

Katie Hopkins, twitter and serious harm

In *Monroe and Hopkins* [2017] EWHC 433 (QB) Mr Justice Warby awarded £24,000 in damages to Ms Monroe in respect of two tweets made by Ms Hopkins which suggested that Ms Monroe condoned and approved of the vandalism of a women's war memorial in Whitehall. In doing so the Judge rejected Ms Hopkins attempt to portray the case as an innocuous Twitter dispute which had been resolved, finding that the tweets had caused/were capable of causing serious harm to Ms Monroe's reputation. The obvious lesson is that if you don't think before you tweet, trouble and expense may follow.

Background

On 9 May 2015 an anti-austerity demonstration took place in London, during the course of which a memorial to the Women of World War II was vandalised. Laurie Penny, a journalist, made comments on her Twitter account on 11 May 2015 stating (among other things) that she "*didn't have a problem*" with the act of vandalism as a form of protest. Ms Hopkins became aware of Ms Penny's tweet and posted her own tweets, one of which suggested that Ms Penny should be made "*a woman of ISIS*".

A week later, in an apparent case of mistaken identity, Ms Hopkins posted a tweet in which she asked Ms Monroe (also a political commentator) whether she had "*scrawled on any memorials recently*" and/or "*vandalised the memory of those who fought for your freedom*". Ms Monroe responded to the tweet stating that she had never scrawled on a memorial, asking Ms Hopkins to delete the tweet, and stating she would accept a public apology and a £5,000 donation to charity. In response to this Ms Hopkins deleted her first tweet, but then posted a further tweet asking someone to "*explain the difference between irritant @PennyRed (i.e Ms Penny) and social anthrax @JackMonroe*" (i.e. Ms Monroe).

Ms Monroe instructed solicitors who wrote to Ms Hopkins requesting an apology and a correction, an undertaking not to repeat to tweets, a payment to a charity of her choice and payment of her legal costs. In response to this Ms Hopkins did post a tweet stating that she had "*got it wrong*" and mistaken Ms Monroe's identity. However she did not apologise, provide the undertaking or agree to make payment of damages or legal costs. Ms Hopkins subsequently instructed solicitors, however the parties were unable to resolve the matter in correspondence and Ms Monroe issued court proceedings, which proceeded all the way to trial.

The decision

The Judge was required to determine (1) the meanings borne by the tweets; (2) whether the tweets had a defamatory tendency; and (3) whether the serious harm requirement contained in the Defamation Act 2013 had been met.

Ms Monroe asserted that the meaning of the first tweet was either that she had personally vandalised a memorial, or alternatively that she approved or condoned such an act. She asserted the second tweet also meant that she condoned or approved of this act, as it associated her with and/or suggested she held similar views to someone who did. Ms Hopkins argued that the meaning of the first tweet was that Ms Monroe was supportive politically of those who had painted on the monument, and the second was no more than a

“petulant acknowledgement” that she had mistakenly identified Ms Monroe instead of Ms Penny. In determining the meaning of the tweets, the Judge considered how the tweets would be understood by the hypothetical twitter user. He found that the reasonable reader would have been aware of the context in which Ms Hopkins’ tweet was posted, and would not have read the tweets as meaning that Ms Monroe had herself scrawled on and vandalised a memorial. However he found that the reasonable reader would have understood them to mean that Ms Monroe condoned and approved of scrawling on war memorials and vandalising commemorative monuments.

Having determined the meaning of the tweets, the Judge found that the tweets were defamatory by the standards of common law i.e. they would lower Ms Monroe’s estimation in the eyes of right thinking members of society. In reaching this conclusion he accepted Ms Monroe’s contention that right thinking members of society would find spraying graffiti on public monuments to be obnoxious behaviour (as indicated by the fact it is a criminal offence), and would strongly disapprove of anyone who approved or condoned it.

Finally, the Judge reached the “*clear conclusion*” that the serious harm requirement was satisfied, notwithstanding Ms Hopkins raising no less than eleven arguments as to why the requirement had not been met. She argued (among other things) that the first tweet had been deleted within hours and was directed to a relatively small number of individuals, although the Judge rejected this argument, finding that the tweet was available to view on the Ms Hopkins home page for some time and would have been re-tweeted. She also argued that there was no evidence of serious harm, or that the allegation had been believed by those who had read it.

The Judge emphasised that the serious harm test was essentially a threshold requirement, designed to weed out defamation claims which would be otherwise viable but did not involve (or were likely to involve) serious harm being caused to a Claimant’s reputation. Whilst in some cases it may be necessary to determine whether serious harm had been caused by reference to detailed evidence and/or proof of such harm, in cases where the statement/statements complained of had a seriously defamatory tendency and had been widely published, a claimant may choose to rely on those facts alone to meet the serious harm threshold. In this case, the Judge found the serious harm requirement to be satisfied on the “*straightforward basis that the tweets complained of have a tendency to cause harm to the claimant’s reputation in the eyes of third parties, of a kind that would be serious for her*”, and having reached that conclusion dealt with Ms Hopkins’ 11 points summarily.

The Judge awarded Ms Monroe £24,000 in damages, comprising of £16,000 damages for the first tweet and £8,000 damages for the second. The Judge found that the tweets had caused Ms Monroe (who gave evidence) real and substantial distress, and assessed the damages at a higher level than would have been the case had they been assessed at the time of publication, due to Ms Hopkins’ failure to issue an apology/retraction and the fact that Ms Monroe’s distress had been “*significantly exacerbated*” by the way Ms Hopkins had conducted the proceedings.

Conclusions

Whilst this particular case may have been influenced by the high profile nature of the dispute and the personality of the parties, it also highlights the growing tendency of defendants in defamation cases to seek to defend prima facie defamatory comments on the basis that they had not caused serious harm. Since the Defamation Act 2013 came into force it has been common for defendants to seek a hearing on the question of whether serious harm had been caused by way of preliminary issue. The (presumably unintended) consequence of this is that defamation disputes, already known for being expensive, have become more time consuming and costly.

The Judge noted Ms Monroe's open offer of a retraction, apology and £5,000 damages, and observed that had this offer been accepted (or an offer of amends made under the Defamation Act 1996) the compensation would have been modest and the costs a fraction of those incurred by the parties (Ms Hopkins was ordered to pay £107,000 on account in respect of Ms Monroe's legal costs). The Judge pointedly observed that *"(t)hose costs have largely been incurred in contesting the issue of whether a statement which on its face had a defamatory tendency had actually caused serious harm"*.

Ms Hopkins has indicated an intention to appeal the decision, on the apparent basis that *"no evidence of harm was produced in the court"* and suggesting that the threshold for serious harm should be higher for social media than traditional media. It will be interesting to see how the Court of Appeal responds to these arguments.

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