claims (and in the interests of proportionality) the Claimant did not pursue compensation in relation to that part of the claim. I should record that I gave the Claimant permission at the start of the hearing under CPR r 17.1(2)(b), to amend the Claim Form to increase the upper limit of the amount claimed in the proceedings.

7. I will begin with an outline of the facts.

II. The Factual Background

8. I have based this summary on the pleadings and witness statement of Mr Blackledge, the Claimant (hereafter referred to as "C"), which has not been contradicted.

9. As I stated above, C is an academic. C does not know the identity of the Defendant ("D").

10. Between 1999 and 2017 C worked at Leeds Metropolitan University (which changed its name to Leeds Beckett University in 2014) teaching Politics. C has subsequently held positions in London South Bank University, Northumbria University and recently Shanxi University, China.

11. Between 1999 and 2017 C was a member of the University and College Union ("UCU"). The UCU represents employees of universities and colleges across the UK. While at UCU, C was aligned with what in the evidence before me is described as the 'UCU Left', one of the two major factions within the UCU, and was a member of the SWP until he left voluntarily in August 2015.

12. The website at the URL https://MeTooUCU.blogspot.com ("the Website") is on BlogSpot (a free to use blogging platform hosted by Google LLC). There are three blog posts that have been posted on the Website by D which make seriously defamatory allegations about C:

    (a) the First Article "*An account of sexual assault in the UCU*" (published on 8 February 2020);

(b) the Second Article "*The Blackledge Web*" (published on 15 February 2020);

(c) the Third Article "*New light on MeTooUCU, involving evidence from within the SWP*" (published on 28 April 2020).

13. At the bottom of each article contact details are given in the form of an email address: MeTooUCU@protonmail.com. As is well known, ProtonMail is an end-to-end encrypted email service based in Switzerland.

14. The Articles make gravely defamatory allegations to the effect that C is guilty of rape and sexual assaults, is a sexual predator and covered up his crimes and humiliated survivors of his abuse.

15. Although it would be for D to establish truth and D has not participated, I am satisfied on the evidence that C has never committed any form of sexual harassment, sexual assault, or rape. I also accept that he was devastated by these false allegations and finds the very idea of sexual violence abhorrent.

16. C first heard of the Website when he received a call from Geoff Brown, a former regional officer in the UCU who told C he had been emailed a link to a blog post at the Website and that they alleged C was a rapist and had sexually assaulted women. Around the same time, C found the newly created anonymous Twitter account with the handle @MeTooUCU ("the Twitter Account"). It had "tweeted out" a link to the blog 27 times, each one tagging a different Twitter account stating, "*Please read this account of sexual assault in the University and College Union UCU [Content warning] https://metooucu.blogspot.com*".

17. On 15 February 2020, C conducted a Google search of his name and found the Second Article. C saw the Twitter Account tweeted a link to the Second Article on the same day stating, "*Many of those who helped enable and defend a sexual predator remain in key elected positions in University and College Union (UCU) #MeToo #MeTooUCU*".

18. On 28 April 2020, C searched for his name on Google and found the third article. C saw the Twitter Account tweeted a link to the Third Article again, tagging multiple Twitter accounts in separate messages.

19. C was invited to present on a topic to an academic conference on 24 July 2020 via Zoom: the 13th Annual Conference of the International Society for MacIntyrean Enquiry. C had been involved since the inception of the ISME in 2008. It is organised by the ISME Central Committee comprised of six academics from around the world, including Dr Kelvin Knight (London Metropolitan University) and Dr Jeffrey Nicholas (University of Notre Dame) both of whom C knew personally. On 18 July 2020 C received a call from Dr Nicholas who told C that all members of the ISME Central Committee had received an anonymous email on 10 July 2020 that directed them to the First Article and urged them to exclude C from the ISME. Dr Nicholas also told C that on 16 July 2020 all members of the ISME Central Committee had received an email from D's Email Address. The email included a hyperlink to the Website and stated C had a sexual history of "*sexual assault, harassment and predation*" and that he had been expelled from UCU after an investigation into him.

20. On 29 July 2020 C again conducted a Google search of his name and saw a further Tweet by the Twitter account 'MeTooUCU' which stated:-

> "It's troubling to see Paul Blackledge continue to be invited to academic events. He spoke last week at the International Society for MacIntyrean Enquiry (ISME) online conference. The organisers were informed but they failed to respond *https://macintyreanenquiry.org/isme-online* #MeToo #MeTooUCU"

21. On 3 November 2020, C spoke with Dr Nicholas and C was informed that on 7 August 2020 Dr Nicholas had received a further email from the same person calling themselves 'Concerned Member'. The email purported to be sent to all members of the ISME whose email addresses could be located, it repeated the allegations in the metooucu.blogspot.com post, and expressed indignation and disappointment that the ISME had not taken any action against C.

22. C in his evidence says he was shocked that his attackers were so relentless in pursuing him, and that they were turning their attention to attack others in an effort to pressure them to expel C. C asked Dr Nicholas to provide copies of the emails, and he forwarded emails he had received from the email address concernedmember96746453@gmail.com and metooucu@protonmail.com. They are in evidence before me.

III. Procedural History

23. As to the initiation of the claim, in August 2020 C contacted Brett Wilson LLP, his Solicitors. Brett Wilson sent a letter of claim pursuant to the pre-action protocol for media and communications claims on 7 September 2020 to D's Email Address. The letter requested *inter alia* that D identify themselves and provide an address for service. D did not respond. However, the evidence is that D's Email Address is operated by D as it is used as a contact address on the Website and under the Articles.

24. C sent a letter to Proton Technologies AG, the company that operates ProtonMail, the company that operates D's Email Address regarding the identity of the owner of the account, or whether any identifying information was held and whether it would comply with a court order. No response was received.

25. I am satisfied that given the lengths D has gone to obscure their identity, and failure to respond to the letter of claim, it is highly unlikely that the real identity would successfully be ascertained.

26. C therefore was justified in bringing his claim against 'Person(s) Unknown' defined as being the authors, editors and publishers of the website https://metooucu.blogspot.com. On 2 December 2020 C made an application for permission for alternative service and for ancillary orders. The application was granted by Order of Master Cook dated 30 December 2021. The Claim Form and Particulars of Claim were issued on 28 January 2021. On 29 January 2021, C served the Claim Form, Particulars of Claim and other documents on D's Email Address in accordance with the Order of Master Cook. No acknowledgement of service was filed by D and so on 18 February 2021 C applied for

default judgment and directions for a disposal/remedies hearing**.** This application was granted.

The claim

27. As explained in New Century Media Limited v Makhlay [2013] EWHC 3556 (QB), at [30], that where default judgment is granted *"The Particulars of Claim are, in effect, a proxy for the judgment, setting out the basis of liability".* As set out in the Particulars of Claim C brings a claim in respect of D's conduct and the Articles on the Website. The causes of action on which C relies are:

    (a) libel in relation to the Articles and each of them;

    (b) harassment in relation to the Articles and other conduct of D including emails sent from D's Email Address and tweets from the Twitter Account; and

    (c) under data protection law in relation to the personal data in the Articles processed by D (which is not pursued before me, as I have said above).

28. C seeks a single global sum in relation to all of the causes of action to vindicate his reputation (in relation to the libel claim) and to compensate him for distress in relation to the Articles and their further dissemination via email and on Twitter (in libel and harassment).

29. C seeks an injunction in libel to prevent further defamatory publications and from D further harassing him. He also seeks an order under s.13 of the Defamation Act 2013 for Google LLC, the host of the Website, to take down the website.

IV. Quantum

30. I will begin with the relevant legal principles and then turn to the specific facts and findings (including inferential conclusions as to the facts).

31. It is established that libel damages have a threefold purpose namely: (1) to compensate for distress and hurt feelings; (2) to compensate for actual injury to reputation which has been proved or might reasonably be inferred; and (3) to serve as an outward and visible sign of vindication.

32. The relevant principles as to assessing damages in a defamation claim were described in some detail in C's submissions by reference to the main cases including Barron v Vines [2016] EWHC 1226 (QB) at [20]-[21]. I was also taken to defamation awards approved by the Court of Appeal, Supreme Court or House of Lords, and made by judges sitting without juries (as is the usual practice since the Defamation Act 2013) that are most relevant to the assessment in this case. I will not set those cases out and I bear in mind that every case is decided on its own facts and there is no direct comparator.

33. As to the principles guiding quantum for harassment, I was referred to Suttle v Walker [2019] EWHC 396 (QB) at [54]-[57]. I note that Nicklin J in that case took into account (inter alia) the following factors in assessing damages for harassment: (a) the fact that

the defendant's campaign was "*clearly and deliberately targeted*" at the Claimant; (b) the campaign was relentless over a period of three to four weeks; (c) it had a lasting effect on the claimant; (d) the use of a Facebook group was deliberately to recruit others to gang up on the claimant.

34. Counsel for C submitted that I should award C a single global sum to vindicate his reputation and compensate him for distress in relation to all the defamatory publications. I agree that in the circumstances that would appear to be the most efficient and just way of proceeding (as opposed to distinct awards). However, in determining the amount of such global award I proceed on the basis that judgment on any one of the Articles would ordinarily, and if assessed separately, give rise to a substantial award.

35. It was submitted to me that the question whether there should be separate awards in relation to defamation and harassment is one for my discretion. I accept that submission. In my judgment, in circumstances where there is a substantial (even if not a complete) overlap of the matters relied on for constituting libel and constituting harassment it would be wholly artificial to separate out the distress caused by the libels and the course of conduct amounting to harassment. I will accordingly make one award in relation to the libels and the course of conduct. That is not an uncommon course on this type of fact pattern, as the cases cited to me demonstrate.

Gravity

36. Where a damages assessment follows default judgment, the court should give judgment based on the claimant's pleaded meaning, unless it is "*wildly extravagant or impossible, or that the words were clearly not defamatory in their tendency*": Sloutsker v Romanova [2015] EWHC 2053 (QB) at [83]-[86]. C's pleaded meanings are set out at §8 of the Particulars of Claim as follows:

> "The First Article:
>
> i. The Claimant is guilty of rape;
>
> ii. The Claimant is a sexual predator who is guilty of a series of serious sexual assaults, sustained bullying and intimidation;
>
> iii. the Claimant, in order to cover up his harassment of one of his victims, physically threatened and intimidated one of his former doctoral students who was supporting that victim; and
>
> iv. the Claimant undermined and humiliated survivors of his sexual abuse, including one victim against whom the Claimant fabricated a case of false allegations in order to protect himself.
>
> The Second Article
> The Claimant is a dangerous sexual predator who is guilty of serious and sustained sexual harassment, violence and abuse.
>
> The Third Article
>
> The Claimant is guilty of serious sexual abuse and sexual harassment."

37. Having considered the body of the Articles and applying the well-established principles on approaching meaning in libel claims, I accept these pleaded meanings.

38. In assessing gravity, in my judgment, the clear starting point is that allegations of rape and sexual assault are extremely grave allegations. The articles are all individually extremely serious, but they are even more so when taken collectively. The incremental effect of reading these allegations over a period of time (as the followers of D's Twitter Account would have done, or those in the same professional circles as C) would have been devastating to the C's reputation.

39. The allegations are allegations of guilt. They are not qualified in any respect. The Articles suggest direct knowledge of C's alleged conduct and crimes as well of access to direct sources that had been in contact with C. The form and style of the Articles is similar to that of a case study from an investigative journalist, recounting supposed testimony from claimed "survivors".

Manner and extent of the publications

40. I approach the extent of publication in two broad stages: first, the number of people likely to have read the words complained of; and secondly, the likely size of the secondary readership.

41. C finds himself in a situation where D has failed to identify themselves (or be identified) or otherwise engage at all. In light of D's 'mute defiance', I accept that C can rely on the principle in the classic chimney sweep case, Armory v Delamirie (1721) 93 ER 664. That case and principle were summarised by the Court of Appeal in Various Claimants v MGN [2015] EWCA Civ 1291 at [107]. To the extent there are gaps in the evidence, D should not benefit from their failure to engage or provide disclosure as to the extent of publication or otherwise. This is a strong case for the application of the Armory principle.

42. C is a prominent academic and widely published as an author. Those who work in his field of study or who have been taught by him would likely search for him online and would be directed to the Website and the Articles by Google. I consider it appropriate for me to infer that there was substantial publication on this basis. The evidence is that when one searches for C's name the Website (containing the Articles) appears on the first page of the results on Google.

43. The Articles, and the tweets that further disseminated the Articles and Website, promote the allegations as being part of 'Me Too', the social movement against sexual abuse and sexual harassment. In seeking to legitimise and publicise themselves by association with this movement the D have extensively used the #metoo hashtag on all of the Articles and in the tweets promoting them and it can be inferred that this is a deliberate association with the Me Too movement. The #metoo hashtag is often a 'trending topic' on social media and would lead to further widespread publication.

44. I infer from D's Twitter Account, which operated to disseminate links to the Website and Articles, that substantial numbers of readers would have been directed to the

Website. I note that D's Twitter Account has 135 followers and that on 8 February 2020, 26 leading journalists and academics were 'tagged' in tweets (meaning they would be notified of the tweet and the tweet may also appear in the timelines of those following the individuals tagged) from D's Twitter Account with hyperlinks to the Website and the First Article. On 28 April 2020, D's Twitter Account tagged many more accounts in further tweets linking to the Second Article. As D's Twitter account is set to 'public', the Tweets were visible to anyone who viewed the profile. It can properly in my judgment be inferred that those reading the tweets would have clicked through to the Website and the Articles. Emails were also sent directly with hyperlinks to the Website, and the recipients would have read the Website and the Articles published on it. The evidence is that C was contacted by some of those who had read the Website or the Articles: Geoff Brown, a former regional officer at the UCU, told C that he had received an email with a link to the Website on 8 February 2020 and that many others at the UCU had too; Dr Jeffrey Nicholas told C on 10 July 2020 and on 16 July 2020 all of the ISME Central Committee (including himself) had been sent an email and a hyperlink to the Website.

45. It is also clear from circumstantial matters that others with whom C had professional relationships were emailed by D and directed to the Website and the Articles (or otherwise became aware of the Website and the Articles), though I note that C is unable to confirm this. It can be inferred that far larger numbers of individuals had in fact read the publications and not contacted C given the seriously defamatory nature of the allegations therein. I consider it an appropriate inference to draw that academics (who are generally technically proficient and avid online exchangers of information) will have shared the articles in their substantial communities where there is regular exchange of both professional and "gossip-type" information.

46. In the circumstances, I am satisfied that the extent of publication for each of the Articles can be safely inferred to be in high hundreds to the low thousands.

47. Beyond these primary recipients, the evidence shows the operation of the "*grapevine effect*", where scurrilous allegations "*percolate through underground channels and contaminate hidden springs*". This is particularly true of the internet, and especially, in this case, amongst those in academia. I refer to Cairns v Modi [2012] EWCA Civ 1382 at [27]. I consider the percolation factor as a highly material matter to be taken into account when assessing damages in this particular case.

48. I also agree with Counsel for C that I should also have in mind the observations in the case law as to the damaging potential of internet publications, due to their permanence online. Website publications remain accessible in ways that hard copy publications never did, so a person's reputation may be "*damaged forever*": ZAM v CFW [2013] EWHC 662 (QB) at [61]-[62]. Further, such information can be far more easily disseminated by simply copying a hyperlink or forwarding an email. Even if deleted, webpages and blog posts remain accessible via republications, screenshots, and internet archives.

Credibility of the Defendant

49. It is apparent from the nature of the Articles that the author would be understood to be someone with knowledge of C and claims to have witnessed or to have direct knowledge of the crimes alleged. The Articles are each described as 'accounts' of C's

behaviour from apparently first-hand sources. My own reading of the Articles is that they are well-structured and appear to have the credibility of a person who has undertaken in-depth research and interviews. This adds to their seriousness.

Effect on the Claimant

50. C gives direct and compelling evidence as to his distress, despair and shock at the allegations which was magnified by professional colleagues, acquaintances and friends becoming aware and concerned about the allegations. I will summarise the substance of that evidence. C explains "*the actions of the defendants have all but destroyed my career and my livelihood*". I accept that the libels have devastated C's life in a number of ways. C can barely sleep from the torment of the allegations and thinks about them all the time. The Website and emails have caused many who were previously close to C to stop speaking to him completely. Others have told C they would have to distance themselves from C despite telling him they did not believe the allegations. C has become withdrawn and is constantly worried that people he meets have heard about the allegations and are simply not mentioning it. It has affected C's family; his wife and children are constantly stressed.

51. C has been excluded from academic events. C understandably feels his professional life has been tarnished, and the allegations in the Articles continue to resurface, as they did recently when on 12 February 2021 a Professor of Politics and associate editor of a journal in which C had recently been published tweeted an apology for publishing the piece as she "*was just made aware of Paul Blackledge's history of sexual assault*" (and which was retweeted three times and liked 40 times) with comments linking to the Website. C feels he can no longer work with the journal. The link to #metoo means institutions and individuals are pressured to immediately cutting ties or be branded "enablers". C feels hopeless at the prospect of future employment and the fact that D has hidden behind a veil of anonymity is also deeply upsetting. C has no way to properly engage and refute the allegations.

52. In my judgment, the following factors are relevant when considering quantum in the harassment claim:

    (a) The vindictive and relentless nature of D's campaign, which took the form of contacting figures in C's professional life with extremely serious allegations made in a sustained fashion over a number of months.

    (b) All of this was directly targeted at C. D must have known it would come to C's attention – it was impossible that it would not do so, especially since D emailed those professionally involved with C.

    (c) The distress and alarm caused by D's conduct, as set out above.

Conclusion on damages

53. Standing back from these facts, I award a combined sum (for the libel and harassment claims) of £70,000.00 to the Claimant.

54. This substantial sum is intended to reflect and signal the total falsity of the allegations against Paul Blackledge.

V. Injunction

55. In my judgment, given D's refusal to identify themselves and the continued publication of the Articles and the Website it is necessary, just and appropriate for the Court to restrain D from further publishing or causing to be published the same or similar words defamatory of C.

56. Similarly, in circumstances that D is still unknown, it would be appropriate to grant an injunction to prevent them harassing C.

VI. Section 13 of the Defamation Act 2013

57. Section 13 of the Defamation Act 2013 provides:

> "(1) Where a court gives judgment for the claimant in an action for defamation the court may order—
>
> (a) the operator of a website on which the defamatory statement is posted to remove the statement, or
>
> (b) any person who was not the author, editor or publisher of the defamatory statement to stop distributing, selling or exhibiting material containing the statement.
>
> (2) In this section "author", "editor" and "publisher" have the same meaning as in section 1 of the Defamation Act 1996.
>
> (3) Subsection (1) does not affect the power of the court apart from that subsection."

58. I have found Master Cook's judgment in Summerfield Browne Limited v Philip James Waymouth [2021] EWHC 85 (QB) of substantial assistance in relation to the s.13 application. In that case the Master addressed the application of section 13 following judgment against a defendant who posted a defamatory review on the Trustpilot website (which was operated by the Danish company Trustpilot A/S). He explained:

> "[39] Trustpilot is therefore the relevant 'operator of a website' for the purposes of s.13 DA 2013. By s.5 DA 2013, however, Trustpilot would, had it been named as a defendant, had recourse to the defence under s.5(2) that it was not itself the party that posted the defamatory statement. In my judgment liability having been determined against the Defendant, Trustpilot cannot be said to be exercising any right to self-expression such as to be protected by Article 10 ECHR. Accordingly, s.12 Defamation Act 2013 [see my comment below]does not apply to restrict the power of the Court to grant relief affecting Trustpilot, as the relief sought by the Claimant does not affect Trustpilot's exercise of the Convention right to freedom of expression.

> [40] In the circumstances I will make a s.13 order requiring Trustpilot to remove the defamatory review, on the basis that the Defendant's conduct to date makes it doubtful that he will comply with the injunctive relief the Claimant has been granted. As Trustpilot has not been present or represented at this hearing the order will contain a provision that it may apply to the Court for the order to be varied or discharged".

59. Similarly, the Website (metooucu.blogspot.com) is hosted on blogspot.com which is operated by Google LLC based in the State of California in the United States. Google LLC has informed C's Solicitors that as a third-party host it will remove the Website only with a court order.

60. For clarification, I am sure that the Master (in the citation above from [39] of his judgment), when making reference to section 12 Defamation Act 2013, in fact intended to refer to section 12 Human Rights Act 1998. This appears to have simply been an understandable slip.

61. In the circumstances, an order requiring Google to remove the Website is justified and wholly appropriate. It is highly unlikely that D will comply with the injunction I have made due to their failure to engage with proceedings. Where an injunction may not be effective, as in the instant case, an order under section 13 is an appropriate and proportionate remedy. On the facts of this case, where D has hidden their identity, a section 13 order is likely to be the only remedy that is capable of providing effective and meaningful protection to C's civil rights.

62. As Google was not present at the hearing, a provision allowing it to apply to the Court for the order to be varied or discharged will be added to the Order I propose to make.