

IN THE HIGH COURT OF JUSTICE

**Claim Nos. QB-2020 000799
QB-2020-000801**

KING'S BENCH DIVISION

MEDIA AND COMMUNICATIONS LIST

BETWEEN:-

ZOË HARCOTBE PhD

First Claimant

-and-

**(1) ASSOCIATED NEWSPAPERS LIMITED
(2) BARNEY CALMAN**

Defendants

AND BETWEEN:-

DR MALCOLM KENDRICK

Second Claimant

-and-

**(1) ASSOCIATED NEWSPAPERS LIMITED
(2) BARNEY CALMAN**

Defendants

STATEMENT IN OPEN COURT

Solicitor for the Claimants

1. My Lord/Lady, I appear for the Claimants in this matter, Zoë Harcombe PhD and Dr Malcolm Kendrick.
2. Dr Harcombe is a professional researcher, writer, and public speaker on diet, health and nutritional science. She is a graduate of the University of Cambridge in economics and mathematics and has a PhD in public health nutrition. Her thesis was titled "*An examination of the randomised controlled trial and epidemiological evidence for the introduction of dietary fat recommendations in 1977 and 1983: A systematic review and meta-analysis.*"

3. Dr Kendrick is a general practitioner, writer, and lecturer. As a medical practitioner, he worked in general practice, intermediate care and out of hours for two NHS Trusts in Cheshire, the East Cheshire NHS Trust and the Central Cheshire Integrated Care Partnership (CCICP). As a writer and lecturer, he has a specialist interest in the epidemiology of cardiovascular disease. He has authored books including "*The Great Cholesterol Con*" (2008), "*Doctoring Data*" (2015), "*A Statin Nation: Damaging Millions in a Brave New Post-Health World*" (2018) and "*The Clot Thickens: The enduring mystery of heart disease*" (2021). He was an original member of the Centre for Evidence Based Medicine at the University of Oxford and of The International Network of Cholesterol Sceptics, the latter comprising scientists, doctors and researchers who share the belief that cholesterol does not cause cardiovascular disease. He has also worked for the European Society of Cardiology and the National Institute for Clinical Excellence.
4. In the course of their research and publications in their specialist fields, both of the Claimants have, to different degrees, contributed to ongoing public debate concerning the use and efficacy of statins, the cholesterol-lowering drugs widely prescribed for cardiovascular disease.
5. The First Defendant, Associated Newspapers Limited, is the publisher of *The Mail on Sunday*, and the operator and publisher of the *MailOnline* website and associated applications. The Second Defendant, Mr Calman, is the Head of Health for *The Mail on Sunday*, having formerly been the publication's Health Editor.
6. On 3 March 2019, the Defendants published in *The Mail on Sunday* a series of articles as part of a special report under the headlines "*Deadly Propaganda of the Statin Deniers*", "*Statin Deniers are putting patients at risk, says Minister*", referring to the then Secretary of State for Health and Social Care, Matt Hancock MP, and "*There is a special place in hell for the doctors who claim statins don't work*". The articles were published in similar form online on the *MailOnline* website on 2 March 2019, where they remained until June 2024. The articles featured prominent photographs of both Dr Harcombe and Dr Kendrick, who were identified as so-called "*statin deniers*" who published "*fake news*" about statins.
7. Several paragraphs of the articles included reference to remarks given to the Defendants by Mr Hancock, known as "the Hancock Statement". Other paragraphs referred to a scientific paper produced primarily by researchers working at the London School of Hygiene and Tropical Medicine in the University of London and published in the British Medical Journal known as "the LSHTM Paper".

8. Following substantial pre-action correspondence aimed at resolving the Claimants' complaint without the need for litigation, the Claimants issued proceedings for libel against the Defendants in February 2020. In answer to the Claimants' claims, the Defendants relied upon substantive defences of honest opinion; truth; reporting privilege under Section 15 of the Defamation Act 1996 (in respect of the Hancock Statement); reporting privilege under Section 6 of the Defamation Act 2013 (in respect of the LSHTM Paper); and publication on a matter of public interest.
9. The Claimants' claims went to trial in July 2023 to determine a series of preliminary issues, including the public interest defence; privilege; meaning; whether the publications contained defamatory statements of fact or of opinion; and if and insofar as opinion, whether Mr Calman had held these opinions. A finding that he did not would invalidate a defence to the claims of honest opinion.
10. The Court was not asked to determine, nor did it determine, who is "right" in the statin debate.
11. In a Judgment of 25 June 2024, the Court dismissed the Defendants' public interest defence in its entirety. The Judgment itself may be found in full on the National Archives and Bailii websites. In relation to the way in which the Defendants had gone about the preparation of the articles, the Court found that there had been a number of significant failings in the Defendants' approach.
12. The Court held that Mr Calman was an honest witness who had approached his work honestly, and an allegation of malice against him was dismissed. A key issue for the Court was whether or not Mr Calman reasonably believed that it was in the public interest to publish the articles. In that context the Court assessed Mr Calman's journalistic approach: "*what inquiries were made, what did [Mr Calman] know, what information did he receive, what opportunity did he give to the Claimants to comment and respond to the allegations to be made against them and how ultimately did he present all of this material in his Articles?*"
13. After a detailed analysis of how Mr Calman went about writing his story, the Court concluded amongst other things:
 - (i) The use made by the Defendants of the Hancock Statement "*gave readers a completely misleading impression of what Matt Hancock had said*" and "*Mr Calman knew that*". This was described as a "*serious error*" on the Defendants' part.

- (ii) The portrayal of a patient “*case study*” used in the coverage – which referred to a heart attack patient at Hammersmith Hospital in London identified as “Colin” – was “*misleading*”.
- (iii) That “*in the context of the public interest defence, perhaps the most serious omission of Mr Calman was his treatment of the Claimants’ right-to-reply responses*”. The failure to consider the responses and the materials in them properly was said by the Judge to have “*rendered the right-to-reply process hollow and superficial*”, and the Judge also described Mr Calman’s attitude towards the Claimant’s responses as “*dismissive*”.
- (iv) That Mr Calman had allowed the experts who had helped him with his story to have “*a very significant*”, and “*undue*”, influence over the editorial process and the terms of the articles.
- (v) That “[*w*]hilst there is an important area for editorial judgment in what is reported in any article, it is not in the public interest for a publisher to misstate (or ignore) the evidence it has available. That remains the case even if the underlying material or evidence is complex.”

14. Informed by these conclusions, the Court held that although Mr Calman believed that publishing the articles was in the public interest, the Defendants had failed to demonstrate that this belief was, in all the circumstances, reasonable, with the consequence that the Defendants’ public interest defence failed. Dr Harcombe and Dr Kendrick welcome that finding, since each of them believes, and has always believed, that the debate about the balance of the benefits and harms of statins remains “*alive and kicking*” as Dr Fiona Godlee, a former editor-in-chief of the *British Medical Journal*, put it¹, and that accordingly where the press wishes to criticise individuals who hold non-mainstream views on statins the public interest demands that the scientific evidence supporting their views should be properly and fairly scrutinised and presented to their readership, not rejected out of hand. They do not believe that the Defendants treated them fairly in the articles of which they complained.

15. At trial, the Court found that the articles defamed the Claimants by conveying to readers the defamatory meaning that each of Dr Harcombe and Dr Kendrick had repeatedly made public statements about cholesterol and statins that they knew to be false; that there were strong grounds to suspect that each had made these knowingly false statements motivated

¹ [https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(17\)30721-3.pdf](https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(17)30721-3.pdf)

by the hope that they would benefit from doing so either financially or from enhanced status; and the direct effect of the publication of these knowingly false statements by Dr Harcombe and Dr Kendrick was, first, to cause a very large number of people not to take prescribed statin medication; and second, thereby to expose them to a serious risk of a heart attack or stroke causing illness, disability or death; that in consequence, each of Dr Harcombe and Dr Kendrick was rightly to be condemned as a “*pernicious liar*”, for whom there was “*a special place in hell*”, whose lies, deadly propaganda, insidious fake news, scare stories, and crackpot conspiracy theories, had recklessly caused a very large number of people to stop taking statins, risking needless deaths and causing harm.

16. These allegations were, and are, completely untrue. In particular, neither Dr Harcombe nor Dr Kendrick is a challenger or a ‘denier’ of scientific fact, or a purveyor of lies about cholesterol or statins. To the contrary, they have always been passionate believers in evidence-based science and open scientific debate, who defend the principle that impartiality and objectivity are called for in the evaluation of scientific evidence, including in relation to the use and prescription of statins. Accordingly, the articles’ allegations went to the core of the Claimants’ personal and professional reputations, by directly impugning their academic integrity and motivation, and attributing to them a risk of having caused a serious public health scare, on a scale said to have been worse than the infamous MMR vaccine scandal.
17. In particular, to have such allegations made of a dedicated practising GP, Dr Kendrick, was a particularly serious and unjustified slur.
18. In fact, neither of the Claimants has knowingly made false statements as alleged by the articles. Indeed, Mr Calman acknowledged in his evidence at trial that he did not intend for the articles to allege dishonesty on the part of Dr Harcombe or Dr Kendrick, nor had he seen anything in his research that would suggest Dr Harcombe and Dr Kendrick were dishonest. It is therefore highly regrettable that articles were published by the Defendants which went so far beyond what they said they had intended in terms of a critique of the Claimants and that this serious error on their part was not recognised by them sooner than it was. The Claimants are appalled that, until they were removed from the MailOnline website in June 2024, these grave libels continued to be published there – in unqualified and unamended form, despite requests by them for qualification and amendment – for more than five years.
19. Furthermore, there is no evidence linking any published views of Dr Harcombe or Dr Kendrick about statins to a reduction in statin uptake, let alone any evidence linking their published views to illness, disability or death consequential upon a reduction or cessation

of usage of statins. Specifically, the LSHTM Paper, to which the articles referred, did not have as its subject matter anything that Dr Harcombe or Dr Kendrick had said or written, but rather was concerned with a general debate on statins taking place in the mainstream media following publication of two papers in the British Medical Journal in October 2013 which were not authored by either Dr Harcombe or Dr Kendrick. The LSHTM Paper simply should not have been deployed against Dr Harcombe or Dr Kendrick by the Defendants in the way it was; there was no justification for doing so.

20. Finally, the books that Dr Harcombe has written are about diet, not about cholesterol or statins. She does not blog regularly about cholesterol and statins. She has not – and there were no grounds for alleging, contrary to what was implied in the articles, that she had – profited financially from having a stance on statins. As for Dr Kendrick, while he has written several books, articles, blogs and scientific papers about statins, there were no grounds to allege in his case either that he had profited financially from his stance on statins. At the time he wrote and published the various books, articles and papers about statins, he was working in full time employment as a GP, and that was always his primary concern and almost exclusively his source of income. He has derived only modest income from his books and none at all from his articles, blogs and scientific papers.
21. In its Judgment, the Court stated that in consequence of its decision on the preliminary issues the Defendants' pleaded defences of truth and honest opinion could not be maintained in the form in which they had been advanced. The Defendants were afforded an opportunity to amend their Defence to bring it in line with the decisions made on the preliminary issues.
22. The Defendants did not seek to do so, but instead offered to settle the Claimants' claims in their entirety on terms which the Claimants accepted. As well as undertaking not to repeat those allegations that the articles were found by the Court to bear, the Defendants have published an apology both online and in the print edition of *The Mail on Sunday*, which accepted that the allegations are untrue and ought not to have been published. The Defendants have also agreed to pay each of the Claimants very substantial damages, in addition to their legal costs.
23. On this basis, and on the footing that this statement will be read publicly on their behalf in open court, Dr Harcombe and Dr Kendrick are satisfied that they have secured proper vindication in this matter, and feel they are able finally to draw a line under these proceedings.