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The defamation 'Drag Race' against Laurence Fox

On 6 October 2020, Drag Race UK participant Crystal publicly [announced](#) her intention to pursue a defamation action against actor and [aspiring politician](#) Laurence Fox after calling her a 'paedophile' on Twitter.

The comment was made in relation to an earlier tweet posted on Sainsbury's account, which expressed support for Black History Month. Fox accused the supermarket of promoting '[racial segregation and discrimination](#)' and encouraged people to boycott the groceries retailer. Crystal criticised Fox's tweet, writing: 'Imagine being this proud of being a racist! So cringe. Total snowflake behaviour.' In response, Fox [tweeted](#): 'Says the paedophile.'

The reality show contestant claimed that Fox's comment on the microblogging platform amounted to 'homophobic defamation'. In her statement, she said: 'An accusation of paedophilia is one of the oldest homophobic tropes, and it was very shocking to have that levelled at me, not just by Mr Fox, but also his many followers who believed him. I may have had to endure homophobic bullying as a child, but I will not tolerate it as an adult.'

Crystal is the second individual seeking to bring a legal action against the actor over comments on the social networking platform. Simon Blake, deputy chair of the LGBT rights organisation Stonewall, also [advised](#) his lawyers to begin defamation proceedings against Fox, after the actor called him a 'paedophile' as well. Earlier, Blake had challenged him over his Sainsbury's tweet by writing 'What a mess. What a racist t**t', to which Fox [replied](#): 'Pretty rich coming from a paedophile.'

Fox subsequently deleted his tweets, but screenshots continued to circulate online. He appears to have regretted posting these comments. In a Channel 5 interview, he [stated](#): 'It was in response, possibly, to 10 months now of being called a racist by people on Twitter, which I think is a career-ending slur, actually, and I find very hurtful. If the point is that words mean nothing, seeing as it's a totally baseless allegation and is entirely in opposition to what my feelings are, I thought, you know what, if words meaning nothing nowadays, I can call you anything I want in return. Was it my finest hour? No.'

Defamation is committed by publishing a statement which lowers the reputation of the person referred to. In order to succeed in an action for defamation, the claimant must prove that the statement complained of was defamatory; that the statement was published and referred to the claimant; and that the publication of the statement has caused or is likely to cause serious harm to the claimant's reputation. Whilst it is well-arguable that Fox's tweets could provoke strong feelings against Crystal and Blake, the introduction of a serious harm threshold is one of the major changes introduced by the Defamation Act 2013 and is likely to prove a challenge when/ if these cases come before the court.

The early judicial opinion in *Cooke and Anr v MGN Ltd and Anr* [\[2014\] EWHC 2831](#) suggests that in cases involving grave imputations serious harm will be so obvious that the need for evidence can be dispensed with, such as where an individual was wrongly accused of being 'a terrorist or a paedophile' in a national newspaper (Mr. Justice Bean, para. 43). More recently, however, the Supreme Court held in *Lachaux v Independent Print Ltd and Anr* [\[2019\] UKSC 27](#) that, in assessing whether a publication has caused serious harm to reputation, the meaning of the words and their inherent tendency to do harm are not the sole factors. As Lord Sumption stated in para. 14:

The reference to a situation where the statement 'has caused' serious harm is to the consequences of the publication, and not the publication itself. It points to some historic harm, which is shown to have actually occurred. This is a proposition of fact which can be established only by reference to the

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impact which the statement is shown actually to have had. It depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated. The same must be true of the reference to harm which is 'likely' to be caused. In this context, the phrase naturally refers to probable future harm.

So, the threshold has been raised and its application is to be determined with reference to a two-pronged test, i.e. the meaning of the words, plus their actual impact. The Supreme Court recognised, nevertheless, at para. 21 of the decision that inferences of fact can still be drawn from the circumstances and context of the publication, including factors like the scale of publication and the gravity of the allegation(s). The same court confirmed the importance of context in *Stocker v Stocker* [2019] UKSC 17, where the fact that publication was in a Facebook post was critical, as Facebook is 'a casual medium; it is in the nature of conversation rather than carefully chosen expression; and that it is pre-eminently one in which the reader reads and passes on' (Lord Kerr, para. 43). Twitter is not too dissimilar. One of the messages sent is that in many instances not much thought is invested by people publishing on forums like these, and so far as defamation is concerned, ordinary readers on such platforms recognise this and are not overly analytical: 'People scroll through it quickly. They do not pause and reflect. They do not ponder on what meaning the statement might possibly bear. Their reaction to the post is impressionistic and fleeting' (Lord Kerr, para. 44; see also *Monir v Wood* [2018] EWHC 3525, para. 90, Mr. Justice Nicklin).

A similar approach had earlier been taken in *Monroe v Hopkins* [2017] EWHC 433, in which Twitter was seen by Mr. Justice Warby as 'a conversational medium' to which 'an impressionistic approach is much more fitting and appropriate' (para. 35), taking into account the immediately surrounding contextual material. But, would it be fair to say that crude, provocative and controversy-seeking messages on Twitter are not often taken seriously because they are considered by ordinary readers 'mere abuse' or are perhaps expected in a forum of this nature? And, does it follow that the harm suffered will often be less serious? Every case depends on its own facts, but in *Monroe*, Mr. Justice Warby had little difficulty in accepting that the absence of evidence that a tweet was believed was not evidence of a lack of harm (para. 71).

Ultimately though, does it really make a difference if someone is accused of paedophilia in a 'casual' social medium like Twitter or a national newspaper? In our multi-mediated world, the so-called '[trial-by-media](#)' – which often involves a sensationalist, moralistic speculation over the actions and motives of those who find themselves accused in the 'court of public opinion' – extends beyond news stories produced by professional journalists to also cover claims made on social media. More importantly, the age of 'fake news', the Jimmy Savile scandal and the #MeToo movement is also an [age of mistrust](#) towards society's institutions (including traditional media organisations), especially when the matter at issue is paedophilia. From this perspective, social media have the power to challenge the top-down information flow in contemporary democratic societies and therefore their ordinary users might attribute more importance to content like Facebook posts or tweets than they are often assumed to.

With regard to how a tweet containing accusations of paedophilia could be interpreted, it is also worth briefly noting here the similarities between Fox's case and that of the equally temperamental Tesla CEO Elon Musk, who was sued for defamation in the USA by a British cave explorer, Vernon Unsworth, after Musk called him a '[pedo guy](#)' on Twitter in 2018. Musk claimed at the time that he used the term as a generic insult meaning 'creepy old man' and not with the intention to literally accuse Unsworth of paedophilia – an explanation that was accepted by the Los Angeles court which [cleared](#) Musk a year later. However, coming back to Fox's tweets, an assessment of the harm they could cause to the claimants' reputation

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would be deficient without a careful consideration of their identities and, particularly, their sexuality. Targeted towards two members of the LGBT community, Fox's claims acquire an additional layer of meaning (and by extension, a greater capacity to harm) as they allude to the [homophobic myth](#) conflating homosexuality with child predation and paedophilia.

Post-Lachaux case law [indicates](#) that solely relying on the inherent tendency to cause harm may not be optimal for the success of a libel claim. Adducing as much evidence as possible can maximise a claimant's likelihood of success. This could include: first, reliable evidence as to the extent of publication. Although Fox's tweets were deleted, a sound assessment can still be made of the scale of publication through a combination of the number of his followers, the number of profile visits to his 'home page' and Twitter analytics. Hence, efforts should be made prior to the deletion of the tweets to obtain and preserve the analytics data regarding publication. The importance of Twitter analytics was noted by Mr. Justice Warby in *Monroe* (para. 84). And, even if a tweet is deleted, 'what matters [...] is not the period of time for which a person is exposed to the message but the impact the message has' (*Monroe*, para. 71). Second, evidence of serious harm in the form of abusive tweets from other Twitter users who had read the tweet complained of can also be helpful, so long as the alleged abuse is causally linked to the offending tweet and reflects harm to reputation (see *Monroe*, para. 71). Third, evidence of substantial further indirect ("grapevine") dissemination of the allegations complained of would be useful; as *Fentiman v Marsh* [\[2019\] EWHC 2099](#) suggests, the likelihood of repetition of the allegation beyond the original publishers may be 'typically' inferred in cases involving social media (para. 55). Finally, evidence of the statement's adverse effect on the way right-thinking members of society generally would treat the claimant could strengthen the serious harm argument, but the absence of direct evidence of adverse impact does not of itself mean a claim should fail. As noted earlier, Lord Sumption in *Lachaux* referred to the court's ability to draw inferences and to the 'inherent probabilities' (para. 21).

At the time of writing, letters of claim have not been issued. If, however, the cases eventually reach the court, a difficult evidential burden will have to be shouldered. In the absence of such evidence, serious harm arguments may be open to question and weakened.

Alexandros Antoniou and Dimitris Akrivos
School of Law, University of Essex
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