

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
BETWEEN:

FIYAZ MUGHAL

Claimant

-and-

TELEGRAPH MEDIA GROUP LIMITED

Defendant

CLAIMANT'S SKELETON ARGUMENT FOR PRELIMINARY TRIAL ON MEANING
30 April 2014

References to the Hearing Bundle are in the form [Tab/Page]

Estimated length of reading time: 1½ hours

Estimated length of hearing: 1½ hours

INTRODUCTION

1. This is the Claimant's skeleton argument for the hearing of the Defendant's application under CPR 3.1(2)(i) for a ruling on the following preliminary issues:
 - (1) whether the words pleaded in paragraph 3 of the Particulars of Claim bear the meanings pleaded in paragraphs 4, 5(a) and 5(b) of the Particulars of Claim; and
 - (2) if so, whether those meanings are defamatory of the Claimant.
2. For the reasons set out below, the Claimant submits that the words complained of bear the meanings pleaded in the Particulars of Claim, which are plainly defamatory of the Claimant.

THE PARTIES

3. The Claimant is a social entrepreneur and prominent anti-extremism campaigner. Since 2006 he has been the Director of Faith Matters UK, an inter-faith and anti-extremist organisation involved in attempting to improve dialogue and relations between Muslims and others sectors of the community. Between 2008 and 2010 the Claimant served as an Advisor to Nick Clegg MP on Interfaith and Preventing Radicalism and Extremism. In 2009 he was awarded the OBE and appointed by the Government as a member of the Local Delivery Advisory Group on Preventing Violent Extremism. As part of their inter-faith and anti-extremism work, the Claimant and Faith Matters set up and run “Tell Mama”, a project measuring and monitoring all forms of anti-Muslim attacks.

4. The Defendant is the publisher of *The Daily Telegraph*, the well-known daily broadsheet newspaper which has a substantial hard copy and electronic circulation in the jurisdiction.

THE WORDS COMPLAINED OF

5. On page 22 of the issue of *The Daily Telegraph* dated 15 June 2013 the Defendant published an article entitled “*Woolwich outrage: we are too weak to face up to the extremism in our midst*” (“the Article”). A copy can be found at [5/13&13a]. The Article was also published on the Defendant’s website at www.telegraph.co.uk, where it continues to be available [5/14-17]. The Article contained the following words, which the Claimant submits were/are defamatory of him:

“Much more important – from the point of view of the general public – you frequently find that Muslim groups like Tell Mamma get taxpayers’ money (though, in its case, this is now coming to an end). You discover that leading figures of respectable officialdom share conference platforms with dubious groups. You learn that Muslim charities with blatantly political aims and Islamist links have been let off lightly by the Charity Commission. And you notice that many bigwigs in Muslim groups are decorated with public honours. Fiyaz Mughal, for example, who runs Tell Mamma, has an OBE. Obviously it would be half-laughable, half-disgusting, if activists of the EDL were indulged in this way; yet they are, in fact, less extreme than some of those Muslims who are.”

THE MEANING PLEADED IN THE PARTICULARS OF CLAIM

Ordinary and natural meaning

6. Paragraph 4 of the Particulars of Claim pleads the following natural and ordinary meaning in respect of the words complained of:

“In their natural and ordinary meaning the said words meant/mean and were/are understood to mean that the Claimant is a Muslim extremist.” **[4/7]**

Innuendo meanings

7. In addition to the natural and ordinary meaning, paragraphs 5(a) and (b) of the Particulars of Claim plead the following innuendo meanings:

“Further or alternatively, by way of innuendo the said words meant/mean and were/are understood to mean that the Claimant is

- (a) more extremist in his views and his actions than the far-right extremists who are activists within the English Defence League (‘EDL’); and/or
- (b) a hypocrite, as he falsely portrays himself as an individual who is anti-extremist.” **[4/7]**

THE APPLICATION AND THE LEGAL PRINCIPLES FOR ASCERTAINING MEANING

8. This is an application for the trial of an issue on meaning rather than for a ruling under CPR PD 53 para 4(1). On the trial of a preliminary issue the judge is determining the actual meaning of the words complained of, not delimiting the meanings which the words are capable of bearing (see *Gatley on Libel and Slander* (12th Edition (2013)) para 30.14). The Claimant has pleaded his meaning, however, as no defence has been served, the Defendant has not yet set out its case on meaning.
9. In such applications it is open for the judge to find the words bear a lower defamatory meaning than that set out in the Particulars of Claim, as the pleaded case sets out the Claimant’s high water mark leaving it open for them to contend for and for the jury to find some lower meaning at trial (see *Charman v Orion Publishing Group Ltd* [2005] EWHC 2187 QBD, per Gray J at [13]).

10. The general principles to be applied in the determination of the meaning of words complained of are well known. In *Jeynes v News Magazines Limited* ([2008] EWCA Civ 130 at [14]) Sir Anthony Clarke MR summarised the principles as follows:

“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) Over-elaborate 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".

11. In *Cruddas v Calvert* [2013] EWHC 1427 (QB) Eady J emphasised the representative character of the hypothetical reader described at point (6) of the summary of principles in *Jeynes*:

“It is important to stress point (6). The three Articles are a publication to the world at large. The hypothetical reader must be taken to be a reasonable representative of readers of *The Sunday Times*. What the characteristics of such people might be is a matter of public knowledge. It is a newspaper directed to readers with an interest in and general knowledge of politics.”

12. In *Gillick v Brook Advisory Centres* [2001] EWCA Civ 1263 Eady J stated:

"the court should give the article the natural and ordinary meaning which it would have conveyed to the ordinary reasonable reader reading the article once. Hypothetical reasonable readers should not be treated as either naïve or unduly suspicious. They should be treated as being capable of reading between the lines and engaging in some loose thinking, but not as being avid for scandal. The court should avoid an over-elaborate analysis of the article, because an ordinary reader would not analyse the article as a lawyer or accountant would analyse documents or accounts. Judges should have regard to the impression the article has made upon them themselves in considering what impact it would have made on the hypothetical reasonable reader. The court should certainly not take a too literal approach to its task."

13. It is trite law that the tribunal of fact must identify a single natural and ordinary meaning of the words complained of (*Slim v Daily Telegraph* [1968] 2 QB 157). However, in addition to the natural and ordinary meaning, the words complained of may also bear an innuendo meaning. A meaning by innuendo is "a meaning alleged to be conveyed to some person by reason of knowing facts extraneous to the words complained of": CPR PD 53, para 2.3(1)(b).
14. The courts have emphasised the importance of avoiding an overly technical analysis of the words complained of, particularly where a judge is required to determine meaning. *Gatley on Libel and Slander* explains at para 3.14 that:
- “Where a judge has to determine meaning it has been said that the correct approach is to ask himself what overall impression the material made on him and then to check that against the detailed textual arguments put forward by the parties. Hence in *Armstrong v Times Newspapers* Gray J. “deliberately read the article complained of before reading the parties’ respective statements of case or the rival skeleton arguments”.”

APPLICATION OF THE LEGAL PRINCIPLES TO THE WORDS COMPLAINED OF

Ordinary and natural meaning: “The Claimant is a Muslim extremist.”

15. The Claimant submits that the ordinary and natural meaning of the words complained of was/is that the Claimant is a Muslim extremist.
16. First, the Claimant is referred to as a ‘bigwig’ who had been decorated with public honours. The next sentence states: “*Obviously it would be half-laughable, half-disgusting, if activists of the EDL were indulged in this way; yet they are, in fact, less extreme than some of those Muslims who are*”. This clearly suggests and identifies the Claimant as one of “*those Muslims*” who have been “*indulged*” with public honours and who are more “*extreme*” than the EDL activists.
17. Second, while the words complained of contain several general references to “*Muslim groups*” and “*dubious groups*” receiving favourable treatment, they identify only two recipients of favourable treatment by name: “*Tell Mamma*” and “*Fiyaz Mugha*”. Since the essential argument of the passage is that EDL activists are “*less extreme*” than individual “*Muslims*” who are “*indulged*” by the British state, it is implausible to suggest that the one individual Muslim

identified by name (the Claimant) and the one Muslim project identified by name (Faith Matters) were not intended to serve as the focal point of that critical comparison.

18. Third, apart from the Claimant, the Article did not give any other examples of Muslims who have received public honours. In the context of that comparison, it is an unreasonable interpretation to suggest that the sole example of a Muslim receiving a public honour cited by the Article was actually intended to refer to a Muslim who was not an extremist and he did not fall into the category of 'some' Muslims. This would be "*a strained, or forced, or utterly unreasonable interpretation*".

19. Fourth, as the title of the Article makes expressly clear, the words complained of were part of a critical discussion about the presence of "*extremism in our midst*". The critical statements about the Claimant and his favourable treatment must therefore be interpreted in the light of the overall subject matter of the Article, which expressly and specifically concerned the preferential treatment afforded to Muslim extremists in British society.

First innuendo meaning: "The Claimant...is more extremist in his views and his actions than the far-right extremists who are activists within the English Defence League ('EDL')"

20. The Claimant submits that the words complained of bear an innuendo meaning that he is an extremist who is more extreme in his views and actions than the far-right extremists who are activists within the English Defence League (see paragraph 5(a) of the Particulars of Claim **[4/7]**). This meaning is clear from an analysis of the words complained of as a whole, considered in the light of the knowledge of a substantial number of readers that the EDL is a far-right extremist organisation whose members include far-right extremists.

Readers' knowledge about EDL extremism

21. In support of this innuendo meaning, paragraph 5.1 of the Particulars of Claim identifies seven publications which demonstrate that EDL activists are widely known to be and/or to include far-right extremists, together with details of their activities:

- (a) An article published in *The Daily Telegraph* on 23 May 2013 entitled “*Police clash with far-right EDL protestors in Woolwich*” [8/51-52]. The article described how EDL activists were involved in violent disorder when they clashed with police in Woolwich shortly after the murder of Fusilier Lee Rigby on 22 May 2013. The article explained that protestors involved in the disorder included “*supporters of the far-right English Defence League (EDL)*”.
- (b) An article published in *The Daily Telegraph* on 22 May 2013 by Jake Wallis Simons entitled “*The Far-right EDL is using Facebook and Twitter to exploit the Woolwich terrorist attack*” [9/53-54]. The article discussed postings published on the EDL’s social media webpages in the aftermath of Lee Rigby’s murder. It stated that the messages on the EDL’s Twitter account “*[spoke] volumes about the opportunistic nature of the far Right, and the type of emotions on which it thrives*”.
- (c) An article published in *The Daily Telegraph* on 22 October 2012 entitled “*EDL: far-right supporters held on way to Mosque protest*” [10/55-56]. The article discussed the arrest of 53 “*members of the far-right group*” who were travelling to a surprise protest outside an East London mosque. It stated that the “*extremist group*” was also understood to be planning a protest in Walthamstow, adding that, “*[a] similar protest in the area in September ended in violence with 20 arrests*”.
- (d) An article published by the Security Editor, Tom Whitehead, in *The Daily Telegraph* on 7 March 2013 entitled “*Managers and skilled workers make up the bulk of far right supporters*” [11/57-58]. The first line of the article referred to “*supporters of the far right English Defence League*”. The article referred to a report published by Chatham House which “*warns that the EDL is part of a new breed of far right extremism that is more ‘confrontational and unpredictable’ and more likely to support violence on the streets*”. The article went on to say that the author of the Chatham House report “*also warned that the new forms of far right extremism, like the EDL, are more ‘confrontational, chaotic and unpredictable’ that [sic] established political parties*”.
- (e) An article by Dr Matthew Goodwin published in *The Guardian* on 23 May 2013 entitled “*Woolwich attack and the far right: three points to consider when the dust settles*” [12/59-60]. The article discussed the danger of

“cumulative extremism” in the wake of the murder of Lee Rigby. The first paragraph noted that *“the number of supporters of the far-right English Defence League’s (EDL) Facebook page has rocketed more than threefold”* within 24 hours of the killing. The article described how 100 EDL activists engaged in a violent confrontation with police in Woolwich, while *“Online, many EDL supporters were calling for violence”*. The article then went on to discuss the concept of *“cumulative extremism”* and the *“changing nature of extremism”* by reference to the activities of the EDL. In this connection it explained that: *“Our research shows that EDL supporters are more likely than others to view violence as a justifiable course of action”*, adding that: *“the events of the past day demonstrate, clearly, how the modern extreme right can translate online bluster into offline action. In only a few hours, the EDL had a small number of committed activists on the streets, disrupting investigations and distracting police resources. While cumulative extremism may well be the broad challenge, we also need to sharpen our understanding about how current and specific forms of extremism are evolving: how they move online to offline; when and where to intervene in this process; and how to minimize the prospect of violence”*.

- (f) A report entitled *“The EDL: Britain’s ‘New Far Right’ Social Movement”* by Dr Paul Jackson and a team of academics at the University of Northampton’s Radicalism and New Media Research Group [13/61-140]. The report contained a detailed analysis of the evolution, agenda and activities of the EDL. The introduction stated that: *“For some thirty months, the English Defence League has brought disorder, violence and racism in its wake...Despite claiming that it opposes jihadi Islamism – like, of course, all right thinking people – the EDL’s rhetoric quickly turns into anti-Muslim prejudice, whether at demonstrations, online or, increasingly, in court.”* It describes the EDL as a movement *“driven by a unique alliance of football hooliganism, xenophobic nationalism and street politics”*. The report referred to the *“the EDL’s signature anti-Muslim politics”*, its *“potent anti-Muslim agenda”* and its *“thuggish and violent means of expression”*. It concludes that: *“As with many far right organisations in British history, its brand has become indelibly associated with violence and extremism.”* The report was discussed widely in the

media and was considered by the Parliamentary Home Affairs Committee.

- (g) A resignation statement published by Tommy Robinson, the founder of the EDL. On 8 October 2013 Tommy Robinson resigned from the EDL, explaining that he “*acknowledge[d] the dangers of far-right extremism*”. Mr Robinson’s statement was published widely in the media including by the BBC, Sky News, The Guardian, The Independent, The Express, The Mirror, New Statesman and The Spectator.

22. Like the *Sunday Times*, *The Daily Telegraph* is “*a newspaper directed to readers with an interest in and general knowledge of politics*” (*Cruddas v Calvert*, [2013] EWHC 1427 (QB), [22]). Accordingly, “[t]he hypothetical reader must be taken to be a reasonable representative” of those readers. In particular, the Claimant submits that most readers with an interest in and general knowledge of politics will be aware of the status of the EDL as a far-right extremist organisation. Accordingly, the hypothetical reasonable reader of the Article should be imputed with a reasonable degree of knowledge about the agenda, activities and composition of prominent extremist groups in the United Kingdom such as the EDL.

23. In a letter to the Claimant dated 23 April 2014, the Defendant stated that it was “*willing to proceed, for the purposes of argument, on the basis that [the Claimant] will establish the facts set out in POC [5.1] and [5.2].*” (see [7/50]). Accordingly, while the supporting articles referring to in paragraphs 5.1(i) – (vii) and 5.2(i) – (ix) have been included in hearing bundle for completeness as they are expressly referred to in Particulars of Claim, for the purposes of this hearing the Court must determine whether the words bear the innuendo meaning pleaded at paragraph 5(a) on the basis of that it is accepted that:

“*EDL activists are known to be and/or include far-right extremists. There have been numerous, articles, reports and broadcasts that refer to the EDL as a ‘far-right’ extremist organisation.*” (Paragraph 5.1 of the Particulars of Claim).

Submissions on innuendo meaning pleaded at paragraph 5(a)

24. The Claimant submits that the words complained of plainly bore the meaning pleaded at paragraph 5(a) of the Particulars of Claim:

- (a) First, for the reasons set out above, the Claimant submits that the words complained of bore the ordinary and natural meaning that he is a Muslim extremist. The essential thrust of the words complained of is that EDL activists are “*less extreme*” than individual “*Muslims*” who are “*indulged*” by the British state. With that core comparative argument in mind, it is implausible to suggest that the one individual Muslim identified by name in the words complained of (the Claimant) and the one Muslim project identified by name (Faith Matters) were not intended to form the focus of the critical comparison.

- (b) Second, the assertion in the final sentence of the words complained of that EDL activists “*are, in fact, less extreme than some of those Muslims*” would be understood as involving:
 - (i) a recognition that EDL activists are “*extreme*”;
 - (ii) a direct comparison between the extremism of those EDL activists and the extremism of “*those Muslims*” who have been “*indulged*” in the ways described in the preceding sentences; and
 - (iii) a conclusion that some of “*those Muslims*” are even more extreme than EDL extremists.

- (c) Third, the reference in the final sentence of the words complained of to EDL activists being “*indulged in this way*” could be understood to be either a reference to Muslims receiving of ‘public honours’ (i.e. only a reference to the ‘indulgence’ bestowed upon the Claimant) or alternatively a reference to the four particular forms of supposedly favourable treatment described in the preceding five sentences, which includes both:
 - (i) the decision to award the Claimant the OBE (which is expressly referred to in the fifth sentence); and

- (ii) the use of public funds to support the Claimant's work with Tell Mama (which is referred to in the first and fifth sentences).

Either interpretation of the passage plainly sought to use the Claimant's treatment as a specific example (indeed the only specific example) of Muslims being "*indulged*" by the British authorities, before proceeding to compare that favourable treatment to the treatment afforded to "*less extreme*" EDL activists.

- (d) Fourth, as the title of the Article makes clear, the words complained of were published in the context of a discussion of the presence of "*extremism in our midst*". This is reflected in the critical comparative narrative that runs throughout the Article, which contrasts the "*disparity*" between official attitudes and treatment of the EDL and official attitudes and treatment of "*Islamist organisations*", "*Islamist terrorism*", "*Muslim sectarianism*" and Muslim "*extremism*". The specific negative statements about the Claimant in the words complained of, and the specific comparison with extremist EDL activists in the final sentence, must therefore be read in that light.
- (e) Fifth, the presence of the words "*some of*" in the final sentence would be read by the reasonable reader as including the Claimant. He is singled out, expressly named and deliberately placed at the heart of a highly unfavourable comparison with EDL extremists. In the circumstances, it would be a strained, unreasonable and forced reading to suggest otherwise.

Second innuendo meaning: "The Claimant...is a hypocrite, as he falsely portrays himself as an individual who is anti-extremist."

25. In addition to the innuendo meaning pleaded at paragraph 5(a) of the Particulars of Claim, the Claimant further submits that the words complained of meant/mean he is a hypocrite who falsely portrays himself as an individual who is an anti-extremist (see paragraph 5(b)).

26. In support of this innuendo meaning, paragraph 5.2 of the Particulars of Claim cites nine publications which demonstrate that the Claimant's publicly espoused views on extremism and his role in Faith Matters were widely

reported in the media (including articles in *The Daily Telegraph*) and were therefore known to a substantial proportion of *The Daily Telegraph's* readers. As explained above, while these articles are included in the hearing bundle for completeness, the Defendant has agreed to proceed on the basis that the facts and matters about the Claimant set out in paragraph 1 of the Particulars of Claim would be so established as articles about the Claimant and his role in Faith Matters were widely published in the media (see [7/48] and paragraphs 5.2 and 5.3 of the Particulars of Claim [4/9-10]).

27. For the reasons set out above at paragraphs 15 to 19, there can be no doubt that the words complained of bear an ordinary and natural meaning that the Claimant is a Muslim extremist. On the basis of the concession contained in the Defendant's letter, it is indisputable that a substantial number of readers of the Article were aware of the Claimant's publicly stated views on extremism and his position as a director of the anti-extremism organisation Faith Matters and the anti-extremism project Tell Mama. It inevitably follows from this that a statement that the Claimant is a Muslim extremist carries with it a clear imputation that he is acting hypocritically and falsely in portraying himself as someone who is anti-extremist.

DEFAMATORY

28. Having identified the meaning of the words complained of, the court must then decide whether those meanings were defamatory of the Claimant. In *Thompson v James and Carmarthenshire County Council* [2013] EWHC 515 (QB) Tugendhat J stated:

"266. The definition of defamatory commonly used is that given by Sir Thomas Bingham MR in *Skuse v Granada Television Limited* [1996] EMLR 278 at 286 where he said:

'A statement should be taken to be defamatory if it would tend to lower the plaintiff in the estimation of right-thinking members of society generally or would be likely to affect a person adversely in the estimation of reasonable people generally.'

267. But in some cases it may be necessary to consider whether the words complained of satisfy a requirement of seriousness. For this purpose I would repeat the definition I preferred in *Thornton v Telegraph Media Group Ltd* [2011] 1 WLR 1985; [2010] EWHC 1414 (QB):

'the publication of which he complains may be defamatory of him because it [*substantially*] affects in an adverse manner the

attitude of other people towards him, *or has a tendency so to do.*"

29. A statement that a person (a) is a Muslim extremist; or (b) is more extremist in his views than far-right EDL extremists; or (c) is a hypocrite who falsely portrays himself as someone who is anti-extremist, will plainly lower that person in the estimation of reasonable people generally. There can be no doubt that the publication of such a statement would substantially and adversely affect the attitude of other people towards the subject of the statement. In these circumstances, the Claimant submits that the ordinary and natural meaning pleaded at paragraph 4 of the Particulars of Claim and the innuendo meanings pleaded at paragraphs 5(a) and (b) are defamatory and easily satisfy the threshold of seriousness described in *Thornton*.

CONCLUSION

30. For the reasons set out above, the Claimant submits that the words complained of bear the meanings pleaded in paragraphs 4 and 5(a) and (b) of the Particulars of Claim and are defamatory of the Claimant.

SARA MANSOORI

EDWARD CRAVEN

Matrix Chambers

28 April 2014