

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/11/2017

Before :

MR JUSTICE WARBY

Between :

Pirtek (UK) Limited

Claimant

- and -

Robert Jackson

Defendant

Caroline Addy (instructed by **Irwin Mitchell LLP**) for the **Claimant**
The Defendant did not appear and was not represented

Hearing date: 7 November 2017

Judgment Approved

Mr Justice Warby :-

1. This is an application for judgment in default of acknowledgment of service and summary disposal pursuant to ss 8 and 9 of the Defamation Act 1996 and CPR 53.2. The defendant is neither present nor represented, nor has he submitted any representations to the Court. Ms Addy, who appears for the claimant, has however helped me by addressing points that might have been made by the defendant, or on his behalf.

Factual and procedural background

2. The action is brought by a company ("Pirtek") which carries on the business of providing hydraulic hose replacement services to industry. Pirtek does this through a network of franchisees, about 65 in number. One such franchisee was a company called Starflow Hydraulics Limited ("Starflow"). The defendant ("Mr Jackson") used to own and operate Starflow. He guaranteed the performance of its obligations to Pirtek.
3. The background to the claim can be quite shortly summarised.
4. Pirtek, Starflow and Mr Jackson fell out badly over Starflow's performance of the franchise agreement. The dispute was settled, but Starflow and Mr Jackson failed to pay the agreed settlement sum to Pirtek. When Pirtek sought to enforce their

obligations Mr Jackson and associates carried on a campaign of harassment against senior executives of Pirtek. The company and two such executives successfully sued Mr Jackson for harassment (“the Harassment Action”).

5. Pirtek then made a statutory demand for some £54,000 comprising the agreed settlement sum and debts due pursuant to the franchise agreement (“the Money Claim”). Mr Jackson sought to set aside the statutory demand, but he lost. Eventually, at the instigation of Pirtek, Mr Jackson was made bankrupt. In due course, the trustee in bankruptcy obtained a possession order with a view to selling Mr Jackson’s home. He lost his home at some point in early 2016.
6. After that, from about mid-April 2016, a campaign was carried out online and via social media disparaging Pirtek, its products and services. The campaign was conducted mainly via a website www.pirtek-franchise.com (“the Website”), a Twitter account [Pirtek-franchise.com@petenutt](https://twitter.com/Pirtek-franchise.com@petenutt) (“the Twitter Account”), and a Facebook page www.facebook.com/pirtek-UK-steal-homes (“the Facebook Page”). It is that campaign which led to this action. Pirtek’s case is that Mr Jackson is behind all these online and social media postings.
7. On 22 March 2017, an email (“the March 17 Email”) entitled ‘Pirtek Failures’ was sent from an address signet26@protonmail.com to numerous employees of the Halifax Group LLC, to Pirtek’s master franchisor (Pirtek Australia), to one of the Claimant’s franchisees, to an ‘enquiries’ email address at the British Fluid Power Association, and to another unrelated company. The March 17 Email contained these words:

“I am going to be documenting here the failed Franchises around the country as part of my mission in life to expose the corrupt Pirtek UK Directors Kelvin Roberts, Alastair Wiggins, Paul Dunlop, Mark Wilton and Alex McNutt (sic)”
8. The claim form was issued on 13 April 2017. It sought “relief relating to libel and malicious falsehood” published on the Website, via the Twitter account and on the Facebook page. On the same day Pirtek’s solicitor, Alexander Newman, emailed Mr Jackson asking for an address at which to serve proceedings. To do so, Mr Newman used an email address that had previously been used to correspond with Mr Jackson (“the BT Email address”). Mr Jackson did not reply directly, but text appeared on the Website two days later purporting to be an open letter from Mr Jackson in reply to Mr Newman (“the Open Letter”). This was a long letter complaining of Mr Jackson’s treatment at the hands of Pirtek and Irwin Mitchell, and explaining why Mr Jackson declined to provide a private address to the firm. It was signed “Yours Bob, Bankrupt and Belligerent.”
9. On 19 April 2017 Mr Newman sent a letter of claim to Mr Jackson, using the BT email address. Mr Jackson did not reply, but the letter was posted on the Website together with a lengthy riposte (“The April 17 Riposte”). The April Riposte contained a section entitled “The full Defamation Claim from Alex Newman of Irwin Mitchell on behalf of Pirtek UK and my initial response”, accompanied by a considerable body of additional text in reply to the complaints made in the letter of claim

10. The claim was elaborated and expanded on in July 2017 by means of two documents settled by Counsel: a draft Amended Claim Form, and Particulars of Claim. These identified and set out 55 separate statements complained of: 34 published on the Website, 18 via Twitter, a further 2 on Facebook, and one contained in the March 17 Email.
11. On 28 July 2017 Pirtek filed an application notice seeking (i) permission to amend the Claim Form, (ii) dispensation from the requirement to provide a postal address for the defendant pursuant to 16 PD 2.5, and (iii) “permission to serve the Claim Form, Particulars of Claim and all other documents by an alternative method”.
12. The reasons given for this last application were that the claimant and its solicitors did not have Mr Jackson’s address for service and, despite efforts to find it, did not anticipate being able to do so. The efforts included those of April 2016, identified above. Other efforts to identify a postal address for service had been unsuccessful. This application was supported by a witness statement of Mr Newman.
13. On 31 July 2017 Master McCloud granted Pirtek’s application, giving the company permission to serve the Amended Claim Form, Particulars of Claim and “all further documents that may be required to be served during the course of these proceedings” by any of three means: by first class post to an address in Hitchin that appeared to belong to Mr Jackson’s daughter (“the Hitchin Address”); to the BT Email address; and via a section of the Website called “contact Bob”. The order made provision for the deemed date of service of the Claim Form and Particulars of Claim, depending on which method of service was adopted. It gave Mr Jackson “14 days after deemed service of the claim form in which to file an acknowledgement of service, file an admission or file a defence.”
14. According to a certificate of service in form N215 and the evidence now before the Court, the Amended Claim Form and Particulars of Claim were served in accordance with the Master’s order was made by the first two of the authorised methods on 9 August 2017. Time for Acknowledgment of Service expired on 23 August 2017. Mr Jackson has never acknowledged service of the proceedings, or filed an admission. He has put forward no defence. He has made no formal response to the claim. He has made no response at all other than the Open Letter, the April 17 Riposte, and some passages in a more recent letter to Mr Newman dated 23 August 2017 (“the August 17 Letter”).
15. The August 17 Letter was headed with the Hitchin Address. It said that Mr Jackson planned to bring a claim against Pirtek in relation to the statutory demand to which I have referred. The letter also claimed that Mr Jackson did not control or run the Website “which you wrote to me separately about”, nor did he know the identity of the owners of the domain. I shall have to consider the significance of the Open Letter, April 17 Riposte and August 17 Letter when I address the applications which Pirtek now make.

The application

16. Before the court today is an application notice filed by Pirtek on 14 September 2017. The relief sought in the application notice is an Order that:

“i) pursuant to CPR 12.3(1) judgment in default of the defendant filing an Acknowledgment of Service is entered on behalf of the claimant; or

ii) pursuant to CPR 53.2 and section 8(3) of the Defamation Act 1996 judgment is entered for the claimant and the claim is dealt with by summary disposal.”

17. In fact, the application is for both default judgment and relief by way of summary disposal. This is made clear in a 2nd witness statement of Mr Newman, a draft order accompanying the application, and Ms Addy’s submissions. Those also make clear the full range of the relief that is or was sought, namely:

- (1) A declaration pursuant to section 9 of the Defamation Act 1996 (“the 1996 Act”) that the statements complained of are false and defamatory of Pirtek;
- (2) An order that Mr Jackson publish or cause to be published a suitable correction and apology on the Website, the Twitter account and the Facebook account, or in the absence of agreement (within 7 days of the date of the Court’s order) on the time, manner and form of such correction and apology, an order that Mr Jackson publish a summary of the court’s judgment (including the court’s declaration of falsity) on the Website, the Twitter account and the Facebook account;
- (3) A permanent injunction restraining Mr Jackson from repeating the allegations or publishing new allegations to similar effect;
- (4) An order requiring Mr Jackson to remove or cause to be removed the allegations published on the Website, the Twitter account, the Facebook account and anywhere else;
- (5) An order for damages in the sum of £10,000;
- (6) Indemnity costs to be summarily assessed.

18. It will be convenient to deal in turn with the application for default judgment and the question of summary disposal. But first I should explain why I am prepared to hear and deal with those applications in the absence of Mr Jackson. I shall also need, incidentally, to explain the basis on which I am proceeding despite s 10(1) of the Defamation Act 2013.

Proceeding in the absence of the respondent

19. This is permissible in principle, but the court has a discretion: CPR 23.11. The Court must exercise its power to proceed in the absence of a party in a way that is compatible with the overriding objective. I had to consider this issue in somewhat similar circumstances two years ago, in *Sloutsker v Romanova* [2015] EWHC 545 (QB) [2015] EMLR 27 [22]-[23] (July 2015) and again in *Brett Wilson LLP v Persons Unknown* [2015] EWHC 2628 (QB) [2016] EMLR 2 [14]-[16] (September 2015). Both were applications for default judgment where the defendant was a litigant in

person who had failed to appear without giving a reason, and the relief sought fell within the scope of s 12(2) of the Human Rights Act 1998.

20. I took a two-stage approach, considering (1) whether the defendant had received proper notice of the hearing and the matters to be considered at the hearing; (2) if so, whether the available evidence as to the reasons for the litigant's non-appearance supplied a reason for adjourning the hearing. I considered it necessary to bear in mind that the effect of s 12(2) is to prohibit the Court from granting relief that "if granted, might affect the exercise of the Convention right to freedom of expression" unless the respondent is present or represented or the Court is satisfied that "(a) the applicant has taken all reasonable steps to notify the respondent; or (b) that there are compelling reasons why the respondent should not be notified." I adopt the same approach in this case.
21. Section 12(2)(b) of the Human Rights Act is clearly inapplicable in the present case. But I am satisfied that s 12(2)(a) applies. I have already recounted the efforts made to serve Mr Jackson. Service has been effected pursuant to the Order of Master McCloud. It is quite clear that he knows the nature of the claims, as set out in the letter of claim. He has offered open responses to those claims, via the Website. It is also clear that he has read the Particulars of Claim, because matter has been posted on the Website that could only have been gleaned from reading that document. It is wholly implausible that anyone else had access to the document and a motive to post such information. It follows that Mr Jackson is aware of the claim and its basis and its detail.
22. I am also satisfied that he has been given proper notice of these applications and of the evidence that is relied upon. At this hearing, I have been shown copy email and paper correspondence which satisfies me that the application notice, draft order and supporting witness statements were emailed to the BT Email address on 18 September and posted to the Hitchin Address on 2 October 2017. Pirtek has undertaken, through Ms Addy, to verify by witness statement that this correspondence was sent as it appears to have been sent. It is on that basis that I proceed.
23. There is nothing at all before me, by way of evidence or otherwise, that suggests that I ought to adjourn or that it would be unfair to proceed in Mr Jackson's absence. He has not asked for any adjournment. My conclusion is that he is not here because he has decided not to attend, despite having full knowledge of what is going on. That is the fair and proper conclusion on the basis of the evidence and information available today. In the Open Letter he said that "any future communication between us I will be publishing via open letter as I now wish the Public, the franchise industry, the Hydraulic Industry, the Press and the Legal Profession to be judge and jury". He did thereafter say, in the April 17 Riposte that he was "fully prepared to defend my claims in a civil court for a judge based on the evidence to legally decide what is true." But he has clearly changed his mind since then. He has not taken any of the many opportunities available to engage with these proceedings, and put evidence before the court.
24. I add that despite these conclusions I have decided to hand down this judgment in written form, and to direct the claimant to serve a copy on Mr Jackson along with the resulting order. In that way, he will not be hampered or delayed in getting to know my reasons. Anyone has the right to obtain a transcript. But Mr Jackson is a litigant in

person who lacks or may lack the knowledge or the financial resources to obtain a transcript. Proceeding in the way I have described will give him an opportunity to consider and, if he thinks it appropriate, to make a timely application to the Court for Pirtek's applications to be re-listed pursuant to CPR 23.11(2), or to set aside the default judgment which I propose to enter. I do not suggest that it would be appropriate to make either application. My point is that in this way Mr Jackson will be able to give informed consideration to those options, in full knowledge of the basis on which judgment has been entered against him, and will have no reason to delay any application he may choose to make. All this buttresses my view that it is just and convenient to go ahead now, despite the absence of Mr Jackson.

Judgment in default

25. I accept the evidence of Mr Norman, and the submission of Ms Addy, that the conditions set by r 12.3(1) of the Civil Procedure Rules for obtaining judgment in default of an acknowledgment of service are met: the time for filing an acknowledgement of service or defence has expired, and neither has been filed.
26. This is not a case in which default judgment can be obtained by filing a request pursuant to CPR 12.4(1). The claimant has, as required by CPR 12.4(2), made an application pursuant to CPR 23. On such an application, the Court will enter "such judgment as it appears to the court that the claimant is entitled to on his statement of case": CPR 12.11(1). This enables the Court to proceed on the basis of the claimant's unchallenged particulars of claim, which is normally the right approach, as evidential examination of the merits will usually involve unnecessary expenditure of time and resources and hence be contrary to the overriding objective: *Sloutsker v Romanova* [84], *Brett Wilson v Persons Unknown* [18]. Both those judgments contain some discussion of the possibility of departing from that normal approach. But I see no reason to do so here.

Jurisdiction

27. This issue has not been fully recognised on the claimant's side, but it is a point that came up in *Brett Wilson* and I think that I must address it here. Section 10(1) of the Defamation Act 2013 provides as follows:

“(1) A court does not have jurisdiction to hear and determine an action for defamation brought against a person who was not the author, editor or publisher of the statement complained of unless the court is satisfied that it is not reasonably practicable for an action to be brought against the author, editor or publisher.”
28. By s 10(2) of the 2013 Act, the terms “author”, “editor” and “publisher” have the same meaning in this context as they do in s 1 of the Defamation Act 1996. Section 1(2) of the 1996 Act contains the basic definitions:

“(2) For this purpose “author”, “editor” and “publisher” have the following meanings ...

“*author*” means the originator of the statement, but does not include a person who did not intend that his statement be published at all;

“*editor*” means a person having editorial or equivalent responsibility for the content of the statement or the decision to publish it; and

“*publisher*” means a commercial publisher, that is, a person whose business is issuing material to the public, or a section of the public, who issues material containing the statement in the course of that business.”

These definitions are further explained in section 1(3), but in this case it is unnecessary to explore the detail of that subsection.

29. This is a case in which the defendant has failed to file any defence, or to acknowledge service, or to put any evidence before the Court. That is why the first application before the Court is for default judgment. In such a case, for the reasons already given, the Court should in my view ordinarily approach the issue of whether it has jurisdiction pursuant to s 10 on the basis of the case stated by the claimant in its Particulars of Claim.
30. On that footing, the conclusion on this issue is clear. Pirtek’s case as pleaded in paragraph 9 of the Particulars of Claim is that Mr Jackson “created” [the Website, Twitter Account and Facebook Page] and then “used these accounts to publish the following defamatory words of and concerning the Claimant”. Paragraph 10 of the Particulars refers to the March 17 Email. In paragraph 11 it is alleged that Mr Jackson “either published [the Website] and the statements they contain, the tweets and the Email, or caused them to be published.” Details of facts alleged to support those conclusions are set out. These pleaded allegations, uncontradicted by any statement of case or evidence from Mr Jackson, lead to the conclusion that whilst he may not have been the “publisher” of the statements complained of within the meaning of s 10 he was the “author” or, at the very least, an “editor” of all those statements.
31. Even if that were a wrong approach, and the matter of jurisdiction was one for decision on the evidence, I would reach the same conclusion. Mr Jackson having failed to file any witness statement, the only evidence on the matter is contained in the statements of Mr Norman, and their exhibits. In paragraph 5 of his second statement, Mr Norman refers to the bankruptcy litigation and makes these assertions:

“Subsequent to the conclusion of that litigation and the lapse of the harassment injunction, Mr Jackson launched a website at URL www.pirtekfranchise.com (the “Website”) on around 14 April 2016. On or around the same date he also set up a Twitter account with the user name “@petenutt” and a Facebook account (www.facebook.com/pirtek-uk-steal-homes). The primary purpose of these actions appears to be to create platforms from which to defame Pirtek and its directors. The

content of the Website and the posts made on those accounts make it very clear that they are operated by Mr Jackson.”

32. This is uncontradicted evidence. There is some material in the Open Letter, April 2016 Riposte and August 2017 Letter which relates to the issue of Mr Jackson’s responsibility for publication. Some of it disputes responsibility for some of the publications complained of. Responsibly, Ms Addy has drawn my attention to such material, which is exhibited to the statement of Mr Norman. But I doubt that Pirtek bears any evidential burden here; the governing rule is CPR 12.11(1). Moreover, this material is nothing more than correspondence. It is not a statement of case, verified by a statement of truth. Nor is it evidence of fact on which Mr Jackson would be entitled to rely if he were present in court. The general rule is that facts are to be proved at hearings other than trials by “evidence in writing”, in the form of a witness statement: rr 32.2, 32.6(1). There is no such statement, nor is there any apparent reason why Mr Jackson should not have prepared and submitted one.
33. As a rule, it seems to me, a defendant who is in default of acknowledgment of service, has failed to file a Defence, and has failed to adduce any evidence on an application for judgment of which he is fully aware, is not entitled to have the Court treat assertions which he has chosen to make in correspondence and not otherwise as worthy of any weight. To do so is not mandated by CPR 12.11(1), nor by any other part of the CPR nor, in my view, by the Human Rights Act.
34. There is in this case the additional consideration that, in my judgment, Ms Addy is right to submit that Mr Jackson has “chosen his forum”. Whatever he may have said in the April 2016 Riposte he has in the event made a deliberate decision to avoid engaging with these proceedings. In those circumstances, it is legitimate to stand by the general rules in CPR 32.2 and 32.6(1). To depart from them seems apt to lead to needless cost, and to cause unnecessary complications: see eg *QRS v Beach* [2014] EWHC 4189 (QB) [2015] 1 WLR 2701.
35. Again, though, if I was wrong in that conclusion I would still find that the Court has jurisdiction to deal with this matter. I have examined the Website postings and those on the Twitter Account and Facebook page, and considered the way in which this claim has been responded to. I agree that in all the circumstances the sensible and realistic conclusion is that the offending publications were all made by Mr Jackson as author or, at the very least, editor within the meaning of s 10 of the 2013 Act.
36. In the April 17 Riposte Mr Jackson said in terms “I admit to being the owner of the website ... and stand by what I have published.” In the August 17 Letter he denied responsibility for the Website, but the denial is not only contrary to admissions made earlier, it is wholly implausible. It is, in all the circumstances, one that I am able confidently to reject as incredible on the basis of the evidence that has been put before me. The same is true of Mr Jackson’s denial in the April 17 Riposte of “controlling or owning any social media accounts or using an anonymous email”. That denial, not repeated in the August 17 Letter, is not credible.
37. That evidence includes the following further compelling points made in paragraph 16 of Mr Newman’s second statement:

“The Website (and the Twitter account) both referred to and provided a link to a BBC TV news ‘special report’ which the writer said documented “the extortion and corruption that caused *my* demise” (my emphasis). That language, together with (i) the fact that the contact section of the Website invites visitors to “Contact Bob”, and (ii) that when a response to my request for a contact address for Mr Jackson (purportedly written by Mr Jackson) was posted on the Website, it said that my request had been received via “my website”, supports my belief and Pirtek’s belief that the Website is operated or controlled by Mr Jackson, despite what he now claims.”

38. As for the social media accounts and the March 17 Email the overwhelming inference, given their content and all the circumstances, is that these are the work of Mr Jackson. As to the Email, he has not attempted to identify anybody else whose “mission in life” it is “to expose the corrupt Pirtek UK Directors”.

The substantive claims

39. The first question is whether the Particulars of Claim set out a factual case which discloses good causes of action for libel and/or malicious falsehood. For the reasons set out below I find the Particulars of Claim set out a factual case that justifies the Court in entering default judgment in the claimant’s favour for damages to be assessed for both libel and malicious falsehood, and for a permanent injunction.

Libel

40. Dealing first with libel, the Particulars clearly and sufficiently allege publication on the Website, via the Twitter Account, on the Facebook Page, and in the March 17 Email. Mr Jackson’s responsibility for such publication as author or editor of the material is clearly and sufficiently set out, as I have just explained. The statements plainly refer to Pirtek.
41. The third element of a good cause of action in libel is that the statements are defamatory of the claimant. It would unduly lengthen this judgment to set out each of the 55 statements complained of, and it is unnecessary to do so. The Particulars of Claim set out at length what are said to be the natural and ordinary meanings of those statements. These allegations as to meaning are uncontradicted allegations of fact, and I do not consider them to be extravagant. Accordingly, with one qualification to which I shall come, I proceed on the basis that these are the natural and ordinary meanings of the words complained of, cf *Brett Wilson* [26].
42. The Particulars of Claim allege that all the words complained of are defamatory. By that, I take the pleading to refer to the common law requirement that, in order to be actionable as a libel, words must have a tendency to defame the claimant. That raises a question of law. The law requires that the statement be damaging to the reputation of the claimant in the eyes of ordinary, right-thinking people generally. There is a common law threshold of seriousness, namely that the publication “*substantially* affects in an adverse manner the attitude of other people towards [the claimant] or has a tendency to do so”: *Thornton v Telegraph Media Group Limited* [2010] EWHC 1414 (QB), [2011] 1 WLR 1985 [96] (Tugendhat J) (emphasis added).

43. It is unnecessary to recite the pleaded meanings in full. Ms Addy has provided a summary which I accept. She identifies three categories of meaning:
- (1) That Pirtek has either knowingly or recklessly acted illegally and caused a grave risk to public safety by supplying unsuitable hoses to the aviation industry and by undertaking installation of hoses for which its employees were neither qualified nor trained; these actions may have caused fatal crashes by Spitfires;
 - (2) That Pirtek abused and extorted its franchisees, including Mr Jackson, with fraudulent sanctions; furthermore in Mr Jackson's case its directors had conspired to ruin him and take his family home;
 - (3) That Pirtek is a shady company that practised tax avoidance.
44. There is no room for doubt that meanings in the first two categories are defamatory of the claimant according to the common law test. Both the above-mentioned requirements are met. It is also defamatory at common law to accuse somebody of being “shady”. “Tax avoidance” refers to a lawful activity, distinct from tax evasion which is unlawful. An allegation of “tax avoidance” may or may not be defamatory, according to the context. Ms Addy has quite properly addressed this point. Her argument is that in the present case the imputation, read as a whole, has defamatory overtones. I am inclined to accept that.
45. The common law test has however been modified by statute. Section 1(1) of the Defamation Act 2013 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”. By s 1(2) the Act provides that “For the purposes of this section, harm to the reputation of a body that trades for profit is not ‘serious harm’ unless it has caused or is likely to cause the body serious financial loss.” Pirtek is a body that trades for profit.
46. In *Lachaux v Independent Print Media Ltd* [2017] EWCA Civ 1134 the Court of Appeal considered the meaning and effect of s 1(1). The key conclusions of the Court for present purposes are those summarised by Davis LJ in paragraph [82], as follows:-
- “(1) Section 1(1) of the 2013 Act has the effect of giving statutory status to *Thornton*, albeit also raising the threshold from one of substantiality to one of seriousness: no less, no more but equally no more, no less. *Thornton* has thus itself been superseded by statute.
 - (2) The common law presumption as to damage in cases of libel, the common law principle that the cause of action accrues on the date of publication, the established position as to limitation and the common law objective single meaning rule are all unaffected by s.1 (1).”

47. The first of these conclusions reflects the Courts finding at [50] that “the words ‘is likely to cause’ as used in s 1(1) are to be taken as connoting a tendency to cause.”
48. I have no hesitation in concluding that the publication of the words complained of in this case has a tendency to cause serious harm to the reputation of Pirtek. Put another way, the allegations have a seriously defamatory tendency. The requirements of s 1(1) are met, subject to the qualifications inherent in s 1(2).
49. In *Lachaux* the Court of Appeal did not have to address s 1(2). At [82(7)] Davis LJ said that “it may be that in some respects the position with regard to bodies trading for profit, under s 1(2), will be different. I say nothing about that subsection which clearly is designed to operate in a way rather different from s.1(1).” That is clear enough, and understandable. Financial loss is a more concrete and tangible concept than reputational harm. But there is no need to engage in elaborate discussion of the subsection in the present case.
50. Three things can safely be said about s 1(2). First, that in this context as in s 1(1) “serious” is an ordinary English word, to be given its ordinary meaning; it means something more weighty than “substantial”: see *Lachaux* [44], *Brett Wilson* [30]. Secondly, whether loss is “serious” must depend on the context: *Brett Wilson* [30]. Thirdly, that the word “likely” in s 1(2) bears the meaning of liable to, or having a tendency to: *Lachaux* [50]; the word cannot bear different meanings in two adjacent subsections.
51. In my judgment s 1(2) is satisfied on each of two bases. First, taken as a whole, the Particulars of Claim justify the conclusion that the publications complained of were likely to, in the sense that they had a tendency to, cause serious financial loss to Pirtek. Secondly, there is an uncontradicted case of actual financial loss which in my judgment counts as “serious” in all the circumstances as disclosed by the Particulars of Claim.
52. The claimant’s case is pleaded in paragraphs 18 and 23 of the Particulars of Claim, which read as follows:-

“18. The publication of the said words has gravely damaged the Claimant in its business reputation and goodwill and has caused the company serious financial loss.”

...

23. By reason of the publication of the said words, the Claimant has suffered loss and damage:

PARTICULARS OF SPECIAL DAMAGE

The Claimant has had to employ a PR consultant, Morgan Rossiter, to deal with various issues caused by the Defendant’s publication, including liaising with the BBC in relation to its ‘special report’ on the Defendant’s allegations at a cost to the Claimant of £15,000.”

None of this is contradicted.

53. This is not explicitly framed as a case of “likely” financial loss, but such an assertion is implicit in the allegation of damage to “reputation and goodwill”. Goodwill is the ability of a business to generate revenue and profit. In any event, the statement of case as a whole allows the conclusion that the “likelihood” limb of s 1(2) is satisfied. It alleges the continued publication online over a prolonged period of words bearing meanings which have a tendency seriously to defame the claimant company and thereby to cause it serious financial loss. (In paragraph 24 the following is alleged: “numerous fresh publications of the same or similar defamatory words as the Claimant complains of in these Particulars of Claim continue to be published almost daily, both online and by email to the Claimant’s parent company, franchisees and employees.”) In any event, the pleaded case of actual financial loss is logical, coherent, and uncontradicted. The special damage that has been particularised can be characterised as loss and expense incurred in an attempt to mitigate loss. The attempt appears reasonable, and accordingly there seems to be no reason to doubt the viability of the claim.

Malicious falsehood

54. My task on this part of the application is, again, to determine whether on the face of its Particulars of Claim the claimant company appears to have made out a cause of action. The ingredients of the tort of malicious falsehood are publication by the defendant of statements which refer to the claimant, are false, are published maliciously, and either cause special damage or (if published in writing) are “calculated to cause pecuniary damage” to the claimant: Defamation Act 1952, s 3(1). “Calculated” has been interpreted as meaning “more likely than not”. The statements need not be defamatory in order to be actionable. So if the imputation of tax avoidance in this case is not defamatory it can, in principle, be the subject of a claim in malicious falsehood.
55. All the above ingredients are clearly and distinctly alleged in the Particulars of Claim. I must however assess whether they are sufficiently pleaded to make out a case. I have already undertaken that task in relation to publication, and responsibility for publication. My conclusions in relation to s 1 of the Defamation Act 2013 are sufficient to deal with the requirement of special damage. I have not yet dealt with either falsity or malice. It is I believe sufficient to say the following.
56. The particulars of falsity in paragraph 19 of the statement of case extend over twelve separate sub-paragraphs. They address in sequence and in sufficient detail each of the imputations complained of. They make out, on their face, a case of falsity in respect of each imputation complained of. To take for example, the first imputation complained of (endangering the public by the supply and fitting of unsuitable hoses to commercial aircraft by unqualified personnel, without insurance etc.), the claimant’s case is that it “does not and has never supplied or fitted any hoses for installation in aircraft.” As to the second imputation (supply and fitting of such hoses into a Mk 9 Spitfire which crashed at Biggin Hill in 2015), the claimant’s case is that neither it nor any of its franchisees supplied and fitted hoses into that Spitfire, and that “the crash was caused by an unrelated mechanical failure.”

57. Turning to malice, again the pleader has addressed the issue carefully and in detail. The headline allegations of malice are that “The Defendant published the words complained of knowing them to be untrue or recklessly not caring if they were true or false in order to: (i) denigrate and damage the Claimant; and (ii) rewrite history to make the Claimant rather than the Defendant himself responsible for his bankruptcy and other misfortunes” Those assertions, if supported by the particulars, would disclose a sound case of malice in law.
58. The Court is always vigilant when scrutinising particulars of malice, each of which must be more consistent with the presence than the absence of malice. I have looked carefully at the particulars of malice here. They extend over sixteen sub-paragraphs. In my judgment, they do disclose a case of malice. That is to say, if these factual allegations were made out evidentially malice would be proved. Again, it is enough to select some examples.
59. The particulars criticise Mr Jackson for an entirely inconsistent attitude to the practice of franchisees “buying out”, that is to say buying products from other suppliers. He accused Pirtek of fraudulent and bullying conduct, denying that the company’s audit findings showed that he had been doing this. But he eventually admitted that he had indeed engaged in this practice. The particulars go on:

“The Defendant has never denied that doing so was a breach of the franchise agreement and caused loss to the Claimant, merely issuing the lame complaint that other franchisees had also done it. Accordingly, the Defendant has not disputed and cannot dispute the basis for the Claimant’s claim against him, which comprehensively refutes his allegations that the Claimant took action against him fraudulently and vindictively.”

60. The following paragraph of the particulars of malice reads as follows:

“As he cannot have failed to realise, the Defendant’s financial ruin and the loss of his home were caused entirely by the Defendant himself, who harassed officers of the Claimant, defended the resulting harassment action and money action on spurious grounds, pursued a hopeless appeal in the latter action and then refused to pay any costs despite court orders requiring him to do so.”

61. These are coherent and cogent allegations, sufficient if proved to establish a case of malice.

Conclusions on default judgment

62. For these reasons, I conclude that the claimant company is entitled to default judgment for damages for libel and malicious falsehood to be assessed. The case stated in the Particulars of Claim also provides a sufficient basis for the grant of a final injunction, restraining further publication of the statements complained of, or statements to the same or similar effect.

63. Paragraph 27 of the Particulars of Claim states that “Unless restrained by this Honourable Court the Claimant believes the Defendant will continue to publish or cause to be published the said or similar words defamatory of the Claimant and/or the said or similar false statements of and concerning the Claimant and its business.” To plead in terms of what the claimant believes is technically deficient: cf. *Brett Wilson* [28]. But this is nevertheless a sufficient plea that there is a real and substantial risk of repetition. The claimant’s uncontradicted factual case includes the passage at paragraph 24 which I have quoted above. The statement of case shows that repetition is likely and that any repetition would in all probability be actionable as further libel and/or malicious falsehood.
64. This claim engages s 12 of the Human Rights Act, and thus requires me to have particular regard to the importance of the Convention right to freedom of expression: s 12(4). I need to consider whether the interference with free speech which the injunctive relief sought would represent is justified in the pursuit of a legitimate aim, and goes no further than required: *Brett Wilson* [33]. I am so satisfied. There is a public interest in protecting the reputation and business of Pirtek against false and damaging defamatory allegations, made maliciously. That, on the claimant’s uncontradicted case, is the position here.
65. The Particulars of Claim seek “Such further or other relief as the Court may see fit to grant”. But I do not consider it necessary or proportionate to grant a further, mandatory order requiring Mr Jackson to remove the offending material, which would be a necessary consequence of the negative injunction. Continued publication would be a contempt in any event. I also decline to grant an order requiring the removal of the Website, Twitter account, or Facebook page in general terms, regardless of their content. That would be too broad, and disproportionate. I note that neither of these orders was sought in terms, either in the Claim form or in the Particulars of Claim. No case has yet been made out to justify an order in either form.

Summary disposal

66. The only basis on which any other remedies are sought is the summary disposal regime enacted by Parliament in ss 8 and 9 of the Defamation Act 1996.
67. Section 8 allows the court to give judgment for the claimant in a defamation case and grant “summary relief” if it appears to the court “that there is no defence to the claim which has a realistic prospect of success and no other reason why the claim should be tried.” Summary relief is defined by s 9:

“9.— Meaning of summary relief.

(1) For the purposes of section 8 (summary disposal of claim) “*summary relief*” means such of the following as may be appropriate—

- (a) a declaration that the statement was false and defamatory of the plaintiff;
- (b) an order that the defendant publish or cause to be published a suitable correction and apology;

(c) damages not exceeding £10,000 or such other amount as may be prescribed by order of the Lord Chancellor;

(d) an order restraining the defendant from publishing or further publishing the matter complained of.

68. I have already decided that an order within s 9(1)(d) should be made, pursuant to the default judgment procedure. I therefore turn to address the remedies sought pursuant to s 9(1)(a) to (c) of the 1996 Act.
69. The jurisdiction to grant summary relief is available after the court has entered judgment for damages to be assessed, after a trial: *Loutchansky v Times Newspapers Ltd* [2001] EWCA Civ 1805, [2002] QB 783 [93]-[99]. The same is true where the court has entered default judgment and dismissed an attempt to set it aside: *Robins v Kordowski* [2011] EWHC 1912 (QB) [55]-[57]. In each of those cases the defendant had advanced, or tried to advance, defences which the court had evaluated and rejected on their merits. On that basis, it was possible to say that the defendant had no defence to the claim with a realistic prospect of success. In *Brett Wilson* [35]-[39] I applied that approach in a situation where the defendant had not attempted to defend the case at all. I am invited to do the same in the present case. One reason the procedure is invoked is to bring a swift end to the matter and avoid assessment proceedings which might be disproportionately expensive. It is easy to see the force of that.
70. I have examined with the help of Ms Addy the question of whether Pirtek has complied with all the procedural requirements for a summary disposal application, as set out in CPR 53.2(2) and PD53 paras 5.1 and 5.2. I am satisfied that there has been substantial compliance.
71. The provisions are a little confusing. CPR 53.2(2) would appear on its face to incorporate by reference the time bar imposed by r 24.4.1. But that time bar is then disapplied by PD53 5.2. A claimant is permitted to seek summary disposal in the absence of a defence or acknowledgement of service. Rule 53.2(2) incorporates the requirement of PD24.5(1), that if the respondent wishes to file evidence he must file and serve it at least 7 days before the hearing; but Part 53 does not incorporate the provision of PD24 2(5), that the application notice “should draw the respondent’s attention to rule 24.5(1)”. Hence, the fact that the application notice in this case did not mention that provision does not amount to a procedural flaw. In the event, Pirtek’s solicitors emailed Mr Jackson on 30 October 2017 to draw his attention to rule 24.5(1). This was rather late as it was the very day on which his evidence, if any, was due. But the solicitors said they would be open to service of late evidence. There has been no attempt to serve any. I am quite satisfied that Mr Jackson would have remained inactive however soon the point had been made.
72. Turning to the substance of the matter, the claimant’s legal team have approached the summary disposal application on the footing that in order to satisfy the threshold requirement set by s 8 ([67] above) Pirtek needs to disprove the existence of any viable defence to the claim. The claimant’s evidence thus includes what appears to be a full account of what Mr Jackson has said on the Website and in correspondence in answer to the letter of claim. The gist of the position he has taken can be gleaned from a passage in the April 17 Riposte, where he stated “My honest opinion is that the

statements above are the TRUTH. I also believe it is a matter of public interest and the public should not be exposed to an aircraft they have paid to have a flight in that is fitted with Pirtek hydraulic hoses.” In her submissions, Ms Addy has set out to identify and then refute by evidence and argument everything that Mr Jackson has said in support of such lines of defence.

73. I can understand why, as a precaution, that approach has been taken. But I am not convinced that this is a burden which a claimant in Pirtek’s position is required to undertake in order to obtain a summary assessment of damages. The starting point for the s 8 application is that Pirtek has already secured judgment on liability for damages to be assessed. It has done so because Mr Jackson has chosen not to advance any defence, or to participate in the proceedings at all. Absent a s 8 application, the next stage would be an assessment of damages. It is hard to see why a claimant in Pirtek’s position which seeks to short-circuit that procedure and deal with the matter efficiently via a summary assessment of damages under s 9(1)(c) should have to identify and then refute defences on the merits which the defendant could have advanced but chose not to put forward.
74. In my judgment, that is not required. The Court can, and I do, conclude that for this purpose at least the s 8 threshold is satisfied on the following basis. The libel claim is sound on its face. The burden of pleading and proving a defence to the claim rests on the defendant. He has not advanced any defence at all. Hence the grant of default judgment. Accordingly, it can properly be said that there is no defence with a realistic prospect of success. As to the second limb of the s 8 threshold, there is no reason at all why the issue of damages should go to a trial. On the contrary, considering the five matters to which I am bound to have regard pursuant to s 8(4) of the 1996 Act, the clear conclusion is that there is every reason to proceed to a summary assessment of damages under s 9(1)(c), rather than a trial of damages. Mr Jackson is the only likely defendant, the issues for consideration are clear, summary relief of this kind would be modest by comparison with the wrong, the chances of Mr Jackson keeping damages below £10,000 are remote, indeed fanciful in my judgment; and if that is wrong the costs of disputing the issue would be out of proportion to any benefits that an assessment hearing might yield for Mr Jackson.
75. I am easily persuaded that an award of damages of the maximum permissible under s 9(1)(c) would be appropriate here, subject to any mitigating factors that may come into play. The gravity of the allegations calls for a substantial vindicatory award. The undisputed case of financial loss would be more than enough anyway, to justify an award on this scale. The maximum, set over 20 years ago, is very modest by current standards.
76. There are some points to be taken into account in mitigation. First, I take account of the fact that the extent to which the offending imputations have been published is so far unknown. Secondly, and importantly, there is this public judgment. Pirtek is entitled to publicise its contents. The judgment may have some mitigating impact on damages. I shall have something to say about the merits and, as I shall explain, I propose to prepare and issue a Press Summary. I do not take account in mitigation of any declaration of falsity or any apology that might be made or ordered to be made. That is because, for reasons I shall explain, I do not make any such declaration; the claim for a court-ordered apology has not in the event been pursued; and nor do I expect that any apology will be made. In all these circumstances, the available

mitigation does not reduce the appropriate award below the long-established maximum. I therefore award that maximum.

77. A declaration of falsity was made by Eady J in *Bin Mahfouz v Ehrenfeld* [2005] EWHC 1156 (QB). The circumstances of that case were highly unusual. Neither Ms Addy nor I could identify any other case since the 1996 Act came into force in which a declaration of falsity has been made. It is easy to see why. Among the reasons are the fact that the function of the court in a defamation case is to resolve disputes between civil parties, and not to conduct a public inquiry. Further, in defamation, the burden of proof of truth lies on a defendant; if a defendant fails to allege or prove the truth of a given allegation it does not necessarily follow that it is untrue. The court will naturally be reluctant to proceed to try the merits of a claim on the basis of evidence from the claimant alone, purely for the purposes of granting this head of relief.
78. There is an additional point, which emerged in the course of argument in this case. What form should the declaration take? By the time the matter came before the Court the claimant had still not formulated the proposed form of order. Ms Addy freely confessed that her mind had wavered on this point. That is understandable. The purpose of a declaration must be to demonstrate to the outside world that defamatory allegations have been authoritatively assessed as false. How can that be done concisely and effectively? One can see the difficulties.
79. In the course of her submissions, Ms Addy devised a form of declaration, that “the allegations complained of in the meanings complained of are false.” She initially submitted that nothing else would be satisfactory. I do not consider that *this* would be satisfactory. Better, in my judgment, is a summary of this judgment which can be publicised, and which I have therefore prepared under the title Press Summary. This is a process that is undertaken from time to time in cases of all kinds. I consider it appropriate here. Having reached that conclusion, I decline to grant the declaration sought. I believe Ms Addy’s ultimate position was that she would not resist this approach.

Costs

80. Pirtek seeks an order for its costs of the action as a whole, including these applications. Pirtek is certainly the successful party. There is no reason why the ordinary rule should not apply, subject to this: some of the costs incurred relate to claims for remedies which have in the event not been pursued or not been granted. It is true that most of the work and cost will have been devoted to the issues of liability. But applying CPR 44.2 and the established principles in relation to cases where a claimant has lost on some issues, I consider the appropriate course is to make some reduction, and to award Pirtek 90% of its costs.
81. Pirtek seeks a summary assessment of its costs. This is a course which I am bound to consider: 44PD 9.1. The general rule as to summary assessment, set out in 44PD 9.2, is that where a hearing which has lasted not more than one day disposes of the claim “the order may deal with the costs of the whole claim, unless there is good reason not to do so.” The costs here are not enormous. I have a statement of costs which goes into enough detail. There is no good reason not to make an assessment now, and I shall do so. I do not see good reason to assess the costs on an indemnity basis.

82. The total sum claimed, which does not include VAT, is just above £63,000. The hourly rates are reasonable. There has been an appropriate amount of delegation by the partner responsible, who has himself spent a modest amount of time on the matter. I acknowledge the complexity of the case, but still consider that an excessive amount of time has been spent working on documents. Over 95 hours of solicitors' time is claimed for drafting, reviewing, analysing and revising various documents. I disallow 12 hours of that which, applying the relevant hourly rates, brings the total bill down by £3,650 to £59,500. Applying the 90% figure above yields a sum of £53,560.