

Parliamentary privilege in political libel claims

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Public Law analysis: Following the preliminary ruling in *Yeo v Times Newspapers Ltd*, David Bowden, freelance independent consultant, examines the judgment and talks to Alex Bagnall, associate and costs advocate of Just Costs Solicitors, and Caoilfhionn Gallagher, a media law barrister at Doughty Street Chambers in London.

Original news

Yeo v Times Newspapers Ltd [2015] EWHC 2132 (QB), [2015] All ER (D) 282 (Jul)

In a pre-trial review of the claimant former MP's libel action, the Queen's Bench Division refused to lay ground rules as to parliamentary privilege, to strike out the claim as to the second article and to amend the claimant's costs budget. However, it struck out parts of the claimant's witness statement and case.

What is the background to this dispute?

David Bowden (DB): This relates to a libel action by the former MP Tim Yeo against the publishers of *The Sunday Times*. It published two articles on 9 and 23 June 2013. The articles complained about stem from an undercover investigation undertaken by two journalists of the newspaper's 'Insight' team (Heidi Blake and Jonathan Calvert). Central to the story was what Mr Yeo is alleged to have said to them at a lunch at Nobu restaurant on 21 May 2013. The journalists were working undercover, posing as representatives for a solar technology developer in the Far East. The lunch had been arranged to discuss an opportunity for Mr Yeo to provide consultancy work with an extremely generous remuneration package. The lunch meeting was covertly filmed.

Mr Yeo's case is that two articles published by the newspaper, which it is agreed should be read together, contained a defamatory factual meaning to the effect that he was in breach of the rules of the House of Commons in certain ways. The newspaper denies that these articles were defamatory of Mr Yeo but in the alternative pleads defences of justification, fair comment and *Reynolds* privilege.

In an earlier judgment of 20 August 2014, Warby J determined preliminary issues in the case ([2014] EWHC 2853 (QB)) concerning the meanings of the articles complained of. The central factual allegations Warby J identified were to the effect that Mr Yeo was prepared to, and had offered to, act in a way that was in breach of the Code of Conduct of the House of Commons by acting as a paid parliamentary advocate. The newspaper submits that the factual meanings of the articles are true, that the comment was fair comment, and/or that the content of each article represented responsible journalism on matters of public interest.

The action was set to be tried over seven days starting on 12 October 2015 by Warby J.

What were the key issues in this case?

DB: At pre-trial review, Warby J had to determine four issues:

- o the extent to which the Bill of Rights 1689, art 9 applies to the issues in the case
- o an application by the newspaper for a striking out order or summary judgment
- o an application by the newspaper to strike out passages in the claimant's witness statement
- o an application by the claimant for the court's approval to amend his costs budget

The judge refused the applications to strike out the claim or to grant summary judgement. The judge noted that when Mr Yeo served his reply this contained new matters that were not in his statement of case. Rejoinders in claims are now quite rare. The newspaper addressed what was in the reply when it served its five witness statements. The judge noted the application to strike out parts of the witness evidence could have been made sooner. In the end the judge was quite sparing in what he excised from the witness statements (noting here that he will be the trial judge and will now have read the witness statements in full). Two paragraphs of one witness statement were removed and a few sentences were

deleted from another paragraph. The application to amend the costs budget was refused because the judge ruled that there had not yet been a significant development in the litigation which would justify the approval of the additional costs.

What role did parliamentary privilege play in this case?

Caoilfhionn Gallagher (CG): The Bill of Rights 1689, art 9 provides that:

'the freedom of speech and debates or proceedings in Parlyament ought not to be impeached or questioned in any court or place out of Parlyament.'

This embodies a well-known constitutional principle, which can conveniently be labelled as 'parliamentary privilege'.

The judge correctly notes that what was said at the lunch meeting was clearly not a Parliament proceeding of any kind. As this was a judgment following a pre-trial review, the judge was also clear that this was not an appropriate place for him to lay down ground rules or relevant principles on the scope of parliamentary privilege.

In his August 2014 judgment, Warby J referred to a report of the House of Commons Committee on Standards of November 2014, upon which Mr Yeo was then relying as having exonerated him of any breach of the MPs' Code of Conduct. The newspaper took issue with this, maintaining that the Standards Report was concerned with different issues and did not exonerate Mr Yeo of the allegations made in the articles.

In the end, Warby J said he suspected that he may not ultimately need to rule on parliamentary privilege at all. This is because he thought it would be hard to see how Mr Yeo could simultaneously object that it is 'unnecessary' to 'delve' into his past conduct, and at the same time maintain in his pleadings that the newspaper had no basis for engaging in the subterfuge it employed. The judge thought Mr Yeo was blowing hot and cold because he could not fairly stand by his pleaded case yet require on grounds of parliamentary privilege that the newspaper be prevented from responding to that case in a relevant and proportionate way.

The judge left open a door to Mr Yeo in case he wanted to issue an application to strike out passages in the newspaper's witness statements on the grounds of parliamentary privilege. If he did so, the judge said he would expect to see not only a precise identification of the passages under attack but also a detailed explanation of the reasoning behind each attack.

How has the law moved on since the 'cash for questions' scandal and the Deregulation Act 2015?

CG: Parliamentary privilege protects freedom of speech in debates or other proceedings in Parliament. It does so by preventing the proceedings being impeached or questioned in any court or place out of Parliament. Traditionally, the privilege could not be waived but section 13 of the Defamation Act 1996 (DeA 1996) allowed a person (whether a member of Parliament or not) to waive it for the purpose of defamation proceedings. The Joint Committees on Parliamentary Privilege in 1999 and 2013 both recommended that DeA 1996, s 13 be repealed (Session 1998-99: HL Paper 43-1 & HC 214-1, Session 2013-14: HL Paper 30 & HC 100).

Paragraph 44 in Part 8 of Schedule 23 to the Deregulation Act 2015 (DA 2015) gives effect to this recommendation and repeals DeA 1996, s 13 which is a number of legislative measures said to be 'no longer of practical use'. The removal of this provision means that a person is no longer able to waive this protection. DA 2015 received Royal Assent on 26 March 2015. As Mr Yeo started these proceedings before this repeal took effect, this judgment may therefore be the last one we see under the old regime.

What are the important things for lawyers to take from this decision?

Alex Bagnall: From a costs solicitor's perspective, it is interesting to note that the judge refused an application to amend Mr Yeo's costs budget and increase it by a further £36,160. In an earlier ruling Mr Yeo's costs budget had been approved at £370,000 (see [2015] EWHC 209 (QB), para [77]). The reason given for seeking to increase the costs budget was:

'Considering impact of parliamentary privilege and considering and making amendments to statements of case and witness evidence of both parties.'

The judge agrees that this places a high premium on swift action to prepare a revised budget. The judge comments that a revised budget could have been prepared by 10 July 2015. The judge would have dismissed the application on the basis that it was not made promptly enough because most of the additional costs had been incurred by the time the application was made

However, it should be noted that the main reason the judge refused to amend the costs budget was because he was not persuaded that there had yet been a 'significant development in the litigation' within the meaning of CPR, PD3E 7.6 which would justify the approval of the additional costs incurred. The 'significant development' in the litigation was claimed to be the repeal of DeA 1996, s 13 in May 2015 and the consequent need to address issues of parliamentary privilege. The judge said he found it hard to see the repeal of the section as a development of significance for the action.

In the previous ruling, the court had indicated that work should only be included as a contingency within budgets where 'if it is foreseen as more likely than not to be required' (see [2015] EWHC 209 (QB), para [71]). This latest judgment demonstrates that a lacuna may exist between the 'significant development' threshold for revising a budget and the 'more likely than not' threshold whereby costs can be included as contingencies in the original budget.

This shows the importance of getting the costs budget right the first time and putting the right contingencies in there. Getting a costs budget amended requires the approval of the court and when this is contested this is not a rubber-stamping exercise.

Interviewed by David Bowden.

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