High Court awards £100,000 in damages to former CEO of the Football Association in defamation and harassment claim (Glenn v Kline)

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TMT analysis: This case concerned the appropriate remedies in a harassment and libel claim brought following judgment in default. The judge ordered that the defendant should pay £25,000 in respect of the harassment claim and £75,000 (including £10,000 in aggravated damages) in respect of the defamation claim. The judge also provided helpful guidance on the application of quantification of damages principles in the context of internet harassment and defamation cases. Written by Helena Shipman, senior associate at Carter-Ruck.

Glenn v Kline [2021] EWHC 468 (QB)

What are the practical implications of this case?

This judgment provides a clear application of the quantification of damages principles in the context of internet harassment and defamation cases, in addition to a comparison of recent damages awards in similar cases. The judgment also makes it clear that, where claims for defamation and harassment overlap, and the making of the defamatory statements constitutes the harassment, a composite damages award is appropriate. Claimants may therefore question the merit in bringing both claims unless they cover distinct periods in time. In this case, the publications sued over in the claim for harassment included some which were time-barred for the purposes of the defamation claim (ie prior to May 2019), as well as some which were also subject of the defamation claim.

Some guidance was also given on the potential appropriate form of an order under section 12 of the Defamation Act 2013 (DA 2013), which requires the defendant to publish a summary of the court's judgement. The purpose of such an order is to cause the judgment to come to the attention of as many of the same people who read the original libels as possible; parties must therefore consider the original forum of the libel, its prominence in that forum and the amount of time for which it remained visible. In the case of defamation on Twitter, an appropriate order may include requiring the defendant to pin a tweet containing a short factual account of the court's actions and a link to the judgment for three months.

The judgment also provides guidance on when the court will permit an application to amend the claim form to increase the value of the claim (which it did in this case). The court will undertake a balancing exercise to see if the injustice to the claimant of refusing the amendment outweighs the injustice to the defendant of permitting the amendment. Defendants should expect the court to permit an application of this type if they continue to publish defamatory or harassing content after proceedings have been issued, so long as the claimant undertakes to pay the additional court fee appropriate to the increased sum demanded.

What was the background?

The claimant was the chief executive officer (CEO) of the Football Association (FA) from March 2015–August 2019. The defendant is an Illinois-qualified lawyer who has lived and worked in the UK for several years. Between 2014 and 2017, he was the assistant director of Football and director of Statistical Research at Fulham Football Club. According to the claimant, he had never worked with, or even met, the defendant.

Between November 2018 and February 2019, the defendant began a campaign of harassment against the claimant, by email and on Twitter. The allegations by the defendant were extremely serious, including, for example, that he 'was part of an international criminal conspiracy that permits organised crime to run English football and covered up the sexual abuse of children, racism, fraud, money laundering and misogyny', and that he 'sought to punish, bully and silence whistleblowers like the defendant to avoid exposure of his corrupt activities'. The defendant's campaign briefly ceased between February 2019 and May 2019, but then continued thereafter with a vengeance.

As a result of the defendant's tweets and emails, the FA launched an independent investigation into the claimant, which lasted several months and ultimately found there was no case to answer. The investigation was highly intrusive and distressing for the claimant. The defendant also had a substantial Twitter following, which included a number of journalists. This led to the defendant's claims being published in the national press. This had a huge impact on the claimant, both professionally and personally.

The claimant sent the defendant a formal letter of claim in February 2020, which the defendant dismissed out of hand and refused to engage with. Proceedings for harassment and libel were ultimately issued in May 2020. The defendant purported to relish the prospect of court proceedings, but failed to file an acknowledgment of service (despite multiple reminders from the claimant's solicitors), which led to the claimant obtaining judgment in default. The purpose of this hearing was to assess the appropriate remedies for the claimant following default judgment.

What did the court decide?

The judge awarded the claimant £100,000 overall in damages, a remedy under DA 2013, s 12 and his costs. His judgment regarding the assessment of the appropriate level of damages for the claimant's claims is of particular interest. No injunction was ordered as, following an earlier hearing before Mr Justice Nicklin, the defendant had given permanent undertakings to the court not to repeat his allegations and not to pursue any conduct which amounted to harassment arising out of the publication of his allegations.

Harassment claim—up to May 2019

Damages for harassment under the Protection from Harassment Act 1997 are to compensate a claimant for distress and injury to feelings (see *ZAM v CFW and another* [2013] EWHC 662 (QB) at para [59]). Three broad bands for compensation in harassment claims were given by the Court of Appeal in *Vento v Chief Constable of West Yorkshire Police* [2002] EWCA Civ 1871; these have since been increased as per para 10 of the Employment Tribunal's Presidential Guidance of 5 September 2017.

The judge followed the approach set out by Nicklin J in *Suttle v Walker* [2019] EWHC 396 (QB) in order to ascertain the measure of damages for the claimant's harassment claim.

In this case, the protracted and relentless nature and numerous incidents of the defendant's campaign, persisting up to, and beyond, the issue of proceedings, which was directly targeted at the claimant, and the aggravating features of the defendant's conduct, led to the judge concluding that an award 'on the cusp' of the upper *Vento* band was applicable. He awarded £25,000. The judge concluded that the sum would have been higher 'if the claimant had not coped with the allegations as well as he did'.

Defamation claim—post May 2019

The judge considered a large number of factors when determining the appropriate level of damages for the claimant's defamation claim.

The damages assessment was based on the claimant's pleaded meanings (see *Sloutsker v Romanova* [2015] EWHC 2053 (QB)). The judge also considered the specific words complained of 'to get a proper flavour of the tone and content of the allegations'.

There is a sliding scale of gravity in defamation claims. The judge accepted that allegations of child abuse are 'at the upper end of the scale of gravity': *Barkhuysen v Hamilton* [2016] EWHC 2858 (QB). The defendant's allegations of fraud, corruption, bribery, conspiracy and money laundering are also gravely serious (*Triad Group plc and others v Makar* [2020] EWHC 306 (QB)). Allegations that the claimant covered up racism and misogyny are also very serious, particularly in light of current socio-political movements. The allegations imputed guilt on the part of the claimant (rather than suspicion), which increased the gravity of the claim.

The judge also accepted the claimant's submission that the tweets could be considered both singularly and collectively, the latter of which would have been 'devastating' to the claimant's reputation.

The judge next considered the extent of the publication. This included the primary readership (ie the number of Twitter followers who had read the words complained of, which were roughly 1,700 in number) and those who heard about the allegations subsequently via the 'grapevine effect'; see *Cairns v Modi; KC v MGN Ltd* [2012] EWCA Civ 1382.

As for the manner of publication, the tweets themselves were online for an extended period of up to 12 months; this was compared to the defamatory tweets in *Monroe v Hopkins* [2017] EWHC 433 (QB), which imputed a far less serious allegation, and were only visible for two hours and 25 minutes, and still attracted a damages award of £24,000. The judge also accepted that internet publications have significant damaging potential, due to their permanence online (see *ZAM v CFW*). Even though the tweets were deleted, they remain accessible via republications, screenshots, and potentially archived webpages.

As for the email publications sued over, although the extent of publication was relatively small, the identities of the publishees (including the claimant's employer and a government department) meant that the libels were nevertheless likely to have a very significant impact.

The identity of the defendant himself was also a relevant factor; the fact that he is a US-qualified lawyer, that he claims to have joined Fulham FC as director of Statistical Research in 2014 and to have been promoted to assistant director of Football in January 2017, and to have resigned in October 2017, all tended to lend credibility to (and therefore increase the damage of) his allegations.

The judge also considered the claimant's evidence on the distress and alarm caused by the defendant's campaign, which was fully accepted. The defendant's conduct towards to the claimant, both prior to and during the proceedings, was also a relevant factor. The claimant submitted (and the judge accepted) that 'the defendant has at all times remained completely unrepentant. His hostility and vindictiveness towards the claimant appear to be limitless'. As a result of this, the judge agreed that the award of damages would need to properly signal that the defendant's allegations against him were false.

The judge considered that all of the above factors were relevant, and awarded the claimant £65,000 in general damages, and £10,000 in aggravated damages for defamation.

Harassment claim—post May 2019

The judge decided that, where the harassment claims and defamation claims overlapped in time from May 2019 onwards, it would be artificial to try to separate out the distress caused by the libels to that caused by the course of conduct constituting harassment. The judge therefore made one award in respect of all the defamatory publications complained of, and decided that this award should take account of the claim in harassment as well as the claim in libel. This was the course adopted in *Suttle*, *Triad Group*, and *ZAM v CFW* (all cited above). This was in addition to the £25,000 damages awarded separately for the harassment claim.

Case details:

- Court: Media and Communications List (Queen's Bench Division), High Court of Justice
- Judge: Richard Spearman QC (sitting as a Deputy Judge of the Queen's Bench Division)
- Date of judgment: 5 March 2021

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