

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

Between

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COLIN DAVID FULTON

Plaintiff

And

SUNDAY NEWSPAPERS LIMITED

Defendant

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MR JUSTICE DEENY

**Introduction**

[1] The plaintiff, Colin David Fulton, resides in an area of Belfast off the Donegall Road known as The Village. In his Statement of Claim it is said that he is "an active member of the Progressive Unionist Party but is otherwise unemployed".

[2] The defendant company publishes the Sunday World newspaper in Dublin. It has a Northern Edition sold in Northern Ireland. The plaintiff complains that this newspaper, between 26 August 2012 and 5 January 2014, published a series of articles about the plaintiff making allegations "of a serious, inflammatory and highly controversial nature". He does not sue for defamation but seeks damages and an injunction for alleged breach of his rights pursuant to Article 2 of the European Convention on Human Rights and for breach of "the protection from harassment" pursuant to the Harassment (Northern Ireland) Order 1997. He claims declarations in regard to those claims, costs and any further order deemed appropriate by the court.

[3] Mr Frank O'Donoghue QC appeared with Mr David Hegarty for the plaintiff. Mr Brett Lockhart QC appeared for the defendant. I am obliged to all counsel for their helpful oral and written submissions and conduct of the hearing before me from 21 to 24 and 29 September 2015.

## The Facts

[4] I propose to consider the articles complained of by the plaintiff which, with a number of other documents, were put in evidence by the parties at the hearing. I shall also deal with the oral evidence of the plaintiff and that of two journalists employed by the defendant newspaper, James Alexander (Jim) McDowell and Richard Sullivan.

## The Newspaper Articles

[5] The plaintiff complains of a long series of articles published in the Sunday World newspaper, Northern Edition. In fairness to him I propose to briefly describe these articles, the strongly worded and repeated nature of which is an important part of his case.

- (i) August 26 2012 - The plaintiff is to be seen immediately behind a 'Y.C.V.' band which was marching past St Patrick's Catholic Church, Donegall Street, Belfast in breach of a ruling by the Parades Commission. The plaintiff is not named.
- (ii) The plaintiff is just about visible in a crowd of men confronting police following the march. This was a crowd of men (with a few women) who would describe themselves as Loyalists. While this is a self-description that not all would find accurate for convenience I propose to use it in this judgment. Mr Fulton is again not named in the article of 2 September.
- (iii) September 9 2012. There is an article by both the journalists named above based around the same photograph of a confrontation between Loyalists and police and a part of the photograph shown on 26 August showing the plaintiff looking towards the cameraman. On this occasion the plaintiff is identified at two places. In the larger photograph he is captioned as "UVF Thug Colin 'Meerkat' Fulton". In the smaller photograph there is a caption as follows: "Gotcha: Colin 'Meerkat' Fulton watching with a banned YCV Loyalist band". In the text it is said that he is believed to be closely associated with Winston Irvine, an alleged company commander in the UVF, and also said to be close to another "senior UVF figure in the south of the city". It is said that he is "being tipped to take over as top dog in south Belfast when Eddie Rainey stands down".
- (iv) September 16 2012 - There is a picture of the plaintiff with the caption "UVF thug Colin 'Meerkat' Fulton marches with YCV band".

- (v) September 23 2012 – There is a headline “Village Idiot” – “Dopey UVF Commander Meerkat could kick off bloody UDA turf war”. In the text of the article below one finds: “This is the UVF’s so-called commanding officer called Meerkat who would put Loyalism back in a hole ...” “Our sources says that Meerkat and his mob are trying to steal from still occupied houses in Soudan Street and Broadway Parade ...”
- (vi) December 16 2012 – Below headlines one finds in the narrative: “Nicknamed the Meerkat he’s the so-called commanding officer of the UVF in the Village area of south Belfast”.
- (vii) December 30 2012 – There is a headline: “UVF drummed up a sectarian squabble”. The newspaper publishes the photograph of Colin Fulton which has appeared four times before but he is not mentioned in the narrative.
- (viii) January 27 2013 - “Doing the Splits”. There is a photograph with the caption: “Stirring it up ... UVF Gangster Colin Meerkat Fulton is agitating against the south Belfast UVF ...” In the text the plaintiff complains of the following statement: “Prominent among city centre protestors the south Belfast UVF thug Colin Meerkat Fulton”.
- (ix) March 3 2013 – “Punishment Squad uses Taser on Teenager’s Privates”. There is another photograph with the caption: “Under fire: Colin Meerkat Fulton has been linked to the attacks which families are reporting to Bunter Graham”. The narrative includes the following serious allegations. “A UVF mob used a Taser gun on a teenager’s privates in a so-called punishment attack... We can reveal the families were given personal assurances by UVF goon Colin Meerkat Fulton that they would only be spoken to ... Wearing his Progressive Unionist Party hat Fulton pledged if they went with him they’d be safe and be allowed home after answering a few questions. The boys were ordered into a room one by one. First was a 12 year old boy, confronted by five men, he was, according to well-placed Loyalist sources, thrown about a bit... The first 15 year old boy was beaten and ordered home but it was the third victim, also 15, who suffered most at the hands of the UVF mob...”
- (x) March 17 2013 – “UVF Sex Torture Boss”. “This is the UVF godfather who ordered a teenager to be tortured by being tasered on his private parts. Cops are now probing the vile sex crime. And Colin the Meerkat Fulton is the focus of their investigation ... A UVF punishment squad is facing child sex charges after using a Taser gun on a teenager’s privates. The Sunday World can reveal up to half a dozen UVF men are under investigation over an alleged punishment attack in which

three teenagers were beaten over allegations of anti-social behaviour..." The plaintiff's photograph appears both on the front page under the headline above and again on the inside page 11 of the newspaper.

- (xi) April 7 2013 - "Taser Gang beats up Boy Victim". There is again a photograph of the plaintiff and repetition of this allegation.
- (xii) April 14 2013 - There is, at page 24, a single column headed by a small photograph of the plaintiff linking the attack to an alleged recruitment of the victims by the UDA.
- (xiii) April 21 2013 - At page 4 of the newspaper there are two photographs of the plaintiff. There are references to him taking part in a parade under the headline "Meerkat fired by UVF bosses over warped sex attack on teen's privates". The suggestion is that he is to be removed by members of his own organization but also that his "mob" were suspected of being involved in a series of pipe bomb attacks across the city in recent months with several explosive devices found at a variety of locations including inside school grounds. One of the photographs shows Fulton taking part in a Loyalist march the previous day to mark the 100<sup>th</sup> anniversary of the creation of the original Ulster Volunteer Force in 1912.
- (xiv) April 28 2013 contains a new allegation against the plaintiff, under a photograph of him and another man captioned "The Heat is on Colin Meerkat Fulton and Psycho Stuart Lindsay". Here the headline is "Stool Pigeon". It alleges that Fulton was to be removed as second in command of the UVF in the Village but has been allowed to remain in a nominal role. It associates him with Stuart Lindsay who had a conviction for a "brutal unprovoked sectarian attack in south Belfast six years ago". In fact it is not in dispute that Lindsay was convicted of such an assault and sentenced, it seems, to nine years' imprisonment. The phrase 'stool pigeon' in the headline sometimes bears a certain meaning, but is not elaborated on in the articles as far as I can see.
- (xv) May 12 2013 - The plaintiff is again photographed on the front page beside the headline "UVF Mob Beat Prods". The story below alleges that a UVF mob launched a blood splattered attack on two Protestant girls and a Catholic friend because they brought a Catholic to a Rangers Supporters Club near the Village. Inside the newspaper there is a further photograph of the plaintiff underneath the headline "Meerkat Mobs Bloody Attack on Three Young Girls" giving further details about serious assaults on these three young women attending this club. The plaintiff is alleged to have been involved, unlike the previous story about the tasing of young boys. At least one of the

victims has spoken up here to Richard Sullivan of the Sunday World about what happened. On page 5 she is relied on as alleging "South Belfast UVF Goon Colin Fulton forced her to leave the Club where she was Assaulted Again". This incident was the subject of a subsequent prosecution of a friend of Fulton's.

- (xvi) June 30 2013 - Under a headline of "The Sale of Dangerous Ecstasy Tablets by the UVF and UDA" there is an allegation that "Village UVF Thug Colin Meerkat Fulton" organised a ceremony to unveil a mural in the Village area of the Donegall Road.
- (xvii) July 21 2013 - The very familiar photograph of the plaintiff appears again beside the headline "Scaredy Meerkat told to give up his Arms". Beneath that the sub-headline reads "UVF Blagger Scarpered Abroad after Chickening out of Twelfth Battles". The narrative reads, in part, as follows. "Baby-faced UVF Goon Colin Meerkat Fulton has been forced to hand over guns and ammo after he bottled out of the Twelfth Celebrations. The self-styled paramilitary chief boasted he would turn up the heat over the marching season and vowed to target dissident Republican rivals - but rather stay at home for the fight (sic) Meerkat scuttled off to Barcelona for a family holiday, the (sic) hopped over to Scotland to see his mistress and lovechild before taking off to Essex for a caravan holiday with his partner!". Further criticism of Fulton for stirring up an extreme response and not being there to stand over it follows and also the allegation that he was on his sixth holiday of the year, which he subsequently denied.
- (xviii) July 21 2013 - Under an overall headline of "Summer of War" it was alleged that Loyalist dissidents were planning a marching season mayhem of attacks and murder as police hunted for their guns and mortars. Previously used photograph of Fulton appears again with the allegation that he is driving a sinister arms race although pointing out that he himself was away on holiday in Spain and was to be away for the key period of tension around the Twelfth of July.
- (xix) August 4 2013 - In the course of an article dealing with UVF men and drug dealing Mr Fulton is again mentioned and there is a previously used photograph of him.
- (xx) August 11 2013 - The front page of the newspaper has a photograph of the plaintiff being arrested and handcuffed by the PSNI in the course of a Loyalist parade in the city centre which turned into violence - "cars hijacked, bars attacked, people hospitalized - proof that the paramilitary organization orchestrated and controlled seven hours of sickening street riots".

- (xxi) September 8 2013 - There is a brief reference to the plaintiff and Eddie Rainey alleging that they were defying the UVF leadership by engaging in the drugs trade and openly importing guns.
- (xxii) September 15 2013 - There is a somewhat different photograph of the plaintiff alleging that he was involved in setting up an illegal drinking den over a Chinese takeaway restaurant on Tate's Avenue in the Village which was then shut down by the UVF, it is alleged after exposure by the Sunday World.
- (xxiii) September 22 2103 - An enlarged version of the last photograph of Fulton surrounded by police officers and with the headline "Scaredy Cat -8 holidays away in '13 for Fulton!" This makes various allegations against the plaintiff including the fact that despite being unemployed he was on his eighth holiday of the year and associating him with crimes committed by the UVF.
- (xxiv) October 13 2013 - Includes the same photograph as the last two articles but this time now alleging that the UVF in south Belfast was locked in a bitter power struggle with an Eastern European crime gang known as the Russians.
- (xxv) November 3 2013 - There is an article about the finding of a UVF car bomb in Kilburn Street off the Donegall Road as part of an attempt to kill a "Russian crime boss" by planting a booby trap under his car. There is the same photograph of Mr Fulton at the foot of the article with the allegation that he and Rainey "are said to be fearful that the rival gang will force them out of business".
- (xxvi) December 8 2013 - This is predominantly about the alleged Russian crime boss running a drugs and vice empire in Belfast. The allegation is that the UVF are now working with or for him. There is the same photograph of the plaintiff saying that he and Rainey "had been left with egg on their faces at their failure to take on the invaders".
- (xxvii) December 29 2013 - Under the headline "Out with the Old ..." there are the photographs and names of a number of alleged paramilitary leaders including this plaintiff who is said to be running shebeens and drug running operations in defiance of the Shankill" i.e. the Shankill Road section of the UVF.
- (xxviii) January 5 2014 - In an article about the use of cocaine, heroin and crystal meth in Belfast there is a brief mention of the plaintiff.

## Evidence of the plaintiff

[6] I now turn to the evidence of Colin David Fulton who gave evidence before me on September 21, 22 and 23, 2015. He is a man of 39 years of age who has lived for virtually all his life in the Village area of Belfast. He gave his address to the court. He and his partner have five children. She lives with them at another house near the plaintiff's home. He also has a child from another relationship. He said that he had been unemployed for about 18 years.

[7] He had been a member of the Progressive Unionist Party since January 2010 but he was not a public representative. He did community work for the party on a voluntary basis co-operating, he said, with Policing Boards, the Housing Executive, other public bodies and the Police Service of Northern Ireland. In particular he worked with the Housing Executive on re-imaging the local area, trying to get down Loyalist murals and have more family friendly ones put up in their place.

[8] Strong reliance was placed on the fact that he had no criminal record and, with the exception of his arrest on suspicion of disorderly behaviour and rioting in 2013, had not been accused by the police of any other offences. That arrest in 2013 led to a court case where he was acquitted, I was told, because CCTV evidence did not bear out the suspicion of the arresting police officer that he had been guilty of rioting. It follows that he has not therefore been arrested for being a member of the proscribed organisation, the Ulster Volunteer Force. He denied being a member or leader of that or any paramilitary organisation. He has received several written notices from the police to say that there is a threat to his life. This threat notice from the police followed within a week of an incident which the plaintiff described. He said that he had been doing community work on the interface with "community representatives" from the Catholic side. He had joined a Village Focus Group in 2008 and he had been given or had a phone with which he rang the community representatives on the other side or the police to alert them to trouble. Shortly before this threat notice he phoned the community representative on the other side to complain that windows had been put in in the Village. His opposite number said that he did not want to confront the young people responsible for that. Mr Fulton complained to him that he and those with him confronted the young people on his side of the community divide and therefore his opposite number should do the same. But the community representative on the other side said "I don't want to get a dig in the gob" i.e. a punch in the face, from these people for reproving them. The plaintiff then says that he said to that man: "Perhaps we should be talking to dissident republicans then". The implication of this in the Northern Ireland context is that the man he was already talking to was associated with the Provisional IRA, or that part of the republican movement, which has been on ceasefire, largely, since 1997 as opposed to dissident republicans who are opposed to the current policy of engagement by Sinn Fein and engage in continued violence.

[9] He was taken through the lengthy series of articles about him by his counsel. It is unnecessary for me to recount in detail his comments on each of the many and

serious allegations made against him. His answer often was that they were “all lies”. But where there is objective evidence relevant to the defendant’s allegations I have fully taken into account his explanations.

[10] With regard to the photograph of him in the confrontation with the police holding riot shields he claimed that he was being pushed towards the shields having been walking with the last Loyalist band which was then the subject of a rush, he said by local Catholics. He was not arrested and had done nothing wrong. As set out above there were articles on 26 August and 2 September. He said he got a further threat notice from the police on 4 September two days after that second article saying the information that a criminal gang could take action against him. It was then clarified that that was served on 4 September. Neither side called any witness from the Police Service of Northern Ireland so I do not know when the information came into the hands of the police. The threat was specifically, the witness said, that he may be shot by dissident republicans. He was advised to take precautions.

[11] He denied that “Meerkat” had ever been his nickname. The first time he heard of it was when he read it in the Sunday World.

[12] He was asked about other men named in these articles. He said that “Winky” Irvine is the press officer of the PUP not of the UVF. It is common case that persons who were, at least in the past, active members of the UVF are prominent in the PUP. It is not an unlawful organisation and indeed had a member of the Assembly until recently. He was asked about his association with Eddie Rainey, named as commanding officer of the UVF in this area. He said he was also PUP and not UVF. He did not deny knowing him or Davy Andrews but did not know Johnny Bustard or Philip Lamont. With regard to matters dealt with in other articles in September and December he denied stoking up trouble. On the occasion of one incident where there were some 400 protestors he was just there. “I was the only person talking to the police”. With regard to the allegations on 30 December he said they were all lies. He admitted that he had gone to a “few” of the protests that took place over that winter apparently or ostensibly connected with the decision of Belfast City Council to reduce the number of days on which they would fly the Union flag over Belfast City Hall.

[13] With regard to the allegations in March 2013 that he had encouraged boys in his locality to meet with some UVF men who had then assaulted and tasered them he denied any involvement. He did not know B Graham who was said to be involved. No one had ever spoken to him about this or any such incident. He admitted that he did know Eddie Rainey. On 22 September he said that he had been to 5 or 6 city centre flag protests to show his support. (That might be thought to differ somewhat from his answer the previous day of a “few” protests).

[14] He gave evidence that he had been served with a further threat notice on 1 March two days before the article of 3 March. He himself linked the first threat to



his exchange with the Republican “community representative” not long before the threat was received. He did not buy the Sunday World himself but he was told about the article and he was sick, disgusted and very distressed about it particularly as a father of children. They were making up lies about him. He was never spoken to by the police about this alleged crime on the youth in the Village. He did admit that he knew Stuart Lindsay who was in fact his next door neighbour. This was the man with a conviction for a serious sectarian attack with a machete for which he had received a long sentence of imprisonment.

[15] He was asked to comment on the contention in the paper on 7 April that he was under pressure in his own community. He denied this but admitted that he did have security cameras erected at his house after he had been in the papers two or three times. The police did not put them up. He put them up with the assistance of a cousin to act as a deterrent to any attack.

[16] Further allegations were put to him such as the allegation that he was involved in a series of pipe bomb attacks. He said they did not have a good effect on his health. He was suicidal at one point and went to his doctor and got medications. No medical report was furnished to the court initially but the defendant accepted that that may have been the case. He denied having a bomb or making or storing pipe bombs.

[17] The allegations commenced in the Sunday World of 12 May 2013 are of particular importance as here there is no doubt that there was an incident which led to a successful prosecution. This was the attack on two Protestant girls and their Catholic friend in the Barrington Street Rangers Club off the Donegall Road. There was an allegation that the plaintiff was involved in this “sectarian attack”, with Matthew McGrath the main assailant. The plaintiff knew this man because he had played in a football team which the plaintiff said he had started. Counsel read out the parts of the article including the suggestion that the walls of the club were splattered with the blood of one of these young women, who is named in the article. The plaintiff replied that there was “no such incident”. Then he said there was an incident but he was not involved. There were cameras all over the club and they proved, after the police looked at CCTV, that he was not involved. He said that the club was part owned by the brother of Mr Jim McDowell. (This was not pursued subsequently in evidence.) He acknowledged that McGrath was prosecuted and ultimately pleaded guilty to an assault charge and received 150 hours community service and a fine of £800. He has not given an explanation of how Kristy Thompson named him as involved in this matter if he was not there.

[18] With regard to the next set of articles he denied that he had had six holidays in 2013. He had only been on holiday twice, a week in Spain and a further week or so at his aunt’s caravan in England. He then apologised and said no that he had been on three holidays because he had four further nights in Spain in September with his friends.

[19] He detailed receiving another threat warning from the police on or about 24 June 2013. He claimed that when these articles would appear in the Sunday World he would then go up to the police on the Sunday or the Monday at Lisburn Road Police Station and asked them if they wanted him for these alleged offences but they never did. He had not moved house because his children were at local schools. He denied that he had a mistress in Scotland with a child of his and, therefore, that he had gone to visit such a person that summer. He denied being Rainey's "side kick".

[20] Counsel read to him from the articles about the "bloody confrontation in Belfast City Centre" reported on August 11, 2013 between Loyalists and the police. He had admitted being there but did not recollect a number of the matters set out in the article.

[21] He denied being involved in the guns trade or the possession of firearms or running a drinking den or being aware of there being such a place on Tate's Avenue.

[22] With regard to the article of 22 September asserting, it seems wrongly, that he had eight holidays in 2013, one of the three men with whom he went to Lloret da Mar was his next door neighbour Stuart Lindsay, with the conviction for a grave sectarian assault.

[23] The allegations about holidays were along the lines that this pointed to him having an illegal source of income as he was a man living on state benefits. Consistent with the allegation was that he had paid for plastic surgery for the mother of his children. He admitted, with an understandable degree of embarrassment, that she had had a cosmetic procedure which he identified. She does not work either but she had saved up for it, he said. He did not contribute, he said.

[24] He denied being involved in some kind of turf war with Russian criminals. There was no truth in these allegations he said. He denied a later article alleging that he was now co-operating with the Russians. With regard to articles later in 2013 he again said that these were lies and asserted that he had been a law abiding citizen all his life who had been blasted by the Sunday World. It had had a very distressing effect upon him. He said his own brother was in a mixed marriage and that his step-mother was a Catholic. His grandmother was nearly 90 and living nearby. All this had caused tensions. He just wanted to be left alone. None of the articles were true of him save that he was in the PUP. His counsel raised with him the issue that he had a UVF flag hanging from his own house. He said that the flag was a centenary flag referring back to the founding of the UVF in 1912.

I pause there to make two observations on the high authority of Lord MacDermott, a member of the original U.V.F, who was later Lord Chief Justice of Northern Ireland. In his memoir, *Enriching Life*, one sees that that UVF was founded in 1913 not 1912.

He points out that there is no connection between it, however one regards it, and the terrorist gang which took its name.

[25] In January 2014 Mr Fulton had sought to obtain an injunction restraining the defendant from publishing any allegations that he was associated with the Ulster Volunteer Force. He acknowledged to his counsel in his evidence before me that he had made errors in his first affidavit, by failing to disclose his arrest on a charge of disorderly behaviour. The conclusions of Gillen J, as he then was, on this I shall return to in due course.

[26] With regard to his claim that there is an interference with his Article 2 right to life he was asked had there in fact been a killing of a Loyalist by dissident Republicans in recent memory. He said “no, just threats but no attacks that he was aware of”.

[27] Mr Fulton was cross-examined by Mr Brett Lockhart Q.C. He acknowledged that the newspaper had not published any details of his address or of his family. He acknowledged that the affidavits, four, previously sworn by him had not contended that he went to the PSNI every time he was named in these articles, about 2½ years ago. He acknowledged that the first threat warning he received from the police was before any photograph of him or article about him was published by the defendant. He accepted that his account of the exchange with the “community representative” about dissident Republicans was important in linking that exchange to the threat. He accepted that he had a duty of candour when applying for an injunction before Gillen J. He had no comprehensible answer as to why he had not disclosed that in his affidavits before the Judge. After a little time he suggested that that might be because there was “so many things at once”.

[28] At first he said that the PUP did not really have any link with the UVF. Then he admitted that the PUP did give guidance to the UVF and another Loyalist body. Mr Lockhart reminded him of the resignation of Ms Dawn Purvis from the party over events (including the murder of a Loyalist) which she considered indefensible. The plaintiff then admitted that the PUP had announced that it would maintain its link with the UVF. His evidence at this point, before the luncheon interval on 22 September, as at other times, was inconsistent and unimpressive. At one point he admitted that he did speak to the UVF in his area. Then he denied speaking to them and said he did know who the UVF were in the village. He then, inconsistently, said he had an idea of who they were. His account changed in several respects in this regard. It was put to him that he was representing the UVF at the unveiling of the new mural which had replaced an earlier more extreme mural. It was only after the luncheon interval and some further questions that he resorted to saying that he was not going to start naming UVF men in a Protestant area where he lived.

[29] Counsel then cross-examined him about his own volunteered evidence that in a prolonged riot around Broadway off the Donegall Road he had spoken to the

police. Again his evidence here was unconvincing and inconsistent as to why he took on that role.

[30] He was asked about the other people named in the articles as prominent members of the UVF. He admitted to knowing a number of these people. He agreed that although repeatedly named as members of the UVF they often had no convictions but themselves never sued over this allegation.

[31] Counsel put to him an extract from the evidence of Assistant Chief Constable Drew Harris to the Northern Ireland Affairs Committee of the House of Commons on 29 October 2013. In summary that was to the effect that although the leadership of the UVF at a certain level was committed to trying to take the UVF off the stage the membership in sizeable chunks, including in south Belfast, thought otherwise. Police saw “their involvement in serious crime, robbery, extortion and drug dealing, probably drug dealing being the principal source of funding.” Mr Fulton said he did not see this in the Village. He did not want his children on drugs. Nevertheless he was afraid of naming the UVF. He denied that the UVF harassed the areas in which they were strong or that they resorted to extortion. Inconsistently, when counsel put to him that people were frightened to give evidence against paramilitaries he agreed that was so. He agreed it was probably true especially in the village.

[32] He was cross-examined about flying the UVF flag outside his home. He emphasised that 1912, in smaller print I observe, was to be seen under the initials UVF and therefore he was referring back to the formation of that body and not to the current proscribed terrorist organisation. But he did admit to counsel that such flags were normally seen on lamp posts not on people’s houses. He admitted that his was the only one in his street. In the course of continued cross-examination I note him as saying that he was proud to identify with the Ulster Volunteer Force but he went on to indicate that he meant the original Ulster Volunteer Force from before the First World War.

[33] He was cross-examined about his foreign holidays, on the basis that they indicated that he had a source of illegal income over and above his State benefits. With regard to one holiday he named the precise sum that was spent on it for him and his family and claimed that his mother had paid this. He said she was a retired manager. With regard to his holiday in September 2013 with three men friends he said he did pay but that the holiday cost only £210 each because they were sharing a room. He does not smoke and does not drink much. The amount that his mother had given him seemed to vary each time that he was asked about it. He explained the medical condition which meant that he could not work and that he got about £900 a month in benefits. He claimed to have some difficulty with literacy and also to a degree of embarrassment in telling his ‘good looking young (female) solicitor’ some of these personal details which explained why they had not been in earlier affidavits. He was cross-examined at length about the articles published about him. I do not propose to go through that in detail but refer only to some salient features.

[34] He initially came to attention because he was photographed walking behind the YCV (Young Citizen or Conway Volunteers) band. In doing so he was not walking with the UVF but with the Royal Black Preceptory. He then admitted he was not a member of the Royal Black Preceptory. He was reminded that he had already been on notice of a threat at this time with which he agreed. He was then asked why did he not stay away from such an event if he had already been threatened, to which he gave no coherent answer.

[35] When cross-examined about the information that had been volunteered to the defendant about him he asked "Do they get paid? Do they do it for money?" I pause there to say that his answers to counsel increasingly took the form of other questions delivered in a competitive and aggressive way.

[36] It was put to him that many of the details reported to the Sunday World had in fact proven to be correct e.g. his wife's cosmetic surgery. He denied that the UVF were involved in drug dealing. Later he said that he was never aware of UVF punishment beatings in the last 3 or 4 years. That would not accord with the view expressed by the PSNI to the House of Commons put in evidence to the court on consent. When asked about the attack on the three young women in the Rangers Club he admitted that he knew McGrath (later convicted) but said: "I know nothing about the incident".

[37] It was put to him that contrary to his evidence that he was not at the protest with regard to flags on 3 February 2013 he had in fact been seen at that one by the defendant's journalist Mr Sullivan. He again denied that he was there.

[38] His cross-examination continued on 23 September. He confirmed that he was a friend of Stuart Lindsay and that he believed that he had received a sentence of 9 years' imprisonment for an attack with a machete on a Catholic. He admitted that he believed Stuart Lindsay had served a further 6 months in 2014 for possession of a knife, presumably in a public place. He admitted that Stuart Lindsay was one of the men he went on holidays with in September 2013. He was asked about the incidents on 16 October 2013 when it was put to him that Mr Sullivan had seen him heavily involved in apparently fermenting trouble on that day with the police. He said, more than once, that this was a lie. He was with Stuart Lindsay on that occasion. He denied following Mr Sullivan with Lindsay in a threatening manner.

[39] With regard to the covenant parade he agreed that there were many well-known UVF persons whom he knew or recognised from the press. Again with regard to his Article 2 claim it was put to him that he had done little to reduce the threat to him after he was warned by the police other than put up cameras. He claimed that he did not go out too much or by himself. It was put to him that he went to these Loyalist protests but he pointed out that in doing so he was consorting with other Protestants, with whom (implicitly) he felt safe.

[40] It was put to him that some 50 police officers had been injured in the riot on 9 August 2013 but he said that he had done nothing and had been acquitted of the charge against him.

[41] When it was put to him that he waited some 15 months before doing anything about these articles he claimed that he had tried to contact various organisations including Amnesty International. He had to admit that he had never mentioned this in the four affidavits that he had previously sworn and that there was no documentary evidence of any such attempt. When it was put to him that he was “enjoying his notoriety” he said no but laughed. With regard to the reference to him in the newspaper as a stool pigeon he said that was a term that meant a police informer.

[42] Counsel put to him an emailed letter from his present solicitors of 2 November 2013 to Mr Kieran Kelly for the defendants. In the fourth paragraph the letter says:

“We can now confirm that Mr Fulton was never charged with any offence.”

That was untrue. In the fifth paragraph of that letter counsel pointed out the letter went on to say that the plaintiff “has never been the subject of any threat up until the Sunday World named him as a criminal figure in the UVF”. The plaintiff admitted that that was a very misleading statement. It was, in fact, also untrue.

[43] On re-examination the plaintiff said that he had received more threats since 2014, perhaps three or four more from the police, one as recently as the previous Saturday. He also reported having a series of meetings with the late Gerry Conlon and Justice Watch Ireland who recommended Kevin Winters to him as a solicitor.

[44] At this point the plaintiff’s counsel put in evidence the plaintiff’s medical notes and records to support his claim for damages, pursuant to Art. 5 of the Protection from Harassment (NI) Order 1997, for anxiety caused by the defendant. The plaintiff said that he went to his doctor. He was already on medication but the doctor “juggled with it a bit”. He said that his doctor sent him to a psychiatrist, or counsellor, he did not know which. This had occurred maybe about 6 months ago. It was regarding the paper articles (sic). As Mr Lockhart had only just received these notes and records he was unable to cross-examine on them at that time.

[45] Mr Lockhart QC, on instructions, following his solicitor’s perusal over a short period of time of the notes and records, did put one matter to Mr Fulton. It transpired that there was a record of him complaining of threats to his life and being hyper vigilant on 15 April 2005. The plaintiff explained that this was because he was standing beside a man called Stephen Clarke when he was shot by the UVF. He could not explain why he knew it was the UVF. The bullet grazed his own chest. Mr Clarke survived. The matter was investigated by the police. In connection with

that he had some five psychiatric appointments, which the records suggest he did not attend.

[46] It was at this point that the records were put in evidence. There does seem to be a record of what Fulton describes including a referral for counselling. I also see in the records that he attended at least twice in 2014 with anxiety and lowered mood and on both occasions complained about the allegations in the press. He also seems to have had psychiatric referrals from time to time in 2013/2014 but also in 2009 and 2005 long before these articles.

[47] Mr Lockhart cross-examined him about the 2005 entry. It appears that he was complaining then, understandably, of hyper-vigilance, and was also sent for psychiatric appointments. I also note an entry for the 11 December 2002 which shows that he had a serious head injury in or about 1995 which was still causing him symptoms some seven years later. These symptoms included anxiety, stress and annoyance. That completed the plaintiff's evidence.

### **The defendant's evidence**

[48] The defendant called Mr Richard Sullivan who had been a journalist for 28 years, 18 of them with the Sunday World. He was the Deputy Editor of the Northern edition responsible for the news items, some of which he wrote himself.

[49] He said that the paper paid for information only on very very few occasions, perhaps twice in his 18 years. None of the information received about Mr Fulton had been paid for. The information came from a variety of sources. The paper had a clear trademark, in his view, of exposing paramilitaries and crime which attracted the provision of information. He was insistent on the strict confidentiality of his sources, something that Mr O'Donoghue did not seek to press him on. He was alert to the possibility of information having a vindictive motive. He and his colleagues would seek to "check and re-check items before writing or publishing". He himself had received threats over the years including three bullets in the post in 2013 and 2014. A picture of him had been published in the UVF magazine with crosshairs over his face. Bullets had been sent with a sympathy card from the South Belfast UVF.

[50] He had never heard of the plaintiff before 6 August but thereafter persons came forward who briefed him on Fulton's alleged activities. As the articles appeared more persons came forward with more information. Mostly it was from a core of trusted sources known to the witness.

[51] On the application of the plaintiff and on the direction of the court the defendant had belatedly discovered the notes made by Mr Sullivan and, insofar as they existed, by Mr McDowell, in a redacted form, relating to these articles. Mr Sullivan explained his working method which meant that the notes were not extensive because the information was often obtained by him in informal

conversations over a cup of coffee where it would have drawn attention to him and his source if he began writing notes. Some went straight on to the computer.

[52] Mr Sullivan went through in some detail the material that the paper had been given in relation to these various incidents. The picture that was being drawn for the court was that it was not the mere repetition of the original information but that fresh information about Mr Fulton or his associates of various incidents came to the newspaper. Where on checking it they believed it to be reliable they then reported it.

[53] Mr Sullivan described the incident in particular on 16 October 2013 where he believed that he was being "tailed" by three men after Mr Fulton spotted him. As part of his duties he attended many Loyalist protests and saw the plaintiff at a number of them including the one disputed by the plaintiff. He saw the police take the plaintiff aside on 19 August 2013.

[54] Mr Sullivan described the event of 9 August 2013. Among the persons they observed as well as the plaintiff and Edward Rainey was Clifford Peoples who had been sentenced to 10 years' imprisonment for directing terrorism. The demonstration turned into a riot with flagstones being broken up and thrown at the police. He saw police take Mr Fulton away but as I have mentioned he was not convicted of any offence.

[55] Mr Sullivan described his knowledge of the Ulster Volunteer Force and its leaders. He named a number of these to the court, apart from the plaintiff. He said such information as to their leaders was well-known, at least to journalists. Although naming these men repeatedly none of them had ever sued the newspaper for defamation. They included a number of persons whom the plaintiff had admitted to knowing. This witness referred to the evidence of ACC Drew Harris which he had referred to in his affidavit, commenting on the UVF being a significant crime organisation involved in drug dealing, extortion, loan sharking and intimidation.

[56] Mr Sullivan was cross-examined by Mr O'Donoghue on behalf of Mr Fulton. He said the Sunday World newspaper had in total a readership of some two point four million. He acknowledged that it was published for profit. He was queried why, if he was well-informed about the UVF, he had never heard of Mr Fulton until September 2012 when the paper accused him of being the UVF commanding officer in south Belfast. Mr Sullivan said that he worked closely with Mr McDowell and, at that time, another journalist on articles. He did not have any very satisfactory answer to Mr O'Donoghue's point. He accepted that he did not know whether or not this allegation was true but he did maintain that he believed it was true. It was based on the views of other well-informed persons. His sources were neither police informers nor members of the security forces.



[57] He denied that a decision was made to target this plaintiff. He denied that he invented the term “Meerkat” but said that that came from a source. It was then pointed out to him that the newspaper article of 9 September 2012 claimed that the plaintiff had been “dubbed Meerkat by the police”. Mr Sullivan said that was Mr McDowell’s information and not his. Mr Sullivan said there was a long tradition in Loyalist circles of having nicknames of which a number of examples have occurred in this case. He accepted that Fulton had never been asked to account for his activities by the police. The paper only reported allegations as facts if they believed them.

[58] Counsel for Fulton pressed Richard Sullivan on the basis that the paper did not give his client an opportunity to respond to or comment on these serious allegations. His answer to that was to the effect that it had not borne fruit in the past with people of that kind who dismissed the allegations or would make no comment, even if they were able to contact them. To physically seek them out and ask for comment face to face would invite physical retribution, it was later said.

[59] The witness was pressed with the point that the police had not prosecuted Mr Fulton for any of these matters. Mr Sullivan said that witnesses were terrified to speak out.

[60] Counsel pointed out a number of minor inconsistencies in what was being alleged against his client e.g. as to whether he was the officer commanding the UVF in South Belfast or maybe the second in command. Likewise Mr Sullivan accepted that with regard to the tasing one sentence in a report overstated the role of Fulton in the ill-treatment of this youth. Again counsel pointed out that as late as 21 April 2015 it was being suggested that Mr Fulton had been “fired” by the UVF. The witness had spoken to police on occasions about the plaintiff. They had a line of communication with the police.

[61] The defendant then called Mr James Alexander McDowell, known as Jim McDowell, on its behalf. He had recently retired as the Northern Editor of the Sunday World. He had been a journalist since 1968 and for some 11 years ran a press agency. He was invited to become Northern Editor of the newspaper some 25 years ago after the departure of Mr Jim Campbell.

[62] In his evidence in chief he spoke of the personal cost of the “very torrid and rough, albeit rewarding, ride which he had endured”. He had been beaten up outside the City Hall by the Ulster Volunteer Force. His colleague, Mr Martin O’Hagan, had been murdered 14 years ago. There were often threats against the journalists. The police patrolled constantly in their vicinity. His son had to give up employment for a time owing to threats from loyalists. The PUP knew of his personal hatred for all paramilitaries and refused to talk to him. He gave evidence that when confronting a loyalist he had been hit in the face on one occasion and threatened with a gun on another occasion. It was futile to speak to these people.

On an occasion when he attempted to do so, in the Royal Courts of Justice, he was greeted with expletives.

[63] He acknowledged that he had a paucity of notes but he retained much in his own head. He knew the village well and knew the Ed Rainey referred to in the articles. He had detailed knowledge of this man and of his predecessors and attended funerals with them. They did not make up information or nicknames about Fulton or other people but these came to him from sources. He would absorb the information to cross-check it and collate it before publishing it. He had heard of Colin Fulton before August 2012 but did not know of his rank. He made further allegations about his criminal past in giving evidence about him.

[64] He was cross-examined by Mr O'Donoghue. He accepted that the police had never once arrested the plaintiff for these matters but said he could not answer for the police. He said that the circulation of the newspaper, as opposed to its readership, was 47,600 in Northern Ireland, mostly in the east of the province. He accepted that with modern technology many of these articles would remain in perpetuity on the internet, although he himself had had some material regarding his own family removed and presumably others could do the same. He defended the methodology pointing out that they had been voted Northern Ireland Sunday Newspaper of the Year some 5 years in a row.

[65] He defended the paucity of his notes by saying that he was trained to retain matters and that they cross-checked any allegations before publishing them.

[66] The witness was ably cross-examined by Mr O'Donoghue about certain demonstrable albeit lesser inconsistencies in the articles e.g. whether it was the police who had nicknamed the plaintiff Meerkat or "his pals". On that topic he was adamant that he had not ascribed that label and that it may be that the plaintiff was called that nickname by both the police and his colleagues.

[67] He acknowledged that they had not reported Fulton's acquittal by the Magistrates' Court. He said that theirs was a Sunday Newspaper, not a daily newspaper of record. They did not have a court reporter. He could not recall specifically whether or not he was there at the time or conscious of that court hearing. Counsel pointed out that the hearing was the day after the injunction hearing against them. Mr McDowell repeated that theirs was a Sunday newspaper and that he could not recall the precise matter. He was cross-examined about the allegation in the newspaper of 18 April 2013 that his client was a "stool pigeon" and appreciated that one of the meanings of that was of him being a "tout".

[68] In answer to a question from the court he said that he did speak to the police about these matters. In particular if he garnered information in advance of a crime he appreciated his first duty was to inform the police. He spoke to the police, both in the past and nowadays frequently, sometimes on social occasions.

## The law

[69] The main thrust of the plaintiff's case related to a civil claim pursuant to The Protection from Harassment (Northern Ireland) Order 1997. The secondary claim was in foot of Article 2 of the European Convention on Human Rights, the right to life.

[70] I begin by setting out the relevant provisions of the 1997 Order which accord in substance though not in their numbering with the Protection from Harassment Act 1997.

[71] Article 3 of the Order reads as follows:

"3.—(1) A person shall not pursue a course of conduct—

- (a) which amounts to harassment of another; and
- (b) which he knows or ought to know amounts to harassment of the other.

(2) For the purposes of this Article, the person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.

(3) Paragraph (1) does not apply to a course of conduct if the person who pursued it shows—

- (a) that it was pursued for the purpose of preventing or detecting crime;
- (b) that it was pursued under any statutory provision or rule of law or to comply with any condition or requirement imposed by any person under any statutory provision; or
- (c) that in the particular circumstances the pursuit of the course of conduct was reasonable."

[72] Article 4 of the Order creates an offence of harassment and Article 5 provides a civil remedy which the plaintiff seeks to avail of here. He contends that he is a victim of the course of conduct in question who should be awarded damages for

“any anxiety caused by the harassment and any financial loss resulting from the harassment” (Article 5(2)). There is no claim for financial damages in this case.

[73] The leading authority on the topic is that of Thomas v News Group Newspapers Limited and Another [2001] EWCA Civ. 1233. Lord Phillips MR delivered the judgment of the court with which Jonathan Parker LJ and Lord Mustill agreed. It was an appeal by Newspapers Limited from the decision of HHJ Cox to refuse to strike out a claim under the Protection from Harassment Act 1997. The plaintiff had been criticised in The Sun newspaper for reporting two police sergeants for apparently racist remarks made within her hearing when she worked as a clerk in a police station in south London.

[74] The Master of the Rolls drew attention to Article 10 of the European Convention on Human Rights on which the newspaper relied.

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

[75] He further drew attention to Section 12(4) of the Human Rights Act. Blackstone’s Human Rights Digest, 2001, paragraph 5.2 quotes the then Home Secretary in the House of Commons to this effect with regard to Section 12. “We have taken the opportunity to enhance press freedom in a wider way than would arise simply from the incorporation of the Convention into our domestic law.”

The relevant provision quoted by Lord Phillips reads:

“The court must have particular regard to the importance of the Convention right to freedom of

expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to –

- (a) the extent to which –
  - (i) the material has, or is about to become available to the public; or
  - (ii) it is, or would be, in the public interest for the material to be published;
- (b) any relevant privacy code.”

His Lordship quoted further dicta from the Strasbourg Court and the House of Lords emphasising the importance of this right in a democratic society.

[76] I set out the more salient paragraphs of his judgment with relevance to the case before me.

“[29] Section 7 of the 1997 Act does not purport to provide a comprehensive definition of harassment. There are many actions that foreseeably alarm or cause a person distress that could not possibly be described as harassment. It seems to me that section 7 is dealing with that element of the offence which is constituted by the effect of the conduct rather than with the types of conduct that produce that effect.

[30] The Act does not attempt to define the type of conduct that is capable of constituting harassment. "Harassment" is, however, a word which has a meaning which is generally understood. It describes conduct targeted at an individual which is calculated to produce the consequences described in section 7 and which is oppressive and unreasonable. The practice of stalking is a prime example of such conduct.

[31] The fact that conduct that is reasonable will not constitute harassment is clear from section 1(3) (c) of the Act. While that subsection places the burden of proof on the defendant that does not absolve the claimant from pleading facts which are capable of

amounting to harassment. Unless the claimant's pleading alleges conduct by the defendant which is, at least, arguably unreasonable, it is unlikely to set out a viable plea of harassment.

The nature of reasonable conduct.

[32] Whether conduct is reasonable will depend upon the circumstances of the particular case. When considering whether the conduct of the press in publishing articles is reasonable for the purposes of the 1997 Act, the answer does not turn upon whether opinions expressed in the article are reasonably held. The question must be answered by reference to the right of the press to freedom of expression which has been so emphatically recognised by the jurisprudence both of Strasbourg and this country.

[33] Prior to the 1997 Act, the freedom with which the press could publish facts or opinions about individuals was circumscribed by the law of defamation. Protection of reputation is a legitimate reason to restrict freedom of expression. Subject to the law of defamation, the press was entitled to publish an article, or series of articles, about an individual, notwithstanding that it could be foreseen that such conduct was likely to cause distress to the subject of the article.

[34] The 1997 Act has not rendered such conduct unlawful. In general, press criticism, even if robust, does not constitute unreasonable conduct and does not fall within the natural meaning of harassment. A pleading, which does no more than allege that the defendant newspaper has published a series of articles that have foreseeably caused distress to an individual, will be susceptible to a strike-out on the ground that it discloses no arguable case of harassment.

[35] It is common ground between the parties to this appeal, and properly so, that before press publications are capable of constituting harassment, they must be attended by some exceptional circumstance which justifies sanctions and the restriction on the freedom of expression that they

involve. It is also common ground that such circumstances will be rare.”

[77] It is also right to quote his comment in conclusion, having found that the plaintiff/respondent there had an arguable case the articles constituted an incitement to racial hatred.

“On my analysis, the test requires the publisher to consider whether a proposed series of articles, which is likely to cause distress to an individual, would constitute an abuse of the freedom of press which the pressing social needs of a democratic society requires should be curbed. This is a familiar test and not one which offends against Strasbourg requirement of certainty.”

[78] This legislation and Thomas were considered by Weatherup J, as he then was, in King v Sunday Newspapers Limited [2010] NIQB 107. That was a claim again by a Loyalist against the Sunday World Newspaper. Harassment made up a part of the claim there. The judge found the following at [43]:

“The central theme of the articles reflects the reporting of matters of legitimate public interest concerning criminal activity and criminal lifestyle. The truth of the central theme of the articles was not an issue in these proceedings. I am satisfied as to the bona fides of the defendant in advancing the central theme of the articles.”

[79] The judge went on to note that there were inaccuracies in the articles. He reached his conclusion as follows:

“[46] The present case is not attended by some exceptional circumstance which justifies sanctions and the restriction on the freedom of expression that they involve. Nor does the publication of the series of articles constitute an abuse of the freedom of press which the pressing social needs of a democratic society require should be curbed. Overall, on the question as to whether or not this series of articles constituted reasonable conduct, I am satisfied that they did and that they did not amount to harassment of the plaintiff.”

[80] Drew Robert King then appealed that decision to the Court of Appeal in Northern Ireland which gave its judgment in King v Sunday Newspapers Limited

[2011] NICA 8. Girvan LJ delivered the judgment of the court with which Higgins and Coghlin LJJ agreed. Girvan LJ dealt with the topic of harassment at [34] and the following. At [36] he said this, following citation of Article 3(3) of the 1997 Order:

“While the provisions of the Order are capable of applying to this series of newspaper articles and while the judge justifiably concluded that the articles would have caused alarm and distress to the appellant (and must have been intended to do so), in a case of harassment a plaintiff must show that the conduct was oppressive and unreasonable.”

[81] Mr O’Donoghue QC submits that Girvan LJ fell into error at that point. The normal implication of Article 3(3) would be that the burden was on the defendant to show that in the particular circumstances its pursuit “of the course of conduct was reasonable”. Indeed Lord Phillips MR expressly found the burden to be on the defendant in that regard at [31] of Thomas.

[82] I must accept the force of this submission but it does not render the decision as a whole per incuriam because the court cited with approval the decision of the Court of Appeal in England in Thomas. Counsel suggest that the court was led into this error by the summary of relevant matters set out in Dowson v Chief Constable of Northumbria Police [2010] EWHC 2612.

[83] If one separates out the issues when the burden of proof changes what are the issues the court must decide before finding in favour of the plaintiff in a claim of this kind for damages under the 1997 Order?

- (i) Was there a course of conduct i.e. conduct on at least two occasions? Conduct includes speech or writing.
- (ii) Did the defendant know, or ought he to have known that the course of conduct would amount to harassment of the other i.e. what a reasonable person in possession of the same information would think amounted to oppressive behaviour or conduct likely to distress, wear out or cause anxiety to the plaintiff?
- (iii) Did the course of conduct in fact cause anxiety to the plaintiff justifying an award of damages under Article 5 of the Order?

[84] If these matters are established has the defendant, nevertheless, shown that it was entitled to have paragraph (1) of the Article 3 disapplied because its course of conduct was within one of the three defences set out at paragraph 3(3) i.e. –

“(a) That it was pursued for the purpose of preventing and detecting crime;



(b) That it was pursued under any statutory provision or rule of law or to comply with any condition or requirement imposed by any person under statutory provision;

(c) That in the particular circumstances the pursuit of course of conduct was reasonable.”

This might be an alternative way to set the matter out from the compendious approach adopted in Thomas and King. Out of caution I shall address the evidence under both the approach binding on me and this possible alternative approach.

[85] As the articles here concern alleged criminal activity and criminal lifestyle it is right to recall that the defendants did not seek to rely on the defence open to them under Article 3(3)(a) i.e. that the course of conduct “was pursued for the purpose of preventing or detecting crime.” Although not expressly referred to in the submissions I presume they were accepting the view of Walker J in EDO MBM Technology Limited v Axworthy [2005] EWHC (QB) 2490, [53], to this effect.

“I conclude that to rely on s. 1(3)(a) a defendant must have intended to prevent a crime that was both specific, in a sense that a particular victim or victims and a particular danger could be identified, and immediate and imminent.”

[86] The decision of the judge in King v Sunday Newspapers Limited was based on his finding of the “bona fides of the defendant in advancing the central theme of the articles” [43]. I do not think it is safe to conclude from that that the learned judge was saying that good faith on the part of the defendants was sufficient in itself to make a finding of reasonable conduct on their part. Somebody may believe grave allegations in good faith and yet their belief may be utterly unreasonable and their pursuit of such allegations, in the press or otherwise, equally unreasonable. I conclude that his paragraph [46] conveys a wider test.

[87] It seems to me that, as contemplated by the Court of Appeal in their judgment and their citation of Simon J in Dowson v The Chief Constable of Northumbria Police [2010] EWHC 2612 (QB) that a measure of objective judgment is appropriate. It follows from that that it is not only a matter of the good faith of the defendant. There must be a factual basis for that belief.

[88] I remind myself that membership of a prescribed organisation such as the Ulster Volunteer Force is a criminal offence. Mr Fulton is accused by the defendant in these articles of many criminal offences. I make no finding of criminal or civil liability in this case which binds me or another court in any other proceedings. The

conclusions which I make are merely sufficient to deal with the issues in these proceedings before me.

[89] What constitutes harassment was considered by Maurice Kay LJ in Veakins and Kier Islington Limited [2009] EWCA Civ. 1288. He reviewed the relevant appellant decisions including Majrowski v Guy's and St Thomas' NHS Trust [2007] 1 AC 224; Alan v London Borough Suffolk [2008] EWCA Civ. 1478 and Ferguson v British Gas Trading Limited [2009] EWCA Civ. 46. This case was in the employment context. He concluded at paragraph [15] that the evidence in that case "crosses the line into conduct which is oppressive and unreasonable". He puts it slightly differently in the conclusion:

"I found the conduct in this case to be 'oppressive and unacceptable' but I have done so in circumstances where I have described it as 'extraordinary'. I do not expect that many work cases will give rise to this liability."

## Conclusions

[90] Bearing those comments on the relevant legal principles in mind I reach the following findings. The series of articles constituted a course of conduct towards the plaintiff. The articles were such that the defendant would have known or ought to have known that they would cause distress and anxiety to the plaintiff. I find that they did have such an effect. To that extent they were prima facie oppressive.

[91] However, the defendant has satisfied me pursuant to Article 3(3)(c) that its conduct in publishing the articles was nevertheless reasonable. Such a finding must be based on the circumstances of this particular case, per Lord Phillips in Thomas at [32]. I reach that conclusion for the following reasons. Given that it would be inappropriate for me to reach any firm findings on the truth of allegations in the articles it is appropriate to express those reasons in a summary form.

[92] Firstly, having heard the two experienced and courageous journalists concerned I am satisfied that they were acting in good faith in publishing the articles. Although their sources were anonymous to the court they were known to the journalists and were cross-checked by them. I do not consider that their motivation was vindictive but was to expose criminal conduct and wrongdoing.

[93] Secondly, in arriving at that conclusion I have taken into account the evidence of Mr Fulton. It is not evidence on which I would feel it safe to rely having had the opportunity of considering his answers and his demeanour over an extended period in the witness box. It can be seen from above that many of his answers were inconsistent and contradictory. He had caused his solicitors to make false statements in correspondence. When pressed by Mr Lockhart for the paper he resorted to a

brazen assertion that the allegations were “all lies.” Under pressure he reached for explanations that had never been raised before by him or those acting for him. He was not convincing in his denials of many allegations.

[94] Thirdly, while there are undoubtedly some inaccuracies demonstrated in the articles, and while I do not make any finding of fact on the truth of those matters in dispute, for the reasons outlined above, it is right to say that some matters which are not in dispute, shore up and sustain a finding that the defendant’s conduct was reasonable in making allegations of this nature against this plaintiff. Mr Fulton is admittedly a member of the Progressive Unionist Party which, after initial denials, he admitted had links with the UVF. He attended at least five marches attended by and sometimes organised by UVF members. He knew and associated with a considerable number of people alleged to be members of the UVF who had never sued to deny such allegations. He was a close friend of one man with a serious conviction in the past for a grave sectarian attack whom he admitted had a more recent conviction warranting a further period of imprisonment. He flew the only UVF flag in his street. While not necessary for my own findings I note the adverse conclusions reached by Gillen J, as he then was, at [2014] NIQB 35.

[95] I take into account the strongest point argued on his behalf. This is that he has never been arrested or questioned by the Police Service of Northern Ireland about these serious allegations. Mr Lockhart, for the defendant, submits that there may be many reasons for that. What is certainly the case is that the police for good operational reasons could choose not to arrest this particular individual. Another possibility is that they or the state authorities are at fault in addressing these alleged paramilitaries and ought to be investigating him and others about these matters. Various possibilities exist to explain their inaction, including a difficulty with witnesses. The fact that they have not interviewed him does not deter me from reaching my conclusions here.

[96] I note that he has not opted for the obvious remedy of suing for defamation. His counsel says that is because there is no legal aid for defamation. That is what the legislature has determined. This legislation was not enacted to circumvent that provision in law. I conclude that he is not entitled to the civil remedy of damages as the statutory tort of harassment has not been proved on his part. I observe that one could reach that finding on rather less material than the defendant was able to adduce in this case.

[97] For the avoidance of doubt, in applying the test formulated by Lord Phillips, I do not consider that this series of articles, although likely to cause distress to an individual, do in fact constitute an abuse of the freedom of press which the pressing social needs of a democratic society require. Rather they are to be seen as a robust expression of press freedom which the courts have a duty to protect.

## **Article 2 of the European Convention on Human Rights**

[98] I also reject the complaint on the part of the plaintiff that the defendant was in breach of his Article 2 rights. The first threat notice he received was before there was any reference to him by this newspaper. As professing to be a member of an illegal organisation is in itself a criminal offence it would be inappropriate for me to express a view regarding that in light of the plaintiff's conduct. Suffice it to say, for these purposes, that he has failed to take a number of obvious steps on his own part with regard to his right to life but, on the contrary, has continued to be prominent in the role as a representative of Loyalism in the Village area and at demonstrations and in his associations and activities. I formed the view that he did relish his notoriety, as counsel put to him. It is the facts which lead to the threats more than the reporting of facts or allegations made in good faith by experienced journalists.