Do Words Have a Price?

This month we saw food blogger Jack Monroe winning a case against the controversial Mail Online columnist Katie Hopkins. The Court decided Hopkins must pay £24k libel damages over tweets as her words caused 'serious harm' to Monroe and her reputation.

The posts from May 2015, told the high court in London that the messages from Hopkins had led to death threats, and said their legal dispute had been an "unproductive, devastating nightmare".

Monroe tweeted: "It's taken 21 months but today the High Court ruled that Hopkins statements to/about me were defamatory. I sued her for libel and I won."

With mixed views on the case and its end result, we decided to gain some thoughts on to whether "words have a price", especially if it comes from a known and influential individual in the media eye.

If words really do "have a price", we ask: are these fines fair and the most appropriate form of action? What else could be done to prevent big names from causing 'serious harm' with their words? What clarifies as 'serious harm' and is it all just a little too exaggerated and unnecessary?

How to deal with Twitter spats: Katie Hopkins' expensive mistake

By Giles Crown & Oliver Fairhurst, Lewis Silkin LLP

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Much ink has been spilled about the Twitter-spat turned libel litigation between the "rent-a-gob" columnist Katie Hopkins and food-blogger-turned-cookbook author Jack Monroe. Most commentary has borne a heavy hint of schadenfreude as many have taken great pleasure in seeing Hopkins getting her comeuppance. However, from a PR and legal angle, the case has some interesting lessons.

The Dispute

Hopkins mixed up New Statesman journo, Laurie Penny (who had made some comments about political vandalism of a war memorial) and Monroe. Hopkins tweeted "@MsJackMonroe scrawled on any memorials recently? Vandalised the memory of those who fought for your freedom. Grandma got any more medals?"

A Twitter spat ensued, and Monroe asked Hopkins to delete the tweet, issue a public apology and make a donation of £5,000 to a charity. Hopkins deleted the tweet, but followed up with another tweet asking "Can someone explain to me – in 10 words or less – the difference between irritant [Penny] and social anthrax [Monroe]."

Monroe's lawyers wrote to Hopkins and offered to settle the dispute essentially on the same basis as Monroe had suggested, except this time including legal costs. While Hopkins retracted the allegations, she did not accept the offer to settle. Monroe issued proceedings, and the case came before Mr Justice Warby.

The Decision

Warby held that both of the tweets were defamatory. This is important: in 2014, Parliament introduced an additional threshold requirement that a statement also needs to have caused (or be likely to cause) "serious harm". At the time of writing, there is an appeal awaiting judgment (in which Lewis Silkin are instructed) addressing exactly what is required to show "serious harm" (Lachaux v AOL). However, in the meantime, there have been a series of judgments where the bar has been set rather low.

The effect of all this (subject to the Lachaux appeal) seems to mean that if a person makes a negative statement about another person which is relatively serious (not necessarily "really serious" or "grave") and is perceived by that person as being serious, there is a good chance it will pass the threshold. The whole purpose of the "serious harm" reform was to weed out trivial claims, but this case goes to show that Twitter spats have real potential to lead to litigation.

So, what should Twitterers take away from this sorry debacle? Well, here are Lewis Silkin's top tips:

1. Think before you tweet. Tweets are not some special category of communication; a statement on Twitter can have the same consequences as an article in a newspaper – potentially greater consequences given the potential for 'going viral'.

2. Think before you delete. Warby criticised the fact that Hopkins deleted the tweet before obtaining the relevant Twitter analytics.

3. Act quickly. While it might seem like shameless self-promotion, there is real value in obtaining specialist legal advice promptly. A speedy apology or correction can blunt any claim and makes it much less likely that a complainant will 'go legal'.

Twibel: The American View

By Bob Latham, Partner at Jackson Walker L.L.P., a Globalaw Member Firm

Over the years, American constitutional, statutory and common law regarding defamation has proven adaptable to many forms of media and communication. So, it is with libel actions brought over comments made on Twitter, sometimes colloquially known as "twibel".

Even before Twitter, public statements could be nasty, distasteful, provocative and full of hyperbole, but the target of those comments would not have a remedy unless it could be proven that there had been a false statement of fact (as opposed to opinion), that the statement was indeed defamatory, that it caused reputational harm, and that the speaker acted with the requisite degree of fault. Two of the recurring themes that arise in any case brought over a rant on Twitter are whether there has been a false statement of fact - that a reasonable reader would understand to be fact as opposed to opinion – and whether there was any incremental harm caused to someone who was the subject of the tweet amidst the cacophony of noise that is Twitter.

It has always been appropriate for American Courts to examine the context in which an allegedly libellous statement is made and how a reader would process that statement in that context. As one American court put it in a case involving actor James Woods: "Twitter is a social media platform known for hyperbole and insult." In another case where a user went on a Twitter rant against a supplier of nutritional products, an American court stated that the "literary or social context of these tweets does not imply factual content." That is a legalistic way of saying "Come on, man. It's Twitter!" Twitter followers are used to seeing invectives hurled by people with an axe to grind and are able to process such information accordingly. Simply because there might be one idiosyncratic reader who believes some preposterous hypothesis presented on Twitter or who processes a colourful opinion as fact, that does not make such a tweet actionable, nor does it necessarily cause any reputational harm to the person or entity who is the target of the missive.

This does not necessarily make Twitter the Wild, Wild West of social media, where absolutely anything goes. But it does require a rational assessment of the context of the communication. Again, this is nothing new in American law. Statements made on the op-ed pages of newspapers were always viewed in a different context than a front page, factual news article. Thus, attempting to find a remedy for every over-the-top tweet is as unnecessary as it is impractical.