

Slander claim gets over the serious harm threshold (Hodges v Naish)

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TMT analysis: This is the judgment on the trial of preliminary issues in a slander claim brought in relation to allegations of grooming. It provides a useful reminder of how well-known principles of defamation law, which are usually developed in the context of libel claims, are applied in the context of a slander action. Based on the parties' evidence, the court drew conclusions as to the publication of the words proven to have been spoken and allowed two of the three publications complained of to proceed (disapplying the limitation period in relation to one of those publications). The court also determined the meaning of the words complained of, and found that the allegations (whose actionability at common law had been conceded by the defendant) were actionable per se and had caused serious harm to the claimant. In doing so, it queried recent guidance as to the proper analysis of the moment at which the cause of action in defamation claims crystallises, in the light of Lord Sumption's analysis of section 1 of the Defamation Act 2013 (DA 2013) in *Lachaux v Independent Print Ltd and another*. Written by Mathilde Groppo, senior associate at Carter-Ruck Solicitors.

Hodges v Naish [\[2021\] EWHC 1805 \(QB\)](#)

What are the practical implications of this case?

There are two main points of interest in this decision.

First, it is a useful reminder of the approach that the court will take to the preliminary issues of publication and actionability in the context of a slander claim.

The judgment reminds the readers that each instance of publication of the words complained of amounts to a separate cause of action which must be properly pleaded and particularised. The court's approach to the issue of publication of the words alleged to have been spoken was a fact-specific one based on the parties' respective evidence, designed to determine 'the actual words used [by the defendant], rather than words to the effect of those used'.

In relation to actionability, the court (having found that the slanders were actionable per se) considered that the words complained of had caused serious harm to the claimant's reputation. This is the first slander case which overcomes the [DA 2013, s 1](#) threshold since the judgment in *Lachaux v Independent Print Ltd and another* [\[2019\] UKSC 27](#). The present judgment contains discussion as to the proper analysis of Lord Sumption's comments in that case as to the moment when the cause of action crystallises.

The claimant's position was that the cause of action is complete, and the reputational impact caused, at the moment of publication. Although the judge did not need to make his findings on the basis of this submission, he commented on it. He considered it to be somewhat artificial, and difficult to apply in practice, since factors occurring after publication may be relevant to serious harm, whether they confirm the seriousness of the words (as envisaged by Lord Sumption) or they show that the words were less damaging than initially supposed (which was not envisaged by Lord Sumption but which the judge considered to be the only logical approach).

Secondly, the judgment provides a helpful reminder of the principles applicable to the disapplication of the limitation period, and of the relevant factors in approaching this issue (focusing on the claimant's attempts to seek speedy vindication, and the balance of prejudice between the parties in disapplying the limitation period).

What was the background?

The claim arose from allegations published to individuals who were friends of both parties following the breakdown of the parties' relationship, which had been in the form of both a friendship and a business relationship in the 'small world of Irish dance'. The allegations complained of in the proceedings were allegations of grooming.

The claimant complained about five publications in total, of which two were abandoned by him (having been published in foreign jurisdictions) and one was not permitted by the court to proceed (on the basis that the facts before it were insufficient to infer that the specific grooming allegation complained of had been published).

The procedural background to the claim is a complex one, which started with inadequately formulated pleadings, and proceeded to the trial of preliminary issues after service of amended particulars of claim and after a number of applications, including in relation to the parties' evidence, were issued.

This is the judgment of the trial of preliminary issues 'as to the words published, the meaning of the words complained of, whether the meanings were defamatory at common law, whether the imputations were likely to cause the claimant's reputation to suffer serious harm, and whether they were allegations of fact or opinion', which also considered 'whether the words complained of by the claimant, as determined by the court at trial, were actionable as slanders per se, that is to say, without the necessity to prove special damage' and gave a decision on the claimant's application to disapply the limitation period in respect of one of the publications complained of.

What did the court decide?

Regarding the publication of the words complained of, the court decided that the claim could proceed in relation to two of the three statements complained of. In relation to the allegation which was not permitted to proceed, while the court considered that it was likely that the defendant had made allegations of sexual misconduct, it was not prepared, on the facts before it, to infer that the defendant had made allegations of grooming.

On the issue of actionability, the court noted that the defendant had (rightly) conceded that the allegations complained of were defamatory at common law. Having set out the exceptions to the rule that slander is not actionable without proof of special damage, it found that the allegations complained of were actionable per se, since they concerned allegations of criminality punishable by imprisonment (and the court reminded readers that a general allegation of criminality would suffice), and those allegations, which related to the claimant's business, were calculated to disparage the claimant in that business (which, in this context, is to be interpreted as 'likely' to cause damage). The court was also satisfied, on the basis of the parties' evidence (both written and oral), that the allegations complained of, were 'immensely serious', had had a profound impact on the publishees, and had (adopting Mr Justice Nicklin's term in *Dhir v Saddler* [2017] EWHC 3155) 'stuck'—which had thereby caused serious harm to the claimant's reputation.

In disapplying the limitation period, the court focused on the claimant's genuine wish to obtain vindication and his attempts to pursue his complaint promptly, and carefully analysed the balance of prejudice between the parties. It was important that the key issue in the case (where actionable publication was limited to two very similar allegations, but a non-actionable publication and rumours of the same kind 'had been going round' in the same business circles) was the claimant's need to obtain an injunction, and that the defendant's defences in relation to both allegations would be identical, such that they would 'stand or fall together'.

Case details

- Court: Queen's Bench Division, Media and Communications List, High Court of Justice
- Judge: His Honour Judge Richard Parkes QC (sitting as a High Court judge)
- Date of judgment: 1 July 2021

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