Neutral Citation Number: [2020] EWHC 59 (QB)

Case No: QB-2018-000694

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 January 2020

Before :

MR JUSTICE WARBY

- -

Between :

Tina Hamilton	**Claimant**
- and -	
News Group Newspapers Limited	**Defendant**

- -
- -

Victoria Jolliffe (instructed by **Grant Saw Solicitors LLP**) for the **Claimant**
Anthony Hudson QC (instructed by **Simons Muirhead & Burton LLP**) for the **Defendant**

- -

Approved Judgment

Mr Justice Warby:

1. The claimant was, for a period of months in 2017, a prison officer at Her Majesty's Prison, Wandsworth. She brings this action for libel and misuse of private information against the publisher of *The Sun* newspaper in respect of an article published in the print edition of *The Sun* for 28 February 2018 under the heading, "Taming of the Screw – Jail officer quits after lag 'fling'", and a similar online article. This judgment contains my determination of the meaning of the articles, as a preliminary issue in the case.

Procedural history

2. The claim was issued in September 2018, accompanied by Particulars of Claim. Untypically for cases in which the Court is asked to determine meaning, the case has progressed as far as a Defence, served on 13 November 2018, and a Reply, served on 22 February 2019. By October 2019, Amended Particulars of Claim had been served, and in November 2019 the parties agreed that the natural and ordinary meaning of the words complained of should be determined as a preliminary issue. A consent order to that effect was made by Master Davison on 11 November 2019. The Master gave directions, also by consent. These included provision for costs budgeting, directions for the lodging of written submissions, and an order that the preliminary issue should be determined without a hearing "subject to the approval of the Judge that a hearing is not required".

3. Written submissions having been lodged, the matter was listed for my consideration on Friday 20 December 2019. I adopted the standard approach to determinations of meaning, by reading the words complained of without knowing what either party said about their meaning, and reaching some provisional views. I then read the written submissions. Having done so, I was satisfied that there was no need for an oral hearing, and I have proceeded to reach a final determination and to prepare this written judgment setting out my conclusions, and reasons.

"Paper" determination

4. The parties, in drawing up the consent order, rightly recognised that it is always a decision for the Judge, whether to deal with an application without a hearing. The decision must of course be made in accordance with the overriding objective, and the duty to further that objective by active case management. Active case management includes, where appropriate, "dealing with the case without the parties needing to attend at court": CPR 1.4(2)(j). Relevant considerations, in a case where the parties agree to a matter being dealt with "on paper", include giving effect to the wishes of the parties. In any event, the Court will have regard to the imperatives of efficiency, economy, and speed. These will often point in favour of a "paper" disposal, but not always. That may be an unsuitable procedure where one or both of the parties is unrepresented. Even where the parties are represented, the Court may form the impression that one or both has missed an important issue. There may be arguments that can best be presented orally, or complexities may emerge which require a face-to-face dialogue, rather than a purely "paper" process. On occasion, it may be a more efficient use of the Court's own resources to hold a hearing. None of these points applied here. As will become apparent, these were relatively short and straightforward articles concerning a single claimant, who is an individual. The issues for resolution are relatively confined. The case has no particularly unusual features.

5. It is also important, always, to keep in mind the requirements of transparency. These have been considered by me, in the context of applications for final injunctions or undertakings by consent (*PJS v News Group Newspapers Ltd* [2016] EWHC 2770 (QB) [1-4]), and for default judgment and summary disposal (*Charakida v Jackson* [2019] EWHC 858 (QB) [2019] 4 WLR 66 [8-11]). In *Hewson v Times Newspapers Ltd* [2019] EWHC 650 (QB) [16-26] the requirements of open justice were considered by Nicklin J in the context of a consent application for the "paper" determination of preliminary issues on meaning. In each of these cases, the Court concluded that it would be consistent with the open justice principle to determine the application without a hearing, providing appropriate measures were taken to ensure that interested members of the public had access to the Court's decision and reasons, and other key materials. In *Hewson* at [26] and *Charakida* at [10], the Court suggested that under modern conditions this way of dealing with matters might indeed achieve greater transparency than the traditional method.

6. In *Hewson,* Nicklin J held that any concerns about open justice could be overcome by a four-stage procedure: (i) the provision of written submissions; (ii) the preparation in draft of a written judgment based upon those submissions; (iii) the circulation of the draft to the parties in the normal way; and (iv) at the handing down of the judgment in open court, the making available all written submissions that were considered by the Court before making the determination. Subject to contrary argument on some future occasion, that seems to me a satisfactory solution, at least in general. I understand that no third party attended the hand-down in *Hewson*, but that does not affect the principle. When preliminary issues are dealt with at a public hearing, as is the norm, it is commonplace for nobody other than the parties and their lawyers to attend. Someone who merely attends the hand-down of a judgment arrived at under this regime will probably, as a matter of practice, have greater access to the parties' arguments than a person who attends a contested hearing.

7. I add that, since the judgment in *Hewson*, the Supreme Court has further clarified the Court's inherent jurisdiction to provide third parties with access to documents held by a civil Court, including the parties' written submissions and arguments. In *Cape Intermediate Holdings Ltd v Dring* [2019] UKSC 38, the Court unanimously approved the principles identified by the Court of Appeal in *R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court* [2012] EWCA Civ 420 [2013] QB 618, and endorsed by the majority in *Kennedy v Charity Commission* [2014] UKSC 20 [2015] AC 455. Those principles would appear to indicate that the Court should ordinarily be ready to provide a third party, on request, with copies of written submissions lodged for the purposes of a determination of the present kind, if these are still held by the Court. It should not, however, be assumed that such documents will be retained indefinitely. They are not documents which the court maintains as part of its record of proceedings.

The preliminary issue

8. Often enough, preliminary issue trials encompass issues other than meaning, such as whether any meaning found is defamatory at common law, and whether it is factual or in the nature of an opinion. For a recent example, see *Triplark Ltd v Northwood Hall (Freehold) Ltd* [2019] EWHC 3494 (QB) [7]. (There may still be cases in which the Court can sensibly try, at the preliminary stage, the issue of whether the publication complained of satisfied the serious harm requirement under s 1 of the Defamation Act 2013. That remains an open question in the light of the decisions of the Court of Appeal

and Supreme Court in *Lachaux v Independent Print Ltd* ([2017] EWCA Civ 1334 [2018] QB 594, [2019] UKSC 27)). But the Order in this case identifies the single issue for trial as "the natural and ordinary meaning of the words complained of" in each of the articles.

The words complained of

Print version

9. The print version of the article read as follows (the paragraph numbering has been added):

> "TAMING OF THE SCREW
>
> Jail officer quits after lag 'fling'
>
> EXCLUSIVE by TOM WELLS, Chief Reporter
>
> [1] A PRISON officer quit her job while being investigated for an alleged fling with a lag she was guarding.
>
> [2] Mum-of-two Tina Hamilton, 31, resigned during a probe into claims that she had fallen for burglar Perry Middlemass behind bars.
>
> [3] But The Sun can reveal she has seen the thief, 23, after leaving her job and even visiting him in jail on Valentine's Day.
>
> [4] Last night Tina insisted she quit over "childcare issues" and denied misconduct. She said she was pals with Middlemass as she had "worked" with him at HMP Wandsworth in South West London.
>
> [5] A source said: "The investigation related to an allegation of an inappropriate relationship between Tina and a prisoner. She resigned before it concluded."
>
> [6] Jail chiefs launched a probe last December after reports of inappropriate behaviour in a cell.
>
> [7] It was referred to Scotland Yard, but cops reportedly ruled there was too little evidence to pursue a criminal case.
>
> [8] Tina, of Plaistow, East London, quit the Prison Service on December 13.
>
> [9] Middlemass, serving seven years, was moved to another jail soon after. A Prison Service spokesman said: "We take all allegations of staff misconduct very seriously."

10. The hard copy article was accompanied by photographs of the claimant and Mr Middlemass. The claimant complains of the entire article.

Online version

11. The claimant also complains of the whole of the online version of the article. The body of that version was identical to paragraphs [1-9] above, and it was also billed as an "**EXCLUSIVE** By Tom Wells, Chief Reporter", but the headlines were different. They were:-

> "**Prison Officer quits her job amid claims she had a fling with burglar she was guarding**
>
> Tina Hamilton resigned while being investigated for an alleged fling with a burglar she was later seen visiting in jail on Valentine's Day"

12. The online version of the article was accompanied by a number of photographs, with captions. There were three photographs of the claimant, with the following captions:

> "Tina Hamilton quit her job as a prison officer during an investigation where it was claimed she had a fling with a lag"
>
> "The mum-of-two visited the 23-year-old burglar in jail on Valentine's Day and she was pals with Middlemass as she had "worked" with him at HMP Wandsworth"
>
> "Tina has insisted that she quit her job because of 'childcare issues' and denied misconduct".

13. There was one photograph of Middlemass, captioned, "Perry Middlemass is the lag Tina is accused of having a fling with."

Legal principles

14. I have sought to identify a single natural and ordinary meaning for each version of the article, applying the familiar principles, distilled by Nicklin J in *Koutsogiannis v The Random House Group Ltd* [2019] EWHC 48 (QB) [11-15].

15. I have placed myself in the position of an ordinary, reasonable reader of *The Sun*, reading the entire article, in print or online, once, with an approach that falls between the extremes of being unduly naïve, and avid for scandal. To do this, I have read the words complained of in the original hard copy form, and a printed version of the online article, as it appeared on the screen of the reader. I have sought to capture the impression made on me, avoiding over-elaborate analysis.

16. I have done this without first reading any of the written submissions, the Particulars of Claim, the Defence, the Reply, the requests for further information, the correspondence or any other extraneous materials. Having reached some provisional views, I have then tested these against the submissions of the parties.

17. Even after this process was over, I have not found it necessary or helpful, at this stage, to read anything other than the articles, the submissions, and those parts of the pleaded cases that deal with meaning. Neither side suggested that this would be necessary, or even appropriate.

18. In this case, a principle of particular relevance, relied on by the claimant, is "the repetition rule", which I summarised in *Price v MGN Ltd* [2018] EWHC 3014 (QB) [2018] 4 WLR 150 [57]:

> "[The] rule holds that the meaning of a reported allegation is normally the same as the meaning of a direct allegation; and a defendant cannot establish the truth of such a publication by proving merely that the allegation was indeed made."

19. The rule therefore has two limbs. The first has to do with the meaning of words. Words "must be interpreted … by reference to the underlying allegations of fact and not merely … some second-hand report … of them": *Shah v Standard Chartered Bank* [1998] EWCA Civ 612 [1999] QB 241, 263. Lord Devlin put it succinctly in *Lewis v Daily Telegraph* [1964] AC 234, 284: when deciding meaning "for the purpose of the law of libel a hearsay statement is the same as a direct statement". This is a rule based upon how ordinary readers in fact approach hearsay allegations. The second limb of the rule governs the pleading and proof of a defence of truth; it provides that a defendant may not seek to prove the truth of imputations conveyed by the words complained of "by reliance upon some secondhand report or assertion of them": *Shah* (ibid). Only the first limb of the repetition rule is relevant to my task in this preliminary trial.

The rival contentions

20. The case for the claimant, as now set out in the Amended Particulars of Claim, is that the articles both meant that:

> "the claimant has, alternatively there are reasonable grounds to suspect that the Claimant has, committed a criminal offence by engaging in a sexual relationship with an inmate while she was a prison officer"

21. Ms Jolliffe has submitted that the headlines of both versions of the article tell the reader that this is a story about a prison officer having a sexual relationship with an inmate. The body text reinforces that impression. The article repeats the allegations of others, and there is nothing that serves to mitigate or avoid the operation of the repetition rule. The overriding impression is that the claimant is guilty of the conduct attributed to her, and that the only reason she was not prosecuted was, at the time, an inability to assemble enough evidence.

22. The defendant's pleaded case includes two alternative "*Lucas-Box"* meanings, that is to say meanings which the defendant will, if necessary, defend as true:

> "the Claimant had, alternatively there are reasonable grounds to suspect that the Claimant had, engaged in an inappropriate relationship with an inmate whilst she was a prisoner officer"

23. In his written submissions for this trial, however, Mr Hudson QC for the defendant has argued that the articles bore lesser meanings, as follows:-

> "the claimant had resigned as a prison officer during an investigation into an allegation that she had engaged in an

> inappropriate relationship with a prisoner"

alternatively, that

> "there were grounds to investigate whether the Claimant had engaged in an inappropriate relationship with a prisoner whilst she was working as a prison officer"

24. Mr Hudson has argued that readers would understand that the hard copy article was simply a report that the claimant had resigned during an investigation into an allegation of an inappropriate relationship between her and a prisoner. Readers would not think that this article meant that there were reasonable grounds to suspect that she was guilty of misconduct, or of any crime. The most serious imputation that would be drawn from the articles is that there were grounds to investigate whether the "inappropriate" relationship alleged had in fact taken place.

25. These submissions came as a surprise to those acting for the claimant, as they had written in October 2019, expressly to ask the defendant to clarify whether it would be contending that the words in fact bore either of the *"Lucas-Box"* meanings defended as true. The reply did not answer the question, and did nothing to alert the claimant's representatives to either of the meanings now advanced by the defendant. Ms Jolliffe therefore lodged a short reply submission. In it, she maintains that the first of the meanings contended for by Mr Hudson offends the repetition rule, and that the second ignores the fact that the reader is told that an investigation has already taken place, and is plainly too low.

26. It is unhelpful for a defendant to keep its cards so close to its chest until so late. On the face of things, it represents a breach of the duty to help the court achieve the overriding objective. If a similar situation arises in future, the Court will need to consider a direction that the defendant set out the meaning(s) for which it will contend.

27. Despite these complexities, the issues between the parties, as they now stand, are relatively narrow. It is common ground that the articles were concerned with whether the claimant engaged or may have engaged in a relationship of some kind with a prisoner when she was working as a prison officer. There are three main points of difference: (1) whether the articles indicated a relationship that was "sexual", or merely one that was "inappropriate"; (2) whether it was suggested that the conduct was or might be criminal; (3) the level of gravity of any meaning. The claimant now contends for a "Chase" Level One imputation, or alternatively one at Chase Level Two. The defendant is prepared to defend a Chase Level One or Two meaning, but contends for something below Chase Level Three, or alternatively Chase Level Three.

28. The Court is not bound to find a meaning within one of the *Chase* levels, which are not exhaustive of the possible degrees of defamatory meaning or imputation: *Brown v Bower* [2017] 4 WLR 197 [17], *Doyle v Smith* [2018] EWHC 2935 (QB) [57], *Feyziyev v The Journalism Development Network Association* [2019] EWHC (QB) [11-14]. It is also open to me, within certain limits, to find a meaning which is different from those contended for by the parties: although the Court should not normally go beyond a meaning in the same class or range as those advanced by the parties, it is not constrained to find that one or the other party has correctly identified the true meaning of the words: *Yeo v Times Newspapers Ltd* [2015] EWHC 2853 (QB) [2015] 1 WLR 971 [82].

Discussion

29. In my judgment, the defendant's primary argument is unrealistic; it ignores limb (1) of the repetition rule and – as a consequence - is barely defamatory, if defamatory at all. The defendant's alternative argument downplays the true impression conveyed by the articles. The defendant's Lucas-Box meanings were more in line with the reality. Both articles went, however, beyond Chase Level Two; they suggested to the ordinary reader that the claimant had in fact engaged in a relationship with Middlemass.

30. True it is that the articles were both phrased largely in terms of what allegations, claims, reports or accusations others had made about the claimant (see paragraphs [1], [2], [5], [6] and [9] of the print version, the headlines of both versions, and two of the photo captions). The headline of the print version also used "fling" in quotation marks, indicating that this was a third-party allegation. But, as Ms Jolliffe has pointed out on the claimant's behalf, this cannot provide the publisher with much comfort. The repetition rule provides the starting point: the meaning which an ordinary reader would draw from the report of these third party allegations is the same as the meaning the reader would draw from a direct allegation that the claimant is guilty of the same misconduct.

31. That is the starting point, but it is the overall impression that counts: *Hewson* [40-41]. The "bane" or poison placed in the mind of the reader by reporting the allegations of others can, in principle, be removed by an "antidote" to be found elsewhere in the same article, if strong enough; but that is not the position here. The articles did not state that any adverse findings had been made against the claimant; they reported on an "investigation" into the claims, allegations, etc. But nor did they indicate that the claimant had been exonerated, as a result of that investigation. The impression conveyed was not that there was any real mystery or uncertainty about the matter. Both versions reported, at [4], that the claimant had insisted that her resignation was over childcare issues, and denied misconduct. The same message was repeated in one of the photo captions. This, however, does not even amount to a direct contradiction of the reported allegations. Indeed, when these superficially exculpatory passages are read in the context of the article as a whole, the general impression conveyed to the ordinary reader is not that there are two sides to the story but rather that the third-party allegations are true, the claimant has lied about her true reasons for resigning, and that by resigning she thwarted the chance of any misconduct proceedings.

32. That impression is conveyed in at least the following ways:-

    (1) the sheer weight of reported allegations, seemingly from several sources ("claims" [2]; "reports" [6]);

    (2) the reported admission by the claimant that she had been "pals" with Middlemass (paragraph [4]);

    (3) the reported fact that the claimant resigned "during" the investigation; the article identifies the date of the "probe" as December, and the claimant's resignation as 13 December, suggesting that she resigned swiftly after the investigation began, and *because of* the investigation; this all suggests a quick move, borne of a guilty wish to avoid the investigation reaching any or any adverse conclusion whilst she remained in post;

(4) the purported revelation by *The Sun* (in paragraph [3] and one of the captions), of a continuing relationship between the claimant and Middlemass after her resignation, including a visit by her on Valentine's Day, some three months afterwards; this is an important contribution to the story, coming from the publisher itself, and any reasonable reader would attribute weight to it as an indication that there was in fact a relationship, strong enough to last for months, and for the claimant to "go public" about it, to this extent;

(5) the use of quotation marks around "childcare issues" and "worked" (in paragraph [4] and the corresponding photo captions); this is not a case of reporting in quotation marks the claimant's entire answer to the allegations, claims and reports; it is a selective use of quotation marks as a device to indicate commentary by the publisher, and is redolent of scepticism about the claimant's account of things;

(6) the word "insisted", which the ordinary reader would take as an indication of "protesting too much", a further indication of a guilty conscience;

(7) the photographs, in which the claimant looks shifty.

33. As to the nature of the relationship, there can in my view be no doubt that the articles were portraying it as more than just an emotional attachment. It was implicitly a physical relationship. The term "fling" indicates at least some physical contact. All the more so, the reference to "inappropriate behaviour" in a cell, which can only mean that the couple were doing something there. Ms Jolliffe has drawn attention to the potential ambiguity in the headline, using the word "screw" as slang for a prison officer, when it is also slang for sexual intercourse. I was aware of this when first reading the article. Despite all this, when I read the article, it left me uncertain whether the relationship was alleged to have involved sexual intercourse.

34. I do not believe this is due to undue naivety on my part. Rather, I think, it is the result of a combination of factors. One is the particular use of language. There is no direct allegation of sexual intercourse. Here, the word "screw", although capable of being ambiguous, is used in the context of a modified version of the title of a well-known Shakespeare play, and the headline clearly refers to the "taming" of the female claimant, not to a physical sexual act. Mr Hudson may be right in his submission that the headline to the hard copy version of the article, with its reference to a comedy, also lends a humorous aspect to the article. The word "fling" does have a light-hearted aspect and, although it implies something physical, I do not agree with Ms Jolliffe that it points unequivocally to intercourse. The term "inappropriate behaviour" would be a mealy-mouthed euphemism for sexual intercourse. Something more direct would be expected, if that was the allegation. Then there is the fact that the relationship is said to have been carried on between an officer and prisoner in the prison context, in a cell, which would seem on the face of it to present some challenges. The fact that "Scotland Yard" ruled there was too little evidence to pursue a criminal case also makes a contribution to this conclusion.

35. I do not consider that this part of the article - the reference to Scotland Yard and criminal charges in paragraph [7] – would lead the ordinary reader to conclude that the claimant had committed an offence, or even that there were reasonable grounds for suspecting her of an offence. Here, I have sought to guard against too lawyerly an approach. On first reading the article I did not, of course, overlook the reference to "Scotland Yard"

and crime. But at that stage, when noting my initial conclusions on meaning, I did not include any reference to criminality. Returning to the question after reviewing the parties' submissions, I have not changed my opinion.

36. To my mind, the articles suggested that the claimant, by engaging in an emotional and physical relationship with an inmate when she was a prison officer, was guilty of serious misconduct. Any reader would expect such conduct to be strictly prohibited. The very fact that the "claims" and "reports" led to an "investigation" or "probe" indicates that it is. Paragraphs [4] and [9] underscore the point, by referring in terms to "misconduct". The reference to Scotland Yard adds to this impression. But I believe the main reasons that my provisional meanings did not record any reference to criminality are (a) the article does not indicate the nature of the offence that was under consideration, which would not be obvious to the ordinary reader; (b) the ordinary reader would not, I think, assume that every relationship, of whatever nature and degree, between a prison officer and an inmate was necessarily a criminal offence; (c) if the ordinary reader could understand the nature of the possible criminality, the reader would take it to be engaging in a sexual relationship with an inmate, when employed as a prison officer; (d) the article does not state or imply that this relationship was sexual; and (e) the stated reason why the police took no further action is insufficiency of evidence. The impression the reader would take away is, I think, that there was clear evidence of a relationship, and a physical one, but not enough to prove a sexual relationship and hence no evidence of a crime.

Conclusion

37. Drawing together these strands, and reverting to the essence of what I took from the articles when I first read them, the central, natural and ordinary meaning of each article, in my judgment, is this:

> "the Claimant committed serious misconduct in her role as a prison officer by engaging in an emotional and physical relationship with an inmate."

38. This is not the same as either of the claimant's meanings, or either of the defendant's meanings. It is however, within the same range or class. It is graver than the defendant's alternative meaning but falls short, even if not far short, of the gravity of the claimant's primary case.

39. On a number of occasions, after a trial of meaning, the Court has found a meaning different from any of those pleaded or contended for in advance of the trial: see, for instance, *Allen v Times Newspapers Ltd* [2019] EWHC 1235 (QB) [39], [56] and, more recently, *Triplark* (above) [24], [28]. If that happens, the claimant may be permitted to amend to adopt all or part of the meaning identified by the Court, provided the meaning relied on is not inconsistent with the judgment, and – bearing in mind that the process is not an interim ruling but a final determination, after a trial - the amendment is otherwise permissible: see *Triplark* [31] and *Allen* [44-54]. In this case, I cannot identify any obvious reason why such an amendment should not be permitted, but in the absence of agreement I shall rule on that issue.

40. I take it that the parties would wish to address that issue (if at all), as well as the issue of costs and further directions, by means of written submissions.