



Neutral Citation Number: [2020] EWHC 540 (QB)

Case No: QB-2019-000557

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/03/2020

Before :

MR JUSTICE JULIAN KNOWLES

Between :

Stephanie Rebecca Hayden
- and -
Associated Newspapers Limited

Claimant

Defendant

The Claimant appeared in person
Alexandra Marzec (instructed by ACK Media Law) for the Defendant

Hearing date: 3 March 2020

APPROVED JUDGMENT

Mr Justice Julian Knowles:

Introduction

1. The Claimant has sued the Defendant for libel and harassment. I am only concerned with the libel claim. The claim is based on an article published by the Defendant in the *Mail on Sunday* on 10 February 2019 and on the website *Mailonline* on the same day. The articles are the same except for (a) a longer heading in the online article; (b) bullet points under the heading in the online article, which do not appear in the hard copy; (c) the captions in the photographs. Neither side contends these slight differences are relevant to the issues before me. They are agreed that in all material respects the two articles are the same and so I will refer to them as ‘the Article’.
2. In summary, the Article reported on the arrest by the police of a Hertfordshire woman called Kate Scottow for harassment and malicious communications arising out of things which she had posted online about the Claimant, who is a transgender woman. Mrs Scottow was arrested following a complaint to the police by the Claimant.
3. This is a trial of meaning. Pursuant to an order dated 12 November 2019 the issues to be tried are:
 - (1) Whether the Article bears the meanings pleaded in [25] of the Amended Particulars of Claim (APOC) in respect of the *Mail on Sunday* version and [29] in respect of the *Mailonline* article, and if not, what meanings each of the articles had.
 - (2) Whether such meanings are defamatory at common law.
 - (3) Whether any such defamatory meanings is/are a statement of opinion.
 - (4) If so, whether the Article indicates in general or specific terms the basis of the statement of opinion.
4. At the hearing Ms Marzec for the Defendant did not pursue issues (3) and (4) and so I am only concerned with (1) and (2).

Application to recuse

5. At the outset of the hearing the Claimant made an application that I should recuse myself because of some of the things I said in *R (Miller) v College of Policing and another* [2020] EWHC 225 (Admin), which I handed down on 14 February 2020. She said that a fair minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias: *Porter v Magill* [2002] 2 AC 357, [103] (apparent bias). The Claimant explicitly did not submit that I was actually biased.
6. *Miller* concerned a judicial review challenge by a man called Harry Miller in relation to tweets he had posted on Twitter about transgender issues.

Following a complaint by a transgender woman called Mrs B that what he had written was ‘transphobic’, Humberside Police recorded his tweets as a non-crime hate incident under the College of Policing’s Hate Crime Operational Guidance (HCOG). An officer visited Mr Miller’s workplace and then warned him about the risks of prosecution if he continued to tweet or ‘escalated’, a warning which the police subsequently repeated. Mr Miller challenged HCOG as being unlawful at common law and under Article 10 of the European Convention on Human Rights. He also challenged the police’s treatment of him as being a disproportionate interference with his right of freedom of expression under Article 10.

7. In my judgment I rejected Mr Miller’s challenge to the lawfulness of HCOG. However, I went on to hold that the police’s actions had had a chilling effect of his right of freedom of expression and had been a disproportionate and unlawful interference with his Article 10 rights.
8. The specific paragraphs of my judgment which the Claimant said gave rise to apparent bias are [17], [250], [271], [280], [281]. I will not set them out, but the reader is referred to them. Put shortly, the Claimant said that these paragraphs show that I hold gender critical views such that a fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that I cannot judge this trial of meaning fairly, given the context is a complaint by the Claimant to the police relating to her transgender status. She said that Graham Linehan, a well-known comedy writer and comedian, had made a witness statement in *Miller* that was critical of her.
9. Whilst the Claimant was entitled to raise the matter, I was clearly of the view, as I indicated at the hearing, that there was no proper basis to recuse myself, and I refused the application. None of the paragraphs relied upon by the Claimant show that I hold any views one way or the other on transgender rights and in [17] I was at pains to say so. In the later paragraphs I merely referred to the strength of the debate on the topic; that the term ‘transphobic’ is used by some to describe those on a different side of the debate who are not, in fact, transphobic; and that some of Mrs B’s evidence in *Miller* had been overstated. None of these issues has any bearing on what I have to decide on this trial of meaning. Mr Linehan’s statement was not relied upon by any party in *Miller* and it played no part in my decision.
10. On behalf of the Defendant, Ms Marzec referred me to *Locabail (UK) Limited v Bayfield Properties Limited* [2000] QB 451, [25], which made clear that save in special circumstances previous judicial pronouncements will not provide a proper basis for recusal (emphasis added):

“25. It would be dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. Everything will depend on the facts, which may include the nature of the issue to be decided. We cannot, however, conceive of circumstances in which an objection could be soundly based on the religion, ethnic or national origin, gender, age, class, means or sexual

orientation of the judge. *Nor, at any rate ordinarily, could an objection be soundly based on the judge's social or educational or service or employment background or history, nor that of any member of the judge's family; or previous political associations; or membership of social or sporting or charitable bodies; or Masonic associations; or previous judicial decisions; or extra-curricular utterances (whether in textbooks, lectures, speeches, articles, interviews, reports or responses to consultation papers); or previous receipt of instructions to act for or against any party, solicitor or advocate engaged in a case before him; or membership of the same Inn, circuit, local Law Society or chambers (see *KFTCIC v Icori Estero SpA* (Court of Appeal of Paris, 28 June 1991, International Arbitration Report, vol. 6, 8/91)).* By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the judge and any member of the public involved in the case; or if the judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of any individual were an issue to be decided by the judge, he had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or if on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind (see *Vakauta v Kelly* (1989) 167 CLR 568); or if, for any other reason, there were real ground for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues before him. The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection. In most cases, we think, the answer, one way or the other, will be obvious. But if in any case there is real ground for doubt, that doubt should be resolved in favour of recusal. We repeat: every application must be decided on the facts and circumstances of the individual case. The greater the passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised, the weaker (other things being equal) the objection will be.”

11. Ms Marzec also referred me to the recent judgment of Fraser J in *Bates v Post Office Limited* [2019] EWHC 871 (QB), [29]-[30], [35]-[36], [41], where the relevant cases are summarised. At [30] the judge referred to the judgment of the Court of Appeal in *Otkritie v International Investment Management Limited v Urumov* [2014] EWCA Civ 1315, [13], where Longmore LJ said (emphasis added):

“The general rule is that he should not recuse himself, unless he either considers that he genuinely cannot give one or other party a fair hearing or that a fair minded and informed observer would conclude that there was a real possibility that he would not do so ... *there must be substantial evidence of actual or imputed bias before the general rule can be overcome. All of the cases, moreover, emphasise that the issue of recusal is extremely fact-sensitive.*”

12. There is no such evidence in this case. I accepted Ms Marzec’s submission on behalf of the Defendant that I should not recuse myself and that the application had no merit. She pointed out that the Claimant was not a party in *Miller*; that she was not involved in the factual background to the case; that she was not mentioned at all in the judgment, let alone critically; and that Mr Linehan’s witness statement was not referred to in the judgment. I made no findings about her, nor did I make any findings that are relevant in any way to the issues arising on this trial of meaning. Overall, I was wholly satisfied that I could and would give both sides a fair hearing.
13. It was for these reasons that I refused the Claimant’s application.

The Article

14. The Article is a piece of news journalism about the arrest by the police of Mrs Scottow following a complaint by the Claimant. I accept the Defendant’s submission that on its face the Article does not contain any express criticism of the Claimant.
15. It seems to me that that the headlines/headings of both articles make clear that the focus of the reports is the police’s actions vis-à-vis Mrs Scottow. In the newspaper the headline is: ‘Mum thrown in cell for 7 HOURS – for calling trans woman a man’; in the online version it is: ‘Mother, 38, is arrested in front of her children and locked in a cell for seven HOURS after calling a transgender woman a man on Twitter’. Both headings emphasise the length of time Mrs Scottow was detained. In the online copy, the first two bullet points also highlight the severity of the police’s response against Mrs Scottow. The third bullet point stated that ‘The complaint made by activist Stephanie Hayden led to arrest of Mrs Scottow’.
16. The essence of the information in the headings (in both versions) is repeated in [1], which tells the reader what the article is about. Further details as to the

extent of the police action are set out in [2] to [6]. Readers are told about Mrs Scottow's arrest in front of her children; being detained in a cell for seven hours without her basic hygiene needs being met; and the confiscation of Mrs Scottow's personal property. Readers are also told in [5] that Mrs Scottow was served with a court order preventing her 'from referring to her accuser as a man'. The court order in question was an injunction, further details of which are given later in the Article. Paragraph 6 quotes Mrs Scottow as saying that she was arrested for 'harassment and malicious communications because I called someone out and misgendered them on Twitter'.

17. Paragraphs 7 and 8 set out two rival viewpoints as to the police's conduct. In [7], Hertfordshire Police are reported as stating that, 'We take all reports of malicious communications seriously'. A different perspective is reported in [8], 'The case is the latest where police have been accused of being heavy-handed when dealing with people who go online to debate gender issues'.
18. In [9], more than halfway through the fourteen paragraph-long Article, the Claimant is referred to by name for the first time (except that in the online version, as set above, she is mentioned in the third bullet point). In that paragraph it is stated that she reported Graham Linehan to the police for referring to her by her previous (male) names and pronouns. The Claimant does not make any complaint in respect of those words.
19. Paragraphs [10] to [14] of the Article then set out the details of the Claimant's complaints against Mrs Scottow, beginning with the following introduction in [10]:

'It was complaints by Miss Hayden that led both to the arrest of, and injunction against, Mrs Scottow'.
20. The Claimant's complaints are then set out fully. In [11] the Article reports that the Claimant's High Court papers 'detail how Mrs Scottow is accused of 'a campaign of targeted harassment'', which campaign was allegedly motivated by the Claimant's 'status as a transgender woman'. The Article sets out that the Claimant's (court) papers alleged that a 'toxic' debate had raged online, presumably between herself and Mrs Scottow, over plans to allow people to 'self-ID,' and that Mrs Scottow had used accounts in two names to 'harass, defame and publish derogatory and defamatory tweets' about the Claimant, including referring to the Claimant as male, and stating that she was 'racist, xenophobic and a crook' and mocking the Claimant for being a 'fake lawyer' ([12] and [13]). The final paragraph, [14], contains details of Mrs Scottow's views, and records that a Deputy High Court Judge had issued an interim injunction preventing her from publishing about the Claimant on social media 'referencing her as a man' or linking her to her former male identity.
21. Both versions of the Article include photographs of Mrs Scottow and of the Claimant respectively. In the newspaper version there is one caption to both photographs, stating: 'ONLINE ROW: Kate Scottow, left, made remarks about Stephanie Hayden, right'. In the online version, there are separate

captions under each photo; that under the photo of the Claimant reads: ‘Complaints made by Stephanie Hayden led both to the arrest of, and injunction against, Mrs Scottow’.

The words complained of and the pleaded defamatory meanings

22. The words complained of in the *Mail on Sunday* version of the Article are as follows (emphasis as in original)

“A MOTHER was arrested in front of her children and locked up for seven hours after referring to a trans-gender woman as a man online.”

“Mum thrown in cell for 7 HOURS – for calling trans woman a man”

23. In [24] it is averred that the words complained of refer to the Claimant by reason of the following particulars of references, namely the article mentioned the Claimant by name, included a photograph of her, and stated ‘It was the complaints by Miss Hayden that led both to the arrest of, and injunction against, Mrs Scottow.’

24. The pleaded defamatory meanings at [25] of the APOC is that in their natural and ordinary meaning (or in the alternative by an innuendo meaning), these words published by the Defendant meant and were understood to mean (or can be inferred to mean):

- a. That the imputation was that the Claimant had reported Mrs Scottow to the police primarily for calling the Claimant ‘a man’.
- b. That the imputation was that the Claimant had secured the arrest of Mrs Scottow based primarily on the allegation that Mrs Scottow had called the Claimant ‘a man’.
- c. That the imputation was that the Claimant had made a trivial complaint to the police which was without merit and vexatious.

25. The words complained of in the *Mailonline* article are as follows (emphasis as in original):

“A MOTHER was arrested in front of her children and locked up for seven hours after referring to a trans-gender woman as a man online.”

“Mother, 38, is arrested in front of her children and locked in a cell for seven HOURS after calling a transgender woman a man on Twitter.”

26. Similar particulars of reference are then given in [28] of the APOC.

27. The pleaded defamatory meanings at [29] is that in their natural and ordinary meaning (or in the alternative by an innuendo meaning), these words published by the Defendant meant and were understood to mean (or can be inferred to mean):
- a. That the imputation was that the Claimant had reported Mrs Scottow to the police primarily for calling the Claimant ‘a man’.
 - b. That the imputation was that the Claimant had secured the arrest of Mrs Scottow based primarily on the allegation that Mrs Scottow had called the Claimant ‘a man’.
 - c. That the imputation was that the Claimant had made a trivial complaint to the police which was without merit and vexatious.

The Defendant’s case on meaning

28. Although the Defendant has not (yet) filed a Defence, Ms Marzec supplied me with a written document setting out what the Defendant says the meaning of the Article is. As refined at the hearing, it as follows:

“The Claimant had reported Kate Scottow to the police, and had brought a civil claim against Mrs Scottow, complaining of the criminal offence of harassment and malicious communications on the basis that Mrs Scottow had, according to the Claimant, online called the Claimant a man; posted defamatory and derogatory statements about her including that the Claimant was racist, xenophobic and a crook; and mocked her (the Claimant) for being a fake lawyer.”

29. The Defendant points out that no particulars of innuendo have been pleaded, nor has the Claimant identified in what way(s) she says that the Article is inaccurate.

Legal principles

30. These were not in dispute. I recently summarised them in *Kirkegaard v Smith* [2019] EWHC 3393 (QB), at [20] et seq. They owe much to the learned scholarship of Nicklin J.

Determining meaning

31. The principles in relation to meaning were summarised by Nicklin J in *Koutsogiannis v The Random House Group Ltd* [2019] EWHC 48 (QB), [11] - [15] (internal citations omitted):

"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 ...

12. The following key principles can be distilled from the authorities ...

(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 (eg, 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)."

13. As to the *Chase* levels of meaning, see *Brown v Bower*, [17]:

"They come from the decision of Brooke LJ in *Chase v News Group Newspapers Ltd* [2003] EMLR 11 [45] in which he identified three types of defamatory allegation: broadly, (1) the claimant is guilty of the act; (2) reasonable grounds to suspect that the claimant is guilty of the act; and (3) grounds to investigate whether the claimant has committed the act. In the lexicon of defamation, these have come to be known as the Chase levels. 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. In *Charman v Orion Publishing Group Ltd*, for example, Gray J found a meaning of "cogent grounds to suspect" [58]."

32. The courts have emphasised the importance of avoiding an overly technical analysis of the words complained of where a judge is required to determine meaning. The authors of *Gatley on Libel and Slander* (12th Edn) explain at [3.14] that:

“Where a judge has to determine meaning it has been said that the correct approach is to ask himself what overall impression the material made on him and then to check that against the detailed textual arguments put forward by the parties. Hence in *Armstrong v Times Newspapers* Gray J 'deliberately read the article complained of before reading the parties' respective statements of case or the rival skeleton arguments'.”

33. The meaning of the words must be ascertained in the context of the publications complained of. As Nicklin J said in *Greenstein v Campaign Against Antisemitism* [2019] EWHC 281 (QB) at [15]:

"Although the Claimant has selected only parts of the Articles for complaint, the Court must ascertain the meaning of these sections in the context of each Article as a whole."

34. The fundamental importance of context was also emphasised by the Supreme Court in *Stocker v Stocker* [2019] 2 WLR 1033, [38]:

"38. All of this, of course, emphasises that the primary role of the court is to focus on how the ordinary reasonable reader would construe the words. And this highlights the court's duty to step aside from a lawyerly analysis and to inhabit the world of the typical reader of a Facebook post. To fulfil that obligation, the court should be particularly conscious of the context in which the statement was made, and it is to that subject that I now turn.

[...]

40. It may be that the significance of context could have been made more explicitly clear in *Jeynes*, but it is beyond question that this is a factor of considerable importance. And that the way in which the words are presented is relevant to the interpretation of their meaning - *Waterson v Lloyd* [2013] EWCA Civ 136; [2013] EMLR 17, para 39.

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."

Discussion

35. In support of her case, the Claimant pointed to the headlines both of which referred to the reason for Mrs Scottow's arrest as merely being that she had called the Claimant a man; that this was repeated in [1] of each version; and that her photograph was prominently displayed. She submitted that the Article obviously meant the only reason for Mrs Scottow's arrest was because she had called the Claimant a man, and that it had portrayed this as a trivial complaint which had led to a mother's arrest, and so defamed her.
36. Despite the succinct clarity of the Claimant's submissions, I am unable to accept them. In my judgment, applying the *Koutsogiannis* principles, the hypothetical reasonable reader would understand the natural and ordinary meaning of the words complained of, when read in the context of the Article as a whole, to be that the Claimant's complaint to the police, and the reason for Mrs Scottow's arrest, went far beyond merely that Mrs Scottow had called the Claimant a man. They would understand that it extended to the other – and really quite serious – aspects of her complaint about what Mrs Scottow had said about her which the Article set out in [13] and [14]. In short, this is a classic 'bane and antidote' case: see *Koutsogiannis*, supra, [12(viii)]. Read by themselves, the words complained of (the bane) suggest the only reason Mrs Scottow was arrested was for calling the Claimant a man. But when they are read in the context of the Article as a whole (the antidote), a different meaning emerges.
37. Although the headline merely referred to the misgendering aspect of the Claimant's complaint, the quote from Mrs Scottow in [6] about why she was arrested goes further, in that it refers to harassment, malicious communications and 'calling someone out'. But the key paragraph in my judgment is [10], which makes clear the link between the reasons for the arrest and reasons why the High Court injunction was granted, and it shows that the basis for each was the same. The detail is then given at [13] and [14]. Whilst the detail is given in the context of the injunction, the Article had already said that the injunction and the arrest were linked. In light of this, in my judgment, no reasonable reader could have concluded that the only reason that Mrs Scottow had been arrested was because she had called the Claimant a man. They would have been bound to conclude that the basis for the arrest included the matters set out in [13] – [14]. In other words, what the Article described was a single set of allegations by the Claimant about what Mrs Scottow had written online which led *both* to the grant of an injunction *and also* to Mrs Scottow's arrest following the Claimant's complaint.
38. For these reasons I reject the Claimant's case on meaning, and broadly uphold the Defendant's contention, although I would rephrase it as follows:

“The Claimant reported Kate Scottow to the police for the criminal offences of harassment and malicious communications. This complaint resulted in Mrs Scottow's arrest. The Claimant also obtained an injunction

from the High Court against Mrs Scottow. The Claimant's criminal complaint and the factual basis for her injunction application was that Mrs Scottow had posted a number of matters online about the Claimant which included: (a) calling the Claimant a man; (b) defamatory and derogatory statements to the effect that the Claimant was a racist, a xenophobe and a 'crook'; and (c) statements which accused the Claimant of being a 'fake lawyer'."

39. I turn to the second issue that is before me, namely whether this meaning was defamatory of the Claimant at common law. Words are only defamatory in law if they attribute to the claimant some quality or conduct which is contrary to standards that are shared and agreed upon by society as a whole or, in the old language, 'would tend to lower the plaintiff in the estimation of right-thinking members of society generally': *Skuse v Granada Television Limited* [1996] EMLR 278, 286, per Sir Thomas Bingham MR.
40. In my judgment, assessed according to this standard, the words used are not defamatory of the Claimant because a right thinking member of society generally would not consider that the Claimant had done anything improper or wrong in reporting Mrs Scottow to the police for the things she had posted which the Claimant, in good faith, believed constituted the offences of harassment and malicious communication.
41. On any view what the Claimant reported to the police were serious allegations against Mrs Scottow which went beyond simple misgendering. For the reasons I have explained, the Article made clear that the arrest and the injunction had the same factual basis and it set out the detail of some of the very unpleasant things Mrs Scottow had allegedly posted. No reasonable person could have regarded the Claimant's complaint to the police as trivial. I accept the Defendant's submission that a reasonable reader would appreciate that if these complaints of malicious conduct were well-founded, then a complaint to the police was warranted or at least understandable. Even if such a reader thought the police's response heavy-handed, they could not, in my judgment, have reasonably held the Claimant responsible for that response. Such a person would understand that the decision to arrest and then to detain Mrs Scottow would have been the police's decision, and that the Claimant would not have been involved in that decision.
42. The final paragraphs of the Article would have brought home to a reasonable reader the seriousness of the Claimant's allegations. Such a reader would understand that a High Court injunction is not lightly granted, and the fact that one was granted in this case meant a judge had found there was substance to the Claimant's complaint. The Article referred to the injunction restraining Mrs Scottow from 'posting any personal information about' the Claimant or 'referencing her as a man' or linking her to her 'former male identity'. It thereby informed readers that the injunction went beyond misgendering, and reflected the wider nature of her complaint, both criminal and civil.

43. Overall, in my assessment the Article's principal focus was not the validity or seriousness of the Claimant's complaint but was about how the police reacted. They are criticised for being heavy-handed, but nowhere in the Article is the Claimant criticised for making a trivial complaint, or criticised at all. On the contrary, my reading of the Article is that the complaint made by the Claimant is presented as being quite serious. I consider any reasonable and fair-minded person would consider that alleged online harassment and defamation and mockery, including allegations of racism, xenophobia and dishonesty, which had led to a High Court injunction, is conduct that at least merited a report to, and investigation by, the police.
44. For these reasons, I conclude that the meaning of the words complained of are not defamatory of the Claimant at common law. It follows that the Claimant's claim in libel fails, and there will be judgment for the Defendant on that claim.
45. Copies of the Article referred to within this judgment are contained with Annex A and B herein.

FEBRUARY 10 • 2019 The Mail on Sunday

Mum thrown in cell for 7 HOURS – for calling trans woman a man

By **Martin Beckford**

HOME AFFAIRS EDITOR

A MOTHER was arrested in front of her children and locked up for seven hours after referring to a transgender woman as a man online.

Three officers detained Kate Scottow at her home before quizzing her at a police station about an argument with an activist on Twitter over so-called 'deadnaming'.

The 38-year-old, from Hitchin, Hertfordshire, had her photograph, DNA and fingerprints taken and remains under investigation.

More than two months after her arrest on December 1, she has had neither her mobile phone or laptop returned, which she says is hampering her studies for a Masters in forensic psychology.

Writing on online forum Mumsnet, Mrs Scottow – who has also been served with a court order that bans her from referring to her accuser as a man – claimed: 'I was arrested in my home by three officers, with my autistic ten-year-old daughter and breastfed 20-month-



ONLINE ROW: Kate Scottow, left, made remarks about Stephanie Hayden, right

old son present. I was then detained for seven hours in a cell with no sanitary products (which I said I needed) before being interviewed then later released under investigation ... I was arrested for harassment and malicious communications because I called someone out and misgendered them on Twitter.'

Confirming the arrest, Hertfordshire Police said: 'We take all reports of malicious communication seriously.'

The case is the latest where police

have been accused of being heavy-handed in dealing with people who go online to debate gender issues.

Sitcom writer Graham Linehan was given a verbal harassment warning by West Yorkshire Police after transgender activist Stephanie Hayden reported him for referring to her by her previous names and pronouns on Twitter. It was complaints by Miss Hayden that led both to the arrest of, and injunction against, Mrs Scottow.

High Court papers obtained by

The Mail on Sunday detail how Mrs Scottow is accused of a 'campaign of targeted harassment' against Miss Hayden, allegedly motivated by her 'status as a transgender woman'.

The papers claim that, as a 'toxic' debate raged online over plans to allow people to 'self-ID' as another gender, Mrs Scottow tweeted 'defamatory' messages about Miss Hayden. She is also alleged to have used accounts in two names to 'harass, defame, and publish derogatory and defamatory tweets' about Miss Hayden, including referring to her as male, stating she was 'racist, xenophobic and a crook' and mocking her as a 'fake lawyer'.

Mrs Scottow denied harassing or defaming Miss Hayden and said she holds a 'genuine and reasonable belief' that a human 'cannot practically speaking change sex', but Deputy Judge Jason Coppel QC issued an interim injunction that bans her from posting any personal information about Miss Hayden on social media, 'referencing her as a man' or linking her to her 'former male identity'. Mrs Scottow last night declined to comment.

Annex B

Mother, 38, is arrested in front of her children and locked in a cell for seven HOURS after calling a transgender woman a man on Twitter

- Police officers detained Kate Scottow, 38, at her home in Hitchin, Hertfordshire
- More than two months after her arrest and she has had neither her mobile phone or laptop returned
- The complaints made by activist Stephanie Hayden led to arrest of Mrs Scottow

By MARTIN BECKFORD HOME AFFAIRS EDITOR FOR THE MAIL ON SUNDAY
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- 1 A mother was arrested in front of her children and locked up for seven hours after referring to a transgender woman as a man online.
- 2 Three officers detained Kate Scottow at her home before quizzing her at a police station about an argument with an activist on [Twitter](#) over so-called 'deadnaming'.
- 3 The 38-year-old, from Hitchin, Hertfordshire, had her photograph, DNA and fingerprints taken and remains under investigation.
- 4 More than two months after her arrest on December 1, she has had neither her mobile phone or laptop returned, which she says is hampering her studies for a Masters in forensic psychology.



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- A Three officers detained **Kate Scottow, 38**, at her home in Hitchin, Hertfordshire, before quizzing her at a police station
- 5 Writing on online forum Mumsnet, Mrs Scottow – who has also been served with a court order that bans her from referring to her accuser as a man – claimed: 'I was arrested in my home by three officers, with my autistic ten-year-old daughter and breastfed 20-month-old son present.'



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6 'I was then detained for seven hours in a cell with no sanitary products (which I said I needed) before being interviewed then later released under investigation ... I was arrested for harassment and malicious communications because I called someone out and misgendered them on Twitter.'

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- 7 Confirming the arrest, Hertfordshire Police said: 'We take all reports of malicious communication seriously.'
- 8 The case is the latest where police have been accused of being heavy-handed in dealing with people who go online to debate gender issues.
- 9 Sitcom writer Graham Linehan was given a verbal harassment warning by West Yorkshire Police after transgender activist Stephanie Hayden reported him for referring to her by her previous names and pronouns on Twitter.



8 Complaints made by Stephanie Hayden led both to the arrest of, and injunction against, Mrs Scottow

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- 10 It was complaints by Miss Hayden that led both to the arrest of, and injunction against, Mrs Scottow.
- 11 High Court papers obtained by The Mail on Sunday detail how Mrs Scottow is accused of a 'campaign of targeted harassment' against Miss Hayden, allegedly motivated by her 'status as a transgender woman'.
- 12 The papers claim that, as a 'toxic' debate raged online over plans to allow people to 'self-ID' as another gender, Mrs Scottow tweeted 'defamatory' messages about Miss Hayden.
- 13 She is also alleged to have used accounts in two names to 'harass, defame, and publish derogatory and defamatory tweets' about Miss Hayden, including referring to her as male, stating she was 'racist, xenophobic and a crook' and mocking her as a 'fake lawyer'.
- 14 Mrs Scottow denied harassing or defaming Miss Hayden and said she holds a 'genuine and reasonable belief' that a human 'cannot practically speaking change sex', but Deputy Judge Jason Coppel QC issued an interim injunction that bans her from posting any personal information about Miss Hayden on social media, 'referencing her as a man' or linking her to her 'former male identity'.

Mrs Scottow last night declined to comment.

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