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IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
MEDIA & COMMUNICATIONS LIST  
[2022] EWHC 2658 (KB)



No. QB-2021-003225

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Monday, 25 July 2022

Before:

MR JUSTICE JOHNSON

B E T W E E N :

TJM

Claimant

- and -

CHIEF CONSTABLE OF WEST YORKSHIRE POLICE

Defendant

**ANONYMISATION APPLIES**

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MR M. HENDERSON (instructed by Cohen Davis Solicitors) appeared on behalf of the Claimant.

MR R. COHEN (instructed by Legal Services, West Yorkshire Police) appeared on behalf of the Defendant.

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**J U D G M E N T**

MR JUSTICE JOHNSON:

- 1 The claimant seeks damages, including aggravated damages, in defamation and other torts. The publication that underlies the claim is an email sent by PC Cathryn Harrison to Warrant Officer Michael Seabrook on 25 August 2020. A copy of the email is appended to this judgment. The claimant also seeks an injunction to restrain further publication. On 14 June 2022, Master Eastman directed the trial of preliminary issues as to firstly the meaning of the email; secondly, whether it is defamatory of the claimant at common law; and thirdly, whether the email conveys matters of fact or opinion.

### The legal framework

#### Meaning

- 2 The legal principles to be applied when determining meaning are summarised in the judgment of Nicklin J in *Koutsogiannis v Random House Group Limited* [2019] EWHC 48 (QB); [2020] 4 WLR 25 at [11] to [12]:
- “The Court’s task is to determine the single natural and ordinary meaning of the words ... which is the meaning that the hypothetical reasonable reader would understand the words bear.”
- 3 In making that determination, the court should apply the approach identified by Nicklin J in *Koutsogiannis* at [12]. Where the meaning suggests that the claimant has or may have committed some particular act, there are different levels or shades of meaning that may attach. They lie on a continuum. In *Chase v Newsgroup Newspapers Limited* [2002] EWCA Civ 1772; [2003] EMLR 11, Brooke LJ identified three different points on that continuum which have been given the shorthand “Chase Levels 1, 2 and 3”. Chase Level 1 is that the claimant is guilty of the act alleged. Level 2 is that there are reasonable grounds to suspect that the claimant is guilty of the act. Level 3 is that there are grounds to investigate whether the claimant has committed the act.
- 4 There are a number of shades of meaning between each of those levels, and in particular between Level 1 and Level 2. Where a defendant publishes a statement saying that a third party has said that the claimant is guilty of an offence, then that will ordinarily be taken to mean that the claimant is guilty of the offence, not simply that the third party has said so. By making the statement, the defendant is ordinarily to be taken as in substance conveying and endorsing the underlying allegations made by the third party. That is the repetition rule: see the judgment of May LJ in *Shah v Standard Chartered Bank* [1999] QB 241 at 266D-F. In other words, the repetition of a Chase Level 1 allegation will itself generally have a Chase Level 1 meaning.
- 5 That repetition rule does however critically depend on all the circumstances and the particular context. It is perfectly possible to repeat a Chase Level 1 statement in a way that does not bear a Chase Level 1 meaning. A paradigm example is where the Level 1 statement is repeated in terms which make it clear that it is untrue: see, for example, *Wake v John Fairfax & Sons Limited* [1973] NSWLR 43, 49-50; and *Brown v Bower* [2017] EWHC 2637 (QB), Nicklin J at [30]. There is no dispute between the parties that I was able to

detect that, so far as is relevant to this hearing, the summary I have just set out accurately reflects the law.

### Fact/opinion

- 6 Again, the legal principles are well established. They are again summarised by Nicklin J in *Koutsogiannis* at [16] to [18]. Again, I do not understand there to be any dispute between the parties that that represents an accurate distillation of the legal principles. The ultimate question is the impact on the hypothetical reasonable reader of the words: see *Koutsogiannis* at [16(iii)]; in other words, whether the reader would understand the publication, read in context, as conveying fact or opinion. Determining whether words express an opinion or assert fact is part and parcel of determining their meaning.
- 7 Both questions (i.e. as to meaning and as to the fact/opinion question) depend on how the words would strike the hypothetical reasonable reader. It would be artificial to determine the two issues in any specific order, because then the resolution of one might impact or stifle the resolution of the other, and also that is not how a reader naturally approaches the reading of an email. The meaning of the words and whether they convey fact or opinion is assimilated by readers holistically, and I have therefore sought to answer the fact/opinion at the same time as, and as part and parcel of, the resolution of the meaning of the email.

### Submissions

- 8 Mr Mark Henderson on behalf of the claimant contends that the email conveys matters of fact rather than opinion, and that it is defamatory at common law of the claimant. He says that the overall effect of the email is that the claimant has committed one or more of the criminal offences identified in the email, and that the imputation is therefore conveyed at a Chase Level 1 meaning; in other words, Mr Henderson submits that the email positively alleges that the claimant is guilty of the stated offences. In the alternative, Mr Henderson submits that the meaning falls somewhere between Chase Level 1 and Chase Level 2, and in particular that it conveys that there are strong grounds to suspect the claimant of the offences.
- 9 Mr Robert Cohen on behalf of the defendant accepts that the statement is defamatory at common law, and broadly that it is a statement of fact rather than opinion, and accepts that it conveys a Chase Level 2 meaning in respect of an offence of coercive and controlling behaviour. In oral submissions, it was accepted that that applied too in respect of an offence of harassment; in other words, the defendant accepts that the statement means that there are grounds to suspect the claimant of offences of coercive and controlling behaviour and harassment.
- 10 Mr Cohen does not accept that it reaches a Chase Level 1 meaning. He says that it is important to read the email in its overall context, and says that important features of the context include that the email was sent by an investigator within the police; that reference was made to the case being referred to the Crown Prosecution Service, which is an independent public body with an independent decision-making function. He says the email was plainly sent in an official capacity, and relies on the text of the email where it says in particular, "If ... a criminal charge is unable to be brought against him", as well as the word "appeared" and the word "alleged".
- 11 He says that an ordinary reader would understand the constitutional functions of the police, the presumption of innocence and the role that the police have in investigating matters

before charging decisions are made by the Crown Prosecution Service. In that context, he submits that the words meant that the author had grounds to suspect the claimant of the offences, but not that she was asserting that the claimant was guilty of any offence. In respect of the last part of the email, which related to the claimant's fitness to serve in the armed forces, he submits that that amounts to opinion rather than fact.

#### Decision on meaning

- 12 In approaching the decision on meaning, I read the order of Master Eastman and the email, and at that stage reached a preliminary view as to the meaning of the email. I did not at that stage read any other material because my preliminary view was that additional material was not relevant to any issue as to the meaning of the words, and I was aware from correspondence that there was likely to be a dispute between the parties as to the admissibility of other material. In any event, it seemed to me to be better not to read any other material until I had first read and formed a preliminary view about the meaning of the email itself.
- 13 After reading the email and forming a preliminary view as to its meaning, I then read the particulars of claim, the defendant's written statement on meaning and the skeleton arguments. The defendant's skeleton argument makes reference to what are said to be quotations from attachments to the email. There is a dispute between the parties as to whether they were relevant to the meaning question. In the event, it is not necessary to rule on that dispute because it is common ground between the parties that the attachments have no significant impact on the meaning of the email.
- 14 The skeleton argument also made reference to the circumstances in which the claimant came to know about the email. That does not seem to me to be relevant to the question of meaning. It also made reference to a response to the email that shows that there was re-publication of it, but again that response does not seem to me to bear on the overall question of the email's meaning.
- 15 I then heard the oral submissions of counsel, which I have summarised above. The features of the email which struck me as informing the meaning are that it is written in an official capacity by a police officer; it uses the sender's and the recipient's official work email address; it is written in formal language; the correspondents do not apparently know each other; the recipient is a warrant officer, and therefore holds a rank of some seniority, the highest non-commissioned rank; there is a clear purpose in sending the email, which is to persuade the recipient to initiate an investigation into the claimant; the nature of the email and the context is such that it was very likely that there would be re-publication by the recipient to his colleagues.
- 16 The reason why it is suggested that an investigation should be instigated is spelt out in clear terms in the email. That is because it is said the claimant's behaviour falls far below the standard expected of a member of the armed forces. It was therefore being said that the claimant was not fit to serve in the armed forces. The internal content of the email is, as it seems to me, careful to distinguish aspects which are capable of further investigation. In respect of some matters, the email indicates that there is scope for investigation. As Mr Cohen says, it uses the words "alleged" and "appeared". In one respect, as I have said, it indicates that further investigation is required.
- 17 But all of that just serves to reinforce that the balance of the email, which is not qualified in that way, does not simply repeat what the complainant has said, but positively endorses her

allegations. So, for example, the email states positively that the claimant has sent emails about his private vehicle being fitted with cameras; that he is being supplied with a military aircraft to find her; that he is a member of the special forces; and that there are hundreds more emails sent by him in similar vein, albeit the officer has referred to the ones which she considers are “the more obvious”. And it says in terms that his behaviour falls below the standard expected of the armed forces.

- 18 Much of the argument between counsel has concerned the words, “The police will be seeking a charge of controlling and coercive behaviour/harassment against [the claimant]”. In particular, the argument concerned whether those bear a Level 1 or Level 2 meaning. It was in the context of that argument that there was discussion as to whether the reasonable reader would be expected to know the process by which a charge is sought, and the involvement of the independent Crown Prosecution Service applying the Code for Crown Prosecutors.
- 19 Those words must, however, be read in their overall context. That context, as I have said, does not merely repeat but in effect endorses the allegations made by the claimant’s former partner. It follows, in my judgment, that the bulk of the email, including the reference to two criminal offences, is at Chase Level 1. In substance, it states that the claimant has committed those two criminal offences.
- 20 I appreciate that it acknowledges, firstly, that the matter must be referred for a charging decision, and, secondly, that it was at least possible that the claimant would not be charged. That however simply reflects the fact that the decision-making in respect of charge was out of the police’s hands. It does not alter the fact that the meaning communicated by the email is that the police, for their part, were saying that the claimant had committed the offences.
- 21 I also consider that in this respect, and indeed in the main, the email asserts fact rather than expresses opinion. The last phrase, that the claimant is not fit to serve in the forces, is in a different category. In that respect, I accept Mr Cohen’s submission that that amounts to an expression of opinion. Accordingly, the email bears the following meaning:
- “The claimant has threatened and told blatant lies to his former partner, sending her emails which make threats, drawing on his military background to control her, and causing her to be scared that she is under constant surveillance and affecting her mental health. He has thereby committed an offence of controlling and coercive behaviour against his former partner and an offence against her of harassment. His behaviour is not compatible with service in the armed forces.”
- 22 This meaning is defamatory at common law; it amounts to fact rather than opinion, save that the last sentence amounts to an expression of opinion.

#### Next steps

- 23 Consequent on this decision on the preliminary issues, there will need to be amendments to the statements of case. The claimant will need to amend his particulars of claim to bring his pleaded meaning into line with that which I have found. The defendant will then need to file a defence, and the case will then need to be listed for a costs and case management hearing. I will make directions accordingly, but will invite counsel to provide a draft order.

Outcome

- 24 The email has the meaning as set out in this judgment. It amounts to a mixed statement of fact and opinion which is defamatory at common law.
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## APPENDIX

### DIRECTION FROM MR JUSTICE JOHNSON

The claimant is a serviceman. His claim relates to an email sent by a police officer on 25 August 2020 to a warrant officer in the human resources department that is responsible for the claimant. If this judgment is to be transcribed, then a copy of that email from p.27 of the bundle is to be appended in redacted form to this judgment. The header to the email with the sender, recipient, date and subject line should be copied; but it is not necessary to copy the footer.

From: Harrison, Cathryn <Cathryn.Harrison@westyorkshire.pnn.police.uk>

Sent: 25 August 2020 10:40

To: Seabrook, Michael WO1 (NAVY TRG CTCRM-HQ WO1HR) <Michael.Seabrook572@mod.gov.uk>

Subject: [REDACTED]

Classification: OFFICIAL

Michael,

As discussed, please find attached a number of emails sent from [REDACTED] to his ex-partner [REDACTED]

The two parties are going through what appears to be a rather messy custody battle over their child, however, [REDACTED] alleges that [REDACTED] is using his military background as a means to control her. As you can see in the emails, he has made references to his private vehicle being fitted with cameras, courtesy of the MOD and in one instance, she has taken the child to Switzerland and he alleges that he has been supplied with a military plane to come and find her.

He also makes comment towards [REDACTED] stating 'I will not let this slide [REDACTED], you do not become an SF operator by letting people get away with things' and leads her to believe that he is in warzones 'every other week' with bullets 'flying past his head' therefore reinforcing her belief that he is an active member of the SAS / military.

There has also been a mention of him threatening [REDACTED] with the fact he has access to firearms, however this is yet to be explored.

There are hundreds of emails that I have been supplied with by [REDACTED] from [REDACTED] however I have gone through the more obvious ones to bring to your attention, as it will take me a good while to sort through them all thoroughly.

The Police will be seeking a charge of controlling and coercive behaviour / harassment against [REDACTED] [REDACTED], as [REDACTED] now feels as though she cannot leave the house, she is scared that she is under constant surveillance due to [REDACTED] alleged military links, and this is having a serious



detrimental effect on her mental health. She will be giving a Video Interview today and I will hopefully be arresting [REDACTED] this evening (25/08/2020) to get his side of the story and put bail conditions on him to prevent him from contacting [REDACTED]

I ask that you look into an internal investigation into [REDACTED], as if in the case a criminal charge is unable to be brought against him, his behaviour, threats and blatant lies to [REDACTED] are far below the standard expected of a member of the armed forces.

Please feel free to contact me with any further enquiries

Thanks

PC 2265 Cathryn Harrison

West Yorkshire Police

Patrol Team 1

Calderdale District

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This transcript has been approved by the Judge.