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*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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Between

MARK AUSTIN

Plaintiff:

v

THE CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND

Defendant:

_____

STEPHENS J

Introduction

[ ] The defendant applies under the principle established in *Jameel v Dow Jones & Co Inc* [2005] QB 946 and applied in this jurisdiction by Gillen J in *Ewing v Times Newspapers Ltd* [2011] 63 NIQB and on appeal by Morgan LCJ delivering the judgment of the court under citation [2013] NICA 74, to stay these proceedings as an abuse of process on the basis that there has been "no real and substantial tort." In the proceedings the plaintiff, Mark Austin, a solicitor, alleges that Detective Constable Wallace, a servant or agent of the defendant, published a defamatory statement during the course of a police interview of the plaintiff's client, Mr AB (though those are not his real initials), by saying that the action of the plaintiff in offering his client's pre-prepared statement at the end of the interview process, rather than at the beginning, was "unprofessional." The words spoken by Detective Constable Wallace about the plaintiff were heard by the two other people in the interview room, namely Mr AB, the plaintiff's client and the other interviewing police officer, Constable Julie-Ann Kenny. They were also recorded on tape and a transcript has been made of that tape.

[2] Mr O'Donoghue QC and Mr Devine appeared on behalf of the plaintiff and Mr Ringland QC appeared on behalf of the defendant.

Factual Background

[3] The plaintiff was admitted to the Roll of Solicitors in 2011 and practices in the firm of Bannon Crawford. He states that the firm specialises in the practice of criminal law and in particular in the defence of clients suspected of or charged with serious criminal offences.

[4] On the evening of Friday 16 January 2015 between 7.30 pm and 9.30 pm two males, described as of average height, stocky build in their 30s and wearing dark clothing, were involved in an incident which commenced on the Stewartstown Road, Dunmurry. They had both been in a black Alfa Romeo motor vehicle. An object had been thrown from that car at a Silver Audi A4 motor vehicle. Subsequently the Alfa Romeo had swerved in front of the Audi to box it in. The two males had then left the Alfa Romeo approaching the Audi and one of them was wielding a baseball bat. They had attempted to open the door of the Audi and one of them had used the baseball bat to cause damage to the Audi shouting at the occupants to "get out of the f***ing car and open the door." The occupants of the Audi included an 11 month old baby. The driver of the Audi managed to reverse the vehicle and drive off but was followed by the Alfa Romeo. There were separate and further incidents at this stage which involved the Alfa Romeo being driven dangerously. It was not until the Audi approached Woodbourne PSNI station that the chase stopped. The Alfa Romeo's registration number had been obtained and it was located outside Mr AB's premises on the morning of 17 January 2015. He was arrested on suspicion of various offences arising out of these incidents namely attempted robbery, attempted hijacking, possession of an offensive weapon, criminal damage and dangerous driving. He was detained at Lisburn Police Station and he retained the professional services of the plaintiff.

[5] On Saturday 17 January 2015 and prior to the first police interview, the plaintiff consulted with Mr AB. The plaintiff states that strategy was discussed and that he received his client's instructions which are subject to client privilege except in that he prepared a statement which Mr AB signed and dated and which the plaintiff was authorised by Mr AB to read into the record as his account of what occurred on the evening of Friday 16 January 2015.

[6] The plaintiff states that the decision as to the time at which a pre-prepared statement is made during the course of a police interview is a matter of professional judgment. The plaintiff states that on some occasions it can be to the advantage of a client to wait before putting a case on the record in order to see, through the questions which the police ask and the disclosure which is given by the police, the extent to which the police are in possession of any evidence. The plaintiff also states that on other occasions it can be tactically advantageous to confront known evidence that lies against a client by making a statement at an earlier time in the interview process. The plaintiff asserts that each case is different and that his clients, their needs and their instructions differ. He asserts that this is a part of the important

advices to be given to a client and the judgment calls to be made on how a solicitor shall represent a client during after caution police interviews.

[7] Mr AB's decision as to strategy after obtaining advice from the plaintiff, was to wait to hear the questions that the police asked during the course of the interview process, before submitting the pre-prepared statement. On foot of that strategy a decision had been made not to read the statement at the stage of the first police interview. I would add that one potential effect of adopting that strategy, is to leave the client vulnerable, if there was a criminal trial, to the suggestion on behalf of the prosecution, that the pre-prepared statement was incorrect to the knowledge of Mr AB (though not to the plaintiff) and that the decision to submit it, knowing that it was incorrect, was only made as a result of forming an assessment during the interview process as to whether, at that stage, the police lacked convincing evidence which would undermine the veracity of the statement. That if the interview questions and the disclosure, revealed that the police had a strong evidential case that the pre-prepared statement may not or would not have been submitted. So, if for instance, during the course of the interviews, it became apparent that the police had evidence of Mr AB's fingerprints on the door handle of the Audi, then a decision may have been made by Mr AB not to submit the pre-prepared statement. The time at which the pre-prepared statement was made could also be the subject of another comment at any criminal trial that if the pre-prepared statement was a true statement, which Mr AB was convinced was accurate and which he knew would withstand analysis and any evidence that the police might have, it would have been made at the very start of the interview process.

[8] It is also apparent from the contents of the police interviews that a strategic decision had been taken that Mr AB would not reply to any question asked during the course of any of the police interviews.

[9] The first police interview commenced at 15:04 on 17 January 2015 and Mr AB was asked a whole series of detailed questions dealing with matters such as the ownership of the black Alfa Romeo, an insurance policy, the keys to the Alfa Romeo, where he was, who was with him on the evening of 16 January 2015, whether he had seen the silver Audi, whether he punched the driver's side of the Audi and hit it with a weapon and whether he noticed an 11 month old baby in that car. Mr AB either declined to answer or answered "no comment" to all questions. The interview was terminated at 15:07 when Mr AB requested to consult privately with the plaintiff. Just before termination of the interview the plaintiff asked the Detective Constables whether there was a statement from one particular individual whom he named and was told that at present there was not. He then asked whether there was a statement from anyone and was told that there was a statement from the injured parties.

[10] The second police interview commenced at 15:25 hours on 17 January 2015. The Detective Constables again proceeded to ask Mr AB a series of detailed questions to which again he replied consistently "no comment" though he varied the

answer on one occasion to say of one of the Detective Constables "My god this woman is like a parrot. No comment." On another occasion Mr AB enquired of the plaintiff "Do I have to keep saying No comment?" and was told "Yes." Mr AB then replied "No comment". Eventually the Detective Constables indicated that they had no further questions at which stage the plaintiff enquired as to whether the police could give a description of the individual. He was informed that the injured party described males as average height, stocky build, in their 30s wearing dark clothing, the man in the baseball bat (sic) was a man in his 30s, slightly taller than the first with a bald head and dark clothing. The plaintiff then enquired as to whether there was CCTV at this stage. He also said "I'm sure you are trying to uplift it?" He was told "That's all, obviously we are here and that's all in Dunmurry and its all being looked at, at the moment." The Detective Constables having replied to those enquiries the plaintiff said:

> "At this stage Daniel has prepared a statement."

Detective Constable Wallace replied:

> "I'd like to ask why that wasn't offered at the beginning of the interview Mr Austin?"

The transcript of the interview then continues as follows:

> "Mr Austin: It's obviously at our discretion if and when we –
>
> DC Wallace: Well it is but it's slightly unprofessional to at the end then offer the pre-prepared statement.
>
> Mr Austin: It's not unprofessional.
>
> DC Wallace: It is unprofessional.
>
> Mr Austin: It's not. I take grievance at that being said on tape.
>
> DC Wallace: That's fair enough.
>
> Mr Austin: I think my client might possibly think that undermines my credibility. It's a very serious thing to say. That I am being unprofessional?
>
> DC Wallace: Mhmm

Mr Austin: It's a very, very serious thing to say.

DC Wallace: Mhmm"

The plaintiff then read Mr AB's pre prepared statement which asserted that he was known for buying and selling cars and that an individual, who was known to him, but whom he did not name, asked him whether he was selling the Alfa Romeo and whether he could take it for a test drive. The statement went on to assert that the individual took the Alfa Romeo for a test drive and returned it at around 9:30 to 10:00 pm saying that he would have a think about buying it. The statement concluded by asserting that he knew nothing about the incident that he had been arrested for and did not wish to name the person who took the Alfa Romeo at this stage. Detective Constable Wallace then asked the plaintiff to provide a photocopy of the statement to which he replied:

> "No, I'm not providing anything, it's on the tape, and I do take grievance at being called unprofessional. I think that it might have undermined me in front of Mr AB, he might believe the same."

The Detective Constable replied "That's fair enough. That's noted on the tape as well." It was then indicated that the Detective Constables would have to ask Mr AB questions in a further interview. The second interview terminated at 15.36 hours.

[11] The Detective Constables then conducted a third interview commencing at 16:03 hours during which they asked a whole series of questions, informed by the statement which had been read by the plaintiff, to which questions Mr AB answered "no comment". The third interview concluded at 16:10 hours.

[12] The plaintiff states that he owes "a professional duty to no one other than my client" and that he is "required to act in (his) client's best interests at all times." That this was what he did "and it resulted in the police accusing (him), in front of (his) client, of being unprofessional." That he took grave exception to this comment and continues to do so. The plaintiff also states that his reputation, within the field in which he practices, is precious to him and that this was the only occasion on which he has been accused of any form of unprofessionalism or sharp practice. The plaintiff states that Mr AB and other members of his family are regular clients of his and that following the accusation which was levelled at him during the interview he had to deal with challenges not only from his client, but also from his client's mother, though these challenges were "as to whether or not the strategy upon which" he had advised "was correct". I proceed on the basis that the challenge to the plaintiff by Mr AB and his mother was as to the strategic advice given by the plaintiff, rather than in relation to whether the plaintiff had been unprofessional in the sense of adopting some sharp practice. The plaintiff accepts that the client and his family remain as regular clients.

[13] It can be seen from the transcripts of the interviews that there was no retraction or apology during the course of those interviews by either of the Detective Constables. The plaintiff asserts that after the interviews he contacted Custody Sergeant McAdam who informed him that Detective Constable Wallace had no intention of retracting her comments. The plaintiff asserts that there has been no apology to date. It is stated by the defendant's solicitor on the basis of information provided to her by Sergeant McAdam that he offered to attempt resolution of the dispute which had arisen but that this offer was rebuffed by the plaintiff. There is no express averment by the defendant's solicitor that any written or oral apology was made to the plaintiff.

[14] Mr AB was not prosecuted and the plaintiff states that he regards the fact that Mr AB having, through the plaintiff, placed on the record, an account of what happened on 16 January 2015 that this was a relevant, if not important factor in the decision not to prosecute.

[15] The plaintiff made a complaint to the Police Ombudsman for Northern Ireland, who, on 20 April 2015, informed the plaintiff that he had concluded the investigation into the matter. It is apparent from that letter that the information provided to the Ombudsman was that immediately after the incident on 17 January 2015 the Custody Sergeant spoke to Detective Constable Wallace regarding the comments and provided appropriate disciplinary action which included reminding them that the comment was inappropriate, unprofessional and should not be repeated. The Ombudsman concluded that:

a) the comments made by the interviewing officer were inappropriate and unprofessional;

b) suitable misconduct action was taken immediately by the Custody Officer and the matter was appropriately dealt with at the time; and

c) the complaint had been upheld.

It will be seen that a question arises as to whether the custody officer did immediately take appropriate action.

The Proceedings

[16] On 4 August 2015 the plaintiff issued a writ of summons seeking damages for slander. The Statement of Claim was served on 15 September 2015 and amended on 22 December 2015.

[17] In relation to publication the plaintiff alleges in the amended Statement of Claim that the words were not only spoken in the hearing of Mr AB and the other interviewing police officer, Detective Constable Kenny, but also that they were recorded on tape and will have been listened to by the typists and secretaries

responsible for the transcription of the tape recording, other police officers and representatives of the Public Prosecution Service. Furthermore that the transcript of the interview was read and the tape was heard by representatives of the office of the Police Ombudsman in relation to the plaintiff's complaint. Each are asserted to be further instances of publication. In her affidavit sworn on 14 April 2016 the defendant's solicitor deposes that the tape was not sent to other police, or to the lawyers in the Public Prosecution Service. On the evidence presently available I consider that the publication was to:

a) the two other persons in the interview room;

b) to those involved in transcribing the tape which transcript was for the purpose of the complaint to the Ombudsman or for the purposes of these proceedings; and

c) to those in the office of the Ombudsman involved in investigating the complaint.

[18] In relation to meanings the plaintiff alleges in the amended Statement of Claim that the words spoken meant that the plaintiff was "unprofessional in the manner by which he conducted himself as an officer of the Court and as a solicitor advising and representing a client suspected of having committed a serious criminal offence." For the purposes of this application the plaintiff states that the word "unprofessional" does not connote incompetence or dishonesty on his part but rather that it connoted a sharp practice in the discharge of his professional obligations. That it suggests that he was discharging his duties in a disreputable way and in a manner unbecoming of his profession as a solicitor.

[19] The defendant's defence was served on 6 November 2015. In it the defendant admits that the words were spoken by Detective Constable Wallace and that they were spoken within the hearing of Mr AB and Constable Kenny. Despite the findings of the Ombudsman the defence goes on to plead justification in relation to lesser meanings, which the defendant asserts that the words are capable of bearing. Those lesser meanings are that in disclosing a pre-prepared statement at the conclusion of an interview, the plaintiff departed from recognised practice and that in disclosing a pre-prepared statement at the conclusion of the interview the plaintiff caused delay in the interview process. It can be seen that, in pleading justification, the defendant, far from apologising, is making a positive case that the plaintiff acted inappropriately. It can be seen that the Ombudsman was proceeding on the basis that the Custody Sergeant had spoken to Detective Constable Wallace regarding the comments and provided appropriate disciplinary action which included reminding them that the comment was inappropriate, unprofessional and should not be repeated. The defence contends that the comment was not inappropriate. In so far as there appears to be a conflict in the approach adopted in the defence with the account given to the Ombudsman then, at this interlocutory stage, I should not attempt to resolve the conflicts but rather, purely for the purposes of this application

only and not otherwise, I should proceed on the basis that there was no apology to the plaintiff and that a question might be raised at the trial as to whether there was appropriate action taken by the Custody Sergeant. The fact remains that if the defendant succeeds in the application to stay these proceedings then the allegations contained within the plea of justification, would not have been withdrawn, but would have been left undetermined as the position adopted by the defendant in relation to the plaintiff's conduct. There would remain an allegation against the plaintiff that a defamatory meaning is true.

The Submissions

[20] Mr Ringland relied on *Jameel* and on *Thornton v Telegraph Media Group Ltd* [2010] EWHC 1414, [2011] 1 WLR 1985, [2010] All ER (D) 169 to support the proposition, on behalf of the defendant, that the action should be stayed as an abuse of process there having been "no real and substantial tort." He submitted that the tort was not a "real tort" within *Jameel* on the basis that the relevant words used were trivial so that the plaintiff has no real prospect of establishing that they met the threshold of seriousness test set out in *Thornton*. Mr Ringland relied on the definition of the word defamatory in *Thornton* that "the publication of which (the plaintiff) complains may be defamatory of him because it *substantially* affects in an adverse manner the attitude of other people towards him, or has a tendency so to do" (emphasis added). It was submitted that the words used did not *substantially* affect in an adverse manner the attitude of other people towards the plaintiff nor did they have a tendency so to do. Mr Ringland also submitted that the tort was not a "substantial tort" within *Jameel* given the limited publication, the likely attitude of Mr AB, the vindication already given to the plaintiff by the decision of the Ombudsman so that the action should be stayed given the amount of costs involved in the proceedings and the chilling effect on the article 10 ECHR rights of the defendant.

[21] Mr O'Donoghue for the plaintiff submitted that there was a real and substantial tort comprehensively referring to the detailed factual background.

Legal Principles

[22] Proceedings can be stayed as an abuse of process if the defendant establishes that there has been "no real and substantial tort," *Jameel*. *Ewing* was "a clear case for the application of the *Jameel* principle." However "to obtain before trial the summary arrest of a Plaintiff's proceedings as an abuse of the process of the court, the task of satisfying the court that a stay should be imposed is, and should be seen to be, a heavy one" see the judgment of Scarman LJ in *Goldsmith v Sperrings* [1977] 2 All ER 566, [1977] 1 WLR 478 relying on the authority of *Shackleton v Swift* [1913] 2 KB 304, 311-312

[23] The principles in *Jameel* may be applied where the defamatory sting is a trivial one, *Daniels v BBC* [2010] EWHC 3057 or where the publication was only to a very

small number of people *Hays plc v Hartley* [2010] EWHC 1068, *Wallis v Meredith* [2011] EWHC 75, *Williams v MGN Ltd* [2013] EWHC 848, *Tamiz v Google* [2013] EWCA Civ 6 or where winning the case would not achieve any tangible advantage to the plaintiff in terms of vindication *Henderson v London Borough of Hackney* [2010] EWHC 1651, at [42], *Hamaizia v Commissioner of Police for the Metropolis* [2013] EWHC 848.

[24] In *Jameel* it was stated that section 6 of the Human Rights Act 1998 "requires the court, as a public authority, to administer the law in a manner which is compatible with Convention rights, in so far as it is possible to do so. Keeping a proper balance between the Article 10 right of freedom of expression and the protection of individual reputation…." That as a consequence this "must … require the court to bring to a stop as an abuse of process defamation proceedings that are not serving the legitimate purpose of protecting the Claimant's reputation, which includes compensating the Claimant only if that reputation has been unlawfully damaged." The Article 10 freedom of expression rights which are to be considered are not only the freedom of expression in respect of the particular matter published, but rather are to be viewed more widely, in that the litigation may have a more general adverse impact on the ability of the individual to exercise the right to freedom of expression. In *Wallis v Meredith* Mr Justice Christopher Clarke stated that "… the fact of being sued at all is a serious interference with freedom of expression." He also referred to the particular importance of freedom of expression of the press in that they occupy a "special place in a democratic society" "as purveyor of information and public watchdog" (see *Prager and Oberschlick v Austria* [1995] 21 EHRR [34])." This case does not involve the freedom of expression of the press but it does involve the freedom of expression of those responsible for the investigation of serious crime. That is a most important function in a democratic society. The threat of defamation actions on the proper questioning of those suspected of serious crimes is an important aspect of this case so that this court "must … bring to a stop as an abuse of process defamation proceedings that are not serving the legitimate purpose of protecting the Claimant's reputation, which includes compensating the Claimant only if that reputation has been unlawfully damaged."

[25] The application of the principles in *Jameel* should take into account the legal and procedural differences as between this jurisdiction and England and Wales.

[26] In *Jameel* there was a balance between the damages that could potentially be awarded on the one hand and on the other hand, amongst other matters, the costs involved in achieving that award. At paragraph [68] *et seq* the Court of Appeal anticipated that the defences were likely to prove cumbersome to try with a jury, so that there would be a lengthy and expensive trial. That if the plaintiff succeeded then that the jury could properly be directed to award only very modest damages reflecting the fact that the publications can have done minimal damage to the claimant's reputation. The Court of Appeal continued that if the claimant succeeds and is awarded a small amount of damages that both the damage and the vindication will be minimal so that the cost of the exercise will have been out of all

proportion to what has been achieved. Accordingly that "the game will not merely not have been worth the candle, it will not have been worth the wick." Having concluded that any recoverable damages would be out of all proportion to the costs involved Lord Phillips MR, delivering the judgment of the court, then considered, but dismissed, the alternative route of treating the case as a small claim because the issues were complex and subject to special procedure under the CPR. So as the costs could not be avoided the case was struck out as an abuse of process.

[27] Another example of that balance between costs and potential outcome is *Lonzim Plc & others v Sprague* [2009] EWHC 2838 *(QB)* where Tugendhat J considered that any damages could in the circumstances only be very small and they would be totally disproportionate to the very high costs that any libel action involved.

[28] In Northern Ireland costs are significantly lower than in England and Wales. The Northern Ireland Law Commission's Consultation paper Defamation Law in Northern Ireland stated that "estimates varied …, but the idea that base costs could be as much as four or five times higher in England and Wales than in Northern Ireland was commonplace." So in Northern Ireland the cost side of the balance will be different with the result that in Northern Ireland it is less likely that a claim will be struck out under the *Jameel* principle. The impact of costs on the balance is also to be seen in the context of the chilling effect on the Article 10 ECHR rights of others. In Northern Ireland the chilling effect created by defamation costs is not as poignant as in England and Wales. So in Northern Ireland the balance is going to be different as the cost regime is different.

[29] A part of the balance is a consideration of the likely level of an award in Northern Ireland if the matter proceeded to trial. In *Elliot v Flanagan* [2016] NIQB 8 and at paragraphs [26] to [36] inclusive I set out the legal principles in relation to the assessment of compensation for defamation. In particular I referred to the checklist adopted by Hirst LJ in *Jones v Pollard* [1996] EWCA Civ 1186 which was in the following terms:-

> "1. The objective features of the libel itself, such as its gravity, its prominence, the circulation of the medium in which it was published, and any repetition.
>
> 2. The subjective effect on the plaintiff's feelings (usually categorised as aggravating features) not only from the publication itself, but also from the defendant's conduct thereafter both up to and including the trial itself.
>
> 3. Matters tending to mitigate damages, such as the publication of an apology.
>
> 4. Matters tending to reduce damages, e.g. evidence of the plaintiff's bad reputation, or evidence given at the trial which the jury are

> entitled to take into account in accordance with the decision of this court in Pamplin v Express Newspapers Ltd [1988] 1 W.L.R. 116.
>
> 5. Special damages.
>
> 6. Vindication of the plaintiff's reputation past and future."

I stated that:

> Vindication is an aspect of the award so that if the allegations should re-emerge, the damages must be large enough to proclaim the baselessness of the libel or as put in *Broome v Cassell & Co Ltd* [1972] AC 1027 at 1071 the plaintiff "must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charge." Also vindication can be achieved, either in whole or in part, by an apology or by a categorical statement by the defendant that the statement is unfounded.

In arriving at an estimate of the likely award of damages in this case if the plaintiff succeeds in relation to the issue of liability I seek to apply the principles which I summarised in *Elliot v Flanagan*.

[30] Another feature of the decision in *Jameel* that should be considered in this case is whether the issues are complex, because if they are not and if the matter falls within the jurisdiction of the county court, then if an application was made the case could be remitted to that court. In England and Wales the county court only rarely has jurisdiction to hear and determine any action for libel or slander. The default position under section 15 of the County Courts Act 1984 is that (except as in that Act provided) the county court should not have jurisdiction to hear and determine any action for libel or slander. The county court can acquire jurisdiction under section 18 if the parties agree by a memorandum signed by them or by their respective legal representatives. The county court can also acquire jurisdiction if the High Court orders the transfer of a libel or slander action to it under section 40. The decision in *Davies v WM Morrison Supermarkets plc* [2007] EWCA Civ 594 is an example of circumstances in which the Court of Appeal in England and Wales, having reinstated a libel claim that had been struck out by the High Court, accepted the respondent's submission that it had become a "storm in a teacup" and transferred the claim for further disposal to an appropriate county court. The position is different in Northern Ireland where the county court has a general jurisdiction to hear actions for libel or slander but the jurisdiction is limited so that it cannot hear any such action in which damages exceeding £3,000 are claimed. So in theory a plaintiff may commence any action in the county court, regardless as to its potential value, provided that he does not *claim* more than £3,000, though in practice a defendant could apply to remove the action to the High Court under section 31(5) of the Judicature (Northern Ireland) Act 1978 on the basis that the proceedings could in all the circumstances be more appropriately heard and determined in the High

Court. In Northern Ireland under the County Court (Amendment) Rules (Northern Ireland) 2013 the scale costs for county court libel and slander actions for solicitors range from £519 to £1,072 and for counsel range from £230 to £729. So there is a forum available in Northern Ireland to hear and determine small defamation claims where the costs are controlled.

Discussion

[31] The conclusions which I express are at an interlocutory stage, not binding at trial and are therefore as concise as circumstances allow. There was limited publication. In relation to the publication to the Ombudsman at this stage I do not consider that the words had any effect on the plaintiff's reputation. At this interlocutory stage I approach the case on the basis that the plaintiff's client was concerned as to whether the plaintiff's strategic advice was effective rather than that he thought any the worse of the plaintiff by reason of the words that were spoken. It could be that the publication is limited to one other person, namely the other police officer in the interview room. I note the decision of the Ombudsman which vindicates the plaintiff. I consider that but for the plea of justification this case would be within the *Jameel* principle. However, the defendant has asserted that the plaintiff did act inappropriately and if this action was stayed then there would remain an allegation against the plaintiff that a defamatory meaning is true. There remains a challenge to the plaintiff's professionalism which he is entitled to take seriously. I consider that the case has a low value within the County Court jurisdiction and that the costs in the County Court are proportionate. I do not consider that applying *Jameel* that I should stay these proceedings. I also consider that the threshold of seriousness as set out in *Thornton* has been met.

[32] I dismiss the defendant's application.

[33] I will hear counsel in relation to the remittal of this action to the County Court and in relation to the question of costs.