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Politician's libel damages assessed at £54,000 each

Sir Kevin Barron MP, Rt Hon John Healey MP & Sarah
Champion MP v. Jane Collins MEP - [2017] EWHC 162 (QB)

Article by David Bowden

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Executive speed read summary

Jane Collins MEP gave a barn storming speech for the UK Independence Party at its annual party conference in September 2014. The year before Rotherham Council had commissioned Professor Jay to prepare a report on historic child sex abuse in Rotherham. That report revealed a problem on a large scale but did not implicate or blame any elected politicians for what happened. The conference speech sought to implicate the 3 serving MPs whose constituencies covered Rotherham. They sued for slander and libel. The European Parliament ruled that Ms Collins had no special immunity as an MEP for what she said. Although a draft apology was prepared it was never published. Ms Collins on advice later accepted that the claimants were entitled to compensation. At a hearing on 31 January 2017 Warby J assessed that compensation. As no apology had ever been published, he decided to make only a deduction of 10% for Ms Collins' offer to make amends. As the allegations were serious and reached a large audience, he determined the appropriate level of damages for each MP was £9000 for slander and £45,000 for libel.

Sir Kevin Barron MP, Rt Hon John Healey MP & Sarah Champion v. Jane Collins MEP
[2017] EWHC 162 (QB) 6 February 2017
High Court of Justice, Queens Bench Division, Warby J.

What is at the heart of this dispute?

In October 2013 the Metropolitan Borough of Rotherham commissioned Professor Alexis Jay OBE to investigate historic allegations of child sex abuse in its area. The report was published in August 2014 entitled: '*Independent Inquiry into Child Sexual Exploitation in Rotherham 1997 – 2013*'. In his executive summary, are these findings:

- *'No one knows the true scale of child sexual exploitation (CSE) in Rotherham over the years. Our conservative estimate is that approximately 1400 children were sexually exploited over the full Inquiry period, from 1997 to 2013. In just over a third of cases, children affected by sexual exploitation were previously known to services because of child protection and neglect. It is hard to describe the appalling nature of the abuse that child victims suffered. They were raped by multiple perpetrators, trafficked to other towns and cities in the north of England, abducted, beaten, and intimidated. ... This abuse is not confined to the past but continues to this day....'*
- *'... Further stark evidence came in 2002, 2003 and 2006 with three reports known to the Police and the Council, which could not have been clearer in their description of the situation in Rotherham. The first of these reports was effectively suppressed because some senior officers disbelieved the data it contained. This had led to suggestions of cover-up. The other two reports set out the links between child sexual exploitation and drugs, guns and criminality in the Borough. These reports were ignored and no action was taken to deal with the issues that were identified in them.'*
- *'... Seminars for elected members and senior officers in 2004-05 presented the abuse in the most explicit terms. After these events, nobody could say 'we didn't know'. In 2005, the present Council Leader chaired a group to take forward the issues, but there is no record of its meetings or conclusions, apart from one minute. By far the majority of perpetrators were described as 'Asian' by victims, yet throughout the entire period, councillors did not engage directly with the Pakistani-heritage community to discuss how best they could jointly address the issue. Some councillors seemed to think it was a one-off problem, which they hoped would go away.'*

What happened at the September 2014 UKIP Party Conference?

At the UKIP party conference on 26 September 2014 the MEP for Yorkshire, and candidate for UKIP in the Rotherham constituency in Westminster, Jane Collins gave a speech to her party's conference. The full text of that speech is in the earlier judgement of Warby J where he determined preliminary issues - [2015] EWHC 1125 (QB). As well as referring to the Jay report she sought to put the blame for what had happened at the door of Rotherham Council which was Labour controlled. However, in the speech she appeared to go further by seeking to implicate the 3 claimant politicians.

What was in the party conference speech of Jane Collins MEP?

The judge highlights key parts of Ms Collins' speech and these are set out below:

- *'My speech today will deal with an issue that highlights just how social engineering and political correctness has failed the most vulnerable people in our society today...'*
- *'The report reiterated throughout warning after warning went unheeded in the town. And much of this was due, ladies and gentlemen, to political cowardness [sic] and worrying about keeping their vote.'*
- *'From the outset of this scandal I called, and the party called, for resignations of all those directly involved. And we managed to bag a few ... However there are many others that still have questions to answer, and possibly charges to face. This includes the three Labour MPs for the Rotherham area. I am convinced that they knew many of the details of what was happening.'*

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- 'I am now calling for criminal charges to be brought against those who it can be proved knew about the abuse, who failed to act - because in failing to act they aided and they abetted the perpetrators and they are just as guilty. Take heed Mr Miliband, take heed. Together the Labour Party betrayed the children of Rotherham.'
- 'And as Mr Miliband put it, together they conspired to allow the abuse of children on an industrial scale; together, they failed to apologise, and they kept quiet to suit their political purposes.'

What had Warby J previously decided as to whether the speech referred to Dennis McShane or Sarah Champion?

The 3rd Claimant had been running a hospice for most of the time period covered by the Jay report. She was elected as MP for Rotherham at a by-election in November 2012 holding her seat at the May 2015 General Election. The MP for Rotherham who was in office during the time of the complaints covered in the Jay report was Dennis McShane. In the UKIP conference speech, Ms Collins refers to Denis McShane by name but never refers to Ms Champion by name. Warby J previously had to decide if (even though Ms Champion was not mentioned by name) the impression left on her conference audience speech was such that Ms Champion was also attacked by Ms Collins.

The judge noted that this was a conference speech. It had to be judged as such on its overall impact. This would be different to how a written piece in a newspaper may be judged. Warby J ruled that it was implicit in the UKIP conference speech that the allegations were levelled at the former and not the current MP for Rotherham were 'ill-founded'. He felt that this would require specialized knowledge by the audience as to who Ms Collins was referring to and would not be in the general knowledge of her UKIP party audience. He labelled this 'reference innuendo'.

What had Warby J previously decided as a preliminary issue?

The 3 claimants brought a defamation action against Ms Collins on the basis of her party conference speech. The judge decided that these 3 preliminary issues needed resolving before the trial:

- the meaning of the words,
- whether the words are fact or comment, and
- whether the words referred to the third Claimant, Sarah Champion.

These issues were resolved in the claimants' favour.

What settlement offers had been made?

The 3 claimants promptly sent a letter before action to Ms Collins. It was sent on 2 October 2014 – 6 days after her UKIP conference speech. The claimants offered to settle their claims for £10k each. Ms Collins rejected that offer suggesting instead that the 4 politicians should 'join in the publication of a form of words in which (should they so wish) each of the parties clarifies its respective positions'.

By letter dated 26 May 2015 (a month after Warby J handed down his judgment on the preliminary issues) Ms Collins through her solicitors sent the claimants a letter making an unqualified offer of amends under section 2 of the Defamation Act 1996. Her defence to the libel claim was served the following day in which it was 'accepted' that the claimants were 'entitled to compensation'.

On 28 May 2015 Ms Collins' solicitors made a money offer in a letter sent 'without prejudice save as to costs'. The claimants rejected that offer. On 12 June 2015 Ms Collins agreed to a draft statement stating the allegations 'were completely without foundation' but this was never published.

What immunity did Jane Collins claim as an MEP?

In May 2016 Ms Collins applied to stay the proceedings pending an opinion from the European Parliament as to whether this libel claim infringed her immunities as a MEP. On 17 October 2016 Tadeusz Zwiefka, a rapporteur appointed by the Legal Affairs Committee of the European Parliament issued its opinion **A8-0297/2016** stating that Ms Collins' statements were not protected by parliamentary immunity. This report was then endorsed at a Plenary session held on 25 October 2016. Ms Collins then sought to challenge that opinion by making an application to the Court of Justice of the EU under Article 263 of the Treaty on the Functioning of the EU. On 22 December 2016 Warby J refused an application for a stay by Ms Collins - **[2016] EWHC 3350 (QB)**.

How big was the audience for the broadcast?

The claim was for both slander and libel. The judge had to make an assessment of who heard the conference speech live. The UKIP party conference venue had a capacity of 3000, Ms Collins admitted there were 800 in the audience but Warby J found that the numbers there 'exceeded 2000'.

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The speech was broadcast live on BBC Parliament which has an audience of only 12,500 viewers with an additional potential audience of up to 2000 viewers in the Palace of Westminster itself. There were just over 2000 views of YouTube. It was reported on a PA Mediapoint wire service report for 3 hours. The gist of the libel was also re-published on Twitter with Warby J finding that the message reached 'nearly 20,000' twitterati. There was also re-publication.

How are damages to be assessed under the Defamation Act 1996?

The amount of compensation after the acceptance of an offer of amends is assessed 'on the same principles as damages for libel' under section 3(5) of the Defamation Act 1996 in 2 stages:

- identify the award that should be made without reference to any offer, and
- discount the figure to take account any offer of amends.

What figure did Warby J judge appropriate for damages without reference to any offers?

Warby J said the top-end figure for libel damages was now about £300,000 but that was reserved 'for the gravest of allegations such as imputations of terrorism or murder'. Ms Collins submitted that a figure of £60,000 was an 'approximate high watermark' and said that a judgment of Warby J in another related case (*Barron v. Vines*) suggested a £40,000 starting point. In the end Warby J determined that these figures were the appropriate starting point:

- £10,000 for slander, and
- £50,000 for libel.

Was any increase made in the award to reflect aggravation?

This is not the test that is to be applied under the 1996 Act. Nevertheless Warby J does look at what are aggravating factors in informing his decision on the discount. These include:

- It was irrelevant that all 3 claimants were re-elected at the 2015 General Election. It was not open to Ms Collins to say thereby that their reputations had not been damaged,
- The Jay Report itself 'did not implicate any MP',
- One re-tweet was under the hashtag '#RotherhamAbuse a brilliant speech from #UKIP Jane Collins, let's arrest 3 MPs',
- All 3 claimants said they found the experience immediately after the conference speech 'genuinely and significantly distressing', and
- Ms Champion MP said that she felt 'sick, embarrassed, self-conscious and that I needed to justify that it was not true'.

What discount did Warby J judge appropriate for the offer of amends?

Warby J said these 4 factors would bear on the level of discount and whether:

- an offer is prompt or delayed,
- any published correction or apology is prompt and fulsome,
- a defendant has acted in an inconsistent way to the conciliatory stance in her offer, and
- a defendant's conduct has increased the overall hurt to the claimants' feelings.

Warby J (being the judge in charge of the libel list) noted that 'this case appears to be unique' because Ms Collins had 'not made or published any correction or apology at all'. Warby said a 40% discount would be appropriate for a prompt offer but that here a discount of '20% might have been appropriate even so, if the belated offer had been carried through'. Warby J decided that to 'deduct 10% may tend towards being generous to Ms Collins' but he said that this 'is not a scientific process'.

What award did Warby J make for slander and libel?

Pulling all these threads together Warby J made these awards:

- £9,000 for slander, and
- £45,000 for libel.

This meant that each claimant was awarded total defamation damages of £54,000.

7 February 2017

David Bowden is a solicitor-advocate and runs [David Bowden Law](http://DavidBowdenLaw.com) which is authorised and regulated by the Bar Standards Board to provide legal services and conduct litigation. He is the cases editor for the Encyclopedia of Consumer Credit Law. If you need advice or assistance in relation to consumer credit, financial services or litigation he can be contacted at info@DavidBowdenLaw.com or by telephone on (01462) 431444.