

Second application for jury trial in libel proceedings since 2014 fails (*Blake and others v Fox*)

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TMT analysis: The judge in charge of the Media and Communications List has rejected the application of actor and political activist Laurence Fox for a jury trial in his counterclaim for libel concerning allegations of racism. Laurence Fox is the defendant in libel proceedings brought against him by a former trustee of Stonewall and two others following an exchange of tweets. He counterclaimed against them for libel. Fox issued what was only the second application for a trial by judge and jury since section 11 of the Defamation Act 2013 (DA 2013) removed the presumption in favour of trials by jury. His case was primarily based on the ‘appearance of ‘involuntary bias’ arising from the discrepancy between his pleaded case on meaning and the definition of racism given by the Judicial College in the most recent edition Equal Treatment Bench Book (ETBB). Unsurprisingly, his application failed. This judgment makes clear that the prospects of success of such applications are dead in the water, with the court concluding that ‘jury trials in defamation claims are now as likely to be tried by a jury as a personal injury claim or a contractual dispute’. Written by Mathilde Groppo, senior associate at Carter-Ruck Solicitors.

Blake and others v Fox [\[2022\] EWHC 1124 \(QB\)](#)

What are the practical implications of this case?

This case reviews in a great deal of detail the principles applicable to an application for a trial by judge and jury pursuant to [section 69\(3\)](#) of the Senior Courts Act 1981, and the single judgment in this matter handed down since [DA 2013](#) came into force (*Yeo MP v Times Newspapers Ltd* [\[2014\] EWHC 2853 \(QB\)](#)). By comparing the likelihood of a jury trial in a defamation claim to that of a jury trial in a personal injury claim or a contractual dispute, it sends an undeniably strong signal about what was effectively becoming an almost extinct mode of trial in defamation cases.

The benefits of having a reasoned judgment and of proportional and effective case management, coupled with the complex nature of the law of defamation, all militate against the use of juries, and there can be no doubt that this is an area of law that is best left to specialist judges in all but the most exceptional circumstances. So much so, in fact, that following *Yeo* and this judgment, it is difficult to see in which cases the court may consider a trial by jury to be appropriate.

What was the background?

This is a social media claim which followed the defendant posting a tweet in which he described Sainsburys’ announcement that it was providing ‘[its] black colleagues with a safe space to gather in response to the Black Lives Matter movement’ as ‘racial segregation and discrimination’.

The claimants each quote tweeted the defendant’s tweet, in which they described the defendant as ‘a racist’. The defendant replied to each of these tweets calling each of the claimants a ‘paedophile’. His tweets in response were later deleted, but the claimants sued him in respect thereof.

The defendant filed a defence and served a counterclaim for libel in respect of the racism allegations. The complex procedural background which ensued is described in detail at paragraphs [19]–[21] of the judgment.

The defendant then issued an application notice seeking a direction for trial by jury, which was the subject-matter of the hearing following which this judgment was handed down.

The defendant’s primary argument was that there was an appearance of ‘involuntary bias’ on the part of the judiciary, because his case on the meaning of ‘racism’ did not accord with the definition thereof given in the ETBB (which was said not to reflect the way ordinary people use the word); and that in these circumstances, the court ‘might well be thought to feel some reluctance’ to find in favour of the defendant. The defendant also argued that a reasoned judgment in what was a ‘culture war’ case

would be a '[magnet] for appeals', and that the vindication he sought 'could be undermined by the lack of diversity of the judiciary'.

The claimants relied on the importance of a reasoned judgment, the complexity of the case as recognised by Senior Master Fontaine in an earlier judgment, and the defendant's lack of engagement with the claimants' request that he provides questions that a jury would be required to address to resolve the issues.

What did the court decide?

Mr Justice Nicklin considered that the defendant had not demonstrated that there was a real risk of involuntary bias if the case were determined by a judge alone, and so he did not consider the next stage of the test (the weighing of such risk against other factors is usually considered under DA 2013, s 69(3)). In reaching this finding, he reiterated well-known rules on the determination of meaning, which suggested that the defendant's argument about involuntary bias, which relied heavily on the ETBB rules, was bound to fail.

Having cited *Koutsogiannis v Random House Group Ltd* [2020] 4 WLR 25, Nicklin J reiterated 'the well-established principle that no evidence, beyond publication complained of, is admissible in determining these issues'—and in particular, the need to avoid dictionary definitions: *Stocker v Stocker* [2019] UKSC 17.

In the circumstances, he decided the application by exercising his discretion having regard to the various factors that have been identified in the authorities. He dismissed the application, largely adopting the claimants' arguments—referring to: the importance of a reasoned judgment (which he stated provided a better safeguard against error than a jury verdict); the need for proportionate and effective case management (which weighed very heavily against a jury trial); the complexity of the law of defamation; and the fact he was not persuaded about the 'enhanced impartiality' of a jury trial over one by judge alone.

Case details:

- Court: Media and Communications List, Queen's Bench Division, High Court of Justice
- Judge: Mr Justice Nicklin
- Date of judgment: 18 May 2022

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