



OUTER HOUSE, COURT OF SESSION

[2018] CSOH 121

A183/16

OPINION OF LORD UIST

in the cause

JULIE McANULTY

Pursuer

against

SHEENA McCULLOCH

Defender

**Pursuer: McBrearty QC, Ewen Campbell; Burness Paull LLP  
Defender: R W Dunlop QC, Pugh; Shoosmiths LLP**

19 December 2018

**Introduction**

[1] The pursuer in this action seeks an award of damages against the defender for alleged defamation. Both were at the material time activists in the Scottish National Party (SNP). The pursuer joined the SNP in September 2010 and was elected a councillor on North Lanarkshire Council in May 2012. The defender first joined the SNP (Baillieston and Uddingston Branch) as an associate member in 1967. She became the Parliamentary Assistant to Richard Lyle, Member of the Scottish Parliament (MSP) for Bellshill and Uddingston, on 1 April 2015. The pursuer avers that she was defamed by the defender in an email dated 5 February 2016 sent by the defender to Ian McCann, the SNP's compliance

manager, and copied to various other people within the SNP and that the email was copied by the defender or one of the recipients to the Daily Record, which published extracts from it in an article published by it on 8 February 2016 on the front page of the newspaper, and also on its website and its Twitter feed.

[2] The contents of the email, as typed, were as follows:

**"CONFIDENTIAL – For The Attention of Ian McCann – Scottish National Party Compliance Manager"**

Dear Ian

Having read in the daily record (*sic*) the story on Julie McAnulty I wish to raise formally an incident of, what I consider, racism that involved Julie.

During the run up to the Ward 13 Thorniewood, North Lanarkshire By-Election in July last year I was assisting with Steven Bonnars (*sic*) campaign and I recall, on the first Saturday of the campaign, and being asked to take Julie by car to Lincoln Ave to assist with canvassing. Once we had carried out the canvassing I was told I had to return with her to the street stall.

On the journey back Julie was asking me about the trouble and in fighting in the Bellshill branch and asked for my view on the trouble in Coatbridge. During this discussion Julie made a comment which I found to be unacceptable. She asked if I agreed with her that it was *in her words* "the pakis" that were causing the problems locally and that we needed to get rid of them out of the party.

I outlined immediately that I was not happy with her comment as I know, and respect many Muslim members locally. I informed her that what she said was unacceptable and that I considered many of the people she was referring to as friends. For the remainder of the journey she did not speak to me. Ever since this Day (*sic*) Julie has ignored me and refused to speak to me.

I feel in view of the recent accusations that have come to light, both in the media and within local politics. (*sic*) I have a duty as a party member to raise this with Headquarters. As you are aware Julie has some strong support locally including the backing of Phil Boswell. I feared at the time that I may suffer reprisals from her supporters if I attempted to raise this. I feel now that I can't stay silent that an investigation is under way.

Regards

Sheena

Sheena McCulloch  
 Membership number 1433512"

[3] The pursuer avers that she did not make the comments attributed to her in that email and that the statements made by the defender of and concerning her were false and calumnious. The defender avers that the content of the email was substantially true and that it was prompted by her reading of a story relating to the pursuer in the edition of the Daily Record dated 3 February 2016 headed "SNP Holyrood candidate accused of racism refuses to sit beside Muslim party colleague at council meetings". The defender averred in her pleadings that the conversation referred to in the email took place in or about May or June 2015, but it was ultimately accepted by counsel on her behalf that the date of the car journey in which the conversation is alleged to have taken place was 20 June 2015.

[4] On 22 January 2016 the Daily Record newspaper had published an article headed "SNP race row No 2: Holyrood candidate accused of racism by Muslim party colleague during explosive meeting". Its content was as follows:

"It's the second race row in days to hit the SNP, after we revealed Dundee councillor Craig Melville had been suspended over racism claims.

An SNP Holyrood candidate has been accused of racism by a Muslim party colleague, the minutes of an explosive meeting have revealed.

Julie McAnulty walked out of the meeting with eight others after her fellow North Lanarkshire councillor, Dr Imtiaz Majid, won a key post.

And according to the minutes, Majid claimed there would have been no protest if he had been white.

Majid also reportedly accused McAnulty of making a racist comment to him previously, leaving her furious.

It's the second race row in days to hit the SNP, after the Record revealed Dundee councillor Craig Melville had been suspended over claims that he sent hate-filled texts to a Muslim colleague.

And it is a particular headache for First Minister Nicola Sturgeon because McAnulty, as well as being a list MSP candidate, is a key aide to controversial Coatbridge MP Phil Boswell.

Boswell faces a parliamentary standards investigation for allegedly failing to declare a directorship.

The minutes, obtained by the Record, describe a heated row between Majid and McAnulty at a party meeting in Coatbridge on January 10.

The Coatbridge and Chryston constituency branch was split into four this month because of the huge growth in SNP membership. A new constituency association was set up to oversee the new branches.

That meant an election for the vital post of association convener.

McAnulty and Boswell, who was not at the meeting, wanted their ally Paul Welsh to get the job. But Majid won it after a tense series of votes.

The minutes say McAnulty and eight others who voted for Welsh then walked out. They say members of the group were 'shouting abusive language at the chair' as they left the room.

McAnulty returned to the meeting and was appointed treasurer.

But the minutes say that, as the meeting was about to end, Majid made his bombshell claim of racism. The papers claim: 'Imtiaz Majid said he was upset at the way members had behaved by walking out.

'He said he felt the way he had been treated by some of these members was due to his colour. He said he didn't believe there would have been a walkout had he been white (a number of delegates nodded in agreement).

'He also said he had endured racist comments previously.'

The minutes say McAnulty called Majid's claim outrageous, and he then told her she had made a racist comment towards him at a previous meeting.

The document adds: 'Julie McAnulty banged the table and shouted at Imtiaz Majid, saying she would take the matter further.'

The minutes also describe a delegate being accused of 'misogyny' during the meeting, several incidents of shouting and swearing and a membership card being 'violently thrown' at the chairman, Duncan Ross.

An SNP spokesman said: 'We're aware this meeting was bad-tempered, but we understand there were no comments of a racist nature during proceedings and there's been no complaints of such since the event.'

Majid yesterday told us he could not comment on the row because a party investigation was under way.

We tried repeatedly to contact McAnulty, by phone, email and at her Coatbridge home. She was unavailable.

Majid, a wealthy property developer known locally as Jimmy, hoped to be the SNP candidate for Coatbridge, Chryston and Bellshill at the general election.

He had majority support in the local party but SNP headquarters blocked his candidacy after newspaper coverage of his bitter divorce. Boswell was brought in at the last minute to replace him.

As well as the standards investigation, Boswell has been accused of hypocrisy over his tax affairs.

He admitted benefitting from a legal tax avoidance scheme while working in the oil industry after campaigning against such schemes. He said they were common practice in the industry."

[5] The Daily Record article of 3 February 2016 was headlined "SNP Holyrood candidate accused of racism refuses to sit beside Muslim party colleague at council meetings" and subtitled "Julie McAnulty has demanded North Lanarkshire Council chamber is rearranged so she is no longer put next to Dr Imtiaz Majid". Its content was as follows:

"An SNP Holyrood candidate accused of racism is refusing to sit beside a Muslim party colleague at council meetings.

Julie McAnulty has demanded North Lanarkshire Council chamber is rearranged so she is no longer put next to Dr Imtiaz Majid.

The move comes after a race row between Majid and McAnulty at last month's meeting of the SNP's Coatbridge constituency association.

The Daily Record has told how McAnulty staged a walkout with eight others after Majid won the post of association convener.

According to the minutes of the meeting, Majid claimed there would have been no protest if he had been white.

He also reportedly accused McAnulty of making a racist comment to him previously – an accusation she denies.

A source said: ‘Council officials couldn’t believe it when Julie asked to be moved so she was not sitting beside a member of her party. The request was approved by the leader of the SNP group.’

SNP bosses have been forced to cancel tonight’s planned meeting of the constituency association because of the feud.

The party’s national executive took the decision after launching a probe into the row. It means the constituency association have effectively been suspended months before the Holyrood election.

An SNP source said: ‘It is appalling the party are dragging their heels. With such a serious allegation you’d expect McAnulty to get her whip withdrawn.’

McAnulty is a key ally of Coatbridge MP Phil Boswell, who is facing an inquiry over his register of interests and benefited from a legal tax avoidance scheme after campaigning against them.

Scottish Labour said: ‘Given the very serious allegations there must be an urgent investigation by the SNP.’

Majid said he could not comment as a party probe was under way.

The SNP said: ‘The meeting is postponed while we examine the conduct of a previous meeting.’”

[6] On Monday 8 February 2016 the Daily Record published a further article headed

“ ‘Get the Pakis out of the party’: SNP councillor Julie McAnulty at the centre of second race row”. Its content was, so far as relevant, as follows:

“An SNP councillor told a colleague she wanted to ‘get the Pakis out of the party’, officials have been told.

Holyrood candidate Julie McAnulty is already at the centre of a racism row.

And now an SNP activist has filed a complaint alleging she made the ‘Pakis’ comment.

McAnulty is involved in a bitter feud with Dr Imtiaz Majid – a fellow SNP group member on North Lanarkshire Council.

Sheena McCulloch, an SNP member for almost 40 years, notified the party leadership about the alleged comments after reading about earlier racism claims in the Record.

The details are outlined in an official complaint lodged with the SNP's compliance officer Ian McCann and obtained by this newspaper.

Ms McCulloch says the exchange took place in July last year as the pair were campaigning for the nationalists in the North Lanarkshire Council by-election.

She was driving Councillor McAnulty back from a canvassing session in Birkenshaw when the alleged remarks were made.

...

Contacted by the Daily Record last night, Ms McCulloch confirmed the details of the complaint but said she could not comment further due to an ongoing investigation by party bosses.

...

Last night several sources within the SNP in Coatbridge expressed outrage that McAnulty had not been suspended from the party over the allegations.

...

An SNP spokesman said: "The SNP takes a zero tolerance approach to racism in any form. We have received Ms McCulloch's complaint and are examining the claims she makes."

...

The Record revealed last week how McAnulty is refusing to sit beside Dr Majid at council meetings.

She has demanded North Lanarkshire Council chamber is rearranged so she is no longer put next to the Muslim businessman.

The move followed a bitter racism row between the two at last month's meeting of the SNP's Coatbridge constituency association.

McAnulty staged a walkout with eight others after Majid won the post of association convener.

According to the minutes of the meeting, Majid sensationally claimed there would have been no protest if he'd been white.

He also reportedly accused McAnulty of making a racist comment to him previously – an accusation she denies.

SNP bosses were forced to cancel last week's planned meeting of the constituency association because of the feud.

The ugly saga is a particular headache for party leader Nicola Sturgeon because McAnulty is a close ally of controversial Coatbridge MP Phil Boswell.

McAnulty works in Boswell's constituency office and has appeared in videos he funded with taxpayers' money.

...

Majid, a wealthy property developer known locally as Jimmy, hoped to be the SNP candidate for Coatbridge, Chryston and Bellshill at the general election.

He had majority support in the local party but SNP headquarters blocked his candidacy after newspaper coverage of his bitter divorce.

Boswell ultimately won the seat in an SNP landslide.

McAnulty was not returning phone calls yesterday and there was no answer at her Coatbridge home."

[7] The case proceeded to proof before me. The pursuer led six witnesses: the pursuer herself; Martin O'Neill, a local organiser for the Uddingston and Bellshill branch of the SNP; Steven Bonnar, a member of North Lanarkshire Council since June 2015; Mrs Patricia Spencer, a member of the Coatbridge and Chryston branch of the SNP since October 2014; William Layden, a former branch organiser of the Coatbridge and Chryston branch of the SNP; and Ian McCann, the Corporate Governance and Compliance Manager of the SNP. The defender led eight witnesses: the defender herself; Alan Stubbs, a member of North Lanarkshire Council for Coatbridge North; Richard Lyle, a member of the Scottish Parliament since 2011, and formerly a member of North Lanarkshire Council for 30 years; Mrs Anne Neilson, a member of the SNP; Mrs Marie Collins, a member of the SNP since 2014; Fulton McGregor, member of the Scottish Parliament for Coatbridge and Chryston



since May 2016; William Marshall, a member of the SNP since 2015; and Mrs Jean Marshall, also a member of the SNP since June 2015. The principal issue at the proof was whether the pursuer had made the statement attributed to her by the defender in the course of the car journey on 20 June 2015.

**Did the pursuer make the statement attributed to her by the defender?**

*(i) Direct evidence*

[8] The direct evidence on this point came from the pursuer, the defender and Steven Bonnar. According to the pursuer and Steven Bonnar, Steven Bonnar was a passenger in the car at the material time and no such statement was made: according to the defender he was not in the car at the material time and such a statement was made. It is therefore necessary to carry out a close analysis of the evidence of these three witnesses.

[9] The pursuer, who has a degree in music and Scottish Literature and teaches at a local music school, was born and raised in Coatbridge. She became involved in local politics at the time when there was a proposal to close the Accident and Emergency Department of Monklands Hospital. She became involved in the campaign against its closure and was an independent candidate in the 2007 election for the Scottish Parliament. She became interested in health politics and joined the SNP (Coatbridge and Chryston branch) in September 2010. She was elected an SNP member of North Lanarkshire Council in May 2016. In late 2015, because of the exponential increase in the number of members of her local branch, it was decided to divide it into four parts- Coatbridge North, West and South and Strathkelvin, all of which were to be overseen by the Constituency Association through an Overseeing Committee. The atmosphere in the Coatbridge and Chryston branch had been toxic from 2012 to 2016. No proper minutes or accounts were kept, there was bullying and

people were picked on. Broadly speaking there were two rival factions. The pursuer belonged to one of them, which just wished the branch to be properly run. After the influx of new members following the independence referendum in 2014 those who sought to be elected office bearers had to campaign for more votes. Before the Scottish Parliament election in May 2016 the pursuer sought the nomination for Coatbridge and Chryston against Fulton McGregor and the nomination for Bellshill and Uddingston against Richard Lyle. She failed to obtain either nomination.

[10] The pursuer recollected reading the Daily Record article of 22 January 2016. As there was no official route by which the newspaper could have got the minutes referred to, they must have been leaked. The article was part of a smear campaign against her. She was at the time a sitting councillor. Seats in the council chamber for a full council meeting were allocated in alphabetical order. She had sat next to Imtiaz Majid for ten months without any problem. She then became extremely nervous about this and thought she might be accused of something else. She went to see the committee clerk and arranged to swap seats with Steven Bonnar. Her moving seat from the one next to Mr Majid was not connected to his race or the fact that he was a Muslim, as the subsequent Daily Record article of 3 February 2016 suggested. As there could not have been any official source for the article, she concluded that it had been leaked by the opposing faction and that the campaign to smear her had been ratcheted up. So far as the complaint made by the defender in her email of 5 February 2016 was concerned, she did not make the alleged statement, she had never used the word "Pakis" and she had never said that we needed to get rid of them out of the party. She found out about the defender's complaint on Sunday 7 February 2016 as a result of a voicemail left on her phone by David Clegg, a Daily Record journalist, telling her that allegations had been made against her. On Monday 8 February 2016 the above article of that

date appeared in the Daily Record. The pursuer thought it must have been leaked by someone in the opposing faction and that it was an attempt to destroy her and her political career.

[11] The day when the remark was alleged to have been made by the pursuer was Saturday 20 June 2015, the first day of campaigning for a council by-election. The pursuer and the candidate Steven Bonnar were in the defender's car returning from a canvassing session in Lincoln Avenue. The pursuer had been asked by Martin O'Neill, at a political stall which had been set up in Market Place, Viewpark, to go with the defender and Steven Bonnar to canvass in Lincoln Avenue. All three travelled in the defender's car, which had been parked "out of sight of the main drag" to Lincoln Avenue. The journey took about five minutes. The defender drove, the pursuer sat in the front passenger seat and Steven Bonnar sat in the back. At Lincoln Avenue they canvassed for less than an hour. As the defender was turning her car to return to the stall a man with a dog ran up to the car and asked if that was the candidate. She and Steven Bonnar got out of the car and the man engaged Steven Bonnar in conversation. The pursuer got back into the car. She called Steven Bonnar on his mobile phone to try to get him away from the man. After about five minutes Steven Bonnar returned to the car and the defender drove back to Market Place. The atmosphere in the car was OK. There was a conversation about dog grooming in the course of which the defender said that two girls in the area had set up in competition with her. The pursuer was emphatic that she would not have discussed with the defender what the defender alleged. As the defender was allied with Richard Lyle she was part of the problem. She did not know as a matter of fact why the defender had made the false allegation, but she thought the defender was afraid that Richard Lyle would lose his job as an MSP and she would consequently lose her job as his caseworker. The complaint made by

the defender was part of a campaign against her (the pursuer). Following upon her suspension from the SNP she was subsequently reinstated on 18 August 2016. The SNP did not take any action against her. She was removed from the list of possible MSPs because she had been suspended. She was deselected as a council candidate. She resigned from the SNP at the end of March 2017 and unsuccessfully stood for election as an independent candidate.

[12] The pursuer asserted that the third Daily Record article was humiliating and distressing for her. When she read it it was the worst day of her life. It was much worse than the previous two articles and made her sick. She considered that the defender's email had been sent to other people out of malice. The complaint by the defender had done her permanent damage. It was beyond her comprehension how someone could lie like that.

[13] Steven Bonnar, the candidate at the by-election, recalled Saturday 20 June 2015 and the stall at the square in Market Place. While he was at the stall Martin O'Neill suggested that he should do some canvassing with the pursuer and defender. The three of them travelled to Lincoln Avenue in the defender's blue van-type car, which had been parked behind Corals on Market Street. He got into the back through a sliding door. The defender was driving and the pursuer was sitting in the front passenger seat. There was absolutely nothing notable on the journey there, which took four to six minutes. They got out of the car and he went with the defender to do canvassing for about 45 minutes. As they set out on the return journey a man approached the car and asked if he was the candidate. He got out of the car and chatted to him for four or five minutes until he was told that there was a call for him and he got back into the car. On the return journey there was chat about what the man had been asking him. The pursuer did not make any racist comment in the course of the return journey. He would have been outraged had she done so. The defender did not reprimand her. He first became aware of the allegation made against the pursuer by the

defender when he read about it in the edition of the Daily Record of 8 February 2016. He was flabbergasted when he did so and could not believe that the allegation had been made six months later. He did not know the people involved and was horrified and shocked. He would not be prepared to protect the pursuer from the consequences of racist comments and was aware of the consequences of perjury. He was a working class guy who had left school at 15 with no qualifications. As he put it, "they words were not spoken in the car on the way there or back". In cross-examination he stated that he sat in the middle of the back seat of the car. There were campaign materials, leaflets, billboards and some boxes sellotaped shut (although he was not certain about the boxes) there, but there was space enough for him. He rejected the suggestion that the back seat was incapable of holding a passenger. To his recollection there was no child seat in the back. When he got out of the car to speak to the man he spoke to him about Birkenside Sports Barn, a community facility which had been under threat for years.

[14] The defender in evidence spoke generally to the terms of her email. She said that she and Marie Collins arrived at Market Place at about 9:30 am that morning and she parked nose-in in a parking place at the Scotmid shop. Because of the items in the back seat which had been there since the General Election there was absolutely no room for an adult to sit there. There were materials piled up to the roof of the car. She was asked by Mr O'Neill to go canvassing in Lincoln Avenue with the pursuer at about 11:45 am. She drove to Lincoln Avenue with the pursuer in the front passenger seat. On the way there they chatted about the usefulness of canvassing at that time of day. Steven Bonnar arrived at Lincoln Avenue in a car driven by his girlfriend. There was no way he could have travelled to Lincoln Avenue in the back of her car. There was a baby seat strapped in and child locks on the door. She had not discovered over a period of eleven years how to release the child lock.

She did not see or hear any engagement by him with a constituent as described by him and the pursuer. She and the pursuer left Lincoln Avenue after about 20 to 25 minutes as very few people were at home. The pursuer instigated a conversation about infighting in the Coatbridge and Bellshill branch. She said to the defender "Do you not think it's the Pakis that are causing all the problems? Do you not think it's time we got rid of them?". She told the pursuer that what she said was inappropriate and racist and that, as a councillor, she should be careful about what she said. It was another race allegation against the pursuer in the Daily Record article of 3 February 2016 which caused her to send the email containing her complaint. She felt it was her duty to contact headquarters as the pursuer had not taken her advice. She marked her email "CONFIDENTIAL" so that its contents would not go outwith the party. There was no untruth contained within it and she stood by every word in it. At that time she had no enmity or ill-will towards the pursuer. The pursuer was a councillor standing for nomination to the list for the Scottish Parliament, as was Richard Lyle, but she was not a heavyweight political rival to him and the SNP would have to have lost several seats for the list to kick in. The email would not therefore have made the slightest difference to the pursuer's political career. It was ridiculous to suggest that she set out to ruin the pursuer's political career.

*(ii) Indirect evidence*

[15] Indirect evidence about the day came from other witnesses.

[16] Martin O'Neill worked as an emergency call handler for the police and had been a member of the SNP Uddingston and Bellshill branch since October 2014. He acted as the local organiser for Steven Bonnar at the North Lanarkshire Council by-election in June 2015. The first Saturday of the campaign, 20 June, was known as "Steven's Super Saturday". A

stall with bunting, gazebo and flags had been set up. Not all those in attendance were from the local area, so it was arranged that everyone would meet there. Between 20 to 30 people turned up at around 09:30. It was the busiest day of the campaign for volunteers. He was the point of contact for volunteers and he decided who should go where. He instructed Billy and Jean Marshall to remain at the stall. He sent the pursuer, the defender and Steven Bonnar to canvass in Lincoln Avenue. The reason he did so was because they were standing in front of him at the time. He watched them going off together from the stall. He did not see them get into any vehicle. They returned at about 12:10 pm. He did not recall if they were separate or together on their return. He spoke directly to Steven Bonnar.

[17] Marie Collins had worked as a nurse for 45 years and had been retired for ten years. She was involved in campaigning for Steven Bonnar at a street stall at the request of the defender. Sheena picked her up that day, which she thought was at the end of May, in her Citroen Bellingro car. (It was in fact a Peugeot Partner MPV.) It had child locks on the back door and the defender always opened it for her. There were boxes on both back seats and on the floor which had been there since the General Election. She had never been given a lift in the back seat after the General Election. The defender drove her to Market Street and parked in one of the bays in front of Market Square. She assisted in setting up the stall. She saw the pursuer and defender leave together to canvass. She saw them get into the defender's car, but she did not see the defender drive off. The car was still full of boxes and she did not see Steven Bonnar get into it. Steven Bonnar left in a black or navy car with a young woman.

[18] William Marshall was a 68 year old retired painter and decorator. He helped in setting up the stall in Market Place. The pursuer asked the defender if she could take her to do a bit of canvassing. Just the two of them went and then came back. Steven Bonnar was

not there. He went away a couple of times for a cigarette behind the shop. The state of Sheena's car at that time was such that she could take only one passenger. His wife, Mrs Jean Marshall, was a 65 year old retired office worker. She had helped pack up the defender's car at the General Election. The rear was full of carpet, boxes of leaflets and even a toilet brush right up to the day of campaigning for Steven Bonnar. She saw the pursuer and defender come back from canvassing. There was no one with them. Steven Bonnar could not have been in the defender's car. It was impossible as the defender could not have given a lift to more than one person. The defender's car remained full right through to July. Any time she saw it it was full. She had first cast her mind back to the events of that day more than six months previously. She was a supporter of Richard Lyle but did not hold anything against the pursuer.

*(iii) Indirect evidence*

[19] There was, in addition, what I would describe as wider background evidence. This related to two previous incidents mentioned in the Daily Record reports: first, an SNP branch meeting about the splitting of the ward held in 2012 which the pursuer attended; and, secondly, the request by the pursuer not to be seated beside Mr Majid at council meetings. This evidence was led by the defender with a view to showing that the pursuer had previously exhibited racist tendencies.

[20] So far as the 2012 meeting is concerned, the witness Alan Stubbs, who at the time of the proof was SNP councillor for Coatbridge North on North Lanarkshire Council as well as office manager for Fulton McGregor, was present in his capacity as branch secretary. He made the following note of the meeting once he got home:



“Racist – Told Imtiaz when he was instructing people to vote him Number 1 that he vote Gerry Number 2. When told by Imtiaz he couldn’t instruct anyone how to use their vote she responded ‘looking around this room is testament to the fact that you can’.

I raised Point of order asking for clarification on the point which was a blatantly racist comment. Many angry, more shocked, in room. Julie apologised and withdrew comment.

Party must take this seriously. Candidate racist towards fellow candidate.”

He added that he thought the remark was racist because she had made a gesture towards an Asian group present when she said “looking around the room”. He spoke to Ian McCann, the Governance and Compliance Manager, about the matter. He accepted that there had been infighting within the local party for many years and that two factions existed. It was not true that the pursuer said that the floor was clearly being directed. In his opinion it was a blatantly racist remark which she had made. He accepted that he had described the pursuer to the Press as “a twisted bitch”, but claimed that he had no reason to have animosity towards her. Anne Neilson was an SNP activist in 2012 and election agent for Dr Majid and at one point for Gerry Somers. According to her the pursuer said at the meeting “You just need to look around the room to see which way the vote is going to go.” There were a lot of Asians in the room. The branch secretary or convener asked her if she wished to withdraw the remark, which she did. She understood the pursuer to be directing her comments at the Asians in the room. She did not hear Mr Majid say he was at a disadvantage because he was Asian and did not recall an allegation that entryism was going on. Fulton McGregor, the SNP Member of the Scottish Parliament for Coatbridge and Chryston since 2016, also spoke to the pursuer having made the same or a similar comment at the 2012 meeting. He accepted that he was part of the faction opposed to the pursuer.

[21] The pursuer's account of the 2012 meeting was that it was very crowded and she took issue with how people were behaving. There were relations of Alan Stubbs and friends and employees of Imtiaz Majid present. She thought they were there basically to bully Gerry Somers into accepting Imtiaz's position. She took issue with Imtiaz for improper conduct, bullying and intimidation. He was sitting among the new members and telling them by gesture when to raise their hands. She was very annoyed by what was going on and commented "The floor is clearly being directed". Alan Stubbs called a point of order. She thought he was just annoyed she was pointing out what was happening at the meeting. She withdrew her comment and apologised when requested to do so as she wanted to close down the argument and the meeting to go on. She did not say anything intended to be racist. No complaint had been made or disciplinary action taken against her.

[22] So far as the issue of the pursuer refusing to sit beside Dr Majid at council meetings is concerned, the substance of the allegation is contained in the Daily Record article of 3 February 2016 set out above. The pursuer's response to this was that there was no truth that she refused to sit beside him because he was a Muslim. I have already set out her evidence on this point at paragraph [10] above. She was not aware of any probe at that time or of any official source for the Daily Record article. She concluded it had been leaked by the faction opposed to her and was a continuation of the campaign to smear her, which had been ratcheted up.

[23] As regards the condition of the interior of the defender's car on 20 June 2015, Richard Lyle spoke to the general position following the General Election on 7 May 2015. He said it was full and still full at the time of Steven Bonnar's election in July. The defender was unable to pick up his grandson from nursery over that period. Ann Neilson said that the car was jam-packed with boxes and a child seat in the rear following the General

Election. Mr and Mrs Marshall also spoke of the items in the car and of the impossibility of anyone being able to get into the back seat.

### **Assessment of the evidence**

[24] The evidence of the above witnesses was in conflict to a greater or lesser extent.

Guidance on how to deal with such a conflict was given by the Court of Appeal in *Wetton (as Liquidator of Mumtaz Properties) v Ahmed and Others* [2011] EWCA Civ 610, in which Arden LJ stated at para 12:

“There are many situations in which the court is asked to assess the credibility of witnesses from their oral evidence, that is to say, to weigh up their evidence to see whether it is reliable. Witness choice is an essential part of the function of a trial judge and he or she has to decide whose evidence and how much evidence, to accept. This task is not to be carried out merely by reference to the impression that a witness made giving evidence in the witness box. It is not solely a matter of body language or the tone of voice or other factors that might generally be called the ‘demeanour’ of a witness. The judge should consider what other independent evidence would be available to support the witness. Such evidence would generally be documentary, but it could be other oral evidence ...”

At paragraph 14 her ladyship went on to state that the presence or absence of contemporaneous documentation was of the very greatest importance in assessing credibility. In this case there is no contemporaneous documentary evidence about what was said in the car, nor would I expect there to be any. Nor is there any CCTV footage or the like, which would have shown how many people got into the defender’s car. I am therefore totally reliant on the oral evidence of witnesses in reaching a conclusion on credibility and reliability. I have reached the conclusion that the pursuer did not make the statement attributed to her for the following reasons.

[25] First, I regard it as implausible and inherently unlikely that the pursuer would have made the statement attributed to her, and especially to the defender. She did not know the

defender and understood that she was aligned to Richard Lyle and part of an opposing faction within the local SNP. She was wary of the defender, understood that she had been discussing her behind her back and had made untruthful allegations against another person. The alleged statement is said to have been made 12 days after Richard Lyle had blocked her nomination as a candidate for Coatbridge and Chryston at the Scottish Parliament election. Counsel for the pursuer submitted that it would have required the pursuer to have taken complete leave of her senses to have made such a statement to the defender. I agree with that observation.

[26] Secondly, there is the issue of the delay by the defender from June 2015 to February 2016 in making an official complaint against the pursuer. The principal explanation given by the defender in evidence for this delay was that she had hoped that the pursuer would desist from making any further comments of such a nature and that her comment had perhaps been “a slip of the tongue”. She ultimately suggested that the use of the term “Pakis” was not necessarily racist despite the fact that the terms of her written complaint made clear that she was reporting the pursuer for having made a racist comment. Had the defender genuinely thought at the time of the alleged statement that the pursuer was a racist within the SNP I would have expected her to take some formal action to report the matter then. The other, and inconsistent, explanation given by the defender in the body of her written complaint for the delay was that she feared reprisals from the pursuer and her supporters. The defender stated in evidence that in June 2015 she had little knowledge of the ongoing discord within Coatbridge and Chryston SNP and that she did not know that the pursuer and Phil Boswell were aligned. I do not accept the explanation for the delay given in her written complaint.

[27] Thirdly, there is the issue of the complainer having copied her written complaint to various individuals. The reason given on record for this was so that they would be aware that it was not the North Lanarkshire Liaison Committee which had made the complaint. The list of recipients consisted mainly or wholly of people who were not supportive of the pursuer and did not include anyone supportive of her. The reason given by her in evidence was that she wished to ensure that the complaint was dealt with. I do not accept either of these reasons. In my judgment the complaint was circulated to these other recipients out of malice or ill-will on the part of the defender, in order to cause as much damage as possible to the pursuer.

[28] Fourthly, there was obviously a campaign within the local SNP against the pursuer in January and February 2016, as demonstrated by the articles in the Daily Record, the information for which must have been leaked to the newspaper by a party member or someone on his or her behalf. I regard the complaint made by the defender as part of this campaign, designed to prevent the pursuer being nominated as a candidate for the Scottish Parliament elections, and possibly to oust her from the party. The timing of her complaint is, in my view, highly significant, coming as it did after the Daily Record articles traducing the pursuer. So also, in my opinion, is the fact that she worked for Richard Lyle MSP. Although it is not necessary for the pursuer to establish a motive for the defender's statement, I am satisfied upon the entire evidence led that the defender was part of a campaign against the pursuer.

[29] Fifthly, the defender has previously been convicted of a charge of theft. This in itself does not establish that she lied, but it does show that she is not averse to acting dishonestly.

[30] Sixthly, I do not accept that the pursuer has generally racist views. She has taught music to pupils of different nationalities. The comment which she made at the meeting in

March 2012 directed against Dr Majid and his supporters, whatever its exact terms, was solely political in nature and critical of what she regarded as entryism on the part of his supporters. Her refusal to sit beside Dr Majid in the council chamber was again political and not racist in nature. I therefore reject the submission of counsel for the defender that what happened at the 2012 meeting is indicative of a propensity on the part of the pursuer to speak in a way that is heedless of racial sensitivities.

[31] Seventhly, I believe the evidence of the pursuer and Steven Bonnar to the effect that the pursuer never made the alleged statement and reject the evidence of the defender that she did make it. My impression of the pursuer as a witness was a generally favourable one. Even if I had had any doubts about her credibility and reliability (which I did not) they would have been dissipated by the evidence of Steven Bonnar. He was, to my mind, an entirely honest and reliable witness. He had no axe to grind and no reason whatsoever to lie. He was a guileless greenhorn in the world of local politics, unused to its scheming machinations. Unlike other witnesses, he had a good reason to remember the events of 20 June 2015 in detail as he was the candidate and then embarking on his first day of campaigning. He was clear that he was in the defender's car and that the alleged statement was not made by the pursuer. He stated that he abhorred racism: that being so, I would have expected him to take some action in relation to the pursuer had she made the statement attributed to her. I refuse to accept that he committed perjury in order to assist the pursuer. On the other hand, I did not accept the evidence of the defender that the pursuer made the statement attributed to her. I found her to be an unforthcoming witness and formed a generally poor impression of her. Faced with a direct conflict between her evidence and that of the pursuer and Steven Bonnar, I have no hesitation in accepting the evidence of the latter two. On the question of the items allegedly in the defender's car at the material time which

would have prevented Steven Bonnar getting into the car, I take the view that while there might well have been some items in the car, they did not prevent Steven Bonnar getting into the back of the car. Moreover, I find it extremely strange that there should be the large number of items in the car which the defender claimed there were several weeks after the General Election, particularly as she was in the habit of ferrying around Mr Lyle's grandchildren. The issue raised by the defender about the child lock on the back door of her car and where her car was parked before she drove to and then back from Lincoln Avenue probably cannot be definitively resolved on the basis of the conflicting accounts, but I am satisfied that Steven Bonnar was in her car on the journeys to and from Lincoln Avenue. I regard his evidence as the touchstone of the truth and reject the evidence of any witness in conflict with it.

[32] I am therefore satisfied that the statement made by the defender attributing the alleged statement to the pursuer was false. Moreover, as stated above, I am satisfied that it was activated by malice and ill-will as part of a campaign directed against the pursuer by the opposing faction within the local SNP. On the view I have taken no issue of *veritas*, fair comment or qualified privilege arises.

### **Damages**

[33] The false allegation of racism against the pursuer was extremely serious in nature and caused her great distress. The defender must be held liable for direct publication to the recipients of the complaint. Counsel for the pursuer submitted that the defender must also be held liable for all further publications of the allegation as these would not have occurred but for her complaint. She was actually aware, or at least a reasonable person in her position should have been aware, that there was a significant risk that what she said would be

repeated in whole or in part in the media and that would increase the damage caused to her, particularly in light of the previous articles concerning the pursuer having been leaked to the Daily Record. The conclusion that there was actual awareness was consistent with the proposition that the defender was actually engaged in seeking to damage the pursuer. As a result, the defender was liable for the damage caused by the totality of the publication of the allegations contained within the complaint: *McManus v Beckham* [2002] 1 WLR 2982.

Reference was made to *Baigent v BBC* 2001 SC 281 at paragraphs 22 and 26. The court should also take into account that the defender had pleaded and failed in a defence of *veritas*, resulting in additional publication of the defamatory statements and distress to the pursuer: *Munro v Brown* 2011 SLT 947 at paragraphs 47, 50 and 51. Standing the seriousness of the allegations made by the defender, her conduct of the case and the extent of publication, damages should be assessed at £100,000. Alternatively, if the court took the view that the defender was liable only for a more restricted publication, an award of £40,000 would be appropriate. On any view there was at least a significant risk that the content of the complaint would be discussed within the party and locality of the pursuer, affecting her reputation and her career as a politician.

[34] It was submitted on behalf of the defender that the award of damages should take into account several factors. First, in making her complaint, which was headed “CONFIDENTIAL”, the defender was making a formal report to an SNP official. The recipients of her email, all of whom were members of the SNP and subject to its disciplinary processes, should have been expected not to disseminate its contents as a leak to the Press would be contrary to the code of conduct. Secondly, the extent of dissemination by the defender was restricted to the thirteen people listed as recipients of the email. That the contents of her complaint ended up being reported in the Press was not of the defender’s



making. It was reasonable for her to assume that it would not be published more widely. Thirdly, when the Press received the story and asked the defender for comment she replied by stating that she could not provide any comment as the issue was by then with the SNP. Fourthly, by the time of the complaint and its subsequent reporting the pursuer was already the subject of the articles in the Daily Record dated 22 January and 3 February 2016 and had also, at the 2012 meeting, spoken in a way that was heedless of racial sensitivity and thought to be racist by several persons present. Fifthly, the pursuer had demonstrated herself, by her evidence relating to the 2012 meeting, to be untruthful and (again) heedless of racial sensitivities. She had on any view made unwarranted and heedless accusations of the most serious nature against a number of individuals so that her reputation would be substantially diminished in any regard.

[35] The submission for the defender continued by asserting that an award of damages for defamation under Scots Law was compensatory only: unlike the law of England, there should be no question of punitive damages. If the pursuer had no reputation worthy of protection any award of damages should be nominal. So far as responsibility for wider publication was concerned, the necessary foresight of wider publication was absent. The allegation, albeit serious, had been made to the named recipients only and an award of more than £5,000 would not be warranted. If the defender were to be held responsible for the wider circulation an award in the region of £30,000 would be appropriate.

[36] I deal first with the question whether the defender is to be held liable for further publication of the defamation beyond the publication which she made to the named recipients of her email. In *McManus v Beckham* the claimants, who sold autographed memorabilia, claimed damages against the defendant, a well-known celebrity, for an alleged slander of their business. They alleged that he had spoken to several customers in

their shop advising them not to buy autographs from their shop since they were all fakes.

The particulars of claim alleged that the defendant's publication of the words complained of foreseeably led to extensive media coverage, repetition and republication in various newspaper and internet articles, thereby causing substantial loss to the business for which the defendant was liable. The particulars also stated that the claimants further relied, in support of their damages claim, on the fact that the defendant courted publicity in her professional and private life, that, as she well knew or could or did foresee, her remarks were likely to come to the attention of and be widely reported in the tabloid press and that, alternatively, it was the natural and probable consequence of her publication of the words complained of that they would be reported in the media and/or repeated in the specialist celebrity autograph market. The defendant applied to strike out those particulars on the ground that she could not, as a matter of law, be liable for any damage flowing from the independent and unauthorised republication of the alleged slander. The judge at first instance granted the application, holding that the newspaper publications must have resulted from the independent act of a third party for whose acts the defendant was not in law responsible. The Court of Appeal (Waller, Clarke and Laws LJJ), taking as its starting point the statement in *Gatley on Libel and Slander*, 9<sup>th</sup> ed (1998), pp 154-155, para 6.30, reversed the decision of the judge at first instance. Waller LJ stated at page 2998F-H, para 34:

“What the law is striving to achieve in this area is a just and reasonable result by reference to a reasonable person in the position of the defendant. If a defendant is actually aware (1) that what she says or does is likely to be reported, and (2) that if she slanders someone that slander is likely to be repeated in whole or in part, there is no injustice in her being held responsible for the damage that the slander causes via that publication. I would suggest further that if a jury were to conclude that a reasonable person in the position of the defendant should have appreciated that there was a significant risk that what she said would be repeated in whole or in part

in the press and that that would increase the damage caused by the slander, it is not unjust that the defendant should be liable for it.”

Laws LJ stated at pp 3000H- 3001C, paras 42 and 43:

“42 The law needs to be simplified. The root question is whether D, who has slandered C, should justly be held responsible for damage which has been occasioned, or directly occasioned, by a further publication by X. I think it is plain that there are cases where that will be entirely just. The observation of Bingham J in *Slipper v British Broadcasting Corpn* [1991] 1QB 283, 300 that ‘Defamatory statements are objectionable not least because of their propensity to percolate through underground channels and contaminate hidden springs’ states an ancient and persistent truth, long ago vividly described in Vergil’s account of Aeneas and Dido, Queen of Carthage (*Aeneid* bk4, II 173-188).

43 It will not however in my judgment be enough to show that D’s slander is a cause of X’s further publication: for such a cause might exist although D could have no reason to know of it; and then to hold D responsible would not be just. This is why the old formula ‘natural and probable cause’ is inapt even as a figurative description of the relationship that needs to be shown between D’s slander and the further publication if D is to be held liable for the latter. It must rather be demonstrated that D foresaw that the further publication would probably take place, or that D (or a reasonable person in D’s position) should have so foreseen and that in consequence increased damage to C would ensue.”

Assuming for present purposes (as I was not referred to any Scottish case on the point) that the above *dicta* correctly state the law of Scotland, I have reached the conclusion that the defender in the present case cannot be held responsible for any publication of the libel beyond the email which she sent. Notwithstanding the previous publicity relating to the pursuer, that email was marked “CONFIDENTIAL” and circulated to a restricted number of named persons within the SNP. I am of the view that it cannot be said that the defender foresaw or should have foreseen that further publication of the libel would probably take place. In these circumstances it would not, in my opinion, be just for her to be held responsible for further publication.

[37] Nevertheless, the libel in question, which made an unfounded allegation of racism, was an outrageous one which has had a serious effect on the pursuer’s personal reputation

and effectively ended her political career. I consider the figure of £5,000 suggested by counsel for the defender as damages to be wholly unrealistic and inadequate. I accept the submission of counsel for the pursuer that in these circumstances an award of £40,000 in name of damages would be appropriate.

### **Decision**

[38] I shall sustain the first, second, third, and fourth pleas-in-law and repel the fifth plea-in-law for the pursuer, repel the first to sixth pleas-in-law for the defender, grant decree for payment by the defender to the pursuer of the sum of £40,000 with interest thereon at the rate of 4% per annum from the date of citation until the date of decree and thereafter at the rate of 8% per annum until payment.