



Neutral Citation Number: [2025] EWHC 853 (KB)

Case No: KB-2024-001987

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 April 2025

Before :

MR JUSTICE LAVENDER

Between :

ENIOLA ALUKO

Claimant

- and -

JOSEPH BARTON

Defendant

Gervase de Wilde and Luke Browne (instructed by **Samuels Solicitors LLP**) for the
Claimant
William McCormick KC (instructed by **Simons Muirhead Burton LLP**) for the **Defendant**

Hearing date: 19 December 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 9 April 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Lavender:

(1) Introduction

1. This is my judgment following the trial of certain preliminary issues relating to the claimant's claim in defamation against the defendant. This trial was not concerned with the claimant's other claim against the defendant, nor with related criminal proceedings which have been brought against the defendant. Indeed, the wider dispute between the parties is irrelevant to the issues which I have to decide.

(2) The Allegedly Defamatory Posts

2. The claimant alleges that she was defamed in each of two posts by the defendant on his account on the X platform, which I will refer to as the First Post and the Second Post.

(2)(a) The First Post

3. The First Post was posted by the defendant at 1.53 pm on 17 January 2024. It read, "Surprise, surprise ..." followed by three clown face emojis and, below that, a crown emoji.
4. Below these words and emojis was a screenshot of a page from the Guardian website ("the Guardian Article") which showed:
 - (1) a photograph of the claimant;
 - (2) the words, "England women's football team";
 - (3) the headline, "FA faces calls for fresh investigation after Eni Aluko's claims of racism and bullying";
 - (4) the following words:
 - England manager Mark Sampson understood to deny allegations
 - Chelsea back their player for 'speaking about her experiences'";
 - (5) the name, "Daniel Taylor";
 - (6) the date and time, "Tue 22 Aug 2017 15.14 EDT";
 - (7) a clock symbol and the words, "6 years old"; and
 - (8) the following text:

"The Football Association is facing calls for an "open, transparent and independent investigation" into how it handled the Eni Aluko affair amid pressure from anti-racism groups and with Chelsea praising the player".

(2)(b) The Victim Card Post

5. In relation to the First Post, the claimant also relies on another post, which has been referred to as the Victim Card Post. The defendant posted the Victim Card Post at 9.05 am on 17 January 2024.

6. The Victim Card Post reads:

“Cry me a fucking river...

I was waiting for the victim card to be played.

Eni, sorry luv, you're dreadful as a pundit.

Tone deaf, can't count and most importantly you know next to nothing about men's football.

You should have ran off to a desert island after your 'Arteta phoning Pep to put a bid' in nonsense.

Everyone is laughing at you. [thumbs up emoji]

Not just me. [crown emoji]”

7. Below these words there was a headline from a video posted online by the claimant, which read as follows:

“Eni Aluko speaks on online abuse, hate speech, harassment towards women in football broadcasting”

8. This was a link to the video posted online by the claimant. In that video, the claimant said as follows:

“... about me and Lucy. Um, I wanted to really firstly come on here and say thank you to ITV, um for their leadership, their support, um. Now people say to me Eni, you know, you can't take criticism. Oh wow, wow. If I couldn't take criticism, I wouldn't be doing this. I would have been long gone mate. I would have been doing other things, trust me.

I've been doing this for 10 years now, and the reality is that as much as football is a game of opinions and all of that, there are certain opinions I value and certain opinions I don't value.

And unless you've actually sat in a seat and been a pundit, and been on TV and had the bright lights, and had someone in your ear telling you how much time you've got, or you've been in a live stadium where fans are screaming whilst you're trying to talk, and you're on the pitch and you've got stats in your brain. Unless you've done that and been in that situation, I don't value your opinion on it. The opinions I value is those of my colleagues, those of my peers, those of producers, those of the people who hire me. And in the 10 years I've been doing this, no one has said to me, we think you're struggling. No one.

And I'm sure the same applies to all the other female broadcasters who work hard to be in the position we're in. Obviously after last week...”

(2)(c) The Second Post

9. The defendant posted the Second Post at 10.12 am on 19 January 2024. It read:

“More has come to light about poor, little Eni Aluko.

Dad was a Nigerian Senator. Dodgy money. Ran to England. Massive house in Wentworth. 3 Rolls Royce’s [sic]. St Mary’s in Ascot private education.

Lawyer. Race card player.”

10. Below these words was a preview image which contained a photograph of the claimant and the words:

“bbc.co.uk

Aluko apologises for furlough tweets”

11. The preview image was a hyperlink to a page on the BBC’s website which contained an article (“the BBC Article”) consisting of:

- (1) the headline, “Eniola Aluko: Former England and Chelsea forward apologises for furlough tweets”;
- (2) the date of the article, 13 May 2020;
- (3) a photograph of the claimant, with the caption, “Aluko worked in the media after retiring from playing”; and
- (4) text which read:

“Ex-England international Eniola Aluko has apologised after posting a series of tweets appearing to criticise people placed on the government's furlough scheme amid the coronavirus pandemic.

Aston Villa Women's sporting director said it created a "do-nothing" mentality and "culture of entitlement".

The scheme, now extended until October, sees employees receive 80% of their monthly wages up to £2,500.

She has since deleted several posts and apologised for "any offence caused".

Aluko, who won 102 caps for her country and also played for Chelsea, Birmingham City and Juventus, said to one responder: "When people were dying in other parts of the world before this crisis, did you stop working? Probably not."

In a statement on Wednesday, the 33-year-old said: "Opening up my tweets this morning to say sorry for any offence caused by any of my tweets on furlough last night.

"The tweets that seem to have upset people the most have been deleted. I have no interest in being a source of further public upset."

She added: "No generalisations or widespread offence was intended. Just a personal opinion on the future economy in this crisis. This account will now be private and views, as always, remain my own."

Aluko helped the Lionesses to third place at the 2015 Women's World Cup, as well as playing five times for Great Britain at the 2012 Olympics.

She is England's joint-10th most capped international, scoring 33 goals in her 102 senior appearances.

BBC Sport understands players and staff at several clubs in the Women's Championship, which Aluko's Villa are leading, have been furloughed during the coronavirus outbreak.

Chancellor Rishi Sunak said on Tuesday the UK scheme to pay wages of workers on leave because of coronavirus would continue but that the government would ask companies to "start sharing" the cost from August.

A quarter of the workforce, some 7.5 million people, are now covered by the scheme, which has cost £14bn a month."

12. The defendant admits that the text of the BBC Article formed part of the Second Post.

(3) The Issues

13. The issues for determination are:

- (1) the natural and ordinary meaning of the First Post and the Second Post;
- (2) the innuendo meaning of the First Post to readers who had also read the Victim Card Post;
- (3) the extent to which the meanings found constitute statements of fact and/or opinion; and
- (4) whether the meanings found are defamatory at common law.

(4) Meaning

(4)(a) Meaning: The Applicable Law

14. There is no dispute about the applicable law, which was recently summarised by Steyn J in paragraphs 7 to 20 of her judgment in *Vine v Barton* [2024] EWHC 1268 (KB), which in turn referred to the principles listed in paragraph 12 of Nicklin J's judgment in *Koutsogiannis v The Random House Group Ltd* [2020] 4 WLR 25 ("*Koutsogiannis*"). Guided by what is set out in those judgments, I have to determine: "The single natural and ordinary meaning of the words complained of, which is the meaning that the hypothetical reasonable reader would understand the words to bear."

(4)(b) Meaning: The Rival Cases

(4)(b)(i) The Rival Cases as to the Meaning of the First Post

15. The claimant contended that the natural and ordinary meaning of the words used in the First Post was that:

“the Claimant made dishonest and unwarranted racism and bullying claims in respect of her participation in the England Women’s football team as part of a pattern of bad faith complaints of discrimination.”

16. In relation to the First Post, the claimant submitted that the words “Surprise, surprise” were clearly sarcastic, that the clown emojis conveyed that the person referred to was not serious, that the headline of the Guardian Article referred to the claimant’s claims of racism and bullying and that the post was clearly about the claimant because her photograph was prominent, she was named and the clown emojis would be understood as referring to a person.

17. The defendant contended that the natural and ordinary meaning of the words used in the First Post was that:

“the situation with regard to calls from anti-racism groups for the FA to open a fresh investigation into the Claimant’s contested claims (*sic*) of racism and bullying which had been investigated 6 years earlier was laughable but predictable.”

18. The defendant submitted that the words “Surprise, surprise” in the First Post and the clown face emojis meant that what the article reported was predictable and laughable, but that the article (so far as the reader of the post could tell) did not comment on the merits or otherwise of the claimant’s claims of racism or bullying, but rather the calls by anti-racism groups for a further investigation into the claimant’s claims. The defendant submitted that only a reader “avid for scandal” would think that the defendant was saying anything about the merits of the claimant’s claims of racism and bullying. The defendant also submitted that there was no express allegation of dishonesty and that only a strained and forced reading of the post would result in the reader understanding it to include an allegation of dishonesty.

(4)(b)(ii) The Rival Cases as to the Innuendo Meaning of the First Post

19. Each party contended that what they alleged was the natural and ordinary meaning of the words used in the First Post was also the meaning of the First Post by way of innuendo to those readers of the First Post who read the Victim Card Post.

20. As for the alleged innuendo meaning of the First Post, the claimant focused on the words in the Victim Card Post:

“Cry me a fucking river...

I was waiting for the victim card to be played.”

21. The claimant submitted that these words were used by reference to the photograph of the claimant and the text saying that:

“Eni Aluko speaks on online abuse, hate speech, harassment towards women in football broadcasting”

22. The claimant submitted that the Victim Card Post would be understood as meaning that the claimant was someone whose complaints about online abuse, hate speech and harassment towards women in football broadcasting were not well-founded or

deserving of sympathy, but were instead a case of her playing the victim card, i.e. making unjustified complaints about her treatment by others.

23. The defendant submitted that the Victim Card Post contained an expression of the defendant's opinion on the claimant as a pundit and noted that the claimant has not sued on this post in libel. The defendant also submitted that the Victim Card Post says nothing about any claims made by the claimant about racism.

(4)(b)(iii) The Rival Cases as to the Meaning of the Second Post

24. The claimant contended that the natural and ordinary meaning of the words used in the Second Post was that the claimant:

- “(a) is a hypocrite for criticising a culture of entitlement when she is herself the beneficiary of dodgy money which her father pocketed through being a corrupt Nigerian senator and which has paid for her to have a lavish lifestyle with an enormous house, three Rolls Royce cars and a private education, and
- (b) has persistently made dishonest and unwarranted complaints about racism in order to gain unjustified advantages.”

25. The claimant submitted that the words “Race card player” connoted a tendency on the claimant's part and imputed both dishonesty and the exploitation of a sensitive issue.

26. The defendant contended that the natural and ordinary meaning of the words used in the Second Post was that:

- “(1) the Claimant had acted hypocritically in publicly criticising the Covid-19 furlough scheme on the basis that by paying 80% of the salaries of employees earning up to £2,500 pcm, it was encouraging in those employees a culture of entitlement and/or a “do-nothing” mentality, when she had been brought up in an affluent household and had enjoyed the benefits of that affluence, namely a very large house in an affluent area; luxurious cars and a private education.
- (2) the Claimant had raised the issue of race in the context of arguments or discussions.”

27. The defendant submitted that only a strained reading of the Second Post could result in the reader inferring an allegation of either persistent or dishonest conduct. He submitted that the present case was similar in this respect to *Shah v Up and Coming TV Limited* [2020] EWHC 3472 (QB). Collins Rice J said as follows in paragraphs 45 and 46 of her judgment in that case:

- “45. I agree that someone who knew that the Claimant had described himself as a Pakistan citizen, but was then told on TV news, as a fact, that he was Indian, would logically have to conclude that what they had been given to understand by him was not true. To add the language of lies and dishonesty is however to supply an element of commentary, or of imputed motive, for which I see no basis in the item. To learn that someone had claimed one nationality when they were of another would

certainly raise questions about what sort of person they were and why they had done so. It is on the face of it a surprising thing to do and would no doubt invite speculation: perhaps he had private or family reasons? was he trying to leave some sort of past behind him? was he a fantasist? an undercover agent? or perhaps a thorough-going charlatan? But the point is that the item does not tell us, and it is the innuendo meaning of *the item* that I am considering.

46. In my view it simply leaves the reasonable viewer in those realms of speculation. I do not agree that the adjectives ‘dishonest’ and ‘lying’ would come to mind without a degree of predisposition to think the worst of the Claimant. That is not the perspective of an ordinary reasonable person. ...”

(4)(c) Meaning: Decision

28. I confirm that I read the posts and the BBC Article before reading the parties’ submissions as to their meaning. My conclusions are consistent with my first impressions.

(4)(c)(i) Meaning: The First Post

29. In my judgment, the hypothetical reasonable reader would understand the defendant’s words and emojis in the First Post to mean that someone or something was both predictable and laughable. The words “Surprise, surprise” were clearly used sarcastically and the clown face emojis conveyed ridicule.
30. As to the dispute whether it was the conduct of the claimant or the conduct of those, described as anti-racism groups, who were calling for a fresh investigation which the defendant would be understood to be describing as predictable and laughable, the absence of any context for the First Post might lead to some uncertainty on the part of the hypothetical reasonable reader. However, I consider that the hypothetical reasonable reader:
- (1) would understand the defendant’s words and emojis to be comment on a news article;
 - (2) in that context, and without more, would understand the defendant’s words and emojis to be comment on the news in the news article; and
 - (3) would recognise that the news in the Guardian Article was that which was stated prominently in the headline, i.e. that the FA faced fresh calls for an investigation.
31. I do not consider that the age of the Guardian Article is significant. Whether or not the hypothetical reasonable reader noticed the date of the article, they would understand from the Guardian Article that there had been the following sequence of events: the claimant had made claims of racism and bullying; the FA had handled those claims; and the FA faced claims for a fresh investigation into how it had handled those claims.
32. It follows that I do not consider that the hypothetical reasonable reader would understand the First Post as containing an implied assertion that the claimant’s claims

were dishonest or unwarranted or part of a pattern of bad faith complaints of discrimination.

33. Accordingly, I find that the meaning of the First Post was that:

“It was both predictable and laughable that the Football Association had faced calls for a fresh investigation into its handling of the claimant’s claims of racism and bullying.”

(4)(c)(ii) Innuendo Meaning: The First Post

34. However, for any reader of the First Post who had also read the Victim Card Post, the Victim Card Post would give context to the First Post, which was posted just under 5 hours later.
35. The hypothetical reasonable reader would understand that the defendant meant in the Victim Card Post that the claimant had, by posting her video, “played the victim card” and that it was predictable that she would “play the victim card”.
36. It is clearly derogatory to say of someone that they have “played the victim card”. The words “played” and “victim card” would be understood as meaning that the claimant had cynically sought to exploit her alleged status as a victim, on the basis that she treated her alleged status as a victim as a “card” to be “played”, and that her claim to be a victim was unwarranted, on the basis that the words would not be used in respect of a claim which was well-founded.
37. I do not consider, however, that the Victim Card Post would be understood as meaning that the claimant had acted dishonestly, since it would only carry that meaning if it meant that the claimant did not believe that her actions were justified and I do not consider that the words used would be understood to go that far.
38. The sarcastic use of the words “Surprise, surprise” in the First Post would be understood as referring back to the words “I was waiting for the victim card to be played” in the Victim Card Post. Thus, the hypothetical reasonable reader would understand the First Post as meaning that what was being said to be both predictable and laughable was that, in making her claims of racism and bullying, the claimant had cynically sought to exploit her status as an alleged victim of racism and bullying and that her claim to be such a victim was unwarranted.
39. The First Post does not say anything expressly about “a pattern of bad faith complaints of discrimination” and I do not consider that the hypothetical reasonable reader would understand it to refer to such a pattern.
40. Accordingly, I find that the innuendo meaning of the First Post is that:
- “In making claims of racism and bullying in respect of her participation in the England women’s football team the claimant cynically sought to exploit her status as an alleged victim of racism and bullying, her claim to be a victim of racism and bullying was unwarranted and it was both predictable and laughable that she acted in this way.”

(4)(c)(iii) Meaning: The Second Post

41. As for the Second Post, it is common ground that this contained two separate statements, one accusing the claimant of hypocrisy in making her statements about the furlough scheme and one made by the words “Race card player”.
42. In my judgment, in relation to the accusation of hypocrisy, the hypothetical reasonable reader of the Second Post would have focused on the defendant’s own words and on that part of the BBC Article which presented what were said to be the claimant’s own words, i.e. the statement that she said that the furlough scheme “created a “do-nothing” mentality and “culture of entitlement”.” I do not accept the defendant’s submission that the hypothetical reasonable reader would have taken the details of the furlough scheme as part of the meaning of the Second Post. The nature of the furlough scheme was very well known at the time and it was not any part of the purpose of the BBC Article or the Second Post to inform readers of the details of the scheme. By contrast, I accept the claimant’s submission that the hypothetical reasonable reader would have focused on the details given by the defendant of the claimant’s alleged upbringing.
43. On the whole, therefore, I consider that the hypothetical reasonable reader’s understanding of this aspect of the Second Post would be closer to that contended for by the claimant, although I express it as follows:

“The claimant was a hypocrite for saying that the furlough scheme created a “do-nothing” mentality and a “culture of entitlement” when she was herself the beneficiary of dodgy money obtained by her father, a Nigerian senator who ran to England, which has paid for her to have a massive house, three Rolls Royce cars and a private education.”
44. That leaves the words “Race card player.” The defendant alleges that these words mean no more than that the claimant “had raised the issue of race in the context of arguments or discussions.” I do not consider that this proposed meaning does justice to the words as they would be understood by the hypothetical reasonable reader. The words would clearly be understood as meaning more than that.
45. “Race card player” is clearly a derogatory term. As with saying that someone has “played the victim card”, to say of someone that they have “played the race card” would be understood as meaning not merely that they had raised the issue of race, but that they had cynically sought to exploit their race, on the basis that they regarded their race as a “card” to be “played”.
46. However, describing someone as a “race card player” without more does not say anything about how they have sought to exploit their race. It would not be understood as implying that they had made an unwarranted claim to be a victim of racism or that they had acted dishonestly.
47. I do not accept that the words would be understood as meaning that this is something which the claimant has done “persistently”. The words “Race card player” are not specific as to how many times the claimant has “played the race card” and are consistent with the claimant having “played the race card” only once.

48. Moreover, the words “in order to gain unjustified advantages” contended for by the claimant as part of the meaning of the Second Post are words which go to the claimant’s motive in “playing the race card”, which is not addressed expressly in the Second Post and as to which I do not consider that the hypothetical reasonable reader would impute any meaning in the Second Post.

49. Consequently, I find that this part of the Second Post meant that:

“The claimant has on at least one occasion cynically sought to exploit her race.”

(5) Fact or Opinion

(5)(a) Fact or Opinion: The Law

50. In paragraph 16 of his judgment in *Koutsogiannis* (which was approved by the Court of Appeal in *Millett v Corbyn* [2021] EWCA Civ 567, [2021] EMLR 19) Nicklin J said:

“... when determining whether the words complained of contain allegations of fact or opinion, the court will be guided by the following points:

- (i) The statement must be recognisable as comment, as distinct from an imputation of fact.
- (ii) Opinion is something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation, etc.
- (iii) The ultimate question is how the word would strike the ordinary reasonable reader. The subject matter and context of the words may be an important indicator of whether they are fact or opinion.
- (iv) Some statements which are, by their nature and appearance opinion, are nevertheless treated as statements of fact where, for instance, the opinion implies that a claimant has done something but does not indicate what that something is, ie the statement is a bare comment.
- (v) Whether an allegation that someone has acted “dishonestly” or “criminally” is an allegation of fact or expression of opinion will very much depend upon context. There is no fixed rule that a statement that someone has been dishonest must be treated as an allegation of fact.”

(5)(b) Fact or Opinion: Decision

51. The meaning of the First Post, as I have found it, is a matter of opinion. It sets out the defendant’s comment on matters stated in the Guardian Article.

52. The innuendo meaning of the First Post, as I have found it, is a matter of opinion. It sets out the defendant’s views in relation to the claimant’s claims of racism and bullying, the basis for which (as indicated by the words “Surprise, surprise” in the First Post and the words “I was waiting for the victim card to be played” in the Victim Card Post) is the defendant’s view of the claimant as someone who is to be expected to “play the victim card”.

53. The meaning of the Second Post, as I have found it:

- (1) is a matter of opinion insofar as it accuses the claimant of hypocrisy, since that is the defendant's view in relation to the claimant's comments on the furlough scheme and the basis for that view is stated, namely the series of factual assertions about the claimant's background; but
- (2) is a matter of fact insofar as it means that the claimant has on at least one occasion cynically sought to exploit her race. The words "Race card player" come at the end of a list of factual assertions about the claimant's background, with nothing to indicate that they are a statement of opinion rather than fact and no indication of any basis for an opinion.

(6) Were the Words Defamatory

(6)(a) Defamatory: The Law

54. In paragraph 23 of her judgment in *Vine v Barton*, Steyn J said as follows:

"In short, a statement is defamatory at common law if it (a) attributes to the claimant behaviour or views that are contrary to the common, shared values of our society ("*the consensus requirement*"); and (b) would tend to have a substantially adverse effect on the way that people would treat the claimant ("*the threshold of seriousness*"): see *Blake v Fox*, Warby LJ, [26]; *Millett v Corbyn*, Warby LJ, [9]."

(6)(b) Defamatory: Decision

55. The First Post, given the meaning which I have found, is not defamatory, since it is not critical of the claimant.
56. The First Post, given the innuendo meaning which I have found, is defamatory, since it accuses the claimant of cynical conduct in making an unwarranted claim, which is contrary to the common, shared values of our society, and, in doing so, would tend to have a substantially adverse effect on the way that people would think of the claimant.
57. The Second Post, given the meaning which I have found, is also defamatory insofar as it accuses the claimant of cynical conduct in exploiting her race. The defendant accepted that the Second Post is defamatory insofar as it accuses the claimant of hypocrisy.

(7) Conclusion

58. The First Post had the following meaning:

"It was both predictable and laughable that the Football Association had faced calls for a fresh investigation into its handling of the claimant's claims of racism and bullying."

59. That was a statement of opinion and it was not defamatory.
60. The First Post had the following innuendo meaning:

“In making claims of racism and bullying in respect of her participation in the England women’s football team the claimant cynically sought to exploit her status as an alleged victim of racism and bullying, her claim to be a victim of racism and bullying was unwarranted and it was both predictable and laughable that she acted in this way.”

61. That was a statement of opinion and it was defamatory.
62. The Second Post had the following meaning:
 - “1. The claimant was a hypocrite for saying that the furlough scheme created a “do-nothing” mentality and a “culture of entitlement” when she was herself the beneficiary of dodgy money obtained by her father, a Nigerian senator who ran to England, which has paid for her to have a massive house, three Rolls Royce cars and a private education.
 2. The claimant has on at least one occasion cynically sought to exploit her race.”
63. That was a statement of opinion insofar as it accused the claimant of hypocrisy and a statement of fact insofar as it meant that the claimant had on at least one occasion cynically sought to exploit her race. It was defamatory in both respects.