

IN THE HIGH COURT OF JUSTICE



2016 EWHC 2011 (QB)

QUEEN'S BENCH DIVISION

No. HQ15D051431

Royal Courts of Justice
Thursday, 28th July 2016

Before:

MASTER McCLOUD

BETWEEN:

Mr Kamran Malik

Claimant

- and -

Mr Donald John Trump

Defendant

Mr. Kamran Malik, the Claimant, appeared in person.

Mr. William Bennett (instructed by Messrs Atkins Thomson, Solicitors) appeared on behalf of the Defendant.

JUDGMENT

Hearing: 28th July 2016

Handed down: 6 October 2016

MASTER VICTORIA McCLOUD:

The parties

1. The Defendant to this suit, Mr Donald John Trump, is a politician in the United States albeit not holding any public office. He owns, or is involved in running, various businesses including hotels. One such business is a golf course in Turnberry, Scotland, UK.
2. He is running for election as President of the United States of America in the current US Presidential election. He made a number of speeches about various issues as part of his campaign to be selected as Republican nominee in that Presidential election.
3. Some of his statements which received very wide media coverage both here and in the USA (and no doubt elsewhere) concerned people of the Muslim faith. A subset of those comments related to people of that faith in the UK, and London specifically. They are well known and controversial statements, about which I say more below.
4. The Claimant (in American terms, Plaintiff) Mr Malik is also a politician, also not holding a public office, but has in the past run for office as Mayor of the London Borough of Newham and ran for election as a Member of the European Parliament. He is the leader of a party called the Communities United Party which has its headquarters in the east of London, in Romford Road E7, and an office in Green Street, London E13. He is British Muslim and according to his skeleton argument he founded that party.

The claim

5. Before proceeding further I should pay tribute to both sides for their measured approach in argument before me. Both sides presented arguments in restrained and moderate terms and both sides sought to assist and persuade the court constructively.

6. This claim is brought by Mr Malik, who is acting for himself without counsel so I have made allowances for his style of pleading in order to be fair to him. It was issued on 14 December 2015 and in it he claims damages. His claim form puts it in the following manner:

“The Claimant brings a claim against the Defendant’s negligence in submitting on national television that ‘all Muslims, whether they be tourists or immigrants are to be banned from entering the USA until we know what is going on’ in the light of recent terrorist attacks in Paris, France. These comments have caused severe loss and distress to the Muslim community in East London’s Green Street where the Claimant has sought to build strong relationships and provide support to many business owners and families who heard the news and were shocked by its discriminatory and Islamophobic content.”

He continues:

“Under USA law it is difficult to lodge any claim against him due to the Constitution” – by which of course Mr Malik means the US Constitution – “not offering much by way of sanctions for outspoken presidential candidates. However, under UK law the Claimant submits that the Defendant has made slanderous/defamatory statements which affect him as a Muslim, members of his local community and in light of the conduct, the Defendant is liable under both the Defamation Act 2013, Equality Act 2010 and the incitement for racial and religious hatred Act 2006 and should be ordered to make payment to the sum of £10,000,000.”

7. The amended Particulars rather than the claim form also pleads claims which mention Article 9 and Article 14 of the European Convention on Human Rights and Fundamental Freedoms.

Article 9 states:

“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

The progress of this claim

8. Because Mr Trump is not resident in this jurisdiction, Mr Malik applied on 11 January 2016 for permission to serve Mr Trump out of the jurisdiction in the USA, or alternatively for a declaration that the steps which Mr Malik has apparently already taken to deliver the Claim to the golf course business which Mr Trump operates in Scotland would suffice to be good service out of the jurisdiction (Scotland being out of the jurisdiction for present purposes, the High Court being a court with jurisdiction over England and Wales).

9. Mr Malik provided Particulars of Claim with his claim form, but I was not satisfied that they satisfied procedural and legal requirements for the pleading of what was effectively a claim in libel. By my order of 29 January 2016 I made an ‘unless’ order requiring him to plead his case in a manner which complied with Practice Direction 53 of the Civil Procedure Rules.

10. On further consideration of the court file, I ordered on 11 February 2016, inter alia, that Mr Malik must lodge a schedule of publications relied on within the UK, by 11 March 2016. I also made provision to ensure that Mr Trump was aware of the

claim but without deciding the question of formal permission to serve and without him being required to take any steps in the proceedings.

11. On 22 March 2016 on application by Mr Trump's legal representatives I made an order inter alia requiring Mr Malik to comply with the order of 11 February as to service of a schedule of publications relied on, within 7 days.

12. The date is unstated but there is before me a Schedule of Publications lodged by Mr Malik which refers to articles on websites run by The BBC, The Guardian newspaper and The Independent newspaper. A letter apparently enclosing it is dated 20th February 2016.

13. The articles quote some of Mr Trump's alleged statements, in a journalistic and non-approving context. The quotes which one can draw out from them which refer to Muslims appear to be:

- a. *"They have sections in Paris that are radicalised – police refuse to go in there. We have places in London and other places that are so radicalised the police are afraid for their own lives".* (BBC website, 8 December 2015)
- b. *"Donald Trump has called for a 'total and complete shutdown' of the USA's borders to Muslims"... "Until we are able to determine and understand this problem and the dangerous threat it poses, our country cannot be the victims of horrendous attacks by people who believe only in Jihad, and have no sense of reason or respect for human life"... "Shariah authorizes such atrocities as murder against non-believers who won't convert, beheadings and more unthinkable acts that pose great harm to Americans, especially women."... "the hatred is beyond comprehension. Where this hatred comes from and why we will have to determine."* (The Guardian website, 8 December 2015).
- c. *"Mr Trump...said they should be banned 'until our country's representatives can figure out what is going on'.* (and quotes similar to the above, BBC website 8 December 2015)
- d. *The Independent* website 8 December 2015 repeating parts of the quotes above.

14. For context, the titles of the above articles were, respectively (a) *“Trump claim wrong that police ‘afraid’ in London – PM says”* (b) *“Donald Trump: ban all Muslims entering US”*, (c) *“Donald Trump’s Muslim US ban call roundly condemned”* and (d) *“Donald Trump speech in full: What the Republican presidential candidate said about Muslims”*.

15. Each of the articles provides quoted material from various political and other figures challenging and disagreeing with the statements made by Mr Trump and I think it can fairly be said that none adopt a tone sympathetic to the content of his statements.

16 In parallel with this application, Mr Malik applied for an injunction prohibiting Mr Trump from entering the UK for 2 years. Correspondence in the hearing bundle suggests that the trigger for the application was that Mr Trump was intending to visit the UK after the result of the EU referendum. That application was dismissed by Dove J. on 10 February 2016 *“irrespective of the underlying merits of C’s Claim”*. Application to appeal was refused by King J on 20 June 2016. Mr Trump was widely reported as having visited the UK, specifically Scotland, on 24th June 2016 which was the day after the “Brexit” vote.

17. The application before me is for permission to proceed with this claim against Mr Trump by serving him in the USA or deeming him to have been served in Scotland at his Turnberry golf course business. The application is opposed. As part of the consideration of the application I do have to consider the legal merits of the claim, and other matters.

The arguments on the application

18. There are two issues for me to determine:

(A) whether the claim brought by Mr Malik is actionable; and if so

(B) whether he ought to be given permission to serve his Claim Form out of the jurisdiction (or alternatively deemed to have validly served out of the jurisdiction in the case of his delivery to the golf club in Scotland).

Lack of a proper claimant

19. The Defendant raised what might be termed a logically anterior point to the above main issues and that is whether the claim fails at the outset for want of a proper claimant and for noncompliance with CPR 16.2(3). In particular whilst Mr Malik's claim form is clearly framed in terms of a claim brought by him personally, the Amended Particulars of Claim which are before the court state that the claim is brought by him "On behalf of the Communities United Party". The Defendant indicated to me that by CPR16.2(3): "*If the claimant is claiming in a representative capacity, the claim form must state what that capacity is.*" Hence, the Defendant argued, if the claim is intended to be brought on behalf of the political party referred to then Mr Malik is in breach of the requirement to comply with CPR 16.2 and that should be the end of the matter, though in addition it was also said that (assuming the Communities United Party is an unincorporated association, it cannot sue in its own name in defamation. (The Defendant cited *North London Central Mosque Trust v The Policy Exchange* [2009] EWHC 3311 where it was held that the claimant, an unincorporated charitable trust responsible for the management of a mosque, could not sue in its own name nor could trustees sue on its behalf. See *Gatley on Libel & Slander 12th ed.* §8.29, *The Law Society of England and Wales v Kordowski* [2011] EWHC 3185 QB, and *Markt v Knight and Co.* [1910] 2 KB 1021 at 1040.

20. Mr Malik argued, per his skeleton argument para 22-23 that officials of unincorporated associations may bring actions personally, and that, eg, whilst a Government department cannot sue in libel, individual councillors can do so and he referred to *Derbyshire CC v Times Newspapers Ltd* [1993] AC 534, HL, and (in the case of a company, not an unincorporated association) *Jameel and others v Wall Street Journal Europe Sprl* [2006] UKHL 44, [2007] AC 359. He said that the action in this case was obviously personal in nature.

21. On this point I sense no real difference between the parties as to the law. Both parties effectively accept that an unincorporated association cannot sue in its own name in defamation and that defamation is a personal action.

22. I consider that I have to look at the underlying intention of the claimant as a lay person pleading a claim. The claim form was framed as a personal libel claim by Mr Malik. The amended Particulars drafted as they are by Mr Malik in person should I

think in fairness be read consistently with his intention which is to pursue a personal action, and (albeit generously) to allow leeway on the basis that if the sole defect were pleading by Mr Malik 'on behalf of the Communities United Party', such could be amended out so as to facilitate the bringing before the court of the issues of real controversy between the parties. I will proceed on that basis. Similarly it was pointed out by the Defendant that whereas the claim form refers to a statement of Mr Trump about preventing Muslims from entering the USA, the Amended Particulars refer to a statement by him quoted in a BBC article, relating to Muslims in London. Mr Malik as a lay person did not appreciate that an amended claim form was required and nor had I ordered it, and in the circumstances I shall overlook that defect as being readily amenable to correction if need be by amendment of the claim form.

(A) Whether the claim brought by Mr Malik is actionable: Defendant's argument

23. It is convenient for ease of exposition here to set out the Defendant's arguments first under each head but without losing sight of the fact that the burden is on the Claimant to establish that he should be given permission to serve out of the jurisdiction.

(i) Breach of CPR 53PD 2.3 requirement to plead defamatory meaning

24. Counsel for the Defendant argued that in breach of CPR53 PD2.3, Mr Malik had not set out the natural and ordinary defamatory meaning which he claimed the articles cited bear in regard either to him or to the Communities United Party. The defamatory meaning complained of was said to be fundamental to a defamation claim. The failure to plead it meant that the claim was deemed to have been struck out automatically by virtue of paragraph 1 of my order of 29 January 2016 which required proper pleading on an 'unless' basis.

25. The particulars rely on a BBC web page dated 8 December 2015 entitled "*Trump claim wrong that police "afraid" in London – PM says*" namely a statement made by Mr Trump in the US: "*We have places in London and other places that are so radicalised that the police are afraid for their own lives.*" The Defendant argued that as a whole the article comprehensively refuted that assertion by means of a

number of quotes given by authoritative sources, most notably the former Prime Minister, the Mayor of London, the leader of the opposition and the Metropolitan Police. The message conveyed by the article was said to be that Mr Trump's assertion concerning areas of London being unsafe was wrong (which was reflected in the article's headline). Moreover no defamatory meaning was pleaded for words in the Guardian, Independent and the second BBC article mentioned in the Schedule of publications.

26. Mr Malik's argument on this point focussed on his position (per his skeleton para. 26) that "despite the fact that there is no single definition" pleaded, the nature of the statement itself satisfied the test for defamation, defamatory words are words which lower him "in the estimation of right-thinking members of society generally" (quoting from the well known case of *Sim v Stretch* [1936] 2 All ER 1237 HL) or (from *Parmiter v Coupland* [1840] 6 M&W 105): defamatory material is "... a publication ... calculated to injure his reputation by exposing him to [public] hatred, contempt, or ridicule. He also referred to *Youssouf v MGM Ltd* [1934] 50 TLR 581 CA.¹

(ii) That the words complained of do not refer to or identify the Claimant

27. The Claimant was not named in the article(s) referred to. In order to defame the Claimant, it was said by the Defendant that the defamatory statement (if such it was) made in the article must defame Mr Malik specifically. Even if a Claimant was not named, he or she could still succeed if the article in question was such that a reasonable person having knowledge of pleaded extrinsic facts would have read the article and concluded that defamatory statements were made against the Claimant.

28. The Defendant argued that the Claimant's best case on the issue of whether the statements referred to Mr Malik was that a reasonable reader would have interpreted the relevant quote attributed to Mr Trump to be a reference to Green Street, Forest Gate, London and, because this is where Mr Malik lives, to refer to

¹ s.1 Defamation Act 2013 which applies now, states that a statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the Claimant.

him. The Defendant however argued that the claim failed at the first of those two required references namely the absence of anything which a reasonable reader would understand as a reference to Green Street, London (let alone to the Claimant himself).

29. The law as to whether a member of a group could be defamed in circumstances where a statement was made which referred to that group rather than the individual by name, appeared at §7.9 of *Gatley on Libel & Slander* 12th ed. The defamatory allegation had to be directed at the claimant, not the group, and *Gatley* quoted the following familiar statement by Willes J in *Eastwood v Holmes* (1858) 1 F & F 347 at 349: *“If a man wrote that all lawyers were thieves, no particular lawyer could sue him unless there was something to point to the particular individual.”*

30. Mr Malik's case was that the community in Green Street was the only part of London which had a very high concentration of Muslims who could arguably be said to be '*radicalised*'. It was they, including Mr Malik who said he owns and runs a business there, who ended up being most deeply affected by Mr Trump's comments. He referred to the Gatestone Institute International Policy Council of 3rd February 2015 from which he quoted *“Muslim enclaves in European cities are also breeding grounds for Islamic radicalisation An analysis of 2011 census data reveals the existence of more than 100 Muslim enclaves in Britain”*, and Mr Malik went on to rely on the asserted fact that the percentages of Muslim people in Green Street East were said in that report to be 49.1% of the total local population and the percentage in Green Street West was 50.4%.

31. He said that *“Due to the incident, Muslims in the area have been making an extra special effort to live lives that are productive in order to eradicate the stereotype and prejudicial bias which has been caused by the remarks of the Defendant, who has not exhibited a great deal of knowledge regarding the Muslim communities across the world, especially in London who hold the USA in high regard, due to their multicultural tolerance and acceptance of their cultures and beliefs both in the London and New York (sic)”*.

(iii) That the words complained of were not defamatory even if they referred to the Claimant

32. The Defendant argued that even if Mr Malik were to establish that the BBC article complained of (and I shall interpret this argument as extending also to the Independent and Guardian pieces albeit not pleaded in the amended Particulars but cited in the Schedule), the article was not, when taken as a whole, defamatory. *Gatley on Libel & Slander* 12th ed. was cited at 3.14 on p.115, in the form of a quote from *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130 at §14 per Sir Anthony Clarke MR and specifically the fifth principle referred to there:

The legal principles relevant to meaning ... may be summarised in this way: (1) The governing principle is reasonableness. (2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. (3) Overelaborate analysis is best avoided. (4) The intention of the publisher is irrelevant. (5) The article must be read as a whole, and any 'bane and antidote' taken together. (6) The hypothetical reader is taken to be representative of those who would read the publication in question. (7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, 'can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation...' ... (8) It follows that 'it is not enough to say that by some person or another the words might be understood in a defamatory sense.'

33. In this case the article(s) read as a whole did not support a defamatory meaning. The BBC article primarily complained of which quoted Mr Trump's statement about police being afraid of going to some places in London because they are so radicalised, was in reality a piece about how wrong Mr Trump was i.e.

the message was that such areas *do not exist*. The reasonable reader would conclude that areas of London are not so radicalised that the police dare not enter them. Therefore, even if the article did somehow refer to the Claimant, it could not have defamed him because its message was the very opposite of the statement made by Mr Trump.

34. Mr Malik's argument in this case was to concentrate not on the whole article per se but on the quote within it in which Mr Trump referred to London and which Mr Malik took to be an oblique reference to Green Street. He was clear that such a statement was defamatory and tended to stir up religious hatred of Muslims, most particularly in Green Street (since on his case it is Green Street which is the candidate for being the place most likely to be seen as 'radicalised').

35. He said at para. 31 of his skeleton for example that *"In specifically targeting Muslim people, Mr Trump is demonising them in the eyes of the general public who read the news and hear the speech online this week."* He reminded the court that the Mayor of London had called Mr Trump's words *"complete and utter nonsense"*, and that the former Prime Minister had said that the remarks were *"divisive, unhelpful and quite simply wrong"*.

(iv) Articles 9 and 14 of the Convention

36. The Defendant's position was that there was no conceivable interference with the Claimant's right to freedom of thought, conscience and religion. The assertion that the Defendant was trying to restrict him "from exercising his faith in his own country" was said to be ludicrous. As to Art. 14 (the right not to be discriminated against in the exercise of a protected right) there was no more than a passing reference to it.

37. Mr Malik put his argument to the contrary this way (I shall attempt to give a fair summary): there were four elements of potential relevance namely (i) do the Claimant's beliefs come within Article 9? (He said that his religion, as a Muslim, was affected because he was limited by the impact of Mr Trump's statement from interacting with people of other faiths and convincing them to join the practice of his faith through its teachings) (ii) whether manifestation of belief was affected (he said this aspect was not relevant), (iii) whether the statement(s) interfered with his Art. 9

rights (he said yes, since the statement by Mr Trump about banning Muslims from entering the USA amounted to preventing Muslims such as him from exercising his faith in the USA). Lastly (iv) justification or lack of it, as to which he said the statements were not prescribed by law and did not have a legitimate aim.

38. As to Art. 14 Mr Malik argued that the remarks were discriminatory against Muslims and therefore breached Art. 14.

(v) The Equality Act 2010

39. The Defendant said that whilst the Claim Form referred to the Equality Act 2010, no claim in this regard had been pleaded in the Amended Particulars and it therefore failed *in limine* for that reason.

40. The Claimant's skeleton as I understand it in fact relied at para. 29 on the Equality Act 2010 as an illustration of the fact that the interference with his religion under Art 9 was not 'prescribed by law' since it infringed both the Equality Act 2010 and indeed he said also the Racial and Religious Hatred Act 2006.

41. Mr Malik also indicated that whereas the above two Acts do not of course apply in the USA, the law of the USA did include provisions relating to Treason in the form of disloyalty to one's country and that was (as Mr Malik put it) an 'error that Mr Trump has committed.'

(vi) Racial and Religious Hatred Act 2006

42. The Defendant relied, if there was intended to be a freestanding claim under this Act, on the fact that the Racial and Religious Hatred Act 2006 creates criminal offences, not civil causes of action. I did not understand Mr Malik ultimately to be relying on this Act as a freestanding claim but rather as an illustration that any interference with his Art. 9 rights was not in accordance with the law if it was contrary to that Act.

Conclusions

43. At the end of the oral hearing Mr Malik asked to be allowed to make further submissions in response to the authorities cited by the Defendant. I permitted him

to do so in writing and he sent me those submissions on 29th July 2016. I have taken them into account.

44. In order for his application to serve out of the jurisdiction to succeed the C must establish that each pleaded cause of action has a reasonable prospect of success, that for each cause of action which satisfies the first test, there is also a good arguable case that it falls within one of the jurisdictional gateways set out in CPR6 PD6B §3.1; and for any cause of action which satisfies the first and second tests, the court must then decide whether to exercise its discretion to grant permission to serve out. As to the exercise of discretion the claimant must satisfy the court that England is the natural forum for the resolution of the dispute but since the coming into force of the Defamation Act 2013, s.9 of that Act has required that where the claim is for defamation, the court will have to be satisfied that *“England and Wales is clearly the most appropriate place in which to bring a claim in respect of the statement.”*

Whether the claim brought by Mr Malik is actionable

45. It is obvious that if the claim by Mr Malik is not actionable then permission to serve out of the jurisdiction, or to deem service in Scotland as having been valid, must fail.

(i) Breach of CPR 53 PD 2.3 requirement to plead defamatory meaning

46. CPR 53 PD 2.3 says:

(1) The claimant must specify in the particulars of claim the defamatory meaning which he alleges that the words or matters complained of conveyed, both

(a) as to their natural and ordinary meaning; and

(b) as to any innuendo meaning (that is a meaning alleged to be conveyed to some person by reason of knowing facts extraneous to the words complained of).

(2) In the case of an innuendo meaning, the claimant must also identify the relevant extraneous facts.

47. I accept the submission that the current pleading by Mr Malik does not satisfy the requirements of CPR 53 as to pleading meaning. That is a vital step in a

pleading in defamation and the failure to do so (having been given a second chance under an unless order) means that this claim is automatically struck out. However to decide a claim on that basis and to stop there without the courtesy of reasons in relation to other arguments would in my judgment be unhelpful given the public interest which there is about this claim against Mr Trump and the strong feelings which the statements made by Mr Trump have elicited. I shall therefore briefly state my decision under each head of argument notwithstanding the above.

48. It will have been apparent from my summary of the arguments of the parties in this case that Mr Malik's arguments were not those of a team of professional lawyers and I have tried to do my best in summarising them in a way which ensures that Mr Malik's underlying points are as clear as possible but this was not a wholly easy task to perform.

49. Because this judgment may be read by people affected by the comments made by Mr Trump but who are non-lawyers I shall set out, I hope in straightforward terms, why it is that statements such as those made by him are not capable of being the subject of a defamation claim even if what was said by him caused real upset and a sense of injustice to a section of the London community and more widely.

50. It is important that in dismissing this case this court is not understood to be endorsing or making any judgment on the merits of comments such as those in this case which have already been roundly condemned by among other people both the former Prime Minister and the Mayor of London. To give a flavour of the feelings expressed to me in court, in his submissions Mr Malik said with emphasis that (to quote from my notes of his oral submissions "*Some Muslim families stopped coming here. People come to me as a politician locally and are very concerned about the statements.*" "*Mr. Trump is trying to divide society.*" And per his skeleton at para. 33 "*the people of East London have been passionately against the remarks made by the Defendant.*") It was suggested in Mr Malik's skeleton at para. 46 among other things that Mr Trump should apologise to people of all faiths, and at para. 44 that "*a large amount of people ... view [Mr Trump] as a role model*

(including Muslims) and someone who is in a position to show guidance and leadership”.

(ii) That the words complained of do not refer to or identify the Claimant

51. The sense in which a person has to be identified or identifiable as the subject of a defamatory statement, for the purposes of the law of England and Wales is different from the sense in which one might quite properly use the concept of identification in general speech.

52. In this instance as a Muslim, at a strictly plain language level of course Mr Malik properly feels that he falls within the subject matter of Mr Trump's comments, all the more so because Mr Malik is a Londoner and lives in what he describes in effect as being the most likely place in London to be capable of being called 'radicalised' (I make no judgment about the correctness or otherwise of that demographic statement).

53. However as the Defendant correctly argues, for a claim in the law of defamation one needs something which either names the Claimant or which identifies him by facts known to the reader which make it clear who is referred to. In this instance what is identified clearly is “parts of London” but beyond that I cannot in my judgment accept that a reasonable reader would conclude that Green Street was the intended reference, and nor can I go further and conclude that Mr Malik could be understood as particularly referred to within that geographic location.

54. That is not to say that there could never be cases where some form of geographic reference could suffice, but the words would have to be more specific than those used by Mr Trump here.

(iii) That the words complained of were not defamatory even if they referred to the Claimant

55. This point is correct but in some ways unattractive. Mr Malik by citing a whole (or more than one) whole media article which quoted Mr Trump and then effectively 'demolished' the credibility of the quotation placed himself in the position of having to show that the totality of the words were defamatory, not merely the content of the quotation. A professional pleader might well have been able to point to some other

publication or publications where there was no such balance and no such 'antidote' to the words used.

56. Therefore whilst I accept the point that as pleaded the article(s) are not capable of being defamatory, I think in truth it was Mr Malik's intention to say that the words used by Mr Trump alone were defamatory, but he has pleaded for that purpose articles which are not suitable to achieve that end. Whether there are other publications which uncritically reproduce Mr Trump's words is not a matter properly in issue before me. The Defendant's counsel correctly accepted that "*In reality, what the C takes issue with is the quote attributed to the D in the article.*"

(iv) Articles 9 and 14 of the Convention

57. Mr Trump is not a public authority falling within the scope of the Human Rights Act 1998 duty not to act incompatibly with Convention rights. As such no claim lies against him for breach of the Convention. That is the often misunderstood effect of the Human Rights Act. Mr Malik referred to *Kimlya and Others* 2009 (I have no reference for that case and it was not before me) and to *Kokkinakis v Greece* [1993] ECHR 20 but it is clear that those cases relate to State actions or laws.

58. This court as a public authority does, however, have to act compatibly with Mr Malik's (and Mr Trump's) Convention rights and in my judgment his Art. 9 and Art. 14 rights are properly protected by the presence of a neutral court and a process which can evaluate whether it is necessary to construe the Defamation Act 2013 and apply the law generally, so as to afford Mr Malik a remedy in respect of Mr Trump's words. Clearly Islam falls within the scope of protection of religious freedom under Article 9.

59. In this instance in my judgment what one sees are words which may be offensive to many people including most obviously to Muslims. However I cannot agree that there is a strong enough connection between the words used and the ability of Mr Malik to both hold and exercise his religious beliefs and freedoms in the UK, as to give rise to an interference with his Art. 9 rights. Part of his argument was that the words used might prevent him from exercising his religion in the USA, but such an argument does not fall within the jurisdiction of this court.

60. I do not find that the protection of Mr Malik's Art. 9 rights requires (or arguably requires) me to apply the law of defamation in such a way as to limit Mr Trump's countervailing right of free speech in circumstances where Parliament has already drawn the line and has done so in a way which emphasises free speech and penalises only the most extreme cases which fall within the scope of the Racial and Religious Hatred Act 2006 (amending the Public Order Act 1986). It is worth setting out the text of the relevant part of the Public Order Act 1986 which was amended by the 2006 Act, which makes clear the emphasis on protection of freedom of speech:

“29J Protection of freedom of expression

Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.”

(v) and (vi): The Equality Act 2010 and the Racial and Religious Hatred Act 2006

61. It did not appear from the ultimate form of this claim that either a freestanding Equality Act 2010 claim was relied on, or a claim under the Racial and Religious Hatred Act 2006 but rather that they fell within what one might describe as illustrations of how the words used were 'not in accordance with the law' for the purposes of Art. 9. However even if I am wrong, the absence of pleading of a claim under the 2010 Act means that it must be dismissed, and any claim, if brought, under the Racial and Religious Hatred Act 2006 would have to fail because that Act concerns criminal offences and does not give rise to private causes of action.

62. It follows from the foregoing that:

(a) This claim was automatically struck out under my 'unless' order of 29 January 2016; and

(b) Even if not so struck out, I would refuse leave to serve out, and leave to treat the claim as served out in Scotland, on the basis that the claim does not stand a reasonable prospect of success.

MASTER VICTORIA MCCLOUD