



21 March 2012

## PRESS SUMMARY

**Flood (Respondent) v Times Newspapers Limited (Appellant) [2011] UKSC 11**  
*On appeal from [2010] EWCA Civ 804*

**JUSTICES:** Lord Phillips (President), Lord Brown, Lord Mance, Lord Clarke, Lord Dyson

### BACKGROUND TO THE APPEALS

The respondent is a Detective Sergeant with the Metropolitan Police Service ('MPS') Extradition Unit. The appellant is the publisher of The Times newspaper and of material on The Times website.

On 2 June 2006 the appellant published an article which named the respondent as a detective accused of taking money to disclose confidential extradition information to a security firm, ISC Global (UK). ISC's clients included high profile Russians who were the subject of extradition requests. The respondent was a friend of one of the partners of ISC, Mr Hunter. An 'ISC insider' was said to have identified cash payments totalling £20,000, to a recipient codenamed as Noah in the accounts, which could be a reference to the respondent. The appellant was told of and became interested in this possibility from December 2005. The ISC insider later passed a dossier of information to the MPS and to the appellant. The article quoted a spokesman from the MPS who confirmed that the MPS was 'conducting an investigation into allegations that a serving officer made unauthorised disclosures of information to another individual in exchange for money'. The article reported the denial of wrongdoing issued by the respondent.

The MPS had not in fact taken any steps to investigate the allegations before being contacted by the appellant in April 2006. At that point warrants were issued and the respondent's home was searched. The respondent was temporarily moved from the Extradition Unit, returning in January 2007. In September 2007 the MPS told the parties that the investigation had finished and that it had made no recommendations of criminal or disciplinary proceedings against the respondent.

The respondent issued a claim for libel, complaining that the article meant there were strong grounds to suspect he had abused his position as a police officer. The appellant relied, amongst other defences, on the special defence for publications in the public interest known as *Reynolds* privilege. The applicability of the defence in the circumstances of this case was determined as a preliminary issue.

On 16 October 2009 the judge in the High Court found that the publication of the article in the newspaper (and on the website up to the date the investigation was completed) was protected by *Reynolds* privilege. This finding was overturned by the Court of Appeal on 13 July 2010.

### JUDGMENT

The Supreme Court unanimously allows the appeal and holds that the article was protected by *Reynolds* privilege. The main judgments are given by Lord Phillips and Lord Mance.

### REASONS FOR THE JUDGMENT

*Reynolds* privilege protects the publication of defamatory matter to the world at large where (i) it is in the public interest that the information should be published and (ii) the publisher has acted responsibly in publishing the

information [2]. The present appeal raised three issues of principle in relation to the privilege: how to approach the question of the meaning of the article, whether it was in the public interest to refer to the details of allegations made against the respondent and what verification was required to discharge the requirements of responsible journalism [22-25]. The Supreme Court addressed the issues as follows:

### Meaning

The seriousness of the allegation being made is an important factor in the assessment of where the balance is to be struck between the desirability that the public should receive information and the potential harm caused if the individual is defamed [48]. It is commonplace for *Reynolds* privilege to be determined as a preliminary issue but this makes it necessary to determine the meaning of the article, which will also be relevant to verification. The sensible way of achieving this is for the parties to agree to trial by judge alone, who can then resolve any dispute as to meaning at the same time [49]. In this case the parties agreed that the meanings of the article for which they respectively contended – that there were strong grounds to investigate the respondent or that there were grounds justifying a police investigation – were so close that it was not necessary to choose between them for the purposes of the preliminary issue. However, where a publication is capable of bearing a range of meanings, Lord Phillips and Lord Brown thought that a journalist must have regard to the full range when deciding whether to publish and when attempting to verify [51][111].

### Public interest

The respondent maintained that while the general subject matter of the article – police corruption – was of public interest, as a matter of principle the publication of the facts giving rise to the allegations being investigated was not [53]. This may be so, but each case will turn on its own facts and on this occasion the publication of such details was justified. The story was of high public importance and the allegations against the respondent were the whole story [68] [119]. They were published with the legitimate aim of ensuring the allegations were properly investigated by the police in circumstances where the journalist had good reason to doubt that they were being [69]. Naming the respondent was also justified as he would be identified in any event by his fellow officers and suspicion should not fall on other members of the Extradition Unit [75] [169]. Lord Mance held that journalistic judgment and editorial freedom were entitled to weight when considering how much detail should be published [170] but any journalist must consider carefully the public interest in doing so when allegations have not been investigated or their accuracy determined [177]. Lord Dyson considered that it was generally likely to be in the public interest to publish the details of allegations of police corruption, provided the test of responsible journalism was met [195].

### Verification

This was not a case of reportage, where the public interest lies in the fact that an allegation has been made. Here the public interest lay in the content of the allegations and the fact that they might be true. Privilege for this would only attach if the journalist honestly and reasonably believed the published facts to be true [78]. The hard and fast principles relating to the defence of justification do not apply when considering verification. The existence of grounds for suspicion can be based on information from reliable sources or may reasonably be inferred from the fact of a police investigation [80]. In this case the judge found that the supporting facts were true and verified as such [87] [167]. It was reasonable for the journalists to conclude from the police investigation and application for a search warrant that the accusation against the respondent might be well-founded. There was a strong circumstantial case against him [98].

The Supreme Court declined to address the question of how, as a matter of principle, the Court of Appeal should approach a challenge to a decision of a trial judge on a defence of *Reynolds* privilege, in the absence of oral argument on this aspect [100-106].

The outstanding appeal, in relation to the continued publication of the article on the website after the completion of the investigation of the respondent, was adjourned for a further hearing [107].

*References in square brackets are to paragraphs in the judgment*

### **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.**

**Judgments are public documents and are available at:**

[www.supremecourt.gov.uk/decided-cases/index.html](http://www.supremecourt.gov.uk/decided-cases/index.html)