

## Libel and harassment damages capped at the value claimed on the Claim Form (*Hills v Tabe*)

This analysis was first published on Lexis®PSL on 24 February 2022 and can be found [here](#) (subscription required)

Commented [JRA(1)]: Insert stable link to the analysis

**TMT analysis:** This was an assessment of damages following default judgment having been entered against the defendant, who did not appear. The claim was for libel and harassment, arising out of the publication of a series of allegations that the claimant was a prostitute, unclean and unhygienic, which were published on social media by a defendant with a high number of followers within the Cameroonian community in the UK, which both parties are a part of. As the defendant had not engaged with the proceedings at all, the court proceeded on the basis of the claimant's unchallenged particulars of claim and evidence. On the basis of the number and seriousness of the allegations, the number of people likely to have read them, the claimant's evidence on distress and the aggravating features of the case, damages were awarded in the sum of £10,000 (as per the cap on the Claim Form). The judgment's main point of interest is its approach to the damages cap on the claim form. Written by Mathilde Grop-po, senior associate at Carter-Ruck Solicitors.

*Hills v Tabe* (also known as *Esanza Mateke, Bridget Benjamin*) [\[2022\] EWHC 316 \(QB\)](#)

### What are the practical implications of this case?

In this case, the claimant capped the value of the claim at £10,000. That sum was readily awarded by the judge and recorded in a consequential order, annexed to the judgment.

In the claimant's schedule of loss filed pursuant to the court's directions, she had sought 'damages of no less than £15,000 for defamation and damages of no less than £13,000 for personal (psychiatric) injury/pain suffering and loss of amenity'. However, the claimant had not applied for permission to increase the value of her claim under [CPR 17.1\(2\)\(b\)](#), and the judge indicated that if she wished to pursue her claim for a higher amount, she would need to issue such an application, to be heard on notice to the defendant.

This approach differs from that taken in other cases, including in judgments given following assessment hearings in which the defendant did not appear and which followed after default judgment having been entered in the claimant's favour: see *XXXX Known As Jean Hatchet v Varma* [2021] EWHC 1709 at para [19]; *Harrah v Stand for Peace Ltd* [2017] EWHC at [22]; *Hussein & others v Hamilton Franks & Co Ltd* [2013] EWHC 462 at para [33]. In these cases, which do not appear to have been cited, it was accepted that pursuant [CPR 16.3\(7\)](#), the value of the Claim Form does not limit the power of the court to give judgment for the amount which it finds the claimant is entitled to recover.

This is of particular relevance in case such as this, where the order annexed to the judgment contains directions regarding the defendant's ability to apply to have the order set aside under [CPR 39.3\(3\)](#).

### What was the background?

The claimant is a nurse and a member of the Cameroonian community in the UK. The defendant, who is a member of the same community, operates various Facebook accounts and a YouTube channel broadcasting in Pidgin English, in the UK and internationally.

The publications complained of were posted on Facebook and on YouTube, and the claimant's evidence was that these were the source of ongoing discussions within the Cameroonian community. The claimant's efforts to resolve this matter informally was unsuccessful, and in fact led to more allegations being published by the defendant.

The claimant issued and served her claim, with which the defendant did not engage at all. The claimant obtained default judgment and, pursuant to directions given by the court, she filed evidence and a schedule of loss in the run up to the hearing of the assessment of damages. The defendant,

again, did not engage at all; she did not file a counter-schedule of loss as directed by the court, and she did not appear at the hearing. The hearing proceeded in the defendant's absence (subject to the inclusion of wording in the order concerning permission to apply to set aside under [CPR 39.3\(3\)–\(5\)](#), due to the fact that some correspondence about the change in hearing date had not been copied to the defendant).

### What did the court decide?

The court made a straightforward application of the principles applicable to a default judgment—namely, proceeding on the basis of the claimant's unchallenged particulars of claim.

Regarding the libel claim, the judge considered that the serious harm threshold included in [section 1](#) of the Defamation Act 2013 had been met. Those findings were based on the seriousness of the allegations, as supported by the claimant's evidence.

Applying the now well-established principles as to quantification of damages as set out by Mr Justice Warby in *Barron v Vines* [2016] EWHC 1226, the judge awarded the claimant £10,000, being the figure at which she had capped her claim.

This figure was based on: the recognition of the seriousness of the allegations, which struck at both her personal and professional life, as a nurse; the incremental effect of a series of publications over a prolonged period of time; the number of publishees; the nature of internet publications and their permanence online; the claimant's evidence as to the effect of the publications on her, including distress, embarrassment, humiliation and serious mental health issues; and aggravating features of the defendant's conduct, including the fact that she failed to engage with the proceedings and had in fact added to her existing allegations.

Regarding the harassment claim, the judge referred to the guidance provided by Mr Justice Nicklin as to the measure of damages for harassment in *Suttle v Walker* [2019] EWHC 396. He considered that the facts of the case (including the prolonged nature of the attack against the claimant, the distress caused to her and the targeted and spiteful nature of the attacks) would have justified an award in the middle 'Vento' band (which currently ranges from £8,400 to £25,200). This, in his view, confirmed that the claimant ought to be entitled to the full £10,000 at which she had capped her claim, even if a defamation award at that level had not been justified.

The judge also granted the claimant a permanent injunction in the terms set out in the order annexed to the judgment, and the payment of her costs as set out in her schedule of costs filed before the hearing.

### Case details:

- Court: Queen's Bench Division, Media and Communications List
- Judge: Richard Spearman QC (sitting as a Deputy Judge of the Queen's Bench Division)
- Date of judgment: 17 February 2022

Mathilde Groppo, senior associate at Carter-Ruck Solicitors. If you have any questions about membership of LexisPSL's Case Analysis Expert Panels, please contact [caseanalysis@lexisnexis.co.uk](mailto:caseanalysis@lexisnexis.co.uk).

Want to read more? Sign up for a free trial below.

**FREE TRIAL**

The Future of Law. Since 1818.