



Neutral Citation Number: [2023] EWHC 3027 (KB)

Case No: KB-2023-001643

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29 November 2023

Before :

SUSIE ALEGRE, SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

Between :

SEAN PRICE	<u>Claimant</u>
- and -	
NEWSQUEST MEDIA GROUP LIMITED	<u>Defendant</u>

Robert Sterling (instructed by **Carruthers Law**) for the **Claimant**
Jonathan Scherbel-Ball (instructed by **Jaffa Law**) for the **Defendant**

Hearing dates: 21 November 2023

Approved Judgment

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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SUSIE ALEGRE, SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

Susie Alegre, sitting as a Deputy Judge of the High Court :

Background

1. The Claimant in this case, Sean Price, is a former Chief Constable of Cleveland Police. He was appointed to that role in March 2003 and was dismissed from that role and from the police force on 4th April 2012 following a disciplinary finding of gross misconduct. This is not contested. He now runs a domiciliary care business with his wife providing care to people in their own homes in the North of England. Mr. Sterling appeared for the Claimant.
2. The Defendant is Newsquest Media Group Limited, a publisher of local newspapers throughout the United Kingdom. One of its titles is The Northern Echo which was founded in 1870. The Northern Echo is published in hard copy daily and online and covers the areas of Darlington, County Durham, Teeside and North Yorkshire. Mr. Scherbel-Ball appeared for the Defendant.
3. This is a claim for libel in which the Claimant, Mr. Price seeks damages and an injunction arising out of the publication by the Defendant Newsquest of two substantially similar newspaper articles in hard copy and online on 12 and 13 April 2022:
 - a) Firstly, an article published on the Defendant's website www.thenorthernecho.co.uk on 12 April 2022 under the headline "Cleveland Police chief sets out his vision for the future" (the "Online Article"); and
 - b) Secondly, an article published in The Northern Echo newspaper on 13 April 2022 under the headline "New chief vows to restore reputation" (the "Newspaper Article").
4. The words complained of are identified in the Claimant's Amended Particulars of Claim dated 16 October 2023 and they appear in paragraphs 11, 12 and 13 of both articles as follows:

"The force has been beset by a series of scandals, including it becoming the first to be officially rated as failing in all areas in 2019.

Former chief constable Sean Price was sacked for gross misconduct in 2012, officers were under investigation after journalists' phones were unlawfully monitored, and there have been long-standing claims of racism within the ranks.

The force has seen a number of chief constables among its ranks since Sean Price was sacked in 2012."
5. The articles are substantially the same with some minor differences in drafting and format. Of particular relevance to Mr Price, a photograph of him along with photographs of other former chief constables appears in the online article but not in the newspaper article.

The Issues

6. On 28th September 2023 Mr Justice Nicklin made an order on the Defendant's application and on the Claimant consenting, for there to be a trial to determine the following preliminary issues ("the Preliminary Issues Trial"):
 - a) the natural and ordinary meaning of each of the publications complained of insofar as that meaning concerns the Claimant; and
 - b) whether the meaning of each of the publications complained of, as determined by the Court, is defamatory of the Claimant at common law.
7. This is the judgment on those issues following a trial hearing on 21st November 2023.

The Law

8. In reaching a conclusion on meaning, the court should first reach a provisional meaning that the hypothetical reader would understand the words to mean (Millett v Corbyn [2021] E.M.L.R. 19 at [8]) before analysing the application of relevant legal principles to determine a meaning.
9. The relevant principles on meaning as they apply today have been helpfully set out by Nicklin J in *Koutsogiannis v Random House Group Limited* [2020] 4 W.L.R. 25 at [11] – [12]:

“[11] The Court's task is to determine the single natural and ordinary meaning of the words complained of, which is the meaning that the hypothetical reasonable reader would understand the words bear. It is well recognised that there is an artificiality in this process because individual readers may understand words in different ways: *Slim -v- Daily Telegraph Ltd* [1968] 2 QB 157, 173D-E, per Lord Diplock.

[12] The following key principles can be distilled from the authorities: see e.g. *Slim -v- Daily Telegraph Ltd* 175F; *Charleston -v- News Group Newspapers Ltd* [1995] 2 AC 65, 70; *Gillick -v- Brook Advisory Centres* [2002] EWCA Civ 1263 [7]; *Charman -v- Orion Publishing Co Ltd* [2005] EWHC 2187 (QB) [8]-[13]; *Jeynes -v- News Magazines Ltd & Anor* [2008] EWCA Civ 130 [14]; *Doyle -v- Smith* [2018] EWHC 2935 [54]-[56]; *Lord McAlpine of West Green -v- Bercow* [2013] EWHC 1342 (QB) [66]; *Simpson -v- MGN Ltd* [2016] EMLR 26 [15]; *Bukovsky -v- Crown Prosecution Service* [2017] EWCA 1529 [2018] 1 WLR 18; *Brown -v- Bower* [2017] 4 WLR 197 [10]-[16] and *Sube -v- News Group Newspapers Ltd* [2018] EWHC 1234 (QB) [20]:

- i) *The governing principle is reasonableness.*
- ii) *The intention of the publisher is irrelevant.*
- iii) *The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an*

implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. A reader who always adopts a bad meaning where a less serious or non-defamatory meaning is available is not reasonable: s/he is avid for scandal. But always to adopt the less derogatory meaning would also be unreasonable: it would be naïve.

- iv) *Over-elaborate analysis should be avoided and the court should certainly not take a too literal approach to the task.*
- v) *Consequently, a judge providing written reasons for conclusions on meaning should not fall into the trap of conducting too detailed an analysis of the various passages relied on by the respective parties.*
- vi) *Any meaning that emerges as the produce of some strained, or forced, or utterly unreasonable interpretation should be rejected.*
- vii) *It follows that it is not enough to say that by some person or another the words might be understood in a defamatory sense.*
- viii) *The publication must be read as a whole, and any 'bane and antidote' taken together. Sometimes, the context will clothe the words in a more serious defamatory meaning (for example the classic "rogues' gallery" case). In other cases, the context will weaken (even extinguish altogether) the defamatory meaning that the words would bear if they were read in isolation (e.g. bane and antidote cases).*
- ix) *In order to determine the natural and ordinary meaning of the statement of which the claimant complains, it is necessary to take into account the context in which it appeared and the mode of publication.*
- x) *No evidence, beyond publication complained of, is admissible in determining the natural and ordinary meaning.*
- xi) *The hypothetical reader is taken to be representative of those who would read the publication in question. The court can take judicial notice of facts which are common knowledge, but should beware of reliance on impressionistic assessments of the characteristics of a publication's readership.*
- xii) *Judges should have regard to the impression the article has made upon them themselves in considering what impact it would have made on the hypothetical reasonable reader.*
- xiii) *In determining the single meaning, the court is free to choose the correct meaning; it is not bound by the meanings advanced by the parties (save that it cannot find a meaning that is more injurious than the claimant's pleaded meaning)."*

10. Meanings will be considered defamatory at common law if they “*substantially affect in an adverse manner the attitude of other people towards a claimant, or have a tendency to do so*” - **Triplark v Northwood Hall [2019] EWHC 3494 (QB)** at [11].

The Arguments on Meaning

11. The Claimant’s amended meaning (following the Order of Mr Justice Nicklin dated 28th September 2023) is as follows:

“Whilst holding office as Chief Constable of Cleveland Police, there were strong grounds to suspect that Sean Price was involved in the force’s unlawful monitoring of phones belonging to journalists and the long-standing racism pervading the force.”

12. No ground of complaint is made in relation to Mr. Price’s dismissal for gross misconduct.
13. The meaning put forward by the Defendant, Newsquest, in its notice of case dated 19th October 2023 following the Order of Nicklin J is:

“The Claimant committed acts of gross misconduct while he was Chief Constable of Cleveland Police, which led to him being sacked in 2012.”
14. The essence of Mr. Sterling’s arguments for the Claimant is that, while the articles as a whole refer to failings and scandals that have affected Cleveland Police Force over more than a decade, the scandal directly referable to Mr. Price is the only explicit scandal referred to in the article. In the words complained of, he says that Mr. Price is not separated linguistically and grammatically from the references to “officers were under investigation” and to “racism within the ranks”. Therefore, he argued that Mr. Price had been “compartmentalised” as being the subject of paragraphs 12 and 13 of the Articles. In addition, he points out that no explanation is given for the dismissal for gross misconduct such as would separate it from the other two elements of the sentence in paragraph 12.
15. For the Defendant, Mr. Scherbel-Ball argued that the context and general thrust of the Articles were clearly problems with the police force extending over 11 years. He suggested, in essence, that the reasonable reader would conclude that this was a story about events that went well beyond Mr Price’s dismissal in 2012 and would, therefore, read the words complained of as disjunctive. Mr Scherbel-Ball contended that the difference between the use of a comma and a semi-colon is overly analytical – they are simply different ways of breaking up a sentence and the reasonable reader would not see anything consequential in this.
16. I take note of the submissions from both counsel regarding the appropriate “Chase levels” that should be applied to their respective proposed meanings. Chase levels are a categorisation of levels of defamatory meaning deriving from the decision of Brooke LJ in *Chase v News Group Newspapers Ltd* [2002] EWCA Civ 1772; [2003] EMLR 11, para 45. As Mr Justice Nicklin pointed out when summarising the Chase levels in *Brown v Bower and anr* [2017] 4 W.L.R. 197 at 17: “Reflecting the almost infinite capacity for subtle differences in meaning, they are not a straitjacket forcing the court to select one of these prescribed levels of meaning, but they are a helpful shorthand.” As discussed in my reasons below, I do not believe that an analysis of “Chase levels” is called for given the meaning which I have identified.
17. Mr. Sterling drew my attention to the judgment of Warby J in *Sean Price v MGN Limited* [2018] EWHC 3014 (QB) which was a case brought by the Claimant about a different set of articles published previously by a different Defendant. I do not find

that the case, or the previous articles, have any direct relevance to this case and therefore I have not considered them further.

Decision on Meaning

18. I have the somewhat artificial task of determining the “single, natural and ordinary meaning” of the words complained of taking account of the principles set out in *Koutsogiannis*.
19. On an initial reading of the words complained of, my understanding of the meaning was that:

“Sean Price was sacked in 2012 as a result of gross misconduct and he was in some way implicated in the unlawful monitoring of phones belonging to journalists and to the long-standing issue of racism within the force.”
20. Having considered the submissions of both counsel, I remain of the opinion that this is the single, natural and ordinary meaning of the words taken in the context of the Articles as a whole. I have borne in mind the principle of reasonableness and taken account of the principle that: “[a] reader who always adopts a bad meaning where a less serious or non-defamatory meaning is available is not reasonable: s/he is avid for scandal. But always to adopt the less derogatory meaning would also be unreasonable: it would be naïve.”
21. There are three strands to the words complained of:
 - i) Mr. Price’s dismissal for gross misconduct;
 - ii) The investigation after journalists’ phones were unlawfully monitored; and
 - iii) Long-standing claims of racism within the ranks.
22. The way in which paragraph 12 of both articles is drafted does not draw a clear distinction between those three strands. This gives rise to a natural and ordinary meaning that the three are somehow connected. All three strands are contained in a single sentence paragraph which is separated from other aspects of the history of the force. This separation from later events gives the impression that they are somehow connected. That connection is reinforced by the absence of any further explanation for Mr. Price’s dismissal which might have set it apart from the other strands.
23. In *MacAirt and anr v JPI Media NI Limited and anr* [2021] NIQB 52 at [18] Mr Justice Scoffield said: “*Punctuation matters. Otherwise, claims could be founded (as here) on meanings which are demonstrably not the ordinary and natural (including the objectively grammatically correct) meaning of the words used.*” In this case, punctuation is not crucial to the question of meaning. However, while the hypothetical reasonable reader would probably not notice or analyse the punctuation in the words complained of, punctuation serves as a subtle guide to reading which leads the reader to a natural and ordinary meaning.

24. I have considered the wider context of the words and noted Mr. Scherbel-Ball's submissions that the overall topic of the Articles is about the generally problematic history of the force. I have also taken note of the “bane and antidote” in the articles overall. In particular, the preceding paragraph (11) in both articles says:
- “The force has been beset by a series of scandals, including it becoming the first to be officially rated as failing in all areas in 2019.”
25. I accept this shows that the articles as a whole are about a wider set of issues over a longer timeline, many of which are not connected to Mr. Price. But the following paragraph (13) in the Newspaper Article (separated into paragraphs 13 and 14 in the Online Article) opens with the statement that “The force has seen a number of chief constables amongst its ranks since Sean Price was sacked in 2012.” It then goes on to list those other chief constables with no mention of particular scandals associated with them. This leads to a natural reading of Paragraph 12 as being about issues connected to Sean Price while the following paragraphs describe events after his dismissal.
26. Mr. Scherbel-Ball submitted that there was a logical inconsistency in the Claimant’s suggestion that an ordinary person would understand that Mr. Price had been dismissed due to strong grounds of suspicion related to the two contested strands of the wording. He says that an ordinary person would know that you cannot be dismissed because of “strong grounds for suspicion.” In my view, this is an overly elaborate analysis of the words. An ordinary person would not take an overly analytical approach to the basis for Mr. Price’s dismissal. They could conclude that the three strands in paragraph 12 were somehow connected to Mr. Price without considering what are known in legal terms as “the Chase levels”. They would probably not be familiar with the details of police disciplinary proceedings or the burden or standard of proof that might be required to dismiss someone for gross misconduct. And, on my meaning, there is not necessarily a causal connection between the three strands. They are simply all read as connected to Mr. Price and his time as Chief Constable. I therefore do not find there is any need to consider arguments about “Chase levels” in this case.
27. Both Mr. Sterling and Mr. Scherbel-Ball made submissions about the use of the words “officers” and “ranks” and their relevance as a reference to Mr. Price. I find this to be an overly analytical approach. On the ordinary meaning I have identified, there is no need to make a clear analysis of the role Mr. Price might have played in strands two and three of the words complained of – they are simply connected to him and his time as Chief Constable. Any further specification of the role would be overly analytical.
28. There is no dispute between the parties that the meanings they proposed are defamatory of Mr. Price at common law. The meaning I have found is slightly different to those proposed but I find that it would “*substantially affect in an adverse manner the attitude of other people towards [Mr Price] or have a tendency to do so.* - **Triplark v Northwood Hall [2019] EWHC 3494 (QB)** at [11]. Therefore, the meaning is defamatory at common law.

Costs

29. I have considered counsels' submissions on costs related to the Amendment of the Particulars of Claim. While the amendments were made pursuant to Nicklin J's order of 28th September 2023, they were needed because of a flaw in the Claimant's original pleadings. I therefore make an order for costs of and occasioned by that amendment to be borne by the Claimant. All other costs in the case.