

THE LAWYER

Plebgate: a libel battle royal in the RCJ

Desmond Browne QC, James Price QC and Gavin Millar QC, royalty of the libel bar, are going head to head in what is certainly the libel trial of the year.

It's the kind of high-profile, high-stakes battle that libel lawyers yearn for but is now all too rare. If you look at the history of the case, it's easy to see why.

For litigators outside the libel sphere, the case is already notorious for the Master McCloud's ruling in the costs case management hearing, disallowing the claimant all his future costs because of a failure to file a costs budget on time. The decision was upheld by the Court of Appeal (*Mitchell v News Group* [2013]) and served as a rude awakening to the post-Jackson era.

Mitchell, who had signed a CFA with his lawyers, was largely unaffected. His law firm (the well-regarded media specialist Atkins Thomson) have had to take the brunt.

Other applications have resulted in third-party disclosure orders from the police and permission to rely on similar fact evidence.

This hearing is a result of an order for a trial of the preliminary issues involving Mitchell's libel claim, and PC Rowland's libel claim against Mitchell, and is to be heard (as is now the norm) without a jury.

The case, as is well known, arises from The Sun's allegation that Mitchell called police officers who refused to open the gates at Downing Street "f*cking plebs". For a Tory cabinet minister, the allegation of such offensive snobbery was devastating and cost Mitchell his job.

In addition to suing The Sun Mitchell, as is often the case with politicians, made several public statements to try to make his position clear. It is these statements that PC Rowland says defamed him by suggesting that he fabricated evidence. Mitchell defends Rowland's case by saying that this allegation is true ('justification'). The Sun defends Mitchell's case based on the defences of justification and 'Reynolds' public interest qualified-privilege.

This hearing will decide the meaning of the words complained of, and whether they are substantially true. In reality, it is likely to be decisive of the case as a whole. The first day set the tone: Browne for Rowland told of Mitchell's "capacity for menace", Price for Mitchell outlined the "web of lies, deceit and indiscipline" of the police officers.

The Sun article was published before the Defamation Act 2013 came into force this year. The myth that the UK is an excessively claimant-friendly jurisdiction has already been exposed, but this case, and the Defamation Act 2013 should put it to bed once and for all.

The stakes are enormously high in reputational and cost terms. Mitchell's liability for The Sun's costs arising from his claim is likely to be covered by insurers, but his liability for Rowland's costs may well not be. News Group Newspapers Ltd, the publishers of the Sun, have only their costs to worry about thanks to Master McCloud.

It's all a long way from the quick and cheap arbitration system that Lord Justice Leveson recommended should replace libel litigation in his report but, for now, let's just enjoy the drama. There are unlikely to be many more like it.

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