



Neutral Citation Number: [2022] EWHC 1755 (QB)

Case No: QB-2022-000595

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 July 2022

Before :

THE HONOURABLE MR JUSTICE NICKLIN

Between :

The Duke of Sussex

Claimant

- and -

Associated Newspapers Limited

Defendant

Justin Rushbrooke QC and Jane Phillips (instructed by Schillings International LLP)
for the Claimant

Andrew Caldecott QC and Ben Gallop (instructed by Reynolds Porter Chamberlain LLP)
for the Defendant

Hearing date: 9 June 2022

Approved Judgment

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by e-mail and release to The National Archives.
The date and time for hand-down is deemed to be 10am on 8 July 2022.

The Honourable Mr Justice Nicklin :

1. This claim for libel is brought by the Claimant, the Duke of Sussex, against Associated Newspapers Limited, the publisher of *The Mail on Sunday* and MailOnline, over an article that appeared in the online and print editions of *The Mail on Sunday* on 19 and 20 February 2022. In the print edition, the headline of the article was “*REVEALED: How Harry tried to keep his legal fight over bodyguards secret... then minutes after MoS broke story his PR machine tried to put positive spin on the dispute*” (“the Article”).
2. The text of the Article, as it appeared in the online version, is set out in the Appendix to this judgment, with paragraphs numbers added in square brackets. There were minor differences between the print and online editions of the Article – principally differences in the headlines and the inclusion of more photographs (with captions) in the online edition – but neither party suggested that these differences were material.

The Claim

3. The Claim Form was issued on 23 February 2022. In Particulars of Claim, dated 14 March 2022, the Claimant contended that, in its natural and ordinary meaning, the Article was defamatory of him and bore the meaning:

“...the Claimant had

- (1) lied in his initial public statements to the effect that he had always been willing to pay for police protection in the UK, when the true position, as revealed by High Court documents, was that he had only made such an offer recently, after his dispute with the Home Office had started and after his visit to the UK in June 2021;
 - (2) improperly and cynically tried to manipulate and confuse public opinion by authorising his ‘spin doctors’ to put out false and misleading statements about his willingness to pay for police protection immediately after the Mail on Sunday had revealed that he was suing the Government; and
 - (3) tried to keep his legal fight with the Government secret from the public, including the fact that he expected British taxpayers to pay for his police protection, in a way which was improper and showed a lack of transparency on his part.”
4. As is now conventional, following an application by the Defendant, I made an order on 26 April 2022 directing the trial of the following preliminary issues:
 - i) the natural and ordinary meaning of the Article;
 - ii) whether the Article is (or includes) a statement of fact or expression of opinion; and
 - iii) whether the Article is, in any meaning found, defamatory of the Claimant at common law.

5. The Claimant had additionally sought a determination, as a preliminary issue, whether the publication of the Article had caused serious harm to his reputation (as is required to be demonstrated under s.1 Defamation Act 2013). I refused that application. At the trial of the preliminary issues I have directed, no evidence is admissible beyond the Article itself. By contrast, the issue of serious harm to reputation is one on which evidence is admissible as to the actual impact of the publication on a claimant's reputation. That made it unsuitable for inclusion in the preliminary issues to be tried.

The Defendant's case on the preliminary issues

6. Consequent on a direction given in the Order of 26 April 2022, the Defendant provided a written notice stating its case on the preliminary issues to be tried, as follows:

i) Natural and ordinary meaning of the Article:

“(1) The Claimant initially sought a far-reaching confidentiality order in his legal fight with the government over his claimed entitlement to police security when in the United Kingdom which would have kept from the public documents and witness statements deployed in the action and later agreed to relax that position after the Home Office argued for more transparency.

(2) The Claimant's PR team issued a public statement on the Claimant's behalf within minutes of news of the legal action breaking in a Mail on Sunday article, which spun the story to imply that the Claimant had brought proceedings to challenge the Home Office's refusal of his offer to pay for police protection in the UK, when in fact no such offer to pay had been made to RAVEC before his visit in June 2021 or to the Home Office in correspondence prior to the commencement of the proceedings. This rebutted the Claimant's initial public statement which implied that he had always been willing to pay.

(3) In consequence of the statement from his PR team, the media were confused and the public misinformed by the resulting media coverage.”

ii) The Defendant contends that none of these meanings is defamatory of the Claimant at common law.

iii) Finally, the Defendant argues that meanings (1) to (3) are statements of fact save for the underlined words in meaning (2) which is an expression of opinion.

7. This judgment deals only with the determination of the preliminary issues identified above (see [4]). Once these have been determined, if the claim goes further, the Defendant will have the opportunity of filing a Defence. The determination of any remaining issues, including whether the publication of the Article meets the requirements of serious harm to reputation under s.1 Defamation Act 2013 and any substantive defences, will take place at a later point in the proceedings.

Meaning, fact/opinion and defamatory: the law

8. The legal principles are well established and not in any dispute between the parties.

9. In determining the single natural and ordinary meaning of the Article, and whether the Article is, or contains, a statement of fact and/or expression of opinion, the principles can be taken from *Koutsogiannis -v- The Random House Group* [2020] 4 WLR 25 [11]-[17].
10. As to whether a statement is defamatory at common law, the test was stated by Warby LJ in *Millett -v- Corbyn* [2021] EMLR 19 [9]:

“At common law, a meaning is defamatory and therefore actionable if it satisfies two requirements. The first, known as ‘the consensus requirement’, is that the meaning must be one that ‘tends to lower the claimant in the estimation of right-thinking people generally.’ The Judge has to determine ‘whether the behaviour or views that the offending statement attributes to a claimant are contrary to common, shared values of our society’: *Monroe -v- Hopkins* [2017] 4 WLR 68 [51]. The second requirement is known as the ‘threshold of seriousness’. To be defamatory, the imputation must be one that would tend to have a ‘substantially adverse effect’ on the way that people would treat the claimant: *Thornton -v- Telegraph Media Group Ltd* [2011] 1 WLR 1985 [98]...”
11. When determining these issues, in order so far as possible to put him/herself in the position of the hypothetical ordinary reasonable reader, the Judge should read or watch the publication to capture an initial reaction, before reading or hearing argument: *Tinkler -v- Ferguson* [2019] EWCA Civ 819 [9].

Submissions

12. For the Claimant, Mr Rushbrooke QC submits that, if a newspaper tells its readers that a person has put out a statement to the public and then tells them that they have been conclusively shown to be false and misleading, and even goes on to note the irony about that person’s campaign against misinformation, then readers will easily conclude that the allegation is one of dishonesty. He argued that, in presentation, the Article is “*unremittingly negative right from the start*”, containing all bane and no antidote. He suggests that there are two discernible themes to the Article. First that the Claimant put out knowingly false and misleading statements about his willingness to pay for public protection. Second, that proof of this was contained in the court documents, documents he had tried to keep secret, by virtue of a far-reaching confidentiality order.
13. As to the first aspect, Mr Rushbrooke QC argues that the Article states clearly that the Claimant had publicly claimed that he had always been willing to pay personally for police protection whilst in the UK and he had brought a claim for judicial review against the decision concerning his police protection. Contrary to the claims made in the statements, the Article informed readers that the relevant court documents “*crushingly rebutted*” the Claimant’s “*inaccurate*” account that he had always been willing to pay for police protection ([6] and [8]). An essential part of this narrative in the Article was that, following a *Mail on Sunday* article which revealed that the Claimant was suing the government, he launched a coordinated and pre-planned PR response to “*confuse*” the reporting of the case that led to “*fury*” and was ironic given the Claimant’s new mission to tackle ‘misinformation’ online ([11]).
14. Mr Rushbrooke QC submits that the other main theme in the Article was the Claimant’s efforts to keep details of the case confidential (see [A], [C], [1], [2]). The implication

the ordinary reasonable reader would understand was that the Claimant was trying to hide the truth about the issue of payment for police protection. What is the confidentiality trying to protect, Mr Rushbrooke QC submits a reader would ask? The inference is that this is not a genuine attempt to obtain legitimate protection for confidential information, but to protect something discreditable.

15. Overall, Mr Rushbrooke QC contends that a reader would understand that it was being alleged that the Claimant had put out false and dishonest statements about the case; that he had, in effect, lied to the public. The implication of personal dishonesty is irresistible, Mr Rushbrooke QC submits.
16. As to whether the Article is or contains allegations of fact or an expression of opinion, Mr Rushbrooke submits that the Article is not an opinion piece. There is nothing to indicate expressions of opinion. Insofar as the Article contains defamatory implications, for example the improper manipulation of public opinion, these all flow as factual implications from the factual allegations that are clearly made. In summary, this was a sensational news story and readers would take it as such.
17. For the Defendant, Mr Caldecott QC submits that the defamatory elements of the Claimant's meaning (see [3] above) do not appear in the Article, whereas the Defendant's meaning more closely tracks what the Article expressly alleges. In some articles, a reader may be expressly invited to speculate as to what the facts presented amount to (for example the article in *Jones -v- Skelton* [1963] 1 WLR 1362), but this was not such an article. It made plain what was being alleged.
18. Mr Caldecott QC accepts that, applying the *Koutsogiannis* principles, an implication that is contained in an article may supply part of the natural and ordinary meaning. Nevertheless, he submits that care must be taken to ascertain whether the relevant text does actually contain such an implication. On this point, he referred to a passage in my decision in *Tinkler -v- Ferguson* [2018] EWHC 3563 (QB) [37] (a passage he submits was approved by the Court of Appeal in dismissing Mr Tinker's appeal: [2019] EWCA Civ 819 [24]):

“I agree ... that a number of adjectives and adverbs have been inserted into the Claimant's meaning which are not part of the natural and ordinary meaning of the words. They are strained constructions of what is being said in the Announcement. For example, if an individual reader thought that the Claimant's alleged behaviour was ‘selfish’, but that would be a personal judgment made by the individual reader. It is neither stated nor implied in the text. Such inferential meanings (that depend upon - and vary between - each individual reader's moral judgment) are not part of the natural and ordinary meaning of words: *Brown -v- Bower* [2017] 4 WLR 197 [54]. In context, a suggestion that the conduct of the Claimant was ‘selfish’ would be an expression of an opinion. If such an opinion is expressly stated by the author, then it can readily be identified as such by readers. I find the notion of an ‘inferred opinion’ conceptually difficult. I suppose it is conceivable that an article may not make express an author's view, but it nevertheless emerges clearly as a result of discernible indications in the text as to what his or her opinion actually is on the given facts. But this is very subjective; and it may be difficult to separate out those cases from cases where what is really happening is simply that the reader is supplying his or her own judgment on the stated facts rather than detecting the author's opinion by implication.”

19. Mr Caldecott QC submits that the headlines and sub-headlines are important signals to a reader even if they must be read as part of the whole article. He contends, nevertheless, that headlines are unlikely to sell a story short. If the Article was sending a message that the Claimant was a liar, it is not something that would be left to implication.
20. More generally, Mr Caldecott QC argues that the issue regarding confidentiality at the beginning of the Article would be regarded as a discrete topic, with only a passing further reference at the end of the Article ([27]). He submits that, on this issue, the Article tells a very simple story, and not one that suggests any impropriety on the Claimant's behalf. The initial court documents sought a far-reaching confidentiality order. The Home Office made a submission that the restrictions sought went too far and a more detailed assessment was required. The Claimant accepted that a different approach should be adopted, and the Home Office agreed to do it. Mr Caldecott QC argues that there is simply no room to introduce any element of impropriety into that narrative. There is nothing to link this to the rest of the Article. Specifically, the Defendant argues that it is nonsensical to suggest, as meaning (3) does, that he was trying to keep secret the fact that he expected the British taxpayer to fund his police protection.
21. Mr Caldecott QC suggests that the real focus of the Article is upon the Claimant's PR machine putting a positive spin on the dispute. He argues that the reader will appreciate what the spin was, and that different people are said to be responsible for it. The spin was to present the Home Office as refusing to allow the Claimant to pay for protection for himself and his family. The truth was that he did make an offer to pay, but that offer came in a witness statement in the legal proceedings. No offer had been made before the claim was commenced. The confusion and inaccuracy are the words used in the Article to describe the spin.
22. Who is portrayed as being responsible for this spin, Mr Caldecott asks? Unequivocally, he submits, the finger in the Article points readers to the PR advisors and his lawyers: "*the PR machine*" ([A]); "*his spin-doctors swung into action*" ([5]); "*aides acting for Harry*" ([11]); "*the Sussex camp*" ([12]); "*lawyers and PR advisers acting for the Sussexes*" ([18]); "*Harry's camp*" ([19]); and "*Harry's team*" ([20] and [22]). None of these suggest that the Claimant was personally responsible, Mr Caldecott QC argues and, he submits, it is not likely that text of statements issued on his behalf would have been personally authorised by him. The "*crushing rebuttal*" is of the implication that he had always been willing to pay.
23. Without the reader thinking that this criticism is directed, personally, at the Claimant, Mr Caldecott QC argues that the allegation is not serious enough to be defamatory of the Claimant.
24. As to fact/opinion, Mr Caldecott QC submitted that the broad thrust of the Article, as reflected in the Defendant's meaning, is factual. In contrast, he argues that the Claimant's meaning incorporates various statements critical of him (e.g. "*improperly and cynically*"), which are expressions of opinion and more accurately are likely to reflect the value judgment of an individual reader on the behaviour described. This is not part of the natural and ordinary meaning (see discussion in [18] above).
25. In reply, Mr Rushbrooke QC argued that the Defendant's approach is far too analytical and ignores the reality of how an ordinary reader would understand the allegations in

the Article. Of course, the allegations in the Article about the statements issued by the Claimant's "team", "camp" or advisors could be read as having been issued without any reference to the Claimant, but this is not the natural reading of the Article and are inconsistent with the contention that the truth, as revealed in the court documents, was a "crushing rebuttal" to the Claimant's "initial public statement".

Decision

26. In my judgment, the natural and ordinary meaning of the Article is as follows:
- (a) in his legal claim against the Home Office over the provision of police protection, the Claimant had initially sought confidentiality restrictions that were far-reaching and unjustifiably wide and were rightly challenged by the Home Office on the grounds of transparency and open justice;
 - (b) the Claimant was responsible for public statements, issued on his behalf, which claimed that he was willing to pay for police protection in the UK, and that his legal challenge was to the Government's refusal to permit him to do so, whereas the true position, as revealed in documents filed in the legal proceedings, was that he had only made the offer to pay after the proceedings had commenced; and
 - (c) as such, the Claimant was responsible for attempting to mislead and confuse the public as to the true position, which was ironic given that he now held a public role in tackling "misinformation".
27. The underlined passages of the meaning are expressions of opinion, the balance makes allegations of fact. I am satisfied that these meanings are defamatory at common law, albeit only narrowly in respect of (a).
28. My reasons for these conclusions are as follows.
29. I accept Mr Caldecott QC's submission that the Article does include two separate allegations and I have reflected those in meanings (a) and (b) above. Meaning (a) is straightforward and emerges without difficulty from the opening paragraphs of the Article. It is closer to the Defendant's meaning (1). I have rejected the Claimant's meaning (3). That is a forced meaning and one that is inconsistent with the message in the Article as a whole. Although headline [A], if read alone, might suggest this, the Article was not suggesting the Claimant was seeking to keep his "legal battle" with the Government secret. Read as a whole, the Article was quite clear that he was seeking certain confidentiality restrictions in relation to "documents and witness statements" in the proceedings, not blanket secrecy on the whole claim.
30. Although meaning (a) makes clear allegations of fact, it does contain elements of opinion. The ordinary reasonable reader would understand that the criticism that the confidentiality restrictions sought by the Claimant were "far-reaching" and "unjustifiably wide" represented the deduction or conclusion of the newspaper.
31. What I have found more difficult is whether meaning (a), on its own, is defamatory, applying the test from *Millett* (see [10] above). Narrowly, I have concluded that it is. Overall, the Article does signal clearly to the reader that the actions of the Claimant,

captured in meaning (a), are discreditable or worthy of criticism. That is the message that comes across, clearly, in the headlines and paragraphs [1]-[4]. The defamatory flavour is supplied by the criticism. Although I have found this criticism to be an expression of an opinion, it is nevertheless defamatory at common law. In my judgment, seeking unjustifiably wide confidentiality restrictions on Court proceedings meets both the ‘consensus’ and ‘threshold’ requirements.

32. Meanings (b) and (c) capture the second theme of the Article. I have separated them out so as to identify the separate factual allegation and the expression of opinion based on it.
33. As to meaning (b), largely I have adopted the structure of the Claimant’s meaning (1) because I consider that this more accurately captures this part of the Article. I have, however, rejected the Claimant’s meaning of “*lying*”. The Article does not make that blunt allegation, whether expressly or by implication. The hypothetical ordinary reasonable reader would understand the difference, as a matter of fact, between “*spinning*” facts and “*lying*”. The former would be a concept familiar to readers; the presentation of true facts (and often the omission of other facts) in a way that is designed to give a positive message but which, overall, is apt to mislead. The Article was clearly alleging that this was an example of “*spinning*”. Some people will think that the practice of “*spinning*” facts is tantamount to, or the equivalent of, “*lying*”, but this represents their own value judgment of the practice. The Article was clear what was being alleged; it was the former not the latter.
34. I have rejected Mr Caldecott’s argument that the hypothetical reader would not have connected the allegation with the Claimant personally, detecting only a criticism of his “*team*” or those acting on his behalf. I accept Mr Rushbrooke’s submission that this meaning could only emerge as a product of a significant degree of analysis, and no small element of naivety, on the part of the reader. Of course, it is possible that the public statements issued on the Claimant’s behalf by the “*PR machine*” were done without his knowledge or approval, but that is not the ordinary reading of the Article. A reader could expect, if that was the message being conveyed, that it would be made clear. Without that clarification, the natural reaction of the reader would be that the Claimant was responsible for the public statements issued on his behalf. Further, the contention that the newspaper’s allegations were a “*crushing rebuttal*” (itself a memorable phrase) depends for its coherence upon the Claimant bearing responsibility for the “*spin*” issued on his behalf. Meaning (b) reflects these factors.
35. Meaning (c) captures the element of opinion or criticism in the Article. The text clearly conveys the elements that the public statements were misleading and caused confusion; indeed, this is the essential criticism directed at the “*spin machine*” deployed by the Claimant. These would clearly be recognised by the hypothetical reader as critical comments, and as such, to be an expression of opinion. The irony element is also an expression of opinion, but it also reinforces the element of “*misinformation*” which is at the heart of the allegation of attempting to mislead.
36. Although, on its own, meaning (b) would not be defamatory at common law, when it is taken together with the criticism supplied by meaning (c), I am satisfied that, overall, meanings (b) and (c) are defamatory at common law. It may be possible to “*spin*” facts in a way that does not mislead, but the allegation being made in the Article was very

much that the object was to mislead the public. That supplies the necessary element to make the meanings defamatory at common law.

37. Finally, I should reiterate that the decision made in this judgment is solely concerned with the objective meaning of the Article published by the Defendant for the purposes of the Claimant's defamation claim. This is very much the first phase in a libel claim. The next step will be for the Defendant to file a Defence to the claim. It will be a matter for determination later in the proceedings whether the claim succeeds or fails, and if so on what basis.

Appendix: the online version of the article

[A] **EXCLUSIVE: How Prince Harry tried to keep his legal fight with the government over police bodyguards a SECRET... then – just minutes after the story broke – his PR machine tried to put a positive spin on the dispute**

[B] • **Prince Harry sought far-reaching confidentiality, High Court documents show**

[C] • **He tried to keep details of his legal battle about police protection private**

[D] • **However the Home Office argued for transparency over the legal documents**

[1] Prince Harry tried to keep details of his legal battle to reinstate his police protection secret from the public, The Mail on Sunday can reveal.

[2] High Court documents show he sought a far-reaching confidentiality order on documents and witness statements surrounding his case against the Government.

[3] But the Home Office argued for transparency, saying ‘there must be a sufficiently good reason, in the wider public interest, to justify the departure from open justice that such an order involves’.

[photograph with caption]

[E] Prince Harry and Meghan Markle in Rotorua, New Zealand, in 2018. Prince Harry tried to keep details of his legal battle to reinstate his police protection secret from the public

[4] Both sides then agreed that some papers would be made public with the Home Office agreeing to carry out a ‘confidentiality exercise’ to determine what would be kept secret, even though it caused ‘an unprecedented expenditure of time and resources’.

[5] When The Mail on Sunday last month revealed that Harry was suing the Government, his spin-doctors swung into action, briefing journalists that Harry was being denied the right to pay for bodyguards.

[6] It led to inaccurate reports across the media, such as the BBC headline: ‘Prince Harry in legal fight to pay for UK police protection.’

[7] As documents lodged at the High Court last week show, no such offer to pay was made in the Prince’s initial ‘pre-action’ letters to the Home Office, suggesting he expected British taxpayers to cover it.

[photograph with caption]

[F] The Sussexes pictured with their children. High Court documents show he sought a far-reaching confidentiality order on documents and witness statements surrounding his case against the Government

- [8] The revelations are a crushing rebuttal to Harry's initial public statement that implied he had always been willing to foot the bill.
- [9] Nor did he offer to pay when he visited the UK last June to unveil a statue to his mother, Princess Diana.
- [10] Home Office lawyers state that it was only in later correspondence that the offer was made.
- [11] That led to fury last night that aides acting for Harry sought to confuse the mainstream media's response to the story, ironic given the Prince now has a role with a Silicon Valley firm tackling 'misinformation' online.
- [12] As royal author David McClure, tweeted: 'Once more confusion about the accuracy of messages coming out of the Sussex camp. First Harry offers to pay, then when he visits the UK, he does not.'
- [13] The Duke launched his claim in September, more than 18 months after the Government's RAVEC (Royal and VIP Executive Committee) decided he would be stripped of his full state-funded security.

[photograph with caption]

- [G] Harry, pictured with Meghan, argues that 'while his role within the institution has changed, his profile as a member of the Royal Family has not. Nor has the threat to him and his family'
- [14] But court papers reveal that Harry still maintains 'exceptional status', which means he could be afforded protection depending on the nature of his visits, assessed on a 'case-by-case basis'.
- [15] Harry argues that 'while his role within the institution has changed, his profile as a member of the Royal Family has not. Nor has the threat to him and his family.'
- [16] Yet his initial bid to get the decision overturned did not mention he would pay anything. Court papers say: 'The offer [to pay] is now advanced in the Claimant's witness statement...but notably was not advanced to RAVEC in June 2021 or in any of the pre-action correspondence which followed.'
- [17] It adds that Harry's recent offer to pay is nevertheless 'irrelevant' because 'personal protective security by the police is not available on a privately financed basis, and RAVEC does not make decisions...on the basis that any financial contribution could be sought or obtained to pay for it'.
- [18] When The Mail on Sunday first broke the story, lawyers and PR advisers acting for the Sussexes sought to put their own gloss on it.

[photograph with caption]

- [H] The revelations are a crushing rebuttal to Harry's initial public statement that implied he had always been willing to foot the bill
- [19] Just six minutes after The Mail on Sunday's world exclusive, the Press Association, apparently having been given an advanced briefing by Harry's camp, reported that the Duke

had offered ‘to pay personally for UK police protection’ and quoted his lawyer saying: ‘He remains willing to cover the cost of security.’

- [20] Omid Scobie, a journalist known to be supportive of the Sussexes, also appeared to have been briefed by Harry’s team.
- [21] Five hours after this newspaper told the Prince’s aides we were planning a story, Scobie told his 76,000 Twitter followers: ‘Prince Harry has applied for a judicial review of a Home Office decision not to allow him to personally pay for police protection for himself and his family when they are in the UK, a legal representative for the Sussexes confirms.’
- [22] Harry’s team only responded to this newspaper after this inaccurate version of events had been tweeted.
- [23] Further questions were raised last night about the legal fight.
- [24] Former Minister Norman Baker said: ‘The police are not a commodity to buy like a pack of biscuits.’
- [25] If Harry has concerns about a specific threat, he should share those with the police.
- [26] Otherwise, it is open to him to engage security staff on any visits. Personally, I would have thought he was at more risk in gun-mad America than over here.’
- [27] Home Office QC Robert Palmer has said that if Harry loses, the Government will ‘seek the costs incurred in full, including those of the confidentiality exercise’.