Neutral Citation Number: [2025] EWHC 74 (KB)

Case No: QB-2022-000858; QB-2022-000862

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/01/2025

Before :

THE HONOURABLE MR JUSTICE SAINI

- -

Between :

ANN-MARIE JANICE SMITH	**Claimant**
- and -	
(1) PASTOR JOHN CHARLES SURRIDGE	
(2) PASTOR IAN SWEENEY	
(3) PASTOR EMMANUEL OSEI	
(4) KAZ JAMES	**Defendants**

KAYON JUDYDEEN JACKSON	**Claimant**
-and-	
(1) PASTOR JOHN CHARLES SURRIDGE	
(2) PASTOR IAN SWEENEY	
(3) PASTOR EMMANUEL OSEI	
(4) KAZ JAMES	**Defendants**

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- -

Robert Sterling (instructed by **Carruthers Law**) for the **Claimants**
William McCormick KC (instructed by **Shakespeare Martineau LLP**) for the **Defendants**

Hearing dates: 25, 27, 28 November; 2-4 December 2024

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JUDGMENT

This judgment was handed down remotely at 10.30am on Monday 20 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Saini :

This judgment is in 11 main parts as follows:

I. Overview

1. This is a case about teachers, safeguarding and employment references. The Claimants are secondary school teachers. Ann-Marie Janice Smith ("Miss Smith") is a Mathematics teacher. Kayon Judydeen Jackson ("Mrs Jackson") is an English teacher. They each taught at an Independent School, Stanborough Secondary School ("the School") in Garston, Watford between September 2014 and August 2018. In September 2018, they both took up new teaching posts at the Oasis Academy in Enfield. Some years later, in December 2020, they each applied for, and were offered (subject to satisfactory references from their last two schools) new teaching roles obtained by a recruitment consultant, Mr Dan Brown, retained by the Claimants. Oasis Academy provided satisfactory references.

2. That was not the case however with the School. On 18 March 2021, the personal assistant to the Headteacher of Stanborough School sent on his behalf a preliminary reference ("the Reference") to Mr Brown which stated insofar as material, as follows:

> "We can confirm that the applicants worked at Stanborough School during the following dates…However, I would like to inform you that **there were some safeguarding issues during their time at Stanborough School**. We will fill in the forms you have sent us in detail and send these to you shortly."

(The bold and underlined emphasis is as in the original: see [107] below for the full text of the relevant email).

3. Mr Brown passed on the terms of the Reference to the Stockwood Park Academy. No further "forms" were in fact completed by Mr James in relation to the "safeguarding issues" referred to in the Reference (Mr Brown having informed Mr James that he did not need the further forms), and the Stockwood Park Academy withdrew the job offers it had made to the Claimants. The Claimants deny that there were any safeguarding issues from their time at the School, and they say the Reference led to their job offers being withdrawn.

4. It is in these circumstances that the Claimants bring the present proceedings for a number of torts: libel, negligent misstatement and misuse of private information ("MPI"). Aside from Mr Kaz James, the Headmaster (admitted publisher of the Reference) claims are made against a number of individuals said by the Claimants to be responsible for the various torts. The position as to the true and proper defendants is complicated by the fact that the School is not a legal person. It is associated in some fashion with the British Union Conference of Seventh-day Adventists ("the BUC") which is part of the global Seventh-day Adventist Church, a Protestant denomination. The BUC is itself an unincorporated association, and a registered charity. The identity of the correct defendants is one of the issues I need to determine in Section III below.

5. Although there are two separate claims before me most of the factual and legal questions which arise in the claims are the same. The cases have been case-managed together and on 20 February 2023, HHJ Lewis (sitting as a Judge of the High Court), gave a judgment on the meaning of the Reference: see [2023] EWHC 351 (KB). At [37], the judge held that the Reference had a *Chase* level 1 meaning, namely that something had actually happened that gave rise to a safeguarding issue. He explained that there was nothing in the Reference that suggested a need for caution, or to qualify what was being said. At [38], the judge determined that the meaning of the Reference in respect of each Claimant was: "During the time when she worked at the School, she did something that gave rise to a safeguarding issue, namely something that either caused harm to a child, or placed a child at risk of harm". The judge further held that this meaning was defamatory at common law. It was common ground that the words complained of were a statement of fact.

The issues

6. The principal liability-related issues in relation to the libel claim can be summarised as follows:

    (1) Have the Claimants shown that the Reference caused or was likely to cause serious harm?
    (2) Was the Reference published on an occasion of qualified privilege?
    (3) If so, have the Claimants proved malice so as to rebut that privilege?
    (4) Have the Defendants shown the substantial truth of the words complained of?

7. As regards the negligent misstatement claim, the issue is breach of duty. It is conceded on behalf of the Defendants that a duty of care was owed on the basis established in Spring v Guardian Assurance [1995] 2 AC 396. In relation to the MPI claim, the issue is whether the Reference contained information in respect of which there was a reasonable expectation of privacy. For the Claimants it was conceded at trial that if the truth defence to the libel claim succeeded, the negligent misstatement and MPI claims would also necessarily fail.

8. Mr Robert Sterling appeared for the Claimants and Mr William McCormick KC appeared for the Defendants. I am grateful to Counsel for their concise cross-examination of the witnesses and their focussed submissions. That was particularly helpful in a case where the oral and written evidence on both sides travelled into areas which went substantially beyond matters required to resolve the legal issues. At points this evidence resembled a blow-by-blow account of staff, pupil and parent relations

over some years. The statements before me were in some respects focussed on a moral accounting of the rights of wrongs of conduct by many persons (sometimes of a trivial nature) over a 3-4 year employment period.

9. I regret to say that the overriding impression the evidence left on me was that Stanborough School was a deeply unhappy and dysfunctional place. It was a school characterised by a toxic culture which included factional disputes between different teacher groups, with those disputes sometimes crossing over into relations between other teachers, pupils and their parents.

10. The major factual issues in the trials were whether the truth defence in relation to the safeguarding issues relied upon by the Defendants was proved and whether there was malice established by the Claimants (it being belatedly accepted that the publication was an occasion of qualified privilege). There was a spectrum of safeguarding issues relied upon by the Defendants from the most serious (such as the Parliament Visit Issue as I describe it below) to some things which were of a substantially less serious nature. The Defendants took a *kitchen sink* approach. I will give one example: until closing speeches the Defendants relied upon the failure of the Claimants to cheer on a student who features heavily in this case (Andrew Papaioannou) at a cross-country race. Actions towards Andrew in other respects are also relied upon. Mr McCormick KC wisely abandoned the cross-country race matter as a claimed safeguarding issue before he made his closing speech. The parties were in agreement that the Parliament Visit Issue was the most serious matter and Mr Sterling in particular correctly conceded that if the Defendants succeeded in relation to truth on this issue the claims fell to be dismissed in their entirety.

11. I have divided the major relevant factual issues relating to alleged safeguarding matters relied upon by the Defendants into the following by way of shorthand: (a) the Attack Issue concerning Mrs Jackson; (b) the Parliament Visit Issue concerning both Claimants; (c) the Medication and Exam Issue concerning Miss Smith; and (d) the Muskah Issue concerning Miss Smith. I provide a fuller description of what falls under each issue in my narrative in Section IV below. There are sub-issues within each issue but I will not seek to describe those in this introduction.

Safeguarding

12. It is important that I emphasise at the outset that *safeguarding* as a concept (in terms of its practical application in schools) covers a substantially wider field than acts causing harm to a child or placing a child at risk of harm. In the judgment on meaning, the judge had to determine the meaning of the specific words in the Reference complained of in their proper context. He found a focus on harm or risk of harm to children. That is the meaning I have to consider when I address the truth defence. However, when it comes to considering the actions and motivations of the persons in the School who were dealing with alleged safeguarding concerns in the context of the Reference (in particular Mr James, the Head, and Ms Clements, Chair of Governors), I need to bear in mind that they approached matters applying the wider concept of safeguarding which is not confined to harm/potential harm to a child in this narrow way.

13. As to that wider concept, and in the statutory guidance in this area, "safeguarding" includes a broad range of matters including: promoting the welfare of children;

providing help and support to meet the needs of children as soon as problems emerge; protecting children from maltreatment, whether that is within or outside the home; preventing the impairment of children's mental and physical health or development; ensuring that children grow up in circumstances consistent with the provision of safe and effective care; and taking action to enable all children to have the best outcomes.

II. The Witnesses

14. On the Claimants' side, I heard oral evidence from Mrs Jackson, Miss Smith, Mr Ricardo Wright (former Head of Mathematics of the School), Mr Dan Brown (the recruitment consultant retained by the Claimants), and Mr Keith Allen (former Bursar and CFO of the School). For the Defendants, I heard oral evidence from Mr Kaz James (Fourth Defendant, sender of the Reference, and former Head of the School), Pastor John Surridge (First Defendant, former Executive Secretary of the BUC and former School Governor), Pastor Ian Sweeney (Second Defendant, former BUC President and former School Governor), Ms Judy Clements (former Chair of Governors and now Head of Safeguarding for the South of England Conference of Seventh Day Adventists), Mrs Anna Papaioannou (Mr James' former PA and mother of Andrew), and Andrew Papaioannou (sometimes referred to as "Andreas" in the documents). Although Andrew was a child of 15 years at the relevant time, the parties have agreed that he should be referred to in the proceedings by his actual name. Andrew is now in his early 20s. There are a number of other persons who feature in the relevant events of 2017 and who were children at the relevant time. I have used their names given they are also now adults.

15. Subject to a qualification concerning Mr Dan Brown, I found all the witnesses to be genuinely seeking to help me in their evidence. That does not mean that I accept their evidence on all issues. At points I have to decide which account of particular events I prefer but, as regards witnesses other than Mr Brown, when I have accepted one account over another it is not because I consider untruthful evidence was being given by the person whose account I did not accept. Such differences as there were between the witnesses were largely the result of strongly held feelings of injustice or unfairness about events, as well as difficulties of recollection. It is only natural that people view the same events through different spectacles when they hold such views. I did however find the Claimants to be rigid and inflexible in their approach in their evidence. Unlike the Defendants' witnesses, they were not willing to make realistic concessions that they did not recall matters or that they might have been mistaken about anything at all. They were also keen to present similar and consistent accounts of material events.

16. However, this is not a case where the central facts concerning the matters said by the Defendants to give rise to the most serious of the claimed safeguarding issues were in dispute. Whether those facts can be properly characterised as safeguarding matters with the terms of the judgment on meaning, and the events surrounding the composition of the Reference in March 2021, were the real battleground. In many respects there is a contemporaneous documentary record of the central events. The witness statements revealed major disputes on many issues which I consider were tangential and, other than referring to such matters when I have to put the crucial events in perspective, I have not been drawn into trying to resolve every aspect of the allegations and counter-allegations made in the evidence about the 4 years of the Claimants' employment within the School.

17. I return to Mr Brown. I regret to say that I did not find Mr Brown to be a satisfactory witness. The concern I have with his evidence was his purported accurate note of a conversation he had with Mr James shortly after the Reference was sent. I address this matter in more detail at [114] below.

III. The Correct Defendants: Unincorporated Associations

18. There is no dispute that Mr James published the Reference (by deciding what it should contain and authorising that it should be sent). He is therefore liable as the publisher and his employer is vicariously liable for that act. Mr James' employer was the School. However, the evidence is that it had no legal personality: it was either an unincorporated association in its own right or part of the BUC which is also an unincorporated association. It is a well-established principle that an unincorporated association, being neither a partnership nor a legal entity, cannot sue or be sued in its own name. This reflects the fundamental point that an unincorporated association, not being a legal entity, cannot have imposed on it tortious liabilities. Where members of an unincorporated association publish a libel each one who authorised or participated in it is personally liable in the normal way. However, a claim in libel will not lie against an unincorporated association in its collective name. Such an entity can neither publish nor authorise the publication of a libel.

19. The parties are agreed that when it comes to identifying which entity (by which I do not mean a legal person) was responsible in law for the Reference, I should consider only two options: (1) either the School was an unincorporated association in its own right; or (2) it was not separate but part of the BUC which is an unincorporated association. I have to decide between these two options and on the basis of rather unsatisfactory evidence. Mr McCormick KC acknowledged that the Defendants had not provided me with any constitutional documents as regards governance of the BUC or the School, and that such materials must exist. I will do the best I can to make a decision in these less than ideal circumstances.

20. The First, Second and Third Defendants were trustees of the BUC at the material time. The Third Defendant (Pastor Osei) and Mr James were Governors of the School. Ms Clements' evidence was that the School was owned and operated by the BUC. That was also the overall impression I got from Mr James's, Pastor Surridge's and Pastor Sweeney's evidence. The other material before me of the role of the BUC in the day to day affairs of the School and its governance suggested to me that the BUC had effective control (through mandatory memberships) of the School's Governing Body. The only counter-point was the School's leadership itself decided on how the funds provided to it by the BUC would be used. The following exchange I had with Pastor Sweeney when he concluded his evidence reflects this position:

> "MR JUSTICE SAINI: Just one question to raise, Pastor, which is that I think you said that the BUC owned the school. It looks to me from your statement that in terms of the decisions as to who was to be on the governing body of the school, the BUC had a very heavy say in that - given the number of people they had on the body and also the role of the education director which came from the BUC. So I understand what you say about money - that you handed the money over to the school and they decided what to do with it. But in terms of the overall direction

> of the school it looks like the BUC have quite a substantial influence through its representation on the governing body. Would that be fair to say?
>
> A. That is correct, my Lord…".

21. Overall, I see no evidential basis for a conclusion that somehow the School was a distinct entity (unincorporated) with some form of arm's length relationship with the BUC and with independent control. Although there was a distinct board of governors for the School, the preponderance of the evidence shows that the BUC had a controlling hand over who would be on the board and they had the power to control major decisions. The evidence, unsatisfactory as it is, was more consistent in my judgment with a loose structure where there was a single entity at the top, the BUC, a registered charity; and that single unincorporated association was an umbrella for organisations such as the School.

22. On the basis of that conclusion, the parties were agreed as to what would follow. This was that the First to Third Defendants are properly parties (in addition to Mr James, the Fourth Defendant) to these claims as trustees of the BUC at the material time.

IV. The Facts

23. My narrative below contains my findings of fact. I will adopt a broadly chronological approach (with some exceptions), identifying which issues are being addressed by way of sub-headings. My narrative draws on the oral evidence of the witnesses, but I have given primacy to the many contemporaneous documents which are the best guide to what took place. I have excluded from my narrative parts of the evidence which I considered were not relevant to the issues I have to decide. In particular, the witness statements included substantial detail on the disputes between the Claimants and the Deputy Head at the material time, Eileen Hussey ("Mrs Hussey"). I have read that evidence and taken it into account as part of the context, but much of it did not seem to me to be relevant to the factual matters I have to decide.

24. On a general point, when I refer below by name to what a particular witness said in evidence, I accept that evidence as correct unless I indicate a finding to the contrary.

Miss Smith and Mrs Jackson: background and school relationships

25. Mrs Jackson was employed at the School between 3 September 2014 and 31 August 2018. Her subject was English but she also taught Religious Studies. Miss Smith was employed at the School between 1 September 2014 and 31 August 2018. Her subject was Mathematics. The School shared premises and some staff with an international school also owned and operated by the BUC.

26. Subject to the disputes which the Claimants had with Mrs Hussey and with the parents of Andrew, each of the Claimants had a positive reputation amongst students and parents and their students did well in exams. They are experienced professionals. The Claimants also had (and continue to enjoy) positive Disclosure and Barring Service (DBS) certificates. No findings were made against them in relation to any issues in relation to safeguarding while they were at the School. Equally, they were not subject to any disciplinary processes. Mr Wright and Mr Allen spoke in glowing terms about

them and confirmed they were not aware of any safeguarding concerns in relation to the Claimants.

27. When they left the School, the former Headmistress, Mrs Dixon, provided an agency acting for them with excellent written references dated 13 June 2018. She described them in glowing terms, as outstanding teachers, and stated there were no safeguarding issues arising. Those references appear however not to have been on the School files when Mr James considered those files some three years later when preparing the Reference: see further [98] below.

28. It is also appropriate at this stage to note that at no point were any of the matters relied upon by the Defendants in these claims as safeguarding issues referred to the Local Authority Designated Officer (LADO). The LADO is responsible for overseeing concerns, allegations, or incidents involving individuals working with children. The School also enjoyed (at the times material to these claims) positive Ofsted and Independent Schools Inspectorate reports as regards safeguarding policies and practices.

29. Further, insofar as there were in fact safeguarding incidents, it does not appear to be in dispute that the procedures specified in national statutory guidance for addressing safeguarding issues were not used in relation to the matters relied upon by the Defendants in these claims. Here, I refer to the Department for Education publication *Keeping children safe in education: statutory guidance for schools and colleges*. I had before me a number of versions of this guidance, from 2018 and 2020 ("The Guidance") and I have also found a number of versions of such guidance from my own researches. The parties did not produce the Guidance which was current at the time but Part Four in each edition contains the relevant procedures. However, if there was a failure to follow procedures in the Guidance, this only takes one so far. As I said in argument, a failure to follow the Guidance does not in itself show no safeguarding issue arose but is a point which can be used by the Claimants in support of their argument that the School did not in fact ever consider, contrary to the position it now adopts, that their conduct gave rise to safeguarding issues.

30. The Claimants have a strong personal relationship and have described one another as "sisters". Miss Smith also acted as a de facto guardian for Mrs Jackson's son (who was at the School at the material time) and took direct responsibility for liaising with his teachers and monitoring his educational progress. The impression I got of them is that they were and remained, even in evidence, fiercely loyal to one another and would step in to defend one another when necessary. This closeness and loyalty undoubtedly played a part in Miss Smith getting involved in the issues which Mrs Jackson had with Andrew and Mrs Hussey. It also meant that when relations between Andrew (and his family) and Mrs Jackson soured, this had an effect on Miss Smith's relationship with Andrew who had been her mentee. I turn briefly to Mrs Hussey.

31. A major feature of the oral evidence and the documents in the trial bundles, is what I would neutrally term "friction" between the Claimants and Mrs Hussey. I cannot resolve and do not need to resolve the rights and wrongs of this dispute. I can see however that from the Claimants' side they strongly and genuinely felt that she sought to undermine them; and they felt that in effect Andrew (in his issues with Mrs Jackson) had recruited Mrs Hussey onto his "side". The School was divided into "factions" - with those with Mrs Hussey on one side and those in opposition on the

other. The Claimants (together with Mrs Dixon) appear to have been on the anti-Hussey side. Certain of the matters which gave rise to this friction were raised by Mrs Jackson in a formal grievance about Mrs Hussey dated 5 March 2017. That is in the documents before me and I do not need to go into it any further save to note that in due course Mrs Jackson presented her evidence in support. How the grievance was resolved (or not) is not relevant to the issues I have to decide.

32. Mrs Jackson described in her evidence a number of issues with Mrs Hussey including in relation to assessments. I will not go into those but note that Mrs Jackson documented and reported some of the issues with Mrs Hussey to Mrs Dixon. Miss Smith witnessed some of Mrs Hussey's behaviour and she herself made what she called a "qualifying disclosure" (or "whistleblowing", as it was described in oral evidence) to Mrs Dixon. This led to a meeting on 27 January 2016, attended by Mrs Jackson, Mrs Pilmoor (BUC Educational Director), Mrs Dixon, and Mrs Hussey, to discuss the disclosure. Unfortunately, the meeting does not seem to have resolved matters and the friction continued. I turn to the first alleged safeguarding issue.

The Attack Issue

33. This starts with events concerning a student of Mrs Jackson, Tabasom Mahjub ("Tabasom") who also appears at further points in the narrative. These events led to the involvement of Andrew. Tabasom was Andrew's girlfriend at this time. On its face this is what I regard as a minor but unfortunate event and it took up a disproportionate amount of time in written and oral evidence, including cross-examination.

34. In March 2017, Mrs Jackson instructed her Year 11 students to work in pairs and use the mark scheme and exemplar responses provided by AQA to assess their own work and that of their peers. Her perfectly appropriate aim was to motivate the students to take responsibility for their learning and collaborate with their peers to improve their work. During one such session, Tabasom was unhappy when Mrs Jackson agreed with Tabasom's own assessment that her work on a particular question, was at a level 2 and not higher. Tabasom did not like this agreement. She said to Mrs Jackson that this was demotivating her and that her work was "going down, down, down" as a result. Mrs Jackson asked Tabasom to focus on her feedback. Tabasom told Mrs Jackson that the other students in the class felt the same way. That led to Mrs Jackson (again perfectly legitimately) raising the issue with the whole class who said they had no issues and that she was providing detailed feedback on what they needed to do to improve. Tabasom was upset that Mrs Jackson had raised this matter in open debate with the class. When the class moved to the ICT Lab, Tabasom had disappeared. Mrs Jackson sent an e-mail to Mrs Dixon informing her that Tabasom was not in class.

35. Mrs Dixon came to the ICT Lab to check if Tabasom had arrived at the lesson. Andrew then approached Mrs Dixon. He said he wanted to speak to Mrs Dixon outside the room. He said he was struggling with time management in Mrs Jackson's class. Mrs Jackson joined the conversation and pointed out that Andrew spent too much time focusing on Tabasom instead of his work. Andrew said that Mrs Jackson should be "more like Mrs Hussey", spending "five or ten minutes" of class time to motivate and communicate with students. He stated that focusing on improvements rather than acknowledging their successes was demoralising. Although he appreciated the "excellent feedback" Mrs Jackson gave them in their books, he asked Mrs Jackson

to seek out students outside of class, as Mrs Hussey did, and to encourage them. Andrew mentioned consulting Mrs Hussey frequently due to his lack of progress in English and felt his lower grades in Mrs Jackson's class were partly her fault. Unsurprisingly, Mrs Dixon told Andrew it was unacceptable to complain about one teacher to another. She instructed him to address issues directly with the concerned teacher and not play teachers "off" against each other.

36. The safeguarding issue relied upon by the Defendants arose later that same day in another class. They say that Mrs Jackson told the students that one of her students had "attacked" her (a reference said to be to Andrew's interactions with Mrs Dixon). I am not satisfied this inflammatory word was used but I am satisfied that Mrs Jackson said something on those lines: that a student had targeted her for adverse comment. I accept that whatever was said, it provoked a lot of sniggering in the class amongst students who probably knew this was Andrew. I accept this caused him to become upset. He was a sensitive teenager. It was not professionally appropriate for Mrs Jackson to have referred even indirectly to Andrew in this way but it is hard to see how in the day to day life of a busy and challenging school day this was an issue of real importance. I do not suggest that Andrew was not entitled to be upset but this is not the most serious of the matters before me.

37. A few days later Miss Smith (who had been Andrew's mentor for some time), said she was disappointed in him saying what he had said in relation to Mrs Jackson. This was part of the Claimants' approach of supporting one another. It also led to Miss Smith ceasing (without notifying anyone) to act as his mentor. That was highly unprofessional. I reject however the Defendants' case that the Claimants from now on started to wholly ignore Andrew. That is not made out in the evidence. There is an issue which I address below about his family withdrawing him from Mrs Jackson's classes later in the year before GCSEs.

38. I turn to the next issue which all parties were agreed is determinative of the main issues in these claims.

The Parliament Visit Issue

(i) ***Selection process***

39. In March 2017, Mrs Jackson began organising a trip to the Houses of Parliament for Year 11 students on 26 April 2017. The purpose of the trip was to enable the students to participate in (and to observe) debates. Andrew was a Year 11 student. In order to be chosen for the trip, the students had to attend compulsory debate training. The training was delivered by an independent trainer, Ms Bien King ("Ms King"), a debate club coordinator from iDebate-IDEA. iDebate-IDEA is an international debate education association which coordinates debates in schools and trains educators to deliver debate sessions. Ms King's role was to select the best candidates based on their performance in the training sessions.

40. By early March, a group of students (not including Andrew) had been selected by Ms King to attend the debates. However, on the morning of 19 April 2017, one of the students dropped out. Mrs Jackson informed the Year 11 students that those who were interested in replacing the student should attend the debate training at the end of that school day. Later that day, when Mrs Jackson had the Year 11 students for a class,

some students suggested that Andrew should be the replacement. Mrs Jackson responded by repeating the selection procedure (in short they would need to earn a place by participating in the training that evening). For reasons which are not relevant the training that evening was cancelled.

41. The debate training was rescheduled for 20 April 2017. On the morning of that day, Mrs Jackson reminded the Year 11 students of the selection procedure. The training session took place with Ms King, Mrs Jackson, Miss Smith and another teacher, Mr Emmanuel Kumi, present. At the beginning of the session, a student made apologies on behalf of Andrew who was not in attendance. Tabasom attended the training session. After the session a student was selected by Ms King. Andrew appeared after this selection. He asked Ms King if he could speak to her privately outside the room. Miss Smith told Andrew that he should speak to Ms King inside the room but Andrew said that he did not wish to do so. He then turned away from Miss Smith and insisted that Ms King speak to him outside. Ms King joined him outside the room and they had a discussion. Mr Kumi and Mrs Jackson then joined Andrew and Ms King in the corridor. Mrs Jackson asked Ms King to return to the room and to the students. Before Ms King returned to the room, Mrs Jackson spoke with Andrew in the presence of Ms King and Mr Kumi. He said that he had told Ms King that he should have been given a place on the team because he attended the Easter debate training booster camp. Mrs Jackson explained to Andrew that she found his behaviour inappropriate given the established procedure. That was a fair comment in all the circumstances. She repeated the selection procedure that had been used to select all members of the debate team.

42. As a result of these events, Mrs Jackson, Miss Smith and Mr Kumi concluded that Andrew had acted with a lack of respect for them and their authority; and he had deliberately attempted to undermine the selection process of the candidate for the debates. They decided that Andrew should not attend the debates. This decision was in due course endorsed by Mrs Dixon. Again, I consider these conclusions and decisions to be justified as appropriate responses to what had happened.

(ii) Parental meeting: 21 April 2017

43. On 21 April 2017, Andrew's parents requested a meeting with Mrs Jackson. They wanted to discuss her teaching of Andrew and in particular why Andrew's progress had in their view declined since she had begun teaching him (in comparison to his progress in Year 10 when he was taught by Mrs Hussey). Andrew's parents said to Mrs Jackson that they wanted the meeting to be only between them and Andrew. Mrs Jackson did not consider this to be appropriate and asked that senior leadership be involved. Accordingly, Mrs Dixon, Mr Amo-Adjei, Mr Nalli, and Mr Kumi attended the meeting. Mr Amo-Adjei and Mr Nalli were Andrew's form teachers. At the meeting, Mrs Jackson took the opportunity of informing Andrew's parents that Mrs Dixon had decided not to include Andrew in the school group for the debates. A letter was prepared for his parents stating why this decision had been made. They were handed the letter and informed in clear terms that Andrew did not have permission to attend the Houses of Parliament.

44. In the meeting, Andrew's parents said that they were concerned that Mrs Jackson was negative towards Andrew, particularly when it came to grading his work and giving him feedback on his work. They suggested that she was purposely failing Andrew. Mrs Jackson did not accept this had any justification. I accept this evidence - she was

not deliberately seeking to harm him in this way. There was much more detail in the evidence in relation to this meeting but I will not deal with it further beyond noting that the meeting concluded and there is a dispute as to whether demands were made by the family at that meeting to the effect that Mrs Jackson have nothing further to do with Andrew. They did not say this. It is inconsistent with what they said in the letter which I deal with next.

45. To follow-up, the Papaioannou family wrote to Mrs Jackson on 23 April 2017. They thanked her for her contribution to his education and stated that they thought it was best if Andrew did not attend any more of her classes for the rest of the school year. This is not consistent with any demand by the parents at the meeting of 21 April 2017 that Mrs Jackson have nothing further to do with him. The letter was measured, moderate and respectful in a situation where I accept the family had strong feelings about the way in which Andrew had been treated. It shows the family had made a careful decision as to their desire that Mrs Jackson no longer teach their son (no doubt a difficult decision just before GCSEs).

46. Andrew also wrote to Mrs Jackson a letter dated 23 April 2017, in which he apologised for his behaviour on 20 April 2017 (involving Ms King) and for not following the debate selection process. He accepted his behaviour had been "disrespectful and inappropriate". Whatever the rights and wrongs of the situation in relation to Andrew, it is clear that relations between Andrew/his family and the Claimants were not good.

(iii) 26 April 2017: the trip to the Houses of Parliament

47. This has been the major issue in the trial. Subject to an important factual issue about what happened at the end of the evening of the visit when Andrew and the School party were leaving Westminster, I do not consider the parties to have been far apart on the facts. Counsel agreed with this in their closing submissions.

48. On the morning of 26 April 2017, Mrs Jackson and Ms Smith were told in an email from Ms King that she had given Andrew a speaker role for another school. This came as a surprise and can be seen to have undermined the collective decision of the School not to include Andrew. Ms King had made a private arrangement with his parents. Mrs Jackson forwarded Ms King's email to Mrs Dixon, Mr Kumi and Mr Nalli. Mrs Jackson requested an urgent meeting to discuss how the matter should be dealt with. Miss Smith and Mrs Jackson also spoke to Mrs Dixon in person that day. They told her that in light of Andrew's behaviour (the matters I have referred to above), they no longer wished to accompany the students to the Houses of Parliament and to take part in the trip. Mrs Dixon was unable to find teachers to replace them at such short notice so they reluctantly agreed to go.

49. Mrs Jackson emailed Ms King requesting her contact information so that Mrs Dixon could speak to her personally. In advance of that proposed call, Mrs Jackson informed Mrs Dixon that Andrew's name was not on the list of names that she had submitted of students who would be attending the debates. Mrs Jackson also expressed the view to Mrs Dixon that a private arrangement with a child was deemed a safeguarding issue. This was agreed by Mrs Dixon. Following Mrs Dixon's contact with Ms King, Ms King apologised for her assumption that Andrew had permission from the School to

attend the Houses of Parliament. Ms King stated that she would inform the other school that Andrew could not participate in the debates for them.

50. Separately, Mr Amo-Adjei informed Mr and Mrs Papaioannou of Mrs Dixon's decision that in light of the private arrangement made between Ms King and Andrew the School would not be responsible for Andrew whilst he attended the Houses of Parliament. Mr Papaioannou responded and stated that he had forgotten to inform the School of Andrew's proposed absence from School (because he was to be attending the Houses of Parliament instead). Mr Papaioannou stated that Andrew's attendance was a private arrangement and as such neither himself nor Mrs Papaioannou expected the School to accept any responsibility for him whilst at the Houses of Parliament.

51. The five teacher contingent from the School attending the Houses of Parliament comprised Mrs Jackson, Miss Smith, Courtney Prince, who was the Designated Safeguarding Lead ("DSL") for the trip, Mr Kumi, and Mr Ricardo Wright (Head of the Mathematics department and also the Male Harassment Officer).

52. Andrew had not been informed by Ms King that he was not permitted to represent the other school before he had set off for Westminster by train and tube. He was on crutches at the time he left and throughout the evening. Andrew suffers from a painful inflammatory knee condition (Osgood-Schlatter disease). He was excited and looking forward to the debate despite finding it difficult getting there on crutches. Andrew first learned of the problem with his attendance when Ms King met him at the entrance. She told him that he was unable to take part in the debate following her call with Mrs Dixon and said she had sent an email to this effect. Andrew said he had not seen the email as he was travelling. Ms King was very sorry and said she had really tried to find a way of him participating in the debate but Mrs Jackson and Mrs Dixon did not want him to participate. Upon finding out that he could not participate, Andrew was very upset. He called his father to tell him what had happened. Andrew was however determined to attend the debate as a member of the audience. Because he was on crutches it was not easy to get into the debate room and he received assistance from Parliament staff with mobility. He did not speak to anyone from the School before the debate. He stayed in his seat from the start of the debate until the end and only spoke to his friends after the debate was over. His friends and the teachers had all seen him during the debate as he was sitting on the front row. He said in evidence that the Claimants were giving him *dirty looks*. I accept that this is how Andrew felt he was being looked at but he may have been reading too much into this. I accept that the Claimants were not happy at his attendance given what had gone before.

53. None of the teachers spoke to, or acknowledged, Andrew at any point during the evening. Mrs Jackson and Miss Smith both saw him speaking to friends including Tabasom, his girlfriend, during the event. When it came time to leave his friends told him there was space in the minibus and he should travel back with them. This prompted Tabasom to say to the teachers she wanted to come back with him, to check he was ok. She became emotional and upset (called a *tantrum* by the Claimants) when she was told that she was not allowed to travel back with Andrew on the train. This behaviour required calming by the Claimants, in particular by Mrs Jackson.

54. The debate ended. Andrew went to the toilets before all of them left the debate. My finding is that as he came outside on crutches he was seen by the students and by the

Claimants (and other teachers) who were gathered near the transit van minibus taking them home. Andrew gave a vivid description of the vehicle. He was not offered a seat nor did any of the teachers speak with him. Mrs Jackson and Miss Smith both said in their oral evidence that they did not see Andrew when they were leaving. I do not accept that evidence and I prefer Andrew's evidence that they had seen him alone on crutches making his way out at the time they were getting on the minibus. I find that they (and the other 3 teachers with them) saw him and made a deliberate decision not to engage with him. I also consider that Andrew's recollection of events outside Parliament when they were leaving is inherently more likely. He clearly wanted to go home with Tabasom and would not simply have disappeared before she and the School party left. In due course Andrew made his way back home and was picked up by Tabasom's mother from the local station and taken home.

55. To summarise, my finding based on the oral evidence is that the teachers on the trip did not speak to Andrew, and made no attempt to inquire as to how he was to get home, either during the debate or when they saw him leaving.

56. I turn to the next alleged safeguarding matter which is of a more minor nature.

The Muskah Incident

57. This issue concerns Miss Smith alone and was dealt with by Pastor Sweeney. There does not appear to be any relevant factual dispute as to the conduct of Miss Smith although why (and the context within) she spoke certain words was, as Pastor Sweeney found, subject to dispute. In short, the issue relates to an incident that took place in Miss Smith's maths class on 6 June 2017. During the lesson, Miss Smith used what she fully accepted was inappropriate language towards a pupil Muskah Mahjub (sister of Tabasom). Miss Smith was giving advice to Muskah as to how she could improve her work. Muskah reacted negatively to this advice. She said Miss Smith's advice (which was not well received) had something to do with her animus against Tabasom, her sister. In these circumstances Miss Smith said in an act of frustration: "*go to hell*". That was plainly wholly unacceptable conduct and Miss Smith fairly and immediately accepted this in her oral evidence.

58. Mrs Dixon considered a complaint about the conduct and rejected it. In due course, following a referral by the child's parents, Pastor Sweeney was asked to address this matter. He was default Chair of Governors of the School (in the absence of Berton Samuel). He interviewed Miss Smith and a number of students. He wrote a letter dated 13 July 2017 which records the investigation and outcome. That letter records what happened and I reproduce the material parts as follows:

> "…Many thanks for taking the time to meet with me on 05 July 2017 to discuss the incident that occurred in your class on 06 June 2017. My investigation of the allegations made by Ms Mahjub highlighted a number of disagreements and contradictions in the interpretation of the events of that day. However, I do believe that you used language and conduct with one of your pupils that falls short of the high standards that the Stanborough Secondary School sets, more so as a Seventh-day Adventist Christian institution. It is my conclusion, that the language and behaviour of 06 June 2017, was both

> inappropriate and unacceptable. I do appreciate that you immediately apologised to Muskah in the subsequent meeting that was held with her and Ms Dixon. I also appreciate the high standards you are seeking to set for your pupils. I also recognise the difficulty faced in teaching British children as compared to those children you taught when you began your teaching career in Jamaica. To this end I am recommending that Ms Dixon and the chair of governors, Mr Berton Samuel in consultation with you identify and complete the following: (1) A course or training session that will assist you in finding appropriate techniques of how to deal with difficult classes, and pupils. (2) A course or training or counselling session that will assist you in managing your emotions in stressful situations. I expect the above to be completed by the start of the next school year. While disciplinary action was considered, I do not believe it is necessary in this case and hope that the recommendations above will be of assistance to you and in your continued career in teaching. I am sorry that this unfortunate incident occurred and hope that you are satisfied with this conclusion. However, if you would like to appeal this decision, please do so in writing".

59. As recorded in the letter, Miss Smith was apologetic and did not deny she used inappropriate language towards the child. There is an issue between Miss Smith and Pastor Sweeney as to whether he said certain things to her in their meeting which appeared sympathetic towards her. I do not need to resolve those issues. I do accept his evidence however that he saw this as a safeguarding matter. I accept also that Miss Smith was unwell at the time she used these words and was under considerable stress. I do not need to go into the medical issues. She did not share details of these with anyone other than Mrs Jackson.

60. It is common ground that Miss Smith failed to undertake the recommended courses. In his oral evidence Pastor Sweeney appeared to accept that perhaps a "recommendation" was not quite what was intended but the letter did say he "expected" the courses to be undertaken within a certain time period. Pastor Sweeney was made aware that the recommendation had not been taken up when he spoke to Ms Clements at some time in the school summer term of 2018.

61. On 15 August 2018, Ms Clements wrote to Miss Smith. Her letter referred to their 12 July 2018 meeting and stated that the recommendations for her to undertake the courses recommended by Pastor Sweeney had not been followed. She also referred in that letter to an email Miss Smith had sent to a colleague, Alicea Anderson, who arranged cover for the teachers. In this email, Miss Smith had told the colleague to "*stop making trouble in God's school*". Ms Clements said in the letter that this was "*not the kind of conduct*" she expected from teachers of the School as it did not "*display the Christian ethos synonymous with our school values*" but the incident was not described as a safeguarding issue. The letter noted that Miss Jackson had "*asked for the matter to be brought to the attention of the BUC President*" (meaning the conduct of Ms Anderson) and informed Miss Smith that her "*conduct demonstrates that even twelve months on since the last incident giving cause for concerns about her*

behaviour in the workplace, there is a clear need" for you to "*undertake the training of the nature specified in Pastor Sweeney's letter dated 13th July 2017*". It is common ground that despite this letter, Miss Smith did not undertake any training.

62. In her oral evidence, Miss Smith said that she had not undertaken the courses recommended because no one had identified any such course, and also added that in fact she did not consider she had any issues which required her to undertake any training.

The Exam and Medication Issue

63. This is the final alleged safeguarding issue. This incident arose during one of Andrew's exams and concerns Miss Smith alone. The specific exam took place at some point between mid-May and mid-June 2017 when Miss Smith was the invigilator. Andrew and Miss Smith have different recollections. On this matter I prefer Miss Smith's evidence and consider that Andrew, whilst an honest witness, may at the time have interpreted events in an unduly negative way given the poor nature of relations between him and Miss Smith at this time.

64. Miss Smith was sitting at the side of the exam hall in close proximity to the students including Andrew. He raised his hand to get her attention. Miss Smith held a cup of water in the air to query whether he needed water. He shook his head to indicate "no". She then did the same action with a tissue and he shook his head to indicate "no" again. Miss Smith then gestured "*what?*" and he said "*medication*". Miss Smith then went to the telephone which was at the side of the exam room to make a call to the office to request that someone bring Andrew his medication, which they did.

65. After the exam ended, both Andrew and Tabasom complained to Mrs Dixon that, despite seeing that Andrew had his hand raised for a considerable amount of time, Miss Smith chose to ignore him until she eventually and loudly shouted "*what?*" across the exam room, which caused a disturbance. Andrew also alleged that she refused to go over to his desk, leaving him with no other alternative than to loudly shout across the room that he needed his medication for asthma and hay fever. Andrew further alleged that she then angrily walked over to the telephone and loudly shouted down the telephone that he needed his medication, and then she slammed the phone down, which caused all the students to lose their concentration during the exam. This was the substance of his evidence at trial which I consider to be mistaken. The account of Miss Smith which I have set out above is more likely to represent the events that took place during the exam.

66. This completes my narrative and findings on the facts said to give rise to safeguarding issues. I now continue with other relevant events in the chronology.

The Papaioannous' formal complaint

67. On 8 May 2017, the family sent a formal letter of complaint ("the Complaint") to Berton Samuel, the Chair of Governors about the Claimants and Mrs Dixon. The Complaint is a lengthy document and unfortunately the family did not receive a response from the School until March 2019. That is plainly an unacceptable approach and may be a result of the way the BUC allowed the School to be run. For present

purposes, I note that one of the issues raised in the Complaint concerned the Parliament Visit:

> "…One of the most hurtful things from that week's events (at least as far as our family is concerned) was the fact that at the end of the debate (around 9pm), the Stanborough teachers present (Mrs Jackson and Ms Smith) departed with the Stanborough group in the minibus and left Andreas behind to come home on his own, on crutches, on public transport, even though there was space in the minibus. I had offered to pick him up from London by car, however he advised me that he was fine coming home by train. Although we understand that the school had no responsibility towards him whatsoever, would it not have been the right/decent/Christian thing to do to offer him a lift home? What example are they setting to our children? What our Christian teachers were not prepared to do a Muslim parent did – she called Andreas up when she collected her daughter from the school and found out he was returning home by train, told him to get off at North Finchley station, drove the half hour there, picked him up, took him to McDonald's for something to eat, and brought him home at 11.30pm. The actions of this Muslim parent put our so-called Christian teachers to shame…".

Resignations

68. On or about 10 May 2018, Miss Smith and Mrs Jackson had a conversation with Mrs Dixon and gave her verbal notice of their intention to resign from their posts. They asked if they could use her as a referee. Mrs Dixon agreed. During this conversation, they told her that based on their observations of recent events in the School, they feared that there might be a plan to replace her and promote Mrs Hussey to the position of Head Teacher. The Claimants told her they wanted to resign before that happened because given their history with Mrs Hussey. They were not willing to continue working at the School if Mrs Hussey became the Head teacher. Mrs Dixon understood their concerns and supported the decisions to leave. She accepted their notices and gave each the positive references to which I have already made reference. The Claimants did not inform anyone else of their resignations until letters dated 31 August 2018 sent to the School.

69. On 7 September 2018, Ms Clements (who had become Chair of Governors) wrote to each Claimant, acknowledging receipt of their resignations. In these letters, she noted that failing to give "*three months written notice to terminate*" their employment with the School was "*a clear breach of contractual arrangements with Stanborough Secondary School*". The letters went on to say that the fact they had failed to "*adhere to contractual obligations*" would be referred to in any reference requested from the School. The letters made no reference to outstanding disciplinary or safeguarding matters but one can readily appreciate the difficulties the School would have faced losing two teachers a few days before the new term was to begin. I turn now in more detail to Ms Clements and her actions.

Judy Clements becomes Chair of Governors

70. Ms Clements was a straightforward and wholly honest witness. She became the Chair of Governors in April 2018 and almost immediately staff members made complaints to her about Mrs Dixon. Dealing with these matters as between Mrs Dixon and staff was a challenging experience. As she fairly described, the task facing her was more like being sent in as an emergency Executive Head to deal with a failing school, as opposed to acting as a Chair of Governors. Ms Clements' impression was that Mrs Dixon had not been held to account by the Governors before her arrival. Ms Clements was also concerned to discover that regular Governor meetings did not take place, and if any meetings had taken place, minutes were either not prepared or indeed there were no minutes at all. A particular matter of concern to her was that issues around safeguarding were left without any action being taken. She found what she described as a "culture of hiding matters" and Mrs Dixon not reporting them to the Governors. Mrs Dixon was the interface between the School and the Governors, and the Governors would not have knowledge of matters unless she reported them. In short, Ms Clements says she "walked into a mess" when she joined the School as Governor. As Mr James was also to find when he joined the School, Ms Clements found poor record keeping in relation to teacher records (personnel and staffing) and complaints. This included basic documents like employment contracts being missing.

71. In the Summer of 2018, Ms Clements began investigating the performance of Mrs Dixon. Mrs Dixon was hostile to Ms Clements' investigation and on or around 18 June 2018 she was signed off sick. Before this, Ms Clements had informed Mrs Dixon that she was investigating the Complaint of 8 May 2017 which Berton Samuel had not dealt with (it being well over a year old by now). She apologised to the family that it had taken so long to be dealt with but assured them she would take it seriously and investigate it as quickly as possible. Ms Clements had extensive discussions with Pastor Sweeney and Kathleen Hanson, then the BUC Education Director regarding the Complaint. Her first step was to gather evidence and she had a meeting with Mrs Dixon to deal with the Complaint and some other matters. Mrs Dixon blamed Andrew for all the complaints made by the family. After she left the meeting with Mrs Dixon, Ms Clements concluded that there was no factual dispute as to the incidents raised by the family. In particular, she said that Mrs Dixon confirmed to her that Andrew was left in Central London late at night after the debate trip. Ms Clements recalled that Mrs Dixon sought to defend Andrew being left behind. This caused her some shock. Ms Clements decided that the issues raised by the family were serious and she arranged meetings with the Claimants.

72. Ms Clements met with Miss Smith on 12 July 2018, and Mrs Hussey was also present and took the minutes. I have a copy of the minutes which are short. I note that the minutes refer to recommendations from Pastor Sweeney (which I take to be references to the Muskah Issue). The minutes also suggest the focus was on the relationship between Miss Smith and Mrs Hussey as opposed to wider safeguarding issues.

73. There was also a meeting that day between Ms Clements, Mrs Hussey and Mrs Jackson. The minutes are fuller and relevantly include the following brief reference to the Parliament Visit and why Mrs Jackson did not consider it a problem and why Ms Clements thought differently:

> "[Mrs Jackson] said that this reminded her of what had been said in the meeting with Dr Duda. They had asked what type of Christians we are, if we cannot take a pupil who is on crutches,

> onto our school bus? She then went on to explain what happened on that rip [sic]. She had the DSP (CP) with her on that trip. Andreas did not speak to anyone when he got there. [Mrs Jackson] was busy with Tabasom, who wanted to go home on her own, but she did not have a parental permission slip. [Ms Clements] asked if all the four teachers had not seen Andreas".

74. After considerable delay, Ms Clements prepared a draft response letter dated 30 January 2019 in relation to the Complaint. She did not send this to Mr and Mrs Papaioannou (for legal reasons which are not relevant to the issues before me) but kept it as her own record of what she had considered and decided should she ever need to return to these matters. I accept her evidence that the draft was an accurate record of her conclusions at the time. Indeed that was not challenged in cross-examination nor was it suggested that she had not formed those opinions in good faith. The draft letter said in relation to the Parliament Visit Issue:

> "In considering the matter regarding Andreas' treatment in relation to preventing his participation in the school parliamentary debate, I find that both you and Andreas should have recognised the need to have gone through the school in order to participate even as a candidate with independent status. I also recognise that both you and Andreas may have been misled by Mrs Bien King, as she should have known that a pupil could not participate in these debates in any capacity without the support or permission of their school. I find this most unfortunate. It is also clear to me that Mrs Jackson did not want Andreas to participate, and I can see no justifiable reason for her decision. With regard to Mrs Jackson waiting until just before the start of the debate to inform Andreas that he could not participate, I find this wholly unacceptable. In this instance, the school showed no consideration for the psychological impact this would have on Andreas. I spoke with Mrs Jackson regarding leaving Andreas behind to fend for himself on crutches when there was ample space on the school transportation, her rationale is that she had no contact whatsoever with Andreas on the evening of the debate, yet she was aware that Andreas had sat away from the other students and had given instructions to a colleague that he was not to return with the school party. When I raised this with Miss Smith she claimed not to have been aware of Andreas' presence at the debate; an account, which I subsequently discovered, was not accurate. When I discussed this matter with Mrs Dixon, her justification for the school's action in this regard was based on safeguarding and insurance grounds. Taking into consideration both our school values and on humanitarian grounds I find this is a breach of Christian ethics where, once more three members of staff showed no compassion or consideration for the emotional and physical wellbeing of Andreas witnessing all his friends return to school together on transportation which had

> empty seats to accommodate him. In hindsight, there are sound lessons for the school to learn. This was a school trip where a pupil was in a vulnerable situation because, it was late at night, he was on crutches due to a serious medical condition (Osgood Schlatter) in the centre of London, there was ample space on the school transport, and the student was left alone to rely on public transport to travel back to Watford. I can assure you that this is not how the vast majority of staff at Stanborough Secondary School would behave and indeed one staff member on the trip was deeply uncomfortable at Mrs Jackson's conduct. I note the school wrote to you to say they would not accept any responsibility for Andreas as you had made a private arrangement, and you wrote to acknowledge this. Nevertheless with regard to the School's safeguarding mitigation, I have obtained expert advice that suggests it could be strongly argued that to have left Andreas behind as they did constitutes a breach of Safeguarding and Health and Safety legislation. It would also be interest for me to know what your expectations were of the school in respect of Andreas getting home after the debate".

75. So, it can be seen that well before the Reference was sent (indeed some years before) Ms Clements had concluded that as a minimum Mrs Jackson, Miss Smith and any other teacher there on the day had a duty to do all they could to contact Andrew's parents to ask how he was to return home and ask for their consent to him being taken back in the minibus. Her evidence was she viewed this then (and now) as a serious breach of duty and a serious safeguarding breach placing a vulnerable pupil at risk of harm. She said that had they still been employed these matters would have resulted in disciplinary proceedings. She stood by this in her oral evidence which I accept without reservation. Indeed, this was not challenged on behalf of the Claimants.

76. Ms Clements' actual letter of response to the Complaint was sent to the family on 4 March 2019 and did not contain the paragraph I have quoted above. The legal advice the School received has been disclosed and the Draft Letter was the product of amendments made by the School's solicitors. These solicitors substantially amended the Draft Letter to remove any conclusions or findings which might create liability risks on the part of the School to the Papaioannou family.

Mr James joins the School

77. Mr James joined the School as Head Teacher in November 2019, succeeding the interim Head Teacher, Mrs Hussey. Prior to this he had held three Head Teacher posts. I found him to be an impressive witness with substantial teaching and leadership experience. Prior to joining the School, he had been a designated safeguarding lead ("DSL") for 10 years and had dealt with many safeguarding issues, ranging from the low level to the extremely serious. Insofar as it is right to call anyone an "expert" in the field of safeguarding, his evidence demonstrated to me that he had a detailed knowledge of the current safeguarding requirements in academic institutions as well as substantial practical experience of dealing with such matters. Mr James was a *trouble shooter*, often employed to go into failing schools and sometimes to rectify safeguarding problems.

78. Mr James had no affiliation with the Seventh-day Adventists Church. The first time he learned that the School was linked to the Church was when he read the job advertisement. He was also informed of the relationship between the Church and the School by Ms Clements when interviewed for the role of Head. During that interview, in late 2019, he learned from Ms Clements that there were issues surrounding finances, safeguarding, staff culture and general standards attained by the School.

Culture of the School

79. Mr James had a "handover" with Mrs Hussey and got to know the working environment. He had conversations with all of the members of staff, and some students. What he discovered was distressing: there was a toxic and hostile culture between certain members of staff; and that there had been safeguarding concerns but these had not been dealt with in a timely manner nor, it seemed to him, treated as seriously as they should have been. Mr James found out in the course of his work that many documents had not been properly logged onto the IT systems, such as contracts of employment, and policies which had not been updated. He found there were piles of paper everywhere. Overall, Mr James felt that the atmosphere and environment at the School were not at all positive. It had a poor attendance rate for both students and staff, and poor academic performance.

Safeguarding generally

80. While he was the Head, there were many allegations and concerns about senior members of staff sent to him. Some of the allegations and concerns involved bullying and safeguarding. Given the firm foundation in the Seventh-day Adventist Church, he found that religion played a big part in the day-to-day running of the School. Mr James explained in his evidence, this often led to members of staff looking "after their own". He found that members of staff were very strong-minded people and so were never held to account. Mr James' perception was that this was a longstanding cultural problem in the School and that it had led to many members of staff "getting away" with things which should have been addressed by the leadership.

81. What Mr James found most concerning was a complete disregard for practices, in particular as regards safeguarding. He tried to create an open safeguarding culture in which if one member of staff had done something wrong, then steps would be taken to rectify it. He explained in his evidence that this all starts with reporting the issue or concern in the first place. He found that senior members of staff often did not report safeguarding concerns, because they involved a friend. That meant the DSL at the material time would not know about the safeguarding issue.

82. When he arrived at the School, he identified that the safeguarding policy was not kept updated and was what he termed a "vague" policy that required amending because it was not in line with "Keeping children safe in education as issued in September 2019" (this is the statutory guidance to which I have made reference above). At the time in March 2021 when he was dealing with the reference requests in issue in this claim the guidance had just been revised in January 2021. However the provisions regarding references and what should not be included in them had not changed for many years. Mr James had given references in the past and knew that the guidance was not to include safeguarding allegations that had been proven to be false, malicious or unsubstantiated. His evidence was also to the effect that he had in mind what I have

called the wider concept of safeguarding in the educational context as opposed to the narrower one which is relevant for the purposes of the truth defence. That said, Mr James explained, without challenge, that his understanding of the notion of a safeguarding concern included behaviour that has either caused harm to a child, or placed a child at risk of harm.

Miss Smith and Mrs Jackson

83. Mr James has never met the Claimants. The first time he heard of them was when he had initial conversations with staff in late 2019. It came to his attention that they had resigned. He learned from Mrs Hussey and Ms Clements that there were concerns about Miss Smith and Mrs Jackson. In particular, Ms Clements informed him about the findings of her investigation into the Complaint which she had recorded in the draft letter of 30 January 2019 to which I have made reference above: see [74]. At the time he considered this was just background about past issues with previous employees. His evidence was that he was broadly familiar with the draft letter's contents before the reference requests were received from Mr Brown and he particularly recalled having been shocked at hearing that a pupil on crutches had been left alone in London. Following these initial conversations, he read through the personnel files of both Miss Smith and Mrs Jackson. It was apparent to him that they were not complete. He was told that they had left without giving proper notice.

The Claimants receive new job offers

84. On 3 December 2020, The Shared Learning Trust (on behalf of the Stockwood Park Academy), offered each of the Claimants permanent employment as teachers at the Academy, commencing 12 April 2021. The offer made to each Claimant was as 2nd in Curriculum and stated to be "conditional upon and subject to" receipt of "two satisfactory references". Mr Dan Brown of Dunbar Education, a recruitment consultant in the education field, had obtained these offers for the Claimants.

The Reference: the emails between 5 March 2021 and 18 March 2021

85. I will set out the relevant internal and external email exchanges culminating in the Reference below but will later also summarise the facts and process surrounding these emails. I will need to do that in some detail because the process is at the heart of the alleged malice and alleged negligence issues.

86. Matters began with an email dated 5 March 2021 at 14.20 from Mr Brown addressed to the school's HR team and sent to the school's "info" email address:

> "Subject: FAO The HR Team – Reference Request for Ann-Marie Smith
>
> Ann has been offered a position through our agency and our safeguarding procedures require us to approach their last two places of work or teaching practices for a reference. We were provided with your name and would be most grateful if you would complete our attached reference form and return as soon as possible. The reference should only take you a few minutes to complete and we would greatly appreciate an early reply to

> this request as we are unable to search for roles for them until this is received. Should you have, and prefer to use, a standard reference that you have on file please address this to the Compliance Officer and email back to this email address on the appropriate letterhead to verify authenticity. We thank you for your help."

87. The form accompanying the email was a "reference request form". It requested routine factual information, as well as the reason for leaving (if known) a tick-box assessment of performance and details of disciplinary action. The final question on the form was "Have there been any allegations or concerns raised against the applicant relating to the safety and welfare of children or young people or vulnerable adults or relating to behaviour towards children or young people or vulnerable adults?". A separate email was sent at the same time in respect of Mrs Jackson, which was identical save that instead of starting "Ann has been offered" it said "Kayon has applied for". As I have identified above, at this time both Claimants in fact held offers (subject to references) from Stockwood Park Academy.

88. A response was not received to these initial emails so a chasing email was sent on 9 March 2021 at 14.13 by Mr Brown. It was addressed to the school's HR team and sent to the school's "info" email address. This email focussed directly on safeguarding issues and read as follows:

> "Subject: FAO The HR Team – Reference Request for Ann-Marie Smith
>
> We previously sent you a reference request for Ann-Marie Smith (email below and proforma attached). Would it be possible to complete this and email it back asap. If you are not able to write a full reference but can instead just confirm the dates and that there were no safeguarding issues that would be absolutely fine."

(A separate email was sent at the same time in respect of Mrs Jackson, in identical terms)

89. On 11 March 2021 at 16.43 Mr Brown sent a further chasing email referring to the fact that he had "telephoned yesterday to chase these references up". This does not seem to have been a call with Mr James (Mr Brown did not speak with him until later, as set out below). In the email Mr Brown again said that if the reference could not be completed, the school could instead just confirm the dates of employment and "that there were no safeguarding issues". He said the new school needed these references "urgently".

90. There seems to have been no response to this and on 12 March 2021 at 11.04, Mr Brown (having obtained Mr James' direct email) sent the following (identical) requests for the Claimants:

> "Subject: Reference Request for Ann-Marie Smith

> Dear Kaz. I hope you're well. I spoke to a member of your staff today who informed me to email through the reference request for Ann-Marie Smith directly to yourself (email below and proforma attached). Would it be possible to complete this and email it back asap. If you are not able to write a full reference but can instead just confirm the dates and that there were no safeguarding issues that would be absolutely fine. Many thanks for your help, it is appreciated. If you could get back to me asap it would be much appreciated. Their new school needs these urgently".

91. On 15 March 2021, Mr James and Mr Brown had a telephone conversation. Mr James was not able to give a full reference and said that he needed time to review the requests properly. Mr James felt that Mr Brown was pressing him to just "rubber stamp" things and he said he was not happy to do so.

92. This call was followed up by an email on 15 March 2021 at 15.27 (which appears in the papers to have been sent in respect of Mrs Jackson only). This email evidences what had been discussed:

> "Subject: Reference Request for Kayon Jackson
> Dear Kaz, Thanks for speaking with me.
> As per our conversation, I 100% understand that you cannot comment on Kayon's teaching as she left before you joined, however, if you could confirm the dates and that there were no safeguarding issues; that would be much appreciated. I have put the dates and the position on the forms – please can you check and return. Many thanks for your help Kaz, it is appreciated."

93. This email was accompanied by shorter versions of the "reference request" (one for each candidate), which Mr Brown had completed with basic factual information. The only questions for the school to complete related to disciplinary action and safeguarding, the wording in respect of which mirrored the longer version of the form.

94. A further chasing email was sent on 17 March 2021 at 10.49 (my underlining):

> "Subject: FAO Kaz James – URGENT Reference Request for Kayon Jackson & Ann Smith
>
> Dear Kaz,
>
> Thanks for speaking with me on Monday. Did you receive the references okay?
> I've attached both forms again with this email. I have put the dates and the position on the forms – please can you check and return. <u>We now need these urgently; they are supposed to be starting on Monday and the Head of their new school is chasing me morning and night.</u> Many thanks for your help Kaz, it is appreciated."

(The email was accompanied by the shorter versions of the reference request, as sent to Mr James on 15 March 2021).

95. The underlined text made a false representation. The Claimants were not in fact due to start on the coming Monday but some weeks later (12 April 2022). Mr Brown accepted that this representation was false. It was made in the same terms in further emails I set out below. In oral evidence he suggested that this error arose because he had possibly used a "template" from another letter. I do not accept this rather unconvincing explanation. It is obvious to me that a lie was told as part of a bluff to get the School moving in circumstances where Mr Brown wanted to complete the transaction in which he had placed the Claimants.

96. When he first joined the School, Mr James did not have a personal assistant ("PA") and he had to deal alone with the administrative aspects of the job. This was challenging given how chaotic the systems and records were. During 2020, Mrs Papaioannou was employed as his PA and she took on the administrative tasks. It is in that capacity that she entered the picture at this stage. Mr Brown had obtained her details and spoke with her. On 17 March 2021 at 14.51 he sent her the following email:

> "Subject: URGENT Reference Request for Kayon Jackson & Ann Smith
>
> Hi, Thanks for speaking with me. I really appreciate your help. As per our conversation, if you could confirm the dates and that there were no safeguarding issues during Ann and Kayon's time with you; that would be much appreciated. I have put the dates and the position on the forms – please can you check and return. We now need these urgently; they are supposed to be starting on Monday and the Head of their new school is chasing me morning and night.
>
> Many thanks for your help, it is appreciated."

(The email was accompanied by the shorter versions of the reference request, as sent to Mr James on 15 March and earlier that day).

97. Mr James has completed a substantial number of employment references during his career, but the requests in relation to the Claimants were the first he had to deal with at the School. The reference requests were received just as the lockdown for schools due to the Covid Pandemic was about to end. At the time of the first email on 5 March 2021, Mr James and Mrs Papaioannou were working in the School. They were planning the reopening of the School. Unsurprisingly, Mr James said in his evidence that this was an incredibly busy and stressful time. The School had to provide online teaching, and reorganise the international boarding school including sending children home to their home countries.

98. Mr James explained that it is common practice that a reference request is sent to a previous Line Manager to complete. However, Mrs Dixon who was the Line Manager for both Claimants had left the School. He noted that there was no reference for either

Mrs Jackson or Miss Smith on file. Until these proceedings, he had not seen the glowing handwritten references that were completed by Mrs Dixon in 2018.

99. I accept his evidence that as an experienced professional, Mr James took the reference requests seriously. He explained that he was not prepared to send a response to Mr Brown without checking all that he could before writing a reference. He felt (with some justification when one sees the demanding language of the emails I set out below), that he was being pressured by Mr Brown to just write something quickly and without checking properly.

100. On 17 March 2021 at 15.23, Mrs Papaioannou sent an email to Mrs Hussey (copied to Mr James as follows):

> "Subject: URGENT Reference Request for Kayon Jackson & Ann Smith
>
> Dear Mrs Hussey, Mr Brown would like some information from us in regards to Miss Ann-Marie Smith and Mrs Kayon Jackson. I will fill in the forms so no problems there with the dates. However, I am not sure about any safeguarding issues. I know there were some other important matters and there are emails in their files in connection to those. Would you be able to shed some light on the safeguarding or other important issues please? And would those be serious enough for us to report to their prospective School?"

101. On 17 March 2021 at 15.50 Mr James sent an email to Mr Brown (copied to Mrs Papaioannou):

> "Subject: References
>
> Hi Dan. It appears there are some incidents on one of the files, which will need to be further explained to me before I can confirm they are not safeguarding issues. I will update you as soon as I can."

102. On 17 March 2021 at 15.52 Mr James sent Mrs Papaioannou the forms Mr Brown had sent him and said: "Here are the forms which I will need to complete. As there may be safeguarding issues we cannot rush this through. I'll elaborate tomorrow".

103. A few minutes later on 17 March 2021 at 15.54 Mr Brown sent an email to Mr James (copied to Mrs Papaioannou):

> "Subject:References
> Okay thank you for letting me know. They went from Stanborough to Oasis Academy and have nothing on their DBS's..... seems very odd that if it was a safeguarding issue that it was not raised at the time. Hopefully not a safeguarding issue. If you could please get back to me asap that would be much appreciated. They are starting permanent jobs on Monday

> so we need to know pretty quickly. Again thanks for your help Kaz... I know you're a busy man."

Mr Brown was getting anxious and just over an hour letter on 17 March 2021 at 17.13 emailed Mr James:

> "Subject: References
>
> Hi Kaz, Was there any update yet? The Head of their new school is calling me tonight. Even if I'm just in a position to say that all is fine and the references will be over tomorrow; then that would be great. If I don't hear back then it puts me in a difficult position; I don't know if I'm saying there's a safeguarding issue or not. Please feel free to call me if easier – [MOBILE]. Thanks Kaz, Dan Brown"

Mr Brown chased Mr James again on the morning of 18 March 2021 at 10.38 (copied to Mrs Papaioannou):

> "Subject: References – Ann Smith – Kayon Jackson
>
> Morning Kaz, I just wondered if there was any update? I think their new Headteacher is going to contact you directly. She gave me till this morning to get the references and now wants to contact directly as time is running out. Are you happy for me to pass on your details?"

104. Later that day on 18 March 2021 at 12.36, Mrs Hussey sent an email to Mrs Papaioannou (copied to Mr James):

> "Dear Mrs Papaioannou, I initially told you that I did not think that Mrs Jackson or Ms Smith had any safeguarding issues when they worked for the school, however, the DSL at that time was Mrs Dixon. Mr Poddar was the DSL before her, so I do not know. Further to our conversation yesterday, the Chair of the Board (Mrs Clements) must be contacted by Mr James, with regard to references for these two ex-employees, as they left without giving notice and I am sure that she wrote to them."

105. Mr James responded to this email at 13.40 on 18 March 2021 thanking Mrs Hussey and stating "I have managed to find the relevant information for the two ex-employees".

106. I note that the Shared Learning Trust (on behalf of the Stockwood Park Academy) appears to have emailed the School and Mr James directly on 18 March 2021 seeking references for the Claimants, but there is no record in the papers of any response. The reply was requested by 26 March 2021.

107. It is in these circumstances that the email which is the subject of these claims was sent by Mrs Papaioannou to Mr Brown at 15.47 on 18 March 2021. The full terms were as

follows (with emphasis as in the original):

> "**Subject:** RE: URGENT Reference Request For Kayon Jackson & Ann Smith
>
> Dear Mr Brown,
>
> Thank you for your e-mail. We can confirm that the applicants worked at Stanborough School during the following dates
>
> Kayon Jackson
>
> Start date: 01/09/2014
>
> End date: 31/08/2018
>
> Ann Smith
>
> Start date: 03/09/2014
>
> End date: 31/08/2018
>
> However, I would like to inform you that **there were some safeguarding issues during their time at Stanborough School.** We will fill in the forms you have sent us in detail and send these to you shortly.
>
> Kindest Regards
>
> Anna Papaioannou
>
> **International Programme Coordinator**
> **Marketing Administrator**
> **Acting PA to Headteacher**
>
> **God is the Master of Our School**
> Watford, Herts WD25 9JT
> Tel: [deleted]
>
> …".

108. Mrs Papaioannou later sent an email to Mr James at 16.44 on 18 March 2021 as follows:

> "Dear Mr James, As per our discussion, I have filled in both forms. Please check them and add your own comments. I have also confirmed the date with the agency and informed them that there were safeguarding issues during their time at Stanborough School. I promised the agency that we will send the completed forms to them shortly. They have actually called me after I had just sent them the information and they demanded that we send the forms asap. Apparently, the applicants are sitting home

> being frustrated. Dan also mentioned that Stanborough School has written references for them after they left and applied at an Academy. Safeguarding issues were never mentioned from Stanborough. I discussed this with EH and she thinks perhaps it was Mrs Dixon who did this illegally but she is not sure who it was that actually did so. I informed Dan that we will try to send these tomorrow."

109. I accept Mr James's evidence that after the Reference had been sent Mr Brown indicated that the more detailed forms did not have to be completed. Mr Brown had the answer he needed on the safeguarding issue which was the focus of the email requests I have summarised above. This meant the precise details of the safeguarding issues were never disclosed to the new school or to the Claimants at this time.

110. On 19th March 2021, the Claimants had a telephone conversation with Mr Brown in which he informed them that the agency had received unsatisfactory references from the School. Mr Brown did not say anything further about the Reference nor did he provide them with a copy of the Reference.

The job offers are withdrawn

111. On 23 March 2021 the Claimants each received letters from the Shared Learning Trust (on behalf of Stockwood Park Academy) withdrawing the offers of employment that had been made to them on 3 December 2020. The letters were in identical form and show that Mr Brown had communicated to them the terms of the Reference to that school. Insofar as material, the letters said "…I am writing to confirm that the employment offer made to you on 3rd December 2020 for the role of Second in Curriculum – English has been withdrawn. The reason for this is due to the receipt of an unsatisfactory reference".

The conversation of 23 March 2021 between Mr James and Mr Brown

112. Both Mr James and Mr Brown agree that they spoke on this day. Mr Brown's evidence is that he made handwritten notes of the call they had at 12.02pm and then some days later he created a WORD document which he uploaded on 30 March 2021 to his company's database for "due-diligence" purposes. There is a substantial factual dispute as to whether this note is an accurate record and as to what was discussed. The parties agreed that the dispute is such that either Mr James or Mr Brown were being dishonest in their evidence to me. This cannot be a case of simple misunderstandings or inaccurate recollections.

113. Mr Brown's note is dated 30 March 2021 reads as follows (with my underlining):

> "23.03.2021 at 12:02pm, I had a conversation with Kaz James – Headteacher at the Stanborough School re Ann Smith and Kayon Jackson who were employed at the school from 2014 to 2018. Kaz did not join the school until 2019 so he does not know them personally. He has said that he has old emails that reports [sic] issues between Ann and Kayon and other members of staff at the school and also refers to one incident where one of the teachers referred to a pupils [sic] as a 'Devil Child'.

> However, Kaz has stated that there is nothing in what he has read that suggests safeguarding issues and lots of it is just unsubstantiated claims from other members of staff with whom Ann and Kayon had experienced issues with. Kaz made a point of saying that the other teacher were certainly characters that often found themselves in these sorts of disputes. He has stated that in his mind, nothing can be deemed as safeguarding as nothing was ever reported to the Lado. He has also said that 'if it had been safeguarding then I would have known about it'. Kaz has said that although they left the school without much notice and certainly feathers were ruffled; he would not deem any of this to be safeguarding issues and he would advise that we try and find them new roles and just leave Stanborough in the past. Dan Brown and Matt Brown (the Co-Directors) have discussed this and do not believe this to be safeguarding issues. We have requested and received two references from their current school (Head and SLT). We also have a clear DBS and Barred List Check. No further action required".

114. Mr James said in evidence that those parts of the note I have underlined are not accurate. Mr Brown stood by this note as an accurate record. Both were tested in cross-examination. I have no hesitation in preferring the evidence of Mr James, having seen and heard the witnesses, and also bearing in mind the content of the note when compared with what had gone before it. I consider Mr Brown to be a person who lies when it is convenient. I refer to his false representations in the emails about the Claimants "starting on Monday" as I have described them above. Given the care with which Mr James had gone about the task of responding to the request for a reference and the language and terms of the Reference (which are in direct contradiction to the note), I find that Mr Brown made a deliberately false record. Mr James said in evidence that he did not then or now consider the LADO had to be informed of all safeguarding incidents. The other underlined parts are wholly inconsistent with the Reference. It is notable that Mr Brown made no effort to email the School to say something along the lines that what was said in the Reference was in fact untrue or no longer asserted by Mr James.

115. Although it is not strictly necessary for me to decide why Mr Brown created a false record, it may well have been to create a paper trail suggesting those he had "on his books" as a recruitment consultant did not have any negative safeguarding concerns on record. This would have permitted him to continue to seek new offers for the Claimants. In fact he did do that and one can infer he was able to assert that the Claimants had clear references from his records.

116. On 23 March 2021 the Claimants were informed by Mr Brown that he and Mr James had a telephone conversation regarding the Reference. It was reported to them that Mr James had said that they were not involved in any safeguarding issues and no such allegations were reported to the LADO. He also told them that Mr James had advised Mr Brown that Dunbar Education should try to find the Claimants new roles, leaving out Stanborough as a reference. I am satisfied that this conversation took place but my finding is that Mr Brown did not give an accurate and truthful report of his true

discussion with Mr James. He misrepresented the position to the Claimants on the lines of the false record of the conversation recorded in his note.

Process

117. Having set out the run of emails and some of the oral evidence and the post-Reference documents, I need to turn to Mr James' process in deciding on the terms of the Reference and my findings on the identity of the true author of the offending words. As set out above, upon joining the School, Mr James had some general discussions during which Miss Smith and Mrs Jackson's behaviour was called into question by Ms Clements. Accordingly, and as he said in evidence, when the reference requests in respect of the Claimants were received he was on notice that he would need to look at the documents available to understand more about the individuals. In my judgment, he came to the exercise on a fair and impartial basis and in good faith. Indeed, the contrary was not put to him in cross-examination. As I have already noted, Mr James did not know the Claimants, nor did he have a close relationship with any of the people with whom they had had difficult historic relationships. I will summarise his evidence as to process below and I accept it in its totality as an accurate reflection of how he went about the process and the care he took. I also accept without qualification the evidence of Mrs Papaioannou as to her role and actions. Like Mr James, she was a scrupulously honest witness. It is only by coincidence that she in her role as PA came to be dealing with the References for persons with whom the family and her son had had challenging interactions during 2017 when he was a student at the School.

118. Unfortunately, that coincidence has caused the Claimants to interpret her involvement as sinister and led them to aggressively plead and pursue (to the very end of the trial) a case based on a theory that she had "…resolved to wreak vengeance upon [the Claimants] and to cause them very serious harm in their careers and job seeking by composing the March email (including the false reference with regard to safeguarding issues) persuading [Mr James] to authorise the sending of the March email and sending the March email". This is the version of the case on malice in its final pleaded iteration in the Amended Reply. As appears below, I roundly reject this case. It had no support in the documents nor in the other evidence. I now return to the process in more detail.

119. At some point between the requests for references being received and speaking with Mr Brown on 15 March 2021, Mr James considered the Claimants' files. He noticed (again) the gaps in them and that they were a "mess". He asked Mrs Papaioannou to put together a set of complete files for him. This was because she was his PA and this was part of her role. It was no more complicated than that. She also found the files incomplete and recalled the Complaint and added it (having received it from her husband when she requested). She made no comment on this addition and there was nothing untoward about including the Complaint. Crucially, at no stage from the time the reference requests were received to sending the Reference did Mr James ask Mrs Papaioannou her opinion of the Claimants, nor did she offer one. She did not try to influence him in any way. I accept their evidence that the terms of the Reference were completed by Mrs Papaioannou acting as no more than (using my language) a "scribe". The words complained of were authored solely by Mr James and he stood over her shoulder as she typed those words. They could not remember how the underlining and bold emphasis were added but that is not a matter of importance in

circumstances where the author and approver of the text in the Reference was Mr James (against whom no allegation of malice is made).

120. In deciding what to say in the Reference, Mr James was guided by what he had learned from his past experience and from his knowledge of the statutory Guidance safeguarding policies. In short, he asked himself whether he was aware of any matters which would mean that Miss Smith and Mrs Jackson might not be suitable to work with children? He also concluded that it was not necessary that there had been disciplinary action taken against them over such matters. However, he fairly approached matters on the basis that if a concern had been raised that had been found or decided to have been malicious or false it would not be referred to. He explained that concerns that had not been substantiated would also not be included. That did not in his view mean they had to have been formally determined. He said that often a teacher may leave before an investigation into a concern has been concluded but that did not mean it did not have to be reported. What mattered in his approach was whether he was satisfied that the concern had been substantiated. Substantiated meant in his view whether there was what he called "sufficient evidence" of an event to be able to conclude it had occurred. He said in his evidence that in respect of the matters he considered when dealing with these reference requests, there was "very little argument" about whether things had happened. I turn to the various matters he relied upon.

121. First, there was what I have called the Muskah Issue. Mr James noted that Miss Smith had admitted that she told a child "she could go to hell, if she wanted to", but then apologised. There was therefore no doubt in his view that this concern was substantiated. He treated this as a safeguarding concern but a less serious one. He explained that it was evidence of aggressive and uncontrolled behaviour and raised questions over Miss Smith's suitability to work with children. Mr James noted that Pastor Sweeney had in his role as the Chair of Governors had to consider Miss Smith's aggressive behaviour and had informed her that she would need to undertake a course to assist with managing her emotions (see the letter to which I make reference at [58] above). At the time of considering the reference request Mr James' understanding was that there was no dispute that Miss Smith had not undertaken the course she had been told to, despite having been given a long time to do so. Mr James formed the view that Miss Smith's failure to attend the course when he could see no reason she should not have during the time available was a form of safeguarding issue. He concluded that there was a concern about Miss Smith's behaviour in itself, sufficiently serious for it to warrant a recommendation to attend a course. The failure to attend the course meant the conclusions that led to the recommendation stood: Miss Smith needed to seek help to manage her emotions, had not done so and therefore there was a risk she would behave in the same way again.

122. On another matter, Mr James noted that Miss Smith was assigned to mentor an anxious child who seemed to him to have been vulnerable, Andrew. His parents had made a complaint (the Complaint) which he saw on the file and which Ms Clements had investigated and determined. He discussed the Complaint with her. It also mentioned an incident which happened when Miss Smith was the invigilator of one of Andrews' GCSE exams. I have addressed this above as the Exam and Medication.

123. The next matter he considered was the Parliament Visit Issue. As he said in cross-examination, this was the matter of greatest concern to him. Mr James recalled that he

had discussed these events with Ms Clements at a time before the reference was being considered because he viewed it as so serious. He did not read again her draft letter dated 30 January 2019 but his evidence was that its contents matched what they discussed when he was considering the references. Mr James concluded that there was no doubt that Andrew was at Parliament, that he was on crutches at the time, and therefore vulnerable, that the teachers including Miss Smith and Mrs Jackson had seen him there, and that he was not taken back on the School minibus despite there being a spare seat. There was also no doubt that no teachers had tried to contact his parents to check on how he was travelling, to ask if they were happy for him to be taken back to the school in the minibus, or to do anything else to protect him. Mr James said he had seen an email in which Andrew's parents acknowledged that he was not the School's responsibility for the day due to him travelling down independently, but he concluded that this made no difference: failing to ensure he returned home safely was a serious safeguarding failing on the part of each of the teachers who were aware he was there. Specifically it was his view that it was not only the DSL that had a responsibility.

124. In his oral evidence, Mr James elaborated on the safeguarding concern. The duty of care in his view did not "go away" because the child was not on the school premises, or because, as here, the pupil had travelled to an event themselves. The fact that Andrew's parents confirmed it was a private arrangement, did not in his view absolve the teachers of responsibility to Andrew once they had seen him. Mr James' view was that the most important factor was his safety as opposed to how he had got there and what his parents had in mind. He went as far as to say that even if there had not been a spare seat on the minibus, a member of staff should have got on the train with Andrew to get him home safely. By not making any attempt either themselves to contact his parents, or ensuring someone else from the school contacted his parents about taking him back as a minimum, or simply taking him back to school themselves rather than leaving him in London on his own, was a serious concern.

125. In relation to the Attack Issue (concerning Mrs Jackson) Mr James had read the Complaint and Ms Clements' letter of 4 March 2019, about an incident. That had led Mrs Jackson to raise her voice then later tell her class that she had been attacked. Mr James said he understood that there was no dispute this incident had happened and Mrs Clement had told him that Mrs Dixon had confirmed it had happened. This was therefore also substantiated in his view. Although less serious than the Parliament Visit Issue, he considered this was something that would cause emotional harm to a pupil and was again a safeguarding concern.

126. After he spoke to Ms Clements and reviewed all of the documents, Mr James had no doubt in concluding that there had been safeguarding issues concerning both of Miss Smith and Mrs Jackson in respect of each of the incidents described above. His evidence was that it was for that reason he asked his PA to prepare a reply back to Mr Brown with confirmation of Miss Smith's and Mrs Jackson's start and end dates but also told her to say that he had to inform him that there were some safeguarding issues during their time at the school and that he would fill in the full forms shortly. He said in evidence that he was conscious he would need in due course to set out in full the details but wanted to take care doing that and was not willing to rush. Equally he knew Mr Brown was pressing for an answer so he thought it best to send an initial response in the form of the Reference.

127. He explained that he did not instruct Mrs Papaioannou to go into any further detail as he wanted to think carefully about the wording used to describe the incidents. That is because he expected the new school receiving the full forms would want to ask questions of Miss Smith and Mrs Jackson in the usual way and then make their own decision as to employment.

V. Libel: serious harm

128. Serious harm can in an appropriate case be satisfied as a matter of inference from the circumstances of the case: Banks v Cadwalladr [2023] EWCA Civ 219 at [55]-[56]. That said, inherent tendency of a statement to cause some harm to reputation is not sufficient. "Serious harm" refers to the consequences of the publication and depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated. The Defendants put serious harm in issue in their pleaded case but did not press it strongly at trial. I am satisfied that the words complained of in Reference caused serious harm to the Claimants' reputations. That is as a result of the combination of the words themselves (concerning statements about conduct as professionals), and the reaction of the Stockwood Park Academy in withdrawing the job offers.

VI. Libel: qualified privilege and malice

129. Until part of the way through his closing speech, Mr Sterling maintained that the Reference was not sent on an occasion of qualified privilege. He rightly conceded when pressed that qualified privilege did arise. I will not go into the reason for his not conceding it earlier. In my judgment, this is a classic "reference" duty/interest situation as described in *Gatley on Libel and Slander* (13th Edition) (*"Gatley")* at [15.022]. Mr Brown asked Mr James on an urgent and repeated basis for no more, and no less, than dates of employment and whether they were any "safeguarding" issues. The Reference went no further than answering those specific questions, and Mr Brown expressly indicated he did not want further details (which Mr James said would be provided on the forms he had been sent).

130. As to malice, there was no dispute between the parties on the law and I will first summarise the principles to be applied. The important starting point is to underline that inaccuracy is not enough, only bad faith will do: Horrocks v Lowe [1975] AC 135 at 149. The burden of proving malice is not easily satisfied: Horrocks at 149-153. If it is proved that the person publishing defamatory matter did not believe that it was true, that is generally conclusive evidence of express malice. If a person publishes untrue defamatory matter recklessly, without considering or caring whether it is true or not, he is treated as if he/she knew it to be false (see also Salman Iqbal v Geo TV Limited [2024] EWCA Civ 1566 at [91]). But indifference to the truth of the publication is not to be equated with carelessness, impulsiveness or irrationality. A court should be slow to draw the inference that a defendant was so far actuated by improper motive as to deprive them of the protection of privilege unless they are satisfied that he/she did not believe that what he/she said or wrote was true or that he/she was indifferent to its truth or falsity. Where the only evidence of improper motive is the content of the defamatory material itself or the steps taken by the defendant to verify its accuracy, the claimant must show affirmatively that the defendant did not believe it to be true or was indifferent to its truth or falsity. A defendant who honestly believes in the truth of what was published is not to be found

guilty of malice merely because the belief was unreasonable or was arrived at after inadequate research or investigation. As *Gatley* puts it at [17.17], by reference to a number of cases:

> "If the defendant honestly believed his statement to be true, he is not to be held malicious merely because such belief was not based on any reasonable grounds; or because he has done insufficient research or was hasty, credulous, or foolish in jumping to a conclusion, irrational, indiscreet, stupid, pig-headed or obstinate in his belief".

131. I have cited this passage because it is striking that at no point did Mr Sterling suggest to Mr James that he did not believe what he said in the Reference to be true. It was not suggested to Ms Clements that she did not believe the truth of her conclusions as to safeguarding concerns. Equally, on the Claimants' case theory that the true "author" was Mrs Papaioannou one might expect it would be put to her that (on this hypothesis) she did not believe there were safeguarding concerns or issues. This was not done. The Claimants' approach to the malice issue was the subject of sustained criticism by Mr McCormick KC. This judgment is not the place to address those criticisms but I do however need to address the pleaded case in final form in more detail.

132. At the start of the trial, I ruled that if the malice plea was to be pursued at all, the Reply needed to be amended. In short, there was a contradiction between the pleaded case (which alleged actual malice on the part of all Defendants, 3 of whom had no role in the preparation of the Reference) and Mr Sterling's skeleton argument (which alleged such malice only against Mrs Papaioannou who was alleged to have persuaded an innocent Mr James to send a false reference). This was not acceptable and I directed that a draft amendment be prepared (if the malice case was to be continued at all). I adjourned for a day.

133. When the trial resumed Mr Sterling had substantially amended the plea. The amendment was opposed by the Defendants and I gave a judgment allowing the amendments. In short, by the Amended Reply, the Claimants abandoned their plea that each of the named Defendants was actuated by malice. The essential basis for the claim was instead a direct allegation that only Mrs Papaioannou was actuated by malice, that she decided what the Reference said and the other Defendants were to be fixed with responsibility for her malice. Importantly, it was no longer suggested that Mr James (or any other Defendant) was personally actuated by malice. I noted that Mr Sterling had formed a professional view that he could properly attack the evidence of Mr James and Mrs Papaioannou (to the effect that her role was as mere scribe) as being untruthful. I sought to summarise the case made by Mr Sterling as being in three parts and concluded that an arguable case (for amendment purposes) had been shown. The parts were as follows. First, Mrs Papaioannou was not a mere "scribe" (my word) acting simply on Mr James' instructions but in fact she was the true author of the relevant words in the Reference. Second, that there was a pre-existing animus between Mrs Papaioannou and the two Claimants. Third, that as a result of this animus Mrs Papaioannou selected particularly damaging language and words in the Reference in circumstances where she knew that in fact there were no safeguarding concerns in relation to these Claimants (and effectively got Mr James to go along with this unwittingly).

134. It will be clear from my factual findings above that this plea fails. In short, the Reference was authored by Mr James and Mrs Papaioannou was a mere scribe. Mr James acted in good faith and with a genuine belief that there were safeguarding issues following a detailed consideration of the documentary and other evidence available to him. Unsurprisingly, during cross-examination it was only faintly suggested to Mr James that Mrs Papaioannou was the true author. That was unsurprising: it was a very difficult line to pursue given the state of the documentary and oral evidence. I would add that Ms Clements' own view at the time of the Reference, reached independently to that reached by Mr James, was that there were safeguarding concerns for the purpose of the reference. Both she and Mr James agreed this to be the case in discussion. There was no suggestion that Ms Clements formed this view on the basis of the alleged malign influence of Mrs Papaioannou in the reference provision process. Indeed, as I noted above, Ms Clements had formed her views as long ago as 30 January 2019 when she prepared the letter which was intended to be sent to the Papaioannou family in response to Complaint. References for the Claimants were not even on the horizon at that point in time.

135. There was no malice and it is regrettable that the case was pursued to the end of trial. Accordingly, the claim of qualified privilege succeeds and the libel claim is dismissed. I will however also consider the further defence of truth in the event that this matter goes further.

VII. Libel: the truth defence

136. A defence of truth under section 2(1) of the 2013 Act is made out if the defendant can show, on the balance of probabilities, that the imputation conveyed by the statement complained of is "substantially true". In order to satisfy this statutory test, the defendant has to establish the essential truth of the sting of the libel. The court should not be too literal in its approach. In practice, that means proof of every detail is not required where the relevant fact is not essential to the sting of the publication.

137. Mr Sterling's submissions on the truth issue focussed very much on the lack of safeguarding complaints and adjudication while the Claimants were at the School, and the burden on the Defendants. He forcefully argued that where there were differences between witnesses' accounts I should prefer those of the Claimants and, in particular the evidence of Mr James, and his contemporaneous 30 March 2021 note of his discussion with Mr Brown in which he said there were in fact no safeguarding concerns. Mr McCormick KC argued that his clients needed to succeed on only one of the four issues but emphasised that the Parliament Visit Issue was the most important. On that matter, he persuasively submitted that on the facts which were uncontroversial the Claimants had effectively "abandoned" Andrew in Central London and a safeguarding concern or issue was therefore readily proven.

138. I begin by reminding myself that it is not for me to decide what "safeguarding" means. That is because Judge Lewis' ruling on the meaning of the words complained of in the Reference has decided the scope of that term for the purposes of this trial, even though the concept of safeguarding in Schools covers a wider field. In deciding whether the Defendants have established the truth defence, I must not defer to what Mr James concluded at the material time. I am not carrying out a reviewing function but acting as a primary fact-finder. So, I have to ask whether the Defendants have discharged the burden and substantially proven that the Claimants were responsible

for something that either caused harm to a child, or placed a child at risk of harm. Given the disjunctive nature of the meaning found by Judge Lewis, proof of conduct which, *"placed a child at risk of harm"* (even if that risk did not materialise) will suffice to bring home the defence, and the *"harm"* can be of any kind from which "safeguarding" is intended to protect children.

139. Mr McCormick KC realistically recognised that although "safeguarding" is a broad term, encompassing protections against many sources of harm, poor or sub-standard conduct which does not bear on "safeguarding" cannot prove (or contribute to the proof of) the truth of the imputation which it has been decided was conveyed by the Reference.

140. I will take each of the four safeguarding issues in turn.

The Attack Issue

141. I have set out my findings in relation to this issue at [33]-[38] above. When it comes to behaviour said to amount to a safeguarding concern arising out of pupil/teacher class interactions, one has to approach matters with a degree of robustness. Pupils may well feel that they have been treated harshly or unfairly by a teacher, and that may cross over into the feeling that they have been humiliated in front of their peers by something a teacher has said. We can all remember this feeling at school and how embarrassed one can feel, particularly as a teenager. Equally, a teacher may well later reflect that comments they made in class to a pupil were unfair and unjustified. However, it is something much more serious than the matters arising in relation to Andrew under this head which can properly be regarded as constituting safeguarding issues which caused harm to a child or placed a child at risk of harm. Mrs Jackson's behaviour was unprofessional and would have upset Andrew. It did not however cross the line and become a safeguarding issue within the terms of the judgment on meaning. The truth defence fails.

The Exam and Medication Issue

142. I have set out my findings in relation to this issue at [63]-[66] above. My finding in relation to this issue is that Miss Smith acted appropriately and at most there was a misunderstanding at a time when relations between Andrew and Miss Smith were poor. The truth defence fails.

The Muskah Issue

143. I have set out my findings in relation to this issue at [57]-[62] above. I consider that the failure of Miss Smith to undertake the courses recommended by Pastor Sweeney and in particular to recognise her issues with anger (as evidenced by her further use of intemperate language with another teacher: see [61] above), was a safeguarding issue. In her oral evidence in relation to why she did not take any course, Miss Smith said she did not need the courses. That showed a lack of insight. I was also not impressed by her other reason for not taking any courses which is that it was for others to identify those for her. Despite not appealing against Pastor Sweeney's decision, I consider Miss Smith in substance failed to recognise (and continued to fail in her evidence) to appreciate her issues with anger management and use of inappropriate language in relation to both children and colleagues. The truth defence succeeds.

The Parliament Issue

144. I have set out my findings in relation to this issue at [47]-[56] above. Although I have accepted Andrew's evidence that he was seen by the Claimants when the School party was getting on the minibus, I do not consider that it makes any difference whether the Claimants saw Andrew at the time of departure. Even if they are right in their evidence, in my judgment (and in common with Mr James and Ms Clements), in circumstances where the Claimants knew there was a child of 15 years from their School present (whether or not they wanted him there), they had a safeguarding duty to check how he was going to get home and to offer him a lift home if possible (which it clearly was given space on the minibus). If there was no space they should have personally ensured he got safely home by travelling with him by train.

145. In my judgment, that duty arose from the time they admit they saw him and did not arise only when they saw (or did not see) him leaving. The fact that he was in a physically vulnerable state on crutches underlined this obligation, but even if he was physically fit I conclude they were under the same duty. I also consider that Mr James and Ms Clements were right to say that all of the teachers had this responsibility (not just the DSL) and it was not overridden by apparent instructions from Andrew's parents that this was a private travel arrangement with no responsibility for the School. Accordingly, I conclude that the Claimants' inaction placed Andrew at risk of harm. Their approach was to refuse to engage with Andrew at all.

146. Before leaving this issue, I need to address the way Mr Sterling put the Claimants' case. Mr Sterling's closing submissions as to whether the Claimants owed a safeguarding duty to Andrew when the party was leaving seemed to be contradicted by his clients' own evidence. The evidence from Miss Smith and my questions (with follow-up from Mr McCormick KC in this regard) were as follows (there was similar evidence from Mrs Jackson):

> "MR JUSTICE SAINI: So let's go back…I don't want to stop you from giving the explanation, but counsel asked: did you consider you were under an obligation to check on his welfare at the end of the evening? Perhaps you could answer that question first.
>
> A. Yes, OK, let me answer that. Just to let you know we did not see Andrew at the end.
>
> MR JUSTICE SAINI: So you did not see him at the end.
>
> A. No, at the end.
>
> MR JUSTICE SAINI: OK. And then I think related to that is did you consider you were under an obligation to check on his welfare.
>
> A. If he was at the – at there when we were leaving of course given that it safeguarding is everybody's duty.
>
> MR JUSTICE SAINI: OK.

Q. So you accept that if was there when you were leaving it would have been your duty to check on him.

A. If we had seen him, sir.

Q. Yes, if you had seen him there when you were leaving it was your duty. What about if you saw him 15 minutes before you were leaving. I just want to see how far this goes because up until now we had taken your case has been there was no obligation, safeguarding obligation because it was a private arrangement with Andrew's parents. Now, that may have been our misunderstanding but I want to deal with what is now being said. What about seeing Andrew 15 minutes before you were leaving?

A. If ---

Q. Would you be under an obligation to speak to him then?

A. If Andrew had come over to us, it would have – teachers on the trip, there were five of us.

Q. Mmm.

A. If we had seen Andrew, it had to be our obligation. We had to go over and speak to a child.

Q. Right. At what time? At what point in the evening did you have to go over and speak to Andrew?

A. If we are leaving and Andrew is still at the Houses of Parliament, sir ---

Q. But sorry ---

A. --- that is our bound duty ---

Q. Yes.

A. --- as teachers.

Q. Fine, OK. I get that now. You accept it is your bound duty as teacher. But leaving is not a straightforward process. Certainly not when you have got a group of teenagers. It takes time to gather everybody up, gather them together, put them in a minibus and leave.

A. Yes.

Q. What about if you saw Andrew at the end of the debates, milling around with his 5 school friends and you called ---

> A. He ---
>
> Q. Sorry, wait. And you called to the rest of them and said to the rest of them and said, "Come over here, we are about to go home." At that stage, you will also be on an obligation to say to Andrew, "By the way, what is happening with you?" Would you not?
>
> A. Yes. If Andrew was there, yes.
>
> Q. Yes. So, it is not when you are actually getting in the minibus and leaving, it is when you are getting ready to leave that on your case, you would have that obligation.
>
> A. Mmm.
>
> Q. Yes? A. Yes.
>
> Q. And just so we are clear, the safeguarding obligation lay on all of the teachers. A. Yes, but it was interesting that it is only now down to two of the teachers. Thank you for bringing that to our attention.
>
> …".

147. Mr Sterling maintained that given the circumstances in which Andrew had arrived at Parliament and his parents' agreement that the School did not have responsibility, the Claimants had no obligation to check how he was getting home even if they had seen him when leaving. His clients in evidence did not appear to agree with that position. They each accepted that had they seen him when they were leaving, they (and the other teachers) were duty bound in safeguarding terms to check on how he was to get home and to offer him the spare seat on the minibus.

148. The Defendants' truth defence succeeds on the Parliament Visit Issue.

Conclusions on truth

149. In my judgment, the Claimants' conduct as described in the Parliament Visit Issue and the Muskah Issue were actions/inaction that placed children at risk of harm. The Parliament Visit Issue placed Andrew at risk of harm because on facts largely not in dispute he was left to return home when all the teachers owed him a duty to ensure his safe return. The Muskah Issue placed children generally at risk of harm because of Miss Smith's original words to the student, which were compounded by her refusal to undertake training to deal with her anger issues. As I have said, she continued to refuse to acknowledge any issues with anger management and the need for training in this regard.

VIII. Negligent misstatement

150. There is no dispute that the School owed the Claimants a duty of care when it wrote the Reference. The Claimants' pleading as to the breach of duty relied on two matters as particulars of breach of duty: (1) the fact of sending and publishing the Reference

which is it said contained the false, alternatively inaccurate, allegations; and (2) failing, adequately or at all, to ascertain the facts on which the Reference was based, namely that there were no proved safeguarding issues against the Claimants or any allegation, investigation or finding in respect of safeguarding issues against the Claimants. This second plea was difficult to follow and not detailed. It was never identified in the pleading (nor indeed during cross-examination) what it was said Mr James had failed to do. All roads led back to the assertion that the Reference was inaccurate as opposed to identifying what Mr James should have done differently.

151. In any event the pleaded case fails. In short, the Reference was accurate and true. As a matter of principle, if the statement complained of is true, there can be no liability in negligence any more than for defamation. Secondly, Mr James did not act negligently in the process sense in ascertaining the facts (I have made detailed findings as to the process above). Within a chaotic system of record-keeping, he went about his task of gathering information in a conscientious manner and was careful to ensure his concerns about safeguarding had a proper evidential basis. This was against a background of attempts by Mr Brown to hurry him along. Mr James did not act negligently in the process of preparing and drafting the Reference.

IX. Misuse of private information (MPI)

152. Mr Sterling accepted that if the truth defence succeeded the MPI tort claim also necessarily failed. That is correct but there were more fundamental problems with the MPI claim which I identify in the event this matter goes further and I am wrong on the success of the truth defence. Those problems mean that even if the truth defence had failed, an MPI claim was bound to fail given the privileged circumstances of publication of the Reference.

153. Liability for MPI is determined applying a well-known two-stage test: (1) does the claimant have a reasonable expectation of privacy in the relevant information; and (2) if yes, is that outweighed by countervailing interests: McKennitt v Ash [2008] QB 73 [11]; and ZXC v Bloomberg [2022] 2 WLR 424 [26]. See also, more recently: Stoute & Stoute v New Group Newspapers Ltd [2023] EWCA Civ 523 at [20]-[21] and [31]-[34]; and Andrew Prismall v Google UK Limited & Anor [2024] EWCA Civ 1516 at [38]-[43].

154. That is however a high level description as to how liability is to be established. It is not sufficient in pleading terms for a claimant to merely assert the two-stage test. Much more is necessary in terms of a pleading. Having regard to the Practice Direction, 53B para.8.1, a claimant suing in this tort needs to plead the following five matters:

(1) the information said to be private;
(2) the facts said to give rise to that reasonable expectation of privacy in respect of that information;
(3) what the defendant has done (or threatens to do) which is said to amount of misuse of the information - that is, the specific conduct said to amount to a misuse by the specific defendant in communicating to an identified recipient or class;
(4) why the claimant's right to privacy takes precedence over any rights the defendant may have to use the information in the manner in the way said by

the claimant to be a misuse; and

(5) detriment and relief sought.

155. I turn to the pleaded case which I consider fails to meet these basic pleading requirements. The Claimant's case on the private information that the Defendants allegedly misused is "…the [Reference] contained false private information, alternatively (which the Claimant denies) true or partly true information, in respect of both of which the Claimant had a reasonable expectation of privacy". The Particulars then go on to focus not on what was alleged in this paragraph, but are largely directed instead to repeating that what was published was false. The pleaded case (as amended to reflect the decision of HHJ Lewis) seems to apply the "single meaning rule" to the MPI claim. The single meaning rule is an artificial device developed to apply for claims in libel and slander on policy grounds specific to that area of law. The rule has no place in a MPI claim. In my judgment, it is an error for the Claimants to seek to define the allegedly "private information" by reference to the single meaning rule – what must be considered is the wording of the Reference itself. However, that document gave no details whatsoever about the safeguarding issues referred to, which may or may not have been private. It simply referred to "safeguarding issues", without any reference to what they were.

156. Putting that point to one side, in my judgment, there cannot be a reasonable expectation of privacy in respect of information, alternatively it cannot be a "misuse" of private information, to make a lawful publication of information in a classic duty/interest privileged situation. If, as in this case, the Claimants have not shown malice to defeat privilege, it cannot be an unlawful act of misuse to make such a publication. Qualified privilege within libel law and the MPI tort are both products of common law. It would be a rather odd and an incoherent result within the scheme of tort law for defamation law to recognise a publication as lawful, while at the same time for MPI law to regard it as unlawful. Both torts are aspects of the common law regulating the legality of publication. I respectfully agree with the observations of Nicklin J in Dixon v North Broad NHS Trust [2022] EWHC 3127 (KB) at [64]), although he was concerned with a wider range of torts and causes of action than those in issue before me.

157. Adopting the language of Willes J in Henwood v Harrison (1872) L.R. 7 C.P. 606 at 622 (as approved in Adam v Ward [1917] A.C. 309 at 349) but expressing the matter in perhaps more modern terms, one might put the principle as follows: communications which the wider interests of society require to be made without risk of legal liability should not be actionable as long as the publisher acts in good faith and without malice, and even though publication causes injury to the reputational and/or privacy interests of the subject. The fact that one might sue in respect of a lack of care in preparing a reference so as to ground a negligent misstatement claim (on a Spring v Guardian Assurance basis) does not require that an action for MPI which, like libel, is concerned with the content of the published material itself, should be permitted.

158. Accordingly, even if the truth defences had failed I would have dismissed the MPI claims for these additional reasons.

X. Remedies

159. The issue of injunctive relief does not arise. There were no detailed submissions on quantum issues. Mr Sterling invited me to defer relief issues in respect of libel until after judgment on liability. I will deal however briefly with the financial relief I would have awarded had the Claimants succeeded on such material as was before me. I begin by recording that I am satisfied on the evidence that Stockwood Park Academy, in terms of causation, withdrew the offers solely because of the Reference, and that there was loss of earnings on the part of each Claimant until new employment was found.

160. In respect of special damages for libel (and also for economic loss flowing from negligent misstatement or MPI), I would have awarded Miss Smith lost earnings of £5813.87, and Mrs Jackson lost earnings of £2952.15. The additional claimed lost earnings of Mrs Jackson of £4915.27 appeared to be gross figures and there was no evidence before me as to net sums, despite her being given the opportunity to explain how she calculated these amounts. For libel general damages, I would have made an award in the region of £15,000.00 per Claimant with no aggravated damages. As regards MPI, I would have decided that damages for damage to reputation are not recoverable. Although there were no detailed submissions on this issue, the earlier case law and available arguments on each side were summarised by Warby J in Sicri v Associated Newspapers Ltd [2020] EWHC 3541 (QB) [2021] 4 WLR 9 at [138]-[144]. The stronger arguments support a position that a claimant who wishes to recover such damages must sue in defamation or one of the other torts in which it is established that reputational harm is compensable. Finally, I would not have awarded any sum for non-pecuniary losses in respect of MPI. No proper evidential basis was put forward for such a claim.

XI. Conclusion

161. In the result, I dismiss all claims made by the Claimants.