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Judgment: approved by the Court for handing down
*(subject to editorial corrections)**

Delivered: **25/02/2014**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

SIR GERRY LOUGHRAN

Plaintiff;

-and-

CENTURY NEWSPAPERS LIMITED

Defendant.

GILLEN J

Introduction

[1] This judgment concerns applications by both the defendant and the plaintiff in proceedings for defamation brought by Sir Gerry Loughran who was Permanent Secretary of the Department of Economic Development in the period 1991 to April 2000 and subsequently Head of the Northern Ireland Civil Service and Secretary to the Northern Ireland Executive. The plaintiff contends that the News Letter, a daily newspaper which is published by the defendant, on 23 May 2012 published articles on pages 8 and 9 of that edition (hereinafter called the first and second articles), on-line at www.newsletter.co.uk and in a post on the Twitter account (hereinafter called "the tweet") of a journalist employed by it namely Sam McBride containing defamatory material and comment about him. The impugned material and comment was based on extracts from the Public Accounts Committee of the Northern Ireland Assembly "Report on the Bioscience and Technology Institute" (the "Report") together with the minutes of proceedings relating to the Report and the minutes of evidence which have been ordered to be published by the Public Accounts Committee. The headlines in the first and second articles were respectively "Call in PSNI over suspected fraud, say MLAs" and "Retired top civil servants involved". The online versions of these articles are identical to the hardcopy equivalents. The tweet published by Mr McBride reads "Top Belfast doctors and

two former heads of the civil service involved in saga which MLA's suspect involved fraud".

[2] The Report concerned the cross-party Public Accounts Committee (PAC) investigation into the Bioscience and Technology Institute (BTI) which had been set up in 1998 as a not for profit company to provide a cutting edge building for new biotech companies to use as a base. In the Report a large number of criticisms were made of the BTI and in addition of Invest NI and officials of the Department Enterprise, Trade and Investment (DETI) for their alleged incompetence and mismanagement of the project. In the second article under the heading "Retired Top Civil Servants Involved" it, inter alia, drew attention to the fact that the plaintiff had been Permanent Secretary in the DETI up until April 2000 and had been "named in the ….. Report because of … involvement with the BTI project".

[3] The defendant, by way of summons dated 16 September 2013, firstly sought an order that the question whether the articles published by the defendant, including the words complained in this libel action, on pages 8 and 9 of the issue, on-line and by Tweet were as a matter of law a fair and accurate copy or extract of matter published by or on the authority of the Northern Ireland Assembly and were therefore protected by statutory qualified privilege pursuant to Section 15 of the Defamation Act 1996 and Schedule 1, paragraph 7 thereto. The issue was to be determined by this court as a preliminary issue. I have already handed down a judgment in that matter in which I determined that the contents of the first article attracted qualified privilege.

[4] Secondly, consequent upon my determination of this preliminary issue, the defendant seeks a ruling striking out the allegations of malice contained in the proposed amended Reply. Essentially this contention was founded on my discretion to refuse to permit the pleadings in the proposed amended Reply relevant to the plea of malice but the arguments had all the hallmarks of an application under Order 18 Rule 19 of the Rules of the Court of Judicature (Northern Ireland) 1980, to strike out those pleadings as disclosing no reasonable cause of action on malice.

[5] The plaintiff, pursuant to Order 20 Rule 5 of the Rules of the Court of Judicature (Northern Ireland) 1980, seeks by way of a summons and affidavit, leave to further amend his statement of claim and in addition, although not by way of summons, to bring an application to amend his Reply served in response to the defence. I have copies of the proposed amended pleadings before me.

[6] Although in this judgment I am outlining my decision on the general issue of malice first, in the event I heard all the applications together and thus it is merely a matter of convenience that I have dealt with malice before turning to the proposed amendments.

[7] Mr Ringland QC appeared on behalf of the plaintiff in this action with Mr McMahon. Sir Edward Garnier QC appeared on behalf of the defendant with

Mr Scherbel-Ball. I am once more indebted to counsel for their well-pitched expositions in oral argument and diligently researched written skeleton submissions.

Background to the issue of malice

[8] The defence in this matter was served on 22 February 2013 asserting, inter alia, statutory qualified privilege pursuant to Section 15 and Schedule 1 of the Defamation Act 1996. The plaintiff served a Reply on 6 July 2003 which at paragraph 3.6 pleaded that the publications were malicious. Particulars of the allegation followed. On 18 October 2013, the plaintiff's solicitors forwarded to the defendant's solicitors a draft amended Reply together with their intention to seek permission to amend. For ease of reference I shall now set out the original particulars together with the proposed amendments by means of a line through the proposed deleted original pleading and the additional proposed materials in italics.

> "Particulars
>
> (a) The author of the article (Mr McBride) is a journalist who at all material times was employed by the defendant and for whom the defendant is vicariously liable.
>
> (b) Mr McBride ~~had no honest belief in publishing the words complained of~~. *published or caused to be published the said words knowing they were false or recklessly not caring whether they were true or false.*
>
> (i) Mr McBride was provided with correspondence from DETI on 21 May 2012 that was to be read in conjunction with the Report. The said correspondence highlighted the fact that the Report recorded the plaintiff as being Permanent Secretary to November 2000 and clarifies that this should be "April 2000".
>
> (ii) Mr McBride was aware of this clarification as the Article entitled "Retired Top Civil Servants involved" records that the plaintiff was the Permanent Secretary up to April 2000.
>
> (iii) Even a cursory consideration of the Report and/or the chronology of main events at Appendix 3 to the NIAO report prepared by the Comptroller and Auditor General would have revealed that the only material event that

occurred in the course of the plaintiff's tenure was the letter of 21 December 1999.

(iv) Having regard to the respects in which he misrepresented its content and meaning (as to which see paragraph 3.5) Mr McBride had, in fact, clearly read the Report. The inaccuracies and unfairness in the publications were not, therefore, the product of mere negligence.

(v) In the premises, ~~at no time did~~ Mr McBride ~~have any or any sufficient grounds for honestly believing~~ *knew* that the allegations contained in the publications *did not* constitute a fair or accurate copy of or extract from the report ~~or~~ *knew* that the allegations against the plaintiff were *un*true *or he was reckless, not caring whether they were true or false.*

(vi) Notwithstanding the foregoing, and although the defendant is aware that the publications were both unfair and inaccurate, the defendant has not made or offered any correction or apology to the plaintiff in respect of any of the words complained of, but has instead sought to defend the publications as being accurate and fair.

(vii) The plaintiff will amend these particulars, if necessary, after disclosure (inter alia) of Mr McBride's notebooks, computer records and draft articles."

<u>The Defendant's Case</u>

[9] Sir Edward Garnier made the following points on this issue:

1. It is too late in the day for the plaintiff to now allege actual knowledge or recklessness.

2. The particulars of malice are incapable of sustaining the pleading that Mr McBride knew what he published was false or was recklessly indifferent to the truth.

3. The particulars epitomise "neutral" circumstances which fall far short of an allegation of dishonesty.

4. The particulars accuse Mr McBride of failing to read Appendix 3 of an entirely separate 100 page report of the Northern Ireland Audit Office on 29 November 2011 which allegedly showed that the plaintiff had only limited involvement in the BTI debacle before he left DETI in April 2000. It would undermine the concept of statutory qualified privilege if the defendant's journalists were expected to read this entirely separate and lengthy government report and evaluate the two reports together considering their consistency and differences. Whilst it may be evidence of carelessness, it is not evidence of malice.

5. The inaccuracies and unfairness of which the plaintiff complains are again at best negligence or carelessness.

6. A failure to apologise is not evidence of malice.

7. There is a complete absence of any indication of motive or reason why the defendant should deliberately and knowingly set out to injure the plaintiff.

8. The plaintiff is attempting to assert disproportionately high meanings and then assert that Mr McBride could not have had any honest belief in those meanings.

9. Accordingly this court should refuse leave to amend the Reply and or in the alternative strike out the pleading of malice in toto.

<u>The Plaintiff's Case</u>

[10] Mr Ringland on behalf of the plaintiff made the following points:

1. Any issue of fact should only be withdrawn from the jury if a finding on this issue in favour of the plaintiff would be perverse.
2. The tweet by Mr McBride is in any event in a wholly separate category from the articles. It is a separate publication by Mr McBride on his twitter account for his own interest.
3. In asserting that the plaintiff was suspected of fraud Mr McBride knew that what he said was not true or was indifferent as to its truth or falsity.
4. Cursory consideration of the report and/or the chronology of the main events at Appendix 3 to the NIAO Report would have revealed that the only material event that occurred in the course of the plaintiff's tenure was a letter of 21 December 1999. That letter contained 13 pre-conditions and 4 conditions. In respect of that issue the PAC recommended: "That the Department and Invest NI revise their guidelines to ensure that selective financial assistance is not offered even on a heavily conditional basis to a project with a poorly developed business plan.

5. The NIAO Report underlies the PAC Report and could not be considered entirely separate from it. It would be sufficient to refer to the chronology to the NIAO Report. The timeline of the plaintiff's limited involvement and the failure to make an obvious enquiry about it in relation to the plaintiff renders Mr McBride consciously indifferent to the truth or falsity of his statement that the plaintiff was suspected of fraud.
6. The plaintiff asserts that in these circumstances it is clear from the recommendation that the Department in issuing the letter of offer of 21 December 1999 operated within the existing guidelines.
7. Failure to make available enquiries may be evidence from which it may be inferred that a defendant was consciously indifferent to the truth or falsity of the statement.
8. The tweet is more consistent with the existence of malice than its non-existence.
9. The statement in the second (non-privileged) article that the plaintiff was named in the report because of his involvement with the BTI project, had been Permanent Secretary and went on to become Head of the Civil Service is not in itself defamatory but it conveys a defamatory imputation in the context of the first article that reports that retired top civil servants were suspected of fraud in relation to the BTI project.
10. By asserting in the second article that the plaintiff was named in the report as a result of his involvement with the BTI project, the defendant effectively adopted the privileged material as its own statement.
11. The tweet is not protected by statutory qualified privilege. It asserts that two former heads of the Civil Service were involved in a saga which MLAs suspect involved fraud. The amended amended Statement of Claim identifies persons who read the tweet and the articles and identified the plaintiff. The tweet referred to the plaintiff without reference to the second article.

Principles Governing Malice

[11] I commence by declaring that I am conscious of the overriding objective set out in Order 1 Rule 1A of the Rules of the Court of Judicature (Northern Ireland) 1980. It is important that time and money, and especially public time and money, should be prevented from being wasted if there is no prospect of success. A judge is under a duty to withdraw a case of malice if no jury, properly performing its task and properly directed could uphold such a finding. As I shall indicate later in this judgment, in this new climate late applications for amendments will no longer be readily allowed especially where there is a risk of loss of a trial date.

[12] In the course of their skeleton arguments and submissions to me, counsel identified a number of authorities relevant to this issue. These included:

Webster v British Gas Ltd [2003] EWHC 1188 (QB)
Bray v Deutsche Bank AG [2008] EWHC 1263 (QB)

Seray-Wurle v Charity Commission of England and Wales [2008] EWHC 870 (QB)
Bokker v RSPB [2011] EWHC 73
Thompson v James [2013] EWHC (QB)
Three Rivers DC v Bank of England (No: 3) [2003] 2 AC1
Henderson v London Borough of Hackney [2010] EWHC 1651 (QB),
Horrocks v Lowe [1975] AC 13
Twain v Hillman [2001] 1 All ER 91
Sugar v Associated Newspapers Ltd, Unreported February 6, 2001 QBD
Qadir v associated Newspapers Ltd [2012] EWHC 2606 (QB)

[13] In addition reference was made to Gatley on Libel and Slander, 12th Edition and Duncan and Neill on Defamation, 3rd Edition.

[14] From these authorities, the following principles relevant to malice in defamation actions can be distilled.

[15] Malice is an allegation of dishonesty akin to fraud and should not be lightly made. Questions of dishonesty need to be approached more rigorously than other questions of fault. Absence of an honest belief in the publication is not enough. There must be actual knowledge or reckless indifference as to the falsity. Misuse or abuse of the occasion must be the dominant motive to establish malice. It has particular pleading requirements and is a high threshold to reach even at an interlocutory stage. There is a necessity to set out some factual allegations going to support bad faith on the part of the defendant. It needs to be pleaded with specificity. Thus the burden of proving malice is not easily satisfied.

[16] A pleaded case of malice must be more consistent with malice than its absence or a neutral circumstance (e.g. carelessness or negligence). See Henderson's case per Eady J at [33] and Three Rivers' case at [161]. It is impermissible to plead malice in the hope that something may turn up during cross examination of witnesses. There must be a proper basis for making an allegation of dishonesty in a pleading. (See Three Rivers at [160] and Bray's case at [35]).

[17] The court can take into account the unlikelihood that the person accused of dishonesty will have acted in this way. Bray's case at [35] is authority for the proposition that, consequently, findings of malice are rare.

[18] The test to be applied is not one of probability but rather absence of reality. (See Lord Hobhouse at [158] in Three Rivers).

[19] Malice cannot be inferred from matters which it is alleged the defendant ought to have known or might not have taken into account. That might support a case of carelessness but carelessness is not malice. (See Tugendaht J in Thompson's case at [16]).

[20] Failure to apologise is not sufficient to ground malice.

[21] Gatley at 17.18 states:

> "All this is not to say that a defendant who asserts a belief that others find absurd will necessarily succeed in the defence of privilege, for the unreasonableness of the belief may lead the jury to reject his contention that in fact he holds it. Similarly, failure to make available enquiries may be evidence from which it may be inferred that the defendant was consciously indifferent to the truth or falsity of the statement."

[22] Once a report has been shown to be fair and accurate, it is rather unlikely that a case of malice could be made out. The court should not be receptive to argument that it was actuated by an improper motive except in the clearest possible case (see Gatley at 17.6).

[23] I must assume at this stage that the allegations alleged by the plaintiff will be established and are true. Denials of the other side are of little assistance unless it is possible to say before trial that the factual basis for the claim is fanciful because it is entirely without substance e.g. where it was clear beyond question that the assertions are contradicted by all the documentation or material on which it is based. The defendant must persuade me at this stage that there is no proper basis for making an allegation of dishonesty in the pleading.

[24] The court should be wary not to take away the issue of malice without it coming before a jury for deliberation. This step should only be taken where the court is satisfied that such a finding would be, in the light of the pleaded case and evidence available, perverse. In Seray v Worrie at [32] Eady J suggested that the court should apply a test similar to that used in criminal cases in the light of R v Galbraith [1981] 1 WLR 1039.

Conclusion

[25] I have come to the conclusion that the defendant's application on the issue of malice must fail at this stage for the following reasons. First, the right to jury trial is jealously guarded by judges in Northern Ireland. Whilst the overriding objective of Order 1 rule 1A and the dynamic of the principles in Jameel do represent a wind of change in how litigation is processed nowadays, they must not eclipse the continuing and vital role of juries in our system of justice absent circumstances where, as I found in the earlier part of this case dealing with qualified privilege, only a perverse jury could find for the plaintiff. Whether the defendant was actuated by malice in the instant case is essentially a question of fact for the jury provided always that there is evidence from which the malice can be reasonably inferred.

[26] The critical question for me is whether there is any evidence, taken at its highest, on which a jury properly directed could properly infer that the defendant or its servant or agent Mr McBride knew that what was intended to be said in the publication relied on was false or that they had a reckless indifference as to the falsity.

[27] I believe that it is essentially a matter for the jury to determine in this case whether the reliance of the plaintiff on the NIAO Report is without merit. It will have to decide whether on the one hand it would be absurd to expect the defendant's journalists to read what it contends is an entirely separate and lengthy government report and evaluate the two reports together or whether, as the plaintiff contends, the NIAO Report underlies the PAC Report and it would be equally absurd to contend that Mr McBride would have failed to read at least the chronology in order to get a timeline in respect of the plaintiff's limited involvement or, having read it, he could have made the publications he did concerning the plaintiff. On such an assessment they must determine whether he was consciously indifferent to the truth or falsity of the statements made.

[28] True it is that once a report has been shown to be fair and accurate, it is rather unlikely that a case of malice could be made out when it is invoked as context for a further article. Moreover the court should not be receptive to an argument that it was actuated by an improper motive except in the clearest possible case. The court can take into account the unlikelihood that the person accused of dishonesty will have acted in this way. Consequently findings of malice are rare.

[29] However I must be wary of dismissing too readily the notion that this could be one of those rare instances. It is a matter for the judge to determine at the end of the relevant evidence or for the jury to decide at the appropriate stage if, in the event that the defendant did not read the NIAO, this amounted to carelessness or negligence (in which case malice would fail) or whether it was such an obvious failure to make available enquiries from the available documentation that it may be inferred that the defendant was consciously indifferent to the truth or falsity of the subsequent publications. It is a matter for the jury to determine if they would find it absurd for the defendant or its journalists to contend either they had failed to read the chronology to obtain the timeline or, having read it, it was mere inadvertence or carelessness to overlook it when asserting the words that were published about the plaintiff in this instance.

[30] The jury will be firmly charged by the trial judge with a direction that the allegation of malice must be more consistent with malice than its absence or neutral circumstances and must take into account the unlikelihood of this newspaper or its journalists having acted dishonestly. Nonetheless at the appropriate time it is still a matter for the jury, having doubtless looked at the NIAO Report and its chronology together with the PAC Report, to determine this issue. It will consider the second article in the context of the first and also the tweet which may be regarded by it as independent of the first article/second article.

[31] In short, at this stage I am unable to conclude that no jury, properly performing its task and properly directed, could justifiably uphold a finding of malice. It is for the jury to determine if the matters pleaded in this case are merely equally consistent with the absence of malice as with its presence. I shall reserve the costs of this part of the application to the trial judge.

Amendment to the Statement of Claim and the Reply

[32] It appears that the statement of claim was amended with leave on 31 May 2013. Another proposed amendment was sent to the defendant on 20 August 2013 and on 19 December 2013 a further proposed amendment to the statement of claim was formulated. Before me there was a document headed "Further Amended Amended Statement of Claim" which also refers to a proposed amendment on 24 January 2014. In short it appears that over the course of approximately one year at least four attempts have been made to amend this statement of claim since it was originally served. In addition the Reply, originally served on 16 July 2003 is now the subject of an application to amend dated October 2013.

Principles governing amendment of the pleadings

[33] A pleading may be amended once without leave at any time up to the close of pleading by re-service as amended, in which case the opponent can amend the responding pleadings served by him (Order 20 r. 3. of the Rules of the Court of Judicature (Northern Ireland) 1980).

[34] In a statement of claim the changed or added words are underlined in red, any further amendment to be in green, then blue etc., and any deleted words should remain legible with a line across them in the same colour. The document should be endorsed with a date, and the order or rule under which it is amended (Order 20 r. 10(2)).

[35] A pleading may be amended by leave at any time. The guiding principle is that it will generally be allowed in order to raise or clarify the real issues in the case or to correct a defect or error, provided that it is bona fide and there is no injustice to the other party which cannot be compensated in costs (see Beoco v Alfa Labil [1995] QB 137 and Valentine (Civil Proceedings The Supreme Court) at (11.18). However, as a general rule, the later the application to amend, the more it is likely to be enquired into and the greater risk is that it will be refused.

[36] An amendment may introduce a new case, but not a case which is unarguable (Chan-Sing-Chuk v Innovision Ltd [1992] LRC (Com) 609 (Hong Kong CA).

[37] An amendment may be allowed notwithstanding that the effect will be to add or substitute a new cause of action outside the relevant period of limitation if the new cause of action arises out of the same facts or substantially the same facts as a

cause of action in respect of which relief has already been claimed. A cautionary note was struck by Waller LJ in Worldwide Corp Ltd v G P T Ltd, December 2, 1998 CA when he said:

> "Where a party has had many months to consider how he wants to put his case and where it is not by virtue of some new factor appearing from some disclosure only recently made, why, one asks rhetorically, should he be entitled to cause the trial to be delayed so far as his opponent is concerned and why should he be entitled to cause inconvenience to other litigants?"

[38] Whilst there is no rule on the number of times a party can amend a pleading, the Court of Appeal in Ashcroft v Foley [2012] EWCA Civ. 423 – albeit in the context of the English Civil Procedure Rules per Pill LJ and Sharp J said at (43):

> "… repeated satellite litigation on pleadings for tactical reasons is not, in our view, the best use of court resources and we would expect that to be recognised in this as in other areas of the law. There must come a point at which repeated attempts at amendment … become an abuse of the process of the court."

[39] Ashcroft's case stressed that "a properly pleaded meaning is vital to the eventual success and expedition of the hearing and to ensure fairness as between the parties." It is difficult to overstate the importance of a properly pleaded meaning in libel actions. In almost all cases, the pleaded meanings were the key to the determination and proper conduct of all aspects of the litigation from the first stages through to trial.

[40] Costs of an amendment without leave are borne by the amending party unless otherwise ordered (Order 62 r. 6(5)).

The amendment of the statement of claim

[41] Conventionally in a judgment dealing with amendments I would set out in full the proposed amendment. It is probably sufficient in this instance to record the nature of the amendments as follows:

(1) Paragraph 5 as amended inserts particulars of the facts and matters upon which the plaintiff will rely in proving the inference that the plaintiff was identified by publication of the on-line articles. The grounding affidavit of David Craig, solicitor on behalf of the plaintiff, accompanying the summons to amend declares at paragraph 7:

> "The defendant has challenged the plaintiff's pleading in respect of the on-line publication on the grounds that, whereas the plaintiff is seeking to rely on inference in respect of the publication of the on-line articles and Tweet, he has failed to plead any particular supporting the alleged inferences."

(2) Paragraph 7 as amended pleads particulars of the publication of the Tweet and the on-line articles to named individuals and contains particulars of facts and matters upon which the plaintiff will rely in supporting his claim of an inference of publication in respect of the Tweet.

[42] Mr Craig asserts that the proposed amendments are necessary in the interests of justice and so that all the issues between the parties can be tried and determined. They do not involve additional parties or a new cause of action and will not cause any prejudice to the defendant.

[43] So far as the Reply is concerned, Mr Craig avers that the proposed amendments (underlined in red) delete the assertion that Mr McBride has no honest belief in publishing the words complained of and substitute with an averment that he published or caused to be published the said words knowing they were false or recklessly not caring whether they were true or false. He further avers that the amendment will be consistent with the statement of claim in that at paragraph 8.1 it is alleged therein that the defendant published or caused to publish the words knowing they were false or recklessly not caring whether they were true or false. In addition the Reply as amended contains a minor amendment to paragraph 3.6(a).

The submissions of counsel

The defendant's submissions

[44] Sir Edward Garnier mounted his primary position in relation to the amendments of the statement of claim on the basis that should the court accede to its application to withdraw malice from the jury, the defendant had in effect successfully defended the claim and there should be judgment for the defendant.

[45] Counsel draws attention to the fact that the plaintiff has failed to properly track the various substitutions/deletions/amendments in the statement of claim which means that the court cannot at a glance appreciate or assess the extent and nature of the changes to the case.

[46] It is asserted that the plaintiff is now purporting to advance an entirely new case in relation to the tweet based on an innuendo reference meaning which should

not be considered until the application properly sets out the extent of the changes to this new case. Thus as regards paragraph 7 it is asserted that the plaintiff needs to identify precisely which facts and matters were said to be known to the relevant class of publishees at the time of publication to enable him to have been identified for the plaintiff to establish a cause of action. He further asserts that there is confusion as to which publications are alleged to have been read by those nominated by the plaintiff as having identified him in the impugned publications.

[47] Objection is taken to the proposed amendments to paragraph 5 because it contains alleged patent inaccuracies and inconsistent evidential references.

[48] It is also contended that the named publishees are individuals with extremely close links to the plaintiff and, invoking the spirit of Gappelli v Derek Block Ltd [1981] 1 WLR 822 and Jameel v Dow Jones and Co Inco [2005] EWCA Civ. 75, where the court per Lord Phillips MR adumbrated the principle that it was an abuse of the court's process to proceed to trial in publications of very limited scale, counsel submits I should disallow the proposed amendments.

[49] I trust I do not do any injustice to the defendant's submissions when I summarise them as an attack on what is allegedly misleading, inaccurate and confusing draft amendments.

[50] Finally the plaintiff relies upon the delay in this case. Mr Craig's affidavit, it is asserted, contains no explanation for the delay and an inadequate account as to why for example the new case of reference innuendo is being introduced belatedly.

The plaintiff's submissions

[51] Mr Ringland asserted that the most that the plaintiff is now doing was to clarify their original pleadings with additional information. These did not constitute a new cause of action. The original publications, the on-line website and the Tweet were all part of the original statement of claim. The amendments do no more than include references to people who had read these publications, who knew the plaintiff and were able to identify him.

[52] Countering Sir Edward's invocation of the principles in Jameel, Mr Ringland calls in aid Haji-Ioannou v Dickson and Others [2009] EWHC 178 where Sharp J said:

> "Publication of a libel or indeed a slander to one person may be trivial in one text but more serious than publication to many more in another. Much depends on the nature of the allegation and the identity of the person about whom and the person or persons to whom it is made. To that extent, the decision in each case is 'fact sensitive'. However the

> court should not be drawn into making this decision on the basis of contested facts material to the issue of abuse which ….. properly to be left to the tribunal of fact to decide."

[53] Turning to the number of amendments counsel asserts that this is a complicated case which has developed conceptually as the months have gone by. Simply because counsel has taken a long time to get things in order does not mean that it is prejudice to the conduct of the trial.

Conclusion

[54] I commence by respectively adopting the comments of Waller LJ in Worldwide Corporation Limited and Pill LJ and Sharpe J in Ashcroft cited above. It is unacceptable practice as a rule to engage in lengthy and protracted amendments in any litigation. Moreover the obligations to colour the amendments appropriately are not unimportant, should be known by counsel and have not been adhered to in this instance. The complexities in this case are not at all unusual and counsel is expected to be fully au fait with the relevant legal principles applicable to a case and to the pleadings from the outset. Had this been closer to trial it is doubtful whether this court would have permitted the amendments to the statement of claim to be granted. As it is, the sheer number of amendments in the instant case come perilously close to constituting an abuse of the process given the lengthy period over which these amendments have unfolded and the delay in getting the pleadings in order.

[55] In the event however, recognising that full and precise pleadings are required in an action for libel in order to ensure that both parties have a fair trial, I am prepared to accede to the plaintiff's application to amend in the interests of justice.

[56] The pleading points made by the defendant are not without merit but they are not such in my view as will impede the process of this case to trial or obstruct a fair outcome. They should be allowed in order to raise or clarify the real issues in the case and to correct defects or errors which, albeit they should not have been made, are now being corrected notwithstanding the delay engendered. With trial some time off there is no injustice to the other party which cannot be compensated in costs particularly where I am satisfied that these omissions were not fuelled by any deliberate attempt on the part of the plaintiff to gain a tactical advantage.

[57] I do not believe that any great time or costs will be required to investigate the matters that are the subject of the amendment. It is not a case where new unarguable matters changing the character of the action have been introduced which are not proportionate to the amount of money involved or as would distract the jury from concentrating on the complex issues which they will have to decide. Matters such as the identity of persons who allegedly identified the plaintiff are all

essentially matters for the jury to determine and I do not believe that the Jameel principle can be properly invoked in this instance.

[58] In the circumstances therefore, not without some hesitation because of the number of amendments and the delay, I accede to the plaintiff's application to amend the Statement of Claim and the Reply. It is in the interests of justice that I permit the plaintiff to amend as proposed in this instance in order to ensure that the plaintiff obtains a fair trial and that the defendant is fully apprised of the case it has to meet. The costs of this part of the application will fall on the plaintiff.