



**St John's
Buildings**

Is being called 'gay' in the UK defamatory?

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This case note considers the decision in *Ahmadi v Guardian News & Media Ltd* [2025] EWHC 1191 (KB) on whether statements published in the UK and that suggest a person is homosexual may be successfully relied on in a defamation claim.

The Parties

The Claimant ('C') is an Afghan national who resided in Kabul, Afghanistan. C identified as heterosexual and viewed his life and identity as deeply rooted in Afghan society. C said that in the society he lives in, homosexuality is punished by death or severe punishment.

The Defendant ('D') is a well-known news organisation and publisher of the newspaper and website titled '*The Guardian*'.

Background

On 18 October 2022, D published an online article about the treatment of LGBTQ+ people in Afghanistan and covered news on Hamed Sabouri, who was reported to have been abducted, tortured and murdered by the Taliban in Kabul, Afghanistan in August 2022. The article was headlined "*Gay Afghan student 'murdered by Taliban' as anti-LGBTQ+ violence rises*", with the sub-headline "*the dead of Hamed Sabouri is the latest in a wave of attacks, with right groups warning thousands are going into hiding or attempting to flee the country*".

The article included a photo that appeared beneath the sub-headline. C alleged the photograph shown in the article was of him, despite not being Mr Sabouri and not having an association with him. D said that at the time of publication they understood the photograph to be of Mr Sabouri and had taken steps to verify this.

Later on the day of publication, D became aware the man in the photograph was not Mr Sabouri and removed it. D added a line to the article, stating "the main image on this article was replaced on 18 October 2022" but did not provide any further information or explanation.

C brought claims against D, alleging that, when combined, the photograph and headline gave the suggestion that C was homosexual, that this endangered C's life, harmed C's reputation, and caused him irreversible harm. C relied on the following two suggestions he alleged the article made:

1. That there were reasonable grounds to suspect C is a homosexual man; and
2. That there were reasonable grounds to suspect C was in a relationship with another man.

C's pleaded case relied only on publication within the jurisdiction (as opposed to in Afghanistan or elsewhere). C alleged the article was published to a substantial number of people, again within the jurisdiction. C alleged that because of the article and its imputations he went into hiding, being unable to study or work due to fear of the Taliban.

Strike Out and Summary Judgment Application

D made an application for strike out and summary judgment on the grounds that the meanings alleged by C were not arguably defamatory of C.

What amounts to defamatory remarks?

The Court referred to the judgment in *Monro v Hopkins* [2018] EWHC 433 (QB), [2017] 4 WLR 68, noting that a statement is defamatory at common law if it tends to have a substantially adverse effect on the way that right-thinking members of society generally would treat the claimant; it is not enough that the statement has an adverse effect on attitudes of a certain section of society to the claimant [17]. The remarks of Warby J at [50] in *Monroe* were referred to:

"In a diverse society, there are many with views of which some people approve and some disapprove. The demands of pluralism in a democratic society make it important to allow room for differing views to be expressed, without fear of paying damages for defamation. Hence, a statement is not defamatory if it would only tend to have an adverse effect on the attitudes to the claimant of a certain section of society. The classic example, though far from this case, is a statement that someone is a "grass" who informs on criminals. That is not defamatory because informing on criminals is generally considered to be a good thing to do."

This distinction was said to exist in authorities, including in *Tolley v Fry* [1930] 1 KB 467, where Greer LJ said at 479:

"Words are not defamatory, however much they may damage a man in the eyes of a section of the community unless they also amount to disparagement of his reputation in the eyes of right thinking men generally. To write or say of a man something that would disparage him in the eyes of a particular section of the community but will not affect his reputation in the eyes of the average right thinking man is not actionable within the law of defamation."

Accordingly, the main issue was *"whether the meaning of a publication attributes to the claimant behaviour or views that are contrary to common, shared values of society, or that are illegal or, by the standards of society as a whole, immoral"* [19].

The court identified the following as matters it needed to consider in relation to the statements:

1. The court needed to identify the single natural and ordinary meaning of the publication, which is the meaning that the hypothetical reasonable reader would understand the publication to bear [20]; and

2. The publication of a statement needed to have caused or be likely to cause serious harm to C's reputation, per the Defamation Act 2013, s 1 [21]. It would not be sufficient to show that the words were injurious to reputation, but to show the practical impact of publication on the particular facts of the case [22].

The Arguments

C argued that [29]:

1. The questions of whether identifying a person as gay was defamatory was something that had not be authoritatively determined in the courts in England and Wales;
2. When considering if such an assertion would lower C in the estimation of right-thinking members of society, it was important to take account of the fact societal views are influenced by religion and culture. This should be the determinative factor;
3. In the premises, the relevant community would be the "Afghan/Iranian/Muslin community", having regard to the extent of immigration from Afghanistan to the UK and taking particular account of the extent to which the views of society in Afghanistan are reflected in a legal framework; and
4. That the Afghanistan Penal Code 2018 criminalises homosexuality and reflects the views of a significant section of the Afghan community living in England and Wales.

D argued that [28]:

1. The meanings C relied on did not involve any suggestion of hypocrisy, dishonesty (such as C lying about his sexuality), or any form of impropriety;
2. Without something more than what was actually said, the meanings relied on by C were not defamatory, as being gay or in a gay relationship was not contrary to common, shared values in UK society;
3. The fact that some individual members of society think less of someone who is gay was irrelevant; and
4. Legislative and case law references to same-sex couples acted as a powerful indicator of societal views on homosexuality in the UK.

The Decision

The judge did not accept C's submission that it was appropriate to focus on views of a particular section of society or on Afghanistan's Penal Code.

The judge acknowledged and accepted that there was no modern authority within the

jurisdiction that decided whether the meanings on which C relied were defamatory at common law. There was a time when it would be defamatory, for example in the case where a woman was described as a lesbian (*Kerr v Kennedy* [1943] 1 KB 409) and where it was implied Liberace—the famous pianist/entertainer—was gay.

However, the judge noted societal views had changed. In the Australian case of *Rivkin v Amalgamated Television Services Ptd Ltd* [2001] NSWSC 432 (SC), Bell J accepted that legislative changes (prohibiting discrimination on grounds of sexual orientation) meant “it was no longer open to contend that the shared social and moral standard with which the ordinary reasonable member of the community is imbued include that of holding homosexual men... in lesser regard on account of that fact alone”. In Massachusetts, USA, it was no longer defamatory to describe people as gay (*Albright v Morton* 321 F Supp 2d 130 (D Mass 2004)).

The judge went on to consider developments in UK law, which he said showed a seismic social shift. Examples given that showed this included, *inter alia*, decriminalisation of homosexuality, introduction of equality protections for gay people, removal of policies that had permitted discharge from the armed forces on grounds of homosexuality, allowing same-sex couples to adopt, and legally recognising same-sex civil partnerships and marriages. In the UK courts, a range of decisions demonstrated a recognition that same-sex couples are entitled to the same respect and dignity as opposite-sex couples [36]-[37]. Recent decision in the UK courts showed it was in fact defamatory to suggest a person expressed views or otherwise behaved in a way that was homophobic [38].

The court recognised that there are people who hold homophobic views in the same way that there are racist people, but those views are not reflective of right thinking members of society generally [39]. In light of the changes since the 1960s, there was no longer scope for argument that right thinking members of society generally would think less of someone because of sexual orientation or because they are in a same-sex relationship. This was something foreshadowed in *Gatley on Libel and Slander* (13th edn, 2024) at [2-025].

The court found there were, therefore, no reasonable grounds for bringing the claim and accordingly the claim form and particulars would be struck out and summary judgment entered in D’s favour.

What about serious harm?

As the meanings relied on by C were found to not by themselves capable of being defamatory in the circumstances, the issue of harm did not need to be decided but was nonetheless briefly addressed.

The court found that C did not give any particulars of actual harm sustained from publication in the jurisdiction. The particulars C did give (of going into hiding from fear of the Taliban) would only amount to subjective fears on C’s part—as opposed to demonstrating serious harm

to his reputation by reason of publication in the jurisdiction—which would not be sufficient to found a claim in defamation.

Conclusion

The decision makes clear that describing someone as gay in the jurisdiction is not by itself capable of being used to found a claim in defamation. However, the court has left two matters open where being described as homosexual or gay could be relied on to found a claim in defamation:

1. Where the jurisdiction of publication relied on is one where homosexuality is generally frowned upon by its society and/or criminalised; and/or
2. Where the publication is saying something more than just that the person is gay, such as suggesting the person had been lying about their sexual orientation.

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