

# Irrational beliefs lead to libel and harassment injunction (Davies v Carter)

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**TMT analysis: This is the judgment given following the trial of a libel and harassment claim brought by the claimant against a former customer of her husband's, who wrongly convinced himself of her involvement with the provision of an allegedly defective service by her husband's business. The remedies sought by the claimant included damages, aggravated damages and an injunction to prevent the defendant from republishing defamatory statements and from further harassing the claimant. In establishing the defendant's liability, the judgment followed established case law, paying specific attention to the principles applicable in cases involving harassment by publication. Assessing the reasonableness of the defendant's course of conduct, it considered, in particular, the relevance of the defendant's right to freedom of expression and of the truth (or the defendant's belief as to the truth) of the information published. Written by Mathilde Groppo, senior associate at Carter-Ruck Solicitors.**

*Davies v Carter* [\[2021\] EWHC 3021 \(QB\)](#)

## What are the practical implications of this case?

This judgment follows the trial of the claimant's claim, and this is noteworthy in itself, given the large number of claims which settle before trial.

The decision applies well-established principles in libel and harassment cases. It includes: a helpful summary of the principles applicable in a case of harassment by way of publication, where the interference with the defendant's rights under Article 10 of the [European Convention on Human Rights](#) characterised by the finding of liability in relation to harassment is considered to be a justified and proportionate interference; and, a reminder as to how damages will be assessed in a case where the claims in libel and harassment are distinct but related.

At a higher level, this case illustrates the impact that a campaign of harassment can have on a victim, including in relation to their own ability to exercise their own rights—in particular, their own right to freedom of expression.

## What was the background?

The background to the dispute was the supply of an allegedly defective service by the claimant's husband's company to the defendant. The defendant had retained the company to develop a website. Following the launch of the website the defendant raised various complaints which led to disputed events as to which the court made no findings, but which eventually resulted in a falling out between the defendant and the company. The defendant started posting reviews online, which were highly critical of the claimant's husband and his company, and the claimant's husband ultimately deleted his social media accounts.

The defendant then turned the focus of his communications on the claimant because of his belief that the claimant was involved with the company and the provision of the alleged defective service. Such belief was based on the fact that the claimant had an email address with that company, which had been registered as an 'admin' in the website code. In fact, the claimant had had no involvement with the company or the supplied service, and that email address had been set up and used solely for the purposes of testing the website, unbeknown to her.

The communications complained of were published between June 2017 and early 2020 through a number of Twitter accounts, and on LinkedIn, targeting senior members of two of the claimant's employers, her fellow board members, as well a number of her suppliers, colleagues and mentees. They caused the claimant upset and distress, and led her employers to question her about them.

The communications also impacted the claimant's ability to carry out her duties on social media channels as a marketing expert for a period of time, until an interim injunction was obtained against

the defendant. That injunction marked the start of these proceedings and allowed her to restart her online activities.

### What did the court decide?

The claimant was successful in relation to both her claims.

In relation to the libel claim, the court found that the statements were defamatory of the claimant at common law and that they had, in fact, caused her serious harm (on the basis of the nature of the words and factual evidence as to their impact).

The defendant relied on a defence of truth, in relation to which Mr Justice Saini considered that: ‘The real question [was] [the Claimant’s] involvement if any in Red Communications and its supply of the alleged defective product’. The defendant’s case in that regard was based on assumptions which the court, having heard both parties’ evidence, found to have been mistaken, and the defence of truth consequently failed.

In relation to the harassment claim, the volume of communications clearly satisfied the course of conduct requirement, and their contents (which frequently tagged the claimant or targeted her by sending the communications to her employers’ or colleagues’ accounts) were found to have been targeted at her. Balancing the defendant’s right to freedom of expression against the claimant’s competing Article 8 rights, the court found the conduct to have been unreasonable—noting that a defendant’s inability to distinguish truth or falsity was also a relevant factor going to the unreasonableness of the conduct. The defence of reasonable conduct failed, and the harassment claim therefore succeeded.

The court awarded £10,000 libel damages for injury to reputation and vindication—a fairly low award. However, it noted that the injury to feelings element of the award was covered by the separate £25,000 award made in relation to the defendant’s harassment campaign.

The court dismissed the claimant’s claim for aggravated damages in respect of the libels (on the basis that the defendant’s conduct of his defence had been neither inappropriate nor oppressive), and for damage to the claimant’s professional life claimed in respect of the harassment (for lack of evidence of causation of the loss, which had been framed in broad terms as a ‘stigma’).

### Case details

- Court: Media and Communications List, Queen’s Bench Division, High Court of Justice
- Judge: Mr Justice Saini
- Date of judgment: 15 November 2021

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