

Claim No: HQ17M00856

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

HHJ MOLONEY QC sitting as a Judge of the High Court

BETWEEN: -

MOHAMMED KOZBAR

Claimant

-and-

TELEGRAPH MEDIA GROUP LIMITED

Defendant

Ian Helme, instructed by Keystone Law, for the Claimant

David Price QC and Clara Hamer, instructed by David Price Solicitors, for the Defendant

JUDGMENT ON PRELIMINARY ISSUE

Handed down at RCJ on Monday 11 December 2017

1. INTRODUCTION

The Claimant is the Chairman of the Finsbury Park Mosque. He complains of libel in an article published by the Defendant in the issue of the Sunday Telegraph dated 13 March 2016 and online on the Telegraph website. The two versions are almost but not quite identical. The claim form was issued on 10 March 2017 and Particulars of Claim were served on 5 April 2017. By consent, service of the Defence was postponed until after the determination of "the meaning of the words complained of", and a preliminary issue to that effect was directed by Senior Master Fontaine on 27 June 2017, though her Order was not sealed until 12 September 2017. A brief oral hearing took place on before me on Friday 8 December 2017 and judgment was reserved.

2. THE ARTICLE COMPLAINED OF

2.1 The headline and text of the article complained of are the same in both the paper and online versions. The paper version is as set out below. It includes a photograph of the Claimant's face, captioned:

"Mohammed Kozbar supported the wave of stabbings by Palestinians".

"Jeremy Corbyn and the mosque leader who blames the UK for Isil

Labour leader's 15 meetings with his 'friend' who wants to destroy Israel

Mr Corbyn captioned this photo on his Facebook page: "Really enjoyed Iftar supper at Finsbury Park Mosque with legendary Mohammed Kozbar and friends"

Jeremy Corbyn has held at least 15 meetings – including four since he became Labour leader – with a leading figure from Finsbury Park mosque who blames Britain for Islamic State of Iraq and the Levant (Isil), has called for the destruction of Israel and appeared to praise the recent wave of terrorist stabbings in that country.

Mr Corbyn has spoken of his "friendship" with the "legendary" Mohammed Kozbar, chairman of the mosque and vice-president of the Muslim Association of Britain, which is closely linked to the Islamist Muslim Brotherhood.

Mr Kozbar claims that the Finsbury Park mosque, formerly notorious as the base of Abu Hamza, has turned over a new leaf under his leadership. Mr Corbyn, too, has praised it as a "wonderful place" which "guides me and many others".

But in a demonstration in December 2011 Mr Kozbar called for the destruction of Israel, saying: "This time it will be the end of Israel, inshallah [God willing]."

On October 11 last year, amid a wave of stabbings of Israelis by Palestinians in Jerusalem and elsewhere, he wrote that "Palestine is uprising, Alquds [Jerusalem] is uprising and our brothers and sisters are giving everything to defend Alaqsa Mosque [in Jerusalem]. The question is what are we doing to support them and show them that they are not alone on this."

He has praised as "always cracking the words of truth" the extremist cleric and Muslim Brotherhood ideological leader Yusuf al-Qaradawi, who has supported suicide bombings of civilians and defended rape, saying that "to be absolved from guilt, the raped woman must have shown some sort of good conduct."

He said that "foreign interference" in the Muslim world by Western powers had had an "impact on Muslims in the UK – the young in particular. It is no surprise therefore to see that a small minority of young British men and women have decided to join and fight alongside the extremists abroad, in recent times the so-called Islamic State, better termed as Da'ish."

Under Mr Kozbar's chairmanship Finsbury Park Mosque continues to host bigots, extremists and terrorist supporters. One of its other trustees, Mohammed Sawalha, is a leading activist and former commander in the terror group Hamas.

The mosque hosted as a guest-of-honour an Islamist leader, Abdullah Djaballah, who called on people to “wage holy Muslim war against the US and British invaders in Iraq.” Mr Djaballah was pictured with Mr Corbyn and Mr Kozbar on a visit to the mosque in 2014.

A regular preacher at the mosque, Fadel Soliman, says that wives who displease their husbands should be beaten, albeit that “the hitting must be done with a small stick”.

Mr Soliman ran a weekly lecture series at the mosque until six weeks ago.

Both Mr Kozbar and Mr Corbyn declined to comment when contacted by the Telegraph”.

2.2 The online version differs only as to the photograph and caption. The photograph shows the Claimant shaking hands with Jeremy Corbyn MP in front of a poster for the Muslim Association of Britain. The caption reads:

“Mr Corbyn captioned this photo on his Facebook page: “Really enjoyed Iftar supper at Finsbury Park Mosque with legendary Mohammed Kozbar and friends”.

2.3 All the above words are complained of, except (probably by oversight) the caption at 2.1 above. However, this is plainly part of the context and it was clear from the oral argument that the parties were content to treat it as part of the words complained of in respect of the paper version. In fact, given the identical text of the two versions and their serious content as considered below, I do not consider that the difference between the photo captions leads to any material difference between the overall meanings of the two versions.

3. THE LAW

3.1 Although the preliminary issue does not expressly say so, it is clear that what I am being asked to determine is the actual natural and ordinary meaning of the words complained of. No “true innuendo” is relied on. (I am not asked to determine whether the words are defamatory of the Claimant, but I propose to consider ruling on that issue immediately following the delivery of this judgment.)

3.2 There was no material controversy between the parties about the established legal principles applicable to this exercise, as carried out by a Judge sitting without a jury. The most recent summary is that of Nicklin J in Brown v. Bower [2017] EWHC 2737 (QB):

*“10. My task is to determine the natural and ordinary meaning of the words complained of. That meaning is the meaning that the hypothetical reasonable reader would understand the words bear. In assessing meaning, no evidence beyond the words complained of is admissible: **Charleston –v- News Group Newspapers [1995] 2 AC 65, 70 per Lord Bridge**. The same case establishes the principle that the ordinary reasonable reader is taken to have read the whole of a publication...*

*11. By this process, the Court arrives at the single natural and ordinary meaning that the words complained of 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 [1968] 2 QB 157, 173D-E per Lord Diplock**.*

*12. It is common ground that 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: **Slim 175F per Lord Diplock**).*

*13. There are several authorities which guide the Court as to the process of determining the single meaning. Drawing together earlier authorities, Sir Anthony Clarke MR in **Jeynes –v- News Magazines Ltd [2008] EWCA Civ 130** gave the following summary [14]:*

“(1) The governing principle is reasonableness.

(2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read 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 but as to this see Nicklin J's 15 below].

(3) Over-elaborate analysis is best avoided.

(4) The intention of the publisher is irrelevant.

(5) The article must be read as a whole, and any 'bane and antidote' taken together.

(6) The hypothetical reader is taken to be representative of those who would read the publication in question.

(7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, 'can only emerge as the product of some strained, or forced or utterly unreasonable interpretation'

(8) It follows that 'it is not enough to say that by some person or another the words might be understood in a defamatory sense'."

14. In *Simpson –v- MGN* [2015] EWHC 77 (QB) [10], Warby J noted the following in relation to the third and sixth *Jeynes* principles.

"As principle (3) indicates, the exercise is one of impression. As Eady J said in *Gillick –v- Brook Advisory Centres* (cited in *Jeynes* at [7]) 'Judges should have regard to the impression the words have made on themselves in considering what impact it would have made on the hypothetical reasonable reader'. Principle (6) requires the court to form a view on how the representative hypothetical reader of the particular publication concerned would be likely to understand the words, bearing in mind where in the publication the words appear; the reader's familiarity with the nature of publication in question; and any expectations created by that familiarity: see *John –v- Guardian Newspapers Ltd* [2008] EWHC 3066 (QB), [22]-[23], [32]. I would add, however, that this is an exercise which needs to be undertaken with care. The court can take judicial notice of facts which are common knowledge, but facts which are not need in principle to be admitted or proved, not assumed. The court should beware of reliance on impressionistic assessments of the characteristics of a newspaper's readership."

15. In *McAlpine –v- Bercow* [2013] EWHC 1342 (QB) Tugendhat J dealt with the approach of the court where there are two (or more) rival meanings that are said to be the natural and ordinary meaning [66]:

"... If there are two possible meanings, one less derogatory than the other, whether it is the more or the less derogatory meaning that the court should adopt is to be determined by reference to what the hypothetical reasonable reader would understand in all the circumstances. It would be unreasonable for a reader to be avid for scandal, and always to adopt a bad meaning where a non-defamatory meaning was available. But always to adopt the less derogatory meaning would also be unreasonable: it would be naïve."

16. The recent Court of Appeal decision in *Bukovsky –v- Crown Prosecution Service* [2017] EWCA Civ 1529 [13]-[16] emphasises the importance of the court having proper regard to the context in which the words complained of appear. 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).

17. Finally, I need to refer to what are called the *Chase* levels of meaning. 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 [2005] EWHC 2187 (QB), for example, Gray J found a meaning of "cogent grounds to suspect" [58]."

3.3 In the present case, the relevant factors to take into account in approaching the meaning of this article are as follows:

- a. It was published in the Sunday Telegraph, well known to be a serious broadsheet newspaper of Conservative leanings;
- b. Its typical reader is likely to be a person with some interest in and knowledge of current affairs;
- c. Specifically, such a reader is likely to be aware of the now familiar distinction in usage between the words "Islamic" (a neutral adjective for things connected with the Muslim religion) and "Islamist" (a pejorative term for Muslim extremism, generally political and often violent).

4. THE PLEADED MEANING

4.1 The Claimant's meaning, as set out in the Particulars of Claim, is that:

"The Claimant has dishonestly presented himself as a moderate and reputable Muslim figure when he is in fact a supporter of violent Islamic extremism who has praised and encouraged terrorism."

4.2 In his original letter of complaint, he had also complained of the meaning that he was "*a virulent anti-Semite who advocates the destruction of Israel by violent means*". That specific and serious allegation is not now pleaded, and in accordance with the principle set out by Nicklin J in his paragraph (12) quoted above I should not incorporate it into the meaning I find (though I leave open the question whether and to what extent the Defendant would be permitted to rely on such matters by way of defence if it chose to do so).

4.3 The Defendant has not yet pleaded any case on meaning, nor put forward a specific meaning which it invites me to find. (It does however accept in correspondence that the article states that the Claimant has praised and associated with “violent Muslim extremists” and has appeared to praise the recent waves of terrorist stabbings in Israel and to believe that violence by Palestinians against Israelis can be justified.)

4.4 It is implicit in the Claimant’s pleaded meaning, and became explicit in the course of argument, that there are two distinct strands to his complaint about the article:

- a. support for violent Islamist extremism and terrorism; and
- b. falsely claiming to be a moderate and reputable Muslim when he is not.

I shall consider the arguments on these two strands separately below, though I shall bear in mind before reaching my final conclusion on meaning that this is a single short article and that I must approach it from the standpoint of the hypothetical reasonable reader, who does not read his daily newspaper like a lawyer interpreting a contract.

5. SUPPORT FOR ISLAMIST EXTREMISM AND TERRORISM

5.1 Although this is much the more serious of the two aspects of meaning, it occupied less time in argument, perhaps because it is also much more prominent in the article.

5.2 The Claimant relies on the cumulative effect of a series of passages in the article, which he splits into three categories:

- a. His own alleged views and statements:
 - i. that he blames the UK for ISIL;
 - ii. that he wants to destroy Israel;
 - iii. that he praises (or appears to praise) terrorist stabbings of Israelis;
 - iv. that he praises as always truthful an extremist cleric and Muslim Brotherhood ideological leader (who in turn supports suicide bombings of civilians and defends rape);
 - v. that it was Western interference in the Muslim world which caused a small minority of young British Muslims to join ISIS and fight for it.

b. His leadership of the Mosque:

- vi. he is vice-president of MAB which is closely linked to the Islamist Muslim Brotherhood;
- vii. under his chairmanship the Mosque continues to host bigots, extremists and terrorist supporters;
- viii. a co-trustee there is a former commander in the terror group Hamas;
- ix. a guest of honour there was an Islamist leader who called for holy war against US and British troops in Iraq;
- x. a regular preacher there advocates wife-beating.

c. His refusal to provide the Sunday Telegraph with a comment when contacted.

(I do not accept that a reasonable reader would regard this as in effect an admission of guilt, as the Claimant contended. The press is not held in such high esteem as that, and a reasonable reader would understand that there are many good reasons why a person notified of a newspaper attack might prefer not to dignify it with a response.)

5.3 In response, the Defendant rightly pointed out that:

- a. in the passage about British Muslims joining “the so-called Islamic State, better termed as Da’ish”, it was clear that the Claimant was in fact critical of Islamic State, not supporting it; and
- b. the view (attributed to the Claimant) that the West had brought that situation about by its actions is one held by many respected people who in no sense support terrorism or extremism, so that it would not be defamatory of him to say that he held that view.

5.4 The Defendant also sought, wrongly in my view, to separate out each of these passages from the others and to show by over-close analysis that in most if not all cases readers would recognise that the words and actions attributed to the Claimant were innocent enough and that he was not answerable for the opinions of the other people referred to in the article. At the end of the day, however, what I must consider is the impression that the article as a whole would make on the hypothetical reasonable reader as above defined. Logical and linguistic analysis has its place in this exercise, but it is a minor one compared with the cumulative effect on the reader of the numerous instances of extremism, Islamism and terrorism with which this article plainly associates the

Claimant, both directly and indirectly. Juries are warned against "guilt by association" precisely because it is so natural for people to draw damaging inferences from a rogue's gallery of the kind in which this article places the Claimant.

5.5 It is important in the present climate to note that although the article links the Claimant with support for terrorism, it does not suggest or imply that he supports such terrorism in this country, rather the reverse given the tenor of his quoted words about young British Muslims who fight for Da'ish/ISIS. To leave that open would produce an even more serious meaning, which would not reflect the impression the article makes on the reasonable reader.

6. DISHONESTY, HYPOCRISY AND FALSE CLAIMS

6.1 On this aspect of the case the Defendant's arguments were the stronger. It rightly pointed out that at no point in the article is the Claimant shown as making any claims to be a moderate or reputable Muslim (as distinct from an extremist). All the remarks and associations attributed to him (except those concerning young Muslims joining Da'ish/ISIS) are either extremist in themselves or portrayed as such by their juxtaposition in the article with other aspects of extremism.

6.2 What the article actually says is that he claims that the Mosque has "turned over a new leaf under his leadership" by comparison with when it was the base of the notorious Abu Hamza. (As to him, I take judicial notice that, by reason of his dramatic hooks for hands blown off by a bomb and his long legal battles with the British government, he is one of the very few Islamist extremists and terrorist supporters well-known by name and reputation to the general reader.) At first sight this would appear to be a creditable achievement.

6.3 However, the next sentence begins with a "But" and leads into the string of extremist statements and associations set out at 5.2 (a) and (b) above. From these, taken as a whole, the reasonable reader would clearly draw the inference that the Claimant's "claims" were false, in that he had not led the Mosque to turn over a new leaf but had left it in an extremist position not much different than before. Nothing in the article suggests the

possibility of an innocent explanation for his making such a false claim about a matter within his own knowledge. I do not think the ordinary reader of the article would characterise this as dishonesty, which most people associate with financial misconduct; but I do conclude that they would regard it as two-faced or hypocritical, putting forward a false picture to conceal one's real motives.

7. THE NATURAL AND ORDINARY MEANING

For the above reasons, I conclude that the natural and ordinary meaning of the article, in each of its versions, is as follows:

- A. The Claimant is a supporter of violent Islamist extremism who has praised and encouraged Islamist terrorism abroad.**
- B. He is a hypocrite who has falsely claimed to have led the Finsbury Park Mosque away from Islamist extremism when as he well knows he has not done so.**
