



## Daily Mirror fails to justify the whole of the defamatory sting of its article about Daniel Simpson and Tulisa Contostavlos

The High Court recently ruled on the old law of justification in a case where the publication pre-dated the coming into force of the Defamation Act 2013.

Defamatory statements can be defended where they are substantially justified by the truth (now the Defendant must show that the imputation conveyed by the statement complained of is substantially true). However establishing such a defence requires the Court to make a careful analysis of the natural and ordinary meaning of the words used and whether all the potentially defamatory parts of the statement are substantially justified.

As the Daily Mirror found in *Daniel Peter Simpson v MGN Limited* [2015], a case decided on the law before the Defamation Act 2013, which abolished the common law defence of justification and inserted a new statutory defence of truth, while it is not necessary to justify the truth of every word, justification of all the potential 'defamatory stings' in the statement is necessary.

### The newspaper article

Mr Simpson is a professional footballer playing in the Premier League. He brought libel proceedings against the owner of the Daily Mirror, MGN, regarding an article which appeared in November 2012 alleging that he had been unfaithful to his girlfriend, Ms Stephanie Ward, when he entered into a romantic relationship with the singer and TV personality Tulisa Contostavlos.

The article contained a number of photographs of Mr Simpson and Ms Contostavlos together, with captions stating that Mr Simpson's "pregnant girlfriend", Ms Ward, had called Ms Contostavlos a "home-wrecker".

Mr Simpson brought the proceedings on the basis that the words used on the front page of the newspaper and in the main article itself, which appeared as a splash across pages 6 and 7, were defamatory of him.

MGN denied that the words complained of were defamatory and pleaded a defence of "justification", i.e that the allegedly defamatory statements were true.

### The meaning of the words complained of

Determining the "meaning of the words complained of" is often a key element in any defamation claim as it assists the Court in determining whether the words used were defamatory.

Claimants will often apply to Court for the meaning of the words to be determined as a preliminary issue, in the hope that they will obtain an interpretation of the words which will make it difficult for the Defendant to justify.

In the present case, Mr Simpson made the following two applications:

- (a) An application for an Order that the Court try as a preliminary issue:
  - (i) the meaning of the words which he complained of; and
  - (ii) whether those words were defamatory of him.
- (b) If upon the trial of those issues under the first application the Court upheld the defamatory meaning complained of by Mr Simpson, Mr Simpson sought an Order striking out MGN's defence of justification on the basis that there were no reasonable grounds for defending the claim.

The meaning which Mr Simpson attributed to the words complained of was that:

*"(1) by entering a romantic relationship with the celebrity Tulisa Contostavlos, [Mr Simpson] was unfaithful to his partner Stephanie Ward, with whom he was in a stable, long-term and committed relationship, living together with her and their daughter as a family, despite Miss Ward having sacrificed her legal career to have his children, and being, as he knew, pregnant with their next child"; and*

*"(2) in so doing, [Mr Simpson] callously destroyed the secure family unit that his long-term partner and infant daughter had enjoyed and which was soon to be joined by the child they were expecting".*

MGN pleaded that it would justify the meaning which Mr Simpson complained of or, alternatively, the following meaning:

*"that by entering a romantic relationship with the celebrity Tulisa Contostavlos, the Claimant was unfaithful to his loyal and long term partner Stephanie Ward, with whom he was still in a*

*continued over*

sexual and long term relationship, who was the mother of his child and who, as she had told him, was pregnant with another child of his, thereby upsetting Stephanie Ward and bringing their relationship to an end.”

The Court will decide the natural and ordinary meaning of the words used as a question of fact, by ruling on the meaning that the ordinary reasonable reader would find the publication to bear.

Having considered arguments from both sides’ Counsel, Mr Justice Warby found that the words complained of by Mr Simpson bore the natural and ordinary defamatory meaning that:

*“by entering into a romantic relationship with the celebrity Tulisa Contostavlos [Mr Simpson] was unfaithful to his loyal partner Stephanie Ward, with whom he was in a long-term and committed relationship, living with their daughter as a family; he did so despite Miss Ward having sacrificed her legal career to have his children, and being, as he knew, pregnant with their next child; and by doing so he callously destroyed his relationship with Miss Ward and broke up an established family unit which was soon to be joined by the child they were expecting”.*

### Was it justified?

Having determined the meaning of the words complained of and that those words were defamatory of Mr Simpson, the question for the Court was whether a trial judge could conclude that the pleaded case of justification, if established, would prove the substantial truth of those words.

The problem for MGN was that, in considering its defence, Mr Justice Warby found that the account of events in the pleadings was significantly different from that which was contained in the article. For instance, it was not alleged in the pleadings, as it had been in the article, that Ms Ward had given up her legal career in order to have Mr Simpson’s children. Nor was it alleged that Mr Simpson and Ms Ward were living together as a family with their daughter at the time Mr Simpson began his relationship with Ms Contostavlos; or that Mr Simpson’s infidelity broke up an established family unit.

On that basis, Mr Justice Warby held that:

*“there are therefore components of the defamatory meaning of the article which in my judgment would inevitably be held to contribute significantly to their defamatory sting, the truth of which could not be established by proof of the defendant’s particulars or proposed amended particulars.”*

For that reason, Mr Justice Warby upheld Mr Simpson’s application to strike out MGN’s plea of justification.

## When can a defamatory statement be justified?

In order for the defence of justification to be successful, the defendant does not have to prove the truth of every aspect of the words complained. It is sufficient for the defence to prove the substantial truth of the defamatory sting of the words used.

However, as this case shows, the defence must meet the whole of the defamatory sting. If the words complained of contain a defamatory accusation which is not covered by the plea of justification, as was found to be the case with MGN’s article, then the defence will fail.

## Defamation Act 2013

This case was decided on the law before the Defamation Act 2013, as the article complained of was published in November 2012, before the coming into force of the new Act. The Defamation Act 2013, now in force, substantially changes the law of defamation and expressly abolishes the common law defence of justification for a statutory defence of truth. Section 2 of the Defamation Act 2013 states that “it is a defence to an action for defamation for the defendant to show that the imputation conveyed by the statement complained of is substantially true”.

The core of the justification defence has therefore been brought into the statute but it is the section 2 wording that Defendants will need to prove in future cases in order to establish the defence of truth.

### Contacts

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