Case No: HQ16D01073

Neutral Citation Number: [2017] EWHC 1650 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/07/2017

Before :

MR JUSTICE WARBY

- -

Between :

ABC (A mother)	**Claimant**
- and -	
The Chief Constable of West Yorkshire Police	**Defendant**

- -
- -

The Claimant in person
Cicely Hayward (instructed by **Andrew Garthwaite,West Yorkshire Police Legal Services**)
for the **Defendant**

Hearing dates: 26-28 June 2017

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Judgment

Mr Justice Warby :

1. This has been the trial of a claim for slander, arising from allegations of child sexual abuse. The claimant is the mother of the child concerned, a boy who was aged 4 at the relevant times. It is the claimant who made allegations that her son had been abused. The people she suggested might have been involved were the female partner of the boy's paternal grandmother, who was the principal suspect, together with the grandmother and the boy's father who were also implicated by her.

2. It is because the case involves allegations of this kind that an order was made by the Master for the claimant and the boy to be anonymised, and to prohibit the publication of identifying details. The order requires the claimant to be referred to in any report as ABC and the boy as BCD. It is important to note that the order was made to protect the child, not anybody else. It stands alongside the general statutory prohibition on identification of those alleged to be the victims of sexual offending imposed by s 1 of the Sexual Offences (Amendment) Act 1992, which applies to this case. In this case, as so often, the names and identifying details of family members of an alleged victim must be masked, in order to avoid "jigsaw" identification of the alleged victim.

3. The claimant first made her allegations that her son had been abused in early March 2015. This prompted an investigation by officers under the responsibility of the defendant Chief Constable. One of the first officers to be involved was a Detective Constable Ian Green, a Child Safeguarding Detective within the Kirklees District. The slander claim stems from a written entry made in GP records dated 24 April 2015. This ("the GP Record") appears to result from a conversation between a member of the GP surgery staff and a social worker named Elsa Newell. The claimant's case, in summary, is that this entry reflects and evidences statements that had been made to Elsa Newell by DC Green some days earlier, in which DC Green accused the claimant of lying to the police and thus perverting the course of justice, or attempting to do so, and suggested that she was criminally implicated in the situation.

4. The claimant's case is that such statements were made by DC Green maliciously, and that they have seriously damaged her reputation, and have caused her extreme distress and anxiety. In support of her claim for damages, and in aggravation of damages, she relies on the creation of the GP Record and says it is likely that the words complained of will have been, or will in future be distributed and published both within and outside the bounds of the GP practice. She relies on the harm she says that has probably done, or would be likely to do, to her reputation and feelings, and to her relationships with her son and others.

Issues

5. Some issues as to the adequacy of the statements of case arose at the start of the trial and later on. The issues affected both sides, but the flaws in the defence case were perhaps more obvious and more significant. Following a discussion with Counsel before the evidence began I was asked to and did give permission to amend the Defence to re-state the defence case on truth. A defence of honest opinion was dropped. The trial proper began with the parties written statements of case in a state that was less than perfect, but good enough to allow a fair trial.

6. The claim as now framed and defended gives rise to five main issues on liability:

(1) Publication. Were the words complained of, or some similar words, spoken and published by one or more detective constables to Ms Newell?

(2) Defamation. I use this word to cover several issues: was the statement complained of defamatory of the claimant (according to the common law and statutory tests); if so is it actionable in slander; and did it cause serious harm to reputation or is it likely to do so?

(3) Were the words substantially true in their natural and ordinary meaning(s)?

(4) Were the words published on an occasion of qualified privilege at common law?

(5) If so, were they published maliciously?

7. The claimant bears the burden of proof on issues 1 and 2. Issue 3 arises if she discharges that burden. The defendant bears the burden of proof on that issue. If the defendant fails to prove the truth of the meanings complained of, then issue 4 arises. Again, the defendant bears the burden of proof. If the words are shown to have been published on a privileged occasion, the claimant might succeed if she proves malice. That would defeat the defence of privilege. If the claimant succeeds on liability, of course, I have to consider the question of remedies.

Anonymity

8. Before coming to the evidence and the facts, I should say a few words about the form of the anonymity order in this case, and how I propose to respect the need to anonymise others for the protection of BCD. Anonymization in such cases is designed to respect the privacy of the alleged victim. This can require quite extensive anonymization. A little care needs to be taken in how one goes about anonymising parties and witnesses. The use of a person's true initials can weaken anonymization. Some other methods can cause confusion, and other difficulties.

9. To illustrate, in the same week that the papers in this case reached me another litigant acting in person chose to anonymise themselves in court papers using the same three letters, ABC. For a while I thought the cases involved the same claimant. Another inconvenience of using the first or last, or the first few or last few, letters of the alphabet is that cases become hard to cite. The issue was covered in the 2nd edition of Tugendhat & Christie, The Law of Privacy and the Media (2011) at 14.74:

> "The obvious inconvenience of the proliferation of cases unimaginatively entitled *A v B* or *X v Y* has led the court to develop a protocol whereby any anonymised party is randomly assigned a three letter designation, so that the case may be entitled, for example, *DBM v EJP*."

10. It is too late to adopt that practice here, so far as the claimant and her son are concerned. But the considerations above have led me to add the words "A mother" to the letters that designate the claimant. I shall use BCD for the son. The claimant's mother, who has given evidence, will be referred to as GBC, or "the claimant's mother" or "BCD's maternal grandmother". I shall refer to BCD's father as "DDC",

and to the paternal grandmother and her partner by those descriptions, or as "GNA" and "GNJ".

Evidence and argument

11. For the claimant, ABC herself and her mother GBC have given oral evidence. Both were cross-examined by Ms Hayward, Counsel for the defendant Chief Constable. Three police officers have given oral evidence for the defence: DC Green; Acting Temporary Chief Inspector Ian Mottershaw, a Detective Sergeant at the material time; and Detective Constable Sarah Senior, formerly DC Ridge. All were cross-examined by the claimant, who represents herself and has done so with conspicuous skill, efficiency, and economy.

12. Two lever arch files and one ring binder of documentation have been put before me, and referred to extensively in the course of evidence and argument. All had some relevance, and I wish to pay tribute to the quality of the claimant's paperwork and to her advocacy, both of which have been clear and well focused.

13. I should say, however, that I have proceeded on the basis that the findings of the Independent Police Complaints Commission concerning a complaint made by the claimant are not binding on me, nor are the findings of an investigating officer relating to complaints made by her against individual police officers, including DC Green. I do not, in fact, have any record of the investigating officer's findings, other than indirectly via the IPCC report. In one respect the facts recorded in that report are relevant: there is an issue concerning DC Green's knowledge of the complaints and their outcome, which is relevant to his credibility. But otherwise I have reached my decisions on the basis of the evidence of fact that is before me about the events of (mainly) March and April 2015.

The facts

14. The following is an account of facts that are largely undisputed. To the extent there is any disagreement or any difference between the accounts of these events that are in evidence it is minor, and what follows represents not just a record of facts that are in evidence but also my findings on such disagreements or differences as exist.

15. I shall concentrate on the key period of some 7 weeks from 2 March 2015 to 24 April 2015, the date of the GP Record. Later events have relatively little bearing on the issues for my decision.

16. At all material times ABC was separated from BCD's father, DDC. DDC had a new partner, who had a young son of her own ("T"), who was about the same age as BCD. Orders of the Family Court were in place from about 2014 by which BCD was resident with his mother but his father had contact, weekly. During the periods when BCD had overnight contact with his father, he would have some overnight stays at the home of GNA and GNJ. When that happened, the father would also take T.

17. On Monday 2 March 2015, ABC rang the police to report that BCD had told her that GNJ had been taking photos of his bottom and penis and applying talcum powder to his penis. That evening, two uniformed officers visited the home of ABC's mother, where she and her son were staying at the time. ABC told them that she had seen

"strange" photos of her son on GNJ's public Facebook page, and this had prompted a discussion with BCD in which he told her of the taking of photos and the application of talcum powder, which he said made his willy go fat. ABC showed them the Facebook photos. These were not indecent but were "concerning" to her, showing her son in bed with his friend, asleep, in the bath, in pyjamas and in one instance naked from the waist up. She explained that she was concerned that the photos gave away the location at which her son had been staying, and were a breach of his privacy.

18. The officers were evidently unimpressed. One said to ABC that this "could turn someone's life upside down", meaning GNJ. They left, having taken notes but not a statement. Shortly before midnight one of them called ABC to state that they would not be taking the matter further. He said there was nothing wrong with the Facebook pictures, and suggested that the reaction BCD described to the application of talcum powder was involuntary. ABC could refer the matter to safeguarding officers at Dewsbury if she wished, but they would not. ABC was upset, viewing this response as dismissive and inappropriate.

19. On 3 March, after collecting BCD from nursery, ABC got him to show her what happened when GNJ put talc on him. He did so and she was shocked. At about 10 past 6 that evening, ABC contacted the National Society for the Prevention of Cruelty to Children (NSPCC) via its Helpline, to express concerns that BCD had been subjected to sexual abuse. She gave them an account of what BCD had initially told her, and of her dealings with the police. She told them that when she asked him to show her what GNJ had done, he had demonstrated 5 or 6 "sweeping movements" on his penis. BCD was next due to go to his father's on Thursday 5 March and this, ABC told the NSPCC, was when he would or might next see GNJ. The NSPCC recorded the following assessment (the underlining is in the original):

> "**Counsellor's Assessment of risk or need <u>based on information supplied</u> to the Helpline:**
>
> Based on the information provided, the child is at risk of Sexual abuse. Due to the concerns raised it is requested that children's services investigate further to ascertain the needs of the child. This information is also being shared with the Police to enable a joint approach with Children's Services."

20. On the morning of 4 March 2015, the NSPCC duly referred the matter to Children's Services, Kirklees and to West Yorkshire Police. The record shows that later updates received by the NSPCC were "shared as received". The claimant independently reported her concerns to the police at around midday the same day. At around 2pm on 4 March 2015 a safeguarding report was sent by police to Kirklees social services.

21. It is on 4 March that DC Green first became involved. He was a member of the Child Safeguarding Team at Dewsbury, under the management of DI Michael Brown. His line manager was Ian Mottershaw, then a Detective Sergeant. DC Green's responsibilities in this role included the safeguarding of children and the investigation of crimes relating to child victims. He was assigned to be the officer in the case arising from the NSPCC referral, and given the task of attending and speaking with ABC.

22. On 5 March 2015 DC Green made contact with ABC. In the morning, he left her a voicemail message, a transcript of which is in evidence. At around lunchtime they spoke by phone. He told her that he intended to speak to DDC, GNA, GNJ and BCD. The claimant makes a number of criticisms of DC Green's conduct in the voicemail, in the conversation they had, and in his approach to the investigation at this early stage. I shall have to address those criticisms later.

23. It appears from the Social Services record that it was on 5 March that information was initially passed by the police to Social Services by DC Green. He spoke to Lindsay McMahon, a duty officer. He reported on his conversation with ABC, stating that she was unhappy with contact but he had advised that she should comply with the court order. DC Green told Ms McMahon that he planned to get authority from GNA and GNJ to gain access to the Facebook photos to establish if they were appropriate. His feeling, as recorded in the notes, was that drying and his willy becoming hard was innocent.

24. ABC refused to allow BCD's father the contact that was scheduled for 5 March 2015.

The Home Visit

25. On Friday 6 March 2015 DC Green visited the claimant and BCD at their home, in the company of DC Sarah Dixon. Before doing so he alerted her to his intended arrival and she confirmed this was OK by a text message exchange. In her text, ABC told DC Green that she had had refused to allow the father contact. There are matters of dispute for me to resolve about what happened during this visit, which I shall call "The Home Visit". But some things are not in dispute.

26. Those in the house at the time were the two officers, ABC, BCD and ABC's mother. The officers arrived between 2 and 3pm. They began by speaking to ABC at some length. She showed them extracts from GNJ's Facebook account, containing pictures which ABC considered "concerning". There was a discussion about the pictures, and about what BCD had told his mother about the application of talc to his willy and what happened. The officers then spoke to BCD, in the kitchen. ABC was not present, and there was nobody else in the room. He told them he had a secret. The officers left, having obtained ABC's agreement that they could visit BCD at his nursery to gauge how he was. That visit was later arranged for 17 March.

27. ABC then sent DC Green a text message, timed at 17.27 on 6 March 2015:

> "Hi I understand from my mum that [BCD] said 'my daddy knows my secret' and to be honest I believe he might be aware of what is going on given that [DDC] made that remark about BCD having a big tail that I told u about. I am concerned about letting him have any contact at all. [BCD] has also been saying daddy has got a furry willy."

28. On Monday 9 March 2015 DC Green made a record of the Home Visit on the police computer system that he has dubbed "The Occurrence". I prefer the term "OEL" which is how I shall refer to this log. I understand the system to be accessible to officers generally, or at least to those with a legitimate interest in the relevant investigation. It provides the reader with a log, in chronological order, of relevant

events. The system automatically records the time at which any entry is logged, with the time stamp relates to the end of the process, when the entry is completed. It can thus be seen that DC Green completed writing up his account of the Home Visit and logged it, at 17:56 on Monday 9 March.

29. The format of the log includes a column in which to show the date and time of the event which is being logged, but that information is not included in DC Green's account of the Home Visit. Nor does any of the other OEL entries I have seen contain any such record. The evidence of DC Green is that the version of the software that is used by West Yorkshire police does not in fact permit an entry for the event time, as opposed to the time of the record. That is consistent with the documentary evidence, and I accept it.

30. DC Green's account of the Home Visit included the following:

> " … She provided me with photocopies of [GNJ's] facebook profile. I have no concerns what so ever regarding these pictures. They are fun and innocent pictures. … Nothing untoward about them at all. [ABC] seemed a little taken back when both DC Dixon and I said we had no concerns over the photos and we moved onto her comments regarding [BCD] and the bath time routine at [GNJ] and [GNA's] house. [ABC] said that she never touches her son's genitals, not even to wash or dry. She commented that she felt this wasn't required, that a 4 year old doesn't perspire and she won't expect [BCD] to be touched there as the bath water alone would be enough."

31. DC Green's account of what BCD had said when questioned by him and DC Dixon was this:

> "We spoke with [BCD] in the kitchen alone and after chatting for a few minutes [BCD] told us he had a secret, when asked what he wouldn't say but did continue smiling and playing. My observations are that he is a lively active child who has plenty to say and was in no way uncomfortable with strangers in his house."

The 9 March Phone Conversations

32. Over the weekend, on Saturday 7 March, ABC had contacted the police to report further concerns, about a man coming into BCD's room at night, her ex-partner's son living with them, and a reference on GNJ's Facebook page to the use of "knock out drops" to keep the children asleep. This was logged on the OEL. On the morning of Monday 9 March, the claimant went to Holmfirth police station to lodge some more Facebook print offs. She texted DC Green at 10:28 to report this, and to say she had more information and a picture BCD had drawn. She texted him again at 16:42 asking if he wanted her to leave the picture. The two of them later spoke by telephone.

33. DC Green's OEL entry of 9 March 2015 reflected at least some of this. It continued as follows:

> "On my return to work on Monday 9th March I have had an additional comment on the OEL from [ABC] stating [BCD] has made further disclosures. I've called her today to discuss them further. She explained that [BCD] has said that he's frightened of 'baddies' in the dark and that when he sleeps over at Nana's a man comes into the bedroom to get a book and he describes the man as tall with a moustache. I stated that I would ask [GNJ] and [GNA] about this as it may be possible that a man has come into the room whilst they were there but I felt it normal for children to associate the dark with 'baddies' or monsters and that this should be addressed with support and an explanation. She went onto state that [BCD] has said he's seen his dad's furry willy, which I suspect could be as a result of him seeing his father naked, again not an area of concern on first impression. When I told her this she didn't seem to like my summary of the information and went on to say she feel that the family including [DDC] and [GNJ] might be exploiting her son. abusing him and taking photos for financial gain. I explained that this was serious allegation and has for her to explain her belief. She simply repeated herself explaining what [BCD] had said and that she said she felt it inside that something was not right and that [GNA] has previously been bankrupt and that they don't have much money. I explained my concerns regarding how she'd come to these conclusions and that I felt [BCD] is safe with his father and her refusal to allow him access will potentially be her failing should this be put back in front of her Judge."

34. At 18:36 ABC called the police via the operator and left a message that she was unhappy with DC Green's approach. The call was logged in this way by an officer named Donohoe.

> "she is unhappy with PC GREEN'S report and that he has implamented she said she thought they were doing this for financial gain- she has not said this ass she did was ask his question "why would you think people would do this?" to which she replied "I don't know? Why do people do things like this? Is it for financial gain?" she feels he has put these words in her mouth when she never alleged this. She just wanted this clearing up as has been angry about the conversation implementing that she suggested this allegation."

35. ABC also texted DC Green at about the same time to "clarify" that she was "not alleging that [DDC] is abusing his son and posting pictures on line" or "alleging that his mother and partner are exploiting [BCD] for the purposes of financial gain."

36. As a result, DC Green and ABC spoke again. He recorded his account of that conversation on the OEL at 19:49:

> "Call received through the call centre around 6:15pm this evening from [ABC] stating that she thinks I had

> misunderstood that fact that she alleged that [DDC],[GNA] and [GNJ] were exploiting [BCD] for financial gain……..At the time she said this comment I repeated it back to her to have her confirm what I thought she'd said. As a result I am clear that she made this allegation. She now states that I heard her wrong but accepts that this is a possibility. … I told her that my opinion was that this presumption from [BCD's] comments would not lead me to record additional crimes against [GNJ] [GNA] and [DDC] simply going on her gut feelings. I have serious concerns as to why she is making such allegations and fear that there are other issues here. I told her that I would continue my enquiries and a judgement would be made based on fact not gut feelings from her point of view. Ian."

37. On 10 March 2015 DC Green reported to social services on the Home Visit and his later conversations with ABC. The notes made by the social worker (it is unclear who this was) include reference to the further concerns that DC reported had been "shared to police" by ABC, including "that she feels grandparents are abusing [BCD] for financial gain." DC Green told the social worker there was nothing to suggest the father was a risk to BCD, and that he intended to attend the nursery and speak further to BCD.

ABC's complaints about DC Green

38. The records show that on and between 10 and 14 March 2015 the claimant contacted the police on several occasions to reiterate her position, that DC Green had misinterpreted what she had said, and to make clear that she was not happy with his conduct of the investigation. She reported the same thing to social services on 10 March, and again on 13 March, making clear she distrusted DC Green and felt relationships had broken down. She said that BCD had said "in front of Ian Green and her mother – 'daddy knows my secret'".

39. On 14 March 2015, ABC made a formal written complaint about DC Green to DI Michael Brown and DS Mottershaw. DC Green was instructed not to speak to the claimant, but he was not taken off the case.

The Nursery Visit

40. On 17 March 2015, ABC took BCD to nursery. She knew the police were due to come and see him there that day. On arrival, she approached the boy's key worker, Jill. There is a detailed note of what was said, which was typed up by the nursery's child protection officer (CPO):

> "17th March 10:40am – 10:50am
>
> Today when [BCD] amd mum ([ABC]) arrived, [ABC] approached Jill ([BCD's] key person) and said "[BCD] had said to her that he wanted to tell Jill something before the policeman comes (as [BCD's] mum had explained to him that 2 policemen were coming to talk to him today at nursery). Jill then asked

> mum for the child protection officer to be present and take notes,"

41. The notes taken by the CPO record that BCD then told Jill about being punched in the tummy by a man who came from the sky, and about having pictures taken of him by his nana. The following exchanges then took place:

> "[BCD] then said "the policeman is coming to see me."
>
> Jill said "the policemen are coming to see you, you must tell the policeman what you told me. So they can help you.
>
> Jill asked [BCD] to look at her face and said "if you are worried about anything, you must tell someone."
>
> Then [BCD] said "the policemen are coming to see me!!""
>
> Jill said "yes that's right [BCD] and it's ok to tell the policemen what you've told me!"
>
> Jill said "look at me (when [BCD] was looking at Jill's face) if your ever worried or upset about anything you must tell someone.""

42. The police then arrived and spoke to BCD. The officers involved were again DC Green and DC Dixon. DC Green wrote up the Nursery Visit on the OEL at 16:04 the following day, in these terms:

> "Sgt DC Dixon and I attended at [the Nursery]. We met with the Manager Jane R and Naomi R a Senior assistant at the nursery. We spoke in private and they gave a detailed insight into young [BCD] and his time at the nursery. The explained that he is a fun, happy energetic boy who in general enjoys his time at the nursery and has friends there. He has no behavioural issues, rarely needs any time out or chastisement and is always well presented, clean tidy and healthy. The nursery are aware the parents are separated and did say that [ABC] is open to talking about their current situation with the police. Significantly [ABC] brought [BCD] to nursery that morning and in front of the staff said "Make sure you tell the officer all about what you told me" this follows a conversation DC Dixon and I had with [ABC] not to mention this case at all to [BCD], for her not to mention that we were police Officers and to behave as if there weren't any issues. "

43. This entry went on to give a detailed account of the questioning of BCD by the officers. It concluded with an assessment of BCD as a boy who was "comfortable with us" and would tell them something, if he really wanted to. DC Green requested DS Mottershaw to review the matter "with a view to any actions you require moving forward."

44. At 16:54 on 18 March DC Green added to the OEL this footnote addressed to DS Mottershaw: "Sgt as requested by I have not informed the mother of our visit but I have told the Father. Thanks Ian". This footnote is relied on by the claimant as part of her case of malice.

45. On 23 March 2015, the CPO from the nursery called Social Services to advise them that on 17 March "(before police arrived) BCD made a disclosure to them that his other nana took pictures of his bum and willy", which they had reported to police. They said that BCD had been "sat on mum's knee when he disclosed."

The police investigation continues

46. On 19 March 2015 DS Mottershaw decided a statement should be taken from ABC, and that GNJ should be interviewed under caution. He logged these decisions on the OEL. On 23 March, he emailed Social Services (Sharon Sharman) to report "We are making progress. [BCD] has not made disclosure but Sarah Dixon will be taking a statement from mother re his disclosures." On 26 March DC Green sent the claimant a text about arrangements for this statement to be taken. The claimant is critical of DS Mottershaw's email and also relies, as evidence of malice, on DC Green's text message.

47. On 30 March 2015, the claimant notified DS Mottershaw that in the absence of any response to her letter of complaint about DC Green, she was lodging a formal complaint with Professional Standards. He replied that if that was what she felt she had to do she should, but the investigation was continuing. His reply was brusque and "to the point" as he put it. The claimant goes further, and suggests that his response was dismissive and unprofessional, and evidence of collusion against her.

48. The investigation did continue. According to a chronology prepared by the solicitor for the defendant, GNJ was interviewed under caution by DCs Green and Dixon at Dewsbury on 8 April 2015. The evidence shows that on 17 April 2015, the claimant made a statement by means of a video recorded interview given to DC Senior, then called DC Ridge, at Mirfield police station. A full transcript of that interview is in the claimant's exhibits

The provision of information to Social Services

49. The Social Services records show the provision of further information by the police to Social Services on 2 April 2015, when "Ian" provided an update to Lindsay McMahon. She recorded, "Ian is to speak to [ABC] and from that, may interview Gran's partner under caution. Decision will then be made whether to proceed further." The police speaker is recorded as saying that "However, [BCD] has been seen twice by the Police and has made no disclosures… they lack concrete evidence."

Elsa Newell's Assessment

50. On 13 April 2015, Elsa Newell initiated an "Initial Assessment" of the case. According to that document, she had been "awaiting additional information from police investigation". That information would seem to have consisted of the various reports I have mentioned, since 5 March 2015.

51. Ms Newell has not given evidence because, among other things, she had no independent recollection of the events of 2015. Her FOH Assessment report is thus a valuable source of evidence in this case. On its face, it documents in some detail the events with which Ms Newell was concerned on and between 13 and 27 April 2015, which is the date that it appears to have been completed and signed off by Ms Newell and her Duty Manager, Lynn Blackie. Nobody has suggested that records created by Ms Newell are to be regarded as an unreliable source of evidence. She does not appear to have had any axe to grind.

52. The FOH Assessment shows that on 15 April 2015 Elsa Newell spoke to ABC and interviewed BCD, at his home. Ms Newell set out a summary of what she was told by ABC. This reflected what ABC had previously told others about what BCD had told her and shown her, and summarised the interactions to date between ABC, the police, other agencies, and the court. It included the following:-

> "[ABC] has attended court 3 times in the last 10 days, she has applied for a Prohibited Steps Order preventing [BCD] from having contact with paternal grandmother & partner, as well as preventing dad from having contact with [BCD]. The judge has granted order in respect of paternal grandmother but refused to stop contact between [BCD] and his dad as he felt there was insufficient evidence against dad. [ABC] is not happy with this decision, [BCD] has not had contact with his father since. In court [ABC] confronted [BCD's] father about him knowing what was going on, he didn't make any comment."

53. A full transcript of Ms Newell's interview with BCD, which lasted for 30 minutes, is in the trial papers. The summary which Elsa Newell placed on record in the FOH Assessment includes this:

> "**Views of Child/Children**
>
> [BCD] presented as a happy, confident little boy.
>
> [BCD] engaged well in conversation and was able to tell me he sees nana [GNJ] when his dad takes him.
>
> …
>
> I told [BCD] that his mum had told me about a secret he had with his dad. [BCD] said he had a secret with dad but couldn't remember what it was."

54. The entry then refers to a letter received from the claimant, setting out "following comments to be added verbatim". These include

> - "[BCD] was asked if anyone else knew his secret to which he replied 'mummy, nana and grandad'.

- [BCD] was asked who had told him the secret he replied 'daddy'

- When [BCD] was asked again [BCD] said 'I've forgotten' to which I replied well how do you know you've got a secret if you've forgotten? [BCD] replied 'it's daddy's question, he said keep it a secret'."

55. The transcript of the interview with BCD shows that these additional bullet points are accurate. The transcript also shows that after this last exchange Ms Newell asked "Right. And can you remember what daddy's question was?" BCD answered "No." BCD could remember what he was doing when daddy told him: he was playing "tig" outside.

56. Social Services records identify two further occasions on which the police provided information:

(1) By DC Green to Elsa Newell on 15 April 2015. He told her that ABC had made complaints about him, DC Dixon and DS Mottershaw. Having spoken to GNA and GNJ, he said, "there is no evidence of any inappropriate photos being taken of [BCD]". GNJ, he said, admitted applying talc, but in order to prevent soreness.

(2) By DC Sarah Ridge (now Senior) on 22 April 2015, the identity of the social worker concerned being unclear. The notes say this: "Sarah has interviewed [ABC]. Ian Green intends to speak with [T], although it is likely the case will be NFA'd due to no findings."

Further OEL entries

57. On 23 April 2015 a detailed synopsis of ABC's video-recorded interview was logged on the OEL by DC Ridge (Senior), the record is timed at 15:59. The next substantive entry on the OEL is a long and very detailed "SUMMARY" logged by DC Green in the evening of the same day. It is in two parts, timed at 22:37 and 22:40. He explained in his evidence, and I accept, that officers will commonly write up such an entry using a word processing package, and then insert the finished text on the system. The gist of his summary was that the investigation had disclosed no evidence of criminal conduct. DC Green stated that he had "offered my open frank opinion about this investigation as I feel strongly about this case", and indicated that he had "concerns" about how ABC had gone about things. This OEL entry has been the subject of a number of criticisms by the claimant, who relies on aspects of it as evidence of the malice of which she accuses DC Green.

The creation of the GP Record

58. On 24 April 2015, Elsa Newell had contact with the GP practice and the nursery. The FOH Assessment records that among the "Agencies Contacted during Initial Assessment" was "Vicky Stennit – HV" on 24 April. The entry reads "Vicky phoned for update on case and establish if any role for health." The Social Services referral record indicates that Ms Stennett is a health visitor.

59. The FOH Assessment also records contact that day between Ms Newell and Jill at the nursery, who told Ms Newell that [BCD] was a happy well behaved little boy about whom there were no concerns, other than the matters raised by his mother. The record shows that Jill told Ms Newell that "Prior to police visiting [BCD] in nursery [ABC] said to Jill [BCD] wanted to tell her something before police came to speak with him". The record refers to "printed details of conversation", which may well have been a transcript of the CPO's notes.

60. It was on 24 April that Victoria Stennett wrote up the GP Record on which the slander claim is based. I shall set out the full entry below, putting the words complained of in bold for clarity and ease of reference. I shall interpose some numbering, to help explain the argument and my findings on the issue of meaning. These points aside, I set out the entry exactly as it appears in the records, with all typographical errors.

> "24 Apr 2015 12:30 Mobile Working: Victoria Stennett (Admin/Clinical Sup Access Role) @Supporting Families Unit
>
> Reason for encounter - telephone call from Elsa Newell
>
> Verbal communication interventions
>
> discussion with Elsa newell social care. She has seen [BCD] and mum regarding the concerns that mum has voiced regarding grandparents and dad and sexual abuse towards [BCD]. She has attended court 3 times to stop all contact with the family and has been granted an order to stop grandparents from having over night care however the judge has stated that there is no evidence of abuse at all. Grandparents have admitted that there have been photos taken of him in the bath but police have checked these and they are not abusive mum also states that as grandparents are drying him them put talc on his penis and rubs it. She has stated that this is abusive and she does not even bath him therefore this is not right. There again is no evidence that this is abnormal behaviour other than general bathing of a child of 4. [BCD] has reported that he woke up one night at grandparents house in bed with step sibling Theo and there was a man in his room the man jumped on his bed and then ran out [BCD] did not tell anyone a she is not allowed out of bed when in bed. Mum stated that that [BCD] is drawing pictures of this man and has senn him since however grandparents and dad deny that therehas been an unknown man in the property overnight, [BCD] has also stated to social care that he has never seen this man before or since. Mum has put in a complaint regarding 3 police officers asthey are not taking thisseriously a complaint to the judge for not stopping dads contact and as the gp will not state that dad should have no access she is complaining regarding them **[1]** the judge has also ordered her not to discuss this matter with [BCD] as **there have been witnesses stating that they have heard her putting words into [BCD's]mouth. [2] She has also lied about the statement she has provided to the police**

and who was present when the police interviewed [BCD]. she states that her mother overheard the conversation between [BCD] and the police however this happened at nursery.

Elsa has seen [BCD] who likes spending time with his dad and he has not reported any concerns regarding his care from anybody. Nursery have no concerns and he is developing well.

Elsa wanted to know if mum had a history of mental health issues however all her records are private. **[3]** Elsa intends to close the case as there is nothing to suggest that there issexual abuse however **there are reservations regarding mums role in this.**

Activity: Patient related activity (20 minutes) Administration with Patient Record

Activity: Patient related activity (20 minutes) Telephone with other Professional

Patient Contact: 0 minutes Total Contact 40 minutes."

Later events

61. On 27 April 2015 Elsa Newell completed her Initial Assessment report. She referred to receiving information from the police, who "state that there is no evidence of any offences to proceed with". She stated that in addition to this, enquiries had been made from ABC herself, the GP, and the NSPCC. She could have added the nursery. Her assessment included the following:-

> "… From speaking to [ABC] and [BCD] myself, although [ABC] raised some concerns, [BCD] did not make any disclosure that would suggest he was at risk of harm whilst in the care of his father. [He] did mention [GNJ] puts talk on his willy and demonstrated rubbing motion saying this makes his willy go big, I am of the opinion that this is not carried in a sexual activity. In addition, [BCD] has mentioned that his nana takes photos of his willy and bum after bathing, police have investigated this and have not found any incriminating evidence of this.
>
> **Conclusion**
>
> [ABC] suspects that there has been inappropriate sexual activity with her child and that professionals haven't confirmed this, however there is no evidence to suggest this is the case within police and social care investigation, and [BCD] needs to take comfort in this.

Recommendation

I recommend no further role for social care and case to be closed."

62. Ms Newell's FOH Assessment report was signed off the same day by her Duty Manager, with these comments:

> "The police have investigated this matter and they are of the opinion that no criminal offence has been committed, the matter has also been heard in court on 3 occasions recently and the judge did not feel that contact with father should be stopped. The information obtained from the Social Worker has not highlighted any additional information that would warrant a change in the current contact arrangements. Case to close to Social Care."

63. On 15 June 2015, BCD provided an Achieving Best Evidence video interview to DC Claire Jennings. The history from then onwards, as it appears from the OEL, can be briefly summarised. On 29 June 2015, the father was interviewed under caution by two detective constables, DCs Rudge and Parr. On 2 July 2015, GNJ was further interviewed under caution and GNA gave a statement. On 27 July 2015, DI Griffiths concluded that no further action was to be taken, and the matter was not referred to the Crown Prosecution Service.

64. A chronology prepared by the solicitor for the Chief Constable states that following further representations from the claimant pursuant to the Victim's Right to Review, the decision not to refer matters to the CPS was confirmed by another Detective Inspector. These facts are not agreed, but nor are they disputed by the claimant. It does appear that the police continued to take the view, or at least the position, that there was insufficient evidence to justify referring the matter to the CPS.

65. It is against the background of this overall factual picture that I turn to the issues for decision.

Publication

Principles

66. Any claimant in a defamation case has to prove that the defendant published a statement about them, or is vicariously responsible for someone who did so. The following passages from *Bode v Mundell* [2016] EWHC 2533 (QB) are pertinent:

> "12 … precision in the pleading and proof of publication, including the actual words used, is always essential. It is not enough to plead or prove the gist or substance of what was said. In libel this is rarely a problem. In slander, it often is. …
>
> 13 … CPR 53 PD 2.4 … provides that
>
> 'In a claim for slander the precise words used and the names of the persons to whom they were spoken and

> when must, so far as possible, be set out in the particulars of claim if not already contained in the claim form.'
>
> 14… a claimant has to *prove* publication of particular words at the trial. Gatley puts it this way:
>
> > **'32.13 Action for slander.** Where there is no admission by the defendant that he spoke the words complained of or words to like effect, the claimant must call evidence of what the defendant said and of who heard him. The actual words spoken must be proved; it is not sufficient for witnesses to state what they believe to be the substance or effect of the words, or their impression of what was said. The burden is of course on the claimant to do so.'
>
> 15. The reference here is to witnesses, but of course the best evidence will be a recording. In this action, as will be seen, the claimant has no recording, nor any witnesses to the alleged slander. His case relies on inference from documents he obtained some months after the alleged slanders."

67. There are good reasons for these requirements, which are long-established. The actual words spoken are critical, because everything else flows from the words: meaning, whether defamatory, defences and damages: see *Best v Charter Medical of England Ltd* [2001] EWCA Civ 1588, [2002] EMLR 18 [7] (Keene LJ), *Umeyor v Ibe* [2016] EWHC 862 (QB) [39]. Put another way, these requirements protect freedom of speech by requiring a claimant to prove strictly the factual basis on which the court is asked to interfere with that freedom. Only then is the court able reliably to evaluate whether such an interference is necessary. One must not be too precious about this. Proof that words close to those specifically alleged were used will be enough. But it has never been acceptable to call evidence of the gist or meaning of the spoken words, rather than the words themselves.

Discussion

68. The claimant's pleaded case is that:-

> "1. On or around the 22nd April 2015 an investigating detective constable did publish defamatory statements to social worker Elsa Newell, in relation to myself. The slanderous statements were then further published in permanent form in [BCD's] GP records on 24th April 2015, which was then discovered by myself in August 2015.
>
> 2. The social services log records the social worker having a telephone conversation with DC Ridge on the 22nd April 2015. DC Green was also noted on the log as having a telephone call with Elsa Newell on the 15th April 2015."

69. The claimant goes on to set out the specific words of which she complains, and she has produced a written record of them in the form of the GP Record. There is no

dispute that those words referred to her. It is not unreasonable to rely on a case that DC Green and/or DC Ridge made slanderous statements about the claimant to social services. The evidence establishes that each of them did speak to social services on the dates alleged. The Chief Constable is responsible for what her officers do.

70. But the GP Record is not a record of any slanderous statement made by a detective constable to Elsa Newell on or about 22 April 2015. It is a record of what Elsa Newell said to health worker Victoria Stennett in a telephone conversation on 24 April 2015. The GP Record does not purport to be or to contain an account of what any police officer said to Elsa Newell. Both the officers concerned have given evidence in which they deny making the statements complained of. The person to whom they are alleged to have made those statements, Ms Newell, has not given any evidence at this trial. The evidence is that she has no independent recollection of what she said. For that among other reasons a witness summons that had been served on her was set aside. The person to whom Ms Newell spoke has not given evidence either. An email that is before me contains some evidence that Ms Stennett thinks she wrote down accurately what Ms Newell said to her. But the email is not from Ms Stennett, and it is dated nearly two years after the initial record was made. It would be unsafe to attach any great weight to it.

71. I therefore have to decide whether I should reject the officers' evidence and accept the claimant's case, that it can and should be inferred from the GP Record and the other evidence before me, that the words that the claimant complains of were spoken to Elsa Newell by one or other or both of DC Green and DC Ridge.

72. There is nothing wrong in principle with an inferential case of slander. But it is often going to be hard to prove such a case, and there are real difficulties with the inferences invited in this instance. Some of the more obvious problems are these:

(1) The GP Record does not set out any direct quotation from any police officer. Nor does it contain anything that appears to be an indirect quotation from anything an officer said.

(2) The most recent written accounts of what the detective constables involved had said to social services are dated 15 and 22 April 2015, that is to say 9 and 2 days respectively before the conversation recorded in the GP Record.

(3) The Social Services records of what was said by DC Green on 15 April and by DC Ridge on 22 April 2015 are not helpful to the claimant. None of the language in either those records corresponds with any part of the words complained of.

(4) The first of the three elements of the words complained of (the passage about witness stating they have heard her putting words into her son's mouth) is in a sentence, which I have labelled [1] above, that appears on its face to be a report of something said by a judge, not a police officer.

(5) The second element of the words complained of ("She has also lied …") appears rather garbled, which is not what one would expect from a detective constable. There is ample evidence that DC Green writes clearly. DC Ridge seems to do likewise. More significantly, perhaps, this part of the words complained of is not easy to reconcile with the facts that were known to DC Green. It seems to suggest

that the only conversation between BCD and the police was at nursery, so that the mother could not have overheard it. DC Green was well aware that was not so. He knew at the relevant time what ABC and her mother was saying about the matter. It is hard to see why he might lie about this. It is hard to see why DC Ridge would say anything on this topic. Her only role in the matter was to interview the claimant. Moreover, Elsa Newell knew that there had been two conversations between the police and BCD, or at least the social services records made that clear.

(6) The third element of the words complained of appears on its face to be a report of Elsa Newell's intentions, and her reasons for them. It is clear that DC Green did have reservations about ABC's role in the investigation, but it does not follow that these words reflect or embody a statement he made to Elsa Newell.

(7) The overall impression gained from a reading of Ms Stennett's record is that it reflects a 20 minute conversation in which, whoever initiated the conversation, Ms Newell was conveying to the health visitor her overall assessment of the case, drawing on a number of sources of information.

73. For the reasons that follow I find that the claimant has failed to prove publication of all but one of the words complained of. That word is "lied".

74. The claimant has little to offer by way of answer to the points I have made about element [1] of the meaning. The whole sentence appears to be an account of what a Judge has said, and the reasons the Judge has given for saying it. The evidence does not suggest that DC Green or DC Ridge knew they knew or believed there had been "witnesses stating that they had heard [ABC] putting words into" the mouth of her son. The claimant has not discharged the burden of proving that this part of the words complained of was spoken by any police officer to Ms Newell. I find that is probably not the case. It is more likely than not that the words of element [1] or similar words were spoken by Elsa Newell to Ms Stennett, but that they reflected information gleaned by Ms Newell about what had been said by a judge, which she had obtained from a source other than the police.

75. The claimant is on stronger ground when it comes to element [2] of the words complained of. She can and does say that the words are about what she had said to the police. DC Green and DC Ridge both spoke to social services, and both had information about what she had and had not said to the police.

76. But the case against DC Ridge is weak. She was not involved in the investigation generally. Her only role, I accept, was to take the claimant's statement. It was not her function to assess the truthfulness of what was said, and she had neither the resources nor any reason to do so. In my judgment it is highly improbable that she spoke any of the words contained in element [2] to Elsa Newell at any point. I am not wholly persuaded that DC Ridge spoke to Elsa Newell at all (rather than to someone else at Social Services); but if she did I find as a fact that their only conversation was on 22 April, and that it did not go beyond the topics mentioned in the social services records of that conversation. I am not sure it covered even that much ground. It is quite possible that some of the information in that entry came from some other source. It does not matter for present purposes. The entry provides no basis for a finding that DC Ridge spoke any of the words complained of in element [2].

77. The position is different as regards DC Green. He was the OIC. He knew the details of the investigation. He was in a position to make an assessment of the truthfulness of what the claimant had said to him, and to others. He had formed a view about the claimant, which was not favourable. But element [2] is not just multiple hearsay it is also a muddled version of events. Where the muddle happened is hard to say. But DC Green would not have said that ABC had lied about "who was present when the police interviewed" BCD. I doubt that Ms Newell would have said it, given what was on her records at this time. She is not likely to have ignored what was on file. She was on the verge of completing her assessment. Similar reasoning applies to the false suggestion in the GP Record that there was only one conversation between BCD and the police. The best explanation for these latter parts of element [2] is confusion on the part of Ms Stennett, whose involvement in the case seems to have been minimal, and peripheral.

78. As to the earlier part of element [2], Ms Newell would not, in my view, have said to Ms Stennett that the claimant had "lied about the statement she has provided to the police". DC Green would not have made that assertion. He certainly would not have done so when he spoke to Elsa Newell on 15 April, which was before ABC had made a statement to police. He had no reason to say those words after ABC made that statement. If he did speak to Elsa Newell in that period, there is no record of it.

79. But by the time he spoke to Ms Newell on 15 April DC Green did believe that the claimant had lied to him in the course of the conversations of 9 March. He accepted this in the course of his evidence to me. I find on the balance of probabilities that on or about that date DC Green spoke to Elsa Newell about what the claimant had said to the police, and that in doing so he said of the claimant that she had "lied". In using this word DC Green was referring to what the claimant had said to him on 9 March. At the risk of anticipating a little, the reason he used that word is that he believed that the claimant had lied to him in their second conversation of 9 March, about what she had said in their first conversation.

80. The claimant has failed to satisfy me that any of the other words complained of were spoken to Elsa Newell by DC Green or by DC Ridge. Element [3] of the words complained of is, as a matter of probability, an account of what Elsa Newell said to Ms Stennett about what she was going to do and why. The "reservations" referred to are probably those of Ms Newell. The words used may reflect a view that had also been taken by DC Green. That view might even have been expressed by him to Ms Newell, along with the suggestion that the claimant had "lied". But there is no good reason to suppose that any part of this passage reflects the precise terms of any statement spoken by DC Ridge or DC Green to Elsa Newell. DC Ridge probably had limited knowledge of the investigation. I think it unlikely that DC Green would have used that language.

81. Overall, the GP Record is an account of what Elsa Newell said to Ms Stennett, which does not pretend to be a word for word account and is in some respects an inaccurate one. In one particular respect it reflects, in my judgment, a disparaging word used by DC Green to Elsa Newell about the conduct of the claimant. Otherwise, the claimant has failed to prove her case on publication.

Defamation

82. The requirements that are relevant in this case are these. A claimant in slander must, unless it is admitted, prove that the publication of which they complain (1) conveyed a meaning or imputation which is defamatory at common law (2) has caused special damage, or is actionable without proof of special damage and (3) has caused or is likely to cause serious harm to the reputation of the claimant. The Chief Constable does not accept that any of these requirements is satisfied here. It is convenient to deal with each in turn.

(1) Defamatory meaning?

83. I summarised the core principles in *Monroe v Hopkins* [2017] EWHC 433 (QB) [2017] 4 WLR 433 [23], in this way:-

> "(2) Whether a statement about the claimant has a defamatory tendency is determined according to common law principles identified in *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130, *Thornton v Telegraph Media Group Ltd* [2010] EWHC 1414 (QB) [2011] 1 WLR 1985, and *Modi v Clarke* [2011] EWCA Civ 937. In short, the answer depends on (a) the single meaning that would be conveyed by the statement to a hypothetical ordinary reasonable reader and (b) whether that meaning is one that would tend to have a substantially adverse effect on the way that right-thinking members of society generally would treat the claimant. As this summary suggests, the answer is arrived at objectively, and not by reference to evidence of what people actually thought the statement meant, or how they reacted in fact.
>
> (3) Most cases turn on the "natural and ordinary meaning" that the ordinary reasonable reader would take from a statement. …"

84. The best summary of the principles to be applied when deciding meaning is that of Eady J, as adopted and approved by Sir Anthony Clarke MR in *Jeynes* at [14]:

> "(1) The governing principle is reasonableness. (2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. (3) Over-elaborate analysis is best avoided. (4) The intention of the publisher is irrelevant. (5) The article must be read as a whole, and any "bane and antidote" taken together. (6) The hypothetical reader is taken to be representative of those who would read the publication in question. (7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, "can

> only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation … (8) It follows that "it is not enough to say that by some person or another the words might be understood in a defamatory sense."..."

85. The claimant's case is that the words complained of in their natural and ordinary meaning "imply that I have committed a criminal offence as lying on a police statement" which would be "perverting the course of justice". She complains that the words also imply "that there is suspicion around my involvement and I am implicated on a criminal basis." I explored with her at the outset of the trial the detail of what she was complaining about. In the event, it is not necessary to examine the various permutations. She has proved publication in only one limited respect, and it is one that causes little difficulty.

86. The word "lie" in the context of the conversation between DC Green and Elsa Newell bears the natural and ordinary meaning that in the course of a police investigation into possible child sex abuse the claimant told a deliberate falsehood to a police officer. That is a defamatory meaning. It is unnecessary to rule on what meaning would have been attached to words which the claimant has not proved were published by any officer of the defendant.

(2) Actionable in slander?

87. It is a general rule of the common law that spoken words are not actionable as slander unless it is proved that their publication has caused special damage. None is alleged in this case, so the statements complained of are only actionable if they fall within one or more of the recognised common law or statutory exceptions to the general rule. Only one such exception is relied on here. A slander which imputes that the claimant committed an imprisonable crime is actionable without proof of special damage: see *Lachaux v Independent Print Ltd* [2015] EWHC 2242 (QB) [2016] QB 402 [8].

88. For the defendant it has been submitted that those who tell lies to police officers are not always prosecuted. That is no doubt true, but the question of law as to whether a statement is actionable as a slander does not depend on current charging standards or CPS policy. The question is not whether what was imputed would have led to a prosecution, but whether it amounted to a crime for which a sentence of imprisonment could (not would) be imposed.

89. For reasons that will appear, it is not necessary to decide this point, but I would be inclined to accept the claimant's case on this issue. It may be that not all lies told to the police amount to a criminal offence. Here, though, the imputation of lying to the police that was published in this case might have amounted to the common law offence of perverting the course of public justice, but in any event would at least amount to wasting police time contrary to s 5 of the Criminal Law Act 1967. Both offences are punishable by imprisonment.

(3) Serious harm to reputation?

90. Here, the claimant's case runs into difficulties. In my judgment she has failed to show that her case satisfies what I have called the "serious harm requirement." This is contained in s 1(1) of the Defamation Act 2013 which provides that "A statement is

not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant."

91. The meaning and effect of this provision were explored in *Lachaux* (above) but the principles have also been looked at in later cases. It is convenient to adopt the relevant parts of the summary which Dingemans J drew from the authorities in *Sobrinho v Impresa Publishing SA* [2016] EWHC 66 (QB), [2016] EMLR 12 at [46]-[50]:

> "46. … first, a claimant must now establish in addition to the requirements of the common law relating to defamatory statements, that the statement complained of has in fact caused or is likely to cause serious harm to his reputation. *Serious*" is an ordinary word in common usage. Section 1 requires the claimant to prove as a fact, on the balance of probabilities, that the statement complained of has caused or will probably cause serious harm to the claimant's reputation. It should be noted that unless serious harm to reputation can be established injury to feelings alone, however grave, is not sufficient to establish serious harm.
>
> 47. Secondly it is open to the claimant to call evidence in support of his case on serious harm and it is open to the defendant to call evidence to demonstrate that no serious harm has occurred or is likely to do so. However a court determining the issue of serious harm is, as in all cases, entitled to draw inferences based on the admitted evidence. Mass media publications of very serious defamatory allegations are likely to render the need for evidence of serious harm unnecessary. This does not mean that the issue of serious harm is a "*numbers game*". Reported cases have shown that very serious harm to a reputation can be caused by the publication of a defamatory statement to one person.
>
> 48. Thirdly, there are obvious difficulties in getting witnesses to say that they read the words and thought badly of the claimant… This is because the claimant will have an understandable desire not to spread the contents of the article complained of by asking persons if they have read it and what they think of the claimant, and because persons who think badly of the claimant are not likely to co-operate in providing evidence.
>
> …
>
> 50. … as Bingham LJ stated in *Slipper v BBC* [1991] QB 283 at 300, the law would part company with the realities of life if it held that the damage caused by publication of a libel began and ended with publication to the original publishee. Defamatory statements are objectionable not least because of their propensity "*to percolate through underground channels and contaminate hidden springs*" through what has

> sometimes been called "*the grapevine effect*". However, it must also be noted that Bingham LJ continued and said: "*Usually, in fairness to a defendant, such effects must be discounted or ignored for lack of proof*", before going on to deal with further publications which had been proved to be natural, provable and perhaps even intentional results of the publication sued upon."

92. One effect of s 1 is to make proof of serious harm to reputation, or its likelihood, an essential element of any cause of action in defamation. It follows that serious harm or its likelihood must be pleaded in the Particulars of Claim. Otherwise, they will fail to disclose a reasonable basis for a claim. So "… claims should now be pleaded in terms reflecting the wording of section 1 of the 2013 Act, making clear which limb or limbs are relied on, and should set out any facts relied on in support of an allegation of actual or likely serious harm to reputation": *Ames v The Spamhaus Project* [2015] 1 WLR 3409 [102].

93. Here, the claimant did not expressly address the serious harm requirement in her Particulars of Claim. But it would be unreasonable to hold that against her, as a litigant in person, when she did say the following, which has been reflected in the way she has presented her case at the trial:

> "The very serious defamatory words … lower[..] the claimant's reputation in the eyes of a reasonable and right minded person. In this case social workers, medical professionals, doctors, nurses and any medical personnel whom access these records concerned with my sons health will wrongly think I have been perverting the course of justice by lying on my police statement when I have not and that I am a criminal . This permanent, life time record is not only extremely damaging to my personal reputation and mental wellbeing, but could also have implications for the medical treatment of myself and son in the future. I dread to think the effect it will have on [BCD] when he reads his GP records in years to come and the damaging effect this would have on our relationship if this is not properly corrected. It is my position that the words complained of were communicated maliciously to the social worker with intent to cause harm to my reputation as discussed above."

94. It can be said that parts of this are incapable of satisfying the serious harm requirement because they are about the claimant's wellbeing and health, and that of her son. However, it is not inconceivable that there could be real and serious health impacts consequent on serious harm to reputation. The real problem here is with the claimant's case that what DC Green said to Elsa Newell has caused or is likely to cause serious harm to reputation because there has been or is likely to be widespread publication of the offending accusation by means of the GP Record.

95. The claimant has not called or produced any independent evidence to support this aspect of her case, which must rest on what she herself says, such relevant facts (if there are any) as I can take into account as matters of common knowledge, and the evidence called for the defendant.

96. The claimant's witness statement contains an account of an incident which she attributes to the publication complained of. She says she had an appointment with a GP on a date unspecified at which the doctor told her he would not issue any more medication, said she would need to go back next week when she had calmed down and that she had wasted her time. She attributes this to the words complained of. I do not regard this as a satisfactory evidential basis for such a conclusion. I have too little detail to reach a safe conclusion that this episode is linked with the word "lied" in the GP Record. There is no other evidence that the GP Record has had any actual impact on the claimant's reputation.

97. The allegation is not a trivial one. But allegations of a serious nature do not always or necessarily cause reputational harm that is serious. This is not a case in which inference can provide a satisfactory basis for a finding that serious harm to reputation has been caused. Nor do I accept the claimant's case that it is proved that serious harm is likely in the future. I can see that a record has been made in the electronic database of GP information. Beyond that, I know and can infer little. The claimant has put forward a series of suggestions as to how the words complained of might affect her prospects of working with children, or adopting, fostering or having more children of her own in future. But that could only be the case if and to the extent that relevant part of the GP Record would be disseminated or made accessible to people making decisions of that kind, and taken seriously in that context. I cannot make assumptions about such matters. On the evidence before the Court this cannot be said to be likely, or anything more than speculative. That is true, whatever the point in time by reference to which the likelihood of future harm needs to be addressed.

98. Temporary CI Mottershaw gave some evidence from his own experience about the extent to which information of this kind is made available if requests are made for enhanced disclosure of criminal records. I am not sure this was very helpful, as it related to what a police service would do if asked for information for that specific purpose. Here, the relevant statement is held by the police only in the context of this case. The fact that, as I accept, it is highly unlikely that it would be disclosed in the context of a criminal record check is of fairly limited relevance. More relevant is the fact that looking at the overall evidential picture it seems to me that the probability is that the words that are on the GP Record as a result of what DC Green said to Elsa Newell are not likely to be consulted by anyone other than, on occasion, a GP or surgery staff member concerned with the medical needs of the claimant or her son. Consultation in that context for those purposes is not likely to cause any reputational harm of a serious nature, in my view.

99. Data protection law provides a basis on which individuals can, in some instances, seek remedies in respect of false factual records in electronic databases. The remedies available, which include orders for rectification of the record, do not turn on whether the recorded statements are defamatory at common law or whether they meet the harm threshold laid down by s 1 of the 2013 Act. But this is an area of law separate from that which has been examined in this case. It has recently been the subject of consideration by Dingemans J in *Guise v Shah* [2017] EWHC 1689 (QB). And in the circumstances, including those summarised at [97] above and [136] below, has not been necessary or appropriate to explore whether resort to data protection law might avail this claimant.

Conclusions on whether statement actionable

100. In summary, I find that the word "lied" that was spoken and published by DC Green to Ms Newell about the claimant bore a meaning with a defamatory tendency, and I would be inclined to find that it imputed an imprisonable crime, so as to be actionable in slander; but I find that the claimant's case must fail because she has not proved that the publication caused or was likely to cause serious harm to her reputation as required by s 1 of the Defamation Act 2013.

Defences

101. For completeness, and in case this matter should be taken any further, I shall set out my conclusions on the remaining issues in the case. In summary, these are that the claim would have failed in any event because the offending statement although not shown to be true, was privileged and not malicious.

The statements of case

102. The Defence as originally pleaded said as follows:

> "If … the words complained of arose as a result of any information provided to the Social Worker by officers acting under the control of the Defendant then the Defendant will assert that the information provided to the Social Worker was given in confidence to a partner agency for the purpose of child protection, was without malice and would be subject to qualified privilege. All such information was disclosed in good faith and/or was substantially true."

103. This form of pleading identifies two recognised defences to a claim in defamation: the common law defence of qualified privilege and the statutory defence of truth provided for by s 2 of the Defamation Act 2013. Otherwise, the statement of case is deficient. It is clearly non-compliant with ordinary pleading principles and, specifically, the requirements of the Part 53 Practice Direction.

104. The defence of truth failed to comply with PD 53 para 2.5 which says as follows: **"2.5** Where a defendant alleges that the words complained of are true he must (1) specify the defamatory meanings he seeks to justify; and (2) give details of the matters on which he relies in support of that allegation." The Defence did neither of these things. They were however done adequately as a result of my prompting at the start of the trial, when the amendment to which I have referred was made.

105. The defence of qualified privilege failed to comply with PD53 para 2.7 which says this: "Where a defendant alleges that the words complained of were published on a privileged occasion he must specify the circumstances he relies on in support of that contention." This calls for a bit more than simply stating that "the information provided to the Social Worker was given in confidence to a partner agency for the purpose of child protection". This part of the Defence was not amended. But I considered that it was proper to allow it to be litigated nonetheless.

106. The claimant had been put on notice that this defence would be relied on. Evidentially the claimant was in possession of the material she needed to challenge the defence case, the rest of the defence being mainly a matter of law for me to consider. Counsel for the defendant elaborated her case on the circumstances in her closing submissions by reference to the legislative context. Those submissions were completed on this point towards the end of the day, and copies of the materials relied on were provided shortly afterwards. That gave the claimant and me time to consider the material. And the claimant had from the start pleaded a case of malice against DC Green.

107. The claimant's case on malice is not pleaded in accordance with the Practice Direction. It says this: **"2.9** If the defendant contends that any of the words or matters … were published on a privileged occasion, and the claimant intends to allege that the defendant acted with malice, the claimant must serve a reply giving details of the facts or matters relied on." A plea of malice requires a high degree of particularity, and the particulars must show a probability of malice: *Seray-Wurie v Charity Commission of England and Wales* [2008] EWHC 870 (QB) [34]-[35] (Eady J), *Thompson v James* [2013] EWHC 585 (QB) [16] (Tugendhat J). Here, there is no Reply. The plea of malice is contained in the Particulars of Claim. The pleading of malice does not meet the standards of particularity that the authorities lay down.

108. These flaws have led to some difficulties in managing the case. However, the defendant has not raised objection on these grounds and the difficulties have not been insuperable. The claimant's case has been made sufficiently clear, and Ms Hayward has been able to understand and address it. The requirement to show a probability of malice is something that, in practice, I must examine as a matter of evidence.

Truth

109. In its amended form the Defence asserts the truth of two imputations. I do not need to concern myself with the second, which does not and cannot arise from the single word of which the claimant is entitled to complain. The nub of this part of the case is whether the Chief Constable has proved the truth of the first and main imputation which is defended as true: "that the claimant had lied to the police". In my judgment, though it is easy to see why DC Green believed that she had done so, the defence has failed to prove that she did.

110. The defence case is entirely concerned with what the claimant said to DC Green on 9 March 2015. The defendant's factual case is set out in paragraph 8 of the Amended Defence:

> "On 9th March 2015 the Claimant spoke with DC Green on the telephone on two separate occasions. During the first conversation the Claimant informed DC Green that she believed that the suspects in the criminal investigation were exploiting her son for financial gain. This was something that DC Green asked the Claimant to repeat, which she did. During the second conversation the Claimant told DC Green that he was mistaken in what he thought she had said in their first conversation and denied making any statement that her son was being exploited for financial gain. DC Green challenged the Claimant and informed her that he was quite clear that she had

made the allegation of her son being exploited for financial gain. It is denied that DC Green was at any time extremely aggressive with the Claimant during either phone call."

111. As the claimant has pointed out in her closing submissions, this does not in terms allege that she lied. But it is sufficiently clear from the statement of case as a whole and from the evidence, including the cross-examination of the claimant, that the defence case is that the claimant's denial in the second conversation was dishonest.

112. That case depends of course on the evidence of DC Green, coupled with the entries he made on the OEL, more or less contemporaneously. He was emphatic that in the first conversation the claimant suggested that her ex, his mother and her partner might be exploiting BCD "for financial gain", and that she had repeated this when he queried it. He was confident that she had used those words. In the second conversation she had denied doing so. He believed that she had lied.

113. The claimant's witness statement said that in the first conversation she was asked by DC Green what she thought was going on and she gave him an answer. She said in her statement that "I said I didn't know, why would anyone take indecent pictures of a child". She said she could not remember what her exact words were. She had "simply reiterated what my mother had told me and about the man and the Facebook post referring to 'knock out drops'. I thought why is he asking me? He's the detective not me. Then he said he had logged it that I had said that BCD's father was abusing BCD for financial gain by placing pictures of him online and Nana J and Nana A were exploiting BCD for financial gain by posting pictures of him online. 1 said I didn't say that, all I did was answer his question and present him with evidence but he seemed set on setting me up on saying things I had not said."

114. By the end of the claimant's evidence the differences between the parties had narrowed. Under cross-examination the claimant accepted that the answer she gave to DC Green was to the effect that she thought "something horrible" was going on. She denied using the words "financial gain" but agreed that she "may have said maybe they were doing it for money. Why would someone do something like that?" She conceded that she "possibly" said "something about them doing it for money". She agreed that she had referred to the fact that GNA had been made bankrupt. It became clear that the claimant had indeed suggested, when questioned, that the explanation for what she knew or thought she knew might be that those involved were taking indecent pictures of her son, in order to make money from them. Her real concern had been that DC Green proposed to record what she had said as an express allegation of crime made by her, that this is what her ex-partner, his mother and her partner were up to.

115. My conclusion is that when asked what she thought was going on the claimant did, in substance, suggest that those three might be involved in exploiting her son for financial gain by taking indecent pictures of him for sale. She may not have used the words "financial gain", but whether or not she did so that is the thrust of what she was suggesting. She did not request or suggest that DC Green should record this as an allegation of crime, and she did not want him to do that. DC Green had no intention of undertaking an investigation of any such allegation, which he believed was entirely fanciful. But the claimant wrongly thought that he did intend to do so, and thereby to cast her in the role of accuser. She was fearful of the possible consequences for her if

that was done. She therefore took energetic steps to counter that possibility. Those steps included denying that she had made such an allegation. The denial was false, in the sense that she had made the suggestion that this might be the case. But the denial was not dishonest. The claimant believed there was a real and substantial difference between speculation about a possible explanation for the facts as she saw them, and a direct accusation of criminality. She had persuaded herself that her words were being twisted by DC Green.

Qualified privilege

116. The general principle of law is that there are circumstances in which, on grounds of public policy and convenience, a person may without incurring liability for defamation make statements of fact about another which are defamatory and untrue. The defence available where such circumstances exist is known as qualified privilege.

117. One well-established category of circumstance giving rise to such a privilege is where the person who makes the communication is under a legal, social or mora duty to communicate on the topic in question and the recipient has a duty to receive or a legitimate interest in receiving information on that topic. One classic formulation of this principle is that of Lord Atkinson in *Adam v Ward* [1917] QC 309, 334:

> "A privileged occasion is … an occasion where the person who makes a communication has an interest, or a duty, legal social or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential."

118. Ms Hayward relies on this principle. She submits, and I agree, that this is a case in which (i) the police had a duty to communicate with social services about the investigation into the allegations that BCD had been abused, and (ii) social services had a corresponding duty to receive such information. The claimant had alleged that BCD's grandmother's partner had sexually touched him and taken indecent photographs of him. BCD stayed frequently at his grandmother's house, sometimes without his father there, as did BCD's stepbrother. If true, as Ms Hayward argues, these allegations plainly posed a risk of serious harm to the children concerned. It was clearly appropriate to take a multi-agency approach to such matters. As Ms Hayward points out, when the allegations were first passed to the police they made a safeguarding report to social services almost immediately, and thereafter, as set out in the social services log, ensured that social services were kept apprised of the investigation.

119. It was necessary, submits Ms Hayward, for social services to understand the nature of the allegations, the progress of the investigation and, pending a final decision on the outcome of the investigation, the views of the police (and in particular the investigating officer), as to the substance of the allegations and the reliability of the person making them. It was entirely appropriate for such information to be relayed to social services as it would help them better understand and assess whether there was any risk to BCD and, if so, to manage it.

120. Where a public authority such as this defendant seeks to rely on the defence of qualified privilege the Court must take account of human rights law. A public

authority can have no duty to make a communication if it represents an unnecessary or disproportionate interference with the Article 8 rights of an individual: *Clift v Slough Borough Council* [2010] EWCA Civ 1171 [2011] 1 WLR 1774. Ms Hayward recognizes this. She argues that to the extent that the communication complained of engaged the claimant's Article 8 rights, it was not more than necessary and proportionate, having regard to shared safeguarding functions of the police and social services. I agree.

121. These activities were taking place within a context governed by statute and well-known statutory guidance. The Children Act 2004 imposes duties on local authorities and the police with regard to the safeguarding and welfare of children. By s 11(2) of the 2004 Act, a local authority and a chief officer of police for a policing area "must make arrangements for ensuring that (a) their functions are discharged having regard to the need to safeguard and promote the welfare of children." By s 11(4), such bodies and persons must have regard to any guidance given to them by the Secretary of State. The guidance in force at the relevant times was "Working together to safeguard children – A guide to inter-agency working to safeguard and promote the welfare of children" dated March 2015. Relevant passages are to be found in paragraphs 12, 15, 18, 22 and 23. Paragraphs 22 and 23 appear under the heading "Information sharing". Paragraph 22 makes the obvious point that "Effective sharing of information between professionals and local agencies is essential for effective identification, assessment and service provision." It is unnecessary to cite these paragraphs more extensively. It is clear that the guidance encourages professionals involved with children to share information with a view to enhancing the prospects for effective safeguarding, or promoting welfare.

122. Of course, it is necessary to consider the particular information provided in the individual case, and whether there was a real need to provide that information to the particular individual(s) with whom it was shared. The statement that "she lied" was not made in order to save a child from abuse. But it was clearly highly relevant to the duties which social services had to perform. In contrast to the factual position in *Clift*, the statement was communicated to a single individual, Ms Newell, who was personally under a duty to acquire and assess information relating to the welfare of BCD. This was information of that nature. In my judgment it is plain that DC Green had a duty to provide Ms Newell with his assessment of the reliability of the claimant, who had made allegations that her son was the victim of abuse by adults within his family. As Ward LJ observed in Clift at [35] "it cannot be held to be disproportionate for a [public] authority to do what it is bound to do anyway".

Malice

123. A defence of qualified privilege is defeated by proof that the defendant published the words complained of maliciously. To make such an allegation good, a claimant must prove that the defendant had a dominant improper motive: see *Horrocks v Lowe* [1975] AC 135 and the discussion in Gatley on Libel and Slander 12th edn. paras 17.1 ff. The test is notoriously hard to satisfy in practice. When it is satisfied, this is usually done by establishing the defendant's knowledge of or reckless indifference as to falsity (Gatley para 32.35). If this is proved, the inference can easily be drawn that the defendant had some dominant improper motive for saying what he did. There may in some cases be language so far in excess of the occasion as to be evidence of actual malice. But this will rarely be the case, and that is not the contention of the

claimant here. She relies on the core principles that I have outlined. Her case therefore depends on persuading me that DC Green spoke dishonestly, or at least that he lacked an honest belief in what he said to Elsa Newell.

124. I am concerned only with the words "she lied". As I have already made clear, I accept DC Green's evidence that he believed that to be so. He had good reason to hold such a belief, based upon his conversations with the claimant on 9 March. She had made a suggestion which she then withdrew, and denied making. After hearing evidence and cross-examination on the topic I have reached the conclusion that she did not do this dishonestly. But it was understandable and reasonable for DC Green to form the view on 9 March that she had lied, and to remain of that view after that.

125. That makes it unnecessary for me to analyse and reach findings on all the claimant's extensive allegations of malice. In fairness to DC Green and the other officers who have given evidence, however, I will briefly indicate my conclusions on the main points.

126. One suggestion made by the claimant in her statement of case and witness statement was that DDC had relatives in the police and that there may have been some connection between this and the way the investigation was undertaken. She effectively abandoned this under cross-examination, however, and she did not put it to the officers. I find it is unfounded. The claimant suggested that DC Green had shown undue concern for the enforcement of the contact arrangements for DDC to see his son, and a lack of real interest in her allegations of abuse. I did not find this convincing, even on its own terms. It certainly did not amount to a persuasive particular of malice. DC Green was quite properly concerned that the claimant should not flout the court's orders as to contact. He was not dismissive of the claimant's concerns, though he had real reservations about her account of things. I was not persuaded by the claimant's evidence that DC Green had said to her at an early stage that it was "all in her head".

127. One important plank of the claimant's case of malice concerns what BCD said to the officers during the Home Visit. She maintains that he said "Daddy knows my secret. Mummy doesn't". Her mother gave evidence that this is what she heard through an open door, listening in to a conversation that was taking place in the kitchen. Giving his account of the Home Visit in the OEL, DC Green recorded that BCD had made reference to a secret but he did not record these words: see [30] above. The claimant's suggestion is that this represents deliberate suppression of important incriminating detail. I reject that. I do not find it necessary to resolve the question of what in fact was said (though I note that in her text of 6 March the claimant herself did not refer to the words "Mummy doesn't'": see [26] above). It is enough to say that in my judgment DC Green's record on the OEL represented an accurate account of what he believed BCD had said.

128. The claimant has accused DC Green of further dishonesty in his record of the Home Visit. She suggests that his OEL entry falsely portrays that visit as having taken place on 9 March, rather than the previous Friday 6 March. That is an ill-founded and unfair criticism. The date on the OEL is the date on which the record was entered by DC Green. The system did not provide for the entry of the date of the event. He could have incorporated an express reference to that in the text of his entry, and did not do so. But it is perfectly clear that he was not attempting to mislead anyone. The

language of the entry shows plainly enough that his account of the Home Visit describes events that took place before Monday 9 March: see [32] above. The claimant suggests that DC Green deliberately and dishonestly suppressed the fact that her mother was present at the time of the Home Visit. That is a bad point. Her presence was, from the perspective of DC Green, immaterial. He was unaware that she had witnessed anything relevant.

129. I have set out my findings about what was said between the claimant and DC Green on 9 March. I add that his refusal to amend his record at the claimant's request was not dishonest. It was an illustration of a conscientious approach on his part. He was convinced that she had suggested that three people were abusing her son for financial gain. He had recorded that. He was not prepared to alter that record. The point is very fairly made by Ms Hayward that if any proceedings or further investigation took place concerning the claimant's allegations of abuse her credibility could very well have been an issue. The defence would have been entitled to disclosure of material tending to undermine her credibility. It would have been wrong to delete or expunge such a record.

130. The claimant maintains that DC Green was aggressive in his tone and manner towards her on the telephone on 9 March 2015. The claimant's mother supports this. I find that he was forceful and abrupt at times, and stubborn in his refusal to amend the records. This clearly was interpreted as aggression. But I consider that the claimant and her mother were over-sensitive and misinterpreted the level of and the reasons for DC Green's forceful manner. He was convinced that false allegations were being advanced. He felt strongly about that. He did not "have it in" for the claimant.

131. The claimant accuses DC Green of "making another false entry on the OEL" in relation to the Nursery Visit. Her case is that it is "completely untrue" that she was heard by nursery staff telling BCD to "make sure you tell the officer all about what you told me." The evidential picture here, summarised at [39]-[45] above is incomplete, and slightly puzzling. I have heard no evidence from anyone at the nursery. A few things are clear, however. One is that the claimant did tell her son before they went to nursery that day that he was going to see the police, when she knew (because it was obvious) that this was an inappropriate thing to do. Secondly, I find as a fact that the claimant had prompted her son to say things to his key worker before he spoke to the police. This is the best and most sensible explanation of what was said and done on their arrival at nursery, as recorded by the CPO at the time. It is in the light of these points that I consider DC Green's OEL entry.

132. In my judgment, the strong probability is that the nursery staff to whom DC Green spoke at the Nursery Visit said something to him and DC Dixon to the effect that the claimant had encouraged her son to say things. She had in fact done so, and she had also told him that he was going to see the police. It is possible of course that DC Green's record of what he was told is inaccurate. He might have misunderstood. DC Green may not have been told that the claimant had told her son to say things *to the police*. His OEL entry could represent a garbled account of the events that had been recorded contemporaneously by the CPO, involving the key worker, Jill. Knowing as I do that this entry has been the subject of separate investigation and findings, and that it may yet be looked at again, I limit myself to stating that my judgment on the evidence that has been called in this case is that DC Green's record reflected what he

thought he had been told. I do not accept that his record of what the nursery staff told him was a dishonest one. I do not need to go further, for the purposes of this case.

133. In cross-examination of DC Green the claimant made a number of criticisms of his Summary, entered on the OEL on 23 April 2015 ([57] above). She was able to identify some errors and omissions, but she was not able to persuade me that any of these were dishonest, or that they represented either individually or cumulatively any evidence of malice on the part of DC Green.

134. I am similarly unimpressed by the claimant's criticisms of the conduct of DC Ridge and DS Mottershaw. She had some points, in that she was able to identify imperfections in the way that they behaved. But these in my view fell a long way short of amounting to evidence of malice.

135. The claimant has persuaded herself that the police were against her and colluding with one another, with ill-will towards her. She has wholly failed to persuade me.

Remedies

136. Given my conclusions on liability, no question arises of any financial remedy. The claimant has suggested that there could be widespread and harmful distribution of the offending words. I have found that this is speculative and affords no basis for any claim for damages. A well-founded fear that a false and actionable defamatory statement will be published in future may ground a claim for an injunction. In this case, however, there is no reason to fear re-publication by the defendant or any of her officers. A fear is expressed that the offending statement may be distributed within and by the GP surgery, not the defendant Chief Constable. I do not detect such a threat. And it is not easy to see how an injunction against the defendant could be justified to counter such a threat, if there was one. Any claim there might be for a remedy involving the correction of the record, or a prohibition on its distribution, would seem to lie against the GP practice.

Conclusions

137. The claimant has proved the publication by DC Green to Elsa Newell of two defamatory words about her: "she lied". Those words are defamatory at common law, and I would have been inclined to find the imputation was actionable as slander. But she has failed to prove that serious harm to reputation was caused or is likely to be caused by this publication. The claim must be dismissed. It would have failed anyway because, although the imputation has not been proved to be true, the statement was made on a privileged occasion and the claimant has not proved that it was made maliciously.