

ENGLAND AND WALES / JUDGMENT

Benjamin Thomas Johnson v Stephen Helm

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Neutral Citation Number: [2025] EWHC 1546 (KB) IN THE HIGH COURT OF JUSTICE KING'S BENCH DIVISION MEDIA AND COMMUNICATIONS LIST Case No: K30PR021 Royal Courts of Justice Strand, London, WC2A 2LL Date: 20 June 2025 Before : RICHARD SPEARMAN K. C. (Sitting as a Deputy Judge of the King's Bench Division)

- ----- Between : BENJAMIN THOMAS JOHNSON
- and - STEPHEN HELM Claimant Defendant
- ----- The Claimant appeared in person Eleanor Guildford (instructed by Farleys Solicitors LLP) for the Defendant Hearing date: 17 June 2025
- -----

Judgment

This judgment was handed down remotely at 10.30am on 20 June 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives. Richard Spearman K. C.: INTRODUCTION AND NATURE OF THE ISSUES 1. 2. 3. The Claimant is a joiner and sole trader, who trades as “Johnson’s Joinery”. In early 2022, the Defendant engaged the Claimant to fit a kitchen at the Defendant’s property. In March or April 2022, the parties entered into a dispute about the standard of the Defendant’s work, the Defendant stopped working at the property, and the parties then agreed a financial settlement. Whether that settlement was final or partial, and whether or not it was agreed without any admission of liability are matters that are in issue. The Defendant then published or caused to be published on a website at www.nicelocal.co.uk on 9 May 2022, and continuing until at least 7 October 2023, it would appear as a “Review” of “Johnson’s Joinery” the following words (“the Review”) (underlining and numerals added): “The worse (sic) fitter I have ever seen, ruined everything he touched, didn’t do a full day. (ii) Damaged everything and can’t draw a straight line. Cut into the units which didn’t need touching. Plasterboarded the walls and we lost 10cm for no reason. Lazy, dirty and dangerous health concerns regarding his work as (iii) he pushed pipes in to the waste pipe for washing machine and dishwasher and sealed with silicone (iv) which backed up waste from toilet into the machines. Ben Johnson (and father the plumber) is are (sic) to be avoided at all costs. He refunded our deposit and (v) admitted liability by doing that however wouldn’t pay the extras to rectify and remove everything he did and doesn’t care about the impact to our home. Avoid avoid

avoid. (i) He even cut out the back of units due to a skirting board being at the back which should have been removed yet then realised he hadn't put the legs on the units so when the legs went on the units he cut (sic) were higher than the skirting board. Absolute joke, embarrassing and when questioned for consumer rights claim said his feelings were hurt as we were questioning his character. Should not be in business so avoid." The Claimant has been acting in person throughout these proceedings. The Defendant, in contrast, has at all times been legally represented, by both solicitors and Counsel. By Claim Form dated 9 May 2023, the Claimant began proceedings for libel in respect of the Review. The Particulars of Claim are dated 8 September 2023. At paragraph 7, they complain about the words that are underlined above, in the order enumerated above, and in the form which appears above. For example, the words "Damaged everything" form the subject of complaint in paragraph 7(ii), although, out of the words complained of, those words appear first in the Review. By way of further example, the phrase beginning "He pushed pipes" is made the subject of a separate complaint to the following phrase beginning "which backed up waste", although they all form part of the same sentence. At paragraph 8, the Particulars of Claim plead that the words complained of referred to, and were understood to refer to, the Claimant. At paragraph 9, they plead that the natural and ordinary meaning of those words was (1) "that the Claimant had undertaken the works described and caused the damage described" and (2) (with regard to the words "admitted liability") "that the Claimant had admitted to the Defendant that he had made the errors described and caused the damage described". 4. 5. 6. 7. On 31 October 2023, the Defendant served a Defence and Counterclaim, settled by Counsel. The Defence pleads defences of truth and honest opinion in answer to the claim for libel. The Counterclaim seeks damages for breach of contract, further or alternatively negligence, in respect of the works carried out by the Claimant. Paragraph 8 of the Defence pleads: "Paragraphs 8 and 9 of the Particulars of Claim are admitted." Paragraph 12 pleads: "Further or alternatively, insofar as the words complained of made or contained the following expressions of opinion, they were a statement of opinion within section 3 of the Defamation Act 2013: (i) That the Claimant had undertaken the work described within the review without reasonable skill and care and/or negligently and in substandard manner; (ii) That the Claimant had significantly damaged the Defendant's property in undertaking the work; and (iii) That the Claimant had admitted liability for undertaking the work without reasonable skill and care and/or negligently". On 16 February 2025, the Claimant served a Reply and Defence to Counterclaim. Paragraph 4 took issue with Paragraph 12 of the Defence, and pleaded that all the words complained of were statements of fact, and that they were not substantially true. By letter to the parties dated 4 December 2024, in advance of a review hearing which had been listed to take place remotely on 6 February 2025, the Court directed: "The parties must liaise and confirm whether or not there are any disputes as to the meanings of the published statements (including whether or not they are defamatory and whether they are statements of fact or opinion) and consider whether the court should direct that any disputes as to meaning should be dealt with as a preliminary issue and should set out their positions to the court and each other by not less than 7 days before the hearing." By letter dated 31 January 2025, the Defendant's solicitors made reference to the issues which typically arise for determination on a trial of preliminary issues in a claim for libel, namely (a) the natural and ordinary meaning(s) of the words complained of in the

Claimant's claim for libel; and (b) in respect of each publication complained of (i) whether each meaning found is defamatory of the Claimant at common law; (ii) whether it made a statement or statements of fact or was or included an expression of opinion(s)). They set out the Defendant's position with regard to such issues as follows:

- (1) They confirmed that, in keeping with paragraph 9 of the Particulars of Claim and paragraph 8 of the Defence, there is no dispute as to natural and ordinary meaning.
- (2) They conceded that the words complained of are defamatory at common law.
- (3) They contended, as the Defendant's primary position, that each statement complained of by the Claimant in the Particulars of Claim was a statement of opinion, having regard to the context that they were published as part of a "review".
- (4) In the alternative, they contended that: i. ii. iii. iv. v. vi. The words "He even cut out the back of units due to a skirting board being at the back which should have been removed yet then realised he hadn't put the legs on the units so when the legs went on" was a statement of opinion. The words "the units he cut (sic) were higher than the skirting board" was a statement of fact. The words "damaged everything" was a statement of opinion – "as this is the Defendant's subjective view on the extent of the damage caused". The words "he pushed pipes in to the waste pipe for washing machine and dishwasher and sealed with silicone" was a statement of fact. The words "which backed up waste from toilet into the machines" was a statement of opinion. The words "admitted liability [by refunding the deposit]" was a statement of opinion. 8. 9. The hearing fixed for 6 February 2025 duly took place remotely before Master Dagnall. The Claimant appeared in person and the Defendant was represented by Counsel. According to his Order of that date, Master Dagnall considered the above letter from the Defendant's solicitors and ascertained from the Claimant's response to the position set out in that letter that there was a disagreement between the parties as to whether the words complained of in Paragraph 7 of the Particulars of Claim were statements of fact or opinion. Master Dagnall therefore ordered that this issue should be determined as a preliminary issue on the papers by a High Court Judge of the Media and Communications List. He also gave directions to enable that hearing to take place. Pursuant to those directions, the Claimant filed a written argument, which is undated, and the Defendant's Counsel filed written submissions in response dated 10 April 2025. 10. That is how the matter comes before me for determination without a hearing today. THE PARTIES' SUBMISSIONS 11. 12. The Claimant's written argument contends that each of the statements complained of is a statement of fact. Reliance is placed on *Kemsley v Foot* [1952] AC 345 for the proposition that a statement of fact is one that can be proved true or false. The Defendant's written submissions take issue with that proposition. Ms Guildford pointed out that in *Butt v The Secretary of State for the Home Department* [2019] EWCA Civ 933, [2019] EMLR 23, Sharp LJ observed at [51]: "the mere fact that a statement may in principle be capable of being objectively proved is not sufficient to take it outwith the protection afforded by the defence of honest opinion". She also relied on the observations of Lord Judge LCJ in *British Chiropractic Association v Singh* [2010] EWCA Civ 305, [2011] 1 WLR 133 at [17]-[18] to

the effect that it is wrong to treat “verifiable fact” as antithetical to comment, so that any assertion which ranks as the former cannot qualify as the latter, because this creates a false dichotomy.

13. Ms Guildford referred to the following passages from *Gatley on Libel and Slander*, 13th edn (citations omitted):
 - (1) [13-006] “...That the common law authorities can provide guidance on the question is clearly helpful, but as Warby J commented in *Yeo v Times Newspapers Ltd*: “the requirement that comment be recognisable as comment as distinct from a factual imputation is not as straightforward as at first it might seem”. Elevated to the Court of Appeal, Warby LJ explained further that the determination is “a highly fact-sensitive process that focuses on the particular statement at issue”. It is a fair summary that “jurists ... had difficulty in defining the difference between a statement of fact and a comment in the context of the defence of fair comment”, and there may be significant practical difficulties in distinguishing opinion from fact.”
 - (2) [13-009] “Words must always be considered in their context, and the context may point to the conclusion that words which could, taken literally, be a statement of fact, are opinion ... A particular type of publication that can cause difficulty is the review. Often in such publications, assertions are made that, read literally, appear to state hard facts. In *Burstein v Associated Newspapers Ltd*, the Court of Appeal granted summary judgment to the defendant on the basis that it would be perverse to regard the words— a review of an opera which was held to be “just” capable of meaning that the author admired terrorism—as anything other than comment: “Insofar as the final sentence in the review might be said to be capable of being read as a statement of fact, it was patently intended as a summary of and a commentary on the factual description of the opera set out in the preceding part of the review... Moreover, the words complained of were contained in a review by a critic, as any reader would appreciate, and which the reader would expect to contain a subjective commentary by the critic.””
14. Ms Guildford further relied on the convenient distillation of relevant principles by Nicklin J in his judgment in *Koutsogiannis v The Random House Group Ltd* [2019] EWHC 48 (QB), [2020] 4 WLR 25 at [16], as approved by Warby LJ speaking for the Court of Appeal in *Corbyn v Millett* [2021] EWCA Civ 567, [2021] EMLR 19 at [14]: “(i) The statement must be recognisable as comment, as distinct from an imputation of fact. (ii) Opinion is something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation, etc. (iii) The ultimate question is how the word would strike the ordinary reasonable reader. The subject matter and context of the words may be an important indicator of whether they are fact or opinion. (iv) Some statements which are, by their nature and appearance opinion, are nevertheless treated as statements of fact where, for instance, the opinion implies that a claimant has done something but does not indicate what that something is, i.e. the statement is a bare comment.

- (v) Whether an allegation that someone has acted “dishonestly” or “criminally” is an allegation of fact or expression of opinion will very much depend upon context. There is no fixed rule that a statement that someone has been dishonest must be treated as an allegation of fact.” 15. Further, in *Corbyn* at [17], Warby LJ pointed out that “The statutory test refers to the “statement complained of”, not the meaning of that statement, or the imputation it conveys”. Accordingly, as stated by Griffiths J in *Alam v Guardian News and Media Ltd* [2023] EWHC 2847 (KB) at [53]: “The question of whether the statement complained of is fact or opinion is to be determined on the basis of [the publication], not on the basis of [any] précis of the meaning of [the publication].”
16. Ms Guildford submitted that I should apply the law as summarised in *Alam* at [57]- [58]: “The key principle of law is that the answer to the question of whether a statement is of fact or of [comment] “must always be the one that would be given by the ordinary reasonable reader”; “This is a highly fact-sensitive process that focuses on the particular statement at issue. It is obvious that the court cannot be bound or guided by findings made in other cases, about different words” per Warby LJ in *Millett v Corbyn* [2021] EMLR 19 at paras 18 and 19. I am also familiar with and apply the principles summarised by Nicklin J in *Blake v Fox* [2022] EWHC 3542 (KB) at paras 28-35, by Warby J in *Yeo v Times Newspapers Ltd* [2014] EWHC 2853 (QB) at paras 88-97 and by the Court of Appeal in *Butt v Secretary of State for the Home Department* [2019] EWCA Civ 933 at paras 25-39. Butt includes (at paras 34-35) approval of the classic observation of Cussen J in *Clarke v Norton* [1910] VLR 494 at 499 that comment is “to be taken as meaning something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, judgment, remark or observation”. Inferences of fact may be comment (paras 37-38). However, the “ultimate determinant... is how the statement would strike the ordinary reasonable reader” (para 39 of Butt). *Zarb-Cousin v Association of British Bookmakers* [2018] EWHC 2240 (QB) per Nicklin J at para 26 is also relevant.” 17. Finally, so far as the applicable legal principles are concerned, Ms Guildford relied on the judgment of Tipples J in *BW Legal Services Ltd v Trustpilot A/S* [2023] EWHC 6 (KB) at [44], [47]: “Section 3(3) of the Defamation Act 2013 requires that, in order for the defence of honest opinion to apply, “the statement complained of [must have] indicated, whether in general or specific terms, the basis of the opinion”. The publication need not give sufficient information to enable the reader to determine whether the comment was well-founded, but simply sufficient to alert the reader to the general subject matter of the comment: see, for example, *Yeo v Times Newspapers Ltd* [2015] 1 WLR 971, Warby J at [90]-[91]. A reference to “the general nature of the underlying issue” is sufficient: *Godfrey v Institute of Conservation* [2020] EWHC 374 (QB), Saini J at [31]. ... each of the statements complained of are a combination of a statement of fact and expression of opinion. I agree with the Defendant that, in each case, the reviewer has indicated, whether in general or specific terms, the basis of their opinion. This is because the reviewer has narrated their experience of the Claimant, and their opinion of the Claimant is based on that experience which is set out in the review. This is the case in respect of each review.”

18. Ms Guildford's written submissions adopted a different stance to the statement of fact versus statement of opinion dichotomy to that which had been expressed in the letter from the Defendant's solicitors dated 31 January 2025. She submitted:
- (1) The statement "He even cut out the back of units" was a statement of fact.
 - (2) The statement "there was a skirting board at the back" (sic) was a statement of fact.
 - (3) The statement "He pushed pipes in to the waste pipe for washing machine and dishwasher and sealed with silicone" was as statement of fact.
 - (4) All the other words complained of comprised statements of opinion.
19. The parties made further written submissions, in the case of Ms Guildford in more detail than in the case of the Claimant, about the statements complained of, and whether they were statements of fact or opinion, but I do not consider it necessary to set them out.
20. Ms Guildford's written submissions contained a section dealing with the issue of whether the words complained of are defamatory at common law, but in light of the history (specifically, the concession made by the Defendant's solicitors - [7](2) above) and the form of Master Dagnall's Order I do not consider that this issue is before me. DISCUSSION AND CONCLUSIONS 21. 22. Although this case has proceeded along entirely conventional lines, it has done so on a basis that lacks both obvious coherence and consistency. The way in which the words selected for complaint have been carved up by the Claimant in the Particulars of Claim, to say nothing of the order in which those words are listed for complaint therein, is puzzling. The same can be said of the Defendant's responses. The way in which the Defendant's responses have varied over time adds another element of confusion. Standing back, and looking at the Review in the round, it seems to me that it plainly contains some statements of opinion and some statements of fact. On the one hand, for example, statements such as "[he's] the [worst] fitter I have ever seen", and "[he's] an absolute joke" are or can reasonably be inferred to constitute "criticism, judgment, remark or observation". On the other hand, for example, and as appears to be accepted even in accordance with the Defendant's most recent stance, statements such as "He pushed pipes in to the waste pipe for washing machine and dishwasher and sealed with silicone" and "He even cut out the back of units" are statements of fact. Moving into less clear waters, a statement such as "Damaged everything" is one 23. 24. 25. which, taken literally, has the appearance of being a statement of fact, but at the same time, when contained in a critical review, may in truth represent no more than the author's personal way of summarising or commenting on other factual matters set out in the publication. The difficulty that I have is that the case has arrived before me with the battle lines drawn in a different way. I am faced with the task of striving to be fair to both parties by not determining the issues before me in a way that departs from what they might expect having regard to the history of the proceedings and the arguments that they have presented, while at the same time not allowing form to triumph over substance to the extent that I end up producing rulings that seem to me legally unsound, or unhelpful. For example, I do not know why the Claimant chose to separate into

two complaints the words “he pushed pipes in to the waste pipe for washing machine and dishwasher and sealed with silicone” and the words “which backed up waste from toilet into the machines”, especially as, on the face of it, the latter words do not, in and of themselves, refer to the Claimant, let alone affect his reputation. In my view, the only sensible approach is to consider all those words together, while bearing in mind that, due to their separation in the Particulars of Claim, the Defendant has responded to them separately. Confining myself, as I think I must, to the only issues that I have been asked to decide, and carrying out that exercise by reference to the statements made by the words in the Review that have been selected for complaint by the Claimant, I would rule as follows:

- (1) The earliest words contained in the Review that the Claimant has selected for complaint are “Damaged everything”. Read in context, namely that this is a piece detailing allegedly poor and unsatisfactory work carried out by the Claimant, I consider that these words constitute a statement of opinion. The substance of the Review consists of listing a number of things that the Defendant is said to have done, and then expressing views on the basis of those matters such as that he is to be “avoided at all costs”. In my judgment, the words “Damaged everything” would be understood by the ordinary reasonable reader as representing or comprising the author’s shorthand for the effect of the deficiencies set out elsewhere in the Review.
- (2) I consider that the next two sets of words contained in the Review that the Claimant has selected for complaint should be read together, as follows: “he pushed pipes in to the waste pipe for washing machine and dishwasher and sealed with silicone which backed up waste from toilet into the machines”. It is conceded by the Defendant, rightly if not inevitably in my view, that the words “he pushed pipes in to the waste pipe for washing machine and dishwasher and sealed with silicone” comprise statements of fact. In my judgment, the words “which backed up waste from toilet into the machines” would also, especially in the immediate context that they form part of the same sentence, be understood by the ordinary reasonable reader as a statement of fact. In any event, it seems to me that they do not carry any, or any significant, defamatory imputation in addition to that conveyed by the first set of words. In substance, the allegation is that the Claimant botched the pipework. The later words identify an alleged consequence of that, not separate shoddy work.
- (3) The next words contained in the Review that are selected for complaint by the Claimant are the following: “He even cut out the back of units due to a skirting board being at the back which should have been removed yet then realised he hadn’t put the legs on the units so when the legs went on the units he cut (sic) were higher than the skirting board”. Again, the statement “He even cut out the back of units” is accepted by Ms Guildford on behalf of the Defendant, rightly if not inevitably in my view, to be a statement of fact. In my judgment, the remainder of the words complained of under this heading would also, especially in the immediate context that they form part of the same sentence, be understood by the ordinary reasonable reader as comprising statements of fact. If and to the extent that some of these words, read in isolation, could be argued to represent an expression of opinion, such as that

“the skirting board ... should have been removed” , I do not consider either (i) that this is how they would be understood by the ordinary reasonable reader, or (ii) that they could have the effect of rendering as statements of opinion the totality of the words complained of in this instance, or the totality of those words beyond “He even cut out the back of units” which are accepted to be a statement of fact.

- (4) The last words contained in the Review that have been selected for complaint by the Claimant are “admitted liability”. These words appear in the phrase “He refunded our deposit and admitted liability by doing that”. In my judgment, these words comprise a statement of opinion. The facts upon which that opinion is based are identified in the same sentence, namely “he refunded our deposit”, and the way in which the ordinary reasonable reader would understand the two words complained of is to the following effect: “in my (the author’s) view the Claimant admitted that he was liable [for carrying out bad work] by refunding our deposit”. 26. I therefore decide the Preliminary Issues as set out above. I ask Counsel for the Defendant, as the only represented party, to draft an Order which reflects these rulings, and to endeavour to agree the same with the Claimant. Failing that, I will rule on it. 9

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