Rantzen: A byword for see no evil.

The Express/judgmental.org.uk

Esther: I don’t lie to Editors.

TELEVISION personality Esther Rantzen yesterday angrily denied

that she was a liar.

Trembling with emotion, she said in the High Court: “It is not my habit to lie to newspaper Editors for whatever purpose.”

The outburst from Miss Rantzen, 51, presenter of that’s Life and founder of Childline, came during the third day of her libel action against The People. She/is suing over articles which said she kept quiet about an alleged child abuser because she owed him a favour.

Charles Gray, the paper’s QC, accused her of making false claims to Richard Stott, then editor of The People, to stop him publishing the story linking her to suspected pervert Alex Standish.

Miss Rantzen demanded: “You are saying I lied?”.

Mr Gray replied: “I am saying you made statements that were false…”

Miss Rantzen answered angrily: “You are saying I lied to Mr Stott”. “It is inconceivable I would ring up Mr Stott as editor of The People and lie to stop him publishing an expose about Alex Standish.”

She insisted she phoned because she believed a police investigation into Standish would be “blown out of the water” if The People printed its stoiy.

She said the Department of Education and Science, also investigating teacher Standish, had asked if the That’s Life team could do anything to stop The People running the story on February 3.

Miss Rantzen said she was always concerned about Standish who in her view was not fit to be in charge of boys aged 7-16.

”I thought he could have been a very dangerous man,” she said. “It was absolutely crucial that the police be allowed to

discover whether that was the case."

A recording of the conversation between Miss Rantzen and Mr Stott was played to the court.

Miss Rantzen, who said she had not known the call was being taped, complained that Mr Stott had shouted at her and was belligerent.

She said she would have preferred to sit down and discuss the matter properly rather than have a quick phone call in a stressed 15-minute break from rehearsals.

She said: "If I had realised I was going to become the major target of his newspaper, I would have asked him if we could do that."

The trial continues.

Rantzen v Mirror Group Newspapers (1986) Ltd. [1993] EWCA Civ 16 (31 March 1993)

This judgment: Home England and Wales Court of Appeal (Civil Division) DecisionsRantzen v Mirror Group Newspapers (1986) Ltd. [1993] EWCA Civ 16 (31 March 1993)

Cite as: [1993] EWCA Civ 16, [1993] 4 All ER 975

This judgment is cited by the following judgments:

- De Rossa v. Independent Newspapers [1999] IESC 63; [1999] 4 IR 432 (30th July, 1999)
- O'Brien v. Mirror Group Newspapers Ltd. [2000] IESC 70 (25th October, 2000)

This judgment cites the following other judgments:

- [1972] AC 1027
- [1987] 1 WLR 1248
- [1990] 1 AC 109
- [1991] 1 QB 1
- [1991] 1 AC 696

1986-11-06

		Neutral Citation Number: [1993] EWCA Civ 16
		Case No:

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
(Mr. Justice Otton)

		Royal Courts of Justice
		31st March 1993

B e f o r e :**LORD JUSTICE NEILL**
LORD JUSTICE STAUGHTON
and
LORD JUSTICE ROCH

	ESTHER LOUISE RANTZEN	**Respondent (Plaintiff)**
	and	
	(1) MIRROR GROUP NEWSPAPERS (1986) LTD.	
	(2) BRIAN RADFORD	
	(3) RICHARD STOTT	

	(4) MIRROR GROUP NEWSPAPERS PLC	**Appellants (Defendants)**

_____(Transcript of the Shorthand Notes of the Association of Official Shorthandwriters Limited, 2 New Square, Lincoln's Inn, London WC2)._____MR. RICHARD HARTLEY QC and MR. GEOFFREY SHAW QC
(instructed by Messrs Herbert Smith) appeared on behalf of the Respondent (Plaintiff).
MR. CHARLES GRAY QC and MISS HEATHER ROGERS
(instructed by Mr. Cruddace Esq., Solicitor to Mirror Group Newspapers) appeared on behalf of the Appellants (Defendants).

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JUDGMENT (Approved)
LORD JUSTICE NEILL: This is the judgment of the Court.
On 16 December 1991 after a trial in the Queen's Bench Division before Mr. Justice Otton and a jury Miss Esther Rantzen was awarded the sum of £250,000 as damages for libel in respect of articles published in The People newspaper on Sunday 3rd February 1991. It will be seen that the action came on for trial with commendable speed.
The Defendants in the action were the publishers of the newspaper, Mr. Richard Stott, the editor of The People, and Mr. Brian Radford, a journalist who wrote the two main articles complained of.
The articles of which Miss Rantzen complained were

(a) An article written by Mr. Radford which was published on the front page of The People under the headline "ESTHER AND THE SEX PERVERT TEACHER" "A People Investigation".

(b) An article by Mr. Radford published on pages 4 and 5 of The People under the headline "ESTHER AND THE PERVERT SHE DIDN'T EXPOSE".

(c) An article by another journalist published on page 5 of The People under the headline "Her Hot Line to save kids from sex abuse".

(d) The leading article published on page 6 of The People under the heading "VOICE OF THE PEOPLE" "The wrong line, Esther."

For the purposes of this judgment it is not necessary to set out the text of all four articles. It is sufficient to reproduce the text of the article on the front page and the leading article.
The article on the front page contained a further heading "She knew horrifying secret but didn't tell his school." The article then continued:

"A teacher who helped T.V.'s Esther Rantzen to expose child abuse at a boys' school hid a horrifying secret. He was a pervert himself.

Esther knew the truth about depraved religious studies master Alex Standish.

But the That's Life star, who set up ChildLine to protect victims from abuse, didn't tell the school where Standish

taught about the danger he posed to pupils. Nor did she warn any of the parents.

Esther wasn't the only one to keep quiet. She and the police had known about Standish for two years. The Department of Education also knew. But nothing was done to stop Standish teaching.

When Esther spoke to The People, she said that Supt. Mike Hames, Head of Scotland Yard's Obscene Publications Squad, had asked her: Please leave it to me.' She was angry at our decision to publish our investigation and suggested it would jeopardise police enquiries into Standish.

But yesterday Mr. Hames backed The People. He told us: 'I'm totally behind what you are doing.'"

On the left hand side of the article on the front page was published a photograph of Miss Rantzen with the words "ANGRY: Esther objected to our report, saying it could endanger police enquiries."
On the right hand side of the article was published a photograph of Mr. Alex Standish with the words "TEACHER: Depraved religious studies master Standish enjoyed wearing uniforms."
Underneath the article the following words were published:
"THIS MAN SHOULDN'T BE ALLOWED NEAR KIDS – Pages 4 & 5."
The leading article on page 6 was in these terms:

"When Esther Rantzen set up ChildLine, she did so to protect children from adult abuse.

Assaulting children is the nastiest of crimes. Thanks to ChildLine hundreds, perhaps even thousands, have been spared the ongoing agony of ill-treatment.

Many others at risk can take comfort in knowing that help is only a phone call away and for that Esther and ChildLine deserve our praise and our gratitude.

That was why we were astonished to discover Esther's attitude to the sordid secrets of teacher Alex Standish. Standish helped Esther and her 'That's Life' team to expose the goings-on at Crookham Court boys' school and bring the guilty men to justice. Yet, as we reveal today, Standish is a pervert himself, a sadistic fantasist, who is unfit to have any child in his care. And Esther knew it.

But when he got another job at a boys' school in Orpington, Kent, neither Esther nor the Thames Valley Police, who also knew about him, felt they should tell the school authorities.

The police argue that because there was no evidence of a criminal offence they were not in a position to warn Standish's present employers of his sick taste in amateur pornography.

Esther has no such excuse. And what she did, or rather failed to do, was a gross error of judgment. Her defence was that she and the police were waiting for worse to happen. Whether it did or didn't is immaterial.

ChildLine is there to look after children. Not to use them as bait for a paedophile.

What The People publishes today will ensure that Standish never teaches children again.

The last question put to Esther by the Editor was what would SHE say to parents, if, as a result of her inaction, a child had been abused?

Three times she was asked. Three times she wouldn't answer.

WHY? BECAUSE SHE COULDN'T.

NO HIDING PLACE FOR VILLAINS.

Just over a year ago, we branded two policemen as cowards for failing to help three colleagues from being beaten up by a

drunken mob. The two P.C.’s sued us for libel.

Last week a High Court jury decided we were right and they were liars.

The People is proud of its motto to be frank, fearless and free and we will continue to expose public servants who fail in their duty.

CON-MEN, LIARS, HUMBUGS AND HYPOCRITES – YOU HAVE BEEN WARNED.”

In the pleadings served on behalf of Miss Rantzen it was alleged that the articles by Mr. Radford on the front page and on pages 4 and 5 of The People bore the following meanings:

(a) That the plaintiff, knowing that Alex Standish was guilty of sexually abusing children, protected Standish by keeping that fact a secret because of his past services to her as confidential assistant in preparing a programme about the sexual abuse of children at Crookham Court School, thereby abandoning all her moral standards and in particular her publicly professed concern for abused children;

(b) That the plaintiff, knowing that Alex Standish was guilty of sexually abusing children, and notwithstanding her position as founder of the ChildLine Service for sexually abused children, took no action at all in respect of what she knew.

(c) That the plaintiff knowing since 1988 that Alex Standish was guilty of sexually abusing children at Crookham Court School and knowing since early 1989 that he was teaching at Cannock School, took no action in respect of the risk thus arising at Cannock School.

(d) That the plaintiff's public statements and activities on behalf of sexually abused children, given her misconduct and culpable admissions as set out above, were insincere and hypocritical.

(e) That the plaintiff untruthfully told the Editor of The People that publication of a story about Alex Standish would blow Superintendent Hames' inquiry into Alex Standish out of the water, when, she well knew, the truth was that Superintendent Hames would welcome such a story; and that she told this lie in an attempt to avoid publication of the facts of her misconduct and culpable admissions as set out above.

The Defendants served a Defence setting out pleas of justification and fair comment. In addition the Defendants strongly disputed the assertion that the article meant that Miss Rantzen had protected Mr. Standish as a reward for his help. The judge, however, and later the Court of Appeal on an interlocutory appeal, upheld the submission advanced on behalf of Miss Rantzen that this was a possible meaning which should be left to the jury. In the Defence the Defendants pleaded justification of the following meanings:

"(a) That the plaintiff knowing that Alex Standish was sexually depraved and perverted failed to warn Cannock

School, Orpington, Kent, the Headmaster of the school, parents of the children at the school and the public thereof.

(b) The plaintiff deprived Cannock School, the Headmaster and parents of children at the school of the opportunity of taking preventative steps to ensure that children at the school were not left in the custody of Alex Standish and exposed to the risk of homosexual abuse or depravity.

(c) The plaintiff by her actions, in good faith but mistakenly, exercised a judgement which risked children at Cannock School remaining in the custody of Alex Standish and, being at risk to homosexual abuse or depravity instead of seeking to ensure that they were forthwith removed from his custody.

(d) That the plaintiff sought to persuade the defendants that they should not publish a story about Alex Standish by making statements to them which were (as the plaintiff must have known) false and/or thereby compounded the plaintiff's own error of judgement in depriving Cannock School, the Headmaster and parents of children at the school of [the opportunity of] taking preventative steps to ensure that the children at the school were not left in the custody of Alex Standish and so exposed to the risk of homosexual abuse or depravity."

The meanings set out in (d) above were added by way of an amendment made a month before the trial.
In support of the plea of fair comment the defendants pleaded

that the articles were fair comment on a matter of public interest “namely the plaintiff’s judgement in failing to alert Cannock School, the Headmaster of the school, parents of children at the school and the public as to her knowledge in relation to Alex Standish.”

In answer to the plea of fair comment Miss Rantzen served a Reply alleging that the defendants had been actuated by express malice. She relied on, inter alia, an article about her published in the issue of The People on the following Sunday, 10 February 1991.

THE BACKGROUND TO THE ARTICLES.

Miss Rantzen is the presenter of the B.B.C. Television programme “That’s Life”. In addition she is the founder and chairman of the ChildLine charitable service for sexually abused children. The ChildLine service was established in October 1986. In her evidence at the trial Miss Rantzen explained that in the following five years about 190,000 children had been counselled and helped by making use of the ChildLine service, though she added that the service received about 10,000 attempted calls every day. In addition she told the court that she had set up the ChildLine Educational Trust to try to help children who had been abused and needed further counselling.

In February 1989 Miss Rantzen’s attention was drawn to Crookham Court School, a private preparatory school near Newbury in Berkshire. A former pupil wrote to her to say that he had been abused while at the school. As a result of receiving this letter Miss Rantzen together with Mr. Richard Woolfe, a senior producer on the “That’s Life” programme, made enquiries which involved interviewing former pupils at the school and some members and ex-members of the school staff. One of those interviewed was Mr. Standish.

Mr. Standish told Miss Rantzen and Mr. Woolfe that he had been a teacher at the school, that it was a very unsatisfactory school which had a “feeling of a culture of abuse”, and that he believed that some of the teachers had abused children at the school. The meeting with Mr. Standish took place at the

B.B.C. offices at Lime Grove on 20 April 1989. He had resigned as a teacher at Crookham Court in February 1989.
Following the interviews with former pupils at Crookham Court and with members of the staff including Mr. Standish, Mr. Woolfe began to assemble material for a television programme about the school to be broadcast at the end of May 1989.
On 14 May 1989 Mr. Woolfe met Mr. Ian Mucklejohn, who was then a part time teacher at Crookham Court. Mr. Mucklejohn handed Mr. Woolfe copies of some pornographic documents which he said he had been told had been found in the possession of Mr. Standish. As a result Mr. Woolfe spoke to Mr. Standish about the pornographic material which had been found in his possession but Mr. Standish denied that he was the author of it. Meanwhile Miss Rantzen showed copies of it to Mr. Hereward Harrison, Childlines' Director of counselling. The suspicions about Mr. Standish remained, however, and it was arranged that the three boys who were living with him as his wards should visit London to meet Miss Rantzen, Mr. Woolfe and Mr. Harrison. When interviewed none of the boys made any complaint about Standish. Meanwhile Mr. Woolfe gave copies of the pornographic material to the police at Newbury.
On 28 May and 4 June 1989 programmes exposing sexual abuse at Crookham Court School by three members of the staff were broadcast on the "That's Life" programme on television. These programmes were based on information provided by pupils and former pupils at the school. On 22 June 1989 Crookham Court School closed.
On 26 June 1989 Mr. Standish was interviewed by the Newbury police. Following the interview Detective Constable Parsons spoke to Mr. Woolfe, informing him that though Mr. Standish admitted that he was the author of the pornographic material the police accepted his explanation. At that time Detective Chief Inspector Morey was in charge of the enquiry into Mr. Standish's conduct. Mr. Parsons told Mr. Woolfe that the "That's Life" programme should leave Mr. Standish alone.
In about January 1990 Mr. Standish obtained a teaching post at Cannock School in Kent. It was not, however, until 16 July

1990 that Mr. Woolfe was informed by Mr. Michael Gold, a former headmaster of Crookham Court School, that Mr. Standish was teaching at Cannock. At that time Miss Rantzen was in Australia.

On 30 July 1990 Mr. Woolfe spoke to Detective Superintendent Hames, the head of the Obscene Publications Department at Scotland Yard. On 31 July Mr. Woolfe sent copies of the pornographic material to Mr. Hames who then instructed two of his officers to discuss the matter with the Thames Valley Police. Also in July 1990 (on 21 July) Mr. Woolfe had a long talk with JS a former pupil at Crookham Court, who told Mr. Woolfe that Standish had not sexually abused him in any way.

In September 1990 Mr. Woolfe told Miss Rantzen about what had happened in the previous July. On 26 November 1990 Miss Rantzen and Mr. Woolfe met Mr. Michael Fallon MP at the Department of Education. Mr. Fallon was told about the pornographic material and on 4 December 1990 copies of this material were sent to the Department.

On 30 December 1990 JS wrote to Mr. Mucklejohn. In this letter JS alleged for the first time that Mr. Standish had abused him. Copies of this letter were sent to Mr. Woolfe and also to Mr. Barker at the Department of Education, who was responsible for the administration of the regulations under which the Secretary of State can ban individuals from teaching. On 17 January 1991 Mr. Woolfe gave a copy of the letter from JS to Detective Superintendent Hames. JS had been one of the three boys who had visited London on 29 May 1989 and he had also been seen by Mr. Woolfe on 21 July 1990. On neither of these previous occasions, however, had JS made any allegations against Mr. Standish.

In this summary of the background to the case we have not attempted to deal in detail with all the matters which arose in the course of the evidence. In general terms the case for Miss Rantzen was that she had done all she could to bring her anxieties about Mr. Standish to the attention of the authorities and that she believed that the police were keeping a careful watch on Mr. Standish. It was in these circumstances

that she urged the editor of The People not to publish the article because it might interfere with the enquiries which were being carried on.
The case for the defendants on the other hand was that the pornographic material was of such a revolting nature that it could only have been written by someone who was likely to abuse children sexually and that steps should have been taken by Miss Rantzen to alert Cannock School to the fact that Mr. Standish had been responsible for writing it. The Case for the Defendants in support of the Appeal.
It was accepted by counsel on behalf of the appellants that for the purposes of the appeal it was necessary to concede that the jury had been persuaded that the articles bore the meanings which Miss Rantzen sought to put upon them. Accordingly it was inevitable that a substantial award of damages would be made if Miss Rantzen succeeded on the issue of liability. Nevertheless it was submitted that on a number of grounds the award of £250,000 could not be supported. It will be convenient to consider these grounds under three main headings:

(A) Alleged misdirections by the Judge.

(B) The argument that the sum awarded by the jury was excessive.

(C) Whether the Court of Appeal should interfere and substitute another award.

(A) Alleged Misdirections by the Judge.
It was submitted on behalf the appellants that they were entitled to a new trial on the ground of mis-direction. It was recognized by counsel that RSC Order 59 r.11 (4) did not apply

to an application for a new trial on the ground of misdirection. It was also accepted that the court had to take into account the provisions of Order 59 r.11 (2):

> *"The Court of Appeal shall not be bound to order a new trial on the ground of misdirection ….. unless in the opinion of the Court of Appeal some substantial wrong or miscarriage has been thereby occasioned."*

The first complaint of misdirection put forward was that the judge had failed to give sufficient guidance to the jury about the financial implications of their award in accordance with the guidelines set out in Sutcliffe v. Pressdram Ltd. [1991] 1 QB 153. At page 178 G Lord Donaldson MR said:

> *"In the instant case I cannot believe that the jury appreciated the true size of the award which they were making. This is understandable. Despite the inflation which has occurred in the post-war years, sums of money of £100,000 or more, and in many cases less, still lack the reality of the £1 coin or the £5 note. In the lives of ordinary people they are unlikely ever to intrude except in form of the nominal sale or purchase price of a house. I say 'nominal' because in such transactions the only sense in which these sums are real is in the effect which they have in determining the amount of the mortgage payments and the size of the relatively small sum which the purchaser has to pay in cash. Even to the vendor, they do not usually spell wealth, but only the means of reducing the amount of the mortgage payments on his new home.*

> *What is, I think, required, is some guidance to juries in terms which will assist them to appreciate the real value of large sums. It is, and must remain, a jury's duty to award lump sums by way of damages, but there is no reason why they*

should not be invited notionally to 'weigh any sum which they have in mind to award'.

Whether the jury did so, and how it did so, would be a matter for them, but the judge could, I think, properly invite them to consider what the result would be in terms of weekly, monthly or annual income if the money were invested in a building society deposit account without touching the capital sum awarded or, if they have in mind smaller sums, to consider what they could buy with it."

In addition we were referred to the judgment of Russell L.J. in the same case at page 190.
In the present case the judge quite correctly followed the current practice of explaining to the jury that the law does not allow either the judge or counsel to indicate what damages would be appropriate. He told them, again quite correctly, that he was not permitted to tell them by way of comparison what awards are received by a plaintiff who has been totally or partially paralysed as a result of an accident or who has lost a limb. He explained the purpose of compensatory damages and then continued (86E):

"The figure you come up with, if you get to that point, must be a fair and reasonable one. It must not be miserly otherwise the suspicion will linger. On the other hand, the figure must not be wildly excessive. Be reasonable. Keep your feet on the ground. In so arriving at a figure you are entitled to take into account the value of money, what it can buy – a house, a car or a holiday. The question of costs might cross your mind. They are totally irrelevant to the question of damages. The question of costs is for me to determine depending on your verdict. You will arrive at a reasonable figure having balanced out the factors which you think may aggravate and so increase the figure or mitigate

and so reduce the figure."

It is true that in this passage the judge did not direct the jury's attention to the fact that a large sum of money could produce an income which could be enjoyed while the principal sum was left intact. In our judgement, however, the judge gave sufficient guidance to the jury by telling them to take into account the value of money and to relate it to its purchasing power by reference to a house, a car or holiday. He might have gone further but we are satisfied that this suggestion of misdirection is not made out.

Counsel's second complaint of misdirection was that the judge had failed to give the jury any direction on the lines adumbrated in Pamplin v. Express Newspapers Ltd. [1988] 1 WLR 116. In that case Neill L.J. pointed out that although a defence of partial justification may not prevent the plaintiff from succeeding on the issue of liability the facts proved by the defendant may be of great importance on the issue of damages.

Here again we consider that the judge gave the jury sufficient guidance on the facts of this case. At page 88 of his summing up he said:

"You are entitled to bear in mind that the defendants have sought to justify and say that what they wrote in part was true in substance and in fact. Here of course you must be careful. You may well find that they have justified part of what they wrote against her in substance and in fact and that it was true, and insofar as they have succeeded obviously she is not entitled to any award at all. But where they have sought to justify and they have failed she is entitled to compensation and the fact that it has taken your verdict to nail the lie and prove their justification plea was mis-founded. Your award can reflect that fact."

The judge might have explained the matter in greater detail,

but he drew the jury's attention to the fact that damages should not be awarded for that part of the words complained of which had been proved to be true. It is also necessary to bear in mind that by their verdict the jury clearly rejected the suggestion that the articles meant no more than that Miss Rantzen had been guilty of errors of judgement. They were satisfied that she had been the victim of a very serious libel. Pamplin's was quite different. In that case Mr. Pamplin admitted that his conduct could be described as slippery and indeed unscrupulous and that he did not really object to being called a liar. His objection was to being called a "spiv". As the judge explained at the trial in Mr. Pamplin's case the damages were to be as compensation for what had been described as the "over the top" element of calling the plaintiff a "spiv". We turn therefore to the next matter of complaint.
Counsel submitted that the judge misdirected the jury by inviting them to take into account in assessing damages the fact that the defendants had not apologized to the plaintiff. It was said that a failure to apologize can only aggravate damages where a plea of justification or fair comment is not an honest plea.
Mr. Gray drew our attention to a passage in the speech of Lord Guest in Morgan v. Odhams Press Ltd. [1971] 1 WLR 1239 at 1262D:

> *"There was another misdirection when the learned judge told the jury that they might, in considering the amount of damages, take into consideration the fact that the respondents had never apologized…. In my view, this direction by the judge does not represent the law. Failure to apologize is not evidence of malice…. By parity of reasoning it cannot increase the damages."*

We were also reminded that in the same case at 1247A Lord Reid left open the question whether mere failure to make an apology can ever justify aggravation of damages, though he doubted whether it could. In addition we were shown a passage in the

judgment of Toohey J in Coyne v. Citizen Finance Ltd. (1991) 172 CLR 211 at 237 where he said:

> *"Mere persistence, or even vigorous persistence, in a bona fide defence, in the absence of improper or unjustifiable conduct, cannot be used to aggravate compensatory damages."*

In our judgment the relevance of the absence of an apology depends upon the facts of the case. InMorgan (supra) the defence was that the words did not refer to the plaintiff and could not be understood to refer to him. The absence of an apology was therefore explicable. In other cases, though the absence of an apology may be no proof of malice, it can increase the injury to the plaintiff's feelings.
Lord Hailsham's speech in Broome v. Cassell [1972] AC 1027 is strong support for the proposition that the absence of an apology can be taken into account in aggravation of damages. At 1071 E he said:

> *"Quite obviously, the award must include factors for injury to the feelings, the anxiety and uncertainty undergone in the litigation, the absence of an apology, or the reaffirmation of the truth of the matters complained of, or the malice of the defendant."*

To the same effect is the following passage in the judgment of Nourse L.J. in Sutcliffe (supra) at 184 D:

> *"The conduct of a defendant which may often be regarded as aggravating the injury to the plaintiff's feelings, so as to support a claim for 'aggravated' damages, includes a failure to make any or any sufficient apology and withdrawal; …."*

In the present case the judge told the jury (87 G) that they were entitled to take into account the fact that there had been "no apology throughout". In the context of the present case we do not regard that as a misdirection.

Next, counsel submitted that the judge erred in directing the jury that they could take account of the fact that the defendants had persisted in a plea of justification.
It has often been said that the fact that a defendant persists in a plea of justification or fair comment is no evidence whatever of malice unless the plea has been put forward mala fide. It has also been said that the persistence in such a plea should not be taken into account in aggravation of damages. It may merely show that the defendant, though mistaken, has a firm and honest belief in the strength of his case. On the other hand, if one looks at the matter not from the point of view of the state of mind of the defendant but for the purpose of assessing the injury to the plaintiff's feelings, it is easy to see that a contest which involves justification or fair comment may increase the injury and add greatly to the anxiety caused by the proceedings which the plaintiff has had to bring to clear his name. in Broome v. Cassell (supra) at 1125 Lord Diplock discussed the difficulty of allocating compensatory damages between ordinary damages and aggravated damages. He continued:

> *"The harm caused to the plaintiff by the publication of the libel upon him often lies more in his own feelings, what he thinks other people are thinking of him, than in any actual change made manifest in their attitude towards him. A solatium for injured feelings, however innocent the publication by the defendant may have been, forms a large element in the damages under head (1) itself [ordinary damages] even in cases in which there are no grounds for 'aggravated damages' under head (2). Again the harm done by the publication for which damages are recoverable under head (1) does not come to an end when the publication is made. As Lord Atkin said in Lev v. Hamilton: 'It is impossible to track the scandal, to know what quarters the poison may reach.' So long as its withdrawal is not communicated to all those it has reached it may continue to spread. I venture to think that this is the rationale of the undoubted rule that*

persistence by the defendant in a plea of justification or repetition of the original libel by him at the trial can increase the damages. By doing so he prolongs the period in which the damage from the original publication continues to spread and by giving it further publicity at the trial …. extends the quarters that the poison reaches."

The final suggestion of misdirection was based on the complaint that the judge had given insufficient prominence to the factors which tended to mitigate the damages. In addition the judge was at fault, it was said, in referring to the mitigating factors as though they were merely comments of counsel rather than points which could properly be taken into account to reduce the jury's award.

We see nothing in this complaint. The judge listed the matters which Mr. Gray had stressed in a passage at the conclusion of his summing up. He thereby gave them what we regard as entirely satisfactory prominence.

In our judgment there was no misdirection of any significance in this case. In any event, even if one assumes that there may be some merit in some of the individual complaints, we are quite satisfied that there is no possibility that any misdirections led to the risk of injustice or any substantial wrong or miscarriage".

(B) The argument that the sum awarded by the Jury was excessive.

The second main ground of appeal was that the sum of £250,000 was excessive and unreasonable. It was so large as to indicate that the jury must have applied a wrong measure of damages and furthermore amounted to a restriction or penalty on the right to freedom of expression. The argument under this heading was developed on the following lines:

(1) That the Court of Appeal has power to order a new trial on the ground that the damages awarded by the jury were excessive. This power has been given statutory recognition in section 8(1) of the Courts and Legal Services Act 1990 (the

1990 Act).

(2) That in the past this power has only been exercised in a small minority of cases where the damages have been regarded as so excessive as to be "divorced from reality" (McCarey v. Associated Newspapers Ltd. [1965] 2 QB 86, 111 per Willmer L.J.). The barrier against the grant of a new trial has been set very high.

(3) That the exercise of the power to order a new trial requires to be re-examined in the light of

> *(a) the fact that section 8(1) of the 1990 Act refers to "excessive" damages and contains no indication that the power can only be exercised where the damages are, for example, "grossly excessive" or "excessive and wholly unreasonable".*
>
> *(b) the fact that the Court of Appeal is now empowered under section 8(2) of the 1990 Act and RSC Order 59 r.11(4), in place of ordering a new trial, to substitute for the sum awarded by the jury "such sum as appears to the court to be proper".*
>
> *(c) the fact that it has been established by recent authorities that the common law is consistent with Article 10 of the European Convention for the Protection*

of Human Rights and Fundamental Freedoms (the Convention).

(4) That in any event, even if one applied the old test which had to be satisfied for the grant of a new trial, the damages were excessive and the court should exercise its powers under section 8(2) of the 1990 Act and Order 59 r.11(4).

In order to examine these submissions it is necessary to start by setting out the text of section 8 of the 1990 Act, of Order 59 r.11(4) and of Articles 10 and 13 of the Convention. Section 8 of the 1990 Act, as far as is material provides:

"(1) In this section 'case' means any case where the Court of Appeal has power to order a new trial on the ground that damages awarded by a jury are excessive or inadequate.

(2) Rules of Court may provide for the Court of Appeal, in such classes of case as may be specified in the rules, to have power, in place of ordering a new trial, to substitute for the sum awarded by the jury such sum as appears to the court to be proper.

Order 59 r.11(4), which applies to appeals set down after 31 January 1991, is in these terms:

"in any case where the Court of Appeal has power to order a new trial on the ground that damages awarded by a jury are excesssive or inadequate, the court may, instead of ordering a new trial, substitute for the sum awarded by the jury such sum as appears to the court to be proper;…"

Article 10 of the Convention provides:

> *"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
>
> *2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."*

In addition our attention was drawn to Article 13:

> *"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.*

It was common ground that in the past appellate courts have been very reluctant to interfere with an award of damages made by a jury. The barrier to be surmounted was a high one. The question for consideration in the present appeal is whether this barrier needs to be re-assessed in the light of pronouncements made by the House of Lords in the context of the right of freedom of expression.
Counsel for Miss Rantzen submitted that there was no reason to

depart from the former practice which had been reaffirmed by the Court of Appeal not only in Sutcliffe v. Pressdram (supra) but also more recently in Gorman v. Mudd (unreported) (15 October 1992). In Sutcliffe Lord Donaldson collected together some of the formulations which had been used to identify the test which had to be satisfied before the Court of Appeal could grant a new trial. These formulations included:

> *"(1) 'The damages are so excessive that no twelve men could reasonably have given them': Praed v. Graham (1889) 24 QBD 53, 55 per Lord Esher MR.*
>
> *(2) 'There must be some reasonable relation between the wrong done and the solatium applied':Greenlands Ltd. v. Wilmshurst [1913] 3 KB 507, 532 per Hamilton L.J.*
>
> *(3) The damages are 'out of all proportion to the circumstances of the case': Scott v. Musial [1959] 2 QB 429, 437 per Morris L.J.*
>
> *(4) 'It is out of all proportion to the facts or such that twelve reasonable men could not have made such an award': Lewis v. Daily Telegraph Ltd [1963] 1 QB 340, 380 per Holroyd Pearce L.J.*
>
> *(5) The jury's award was 'divorced from reality': McCarev v. Associated Newspapers Ltd [1965] 2 QB 86, 111 per Willmer L.J."*

In the reports there are many other passages to the same effect. Counsel for Miss Rantzen submitted that these tests remained unaffected by any recent changes in the law.
On behalf of the defendant, however, it was submitted that section 8 of the 1990 Act now empowers the court to intervene more readily and to apply a less stringent test. Counsel contended that section 8 was enacted to address the concern which was widely felt that awards of damages in libel actions had become unreasonable. The new power conferred by section 8 of the 1990 Act, and by the Rule made under it, was clearly designed to be exercisable whenever an award of damages was considered by the Court of Appeal to be "excessive." It was no longer necessary or appropriate to use the barrier against interference which the earlier formulations had erected.
At the invitation of the parties and in order to resolve a possible ambiguity as to the meaning of the word "excessive" in section 8(1) of the 1990 Act the court consulted the passage in Hansard for 20 February 1990 when the Lord Chancellor introduced the clause in the House of Lords. At that stage the Lord Chancellor was moving an amendment to introduce a new clause 7A to the Courts and Legal Services Bill. In his speech the Lord Chancellor said this (col. 170 – 171):

> *"The power is a useful addition to the powers available to the Court of Appeal. I do not believe that I can be accused of coming forward with the amendment too soon, seeing that it was first suggested in 1948. That suggestion was reinforced in 1975. Both those committees [the Porter Committee and the Faulks Committee] suggested a rather wider formulation than this rule. It is within the recommendation but it does not go quite so far. On the other hand, it may be wise to allow the juries to fix damages in the first place. The difficulty of the previous formulations was to see on what grounds it would be right to allow the Court of Appeal to interfere in a jury's verdict. That is not being touched by the amendment. It deals only with the consequences of the Court of Appeal*

> *coming to that conclusion. I believe that it is a useful although not a major change in the law."*

Counsel for Miss Rantzen submitted that this passage made it plain that the change in the law was not introduced to lower or otherwise interfere with the barrier which had to be surmounted before the Court of Appeal could exercise a power to order a new trial. The amendment was introduced merely to give the court the opportunity of substituting a different award once it had been established that the power to order a new trial could be exercised.

We agree that this passage in the Lord Chancellor's speech does not by itself lend any support to the propositions advanced on behalf of the appellants. As we explain later, however, it is necessary to examine the powers of the court to order a new trial and to substitute a fresh award in accordance with section 8 (2) of the 1990 Act and Order 59 r.11(4) in the light of the guidance recently given by the House of Lords as to the relationship between the common law and Article 10 and also in the light of the guidance as to the proper scope of Article 10 given by the European Court of Human Rights in Strasbourg (the court in Strasbourg).

It was accepted by counsel on behalf of the appellants that article 10 cannot be applied directly because the Convention has not been formally adopted by Parliament so as to have become part of English Law. It was also accepted that, by reason of paragraph 2 of Article 10, the "right to freedom of expression" enshrined in paragraph 1 had to be considered subject to such conditions and restrictions as are contained in domestic law. It was submitted, however, that these conditions and restrictions had to be interpreted so as to take account of the decisions of the Court in Strasbourg.

It was therefore submitted:

(a) That any relevant conditions or restrictions had to be "prescribed by law". There was no statutory basis for the practice whereby a jury was free to award a sum of damages

without any clear instruction by the court as to the principles to be applied or the precedents to be followed.
In this context counsel referred us to paragraph 49 of the decision of the Court in Strasbourg in The Sunday Times v. The United Kingdom [1980] 2 EHRR 245 at 271:

> *"In the courts' opinion, the following are two of the requirements that flow from the expression 'prescribed by law'. First, the law must be adequately accessible: a citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a 'law' unless it is formulated with sufficient precision to enable a citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty: our experience shows this to be unattainable. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to or a greater or lesser extent, are vague and whose interpretation and application are questions of practice."*

It was recognised that it would never be possible in advance to calculate damages with precision, but under the present practice no one, and certainly not a newspaper, had any means whereby, even with appropriate advice, he could foresee the consequences of the exercise by him of his right to freedom of expression.
(b) An award of £250,000 on the facts of the present case was not "necessary in a democratic society … for the protection of the reputation or rights" of Miss Rantzen. Miss Rantzen had not suffered any financial loss or any social damage. She continued to be an extremely successful television presenter.

Counsel referred us to the general principles set out in the judgment of the Court in Strasbourg in The Sunday Times v. The United Kingdom (No.2) (26 November 1991). I should refer to paragraph 50 of the judgment:

> *"Argument before the court was concentrated on the question whether the interference complained of could be regarded as 'necessary in a democratic society'. In this connection, the court's judgments relating to Article 10 … enounce the following major principles.*
>
> *(a) freedom of expression constitutes one of the essential foundations of a democratic society; subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Freedom of expression, as enshrined in Article 10, is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any restrictions must be convincingly established.*
>
> *(b) these principles are of particular importance as far as the press is concerned. Whilst it must not overstep the bounds set, inter alia, 'in the interests of national security' or for 'maintaining the authority of the judiciary', it is nevertheless incumbent on it to impart information and ideas on matters of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of 'public watchdog'.*

(c) the adjective 'necessary', within the meaning of Article 10, paragraph 2, implies the existence of a 'pressing social need'. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with a European supervision, embracing both the law and the decisions applying it, even those given by independent courts. The Court is therefore empowered to give the final ruling on whether a 'restriction' is reconcilable with freedom of expression as protected by Article 10.

(d) The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its jurisdiction reasonably, carefully and in good faith; what the court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was 'proportionate to the legitimate aim pursued' and whether the reasons adduced by the national authorities to justify it are 'relevant and sufficient'."

Counsel submitted that it was apparent from this passage in the judgment that the Court in Strasbourg considered not only the rules of law which the domestic courts applied but also the results in practice of the application of those rules. Accordingly, in a case such as the present the Court in Strasbourg would be likely to scrutinize not only the unguided nature of the jury's deliberations but also the result of those deliberations which had led to an award of £250,000. Such an award lay a long way outside the confines of the

"margin of appreciation" accorded to national courts. In addition counsel referred us to the decision of the Court in Strasbourg in Lingens v. Austria (1986) 8 EHRR 407. In that case the publisher of a magazine in Vienna had been convicted of criminal defamation and had been fined as the result of the publication of two articles critical of the Austrian Chancellor. At page 418 the Court emphasised that it had to determine whether the action taken by the National Court was "proportionate to the legitimate aim Pursued".
(c) That in considering whether the court could and should interfere with the jury's award it was relevant to take account of the concerns expressed by the U.S. Supreme Court in New York Times Co- v. Sullivan (1964) 376 US 254; Curtis Publishing Co. v. Butts (1967) 388 US 130; Gertz v. Robert Welch Inc. (1974) 418 US 323 and Philadelphia Newspapers v. Hepps 475 US 767. By this series of decisions it was now established that where a newspaper article is on a matter of public concern it is for the plaintiff, whether he is a public official or a public figure or only an ordinary private citizen, to prove not only falsity but also fault before he can recover damages.

In this context we were referred to a passage in the speech of Lord Keith in Derbyshire County Council v. Times Newspapers [1993] 2 WLR 449 where it was held that it would be contrary to the public interest for institutions of central or local government to have any right at common law to maintain an action for damages for defamation. At page 456 Lord Keith referred to the decision of the Supreme Court of Illinois in City of Chicago v. Tribune Co. (1923) 139 NE 86 and to Sullivan's case (supra). At page 457 he continued:

> *"While these decisions were related most directly to the provisions of the American constitution concerned with the freedom of speech, the public interest considerations which underlied them are no less valid in this country. What has been described as the chilling effect' induced by the threat*

of civil actions for libel is very important."

It was submitted that the public interest in the freedom of expression required a re-examination of the level of awards in defamation proceedings tried with a jury and of the present rules of practice which prevent or at any rate inhibit a judge from providing any adequate assistance to the jury as to the basis on which the damages should be awarded.
(d) That the present practice whereby damages can be awarded as a vindication of the plaintiff" was contrary to the principle of compensation because it had the effect of allowing the jury, even where exemplary damages were not claimed, to express their indignation.
On behalf of Miss Rantzen on the other hand Mr. Geoffrey Shaw Q.C. advanced very powerful arguments to counter each of these submissions put forward in support of the appeal. He reminded us quite rightly that Article 10 of the Convention is not part of English law and he drew our attention to the speech of Lord Bridge in R. v. Secretary of State for the Home Department, ex parte Brind [1991] 1 AC 696 for an exposition of some of the limited circumstances in which the court can have regard to the Convention. In addition he argued:

(a) That even if Article 10 were to be applied the award of damages fell clearly within paragraph 2 of Article 10. The jury was the tribunal "prescribed by law" to assess the damages.

(b) That a margin of appreciation was accorded to the national courts. No tribunal could be better than a jury to assess what was "necessary in a democratic society" to protect the reputation and rights of Miss Rantzen. In English law the jury were regarded as "the lamp by which freedom lives".

We would like to pay tribute to the quality of the arguments on this aspect of the case.

(C) Whether the Court of Appeal should intervene and substitute another award.

It is always to be remembered that the Convention is not part of English domestic law and therefore the courts have no power to enforce Convention rights directly. Nevertheless, as Lord Bridge explained in Brind [1991] 1 AC 696 at 747 the United Kingdom is obliged "to secure to everyone within its jurisdiction the rights which the Convention defines including both the right to freedom of expression under Article 10 and the right under Article 13 to 'an effective remedy before a national authority' for any violation of the other rights secured by the Convention.

It is therefore clear that the Convention may be deployed for the purpose of the resolution of an ambiguity in English primary or subordinate legislation (see Brind at 760 per Lord Ackner), and that where there is an amibiguity the courts will presume that Parliament intended to legislate in conformity with the Convention, not in conflict with it (see Brind at 747 per Lord Bridge). It is also clear that Article 10 may be used when the court is contemplating how a discretion is to be exercised. Thus in Attorney General v. Guardian Newspapers Ltd. [1987] 1 WLR 1248 Lord Templeman at 1296 referred to Article 10 when considering whether the interference with the freedom of expression which the grant of an interlocutory injunction would entail was "necessary in a democratic society" for any of the purposes specified in paragraph 2 of Article 10.

Where freedom of expression is at stake, however, recent authorities lend support for the proposition that Article 10 has a wider role and can properly be regarded as an articulation of some of the principles underlying the common law. In Attorney General v. Guardian Newspapers (No.2) [1990] 1 AC 109 Lord Goff at 283 referred to the requirement that in order to restrain the disclosure of Government secrets it had

to be shown that it was in the public interest that they should not be published. He continued:

> *"…I can see no inconsistency between English law on this subject and Article 10 of the European Convention on Human Rights. This is scarcely surprising, since we may pride ourselves on the fact that freedom of speech has existed in this country perhaps as long as, if not longer than, it has existed in any other country in the world. The only difference is that, whereas Article 10 of the Convention, in accordance with its avowed purpose proceeds to state a fundamental right and then to qualify it, we in this country (where everybody is free to do anything, subject only to the provisions of the law) proceed rather upon an assumption of freedom of speech, and turn to our law to discover the established exceptions to it. In any event I conceive it to be my duty, when I am free to do so, to interpret the law in accordance with the obligations of the Crown under this treaty. The exercise of the right to freedom of expression under Article 10 may be subject to restrictions (as are prescribed by law and are necessary in a democratic society) in relation to certain prescribed matters which include 'the interests of national security' and 'preventing the disclosure of information received in confidence'. It is established in the jurisprudence of the European Court of Human Rights that the word 'necessary' in this context implies the existence of a pressing social need, and that interference with freedom of expression should be no more than is proportionate to the legitimate aim pursued. I have no reason to believe that English law, as applied in the courts, leads to any different conclusion."*

In Derbyshire County Council v. Times Newspapers (supra), Lord Keith referred to this passage in Lord Goff's speech and added these words, with which the other members of the House agreed, at 460G:

"I agree, and can only add that I find it satisfactory to be able to conclude that the common law of England is consistent with the obligations assumed by the Crown under the treaty in this particular field."

There are other authorities which reflect a similar approach. For example in R. v. Well Street Stipendiary Magistrate, Ex parte Deakin [1980] AC 477 the House of Lords expressed the view that it would be a salutary reform in the law of defamation if no prosecution for criminal libel could be instituted without the leave of the Attorney General. Both Lord Diplock and Lord Keith added that if such a reform were introduced the Attorney General could then consider, in deciding whether to grant his consent in a particular case, whether the prosecution was necessary on any of the grounds specified in Article 10.2 of the Convention and that unless he was so satisfied he should refuse his consent.

How then should the Court of Appeal interpret its power to order a new trial on the ground that the damages awarded by the iury were excessive? How is the word "excessive" in Section 8 (1) of the 1990 Act to be interpreted?

After careful consideration we have come to the conclusion that we must interpret our power so as to give proper weight to the guidance given by the House of Lords and by the Court in Strasbourg. In particular we should take account of the following passage in Lord Goff's speech in Attorney General v. Guardian Newspapers (No.2) (supra) at 283:

"The exercise of the right to freedom of expression under Article 10 may be subject to restrictions (as are prescribed by law and are necessary in a democratic society) in relation to certain prescribed matters which include the interests of national security' and 'preventing the disclosure of information received in confidence'. It is established in the jurisprudence of the European Court of Human Rights that the word 'necessary' in this context implies the existence of a pressing social need, and that interference with freedom of

> *expression should be no more than is proportionate to the legitimate aim pursued. I have no reason to believe that English law, as applied in the courts, leads to any different conclusion."*

If one applies these words it seems to us that the grant of an almost limitless discretion to a jury fails to provide a satisfactory measurement for deciding what is "necessary in a democratic society" or "justified by a pressing social need". We consider therefore that the common law if properly understood requires the courts to subject large awards of damages to a more searching scrutiny than has been customary in the past. It follows that what has been regarded as the barrier against intervention should be lowered. The question becomes: Could a reasonable jury have thought that this award was necessary to compensate the plaintiff and to re-establish his reputation?

We must turn shortly to consider the award of damages in the Present case. Before doing so, however, we should express our conclusions as to what further guidance, if any, can be given to a jury by the judge in his summing up.

There is reason to suppose that the present absence of guidance is a source of concern to jurors themselves. At the conclusion of the trial in Savalas v. Associated Newspapers in 1976 the foreman of the jury wrote to The Times newspaper:

> *"It is no betrayal of the secrets of the jury room to confess, with the other jurors, I entered the Royal Courts of Justice on June 14th with not the remotest idea what compensation is paid for anything except perhaps a dented boot and wing; haloes are outside our normal terms of reference. Apparently that is why we were asked. If that is so, the court had the outcome it deserved from the appointed procedure."*

It is to be remembered that the present procedure is a matter

of practice rather than of substantive law (see Sutcliffe (supra) at 178 C per Lord Donaldson MR), and that therefore the court is not bound by earlier precedents, though of course good reasons must be found before departing from an established practice. It is also to be remembered that even in the field of personal injuries references to awards in other cases is a comparatively recent development. Before the decision of the Court of Appeal in Bird v. Cocking & Sons Ltd. [1951] 2 TLR 1260 and the subsequent decision in Rushton v. National Coal Board [1953] 1 QB 495 it was not the practice for judges to allow awards in previous cases to be cited to them. It is also interesting to note that only thirty years later in Wright v. British Railways Board [1983] 2 AC 773 Lord Diplock was able to say at 784 that it was an important function of the Court of Appeal to lay down guidelines as to the quantum of damages appropriate to compensate for various types of commonly occurring injuries.

So far, however, the courts have declined to introduce similar guidelines either in cases where damages are assessed by jury or in cases of defamation. In Ward v. James [1966] 1 QB 273 a Court of Appeal of five judges presided over by Lord Denning MR emphatically rejected the submission that in cases of personal injury a jury should be referred to awards in comparable cases or even to any conventional figures.

Furthermore, in Sutcliffe's case at 178 Lord Donaldson MR expressed the view that the reasoning inWard v. James was as valid today as it was then and applied "with far greater force to the assessment of damages in libel cases than it did to personal injury claims."

It is for consideration whether this state of affairs should continue or whether the present practice conflicts with the principle

enshrined in the second paragraph of Article 10 that restrictions on the exercise of freedom of expression should be prescribed by law. As was said in The Sunday Timescase [1980] 2 EHRR 245, 271 "A norm cannot be regarded as

a ‘law’ unless it is formulated with sufficient precision to enable the citizen to regulate his conduct” and to enable him to foresee, if need be with appropriate advice, the consequences which a given action may entail.
The matter can be approached in three stages:

(a) References to other jury awards in defamation cases.

(b) References to (what we may call) section 8 awards by the Court of Appeal in defamation cases.

(c) References to conventional awards in personal injury actions.

We are not persuaded that at the present time it would be right to allow references to be made to awards by juries in Previous cases. Until very recently it had not been the practice to give juries other than minimal guidance as to how they should approach their task of awarding damages and in these circumstances previous awards cannot be regarded as establishing a norm or standard to which reference can be made in the future.
Awards made by the Court of Appeal in the exercise of its powers under section 8 of the 1990 Act and 0.59 r.11(4) stand on a different footing. It seems to us that it must have been the intention of the framers of the 1990 Act that over a period of time the awards made by the Court of Appeal would provide a corpus to which reference could be made in subsequent cases. Any risk of over citation would have to be controlled by the trial judge, but to prevent reference to such awards would seem to us to conflict with the principle that restrictions on freedom of expression should be “prescribed by law”. The decisions of the Court of Appeal

could be relied upon as establishing the prescribed norm.
We come therefore to the most difficult aspect of the matter, the possibility of references to awards in personal injury cases. One can start with the judgment of Diplock L.J. in McCarey v. Associated Newspapers [1965] 2 QB 86 where he said at 109:

> *"I am convinced that it is not just … that in equating incommensurables when a man's reputation has been injured the scale of values to be applied bears no relation whatever to the scale of values to be applied when equating those other incommensurables, money and physical injuries. I do not believe that the law today is more jealous of a man's reputation than of his life or limb. That is the scale of values of the duel. Of course, the injuries in the two kinds of case are very different, but each has as its main consequences pain or grief, annoyance or unhappiness, to the plaintiff."*

A little later he added:

> *"I do not accept that that higher scale of values in defamation cases is sanctioned by the law. It is, I think, legitimate as an aid to considering whether the award of damages by a jury is so large that no reasonable jury could have arrived at that figure if they had applied proper principles to bear in mind the kind of figures which are proper, and have been held to be proper, in cases of disabling physical injury."*

The approach of Diplock L.J. was echoed in the dissenting judgment of Mason C.J. and Deane J. in the High Court of Australia in Coyne v. Citizen Finance Ltd. (1991) 172 CLR 211 where they expressed the view at 221 that "it would be quite wrong for an appellate court, entrusted with hearing appeals in both defamation and personal injury cases, to be indifferent to the need to ensure that there was a rational

relationship between the scale of values applied to the two classes of case".

It has to be recognized, however, that the courts in England have rejected the notion that any satisfactory relationship between damages in defamation actions and damages in personal injury actions can be established. In Broome v. Cassell (supra) Lord Hailsham referred to the subjective element in damages for defamation at 1070:

> *"In almost all actions for breach of contract, and in many actions for tort, the principle of restitutio in integrum is an adequate and fairly easy guide to the estimation of damage, because the damage suffered can be estimated by relation to some material loss. It is true that where loss includes a pre-estimate of future losses, or an estimate of past losses which cannot in the nature of things be exactly computed, some subjective element must enter in. But the estimate is in things commensurable with one another, and convertible at least in principle to the English currency in which all sums of damages must ultimately be expressed.*

> *In actions of defamation and in any other actions where damages for loss of reputation are involved, the principle of restitutio in integrum has necessarily an even more highly subjective element. Such actions involve a money award which may put the plaintiff in a purely financial sense in a much stronger position than he was before the wrong. Not merely can he recover the estimated sum of his past and future losses, but, in case the libel, driven underground, emerges from its lurking place at some future date, he must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charge.*

> *This is why it is not necessarily fair to compare awards of damages in this field with damages for personal injuries. Quite obviously, the award must include factors for injury to the feelings, the anxiety and uncertainty undergone in the litigation, the absence of apology, or the reaffirmation that the truth of the matters complained of, or the malice of the defendant. The bad conduct of the plaintiff himself may also enter into the matter, where he has provoked the libel, or where perhaps he has libelled the defendant in reply. What is awarded is thus a figure which cannot be arrived at by any purely objective computation. This is what is meant when the damages in defamation are described as being "at large""*

We see the force of the criticism of the present practice whereby a plaintiff in an action for libel may recover a much larger sum by way of damages for an injury to his reputation, which may prove transient in its effect, than the damages awarded for pain and suffering to the victim of an industrial accident who has lost an eye or the use of one or more of his limbs. We have come to the conclusion, however, that there is no satisfactory way in which the conventional awards in actions for damages for personal injuries can be used to provide guidance for an award in an action for defamation. Despite Mr. Gray's submissions to the contrary it seems to us that damages for defamation are intended at least in part as a vindication of the plaintiff to the public. This element of the damages was recognised by Windeyer J. in Uren v. John Fairfax & Sons Ltd [1966] 117 CLR 118, 150 and by Lord Hailsham inBroome v. Cassell (supra) at 1071. We therefore feel bound to reject the proposal that the jury should be referred to awards made in actions involving serious personal injuries.

It is to be hoped that in the course of time a series of decisions of the Court of Appeal will establish some standards to what are, in the terms of section 8 of the 1990 Act, "proper" awards. In the meantime the jury should be invited to

consider the purchasing power of any award which they may make. In addition they should be asked to ensure that any award they make is proportionate to the damage which the plaintiff has suffered and is a sum which it is necessary to award him to provide adequate compensation and to re-establish his reputation.
We return to the facts of the present case.
A very substantial award was clearly justified for the reasons which Mr. Hartley explained. The jury were entitled to conclude that the publication of the article and its aftermath were a terrible ordeal for Miss Rantzen. But, as has been pointed out, Miss Rantzen still has an extremely successful career as a Television presenter. She is a distinguished and highly respected figure in the world of broadcasting. Her work in combating child abuse has achieved wide acclaim. We have therefore been driven to the conclusion that the court has power to, and should, intervene. Judged by any objective standards of reasonable compensation or necessity or proportionality the award of £250,000 was excessive.
We therefore propose to exercise our powers under section 8(2) of the 1990 Act and Order 59 r.11(4) and substitute the sum of £110,000.
Appeal allowed. Appellants to have one-third of their costs. Application of Respondent for leave to appeal to the House of Lords granted.

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