Neutral Citation Number: [2025] EWHC 453 (KB)

Case No: QB-2022-001106

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/02/2025

Before :

HH Judge Richard Parkes KC
Sitting as a Judge of the High Court

Between :

JAMES GORDON MILLER	**Claimant**
- and –	
ANDREW PEAKE	**Defendant**

The parties were not represented.
Hearing dates: 18-21 November 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 28 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HHJ RICHARD PARKES KC

HH Judge Richard Parkes KC :

INTRODUCTION

1. This case concerns local animosities in rural Norfolk, stoked by the ill-advised use of social media. Its focus is on the parish council of a village called Fleggburgh, which lies east of Norwich and north-west of Great Yarmouth, not far from the North Sea coast.

2. The Claimant, Dr James Miller, was clerk to Fleggburgh Parish Council ("FPC") from 11 February 2019 until his resignation in September 2021. The Defendant, Mr Peake, who is a resident of Fleggburgh, was a member of FPC when Dr Miller became clerk, and remained a councillor until he resigned in April 2021.

3. Dr Miller took a degree in economics from Cambridge, then a master's degree from London University, followed by further work at Uppsala and finally at Tilburg in the Netherlands, where he completed a PhD. Since then he has had a varied career, collaborating with his brother for many years in starting up a business concerned with genetic testing equipment, and working as a business trainer and consultant, a technical author, an accountant, and a teacher. He lives in Freethorpe, a few miles from Fleggburgh, with his wife and their young children, who go to local schools. Since 2014, he has combined a portfolio of different roles, including working as a clerk to parish councils, a mix which enables him to work largely from home and to look after the children, while his wife works as a vet. He describes himself in his CV as a 'stay at home dad'.

4. In 2017 Dr Miller applied to be clerk to FPC, but was unsuccessful. He applied again in 2019, and was appointed, even though he had little experience of the role at the time. He also became clerk to Tunstead Parish Council in February 2021, and remains in post. He has held locum clerking positions at three other councils, and once applied, unsuccessfully, for the post of clerk in his own village of Freethorpe. In recent years, Dr Miller has acquired considerable knowledge and understanding of the roles of councillors and clerks to parish councils. From June 2022 to June 2024 he was contracted to provide training for members of the Norfolk Association of Local Councils (NALC), on such matters as the role of the councillor and the clerk, budgeting and setting the precept, declaring interests, bank reconciliations, internal auditing, procurement and risk management.

5. Mr Peake, the Defendant, lives in Fleggburgh with his wife and daughter. He is a smallholder and a motor engineer. He obtained an HND in mechanical engineering, then worked in the offshore gas industry, and later obtained a qualification in electrical installation, enabling him to work on diesel generators. Lastly, he re-trained to work on electrical vehicles, a business which he carries out from home.

6. Mr Peake was elected a councillor for FPC in 2017, with a mission to end what he saw as the "obvious secret decision making" at FPC, and to make the council open and accountable. It was his evidence that the council had been criticised by the monitoring officer of Great Yarmouth Borough Council (GYBC) for "institutional and systematic failure", which seems to have involved a failure in particular of compliance with legal obligations. Mr Peake attended training sessions for councillors, became chairman of

FPC, and oversaw the introduction of standing orders, a code of conduct and a finance policy. He felt that his actions had made him unpopular with some long-standing members of the council.

7. Mr Peake is, it is fair to say, a man who is resolutely focused on process. He is insistent on full compliance with the procedural norms of parish council operation. He told me that he was on the autistic spectrum, and that he tends to see issues in polarised terms of black and white. That was clear from his evidence.

8. Mr Peake set up a Facebook page, which was initially named "Andrew Peake of Fleggburgh" and later "Fleggburgh Eye". He published a large number of posts on Facebook, which have given rise to the claims in this case. His posts were not removed until February 2023.

THE CLAIM

9. The claim was first notified by letter before action dated 18 February 2022, sent on Dr Miller's behalf by Norwich solicitors. The letter complained of a total of some 26 postings on Mr Peake's Facebook page between January 2021 and February 2022, two messages to a local residents' group and one publication on YouTube. The point was made that as at 7 February 2022, 237 people followed Mr Peake's Fleggburgh Eye page, and that (because of the privacy settings on the account) if someone expressed a reaction or comment, the post commented on would then be visible on that person's newsfeed, where their own friends would then see it. The letter asked, among other things, for the posts to be taken down.

10. Mr Peake's undated response, received by the solicitors on 21 February 2022, was uncompromising. He said: "I do have a great deal of evidence to support the public statement that your client Dr Jimmy or James Gordan (sic) Miller is a liar, he is a dishonest, scheming, devious and threatening liar. He lied orally in meetings, in emails to me, he lied on the telephone to my barrister, he compounded those lies with emails. He threatened me, another Parish Councillor and an elderly resident of Fleggburgh when he emailed her using her personal email address for which he had no right to use (sic), then by visiting her in the evening to discuss a complaint she was planning to submit to his employer - this is proof absolute that the statements cannot be defamatory".

11. Further correspondence proved unproductive, and proceedings were commenced by writ issued on 4 April 2022, with a stated damages limit of £20,000. The original Particulars of Claim, served on 7 July 2022, complained of some thirty publications, one of which was time-barred.

12. Time was then taken up with procedural matters: the Defendant failed to acknowledge service, and on 22 September 2022 Lavender J granted judgment for damages to be assessed. The order made by the judge obliged the Defendant to take a number of steps that were not taken, and an application was made to commit him for contempt. However, an order was made on 15 May 2023 by consent setting aside the order of Lavender J and giving directions.

13. Specialist defamation counsel was then instructed, and on 9 November 2023, by consent, the Particulars of Claim were amended in a number of respects. In particular, the focus was now narrowed to twelve publications on the Fleggburgh Eye Facebook page. The Defence (ultimately Re-amended), and the Reply, were also settled by specialist counsel. Less happily, both parties have since ceased to be legally represented, Dr Miller's solicitors coming off the record only in the week before trial. Those solicitors were, it appears, responsible for preparing the trial bundle, which ran to 833 substantially unindexed pages, many of which are documents duplicated two or three times, arranged in no obviously chronological or otherwise logical sequence with page numbers often illegible, and (according to Mr Peake) omitting some of the documents which he wanted included. It was a poor piece of work that did not make the trial easier for the court or for the parties.

14. The case enjoyed little if any of the judicial case management which is now customary in Media & Communications (MAC) List matters, and as a result there was no preliminary determination of meaning or of fact/opinion, and there was not even a pre-trial review by a MAC List judge, although one was ordered by the Master at a case management conference on 16 July 2024. The consequence is that the case has come to trial in something of a state of nature, exacerbated by the lack of representation and the very considerable antipathy that plainly exists between the parties. That said, both men conducted themselves with dignity and courtesy towards the court and one another, and did all they could to assist the court.

15. The claim as it now stands in the Amended Particulars of Claim (APOC) is brought in defamation and malicious falsehood. It is founded on twelve Facebook posts by Mr Peake, publication of which is admitted. Reference to Dr Miller is also admitted except in the case of two posts, where it is not admitted, but where (as I explain below) there is no doubt that Dr Miller will have been understood to be referred to as the subject of the posts. There is some measure of agreement on meaning, although that is an issue which I have to determine.

16. Notwithstanding the meanings that Mr Peake accepts that the words bear, there is a live issue as to whether the posts are defamatory of Dr Miller at common law. There is also, less surprisingly, a live issue as to whether the posts, or any of them, satisfy the serious harm threshold imposed by Defamation Act 2013 s1, and Mr Peake relies in his Re-Amended Defence (RAD) on substantive defences of truth, honest opinion and publication of a statement on a matter of public interest.

17. Dr Miller's malicious falsehood claim relies on s3(1), Defamation Act 1952, on the footing that the posts were calculated to cause him pecuniary damage in respect of his office as a parish council clerk. The particulars of falsity are very general indeed: one pleaded falsehood, for instance, is that the claimant is a liar and/or dodgy and/or fraudulent. Malice (which is denied) is pleaded in very bald and unparticularised terms. There is no special damage claim. Since the pleading was put on the record (9 November 2023), the Supreme Court has considered the effect of s3(1) in the case of *George v Cannell* [2024] UKSC 19; [2024] 3 W.L.R. 153, and stated the law as being that where there is no actual financial loss, there is no scope in a malicious falsehood claim for damages for injury to feelings. It is trite, of course, that damage to reputation cannot be compensated in a malicious falsehood claim. The best outcome for Dr Miller from this part of his claim would be a nominal award.

THE POSTS COMPLAINED OF AND THEIR MEANING

18. As I have said, there has been no determination of meaning in this case. The principles to be applied in determining meaning have been settled for decades. They were helpfully gathered together by Nicklin J in *Koutsogiannis v The Random House Group Ltd* [2019] EWHC 48 (QB); [2020] 4 WLR 25 at [12], where the judge summarised them in these terms:

    (i) The governing principle is reasonableness.
    (ii) The intention of the publisher is irrelevant.
    (iii) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. A reader who always adopts a bad meaning where a less serious or non-defamatory meaning is available is not reasonable: s/he is avid for scandal. But always to adopt the less derogatory meaning would also be unreasonable: it would be naïve.
    (iv) Over-elaborate analysis should be avoided and the court should certainly not take a too literal approach to the task.
    (v) Consequently, a judge providing written reasons for conclusions on meaning should not fall into the trap of conducting too detailed an analysis of the various passages relied on by the respective parties.
    (vi) Any meaning that emerges as the product of some strained, or forced, or utterly unreasonable interpretation should be rejected.
    (vii) It follows that it is not enough to say that by some person or another the words might be understood in a defamatory sense.
    (viii) The publication must be read as a whole, and any "bane and antidote" taken together. Sometimes, the context will clothe the words in a more serious defamatory meaning (for example the classic "rogues' gallery" case). In other cases, the context will weaken (even extinguish altogether) the defamatory meaning that the words would bear if they were read in isolation (e.g. bane and antidote cases).
    (ix) In order to determine the natural and ordinary meaning of the statement of which the claimant complains, it is necessary to take into account the context in which it appeared and the mode of publication.
    (x) No evidence, beyond the publication complained of, is admissible in determining the natural and ordinary meaning.
    (xi) The hypothetical reader is taken to be representative of those who would read the publication in question. The court can take judicial notice of facts which are common knowledge, but should beware of reliance on impressionistic assessments of the characteristics of a publication's readership.
    (xii) Judges should have regard to the impression the article has made upon them themselves in considering what impact it would have made on the hypothetical reasonable reader.
    (xiii) In determining the single meaning, the court is free to choose the correct meaning; it is not bound by the meaning advanced by the parties (save that it cannot find a meaning that is more injurious than the claimant's pleaded meaning).

19. But at the same time the court must be aware of the distinct issues that arise nowadays with the meaning of publications on the internet, and particularly on social media. Those issues were considered by the Supreme Court in *Stocker v Stocker* [2019] UKSC 17; [2020] AC 593 at [41]-[46]. In sum, the judge must keep in mind the way in which publications on social media (particularly Facebook posts and Twitter/X tweets) are read. These are conversational media which it would be wrong to analyse as if they were literary texts: an impressionistic approach is more appropriate, which takes into account the whole publication and its context. As Lord Kerr put it at [43-44], it is "unwise to parse a Facebook posting for its theoretically or logically deducible meaning. The imperative is to ascertain how a typical (ie an ordinary reasonable) reader would interpret the message. That search should reflect the circumstance that this is a casual medium; it is in the nature of conversation rather than carefully chosen expression; and that it is pre-eminently one in which the reader reads and passes on". "People scroll through it [Facebook] quickly. They do not pause and reflect. They do not ponder on what meaning the statement might possibly bear. Their reaction to the post is impressionistic and fleeting."

20. I asked the parties whether the bundle (which, as I have said, was haphazardly constructed) contained any material (eg other posts) which provided context, but it appeared not, beyond the words that appear on Mr Peake's Fleggburgh Eye page, namely "Publicising stuff about Fleggburgh, things that don't add up, things that seem a little – well, odd". The trial bundle did of course contain, scattered here and there, other posts as well as the ones complained of, but I was not shown (and had no realistic means of re-constructing) a complete sequence of the posts published by the Defendant, or even the immediate context of each post complained of, and neither party suggested that a reading of contextual material would assist in determining the meaning of the posts complained of. So, although it would have been helpful to have seen the context in which each post appeared, I have had to consider each post by itself.

21. There is a modern practice of reading the words complained of before the hearing, and before hearing argument, in the hope of enabling judges to assess the unsullied impression which the words make on them, and thus to consider what the impact would have been on the reasonable reader (*Tinkler v Ferguson* [2019] EWCA Civ 819 at [9]). That is the practice which I have tried to employ.

22. It is admitted that each of the twelve posts was published by Mr Peake on his Facebook page, which seems at all material times to have been entitled "Fleggburgh Eye". They are set out below in the exact form in which they were published, including any idiosynchrasies of language, without the use of any pointers (eg *sic*).

23. I also include after each post the meanings pleaded by Dr Miller and by Mr Peake, and the meaning which I have found the words to bear.

24. Reference is, as I have said, admitted except in two cases (Posts 5 and 6), where I find it plainly established.

Post 1: 18 May 2021

25. The words complained of are:

> "Annual Parish meeting Thursday evening at 6pm, where community groups update parishioners – what has Fleggburgh Council done in the last year? – arranged to get the grass cut, bought a gate for the Village Hall car park and paid it's Clerk, he's Dr Jimmy Miller (56) – or James Gordan Miller depending on where you find him. Before Clerking for Fleggburgh he tried his hand at being a director of a failed 'training provider' company (along with a man who changed his name to Lord by deed poll) and as a 'freelance management accountant'. In Cantley the playgroup and Village Hall committees that he became trustees of were both very late in submitting returns to charity commissioners. When he applied for the job of Clerk at Freethorpe (where he lives and is well known) he was rejected, so he tried at Fleggburgh, the interview panel weren't impressed by his sexist comments, but when he applied again in 2019 after 3 independent Clerks had been seen off by Chair June Pratt he was described by Mrs Pratt as a 'strong candidate' – even though he still had no training or experience. In his 2 years at Fleggburgh and £8,000 of pay and training costs he has; failed to advise PC on policy introduction, been critised by the ICO, had decisions reversed after advice from police, abbetted decisions be made in secret, lied (by email and orally) and orchestrated the bullying of a whistleblower Councillor (as well as being rejected for the job of Clerk of Freethorpe a second time). FPC are proposing to give him more authority – have they asked their electorate? Did they ask before spaffing £4k (cheque signed by PCllrs Pratt and Roper) on a gate for the Village Hall car park? – Residents were asked for their views to be collated into the Neighbourhood Development Plan, which some members of FPC (Pratt, Brown and Sewell) repeatendly derailed, delayed and had dilutted. When FPCs electorate were asked in a 2017 election which Councillor they preffered I was elected, only to subsequently be bullied off. FPC are ignoring it's electorate and wasting money on personal vendettas, we have our chance to stop it on Thursday."

26. The Claimant's pleaded meaning is that he is a sexist, dishonest and incompetent individual who has orchestrated bullying of a colleague and is not fit for the position of a Parish Clerk. The Defendant admits that the words mean that the Claimant is dishonest and incompetent.

27. The meaning which I find the words to bear is that the Claimant, as clerk to Fleggburgh Parish Council, had lied in the course of his duties as clerk and orchestrated the bullying of a whistleblowing councillor, and had shown himself to be a man who was dishonest, sexist and incompetent, and not fit to be the clerk to a parish council.

Post 2: 24 May 2021

28. The words complained of are:

> "When Clerk Jimmy circulated a proposal for a social media policy last Autumn he was asked by email if he'd written it – oh yes, he proudly replied, so the question was asked 'when?' to which he replied that he couldn't remember, then became incredibly evasive concerning the policy – refusing to answer any more questions – just like a child trying to work out how to cover his lies – fact is the policy was 'lifted' from another PC – it was written by another, not Jimmy, as was later revealed, more lies, more gaslighting, more covering up – no wonder the PC is behind with it's policy reviews and statutory obligations, the Clerk is too busy working out how to gloss over the fact that he's a stranger to the truth."

29. The Claimant's pleaded meaning is that he is a prolific liar, and lies often about Parish Council matters, and that he is dishonest, incompetent and untrustworthy. The Defendant admits that the words mean that the Claimant is dishonest.

30. The meaning which I find the words to bear is that the Claimant repeatedly lied about having written the Parish Council's proposed social media policy when in fact he had taken it from another council, then told more lies in his attempts to cover up what he had done, and was a dishonest person who could not be trusted to tell the truth.

Post 3: 25 May 2021

31. The words complained of are:

> "During the Tunstead Parish Council meeting FPC Clerk Dr Jimmy told all that 'all members of Fleggburgh Parish Council have attended planning response training' – what a load of tosh – not only does he lie to Fleggburgh residents, he's lying to the parishioners of Tunstead (who also pay him) – NB – if Jimmy says it's raining – take a look out of the window before getting your umbrella! BTW – PCllr Hacon expressed his opinion on Jimmy – 'he's a really nice guy' – has he seen the video of his mate abusing a fellow Councillor last week? – a poor judge of character? – working for parishioners or a resident of Freethorpe?"

32. The pleaded meaning is that the Claimant is a prolific liar who has lied to more than one Parish Council, that he is dishonest and untrustworthy, and that he has abused fellow Council members. The Defendant admits that the words mean that the Claimant is dishonest and untrustworthy and that he has abused fellow Council members.

33. The meaning which I find the words to bear is that the Claimant had lied to members of Tunstead Parish Council, just as he had lied to residents of Fleggburgh, had abused another member of the council, and was dishonest and untrustworthy.

Post 4: 17 June 2021

34. The words complained of are:

> "Dr Jimmy Miller, or James Gordan Miller depending on what name he's going by is a liar, a threatening, scheming, dishonest, devious liar, he lied about the production of a social media policy, he lied that the police had discussed a suspects interview with him, he lied on his CV to get his job at Fleggburgh PC, what's a PHD and Cambridge degree qualified 56 year old doing working for 2 parish Councils at £11 per hour? – something to hide Jimmy? under that stupid hat you wear?"

35. The pleaded meaning is that the Claimant is a prolific liar, lying particularly about police matters and his employment history, that he is dishonest, that he threatens people, and that his lies and dishonesty are part of a nefarious scheme to gain employment at the Parish Council. The Defendant admits that the words mean that the Claimant is a liar and is dishonest.

36. The meaning which I find the words to bear is that the Claimant is a threatening, scheming, dishonest, devious liar, who had lied about the production of a social media policy, lied in claiming that police had discussed a suspect's interview with him, and lied on his CV to get his job at Fleggburgh Parish Council.

Post 5: 8 July 2021

37. The words complained of are:

> "Parish Council meeting next Thursday evening – all are able to attend in person to see how much your unelected and largely untrained representatives are paying their dishonest and threatening Clerk this month."

38. Reference is not admitted here. The test is whether the words would be understood by reasonable readers who know the Claimant to refer to him. The Defendant's intention is irrelevant at common law, but (for what it is worth) he admitted in evidence that he was referring to the Claimant both in this and all the other posts.

39. The way in which reference is put by the Claimant in the APOC is that there was only one clerk position in Fleggburgh, namely clerk to the Parish Council, a post which he had held for over two years, and that the Defendant's Fleggburgh Eye Facebook page held itself out as "publicising stuff about Fleggburgh", so that on both accounts readers would have understood references to "their Clerk" as referring to him as clerk to FPC. That is not admitted in the RAD, but in my judgment reference is established beyond

any doubt. The pleader of the APOC could have made the further point that a number of previous posts had referred to the Claimant by name as the clerk. Readers would have known exactly who was meant.

40. The pleaded meaning is that the Claimant is a liar, dishonest, and that he threatens people. Despite not admitting reference in this case, the Defendant admits that the words mean that the Claimant is dishonest.

41. The meaning which I find the words to bear is that the Claimant is a dishonest person given to threatening people.

Post 6: 11 August 2021

42. The words complained of are:

> "Sandwell council [*YouTube link*] are having to pay £50,000 of legal costs after their injunction against a blogger was thrown out by a high court judge – Sandwell Council will have to explain to their electorate why they spaffed nearly a quarter of a million quid trying to gag a resident. Perhaps Fleggburgh Parish Council would like to explain how they're going to replace the over £300 they allowed their incompetent, threatening and lying clerk (a resident of Freethorpe) in his continued vendetta against a former Councillor and resident of Fleggburgh."

43. Reference is again not admitted here, although in evidence the Defendant admitted that he was in fact referring to the Claimant in the second part of the post. For the same reasons as in the case of Post 5, I have no doubt that the words complained of would have been understood to refer to the Claimant.

44. The pleaded meaning is that the Claimant is a liar, threatens people and is incompetent. The Defendant does not plead a meaning for this post.

45. The meaning which I find the words to bear is that the Claimant, as clerk to the Parish Council, was an incompetent liar who was given to threatening people, and who had pursued a continued vendetta against a former councillor and resident of the village.

Post 7: 22 August 2021

46. The words complained of are:

> "How many fb users has this idiot contacted using his Parish Council email address to threaten them?"

47. A photograph of the Claimant appeared beside the words complained of. Reference is admitted. The pleaded meaning is that the Claimant is threatening and has improperly used his professional Parish Council email address to threaten members of the Parish and community. Again, the Defendant does not plead a meaning.

48. The meaning which I find the words to bear is that the Claimant had used his Parish Council email address to threaten Facebook users.

Post 8: 1 September 2021

49. The words complained of form the caption to a photograph of the Claimant, a woman and another man. They are:

> "Liars all three – PCllrs Pratt and Brown and their devious, lying, threatening, incompetent clerk."

50. The pleaded meaning of the words (which are in effect the caption of a photograph of the Claimant and two councillors) is that the Claimant is a liar, is dishonest, that he threatens people and that he is incompetent in his role as parish council clerk. The Defendant accepts that the post means that the Claimant is a liar and dishonest.

51. The meaning which I find the words to bear is that the Claimant is a lying, devious and incompetent clerk to the Parish Council, who is given to threatening people.

Post 9: 13 September 2021

52. The words complained of are:

> "Clerk Dr Jimmy was rejected for employment by Fleggburgh at his 1st time of application due to the sexist remarks he made in interview, twice by Freethorpe PC (where he lives) when he applied. He was also rejected by Ashmanuagh Parish Council, a representative of Tunstead PC said they had no choice but to employ him as he was the only candidate and they were desperate! Dr Jimmy was involved in business with a man who changed his name to 'Lord' by deed poll (dodgy, or what?) He is trustee of 2 charities that are months behind with their accounts submission to the charity commission and his children have had to move schools twice, 3 schools in 5 years! what sort of mess does he have to be in before he stops blaming others and accepts failure?"

53. The pleaded meaning is that the Claimant is involved in other dodgy businesses, is incompetent in carrying out other professional roles including with charitable organisations, and that he is generally incompetent to the detriment of his children and their wellbeing. The Defendant does not plead a meaning for this post.

54. The meaning which I find the words to bear is that the Claimant had been involved in a dodgy business, was an incompetent trustee of two charities, could not even organise his own children's education competently, and was a failure who blamed others for his own incompetence.

Post 10: 11 February 2022

55. The words complained of are:

> "FPC meeting last evening – where Chairman Patrick Ely revealed 17:33 the identity of the Clerk being investigated in secret 'to protect their identity' [*laughing emojis*] – then later revealing that the current locum Clerks time was being taken up with the work that dodgy Dr Jimmy didn't do – despite now ex-Councillors (Pratt, Brown and Roper) repeatedly telling us what a good job he was doing, how much they supported him and how much they thought he deserved his overtime payments – over a grand of our cash on top of his 3 grand a year wasn't enough to get him to reply to more than 5 emails a day. Were the other members of Fleggburgh Parish Council looking the other way [*facepalm emojis*] Recently the locum Clerk has answered questions put in the meeting to reveal that what dodgy Dr Jimmy said he was doing – wasn't actually done – are they working for parishioners?"

56. The pleaded meaning is that the Claimant was incompetent in his role as Parish Council Clerk, in that he carried out dodgy activities, failed to undertake his proper roles and responsibilities, and accepted public money for work that he had not undertaken or had conducted incompetently. The Defendant pleads that the meaning is that the Claimant is incompetent and that he failed to undertake his proper roles and responsibilities.

57. The meaning which I find the words to bear is that the Claimant was a dodgy individual who took substantial sums of public money for work as clerk to the parish council which he falsely claimed to have done but did not in fact carry out.

Post 11: 15 February 2022

58. The words complained of are:

> "Anyone wondering what happened to the mysteriously resigned Dr Jimmy Miller? – He's clerk at Tunstead Parish Council where this evening his employment is being discussed in private – are they going to sack him? Strangely he's not wearing his hat and he's had a shave now – what was he hiding from at Fleggburgh? In Fleggburgh PCs last meeting the chairman explained how the locum Clerk, 3 months on from joining Fleggburgh is still trying to catch up on the work that Jimmy said he was doing, but even though Fleggburgh parishioners were paying him £3600 pa, he didn't do, now we can see why Freethorpe (where he lives) rejected him for the job of clerk, twice, what do they know that we don't?"

59. The pleaded meaning is that the Claimant was incompetent in his role as Parish Council Clerk, in that he failed to undertake his proper roles and responsibilities, and accepted public money for work that he had not undertaken or had conducted incompetently. The Defendant pleads that the meaning is that the Claimant failed to undertake his proper roles and responsibilities.

60. The meaning which I find the words to bear is that the Claimant took substantial sums of public money for work as clerk to the parish council which he falsely claimed to have done but did not in fact carry out.

Post 12: 28 December 2021

61. It is unclear why the final post complained of in fact pre-dated posts 10 and 11. The words complained of are: "Item 5: To expose ex Clerk Dr Jimmy Miller as a fraudulent, lying, inefficient low life – unanimous resolution to cover up his criminally malfeasant activity and pay him off with parishioner's cash"

62. The pleaded context of these words is that the words were printed as part of what purported to be mock minutes of an extraordinary meeting of FPC, and introduced with the words "For those not aware of Fleggburgh Parish Councils meeting on the 30th September – here's the minutes".

63. The pleaded meaning is that Claimant was incompetent in his role as Parish Council Clerk, in that he had conducted his role so fraudulently and dishonestly that he had caused financial harm to the Parish Council, and that he had accepted public money for work that that he had undertaken fraudulently and incompetently to the detriment of the Parish Council. The Defendant does not plead a meaning for this post.

64. The meaning which I find the words to bear is that the Claimant had been a fraudulent, dishonest and incompetent clerk to the parish council, and had been guilty of criminal misconduct in that role.

ARE THE WORDS COMPLAINED OF DEFAMATORY AT COMMON LAW?

65. For words to be defamatory at common law, the meaning that they convey must cross a threshold of seriousness that excludes trivial claims, as was pointed out by Tugendhat J well before the introduction of the serious harm requirement in s1 Defamation Act 2013: see *Thornton v Telegraph Media Group Ltd* [2010] EWHC 1414 (QB); [2011] 1 WLR 1985. In *Berkoff v Burchill* [1996] 4 All ER 1008, 1011-1013, Neill LJ collected together, and in *Thornton* at [29] Tugendhat J considered, a number of definitions of the adjective "defamatory" that had been used and approved in the past. Tugendhat J's own preference was for a definition suggested by Neill LJ himself in *Berkoff*, namely that the words should affect in an adverse manner the attitude of other people towards the claimant. The current preference, now termed the "consensus requirement", is for an older definition, namely that the meaning must be one that tends to lower the claimant in the estimation of right-thinking people generally. That requires the judge to determine "whether the behaviour or views that the offending statement attributes to a claimant are contrary to common, shared values of our society": *Monroe v Hopkins* [2017] EWHC 433 (QB); [2017] 4 WLR 68 at [51]. Tugendhat J's "threshold of seriousness" has more recently been expressed as requiring the imputation to be one

that would tend to have a "substantially adverse effect" on the way that people would treat the claimant: *Miller v Corbyn* [2021] EWCA Civ 567; [2021] EMLR 19 at [9].

66. Given the meanings that I have found the words to bear, I have no difficulty in concluding that all the posts bear meanings that tend to lower the claimant in the estimation of right-thinking people generally and attribute to him behaviour which is contrary to the common values of society, and would have a substantially adverse effect on the way that people would treat him.

SERIOUS HARM

67. The threshold of seriousness which defamation claims must satisfy was introduced by s1, Defamation Act 2013. By s1(1), a statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant.

68. To succeed on his defamation claim, Dr Miller must discharge his burden of proving that the posts he complains of caused or were likely to cause him serious reputational harm. If, but only if, he does so, then the burden of proof shifts to Mr Peake to establish the defences on which he relies.

69. Dr Miller pleads a separate case for serious harm in respect of each of the twelve publications of which he complains, but the case is very similar or identical in respect of each. He relies on publication to at least 247 publishees, and to more than that number because the extent of publication will have been wider, by percolation, than the number of those who followed Mr Peake's posts; the fact that publication was to people in the same community as that where Dr Miller worked, and to people who lived in neighbouring communities on whose estimation he depended in order to gain respect and trust as a clerk to a parish council; and the inherent gravity of the allegations in each case.

70. The question of whether a statement has caused or is likely to cause serious reputational harm is a matter of fact, which "can be established only by reference to the impact which the statement is shown actually to have had. It depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated": *Lachaux v Independent Print Ltd* [2019] UKSC 27; [2020] A.C. 612 at [14].

71. The principles that apply to determination of serious harm are uncontentious. To take matters shortly, they include these propositions:
    (1) The 'harm' of defamation is the reputational damage caused in the minds of publishees, and may be (but does not have to be) established by evidencing specific instances of serious consequences suffered by a claimant as a result of the reputational harm.
    (2) Serious harm may be shown by general inferences of fact, drawn from a combination of evidence about the meaning of the words, the situation of the claimant, the circumstances of publication and the inherent probabilities. That brings into play the scale of publication (but serious harm is not simply a 'numbers game'), whether the statement complained of is likely to have come to the attention of anyone who knew the claimant, and the seriousness of the allegations complained of.

(3) It is relevant to consider the risk of percolation of defamatory allegations, especially on social media. It may in such cases be very hard to identify unknown publishees who thought less well of a claimant.

72. There was undisputed evidence that Mr Peake had 271 Facebook followers in 2023 when the posts were taken down. According to Mr Peake, the number had grown from 247, although it was unclear over what period, and the letter before action had posited 237. Dr Miller regarded that number (whether 237 or 247 or 271) as significant in a parish of 900-1000 people. He stated that the posts had been published outside Fleggburgh: for example, he found someone in the West Midlands who had accessed Fleggburgh Eye, and another abroad, in the UAE (which must be discounted, because this action does not rely on foreign publication; but the distance of the percolation may be significant). Even the headmaster of his children's school, who lived neither in Fleggburgh nor in Dr Miller's own village of Freethorpe, knew of the posts. Dr Miller was aware of a number of parish clerks who read the posts. He was blocked by some people on Facebook, which he put down to the impact of Mr Peake's posts, and a number of people contacted him to ask him what was going on.

73. It is plain, therefore, that there was a degree of percolation of the posts beyond Mr Peake's immediate followers. That is not at all surprising. Mr Peake did not suggest that he had made any privacy settings, or that his page was other than public. As I understand Facebook, a new post appears on the feed of anyone who follows the person making the post. If it is then "shared" by the recipient, it will go to some or all of their Facebook "friends". That is how information spreads. Dr Miller's evidence shows that that must have happened in this case, as one would expect. A number of people asked him what was going on, obliging him to try to explain a complex situation. No doubt many more of his friends and acquaintances will have been aware of the posts and not spoken to him. Those who knew him would not necessarily want to raise a sensitive and embarrassing matter. As Warby LJ put it in *Amersi v Leslie* [2023] EWCA Civ 1468 at [38],

> "The difficulties of obtaining evidence about the actual defamatory impact of a publication are well-known. The judge referred (at [146]) to a series of cases in which it has been acknowledged that "a claimant may struggle to identify, or to produce evidence from, all those to whom an article was published and in whose eyes the claimant's reputation was damaged". Put simply, people rarely want to get involved and the more the claimant has been defamed in the eyes of a potential witness the less likely that person is to want to help."

74. The posts complained of repeated very similar allegations over a nine month period. Nine of them appeared in under four months between May and September 2021, another in December 2021, and two in February 2022. They generally repeated the same allegations that Dr Miller, as clerk to FPC, was dishonest, incompetent and threatening. They were, I accept, very serious allegations which are likely to have become widely known over the rural area where Dr Miller lived and worked.

75. That said, there is an extent here to which the very tone of the posts, which was abusive, and their repetition of certain themes, may possibly have served to diminish their impact. Some readers may well have considered, after reading one or two, that Mr Peake had a bee in his bonnet, and have wondered whether someone so obviously obsessive should be taken seriously. That, I think, is a matter to be taken into account in the assessment of damages. It does not bear sufficiently on my assessment of serious harm to alter the view which I have reached.

76. It may be that the posts can properly be seen as a whole and aggregated for the purpose of considering whether they caused serious harm, because they are repeated statements to very much the same effect, published by the same means to the same publishees over a period of only a few months, and have a cumulative impact which is likely to have been greater than the impact made by individual posts. I note the words of Warby LJ in *Amersi v Leslie* at [43] and [56]:

> "The judge held that aggregation was impermissible as a matter of law because serious harm has to be proved "publication by publication". It remains my view after hearing oral argument that this reasoning was arguably mistaken. In short, it seems to me arguable that in a case where there have been multiple publications of a statement it is not necessary for the claimant to prove that each publication taken by itself caused serious harm to his reputation or was likely to do so; a statement can be defamatory within the meaning of s 1(1) and hence actionable if the overall, cumulative, or aggregate defamatory impact of the publication of that statement is serious or is likely to be serious."

> "… in my view, aggregation of reputational harm caused by separate publications is legitimate or arguably so as a matter of law where the statement complained of is identical, as in the typical case of simultaneous mass publication of the same newspaper article or social media post. I can see that the same might be true where some of the statements complained of differ from one another in ways that are minimal and immaterial to the meaning or imputation conveyed. In such a case it might perhaps be said that the statements are all the same or "substantially the same". That could be so in a case of multiple simultaneous publication or, arguably, in a case where the multiple publications are sequential. In such a case the claimant might be entitled to contend that the defendant published the statement complained of (or substantially the same statement) to numerous individuals and that the "statement" meets the statutory threshold because, whatever might be the position in relation to any individual instance of publication, the overall impact of "its publication" on all these different occasions is to cause serious harm to the claimant's reputation."

77. Of course, I heard no argument on that question. My provisional view is that it would be permissible to aggregate this series of related publications of in effect the same statement about the same person in the same context for the purposes of considering whether they caused serious harm. But I do not think that I need to treat them in that way, because even individually they are sufficiently serious allegations, made about a person in a public position in a rural community, for each of them to be taken to satisfy the s1 test. It is impossible to say how far they percolated. Serious harm is not, as has been said, a numbers game. I infer that, taken individually or as a whole, these publications caused serious harm to Dr Miller's reputation.

DEFENCE OF TRUTH

78. Mr Peake pleads truth, in accordance with s2, Defamation Act 2013. I shall set out his pleaded case in full:

[12] If and insofar as the statement complained of conveyed the following imputations about the Claimant, then they are true and/or substantively true pursuant to section 2 of the Defamation Act 2013:

A. The Claimant has in his professional capacity lied, and/or been dishonest and/or deceitful and/or is untrustworthy (Publications 1, 2, 3, 4, 5, 6, 8, 9, 12]
B. The Claimant has abused/made threats to others, including parishioners [Publications 1, 3, 4, 5, 6, 7, 8]
C. The Claimant made sexist remarks in an interview to be the Council clerk [Publications 1, 9]
D. The Claimant has demonstrated incompetence in his role as the Council clerk and/or has failed to carry out his roles and responsibilities [Publications 1, 2, 6, 8, 9, 10, 11, 12]

Particulars: Meaning A

The Claimant's lie in respect of the Fleggburgh Parish Council social media policy

(1) By email on 3 December 2020 the Claimant, as Clerk to Fleggburgh Parish Council, proposed a new social media policy to be adopted by the Council.
(2) The Defendant, in his capacity as a Parish Councillor, sent an email response asking the Claimant whether he had himself written the policy. On 6 December 2020 the Claimant responded stating "yes".
(3) It subsequently transpired that the same social media policy had in fact been published some three years earlier by Burwell Parish Council. The Claimant was forced to admit that he had in fact lied, and simply copied the social media policy from another Parish Council's website. The Defendant will rely on the Fleggburgh Parish Council's monthly report of December 2020 which records the admission by the Claimant.
(4) The Claimant's answer of "yes" on 8 December 2020 was a lie, as the Claimant knowingly and dishonestly represented that he was the author of the social media policy. The Claimant could not have been mistaken when claiming to have written the social media policy.

False allegations in relation to the Defendant's involvement in criminality

(5) During a meeting of Fleggburgh Parish Council on 21 January 2021, the Claimant in his role as Clerk accused the Defendant of involvement in "criminal activity", an allegation that was recorded in the minutes of that meeting. That allegation was not true and was known by the Claimant to be untrue.

(6) On 20 May 2021, the Claimant telephoned the Defendant's counsel Michael Arnheim, instructed on a direct access basis by the Defendant in matters unrelated to these proceedings. The Claimant told Dr Arnheim that the Defendant had been interviewed by police under caution. Once again, this allegation was not true. On 12 June 2021, the Claimant contacted Dr Arnheim by email and purported to inform him that the Defendant had been interviewed under caution by police. In fact, the Defendant had not. It is therefore implausible that the Claimant was told by the police that he had been. The irresistible inference is that once again the Claimant lied in respect of this matter.

False allegations in relation to the Defendant's retention of documents

(7) In an email of 9 December 2020 to Broadland District Councillor Susan Holland, the Claimant asserted that he had evidence that the Defendant had in July 2017 received minutes that had subsequently gone missing.

(8) In his "Clerk's Report" of February 2021, the Claimant addressed the return of boxes of documents to Fleggburgh Parish Council. He alleged that "all three clerks between [the Defendant] signing for the documents and myself have now said that they do not have them. This means that it is likely that [the Defendant] still has these documents in his possession and I urge him to return them to the FPC".

(9) In his "Clerk's Report" of March 2021, the Claimant made the express allegation that the Defendant had inappropriately retained documents, asserting: "[the Defendant] has still not returned the missing minutes. I urge him to do the decent thing and return them. To not do so is to deny the parishioners of Fleggburgh the openness and transparency that they have a right to and deserve".

(10) The allegation that the Defendant had retained documents was not true. The Defendant had returned the missing minutes as required in August 2017 to the Fleggburgh Parish Council Locum Clerk, thereby returning them to the Fleggburgh Parish Council's care. It is averred that the Claimant had no proper basis for the dishonest and untruthful allegation that the Defendant had inappropriately retained minutes.

Particulars: Meaning B

Threatening behaviour during Fleggburgh Parish Council Meeting of 20 May 2021

(11) During a Fleggburgh Parish Council meeting of 20 May 2021, the Claimant shouted at Parish Councillor Osborne and generally behaved in an aggressive, threatening manner.

(12) During the meeting, the Claimant denied that he was making threats, before stating "what I'm telling you is that I could resign and I could sue this council". That statement constituted a threat to resign and subsequently issue proceedings against the Parish Council and/or its councillors. The Defendant will rely on a video

recording of the 20 May 2021 meeting, publicly accessible at https://www.youtube.com/watch?v=lvD5G7Utff8.

Threats made towards the Defendant

(13) On 24 July 2020, the Defendant sent the Claimant an email expressing concern that the Claimant had not answered various questions relating to the Council and pointing out: (i) that "we are living in a world of openness and accountability" in which Fleggburgh Parish Council had to be transparent in all its activities; and (ii) that in his role as Clerk, the Claimant was employed "to assist the smooth running of the Council".

(14) On the same day, the Claimant responded, stating: "Given we are living in a world of openness and transparency, would you mind if I make the minutes from the Standards Hearing last year public?"

(15) The reference to the "Standards Hearing last year" was to an incident in April 2017 in which a complaint was submitted by Parish Councillor Forde-Pogson against the Defendant. The complaint was upheld by Great Yarmouth Borough Council's Standards Committee and training recommended for the Defendant. The minutes in relation to those events were confidential. The Claimant's email of 24 July 2020 was reasonably understood by the Defendant to constitute a threat to reveal those confidential minutes.

(16) The Claimant also behaved in a threatening manner towards the Defendant during Parish Council meetings. The Defendant relies on screenshots of the Claimant (i) giving him "the finger"; and (ii) visibly filming him with a video camera.

Particulars: Meaning C

(17) The Claimant first applied for the role of Clerk to Fleggburgh Parish Council in 2017. As part of the application process, the Claimant submitted a CV in which he claimed to be a "stay at home dad" to his three children.

(18) As part of the application process, the Claimant sat an interview before a panel of Fleggburgh councillors including the Defendant. During the interview, the Claimant made comments about his wife who he referred to as "wifey". He told the panel that she had to stay at home whilst he worked during the evenings.

(19) These Clamant's comments about his wife were obviously and unacceptably sexist to the interview panel. The panel was shocked by the comments, both in and of themselves and particularly in the context of the Claimant's CV. Parish Councillor Daniel Forde-Pogson was alarmed and raised the issue with the Defendant following the interview. The Claimant was unsuccessful in his application.

Particulars: Meaning D

(20) In July 2019, the Claimant drafted a policy under which those making a FOI request of Fleggburgh Parish Council would be charged £20, which was in turn adopted by the council. The policy (which was shortly dropped the following year) drew criticism from the ICO, with a consequent report noting that "the Commissioner strongly disapproves of using fees for this purpose".

(21) The Claimant twice submitted accounts for the year ending 31 March 2020 that did not add up.

(22) On 21 May 2020 (in the early months of the COVID-19 pandemic) the Claimant proposed a Fleggburgh Parish Council meeting "outside the village hall". Such a gathering would have breached the lockdown regulations in force at the time. The Defendant reported the proposed breach to the police. It is to be inferred that the police then contacted the Claimant to inform him such a meeting would not be lawful: the Claimant emailed the invitees the following day to inform them that "after legal advice, I have to inform you that FPC cannot hold a meeting outside on 9th June".

(23) The Claimant submitted an Annual Governance and Accountability Return "AGAR" to the Parish which contained numerous mistakes.

(24) During the Claimant's tenure as Parish Clerk, the Council was overdrawn at its bank for the very first time (to the best of the Defendant's knowledge).

(25) During the Claimant's tenure as Parish Clerk and responsible Financial Officer, the council participated in an unlawful transaction whereby it bought a gate/height barrier, reclaimed the VAT and then subsequently sold half of it to the Village Hall without charging VAT on the sale (it was to be jointly owned by the Council and the Village Hall). The decision-making around the original purchase was conducted in secret: although a council resolution had been made in public to pay only for the equivalent of half a gate, the Claimant without authorisation proceeded to prepare a cheque for the value of the entire structure, which was then paid despite not having council set out as the invoice payee.

(26) During a meeting of the Tunstead Parish Council, the Claimant erroneously told the attendees that all members of Fleggburgh Parish Council have (sic) attended planning response training.

EVIDENCE AND THE PLEA OF TRUTH

79. Dr Miller and Mr Peake were the only witnesses. It was my impression that both men were doing their best to give truthful evidence to the court. However, I have to say that Mr Peake was plainly consumed with a very strong personal dislike of Dr Miller, which is evident in his posts. I had the impression also that Dr Miller's intellectual self-confidence, which some might regard as a little abrasive, may have grated a little on Mr Peake. I am not entirely clear about the origins of this strong feeling of aversion. It is partly explained, perhaps, by the history that I set out below, and which, in my judgment, made it difficult for him to allow Dr Miller any margin of error. To him any false statement by Dr Miller was a lie; any statement capable of being regarded as a threat made him a threatening person; any error showed rank incompetence. As Mr Peake told me, he is on the autistic spectrum, and he tends to see issues in polarised terms of black and white. In my judgment, that difficulty has led him to make accusations which are not justified by the evidence which he regards as proving them. In short, the plea of truth fails, for the reasons given below.

Background

80. Dr Miller decided to apply for the post of clerk to FPC in 2017, because Fleggburgh was reasonably close to his own village of Freethorpe, and – apart from attendance at a monthly meeting - the work could be done from home. He was unsuccessful on his first application, but applied again when the post became vacant in 2019, and he was offered the job, which he held from 11 February 2019 until he resigned in September 2021, leaving the post the following month. As clerk, he was the 'Proper Officer' and

'Responsible Financial Officer' of FPC, and had the responsibility for ensuring compliance with the law relating to parish councils. That included such matters as ensuring that meetings were properly publicised, that meetings were properly conducted and minuted, and that accounts were kept. His duties also included responding to queries from residents, paying invoices and updating the parish council website.

81. In his post as clerk he was an employee of FPC, and was bound to attend the monthly meeting and otherwise to devote five hours a week to the business of the council. However, it was his evidence that he often had to spend much more time on FPC's business than the contractual five hours, which he initially treated as unpaid overtime. He summarised the position in a report to FPC in August 2020:

> "Regarding overtime, I cannot continue to pretend that doing all the extra overtime that I have done doesn't matter. I have internalised the cost for a long time but, this month, I have decided to charge. One councillor has caused me a lot of extra work since I started at Fleggburgh PC as clerk. Since the lockdown started I have been doing approximately 150% of the workload I am contracted to do. This has largely been down to the behaviour of one particular councillor. Other people have been furloughed on 80% of their salary while I have worked 150% for 100% of my salary yet I have been criticised for this publicly by the same councillor. He has implied on Facebook that I have been twiddling my thumbs while taking my salary. Even this evening, he is posting about me on Facebook. I have largely not charged for overtime. Even for my CILCA course, I only charged 60 hours when I could have charged 200 hours. However, I didn't want to burden FPC with too much expense. However, I have this month charged 11 hours overtime. It doesn't take account of anything near the hours I have done and charging is not something I have done lightly...."

82. In December 2020, his report to FPC included the statement that Mr Peake had caused him a "considerable amount of extra work" that month, and that he had as a result charged seven hours' overtime, which did not cover all the work but did go some way to compensating him.

83. When Dr Miller took on the job of clerk to FPC, Mr Peake was already a member of the council, and to start with Dr Miller found him courteous. However, there was some animus between Mr Peake and other councillors, and the personal antipathies were not always kept out of council meetings. Some antipathy developed between Dr Miller and Mr Peake, which Dr Miller felt might have been partly the result of his getting on well with members with whom Mr Peake did not, but a particular cause was Mr Peake's request that he should investigate a local charity called the Fuel or Poor Allotments Charity, which was overseen by FPC. Dr Miller declined, regarding it as a matter for the Charity Commission. On Dr Miller's account, relationships deteriorated in early 2020, just before the Covid lockdown, when Mr Peake created a Facebook group where

he would post disparaging statements about Dr Miller and members of FPC with whom he disagreed. To start with, the page was called 'Andrew Peake of Fleggburgh' but it later became 'Fleggburgh Eye'. As early as 22 May 2020 Dr Miller emailed Mr Peake to complain that he was undermining FPC and bringing it into disrepute, by publishing untruths on his Facebook page.

84. As time went on, Dr Miller began to feel that Mr Peake had a vendetta against him. Early in 2020, he was made aware of Mr Peake's Facebook posts by a parish councillor, so he started to monitor them, although there seems to have been nothing that caused him to consult lawyers until a later stage. He mentioned one post on 7 September 2020, when Mr Peake stated that he had been twice turned down for a job on his own doorstep, which Dr Miller felt was plainly a reference to his failing to be appointed as clerk to the parish council in Freethorpe, where he lived. It was a recurrent theme that he had been rejected twice, when in fact he had only applied once. Mr Peake himself, in his own witness statement, mentions other social media posts in which he described Dr Miller as "a sociopath, evil, a crackpot, and as the worst performing clerk in England". In December 2020, Dr Miller reported to FPC that he been subjected to "unwarranted criticism" by Mr Peake on Facebook.

85. Dr Miller said in evidence that he felt that Mr Peake was posting deliberately false and defamatory statements about him, and he found Mr Peake's behaviour at council meetings and about council affairs to be hostile and challenging. In particular, Mr Peake sent him large numbers of emails which he was obliged to answer. No other councillor sent him as many, and it became clear to him that he would not have time to do his job if he had to continue to deal with them. Mr Peake's interest in council affairs appeared to him obsessive, and (given that his contractual hours were only five hours per week), replying to them became a significant task. It became clear that he would not have time to carry out his core role if he had to deal with a disproportionate quantity of correspondence from Mr Peake.

86. The Facebook posts became more serious. Startlingly, Mr Peake put up a post on 18 January 2021, which was complained of in the original Particulars of Claim (deleted on amendment, no doubt because of limitation difficulties), in which, as a serving councillor, he wrote of his own council's employee in these terms: "Dr Jimmy Miller is a liar, Dr Jimmy, or James Gordon Miller, clerk to Fleggburgh Parish Council, is a dishonest, scheming, devious, threatening liar". That was a remarkable attack by a councillor on the clerk, and plainly it displayed a very strong antipathy to Dr Miller.

87. In February 2021 a number of complaints about Mr Peake's behaviour were considered by the Standards Committee of GYBC, including in relation to his posts on Fleggburgh Eye (referred to as "Andrew Peake of Fleggburgh"). The decision does not identify the complainants. The Committee found, in respect of one or more unidentified posts, that Mr Peake had behaved in such a way that a reasonable person would not find the posts respectful, and would regard them as bullying or intimidatory, and recommended formal censure.

88. In his evidence, Mr Peake explained how he had been elected to FPC in 2017. He had started attending council meetings in 2014 or 2015, and he felt that decisions were being taken outside meetings of the council. He mentioned a number of concerns about the way in which the council was being run. In his campaign to be elected he delivered a

leaflet to every household in Fleggburgh, explaining how he would do his best to put an end to what he felt was the 'obvious' secret decision-making by FPC, and to make the council open and accountable. At that time, he said, a report by the monitoring officer of the unitary authority described FPC as guilty of 'institutional and systemic failure', which entailed a failure to comply with legal obligations and unlawful appointment of the then clerk. One consequence was a recommendation that all FPC members should attend training by NALC.

89. Mr Peake was elected in the 2017 election, during which four councillors and the clerk (Catherine Moore) stood down, which he believed had been the consequence of the questions that he had been asking and the fact that he was himself standing for election. He immediately became chairman of FPC, and held the post for 11 months, during which he oversaw the introduction of Standing Orders, a Code of Conduct and a finance policy. In doing so, he felt that he had made himself very unpopular with some long-serving councillors. He attended NALC training with the new clerk, Sue Holland.

90. Mr Peake's time as chairman was not uneventful. There was an extraordinary general meeting which he chaired on 26 April 2018, which he says he had to close because it was inquorate. As he put the chairs away, a "mob" arrived, demanding that he should reconvene the meeting. It was heated and horrible, he said, and he was pushed by an ex-councillor. Complaints were made to the GYBC monitoring officer, and the matter was considered by the GYBC Standards Committee. It appears that Mr Peake had called some of those present "crooks and thieves", words which he stood by. It is not necessary to rehearse the Standards Committee's findings, but sanctions were imposed on Mr Peake, which included a recommendation for training relating to conduct and anger management.

91. In 2019, he ceased to be chairman of FPC. Other councillors who had left the council re-joined, and a new group formed, which he felt made decisions outside meetings. He regarded Dr Miller as being part of that group after he was appointed clerk.

92. Mr Peake seems to have felt that there was an important distinction between his position as an elected councillor, and that of the other councillors (or some of them) who had been co-opted, which of course is common enough at parish council level. That may have contributed to his sense of being apart from the rest of the council. In October 2020, he proposed a motion of no confidence in the council (there was no seconder) in which he described the council as "unelected, untrained, disengaged and inefficient", and claimed that "independent qualified observers" (not named) had described FPC as "guilty of systematic failure, Mason-like, full of idiots, unsupportive, failing, dysfunctional and out of control".

93. In his evidence, Mr Peake listed a number of complaints that he had about Dr Miller's conduct as clerk. He said that Dr Miller had become the focal point of everything that happened: he felt that Dr Miller had become responsible for the agenda and "everything". Dr Miller had decided, for instance, that councillors should ask for NALC training themselves, instead of receiving information about the training that was available. Mr Peake felt that he was not getting the information that he wanted from the parish council, and was forced to make Freedom of Information requests. One example was an issue about communications between Dr Miller and the pub landlord: he was told he could not see the exchange because it was confidential. He raised the issue of

the Poors charity, which he wanted Dr Miller to investigate, but Dr Miller declined to do so. He was a part of a body which needed to have full information, and he wanted to arrive at meetings with as much information as he could. Mr Peake also cited a decision that all contacts between councillors and parishioners had to go through the clerk. He found it very difficult to keep calm at meetings, and everything he said was construed as being harmful to the council. He felt that there were really two councils - one that met in public, and another that "did stuff", including councillors Pratt and Brown and Dr Miller, doing what they saw fit.

94. It was Mr Peake's evidence that he resigned as a parish councillor in order not to be constrained by any code of conduct in his wish to publicise the way in which the parishioners of Fleggburgh were being "fleeced" by Dr Miller, who, he says, "had been incompetent, had stolen the intellectual property of another and passed it off as his own work, who had lied, who had threatened council and parishioners, and who had abused his position to bully me".

95. Some further insight into the root cause of the antipathy which led to the publication of the posts complained of can be found in the decision of the Information Commissioner dated 31 July 2020 into Mr Peake's complaint about the way in which FPC handled a Freedom of Information Act (FOIA) request made by him on 21 November 2019, which is further dealt with at [145ff] below. In an email to the Commissioner, Mr Peake wrote this:

> "To say that my relationship with the PC is poor is an understatement, I was democratically elected in 2018 to Fleggburgh Parish Council (FPC) and remain the only member to join in this way, the co-opted controlling leadership bullied out the only fully competent clerk FPC have ever employed, 2 clerks have since resigned, the clerk we currently have is far from the 'independent and impartial' parishioners employee that he should be, [the clerk] is biased, rude, evasive and has threatened me and another member, along with the current leadership he has done much to allow FPC to operate in a surreptitious manner, with resolutions for charging for FOI, allowing the chair to alter minutes post submission and a banning of emails between Councillors. Many of my questions put to our clerk remain unanswered, some very simple such as the detail of his contact with a parishioner (whom I represent) to the gist of contact with the professional society of which the clerk is required to be a member, of which FPC parishioners pay his membership fee. I make my FOI requests to discover what is really going on, not frivolously, on behalf of the electorate that supported me."

96. The Commissioner recorded FPC's agreement that its relationship with Mr Peake was dysfunctional, and its argument that this stemmed from Mr Peake's unreasonable behaviour. FPC explained that it had adopted a policy of levying a charge for any FOI request submitted, in order to try to prevent Mr Peake from bombarding the clerk with requests.

97. On behalf of FPC, Dr Miller gave the Commissioner the following account of the background to the difficulties between FPC and Mr Peake:

> "I started as a parish clerk at Fleggburgh Parish Council in February 2019. I am contracted to work five hours per week. This was my first role as a parish clerk. Previous to my appointment, two clerks had left the Council within the previous year and my understanding is that this was due to [Mr Peake's] behaviour. Also, some councillors appear to have left due to [Mr Peake's] behaviour.
>
> "To begin with, he was reasonably pleasant towards me. However, when he realised that I wasn't going to jump every time he asked me to do something, he turned against me. He was particularly upset when he asked me to investigate [redacted] (a charity in the Parish and his pet hate) and I refused. I argued that I neither had the sufficient authority nor the sufficient tools to do so. I argued that it should be the Charities Commission that should investigate a charity, not the Parish Council. However, [Mr Peake] was having none of this. He accused me of failing the poor of Fleggburgh, and, since then, has campaigned to get rid of me."

98. That is the background against which the posts complained of were published on Mr Peake's Facebook page. It is quite apparent to me that Mr Peake's behaviour put great pressure on Dr Miller and must have made his job very much more difficult and time-consuming (and therefore, ultimately, more expensive for the inhabitants of Fleggburgh) than it needed to be. The meetings of the council, whether Mr Peake was present as a councillor or as an observer, filming the proceedings, must have been very stressful for Dr Miller, who will have been conscious that anything he said or did was likely to be written about or posted online.

99. Mr Peake, however, plainly considered that his somewhat obsessive interest in the doings of FPC was an important part of the work that he did for his electors, in holding a public servant to account. It is his case that his posts were made "in truth, in the public interest – of a public servant taking payment for very poor behaviour from the parishioners for whom I was elected to serve".

100. I shall first consider the evidence as it relates to the pleas of truth and honest opinion, by reference to the pleaded particulars. I have not, in the main, referred to evidence which did not go to a pleaded issue. Inevitably, where both litigants are unrepresented, time will be spent on issues which do not strictly arise. For example, Mr Peake sought to cross-examine Dr Miller on such matters as whether he should have disclosed his P60 income tax form to FPC, and whether FPC's social media policy was compliant with legislation, and about instances of allegedly threatening behaviour which had not been pleaded. I may have been more tolerant than I should have been in circumscribing (or not) the issues properly to be explored, usually hoping that what looked like an irrelevant line of questioning might produce

something of value or at least marginal relevance; but I see no reason to lengthen an already long judgment by making findings on extraneous matters.

Allegations of lying, dishonesty, deceitfulness and/or untrustworthiness [Particulars of Truth Meaning A]

The Social Media Policy

101. Dr Miller sent an email to council members on 3 December 2020 in which he informed them that there would be an extraordinary meeting of Fleggburgh Parish Council on Thursday 10 December 2020 to discuss adoption of a social media policy. Mr Peake's evidence was that the purpose of the social media policy was (at least in part) to prevent him posting online his record of the online meetings by Zoom that took place during the pandemic. The policy was adopted, but he continued posting his recordings online because he felt that the Coronavirus Regulations permitted it. On his account, councillors were unhappy about their images being so widely available, but that seems not to have deterred him.

102. On 6 December, Mr Peake emailed Dr Miller to ask if he had written the social media policy. He replied 'Yes'. When did he do so, Mr Peake asked? Dr Miller answered that he could not recall the specific time or day. "But some time in November or December 2020?", Mr Peake asked. Dr Miller answered that he had been looking into the matter as a result of activity on Facebook and that it had been brought to the fore by someone (plainly Mr Peake) posting recordings of FPC meetings on Youtube. Mr Peake came back to the issue two weeks later, asking again when Dr Miller wrote the policy. Dr Miller replied that in view of what he called Mr Peake's "campaign of lies and deceit" on Facebook, he was no longer able to answer his emails.

103. Dr Miller freely accepted in evidence that he had told Mr Peake that he had written the policy, but insisted that he was not lying: the context of their exchange (which I was not shown) had been allegations by Mr Peake that his minutes of meetings had been influenced by the chairman, Cllr June Pratt, for her own ends. He took Mr Peake to be asking if he had written the policy without the involvement or influence of Cllr Pratt: in other words, did he write it on his own, or did he do it with her input. He explained that he had indeed borrowed it from the policy used by another parish council (possibly that of Burwell PC, whose almost identical social media policy was included in the trial bundle at p694). He would have put it into Word and then changed it as necessary. He referred to his December 2020 monthly report to Fleggburgh Parish Council, which told council members that Mr Peake had accused him of plagiarism, which he denied: he told councillors that he had lifted it from another parish council's website and made some minor changes to it. It was, he said, good practice for parish councils to share work and take the best of what was on offer. Indeed, he had spoken to other clerks who regarded it as "common practice", and to a clerk trainer who told him "we all do it": otherwise they would have to charge to draft it themselves or hire a solicitor. Now, model policies are available from NALC.

104. Mr Peake has not persuaded me that Dr Miller's denial was a lie. To have intentionally pretended to Mr Peake that he was the actual originator of the social media policy would have been extremely foolish, because he would have been found out by Mr Peake in a moment, and I am sure that Dr Miller is no fool. I accept that Dr Miller

was in effect answering the question whether he alone, that is to say without the involvement of Cllr Pratt, had been responsible for the document which he was putting before the council.

105. It is not relevant for me to consider whether or not there was a copyright infringement, and I am not in a position to do so. I do not know, for instance, whether the policy adapted by Dr Miller was one which was made generally available by licence of the author for general use by other councils. Mr Peake stigmatised Dr Miller's behaviour as a criminal act (email 10 December 2020), which - even if there was an infringement - was incorrect.

106. I note that in his Particulars of Truth (RAD paragraph 12(A)(3)), it is pleaded on Mr Peake's behalf that Dr Miller was "forced to admit that he had lied" and copied the policy, and that the December 2020 monthly report "records the admission by the Claimant". That is simply wrong: the report confirms that Dr Miller admitted copying the policy, but it does not evidence or record an admission that he lied.

Allegations about the Defendant's involvement in criminality

107. It is Mr Peake's case, as set out above, that during a meeting of FPC on 21 January 2021, Dr Miller accused him of involvement in criminal activity, something that, Mr Peake says, was not only untrue but he knew was untrue, and that Dr Miller later contacted Mr Peake's barrister, Mr Arnheim, to say that his client had been interviewed by police under caution, which was also a lie.

108. The accusation was certainly made, and its context is set out in the minutes of the meeting:

> A parishioner said that she wanted to object to things that Andrew Peake was putting on his page on Facebook. She read out the latest rant from Cllr Peake: "Dr Jimmy Miller is a liar, Dr Jimmy, or James Gordon Miller, clerk to Fleggburgh Parish Council, is a dishonest, scheming, devious, threatening liar". She said that this language is obscene and unacceptable for a parish councillor to write. She said that she objected to it strongly and asked for an explanation. She asked what reasons there were for all the allegations that Cllr Peake had been making.
>
> Cllr Peake replied that he had evidence to back up the claims for every post that he had put on Facebook. He said it was a fact that the clerk had lied.
>
> The Clerk stated the following: "Andrew for the most part of about a year has been posting baseless, false allegations about myself and other people. On this particular occasion, I have called the police. I don't know if you have had a call from the police today Andrew but you will be getting a call, if not today, tomorrow. I've had enough of this criminal activity that you're involved in and I'd like you to stop it".

> Cllr Peake replied that he would welcome a police investigation into the actions of "our dishonest and lying plagiarist clerk"....
>
> Cllr Peake said that he had evidence to back up all his claims. He said that he could provide the parishioner with e-mails and documents to back up all of his claims. The parishioner replied that she wanted parishioners to see this evidence to back up the allegations that Cllr Peake was throwing about. Another parishioner said that if this was now part of a police investigation then there should be no more statement made on the subject at this meeting. The Clerk replied that he had spoken to a police officer at Wymondham Police Station and that they had said it was okay for the Clerk to mention the subject at this meeting.

109. Dr Miller explained his allegation of involvement in "criminal activity" in terms of Facebook communications by Mr Peake calling him a "threatening liar", which he regarded as breaches of the Malicious Communications Act 1988. He did indeed contact the police. At some point thereafter, he called Mr Peake's direct access barrister, Mr Arnheim, at least once, because he believed that Mr Arnheim would be representing Mr Peake in relation to the alleged malicious communications. That was because Mr Arnheim had on Mr Peake's behalf sent him a letter of claim in respect of his allegation at the council meeting, asking for a retraction and apology. He told Mr Arnheim that Mr Peake was being investigated for misconduct and that he had been interviewed by police under caution.

110. He believed that Mr Peake had indeed been interviewed under caution, because he had been told so by a local police officer, PC Gary May. Mr Peake strenuously denied that this had happened, but Dr Miller had recorded the conversation. The transcript of the conversation was not in the bundle, and had not been disclosed as it ought to have been: Dr Miller said that he had told his solicitor of its existence but was not asked for it. However, the recording was produced and played by Dr Miller. It was apparent that the recording was of a conversation between Dr Miller and (as Mr Peake accepted) PC May.

111. PC May told Dr Miller, in answer to a question as to whether Mr Peake had been interviewed under caution, that he had been interviewed "formally", which Dr Miller understood, in the context, to be an acceptance that he had been interviewed under caution. The officer also told Dr Miller that (as he was aware) there had been instances when Mr Peake had been interviewed under caution, which I took to be a reference to other matters, not the alleged malicious communications. Mr Peake, having heard the recording, felt that it was unclear what exactly had been said, and what incident PC May was referring to.

112. My conclusion is that Dr Miller honestly believed that Mr Peake's posts were breaches of the criminal law. It would have been at least arguable that there were breaches of s1(1), Malicious Communications Act 1988, by which there is an offence if any person sends another person an electronic communication which is grossly

offensive, and one of that person's purposes in doing so is to cause distress or anxiety to the recipient or to any other person to whom he intends that it or its contents or nature should be communicated. Whether or not Dr Miller was right to allege that Mr Peake had committed breaches of the criminal law, and in particular to allege that Mr Peake had such a purpose, he had grounds to believe it. Moreover, I conclude that he had grounds to believe, and did believe, that Mr Peake had been interviewed by the police under caution. He did not, therefore, lie in what he told FPC at the 21 January 2021 meeting, nor in his communications with Mr Arnheim.

Allegations about the Defendant's retention of documents

113. Mr Peake alleges that Dr Miller acted dishonestly and untruthfully in asserting that Mr Peake had failed to return some council minutes to the council.

114. Mr Peake's evidence was that he had offered to look after certain council documents (the "archive", as he called it) in 2017, when asked to do so by his neighbour Jennifer Coleman, the previous clerk. Nine days later, Cllrs Pratt and Lindsay brought 5 boxes to his house. He was then chairman. He was asked to and did sign a receipt for the documents. There was then no clerk, but Catherine Moore offered to do the job as locum. He passed all the documents to Catherine Moore when they met at his house in August 2017. He did not obtain a receipt. He did not know what happened to them after that, although he assumed that Ms Moore passed them to Susan Holland, her successor.

115. He maintained that Dr Miller had no basis for his "dishonest and untruthful" allegation that he, Mr Peake, had failed to return them.

116. Dr Miller accepted in evidence that in December 2020 he emailed Susan Holland, who had been clerk to FPC from (he thought) about July 2017, to say that Mr Peake had received minutes that had later gone missing. Unfortunately, the email was not in the trial bundle, but there was no dispute about it.

117. He also accepted that, as pleaded in the particulars of truth at RAD paragraph 12(A)(8) and (9), he had contacted all three clerks in post between the date when Mr Peake signed for the boxes of documents and his own appointment (Catherine Moore, Susan Holland and Catherine Fletcher), and all three had said they did not have them. He had concluded that it was likely that Mr Peake still had them, and in his February 2021 Clerk's report had urged him to return them. In his March report he stated that Mr Peake had still not returned the minutes and urged him to do so.

118. He had looked for the documents because he was asked to do so by a solicitor who was investigating a claim made by Mr Peake about the Parish Council's oversight of a local charity. He knew that he did not have them himself, and he had seen the receipt that Mr Peake had signed for the documents. He contacted Mr Peake to ask if he still had them: he said he did not. The three clerks all said that they did not have the documents either. I note that in the Clerk's report to FPC for December 2020, plainly before Susan Holland replied, Dr Miller wrote this:

> "Missing minutes: Previously had received an FOI request from Andrew Peake for minutes from 2014 (and later he also made an

> FOI request for minutes from 2015). The minutes between 2010 and 2015 are missing. I have been investigating where these missing minutes are and the paper trail stops with Andrew Peake. So far, he has refused to hand over the missing minutes. Clerk has contacted Catherine Moore regarding missing minutes and she replied that she had returned all FPC documents to Andrew Peake. Contacted Catherine Fletcher and she said she'd passed on all FPC documents to myself. Also contacted Susan Holland and, to date, she has not replied".

119. It was Dr Miller's evidence that he never located the missing minutes. When he resigned as clerk he took all his FPC papers and left them in the garage of the then chairman of the council, Mr Doyle. He understood that the documents were found by the locum clerk who replaced him, Charlotte Hummell, but he did not know where she found them. In an email to Mr Peake dated 7 January 2022, Ms Hummell said that she believed that she had located the missing minutes and filed them together, but she did not say where she had found them (and presumably Mr Peake did not ask, because he did not know either). Dr Miller said he believed that they had to be in Mr Peake's possession, he having been the last person to sign for them, so he was not lying when he alleged that Mr Peake had failed to return them.

120. My conclusion is that while Dr Miller may have been wrong to believe that Mr Peake still had the documents, he did believe it, and had some reason to do so: the "paper trial" did stop with Mr Peake, although the paper trail was not everything. He could have handled the issue with considerably more tact and discretion, but Mr Peake has not persuaded me that he lied, and I am confident that he did not.

Dr Miller's CV

121. In the fourth post, Mr Peake alleged that Dr Miller had lied on his CV in order to get the job of clerk to FPC. He does not attempt in his plea of truth to prove the truth of that allegation. Nonetheless, it is fair to record Dr Miller's evidence on the point, which is that his CV contains no falsehoods whatever, although naturally there are matters that he did not include in it, for instance that he had served in the Army. A CV is not an autobiography.

122. I allowed Mr Peake to explain his position in evidence, even though no case on the issue was pleaded. He showed by reference to what appeared to be a Companies House search that Dr Miller had between April 2008 and January 2012 been a director of a company called JD International, of which a fellow director (the managing director) had been a man listed as "Powell, John David, Lord". Mr Peake asserted that this showed that Dr Miller had set up a company with a man who falsely claimed the title 'lord', which he should have included on his CV. He felt that Dr Miller had omitted it so that his involvement with such a character would not be apparent, which was, he said, a lie by omission.

123. I do not know whether this Powell was in fact the younger son of a marquis or duke, or otherwise entitled to call himself 'lord', but whether or not that is right (and it is merely Mr Peake's assertion), the leap from that assertion to the conclusion that, by

omitting any reference to his past directorship of the company, Dr Miller was lying by omission to FPC, is a little startling. Even without Dr Miller's explanation, the court could not possibly conclude from Mr Peake's premise that there was any kind of dishonest misrepresentation to FPC.

Allegations of abusive and threatening behaviour [Particulars of Truth Meaning B]

Threatening behaviour during FPC meeting 20 May 2021

124. It is alleged that during a meeting of the council on 20 May 2021, Dr Miller shouted at Cllr Osborne and generally behaved in an aggressive and threatening manner. It is also alleged that Dr Miller warned that he could resign and sue the council, which constituted a threat to resign and bring proceedings against the council and/or its members. Mr Peake relies on a video recording of the meeting, which he made and posted on Youtube.

125. Dr Miller in his evidence said that he had been frustrated at the meeting, although not angry. He blamed his frustration on Mr Peake, who was posting the derogatory material on Facebook that caused a lot of the issues that arose. In other words, Mr Peake himself had been the cause of the problem.

126. I watched the video recording during the trial, although it seems now to be no longer available. What it shows is the council discussing the possibility of obtaining an injunction against Mr Peake to put an end to his attacks on Dr Miller. This was, according to Dr Miller, an agenda item about Mr Peake's Facepook posts. There was a discussion of whether that would be value for money. In that context, Dr Miller, who asserted that the council owed him a duty of care, said that he could resign from his position at any time and sue the council, which would cost a lot more than the supposed cost of obtaining an injunction.

127. The meeting was tense and uncomfortable, no doubt in part because the subject of the discussion was present in the room filming it, and there appeared to be some commentary from the floor. However, I did not observe any aggression, abuse or threats directed by Dr Miller at anyone, nor was there any evidence that I saw of him shouting at a councillor. Dr Miller's words about resignation were spoken in the context of a discussion about the value for money of seeking and obtaining an injunction to restrain Mr Peake from maligning him, and it was reasonable for him to point to the possible consequences if steps were not taken by the council to protect its employee. His warning could nonetheless be characterised as a threat, but that does not make good the allegation that his behaviour was threatening, which in my view implies words or actions which are directed in an aggressive and intimidating way towards one or more individuals.

Threats made towards the Defendant

128. Mr Peake relies on an email from Dr Miller suggesting that minutes from a meeting of Great Yarmouth Borough Council's Standards Committee, which upheld a complaint against him, should be made public, even though they were (on his case) confidential. That was, he says, understood by him as a threat. He also relies on what he calls

threatening behaviour by the Claimant during FPC meetings in making an offensive gesture by giving him "the finger", and by "visibly filming" him.

129. There is no dispute about the email exchange. Mr Peake emailed Dr Miller on 24 July 2020 to say

> "Jimmy, you may not like me but we are living in a world of openness and accountability, all that FPC does has to be transparent, you are employed to assist the smooth running of the council, which currently is in breach of many regulations - one is that information is not publicly available, I'd have hoped that you would simply answer the simple and reasonable questions I have put on behalf of parishioners".

130. Dr Miller replied a matter of minutes later:

> "Hi, Andrew. Given that we are living in a world of openness and accountability, would you mind if I make the minutes from the Standards Hearing last year public?"

131. Dr Miller's evidence was that he was simply calling Mr Peake out. He felt there was hypocrisy in Mr Peake's enthusiasm for openness and transparency in the council's affairs, while he did not apply the same criteria to the findings of the GYBC Standards Committee in ruling on a complaint against him for his conduct as chairman of the council on 26 April 2018, conduct which had included calling other councillors "crooks and thieves", and which was found to be in breach of the FPC Code of Conduct. The findings were said by Mr Peake to be confidential (although not marked as such), but in Dr Miller's view Mr Peake could have waived any confidentiality. No doubt that is correct. He says that he was not, therefore, making a threat to publish confidential material, but rather pointing out a lack of consistency in Mr Peake's enthusiasm for transparency.

132. I accept Dr Miller's explanation, which seems to me clear from the exchange.

133. The allegation that Dr Miller gave Mr Peake "the finger" during a parish council meeting depends on interpretation of his hand movements. I have seen a photograph of the alleged gesture, which shows Dr Miller with his left elbow on a table and his left hand by his face, with the second finger projecting slightly forwards. I do not know where Mr Peake was in relation to Dr Miller. Dr Miller denies having intended any offensive gesture, which he said would have been highly unprofessional, not to mention unwise, giving that Mr Peake was filming him. My conclusion is that no offensive gesture was made, or at least not intentionally, even if Mr Peake believed it to have been.

134. The final instance of allegedly threatening behaviour was said to be Dr Miller's act in filming Mr Peake at one meeting while Mr Peake was filming him (and the meeting as a whole). He did do so: I have seen a photograph of him smiling while holding a video camera, which he accepts he was aiming at Mr Peake. Mr Peake complained that

he was "pulling a very unusual face", that he was not dressed appropriately, and that his behaviour in waving a camera at him was not appropriate either. I do not think that any face-pulling or dress is relevant to the question of whether Dr Miller's behaviour was threatening.

135. Dr Miller said that he was simply responding to Mr Peake's behaviour in filming the meeting and in mouthing "liar, liar" as members spoke, which raised the temperature of the meeting and, he felt, was an attempt to rile him into doing something which Mr Peake would then put up on Youtube. He felt that to film him in return was a way of dealing with him.

136. I accept that explanation. Dr Miller was no more threatening Mr Peake than Mr Peake was threatening him.

Threats to parishioners using the FPC email address

137. The allegation made in post 7 that Dr Miller had used his parish council email to threaten Facebook users is not said in the RAD to be true. However, both parties mentioned it in their witness statements.

138. In his "primary skeleton argument" (in fact an expanded witness statement) Mr Peake did not in fact allege that he threatened anyone, but that Dr Miller had "abused GDPR" by contacting a parishioner called Janice, leaving her "wondering" if he had threatened her. Dr Miller mentioned this in his witness statement, surmising that it must be a reference to an email which he once sent to a person who had put up an offensive comment on Facebook in response to one of Mr Peake's posts. He asked the person involved whether she felt this was acceptable behaviour: she did not reply.

139. Mr Peake also alleged in his witness statement that Dr Miller had visited the woman called Janice at her home, which he "believes" was to ask her if she would like to explain her online description of him as "scruffy". There was no evidence from Janice. Mr Peake also alleged that Dr Miller contacted another woman by telephone to discuss her online comments, but there is no suggestion of his threatening her. I do not believe that Dr Miller was asked about those matters.

140. That was all the evidence on the point. It did not make good an allegation of "threatening" Facebook users.

Allegation of "sexist" remarks at interview [Particulars of Truth Meaning C]

141. It was Mr Peake's evidence that he chaired the interview of Dr Miller in 2017 when Dr Miller first applied, unsuccessfully, for the position of clerk. On his account, Dr Miller had referred to his wife as 'wifey' and had informed the panel that he had told her to stay at home and look after the children while he attended meetings of the council. That came across, Mr Peake said, as an instruction. It did not come across as a joke, and it would not have been appropriate even had it been a joke. His remarks had been "obviously and unacceptably sexist", and the panel had been shocked by them. It appears, according to Mr Peake, that Dr Miller had been "by far" the best candidate, but that his sexist comments, as Mr Peake described them, nonetheless made him unsuitable, and he was not appointed for that reason. Cllr Forde-Pogson, in particular,

had mentioned his concerns about Dr Miller's remarks to Mr Peake after the meeting. The panel voted to appoint Susan Holland instead.

142. Dr Miller explained that his CV described himself as a "Stay at Home Dad". His wife is a vet. He would not have referred to his wife as "wifey" but possibly, in jest, as "'er indoors", which he accepted might have been regarded by some as a demeaning expression. He wanted to assure the interviewing panel that he would be able to attend meetings, and said something to the effect that he had told his wife that she would have to stay at home on the evenings of meetings, which were generally on a Thursday, a day when she did not have to work herself. On the days when she did work, she often got home very late. He could not have taken a parish council job if its meetings were held on a day when his wife had to work late. As a vet, his wife earned much more than he did, and he looked after their children when she was working - he was the parent who looked after the children, she earned the bulk of the family income. In other words, he would hardly have spoken of her in terms suggestive of him ordering her to stay at home and look after the children. If he had spoken in such terms, it would have been obvious that he was joking. Moreover, he had spoken to Mr Forde-Pogson after he saw Mr Peake's allegation that sexist remarks had blighted his interview, and Mr Forde-Pogson told him that was rubbish; and Cllr June Pratt told him, he said, when he applied on the second occasion, that it had been felt on his first application that he did not have the necessary qualifications or experience for the role.

143. It seems clear to me that Dr Miller was making a (perhaps ill-advised) joke. The whole basis of his application was that his wife was the bread winner and he was the stay at home father who looked after the children, so had some time for part-time work. That was hardly the lifestyle of an old-fashioned sexist male. In my judgment no reasonable member of the interviewing panel could have taken Dr Miller's words seriously as sexist remarks, even had he referred to his wife as "wifey", which I do not find that he did.

Allegations of incompetence in role as clerk and/or failure to carry out roles and responsibilities [Particulars of Truth Meaning D]

144. I turn now to Mr Peake's allegations against Dr Miller of incompetence and failure to carry out his responsibilities. My conclusion is that they have not been made good in evidence. What Mr Peake has done is to put forward a number of individual mistakes by Dr Miller, none of great seriousness, and to ask the court to infer from his making mistakes that he was an incompetent clerk. All of us make mistakes, whether of judgment or otherwise: *humanum est errare*. Even judges do so. That does not make them incompetent. Incompetence entails an inability to perform a job or a role to a reasonably acceptable standard. There is no evidence that comes close to establishing such a failure on Dr Miller's part.

Charge for freedom of information requests

145. Mr Peake alleges that in July 2019, Dr Miller drafted a policy under which those making freedom of information (FOI) requests of FPC would be charged £20, and that the policy was strongly criticised by the Information Commissioner, who was said to have strongly disapproved of making charges for such requests. Mr Peake regards this as an example of incompetence on Dr Miller's part.

146. Dr Miller stated in evidence that he believes he did draft the policy, and that he was indeed criticised by the Information Commissioner's Office. He explained that requests under the Freedom of Information Act 2000 (FOIA) were burdensome for the clerk to deal with. He had many such requests from Mr Peake. One had taken him over 12 hours to deal with, although most probably took about half an hour. They added up to a substantial burden. The then chairman of FPC, June Pratt, was concerned about the volume of work that Mr Peake's requests were creating, and suggested that something needed to be done to stem the flow.

147. The consequence was that Dr Miller drafted a charging policy which was adopted by FPC. Mr Peake made a request on 21 November 2019 to be shown all email correspondence between the chairman and Dr Miller from 1 October 2019. FPC responded by issuing a fees notice (which would have imposed a charge of £20 for dealing with the request), before refusing the request as vexatious.

148. Mr Peake complained to the Information Commissioner, who published her decision on 31 July 2020. She agreed that Mr Peake's request had been vexatious (although FPC had failed to serve a notice to that effect within the relevant time limit, in accordance with s17(5)). She declared that she had been provided with sufficient evidence to demonstrate that Mr Peake had been behaving in a way designed to disrupt the work of FPC, and that he was involved in his own personal campaign against the Parish Council, a campaign of which his request had been a part. That would have been inappropriate from an ordinary member of the public, but was reprehensible when conducted by a sitting parish councillor.

149. As for the policy of FPC to charge a fee, the Commissioner regarded it as unlikely that FPC could have justified a £20 fee, and stated that she strongly disapproved of using fees as a tool to exert some control over the amount of time that the clerk was required to spend dealing with Mr Peake. The right course, where a public authority felt that it was spending a disproportionate amount of time dealing with one particular source of requests, was to consider relying on FOIA 2000 s12 (exemption where cost of compliance exceeds appropriate limit) or s14 (vexatious or repeated requests) to refuse requests.

150. Dr Miller accepted that the council (and therefore he) had been criticised by the Commissioner, and said that he now knew how to handle such requests better.

151. My conclusion is that Dr Miller's suggestion of the charging policy was an understandable error. Neither on its own, or in conjunction with the other matters alleged, does it show that he was an incompetent clerk.

Accounts that did not add up

152. Mr Peake alleges that Dr Miller (who has a qualification in management accountancy) twice submitted accounts for the year ending 31 March 2020 that did not add up. No further particulars are given in the Particulars of Truth. In the Reply, Dr Miller pleaded that he was not aware of two sets of accounts being submitted for that year, but accepted that there were "rounding errors" which the external auditor's instructions defined as "tolerable", and which did not amount to incompetence.

153. However, it did not appear that rounding errors were the focus of Mr Peake's criticism. Rather, he appeared to be pointing to a different issue, which appears from the copy of the accounts for 2019-20 at p489 of the trial bundle. The figures for 2018-19 are included as comparators. The balance carried forward in the 2018-19 accounts is stated to be £53274.01, but that sum is said to be represented by three smaller sums, which should, when added together, equate to the sum carried forward (£53274.01) but in fact make a different total.

154. Dr Miller explained that what was wrong with the accounts for 2019-2020 was not the figures for that year - they were correct, as the figures for 2018-2019 had been. What was wrong was the figures inserted from the 2018-2019 accounts, which are given as comparators, so that the reader can immediately see how the figures have changed from one year to the next. This happened because the spreadsheet containing the figures for 2018-19 did not 'transport over' correctly to the spreadsheet for 2019-20. He did not himself notice the error, but it was drawn to his attention. These, he said, were management accounts, which are often changed and re-evaluated, and in this case they were corrected, and there was no discrepancy in the statutory accounts.

155. Mr Peake pointed out that exactly the same error can be seen in the 2020-2021 accounts. Dr Miller confirmed that the same mistake happened a second time, and for the same reason, but was again corrected.

156. Mr Peake also complained of an item labelled "Misc" in the 2019-20 accounts, which, he said, turned out to involve a wreath, a donation and some other item of expenditure. I was not clear what criticism was levelled at the Misc heading, because Mr Peake did not spell it out, but I assume that he felt that the individual items should have been stated separately in the accounts. Plainly, he was able to find out what they were. He made the same point about smaller sums listed as "Misc" both under income and under expenditure in the 2020-21 accounts.

157. Leaving the "misc" issue on one side, because a difference of view as to the way to treat certain items in accounts does not necessarily entail an error, Mr Peake's points about the error in the comparator columns in the FPC accounts are well made, but they do not amount to very much. They did not mean that the figures for the year for which the accounts were prepared were wrong (they were not), merely that the comparator from the previous year was inaccurately carried over; and they were corrected. These are minor errors: but they do not establish incompetence.

The Covid meeting

158. As evidence of incompetence on Dr Miller's part, Mr Peake relies on Dr Miller's suggestion on 21 May 2020, in the early months of the Covid pandemic, that to enable a parish council meeting to take place, it should be held in the open air outside the village hall. That would, it is accepted by Dr Miller, have breached the regulations in force at the time, because at the time gatherings of more than six people were prohibited unless for exempted purposes.

159. Mr Peake, it appears, thought the right course was to inform the police of the proposed breach, rather than to deal with the matter locally with the parish council. That

was because he feared that vulnerable people might have attended, thinking that because it was a parish council meeting it would be safe to do so. The risk was, he felt, too great. He invites the inference that the police will have warned Dr Miller that the proposal would be unlawful.

160. In fact, Dr Miller explained, he himself sought advice from Caroline Whatling at NP Law, who was also monitoring officer for GYBC, who advised that his proposal would be in breach of the law. By email dated 22 May 2020 he informed members that, following legal advice, FPC could not hold a meeting outside on 4 June.

161. It seems to me that this evidence shows Dr Miller doing his best to enable face to face council meetings to continue despite the difficulties of the pandemic. He was wrong to think that he could do as he proposed, and having taken advice, he withdrew it. If that was a mistake, it was certainly not evidence that he was an incompetent clerk.

Annual Governance and Accountability Return

162. Mr Peake cites as a further example of Dr Miller's incompetence the fact that he submitted an Annual Governance and Accountability Return (AGAR) to the Parish which contained numerous mistakes. That was the extent of the allegation made in the Particulars of Truth, and it was plainly deficient for want of particularity.

163. However, in the Reply Dr Miller pleaded that the AGAR for the year 2019-2020 contained one error, namely that one figure had been put in the wrong row. The error was flagged by the external auditor, who told him that it was not necessary to rectify it for the 2019-2020 financial year record.

164. Dr Miller confirmed in evidence his pleaded case in the Reply, and explained that in addition to the main council income, which was the precept, GYBC also gave the council a contingent functions grant. He should only have put the precept on line 1, but in error put the contingent functions grant on the same line, instead of on line 2. It was the first year in which he had drafted the AGAR, and he had followed the erroneous practice used by the previous clerk.

165. Mr Peake told me that the figures had to be rounded to whole numbers, and that there were nine lines of figures which had been wrongly rounded so were £1 out. There was also a figure in the wrong row, which Dr Miller had accepted. But since the document complained of by Mr Peake was not included in the bundle, it was not possible to examine this issue any further.

166. On any view, these are very trivial matters. They do not demonstrate incompetence on Dr Miller's part.

Parish Council bank account overdrawn

167. Mr Peake relies also on the case that, to the best of his knowledge, FPC's bank account was overdrawn for the very first time during Dr Miller's tenure as Clerk. That allegation is dealt with in the Reply at para 7(e), where it is admitted that the account was overdrawn on one occasion during his tenure. Whether this had ever happened

before was not clear. Dr Miller's pleaded case is that as soon as he was notified, he immediately rectified the position and personally paid the overdraft charge.

168. In evidence, Dr Miller accepted that it had been his mistake: he had been under considerable pressure from Mr Peake and the account went briefly into overdraft. It appears from the bank statement that the small overdraft was corrected by payments in, but in addition Dr Miller transferred money from FPC's savings account to rectify matters. That was the device that he normally employed to keep the current account in credit. The overdraft charge was £7, which he paid from his own pocket.

169. This was a mistake which cost the council nothing. I cannot regard it as evidence of incompetence.

The Village Hall/Parish Council gate

170. Mr Peake relies on what he describes as an unlawful transaction whereby FPC bought a gate or height barrier which was to be jointly owned by FPC and Fleggburgh Village Hall. He said that FPC reclaimed the VAT on the purchase, and then subsequently sold half of it to the Village Hall without charging VAT on the sale. He alleges that although a council resolution had been made in public to pay only for the equivalent of half the gate, Dr Miller without authorisation prepared a cheque for the whole cost, which was paid even though FPC was not "set out as the invoice payee".

171. The bundle (p534) contained what appears to be part of a minute of an undated meeting of FPC, recording that the Village Hall had asked FPC to pay half the cost of the barrier/gate. It appears that a motion was passed that FPC should pay half of the cost of the gate. It is clear that in fact FPC paid the cost at least in the first instance: the council bank statement for 27 October 2020 shows payment out of £4237.07, which appears to have been the cost.

172. In evidence, Mr Peake explained that the transaction was unlawful in that its purpose was to evade VAT, and that in any case VAT cannot be reclaimed against an invoice issued to another body. He complained that the transaction was also contrary to the parish council resolution, whereby, he said, the Village Hall was to buy the gate and FPC was to pay half the cost. It "undermined the system", he said, for the parish council to "dodge paying its fair share".

173. In his witness statement, Mr Peake referred to an email dated 3 July 2023 (trial bundle p495), apparently from the then clerk to FPC, Lolly Dawson, in which she stated that the VAT on the full cost of the gate had been reclaimed by FPC. She said that the Village Hall "gave money to the Parish Council" as "payment towards barrier/gate", of £1765.45. That would have been exactly half the cost of the gate, less VAT.

174. Ms Dawson also referred to the internal audit report for 2021-2022, which appears to be referring to a different matter, namely acquisition of CCTV. She stated "Council must be aware that it cannot claim VAT on behalf of another organisation - in the 15.7.22 meeting point 12 Council states it will pay for CCTV, reclaim the VAT and allow the Village Hall to pay the nett amount across to the Parish Council. This would be deemed a fraudulent transaction by HMRC Customs & Excise". She ended the email by stating that "the Village Hall did not pay any amount to the Parish Council, therefore the CCTV

was a donation to the Village Hall, and the VAT was then claimed by the Parish Council lawfully".

175. Mr Peake asserted that an HMRC investigation concluded that the transaction "to sell half of a FPC purchased gate/height barrier was attempted VAT fraud", and cited Ms Dawson's email as evidence of that conclusion, which of course it it not. Ms Dawson refers to no HMRC investigation, and the reference to a transaction being deemed fraudulent seems to have been to the CCTV, not the gate. I have seen no evidence of any HMRC investigation beyond Mr Peake's assertion, which seems to have been a misunderstanding.

176. In his evidence, Dr Miller explained that the Village Hall in Fleggburgh is owned by FPC, but that a separate charity runs the Village Hall. It was agreed, he said, between the Village Hall and FPC that the cost of the gate would be shared between the two bodies, even though the gate itself, like the Village Hall building and land, would be listed on FPC's asset register. That is clear from the undated council minute to which I have referred. He himself ordered the gate on behalf of FPC (it appears that he did not believe it was resolved that the Village Hall would do so, and the minute does not say it was), but the supplier wrongly directed the invoice for the gate to the Village Hall, which was named on the invoice. As he says was agreed between FPC and the Village Hall, Dr Miller prepared a cheque for the full amount due to the supplier, including the VAT, because FPC (unlike the Village Hall) was able to reclaim the VAT, which would save the council money. The Village Hall paid half the amount due to FPC. There was no 'sale' to the Village Hall. It was an FPC asset. I note in that context an email from Dr Miller to Mr Peake dated 10 October 2020 (p559), saying "we will be able to reclaim the VAT as it remains an asset of the Parish Council".

177. It seems to me that however the arrangements were made, the intended result was achieved, in that the gate was acquired and paid for jointly. I remain unclear why it matters that the gate was paid for by FPC with half the cost refunded by the Village Hall, instead of the other way around.

178. However, the transaction might well have been misconceived to this extent, that I wonder whether it would have been legitimate for FPC to have claimed back any more than 50% of the VAT payable, if in truth it was only paying half the invoice. I heard no argument on the law applying to VAT, so cannot form a decided view one way or the other. It is not clear from Dr Miller's evidence whether or not that happened, although that is what Ms Dawson seems to have been saying in her 3 July 2023 email, and Dr Miller appears from his email to Mr Peake of 14 October 2020 to have believed that the whole amount could be claimed back because the gate was an asset of FPC. If it did happen, and the amount was overclaimed, it would have had to be repaid to HMRC, although I have seen no evidence of that. What I can say is that there was no evidence of any attempt to "evade" VAT, as Mr Peake alleges, which, as I understand it, would have involved a dishonest intention to evade the payment of the VAT properly payable by FPC on the gate. I see no reason to suppose that Dr Miller intended to do any more than save FPC as much VAT as was legally possible, but I suspect that he may have been wrong to imagine, if he did, that he could reclaim the whole amount.

What the Claimant told Tunstead Parish Council

179. Finally, Mr Peake relies as a particular of Dr Miller's alleged incompetence as Clerk to FPC on something which he said to members of Tunstead Parish Council, where he also served as Clerk. It is alleged that he erroneously told those present that all members of FPC had attended 'planning response training'.

180. That allegation is admitted by Dr Miller. He had believed, incorrectly as it appears, that the training of FPC members (presumably the NALC training that Mr Peake himself had undergone) had indeed taken place. His statement had no bearing on any decision made by Tunstead Parish Council.

181. Cross-examined on the issue by Mr Peake, he accepted that he was responsible for booking councillor training, but individual councillors could book it themselves, He said he thought, as a result of a conversation with Cllr June Pratt, that those who had re-joined the council since he became clerk had been on training. However, he accepted that he was wrong. His evidence was that one of the Tunstead councillors asked for training at the end of the meeting, and that he had responded off the cuff by saying that FPC members had received it. That had been a mistake, but it was not a lie. Mr Peake made clear in evidence that he relied on what Dr Miller said as evidence of incompetence, not of a lie. I do not regard it as evidence of incompetence.

Allegations of work not done by the Claimant

182. In posts 10 and 11, Mr Peake alleged that Dr Miller had failed as clerk to do a great deal of work that he should have done, and claimed to have done, and which (according to post 10) his successor had to spend a great of time catching up on. There was no pleaded attempt to prove the truth of that allegation. Nonetheless, I heard some evidence which touched on it, but it did not begin to justify Mr Peake's allegation.

183. Mr Peake included in the bundle (p549) a document apparently drafted by him for the purposes of the trial, which purported to show answers from Dr Miller's successor as clerk, Charlotte Hummell, to a number of questions which he had put to her on 10 February 2022. Given that the document is self-serving (and only lists four questions and answers out of at least nine), and given that he did not even serve a witness statement from Ms Hummell, I place little if any reliance on what are said to be her answers. However, the alleged exchange is illuminating, if only for the conclusion that Mr Peake draws from it, so I shall set it out:

> Q1. Has FPC fulfilled all criteria for applying to the Local Council Award Scheme? (Minutes 09-21: the Clerk (JM) explained that he had issued a progress report on LCAS and FPC was progressing towards fulfilling all criteria).
> A1. The locum clerk spoke with Cllr Osborne and suggested to hold off until a permanent clerk has filled the vacancy. Focus can then be made on a council action plan for the forthcoming financial year and a staff and councillor training can be recorded for the past 12 months.
> Q2. Did the previous clerk pass on the footpath-cutting contractor contact details to PCllr Hacon? (Minutes 09-21: it was also suggested that Cllr Hacon contact the contractor about getting extra paths cut. The Clerk will pass on contact details to Cllr Hacon).

> A2. The previous clerk (J Miller) contacted the footpath cutting contractor, details were not passed on.
> Q5. Did the previous Clerk contact NCC concerning the long grass on Tower Rd? (Minutes 07-21: Another parishioner said that he was concerned about the length of grass on the verges of Tower Rd..... The Clerk said that he would report this to NCC the next day and that he would stress that this was a safety issue).
> A5. Cannot comment on what was or was not communicated by the previous clerk. If this remains an open issue then the parish council can contact NCC about this.
> Q9. Did the previous Clerk contact CAB? (Minutes 02-21: Clerk will contact CAB to find out what they have done for people in Fleggburgh Parish).
> A9. There is no reference to this in the emails, however it could be possible that the clerk made a telephone call to enquire.

184. Mr Peake's observation at the bottom of the document is: "As you can see, the answer to 4 of my questions is NO, JM told Council he was doing stuff, that actually, wasn't done". What is illuminating about Mr Peake's comment is that it is so plainly wrong. The answer to Q1 is unclear (but certainly not 'No'); the answer to Q2 appears to be a mixture of 'Yes' and 'No', in that Cllr Hacon was to contact the contractor after being given the details by Dr Miller, but Dr Miller short-circuited the process by contacting the contractor himself); Ms Hummell does not know the answer to Q5; and as to Q9 she only says that there was no reference to contact with the CAB in emails, and expressly leaves open the possibility of telephone contact (which Dr Miller said in evidence was the way he did much of his work).

185. Dr Miller's position in evidence was that he did do everything that he said he would do. He resigned at the September 2021 council meeting, giving one month's notice. He was owed one month's holiday, but continued working through his holiday period, producing a draft budget for the following year and minutes of the September meeting. He referred also to his report to FPC (set out at [81] above), to illustrate the substantial amount of unpaid work that he had done for the council.

186. As I have said, it is not part of Mr Peake's pleaded case that Dr Miller has failed to do work that he should have done and claimed to have done. But the reality is that the evidence, so far as it goes, is all the other way. I accept Dr Miller's evidence that he worked many more hours than he was paid to do, that he never took money for work that he had not properly carried out, and that he gave up much of his final holiday to leave the council's affairs in reasonable order.

DEFENCE OF HONEST OPINION

187. Mr Peake also relies on honest opinion, in the following terms:

> [13] If and insofar as the publications complained of expressed the following expressions of opinion, those expressions are protected by section 3 of the Defamation Act 2013 as honest opinion:

A. The Claimant has been dishonest and/or deceitful and/or unreliable [Publications 1, 2, 3, 4, 5, 6, 8, 9, 12]
B. The Claimant has conducted himself in a manner that was abusive and/or untrustworthy [Publications 1, 3, 4, 5, 6, 7, 8]
C. The Claimant made statements in an interview to be Council clerk that were sexist [Publications 1, 9]
D. The Claimant has demonstrated incompetence in his role as the Council clerk and/or has failed to carry out his roles and responsibilities [Publications 1, 2, 6, 8, 9, 10, 11, 12]

Each of the publications indicated, in general or specific terms, the basis of the opinion.

[14] An honest person could have held each of these opinions on the basis of facts which existed at the time before the statements complained of. Without prejudice to the generality of that averment, the Particulars of Truth in relation to meanings [A] to [D] above are repeated.

188. So far as material, s3 Defamation Act 2013 provides as follows:

(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….

189. In *Koutsogiannis v The Random House Group Ltd* [2019] EWHC 48 (QB); [2020] 4 WLR 25, Nicklin J also collected together the modern principles for determination of the question whether words are fact or opinion: see at [16]. He stated them as follows:
(i) The statement must be recognisable as comment, as distinct from an imputation of fact.
(ii) Opinion is something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation, etc.
(iii) The ultimate question is how the word would strike the ordinary reasonable reader. The subject matter and context of the words may be an important indicator of whether they are fact or opinion.
(iv) Some statements which are, by their nature and appearance opinion, are nevertheless treated as statements of fact where, for instance, the opinion implies that a claimant has done something but does not indicate what that something is, ie the statement is a bare comment.
(v) Whether an allegation that someone has acted "dishonestly" or "criminally" is an allegation of fact or expression of opinion will very much depend upon context. There

is no fixed rule that a statement that someone has been dishonest must be treated as an allegation of fact.

190. I shall take this shortly, post by post.

191. (1) Post 1: In my view the only statement recognisable as a statement of opinion is that Dr Miller made sexist comments in interview. But the basis of the opinion is not stated. It is, in effect, a bare comment, so falls to be treated as an allegation of fact. The other defamatory statements in the post (eg that he failed to advise FPC, lied, and orchestrated bullying) are allegations of fact.

(2) Post 2: The allegations that Dr Miller was evasive, gaslighting and covering up, and that he was a stranger to the truth, are all opinions based on an allegation that I have found to be untrue, namely that he lied in connection with the social media policy. That is fatal to the defence.

(3) Post 3: The statements that Dr Miller lied to Tunstead councillors, and that he abused a member of FPC, are in my view allegations of fact.

(4) Post 4: The statements are that Dr Miller is a threatening, scheming, dishonest, devious liar, who lied in several respects. In my view the allegations that he lied are allegations of fact: the descriptions of him as threatening, scheming, dishonest and devious are recognisable as opinion, but they are bare comment, and therefore to be treated as statements of fact, except in the case of the words "dishonest" and "devious", which are based on allegations of lying which I have found to be untrue.

(5) Post 5: It is said that Dr Miller is a dishonest and threatening clerk. Those descriptions are recognisable as statements of opinion, but again it is not stated what Dr Miller did that merited the opinion, and therefore they are bare comment, to be treated as allegations of fact. If the allegation of dishonesty could be said to be founded on the allegations of lying made in previous posts, I have found those allegations to be untrue.

(6) Post 6: It is said that Dr Miller is an incompetent, threatening and lying clerk, who is conducting a vendetta against a former councillor. In my view, these allegations fail as expressions of honest opinion for the same reasons as the descriptions in post 5.

(7) Post 7: The allegation here is simply that Dr Miller used his Parish Council email address to threaten people, That, in my judgment, is an allegation of fact.

(8) Post 8: Dr Miller is said to be devious, lying, threatening and incompetent. These descriptions fail as expressions of opinion for the same reason as the descriptions in post 5.

(9) Post 9: The reference to making sexist comments in interview fails as honest opinion because it is bare comment, as in post 1. The statement that Dr Miller was a failure who blamed others for his own incompetence is recognisable as an expression of opinion, but it is based on allegations of fact (that he is a trustee of charities which were months behind with their accounts, and that his children had to move schools twice in five years) that have not been shown (or even pleaded) to be true. But even if they had to been shown to be true, in my judgment no honest person could have held the opinion that Dr Miller was a failure who blamed others for his own incompetence on such a flimsy basis. The statement that the business that he was involved in was "dodgy" is also recognisable as an expression of opinion, but the opinion was expressly tethered to the allegation that the man with whom Dr Miller had been involved had changed his name to "lord". The was simply an assertion by Mr Peake, which was not proved to be true.

(10) Post 10: The descriptions of Dr Miller as a dodgy individual is recognisable as an expression of opinion, but it is a bare comment, and even if it could be said to be understood as a reference to his association with the business colleague, made in a post five months earlier, the facts underlying the comment have not been proved to be true. The allegation of failure to do the work he claimed to have done is an allegation of fact.

(11) Post 11: Again, the allegation of failure to do the work that Dr Miller claimed to have done is an allegation of fact.

(12) Post 12: The description of Dr Miller as a fraudulent, lying, inefficient low life whose activity was criminally malfeasant is recognisable as an expression of opinion. However, it is bare comment: no facts are stated or referred to as the basis of the opinion.

192. For those reasons, the defence of honest opinion fails.

DEFENCE OF STATEMENT ON A MATTER OF PUBLIC INTEREST

193. Finally, Mr Peake relied on the s4 public interest defence. He is entitled to avail himself of its protections if he satisfies the requirements of the section, for its operation is not restricted to journalists, amateur or professional.

194. But he is not entitled to any leeway on account of his amateur status, As was stated by Warby J in *Doyle v Smith* [2019] EMLR 15 at [96]:

> "It seems to me, therefore, that whilst I can and should take account of the nature of the publication in question—its character as a local news website, in the nature of a community operation, it would be wrong in principle to give Mr Smith some credit or leeway to reflect his lack of professional skill, training, or expertise."

195. S4, so far as material, is as follows:

Publication on matter of public interest

(1) It is a defence to an action for defamation for the defendant to show that—
(a) the statement complained of was, or formed part of, a statement on a matter of public interest; and
(b) the defendant reasonably believed that publishing the statement complained of was in the public interest.

(2) Subject to subsections (3) and (4), in determining whether the defendant has shown the matters mentioned in subsection (1), the court must have regard to all the circumstances of the case….

(4) In determining whether it was reasonable for the defendant to believe that publishing the statement complained of was in the public interest, the court must make such allowance for editorial judgement as it considers appropriate.

(5) For the avoidance of doubt, the defence under this section may be relied upon irrespective of whether the statement complained of is a statement of fact or a statement of opinion….

196. Mr Peake's pleaded case is as follows:

[15]... the statements complained of were or formed part of statements on a matter of public interest and the Defendant reasonably believed that publishing the statements complained of was in the public interest pursuant to section 4 of the Defamation Act 2013.
[16]The words complained of in the publications complained of were on matters of public interest, namely:

A. The conduct, integrity and suitability of a clerk of an important public authority body, the Fleggburgh Parish Council.
B. The expenditure of public funds associated with the recruitment, employment, powers and practices of persons within that role.

[17]It was the Defendant's belief that it was in the public interest to publish each of the publications complained of. Paragraph 2 above is repeated. [*Note: it is assumed that sub-paragraph 2 of RAD paragraph 12 is meant.*] At all material times the Defendant was exercising his right to freedom of expression, specifically as a democratically elected counsellor (*sic*) of Fleggburgh Parish Council.
[18]The Defendant's belief was, in all the circumstances, reasonable. As to which:

18.1 The Defendant's speech was political speech attracting a high degree of protection, concerning matters of substantial local interest.
18.2 The Defendant made his statements openly, in a manner in which they could be debated and challenged.
18.3 He did so in a format in which they were likely only to be seen by those who had a material interest in the Fleggburgh Parish Council.
18.4 His publications only concerned matters in relation to which he had personal knowledge.
18.5 In December 2020, the Defendant contacted the Claimant by email to ask about the authorship of the social media policy. The Defendant made further attempts to corroborate the allegation with the police.
18.6 It would otherwise have been wholly unrealistic for the Defendant to have contacted the Claimant prior to making his publications, particularly in circumstances where he knew the Claimant's "side of the story".
18.7 The Defendant is an individual and not a major media organisation with substantial resources.

197. It is well established (see for instance *Economou v de Freitas* [2018] EWCA Civ 2591 at [87]) that in considering a s4 defence, three questions must be addressed:

(1) Was the statement complained of (or did the statement form part of) a statement on a matter of public interest? If so,
(2) Did the defendant believe that publishing the statement complained of was in the public interest? If so,
(3) Was that belief reasonable?

198. The first is an objective question for the court, which (given the words "form part of" in s4(1)(a)) must have regard to the whole of the publication. In that context, as has

been said by Nicklin J in *Harcombe v Associated Newspapers Ltd* [2024] EWHC 1523 (KB); [2025] 1 WLR 405 at [272], Lord Hoffman's observations in *Jameel v Wall Street Journal Europe Sprl* [2007] AC 359 at [51] remain important:

> "If the article as a whole concerned a matter of public interest, the next question is whether the inclusion of the defamatory statement was justifiable. The fact that the material was of public interest does not allow the newspaper to drag in damaging allegations which serve no public purpose. They must be part of the story. And the more serious the allegation, the more important it is that it should make a real contribution to the public interest element in the debate."

199. Nicklin J went on at [273] to rehearse the scope of matters of public interest, which

> "…are of potentially wide compass save that they exclude purely personal or private matters. They specifically include, for example, "the public conduct of a prominent public figure and, in particular, statements she had made or caused to be made publicly: *Riley v Murray* [2023] EMLR 3, para 73. As Lord Bingham of Cornhill CJ explained in *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127, 176—177 (in a passage cited by Lord Phillips of Worth Matravers PSC in *Flood v Times Newspapers Ltd* [2012] 2 AC 273, para 33):
>
> > "By [public interest] we mean matters relating to the public life of the community and those who take part in it, including within the expression 'public life' activities such as the conduct of government and political life, elections . . . and public administration, but we use the expression more widely than that, to embrace matters such as (for instance) the governance of public bodies, institutions and companies which give rise to a public interest in disclosure, but excluding matters which are personal and private, such that there is no public interest in their disclosure.""

200. There is therefore no doubt, in principle, that matters of public interest include such matters as the conduct, integrity and suitability of the clerk to a parish council.

201. The second question requires the defendant to prove that he did actually believe that publication of the statements complained of was in the public interest. That is a subjective matter. There was no very intensive cross-examination of Mr Peake on this issue. He gave his evidence with evident self-belief, and I saw no reason to doubt that he did believe that publication of the statements complained of was in the public interest.

202. The third question is whether the defendant's belief - that publication was in the public interest - was reasonable. That is an objective question. It requires consideration of all the circumstances of the case: s4(2).

203. The *Reynolds* factors emerge from the speech of Lord Nicholls in *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127 at p205. They were non-exhaustive determinants of whether there had been responsible journalism, which was the touchstone of the common law precursor of s4. They remain an important aspect of the objective

assessment under s4 of the defendant's belief that publication was in the public interest (*Economou v de Freitas* [2018] EWCA Civ 2591 at [110]) but should not be seen as a checklist (see *Serafin v Malkiewicz* [2020] UKSC 23 at [69]). Lord Nicholls' non-exhaustive factors are these:

1. The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true.
2. The nature of the information, and the extent to which the subject matter is a matter of public concern.
3. The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories.
4. The steps taken to verify the information.
5. The status of the information. The allegation may have already been the subject of an investigation which commands respect.
6. The urgency of the matter. News is often a perishable commodity.
7. Whether comment was sought from the plaintiff. He may have information others do not possess or have not disclosed. An approach to the plaintiff will not always be necessary.
8. Whether the article contained the gist of the plaintiff's side of the story.
9. The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact.
10. The circumstances of the publication, including the timing.

204. The content of s4(4) may be particularly important here, because of the abusive nature of much of Mr Peake's material, and I think overlaps with Lord Nicholls' reference to the "tone" of the article. The requirement in s4(4) to make allowance for editorial judgment, which may betray the roots of s4 in the protection of traditional media, is as relevant to Mr Peake's "editorial" decisions as to the decisions of a newspaper editor. Steyn J summarised the principles applicable to allowance for editorial judgment in *Banks v Cadwalladr* [2022] 1 WLR 5236:

> "112 …The importance of giving respect, within reason, to editorial judgment is relevant when considering the tone and content of the material and the nature and degree of the steps taken by way of verification prior to publication: *Serafin*, Lord Wilson, para 60, *Flood*, Lord Mance JSC, para 137, Jameel [2007] 1 AC 359, Lord Hoffmann, para 51.
>
> "113. It is important to consider the process and the publication in the round. As Lord Mance JSC noted in *Flood*, in *Bonnick v Morris* [2003] 1 AC 300 the journalist had fallen short both in not making further inquiries about the anonymous source and in not including the claimant's explanation, but the Privy Council was 'prepared to overlook some respects in which the journalist's conduct could legitimately be criticised' in reaching an overall judgment as to the availability of the public interest defence (para 130). Lord Mance JSC continued at para 131: 'The need to look at the position in the round was also identified by

> Lord Bingham in *Jameel's* case [2007] 1 AC 359, para 34, when he disclaimed too close a focus on particular ingredients which have (or have not) been included in a composite story. He said: "This may, in some instances, be a valid point. But consideration should be given to the thrust of the article which the publisher has published. If the thrust of the article is true, and the public interest condition is satisfied, the inclusion of an inaccurate fact may not have the same appearance of irresponsibility as it might if the whole thrust of the article is untrue."
>
> "114. Journalistic freedom covers possible recourse to a degree of exaggeration or even provocation. It is well established that this is something the court must tolerate: *Yeo v Times Newspapers Ltd* [2017] EMLR 1. It is not for the court to substitute its views for those of journalists as to what techniques of reporting should be adopted."

205. It is important to bear in mind, although I am not sure that the point is directly in issue here, that the public interest defence is not to be assessed simply by reference to the single natural and ordinary meaning of the publication. If, for example, there are two possible meanings, one more serious and the other less, the reasonable belief of a journalist who did not perceive the more serious meaning falls to be assessed (unless the more serious meaning was glaringly obvious) by reference to the less serious meaning.

206. Mr Peake plainly had a very strong personal agenda, manifest from the post of 18 January 2021 (see [85] above), and his own account of his poor relations with the council and the clerk. How far is that relevant to consideration of the applicability of s4? Having an agenda cannot, by itself, disqualify a "citizen journalist" from taking advantage of a s4 defence: as Saini J observed in *Packham v Wightman* [2023] EWHC 1256 (KB) at [161], many publications and professional journalists approach stories with what might be called an agenda. But in that case the judge found that the defendants' agenda meant that they approached what might be facts suggesting (at the very highest) that questions might be asked about the accuracy of the fundraising statements, as proving fraud and dishonesty on the part of the claimant. If it is relevant in considering the worth of a source, whether the source had an axe to grind, it must surely be relevant to take into account whether the journalist was similarly placed. The question, it seems to me, is whether Mr Peake's agenda meant that he approached the matters that he was writing about with a reasonably open investigative mind, or whether he was burdened with such dislike and prejudice that he put the worst possible construction on Dr Miller's actions. If the latter, it might throw light on the reasonableness of his belief that a particular statement is in the public interest.

207. Against that background, I turn to consider, in the case of each post separately, whether the s4 defence can be relied on. Since Mr Peake said almost nothing in his witness statements about the s4 defence, I should record his evidence that his posts were made "in truth, in the public interest – of a public servant taking payment for very poor behaviour from the parishioners for whom I was elected to serve". I do not doubt that

he believed that, and, as I have said, I accept that he believed his posts were all made in the public interest. The question is primarily whether that belief was a reasonable one. That question, for the reasons given below, I answer in the negative.

208. **Post 1** (see [25] above)

(1) This post purports to alert parishioners to the approaching annual Parish Meeting, at which community groups update the parish, and it raises the legitimate question of what FPC has done. That is summarised as arranging to get the grass cut, spending £4000 buying a gate for the Village Hall car park, and paying the clerk, whom the council were planning to give further authority, and the question is asked whether the council has asked the electorate before doing that and before spending money on the gate. Instead, he says, he himself was "bullied" off the council, the council has ignored its electorate and is wasting money on unspecified personal vendettas.

(2) That is the context, plainly itself concerning matters of public interest, in which Mr Peake makes a number of allegations against Dr Miller. Those allegations are that he was involved in a failed "training provider" business, with a man who changed his name to "Lord" by deed poll; that two charities of which he was a trustee were very late in submitting returns to the Charity Commissioners (the plain suggestion being that Dr Miller was responsible); that he made "sexist comments" during his original interview for the post as clerk to FPC, when he was not appointed; that he had failed as clerk in a number of respects, including failing to advise FPC on policy introduction, being criticised by the Information Commissioner, having decisions reversed after advice from the police, abetting the making of decisions in secret, lying (by email and orally), orchestrating the bullying of a councillor, and being rejected twice for the post of clerk in his home village.

(3) Mr Peake explained his reference to the "failed training provider" and the false "lord" in terms of his wish to give people a picture of Dr Miller; he brought in the charitable trustee matter because he assumed that Dr Miller was responsible for the accounts of the charities and as a management accountant who managed the public money of Fleggburgh he ought to be able to handle trust accounts; and the reference to Dr Miller's allegedly sexist comments at interview he believed to be relevant because, again, it "painted a picture" of him. He did not seek any comment from Dr Miller on the "training provider" business, or on the authenticity of the title claimed by the "lord", or about the trusts of which he was a trustee: and he did not know whether the failure to file accounts in time was or was not Dr Miller's fault. He did not seek, let alone provide, Dr Miller's explanations. The allegedly sexist comments in interview, which were spoken in what appears to me to have been a plainly confidential context, had no possible bearing on his value for money as a clerk. In truth, none of those matters was relevant to the matter which seems to have been the subject of the post, namely the payment of the clerk and what he did for the money he was paid. That is also true of the false allegation that Dr Miller had been twice rejected as clerk to the parish council of his own village. These were damaging allegations which were in no sense "part of the story", but were dragged in without serving any public interest.

(4) The other allegations come closer to being relevant to Dr Miller's performance as a clerk, although in at least two cases they were exaggerated ("had

decisions reversed after advice from police"; and categorising statements which might only have been false or mistaken as "lies"). Mr Peake did not put to Dr Miller the allegation that he had abetted secret decisions, nor the allegation that he had "orchestrated the bullying" of a councillor (himself).

(5) In my judgment, the post as a whole was primarily a personal attack on Dr Miller as clerk, not a statement on a matter of public interest, and I cannot find that Mr Peake's belief that it was in the public interest was reasonable.

209. **Post 2** (see [28] above)

(1) This post concerns the authorship of the social media policy adopted by FPC, and whether the clerk had falsely claimed to have written it, and had in fact plagiarised it from elsewhere. Those are matters of public interest.
(2) Mr Peake said in evidence that he felt that there were three or four dishonest actions by Dr Miller, and that since he was a parish council employee, they should all be included. One was the plagiarism of the social media policy, the second was his lie in denying plagiarism, and the third his lie in responding to the question of when he had written it. Mr Peake's point was that the clerk was paid to work for five hours a week: instead of researching a genuine policy, he lied to Mr Peake and stole the work of someone else.
(3) Mr Peake did not know that there had been "theft" of another council's social media policy, because he did not know whether or not permission, either general or specific, had been given for its use. Nor did he know that Dr Miller had lied in claiming that he had written it. He had not heard Dr Miller's explanation of what he meant when he said he had written it - i.e. that he had done it alone, not in conjunction with Cllr Pratt. That was because he had not sought a proper explanation for what Dr Miller had done. All that he had to do was to ask Dr Miller what he had meant in saying he had written the policy, when it was plainly almost identical to a policy used by at least one other parish council, and to ask him if he had permission from the copyright owner to do so. He had plenty of time to do so, because this post was put up on Facebook until 24 May 2021, over 5 months after the policy was circulated to council members by Dr Miller.
(4) This, in my view, is a good example of the way in which Mr Peake let himself down. He had a valid point to make, and had he taken the trouble to make enquiries of Burwell Parish Council (at least arguably the council from which the policy was copied), and possibly also of NALC, and to ask Dr Miller the obvious questions before publishing his post, he could have made a very effective criticism of the behaviour of the FPC clerk in terms which probably would have satisfied the requirements of s4. Instead, he turned a valid point into inadequately researched abuse which he could not have reasonably believed to be a statement in the public interest.
(5) The s4 defence therefore fails in respect of this post.

210. **Post 3** (see [31] above)

This post concerns Dr Miller's conduct as clerk to another parish council, Tunstead, which might be thought tangential to his role as clerk to FPC. However, the difficulty with the post is that Mr Peake assumes that Dr Miller's mistake (as I find it was) in saying that FPC members had received training, was a lie. It seems to me a highly improbable lie. Why would Dr Miller lie about such a matter? It

was surely far more likely that he had simply made a mistake, possibly one that he should not have made, but a mistake nonetheless. Mr Peake approached Dr Miller's mistake not with an open mind but with a mind closed by prejudice, and made an assumption about his words which (as I have found) was not justified, and which he did not trouble to explore with Dr Miller before publication. There was no reasonable basis for belief that publication of this material was in the public interest.

211. **Post 4** (see [34] above)

(1) This post is primarily abusive. Asked how it could have been in the public interest to publish it, Mr Peake said simply that it was because Dr Miller was an employee of the council. That will not do. S4 is not designed to give protection to mere abuse.
(2) In the post, Mr Peake makes two new allegations - that Dr Miller had lied in saying that police had discussed with him an interview with a suspect (himself) and that he had lied in his CV. Both, as I have found, were untrue allegations, which Mr Peake had no reason to believe were true, and which he made no attempt whatever to verify. Because of those matters also, the defence fails for Post 4.

212. **Post 5** (see (37) above)

(1) Asked why he posted this material, referring to Dr Miller as the "dishonest and threatening clerk", Mr Peake said it was because Dr Miller "was still a dishonest and threatening person". It was, he said, in the public interest to say so.
(2) I disagree. In my judgment there could be no possible public interest in the publication of these statements, which – though they are directed at Dr Miller as a public official – are not directed to any debate or other matter of legitimate public interest. They make no contribution to the public interest in knowing how much the clerk is paid. They are purely abusive. Mr Peake could not have reasonably believed otherwise. It is worth noting that he stated in evidence that he did not agree that this post would have harmed Dr Miller's reputation: he said that Dr Miller's reputation was so bad that it could not be harmed further.

213. **Post 6** (see [42] above)

Had Mr Peake confined himself to raising the question of how FPC justified allowing Dr Miller to spend council money, and had he explained the respects in which Dr Miller was pursuing a vendetta against him, this post would been capable of contributing to a debate on a matter of public interest; but in my judgment the statement complained of is vitiated by being used as a vehicle for simple abuse, the publication of which Mr Peake could not have reasonably believed was in the public interest.

214. **Post 7** (see [46] above)

(1) Mr Peake asked in this post how many Facebook users "this idiot" (accompanied by a photograph of Dr Miller) had contacted on his Parish Council email address to threaten them.

(2) He explained this as arising from a Facebook comment from one Janice Lewin on one of his posts, saying that she thought Dr Miller scruffy. Dr Miller emailed her, asking for an explanation. She forwarded his email to Mr Peake, asking if Dr Miller was threatening her. This is plainly the same matter as that to which I refer at [138-139] above, concerning Dr Miller's behaviour in contacting a parishioner called Janice, leaving her "wondering" if he had threatened her. Mr Peake had not known, as he admitted, that the email which prompted Dr Miller to contact her said "What is he a Dr in, then? Needs a wash". But he said he must have seen it at the time.

(3) Yet again, it can be seen how this enquiry could have been a proper means of raising a matter of public interest. Should the clerk be approaching members of the public about comments which they make concerning him online, and if so in what terms, and should he be using his parish council address to do so? These are matters worthy of public consideration. The difficulty for Mr Peake is that he went further, without any evidence that Dr Miller did actually threaten even one person. Ms Lewin only "wondered" if he was threatening her. Mr Peake could have made that clear. Instead, he uses an unsupported allegation as the premise for the implication in the question that he may have done it many times. He could not reasonably have believed that suggestion to be a statement in the public interest.

215. **Post 8** (see [49] above)

This post contains nothing more than highly damaging abuse. He accepted in evidence that it was an insult, but said "That was my belief". It was not a statement on a matter of public interest, and Mr Peake could not have reasonably believed that was.

216. **Post 9** (see [52] above)

(1) This post refers to details about the content of the privately conducted interview when Dr Miller first applied (unsuccessfully) to be clerk to FPC; it refers to his being twice rejected when he applied to be clerk to the parish council of his own village (Dr Miller applied only once), and to his failure to be appointed clerk at another parish council, which (if true) could have been for any reason; it alleges that Tunstead had no choice but to appoint him clerk (Dr Miller's unchallenged evidence was that there were four candidates, which Mr Peake conceded he did not know); it refers to Dr Miller's involvement in a company with a man whom he asserts to have changed his name by deed poll to 'Lord', which is said to have been 'dodgy' (he did not ask Dr Miller for any explanation of that matter); he refers to Dr Miller's role as trustee of two charities that are late with their accounts (he did not ask Dr Miller why that might have been or whether it was his fault), and it refers to his children's moving school (the reasons for which – in one instance the sacking of the head and a dramatic fall in numbers – he did not ask Dr Miller). All these matters are said to make him a failure who blames others for his failures.

(2) In evidence, Mr Peake explained that Dr Miller had blamed the Charity Commission for not uploading the accounts of his charities. That was not, I think, something that Dr Miller said in evidence in this case, but if that was what Mr Peake had been told, why not include in the post Dr Miller's explanation?

(3) As for the allegation that Tunstead had no choice but to appoint him clerk, this appears to have been sourced from a Tunstead councillor who said he was the only candidate. That, he felt, was something that the Fleggburgh public needed to know. But he did not ask Dr Miller, who could have told him that there had been four candidates.
(4) The evidence about Dr Miller's children, such as it was, came from the chairman of the PTA at the school from which he moved his children. Mr Peake reported him as saying unpleasant things about the children and about Dr Miller, which had nothing to do with the implication that Dr Miller was a failure who could not even organise his children's schooling.
(5) In other words, all but two of the allegations were made without any attempt to verify them with Dr Miller and to find out whether, if true, they actually reflected badly on him. In the case of the charity trustee matter, Mr Peake actually had what he thought was Dr Miller's side of the case, but did not state it. The other allegation was founded, again, on the confidential exchanges between Dr Miller and an interviewing panel when he first applied to be clerk to FPC. The allegations were nothing more than a highly personal attack on Dr Miller. There was nothing in it that was of public interest, and no reasonable person could have thought that there was.

217. **Post 10** (see [55] above)

This post (posted 5 months after Dr Miller had resigned) alleges that the locum clerk had reported that Dr Miller had failed to do work that he had claimed to do and for which he had been paid. The allegation was founded, as Mr Peake accepted in evidence, on the document produced by Mr Peake himself, to which I have referred at [183-184] above. There was no other evidence. His own document does not begin to substantiate the failures which he alleges. There was, it appears, no attempt to verify the allegation, whether by asking Dr Miller or members of FPC. Mr Peake cannot have believed that it was in the public interest to make an allegation for which there was no evidence.

218. **Post 11** (see [58] above)

(1) This post, put up four days after post 10, makes the same allegation. It is no more defensible than post 10, and for the same reason.
(2) It adds a gratuitous reference to Dr Miller having twice (as Mr Peake persisted in incorrectly saying) been turned down in his application to be clerk to Freethorpe Parish Council, his home village. Asked why he thought it of public interest to bring that up again, Mr Peake could say only that "they know him there", that he is a public employee, and that it was "extraordinary" that he was rejected by his own village twice.
(3) It also brings in Dr Miller's employment at Tunstead. Asked why he referred to discussion of Dr Miller's employment at Tunstead and why he speculated that Dr Miller might be sacked, Mr Peake explained that it was to enable parishioners of Tunstead or anyone who read his page to know that the subject of his employment was being discussed. As he said, tellingly, "there is no limit on who can access my posts". In fact, as he conceded in cross-examination, it was simply an annual employment review, as he could have found out by looking at the Tunstead Parish Council minutes.

219. **Post 12** (see [61] above)

(1) Mr Peake explained this post by asserting that Dr Miller had been guilty of "criminal malfeasance" over the issue of the social media policy. No reasonable person could have thought that Dr Miller's behaviour merited that description. He asserted that it was in the public interest to publish this post because three councillors resigned with Dr Miller. It was wholly unclear to me how that could possibly be arguable. He also argued that the post was "clearly satirical". I disagree. The minutes were clearly mock minutes, but the matters raised were, and in my view were intended to be, absolutely serious.
(2) In my judgment this post, like post 8, is nothing more than highly defamatory abuse. It is plainly not a statement on a matter of public interest: it is simply a torrent of bile directed at Dr Miller, who was not at this stage even the clerk of FPC. Mr Peake cannot reasonably have believed that publication of this material was in the public interest.

220. My conclusion is that the s4 defence fails. That determines all the issues in the libel claim in Dr Miller's favour.

THE CLAIM IN MALICIOUS FALSEHOOD

221. I do not want to spend any substantial amount of time on the issues that arise in the malicious falsehood claim. This judgment is already quite long enough. As I have explained, since the decision in *George v Cannell* [2024] UKSC 19; [2024] 3 W.L.R. 153 (delivered after the Amended Particulars of Claim were served), where there is no actual financial loss (and none is pleaded here), there is no scope in a malicious falsehood claim for damages for injury to feelings. It has long been the law that reputational damage cannot be compensated by damages in malicious falsehood. The best outcome for Dr Miller from this part of his claim would be a nominal award.

222. It is sufficient to say that Dr Miller complains of the following allegations as being falsehoods:

(a) That he has behaved in an aggressive and/or out of control and/or threatening manner towards other councillors, including, but not limited to, FPC and/or to parish residents;
(b) That he cannot add, put dates on forms, produce documents on time, does not conduct research and is generally incompetent;
(c) That he is a liar and/or dodgy and/or fraudulent;
(d) That he has failed in his role as the Clerk to properly advise FPC on introducing new policies, has received criticism from the Information Commissioner's Office, had his professional decisions reversed after police advice, has encouraged or assisted in secret decision-making and has orchestrated bullying;
(e) That he did not initially get the Parish Clerk role at Fleggburgh because he made sexist comments in his interview;
(f) That he lied about writing a social media policy which he had taken from another Parish Council and that he tried to cover up his lies by gaslighting and telling further lies;

(g) That he lied to Tunstead Parish Council and the parishioners of Tunstead in representing that all members of FPC had attended planning response training; and
(h) That he lied on his CV to get the Parish Clerk job at FPC.

223. Mr Peake responds in his RAD by asserting the truth of the alleged falsehoods, relying on his Particulars of Truth. I have no difficulty in concluding, in the light of the findings that I have already stated, that the falsity of the allegations is substantially established.

224. There is, as there has to be, a plea of malice. It is very bald. It must be highly questionable whether it could have survived an application to strike out. It alleges simply that Mr Peake knew his statements were untrue or was reckless as to their truth or falsity or that he published them with the improper motive of trying to damage Dr Miller's reputation, to cause him pecuniary loss by injuring his professional interests and prospects within what is opaquely termed the "Parish Council community and surrounding communities", and to cause him hurt and distress. Dr Miller relies on what he says was Mr Peake's failure to take sufficient steps to verify the truth or falsity of his allegations, and/or to have them investigated through "appropriate and proper channels", and/or to approach Dr Miller to verify their truth or falsity before publication.

225. In response, Mr Peake contends that his motive was a proper one, namely to draw attention to Dr Miller's "prior conduct", "which called into question his suitability, skillset, integrity, demeanour and attitude". He denies knowledge of falsity or recklessness.

226. It would be a pointless waste of time to add further accretions to this judgment by an examination of Mr Peake's state of mind in making each of the allegations pleaded, false as I find them to be, given that the only outcome, even if Dr Miller was successful, would be an award of £5. The reality is, I am sure, that the malicious falsehood claim was pleaded as a fallback in case the libel claim failed to surmount the s1 serious harm threshold. Subject to argument, I propose simply to dismiss it.

DAMAGES

227. I now consider damages. The purpose of compensatory general damages in defamation is to compensate for injury to reputation, to provide vindication, and to compensate for hurt feelings and distress.

228. The need for damages to provide vindication was explained in the case of *Broome v Cassell* [1972] AC 1027 at p.1071 by Lord Hailsham LC who said: "Not merely can (the libel plaintiff) recover the estimated sum of his past and future losses, but, in case the libel, driven underground, emerges from its lurking place at some future date, he must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charge."

229. That tendency of 'percolation', as it has been called, has been given new force by the internet, which creates the potential for libels to spread rapidly, and perhaps particularly on media like Facebook, which make it very easy for users to pass on to

others any posts that they have found interesting. In this case it is very difficult to know how far the libels reached, because no analysis was carried out of the likely extent of readership. However, the percolation factor is a legitimate factor to take into account in assessing damages.

230. In some circumstances a reasoned judgment may provide a degree of vindication: see *Purnell v Business Magazine Ltd* [2008] 1WLR 1. In that case it was held that a prior narrative judgment rejecting a defence of justification was capable of providing some vindication of a claimant's reputation. But, as often in social media cases, I doubt that most publishees (who will have been users of Facebook) are likely to read a dry and lengthy analysis in an analogue medium, so I give little weight to that factor. That said, there may well be local newspaper or digital media coverage providing a summary of the judgment.

231. Factors which may be relevant to the level of general damages include the position and standing of the claimant and the gravity of the allegation, especially insofar as it closely touches the claimant's personal integrity and his reputation. As Sir Thomas Bingham MR said in *John v MGN* [1997] QB 586 at p.607:

> "The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place. It is well established that compensatory damages may and should compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way."

232. There was no apology from Mr Peake, who appears unrepentant. He still regards himself as justified in doing as he did.

233. I also bear in mind that Mr Peake did nothing to take the posts down until he was forced to do so in the spring of 2023, which can only have increased their readership and the

distress suffered by Dr Miller. Dr Miller obtained an order from Lavender J on 14 September 2022 by which Mr Peake was required to take down all the posts within seven days of service of the order on him. He failed to do so. Dr Miller applied to commit for contempt. Directions were given by Lavender J on 2 February 2023. Fortunately, Mr Peake saw sense and matters were finally resolved by a consent order made by Master Eastman on 15 May 2023. Asked why he did not take them down in accordance with the order of the court, Mr Peake said that he did not understand the order. I am afraid to say that it was quite apparent to me, as he gave that evidence, that his explanation was untrue. I have no doubt that he decided to carry on regardless until he was forced to change course.

234. I must take into account the degree of distress caused to Dr Miller, judged objectively. He said in his witness statement, in a somewhat proforma fashion (in the sense that very much the same form of wording is used to describe his reaction to each post), that he was shocked and alarmed by the posts and very worried about how his friends, family, council members and individuals in the community generally would perceive him. Nonetheless, I see no reason not to accept his evidence. I accept, in particular, that he resigned from his post at FPC when Mr Peake first referred in a post to Dr Miller's children (post 9, 13 September 2021), which he felt threatened them and their privacy, and that he hoped that by resigning he would put an end to Mr Peake's campaign. But even then there were three more posts, running into February 2022, and it was another year before they were taken down. He felt and still feels that his reputation has been badly harmed, and took his role as parish clerk very seriously. He found it truly awful that people were reading his posts and believing them. As I have said, he was blocked by some people on Facebook, and asked by others what was going on, which meant that he had to explain to them what had been going on. He has tried to avoid going anywhere where he fears that Mr Peake might be, and he has felt unable to take any other job as a clerk, for fear that Mr Peake would attend the meetings and start posting about it again. He has felt able to stay on at Tunstead, because the members there understand the situation at Fleggburgh. He regards himself as a stoical person, but has been caused great stress and anxiety not only by his ordeal, but also by the stress which has been placed on his wife and children. I accept his evidence. The allegations, particularly those of dishonesty, were extremely serious, and I do not doubt that they were widely known in the area where Dr Miller lives and works. Equally, of course, Dr Miller's vindication is likely to become well known in that area.

235. Moreover, the plea of truth was maintained to the end. That is a factor which is bound to have increased the distress which Dr Miller suffered, but I bear in mind that mere persistence in a plea of truth which is run in a reasonable way but fails, even if the court regards it as not only wrong but weak, is not enough to justify an award of aggravated damages: the plea would have to be completely insupportable, which I do not think this one was (see eg *Oriental Daily Publisher v Ming Pao Holdings Ltd* [2012] HKFCA 59, [2013] EMLR 7 at [132], and *Sloutsker v Romanova* [2015] EWHC 2053 (QB) at [81]).

236. The extent of publication of the posts is a very important factor. I have dealt with this above in the context of serious harm, and repeat my conclusions. It is likely that the posts will have been seen by publishees running into four figures, all or almost of all of whom will have been local people in the area between Norwich and Great Yarmouth where Dr Miller worked and lived.

237. There is a plea of aggravated damages. Damages may be aggravated by the conduct of a defendant, up to the end of the trial. Mr Peake's general behaviour, including his conduct of the case, may be relied on as aggravating damages.

238. But aggravated damages are not a distinct head of damage. The correct approach was explained by Nicklin J (in *Lachaux v Independent Print Ltd* [2021] EWHC 1797 (QB) at [227]) in these terms:

> "…. I consider the better course is to fix a single award which, faithful to the principles by which damages in defamation are assessed, is solely to compensate the Claimant. The award can properly reflect any additional hurt and distress caused to the Claimant by the conduct of the Defendants. To speak in terms of whether a claimant is "entitled" to an award of aggravated damages is misleading. Every claimant who succeeds in a claim for defamation is "entitled" to an award of damages which may reflect any proved elements of aggravation. The real question is whether the claimant can demonstrate, by admissible evidence which the court accepts, that the damage to his/her reputation and/or his/her distress or upset has been increased by conduct of the defendant."

239. In this case, Dr Miller has pleaded an aggravated damages claim which is based on the inherent gravity of the allegations, the fact that he had to leave his post as clerk, the effect which the posts have had on his ability to advertise for work as an accountant and to become a clerk for another parish council, by the fact that Mr Peake contacted his partner on Facebook (a request that she declined), and by the effect which the libels have had in undermining his sense of personal security, which has made him feel obliged to use a bodycam when interacting with people who might be Mr Peake's contacts. It seems to me that most of those difficulties are the result of the posts themselves rather than any particular aggravating conduct on Mr Peake's part. The main aggravation was his insistence in his closing submissions that his allegations were true, and his refusal, even in the face of a court order, to take the posts down until February 2023.

240. I shall include a small element in my award that reflects that aggravation.

241. It seems to me sensible in this case to fix a global award, and I do not think that it would be profitable to try to break it down post by post, so I shall not do so.

242. Dr Miller sought total damages of £20,000. That is the amount specified in the Claim Form as the limit of the amount claimed. That does not prevent me from making an award at a higher level, but it seems to me, taking everything into account, that the amount claimed is a sensible and realistic figure to reflect the injury caused and the need for vindication. One reason for fixing on a fairly modest overall award is that, notwithstanding the gravity of the allegations and the serious harm that in my view they are bound to have caused, some more perceptive readers may well have thought, after reading a few of the posts, that Mr Peake was an obsessive who was fixated on abusing Dr Miller, and have taken the posts less seriously as they were repeated. And even if that was not their response, for those who read the whole series, the impact of the

allegations is likely to have reduced with repetition. In other words, the repetition will not necessarily have added as greatly to the damage done as the gravity of the repeated allegations might suggest, although it will have prolonged Dr Miller's distress. Another factor is that much of the publication took place largely in a fairly contained part of the Norfolk countryside, where – in my experience of rural matters – news spreads quickly. It appears to me likely that Dr Miller's vindication will become widely known in short time in the area where he lives and works, the country bush telegraph being what it is.

243. There is also an application for an injunction. In principle, having regard in particular to Mr Peake's resistance to taking the posts down, it seems to me that Dr Miller is entitled to that relief. However, I do not know whether any undertakings have been offered or may be offered now by Mr Peake. The terms of any injunction are best considered once the parties have considered the Court's judgment. It is still possible that agreement may be reached as to the terms of a final undertaking to the Court.

CONCLUSION

244. Dr Miller's claim in defamation therefore succeeds. I dismiss the claim in malicious falsehood. I award him damages for defamation (including a small amount by way of aggravation) in the sum of £20,000.

245. I invite the parties to agree a form of order, to include the wording of any proposed injunction or undertaking. I will hear submissions on any matters on which they are unable to agree, and on any other outstanding issues, on a date convenient to the parties and the Court, after this judgment has been formally handed down. It would be preferable if any submissions could be in writing.