Defence of Honest Opinion Holds True for the British Medical Association

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In *Whyte v BMA* the High Court entered summary judgment in the defendant's favour as a result of a libel claimant having no real prospect of successfully defeating the defendant's honest opinion defence at trial.[1] Johnson J's judgment provides helpful guidance on the use of the statutory honest opinion defence (formerly known as the "fair comment" defence) against a claimant seeking damages in libel, and issues a useful reminder of the grounds which must be satisfied for a summary judgment application to prevail. It also highlights, once again, the dangers that can be posed to users of social media who engage in public discourse on contentious topics to the world at large.

Background

The claimant, Martin Whyte, was a junior doctor practising paediatric medicine in the North-East of England. As an extension of his role, the claimant was active in the medical community and assumed various committee posts in the British Medical Association (BMA), of which he was a member. For instance, the claimant was elected as the Deputy Co-Chair for Professional Issues on the BMA's Northern Regional Junior Doctors Committee in November 2022.

The defendant, the BMA, operates as a voluntary professional association and trade union, representing doctors and medical students across the United Kingdom (UK). As of July 2023, the BMA had 190,366 members.

A dispute arose in relation to three tweets posted by the claimant on his Twitter account from 2017–2018 (the "Tweets"). Further details are set out below:

- Initially, the American Civil Liberties Union posted the following tweet:

  > *"The city of Dickinson, Texas is requiring people applying for Hurricane Harvey aid to promise not to boycott Israel. This is unconstitutional"*.

  The above tweet was subsequently reposted by another Twitter user alongside the comment "*well this seems quite bad*". The claimant responded to this on 20 October 2017, as follows:

  > *"Lifehack: promise not to boycott Israel, but do it anyway. Do it out of spite"*.

- In response to a tweet which has been deleted and not been recovered, the claimant posted the following tweet in April 2018:

  > *"Me: it's important to represent Judaism and Jewish people fairly and respectfully in art.*
  > *Also me: Jew banker goblins"*.

- A Twitter account with the handle "*Count Dankula*" replied to a tweet made by Jeremy Corbyn MP regarding an antisemitic mass-shooting in Pittsburgh which occurred in 2018. "*Count Dankula*" posted an image of the MP seemingly laying a wreath. The claimant then tweeted:

  > *"hahaha zeig heil hahaha gas the jews hahaha just kidding but have you seen these youtube videos about the holohoax they're pretty convincing imo…"*

In April 2023, a journalist from the *Daily Mail* alerted the BMA to the existence of the claimant's Tweets. A succession of events then followed resulting in the claimant being asked to resign from his post at the BMA and culminating in the junior doctors committee of the BMA sending the following email to its 61,146 junior doctor members (the "Email"):

[1] *Whyte v British Medical Association* [2025] EWHC 1782 (KB) (11 July 2025).

"We unfortunately have distressing information to share.

Today we have discovered that a UK Junior Doctors Committee officer has made deeply troubling comments online that are anti-Semitic.

There is absolutely no place in the BMA for anti-Semitism.

The comments in question were made by Dr Whyte, who had until today been an officer of the UK Junior Doctors Committee. This was totally unacceptable.

We were not aware of these comments, nor of any anti-Semitic views. Any form of anti-Semitism is inexcusable. We strive to be a tolerant, diverse and progressive organisation. We want to assure members that we treat anti-Semitism and all forms of prejudice and discrimination with the utmost seriousness.

As soon as this information came to light, Dr Whyte was immediately removed from all BMA activities and has subsequently resigned from the UK JDC.

As such, he is no longer involved with any BMA work or communications.

For anyone that may need support regarding this, please contact the BMA counselling and support line which is available 24/7 on [telephone number given].

UK Junior Doctors Committee Officers" [sic].

Disciplinary proceedings ensued and the claimant was permanently banned from holding office for the BMA.

The claimant subsequently issued proceedings in the High Court, alleging that the contents of the Email constituted defamatory material, and he therefore sought damages in libel as a result.

Issues in dispute

In response to the claimant's allegation of defamation, the defendant sought to rely on the defence of honest opinion pursuant to s.3 of the Defamation Act 2013. Under s.3, this defence will only be available in circumstances where the following conditions are satisfied:

- the statement complained of must be a statement of opinion;
- the statement complained of must have indicated the basis of the opinion, whether in general or specific terms; and
- an honest person could have held the opinion on the basis of:
  - any fact in existence at the time the statement complained of was published; or
  - anything asserted to be a fact in a privileged statement published before the statement complained of.

It is relevant to note that, pursuant to s.3(5) of the 2013 Act, this defence will not succeed overall (despite the above criteria having been met) in circumstances where the claimant can show the defendant did not in fact hold the opinion.

The defendant also applied for summary judgment and contended that, in accordance with Civil Procedure Rule (CPR) r.24.3: (i) the claimant had no real prospect of succeeding on the claim; and (ii) there was no other compelling reason why the case should be disposed of at trial.

Decision

Defence of honest opinion

The central issue before the court related to the condition that an honest person could have held the opinion on the basis of any fact which existed at the time the statement complained of was published (s.3(4)(a) of the 2013 Act). This was because it was accepted by both parties that the statement complained of: (i) was a statement of opinion; (ii) indicated the basis of the opinion; and (iii) embodied an opinion which the defendant actually held. As a result of the latter circumstance, the defence did not fall vulnerable to s.3(5).

In order to assess whether the condition set out at s.3(4)(a) had been met, Johnson J noted the importance of identifying the facts in existence at the time of publication, and which were relied on by the defendant. As the burden of proof is placed on the defendant, the onus was on the BMA to establish the truth of the facts on which it relied pursuant to s.3(4)(a). Indeed, it was held that "*[s]omething is only a fact if it is true*" [26].

At a basic level, it was agreed that the defendant had relied on: (i) the fact the claimant had posted the Tweets; (ii) the content of the Tweets; and (iii) the known context of the Tweets at the time of publication. It was common ground that the facts relied on were true: the claimant admitted that he had posted the Tweets and their content. Similarly, the known context at the time of publication was not in contention. The claimant argued, however, that it was also necessary for the court to consider the "*broader context*" [37], including facts which were not known to the BMA, and said that the summary judgment procedure was inappropriate for this exercise to be carried out. Ultimately, the court rejected these submissions.

As the BMA was able to successfully prove the truth of the facts on which it relied, the court then assessed whether an honest person could hold the requisite opinion on the basis of those facts. As part of this analysis, Johnson J confirmed that there must be a clear link between the statement of opinion made by the defendant and the facts it has relied on. Fundamentally,

in order for the defence to succeed, the opinion must honestly be held on the basis of the factual matrix the defendant relies on and proves.[2]

Crucially, however, the relevant test under s.3 is that an *honest* person could have held the opinion that the parties agreed the Email conveyed. It is irrelevant that the notional person may have been *"grossly unfair or prejudiced"* as long as they were honest [41].

In light of the above, it was held that there was a clear connection between the content of the Tweets and the opinion that the Tweets were antisemitic in nature. Notwithstanding the broader context on which the claimant sought to rely (i.e. various exculpatory facts including the content of tweets that had been deleted and the claimant's explanation for each tweet), Johnson J confirmed that an honest reader of the Tweets could form the opinion that was contained in the Email. The judge also pointed out that some of the claimant's arguments were premised on the suggestion that the claimant was antisemitic. This was not, however, what the Email (it was agreed) had said—rather that he had posted comments online which were antisemitic.

The defence of honest opinion was therefore successfully deployed by the BMA.

Summary judgment

The defendant's application for summary judgment was granted by the court: it was decided that this case had no real prospect of success as the claimant would be unable to defeat the defendant's honest opinion defence and there was no other compelling reason why the matter should proceed to trial. In accordance with the overriding objective, it was held that the most proportionate approach would be to dispose of the case at this early stage. Summary judgment was therefore entered in favour of the BMA.

Comments

Johnson J's judgment reaffirms the relative breadth of the honest opinion defence. In this instance, the BMA had to prove that an honest reader, however flawed and/or prejudiced, could form the opinion that the Tweets were antisemitic. Contrastingly, if the defendant had sought to rely on a defence of truth under s.2 of the 2013 Act, it would have had to establish that it was substantially true that the claimant had posted antisemitic tweets. This sets a higher threshold for the defendant and is more exacting than the defence of honest opinion.

The judgment also serves to further emphasise the permissive nature of the honest opinion defence by confirming that the applicable statement of opinion does not need to be justified as reasonable or fair by the established facts. Indeed, the court affirmed that "honest" people can hold incorrect or misguided opinions which are borne out of prejudice and/or a surplus of emotion, for example. However, the defence of honest opinion will not necessarily be undermined by these aspects of human fallibility: an opinion is capable of being held honestly even if it is incorrect, unreasonable or includes embellishment (*Branson per* Eady J at [26]). This case therefore provides a useful reminder that practitioners should give meaningful consideration to the defences available to their clients in libel disputes of this nature; the defence of honest opinion may afford greater chances of success to defendants and prove more attractive. This of course is dependent upon the words complained of being held to be a statement of opinion, not fact—an often-vexing question in itself.

This case also highlights the importance of the overriding objective in relation to applications for summary judgment. When considering whether to enter summary judgment, the court will give due consideration to the proportionality of a case proceeding to trial, both in terms of cost and time.

[2] See *Branson v Bower (No.2)* [2002] Q.B. 737; [2002] 2 W.L.R. 452 per Eady J at [38], *Carruthers v Associated Newspapers Ltd* [2019] EWHC 33 (QB) per Nicklin J at [30]–[31].