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The Public Interest Defence



WHITE PAPER DEFAMATION & PRIVACY CONFERENCE

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How far can you push the court over the Public Interest Defence, given the differing outcomes in *Aaronson v Stones* and *Hay v Cresswell* including the wider social media implications?

AARONSON & CRESSWELL

BOTH:

- Involved allegations of serious sexual assault
- Named the alleged perpetrator
- Publications online
- Defences of public interest (s.4) but also truth (s.2)
- Defendant not a professional media publisher

ALL TIME SECTION FOUR TRIALS

Banks v Cadwalladr [2022] EWHC 1417 (QB)

Riley v Murray [2021] EWHC 3437 (QB)

Lachaux v Independent [2021] EWHC 1797 (QB)

Onwude v Dyer [2020] EWHC 3577 (QB)

Turley v Unite [2019] EWHC 3547 (QB)

Burgon v Newsgroup [2019] EWHC 195 (QB)

Doyle v Smith [2018] EWC 2935 (QB)

Serafin v Malkiewicz [2017] 2992 (QB)

Economou v De Freitas [2016] EWHC 1853 (QB)

Aaronson v Stones [2023] EWHC 2399

- Trial December 2022
- Judgment October 2023
- Mr Justice Julian Knowles
- Win for C

Hay v Cresswell [2023] EWHC 882 (KB); EMLR 17

- Trial February 2023
- Judgment April 2023
- Mrs Justice Heather Williams
- Win for D

DEFAMATION ACT 2013, SECTION 4

Publication on matter of public interest

- (1) It is a defence to an action for defamation for the defendant to show that—
 - (a) the statement complained of was, or formed part of, a statement on a matter of public interest; and
 - (b) the defendant reasonably believed that publishing the statement complained of was in the public interest.
- (2) Subject to subsections (3) and (4), in determining whether the defendant has shown the matters mentioned in subsection (1), the court must have regard to all the circumstances of the case.
- (3) If the statement complained of was, or formed part of, an accurate and impartial account of a dispute to which the claimant was a party, the court must in determining whether it was reasonable for the defendant to believe that publishing the statement was in the public interest disregard any omission of the defendant to take steps to verify the truth of the imputation conveyed by it.
- (4) In determining whether it was reasonable for the defendant to believe that publishing the statement complained of was in the public interest, the court must make such allowance for editorial judgement as it considers appropriate.
- (5) For the avoidance of doubt, the defence under this section may be relied upon irrespective of whether the statement complained of is a statement of fact or a statement of opinion.
- (6) The common law defence known as the Reynolds defence is abolished.

THE THREE HURDLES

1. Was the statement on – or did it form part of a statement on – a matter of public interest?
2. Did the defendant believe that publishing it was in the public interest?
3. If so, was that belief reasonable in all the circumstances of the case?



WAS THE STATEMENT ON – OR DID IT FORM PART OF A STATEMENT ON – A MATTER OF PUBLIC INTEREST?

<i>Aaronson v Stones: No</i>	<i>Hay v Cresswell: Yes</i>
<i>Rape, sexual assault, exploitation, abuse in adult entertainment industry</i>	<i>(1) Tattoo Me Too (2) Need to protect women (3) Failure to prosecute sexual abuse cases</i>
High level matter of public interest not sufficient	Each clearly a matter of public interest
RXP if being investigated by the state	Statements sued on were about those matters
C not a public figure	Clear context provided
Discussion of rape etc in any industry is in the public interest	
No real context provided in the statements	
Little to do with encouraging victims to come forward	

DID THE DEFENDANT BELIEVE THAT PUBLISHING IT WAS IN THE PUBLIC INTEREST?

<i>Aaronson v Stones: No</i>	<i>Hay v Cresswell: Yes</i>
Insufficient evidence	D was violently assaulted on her way home in 2010
Case must be set out sufficiently and in detail	Report made to the police, but police NFAed it quickly
Explain reasoning at point of publication	Some attempts made to establish that C was the man
“If necessary” support with contemporaneous docs	D did not speak publicly for 10 years, whilst C’s star continued to rise
	Tattoo Me Too emerged in 2020
	In 2019 and 2020 D had published an account of abuse by a boyfriend, and others had come forward as a result



IF SO, WAS THAT BELIEF REASONABLE IN ALL THE CIRCUMSTANCES OF THE CASE?

<i>Aaronson v Stones: No</i>	<i>Hay v Cresswell: Yes</i>
<i>Reynolds</i> factors still relevant	Statements were on important matters of public interest
Defendant personally invested in the matter	She was assaulted and believed her assailant was C – that is a relevant circumstance
Little to no public interest in making the allegations public	She had promptly reported the crime but her treatment by the police was deficient
‘Blind belief’ in complainant, no consideration as to whether he had an axe to grind	Hence no adequate investigation at the time, despite her efforts
Defendant did nothing to investigate at all	D wrote from her own perspective – limited further investigations required

THE REYNOLDS FACTORS

- (1) The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed.
- (2) The nature of the information, and the extent to which the subject-matter is a matter of public concern.
- (3) The source of the information. Some informants have no direct knowledge of the events. Some have their own axe to grind, or are being paid for their stories.
- (4) The steps taken to verify the information.
- (5) The status of the information. The allegation may already have been the subject of an investigation which commands respect.
- (6) The urgency of the matter. News is often a perishable commodity.
- (7) Whether comment was sought from the plaintiff. He may have information which others do not possess or have not disclosed. An approach to the plaintiff will not always be necessary.
- (8) Whether the article contained the gist of the plaintiff's side of the story.
- (9) The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact.
- (10) The circumstances of the publication, including the timing.

Lessons for social media cases?

- Social media publishers can still run s.4
- But cannot escape *Reynolds*
- Social media publishers must believe in the truth of the allegations
- Hence harder to run if they come from third parties
- Belief in the truth must be based on some reasonable degree of scrutiny and verification
- Whilst a public interest memo may not be required for social media publishers, they still need to provide some evidential basis for the incidence of the incidence of the belief