Neutral Citation Number: [2024] EWHC 380 (KB)

Case No: QB-2020-003448

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/02/2024

Before :

MR JUSTICE KERR

- -

Between :

MR JEFFREY JOHN HINDS	**Claimant**
- and –	
BRITISH BOXING BOARD OF CONTROL LIMITED	**Defendant**

- -
- -

The Claimant appeared in person
Mr Timothy Atkinson (instructed by **Geldards LLP**) appeared for the **Defendant**

Hearing date: 2 February 2024
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Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down remotely by email at 10am on 26 February 2024 may be treated as authentic.

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Mr Justice Kerr :

Introduction

1. The claimant is a professional boxing referee licensed since 1990 or 1991 by the defendant, the governing body for professional boxing in Britain. Officials in the sport of boxing in Britain, including the claimant, are licensed by the defendant to adjudicate at professional boxing tournaments.

2. The claimant brought a claim in May 2020 seeking damages for libel, arising from a publication on the defendant's website in around June 2019, and for about six months thereafter, of the following words:

> "The British Boxing Board of Control – Southern Area Council – June 2019 Notices – Regulation 25 – Jeff Hinds Given Words of Advice for the future."

3. This is my judgment on the trial of preliminary issues relating to the meaning of those words. As is now common in defamation claims, the trial of the preliminary issues takes place without contested evidence being heard.

4. In a case management order sealed on 1 August 2023, Master Dagnall gave the following directions. He referred to the words quoted above as "the statement". I will do so too. He ordered that the preliminary issues to be determined would be (a) the meaning of the statement (b) whether it is defamatory of the claimant at common law and (c) whether the statement is one of fact or opinion.

5. The third issue has fallen away. Both parties assert, and I agree, that the statement is one of fact not opinion.[1] Where they differ is, in summary, that the claimant says the statement conveys the defamatory meaning that he has done wrong and is guilty of misconduct, while the defendant says it does not convey that meaning but only the non-defamatory meaning that the claimant has been given words of advice for the future.

6. As usual at this stage, the compass of the evidence is narrow. Master Dagnall recorded certain other agreed facts for the purposes of the preliminary issues trial, as I shall explain. No contested evidence has been called. I confine my account to the undisputed evidence recorded by Master Dagnall in his case management order. My factual account should be uncontroversial also because there are ongoing employment tribunal proceedings between the parties in which unlawful discrimination is alleged, due to be tried this summer.

Law

7. At common law, a statement is defamatory if the meaning tends to lower the claimant in the estimation of right thinking people generally, i.e. if the behaviour or views attributed to the claimant are contrary to common, shared values of our society; and the imputation would tend to have a substantially adverse effect on the way that people would treat the claimant; per Warby LJ in *Corbyn v. Millett* (cit. sup.) per Warby LJ at [9], citing *Monroe v. Hopkins* [2017] 4 WLR 68, at [51] in the judgment of Warby J, as he then was.

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[1] The claimant referred in his skeleton argument to the statement as "not a statement of fact" but agreed at the hearing that what he meant was that it was not true, not that it was a statement of opinion. At p.10 he submitted: "[t]he ordinary reasonable reader would have understood or believed the words complained of to be a statement of fact".

8. To ascertain the natural and ordinary meaning of the statement, the court applies the principles set out in *Koutsogiannis v. Random House Group Ltd* [2020] 4 WLR 25, per Nicklin J at [12], which the Court of Appeal has approved (*Corbyn v. Millett* [2021] EWCA Civ 567, [2021] EMLR 19, per Warby LJ at [8]). The governing principles are set out in 13 numbered propositions:

> "The following key principles can be distilled from the authorities: …
>
> i) The governing principle is reasonableness.
>
> ii) The intention of the publisher is irrelevant.
>
> iii) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. A reader who always adopts a bad meaning where a less serious or non-defamatory meaning is available is not reasonable: s/he is avid for scandal. But always to adopt the less derogatory meaning would also be unreasonable: it would be naïve.
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> iv) Over-elaborate analysis should be avoided and the court should certainly not take a too literal approach to the task.
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> v) Consequently, a judge providing written reasons for conclusions on meaning should not fall into the trap of conducting too detailed an analysis of the various passages relied on by the respective parties.
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> vi) Any meaning that emerges as the produce of some strained, or forced, or utterly unreasonable interpretation should be rejected.
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> vii) It follows that it is not enough to say that by some person or another the words might be understood in a defamatory sense.
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> viii) The publication must be read as a whole, and any 'bane and antidote' taken together. Sometimes, the context will clothe the words in a more serious defamatory meaning (for example the classic 'rogues' gallery' case). In other cases, the context will weaken (even extinguish altogether) the defamatory meaning that the words would bear if they were read in isolation (e.g. bane and antidote cases).
>
> ix) In order to determine the natural and ordinary meaning of the statement of which the claimant complains, it is necessary to take into account the context in which it appeared and the mode of publication.
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> x) No evidence, beyond publication complained of, is admissible in determining the natural and ordinary meaning.
>
> xi) The hypothetical reader is taken to be representative of those who would read the publication in question. The court can take judicial notice of facts which are common knowledge, but should beware of reliance on impressionistic assessments of the characteristics of a publication's readership.
>
> xii) Judges should have regard to the impression the article has made upon them themselves in considering what impact it would have made on the hypothetical reasonable reader.
>
> xiii) In determining the single meaning, the court is free to choose the correct meaning; it is not bound by the meanings advanced by the parties (save that it cannot find a meaning that is more injurious than the claimant's pleaded meaning)."

9. While in determining the natural and ordinary meaning "nearly always … context is everything" (per Nicklin J in *Brown v. Bower* [2017] 4 WLR 197, at [29] (just as, indeed, "[i]n law context is everything" (*R (Daly) v. Secretary of State for the Home Department*

[2001] 2 AC 532 at [28] per Lord Steyn)), context must not include evidence extrinsic to the words complained of, on the issue of the natural and ordinary meaning (*Riley v. Murray* [2020] EMLR 20, [2020] EWHC 977 (QB) per Nicklin J at [16]-[18]).

10. Thus, in a straightforward case where a single publication is relied on, no meaning based on innuendo is asserted and the issue is simply the natural and ordinary meaning of the words used, it is "impermissible to … rely on material, as 'context', which could not reasonably be expected to be known (or read) by all the publishees" rather than only some of them (*ibid.* at [17]).

Facts

11. I have already introduced the parties: the claimant licensed boxing referee sues his governing body, arising from its publication of the statement. The agreed facts include the following information about other notices which, it is agreed, were on the defendant's website during the time of publication of the statement. These, the defendant submits without dissent from the claimant, are relevant context because they were on the same website at the same time as the statement of which the claimant complains:

> "18/9/18 Billy Joe Saunders – found guilty of misconduct and fined;
>
> 14/6/17 David Haye – admitted misconduct and fined;
>
> 8/12/16 Dereck Chisora – admitted misconduct and fined, suspended licence and costs;
>
> 27/1/16 Tyson Fury – reminded of responsibilities;
>
> 11/6/15 Ian John-Lewis – fined (to be monitored);
>
> 5/6/19 Al Siesta and Luther Clay – given words of advice for the future;
>
> 5/6/19 Joe Hughes – given words of advice for the future;
>
> 5/6/19 Samuel Antwi – found in breach of Regulations 5.13 and 25 and fined."

12. The following further facts, recorded in an appendix to Master Dagnall's order, are agreed for the purposes of this preliminary issues trial; though their admissibility is not agreed:

> "(1) the full text of Regulation 25 first appeared on the Defendant's website so that it was available to the public on 21 September 2021;
>
> (2) the material referred to by the Claimant in his letter … dated 30 May 2023 … was available on the internet and would have appeared in response to any search for "regulation 25 (Boxing)" or similar made on any ordinary search engine and, insofar as they were available on the internet before or during the time of publication (which most of them on their face were), could have been read by a reader of the words complained of, or in the case of the Times articles, a reader who was a Times subscriber;
>
> (3) before or during the time of publication a licence holder of the Defendant and some other persons connected to the Defendant would have received a copy of the full text of Regulation 25 in hard copy and could have asked for a replacement hard copy or an electronic copy whether for payment or otherwise depending on the circumstances (the maximum charge being £10), and third party non-licence holders could have requested a hard or electronic copy in return for payment or otherwise depending on the circumstances (the maximum charge being £15 for a member of the public or £25 for a solicitor/legal request)."

13. As for (1), the defendant submits that publication of the full text of regulation 25, from 21 September 2021, came too late for it to be admissible contextual evidence relevant to the meaning of the statement. The latter appeared in about June 2019 and stayed on the defendant's website until late in 2019. The statement had been off the website for about 19 months before the full text of regulation 25 appeared on it. The defendant submits that a reasonable reader would not have access to the full text of regulation 25 in 2019.

14. As for (2), the defendant says this evidence is likewise inadmissible as context. The "material referred to by the Claimant in his letter dated 30 May 2023" is the product of the claimant's online searches, revealing what I would describe as a mix of articles, vignettes, blog post comments, chat forum observations and the like, touching on disciplinary matters in the world of professional boxing, including reference to "regulation 25".

15. I briefly summarise that disputed material. Those pieces that were published in the Times online were only available to subscribers; others, to anyone who took the trouble for search for them online. They included the following. A search for "Regulation 25" in a standard search engine would bring up aspects of that regulation in the defendant's rules and it would be apparent, in general terms, that it was a disciplinary rule, though the full text was not made publicly available until September 2021 (see (1) above).

16. Articles in the Times dating from 2006 and 2012, available only to Times subscribers, referred to the defendant (the "BBBC" in the articles) using regulation 25 which concerns "bringing boxing into disrepute" or founding "a misconduct charge". The text of parts of regulation 25 appears in at least two transcripts of judgments in the Chancery Division, publicly available if the search is assiduous enough.

17. An article in "International Sports Law" in the section "News & Analysis from Across the Globe", dated 4 March 2017 and available online, included the following:

> "Under Regulation 25 of the rules and regulations, the BBBC can call any member to appear before it in connection with any allegation of misconduct, made by any person. Misconduct rules are usually drafted widely in order to catch a number of different acts that may bring the sport into disrepute and are often criticised due to the uncertainty of what behaviour is caught under the ruIe. Generally speaking, if the behaviour or comment could be considered as risky or offensive to a particular group of persons, it is best to err on the side of caution and avoid it. ln terms of boxing, the conduct rules do, however, include irresponsible or unsavoury outbursts during press conferences, and interviews, leading up to the big fight. More recently, the rules have also covered comments made on social media.
>
> Following an investigation of a misconduct allegation, the governing body, has the power to make any order as they see fit, in the event that they consider that the action does indeed fit the criteria for a finding of misconduct. In determining the finding, the BBBC will be required to determine whether the conduct is likely to bring the sport into disrepute. Sanctions can include withdrawal or suspension of license as well as fines.
>
> The BBBC announced earlier this week that it would be investigating comments made by boxer, David Haye, at a recent press conference ahead of his fight against Tony Bellew. Both fighters had been previously warned of their conduct at a press conference at the tail end of last year after the pair clashed. …"

18. Similar mentions of regulation 25 and its general effect can be found from searches under "regulation 25" in chat room and forum posts on a site called "Board Index"; and on another site called "Boxing Forum". The website of Granada Television includes an article dating from 2014 about Tyson Fury facing a misconduct charge under regulation 25.

19. Two articles from 2006, available to Times subscribers only, are about the boxer Scott Harrison facing a regulation 25 misconduct charge; a third from 2012, available to Times subscribers only, informs that Dereck Chisora "could be banned for life" in a misconduct case under regulation 25 arising from "his shocking brawl with David Haye … ."

20. The defendant submits that far from all the publishees would have read any of those materials; especially not those available only to subscribers to the online version of the Times newspaper. Therefore the defendant denies the admissibility of those materials as relevant context.

21. As for item (3) above, the defendant submits that it shows the full text of regulation 25 is not available to all the publishees, who could be license holders themselves or connected to license holders. The full text would only be available to those publishees who not only visit the website but also ask for and receive, in exchange for payment of a fee in some cases, a copy of regulation 25. Therefore, it cannot be said the the text of the regulation would have been read by all the publishees.

Submissions

22. The meaning of the statement contended for by the claimant is, as set out in his skeleton argument, that "the words complained of would cause the ordinary reasonable reader to believe he had been involved in wrongdoing". He further submits (by reference to what he correctly identifies as the "Chase level 1 meaning"; see *Chase v. News Group Newspapers Ltd* [2003] EMLR 11, per Brooke LJ at [45]-[46]) that the statement carries the sting that he is actually guilty of misconduct.

23. In his written skeleton argument the claimant expanded slightly on his argument that the meaning of the statement is a defamatory one, as follows:

> "… any person who is named on the British Boxing Board of Control's Public Notice Board under Regulation 25 has not only been subject to a disciplinary matter but has been found guilty of misconduct, pleaded guilty or accepted guilt of an act described within the Limited Company's definition of misconduct …. The ordinary reasonable reader would have understood or believed the words complained to be a statement of fact.
>
> The Claimant believes an ordinary reasonable reader would conclude or believe the named person has committed some act of misconduct … ."

24. As for the wider contextual material, the claimant submits, first, that all of it is admissible; and second, that the reasonable reader would know about regulation 25; would know that it is a misconduct rule which allows those subject to it in the professional boxing world to be punished for wrongdoing such as bringing the sport of boxing into disrepute or other kinds of misconduct; and would conclude from the words "Given Words of Advice for the future" that the claimant had done something amounting to misconduct.

25. The claimant drew an analogy with a justice of the peace who gives "advice" to a young defendant fortunate enough to escape conviction and punishment for a crime he is charged with in a magistrates' court. (The claimant is himself a justice of the peace, so he is able to draw the example from his own experience.) The claimant said that a reasonable person

reading a court log stating that "advice" had been given to the young defendant would conclude that he must have done something wrong which caused the "advice" to be given.

26. The meaning for which the defendant contends is a non-defamatory one, as follows:

> "The Claimant was the subject of a decision by the Defendant's Southern Area Council under the Defendant's Regulation 25 in or around June 2019 in relation to alleged misconduct on his part. He was not found guilty of misconduct, nor did he admit misconduct, nor was he found in breach of Regulation 25. He was given relevant words of advice for the future."

27. The ordinary reasonable reader is taken to be representative of those who would read the publication in question. The defendant submits that would be a person sufficiently interested in professional boxing to read the website, either through a professional or other connection with the sport or as an enthusiast for the sport.

28. That person, the defendant submits, would have no special knowledge of the content of regulation 25 or the facts of the particular case mentioned in a notice on the website such as the statement in this case; but would see this publication in the context of the other notices also on the website dealing with cases in which those concerned had in some cases been punished, e.g. with a fine or ban, or not punished but instead offered advice.

29. As explained above, the defendant does not accept that the reasonable reader may be taken to have read and be aware of the text of regulation 25; nor of the various articles, blog posts, comments etc relied on by the claimant. The text of the regulation may therefore not be taken to be part of the statement.

30. The defendant does accept (in its skeleton argument, paragraph 28) that the ordinary reasonable reader would have understood that regulation 25 related to alleged misconduct. That person, the defendant submits, reading the statement in the context of the other statements on the website, would be aware that the content of any misconduct alleged against the claimant was not stated, nor the level of seriousness, nor the facts on which it was based, nor the quality of the evidence.

31. The reasonable reader would have noted the absence of any statement that there was a finding or admission of guilt on the part of the claimant and no punishment recorded, only "advice"; and would have contrasted that with other regulation 25 cases recorded on the website where a finding of guilt is explicitly made and punishment follows. The ordinary reasonable reader, not avid for scandal, would not speculate that there must have been wrongdoing or the claimant would not have received "advice".

Reasoning and conclusions

32. I start by imbuing myself as best I can with the level headed virtues of the ordinary reasonable reader (i.e. those set out in *Koutsogiannis* at [12iii]). I have regard also to the impression the statement has made on me. I apply from that reasonable person's viewpoint the tests set out above. I do so using only permissible context, avoiding avoiding over-elaborate or over-literal analysis of the statement, avoiding any strained, forced or utterly unreasonable interpretation and abjuring any reliance on an impressionistic assessment of the characteristics of the statement's readership.

33. How far does permissible context extend? Only to material that could reasonably be expected to be known to or read by all the publishees. That includes, first, the other notices on the website about disciplinary penalties imposed on or advice given to other people. Those other notices would be read by the same readers as would read the statement complained of in this case. Although they go back to 2015, the last three are dated in June 2019, around the same time as the statement first appeared on the defendant's website.

34. The full text of regulation 25 is not permissible context. The full text was not on the website until about 19 months after the statement ceased to be on that website. The full text would be known to a smaller sub-class of the publishees with a reason for possessing a copy (whether for payment or not), probably in most cases because their job required familiarity with disciplinary procedures in British boxing: sports journalists, coaches, referees, boxers and officials of the defendant; and another smaller sub-class of diehard boxing afficionados keen enough to go the trouble of obtaining a copy of the rules.

35. The materials at item (2) above are the product of the claimant's online searches and are not admissible as context. In my judgment, they would not be known to or read by all the publishees of the statement. Some were only available to subscribers of the Times newspaper online version. There is no particular predilection for reading the Times among those closely involved in boxing, as far as I am aware. Many readers of the disciplinary notices on the defendant's website would not be readers of the Times.

36. The other materials within item (2) that were generally available without any subscription – vignettes, blog posts, chat forum observations and the like - would be seen by a different readership, not including all or even many of the publishees of the statement. Some but nowhere near all readers of the notices on the defendant's website may be among the contributors to those comments and posts. The comments and posts are extrinsic evidence not admissible to determine the meaning of the statement. The same is true of the Granada Television website article about Tyson Fury's misconduct charge in 2014.

37. The most informative article about the disciplinary regime in boxing, including regulation 25, is the article in the section of International Sports Law called "News & Analysis from Across the Globe". The readership of International Sports Law is likely to consist of lawyers specialising in sport cases, academics and sports administrators from various countries. Many readers of that article – particularly those not based in the UK – would have no particular reason or need to visit the website of the defendant where they would encounter the notices of disciplinary decisions, including the statement.

38. The converse is also true, in my judgment. Readers of the disciplinary notices on the defendant's website, including the statement about the claimant, would include many with no interest in or knowledge of the publication International Sports Law. The readers of the statement cannot be taken to have read or know about the International Sports Law article. Its content is therefore not admissible as context to determine the meaning of the statement.

39. The admissible materials therefore comprise, apart from the statement itself, only the notices concerning other people who were subject to disciplinary proceedings brought by the defendant or by organs of the defendant. What would the ordinary reasonable reader understand about the claimant from reading the statement, in the context of the other notices? There are eight such other notices. The four year period covered is from June

2015 to June 2019. Several of those named are boxers well known enough to those who follow the sport of boxing to be recognisable to the readership.

40. The claimant has been a licensed referee for many years and is probably likewise known to the readership. The defendant does not contend otherwise. The defendant accepts also that the reasonable reader would have understood that regulation 25 relates to alleged misconduct. That concession is rightly made because regulation 25 is specifically referred to not just in the statement, i.e. in the claimant's case, but also in the case of Samuel Antwi, who in early June 2019 was "found in breach of Regulations 5.13 and 25 and fined".

41. I conclude that the ordinary reasonable reader would regard the statement as indicating that the claimant was subject to disciplinary proceedings alleging misconduct and that the matter was before the Southern Area Council of the defendant in June 2019. Both parties, thus far, accept the analysis. They also both accept that those who admit misconduct or are found to have committed it may be punished and that readers of the statement in the context of the other notices would discern as much.

42. It is at this stage that their positions diverge. Would the ordinary reasonable reader understand the statement to mean that the claimant had been found guilty of or admitted misconduct and, therefore, that he must have done wrong? In my judgment, the answer is that he or she would not. I prefer the submissions of the defendant. The meaning contended for by the claimant attributes to the reasonable reader the unreasonable proposition that there is (in the well known phrase) "no smoke without fire".

43. I do not attribute to the ordinary reasonable reader such an ungenerous interpretation of the statement. It would, as Mr Atkinson for the defendant submitted, be a reader avid for scandal who placed the claimant's interpretation on the statement. The notices on the website indicate, in my judgment, a clear dividing line between those who are punished and those who are merely given "words of advice for the future".

44. Indeed, in June 2019 when the statement appeared, three others (Al Siesta, Luther Clay and Joe Hughes) were given "words of advice for the future"; while one other (Mr Antwi) was found "in breach of Regulations … 25 and fined". The only other reference to regulation 25 among the other notices is in Mr Antwi's case, which can be contrasted with the claimant's case. The reasonable reader would infer that, while Mr Antwi was found in breach of the regulation and fined, the claimant was offered words of advice for the future.

45. In my judgment, it is not too elaborate an analysis to say that the reasonable reader would perceive the contrast between those punished with a fine (or worse) and those merely offered advice for the future. There must be a difference, in the mind of the reasonable reader, between the two categories. The difference can only be that misconduct cannot safely be attributed to the latter class, but can safely be attributed to the former class.

46. I do not accept the claimant's analogy with a young defendant appearing in a magistrates' court who avoids being convicted of a crime and is given words of advice from the bench. That defendant may have done no wrong. For example, he or she may have been in the wrong place at the wrong time, close to the scene of a crime. The advice could be to avoid going to places frequented by criminals where crimes are often committed and the police might think the defendant was involved.

47. For those reasons I find that the meaning of the statement is that contended for by the defendant and not that contended for by the claimant. The reasonable reader would not assume that the claimant must have done wrong because he was the recipient of advice for the future in a misconduct case where there may have been no misconduct at all.

48. I do not find the defendant's meaning defamatory at common law. A person who is given advice for the future following professional misconduct proceedings where he has not necessarily committed any misconduct, is not lowered in the estimation of right thinking people generally. The behaviour attributed to the claimant is not behaviour contrary to common shared values of our society; nor is there any imputation that would tend to have a substantially adverse effect on the way that people would treat him.

49. In short, the claimant can continue to hold his head high. He has not been defamed. He has emerged from the misconduct proceedings with no stain on his character. No wrongdoing on his part has been shown during the misconduct process and none was alleged in the statement.

Disposal

50. I find that the statement is one of fact and is not defamatory of the claimant at common law. Its meaning is that suggested by the defendant, i.e:

> "The Claimant was the subject of a decision by the Defendant's Southern Area Council under the Defendant's Regulation 25 in or around June 2019 in relation to alleged misconduct on his part. He was not found guilty of misconduct, nor did he admit misconduct, nor was he found in breach of Regulation 25. He was given relevant words of advice for the future."

51. I will consider what order to make having heard from the parties, either in writing or at a short further oral hearing. I am grateful to both parties and especially to the claimant, Mr Hinds. Although he was not successful, he represented himself with dignity and courtesy at the oral hearing before me.