Neutral Citation Number: [2005] EWHC 2410 (QB)

Case No: HQ05X00900

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/11/2005

Before:

THE HON. MR JUSTICE EADY

- -

Between:

Andrew Wakefield	**Claimant**
- and -	
Channel Four Television Corporation	**Defendants**
Twenty Twenty Productions Ltd	
Brian Deer	

- -
- -

Desmond Browne QC and Jonathan Barnes (instructed by **Radcliffes LeBrasseur**) for the **Claimant**

Adrienne Page QC and Matthew Nicklin (instructed by **Wiggin LLP**) for the **Defendants**

Hearing dates: 27th and 28th October 2005

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE EADY

The Hon. Mr Justice Eady :

1. I now give the reasons for my ruling, which was announced to the parties at the conclusion of the hearing on 27th and 28th October 2005, whereby I refused the Claimant's application for a stay of his libel proceedings against Channel Four Television Corporation, Twenty Twenty Productions Limited and Mr Brian Deer. The Claimant, Dr Andrew Wakefield, complains of the content of a programme broadcast in the Dispatches series on Channel Four on 18th November 2004, which was entitled "MMR [What They Didn't Tell You]".

2. The claim form was issued on 31st March but only served on 22nd June 2005. Thereafter, it seems, the particulars of claim were served with some reluctance, following prompting by the Defendants and an order of Master Rose on 27th July of this year. They eventually appeared on 10th August. There has thus apparently been a rather relaxed and dilatory approach towards litigation of a kind which is supposed to achieve vindication of reputation. As it was put by Glidewell LJ in *Grovit v Doctor*, 28th October 1993 (unreported), CA:

> "The purpose of a libel action is to enable the plaintiff to clear his name of the libel, to vindicate his character. In an action for defamation in which the plaintiff wishes to achieve this end, he will also wish the action to be heard as soon as possible".

As Henry LJ observed in *Oyston v Blaker* [1996] 2 All ER 106, 118, "The essence of a genuine complaint in libel is prompt action".

3. The words complained of consist of very lengthy extracts set out in the particulars of claim from the television programme. For present purposes, I do not think it necessary to replicate them in this judgment. I shall confine myself to identifying the Claimant's meanings, which were to the effect that he had:

> "i) Spread fear that the MMR vaccine might lead to autism, even though he knew that his own laboratory had carried out tests whose results dramatically contradicted his claims in that the measles virus had not been found in a single one of the children concerned in his study and he knew or ought to have known that there was absolutely no basis at all for his belief that the MMR should be broken up into single vaccines."
>
> (ii) In spreading such fear, acted dishonestly and for mercenary motives in that, although he improperly failed to disclose the fact, he planned a rival vaccine and products (such as a diagnostic kit based on his theory) that could have made his fortune.
>
> (iii) Gravely abused the children under his care by unethically carrying out extensive invasive procedures (on occasions requiring three people to hold a child down), thereby driving nurses to leave and causing his medical colleagues serious concern and unhappiness.

> (iv) Improperly and/or dishonestly failed to disclose to his colleagues and to the public at large that his research on autistic children had begun with a contract with solicitors which were trying to sue the manufacturers of the MMR vaccine.
>
> (v) Improperly and/or dishonestly lent his reputation to the International Child Development Resource Centre which promoted to very vulnerable parents expensive products for whose efficacy (as he knew or should have known) there was no scientific evidence".

4. On 10th October 2005 a defence running to 95 pages was served which included defences of justification (the *Lucas-Box* meanings being broadly along the lines of those pleaded on behalf of the Claimant), qualified privilege and fair comment. The allegations are thus very serious indeed and concern matters of considerable legitimate public interest and concern. No reply has yet been served although, given the timescale I have described, that is not altogether surprising since modern pleading practice requires that the Claimant should give a detailed response to the particulars of justification identifying the primary factual allegations which are in dispute and, equally important, those which are not. Clearly, the Claimant will need some time to formulate his reply, although it is fair to say that there can have been very little in the particulars which would have taken him by surprise. Mr Deer's case against him has been publicly available, not only because of the allegations contained in the programme itself, but also because of articles he had written in the *Sunday Times* in February and November of 2004 and because of the contents of his website. It is also necessary to bear in mind that, if the claim had been prosecuted expeditiously, and in accordance with the time limits prescribed by the CPR, one could expect to have seen the issues crystallised prior to the Long Vacation.

5. Even without a reply having been served, I can reasonably infer that the trial will turn upon fundamentally serious issues going to the heart of the Claimant's honesty and professional integrity. That in itself is a very powerful reason for trying to achieve as early a resolution of the real issues between the parties as is reasonably possible. This aspect of the case should not, however, be confined to considering the interests of the Claimant. It is also important, especially perhaps since the coming into effect of the Human Rights Act 1998 in October 2000, to have regard to the interests and rights of the Defendants. In particular, they have a right under Article 6 of the European Convention to have their case heard fairly, and in public, within a reasonable time. What is reasonable will, of course, turn partly upon the scale and complexity of the issues. Nonetheless, there should clearly be as little delay as possible. In this context, I was reminded by Miss Page QC, on the Defendants' behalf, of the importance of "… defendants not having the anxiety, expense and inconvenience of a defamation action hanging over them for an unnecessarily long period": see e.g. *Oyston v Blaker*, cited above, at p108, *per* Henry LJ.

6. There is also a public dimension to be considered, and which has been brought into sharper focus following the implementation of the CPR regime. In a libel context, it was noted by the Court of Appeal in *Steedman v BBC* [2001] EWCA Civ 1534 that:

> "Delay itself, whether or not it is established to have been prejudicial to the defendant, is rightly treated as prejudicial to the administration of justice".

7. It is against this background that Mr Browne QC on Dr Wakefield's behalf has applied for a stay of the litigation until the "final outcome" of proceedings currently pending against his client before the General Medical Council. These proceedings were initiated by "an information letter" of 27th August 2004; that is to say, prior to the broadcast forming the subject-matter of these proceedings but following upon, and in the light of, Mr Deer's article in *The Sunday Times* in February 2004 and fairly detailed allegations communicated by him to the GMC thereafter.

8. Before I turn to the issues canvassed before me, I should refer to other libel proceedings commenced by the Claimant. He has also sued Mr Deer in respect of allegations of a similar nature published on his website ("the website proceedings") and, in a further action, he has claimed against Times Newspapers Ltd and Mr Deer in respect of the articles appearing in *The Sunday Times*. In May of this year an agreement was signed between Times Newspapers Ltd and the Claimant that there should indeed be a stay of those proceedings pending the outcome of the disciplinary process. As a matter of fact, although I am not sure that this is accepted by him, it appears that Mr Deer also consented to that stay. Although formalised in May, the agreement had been reached in February.

9. I am concerned primarily with the action arising out of the television programme but the website proceedings are also before me. Although the Claimant is seeking a stay of those also, his attitude as explained by Mr Browne is that if no stay is granted in respect of the Channel 4 proceedings, then the website proceedings should continue in parallel. That proposition is not accepted by Miss Page, who submitted that it would be unnecessarily expensive, since the outcome of the Channel 4 proceedings will almost certainly determine for all practical purposes that of the website proceedings.

10. There was little difference between the parties (if any) on the legal principles applicable in a situation of this kind. There is discretion for the court to stay proceedings having regard to other parallel proceedings, including for example, disciplinary proceedings before a domestic tribunal, if the justice of the case requires it. There are no presumptions.

11. It also accepted that the burden lies upon the applicant seeking a stay to demonstrate, through cogent evidence, that there are sound reasons for a stay in the circumstances of the particular case.

12. It is clearly necessary to have regard to Article 6 of the European Convention and to the obvious significance of taking any step which impinges upon a litigant's right to have issues determined by a court of competent jurisdiction within a reasonable time.

13. There may well be instances in which it would be right to grant a stay, and the most obvious example would be where the parallel proceedings are going to be determinative of the issues in the litigation to be stayed (or at least a significant proportion of them) or otherwise to render a trial unnecessary (or significantly less expensive).

14. It is not by any means essential for a party resisting a stay to demonstrate that he or she will suffer any specific prejudice (beyond the delay itself): see e.g. the citation from *Steedman v BBC* above.

15. Here, it is said on the Claimant's behalf that the GMC proceedings should take precedence, on the basis of "seniority" in the sense of having started first, and that they should be determinative of the real issues between the parties. It is important to note that the issues in the present litigation cannot yet be said to have crystallised, most particularly with regard to the plea of justification, prior to the Claimant's serving a reply; what is more, even the issues before the GMC have not yet been clearly defined. I understand that charges will be finalised in a few weeks time. Nevertheless, I should not approach this matter too technically. It may be said that I can take a reasonably informed guess that the GMC charges will correspond to some extent with the criticisms formulated in the letter of 27th August 2004, which was considered by both counsel in a little detail during the course of the hearing, and that the plea of justification is likely to be comprehensively challenged.

16. Miss Page points out, however, that the charges due to be formulated for the purposes of the GMC may very well reflect additional information which has come to their attention over the last fourteen months. She argues that there is no reason why I should assume that the charges will directly correspond to the original concerns. Moreover, until it is clear how many of the primary factual allegations contained in the plea of justification are admitted, it will not be possible to say to what extent the GMC determination will correspond to the issues to be resolved in these proceedings. There is considerable force in this argument. Not dissimilar questions arose in *Fallon v MGN Ltd* [2005] EWHC 1572 (QB), a case in which I was invited to stay defamation proceedings until the outcome of police enquiries was known. I was not prepared to speculate on the extent to which there would be overlapping issues. I referred to "… the need for the court to make any such judgment on the basis not of hunch or guesswork but in the light of the fullest information possible". I am not convinced that, with allegations so multifarious and grave, it is appropriate to make a judgment on this application on the basis of even an informed guess.

17. A number of matters are already clear. First, it is obvious that the GMC findings will not give rise to any issue estoppel and the Defendants in this litigation will not have any *locus standi* to put forward submissions or arguments (although it is quite possible that Mr Deer will participate in the capacity of a witness).

18. Secondly, the views or conclusions of the GMC disciplinary body would not, so far as I can tell, be relevant or admissible on the issue of justification.

19. Thirdly, the standard of proof in the GMC proceedings would be tantamount to that in criminal proceedings, by contrast with the civil standard applying in a defamation action.

20. Fourthly, as I understand it, there is no power to compel the disclosure of documents; nor any obligation on the Claimant to provide a summary of his case comparable to the material which would be supplied when a reply is served in the libel action.

21. Fifthly, even though I am prepared to assume that there may well be extensive overlap between the issues so far as justification is concerned, there is plainly no function

which the GMC fulfils that is in any way comparable to resolving the important issues arising under qualified privilege and fair comment.

22. Sixthly, the allegations contained in the defence go to undermine fundamentally the Claimant's professional integrity and honesty – matters which are regularly determined in defamation and other proceedings before the High Court. As I noted recently in *Sharma v Jay and Others (No. 2)*, 11th February 2004 (unreported), at [10]:

> "These court proceedings can achieve, albeit imperfectly, as almost always, vindication and they can result in an award of damages if those remedies are appropriate. That again is not something available within the structure and jurisdiction of the GMC. Of course, one pays the greatest respect to the expertise of the GMC in resolving matters of a professional nature and in particular of a medical nature, but here … there are very serious allegations of dishonesty made on both sides. It cannot seriously be suggested that priority should be given to GMC proceedings for the resolution of issues of that kind".

23. Sometimes there is good reason to stay libel proceedings to await the outcome of the criminal process; for example, because it may be necessary to avoid prejudice to the outcome or because a conviction of the claimant will by statute be binding for the purposes of the libel claim: see s.13 of the Civil Evidence Act 1968 and s.12 of the Defamation Act 1996. Neither of those considerations applies here.

24. My attention was drawn to the case *Khalili v Bennett* [2000] EMLR 996, where the Court of Appeal held that it was reasonable in those circumstances for defamation proceedings to have been delayed pending the outcome of criminal proceedings brought against the claimant in France, even though the case had been allowed to drift without the sanction of the court – at a time when litigants were not subject to the disciplines of the CPR. But in that case the defamatory allegation was far simpler and there was a close match between it and the criminal charge. The common issue to both proceedings was whether or not the claimant had been guilty of theft.

25. It is necessary to take account of the timescale which the Claimant contemplates, in so far as the evidence can be relied upon. Although there have already been estimates as to the timing of the GMC proceedings which have had to be abandoned, the Claimant and his advisers now seem reasonably confident that the hearing will take place between June and August 2006. It is yet possible that there may be further delays, but I will assume that the hearing will be concluded in the middle of August next year. There is likely to be some delay thereafter before the findings and reasons are promulgated. When the "final outcome" will be must naturally depend on whether there is some appellate or review process, in which case the timescale will be correspondingly extended. Nevertheless, it is realistic now to proceed on the basis that the course proposed by the Claimant would have the effect of relieving him of his obligation to serve his reply for at least one year from now.

26. In the light of this timescale, it is impossible to envisage the trial of these libel proceedings taking place before the Michaelmas term of 2007. Much of the evidence relating to the issue of justification relates to the mid-90s and a delay of that kind would be plainly undesirable. It would, moreover, involve a gap of three years

between the broadcast in question and the trial. That is beyond what is normally regarded as acceptable in the modern climate for the span of a libel action between publication and trial – even in a complicated case. I should not lose sight of the fact that Parliament, in accordance with the 1991 recommendation of the Neill Committee, substituted a limitation period of twelve months for defamation and malicious falsehood proceedings through the Defamation Act 1996. It was clearly appropriate thereafter for the courts to reflect that sense of urgency in fixing timetables and in case management generally: see e.g. the observations of Simon Brown LJ in *Roe v Novak*, 27 November 1998 (unreported), CA.

27. Some reliance has been placed upon the burdens which would be imposed upon the Claimant by having to cope with parallel proceedings over the next nine months, although it is fair to say that no such evidence has been forthcoming from the Claimant himself. It is a mixture of common sense and speculation on the part of his solicitor. Obviously there would be an increased burden to an extent, both upon the Claimant and his legal advisers, although if the overlap of issues is as extensive as they anticipate, it would be important not to exaggerate the extent of the added workload.

28. In this context, I bear in mind that the libel proceedings were launched by the Claimant with a view to vindicating his reputation and, correspondingly, undermining the credibility of the Defendants and in particular of Mr Deer. Clearly, a convincing case has to be made out to justify the Claimant, at the same time, being able to put them "on ice" for so many months at an early stage. Indeed, if the Claimant had been able to have his way, the stay would have been granted (if not agreed) even before the service of particulars of claim. This is what was achieved in relation to the *Sunday Times* proceedings.

29. If authority were needed for such a proposition, support is to be found in the words of Lord Bingham in *Johnson v Gore Wood & Co* [2002] 2 AC 1, where he warned that:

> "Litigants are not without scrupulous examination of all the circumstances to be denied the right to bring a genuine subject of litigation before the court".

I am quite satisfied, especially having regard to Article 6 of the European Convention, that this principle is equally applicable as between claimants and defendants. It is important to these Defendants, especially perhaps to Mr Deer, that the validity of the case which they wish to answer should be tested promptly and openly. These considerations have a special resonance in the context of investigative journalism. There would surely be a considerable "chilling effect" impinging upon a journalist's rights under Article 10 of the European Convention if, when he is sued for defamation with a view to the protection of a claimant's Article 8 rights, he is to be frustrated in putting forward his defence for any significant period of time.

30. These factors loom even larger in the present case in the light of certain conduct on the Claimant's part which Miss Page has prayed in aid. It is her case that the Claimant is seeking to take full advantage of the fact that he has issued libel proceedings while avoiding any detailed public scrutiny of the underlying merits. In other words, she argues, he is seeking to adopt a strategy comparable to that generally characterised by

the phrase "a gagging writ". It is necessary to consider these allegations in a little further detail.

31. In June of this year the Claimant took exception to an inaccurate article published in the *Cambridge Evening News*. It should be noted that it was published about a month after the stay was formalised with regard to the *Sunday Times* libel proceedings. The article in the *Cambridge Evening News* had referred to one of Mr Deer's *Sunday Times* articles and made reference to what it claimed (inaccurately) was an allegation contained in that article. A letter was sent on 29th June to the editor on the Claimant's behalf. It contained the following paragraph:

> "You should be aware that proceedings in defamation have already been commenced against The Sunday Times in respect of the article published by Mr Brian Deer on 22nd February 2004. Your article has gone even further than the allegation in The Sunday Times which are currently being litigated and allege impropriety on the part of Mr Wakefield to receive money from lawyers to achieve a predetermined outcome."

In my view that paragraph was misleading. Mr Browne argues that, even if the circumstances had been set out more fully and accurately, it would have made no difference to the outcome. The editor would still have acknowledged that he had got his facts wrong. That may be, but the important point at the moment is that the editor was given a misleading impression. Because of the stay, to which I have referred, the allegations in *The Sunday Times* were certainly not "currently being litigated". They were stayed pending the outcome of serious allegations of professional misconduct against the Claimant, to which no reference was made. It thus appears that the Claimant wishes to use the existence of the libel proceedings for public relations purposes, and to deter other critics, while at the same time isolating himself from the "downside" of such litigation, in having to answer a substantial defence of justification. Tactics of that kind would militate against the granting of a stay.

32. Matters do not rest there. It is suggested that there was a consistent pattern of using the existence of libel proceedings, albeit stayed, as a tool for stifling further criticism or debate. For example, my attention was drawn to a letter addressed to Dr Evan Harris, a member of Parliament, on 25th February 2005. He had criticised the Claimant on a radio programme. The letter was to warn him off and contained the following passages:

> "[Mr Andrew Wakefield] has asked us to inform you that defamation proceedings have been instituted against Mr Brian Deer and The Sunday Times newspaper in relation to articles that have been appeared [*sic*] and statements that have been made by them which are defamatory of [him].
>
> Mr Wakefield has drawn our attention to a number of statements made by you in connection with Mr Wakefield and the question of MMR both in newspapers and in BBC broadcast programme.
>
> …

> Given … the fact of litigation having been instituted in defamation and the existence of the General Medical Council inquiry we hope you will agree that further comment on Mr Wakefield's conduct by you or anyone else should be limited until the outcome of those proceedings has been determined. This will avoid Mr Wakefield having to consider further legal proceedings at the present time".

33. I regard that as a threat that libel proceedings will be issued against Dr Harris unless he "limits" any further comment – not in itself objectionable. On the other hand, the threat is backed up by reference to litigation against *The Sunday Times* and Mr Deer which, by the date of the letter, had already been stayed. The implication is that for rather vague "*sub judice*" reasons it would not be appropriate to comment until the proceedings have been determined. At that stage none of the libel actions was "active" within the meaning of the schedule to the Contempt of Court Act 1981 and there was accordingly no reason why Dr Harris should not comment further, if he wished to do so, subject always to the constraints of defamation. Again, one sees the same pattern. The Claimant wishes to use the proceedings for tactical or public relations advantage without revealing that they have been put on the back burner.

34. There was even an attempt on the Claimant's behalf to restrict the Department of Health from supplying the public with such information as it thought appropriate. There was a letter of 23rd June 2005, by which time the present application to stay the other libel actions had already been issued. The letter was addressed to Ms Sophie Rawlings, the website manager of the Department. It referred on no less than three occasions to the existence of the defamation proceedings – but without revealing that they were not active and, in one case, already the subject of a stay.

35. The letter contained the following passages:

> "As you will know Mr Wakefield is a key proponent of views about the potential side effects of the MMR vaccine. This is a subject which features prominently on your website particularly under the heading 'MMR – The Facts'.
>
> You may also be aware that Mr Wakefield has issued proceedings in defamation against variously The Sunday Times, Channel 4 Television and Mr Brian Deer, a journalist. You will further be aware the contents of Mr Brian Deer's television documentary for Channel 4 and Dispatches 'MMR – What they didn't tell you' is hotly disputed and is also the subject of defamation proceedings.
>
> In the circumstances Mr Wakefield is concerned and surprised to note that your official website on behalf of the Department of Health offers links not only to Mr Deer's own website, but also the Channel 4 website on the programme. It seems extraordinary to us and wholly wrong that the Government's official organ should direct website visitors to another site which not only records partisan and hotly disputed opinions on the subject but is also the subject of defamation proceedings.

> You will appreciate our grave concern that this fact appears to suggest that Government offers this subject matter official weight and authority.
>
> This letter is intended to provide formal written warning that the links provided to these two websites are allowing the dissemination of defamatory material. Since this is so you are now invited to withdraw the Department of Health link to these two websites forthwith given that this is an inappropriate use of Governmental weight and authority in such a controversial area".

36. A reply was received dated 25th July from Mr Owen, Head of Publishing, Immunisation Information, Department of Health. He appears to have been made of sterner stuff:

> "We propose therefore to maintain the links concerned as indeed we propose to maintain the links to websites putting forward views supporting Dr Wakefield".

37. I am quite satisfied, therefore, that the Claimant wished to extract whatever advantage he could from the existence of the proceedings while not wishing to progress them or to give the Defendants an opportunity of meeting the claims. It seems to me that these are inconsistent positions to adopt. This conduct is a powerful factor to be weighed in the exercise of the court's discretion in circumstances which are clearly unique.

38. I have come to the conclusion, bearing all these considerations in mind, that the interests of the administration of justice require that the Channel 4 proceedings should not be stayed pending the outcome of the GMC proceedings. I appreciate that there will be an increased workload for the Claimant's advisers, but I do not have any reason to suppose that the firm is incapable of absorbing that extra burden. It is, after all, their client who chose to issue these proceedings and to use them, as I have described above, as a weapon in his attempts to close down discussion and debate over an important public issue. (I note that separate teams of counsel are instructed for the GMC proceedings and the defamation claims.)

39. Miss Page has suggested that the real reason for seeking a stay is more to do with the Claimant's solicitors wishing to avoid the incurring of costs in the libel litigation when they may ultimately have to be borne by the MPS (which is backing Dr Wakefield financially). They would rather see which way the wind blows at the GMC hearing. That is speculation and, since it has not been put that way by Mr Browne in argument, I propose to take no account of this point.

40. So far as the website proceedings are concerned, I see no advantage in those continuing in parallel. There is a significant overlap. I am persuaded that this overlap is so significant, in relation to the defamation proceedings (unlike the GMC disciplinary process), that the outcome of the Channel 4 proceedings is likely to be in practical terms determinative of the others. Mr Deer acts in person in the website proceedings, and a very considerable burden would be placed upon his shoulders if he had to progress that litigation in parallel to the other action, in which he has the advantage of legal representation. Indeed, it may well be that there is a whiff of tactics

in the Claimant's change of stance, whereby he wished to have the website proceedings continue – but only provided there was no stay of the Channel 4 litigation. This is borne out by the suggestion that, before the Claimant should serve his reply, Mr Deer should be obliged to serve a defence in the website proceedings. That proposal has all the hallmarks of a tactical ploy to put Mr Deer at a disadvantage. It would have the effect of isolating him. I am not prepared to go along with that.

41. In the event, I ruled that the website proceedings should be stayed, but I refused the Claimant's application in relation to the Channel 4 litigation. I hope that my examination of the circumstances has been "scrupulous" in accordance with Lord Bingham's admonition, but in any event I am not persuaded that there is any convincing argument for depriving these Defendants of the opportunity for their case to be heard.

42. I directed that the Claimant's reply should be served by 5th December 2005.