



Summary of Judgment and Background: Hay v Cresswell

In 2020, Nina Cresswell wrote on her social media about a violent sexual assault she had survived 10 years earlier, and named her attacker, a tattooist named Billy Hay who had followed her home after they met at a club. Mr Hay brought libel proceedings against her as a result of her publication. Over the following years, Ms Cresswell was not able to speak about the attack, but the proceedings have this morning been dismissed by the court, Ms Cresswell having succeeded in her defences of truth and public interest. The Judge, Mrs Justice Heather Williams, found in a lengthy judgment that the allegations Ms Cresswell made, that Mr Hay had subjected her to a violent sexual assault, were substantially true. The Judge dismissed Mr Hay's denials that the attack took place, and the evidence of his witnesses, as not being credible, having pointed out that there was no room for mistake in the opposing accounts of what had happened – one party must have been not telling the truth. In an important finding, she also decided that Ms Cresswell reasonably believed it was in the public interest for her to have publicised her allegations as she did, and so her public interest defence also succeeded.

This is the first time that a public interest defence under s.4 of the Defamation Act 2013 has succeeded in circumstances where an abuser has sued his victim for libel, and the judgment is an important precedent for survivors in the future. It is a resounding vindication of Ms Cresswell's account of the assault which was found to be true and a testament to her bravery in continuing to defend the claim to a trial where she was publicly cross-examined and wrongly accused of lying. It is also important support and guidance for other women who are considering making public allegations of sexual assault and who are concerned about facing libel proceedings from the perpetrators.

The Judge explained how a delay in making historic allegations could be explained by feeling 'disillusioned and disheartened' following serious police failures to believe the victim or investigate the allegations. She confirmed that in circumstances such as these there was no need to contact the perpetrator for comment or to include his side of the story, and that the desire to protect other women from assault was an important element of the public interest.

Background facts

This was a claim for libel brought by a tattooist, Billy Hay against Nina Cresswell in relation to her June and July 2020 publication of allegations that he had sexually assaulted her on the night of 27 – 28 May 2010 after the two had met in a nightclub in Sunderland. Mr Hay offered to walk her home, and then subjected her to a violent and frightening assault when she was 20 years old and celebrating the end of her second year at University.

Ms Cresswell reported the attack to the police the morning after, but she was not believed. Within hours and without conducting proper interviews or investigations the police decided no crime had been committed and suggested that Ms Cresswell had invented the attack, hinting (without any evidence) that she had had fantasies about being raped. The Judge was extremely critical of this, and the police failure to investigate the report.

After this experience, Ms Cresswell stayed mostly silent about the assault until 2020 when, following the Metoo movement, she felt emboldened to make a public allegation in order to protect other women from this tattooist.

On 31 May 2020, she contacted the Tattoo Sexual Abuse Survivor Support group. She said she was wondering where she could share her story “about another predator in the industry. I’ve kept it to myself for 11 years and felt incredible guilt at the thought of my silence meaning other women were assaulted or abused”.

In July 2020 she then published the allegations in a blog, on Facebook, on her Instagram and in an email to the tattooist’s studio.

The detail of the attack as set out in one of the publications was quoted in full at para 61 of the judgment:

“This story is about yet another male predator in the tattoo industry.

His name is Billy Hay (of Bath Street Tattoos) and he sexually assaulted me when I was 19.

He had a guest spot at a well-known tattoo artist’s shop in the North East, where I had recently been tattooed.

I met Billy Hay on a night out. He was with my tattooist, who introduced us. Billy started asking about my tattoo. We had a brief chat and that was that. I went off with my friends.

It got to a point in the night when I decided I wanted to go home.

When I was leaving the club, he was standing at the exit. I said bye and he offered to walk with me. Didn't want me walking alone – the irony.

My house at the time was about 15 mins from the club. Along the way, I had to cut through a tunnel. When we were in the tunnel, he pushed me into the wall in an attempt to kiss me.

I avoided his face and asked him to stop.

He asked 'why I'd been flirting' with him and 'leading him on' if I wasn't going to put out. I insisted I was just being friendly and certainly had no intentions, but he wouldn't take no as an answer.

He pushed me in a corner and pinned both of my arms either side of me. I crouched down to get my face away from his which was a bad move, because he then pulled down his trousers and took out his penis. He then asked me to 'suck it'.

I was in tears by this point and all I could do was beg. I kept saying 'please let me go home' 'I just want to go home'.

I stood up again to avoid his penis he was trying to shove in my face. So, he pulled down my shorts. I knew things were going to get really bad now, I continued to beg and he continued his assault. I had tights on, so I was protected by one last layer. I stepped out of my shorts. And as I did, I ducked under his arm and ran faster than I've ever ran before.

He didn't attempt to chase me. I left my bag, keys, phone, shorts, purse, everything in that cut and ran home in just a pair of tights.

I couldn't get into my house because I didn't have my keys. I couldn't call anyone as I didn't have my phone. Luckily, a homeless woman spotted my distress and, after an hour or so, I got the courage to walk back to the scene of the crime with her. I don't know who she was but I see her as a real-life angel to this day.

He was gone by the time we went back to the scene of the crime – he'd left all my stuff where it was and I got back into my house. I told my housemate what had happened and called the police.

When the police looked into the CCTV footage, they said they had 'calmly seen me walking away from the scene of the crime with a man, and with all my stuff'. I tried to explain this wasn't a man, this was the homeless woman who helped me (she was wearing a beanie hat covering her hair, hoodie and tracksuit bottoms, so I can see why she may have appeared to be male on grainy CCTV footage). The cut where the sexual assault happened was a CCTV blind spot – they couldn't have seen any of it on camera.

The police reminded me that I was drunk and that I'd given a confusing description (I described his beard as blond at one point, then described it as ginger.) In club lighted and street lighting, it's hard to tell ... never mind during a trauma).

Despite me telling them exactly who he was and describing physical details (such as his septum ring) they said it would be hard to take to court without direct evidence – and that the fact I'd consumed alcohol and given two different beard colours would go against my statement.

They kept reminding me 'you do realise how hard this kind of thing is to prove' and kept asking if I 'definitely wanted to go ahead and press charges'

I was scared, in shock, and 19-years-old. I just wanted to it all to go away and I wanted to go to bed. I told them to forget it.

The next day, I rang the tattoo artist Billy Hay was working with for the guest spot.

The tattooist said he 'didn't want to get involved'. So I told other tattooists. It was met with lukewarm responses.

One tattooist truly betrayed my trust and shouted 'HEARD YOU NEARLY GOT RAPED?!' across a packed beer garden while I was working.

I also told a mutual friend at the time, who approached Billy about the incident at a tattoo convention. They told me he said he was drunk and can't remember. Played it all down.

For me, telling my story to those in and involved in the tattoo industry – people I thought I could trust – did nothing. As much as it angers me, I don't blame the silent ones. I know people still find it hard to call out rapists and sexual abusers, or even just have nothing to do with them, especially if said abusers are popular. Some tattooists are maybe frightened it could jeopardise their careers, or they just want an easy life.

I'm not angry with them. But I cannot have anything to do with these people.

I can't sit with this any longer and I won't be made to feel like my story doesn't matter.

It's been 11 years and I still regret not speaking out about Billy Hay.

I feel cloaked in guilt at the thought of another woman going through the terror I went through. The fact he's worked with women, many undressed, for more than decade since then, haunts me. But the shame of being drunk, wearing really short shorts, not being believed by tattoo artists and not feeling any form of justice when contacting the police, has kept me quiet.

This kind of passive silence will not stop abuse in the tattoo industry.

Who wins if we stay silent? Not us.

I'm relieved women can finally talk about these predators and be believed. I'm relieved action is starting to happen.

The industry will be a safer place when every single one of these tattoo artists are removed from it." (Emphasis in original.)

After this and other publications, Mr Hay instructed solicitors to threaten libel proceedings in which it was suggested that Ms Cresswell had invented the entire account. She reported the assault to the police again, and Mr Hay then issued libel proceedings against her in 2020,

and reported her to the police for malicious communications (an allegation which was not pursued by the police).

The claim was defended by way of a truth defence, and a public interest defence. The claim was fought all the way to a trial on 20-24 February 2023 where both Mr Hay and Ms Cresswell gave evidence.

Truth defence

The judge set out the relevant question for the Court in relation to the truth defence.

“12. The parties agree that the central question for the court is whether or not the defendant has proved the sting of her allegation that she was violently sexually assaulted by the claimant in 2010. In this regard the court is faced with the parties’ starkly opposing accounts, which, on the way they put their respective cases, leaves little room for the possibility of mistake or misunderstanding as the explanation for this divergence.”

She referred to the standard of proof in libel cases (the balance of probabilities) but also the requirement of clear and convincing evidence where the allegation is one of serious criminality (para 38).

Mr Hay’s barrister’s attempt to rely on a ‘presumption of regularity’ to suggest that police records of the 2010 report were reliable and accurate was given very short shrift (paras 48-57).

The Judge took the following approach to the issue of truth:

“156. It is logical to first consider whether the defendant was sexually assaulted at all on the night of 28 May 2010 and, if I find that she has established this, to then consider whether she has proved that her assailant was the claimant. As I have noted earlier, both parties presented their cases on the basis that the other party was being untruthful, rather than mistaken. Indeed, it is hard to see how mistake could arise as a likely explanation, given the diametrically opposed accounts”

On the delay in making the allegation publicly:

“162. Mr Coulter attached significance to the defendant not having made her allegation public at an earlier stage. He said in his oral closing submissions that if her allegation were true there was “no good reason why she would not have wanted to tell the world about it”. I do not accept that proposition. There are all sorts of reasons why a victim of sexual assault might not want to air that publicly. They include: a fear of being disbelieved; a disinclination to re-visit a traumatic event; internalised shame; and concern about a negative backlash and/or being sued by the alleged assailant.

The Court’s finding on truth was summarised at para 172:

“I turn then to the central issues before me. I am satisfied that the defendant has proved on a balance of probabilities that she was violently sexually assaulted in substantially the terms set out at paragraph 10A of the re re-amended defence.

As I have earlier indicated, I address this issue before coming on to consider whether she has proved that the perpetrator was the claimant.

[...]

175. No reason was put to Ms Cresswell in cross-examination as to why she would have gone to such elaborate lengths to initiate and propound a deliberately false complaint of sexual assault and I am unable to identify any such reason. Given this and given the circumstances that I have just summarised, I regard such a scenario as very unlikely. The defendant’s actions and reactions appear to be consistent with an entirely genuine belief that she had been subjected to a serious sexual assault. In turn, the events she described were not things that she could have been mistaken about in terms of the essence of what had occurred (as opposed to particular details).

176. All of this, taken with Ms Cresswell’s own evidence of what occurred, which I listened to very carefully, points strongly in favour of the conclusion that she was sexually assaulted, at least broadly as she describes, in the early hours of 28 May 2010.”

The judge then considered and dismissed the contemporaneous police records which included a decision not to investigate or treat the report as a crime, including at para 178:

“The officers’ stated reliance upon what are said to be the defendant’s dreams of being raped was quite frankly bizarre. Again this was not something that was clarified with the defendant when she was sober and rested and the opportunities for

misunderstanding are evident. Ms Cresswell says that she told police that the incident felt like a nightmare. On a balance of probabilities I accept that this was the case; it is much more consistent with her evident distress that morning, than a suggestion that she was revealing some kind of fantasy that she harboured to the officers.

and

“In all the circumstances, and not least because it is consistent with the approach displayed in the incident log that I have just discussed, I accept the defendant’s account that from the outset of their attendance at her address, the officers appeared to be unsympathetic and conveyed the view that an allegation of this kind would be very difficult to prove.

The Judge’s final decision on truth was:

“183. In summary, I am satisfied that the defendant has shown on the balance of probabilities that the perpetrator of the violent sexual assault upon her was the Claimant.”

At para 184, The Judge referred to Ms Cresswell’s accounts and contemporaneous messages, all of which point to Mr Hay being the perpetrator. Then she referred to the fact that Mr Hay changed his story, from having first claimed that Nina’s entire account was a work of fiction, to suddenly remembering that he had in fact walked out of the club with Nina and tried to kiss her, and left on friendly terms without assaulting her. The Judge considered that this was significant change:

‘The claimant’s explanation for this acknowledged change in his account was unsatisfactory.’ (para 188)

“When asked why he left with the defendant, the claimant denied that there was any sexual motivation, he said that he was not sure of the reason and that it may have been to continue their conversation (at which point his answer tailed off and he shrugged his shoulders). I did not find this to be at all convincing).’

She went through the Claimant’s evidence, describing it as ‘less than credible’ and ‘unsatisfactory’ and at times not ‘at all convincing’ (para 188)

Leading her to the conclusion:

“193. In light of the cumulative effect of these concerns I am unable to attach significant weight to the claimant’s denial that he was the perpetrator of the sexual assault and indeed the unsatisfactory evidence that I have highlighted affords further support for the contrary proposition.

[...]

197. I am satisfied that she has established on a balance of probabilities that she was subjected to a violent sexual assault by the claimant in the early hours of 28 May 2010 as the account at para 10A(c) of the re re-amended defence is honest and accurate in all its essential respects and specifically in the narrative of the assault.”

Public interest Defence

The Judge then went on to deal with Ms Cresswell’s s.4 public interest defence having earlier set out the appropriate questions the Court needed to answer (Para 23)

“when considering whether the defendant has established this defence, there are three questions to be addressed:

- i) Was the statement complained of, or did it form part of, a statement on a matter of public interest;*
- ii) If so, did the defendant believe that publishing the statement complained of was in the public interest; and*
- iii) Was that belief reasonable?”*

Interestingly, the Judge took the view that although deliberately false allegations would be inconsistent with a public interest defence, publishing true allegations would not necessarily be defensible in the public interest as the s.4 Defence is not about truth or falsity – it takes a different approach.

Her decision that Ms Cresswell held a reasonable belief that it was in the public interest to publish the allegation listed a number of relevant factors which included the fact that she was sexually assaulted by Mr Hay. Other important factors were the ‘deficient and superficial’ approach of the Police in 2010 and the need to safeguard other women from assault by Mr Hay.

“Whilst my finding that the truth defence is established is relevant to the section 4 publication on a matter of public interest defence, it does not of itself resolve this further defence, as the criteria which the defendant has to establish are different.

For the avoidance of doubt, I indicate that if I had concluded that the defendant's allegation was a deliberately false one (contrary to my primary finding above), I would not have found that she believed that publishing the statements in question was in the public interest or that such a belief, if it existed, was reasonably held." (paras 199-200)

In relation to the first question – was the statement on a matter of public interest –

"The defendant relies upon three respects in which she says that her statements were on matters of public interest, namely:

- i) The prevalence of sexual abuse committed in the tattoo industry, which at the time was a matter of significant public concern (with the issue becoming known as "Tattoo MeToo");*
- ii) The need to protect women from sexual abuse; and*
- iii) The failure to prosecute sexual abuse cases.*

I accept that each of these topics is clearly a matter of public interest." (para 201)

In relation to the second question, did the Defendant believe that publication was in the public interest, the Judge had this to say:

"206. As I have earlier explained, this is a subjective question. In accordance with the conclusion that I have already reached, I proceed on the basis that the defendant was violently sexually assaulted by the claimant in May 2010. In explaining the basis of her belief, the defendant relies upon the pleaded matters which I have set out in more detail at para 86 above and which I address in more detail at para 210 below. However, in summary the key steps that led up to her decision to publish the publications were as follows:

- i) She reported the sexual assault to the police shortly after it happened;*
- ii) After speaking to her whilst she was still under the influence of alcohol and when the investigation was still at a preliminary stage, the police wrongly decided within a matter of hours that no crime had been committed;*
- iii) She made some attempts herself to establish that the claimant was the man she had left the nightclub with, as she believed him to be her assailant, but Mr Beston*

was unwilling to assist her. She had also told various friends in the aftermath of the incident and one at least had confronted the claimant with her allegation, but nothing had ultimately come of this;

iv) She was disillusioned and disheartened by the police response and she felt that there was no point in her trying to take matters further at that time;

v) She did not then speak publicly about the sexual assault for 10 years, but remained very upset about it and increasingly felt guilty that in not speaking out about the claimant's conduct she may have failed to protect other women. She was aware that he continued to work as a tattooist at a prominent tattooing parlour;

vi) In the first half of 2020 she became aware that the issue of sexual abuse in the tattoo industry had come to prominence, that other women had reported such cases and that the Tattoo MeToo campaign was underway, aimed at exposing the prevalence of such abuse; and

vii) In 2019 and 2020 she had made public allegations of abuse by a former boyfriend and as a result she had been contacted by other women who indicated that they had also experienced abuse by this same man.

207. In light of this sequence of events, which I accept as an accurate description of the defendant's experiences and state of mind, I am satisfied that she did believe that publishing the statements complained of was in the public interest."

She then went on to determine the key question, whether Ms Cresswell's subjective belief was a reasonable one.

"210. I have summarised the claimant's and defendant's respective cases at para 86 and para 91 above. I regard the following circumstances as being of particular significance in leading me to conclude that the defendant's belief was a reasonable one:

i) The statements that she made were each on important matters of public interest, as I have already identified;

ii) She was violently sexually assaulted by the claimant in the early hours of 28 May 2010. The defendant was well aware that she had been sexually assaulted and she

believed that her assailant was the claimant; by the 1 June 2010 she was “pretty sure” that it was him (para 124 above);

iii) She promptly reported the crime to the police, believing that they would investigate the matter and bring the perpetrator to justice;

iv) However, her treatment by the police was deficient and their investigation superficial (para 178 above). She was interviewed whilst she was still affected by alcohol and had not slept. She was not given the chance to check any record that officers had made of what they believed she had said. A number of misunderstandings likely arose and her words that the assault was ‘like a nightmare’ were misconstrued and accorded undue significance. The officers also placed too much weight on CCTV footage from Revolution Bar, failed to undertake the fuller investigation that was warranted and prematurely assessed and rejected her credibility, deciding not to treat the defendant’s allegation as a crime within hours of her first report to police;

v) In consequence the defendant’s belief that the claimant was her assailant (which she voiced to friends over the ensuing days) was not conveyed to police nor investigated by them at the time;

vi) She attempted to make her own inquiries of Mr Beston because of her belief that the claimant was the likely perpetrator, but he declined to assist (paras 118 and 191 above). She also made inquiries of Ms Casey but this did not take matters further (para 117);

vii) These matters left the defendant feeling understandably angry and disheartened. She told friends that she believed that the claimant was her assailant and at least one of them raised this with him but nothing appeared to come of this (paras 123 - 126 above);

viii) Over the ensuing years she remained upset about the incident and she felt increasingly uncomfortable about not having warned other women about his behaviour and frustrated that he had not been held accountable for his conduct. It is plain that the defendant pondered “outing” the claimant for a significant period of time before she did so; see for example her message to Ms Nixon in 2019 (para 129 above);

ix) In 2019 and 2020 she had made public allegations of abuse by a former boyfriend and as a result she had been contacted by other women who indicated that they had also experienced abuse by this man (paras 128 and 141 above);

x) In the first half of 2020 the defendant became aware that the issue of sexual abuse in the tattoo industry had come to prominence and that other women had reported such cases. She was aware that the Tattoo MeToo campaign, aimed at exposing the prevalence of such abuse, was gaining momentum;

xi) The claimant had continued to work as a tattooist at a prominent tattoo parlour and the defendant increasing felt that she should speak out about his sexual assault in order to protect other women who could come into contact with him;

xii) The defendant wrote a statement about the sexual assault which she initially sent privately to the founder of a sexual assault survivors' support group page for those in the tattoo industry (para 133 above);

xiii) She published the statements because she believed in light of the history of the matter that this was the only way to safeguard women who might come into contact with the claimant, including through his work as a tattoo artist;

xiv) Her view was reinforced after Ms Sweeney did not respond to the publications to her;

xv) Whilst she did not initially name the claimant in the Instagram publications and the FB posts publications she received requests from women to name her assailant and duly did so. I accept that naming the claimant at this stage was consistent with her aim of protecting other women. At this stage she was confident that the claimant was her assailant;

xvi) The defendant knew that only limited and inadequate investigations were carried out by the police in 2010 and it was reasonable for her to believe that this would, in turn, impact upon the efficacy of any police investigation undertaken in 2020;

xvii) The defendant did re-report the matter to the police in 2020, albeit after the 22 July 2020 publications. Given the limitations of the earlier investigation and the conclusion reached at that stage, she had real reason to doubt that this step would achieve accountability for the claimant or protection for other women; and

xviii) The defendant was writing from her own first-hand knowledge and experience. There were no other checks or inquiries that standards of reasonableness required her to conduct to verify the information that she proposed to publish before she did so.”

In most libel cases, a public interest defence requires the publisher to contact the person criticised for comment, or at least the inclusion of any exculpatory information. Significantly, the Judge decided that in a case such as this where the survivor of sexual assault makes the allegations, the defence can be established without those steps having taken place, and the usual need for balance in tone is not relevant:

211. I have borne in mind, as the claimant emphasises, that the defendant did not include any denial of the allegation from him or counterbalancing material, such as a reference to the conclusion arrived at by Northumbria Police in May 2010. However, given that the defendant was writing from her own knowledge of the sexual assault upon her, it would be unreasonable to expect her to seek out and include a comment from the claimant (in particular in circumstances where she had tried to initiate investigations into his involvement both via the police and her associates back in 2010). Furthermore, given that she reasonably disagreed with and held legitimate concerns about the approach taken by the police in 2010, I do not consider that a failure to reference the officers’ earlier conclusion adversely impacts upon the reasonableness of her belief that publication was in the public interest. The authorities I have cited earlier make clear that a fact sensitive evaluation is required that takes into account the particular role of the defendant in question. The claimant also refers to the tone of the publications being less than measured. Given the subject matter and the fact that the defendant was writing about her own experience of a frightening and violent sexual assault, this is hardly surprising and does not in my view in these particular circumstances detract from the factors that point to her belief being reasonably held.”

Conclusion

The Judge found that Ms Cresswell had succeeded in proving that she was subjected to a violent sexual assault as she had described, and that Mr Hay was the person who attacked her. Her truth defence was therefore successful. The Judge also found that the allegations were a matter of important public interest, that Ms Cresswell believed that it was in the public interest to publish them, and that her belief was reasonable. Ms Cresswell’s public interest

defence was therefore also successful. The claim against her will be dismissed with legal costs payable to Ms Cresswell by Mr Hay.

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25 April 2023