

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
BETWEEN:

GORDON MILLS

Claimant

- and -

GMB

Defendant

DEFENCE

Throughout this Defence references to paragraph numbers are references to paragraphs in the Particulars of Claim, unless stated otherwise.

The parties

1. Paragraphs 1, 2 and 3 are admitted.
2. Paragraph 4 pleads to matters which are outside the Defendant's knowledge and is noted. It shall be for the Claimant to establish the matters pleaded therein.

The publications

3. As to paragraph 5, it is admitted that:
 - (1) In March 2015 the Defendant published on its website four press releases as part of its Crocodile Tears campaign, dated respectively 4 March 2015 ("Press Release 1"), 11 March 2015 ("Press Release 2"), 12 March 2016 ("Press Release 3") and 26 March 2016 ("Press Release 4"), (collectively the "Press

Releases"). The Press Releases were also published to the Press Association news service for onward dissemination to the media.

- (2) The Press Releases were also published on Twitter. It is admitted that the purpose of publishing the Press Releases on Twitter was to assist their dissemination to the general public.
- (3) Save as aforesaid, paragraph 5 is not admitted.

The words complained of

4. As to paragraphs 6, 7, 8 and 9:

- (1) Publication of the Press Releases is admitted at paragraph 5 above.
- (2) It is admitted that each of the Press Releases contained the words pleaded by the Claimant at paragraphs 6, 7, 8 and 9. The Defendant will rely on the whole of each Press Release for the true meaning of the statements complained of and on the fact that the Press Releases were a series of related publications (see paragraph 8 below).
- (3) It is admitted that the Press Releases were published on the Defendant's website between their respective dates of publication in March 2015 and their dates of removal on 2 June 2016 (Press Releases 1, 2 and 3) and 12 July 2016 (Press Release 4). The assertion that Press Releases 1, 2 and 3 were still published online on the date of the Particulars of Claim (11th July 2016) is incorrect and is denied.

Defamatory meaning

5. It is denied that in their natural and ordinary meaning the said words, in their proper context, bore or were capable of bearing the meanings pleaded in paragraph 10.

6. It is implicit in the Claimant's case, which pleads a single meaning for the 4 separate Press Releases, that the Press Releases were a series of related publications published by the same publisher to the same or substantially the same publishees in the same month and that all of the Press Releases should be read together for all relevant purposes, including their meaning and the availability of any defences. The Defendant is content to adopt this approach and proceeds accordingly.

Serious harm

7. As to paragraph 11, it is denied that the publication of the Press Releases by the Defendant has caused serious harm to the Claimant's reputation, or was likely to do so, pursuant to section 1 of the Defamation Act 2013.
8. As to the matters pleaded in support, the Defendant pleads as follows:
- (1) The Defendant contests the Claimant's pleaded meaning at paragraph 7 above and it shall be a matter for the court to determine the true meaning of the publications complained of. Paragraph 11.1 assumes that which the Claimant is required to prove.
 - (2) As to paragraph 11.2, it is admitted that the purpose of the Press Releases was that they should be released to the media and used for the purpose of reporting. Save as aforesaid, paragraph 11.2 is not admitted.
 - (3) The Claimant is required to prove the publications referred to in paragraph 11.3. The Defendant notes that the Claimant does not rely on any publications by any major national newspaper or broadcaster.
 - (4) The Claimant is required to prove the matters pleaded in paragraph 11.4.
 - (5) Paragraph 11.5 is speculative and is not admitted.
 - (6) Paragraph 11.6 is noted.

- (7) Paragraph 11.7 is denied. In any event, the Defendant has removed the Press Releases from its website as pleaded at paragraph 4(3) above.
- (8) As to paragraph 11.8, it is denied that the Defendant refused to remove the publications. Press Releases 1, 2 and 3 had been removed on 2 June 2016, prior to the Particulars of Claim, as pleaded at paragraph 4(3) above. Press Release 4 was not removed on 2 June 2016, in error, but was removed on 12 July 2016.

Statements on matters of public interest

9. The statements complained of were, or formed part of, statements on matters of public interest, namely:
 - (a) The involvement of the Consulting Association and leading construction companies in the blacklisting of construction workers and environmental activists, which was the subject of an ongoing Parliamentary Inquiry by the Scottish Affairs Committee;
 - (b) The Construction Industry Vetting Information Group Litigation, in which the Defendant was supporting claims against leading construction companies brought by over 100 former construction workers and environmental activists seeking compensation for blacklisting;
 - (c) The Defendant's Crocodile Tears campaign, which sought to draw public attention to the blacklisting of construction workers and environmental activists;
 - (d) The role of the police in working with the Consulting Association and/or corporate members thereof by sharing information about construction workers and environmental activists;

- (e) The question of whether the remit of the Undercover Policing Inquiry should cover allegations about police involvement in the blacklisting of construction workers and environmental activists.

PARTICULARS

- (1) In April 1993 a number of Britain's largest construction companies established a secret organisation called the Consulting Association. The Consulting Association secretly collected information about workers who had applied, or were applying for, work in the construction industry and used that information to vet those workers for employment.
- (2) Construction workers who were added to the database were usually union members or union representatives and included individuals who had raised health and safety issues on construction sites. The Consulting Association database was used by the companies systematically to discriminate against the individuals named in it and inclusion on the database frequently resulted in refusals of employment by Consulting Association member companies. For this reason, this practice is known to trades unions and their members as "blacklisting".
- (3) The Consulting Association's activities were brought to an end after the ICO executed a search warrant at the Consulting Association's premises on 23 February 2009. After the raid in February 2009 Mr Kerr was prosecuted by the ICO for failing to register as a data controller under the Data Protection Act 1998. He pleaded guilty and, on 16 July 2009, he was sentenced at Knutsford Crown Court to a fine of £5,000 and ordered to pay £1,187.20 costs. None of the companies who were members of the Consulting Association was prosecuted.
- (4) In January 2012, there was a hearing in the Employment Tribunal case brought by Dave Smith against Carillion Plc and two other companies in which he sought compensation for blacklisting. In the course of that hearing, David Clancy, a former police officer, gave evidence that some of the

information held in the Consulting Association database could only have come from the police or security services.

- (5) In 2012 the Scottish Affairs Committee of the House of Commons (the "SAC") began an investigation into blacklisting in the construction industry. It received oral evidence and written evidence in the period May 2012 to March 2013 from a large number of witnesses, including trade union members whose names had featured in the Consulting Association database and company directors from construction companies who had subscribed to the Consulting Association.
- (6) On 27 November 2012 the SAC heard evidence from Ian Kerr, the Chief Officer of the Consulting Association between its establishment in 1993 and its demise in 2009. Mr Kerr gave evidence that in addition to the database of construction workers the Consulting Association maintained a database of environmental activists whose names were recorded in green and that there was a separate meeting forum for construction companies to discuss the activities of these activists. Mr Kerr died about two weeks after giving evidence to the SAC.
- (7) Mr Kerr was also asked by the SAC about certain entries on the Consulting Association database which suggested that information had come from the police and/or security services. Mr Kerr asked the SAC to go into private session, a request which was acceded to, and the information provided by Mr Kerr to the SAC did not become public.
- (8) In March 2013, a number of individuals issued proceedings in the High Court against the major construction companies seeking compensation for lost employment as a result of the activities of the Consulting Association. The GMB was the first union to join this group litigation by supporting over 100 of its former members to issue proceedings in June 2014. The GMB's claimants included both former construction workers and environmental activists whose names featured in the Consulting Association database. This litigation became known as the Construction Industry Vetting Information Group Litigation.

- (9) In March 2014, Home Secretary Theresa May made a statement to the House of Commons, following the Mark Ellison Review, in which she announced that there would be a public inquiry into undercover policing following revelations about the role of the Special Demonstration Squad (“SDS”) in targeting the Stephen Lawrence family.
- (10) In July 2014, the High Court handed down a judgment in *DIL v Metropolitan Police Service* [2014] EWHC 2184 (QB) ruling that the Metropolitan Police Service could not maintain its policy of neither confirming nor denying the allegations against, and in some cases identities of, a number of undercover police officers from the SDS who had been involved in infiltrating environmental groups. Proceedings had been commenced in December 2011 by a number of women alleging that SDS officers who had infiltrated environmental groups using false identities had had inappropriate sexual relationships and fathered children with them. The female activists sought compensation for infringements of their private lives.
- (11) On 15 October 2014, the Defendant launched its Crocodile Tears campaign, the purpose of which was to raise the profile of blacklisting with the general public by focussing on key individuals working within construction companies who appeared to have been involved in blacklisting. The Crocodile Tears tour staged demonstrations involving a large model of a crocodile outside the headquarters of the construction companies.
- (12) On 23 October 2014, it was reported in the national media that the Metropolitan Police Service had paid £425,000 in settlement to a woman called Jacqui whose child was fathered by former SDS operative Bob Lambert. This was the first settlement in the civil claims referred to in paragraph 9(10) above.
- (13) On 12 March 2015, the Home Secretary Theresa May publicly announced that there would be a statutory inquiry into undercover policing led by Lord Justice Pitchford which would consider the deployment of police officers as covert

human intelligence sources by the SDS, the National Public Order Intelligence Unit and by other police forces in England and Wales. The Inquiry would also “review undercover policing practices, identify lessons learned and make recommendations about the way undercover policing is conducted.”

Reasonable belief that publication was in the public interest

10. The Defendant reasonably believed that publishing the statements complained of was in the public interest.

PARTICULARS

- (1) Paragraph 9 above is repeated.
- (2) There was credible evidence to suggest that at a meeting on 6 November 2008 the Claimant gave a presentation to the Woodstock Group of the Consulting Association and that following this meeting the Consulting Association and/or corporate members of the Woodstock Group established information-sharing arrangements which, it could properly be inferred, were likely to have contributed to the blacklisting of environmental activists.
- (a) On 23 January 2013, The Times published an article by Billy Kenber entitled “Police briefing on extremists and ‘bad eggs’”. The article was based on a posthumously published interview with Mr Kerr and contained the following passages:

“Mr Kerr told *The Times* that the association had established links with the police and security services. He recounted a meeting organised by the association in 2008 when eight construction companies were addressed by a “key officer” from the National Extremism Tactical Co-ordination Unit (NETCU), which was a Huntingdon-based police organisation set up to counter “extremist” protest groups.

“They were seeking a channel to inform construction companies [of the information] they were collecting [and] they were wanting to be able to feed it out to the companies”, Mr Kerr said.

In return, the NETCU officer purportedly asked the companies to ~~pass on their own information about potential troublemakers and Mr~~

Kerr said that a "two-way information exchange" opened up. A police spokesman declined to comment."

- (b) In October 2013, the Defendant was informed that the IPCC had told representatives of blacklisted workers that the Metropolitan Police Service had, as part of its Operation Herne investigation, uncovered evidence of widespread police involvement in blacklisting around the country. The story was reported in the national media at the time.
- (c) in the course of the Construction Industry Vetting Information Group Litigation, the Claimants obtained and would subsequently disclose to the Defendants the handwritten notes of Mr Kerr, written during his time as Chief Officer of the Consulting Association. In addition, in November 2013 the Claimants obtained disclosure from the Information Commissioner's Office of Mr Kerr's notes of the 6 November 2008 meeting. Collectively, these shall be referred to as the "Kerr Notes".
- (d) The Kerr Notes record the fact that on 6 November 2008 a "Woodstock Meeting" took place at which Claimant, in his capacity as a Detective Inspector in NETCU, spoke to the meeting. The Defendant believes that the Claimant is the "key officer" from NETCU referred to in *The Times*' article pleaded at paragraph 10(2)(a) above.
- (e) The Woodstock Group was a sub-group of the Consulting Association focussed on environmental activism and security matters. It was the Consulting Association "forum" to which Mr Kerr referred in his evidence to the SAC (see paragraph 9(6) above). The attendees at that meeting were Ian Kerr, Chief Officer of the Consulting Association, Alan Audley, Group Employee Relations Manager at Vinci Plc, Mike Harrison, Group Security Adviser of Vinci Plc, Bob Chapman, Group Security Adviser of

Skanska UK, Tony Crowther, Security Manager of Amec, David Hillman of Sir Robert McAlpine, Trevor Spice, Senior Community Relations Manager of Costain, John Stoddart, Group HR Manager, SIAS Building Services and Greg Ingleton, Group HR Director, Emcor.

- (f) Mr Kerr's Notes record that the purpose of the meeting was "to liaise with industry and to explain NETCU's role". Mr Kerr's notes record that much of the meeting was concerned with the Claimant giving the attendees an overview of NETCU's work on environmental and animal rights activists. Mr Kerr's Notes record DI Mills as saying, "Cos [companies] need to have strong vetting procedures in place."
- (g) Mr Kerr's Notes record that in the weeks that followed there was further contact and/or information exchange between Gordon Mills and attendees at the 6 November 2008 meeting, consistent with Mr Kerr's account to *The Times* referred to in paragraph 10(2)(a) above.
- (h) Mr Kerr's Notes also record that Mr Kerr regarded his contact with NETCU as highly sensitive, as his notes made when preparing to give evidence to the SAC state, "Can I offer to give private/in confidence answer to some specific ques. About Police contacts? Which I don't believe would be in anyone's interests to aid in public." The first of the two examples given in Kerr's Notes in relation to this issue is "NETCU: Presentation of Woodstock [illegible] GIP".
- (i) On 27 February 2015, *The Guardian* published an article by Dave Smith and Phil Chamberlain entitled "On the blacklist: how did the UK's top building firms get secret information on their workers?" The article set out a number of allegations about collusion between

the Consulting Association and the police and contained the following paragraph relating to the 6 November 2008 meeting:

“However, in a posthumously published newspaper interview, Kerr recalled a meeting in 2008 at which construction industry directors were addressed by an officer from the National Extremism Tactical Co-ordination Unit (Netcu). Kerr said a two-way information exchange began, and disclosed that codes were used to indicate those who were of interest to Special Branch and that “Irish ex-army, bad egg” was an example of this. The information commissioner seized evidence of this meeting and showed it to MPs but has refused Freedom of Information requests.”

(j) In March 2015, Dave Smith and Phil Chamberlain published a book entitled “Blacklisted: The Secret War between Big Business and Union Activists” (the “book”). A copy of the book had been provided to Maria Ludkin, legal director of the Defendant, several weeks prior to publication. Chapter 9 of the book, entitled “Under constant watch”, is devoted to allegations of collusion between the Consulting Association (and its predecessor organisation the Services Group of the Economic League) and the police and security services.

(k) On pages 251-252 of the book Mr Smith reports about the allegation made by Mr Kerr to *The Times* that a two-way information exchange opened up between the Consulting Association and NETCU following the meeting on 6 November 2008 at which the Claimant was the guest speaker. Mr Smith reports,

“It turned out that the Information Commissioner had seized evidence of this 2008 meeting in which the senior police officer from the counter-terrorism unit had given a Powerpoint presentation to the secret blacklisting body. The ICO allowed MPs on the Select Committee to view a note taken but has refused subsequent freedom of information requests on the grounds of breaching the Data Protection Act.”

(l) The Defendant was aware of the existence of these minutes and believed that the contents of the minutes indicated that the

Claimant had initiated information-sharing between NETCU and attendees at that meeting.

- (m) The Consulting Association, on behalf of its corporate members, maintained a database of environmental activists, which included the list of names and related information in green ink referred to by Mr Kerr in his evidence to the SAC. It was reasonable to infer that if NETCU had shared information with the Consulting Association and/or its corporate members about individual activists that this information would have found its way into the Consulting Association's database.
- (3) The Press Releases were drafted by a team of the Defendant's employees comprising Steve Pryle, Press Officer and Andrew Craven, Chief Researcher, supervised by Justin Bowden, National Officer and Maria Ludkin, Legal Director. Individually and/or collectively the team had knowledge of all of the matters referred to in paragraphs 9 and 10 above.
- (4) The Defendant's decision to include the Claimant in the Crocodile Tears campaign was based on the reasonable belief that the Claimant in his capacity as a Detective Inspector at NETCU had given a presentation to the Woodstock Group of the Consulting Association in November 2008, that during or subsequent to that meeting the Claimant had suggested a two-way information exchange and that following the meeting there had been a two-way information exchange between NETCU and the Consulting Association and/or corporate members of the Woodstock Group which, it might properly be inferred, had contributed to blacklisting.
- (5) The purpose of including the Claimant in the Crocodile Tears campaign and the Press Releases relating to that campaign was to raise the public profile of allegations that the police had been involved in collaborating with the Consulting Association and/or its member companies who were involved in blacklisting, to prompt the Claimant and/or the police to respond to those allegations and to support the Defendant's campaign for the remit of the

Undercover Policing Inquiry to be expanded to include allegations of undercover police involvement in blacklisting.

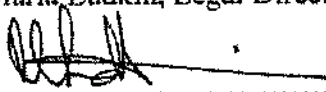
11. In the circumstances, by reason of the matters pleaded above, the Press Releases (including the words complained of) were, or included, statements on matters of public interest and the Defendant reasonably believed that publishing the Press Releases (including the words complained of) was in the public interest.
12. As to paragraph 12, it is denied that the Claimant is entitled to damages.
13. As to paragraph 13, it is denied that the Claimant is entitled to an injunction as the Defendant has agreed not re-publish the Press Releases or to make the same or similar allegations against the Claimant in future.

GUY VASSALL-ADAMS QC

STATEMENT OF TRUTH

The Defendant believes that the facts stated in this Defence are true.

Name: Maria Ludkin, Legal Director, GMB

Signed 

Dated: 29.7.2016