

KARIN WARD

Claimant

-and-

BBC

Defendant

PARTICULARS OF CLAIM

Summary

1. The Claimant claims damages against the BBC for breach of contract for the failure or refusal of the BBC to indemnify her for losses arising out of an interview that she gave to the BBC on 14 November 2011.

The BBC

2. The Defendant ("the BBC") is a leading public service broadcaster with considerable experience in investigative journalism. At all material times Meirion Jones, an investigations producer, and Liz MacKean, an investigative journalist, were the servants or agents of the BBC and acted on its behalf.
3. The Ofcom Broadcasting Code in force for broadcasts from 28 February 2011 to 20 March 2013, under paragraph 7.1 and following, required broadcasters including the BBC to avoid unjust or unfair treatment of individuals in programmes, and to deal with contributors fairly and to obtain informed consent for their contributions.
4. The BBC's values and standards, contained in its Editorial Guidelines, provide that the BBC would normally indemnify contributors except where they may have been negligent or malicious.

5. The BBC's standard approach is to seek informed consent from significant contributors to programmes and its standard consent form contains an indemnity in favour of contributors in respect of defamatory material included without negligence or malice on their part.

The Claimant

6. The Claimant, whose date of birth is 25 March 1958, was sent to Duncroft Approved School ("Duncroft") in Surrey when aged about 14 years, where she met Jimmy Savile ("Savile") and was sexually abused by him.
7. At all material times in her dealings with the BBC the Claimant was a vulnerable adult and a vulnerable contributor within the meaning of the Code.

Background

8. In return for being sexually abused by Savile the Claimant and other girls at Duncroft were given cigarettes and also the opportunity to attend Savile's TV shows.
9. One of those shows was called "Clunk Click", a programme produced by the BBC and filmed on BBC premises, on which guests appeared with Savile in front of a studio audience.
10. One episode of Clunk Click was filmed on 7 March 1974. The Claimant and about four other girls from Duncroft attended. Freddie Starr ("Starr"), a well-known comedian and entertainer, was a guest on that episode.
11. After that show the Claimant and the other girls from Duncroft were able to meet Savile and others including Starr.
12. During that meeting Starr grabbed or squeezed the Claimant's bottom and made a crude remark referring to the flatness of her chest.
13. Starting in about 2008 the Claimant wrote an account of some of the instances in her life on a website called "FanStory". On that website the Claimant wrote about her trips to the BBC and her interactions with celebrities that she met who she referred to by using initials, for example "JS" (a reference to Savile), "G" (Gary Glitter) and "F" (Starr).

14. After Savile's death on 29 October 2011 the BBC authorised Mr Jones and Ms. MacKean to conduct a Newsnight investigation into Savile's sexual offending.
15. On 2 November 2011 Mr Jones telephoned the Claimant, whom he was aware had been to Duncroft, and whom he understood was alleging that she had been abused by Savile, to persuade her to be interviewed for Newsnight, and, after a long conversation, she agreed to be interviewed on 14 November.
16. At that date the Claimant had advanced bowel cancer, was undergoing chemotherapy, was weak, anxious, depressed and terrified of imminent surgery, and Mr Jones was aware that the Claimant was extremely ill.
17. On or before 14 November 2011, Mr Jones and Ms. MacKean became aware that "F" on "FanStory" stood for Starr.
18. On 14 November 2011 Mr Jones and Ms. MacKean, together with a researcher and a cameraman, interviewed the Claimant at her home, for the purposes of the Newsnight investigation into Savile.
19. Mr Jones and Ms. MacKean agreed with the Claimant, before she gave the interview, that Starr would not be identified, and would be referred to only as "a famous person".
20. Mr Jones and Ms. MacKean believed that it was the practice of the BBC to indemnify a person in the position of the Claimant (a vulnerable source speaking to an investigative journalist on a matter of considerable public interest, principally Savile) and saw no need to state expressly to her that she would be indemnified if sued in relation to her contribution.
21. If Mr Jones and Ms. MacKean had believed that the BBC might not indemnify the Claimant they would have informed her accordingly.
22. In the course of the interview the Claimant said *"That's when the other guests on the show would come in, generally after the show had finished they would come in and they clearly saw girls and, well, kids, male and female, as being there to be used. I had a famous person who would try, he smelled awful, he smelled of sweat and alcohol and it made me heave just to be near him, so I certainly didn't want him to do anything to me"* ("the BBC words").

23. The BBC ended the Savile investigation before it was completed, and the interview with the Claimant was not broadcast on Newsnight or anywhere else immediately after it was recorded.
24. Mark Williams-Thomas was a consultant who had helped to work on the Newsnight investigation. In the Autumn of 2012 he was preparing a programme on Savile for ITV which was to be called "Exposure: The Other Side of Jimmy Savile" ("Exposure").
25. The Claimant and Mr Williams-Thomas were in contact and the Claimant agreed to give him an interview which took place on 2 October 2012, in which she named Starr and said that he had "groped her", and referred to her being humiliated in front of everyone in a dressing room ("the ITV words").
26. Exposure was broadcast on 3 October 2012. The programme did not include the ITV words.
27. On 8 October 2012 Channel 4 News broadcast part of the interview which Mr Williams-Thomas had conducted with the Claimant on 2 October 2012 and which included the ITV words. The report included a statement by Starr's solicitor denying the Claimant's allegations.
28. On 10 October 2012 the Claimant's interview with Mr Williams-Thomas, which included the ITV words, was broadcast on an ITV show, "This Morning", and the Clunk Click footage, showing Starr as one of the guests on the show, and the Claimant in the audience, was also broadcast.
29. An extract from the Claimant's interview containing the ITV words was broadcast on ITV News on 1 November 2012, the same date that Starr was arrested on suspicion of sex abuse.
30. On 22 October 2012, on a Panorama programme, the BBC broadcast a clip of the Clunk Click episode of 7 March 1974 showing Starr as a guest and the Claimant in the audience, following which a narrator said one of the guests was Karin Ward, aged just 14, following which the BBC words were broadcast ("the Panorama programme"); which had the effect of identifying Starr as the person who had touched the Claimant.

31. By proceedings issued on 23 September 2013, Case No. HQ13D04680, (“the Defamation claim”), Starr sued the Claimant for slander and libel arising out of the interviews which the Claimant gave to the BBC on 14 November 2011 and to ITV in October 2012, and the subsequent broadcasts of parts of those interviews, and also in libel arising out of online publications made by the Claimant. Starr did not sue the BBC or ITV in respect of the broadcasts.
32. The Claimant was represented in the Defamation claim by David Price Solicitors and Advocates, acting under a Conditional Fee Agreement (“CFA”).
33. Following a trial in June 2015, by a judgment dated 10 July 2015 the Honourable Mr Justice Nicol dismissed all of Starr’s claims against the Claimant. The Claimant has been unable to recover her costs of the Defamation claim from Starr.
34. It is the BBC’s custom or practice to indemnify contributors who are vulnerable whistleblowers.
35. In about June 2015, and before the trial, in correspondence stated expressly to be open and without admission of liability, the BBC offered to make a contribution of £85,000 towards the Claimant’s costs in the event of settlement, and to discuss a contribution towards her costs in the event of a trial and such costs not being recoverable from Starr.
36. Notwithstanding such offer the BBC has failed and refused to offer any contribution towards the Claimant’s irrecoverable costs, and has failed to respond to the Claimant’s letter before claim dated 17 November 2015 (other than to acknowledge it and to say that it is taking instructions).

The Agreement

37. In the premises
 - a. Between about 2 November 2011 and 14 November 2011, the Claimant, and Mr Jones and/or Ms. MacKean on behalf of the BBC, entered into an oral agreement, for the Claimant to be a substantial contributor to the intended Newsnight report (“the agreement”).

- b. There were implied terms of the agreement, based on presumed common intention and/or in order to give business efficacy to the agreement and/or custom and practice, that
 - i. The BBC would indemnify the Claimant in respect of any irrecoverable costs arising out of or in connection with broadcast of the interview and not caused by the negligence of the Claimant; further or alternatively
 - ii. The BBC would provide to the Claimant sufficient information so as to enable her to give informed consent before contributing to the intended broadcast.

Breach/Damages

- 38. In breach of the implied term of the agreement as to indemnification, the BBC has failed and refused, and continues to fail and refuse to indemnify the Claimant for her irrecoverable costs of the Defamation claim.
- 39. In breach of the implied term as to informed consent, the Claimant was not informed that the BBC would not indemnify her if she were sued in relation to her contribution. Had it done so the Claimant would not have agreed to participate.
- 40. By reason of either or both of these breaches, the Claimant has suffered loss and damage.

Particulars

- 41. The Claimant seeks to recover from the BBC her liability under the CFA including the costs of attempted enforcement against Starr other than those costs that are solely attributable to the claims in relation to the ITV interview and broadcast and the online publications. The total liability under the CFA is currently £437,527.50 base costs, a 100% success fee, vat and disbursements of £7,402.64. About 10% of the costs and none of the disbursements are solely attributable to the claims in relation to the ITV words and the online publications. The total sum claimed at the date of commencement of this claim is £952,462.04. The Claimant will give credit for any sums subsequently received from Starr. The Claimant will claim any future costs and disbursements incurred in recovering or seeking to recover any sums from Starr.

42. By reason of the matters set out above, the Claimant is entitled to and claims interest, on such sums as may be awarded to her, for such period and at such rate, as this Honourable Court shall think fit, pursuant to Section 35A of the Senior Courts Act 1981.

AND the Claimant claims:-

- (1) Damages.
- (2) Interest.

Paul Epstein QC

I believe that the facts stated in these Particulars of Claim are true.

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Karin Ward

Dated.....