



Neutral Citation Number: [2015] EWHC 915 (QB)

Case No: HQ14D05024

HQ14D05025

HQ15D00253

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/04/2015

Before :

THE HONOURABLE MRS JUSTICE NICOLA DAVIES

Between :

Bruno Lachaux	<u>Claimant</u>
- and -	
Independent Print Limited	<u>Defendant</u>

Bruno Lachaux	<u>Claimant</u>
- and -	
Evening Standard Limited	<u>Defendant</u>

Bruno Lachaux	<u>Claimant</u>
- and -	
AOL (UK) Limited	<u>Defendant</u>

Godwin Busuttil (instructed by **Taylor Hampton**) for the **Claimant**
David Price QC (instructed by **David Price Solicitors & Advocates**) for the **Defendants in**
HQ14D05024 and **HQ10D05025**
Manuel Barca QC & Hannah Ready (instructed by **Lewis Silkin LLP**) for the **Defendant in**
HQ15D00253

Hearing date: 18 March 2015

Approved Judgment

MRS JUSTICE NICOLA DAVIES:

1. Before the court are applications in three libel actions brought by the claimant against the publishers of three newspapers; the Independent (HQ14D05024) print and online; the London Evening Standard (HQ14D05025) print and online; the Huffington Post UK (AOL(UK) Limited (“AOL”) (HQ15D00253) online only. The claims arise from articles published by the defendants which make substantially the same allegations of the claimant. In summary they are that the claimant became violent towards his ex-wife within months of marrying her causing her to leave and disappear with their infant son. The claimant contends that these allegations are defamatory of him both at common law and pursuant to section 1 Defamation Act 2013 (“the 2013 Act”).
2. The Defendants have issued application notices pursuant to CPR 3.1 seeking a trial of the following preliminary issues:
 - i. An application issued by the defendant in the AOL action seeking an order that there be a trial of the following preliminary issues:
 - a) whether the publication of the words complained of has caused or is likely to cause serious harm to the reputation of the claimant within the meaning of section 1 of the 2013 Act;
 - b) whether pursuant to the principles established in *Jameel (Yousef v. Dow Jones & Co. Inc* [2005] QB 946 the pursuit of the claimant’s claim constitutes an abuse of the court’s process;
 - c) that the claimant’s application for the trial of a preliminary issue as to whether the words complained of bear the meaning attributed to them at paragraph 6 of the Particulars of Claim be combined with a trial of the two preliminary issues at (a) and (b) above.
 - ii. The defendants in the Independent and Evening Standard actions seek orders that the following issues be tried as preliminary issues namely:
 - a) whether the publication referred to in paragraphs 5 and 6 of the Particulars of Claim in the meanings pleaded in paragraph 7 has caused or is likely to cause serious harm to the reputation of the claimant within the meaning of section 1 of the 2013 Act;
 - b) whether the publication was understood to refer to the claimant.
3. Defences have been entered in the Independent and Evening Standard actions. No Defence has been entered in the AOL action. In the event that the court orders a hearing of the preliminary issue it is not intending to serve a Defence until the determination. On 11 March 2015 Sir David Eady sitting as a Judge of the High Court handed down judgment as to the issue of meaning in the actions against the Independent and Evening Standard ([2015] EWHC 620 (QB)).
4. The Particulars of Claim in all three actions plead identical introductory paragraphs. Paragraph 1- 3.2 states:

- “1. The Claimant is a French national. He is an aerospace engineer, and a teacher and instructor in the aviation and aerospace sector. He currently works as a teacher at an air military college in Abu Dhabi UAE and resides in Dubai, UAE.
2. On 26 February 2010 the claimant married Afsana Begum (also known as Aman, Yahiya and Shukur) (“Afsana”), a British National in London. Since then Afsana has gone by the name of Afsana Lachaux. On 4 April 2010 Afsana gave birth to a son, Louis, of whom the claimant is the father. On 12 August 2012 the Claimant and Afsana were divorced.
3. Further, and if and insofar as it may be relevant, the claimant has and at all material times has had substantial, well-established, connections to this jurisdiction, and an established reputation here. In support of these contentions but without prejudice to the evidence that will be adduced in this connection, the claimant will rely on the following facts and matters:
 - 3.1 At all material times the claimant has had a significant number of friends and acquaintances, personal and professional, and some direct relatives (members of the Vazeille family) who are resident within the jurisdiction. In particular:
 - 3.1.1. The UK, England in particular, is a major aerospace hub, and many of the Claimant’s colleagues in previous jobs in the industry have been British nationals and/or resident and working in this jurisdiction. He also has professional connections with individuals who are resident in this jurisdiction, in particular persons working for companies which operate in the aviation and aerospace sector.
 - 3.1.2 Among the Claimant’s current colleagues, several are British nationals, including his Program Chair. Some of these are ordinarily resident in this jurisdiction, and are working only temporarily in Abu Dhabi.
 - 3.1.3 At all material times the claimant has used and/or has been registered with specialist aviation and aerospace-sector recruitment agencies based and operating within this jurisdiction, for example, Resource Consulting Limited based in Worcester, and VHR, based in London.
 - 3.1.4 Further, as pleaded above, the claimant was married to his ex-wife Afsana in England. She is a British national and has a wide circle of relatives, friends, and acquaintances, personal and professional, resident within the jurisdiction. The claimant became known to many of them as a result of their marriage.
 - 3.2 Further, as regards the claimant’s son Louis, although Louis is resident in Dubai with his father and will continue to reside with him there, it is

reasonably to be anticipated that at some time in the future he will start to spend time with his mother and her family in this jurisdiction, and that as a result the claimant himself is likely to spend an increasing amount of time here.”

AOL Action

5. The substance of the claimant’s case as to meaning and serious harm is set out in paragraphs 5 to 7.7 of the Particulars of Claim as follows:

“5. Between about 20 January 2014 and about 17 September 2014, in an article headed “British Victim of Domestic Abuse Faces Prison in the UAE” by Rori Donaghy, the Defendant published on the Huffington Post UK website (www.huffingtonpost.co.uk/rori-donaghy/domestic-abuse-uae_b_4631202.html) and caused to be published on the www.huffingtonpost.com and m.huffpost.com websites, both within this jurisdiction and in Dubai, the following words defamatory of the Claimant:

“British Victim of Domestic Abuse Faces Prison in the UAE

When Afsana Lachaux left her job as a senior civil servant four years ago in London as a newly wed to start afresh in Dubai, but she could never have imagined how that dream would swiftly turn into a nightmare. A victim of domestic abuse, Afsana took her baby and bravely left her partner three years ago, but has been trapped in Dubai ever since as her ex-husband has exacted a prolonged campaign of intimidation and harassment against her

Now on 21 January, she will appear in court accused of kidnapping her own child, as she suffers the consequences of the Emirati legal system that affords little protection for victims of domestic violence. British officials have proved to be ineffective, with politicians repeatedly saying they must respect the UAE’s legal system and recommending lawyers that turn out to be corrupt.

Afsana Lachaux, a 46 year old British citizen of Bangladeshi origin, had her passport taken from her in June 2011 after her abusive ex-husband used his influence with Emirati authorities to obtain an indefinite travel ban on her and her three –year-old son. Since then she has been forced to live in abject poverty, reliant on support from her two adult sons working in London and seen her health deteriorate swiftly.

The ex-husband a wealthy foreign exchange dealer, told her that he would ‘destroy her’ at a divorce hearing and has successfully used the Emirati legal system to do just that. At a trial held in her absence, he was granted sole custody of

their child after a judge ruled she was an unfit mother due to neglect on the basis that her child has eczema. In October 2013, after more than a year of living in hiding. Afsana's ex-husband snatched their child after finding out where they were living.

Emirati authorities have been complicit in this tale of abuse as well. In June 2011 Afsana and her young child were thrown in Bur Dubai prison for several hours during which time they were denied access to food and water. Whilst detained Afsana says a police officer physically assaulted her. For the next year she repeatedly complained to the public prosecutor about the abuse, threats and intimidation she had experienced but her complaints were ignored and the public prosecutor is alleged to have said 'it is not his concern if she and the child lived or died.'

British authorities have been little better, as they have consistently batted off the family by saying they must respect the Emirati legal system. Worse than inaction has been the terrible legal advice provided by the British Embassy, who have recommended 3 lawyers to Afsana's family, all of whom took large sums of money from them and then refused to attend court to represent her.

Sadly, Afsana's experience of authorities failing to investigate allegation of abuse against her, whilst accepting cases submitted by her alleged abuser echoes the experience of many who suffer domestic abuse in the UAE. There are no official statistics for domestic abuse, but legislation that permits the 'chastisement' of wives and children demonstrates a legal system that does not afford sufficient protection for the most vulnerable groups in society.

Although the Dubai Foundation for Women and Children (DWFC) reported a 36% rise in domestic violence cases during 2012, there remains concern that underreporting may be an issue. As when Afsana went to the government run DWFC, staff were legally obliged to inform her husband of her whereabouts as stipulated by Emirati law.

If a woman cannot have their fundamental rights to security protected by refuges, and when legislation effectively legalises acts of domestic violence, it is highly likely that cases of abuse will go unreported by women who possess no recourse to justice.

The courts of the UAE have been manipulated to allow for an alleged perpetrator of domestic abuse to criminalise his victim, when a legal system should provide protection for women in these circumstances. For a country that seeks to

project itself as progressive and liberal, as seen when Dubai recently won the right to host the World Fair in 2020, it is a complete contradiction in terms for this kind of incident to take place.

Emirati authorities and British officials must do more. If authorities in the UAE want to live up to an image of being a place where the world lives together cohesively, they must reform a legal system that allows for victims of domestic violence to become the criminal. British officials need to step up to the mark and provide proper assistance to Afsana Lachaux, by pressuring authorities into dropping all charges and returning her passport so that she can come home as soon as possible.

Sadly, the way things stand, Afsana will appear in court to face unjust charges of kidnapping her own child when it is her ex-husband who should be in court to answer why he has abused this woman and his son in such deplorable ways.”

6. In their natural and ordinary and/or inferential meaning the words meant and were understood to mean that:

6.1.while he was still married to and living with his ex wife Afsana, the claimant subjected her to physical abuse which she bravely left him to escape, taking their baby son with her;

6. 2 the Claimant falsely accused Afsana of kidnapping their son, a false charge which had unjustly left her facing jail in the UAE, when the truth was (as he knew) that she had justifiably taken him away with her to escape his abuse;

6.3 the claimant improperly threatened Afsana at a divorce hearing telling her that he would ‘destroy’ her; and

6.4 having tracked down Afsana after more than a year of living in hiding, the claimant snatched their son back from her without justification and with callous disregard for his welfare.

7. Further, for the purposes of section 1(1) of the Defamation Act 2013, the publication of the said words or statement has caused and/or is likely to cause serious harm to the reputation of the claimant. In support of this contention the claimant will rely on the following facts and matters:

7.1 The said words conveyed the imputations of an concerning the claimant set out in paragraph 6 above.

- 7.2 These imputations were, in the common law sense, very seriously defamatory of the claimant.
- 7.3 As pleaded at paragraph 3 above, the claimant has substantial connections with this jurisdiction and a reputation to protect here, both now and in the future. As regards the future, it is by no means an unlikely prospect that at some point in the future the claimant will wish to live here, as he is entitled to do, not least having regard to the fact that:
- 7.3.1 he works in the aerospace and aviation sector; and/or
- 7.3.2 his son Louis has a British mother, who may choose in the future to exercise his right to take British citizenship and to study and/or live here.
- 7.4 The claimant was readily identifiable from the words complained of. His surname is a relatively distinctive one, both in this jurisdiction and in Dubai.
- 7.5 The words complained of were published on the Huffington Post UK website and on two other Huffington Post Internet platforms which, as set out in paragraph 4 above, have a very substantial readership in this jurisdiction and in Dubai.
- 7.6 The said words were published on those websites continuously for almost eight months.
- 7.7 In the premises, it is reasonably to be inferred that the words complained of have been read and/or drawn attention to by a very large number of readers. Without limiting the generality of this contention, reliance is placed on the fact that by mid-August 2014 the article as published on the Huffington Post UK website was recording that it had received 468 Facebook Likes and 131 Facebook Shares, and that it had been Tweeted 579 times.”

The Independent

6. The substance of the claimant's case as to the defamatory words and serious harm is set out in paragraphs 5 to 8.7 of the Particulars of Claim as follows:

“In an article by Alastair Sloan headed ”British mother faces jail in Dubai after husband claims she kidnapped their son” published on pages 16 and 17 of the print issue of The Independent for 25 January 2014, the Defendant published or caused to be published, both within this jurisdiction and in Dubai, the following words defamatory of the claimant.

“British mother faces jail in Dubai after husband claims she kidnapped their son”.

Family of Afsana Lachaux claim UK is unwilling to help for fear of risking jet deal.

[insert to photograph] Afsana Lachaux from Poplar, east London, moved with her husband to Dubai where she gave birth to her son, Louis.

The family of a British woman trapped in the United Arab Emirates and facing charges of kidnapping her young son have accused the UK authorities of abandoning her.

Afsana Lachaux, 46, from Poplar, east London, was a British civil servant when she met a wealthy French currency dealer who she married in 2010. The couple moved to Dubai where she gave birth to their son, Louis.

Four months later, the family claim, her husband became violent. They also claim he hid Louis's French passport, and refused to allow him to be registered as a British citizen. Fearing for her own safety, they say Ms Lachaux escaped, taking Louis with her.

She tried to return to the UK, but her husband secured a travel ban from a Dubai court and requested that her passport be confiscated. He also initiated divorce proceedings and won custody of Louis.

Mrs Lachaux turned to the UK consulate for help. At first, says her son Rabbhi Yahiya, 26, officials referred her to a refuge for victims of domestic violence. But, he added, they didn't realise the refuge was legally bound to notify her husband once she checked in.

Mrs Lachaux was forced on the run again. She again contracted the consulate and was advised to go to the police station to face charges of libel her ex-husband had brought.

There she was physically assaulted by a police officer, her son claims and, Louis was denied food and water.

Then in October, when his mother was meeting a friend, her ex-husband snatched Louis from her arms. She has not seen him since.

Ms Lachaux's ex-husband filed a further case against her for kidnapping, and if found guilty, she could face several years in prison.

Mr Yahiya says he has written several letters to the Foreign Office to no avail. 'As a family, we are disgusted with the way they have handled my mother's case,' he said.

In the past year, Prime Minister David Cameron and Foreign Secretary William Hague have made official trips to Dubai in a bid to secure a lucrative sale of Eurofighter Typhoon military jets.

'Most of our calls were never returned. They don't want to jeopardise the sale,' claimed Mr Yahiya.

Rori Donaghy, director of Emirates Centre for Human Rights, added: 'The British government have failed to support Afsana, because they were seduced by the deal'. Meanwhile Nick McGeehan, Middle East Director for Human Rights Watch, said the 'UAE's laws discriminate against women', meaning 'Mrs Lachaux cannot be guaranteed a fair trial.'

Mrs Lachaux's MP, Labour's Jim Fitzpatrick told *The Independent*:

'The way Afsana Lachaux has been treated is appalling. As a woman in a Muslim county the authorities there have taken the word of the man as true.'

A foreign Office spokesperson said: 'We cannot interfere in the judicial process of another country. We will continue to provide consular assistance to the family.'"

6. The said article, comprising substantially the same words, was also published on the Website on about 24 January 2014 (<http://independent.co.uk/news/uk/crime/british-mother-afsana-lachaux-faces-jail-in-dubai-after-husband-claims-she-kidnapped-their-son-9084171.html>). The article has been published there continuously since that date and remains on the Website to this day. The only difference between the original online and print versions of the article are as follows:

6.1 The headline of the online version is “British mother Afsana Lachaux faces jail in Dubai after husband claims she kidnapped their son”; the words “Afsana Lachaux” after the word “Family”.

6.2 The standfirst (the words immediately under the headline) in the online version is “Family claim UK is unwilling to help for fear of risking jet deal”, whereas the print version includes the words “of Afsana Lachaux” after the word “Family”.

6.3 The inset wording underneath the photograph in the online version is “Family claim UK is unwilling to help for fear of risking jet deal”, while in the print version it is “Afsana Lachaux from Poplar, east London, moved with her husband to Dubai where she gave birth to her son Louis”.

7. In their natural and ordinary and/or inferential meaning the words complained of (both in their print and online manifestations) meant and were understood to mean that the claimant:

7.1 became violent towards his ex-wife Afsana soon after the birth of their son, which caused her, fearing for her safety, to escape and go on the run with the child;

7.2 having tracked Afsana down, callously and without justification snatched their son back from his mother’s arms; and

7.3 Falsely accused Afsana of kidnapping their son, a false charge which if upheld could result in her, quite unfairly and wrongly, spending several years in a Dubai jail.

8. Further, for the purposes of section 1(1) of the Defamation Act 2013, the publication of the said words or statement has caused and/or is likely to cause serious harm to the reputation of the claimant. In support of this contention the claimant will rely on the following facts and matters:

8.1 The said words conveyed the imputations of and concerning the claimant set out in paragraph 7 above.

8.2 These imputations were, in the common law sense, very seriously defamatory of the claimant.

8.3 As pleaded at paragraph 3 above, the claimant has substantial connections with this jurisdiction and a reputation to protect here, both now and in the future. As regards to the future, it is by no means an unlikely prospect that at some

point in the future the claimant will wish to live here, as he is entitled to do, not least having regard to the fact that:

8.3.1 he works in the aerospace and aviation sector; and/or

8.3.2 his son Louis has a British mother, who may choose in the future to exercise his right to take British citizenship and to study and/or live here.

8.4 The Claimant was readily identifiable from the words complained of. His surname is a relatively distinctive one, both in this jurisdiction and in Dubai. Furthermore, the words complained of have been published at all times in juxtaposition with a prominently displayed and clear photograph of Afsana, making it all the more likely that readers, especially those who came into contact with Afsana and the claimant when they were still married, would identify the claimant with the offending imputations.

8.5 The words complained of were published in the print version of *The Independent*, a national newspaper which, as set out in paragraph 4 above, has a very substantial readership within this jurisdiction and a substantial readership in Dubai.

8.6 The said words have also been published continuously on the Website for around ten months. They continue to be published on the Website to this day. As set out in paragraph 4 above, the Website has a very substantial readership both within this jurisdiction and, it is reasonably to be inferred, in Dubai.

8.7 In the premises, it is reasonably to be inferred that the words complained of have been read by a very large number of readers of *The Independent* within this jurisdiction and in Dubai.

The Evening Standard

7. The substance of the claimant's case relating to the defamatory words and serious harm is set out at paragraphs 5 to 7.7 of the Particulars of Claim as follows:

“In an article by Susannah Butter headed “*Dubai's a small place – he took Louis in an instant*” published in the print issue of *London Evening Standard* for 11 February 2014 and on the Website from about 10 February 2014 onwards and on a continuing basis (<http://www.standard.co.uk/lifestyle/london-life/dubais-a-small-place--he-took-louis-in-an-instant-9119014.html>), the Defendant published or caused to be

published, both within this jurisdiction and in Dubai, the following words defamatory of the Claimant:

“Dubai’s a small place – he took Louis in an instant’

Today a London mother goes to court accused of abducting her own three-year-old. Her older son tells Susannah Butter how escaping a troubled marriage left Afsana Lachaux facing jail abroad after her ex-husband ‘snatched’ their child

Today, in a Dubai courtroom, more than 4,000 miles away from home, a jury will decide if Afsana Lachaux is guilty of kidnapping her three-year-old son Louis from her ex-husband.

The 46-year-old former civil servant from Poplar may never see her child again. Her older son from a previous marriage, Rabbhi Yahiya, 26, says: ‘Unless the British Government intervenes, my mum risks going to jail for something she didn’t do, after which she will be deported and lose her son. All she did was leave an abuser.’

Despite being accused of kidnapping, Lachaux hasn’t seen her three-year-old since October last year, when her ex-husband allegedly took him out of his pushchair in the street. The case has cost the family a ‘debilitating’ £70,000 in legal fees and left an ‘overriding feeling of helplessness’.

The exact charges relate to Lachaux not bringing her son to a custody visit with her ex-husband, who cannot be named for legal reasons, in March 2012. But Yahiya, who works for the British Council, gives his mother’s version of events. ‘She didn’t turn up because on previous visits she was assaulted by him in public. She told the police but they did not want to hear it.’ The allegations of domestic violence have not yet been tested in any court, and her ex-husband has denied them.

Lachaux is originally Bangladeshi but grew up in east London, where she married and brought up Rabbhi, 26, and his 23-year-old brother. ‘She rose up the civil service from local government and worked in regeneration. She was a successful, sociable, headstrong woman. I am proud of her. We liked going to Greenwich as a family.’ She and Yahiya’s father are divorced.

In 2009 Lachaux told her children she was seeing a French man, a comfortably off avionics engineer based in Dubai. Yahiya says: ‘I never asked where they met. We were glad my mum had found someone and was happy.’

They married in summer 2009 in London and moved to Dubai in February 2010. ‘It was a big adventure – the first time my

mom had lived abroad. They were in love and planning to have a child so she was excited. Now I remember that he seemed reserved and only his brother and parents came to the wedding but at the time I didn't question it. It was a happy time.'

Louis was born two months premature, in April 2010, and shortly afterwards Yahiya stopped hearing from his mother as frequently. 'We thought it was odd that she hadn't brought Louis to see us. In November we Skyped.'

He recounts what he heard that day. 'She told me he had beaten her and showed me the bruises. She was crying, which I'd never seen her do before. She told me that since Louis was born her husband had become controlling. He refused to let her register Louis as a British citizen, got him a French passport and hid it with his birth certificate outside the house. The impression I got was that he didn't want her to take Louis anywhere without him. A woman can't work in the United Arab Emirates without her husband's permission so she was confined to the house. Eventually she told the police but they just said, "Go home to your husband". It's seen as the man's right to chastise his spouse there.'

A year later, Yahiya persuaded her to escape. 'I went to Dubai in April 2011. We fled but couldn't leave the country because we didn't have Louis's passport.' They stayed in hotels and rented apartments but, according to Yahiya, things got worse. 'In June 2011 she was taken to Bur Dubai police station for "absconding". She and Louis were put in the same cell where a British man had allegedly been beaten to death by guards a month earlier.'

Yahiya says she was locked up for four hours in 40-degree heat and denied food and water. 'While she was holding her one-year-old and asking why she was there, a prison guard pushed her in the face.' Although Lachaux had never been charged with any offences, her passport was confiscated by Dubai police.

Her husband obtained visiting rights to see Louis, so every week Lachaux would meet him in the park. According to what his mother told Yahiya: 'Once he tried to snatch Louis and it badly bruised his head,' Yahiya alleges. 'She went to the police but they said they didn't care if she lived or died.'

She went to the Dubai Foundation for Women and Children in February 2012. 'It's the only refuge in Dubai and they had a legal obligation to tell her husband where she was. She and Louis shared bunks with illegally trafficked sex workers.'

In March 2012 she went into hiding and stopped the visits – it is for this that she is being prosecuted. ‘I told her not to go any more. I was concerned for her.’ Yahiya and his brother received an email from her husband, warning that if they went to Dubai he would report them for aiding a kidnap. She lived on the sofas of friends and ‘in squalid accommodations, living off noodles’ with Louis who, his brother says, is ‘sharp and funny’.

And then, on October 29 last year, her husband tracked her down. ‘Dubai’s a small place. She told me he took Louis – it happened in an instant.’ Lachaux hasn’t seen her son since.

When she called the British embassy to report the incident they told her that in August 2012 her husband had obtained a divorce in a Sharia court and been given custody. ‘My mum didn’t even know. Men can do that in Dubai. She was denied custody on claims that Louis had eczema, making her an” unfit mother”.’ She claimed to Yahiya that she did not know the four witnesses who testified against her.

Since this began, Lachaux’s family have been trying to help but the Dubai justice system has proved impenetrable. ‘For three years I have been in touch with the Dubai Embassy, the British Embassy there, William Hague and the Middle East ministers. I’ve told them about every incident but they say they can’t intervene in the judicial process of another country. Our MP Jim Fitzpatrick has been supportive, and asked David Cameron to raise my mum’s case when he’s been there. I’ve read about an Austrian woman and a Norwegian woman being raped there, and both their governments intervened. Why can’t ours do anything to help my mum? Do you understand the frustration?’

The Standard contacted the Dubai police for a response and was referred to the British Consulate in the UAE. The FCO spokesman said: ‘Consular staff has been providing assistance to Mrs Lachaux since 2011 including attending court hearings with her. Consular officials have approached the UAE authorities about this case and we will continue to work closely with them. However we cannot interfere in the judicial process of another country. We must respect their systems just as we expect them to respect the UK’s legal processes.’

Meanwhile, Yahiya awaits the court case. ‘Every time I speak with my mum I try to keep her spirits up. She’s still strong but her face has changed. She’s so skinny and on tenterhooks the whole time. My family and I would like the British authorities to ask the Dubai government to drop her case, overturn the current custody order and return her passport so that she and her son can come home to London.’”

6. In their natural and ordinary and/or inferential meaning the words meant and were understood to mean that the Claimant:

6.1 became violent and abusive towards his ex-wife Afsana within months of marrying her, beating her and leaving her with bruises on at least one occasion;

6.2 assaulted Afsana in public on custody visits relating to their young son;

6.3 attempted to snatch their son on one custody visit, leaving him with a badly bruised head;

6.4 callously and without justification snatched their son from out of his pushchair in the street; and

6.5 subjected Afsana to the grotesque injustice of facing jail in Dubai for 'abducting' her own child, when in truth she had only fled with him to escape the Claimant's violent abuse.

7. Further, for the purposes of section 1(1) of the Defamation Act 2013, the publication of the said words or statement has caused and/or is likely to cause serious harm to the reputation of the Claimant. In support of this contention the Claimant will rely on the following facts and matters:

7.1 The said words conveyed the imputations of and concerning the Claimant set out in paragraph 6 above.

7.2 These imputations were, in the common law sense, very seriously defamatory of the Claimant.

7.3 As pleaded at paragraph 3 above, the Claimant has substantial connections with this jurisdiction and a reputation to protect here, both now and in the future. As regards the future, it is by no means an unlikely prospect that at some point in the future the Claimant will wish to live here, as he is entitled to do, not least having regard to the fact that:

7.3.1 he works in the aerospace and aviation sector; and/or

7.3.2 his son Louis has a British mother, who may choose in the future to exercise his right to take British citizenship and/or live here.

7.4 The Claimant was readily identifiable from the words complained of. His surname is a relatively distinctive

one, both in this jurisdiction and in Dubai. Furthermore, the words complained of have been published at all times in juxtaposition with a prominently displayed and clear photograph of Afsana, making it all the more likely that readers, especially those who came into contact with Afsana and the Claimant when they were still married, would identify the Claimant with the offending imputations.

7.5 The words complained of were published in the print version of the *London Evening Standard*, a newspaper which, as set out in paragraph 4 above, has a very substantial readership within this jurisdiction.

7.6 The said words have also been published continuously on the Website for over nine months. They continue to be published on the Website to this day. As set out in paragraph 4 above, the Website has a very substantial readership both within this jurisdiction and, it is reasonably to be inferred, in Dubai.

7.7 In the premises, it is reasonably to be inferred that the words complained of have been read by a very large number of readers of the *London Evening Standard* within this jurisdiction and in Dubai.”

Background

8. The relevant articles were published respectively on 20 January 2014, 24 January 2014 and 10 February 2014. On 27 February 2014 the claimant’s solicitors were instructed. The solicitor’s letters of claim on behalf of the claimant were not sent until 28 August 2014 (AOL), 22 September 2014 (The Independent) and 23 September 2014 (The Evening Standard). The claimant’s solicitors stated that they had spent “a considerable amount of time not only putting together the funding arrangements... but also establishing the facts, collating evidence, and ensuring that our client’s case is sound”. The defendants, unsurprisingly, took exception to the considerable delay which had occurred between instruction and the letters not least because the complaint was directed to serious harm to the claimant’s reputation for as long as any one of the articles remained available upon a defendant’s website.

AOL

9. In a thirteen page letter of response dated 17 September 2014 Lewis Silkin, in clear and trenchant terms, set out the defendant’s case point by point. It dealt with the matters raised by the claimant including reference, the issue of whether in fact the claimant is a “foreign exchange dealer” as alleged in the article, what, if any connections the claimant has to the UK, serious harm and delay. It identified the fact that there had been four articles published by the Daily Mail concerning the custody dispute between

the client and his ex-wife the first of which was published on 23 January 2014 both online and, it was believed, in hard copy. The articles reported a number of allegations made by Afsana Lachaux against the claimant, which reflect the allegations made in the articles complained of in these proceedings. The articles published subsequently in the Daily Mail online were on 2 February, 13 February and 16 February 2014. The point was made on behalf of the defendant that the claimant does not appear to have raised complaint, still less taken any legal action, in respect of the Daily Mail articles.

10. No response was received to the letter and on 3 October 2014 the defendant's solicitors again wrote. An apology was offered which included the following:

“The HuffPostUK has received a complaint about this post from Afsana's ex-husband and we accept that the post might fairly be criticised for creating a one sided impression of the couple's dispute; it could have been made clearer that Afsana's allegations of domestic abuse were denied by her ex-husband.

We are happy to put that right and apologise to him for any embarrassment caused.”

The article was also taken down from the website.

11. By a letter of reply dated 6 October 2014 the claimant's solicitors identified their client as an aerospace engineer by training and profession who is currently working as a teacher in the aviation and aerospace sector. Such activity as a foreign exchange trader was by way of a hobby, the claimant's solicitors describing him as “one of those ‘*amateurs*’ who like many others, dabbles in forex trading using his own money in his spare time.” The letter dealt with many of the points raised in the defendant's letter. Correspondence ensued between the parties which was detailed and dealt at length with the issues raised in the claimant's original letter, the defendant's first letter of response and any subsequent issues. No one reading the correspondence could have been in any doubt as to the stance being taken by the defendant upon the points raised in correspondence.
12. On 19 January 2015, one day before the expiry of the one year limitation period, a claim form was served accompanied by the Particulars of Claim. On the same day the claimant issued an Application Notice seeking a determination of meaning as a preliminary issue. It is clear from the correspondence that both parties contemplated a preliminary challenge upon the issue of serious harm.
13. On 27 January 2015 Warby J handed down the Judgment in *Ames & anr v. The Spamhaus Project Limited* [2015] EWHC 127 (QB) in which he provided guidance as to the appropriate procedural mechanism to adopt for the purpose of determining the issue of serious harm.

The Independent and Evening Standard.

14. Following the first letter by the claimant's solicitors the defendants responded using in-house lawyers. David Price Solicitors & Advocates were subsequently instructed on behalf of both defendants and raised in correspondence the same matters as had been raised on behalf of AOL. Defences in both actions dated 23 January 2015 plead in detail the respective cases of the defendants. Issue is taken with any connection which

the claimant allegedly has with the UK and whether he is identifiable. It is denied that the publication of the words would have caused serious harm to the claimant's reputation or is likely to do so in the near future. Defences of public interest and truth are pleaded.

The Law

15. The relevant provisions of section 1 of the 2013 Act are as follows:

“1.- Serious harm

(1) A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant.....”

16. In *Cooke & anr. v. MGN Limited* [2014] EWHC 2831(QB) Bean J (as he then was) determined the question of serious harm (Section 1 of the 2013 Act) as a preliminary issue. He found that the harm had to be serious and not merely substantial, that harm to the claimant's reputation had been or was likely to be caused and for that purpose it was not sufficient to demonstrate serious distress or injury to feelings. The nature and effect of any subsequent apology was a factor to be considered in assessing whether such serious harm was likely to be caused and that while evidence was not required in every case witness statements had been admitted by the court for the purpose of the determination. Of note is the fact that time for the service of the Defence had been extended until after determination of the preliminary issue.

17. Subsequent to *Cooke* guidance was given by Warby J in *Ames* above as to the appropriate procedural mechanism to adopt for the purpose of determining the issue of serious harm. In his judgment at [48-50] Warby J considered the test set out in Section 1 of the 2013 Act and the connection between “serious harm” and the *Jameel* test which requires a tort to be “substantial” as follows:

“Section 1 of the Defamation Act 2013

48. The major part of the publication complained of by Mr Ames and Mr McGee took place on and after 1 January 2014 and is therefore subject to the requirements of s1(1) of the Defamation Act 2013 which provides that;

1) A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant.”

49. This wording does not abolish the principles discussed above. It introduces an additional requirement. The use of the word “serious” obviously distinguishes the statutory test from the common law as stated in *Thornton*. The threshold identified in *Thornton* was that the statement should “substantially” affect attitudes in an adverse way, or have a tendency to do so. The *Jameel* test also requires a tort to be “substantial”. As Bean J noted in *Cooke v MGN Ltd*[2014] EWHC 2831 (QB), [2014] EMLR 31[37], examination

of the Parliamentary history of the section shows that the word “serious” was chosen deliberately in place of the word “substantial”. It follows that the seriousness provision raises the bar over which a claimant must jump, as compared with the positions established in the two cases mentioned. These Points are spelled out in the Explanatory Notes to the section:-

“The section builds on the consideration given by the courts in a series of cases to the question of what is sufficient to establish that a statement is defamatory. A recent example is *Thornton v Telegraph Media Group Ltd* in which a decision of the House of Lords in *Sim v Stretch* was identified as authority for the existence of a “threshold of seriousness” in what is defamatory. There is also currently potential for trivial cases to be struck out on the basis that they are an abuse of process because so little is at stake. In *Jameel v Dow Jones & Co* it was established that there needs to be a real and substantial tort. The section raises the bar for bringing a claim so that only cases involving serious harm to the claimant’s reputation can be brought”.

Put another way it is no longer enough to establish a tendency to have a substantial impact and amount to a real and substantial tort; there is now no tort unless and until “serious harm to reputation” has either been caused or “is likely to” be caused by the publication.

50. In these circumstances it seems to me that an assessment of whether a defamation claim in respect of publication on or after 1 January 2014 should be dismissed on the grounds that the actual or likely harm to reputation is too slight to justify the claim, or grounds that include this proposition, should normally start with consideration of the “serious harm” requirements in s1. The court should ask itself whether one of those requirements is satisfied or, as appropriate, is arguably, or has a real prospect of being, satisfied. If the answer is no, then there is no tort at all and the claim will inevitably be dismissed. If the answer is yes, it may be hard to establish that the tort alleged fails the “real and substantial tort” test.”

At [101] Warby J stated:

“In my judgment it is likely in today’s legal context to be preferable to address issues of serious harm or *Jameel* abuse by means of preliminary issues, with any disputes as to meaning being resolved at the same time. ...”

18. As to the issue of *Jameel* abuse Warby J considered the authority at [27] and following and noted that the question of whether “a real and substantial tort” had been committed within the jurisdiction had been identified as a “threshold criterion” in an application to strike out a claim as an abuse.

19. The defendants contend that these applications come within the guidance of Warby J in *Ames* and should be tried as preliminary issues together with the issue of meaning in the AOL case. In response the claimant contends that the applications are premature. Reliance is placed upon the fact that in the AOL action no Defence has been served and thus the ambit of the issues between the claimant and the defendant is yet to be defined. Further, in correspondence Lewis Silkin has indicated that its client intends to rely on a defence of truth and until issue has been joined by the pleading of a Defence and Reply accompanied by Statements of Truth it will not be possible to properly evaluate and make informed decisions as to what are described as the 'pros and cons' of the various alternative trial options. It is submitted that the effect of these applications is to hinder the court in its ability to fulfill its costs management duty pursuant to CPR rule 3.12 (2) since costs budgets have not been exchanged. It is said that it is difficult to envisage how it might be possible for the court properly to manage both the steps to be taken and the costs to be incurred by the parties so as to further the overriding objective. These applications should await a case management hearing when the court will be in a position to properly evaluate the relevant issues.

Conclusion.

20. The claimant instructed solicitors on 27 February 2014. Six months later, on 28 August 2014, the first letter of claim in these three actions was sent on behalf of the claimant. The claimant and those who act on his behalf had ample opportunity to evaluate and set out in detail the case that was to be met. The letters of claim set out in detail not only the issues but the facts upon which reliance is placed, such detail being replicated in the pleaded Particulars of Claim. The clarity and detail of the initial and subsequent response by solicitors acting on behalf of AOL dealt comprehensively with the issue of serious harm and relevant matters relating to whether or not a substantial tort has been committed.
21. It is clear from the Explanatory Note to the 2013 Act that the effect of section 1 and the requirement of 'serious harm' is to create a higher hurdle for the claimant and one that is at the threshold of any defamation action. I agree with the approach taken and guidance given by the court in *Cooke* and *Ames* above namely that it is appropriate to determine 'serious harm' as a preliminary issue. I regard the issue of 'serious harm' as a threshold condition in any action brought pursuant to the provisions of the 2013 Act. It is moreover, an issue which can be evaluated, in appropriate circumstances without recourse to any pleaded Defence. The claimant brings the action, it is for him to set out his case on this threshold condition. In this case he has had ample time and opportunity to do so. Witness statements can be before the court to assist in the determination of this issue. I am satisfied that there is before this court sufficient fact and detail in all three actions so as to permit it to determine the question of serious harm as a preliminary issue.
22. The three issues of reference (identification), serious harm and real and substantial tort are all interlinked. If the claimant cannot be identified then he cannot be caused harm. Until serious harm is made out there can be no real or substantial tort. Factually, matters which are relevant to the question of serious harm, for example the connection which the claimant has with the United Kingdom, whether he is identified in the Particulars of Claim which describe him as a French national, make no reference to his occupation as a foreign trader, do not plead his full name - only that he is the ex-husband of Afansa Lachaux - are all interlinked with reference and an abuse argument

as to whether there is a real and substantial tort. In my view, common sense together with observance of the overriding objective, requires early determination of serious harm, reference and *Jameel* abuse so as to enable a determination to be made as to whether these claims should continue. Such a hearing would be at one with the ethos of the 2013 Act namely early identification of issues, where appropriate determination of the same, with consequent saving of time and money. A contention by the claimant that in this case such a course does not take account of the concept of cost budgeting and that such a hearing should await service of further pleadings and a case management hearing, flies in the face of common sense and the aims of the overriding objective.

23. For the reasons given I am of the view that these applications fall within the guidance issued by Warby J in *Ames* namely that it is preferable to address issues of serious harm or *Jameel* abuse by means of preliminary issues with any disputes as to meaning being resolved at the same time. Accordingly the defendants applications are granted.