

HUMAN RIGHTS

Free speech, conspiracy theories and protection from harassment

Hibbert v Hall [2024] EWHC 2677 (KB)

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Introduction

Claims regarding invasion of privacy are not resolved exclusively via the laws of defamation and misuse of private information, and other legal remedies founded more in criminal or public order law exist for those who complain that their privacy or other personal space or interests are affected by others.¹ Specifically, words and conduct might be aimed directly at an individual; either for the purpose of deliberately harassing or threatening them, or during the furtherance of a personal dispute between both parties.² In such cases, the law of harassment, contained in the Protection from Harassment Act 1997, can be used to restrain or seek redress for various acts of personal intrusion, such as persistent abuse, criticism and other personal attacks.

Section 1(1) of the 1997 Act provides that a person must not pursue a course of conduct, (a) which amounts to harassment of another, and (b) which he knows or ought to know amounts to harassment of the other.³ Under, s.1(3)(c), subsection (1) does not apply to a course of conduct if the person who pursued it shows that in the particular circumstances the pursuit of the course of conduct was reasonable. Section 2(1) of the Act then provides that a person who pursues a course of conduct that amounts to harassment of another, and which he or she knows amounts to harassment, is guilty of an offence. Harassment is not defined in the Act, but under s.7(2), references to harassing a person include alarming the person or causing the person distress.⁴

Section 1(3), above, allows the courts to take into account free speech norms and to balance free speech with the other interests of the claimant. Thus, in *Majrowski v. Guy's and St Thomas's NHS Trust*,⁵ the House of Lords held that behaviour must reach a certain level of seriousness before it amounts to harassment, and that there is a boundary between conduct which was unattractive, even unreasonable, and conduct which was oppressive and unacceptable.⁶ Thus, the Act provides a suitable framework for balancing both the interests in free speech and private life. Nevertheless, free speech arguments can be diminished because the action, or other proceedings such as warnings, are brought under harassment laws.⁷ This is particularly so where the words or behaviour of the defendant are regarded, or portrayed as, socially offensive and undesirable, not just by the person to whom they were aimed, but the general public. These factors were relevant in the recent case of *Hibbert v Hall*,⁸ where the conduct of the defendant was carried out in the public eye and attracted a good deal of public and media approbation. The case is also important

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¹ The Malicious Communications Act 1998 and the Communications Act 2003 can be employed, indirectly, to respond to individual distress and injury caused to individuals. The law of harassment under the Protection from Harassment Act 1997, below, in fact contains both criminal sanctions and civil remedies, but it is argued that the law is applied differently than in privacy and defamation cases, which are enforced almost entirely to protect individual private law claims.

² See Steve Foster 'Barristers Behaving Badly: the decision in *Hewson v Commissioner of Police of the Metropolis* (2018) *Communications Law* 92.

³ Under s.1 (2), the person whose course of conduct is in question ought to know that it amounts to [or involves] harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to [or involved] harassment of the other.

⁴ This test is similar to the one used in s. 5 of the Public Order Act 1986.

⁵ [2006] UKHL 32

⁶ *Majrowski v. Guy's and St Thomas's NHS Trust* [2006] UKHL 32, Lord Nicholls, at [30]

⁷ See Steve Foster, The right to criticise and the determination of permissible expression in harassment cases: the decision in *Pal v United Kingdom* (2022) EHRLR (6) 571.

⁸ [2024] EWHC 2677 (KB)

in considering the rights of journalists, including independent journalists, to partake in public debate on matters of public interest, and take advantage of the basic tenets of press freedom.

The decision in *Hibbert v Hall*

The claimants had attended the singer Ariana Grande's concert at the Manchester Arena on 22 May 2017 where an Islamic terrorist detonated an explosive device. Twenty-two people were killed by the explosion (as well as the terrorist). The claimants suffered life-changing injuries – the father rendered paraplegic, and the daughter suffering a traumatic brain injury.

The claimants argued that the defendant, an independent journalist and broadcaster, had published a false narrative regarding the attack, claiming that it was an elaborate hoax orchestrated by public sector agencies: which involved ordinary citizens, including the claimants, portraying fake injuries. The claimants also complained of the defendant's continued publication of four videos, a film and a book in which he accused them of lying about their presence at the arena and their injuries. These claims had also been repeated in a series of in-person lectures. The claimants further alleged that the defendant had attended the daughter's home and secretly filmed her without permission, and had misused their personal data including their names, images, and medical information. The claimants brought a claim against the defendant for harassment under the Protection from Harassment Act 1997, and a claim for data protection breaches under the Data Protection Act 1984.⁹

With respect to the harassment claim under the 1997 Act, the High Court held that the claimants had established that the conduct complained of amounted to a course of conduct under s.1, as each of the publications addressed the same theme, and the allegation that the bombing was a hoax was made more firmly in each subsequent publication. The publications were put into the public domain at regular intervals, becoming more frequent, and each publication was continuing. Further, the visit to the daughter's home was an integral part of the course of conduct, the purpose being to obtain information for use in further publications – the defendant referring to that visit in his publications, together with what he saw in the footage he had obtained. In the court's view, that course of conduct amounting to harassment under the Act.; in other words that the conduct was unacceptable and oppressive, not merely unattractive or unreasonable, and being of an order which would sustain criminal liability.¹⁰ Accordingly, this involved the court striking a balance between the competing Convention rights of the claimants and the defendant. With respect to the defendant's Article 9 rights to freedom of thought conscience and religion, the court found that it could not be said that he held a belief, rather than an opinion or viewpoint based on the present state of information available to him. Thus, the defendant had failed to meet the second criterion outlined in *Grainger Plc v Nicholson*.¹¹

Nevertheless, Articles 8 (private and family life) and Article 10 (freedom of expression) were engaged in this case, creating a tension between those rights. In the court's view, freedom of expression undoubtedly provided protection for journalism that focused on important occurrences, such as in this case the attack, and which investigated the veracity and accuracy of established narratives as to what took place on that night. However, in this case, the defendant had repeatedly published false allegations over many years on a variety of platforms and had done so for commercial gain. Further, that conduct had a natural tendency to cause serious distress, especially when those targeted were vulnerable. This, in the court's view, amounted to a negligent (indeed reckless) abuse of media freedom. Further, going to the daughter's home and surreptitiously filming her was a wholly unwarranted interference with the family's right to

⁹ In this case, the court considered the claim for data protection for damages including aggravated damages for breach of their data protection rights, together an injunction. In the courts view, it was unclear whether an injunction was claimed only in respect of the harassment claim and, if not, the basis on which it was sought in the data protection claim. Thus, it did not reach any final determination of the data protection claim, and invited further submissions from the parties on the issue, as well as on remedies in respect of the harassment claim. (at 246)

¹⁰ *Hibbert v Hall* [2024] EWHC 2677 (KB) (at 173-176).

¹¹ [2010] 2 All ER 235

privacy under Article 8. Accordingly, the claimants had more than satisfied the burden of establishing that the defendant's course of conduct was oppressive, unacceptable, and of sufficient gravity to sustain criminal liability.¹²

The court then found that the defendant knew, or should have known that such conduct amounted to harassment. It found initially that the defendant was so blinkered in his belief that the false story he spun was true, and so unreflective and insensitive to the level of distress likely to be caused by his persistent attempts to discredit what the claimants said about the attack, that he did not know his conduct amounted to harassment. Nevertheless, the knowledge requirement in s.1 of the Act was met on the alternative basis – that a reasonable person in possession of the same information as the defendant would know that the course of conduct would cause alarm and distress, and have a harassing effect on the claimants. Accordingly, the claimants had established that the defendant pursued a course of conduct which amounted to harassment of each of them, and which he ought to have known amounted to harassment.¹³

The court then considered the defendant's two defences under s.1 of the Act: the defence of detection or prevention of crime (s.1(3)(a)), and the defence that his actions constituted a 'reasonable course of conduct.' The defendant claimed that he had engaged in the course of conduct for the purposes of the detection and prevention of crime, referring to the offences under s.35(2) of the Inquiries Act 2005, concerning the alteration or destruction of evidence during an inquiry. However, that defence failed, as the defendant had failed to show that his dominant purpose in engaging in the course of conduct was the prevention or detection of crime.¹⁴ Turning to the second defence, the court found that although the subject-matter of the attack was important, the words spoken and written by the defendant were not. The false allegations were grave and had led a very large number of people to wrongly believe that: the attack was a hoax, that the claimants were not injured in the attack, and that the father had repeatedly and publicly lied to the public for monetary gain. Those allegations also lacked any semblance of balance, and the defendant had continued to publish the false allegations despite the attack having been the subject of thorough investigations, a criminal trial, and authoritative reports. Further, the visit to the daughter's home, and the surreptitious filming of her, was a serious breach of her privacy rights, amounting to unreasonable conduct. Thus, the defendant's approach was blinkered and irrational, and his course of conduct as a whole was unreasonable,¹⁵ the conduct having alarmed and distressed the father, and causing the daughter real, lasting and persistent anxiety, and enormous distress.¹⁶ Since the trial judgment, the defendant was ordered to pay £45,000 by way of damages to the claimants.

Commentary

As Mason has noted, this case is clearly an unusual one, the 'absurd', preposterous and fantastical' nature of the story that the defendant continued to push, despite all the evidence demonstrating its falsity, coupled with the claimants' uniquely sensitive circumstances, playing a pivotal role in the judge's decision-making. Thus, in his view, it is unlikely that the case will open the floodgates to harassment claims against journalists, whilst demonstrating the importance of abiding by accepted journalistic standards.¹⁷ Mason also notes that it is notoriously difficult to

¹² *Hibbert v Hall* [2024] EWHC 2677 (KB), (at 177-198).

¹³ *Hibbert v Hall* [2024] EWHC 2677 (KB), (at 199-204).

¹⁴ *Hibbert v Hall* [2024] EWHC 2677 (KB), (at 205-208).

¹⁵ *Hibbert v Hall* [2024] EWHC 2677 (KB), (at 209-213).

¹⁶ *Hibbert v Hall* [2024] EWHC 2677 (KB), (at 214-244). The defendant argued that any harm caused to the daughter was caused by her mother's decision to let her watch the Panorama programme on TV, and by her parents' telling her about his activities. The judge considered that Eve's parents could not properly be criticised for explaining to her, in simple terms, what he had done, and what they were seeking to do about it to safeguard her. In the judge's view, the impact on Eve flowed from the defendant's course of conduct, and it was plain that his course of conduct caused her "real, lasting and persistent anxiety, and enormous distress". (at 242)

¹⁷ Hugo Mason, 'Hibbert v Hall – a rare example of harassment by publication of journalistic material' (2025) 36(2), *Entertainment Law Review* 67.

bring a harassment claim in relation to the publication of journalistic material. Yet there have been cases where such material has been challenged successfully under the Act; although a ruling from the European Court of Human Rights has made it more difficult for domestic law to enforce the Act against bona fide journalism in discussing matters of public interest.¹⁸ This ruling is discussed below in the context of assessing the relationship between harassment actions against the press, or independent journalists.

Journalistic material and harassment laws: The decision in Pal v United Kingdom

The decision of the European Court in *Pal* did a great deal to inform the employment of harassment law in the United Kingdom, sending a clear message to the authorities on how the law should balance the rights of the victim of harassment with principles of free speech and journalistic freedom.

The applicant was a journalist who became involved in a dispute with a barrister and journalist. The dispute led to a series of email allegations and counter-allegations between the two and a complaint about the applicant's conduct to the Commissioner of Police for the Metropolis. This led to a Prevention of Harassment Letter being served on the applicant. The police subsequently arrested the applicant on suspicion of harassment under s.2 of the Protection from Harassment Act 1997 (the Crown Prosecution Service discontinued the prosecution on the basis that there was insufficient evidence to establish a realistic prospect of a conviction under the Act). The applicant issued proceedings against the Metropolitan Police seeking damages and declaratory relief for assault, unlawful arrest, false imprisonment, malicious prosecution and breach of Article 10 of the European Convention, and on 24 January 2018 the County Court judge dismissed the claims, the judge finding that the arrest had been lawful, and accepting that the arresting officer had an honest suspicion that the applicant had committed the offence of harassment.

The High Court dismissed the applicant's appeal.¹⁹ It held that there had been no breach of Article 10; her arrest had been found to be lawful, and where that was the case, it was difficult to conceive of circumstances that could give rise to a breach of Article 10. The applicant applied unsuccessfully to the Court of Appeal, and then the Supreme Court for permission to appeal, and then lodged application to the European Court, complaining that her prosecution, the manner in which her arrest was carried out, and the conditions of bail imposed on her, breached her rights under Article 10.

Pal appealed to the European Court of Human Rights, who found that the applicant's Article 10 rights had been violated.²⁰ The Strasbourg Court accepted that any interference with the applicant's Article 10 rights was prescribed by law and that it pursued a legitimate aim of either preventing disorder and crime or protecting the claimant's rights, but found that the interference was not necessary in a democratic society. The Court reiterated that a distinction needed to be made between statements of fact and value judgments; while the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof, and the requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself. Although value judgments must often have a factual basis for them to be considered proportionate, in order to distinguish between a factual allegation and a value judgment it is necessary to take account all of the circumstances of the case and the general tone of the remarks. In the present case, the arresting officer stated that she had considered the applicant's Article 10 rights when forming her honest and reasonable suspicion that the arrest was necessary, but discounted them because the claimant found that what was written about him affected his privacy. Importantly, expression extends to information or ideas that offend, shock or disturb. On the

¹⁸ *Pal v United Kingdom*, Application No. 44261/09, decision of the European Court of Human Rights 30 November 2021.

¹⁹ *Pal v Commissioner of Police for the Metropolis* [2018] EWHC 2988 (QB).

²⁰ *Pal v United Kingdom*, Application No. 44261/09, decision of the European Court of Human Rights 30 November 2021.

facts, there was no evidence that the criteria identified by the domestic court as being relevant to the balancing of the respective rights were taken into account prior to the applicant's arrest. In particular, no consideration appeared to have been given to the subject matter of the applicant's article and tweets, and whether they could be said to have contributed to a debate of general interest. Thus, there had been a violation of Article 10.

The decision of the European Court might be regarded as peculiar to its facts, where both the police and the court gave little or no consideration to free speech rights. In the majority of harassment cases the Article 10 rights of defendants are adequately safeguarded, provided there is some discernible public interest in that speech, and that any public interest has not been lost by the unreasonable and gratuitous actions of the defendant. On that basis, the behaviour of the defendant in the present case can justify the restriction and punishment of the defendant's opinions and actions, and, thus, the defendant loses the privileges enjoyed by journalists and journalistic speech. Nevertheless, the decision in *Pal* has highlighted the need to apply the principles of free speech and proportionately consistently and appropriately to cases which justify the recognition of essential principles of free speech and public debate.

Pal also reminded us of the role of campaigners and bloggers in the dissemination of public interest speech and the encouragement of public debate. The European Court stoutly defends the values of freedom of expression and its role in a democratic society, insisting on broad mindedness, pluralism and tolerance, and accepting that it includes the right to shock and offend.²¹ Specifically, it has given greater weight and protection to press freedom and the right to disseminate information and ideas of public interest.²² This includes providing the press with a greater area of editorial discretion in how and in what language it disseminates that information,²³ this discretion extending to the unofficial press.²⁴

There is, nonetheless, a danger in harassment cases that appropriate weight is not given to free speech arguments, as the tactics employed by that person leads the police and the court to concentrate on the protection of the victim rather than balancing both interests.²⁵ The courts have stressed that it was not the conduct that made up an offence of harassment, but rather the effect of that conduct, and that it was for the defendant to show that the motive for their actions were reasonable.²⁶ This might suggest that in harassment cases the defendant will find it more difficult to justify their actions on free speech grounds, even where the messages raise matters of public interest.²⁷ This can have a damaging effect on free speech where the defendant is a journalist, or was otherwise disseminating information legitimately regarded as a matter of public debate. This was illustrated in *McNally v Saunders*,²⁸ a case brought against an online blogger by a local authority's director of public health concerning a series of personally critical blog articles and tweets. Here the court recognised that it had to protect the private interests of the director, as well as the public interest that she should be allowed to carry out that role without being subject to conduct that would undermine that role;²⁹ yet those interests were outweighed by the defendant's

²¹ *Handyside v United Kingdom* (1979) 1 EHRR 737

²² *Sunday Times v United Kingdom* (1979) 2 EHRR 245.

²³ *Sunday Times v United Kingdom*, above, note 59, and *Thorgerison v Iceland* (1992) 14 EHRR 843.

²⁴ *Pal v United Kingdom*, Application No. 44261/09, decision of the European Court of Human Rights 30 November 2021, at [46], *Magyar Helsinki Bizottsag v Hungary* (2020) 71 EHRR 2, and *McNally v Saunders* [2021] EWHC 2012 (QB).

²⁵ *Thomas v Newsgroup Newspapers* [2002] EMLR 4.

²⁶ *Ibid.*

²⁷ See *Howlett v Holding, The Times*, 8 February 2006, where it was accepted that an order under the Act could be made even where the defendant was exercising his right of freedom of expression, and the subject of that free speech was a matter of genuine public debate. The defendant had pursued a campaign against the claimant – a local councilor – after she had spoken out against the defendant in a planning application. This involved flying abusive and derogatory banners and dropping leaflets from his aircraft, and placing her under surveillance in order to see whether she was committing benefit fraud. The court held that the anguish suffered by the claimant was out of all proportion to the value attached to his right of free speech and was thus a necessary restriction under Article 10(2).

²⁸ [2021] EWHC 2012 (QB).

²⁹ *McNally v Saunders* [2021] EWHC 2012 (QB), at [44]. The court also accepted that the claimant's rights had been diminished because of her placing matters in the public domain (at [67]).

Article 10 rights, as the course of conduct involved, materially, publication to the world at large. Publication to the world at large engages the core of the right to freedom of expression, although where publication to the world at large is accompanied by other activities (such as picketing at someone's home or workplace), although the activity may still attract the protection of the right, what is in issue is not 'pure speech', so it will be easier to justify an interference.³⁰ Importantly in the context of *Pal* and other harassment cases, the court noted that even though his blog was not part of the 'mainstream' or 'conventional' media, the posts and tweets were 'journalistic material' thus attracting the enhanced protection given by Article 10 to such expression.³¹ This reflects the European Court's case law, and in *Magyar Helsinki Bizottsag v Hungary*,³² it noted the important role played by the internet in facilitating the dissemination of information, and assimilated the function of bloggers and popular users of the social media to that of 'public watchdogs' in so far as the protection afforded by Article 10 is concerned.³³

That the domestic courts have been willing to extend the principles of journalistic freedom to the unofficial press can also be seen in *Merlin Entertainments LPC v Cave*.³⁴ In this case, the defendant had begun a campaign on the issue of safety in theme parks and had criticised the companies involved in running the parks. After an accident at one of the claimant's parks where a child was seriously injured, the defendant and his company were retained to provide a confidential report, and a dispute arose regarding payment. The defendant then sent a series of emails criticising the claimant's company and its employees, also engaging in mail drops to local residents and businesses. The court held that this course of conduct did not amount to harassment. The real question for the court was whether the conduct complained of had extra elements of oppression, persistence and unpleasantness,³⁵ and whether any relief went no further than was absolutely necessary in interfering with the defendant's article 10 rights,³⁶ and there was no evidence of any threatening or abusive communications; rather, they contained, at times, strong criticism, which was quite a different thing. The conduct of the defendant might be annoying or irritating, but it was not conduct grave enough to be a crime.³⁷ These decisions offer strong support to free speech and press freedom norms, extending journalist immunity and editorial discretion to unofficial journalism. In that sense, it is welcomed in its adoption of the approach to offensive speech taken by the European Court in *Pal*. These cases suggest that free speech norms will be followed in harassment cases where there is a strong public interest element and the speech contributes to a matter of public debate, notwithstanding that the parties were also indulging in a private dispute and using robust and offensive language. However, following the Strasbourg Court's ruling in *Pal*, domestic law needs to ensure that this is the case even where the public interest dispute has become personal and private, and the conduct and language has become what might be seen as unacceptable if viewed out of context and failing to consider any previous exchanges between those involved.

³⁰ *McNally v Saunders* [2021] EWHC 2012 (QB), at [68].

³¹ *McNally v Saunders* [2021] EWHC 2012 (QB), at [74].

³² (2020) 71 EHRR 2.

³³ *Magyar Helsinki Bizottsag v Hungary* (2020) 71 EHRR 2, at [168].

³⁴ [2018] EWCA Civ 612

³⁵ *Merlin Entertainments LPC v Cave* [2018] EWCA Civ 612, at [36 and 41]. See also *Mainwaring v Associated Newspapers*, unreported (2017) QBD, 2 July 2017, where part of a harassment claim was struck out insofar as it concerned contact between newspaper reporters and the claimant, who had painted her property with large red and white stripes in the course of a planning dispute. The reporters' conduct (of following up on the story) had been well within the range of options open to responsible journalists following up a story, and it was relevant that the painting had been a public gesture likely to attract attention.

³⁶ *Merlin Entertainments LPC v Cave* [2018] EWCA Civ 612, at [41].

³⁷ *Merlin Entertainments LPC v Cave* [2018] EWCA Civ 612, at [42]. See also the Northern Ireland case of *Fulton v Sunday Newspapers* [2017] NICA 45, where a newspaper had established that its approach to publishing articles about the appellant was reasonable in the circumstances. In the court's view, there was a public interest in exposing alleged paramilitary influence in a loyalist area of Belfast, which the investigations conducted by the newspaper had uncovered. *Merlin Entertainments LPC v Cave* [2018] EWCA Civ 612, at [42].

However, there are cases where journalistic privilege is lost where the tactics of the speaker are being employed to pursue a private grievance or vendetta. Thus, in *Ware v McAllister*,³⁸ a case involving an ongoing dispute between a journalist and a property developer, the court found that the defendant had abused his Article 10 rights and that the harassment proceedings were justified.³⁹ The defendant had investigated the claimant's site and wrote a series of online articles about its condition, outlining the dangers that it posed to the public. Years later, when the site had been cleared, the claimant asked the defendant to take the articles down; which he refused to do, updating his articles and making criticisms of the claimant to various public authorities and clubs that the claimant was associated with. The defendant was convicted of harassment, but on appeal, that prohibition was lifted, whereupon the defendant increased his campaign and began to distribute flyers showing unflattering pictures of the claimant.

After establishing that the continued conduct of the defendant clearly constituted harassment, the court then considered the defendant's Article 10 rights and whether his conduct was reasonable under s.1(3). In the Court's view, the claimant had been subjected to grave public criticisms in strong and vilifying terms for 13 years, which had grown more severe over the years. This, in the Court's view, was akin to stalking and the claimant had been caused severe anxiety and distress and his article 8 rights were very substantially engaged.⁴⁰ As for the defendant's rights, the original articles had been legitimate exercises in public interest journalism. However, by 2015, it was hard to see that there was any public interest or any other legitimate reasons for the campaign. Since 2012, the site had remained safe and previous public interest had evaporated almost completely. There was no continuing future public interest in publication that was sufficient to outweigh the claimant's rights.⁴¹ As to proportionality, what had started as a legitimate exercise in public interest journalism had become almost a personal vendetta, based on a desire to reinforce the defendant's own sense of personal worth. It was not a conflict between public interest journalism and private interest, but purported public interest journalism against substantive Article 8 rights.⁴²

The decision in *Ware* indicates that greater strength will be given to the free speech arguments if they are journalistic in nature, but only where the purpose of the speech remains journalistic and a matter of public debate. This is reflected in s.12(4) of the Human Rights Act 1998,⁴³ and the court in *Ware* was clearly influenced by the fact that the defendant was, at least initially, pursuing a journalistic goal. Although many would argue that the defendant's speech remained journalistic despite its tone and persistence, the court felt that the public interest nature of the stories had diminished with the defendant's unnecessary and private vendetta. The journalist had, thus, exhausted his professional immunity and the public interest in the story, and thus lost the battle between free speech and the interests of the claimant. This is not limited of course to harassment cases, as many public interest defences in privacy cases are lost because of the unreasonableness of the tactics or the doubtful motives of the media.⁴⁴

Conclusion

The ruling in the present case therefore follows the principles laid down in previous cases, and the rationale of the Strasbourg's rulings. It was, therefore, hardly surprising that the defendant's

³⁸ [2015] EWHC 3086 (QB).

³⁹ The defendant had investigated the claimant's site and wrote a series of online articles about its condition, outlining the dangers that it posed to the public. Years later, when the site had been cleared, the claimant asked the defendant to take the articles down; which he refused to do, updating his articles and making criticisms of the claimant to various public authorities and clubs that the claimant was associated with. The defendant was convicted of harassment, but on appeal, that prohibition was lifted, whereupon the defendant increased his campaign and began to distribute flyers showing unflattering pictures of the claimant.

⁴⁰ *Ware v McAllister* [2015] EWHC 3086 (QB), at [33].

⁴¹ *Ware v McAllister*, [2015] EWHC 3086 (QB), at [39].

⁴² *Ware v McAllister* [2015] EWHC 3086 (QB), at [40].

⁴³ Section 12(4) provides that where the speech in question is of a (journalistic) nature the court must have regard, *inter alia*, to the extent to which it is, or would be, in the public interest for the material to be published.

⁴⁴ See *Sir Cliff Richard v BBC* [2018] EWHC 1837 Ch.

extraordinary conduct, and repeated denial of the facts, took him outside the protection of Article 10 as it applies to journalistic speech. Whilst the cases have supported the right of journalist to seek the truth and expose untruths they have been equally clear that journalists do not abuse that privilege and harm others in their desire to prove their point, irrespective of the veracity of their beliefs and the private and public harms such views cause. Thus, the right to claim that the stories of the bombings were a hoax is protected by Article 10, despite that bare allegation causing private distress and public outrage and disgust. To outlaw the publication of that allegation would normally violate Article 10 and the principles of democracy, unless the view is regarded as damaging to democracy itself, such as holocaust denial. Yet, although there may be a right to support a conspiracy theory, the continued persistence with that view despite all the surrounding evidence, coupled with personal attacks and intrusions towards the victims, is, deserving of restraint and redress to those affected by such speech and actions.

Despite the European Court's ruling in *Pal v United Kingdom*, the Article 10 rights of defendants are in general adequately safeguarded in harassment proceedings. This is the situation provided there is some discernible public interest in that speech, and that the public interest has not been lost by the unreasonable and gratuitous actions of the defendant. In the present case, the defendant's posts could have contributed to a matter of public interest, even though the basic nature of the claim was likely to cause the family, and others, great distress. Yet the defendant's overall conduct, in ignorance of all the evidence, not only made his comments objectionable, but clearly departed from the basic notion of responsible journalism. Although freelance journalist enjoy the enhanced protection of Article 10, that right carries with it duties and responsibilities, which need to be imposed on journalists in order to encourage appropriate journalistic behaviour and to protect the rights of others.

The protection of free speech in harassment cases should, in most cases, be as favourable as that offered in cases involving privacy and defamation, but the present case offered little opportunity for the law and the courts to offer such protection to the defendant. So too, the award of £45,000 appears to be proportionate in all the circumstances, given the evidence of the continued harm suffered by the claimants.⁴⁵ Nevertheless, in more nuanced cases the courts need to be careful not to be influenced too greatly by private or public outrage, and to consider the full tenets of free speech in determining whether there was harassment, and what damages to award to the offended party.

⁴⁵ See 'Manchester Arena Case: cruel lies and abuse of media Freedom' (2025) 8092 *New Law Journal*.