Strike-out of public-interest defence reversed on appeal in Rachel Riley case

Michael Sivier, a political blogger, has won his appeal against the striking-out of the public-interest element of his defence in a dispute with *Countdown* presenter Rachel Riley. Court of Appeal judges ruled that, while Mr Sivier's public-interest defence may have been "imperfectly pleaded", that was not a good-enough reason to dismiss it before a full trial.[1] Conversely, the court dismissed Mr Sivier's appeal against the strike-out of his truth and honest-opinion defences.

Background

In January 2019, Mr Sivier published an article on his website, Vox Political, in relation to Rachel Riley and the wider debate surrounding antisemitism and the Labour Party. The article was entitled "*Serial abuser Rachel Riley to receive 'extra protection' – on grounds that she is receiving abuse*". The article went on to claim that Ms Riley had been abusing others online as part of discussions on the topic, in particular during Twitter exchanges that Ms Riley allegedly had with a 16-year-old girl.

Ms Riley, who is Jewish, had previously spoken in public about her concerns over antisemitism. At the same time, Mr Sivier's website had broadly supported Jeremy Corbyn's leadership of the Labour Party, placing them at opposite ends of the spectrum in terms of the discussion of allegations of antisemitism within the Labour Party. Mr Sivier claimed that Ms Riley's exchange with a 16-year-old supporter of Jeremy Corbyn amounted to abuse, as the girl had been harassed online and had apparently received death threats from some of Ms Riley's followers. Ms Riley was also receiving death threats at the time and had increased her security presence. Mr Sivier alleged that Ms Riley's complaint about receiving abuse was hypocritical, as her own online behaviour had also been abusive.

Ms Riley sued Mr Sivier claiming that the article was defamatory of her.

Preliminary hearing

A hearing of the preliminary issues took place on 11 December 2019, at which Mr Justice Nicklin held that the article's allegations were a combination of statements of fact and expressions of opinion, and that the meaning as a whole was, on the face of it, defamatory.

In his judgment, Nicklin J concluded that the meaning of the statements complained of in the article consisted of two main points, which he summarised as:

(a) The claimant has engaged in, supported and encouraged a campaign of online abuse and harassment of a 16-year-old girl – conduct that has also incited followers of Ms Riley to make death threats towards the individual in question.

(b) By doing so, the claimant is a serial abuser and has acted hypocritically, recklessly and obscenely.

Nicklin J held that the meaning of the first was a statement of fact and the meaning of the second was an expression of opinion; and that the article as a whole was defamatory. Mr Sivier subsequently filed a defence on 29 January 2020, in which he sought to rely on defences under sections 2 (truth), 3 (honest opinion) and 4 (public interest) of the Defamation Act 2013.

[1] *Sivier v Riley* [2021] EWCA Civ 713 (14 May 2021).

Strike-out application

Ms Riley then made an application to have the defence struck out. That application was granted by Mrs Justice Collins Rice on 20 January 2021.[2] Collins Rice J held that the Twitter exchanges between the girl and Riley were "measured and civil" and commented that the tweets were to be understood "in the context of the norms of vigorous Twitter debate on a sensitive subject arousing strong feelings".

Ms Riley applied to strike out the defences on any of the three grounds within Civil Procedure Rule (**CPR**) 3.4(2), which includes that:

(a) the statement of case discloses no reasonable grounds for bringing or defending the claim;

(b) the statement of case is an abuse of the court's process or otherwise likely to obstruct the just disposal of the proceedings; or

(c) there has been a failure to comply with a rule, practice direction or court order.

In her judgment, Collins Rice J proceeded on the basis of the previous judgment that the meaning of the article was defamatory. She then set out the requirements of the public-interest defence under section 4 of the Defamation Act 2013, which relies on the defendant's ability to establish that:

(a) the statement complained of was, or formed part of, a statement on a matter of public interest;

(b) the defendant believed that publishing the statement complained of was in the public interest; and

(c) the defendant's belief was reasonable.

Collins Rice J noted that the first and third elements are objective, and that the second is subjective. The basis for a reasonable belief consisted of a number of tweets sent by and on behalf of Ms Riley and two articles (links to which were included in the Vox Political article). On comparing the tweets and the articles, Mr Sivier felt that the evidential basis for his article had been established, and he did not see any requirement for Ms Riley to have been approached for comment, given that, in his view, she had made her position very clear.

The judge struck out the initial defence of truth and honest opinion, and then noted that "there can be no reasonable belief in the public interest in publishing untrue allegations and unsustainable opinions without some clear explanation and justification", finding that: "None appears here." So Mr Sivier had "no prospect" of succeeding at trial, and all limbs of the defence were struck out accordingly.

Appeal

Mr Sivier appealed against the decision to strike out the defences, and on Friday 14 May 2021 the Court of Appeal handed down its decision to allow Mr Sivier's appeal by reinstating his public-interest defence.

In his judgment, Lord Justice Warby held that Mr Sivier had pleaded all three of the "essential ingredients" of the public-interest defence. Warby LJ concluded that although the defence was "imperfect in some respects", it was "not so deficient" as to justify its summary striking-out on any of the three grounds under CPR 3.4(2) that were the basis of Ms Riley's application.

[2] *Riley v Sivier* [2021] EWHC 79 (QB).

A public-interest defence relies on the question of whether there is a reasonable basis for the public-interest defence on the pleaded facts. In his Court of Appeal judgment, Warby LJ noted that, "in the common law of fair comment, it was well-established that matters of public interest included the public conduct of public figures". Warby LJ went on to consider that "one way it could be put is that the matters of public interest which the Article was 'on', or about, were the public conduct of a prominent public figure and, in particular, statements she had made or caused to be made publicly (a) in a media interview and (b) on Twitter".

Mr Sivier's defence lacked details of his reasoning, but the Court of Appeal held that this was not enough to justify the defence being struck out before a trial. Warby J suggested that, "the right approach for Ms Riley would have been to seek further information about the defence before seeking to strike out on pleading grounds".

Decision

Warby LJ held in his judgment that Collins Rice J had been persuaded to take an approach to the section 4 defence that "was wrong in principle, took account of some irrelevant matters and did not take account of some that were relevant". In his view, the decision in relation to the public-interest defence should have focused on the facts pleaded in relation to that defence, and not those relating to other defences (although there had been some cross-over in the use of evidence to support both defences).

Warby LJ also referred to his own previous judgment in *Economou v de Freitas* when he noted that "the meaning the defendant intended his words to convey may be relevant to the question of whether it was reasonable to believe that publication was in the public interest".[3] In this case, the meaning of the statement complained of had been decided in the preliminary hearing, and Mr Sivier should have made it clear that he intended a different meaning before pleading his public-interest defence.

Comment

Mr Sivier's reasoning for why he believed publication to be a matter of public interest was unclear and lacking in detail.

Yet Warby LJ pointed out that "an important function" of the section 4 defence is "to protect those who honestly and reasonably get their facts wrong when publishing on matters of public interest". He stressed that striking out a defence was a drastic action. Although Mr Sivier sought to rely on the two articles that he had linked, they were not part of the defence and so had not been considered by the Court of Appeal. The judges found that, without sight of the articles, they were not capable of establishing the reasonableness of Mr Sivier's belief that publication was in the public interest, and that the appropriate time to make that determination would be at trial.

The case will now continue to trial.

Jon Oakley, Partner, Simkins LLP and **Alexandra Vyvyan**, Trainee Solicitor, Simkins LLP

[3] *Economou v de Freitas* [2018] EWCA Civ 2591.