Neutral Citation Number: [2024] EWHC 2590 (KB)

Case No: KB-2023-002483

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST
MANCHESTER DISTRICT REGISTRY

Manchester Civil Justice Centre
1 Bridge Street West
Manchester
M60 9DJ

Date: 11/10/2024

Before :

MRS JUSTICE HILL DBE

- -

Between :

JOHN OLIVER	**Claimant**
- and -	
JAINE DUFFY	**Defendant**

- -
- -

The **Claimant** and **Defendant** both appeared in person

Hearing date: 3 October 2024

- -

Approved Judgment

This judgment was handed down remotely at 4.30pm on 11 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE HILL

Mrs Justice Hill:

Introduction

1. This is a claim for slander.

2. The Claimant is a 61 year old man. He alleges that on the evening of 28 January 2022 the Defendant, unprompted, called him a "paedophile" in the Queens Arms pub in Bredbury, near Stockport ("the pub").

3. The Defendant's case is that in fact she said "go away you horrible peedo" [sic]; and that she did so because the Claimant had been sexually harassing her daughter, who is around 30 years younger than him and in very vulnerable mental health. Her case is that immediately before she used the word in question, the Claimant had described her daughter as a "prick tease". The Defendant's daughter is protected by an anonymity order and is to be referred to as RXK.

4. This is my judgment on the claim, after a one day trial on 3 October 2024.

The procedural history and the trial

5. The claim form was issued on 25 January 2023. The claim was case managed by Master Dagnall who made a series of orders, most notably for the purposes of the trial his orders dated 19 December 2023 and 8 March 2024. These required the Claimant to provide further information about various aspects of his claim under CPR Part 18, which he did.

6. On 8 November 2023 the Claimant applied for an order striking out the Defence under CPR 3.4(2) and/or granting summary judgment on his claim under CPR 24.3.

7. On 10 November 2023 the Defendant emailed the court saying she no longer wished to defend the claim because it was affecting her health. She said that she had tried to apologise to the Claimant in person but he would not accept it. She said that she was already in financial hardship and did not wish for any more time or cost to be incurred in the claim. At the end of the email she apologised again to the Claimant. She did, however, continue to defend the claim.

8. On 12 January 2024 the court wrote to the parties giving them notice that the trial would commence on 2 October 2024 with a time estimate of 3 days.

9. On 18 April 2024 Mrs Justice Steyn dismissed the Claimant's application for strike out or summary judgment. In the reasons for her decision she set out the various elements of a slander claim, and what the Claimant had to prove in relation to each element.

10. On 26 June 2024 a pre-trial review took place before Mr Justice Linden. He made a series of orders, including giving the parties further time to serve their witness statements and making provision for a Schedule of Loss from the Claimant and a response from the Defendant. He varied the time estimate for trial to 2 days. The parties were informed that the trial would start on 3 October 2024. In his order, Linden J emphasised that litigation of this nature is "complex" and that it was clear from Steyn J's reasons for dismissing the Claimant's application that he had "a

number of hurdles to clear" if he was to succeed. He also warned the Claimant that even if he succeeded in his claim, a public judgment might do greater harm to his reputation than would otherwise be the case.

11. The Defendant's case was that the Claimant's harassment of RXK had contributed to a deterioration in RXK's mental health. The Claimant disputed this. Shortly before the trial, with considerable reluctance, the Defendant disclosed some recent medical evidence relating to RXK. She asked the court to order the Claimant "not to show these around the public houses in Bredbury". Before and at the outset of the trial the Claimant was reminded about the rules against further use of documents disclosed in litigation set out in CPR 31.22. He confirmed he understood them and would be bound by them.

12. The trial bundle contained the various accounts the parties had given and other key material. The parties both represented themselves. I took into account the fact that both parties were unrepresented, as required by CPR 3.1A(2) and sought to ensure that proper questions were put to the witnesses under CPR 3.1A(5).

13. The Claimant had plainly done extensive legal research and identified the key authorities and most of the relevant legal principles.

14. The Defendant has physical health issues that cause her serious pain. It was apparent that she was finding the litigation process very upsetting. This was especially the case because it involved consideration of her daughter's serious mental health issues and the Claimant's behaviour towards her, which she said had been harmful. The Defendant was therefore vulnerable due to her health and the traumatic nature of some of the subject matter in the proceedings such that CPR PD1A, paragraphs 4(c) and (e) were engaged. We took regular breaks in the proceedings and court staff ensured she was comfortable. She assured me she did not require any other adjustments to the court process.

15. I read the medical evidence about RXK before the trial and it was referred to during the trial in very brief terms. On that basis, CPR 31.22(1)(a) is engaged and the Claimant could use the material for other purposes. It is hard to see what proper purpose the Claimant would have for doing so; and there is a continued need to protect RXK's privacy. I therefore make an order prohibiting the Claimant from further use of the medical evidence about RXK under CPR 31.22(2).

The Claimant's case

The Claimant's evidence

16. The Claimant gave evidence himself. He adopted the contents of his witness statements and Part 18 documents dated 8 November 2023, 8 January 2024, 13 February 2024, 27 March 2024 and 9 July 2024. He was cross-examined by the Defendant and answered questions from me.

The Claimant's hearsay application

17. Before the trial the Claimant had served witness statements from two people present in the pub at the relevant time, Philip Howlett and David Makin. Both their witness

statements indicated that they had heard the central exchange that underpins this claim. The Defendant and the court had expected that they would attend to give oral evidence at the trial. They had featured on the draft timetable agreed the day before the trial. However neither Mr Howlett nor Mr Makin attended court.

18. Under CPR 32.5(1), if a party has served a witness statement, and wishes to rely at trial on the evidence of the witness who made the statement, they must call the witness to give oral evidence unless the court orders otherwise or they put the statement in as hearsay evidence.

19. At the outset of the trial the Claimant applied to have the witness statement of Mr Howlett dated 10 July 2024 and that of Mr Makin dated 11 July 2024 admitted as hearsay.

(a): Submissions

20. The Claimant accepted that he had not served hearsay notices in relation to either Mr Howlett or Mr Makin, as required by CPR 33.2(b). He sought relief from sanctions for that failure under CPR 3.9 and invited me to admit the evidence as hearsay, applying the approach I had taken while a Deputy Master in *ST (A Minor) and Anor v L Primary School* [2020] EWHC 1046 (QB), [2020] ELR 555 at [31]-[42].

21. In deciding whether to grant relied from sanctions, the factors set out in *Denton v White* [2014] 1 WLR 3926 fall to be considered, namely (i) the seriousness and significance of the breach in respect of which relief from sanctions is sought; (ii) why the failure or default occurred; and (iii) all the circumstances of the case, including whether the breach has prevented the efficient and proportionate conduct of the litigation

22. The Claimant submitted that Mr Howlett had significant caring responsibilities for his father who has bowel cancer and had recently had some kind of deterioration. He said that Mr Howlett did not feel able to leave his father for any length of time and apologised for not attending court. The Claimant told me that Mr Howlett had informed him of this late in the afternoon of the day before trial.

23. Mr Makin's witness statement had indicated that he is a self-employed floor covering layer, in both commercial and domestic properties. The Claimant informed me that he is currently working on a big contract at Trafford Park and did not feel able to take time off from this project to attend court. He told me that he had seen Mr Makin in the street the day before the trial. Mr Makin had told him then that he could not attend court as he was "stuck on the job" at Trafford Park.

24. In support of his application for relief from sanctions, the Claimant contended that there was a good reason why he had not served hearsay notices in relation to the two witnesses, namely that he had only discovered the day before the trial that neither could attend. He relied on the fact that the Defendant had been in possession of the statements of both witnesses since they were served in early July 2024 and therefore had not been "ambushed" in any way. He argued that the breach was not serious or significant and relief from sanctions should be granted.

25. The Defendant expressed her disappointment that the witnesses had not attended. She made clear that had they done so, she would have wished to cross examine them on the central dispute as to what she had said. She said she simply could not understand why they had given evidence of her saying something which she said she had not. However, she took a pragmatic stance on the application: rather than objecting outright to the witness statements being admitted, she conceded that they could be admitted, but urged the court to bear in mind that their content had not been challenged when assessing their weight.

(b): Analysis and decision

26. In my judgment the Claimant's failure to ensure his witnesses attended for trial was, under *Denton* factor (i), both serious and significant.

27. Two High Court judges in the last year have emphasised to the Claimant the elements of the claim he needed to prove and the fact that there were certain difficulties in his evidence. A central dispute in this claim was the words used by the Defendant. These two witnesses were both going to give evidence on that issue. The Claimant must therefore have appreciated the importance of them attending trial.

28. The absence of Mr Howlett and Mr Makin from the trial deprived the Defendant of the opportunity to cross examine them on this important issue; and it deprived the court of the ability to assess the quality of the witnesses' evidence to its fullest extent.

29. I did not find the reasons for the non-attendance of the Claimant's witnesses impressive.

30. The Claimant had known of the trial date for many months: see [8] and [10] above. Yet it was far from clear that he had been specific with the witnesses about the trial date and the need to attend. He said he "thought" Mr Makin knew of the trial date but was "not sure" they had had a conversation about it; he simply "assumed" he would attend. It also appeared that the meeting between the Claimant and Mr Makin the day before the trial had been accidental. It follows that if they had not bumped into each other, Mr Makin may not have attended court and no one would have been any the wiser why that was.

31. There was no direct evidence from either witness confirming their reasons for their non-attendance.

32. Further, in respect of both witnesses, the reasons for their non-attendance advanced by the Claimant (namely Mr Howlett's father's illness and the Mr Makin's work commitments) appear to be of a long-standing nature. If these had been identified by the Claimant earlier it might, for example, have been possible to arrange for them to give evidence via video link. However there was no suggestion that the Claimant had considered this, even though he had clearly conducted extensive legal research about other procedural aspects of the case and identified the correct principles.

33. Accordingly, applying *Denton* factor (ii), I concluded that the reason why the failure to serve hearsay notices occurred was not a good reason.

34. However, ultimately, I concluded that *Denton* factor (iii) militated in favour of admitting the witness evidence as hearsay. The breach had not prevented the efficient and proportionate conduct of the litigation: to his credit, the Claimant did not apply to adjourn the trial to allow the witnesses to attend. Admitting the witness statements would allow the Claimant to place some reliance on them and prevent him being unduly prejudiced by matters which in part were outside his control. I also bore in mind the Defendant's position on the application.

(c): The weight to be attached to the Claimant's hearsay evidence

35. Having admitted the statements of the two witnesses as hearsay I had to consider the weight to be attached to their statements by reference to the Civil Evidence Act 1995, s.4.

36. This section provides that in estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence, and that regard may be had in particular, to (a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness; (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated; (c) whether the evidence involves multiple hearsay; (d) whether any person involved had any motive to conceal or misrepresent matters; (e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose; and (f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.

37. Under s.4(a), I consider that with greater focus on the needs of the litigation it would have been reasonable and practicable for the Claimant to have secured the witnesses' attendance before the court by some means, for the reasons set out at [29]-[33] above. Under s.4(b) the statements were not made contemporaneously with the key event (in late January 2022), but almost 18 months later (in early July 2024). Mr Howlett and Mr Makin are both friends or associates of the Claimant, which might engage s.4(c).

38. I also had some concerns about the manner in which the witness statements had been prepared: Mr Makin said in terms at paragraph 4 of his statement that he had been "helped" to prepare his statement by the Claimant; they were both typed in the same style as the Claimant's own witness statement; and both statements contained the same phrase "out of nowhere" and capitalisation of the word "Paedophile" (the latter of which the Claimant also used in his witness statement). These are the sort of issues that could have been explored had the witnesses attended for trial. As they did not, I am left with lingering but unresolved concerns under s.4(e). I also could not help but observe the last minute nature of the stated issues over the witnesses, potentially engaging s.4(f). In fairness to the Claimant, I do not make definitive findings on each of these final two factors, but they are part of the picture that I cannot ignore.

39. For all these reasons, having regard in particular to the factors set out in s.4, I concluded that the hearsay evidence of Mr Howlett and Mr Makin was to be afforded little weight, in particular on the central issue of what the Defendant said.

The Defendant's case

The Defendant's evidence

40. The Defendant gave evidence. She adopted the contents of her Defence, her 10 November 2023 email to the court, her statement dated 30 January 2024 and her response to the Claimant's Schedule of Loss. She was cross-examined by the Claimant.

The Defendant's witnesses

41. The Defendant called two witnesses, Mandy Coombes and Daniel Lee.

42. The Claimant had rightly identified before the trial that the witness statements of neither of these witnesses was supported by a statement of truth that complied with the requirements of CPR 22.1(b) and CPR 22 PD paragraph 2.2. As the witnesses attended court for trial he did not object to them giving evidence. Before they did so, having been sworn, I took each of them through the details of the correct statement of truth including the contempt warning. They each adopted their witness statements by reference to these words. This was an appropriate process to pursue the overriding objective, given that both parties were unrepresented under CPR PD 3.1A(4); and had the effect of verifying their statements for the purposes of CPR 22.4.

43. Mrs Coombes and Mr Lee had both apparently written their statements on their mobile phones in free, unstructured text, without paragraphs. This provided their witness statements with an air of authenticity. There was no suggestion that the Defendant had played any part in the drafting of their statements. Their oral evidence was similarly clear, direct and "unfiltered".

44. In response to a challenge from the Claimant to her credibility, Mrs Coombes agreed that she and the Defendant have been friends for many years, but did not accept that she had come to court to lie on her behalf and discredit the Claimant. I did not believe that she had done so. Most of her evidence related to events after 28 January 2022 and the issue of serious harm.

45. Mr Lee's evidence was directly relevant to the issue of the words used on 28 January 2022. For the reasons explained under **Issue (1)** below, I accepted his account.

The facts

The parties and RXK

46. Both the Claimant and the Defendant, and their respective groups of friends, are "regulars" at the pub. They both also attend the Conservative Club in Bredbury.

47. RXK, the Defendant's daughter, is in her early 30's. She has significant mental health issues and very complex needs. The medical evidence indicates that her difficulties were diagnosed in 2017 and that she has received significant therapeutic interventions since then. The Defendant was repeatedly tearful during the trial while talking about her daughter. She spoke particularly powerfully about living in fear of a telephone call at night, in case it is about her daughter in danger. There have been times when she has received such calls and had to attend the local Accident and Emergency

Department. I was entirely satisfied that the Defendant's evidence about her daughter's mental health and its impact on her was truthful.

48. RXK also goes to the pub where these events took place. This much was clear from the 2020 messages (see [52] below) and the Defendant's evidence about going into the pub with her daughter.

49. The Defendant had asserted in her Defence that the Claimant is a bully who is known for causing trouble in the pub and who regularly intimidates women. At trial, the Claimant asked her why she had written that. The Defendant accepted that "bully" might be too strong a word. However, she said that several women in the pub have expressed concern about how the Claimant behaves: he likes to pursue young women, likes to be liked, likes to get his own way, does not like to take no for an answer and is not happy if women reject his advances. Mrs Coombes corroborated this broad picture, saying that several of the women in the pub "keep a wide berth" from the Claimant, meaning they try and keep their distance from him. The Claimant disagreed with this characterisation of his personality and behaviour.

Contact between the Claimant and RXK before 28 January 2022

50. Prior to the night in question there had been contact between the Claimant and RXK.

51. The Defendant's case was that the Claimant had sought out RXK because she was vulnerable; and had sent her lewd messages on Facebook, asking to see her breasts, telling her what he wanted to do to her sexually and offering to send him pictures of his penis. The Defendant said that one of the aspects of RXK's mental health conditions is that she is unable to easily distinguish between positive and negative attention and "craves" attention. However, she said that the attention that the Defendant had been giving RXK was unwelcome; that RXK was "disgusted" by it as she considers the Claimant an "old man"; and RXK had "blocked" him on social media. The Defendant said that the Claimant had continued to harass RXK for a lengthy period of time and this had contributed to a deterioration in RXK's mental health.

52. The Claimant accepted that he had been in contact with RXK on Facebook. He appended copies of messages between them dating from 14 August 2020 to 3 October 2020 to his 8 November 2023 witness statement. He said he was providing them to show that the Defendant had misled the court in saying that he had sent lewd messages.

53. The Claimant denied that he had "sought out" RXK. However, the messages show that on 14 August 2020 he initiated Facebook contact with RXK by sending her a "friend request" while acknowledging "I know you don't know me x". He immediately asked RXK how long she had been with her boyfriend. She said it had been nearly a year. He then said "Ohrite [sic] x. well I'll be honest and I know this doesn't mean anything but I think your [sic] Gorgeous". He said "I hope I haven't offended you xx". She replied "No it's fine". He then said "Hahaha cool x do you like older men ? xx" before saying he would leave her alone and again that he hoped he had not offended her. It does not appear that she replied.

54. It appears that the Claimant sent RXK a series of messages between 24 August 2020 and 14 September 2020 to which she did not reply other than confirming that she had returned to work and was working until 9 pm. Further messages over 2/3 October 2020 suggest the Claimant asking RXK where she was going out, her and RXK meeting in a pub and him buying her a drink. One message appears to suggest RXK saying that things her boyfriend were "not good". She had walked home alone that night.

55. Accordingly the messages show that having initiated contact with RXK, the Claimant appeared to be pursuing her in a romantic fashion despite their significant age difference and that they met for a drink.

56. The Claimant was correct that there is no evidence in these messages showing him sending the lewd messages that the Defendant described. However these messages are from over a year before the night in question. The Defendant's evidence was that the Claimant continued to communicate with and harass RXK up to 28 January 2022. The Claimant did not, in terms, deny that there had been further contact between himself and RXK. It therefore appears likely that there were many more messages between the Claimant and RXK after 3 October 2022. Neither party disclosed any such messages for the purposes of the trial.

57. The Defendant explained that she did not have access to the messages. They had been sent to RXK, and not her. Moreover, she said that the harassment of RXK by the Claimant had been to such a degree that both she and mental health professionals had advised RXK to delete the Claimant's messages to her, as they were proving harmful to her health.

The deleted messages

58. The Claimant was very focussed on the alleged deletion of the messages at trial. He advanced a detailed legal argument to the effect that this destruction of the messages could not have happened, supported by various statutory provisions and some safeguarding training material. He submitted that if he had sent the lewd messages as alleged, this would have been a criminal act; that mental health professionals have a duty to collate evidence in relation to the sexual exploitation of vulnerable adults; and that they would have been in breach of that duty in advising RXK to delete the messages, such that they would not have done this.

59. The Claimant accurately highlighted certain legislative provisions which make sending lewd messages unlawful. However I was not persuaded that the remainder of his legal analysis about the need to preserve evidence of such crimes, or of abuse generally, was applicable to all situations without exception.

60. It is a core duty of a medical professional to act in the best interests of the patient. Accordingly there may well be circumstances where a mental health professional advises that it is in a patient's best interests to delete messages that are adverse to their mental health. The Claimant took me to no legal provision to contradict this analysis of the role of a medical professional. The particular passage in the training material he relied on related to a local authority's duty to gather evidence and information about abuse while conducting safeguarding enquiries under the Care Act 2014. There was

no evidence that the local authority had had any role to play in the deletion of the messages in this case.

61. The Defendant also said in her evidence that RXK was "never going to press charges" against the Claimant. I understood this to mean that given her vulnerability, she would not want the stress of proceedings against the Claimant. On that basis, there were no likely criminal or civil proceedings that might be prejudiced by the destruction of the messages.

62. Moreover, whether or not the mental health professionals had acted correctly, the Defendant's evidence was that she herself had advised RXK to delete the messages from the Claimant. I accept that evidence.

63. I did not understand the Claimant to suggest that the destruction of the messages meant that he could no longer defend himself against the Defendant's assertion that the content of some of the messages he had sent RXK was lewd. The Claimant's legal argument on this issue appeared to be solely intended to discredit the Defendant.

64. The Claimant had plainly been able to access the messages up to 3 October 2020 when he prepared his 8 November 2023 witness statement. There was no suggestion that he could not access any later messages. This begged the obvious question of why the Claimant had not served his own copies of any further messages between himself and RXK after 3 October 2020.

Overall impression of relations between the parties before the incident

65. Even if RXK had preserved all the messages between herself and the Claimant she would not necessarily have forwarded them all to her mother at the time they were received. The Defendant had to rely, in large part, about what RXK had told her about them.

66. I found the Defendant's evidence about this clear and compelling. I am satisfied that RXK told her mother that the Claimant had sent her the lewd messages she described in the Defence. Further, I am satisfied that RXK told her mother that the communication she was receiving from the Claimant was unwanted and that he was continuing to harass her. The Claimant's own evidence at trial was that on an occasion in December 2023, RXK and her friend shouted at him "What's a grown arsed man doing messing with a girl like this?": see [100] below. This is consistent with the Claimant not only harassing RXK before the key date of 28 January 2022 but for a lengthy period afterwards,

67. I am also satisfied that by early 2022 there had been a deterioration in RXK's health such that, as the Defendant said at trial, she was "quite poorly". I accept the Defendant's evidence that her understanding was that the Claimant's harassment of RXK was one of a large number of different factors (or "chunks", in her words) that had contributed to this deterioration

68. This background provides a crucial context for the exchange of words that underpins this claim.

The evening of 28 January 2022

(a): The arrival of the parties in the pub and the Defendant's assistance to the staff

69. At around 5.30 pm on 28 January 2022 the Claimant met two friends in the Conservative Club. They had a few drinks and chatted about football, all being Manchester City supporters. They remained there for several hours.

70. In the meantime, the Defendant had gone to the pub. The landlady was away and Michelle Gresty was looking after the pub. Ms Gresty is one of the Defendant's friends. Two men who had been barred from the pub came in. Ms Gresty refused to serve them. They started to smash up the pub, throwing pool balls, snapping pool cues and throwing glasses. The Defendant said that Ms Gresty was struggling to get control of the pub and was visibly upset. Mr Lee said it was "too much" for her.

71. The Defendant went behind the bar to help Ms Gresty. Ms Gresty asked the Defendant to continue serving while she dealt with the police, who had arrived and were by this point making arrests. The Defendant started to serve people. She had no access to the till so she had to ask people for the exact money.

72. At around 9 pm the Claimant left the Conservative Club. As he was walking along Redhouse Lane and over the railway bridge he could see blue flashing lights reflecting off the walls and windows of the pub. As he got closer to the pub he could see someone being placed into the back of a police van; and that there were police officers inside the pub. He decided to go to the pub to, in his words at trial, "have a nosey". Mr Lee gave evidence consistent with this, saying that on arriving in the pub the Claimant shouted loudly that he had "come to see the entertainment".

(b): The dispute over the Claimant's payment for his drink

73. On arrival in the pub the Claimant noticed that there were chairs and tables upturned. He saw the Defendant behind the bar which he knew was unusual as she does not work there. He asked where Ms Gresty was. The Defendant explained that she was in the back talking to the police. The Claimant ordered a pint of Carling lager and handed over the money. It was 30 pence short. There had been an offer on the lager that had recently expired, and it appears that Claimant did not know this.

74. The Defendant's case is that she handed the money back to the Claimant because it was short; he threw it back at her and said "you can take that you fat bitch"; and she picked the money up and put it on the side. She said she did not respond further as there had been too much trouble already.

75. The Claimant's pleaded case was that he simply handed over the money and said he would sort it out with Ms Gresty. However, at trial he said that he had challenged the Defendant on her right to ask him for the money, saying "who are you?", suggesting the exchange was rather more acrimonious than he had first suggested. He denied throwing the money.

76. However the Defendant's account of this incident was partly corroborated by Mr Lee: he said that the Claimant "threw the money…at [the Defendant]" and that when it fell on the floor the Claimant laughed.

77. I found Mr Lee's evidence credible. He appeared to have a clear recollection of events. He presented as a considered man, who understood the importance of what he was saying. I did not find the Claimant's attempts to suggest that he could not have heard the words used due to his position in the pub persuasive. Mr Lee explained clearly that he had been sitting at the bar near where the staff come in and out and so had seen and heard the dispute over the money for the pint; and had observed that the Defendant was upset, such that he followed her when she went to collect the glasses.

78. On balance I prefer the account of this incident as given by the Defendant and Mr Lee.

79. The Claimant said the Defendant moaned and said a few words under her breath. This appears to me likely: the tenor of all her evidence was that she just wanted to help Ms Gresty restore order in the pub and did not want further trouble from anyone.

80. Another member of staff, Syleeka, became involved. The Defendant said that Syleeka said "Pay the correct money Ollie, I'm in no mood for your games tonight". The Claimant did not accept that Syleeka had said this: his account was that he said he only had a £20 note and would sort out the missing 30 pence out with Ms Gresty; and that Syleeka accepted this.

81. Whatever the detail of the conversation between the Claimant and Syleeka, the exchange over the money for the lager amounted to an unpleasant start to the interactions between the Claimant and the Defendant that evening.

(c): The words used by the parties

82. Having served several customers, the Defendant came out from behind the bar as there was a lot of tidying up to be done. She began collecting glasses. Shortly after this, the exchange that is the subject of this claim occurred. I address this dispute in further detail under **Issue (1)** below.

(d): The Claimant's assault on the Defendant

83. Immediately after the key exchange, in response to what the Defendant had said, the Claimant threw his pint of lager over her. She said he threw the glass at her as well and it hit her at the top of her chest, near her arm, causing a bruise. She demonstrated at trial where the glass had hit her. The Claimant accepted that he had thrown his lager at the Defendant but denied throwing the glass as well.

84. The Defendant's evidence was corroborated by Mr Lee: he said that the Claimant threw "his full pint and glass" at the Defendant. He said that although the glass didn't smash, the Defendant was "soaked". At trial he said he had tried to make light of the situation by saying words along the lines of "So is it a wet t-shirt competition tonight?". He appeared to have a clear recollection of the incident.

85. The incident was seen by a female police officer who was joined by a male colleague. The female officer asked the Defendant if she wished them to take any action about what had happened. The fact that the police officers chose to become involved also suggests to me that the Claimant had not just thrown lager at the Defendant but also

his glass, the latter rendering the incident much more serious and potentially dangerous.

86. For these reasons I find that the Defendant and Mr Lee were correct in saying that the Claimant had thrown his glass, as well as his lager, at the Defendant after she used the words in question.

(e): The further involvement of the police

87. The Defendant told the female police officer she did not want any more trouble, but just wanted the Claimant "out of the pub".

88. The officers spoke to the Claimant. The Defendant said the Claimant was obstructive with the officers and arguing with them. Mr Lee also said he was laughing at the officers and refusing to give them his name. The Claimant was taken outside by the police officers.

89. Mr Lee said that the Claimant had been arrested, but in fact this was not the case. The Claimant sought to undermine Mr Lee's evidence because he was wrong about this fact. I did not find that persuasive: the Claimant agreed that he had been taken outside of the pub by the officers and to an independent observer this may well look like he had been arrested.

90. The Claimant told the officers he had thrown the lager at the Defendant because he had reacted to what the Defendant had called him. He was told he could be arrested for assault if the Defendant made a complaint. He asked the police what they could do about what the Defendant had called him. He said they told him they were "powerless" to do anything about it and that this was something they would need to resolve between themselves.

91. The officers returned to the pub and spoke further to the Defendant. She indicated to them that she did not want to press charges. In evidence she said she did not want any more trouble; she and her daughter had had "months of harassment" and she "wanted it just to go away". Later that evening the police texted her a crime reference number.

92. The Claimant suggested at trial that it was "strange" and unlikely that police officers would have got involved in this way: he put to the Defendant that police officers have a duty to prevent breaches of the peace and so would have immediately arrested him, rather than asking her what she wanted to happen. This does not chime with the law relating to police powers: police officers have a discretion as to whether to affect an arrest; and the views of the victim of a crime can inform the exercise of that discretion.

93. The Claimant also sought to suggest that the evidence of the Defendant and Mr Lee was inconsistent as to what questions were asked by the police of the Defendant and at what point. I did not find these suggestions persuasive. The overall thrust of the evidence was clear: the Defendant was asked more than once by the police if she wanted to pursue matters against the Claimant and she said she did not.

The subsequent incident between the Claimant and Michelle Hibbert

94. In her Defence the Defendant asserted that a couple of weeks after 28 January 2022, there was a similar further incident, when Michelle Hibbert called the Claimant a "peedo dirty old man" in the pub. The Defendant stated that this was because the Claimant had been sending Mrs Hibbert lewd texts. She pleaded that the Claimant threw a full glass of beer at Mrs Hibbert which missed her and hit another woman whose boyfriend was not impressed; and that the Claimant was seen apologising profusely and was told by the landlady to stop throwing glasses.

95. The Claimant did not serve a Reply to challenge the Defendant's account of this incident. He did not address it in any of his witness statements or Part 18 documents or sought to adduce any evidence to challenge it. At trial he accepted that the incident had happened, albeit averring that as the usual landlady at the pub was still away, it was one not two weeks after the incident with the Defendant. He denied that Mrs Hibbert had called him a "peedo" and said that in fact she had asked "Are you the one who messes with kids?". I found it surprising that the Claimant had not addressed this incident in any of his witness statements or Part 18 documents: if in fact Mrs Hibbert had made mention of him "messing" with children, this was likely to be relevant to his case on serious harm. He did not appear to deny throwing the beer over Mrs Hibbert.

96. The Defendant and Mandy Coombes gave further, albeit hearsay, evidence about this issue at trial. The Defendant said that Mrs Hibbert had had a "terrible time" with the Claimant as she was one of "various" women he had tried to pursue. Mrs Coombes said that Mrs Hibbert had told her that the Claimant had "tried to get involved with her and she did not want it".

97. The Defendant put to the Claimant in cross-examination that the lewd messages he had sent Mrs Hibbert and his sexual harassment of her were one of the causes of the breakdown of her marriage. The Claimant responded with an "emphatic no" but then pivoted into providing some rather lurid details of why he thought Mrs Hibbert's marriage had broken down.

98. On balance, I accept the Defendant's case on this issue. I find that within 1-2 weeks of the incident underpinning this claim Michelle Hibbert used virtually identical words to the Claimant, in the same pub. I also find that she did so for reasons very similar to those that had led the Defendant to speak as she did on 28 January 2022, in that she had concerns about the Claimant's behaviour towards her.

Further incidents and alleged incidents involving the parties and RXK

99. On New Year's Eve 2022 both parties were in the Conservative Club. It was midnight and everyone was wishing each other a happy new year. The Defendant offered her hand to the Claimant to try and make amends and apologise. She said he responded in a nasty way saying "You have to be joking, you fucking fat slag". The Claimant said he did not recall this incident.

100. One night in December 2023 there had been a "ladies' night" at the pub involving male strippers. The Claimant and RXK were outside the pub. The Defendant said that RXK asked the Claimant to bring an end to his claim against her mother. He denied this. However he said that RXK and her friends were abusive to him, shouting words to the effect of "What's a grown arsed man doing messing with a girl like this?".

101. The Defendant said at trial that the Claimant has been "bragging" about his claim in the pub. She was supported in this by Mandy Coombes. She said that for over twelve months the Claimant has been telling "anyone who will listen" that he is taking the Defendant to court; and that she heard the Claimant telling two men in the pub that the Defendant was a "bitch" and that he was "going to destroy her". When the Claimant challenged her on this, Mrs Coombes said that she could recall instances of him saying these things while she was standing next to him at the bar and when sitting at a table opposite him. I found her account to be credible.

102. During the days after the trial both parties were in email communication with the court. Their emails make clear that on the evening of Friday 4 October 2024, the day after the trial, an argument had broken out in The Greyhound pub between them about whether and if so why Alan Gresty (the father of Michelle Gresty and a friend of the Claimant's) had been mentioned in the trial and about the limits of the confidentiality rules.

103. The Defendant alleged that Mrs Coombes came to the bar to see if she was alright, at which point the Claimant shouted "This ugly fat slag mentioned you Alan" and then punched Mrs Coombes in the face. She said that other men jumped in to stop him and he was escorted out of the pub. She said that she and Mrs Coombes contacted the police. She attached the crime reference number.

104. The Claimant's email to the court was supported by a statement of truth. He denied assaulting Mrs Coombes as alleged. He said that Mrs Coombes stepped in front of the Defendant as if to shield her, so he moved her out of the way, but he had not punched or hit Mrs Coombes. He said he had been in touch with the police and was waiting for them to contact him.

105. It is not necessary, possible or appropriate for me to make any findings in relation to this incident.

The legal framework and the issues

106. The tort of defamation comprises two causes of action, libel and slander. Slander is the cause of action for a statement made only orally or by gesture.

107. A claimant in a slander claim has to prove (1) publication of particular words; and that the publication of which they complain (2) conveyed a meaning or imputation which is defamatory at common law; (3) has caused special damage, or is actionable without proof of special damage; and (4) has caused or is likely to cause serious harm to the reputation of the Claimant under the Defamation Act 2013 ("the 2013 Act"), s.1: *ABC (A mother) v Chief Constable of West Yorkshire Police* [2017] EWHC 1650 (QB) at [67] and [82].

108. The Defendant in this case relies on the defence of truth under the 2013 Act, s.2(1) which provides that "It is a defence to an action for defamation for the defendant to show that the imputation conveyed by the statement complained of is substantially true".

109. Alternatively, she advances a defence of honest opinion under the 2013 Act, s.3(1) which provides as follows in material part:

> "(1) It is a defence to an action for defamation for the defendant to show that the following conditions are met.
>
> (2) The first condition is that the statement complained of was a statement of opinion.
>
> (3) The second condition is that the statement complained of indicated, whether in general or specific terms, the basis of the opinion.
>
> (4) The third condition is that an honest person could have held the opinion on the basis of—
>
> (a) any fact which existed at the time the statement complained of was published;
>
> (b) anything asserted to be a fact in a privileged statement published before the statement complained of.
>
> (5) The defence is defeated if the claimant shows that the defendant did not hold the opinion".

110. Accordingly the following issues fall to be determined:

(1) Has the Claimant proved the words on which he relies were used by the Defendant? If not, what words were used?

(2) What was the 'single meaning' of what the Defendant said?

(3) Were the Defendant's words a statement of fact or opinion?

(4) Has the Claimant proved that the words used conveyed a meaning or imputation which was defamatory at common law?

(5) Has the Claimant proved that the words used impute a crime for which he could be made to suffer physically be way of punishment?

(6) If not, can the Claimant prove "special damage"?

(7) Has the Claimant proved serious harm as required by the 2013 Act, s.1?

(8) If the court concludes that what the Defendant said was a statement of fact, has she made out her defence of truth?

(9) If the court concludes that what the Defendant said was a statement of opinion, has she made out her defence of honest opinion?

(10) If the Claimant's claim succeeds what remedy is appropriate?

(11) What order for costs, if any, is appropriate?

Issue (1): Has the Claimant proved the words on which he relies were used by the Defendant? If not, what words were used?

The issues

111. The central dispute between the parties was whether the Defendant referred to the Claimant as a "paedophile" or "peedo". There were further issues about whether the Claimant had said anything to prompt her words, and whether the Defendant said anything else before the controversial word.

112. The Claimant's case, set out in his 9 July 2024 witness statement, was that while he was talking to Mr Howlett and Mr Makin, the Defendant "walked right up to me and called me a Paedophile" [capitalisation in the original]. He denied saying anything to prompt the Claimant's words. He has given this account consistently, from his letter of claim dated 22 February 2023, through his Particulars of Claim, various witness statements and Part 18 documents. He maintained it at trial, including under cross-examination.

113. The Defendant's case was that as she was collecting glasses, the Claimant said "your daughter is a prick tease" and she responded by saying "go away you horrible peedo". The Defendant has also given this account consistently, in her Defence, in her 10 November 2023 email to the court, in her witness statement and in her oral evidence at trial. She said she did not understand the word "peedo" to mean "paedophile": she understood it meant "dirty old man" and this was what she had been intending to convey. In her 10 November 2023 email she said that since the claim was commenced she had been told that "peedo" was an abbreviation for the word "paedophile". She said she was horrified when she found this out.

Analysis and conclusions

(a): The alleged "prick tease" comment by the Claimant

114. I do not accept that the words used by the Defendant were entirely unprompted.

115. While both Mr Howlett and Mr Makin had signed witness statements to the effect that the Defendant called the Claimant a "Paedophile" "out of nowhere", I have real concerns about the veracity of their accounts, and afford them little weight, for the reasons given at [35]-[39] above.

116. The Defendant gave evidence at trial suggesting that Mr Howlett and Mr Makin were not as physically close to the Claimant and the Defendant at the time of the key exchange as he and they had suggested, but were sitting down round the corner. The implication was that they would not have been able to hear the exchange, clearly or at all. As neither Mr Howlett nor Mr Makin attended the trial, they could not be tested on this issue. However, this evidence casts further doubts on whether their accounts were accurate.

117. It also seems to me inherently improbable that the Defendant would, entirely unprompted, provoke the Claimant in this way. The clear thrust of the evidence about the night in question was that the Defendant just wanted to get on with helping her friend sort the pub out, and did not want any unnecessary further contact with the Claimant: that was why she did not engage further with him in the dispute over the money, or tell the police she wanted to press charges after he threw his lager and glass at her: see [74], [79], [87] and [91] above.

118. Rather, I find that the words the Defendant used were prompted by the Claimant saying her daughter was a "prick tease".

119. The Defendant's evidence that the Claimant had said her daughter was a "prick tease" was corroborated by Mr Lee, whose evidence I found generally credible: see [43] and [77] above.

120. I have found that the Claimant had already called the Defendant a "fat bitch", thrown money at her and laughed when it fell on the floor, in the minutes leading up to the key exchange: see [74]-[79] above. For the Claimant to have referred to RXK as a "prick tease" was therefore consistent with his earlier unpleasant behaviour towards the Defendant.

121. Further, for the Claimant to have described RXK as a "prick tease" implied that she had rejected his romantic or sexual advances. This fits entirely with the Defendant's evidence that his attention to RXK was unwanted and that she had sought to block him on social media.

122. This use of language by the Claimant is also consistent with the wider circumstantial evidence about his lewd use of language and him being unhappy if women reject his advances: see [49] and [94]-[98] above. I fully accept the limitations of this evidence which was hearsay; and untested in the sense that the Claimant had not been able to challenge the evidence of these women directly. However, even with those limitations, I consider it permissible to draw some support from it. It adds weight to the other evidence that leads me to conclude that the Claimant made the "prick tease" comment but on its own, would not have enabled me to do so.

(b): The words used by the Defendant

123. In my judgment the finding that the Claimant made the "prick tease" comment significantly undermines his credibility and that of his witnesses, including on the central issue of what words the Defendant used.

124. I found the Defendant's account of what she said much more inherently probable than the account given by the Claimant and his witnesses. For her to say "go away you horrid peedo" was entirely consistent with her not wanting any more trouble from the Claimant on the night in question, or generally with respect to RXK.

125. I accept the Defendant's evidence that "paedophile" is not a word she would use; and is "not something that would trip off the tongue".

126. Again, the Defendant's account of what she said was corroborated by Mr Lee in his witness statement and at trial, including under cross-examination. He said the Defendant "definitely said 'peedo', 100%".

127. I note that Mr Lee's evidence was not identical to the Defendant's. While they both agreed that she had used the word "peedo" (not paedophile) she said that before this word she had said "go away" and also called him "horrible", and Mr Lee said she said "shut up". In the context of the words used, the effect of both these forms of words is similar: it amounted to the Defendant saying she no longer wished to listen to or engage with the Claimant in conversation about sexual matters to do with her

daughter. In my judgment this relatively minor inconsistency between Mr Lee's evidence and that of the Defendant made their accounts more, and not less, credible.

128. On balance I consider that the Defendant's account of the words used was more accurate than Mr Lee's. The account she gave was the one she wrote by hand, in her Defence, on 6 February 2023 and therefore much closer in time to the night in question than Mr Lee's July 2024 witness statement.

129. For these reasons, I conclude that the Claimant has not proved that the Defendant called him a "paedophile". Rather, the words she used were "go away you horrid peedo".

Issue (2): What was the 'single meaning' of what the Defendant said?

The relevant legal principles

130. In *Blake and others v Fox* [2023] EWCA Civ 1000 Warby LJ summarised the essential legal principles relevant to this issue as follows:

> "19. In most defamation claims, the first key issue is the natural and ordinary meaning of the words complained of. This is defined as the single meaning the words would convey to the hypothetical ordinary reasonable reader. That meaning is to be determined objectively by reference to the words themselves. No other evidence is admissible. The author's intention is irrelevant as is evidence about the meaning that readers actually took from the statement complained of. But the medium of expression and the context in which the words complained of appear are both important.
>
> 20. Judges must seek to place themselves in the position of a reader who is neither avid for scandal nor unduly naïve. They should beware of over-elaborate analysis, especially when dealing with postings on social media such as Twitter, which are "in the nature of conversation rather than carefully chosen expression". The meaning that an ordinary reasonable reader will receive from a tweet is likely to be "more impressionistic than, say, from a newspaper article" and "the essential message that is being conveyed by a tweet is likely to be absorbed quickly by the reader". Judges should have regard to the impression the words make upon them. They can take judicial notice of particular characteristics of a given readership if these are matters of common knowledge but should beware of impressionistic assessments of those characteristics. The correct approach, and the established practice, for a judge deciding meaning at first instance is to read or watch the offending publication to capture an initial reaction before reading or hearing argument".

131. As this case involves a claim of slander not defamation, the words "author" and "reader" in the above passage should be replaced with, respectively, "speaker" and "hearer".

132. I performed the task set out at the end of this passage by considering the competing versions of the words complained of without taking into account what either party wanted to say about their meaning; formed some provisional views; then considered the statements of case and skeleton arguments in further detail; heard oral submissions at the trial and reserved judgment.

Analysis and conclusion

133. The Claimant drew significant support from the facts of *Blake*, where the Defendant had described the three Claimants as "paedophiles". He invited me to reach the same conclusion on meaning in this case as Nicklin J had found in *Blake*, as upheld by the Court of Appeal in respect of two of the Claimants, to this effect:

> "…that each of the claimants was a paedophile, someone who had a sexual interest in children and who had or was likely to have engaged in sexual acts with or involving children, such acts amounting to serious criminal offences": [33] and [65]-[70].

134. Because of the importance of the context in which the words are used, decisions on meaning are fact-specific. Accordingly the meaning found in *Blake* is not necessarily directly applicable to this case. That is all the more so given that I have not accepted that the Defendant described the Claimant as a "paedophile", the word used in *Blake*.

135. The Claimant appreciated that I might accept the Defendant's version of events and find, as I have, that in fact she said the word "peedo". His case on meaning was essentially the same, that the word "peedo" meant "paedophile". He relied on an internet search he had done for the word "peedo", which had brought up 306,000 hits mentioning "paedophile". However such extraneous evidence is inadmissible: as noted at [130] above, meaning is to be determined objectively by reference to the words themselves.

136. The Defendant relied on the fact that she had intended the word "peedo" to mean "dirty old man". However, the speaker's intention is not relevant to the determination of meaning: see again [130] above.

137. As Nicklin J made clear in *Riley v Murray* [2020] EWHC 977 (QB) at [16], matters of common knowledge can be relevant to meaning. The Claimant effectively argued that the fact that "peedo" means "paedophile" is such a matter of common knowledge: he submitted that the two words go "hand in hand". I am not persuaded that this is the case: I do not consider that a hypothetical ordinary reasonable hearer would necessarily interpret the slang word "peedo" as the more formal or technical term "paedophile", in this context. As Steyn J explained to the Claimant in her 18 April 2024, it would not have been appropriate determine the meaning of the word "paedophile" out of context. The same applies to the word "peedo".

138. The "medium of expression" here was a heated exchange between two people who had had an acrimonious relationship before, and on, the night in question. The context was a fleeting verbal exchange that probably lasted no more than a matter of seconds. It was therefore akin to a social media exchange where the meaning conveyed was rather impressionistic and absorbed quickly by the hearer.

139. The context for the words used by the Defendant was that they were in direct and immediate response to the Claimant describing her vulnerable daughter as a "prick tease". The context related solely to the discussion about RXK who was by then in her early 30's. There was no mention of any young children. The Defendant's use of the words "go away you horrid" before the word "peedo" made it clear that she did not want to engage further with him in respect of matters about her daughter.

140. Given those circumstances I consider that the hypothetical ordinary reasonable hearer would understand the use of the word "peedo" to relate back to what the Claimant had just said about the Defendant's daughter being a "prick tease": such a hearer would understand that the Defendant's words bore a meaning of rebuke or criticism to him for what he had just said about RXK; as well as the underlying perception of RXK or conduct by him that had led to him describing her in that way.

141. I therefore find that the hypothetical reasonable hearer would understand the meaning of the Defendant's words to be what she had in fact intended, namely "dirty old man". More specifically, I consider that it meant "a man of a certain age who subjected younger women to unwelcome sexual interest". This meaning derives from the words used, in their immediate context. It does not involve an over-elaborate analysis; but reflects the impression that the Defendant's words would have had on a hypothetical ordinary reasonable hearer.

142. However, even if I had accepted the Claimant's case at its highest on meaning, namely that found in *Blake* (see [133] above), the Claimant's case would still have failed for the reasons given under issues **(5)**, **(6)** and **(7)** below).

Issue (3): Were the Defendant's words a statement of fact or opinion?

143. As Warby LJ explained in *Blake*:

> "23. Opinion is synonymous with "comment". It is something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation or the like. As with meaning, the court deciding whether a statement is one of fact or opinion looks only at the words complained of and their immediate context, and the ultimate question for the court is the objective question of "how the words would strike the ordinary reasonable reader". This question may be considered after the meaning has been decided, or at the same time, or in the reverse order, which is common practice.
>
> 24. This is a highly fact-sensitive process that focuses on the particular statement at issue. One factor for consideration is whether the statement contains any indication of the basis on which it is made. At common law a statement that contains no indication of or reference to any supporting facts is liable to be treated as a statement of fact. The second condition for the statutory defence of honest opinion is "that the statement complained of indicated whether in general or specific terms the basis of the opinion": s 3(3) of the 2013 Act. Beyond these extreme cases, [t]he more clearly a statement indicates that it is based

> on some extraneous material, the more likely it is to strike the reader as an expression of opinion".

144. Again, for the word "reader" in this passage, one should substitute "hearer".

145. The Claimant relied on *Blake* where the Defendant's assertions that two of the Claimants were "paedophiles" were found to be statements of fact: see [63]-[70].

146. In my judgment the words used by the Defendant in this case were also statements of fact. She simply said the Claimant was a "peedo". Although her words were prompted by the "prick tease" comment about RXK, I consider it too much of a "stretch" to find that this meant that the Defendant was giving an indication of supporting facts, such as might render her words a statement of opinion.

Issue (4): Has the Claimant proved that the words used conveyed a meaning or imputation which was defamatory at common law?

147. A statement is defamatory if it (a) attributes to the Claimant behaviour or views that are "contrary to common shared views of our society" and (b) would tend to have a "substantially adverse effect" on the way that people would treat the Claimant: *Blake* at [26].

148. In my judgment the Defendant's words were defamatory at common law: they imputed to the Claimant a willingness or tendency to subject younger women to unwelcome sexual interest, which would meet both elements of the test set out above.

149. If I had found that the Defendant had used the word "paedophile", or if that was the meaning of the word "peedo", the Defendant accepted that this would have been defamatory at common law.

Issue (5): Has the Claimant proved that the words used impute a crime for which he could be made to suffer physically be way of punishment?

150. It is a general rule of the common law that spoken words are not actionable as slander unless it is proved that their publication has caused special damage, subject to one or more of the recognised common law or statutory exceptions to the general rule: *ABC* at [87].

151. The only exception that was potentially applicable here required the Claimant to prove that the words used imputed to him a crime for which he could be made to suffer physically by way of punishment. This exception is considered in *Gatley on Libel and Slander* (13th ed.) at 5-003-5-011.

152. To fall within the exception, the words used must impute a criminal offence which is imprisonable, albeit that a general charge of criminality rather than a specific offence will suffice.

153. As Steyn J emphasised in her 18 April 2024 order, words which merely impute an intention or inclination to commit a crime (such as the Claimant's original pleaded meaning that he was "A person who is sexually attracted to children") will be

insufficient. The same is true of words which merely impute a suspicion that the claimant has committed a crime.

154. Moreover, context is again relevant: words which *prima facie* impute a crime are not actionable without proof of special damage if it is clear from their context, or from facts stated by the speaker or known to the hearer, that they were in fact neither used nor understood to convey a criminal imputation.

155. The background for the Defendant's words were her understanding that the Claimant had sent RXK lewd messages and subjected her to harassment. Accordingly the background involved the possibility that the Claimant had committed imprisonable criminal offences such as that of harassment.

156. However it is necessary to focus on the words used, and what they imputed. I have found that the meaning of the words used was that the Claimant was a man of a certain age who subjected younger women to unwelcome sexual interest. In my judgment this meaning did not convey imputations that would fall within this exception. It imputed no crime as such, even at a level of generality. At most it imputed an intention or inclination to commit crime and/or the Defendant's suspicion that the Claimant might have committed a crime.

157. This case can therefore be distinguished from the two authorities which the Claimant had rightly identified and on which he relied, namely (i) *Dhir v Sadler* [2107] EWHC 3155 (QB) at [30], where the exception was satisfied by the words "he threatened to slit my throat" which imputed the commission of the offence of making threats to kill under the Offences Against the Person Act 1861, s.61; and (ii) and *Hodges v Naish (Rev1)* [2021] EWHC 1805 (QB) at [104], where the exception was satisfied by an allegation of child grooming that connoted a general charge of paedophile criminality.

158. I therefore find that the Claimant has not proved that the words used impute a crime for which he could be made to suffer physically be way of punishment.

Issue (6): If not, can the Claimant prove special damage?

159. Special damage for these purposes means pecuniary (ie. financial) loss rather than reputational damage or injury to feelings, which is the natural and probable result of the words used.

160. The Claimant did not plead any claim to special damage, or identify in his statements of case or witness statements any such damage. During his closing submissions he accepted that he had suffered no such financial loss.

161. Accordingly, the combined effect of my findings on issues **(5)** and **(6)** is that the Claimant is not entitled to bring a claim for slander, even if he had succeeded on serious harm (see issue **(7)** below).

Issue (7): Has the Claimant proved serious harm as required by the 2013 Act, s.1?

The legal principles

162. The 2013 Act, s.1(1) provides that "A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the

claimant". The burden is on the claimant to prove serious harm.

163. In a further stage in the *Blake* litigation, at [2024] EWHC 146 (KB), Collins Rice J summarised the relevant principles thus:

> "47. The leading authority on this provision is the decision of the Supreme Court in *Lachaux v Independent Print Ltd* [2020] AC 612. Lord Sumption's judgment makes clear ([12]-[14]) that s.1(1) imposed a threshold test, the application of which is to be determined by reference to the actual facts about the impact of a publication, and not just to the meaning of the words. The statutory term '*has caused*' points to some historic harm, which is shown actually to have occurred; and '*is likely to cause*' points to probable, actual, future harm.
>
> 48. The serious harm test is a question of fact, and facts must be established by evidence. Facts and evidence are matters which are entirely case-specific. *Lachaux* itself confirmed that there is no hard and fast rule as to *how* serious harm is to be evidenced.
>
> 49. That is partly because of the nature of the harm in question. The 'harm' of defamation is the effect of a publication in the mind of a third-party publishee (reader), and thereby on a claimant's *reputation*, and not any specific action adverse to a claimant the publishee may take as a result. The test does not *require* the demonstration of adverse actions by publishees, although such actions may be powerful evidence of the state of the publishee's mind. Nor does the test relate to any direct effect of a publication on a claimant reading it themselves, although that may be highly relevant to the question of remedies if liability is established.
>
> 50. It is also partly because of simple practical considerations relating to establishing, by evidence, not only any individual publishee's state of mind in response to reading something, but the effects of a publication on any *mass* readership. In such cases, *Lachaux* confirmed ([21]) that the evidential process may be able to be discharged by establishing, and combining, the meaning of the words, the situation of the claimant, the circumstances of publication and the inherent probabilities. This is sometimes referred to as a '*Lachaux* inferential case', based on the '*Lachaux* factors'. But the *Lachaux* decision itself was at pains to emphasise it was *not* setting out any special standalone rule of law; it was illustrating the essential point that serious harm is a matter of fact and evidence. As I, and other judges, have said elsewhere, an inferential case is not an *alternative* to an evidential process; it has to *be* an evidential process.
>
> 51. More generally, since *Lachaux*, the serious harm test has been given close attention in a series of High Court and Court of Appeal decisions. This jurisprudence was recently summarised fully and clearly by Nicklin J in *Amersi v Leslie* [2023] EWHC 1368 (KB) at [143]-[163], a passage to which I have addressed myself carefully. I do not need to replicate that passage in full here, since there is no real dispute about

> the applicable law in this case; it turns largely on its facts. I do, however, note two headline points in particular, for present purposes.
>
> 52. First, the jurisprudence has consistently highlighted that section 1(1) is a threshold test, and, in applying it, it is necessary not to lose sight of the basic tort rules of causation (*Amersi* at [157]). The language of causation is prominent in section 1(1). Evidence *contrary* to the imputation of causal responsibility is no less important than evidence tending to favour it (*Miller & Power v Turner* [2023] EWHC 2799 (KB) at [74]). A balanced and fully contextualised approach is needed to the assessment of what *Lachaux* called the *inherent* probabilities arising out of any factual matrix placed before a court.
>
> 53. Second, that factual matrix must itself be clearly established by evidence. Section 1 requires a clear articulation, and an evidential basis, for what difference the publications and imputations complained of made (or were likely in future to make) in real life. Drawing inferences is not a process of speculative guesswork. It is a process whereby a court concludes that the evidence adduced enables a further inference of fact to be drawn (*Amersi* [158]; *Miller & Power* [73])".

The parties' cases in summary

164. In his Particulars of Claim the Claimant claimed that the Defendant's words had had a "devastating" impact on him and his immediate family. However he provided no details to support this allegation, therefore failing to comply with CPR PD 53B, paragraph 4.2(3). This requires a claimant to set out in their Particulars of Claim the "facts and matters relied upon" in order to satisfy the requirement in s.1.

165. In his Schedule of Loss, the Claimant claimed that as well as the serious harm from the Defendant's slander, he had suffered harassment, pain, suffering and loss of amenity. Again he provided no details.

166. He provided some evidence on serious harm in his various witness statements and Part 18 documents and at trial, as detailed below.

167. The Defendant's case on serious harm was set out in her response to the Claimant's Schedule of Loss. She said she had "no idea" what serious harm the Claimant had suffered; rather it was "the other way around": he had harassed her, and had caused her pain when he threw his beer and glass at her, causing a bruise.

168. In her 18 April 2024 order Steyn J had emphasised that the burden of proof was on the Claimant in respect of serious harm. Further she had observed that on the state of the evidence at that point, he "cannot begin to show that he is bound to win on that issue".

Analysis of the evidence of serious harm in this case

(a): The gravity of the meaning of the words used

169. The Claimant placed significant reliance on Collins Rice J's conclusions in *Blake & Ors v Fox* [2024] EWHC 146 (KB) at [66]-[68]. She found that allegations that each

Claimant had, or was likely to have, engaged in sexual acts involving children, such acts amounting to serious crime, were "inherently grave". He understandably cited her observation at [67] that "[i]t is hard to think, in contemporary Britain, of a more grave allegation than that involving the sexual abuse of children".

170. I have not found a meaning as grave as the one in *Blake*. I nevertheless accept that a statement meaning that the Claimant was a man of a certain age who subjected younger women to unwelcome sexual interest was serious, not least as it could involve the suggestion that he was involved in the crime of harassment. The Defendant did not resile from the severity of the words used.

171. I also accept that a statement of fact, as I have found occurred here, may be more reputationally damaging than a statement of opinion.

172. The difficulty for the Claimant, in my judgment, was that he placed undue reliance on this element of the serious harm assessment. At various points he submitted that the gravity, in itself, satisfied the serious harm test. However *Lachaux* makes it very clear that serious harm is to be determined by reference to the actual facts about the impact of the words used, and not just the meaning of the words.

173. The legal principles emphasise the need for any factual matrix from which inferences can be drawn to be clearly established by evidence. Consideration must be given to what difference the publications and imputations complained of made (or were likely in future to make) in "real life": see [167] above.

174. The sort of detailed evidential assessment necessary is clear from the later passages of Collins Rice J's judgment in *Blake*, where she analysed a series of other factors relevant to serious harm, beyond the gravity of the meaning: see [69]-[103].

175. In my judgment, when the totality of the evidence is considered, the Claimant has failed to show serious harm. I deal with the various areas of evidence as I see them thematically.

(b): How many people heard the words used by the Defendant

176. The Claimant had stated at various points that the Defendant's words were said in a loud voice for "all the people" in the pub to hear: see, for example, paragraph 22 of his 27 March 2024 Part 18 document.

177. The evidence did not suggest that "all the people" in the pub had actually heard the words used. Mr Makin did not refer to the number of people who heard the exchange. Mr Howlett said the words the Defendant used were loud enough for "others around" to hear.

178. The overall thrust of the evidence leads me to conclude that the Defendant's words were only overheard by Mr Howlett, Mr Makin, and their respective partners Sarah and Dot.

179. Direct publication of allegedly slanderous words to only four people necessarily amounts to publication to a very small group.

(c): The impact of the words used on those who heard them

180. In his Particulars of Claim, the Claimant averred that Mr Makin and Sarah "kind of queried the situation at that moment in time" and "had to explain" to Mr Howlett and Dot "very quickley [sic] as soon as [the Defendant] had spoken" that what the Defendant had said was not true.

181. Both Mr Howlett and Mr Makin said in their statements that they immediately challenged the Defendant on what she had said: Mr Howlett said he was shocked by what the Defendant had said and told her that she could not call the Claimant that; and Mr Makin said that he "had a go" at the Defendant for what she had said; that she was crying; and that he said "it serves you right you can't go round calling people Paedophiles and not expecting anything to happen".

182. The evidence therefore suggests that the four people who heard the Defendant's words did not think any less of the Claimant because of them: on the contrary, in the case of the two men, they jumped to his defence and sought to correct her.

183. In neither of their witness statements did Mr Howlett or Mr Makin suggest that their estimation of the Claimant had been affected in any way by the Defendant's words.

184. I was not therefore persuaded that the Defendant's words had caused serious harm to the Claimant's reputation in the minds of those who heard them.

(d): The impact on the Claimant's relationships with his friends

185. At trial the Claimant said that he now only sits with one friend in the pub, a Mr Jones. He said he was dealing with the consequences of the Defendant's words "on a daily basis" and that even those friends who engage with him are "unsure" about him, as there is "no smoke without fire". This suggestion that he has been shunned by his own friends or that they treat him differently had not featured in any of his earlier statements of case, witness statements or Part 18 documents. It was not referred to by Mr Howlett or Mr Makin in their statements.

186. The Defendant robustly challenged any suggestion that the Claimant's standing with his friends had been affected. She said, in her response to the Claimant's Schedule of Loss, "every time I see [the Claimant] he is laughing dancing he has lots of friends and they all hold him in high regard nobody has a bad word to say about him, so I really can't understand these claims and there is no evidence to support said claims". Her evidence at trial was that she has seen him "laughing, joking [and] dancing" in the pub; that his friends still "come and sit with him and act the goat together"; and that he is "welcome with open arms".

187. Similarly, Mandy Coombes said in her witness statement that the Claimant is "very popular…always hugging people, shaking hands and dancing and laughing in the pub". At trial she said that when he comes in the pub he gets "bear hugs left right and centre". She said he is similarly popular in the nearby Greyhound pub. She said he could get "5-7 hugs" in each pub and that would not be the case if his reputation was ruined. She added that the Claimant does not sit on his own or just with one person. She said he regularly sits on a table of four people or talks in groups of seven or eight at the bar.

188. The Claimant challenged Mrs Coombes' evidence on this issue as inconsistent: he said he could not be both jolly and popular but also vindictive and a bully at the same time. She responded by saying that the Claimant is popular with the male regulars in the pub but several of the females "keep a wide berth" from him. This evidence had a ring of truth about it given the wider circumstantial evidence I heard.

189. Overall, I find that the Defendant's words have not adversely affected the Claimant's reputation in the eyes of his friends.

(e): The alleged "grapevine effect"

190. The Claimant made repeated references to the "grapevine effect", where the impact of slanderous words can spread. At paragraph 22 of his 27 March 2024 Part 18 document, he said that Bredbury is a village type area which is closely attached to the villages of Woodley and Romiley which in turn are connected to Marple and Greve. He asserted that the grapevine effect had been created, and implied that it had permeated all these villages.

191. At paragraphs 20-21 of his 8 November 2023 witness statement he said that people now look at him in a different way and he gets peculiar looks when he is with his grandson. He said he felt people were looking at him and wondering whether his grandson was one of his "prey/victims". He said that the Defendant's words had changed the way he interacted with people because he feared they thought what she had said was true. At trial he suggested that he had had to stop taking his grandson to school.

192. I found this aspect of the Claimant's evidence largely subjective, focussing on what the Claimant thought. He provided no specific examples of people shunning him. There was no independent evidence to corroborate his assertions. In their witness statements neither Mr Howlett or Mr Makin referred to any difficulties the Claimant has had in his immediate community or in the surrounding villages.

193. Mandy Coombes' evidence directly challenged what the Claimant asserted about the grapevine effect. She said that "nobody treats him any differently since this incident"; "[it] is not mentioned"; and it "not the case" that people are "gossiping and finger pointing" about him. At trial she said that the suggestion that the Defendant's words had ruined his reputation was "not what we see".

194. I do not therefore accept that the Claimant has proved serious harm to his reputation in the wider local community through the "grapevine effect" or otherwise.

(f): The alleged threats to the Claimant and the alleged attack on him

195. In his written evidence the Claimant said he had been confronted by "numerous people" demanding to know if it was true that he was a paedophile. He said he had had threats made against him from others but these threats had been put "on hold" awaiting the outcome of this claim. He gave no details of who the people involved were, or when and where such comments or threats had been made. He provided no details to support his suggestion that any such comments or threats made could be attributed to the words used by the Defendant. He did not expand on this at trial, save

for referencing other well known cases in which suspected paedophiles, including those wrongly suspected, have been attacked and injured in their communities.

196. In his written evidence the Claimant said that he had been attacked and had to physically defend himself. However he gave no details of who had attacked him, or when and where the attack took place. At trial he gave evidence that this incident had taken place on 23 June 2024, so over two years after the Defendant's words. He said that the attack was in the Conservative Club and involved the assailant throwing his drink over the Claimant and saying "You're the kiddy fiddler". He did not suggest that the assailant referred to the Defendant's words. I was shown no evidence such as a police report corroborating the Claimant's account of the attack.

197. Neither Mr Howlett nor Mr Makin referred to any of these issues. The alleged attack was said to have taken place a few weeks before they gave their witness statements and so it might have expected to feature.

198. Given the scant details as to the alleged threats, the way in which the evidence of the alleged attack emerged and the lack of independent support for these allegations by the Claimant, I did not find his evidence of them persuasive. Nor is there any persuasive evidence that if these incidents occurred, they were caused by the Defendant's words.

(g): The impact on the Claimant's family

199. In the Claimant's Particulars of Claim he asserted that the Defendant's words had had a "devastating" impact on his immediate family. However nowhere in his Particulars of Claim, nor in his various witness statements and Part 18 documents, did he provide any detail to substantiate this claim.

200. It was only at trial that he suggested that his daughter has been reluctant to let him go out alone with her child for fear of what people think about him or fear that he might be attacked. Even then he did not provide any clear evidence that any such reluctance could be linked back to the Defendant's words in January 2022. He did not call his daughter as a witness to corroborate these suggestions, nor provide any reason why he could not do so. Neither Mr Howlett nor Mr Makin mentioned this issue in their witness statements.

201. Given the circumstances in which this evidence emerged and the lack of corroboration for it, I did not find it persuasive.

(h): Other potential causes for any adverse impact on the Claimant's reputation

202. The legal principles make clear that causation is important in assessing serious harm; and that evidence contrary to the imputation of causal responsibility to the Defendant is just as important as evidence tending to favour it: see [167] above.

203. In my judgment the incident involving Michelle Hibbert and the Claimant described at [94]-[98] above is potentially relevant to the issue of serious harm. This is because it raises the possibility that any or all of the adverse impacts described by the Claimant were not caused by the Defendant's words but by very similar words used a

short period of time later by someone else (if indeed they were caused by any words at all).

204. In addition, there was persuasive evidence that the Claimant has been talking openly about this case: see [101] above. Mandy Coombes' evidence, which I accept, was that "everybody has been told by [the Defendant] all about this case…he is keeping this argument relevant by telling people and they really aren't interested…lots of people… think he should stop talking as it really is boring now". Again, this raises the possibility that by speaking openly about this case, and the words used by the Defendant, that in itself could have an adverse impact on his reputation.

205. While I make no specific findings about whether the Claimant did send lewd messages to either RXK or Michelle Hibbert, or sexually harassed them, or other women, it follows that if he did, and if they spoke about it, any or all of these things might also have affected the Claimant's reputation in the community quite separately from anything the Defendant said to him.

Overall conclusion on serious harm

206. For these reasons, I conclude that the Claimant has not proved that the Defendant's words about him have caused, or were likely to cause, serious harm to his reputation.

207. As a result of this finding, the effect of the 2013 Act s.1 is that the Defendant's statement was not defamatory.

Issue (8): If the court concludes that what the Defendant said was a statement of fact, has she made out her defence of truth?

208. As the Claimant has not made out his claim, I consider that it is not necessary or appropriate to determine the Defendant's defence of truth: see the approach taken by Collins Rice J in *Blake* at [159]-[165].

Issue (9): If the court concludes that what the Defendant said was a statement of opinion, has she made out her defence of honest opinion?

209. If the Claimant made out his claim, the Defendant would not have been able to rely on this defence as I have found that her words were a statement of fact not opinion: see under issue **(3)** above.

Issue (10): If the Claimant's claim succeeds what remedy is appropriate?

210. The Claimant's Particulars of Claim only sought an award of damages. As his claim has been dismissed the quantification of any damages does not arise. Had I been required to determine damages, I would have applied the well-recognised principle that a well-judged apology will mitigate damages: see *Collins Stewart v Financial Times Ltd (No. 2)* [2005] EWHC 262 (QB), [2006] EMLR 5 at [34]. I say this because the Defendant has repeatedly offered to apologise to the Claimant and thus repair or reduce any impact on the Claimant's reputation, but he has refused to accept her apologies.

211. In other documents the Claimant indicated that he sought a full public apology on social media from the Defendant. There is no power to to order a defendant to make

an apology after a trial (as opposed to the power to facilitate a statement in open court or the limited power to order an apology if the court grants a claimant summary relief under the Defamation Act 1996, neither of which applies here).

212. The Claimant also invited me to make a recommendation under the Care Act 2014 that mental health professionals should not advise individuals in circumstances such as RXK was in before January 2022 to delete messages containing material that they contend is harmful to their mental health. I cannot see that the court would have had the power to make such an order, nor was there any basis for it given my analysis at [60] above.

Issue (11): What order for costs, if any, is appropriate?

213. The Claimant sought his litigant in person costs under CPR 46.5. As his claim has been comprehensively dismissed I do not consider that there is any basis for making a costs order in his favour.

214. The Defendant indicated that if the Claimant's claim was dismissed she did not wish to pursue any application for costs: she simply wanted matters to be concluded.

Conclusion

215. Accordingly, for all these reasons, the Claimant has not made out his claim for slander.

216. I have found that on 28 January 2022 the Claimant a man in his 60's, described the Defendant's daughter, a mentally vulnerable woman in her 30's, as a "prick tease".

217. The Defendant responded, saying "go away you horrible peedo" [sic]. This had the single meaning that the Claimant was a "dirty old man", more specifically "a man of a certain age who subjected younger women to unwelcome sexual interest".

218. Although these words conveyed a meaning or imputation which was defamatory at common law, the Claimant has not brought himself within one of the exceptions permitting him to bring a slander claim without proving special damage. He can prove no special damage.

219. The Claimant has also failed to prove serious harm under the 2013 Act, s.1.

220. The Claimant's claim is therefore dismissed, with no order for costs.