Neutral Citation Number: [2018] EWHC 2935 (QB)

Case No: HQ17D00435

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/11/2018

Before :

THE HONOURABLE MR JUSTICE WARBY

- -

Between :

Stephen Doyle	**Claimant**
- and –	
Patrick Smith	**Defendant**

- -
- -

Richard Spearman QC (instructed by **Taylor Walton LLP**) for the **Claimant**
Guy Vassall-Adams QC and Aidan Wills (instructed by **HCB Solicitors Ltd**) for the **Defendant**

Hearing dates: 15-17, 22 October 2018

- -

Judgment Approved

MR JUSTICE WARBY :

Introduction

1. Planning disputes often generate complaints of defamation. That, no doubt, is because planning applications involve change, and often propose interferences with property, neighbourhoods, views or landscapes on which individuals place high value. These issues can cause heightened emotion, including anger. Often there are dark suspicions about the conduct and motives of others. Public denunciations are common. This case is no exception.

2. The claimant, Stephen Doyle, is a property developer by occupation. The defendant, Patrick Smith, is a resident of the Bedfordshire village of Caddington. He single-handedly operates an online community newspaper or Blog called the Caddington Village News ("the News"). He is also a Caddington parish councillor.

3. In 2015, Mr Doyle formulated a proposal for Luton Rugby Football Club ("the Club") to move to a new ground. It would sell its premises in Newlands, Luton, and buy and develop a new ground and facilities on a greenfield site near Caddington. Mr Doyle was to be the buyer of the Newlands site, and the seller of the site near Caddington, which he planned to acquire from its then owner. These libel proceedings stem from articles

that Mr Smith wrote and published in the News, which were critical of Mr Doyle in the context of this proposal.

4. There were four such articles:

(1) An article published in November 2015, headed "*Luton RFC wants to move to Caddington Village*" ("the First Article");

(2) An article published on 13 July 2016, headed "'*The £10 Million Fraud'.. Stephen Doyle accuses Luton RFC of sending false documentation to members*" ("the Second Article");

(3) An article which was available to be read on and after 19 July 2016, headed "*Stephen Doyle has been Arrested*" ("the Third Article");

(4) An article published on 31 July 2016, headed "*Mr Doyle has been interviewed by police that involves the LTRFC*" ("the Fourth Article").

5. Mr Doyle originally complained of libel in the first three of these articles, and all four remain relevant in one way or another; but the trial has been directly concerned only with the Second and Third Articles. It is they that are complained of as libellous. In summary, Mr Doyle complains that the Second Article accused him of involvement in the perpetration of a fraud of up to £10m on the members of the Club, and that the Third Article meant that there were reasonable grounds to suspect him of blackmail and sending malicious communications in connection with his proposal.

The issues

6. The main issues arising from the statements of case, which I now have to decide, are these:-

(1) In relation to the Second Article: (a) its natural and ordinary meaning; and (b) whether its publication is protected by the defence of publication on a matter of public interest (Defamation Act 2013, s 4);

(2) In relation to the Third Article: whether, having regard to its allegedly minimal circulation and other factors, its publication caused or was likely to cause serious harm to reputation (Defamation Act 2013, s 1);

(3) In relation to each of these Articles, if it arises: the quantum of damages.

7. There were other issues in the case. Before proceedings were brought, Mr Smith was maintaining that he had only written the truth. In his initial Defence, filed on 22 May 2017, he pleaded the defence of truth. But that was abandoned by amendments made on 3 November 2017. Those amendments introduced other defences, including but not limited to the ones I have mentioned. But on 2 October 2018, a further change of position was announced by the defendant's side, and several of those lines of defence were dropped. The main changes are that the defence no longer takes issue with the pleaded meaning of the Third Article; defences of common law qualified privilege are no longer advanced, (with the result that "malice" is no longer formally relevant); and it is no longer said that the Third Article is protected by the statutory public interest

defence. These changes in the defendant's case have significantly reduced the issues for trial.

8. Mr Smith has however sought to raise a new issue. It relates to the Third Article. He now wishes to argue that even if Mr Doyle were to persuade me that the publication of that article satisfies the "serious harm" requirement in s 1 of the 2013 Act, the claim in respect of that article is nonetheless a "*Jameel*" abuse of process (*Jameel (Yousef) v Dow Jones Inc* [2005] EWCA Civ 75 [2005] QB 946).

9. I directed that all these changes of position should be formally set out in a draft Re-Amended Defence, which was done. There was no opposition to the deletions I have mentioned, and I grant permission for those. However, Mr Spearman QC, for the claimant, opposed the late introduction of the abuse of process issue. I heard the arguments in support of this new line of defence without prejudice to my decision on whether it was open to Mr Smith. I held that issue over to this judgment, and I will return to it.

The evidence

10. This has been a relatively short trial, at which I have heard oral evidence from only four witnesses. Apart from Mr Doyle and Mr Smith, I have heard from Peter Foster, a member of the Rugby Club who was involved in dealing with Mr Doyle's proposal, and Simon James, Managing Director of DLP Planning Limited ("DLP"), a firm of planning consultants engaged by Mr Doyle's company, Templeview Developments Limited ("Templeview"). In addition, I have had hearsay written evidence in the form of a witness statement from Linda Doyle, the claimant's wife, who was not well enough to attend court. Although the trial documentation filled six lever arch files, only some of this had to be referred to. Nonetheless, the evidential exploration was detailed and the evidence and argument took up the best part of four days.

A narrative, Part I

11. What follows is either undisputed, or represents (and explains) my conclusions on the relatively few disputes of fact that matter. I confine the narrative to facts that are directly relevant by way of background. I shall not deal here with a number of factual points that were disputed in cross-examination on both sides, but which in my judgment did not go to the issues for decision.

Mr Doyle makes a proposal to move the Club

12. Mr Doyle has been in the property development business since 1987, and has owned and run Templeview since 1995. His wife is also involved in the company as a co-owner and, since 2003, a director. Their business involves acquiring land and obtaining planning permission before either selling on the site with the benefit of the permission, or building residential properties for sale or rent.

13. The Club has premises at Newlands Road in Luton, consisting of pitches and other playing facilities, a clubhouse, car park, and telephone mast. Templeview has owned land to the north of the Club's site since 2006. In 2011, the company enlarged its holding by buying an additional strip, 20m wide, between its existing northerly holding and the Club's site. This enabled the company to seek permission for a residential

development on the combined holding. Full planning permission was granted in March 2015, to build 394 flats on this land.

14. When he first approached the Club, Mr Doyle had wanted to buy more land, but the Club did not want to lose its pitches. He kept an interest in the site, however, believing it had enormous development potential. In late 2014, he heard a rumour that the Club was in financial difficulties, and early in 2015 he came up with the idea of offering to buy the Club's site and sell it an alternative in the locality. He was able to identify a site he thought would be suitable, and establish that the owners of that land had an interest in selling enough land to make his scheme viable. This site was at Zouches Farm, Chaul End Lane, Caddington. That is some 3.5km from Newlands Road. It was at about this time that Mr Doyle contacted DLP for advice on his scheme.

15. Mr Doyle approached the Club, believing that he would be able to secure permission for up to 800 residential units on its land, in addition to the 394 flats for which he had previously obtained permission. The Club appointed a sub-committee to consider the proposal. It had three members: Keith Butten, a former Chairman of the Club, Hugh Byrne, and Peter Foster, a property developer himself. Several meetings took place between Mr Doyle and this sub-committee, to discuss the proposal. Mr Foster confirmed to me that the Club was in some financial difficulty, in the sense that it lacked the funds to invest in repairing or improving its facilities, which were gradually degrading. This is borne out by some Club minutes from as far back as 2010.

16. Other steps were taken to further the scheme devised by Mr Doyle. In March 2015, he reached an agreement in principle with a Mr Gary Speirs for the purchase of the proposed new site. DLP advised Mr Doyle that it was necessary to propose that the Zouches Farm land be included in the emerging Caddington and Slip End Neighbourhood Plan as a potential recreational site. In April 2015, DLP (acting at this time on behalf of a Mr Briggs) wrote to Caddington Parish Council to make that proposal.

17. In May 2015, Templeview put to the Club a formal proposal, to give effect to Mr Doyle's intended scheme. The structure of the scheme was, and always remained, this: Templeview would (a) buy the freehold of the Club's Newlands Road land; (b) buy a section of Zouches Farm; (c) build a clubhouse, pitches, car park and other facilities at the new site; and (d) bear all costs in relation to securing planning permission on both sites. The Club would not have to vacate its existing premises until the new site was completed and ready for it to move in. The figures proposed for the various elements of this scheme varied over time, but both sides viewed the overall package as worth something in the region of £10-12 million to the Club.

18. Things did not move swiftly after the initial proposal. It seems that one reason was that Mr Doyle had been warned in June 2015 that if planning permission was obtained for the Zouches Farm land before January 2017, that would trigger liabilities that Mr Speirs did not wish to incur, and which the Doyles did not want to meet, either. But the Club was also carrying out due diligence, obtaining legal advice, investigating the tax implications of the scheme (at the expense of Templeview), and obtaining property valuations from Kirkby Diamond LLP, surveyors and valuers.

The membership is consulted

19. The Club is a members' club, meaning that its property is owned by all the members together. The Club's management determined that the Templeview proposal should be put to the membership at a Special General Meeting ("SGM"), at 7.30pm on 21 October 2015. Notice of this meeting was sent out by the Club Secretary, Richard Bath, on 19 September 2015, describing it as a "meeting of the membership … to discuss a potentially exciting, unsolicited, proposition from a local development company … [which] if it goes ahead … could have a fundamental effect for the better regarding the future of the Club." The Notice of Meeting went on to say:

> "So that members are well-briefed a document, giving more details, will be available outlining the proposition and the results of some feasibility work already undertaken, will be circulated by the Management Committee in advance of the meeting. Please study the document carefully because at the meeting, as well as listening to your views, the management will be seeking approval for the following motion:
>
> Regarding this proposition the meeting notes the results of the feasibility study and agrees that negotiations should proceed, firstly to agree Heads of Terms and then, if practicable, to negotiate suitable terms for the sale of Newlands and the purchase of the proposed new site, secure in the knowledge that a further SGM of the membership will be held before the Trustees are required to sign contract(s) on behalf of the membership."

20. Before the SGM, and in preparation for it, a document entitled "Important Notice" was drafted on behalf of the Committee of the Club. This was the document that had been advertised in the Notice of Meeting. Its purpose was to inform the membership about the Templeview proposal, and matters of relevance to the decision the members would have to take at the SGM, about that proposal. Attached to the Important Notice was a plan which, it has emerged in evidence, was drawn up at the request of the Club (in the person of Mr Foster), to obtain an indication of what the proposed new site might look like, once development was complete.

21. The Important Notice contained the following words.

> "An Exciting Opportunity:
>
> 1. Further to the recent communication calling a special General Meeting on 21st October, the subject of this document is the unsolicited proposal the Club has received from Templeview Developments, owned by Stephen Doyle, to purchase, subject to obtaining residential planning permission, the freehold of our existing Newlands site for a very substantial sum. The proposal also includes provision for the Club to move to **[A] a new, larger, site at Chaul End Lane near Caddington Golf Club on which it is understood the developer has an option to purchase** and the Club would not be required to vacate Newlands until the new ground is available for use including fit for purpose pitches.

2. So that members are in no doubt, it needs to be made clear the Management Committee has no inherent wish for the Club to re-locate. Also, that the Committee did not canvass the proposal; there is no hidden agenda! However, since the proposal clearly has the potential to have a quite fundamental impact for the better on the future of the Club, the Management Committee took the view they would be failing in their responsibility to the membership if it was not given serious consideration …

   … Again so there is no room for doubt, it needs to be made clear that the sale of Newlands and the move to a new ground could only take place with the approval of a majority of the membership at a general meeting …

3. The sub-committee has completed its feasibility study of the proposal and it is now time to provide information on their findings. Also, importantly to obtain the agreement of the membership to work continuing on the proposal. So far the Club has not made any commitment to Stephen Doyle – nothing has been decided or agreed! However, if future negotiations are successful and the Management Committee consider the terms of the proposal are such that the sale of Newlands and a move to Chaul End Lane would be in the best interest of the Club, the Management Committee will convene a second GM to obtain the formal approval of the membership to the contract(s) for the sale of Newlands and the purchase of the new ground at Chaul End Lane and to authorise the Trustees of the Club to sign the contract(s) on their behalf.

4. … Given recent and current financial difficulties, securing the long-term financial stability of the Club was judged to be a key priority; not just for today's membership but for the future generations. All those volunteers who have helped to keep the Club afloat in recent years will be only too well aware of the size of the Club's financial burden. It can only increase as Newlands continues to age and become even more costly to maintain.

5. Although a considerable amount of work has been undertaken, in the context of the overall project we are still at a relatively early stage and it might be misleading to quote precise numbers. However, to give members a good flavour of the scale of the proposal, the offer to purchase our existing site with residential planning permission obtained is above £12 million and after spending say around £8 to £9 million on purchasing the new ground, building pitches, the Clubhouse and infrastructure at the new site as well as settling the tax liabilities that will arise from the move, around £3 to £4 million would remain. …

6. The indicative figures in para 5 above have been produced following wide consultation including with the RFU, various experts and potential (but no more) companies who could do the work required on our behalf. …

7. Absolutely critical of the viability of the proposal is the question of planning. The proposal is subject to planning approval on both sites; Newlands for residential/ development and the site at Chaul End Lane, for sporting recreational use. The former is potentially by far the most difficult to achieve and in that context it is significant the proposal to purchase has been made by

Stephen Doyle. He has been developing sites around Luton for many years, is well known to local planning authorities and already owns the land adjoining our site at the Barn Owl end of Newlands Road. In the context of Newlands it is probably significant that he has been negotiating with the Borough Authority for some time regarding the development of his existing site. He probably has the inside track regarding obtaining residential planning permission for Newlands.

8. An alternative approach, assuming a wish to sell Newlands, of going to open tender has been considered. Our judgement is that such an approach is likely to be far more risky and problematical particularly in respect of obtaining residential planning consent. Nevertheless the Club is obtaining an independent valuation of Newlands to compare with the offer on the table …

   More information on this aspect should be available at the meeting. But even if the option of going to the open market was feasible it would put the onus on the Club to find a suitable alternative site to move to.

   …

9. …

10. **[B] Obtaining permission to develop the new site at Chaul End Lane is likely to be straightforward, not least because [C] it is understood Mr Doyle has already reached an understanding with the local and Central Beds Authorities.** It is also important to be aware that the Chaul End Lane site comprises some 40 acres, about twice the size of Newlands. While, for a number of reasons including cost, we might not, initially at least, wish to develop the whole site, **[D] a site of this size and location opens up various opportunities for use other than just rugby. For example, if say 25% of the site was not required for rugby, there could be future development potential.**

11. Accordingly the sub-committee's overall conclusion is that the proposal is practicable and has the potential to both provide the Club with a larger freehold site offering significantly better playing and social facilities than even our existing excellent facilities at Newlands, and most importantly, after developing the new site the Club would be left with a very substantial sum (£3 to £4 million) to invest. Such an investment would secure the future financial stability of the Club for generations.

12. The project is clearly not without risks. Therefore it is important that throughout the project effective action is taken to identify and manage risk. Obtaining residential planning agreement for Newlands is the most obvious but for the reasons set out above we consider the proposal on the table to have the greatest chance of success. Other potential risk areas such as cost and affordability, pitch development, interfacing with contractors, resourcing effectively the many project tasks that will undoubtedly fall to the Club officers and representatives will be challenging but are judged to be manageable. Key to this will be maintaining a dynamic up-to-date risk register.

> 13. Therefore we have concluded that provided the development is managed effectively with due regard to risk and affordability, the proposal on the table provides a one-off opportunity both to obtain state of the art 21st century facilities and at the same time provide a financial settlement that will secure the Club for future generations. Accordingly we recommend the SGM notes the work to date and approves a motion to continue with this exciting development opportunity for the future of rugby in Luton, noting that another GM of members will be held before contracts for the delivery of the project are required to be signed by the Trustees on behalf of the membership."

22. I have highlighted some key passages, and added lettering for ease of reference later on. The four points I have emphasised are aspects of the Important Notice which it is common ground between the parties were misleading or inaccurate. The reason for one of them will be clear from what I have said already. Mr Doyle had not secured an option to purchase the land at Zouches Farm (para 1, point [A]); he only had agreement in principle. Nor was obtaining permission to develop that site likely to be straightforward (para 7, Point [B]). The land was in the Green Belt, and in an Area of Outstanding Natural Beauty, both of which posed significant obstacles to the grant of permission. Mr Doyle had not reached any "understanding" with the local or Central Bedfordshire authorities over planning permission for the Zouches Farm site (para 7, Point [C]). All that had happened was DLP's attempt to get recreational use of the site embedded in the Neighbourhood Plan. Finally, although Mr Foster thought otherwise, Mr Doyle's view is and was that it was not likely that the Club would be allowed to develop any land at Zouches Farm that was surplus to its requirements (para 10, Point [D]).

23. The Important Notice and its accompanying plan were sent out to Club members on or around 14 October 2015, a week before the SGM, over the signature of the Club Secretary, Richard Bath. At that time, the Doyles were on holiday in the Gambia, returning on 23 October. They were not completely out of touch with events in Bedfordshire, nor were they ignorant of everything that was going on. That is clear from the fact that Mr Doyle was able to email Mr Foster on 15 October, suggesting that the SGM should be postponed, or that the location of the new site should be withheld from the Club members, for fear that the chances of securing that site might be prejudiced by publicity. These were unrealistic proposals, and neither was implemented. More significant is the response from Mr Foster.

24. On 16 October, he wrote to say "I am afraid it is too late to call off the meeting. All members have been sent a communication already outlining the terms of the proposal including the location of the new site." He explained that this was done so that members could prepare any questions they had. This is obviously a reference to the Important Notice. It is clear that Mr Foster did not think that Mr Doyle had already seen that document.

25. Mr Doyle's evidence at this trial is that he had not seen the Important Notice, and did not see it until December 2015, when he first saw it posted in the News, as part of the First Article. This is not now challenged by Mr Smith. Indeed, it is expressly accepted on his behalf. Further, Mr Doyle's evidence, which I accept, is that he played no role in obtaining or paying for the plans or drawings that accompanied the Important Notice. I accept Mr Foster's evidence that this task was commissioned by him and undertaken without a fee, in the hope or expectation that paid work would be forthcoming if the project came to fruition.

The membership approves

26. The meeting of 21 October 2015 went ahead, in Mr Doyle's absence. It is common ground that the membership voted overwhelmingly, though not unanimously, in favour of proceeding with the scheme as presented to them. This was subject to a vote on the final terms of any proposed agreement. A document which appears to be draft Minutes of the 21 October SGM has been disclosed by Mr Smith. He got it from a Club member called Brian Dooley, of whom more later. The draft Minutes record that the vote was carried by a majority of over 90% of the voting members.

Mr Smith and the First Article

27. At some point in November 2015, Mr Smith came into possession of a copy of the September 2015 Notice of Meeting, a version of the Important Notice of October 2015, and the accompanying plans. His oral evidence was that these were posted through his letter box, anonymously, and that he has never discovered who posted them. I have my doubts about that aspect of his evidence, for reasons I will explain.

28. However, and from whomever, they reached him, it seems very likely that the documents were provided to Mr Smith after the SGM, with a view to publication, in the knowledge that Mr Smith was (as he remains) the owner and controller of the News, and its sole author, editor and publisher. The website which hosts the News describes its raison d'être: "*to provide information on News and events of what is taking place within your community*". The "community" here is evidently Caddington, and more widely the Council areas of Luton and Central Bedfordshire. The News has a motto or slogan: "*hated by some, welcomed by many*". Mr Smith has a Twitter page on which he promotes the News. The evidence establishes that the News has been in operation for several years, and has something of a following among local people. Mr Smith was at the material times also an independent councillor on Caddington Parish Council.

29. Mr Smith took two steps after receiving the Notice of Meeting and the Important Notice: (1) he contacted Councillor A Palmer, to find out what he had to say about the reference to an "understanding" between Mr Doyle and local authorities; (2) he put in a call to the Club, to seek comment about the Important Notice. Cllr Palmer said that Mr Doyle had not had contact with him or the planning committee for a number of years. When Mr Smith called the Club, he spoke to a female who was abrupt with him. He obtained no comment, nor any substantive response.

30. Mr Smith's evidence about the call to the Club is unsatisfactory. His witness statement referred to the woman he spoke to as "a woman I believe was the club secretary" and said that this approach by him was "two days before [Mr Doyle] first contacted me", in mid-June 2016. His oral evidence was that the only approach he made to the Club was some six months earlier, before publication of the First Article, that is in November 2015. This is a big difference. Moreover, if the call was made in November 2015, the Club Secretary was a man, Richard Bath (who signed the Important Notice). I accept Mr Smith's evidence on the fact of the approach. With some reservations, I also accept his oral evidence on the issue of timing, but I find that the person he spoke to was not the Club Secretary, and the discrepancies I have mentioned must cast doubt on the reliability of his witness statement.

31. I add that Mr Smith's statement described the response from the female "club secretary" as "hostile". In his oral evidence he said several times that the unidentified "secretary" was very rude indeed, so much so that he decided then or later not to make or attempt any further contact with the Club. This is a striking difference, and in my judgment his oral evidence was a considerable exaggeration. I shall return to the question of contact with the Club.

32. On or about 24 November 2015, Mr Smith wrote the First Article and published it online, in the News. The First Article is only available now in an altered version, and there has been some debate about how it looked originally. It may not be very important, but I find that its original version contained the following words:

> "LUTON RFC "WANTS TO MOVE INTO CADDINGTON VILLAGE"
>
> "WHAT IS GOING ON WITH THIS CLUB"?
>
> **Has the members of Luton RFC been misled by their club management committee by what they have put into this important document they put out to their members. Read the document and judge for yourself.**
>
> "IMPORTANT NOTICE FROM THE LUTON RUGBY FOOTBALL CLUB MANAGEMENT COMMITTEE TO THEIR MEMBERS"
>
> **It has been reported that Obtaining permission to develop the new site at Chaul End Lane is likely to be straightforward, not least because it is understood "Mr Doyle has already reached an understanding with the local and Central Beds Authorities."**
>
> The Chair of Caddington parish council planning committee Cllr A Palmer has provided a statement to the CVNS stating and confirming that Mr Doyle has not made or had any contact with him or the Caddington planning committee for quite a number of years, "Not by email, telephone or by any meetings ", from what Cllr Palmer's has stated, has Mr Doyle miss-lead the LRFC Management Committee and its members? or has the LTRFC misled their members, as it has now been established there has been no contact made at a local level by Mr Doyle regarding LTRFC moving to Chaul End Road."

(Bold text, and all but the opening and closing quotation marks are in the original).

33. Text drawn from the Important Proposal was then set out, but with a typo in paragraph 12 and the end of that paragraph cut off, as follows:

> "12. The project is clearly not without risk. Therefore it is important that throughout the roject [sic] effective action is taken to identify and manage that risk. Obtaining"

34. Paragraph 13 was omitted, as was the name of Mr Bath, the Secretary. In their place, the First Article set out some material that was not in the Important Notice as issued to Members: some calculations headed "Option 4 * Sports Focused Scheme", which showed a budget cost estimate of £4,048,062 excluding VAT for the proposed works at the new site. In oral evidence, Mr Smith was adamant that he had published exactly what he received. This is consistent with the document he has disclosed as being the version of the Important Notice he received. But that version was incomplete, different from the one sent out to members, and looks as if it may have been a partial reproduction. Where it came from is not clear. The copy in the bundles looks like something that was faxed, not put through a letter box. This leaves me uneasy about Mr Smith's evidence that he does not know from whom or whence it came. The fact remains, however, that on his own account he did not investigate the provenance or authenticity of the document.

35. Mr Smith did not make, or attempt, any contact with Mr Doyle before publishing the First Article. Mr Doyle first became aware of that article on or around 20 December 2015. I accept his evidence that this was probably through contacts of his at the Club, who drew it to his attention. Mr Doyle was, as he put it in his witness statement, "quite cross" about the leak which had clearly taken place from within the Club. Mr Doyle suspected Brian Dooley. But he was persuaded by Keith Butten not to pursue a leak inquiry. In his oral evidence to me, Mr Doyle made clear that he was not only cross that there had been a leak, but also that the Club had put out a document – the Important Notice – containing inaccuracies.

The "no comment" direction

36. Mr Doyle took steps to discourage the Club from putting out further statements or comments about the proposals. He spoke to Mr Butten and emailed him on 20 December 2015, saying that "if you are approached by any 3rd party regarding the current proposals" the Club should contact Simon James at DLP. His oral evidence on this was that this was not a blanket instruction to the Club to say nothing at all about the scheme. His aim was to ensure that any future statements about the planning aspects of the matter were accurate. He was "very annoyed" that the Club had put out information about planning itself, rather than following the simple procedure of letting the professionals deal with the matter.

37. Over the following months, Templeview and the Club pursued further discussions and negotiations. Mr Doyle put forward revised Heads of Terms, with an increased offer to the Club, of £12m. Heads of Terms were also agreed between Mr Speirs and the Club. During this period the Club did not, so far as the evidence reveals, make any further statements about the proposal to the public or to its membership. Neither the Club nor Mr Doyle contacted Mr Smith about the First Article.

Mr Smith and Mr Dooley

38. Brian Dooley approached Mr Smith, and in what Mr Smith calls the "run up" to the publication of the Second Article they had a number of discussions about Mr Doyle's proposals, and the Club's response to them. According to Mr Smith, the first approach was made in December 2015, and when he asked Mr Dooley if it was he who had provided the two Notices, Mr Dooley said no. This is a topic I address later on. I do accept Mr Smith's evidence that Mr Dooley expressed to him some serious concerns to

him about the proposed sale of the Club's land to Templeview. He suggested that the land was being undervalued, that Club members had been misled in a number of ways, that the Club should have put the land on the open market, and that there were unduly close friendships between Mr Doyle and the members of the sub-committee. There is ample evidence that Mr Dooley was raising concerns with the Club itself, in and after December 2015. Mr Smith's oral evidence gave a flavour of how Mr Dooley was expressing his concerns, what he took from it, and his reliability as a witness. He said that Mr Dooley had agreed with him: "What was said about contact with the Council was a lie and so was what was said about the option." (my emphasis.)

39. I am entirely satisfied that this is the kind of way in which Mr Dooley was expressing himself to Mr Smith. He was saying much the same to the Club Chairman, Mike Geraghty. In an undated email, copied to the trustees, and disclosed by Mr Smith, Mr Dooley demanded a halt to the proposed deal with Mr Doyle, stating that "representatives of our Club who have been tasked with safeguarding our future now have some serious questions to ask about … fraud and non-compliance, most notably our former Chairman Keith Butten"; and that he would "not stand by any longer while honest Members are betrayed with a pack of lies."

40. The Club's Committee was unhappy with Mr Dooley's approach, which it considered to be at odds with his membership, and it made this known to Mr Dooley in writing from as early as January 2016. He was told his membership might be terminated if he persisted in accusations of wrongdoing, for which he provided no evidence, and which the Club maintained were unfounded. But Mr Dooley continued to oppose the proposals.

May 2016

41. On 20 May 2016 the Club sent out a document updating its members on progress since the previous October, and giving notice of an AGM to take place on 31 May 2016. I find that Mr Dooley's undated email to Mr Geraghty was probably sent at about this time. The AGM took place, objections to the Doyle proposal were raised by Mr Dooley and others, but the membership present approved the continuation of dealings with Mr Doyle. That much is common ground, or clear enough. Other aspects of this matter are less clear. It seems that, in advance of the meeting, Mr Dooley proposed himself as Chairman because he was "worried that the actions and behaviour of some are not in the best interests of the Club". He created a document recording this, alleging that the proposed move was based on misleading statements, and identifying areas of possible illegality (Bundle page 580). He passed this document to Mr Smith, who treated it as evidence supporting the view that the Club had acted dishonestly, in rejecting the concerns of certain members, dismissing Mr Dooley's concerns at the AGM, and failing to correct misleading statements they made to the membership (his witness statement paragraph 52). The status and timing of this document are however both unclear, and I shall have to return to it.

42. Mr Smith gave hearsay evidence of an offer by Mr Dooley to buy the Club's existing land for £15 million. He was relating what he had been told by Mr Dooley (who was in Court throughout the trial, but not called as a witness by either side). The substance of it was that Mr Dooley had presented this offer, through a barrister, to the Club at the May AGM, but had been turned down, as "they wanted to stay with Mr Doyle". There is no documentary evidence about this, and no other witness has dealt with it. Mr Smith

also gave oral evidence that, at some stage, Mr Dooley had told him that he had a valuation for the land of £20 million. His evidence was that he was not shown the valuation. But there is a document in his disclosure which supports this evidence; it refers to "Cornells valuation … in excess of £20 million". He referred in his witness statement to an attempt to do his own calculation of "what the Newlands Road site might be worth". The document to which I have just referred supports this bit of his evidence. It contains sales values of other sites with planning permission, and references to press reports about property valuations. But he was unable to say when these amateur calculations were carried out, and could not say it was done before publication of the Second Article.

Email contact between Messrs Doyle and Smith

43. It was Mr Doyle who made the first contact. He did so on 10 June 2016, by email via the News website, saying that he wanted to discuss Mr Smith's "blog". There was no reply, and Mr Doyle emailed again on 15 June asking him again "to make contact to talk this points through with me." This second email set a deadline of 4pm on 17 June 2016, failing which "I will move on with contacting parties who will be very interested in the various documents I have to hand."

44. Quite what the documents were has not been explored, but this is, obviously, a thinly veiled threat. It was seen as such by Mr Smith. His witness statement makes this clear, and that he was not intimidated. He says (paragraph 61): "In spite of his threats, I was nevertheless willing to speak to the claimant. I wanted the opportunity to question him about the proposed developments and the "Important Notice." It is an agreed fact that the two men spoke on 15 June. The content of the conversation is known because the majority of it was secretly recorded by Mr Smith, and there is now an agreed transcript. I also have a written account of the whole conversation, which Mr Doyle provided to Mr Butten by email about a month later, on 14 July 2016 - a time when Mr Doyle was unaware that he had been recorded. The email was based on notes made by Mr Doyle at the time. According to the notes/email it was Mr Smith who took the initiative, and called Mr Doyle, who missed the call, and then called back. I accept all of that. Mr Smith places the call at around 5pm, which I also accept. Mr Doyle's second email was timed at 16:45. So that email had its effect: it was only some 15 minutes before he and Mr Smith were in conversation.

The 15 June conversation

45. The conversation related to the scheme devised by Mr Doyle, the content of the Important Notice and some inaccuracies in it, the responsibility for those inaccuracies, the First Article, the way the Club had reacted (or not reacted) to the First Article, the "no comment" direction of Mr Doyle, and other matters. Mr Doyle's evidence, which I accept, is that the conversation began with suggestions from him that Mr Smith was associated with and being influenced by some people called the Boyles. These were people with whom Mr Doyle had been in business, but there had been a falling out.

46. It is not necessary to set out the transcript of the rest of the conversation in full, not least because Mr Smith has made some key admissions about it. In particular, Mr Doyle stated, and Mr Smith clearly understood him to say the following: -

(1) That he had not seen the Important Notice before it was sent out. Mr Doyle's words were - omitting hesitations and ums and ers:

> "I did not see sight of that document. It had gone out and the first time I got told about it was when somebody said that the local gentleman has got something on his local blog and that's when I read it."

(2) That the Notice was wrong to suggest that he had an understanding with local planners; he had no such understanding. His words were:

> "We haven't … spoken to anybody from Luton or Central Beds … I wouldn't dream of being so arrogant or cheeky by saying it's a done deal… I've never said that in my life because it's not a done deal … I didn't say that. I have met nobody from Caddington and Slip End Parish Council, I've met nobody from Luton Council and I've met nobody from Central Beds".

(3) That the Notice was wrong to suggest that any surplus land would have development potential. Mr Doyle's words were:

> "If there's land left over we will be using that for landscaping. … The first person who will decide where things are going is me and … The thing they put in about the development, somebody has got excited again because, you know, that's not something that I entertain."

(4) That Mr Doyle was not responsible for any errors or inaccuracies in the Notice, which had been inappropriate in his view. His words were:

> "a false document that is nothing to do with me and it wasn't the correct way to go forward."

47. Two other features of the conversation are important:-

(1) Having told Mr Smith that he had not seen the Important Notice, Mr Doyle went on to say this:

> "So, what I asked the Rugby Club to do is basically don't make a comment, we need to get you through this process of - 'cause I said it's been very transparent - of getting the votes to move and accept the Heads of Terms. And then from there, I said that's when we start and it starts with me and, as I said, the Chairman of DLP meeting Central Beds, meeting Luton and meeting and … they might just say, "You deal with Caddington"".

(2) Towards the end of the conversation, Mr Smith expressly stated that he did not doubt Mr Doyle's denial of any understanding with the planners ("I've no doubt what you're saying, it's just that the Rugby Club said you had and they put it in writing…") He suggested that Mr Doyle should go to the Club and complain of

them putting him in an embarrassing situation by issuing a document which had gone out on the News "and none of it is true."

48. Mr Smith then brought the conversation to a close because "my dinner's just come up and my wife's calling."

June-July 2016

49. Thereafter, on 26 and 27 June 2016, Mr Smith sent Mr Doyle two emails from his phone asking about the Boyles, and suggesting that Mr Doyle was in partnership with them in respect of a development called Bushwood, which Mr Smith opposed. "If you are anything to do with Bushwood then I really I should not be talking to you." On 29 June, Mr Doyle replied at some length. He asserted that he had not been involved with the Boyles since November 2011, following disagreements. He accused Mr Smith of lying about his own association with the Boyles, complained that Mr Smith had "appointed yourself as judge and judicator" on a number of issues. He demanded to know the identity of the source from whom Mr Smith had obtained the Important Notice, and those who pointed "this disgusting individual your way", failing which "I will release my emails/letters to the person/persons mentioned." A deadline of 1 July 2016 was set. Mr Smith made no reply. He reported the matter to the police, making an allegation of blackmail.

50. At some point around this time, Mr Smith made changes to the First Article. One aim of this was to alert his readers to the fact that a further bulletin would be forthcoming soon. It is unclear exactly when he did this (and his witness statement does not deal with the issue), but the internal evidence suggests that it was during the latter part of June, following the 15 June conversation. He made these changes:-

(1) At the top of the page, he added a photograph of Mr Doyle, with the caption: "Stephen Doyle – Director of Templeview Development Limited".

(2) He added these words:

> "A FURTHER IMPORTANT DEVELOPMENT IN THIS STORY WILL BE MADE AVAILABLE IN THE NEAR FUTURE …
>
> Further information has come to light that will be published in July then you will be able to see for yourself if there has been anyone who has been misleading the club or the club is misleading their members, From the evidence I have it will show someone is given misleading information."

The Second Article

51. The Second Article followed, on or about 13 July 2016. It was headed "Mr Doyle's Statement", and also featured the photograph, with the same caption. Beneath the photo and caption were a headline, a sub-headline and five further paragraphs of text as follows (the numbering has been added by me):

> **"[1] "The £10 million fraud".**
>
> **[2] Stephen Doyle accuses Luton RFC of sending false documentation to Members**
>
> **[3]** In a bizarre twist to the Luton Rugby Club saga the man behind the proposed move, Mr Stephen Doyle of Templeview Development Ltd has contacted The Caddington Village News and accused the Club of misleading Members.
>
> **[4]** Mr Doyle didn't hold nothing back and said that the situation was embarrassing and the Rugby Club were getting all excited about putting stuff in they weren't allowed to do.
>
> **[5]** Most controversial of all Mr Doyle confirmed that he had read the false documentation before it went to the Members but that he asked the Rugby Club not to make a comment due to getting votes (for approval to move from Newlands Road to Caddington) and accepting Heads of Terms.
>
> **[6]** The Caddington Village News has looked into the legal ownership of the land and can confirm that the Members own it and it is reportedly valued at £10 million! This is like a lottery win and Mr Doyle has clearly alleged that the Rugby Club deceived the Members before the vote and that he knew about it.
>
> **[7]** There are so many more questions left unanswered- who is Mr Doyle's contact al the Club, who put the false document together, who is in charge of the money... I let readers come to their own conclusions about if there was a possible "£10 million fraud" but be assured the Caddington Village News will keep you updated and continue investigating."

52. It is convenient to pause the narrative here, and consider the claim in respect of the Second Article, before moving on to deal with the Third and Fourth Articles, which cover slightly different territory and raise separate and distinct questions.

The Second Article: Meaning

53. Mr Doyle complains of the whole of the article. The natural and ordinary meaning complained of is:

> "that the Claimant knew that documentation which was intended for circulation to members of the Club was false and misleading but had asked that it should not be corrected, in order to deceive the members of the Club into voting to approve the sale of land worth £10 million as part of a move which the Claimant was behind, and was accordingly guilty of concerted dishonesty and

> involved in perpetrating or attempting to perpetrate a fraud of up to £10 million"

The law

54. The Court's task is to identify the single, natural and ordinary meaning of the words: the meaning they would convey to a hypothetical ordinary, reasonable reader of the particular publication in question. There is no dispute as to the general principles, which are well-established and very familiar to all those professionally involved in this case. The arguments in this case rely on the commonly cited, classic sources of *Charleston v News Group Newspapers Ltd* [1995] 2 AC 65, esp at 70 (Lord Bridge), *Gillick v Brook Advisory Centres* [2002] EWCA Civ 1263 [7] (Lord Phillips MR citing the words of Eady J at first instance), *Charman v Orion Publishing Co Ltd* [2005] EWHC 2187 (QB) [8]-[13] (Gray J), *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130 [14] (Sir Anthony Clarke MR). The authorities have been recently reviewed in *Simpson v MGN Ltd* [2016] EWCA Civ 772 [2016] EMLR 26 [15] (Laws LJ) and *Bukovsky v Crown Prosecution Service* [2017] EWCA 1529 [2018] 1 WLR 18. In *Sube v NGN & Express Newspapers* [2018] EWHC 1234 (QB), at [20], I drew on *Jeynes* and *Bukovsky* for this encapsulation of the key principles:

> "(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) … 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. (9) In order to determine the natural and ordinary meaning of the statement of which the claimant complains, it is necessary to take into account the context in which it appeared and the mode of publication".

55. To the 9 points above may be added the following: (10) Judges should have regard to the impression the article has made upon them themselves in considering what impact it would have made on the hypothetical reasonable reader; (11) The court should certainly not take a too literal approach to its task; (12) a judge providing written reasons for conclusions on meaning should not fall into the trap of conducting an over-elaborate analysis of the various passages relied on by the respective protagonists. Points 10 and 11 are derived from *Gillick* [7]. Point 12 comes from *Charman v Orion* [11], and would seem to be an expansion of *Jeynes* principle (3).

56. Principle (2) sets out a neutral approach; the court should not select the most defamatory meaning available, or lean in the opposite direction: see the discussion in *Monroe v Hopkins* [2017] EWHC 433 (QB) [2017] 4 WLR 68.

57. As will be seen, the parties have advanced their arguments in this case by reference to the well-known classification of defamatory imputations to be found in *Chase v News Group Newspapers Ltd* [2002] EWCA Civ 1772 [2003] EMLR 1. This identifies three descending levels of gravity: guilt, reasonable grounds for suspicion of guilt, and grounds to investigate whether the claimant has misconducted himself. But the *Chase* levels are not exhaustive of the possible degree of defamatory meaning or imputation, and it is well-established that the Court is not bound by the meanings proposed by the parties.

Arguments

58. Mr Spearman submits that the article is plainly at Chase Level 1. It confronts the reader with reference to Mr Doyle's statement and a "£10 million fraud", and then asserts without equivocation or uncertainty that Mr Doyle had himself confirmed that the documentation was false, that members were deceived, and that he read the documentation before it went to members, knew of the deceit, yet asked the Club not to comment on the falsity in order to get the vote through. There is no room for a reasonable reader to draw from the words any less serious meaning than the one complained of.

59. The case for Mr Smith is that the claimant's meaning is "a strained and selective meaning, which fails to have proper regard to the content of the article as a whole and to the context in which it was published". Mr Vassall-Adams QC submits that the reader would see this article for what it was: the output of an amateur blogger who is accustomed to posting provocative material using colourful language. The primary target was the Club, and there was no direct allegation that the claimant had defrauded or attempted to defraud anyone. The article used quotation marks when referring to "fraud" and expressly said that it would let readers come to their own conclusions. The most serious meaning about the claimant which a reasonable reader could take from the words as a whole is a Chase Level 2 meaning of reasonable grounds to suspect him of involvement in a fraud.

Discussion

60. I do not think it would be right for my decision on meaning to be influenced by any assumption that readers of the Second Article would somehow discount its defamatory message, on the footing that Mr Smith is an amateur with a tendency to overstatement. There are two reasons for that. First, it would be wrong in principle. My task is to decide what the reader would understand the article to be saying. Mr Vassall-Adams' argument risks confusing the reader's ***response*** to the message with the message itself. In any event, this approach would seem to lack a sound evidential basis. I addressed this problem in *Monroe v Hopkins* at [33]:

> *"Jeynes* principle (6) means that the nature of the publication or medium can also affect the characteristics which the court attributes to the ordinary reader. But it is necessary to be a little cautious about this aspect of the matter, because it can involve

> an invitation to act on preconceptions that are unsupported by evidence. Special characteristics should only be taken into account if they are matters of common knowledge, agreed, or proved: *McAlpine* [58], *Simpson v MGN Ltd* [2015] EWHC 77 (QB) [10]."

61. I must therefore assess what an ordinary interested but reasonable resident of Caddington would have taken from the words used in the Second Article. There is a lot of force in Mr Spearman's argument. The proposition that there was or may have been a "£10 million fraud" is presented as the author's suggestion, not one made by Mr Doyle. The impression conveyed is that, according to Mr Doyle, there was deception, which he knew about and condoned. On the face of the article, he had admitted as much. But the reference to fraud is in quotation marks, there is a suggestion that the readers should draw their own conclusions, and – most importantly – there is emphasis on the "bizarre" twist in events, whereby Mr Doyle allegedly came forward, and volunteered admissions of his active participation in deception of the members. The reference to £10 million is also puzzling, as this is said to be the value of the land, but the reader would not suppose that Club members were being tricked into disposing of it for nothing at all. In the end, I find that these factors would raise some doubts and reservations in the mind of the fair-minded reader; they mean the Article falls just shy of an outright allegation of fraud. In my judgment the meaning of the Second Article is this:

> There was very good reason to believe that the Claimant had been guilty of participation in an attempt to defraud members of the Club of many millions of pounds, by allowing the Club to issue what he knew to be false and deceptive documentation about a proposed land sale and then, with a view to ensuring the proposal went through, asking the Club not to correct it.

62. This falls short of a Chase Level One imputation, but not a long way short. It is a significantly graver imputation than Chase Level Two, because it conveys a greater degree of conviction that the suspect is in fact guilty.

The Second Article: publication on a matter of public interest

63. Section 4 of the Defamation Act 2013 reads, so far as relevant, as follows:

> "4.— **Publication on matter of public interest**
>
> (1) It is a defence to an action for defamation for the defendant to show that—
>
> (a) the statement complained of was, or formed part of, a statement on a matter of public interest; and
>
> (b) the defendant reasonably believed that publishing the statement complained of was in the public interest.

> (2) Subject to subsections (3) and (4), in determining whether the defendant has shown the matters mentioned in subsection (1), the court must have regard to all the circumstances of the case.
>
> …
>
> (4) In determining whether it was reasonable for the defendant to believe that publishing the statement complained of was in the public interest, the court must make such allowance for editorial judgement as it considers appropriate.
>
> …
>
> (6) The common law defence known as the Reynolds defence is abolished."

It is convenient to deal in turn with the twin requirements in s 4(1)(a) and (b).

Statement on a matter of public interest

64. The requirement in s 4(1)(a) is not that the statement complained of has some relevance to, or some bearing on, a matter of public interest. The statement must be "on" a matter of public interest, or form part of a statement that is "on" such a matter. This is plainly an objective question. It must therefore be possible to look at the statement, and identify and describe quite shortly something the words are about - one or more topics or subjects - which is or are of public interest. The wording of the statute indicates as much quite clearly, and this was ultimately common ground before me.

65. This point rules out a significant part of the defence case on this issue, as originally pleaded and argued by Mr Vassall-Adams and Mr Wills. It is pleaded that the statement complained of was or formed part of a statement on four matters of public interest. One is "the environmental and planning impact of the proposed development upon the local community in Caddington in terms of a large new development on a greenfield site, additional traffic and impact on quality of life." But the Second Article was simply not about any such topics or subject; it was not "on" any such matter. The Defence goes on to allege that these environmental and planning impacts "were matters which, at the material time, were not widely known about in the local community … outside the narrow confines of Luton RFC and the Claimant's Company and its associates." I would not have accepted that proposition, on the evidence. But it is not necessary to explore the issue, given what I have said.

66. The written closing submissions on the first limb of the s 4 defence devote over 700 words to a list of no fewer than eight "matters of public interest". This is nearly three times as many words as the Second Article itself. The list goes well beyond the pleaded case, and includes not only (5) the environmental and planning impact of the proposed development at Caddington, but also (6) its major impact on village life, the Green Belt and the AONB; and (7) the impact on the village of the proposed development at Newlands Road, involving an additional 1,000 properties, the impact on population, and pressure on services such as traffic, health and education. I summarise a much more elaborate pleaded case, which tends to intermingle descriptions of matters said to be of public interest with reasons as to *why* those matters are of public interest. Again,

however, whatever and however much might be said about these topics, they were not the subject-matter of the Second Article, nor were they touched on or alluded to in that article. It was not "on" any of these matters.

67. It is common ground that for this and other purposes the Second Article needs to be looked at against the background of the First Article; the later article was addressed to the same readership and assumes a certain amount of basic background knowledge about its subject-matter. But that does not affect any of the conclusions I have just summarised. As I understood his oral closing argument, Mr Vassall-Adams accepted those conclusions. He focused his argument instead on the first three points in his pleaded case, and his written argument, which came much closer to the true subject-matter of the statement complained of.

68. In my judgment, the subject-matter of the Second Article can be expressed in a fairly concise fashion. The general subject matter of the article was the Club's proposed move from Newlands "into Caddington". More specifically, it was about information issued by the Club to its members in the Important Notice; what Mr Doyle (the "person behind the proposed move") had said to the News about that Notice and his role; and the implications of and conclusions to be drawn from his statement as to (a) the integrity or reliability of the information in the Notice; and (b) the validity of the resulting vote. These are the key matters which the Second Article was "on". The question is whether these qualify as matters of public interest.

69. It is impossible to provide any exhaustive list of matters of public interest, but the Court of Appeal's judgment in *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127 contains a useful passage, explaining that references in that judgment to matters of public interest were to:

> "matters relating to the public life of the community and those who take part in it, including … activities such as the conduct of government and political life, elections and public administration … [and] more widely … the governance of public bodies, institutions and companies which give rise to a public interest in disclosure, but excluding matters which are personal and private, such that there is no public interest in their disclosure."

70. Mr Vassall-Adams submits that a matter can be of "public interest" even if the number of individuals who are directly concerned with it is relatively small. I accept that (for example) Parish issues can be of public interest and concern, even if the Parish is a small one with few residents. But the internal workings of a members' club are intrinsically a private matter. It will not ordinarily be of legitimate interest to the wider public how the members of such a club decide to organise their affairs, or deal with their property, or whether the members have been misled by some document issued by its officers, concerning their affairs or property. The governance of public bodies is invariably a matter of public concern, but the governance of private clubs not so. The fact, which is agreed, that the proposal to move involved "a hugely important decision for the future of the Club" does not make it a matter of public interest. Nor, in my judgment, is the question affected by the fact that some of the Club members are residents of the local community. Mr Spearman is right to submit that the question of whether there was a risk of the Club's premises being sold at a very substantial

undervalue, to the detriment of its members was not a matter of public interest even if there was such a risk, of which I am not convinced. Nor would it be enough that the decision-making had an impact on another group within the community, such as local rugby supporters who were not Club members.

71. If, however, a private Club makes or contemplates a decision with significant effects on the outside world, and those who dwell in it – if it proposes some action with important ramifications for others in the wider community, then, as it seems to me, the position may well be different. In this case, it is agreed that the Club was and is a significant community institution. It occupied a substantial site in Newlands Road. Its proposed departure from Newlands, with the resulting residential development, would have a major impact on those in the vicinity of that site and others affected by that development. Its proposed arrival in or near Caddington, and the associated development, would have a major impact on the area, residents in the vicinity of that site, and others experiencing consequential effects. The proposal to move, associated with these twin development schemes, was in my judgment a matter of public interest for these reasons. It may be that the Caddington end of things was of much more direct interest to the section of the public addressed by Mr Smith's online newspaper than the Newlands end. But the News addressed a wider readership than just the villagers of Caddington. Moreover, it is hard to draw a hard and fast distinction between the two schemes, for reasons explained in the evidence. Newlands was not so far away, and a development on the scale envisaged could reasonably be seen as having important ramifications for the wider community, including those in Caddington.

72. Also matters of public interest, in my judgment, were the propriety of the decision-making process by which the Club had resolved (or conditionally resolved) to move, and the role played by Mr Doyle in that process. This is not because the public at large had any proper interest in how the Club conducted its internal affairs, as such. None of those involved held any public position, such as to justify an examination of the integrity of their conduct in a private capacity. But because a section of the public had a proper interest in the public and outward consequences of the Club's decision-making, that same section of the public had a legitimate interest in the integrity of the internal, otherwise private process. Put shortly, if the vote had been corrupted by deception, it might be invalidated or revisited and there could be a different outcome. The consequences for the community might be profound. The fact that Mr Doyle had come forward to speak to Mr Smith about these issues lends weight to the view that the subject-matter on which Mr Smith chose to publish was of public interest.

The Reasonable Belief requirement

73. When it comes to this second limb of the s 4 defence, both parties have adopted what I said in *Economou v de Freitas* at [139]:

> "(1) It is not enough for the statement complained of to be, or to be part of, a publication *on* a matter *of* public interest. It must also be shown that the defendant reasonably believed that publication of the particular statement was *in* the public interest."
>
> (2) To satisfy this second requirement, which I shall call "the Reasonable Belief requirement", the defendant

> must (a) prove as a fact that he believed that publishing the statement complained of was in the public interest, and (b) persuade the court that this was a reasonable belief.
>
> (3) The reasonable belief must be held at the time of publication.
>
> (4) The "circumstances" to be considered pursuant to s 4(2) are those that go to whether or not the belief was held, and whether or not it was reasonable.
>
> (5) The focus must therefore be on things the defendant said or knew or did, or failed to do, up to the time of publication. Events that happened later, or which were unknown to the defendant at the time he played his role in the publication, are unlikely to have any or any significant bearing on the key questions.
>
> (6) The truth or falsity of the allegation complained of is not one of the relevant circumstances.
>
> (7) It is not only those who edit media publications who are entitled to the benefit of the allowance for "editorial judgment" which s 4(4) requires (see paragraph 33 of the Explanatory Notes)."

A belief?

74. Some further points from *Economou* are relevant. One is this:

> "153. What s 4(1)(b) requires is a belief that the publication of "the statement" is in the public interest, which must refer to the words complained of, rather than the defamatory imputation which those words convey. That is consistent with the wording of the statute, which uses the term "imputation" to refer to the meaning of a statement."

That remains my view, and I therefore do not accept Mr Vassall-Adams' submission in written closing arguments, that a relevant circumstance is "the extent to which the defendant believed the *allegations* to be true" (my emphasis). I believe Mr Vassall-Adams came to accept that this is not an accurate way of characterising the statutory requirement.

75. This seems to me to be an important point of distinction between the public interest defence and the defence of truth. A defendant who asserts the truth of what was published is not restricted to pleading or proving facts that were reported in the words complained of. Any fact may in principle be established in evidence, if it is capable of contributing to proof of the truth of the defamatory imputation conveyed by those words. Reliance may be placed on facts that were unknown at the time of publication, and even facts which post-date publication. The reason is that the defence is concerned

with the truth or otherwise of a defamatory meaning or imputation conveyed by the published words. The defence of truth is made out by proof "that the imputation conveyed by the statement complained of is substantially true": Defamation Act 2013, s 2(1). By contrast, the public interest defence is not assessed by reference to a meaning or imputation. It is concerned with protection, on public interest grounds, for the publication of "the statement complained of". A key criterion is the defendant's state of mind about that "statement" at the time of publication. This has always been true of the common law defence of qualified privilege, including the *Reynolds* defence which was the predecessor of s 4.

76. I accept Mr Spearman's submission, that these conclusions are fatal to the s 4 defence in this case. That is because, on a proper analysis, the defendant has not made out the first essential requirement of s 4(1)(b): he has not adequately pleaded, nor has he proved, that he held a belief that it was in the public interest to publish the statement complained of.

77. This must of course be looked at as a matter of substance. The seven paragraphs of text contain three main features. There are assertions about the Club members being "deceived" before the vote by "false documentation" sent to them by the Club (paragraphs [2], [3] and [6]). There are words in paragraphs [1], [6] and [7] to do with a "£10 million fraud". And, critically from Mr Doyle's point of view, there are words which portray him as a knowing party to the falsehood, deception, and "fraud": see paragraphs [5] and [6].

78. Mr Smith's pleaded case sets out a factual case about the sequence of events involving him, between 24 November 2015 and the publication of the Second Article. It then asserts that "in the premises, the Defendant reasonably believed that publishing the statement complained of was in the public interest". This is an entirely general statement, which does not follow logically from what precedes it. The Defence goes on, however, to make six specific assertions as to Mr Smith's state of mind. This is the key part of the document, for present purposes. Here it is said, among other things, that the Defendant reasonably believed "that it was wrong that the members of [the Club] were being presented with misleading information…" and that "it was significant and newsworthy" that the Claimant "had admitted that the Notice was false and misleading". Other allegations about Mr Doyle's state of mind are made. The pleading does not deal paragraph by paragraph with the statement complained of. That would not matter, if it dealt with all of the substance. But it does not.

79. Critically, in my judgment, the Defence nowhere asserts that Mr Smith believed (reasonably or otherwise) that it was in the public interest to publish the key words in paragraph [5] of the Second Article: "Most controversially of all Mr Doyle confirmed that he had read the false documentation before it went to the Members ..." Indeed, the pleading does not assert that Mr Smith believed those words to be true. Nor does his witness statement contain any such assertion. The reason is that he knew those words to be false. The evidence shows this unequivocally. Mr Doyle had said the exact opposite in the 15 June conversation. He had said that he had <u>not</u> seen the document until the publication of the First Article, and that errors in it had nothing to do with him. He had said this clearly. Mr Smith had heard him, and had recorded him saying those things. Later, Mr Smith made a transcript. There is no question of Mr Smith having been in any doubt about what had been said by Mr Doyle. His evidence is that he did not believe Mr Doyle's account. His witness statement describes it as "inconceivable"

that Mr Doyle would not have been aware of the Notice in advance. I accept that was his state of mind at the time, though he now professes to accept that Mr Doyle did not see the Notice. The effect of his evidence is that for that reason he decided to inform his readers, falsely, that Mr Doyle had made the incriminating admission attributed to him in the Second Article. This was a deliberate falsehood in what on any view is a part of the offending statement which is of critical importance. It is something for which, in my judgment, Mr Smith plainly cannot claim the protection of the public interest defence.

80. The matter does not stop there, because paragraph [6] of the Second Article repeats the same assertion. To say that Mr Doyle alleged that the Rugby Club deceived the Members before the vote *and that he knew about it*" is to say that Mr Doyle had alleged that he knew of the deception *before the vote.* He had said the opposite. Mr Smith knew that. And Mr Smith has not alleged or proved that he believed it was in the public interest to publish that false statement. Quite the opposite. Under cross-examination he conceded, "No, that was wrong. That was most certainly wrong … It was wrong. I admit it was wrong … It should not have been that he confirmed, it should have been something more in the line of it is believed. That would be more appropriate …" He was right to make that concession.

81. The Explanatory Notes to the 2013 Act (at paragraph 29), identify the intention behind the enactment of s 4: to create "a new defence … of publication on a matter of public interest … based on the existing common law defence established in *Reynolds v Times Newspapers Ltd* ... and … intended to reflect the principles established in that case and in subsequent case law." There is, as I said in *Economou* at [242], obvious force in the argument that a "citizen journalist", composing and publishing what purports to be investigative journalism, should be expected to conform to the requirements of *Reynolds* before he can claim the benefit of s 4.

82. Several points from the *Reynolds* checklist of considerations relevant to the availability of the common law privilege are pertinent here: the Court will consider (among other things) (a) the reliability or credibility of the defendant's source(s); (b) what steps were taken by the defendant to verify the truth of the allegations before he made them; (c) whether the defendant sought any comment from the claimant; (d) whether the defendant included the claimant's side of the story. Where the target of a publication has given an explanation, but the publisher fails to report it, it will be difficult if not impossible to claim the protection of the privilege.

83. The facts of *Reynolds* illustrate that point. Mr Reynolds, the Taoiseach of Ireland, was alleged to have misled the Dail on a specified date in 1994, by suppressing vital information. He had made a statement in the Dail, setting out his response to that allegation. The defendant newspaper reported the allegation but failed to report the exculpatory statement, or even to mention its existence. The justification offered for this was that the journalist had disbelieved the Taoiseach's explanation. The House of Lords were not prepared to accept that privilege could protect the publication of a misleading account of events, provided the defendant believed that the defamatory imputation conveyed was true. Lord Nicholls set out at 206A-F the response of the majority:

> "…. It goes without saying that a journalist is entitled and bound to reach his own conclusions and to express them honestly and

> fearlessly. He is entitled to disbelieve and refute explanations given. But this cannot be a good reason for omitting, from a hard-hitting article making serious allegations against a named individual, all mention of that person's own explanation. … An article omitting all reference to this statement could not be a fair and accurate report of proceedings in the Dail. Such an article would be misleading as a report. This article is not defended as a report, but it was misleading nonetheless. By omitting Mr Reynolds's explanation English readers were left to suppose that, so far, Mr Reynolds had offered no explanation. Further, it is elementary fairness that, in the normal course, a serious charge should be accompanied by the gist of any explanation already given.
>
> … these serious allegations by the newspaper, presented as statements of fact but shorn of all mention of Mr Reynolds's considered explanation, were not information the public had a right to know."

84. The present case is a stronger one than *Reynolds*, from the claimant's perspective. Here, as there, the journalist obtained the claimant's side of the story but chose not to publish it because he disbelieved it. That would be enough to deprive Mr Smith of the benefit of the public interest defence. But Mr Smith went further. He did not merely suppress the claimant's innocent account, he invented a false confession of guilt and published that as an accurate version of events, thereby positively deceiving readers. He did so prominently, presenting the falsely attributed confession as the "most controversial" aspect of the story. I can see that a public interest defence might not fail just because the statement complained of contained some insignificant mis-statements, which the defendant did not reasonably believe. But that is not this case, and it is hard to envisage a defence being upheld where the author knew that a major component of the factual picture presented to readers was untrue.

A reasonable belief?

85. Even if Mr Smith had established as a fact that he believed it was in the public interest falsely to inform readers of the News that Mr Doyle had admitted that he knew before the members' vote of the contents of the Notice and the "deception" it contained, the public interest defence would have failed. This was a central feature of the statement complained of, and such a belief could not in my judgment be characterised as reasonable. Nor is Mr Smith's distortion of the known facts an approach that is, or in my judgment could be, justified by reference to the "editorial discretion" referred to in s 4(3) of the Act. Journalists must be allowed considerable latitude for decision-making as to the manner in which they present the facts, and allowance must be made for a degree of exaggeration. Sometimes it may be reasonable to compress a quotation so that it is not literally exact. But in my judgment, making all due allowance for editorial discretion, no journalist could reasonably believe that deliberate fakery of this kind was in the public interest.

86. The broad point was made trenchantly by Lord Hobhouse in *Reynolds* at 238:

> "There is no human right to disseminate information that is not true. No public interest is served by publishing or communicating misinformation. The working of a democratic society depends on the members of that society, being informed not misinformed. Misleading people and the purveying as facts of statements which are not true is destructive of the democratic society and should form no part of such a society. There is no duty to publish what is not true: there is no interest in being misinformed."

87. There is another major reason why, in my judgment, the public interest defence must fail. It concerns the remainder of the "most controversial" sentence in paragraph [5]. Here, having falsely attributed some admissions to Mr Doyle, Mr Smith went on to say that Mr Doyle had also "confirmed" to the News "that he asked the Rugby Club not to make a comment due to getting votes (for approval to move from Newlands Road to Caddington) and accepting Heads of Terms." This is clearly an important component of the statement complained of - the article as a whole. The reader, told that Mr Doyle admittedly knew of the "false document" before it was sent out, is then told that he admittedly took active steps to prevent any correction being made until the Club was through the process of "getting the votes to move". The case for Mr Smith is that not only did he believe that his paragraph [5] accurately reported what Mr Doyle had said, it was in fact an accurate report. I do not consider that to be a relevant assertion. Mr Smith does not need to go so far. The public interest defence is concerned with the defendant's belief, and not the subsequently determined truth or falsity of the published statement: see *Economou* [139(4)] and [140]-[142].

88. As it happens, Mr Smith has failed to satisfy me that the Second Article was accurate in this respect. What Mr Doyle was trying to convey was that, having seen the inaccuracies in the Notice, he had told the Club not to put out further statements on planning matters. He had advised them to refer all queries to DLP. Further, although I accept that Mr Smith may have thought it was accurate and in the public interest to report as he did, he has failed to persuade me that such beliefs were reasonable.

89. This part of the Article was clearly based on the passage in the 15 June conversation that I have set out at [47(1)] above. If the words set out there are viewed in isolation, it is possible to read them as meaning that, knowing the Notice was a "false document", Mr Doyle had asked the Club not to make a comment, in case that interfered with the process of getting the members' votes and agreeing Heads of Terms. But if the words are considered in context, and paying regard to the inherent probabilities, it is very hard indeed to believe that this is what Mr Doyle was saying. There are three main reasons. The first is the overall context. The 15 June conversation was preceded by Mr Doyle's threatening emails. These gave no reason to suppose that he was minded to confess his participation in a fraud on the Club members; very much the contrary. Secondly, there is the immediate context. By this point in the conversation Mr Doyle had already made clear to Mr Smith that he had ***not*** seen the false document until he saw the First Article – which was after the members' vote. Mr Smith's interpretation therefore involved attributing self-contradictory assertions to Mr Doyle. And as the conversation went on it became or should have become increasingly clear that the general tenor of Mr Doyle's account was that the Club was at fault, but not him. Thirdly, in all the circumstances it

would have been little short of astonishing for Mr Doyle to make an admission of fraud, in this conversation, with Mr Smith.

90. In his evidence, Mr Smith has not adopted the natural interpretation of the words he used in the Second Article. He has suggested that what he understood Mr Doyle to be saying in this part of their conversation was that he had advised the Club not to comment *on the First Article.* That is the case put to Mr Doyle in cross-examination. This is an odd approach, not least because the Second Article makes no mention of the First Article in this or any other context. It is a highly improbable account of things, which is a long way from the natural meaning of the Second Article. Mr Smith's evidence on this topic was confused, and I reject this part of it. My conclusion is that Mr Smith's interpretation was that Mr Doyle had admitted knowing of the falsehoods, and advising the Club not to comment, before the vote at the SGM. For all the reasons I have given, that interpretation was in my judgment a highly improbable and unreasonable one to start with. Indeed, Mr Smith says in his witness statement that he regarded what Mr Doyle had said to him about the advice not to comment as "an extraordinary admission…"

91. In *Economou*, I said this at [241]:

> "… a belief [will] be reasonable for the purposes of s 4 only if it is one arrived at after conducting such enquiries and checks as it is reasonable to expect of the particular defendant in all the circumstances of the case. Among the circumstances relevant to the question of what enquiries and checks are needed, the subject-matter needs consideration, as do the particular words used, the range of meanings the defendant ought reasonably to have considered they might convey, and the particular role of the defendant in question.".

This remains my view.

92. Between the 15 June conversation and the publication of the Second Article, Mr Smith made no attempt to contact Mr Doyle, or the Club, to check or verify his interpretation of the words on which he now relies to justify the public interest in the publication of paragraph [5] of the article. In my judgment, it was highly unreasonable to publish the second aspect of that paragraph without making any further checks or enquiries. Mr Smith, acting reasonably, would have reflected on the inherent probabilities, and the contextual factors I have mentioned. He would either have concluded that he must have misinterpreted Mr Doyle, so that the public interest would count against reporting in the terms he did. Or he would have decided that he should confront Mr Doyle with his interpretation and check the position. To publish without doing this was unreasonable.

93. At this trial Mr Smith has offered an excuse for not contacting Mr Doyle. He and his Counsel have maintained that nobody would, and that he did not, want to contact a man who had subjected him to threats and blackmail. This is portrayed as a reasonable response. I do not accept that this was in fact his reason, or even one of his reasons, for making no contact. He did not say so in his witness statement. This made clear that the initial threatening email did ***not*** deter him from contacting with Mr Doyle: see [44] above. The written evidence satisfies me that it was Mr Smith who initiated the 15 June

phone call. There is no indication in the transcript of that call that Mr Smith felt intimidated. He sent emails to Mr Doyle after that, in somewhat aggressive terms.

94. There was another threatening email from Mr Doyle, on 29 June, but Mr Smith's witness statement did not assert that he had been intimidated by this email into not contacting Mr Doyle. By the time the Second Article was published the deadline set by Mr Doyle was long past, and nothing had been done by him. There had been plenty of time to pick up contact again. Even if I had been satisfied that Mr Smith was in fact deterred by Mr Doyle's threats, I would not find that to be reasonable. Mr Smith could offer no reasonable answer to the obvious point: he did not have to make contact in person; he could have written to Mr Doyle, by email or otherwise. I am inclined to think that he deliberately omitted to do so because he was not concerned to explore further with Mr Doyle the matter on which he intended to publish an article. I do not accept the case for Mr Doyle, that Mr Smith was retaliating for the threatening email of 29 June. In my judgment, he had a closed mind and had determined to publish allegations of involvement in fraud regardless of anything that Mr Doyle might have to say on the matter.

95. I should add this, for completeness. The circumstances I listed in *Economou* at [241] include the "role" of the defendant, but they do not include his qualifications, experience, or other personal qualities or attributes. And I do not accept one line of argument advanced on behalf of Mr Smith, namely that the circumstances relevant to the Reasonable Belief requirement include "(1) the status and characteristics of the publisher including (a) whether or not s/he/it is a professional media organisation/journalist, (b) the journalistic training and experience of the person concerned ….". It is a well-established principle of the law of negligence that when the circumstances are such as to impose a duty of care on a person, the standard of care remains the same, regardless of the individual's personal attributes. The point has come before the Court of Appeal twice in recent years. In *Dunnage v Randall* [2015] EWCA Civ 673 [2016] QB 639 the issue was whether serious mental health difficulties should result in a lower standard of care. The answer was no. The Chancellor said this:

> "124 It has been argued in many cases over many years that the standard of care should be adjusted to take account of the personal characteristics of the particular defendant. So, for example, in Salmon LJ's celebrated dissenting judgment in *Nettleship v Weston* [1971] 2 QB 691 , he would have held that a learner driver's acts should be judged by the standard of a reasonable learner driver rather than a reasonable person generally. But this view has never prevailed (see Lord Macmillan in *Glasgow Corpn v Muir* [1943] AC 448 , 457), except in one respect: the standard of care applicable to the liability of children for negligence is established to be that of the ordinary, prudent and reasonable child of the defendant's age, not that of the ordinary, prudent and reasonable person generally: see McHale v Watson (1966) 115 CLR 199 in the High Court of Australia, followed in *Mullin v Richards* [1998] 1 WLR 1304.
>
> …
> 130 … is there some principle that requires the law to excuse from liability in negligence a defendant who fails to meet the

> normal standard of care partly because of a medical problem. In my judgment, there is and should be no such principle. The courts have consistently and correctly rejected the notion that the standard of care should be adjusted to take account of personal characteristics of the defendant. The single exception in respect of the liability of children should not, I think, be extended. … "

Equally, the standard of skill and care required of a medical professional is not diminished by the fact (if it be so) that the individual clinician is young and relatively inexperienced: see *FB v Rana* [2017] EWCA Civ 334 [2017] P.I.Q.R. P17, and in particular the judgment of Peter Jackson LJ.

96. Mr Vassall-Adams' argument is clearly at odds with this approach. Of course, I am not concerned with the law of negligence, but it is important for the law to be coherent: see *Khuja v Times Newspapers Ltd* [2017] UKSC 49 [2017] 3 WLR 351 [34(3)] (Lord Sumption). As Mr Spearman points out, the approach of applying to the facts (including the defendant's subjective state of knowledge) an objective standard, which does not vary from one person to another, is more generally recognised in other areas of the law, for instance on dishonesty: see *Ivey v Genting* [2018] AC 391 [74] (Lord Hughes). It seems to me, therefore, that whilst I can and should take account of the nature of the publication in question – its character as a local news website, in the nature of a community operation, it would be wrong in principle to give Mr Smith some credit or leeway to reflect his lack of professional skill, training, or expertise.

97. Again, I believe that Mr Vassall-Adams saw the force of this and for that reason he did not press it. For reasons that will be obvious, I do not think the point gets anywhere on the facts of the case. It does not require elaborate training or extensive experience of journalism to realise (a) that a property developer whom you have accused of being party to misleading people is inherently unlikely to confess in the course of a phone call to participation in a £10m fraud or (b) that it was unlikely that the words used by Mr Doyle were intended to or did amount to such a confession or (c) that it would be unfair and contrary to the public interest to assert to the public that there had been such a confession, at least without giving Mr Doyle a chance to comment or respond. If I am right to think that Mr Smith had a closed mind, nobody could suggest that this is consistent with a reasonable belief that he was serving the public interest. A striking phrase that Mr Smith used more than once in his evidence to explain his approach to publication was this: "if it don't smell right, it ain't right." That is not a reasonable basis for anyone to proceed to online publication of statements imputing fraud or something close to it.

98. I can deal more shortly with other aspects of the Second Article. Having read and heard Mr Smith's evidence, I accept that he believed that there had probably been a fraud on the Club members by Club officers, in conjunction with Mr Doyle, and that the public interest demanded that this be exposed. He believed that the land was worth £10 million, and that the contents of his paragraphs [2] and [3], the first paragraph of his [6] and his paragraph [7] were true. Although this was not disclosed in his witness statement, Mr Smith's oral evidence made clear that he thought the proposed sale was at a gross undervalue and that the Club officers who promoted the Doyle proposal stood to gain somehow, from some kind of corrupt payment from Mr Doyle, if the proposal went through.

99. It was not, however, reasonable for Mr Smith to believe that there had been such a fraud, or that it was in the public interest to assert the existence of a £10 million fraud, or the possibility of such a fraud. The figure of £10 million is puzzling, for reasons I have given when dealing with meaning. If the land was worth £10 million it is hard to see how there could be a "£10m fraud" unless the Club was giving the land away. Mr Smith knew that was not the proposal. Indeed, he had information, in paragraph 5 of the Important Notice, that Mr Doyle's offer was "above £12m". I do not believe this puzzle can be resolved by reference to the information which Mr Smith says he was given by Mr Dooley, about the offer of £15m and the valuation of £20m (paragraph [42] above). I would accept that Mr Dooley did say those things to Mr Smith, at some stage. But I do not accept that he had done so before the Second Article was written and published. Mr Smith himself could not make that assertion, when he came to give evidence. And it is extremely improbable. If Mr Smith had been armed with that information, he surely would have incorporated it or referred to it in some way when writing the Second Article. He might, for instance, have explained the "£10m fraud" as a "£3m fraud" (the difference between Mr Doyle's offer and the figure in the Important Notice) or an "£8m fraud", because that was the sum by which the offer, as there quantified, fell short of the true value of the land. He did none of those things. I am not persuaded, either, that Mr Dooley had passed the document at p580 of the Bundle to Mr Smith before the Second Article was written and published. There is much in that document that would surely have found its way into the article if so. Instead, the article referred to a number of unanswered questions. In my judgment, the "£10m fraud" suggestion was careless, based on entirely inadequate research and sloppy thinking.

100. Another important question is what motivation the alleged fraudsters would have had. That is not difficult to see when it comes to a developer, allegedly procuring a sale to himself at an undervalue. But what of the Club officers? In his oral evidence, Mr Smith admitted that he had no evidence to support his beliefs about the roles of the Club officers. He seems never to have considered the possibility that the inaccuracies resulted from human error, or misunderstanding, rather than dishonesty. His investigations, such as they were, were rudimentary and involved little other than discussions with Mr Dooley. Apart from his contact with the rude woman, before publication of the First Article, Mr Smith made no contact nor did he attempt any contact with the Club. Can that omission be justified? In my judgment, it cannot.

(1) Mr Smith's evidence of his conversation with the "secretary" at the Club is unsatisfactory not only as to timing but also as to the content of the conversation. His witness statement contains one adjective ("hostile"). His oral evidence contained several others, more emphatic. But what was actually said by him or her is nowhere explained. He has therefore failed to establish that he conveyed any substantive information to the Club as to why he was calling, what he wanted of them, or what his intentions were.

(2) I cannot regard the initial contact as affording the Club any or any fair or reasonable opportunity to comment on or respond to the proposed publication. Nor can the response of the unknown woman justify a failure to make any further contact with the Club at any later stage. I have concluded that Mr Smith's account of the rudeness to which he was subjected is exaggerated; had the account he gave to me been accurate he would have made more of it in his statement. In any event, such rudeness as there was came from a single individual, of whose identity and role he

was uncertain. He had no reasonable grounds for supposing that it represented the Club's concluded, overall official position. The reasonableness or otherwise of his failure to make further contact has to be assessed in the light of the gravity of the misconduct of which he believed the officials to be guilty, and which he intended to report upon. The allegation came close to an outright charge of fraud, on a grand scale. I assess Mr Smith as a very robust individual, who would not easily be deterred from contacting someone with difficult questions. Even if (which I do not accept) he had felt some difficulty about confronting an official in person or on the phone, there was nothing to stop him putting questions or suggestions to the Club's officials in writing. There is every reason why he should have done this.

(3) It was suggested by Mr Smith on a number of occasions, including in the 15 June conversation, that the onus was on the Club to contact him, following publication of the First Article; and that, in the absence of contact, he was entitled to assume that the Club accepted what he had said and had nothing further to add. I believe that was Mr Smith's attitude. I do not regard it as a reasonable basis for making no attempt to contact the Club.

101. Again, these points do not in my judgment involve setting an unduly high bar for a "citizen journalist".

102. I have dealt with the matter so far without reference to the Strasbourg jurisprudence on which Mr Vassall-Adams placed considerable weight. That is because, although he is right to point out that the s 4 defence must be interpreted and applied in conformity with the right to freedom of expression protected by Article 10 of the Convention, the Court must not act in blinkers. It must also be alive to the responsibilities that come with the freedom protected by Article 10, and the legitimate aims which can justify an interference with freedom of expression. These include the "protection of the reputation of others" and the countervailing Article 8 rights of those subjected to seriously defamatory publications. Those Article 8 rights are, in principle, on a par with the Article 10 rights of publishers, and likewise may only be interfered with in pursuit of a legitimate aim, on pressing grounds. The Court must strike a balance between the two. I am satisfied that the approach I have adopted above is one that strikes a reasonable and proportionate balance.

103. Since the amendments of November 2017, it has been admitted that the publication of the Second Article satisfied the serious harm requirement: it caused or was likely to cause serious harm to Mr Doyle's reputation. He is therefore entitled to recover damages. But I will return to that subject after dealing with the remainder of the claim.

The narrative continued – Part II

104. The timing of Mr Smith's complaint to the police is not known, but seems likely to have been in early July 2016. Mr Smith explains that it was made on the basis that Mr Doyle's demand that he identify his source, or face unspecified consequences, amounted to blackmail. A demand with menaces is blackmail if both are "unwarranted". Mr Doyle attended voluntarily for interview at the police station and was questioned. He was not arrested at any time. According to Mr Smith, however, two police officers told him that Mr Doyle would be arrested, and he believed them, and drafted an article accordingly. This was the Third Article. He says it was drafted in mid-July. It is now common ground that it became accessible online from about 19 July 2016.

The Third and Fourth Articles

105. The Third Article was entitled simply "Stephen Doyle has been Arrested". It included the same photograph, and the badge of the Bedfordshire Police and the words "BEDFORDSHIRE POLICE Protecting People and fighting crime together". The body of the article read as follows (paragraph numbering added):

> **"[1]** The Caddington Village News has further looked into the Stephen Doyle proposal to move Luton Rugby Football Club into Caddington and by doing so has unravelled a very serious set of potential illegal events. It can now be confirmed that Stephen Doyle has been arrested on the allegation of blackmail and malicious communication with menace. Whist the police are carrying out this investigation the Caddington Village News intention is not to make any further comment on this matter.
>
> **[2]** However Mr Doyle has made an allegation that the Rugby Club has knowingly put forward a false document to Members to get votes and agree Heads of Terms to move the Club from Luton into Caddington The Caddington Village News has investigated this matter further and already believes that Mr Doyle 's accusation can be substantiated and that the document is false."
>
> **[3]** Even more concerning is the possible relationship between Mr Doyle and Mr Butten. There has to be one because on 07 04 2011 Templeview Developments bought land off the Rugby Club when an option was held by MC Nominees, (ie Butten so he must have been involved in this deal because he would have to have legally reassigned the land to Doyle.
>
> **[4]** With the Rugby Club land valued at £10 million the Clubs statement that the proposed sale should be with Stephen Doyle alone, this raises serious questions why the Club deceived members and have withheld information, and whether this was an unsolicited proposal as stated."

106. Initially, Mr Smith denied that the Third Article had been published on his website. His original Defence asserted that it "can be proved to have been accessed by the Claimant only using unconventional means". This was an insinuation of some kind of impropriety. It was abandoned by the amendments of November 2017, which admitted that the Third Article was publicly accessible on the Website in response to searches "using relevant search terms". The Amended Defence said that the Defendant was not aware of this and that it this was not his intention; but it was and is not suggested that this absolved him of liability. There are issues about Mr Smith's true intentions, and about the scale of publication that in fact took place. Mr Smith's behaviour, including some exchanges on Twitter from late July and early August 2016 support Mr Smith's account of his intentions; but it tends to undermine his case that he used the "Hide" function on his software to place the draft article in an inaccessible place on the website, and that the extent of publication was minimal.

107. Mr Smith did not tweet a link to the Third Article, as he says is his custom. But on 31 July 2016, consistently with that evidence, he tweeted a link to an article he had just posted in the News, headed "Mr Stephen Doyle has been interviewed by police that involves the LTRFC". The basis for this was that he had been told, at some time on or before 23 July, that his complaint had been "downgraded", and that there would be an interview on 27 July. The article featured the photograph of Mr Doyle, and the Bedfordshire police logo. It read:-

> "Mr Stephen Doyle of Templeview Development Ltd has been interviewed by the police that involves the Luton Rugby Club. The editor took the decision to seek legal advice because he considered that the emails sent to the editor and statements made by Stephen Doyle were so disturbing and threatening . A complaint was made to the police and a crime number subsequently issued. Following the complaint I can confirm that Stephen Doyle has been interviewed. The Caddington Village News will not make any further comment, pending the outcome of the police investigation."

The following morning, a Twitter user calling himself Emperor Hadrian responded to Mr Smith's tweet: "Patrick, I think you said on line that Stephen Doyle had been arrested? Was that not accurate?" On 2 August, Mr Smith replied, denying that he had ever posted such a statement. Another Twitter user responded that he had, and that the user (CaddingtonEye) had a screenshot of it. In a characteristically bullish response, Mr Smith demanded that the user "put up or shut up". The evidence does not relate which course was adopted by CaddingtonEye, but I am satisfied that both these users had seen the Third Article, and that they had done so because Mr Smith had made it public. He had done so unintentionally. Quite how this came about, I cannot say with certainty. I have no expert evidence. The most likely answer is that Mr Smith made a mistake, when seeking to use the "Hide" function. On his own account, he had never done this before.

108. The conclusion that the Third Article did become generally accessible shortly after Mr Smith drafted and saved it is amply supported by the evidence for the claimant, which was not significantly eroded in cross-examination. Mr Doyle's recollection is that he saw the article by logging on to the News website, on Sunday 24 July. Mrs Doyle remembers him calling her into his office at home to show her the article. She was able to search and find the article herself later that day, using variants of her husband's name as search terms. A screenshot was created on 25 July, on which Mr Doyle was later to rely. Mr Doyle says that he was able to access the Third Article using a simple Google search against "Stephen Doyle Luton" and similar terms. Mr James' evidence is that he accessed the article as a result of routine searches conducted as part of his day to day media monitoring. Mr Foster saw it "while visiting the [News] website." Mr Smith's own evidence is that after seeing Emperor Hadrian's tweet he discovered that the Third Article was generally available by carrying out a Google search on the Claimant's name, in response to which the article appeared (witness statement paragraph 89).

109. On Friday 29 July 2016, Mrs Doyle succeeded in getting Google to block access to the Third Article via its search engine. But as she was told, other search engines are available. Mr Smith says, (paragraph 90), that after the Twitter exchanges he deleted the Third Article, "in about early August". It is common ground that it had become unavailable by 15 August. I accept Mr Smith's evidence on this point, rejecting his

pleaded case that the article was only available until 23 July. It was therefore accessible for about 15 days.

The letter of claim and Mr Smith's response

110. On 15 August 2016, Mr Doyle's solicitors wrote to Mr Smith a letter of claim in accordance with the Pre-Action Protocol for defamation. This was a long, detailed letter, which complained of the First, Second and Third Articles, making clear the meanings attributed to those articles and setting out Mr Doyle's case as to the true position. The remedies which it sought, urgently, were the removal of all the Articles from the News website; the publication of a suitable apology; an undertaking not to repeat; compensation; damages; and costs. In addition, it sought the removal of the photograph, damages for its misuse, and an undertaking not to repeat. Those last three claims have not been persisted in, but Mr Doyle has complained – as he did in the letter of claim – that the use of the photograph was wrongful. I will return to that.

111. Mr Smith did not provide or offer any of the remedies demanded by Mr Doyle. He responded dismissively, aggressively and offensively to the complaints. On 24 August 2016, solicitors acting for him responded to the letter of claim, suggesting that he had a defence to all the claims, which were misguided. Mr Smith himself posted further material maintaining that he was in the right and Mr Doyle and his solicitor were liars. A fresh version of the First Article was posted, featuring at its head an image of Pinocchio with his long nose, positioned right next to the photograph of Mr Doyle. Beneath the headline was a picture of Uncle Sam over the words "You Lie!". At the foot of the page was another image of Pinocchio. At some point, not later than November 2016, Mr Smith posted online a further article setting out parts of the letter of claim under the heading "Was Doyles solicitor telling Porky Pies". The article made that accusation, but also reaffirmed the truth of the Second Article, maintaining that "What I have carried out is to publish factual and true information on the [News] website".

112. Under cross-examination by Mr Spearman, Mr Smith maintained that the Pinocchio and Uncle Sam images did not refer to Mr Doyle but rather to his solicitor, or to the Club. These were not credible explanations, given the positioning of the images, and the fact that the amended First Article made no reference to the solicitors. Moreover, in his own "Porky Pies" article Mr Smith reported that he had been asked by the police why he had posted the image of Pinocchio. On his own account, he told them that you did not need to be a genius to work out the answer. He went on: "I told the police that Doyle was a Pinocchio." I am quite satisfied that this is the true reason for the use of the Pinocchio image in the amended version of the First Article, and that Mr Smith's evidence to me on this point was untrue. It was at this point in his evidence that Mr Smith chose to say that "I am now saying that he lied… probably." What followed was incoherent, as an explanation of why Mr Smith was now saying that. It included a claim that when he uses the word "probably" he does not mean "more likely than not" but "yes, it could be; no, it cannot be. That is the way I saw it".

113. It is common ground that from some point in time Mr Smith restricted access to the Second Article to people who had registered as a user and obtained a password. I do not have any satisfactory evidence as to when that was done. It is pleaded that Mr Smith removed the article altogether in or about April 2017. That may be so, though I have no documentary or other evidence to corroborate it. If it is, the article had been accessible

for some 9-10 months. I can and do infer that, as is normal, readership peaks when a story is fresh and contemporary – when it is news.

The Third Article: meaning

114. The meaning complained of is put as follows in paragraph 7 of the Particulars of Claim:-

> "that the Claimant had been lawfully arrested by the Bedfordshire Police for serious criminal offences, namely blackmail and sending malicious and menacing communications in connection with the proposed sale of land owned by the Club to the Claimant and deceiving members of the Club into voting in favour of that sale, and accordingly that there were reasonable grounds **[a]** to suspect that he had committed those offences, alternatively **[b]** to investigate whether he had done so."

(I have inserted the lettering).

115. The pleaded case is therefore that the words bore a Chase Level Two meaning, or alternatively a meaning at Chase Level Three. I have said that the meaning complained of is admitted. That is because the Re-Amended Defence expressly admits the whole of paragraph 7. The effect and the intention, obviously, is to admit the more serious of the alternative imputations: meaning [a]. I agree that the Third Article bears that meaning. An unvarnished allegation that a person has been arrested for a criminal offence will ordinarily convey the imputation that he has conducted himself in such a way as to give reasonable grounds for suspecting him of that offence: cf. *Economou v De Freitas* [2016] EWHC 1853 (QB); [2017] EMLR 4 [61].

The Third Article: serious harm

The law

116. Section 1(1) of the Defamation Act 2013 provides that "A statement is not defamatory unless its publication causes or is likely to cause serious harm to the reputation of the claimant." This is a beguilingly simple sentence. Inevitably, though, there was debate as to its meaning and effect before and after the Act came into force on 1 January 2014. But by the time Dingemans J came to decide *Sobrinho v Impresa Publishing SA* [2016] EWHC 66 (QB), [2016] EMLR 12 it was possible to identify a number of uncontroversial propositions about s 1. They included the following:

> "46 …. [F]irst … "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 …
>
> 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, compare *Ames v The Spamhouse Project* [2015] EWHC 127 (QB) at [55]. 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.
>
> …
>
> 49. Fifthly, as Bingham LJ stated in *Slipper v BBC* [1991] 1 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"*… "

117. The important point about inference which Dingemans J made in paragraph [47] of *Sobrinho* was clear from previous authority (see, for instance, *Ames v The Spamhaus Project* [2015] 1 WLR 3409 [55] and *Lachaux v Independent Print Ltd* [2015] EWHC 2242 (QB) [2016] QB 402 [57-58]) but it does seem to have passed by or been ignored by some litigators. In several cases, defendants attempted to defeat a claim at the interim stage by securing a ruling on serious harm. Although these attempts were almost invariably unsuccessful, as in *Ames* and *Lachaux*, the practice persisted. Hence these observations of HHJ Moloney QC, deciding a preliminary issue on serious harm in *Theedom v Nourish Training (trading as CSP Recruitment)* [2015] EWHC (QB) [2016] EMLR 10:-

> "(e) Depending on the circumstances of the case, the claimant may be able to satisfy section 1 without calling any evidence, by relying on the inferences of serious harm to reputation properly to be drawn from the level of the defamatory meaning of the words and the nature and extent of their publication. …
>
> (h) It is important to bear in mind that section 1 is essentially a threshold requirement, intended by Parliament to weed out those undeserving libel claims otherwise technically viable, but which do not involve actual serious harm to reputation or likely serious harm to reputation in the future."

118. I made the same point in *Monroe v Hopkins* where, giving judgment after a trial, I rejected eleven points said to show that no serious harm had been suffered, and said at [70]:

> "I have reached the clear conclusion that the Serious Harm requirement is satisfied, on the straightforward basis that the tweets complained of have a tendency to cause harm to this claimant's reputation in the eyes of third parties, of a kind that would be serious for her."

119. Meanwhile, the defendants in *Lachaux v Independent Print Ltd* appealed against my decision on serious harm, which had been in favour of the claimant. In September 2017, the Court of Appeal handed down judgment dismissing the appeal. This decision, [2017] EWCA Civ 1334 [2018] QB 594, is now the leading authority on s 1. The Court strongly reinforced the point about inference which had repeatedly been made at first instance. In a judgment with which the other members of the Court agreed, Davis LJ said this:

> "72. ….serious reputational harm is capable of being proved by a process of inference from the seriousness of the defamatory meaning … there is no reason in libel cases for precluding or restricting the drawing of an inference of serious reputational harm derived from an (objective) appraisal of the seriousness of the imputation to be gathered from the words used.
>
> 73. … The seriousness of the reputational harm is … evaluated having regard to the seriousness of the imputation conveyed by the words used: coupled, where necessary or appropriate, with the context in which the words are used (for example, in a newspaper article or widely accessed blog)."

120. Davis LJ went on to approve what HHJ Moloney had said in *Theedom* and, at [79] and [82(3)], to make clear that in most cases it will not generally be appropriate for serious harm to be tried or determined before trial; and that when it is determined, the normal starting point will be the inference of reputational harm to be drawn from the imputation(s) conveyed, in their context. One passage in paragraph [79] seems to me illuminating for present purposes:

> "There may, for instance, be cases where the evidence shows that no serious reputational harm has been caused or is likely for reasons unrelated to the meaning conveyed by the defamatory statement complained of. One example could, for instance, perhaps be where the defendant considers that he has irrefutable evidence that the number of publishees was very limited, that there has been no grapevine percolation and that there is firm evidence that no one thought any the less of the claimant by reason of the publication."

As I read this passage, in the context of the judgment as a whole, the Court concluded that the publication of a seriously harmful allegation will ordinarily justify an inference that serious reputational harm was caused; that such an inference is in principle

rebuttable by evidence; but that such an investigation will hardly ever be appropriate before trial, and rarely useful even then, so far as liability is concerned; evidence going beyond the words themselves, and the context and extent of publication, will be more likely to be relevant to quantum.

Application to the facts

121. The admitted meaning of the Third Article could hardly be described as anything other than seriously harmful to reputation. In their Skeleton Argument for trial, Counsel for Mr Smith originally submitted that the claimant had "adduced very limited evidence of publication". That was always an unattractive position for a defendant publisher to take, when one would have thought the means of proof were within his power. The argument could not be sustained. Although Mr Smith was maintaining until shortly before trial that he could not provide information about the extent of publication it turned out that, with help from an unidentified IT expert, he could. He has now produced some printouts said to contain information drawn from the relevant server. There is no expert evidence to explain these, and Mr Smith lacks the expertise to explain them himself. But they seem to show that the Third Article was viewed on 69 occasions. I accept Mr Spearman's suggestion that they probably show that about 19 of those views involved readers who arrived from another page on the News website. Publication on this scale is not trivial or insignificant. In my judgment, the inference of serious reputational harm is properly drawn on the basis of these facts.

122. I do not consider that the inference is rebutted or even significantly undermined by other evidence, or by the submissions for Mr Smith. Apart from pointing out the "very limited" scale of publication, the points relied on, and my responses to them, are as follows:

i) Accessibility online is not the same thing as publication, and there is no presumption that the one thing leads to the other: *Al Amoudi v Brisard* [2006] EWHC 1062 (QB); [2007] 1 WLR 113 [37].

But the claimant does not need to rely on any such presumption. He has the figures for "views" contained in the defendant's own documents, the Twitter exchanges to which I have referred, and the evidence of his witnesses: see (ii) and (iii) below.

ii) The Claimant has adduced very limited evidence of publication and can cite only two people outside his own "camp" who read the words (Mr Byrne and Mr Wilson from the Club).

It is commonplace for a claimant to adduce evidence that has such limits, and the reasons are well-known: see *Sobrinho* (above). Here, the claimant's evidence in his witness statements for trial was if anything more extensive than one might expect in all the circumstances. During the trial, Mr Foster's evidence that "many members" of the Club were monitoring the Website was not challenged. In cross-examination he elaborated: "Everybody in the Club knew about it. Everyone was talking about it".

iii) Most if not all of the people would either have known that the arrest allegation was untrue or would have had very significant doubts as to whether it was credible.

I do not consider that this submission has a sound basis in the evidence or common sense. I would accept that some of those closest to Mr Doyle, for instance his wife, would have known the allegation was untrue. But why should other readers doubt the story, presented as fact? There is little evidence about who knew what in fact had happened as a result of Mr Smith's report to the police. Mr Doyle has not given evidence that he spread the news of his interview under caution, and there is no reason to suppose he did. Knowledge that he had been interviewed would not have proved that he had not been arrested. It would rather have tended to support the view that he had.

Mr James' evidence is that when he read the article he believed it was essential to ascertain whether there was any truth in it, and therefore contacted Mr Doyle. Mr Foster's evidence also contradicts the defence case. He says that Mr Doyle told him the article was untrue, but "Until he told me this, I thought that the Third Article was true, and that Stephen had been arrested …" I am not clear about the basis on which it is submitted that other people would have had "very significant doubts as to whether it was credible." The Twitter users who engaged with Mr Smith appear to have taken the Third Article at face value. If the argument for Mr Smith is that he was not a credible source in the eyes of his own readers, I reject it. This is an inherently odd argument, as it presupposes that people opt to read material which they do not consider credible. I deal with the argument further below, in the context of the Second Article, but note here that Mr Smith's own evidence was that after he published the First Article, people were coming up to him in the street and asking what it was all about. This supports the view that there was widespread interest and that he was regarded as a trustworthy source.

iv) It can reasonably be inferred, that those who knew the Claimant (including the two persons at DLP Planning Limited and persons at the Club) would have soon discovered that this allegation was untrue.

This is a fair point so far as the few people closest to the claimant are concerned. A prompt and credible rebuttal by Mr Doyle will no doubt have greatly reduced or eliminated reputational harm in the eyes of those who received it. But the argument is not well-founded when it comes to publishees, of whom there seem to have been over 50. In fact, Mr Doyle felt it necessary to act so as to inform business contacts of the true position. That is understandable. The effect will have been to communicate the allegation to some who had not read it in the first place. The victim of a libel cannot ordinarily identify all the publishees. Further, as Mr Spearman points out, there is the "grapevine effect" referred to in *Sobrinho.*

123. Nor do I believe that much reliance can be placed on the Fourth Article for this purpose. It will no doubt have had some mitigating effect. The two Twitter followers with whom Mr Smith engaged on the topic will have gone away understanding that Mr Doyle had been interviewed but not arrested. But it is not established that in their case this dispelled or undid the reputational harm caused by the initial publication. Others who

read the Third Article may never have read the Fourth Article (the views of the latter were only 54 in July 2016). Those who did were not told that an earlier report had been false; Mr Smith never retracted the allegation of arrest, he just deleted it.

124. For all these reasons, I conclude that the serious harm requirement is satisfied.

Jameel abuse

125. Two points arise: (i) should the defence be allowed to raise this further argument at this late stage and (ii) if so, should the argument be upheld? My conclusions are that the defence should not be permitted to raise the point, but that if I were wrong in that the argument should be rejected on its merits. I can explain my reasons shortly.

(1) First, I regard the *Jameel* principle as affording a defendant what is in essence a fall-back defence to the effect that the application of the law would otherwise offend the Convention. The Court of Appeal made clear that it was acting pursuant to what it saw as a duty imposed by s 6 of the Human Rights Act 1998. On this view, plainly, the defence should be pleaded. Otherwise, the claimant will not be given fair and proper notice of the existence and grounds of the defence argument. The same applies even if, contrary to my view, the *Jameel* principle is no more than a branch of the law of abuse of process.

(2) Secondly, it is common ground that the right approach to an application to amend is as summarised by Coulson J (as he then was) in *CIP Properties (AIPT) Ltd v Galliford Try Infrastructure Ltd & Ors* [2015] EWHC 1345 (TCC) [19]. Applying those principles, I would refuse permission to amend because the amendment/application comes woefully and inexcusably late. A defence or application based on the proposition that there has been no harm to reputation should at least be raised (even if not determined) at an early stage. The material on which the application is based was in the defendant's power throughout. The only reason for the delay is the defendant's own failure to give timely disclosure and inspection of documents. The lateness requires the claimant to address fresh issues at a late stage of the litigation, when he was in the course of preparing for trial. It has in fact had a significant impact, as Mr Spearman's skeleton argument had to be re-drafted after its completion, to accommodate this point (among others). Finally, the introduction of this point at this late stage can only have a real purpose if it might succeed in defeating the claim when nothing previously said would achieve that end. But the reality seems to be that if that happened the claimant would be enormously out of pocket; whatever costs order I might make.

(3) Thirdly, the arguments advanced in support of the *Jameel* abuse defence/application are not in my judgment materially different from those which I have already dealt with and disposed of when addressing serious harm. The essence of the argument is that any reputational harm the claimant has suffered is not serious enough to justify the interference with the defendant's Article 10 rights. I do not consider that to be tenable. It would be incoherent to permit a *Jameel* defence on that basis, given the existence of the serious harm requirement. The solution would be to ensure that the serious harm threshold is set at a level which obviates any such argument. In my view, the law already does so. In short, although the *Jameel* doctrine may not have been entirely subsumed in the serious harm requirement, there is no relevant difference between them in the context of this case.

Damages

126. I am concerned only with compensation. The appropriate amount depends on the nature and extent of the harm done to the claimant's reputation, and his feelings, but must also take account of the need for any award to "vindicate" his reputation. That means that it must serve as a visible and outward mark that he has succeeded in clearing his reputation of the imputations complained of. That is a way of putting the claimant back in the position he would have held, but for the wrongdoing. The extent of the injury to reputation will inevitably depend on what Hirst LJ in *Jones v Pollard* [1997] EMLR 233, 243 called "the objective features of the libel itself, such as its gravity, its prominence, the circulation … and any repetition." As Hirst LJ pointed out, there may be matters that tend to reduce the harm to reputation, such as proof of partial truth, or of an existing bad reputation, or matters that mitigate, such as an apology. Injury to feelings may on the other hand be aggravated by the conduct of the defendant after publication, and if it is this so it should be appropriately reflected in the award. The total must be proportionate, and no more than necessary to serve these functions. These and other relevant factors are explored in more detail in *Barron v Vines* [2016] EWHC 1226 (QB) [20-21] and [86-87], of which Mr Vassall-Adams has reminded me.

The second article

127. Here, the defamatory imputation was unquestionably a serious one. The extent of publication was not large, but it was significant. I have found that the article was available to be read online by anyone who visited the News website from about 19 July 2017 to early August 2017. The recently produced printouts state that one version of the article had 242 views. It appears to have been the second most viewed article on the News, in the period under review for the purposes of these printouts. (The third most viewed article was the First Article). It appears that a later or different version of the Second Article had over 90 views. The figure of 242 is amply sufficient to justify the view that serious reputational harm was sustained.

128. Mr Vassall-Adams' other main argument relies on the established principle that, when assessing the reputational impact of a libel, regard is to be had to whether or not it is likely to have been believed: see *Oriental Daily Publisher v Ming Pao Holdings* [2012] HKCFA 59 [2013] EMLR 7 [145] – [147] (Lord Neuberger NPJ). It is here that readers' attitudes to the claimant and the overall output of the News could have come into play. But I do not consider the evidence seriously engages the point of law. Unsurprisingly, Mr Smith has led no direct evidence that he, or anything he had published before, was considered by his readers to lack credibility. Instead, I am invited to infer from Mr Smith's "status as a local activist" and the "hyperbolic and provocative" language habitually used in the News that "many readers would have approached the allegations … with a (large) pinch of salt." The argument has echoes of a line of defence relied on in *Monroe v Hopkins.* As indicated in that judgment, at [71(3)], this is a difficult line for a defendant to tread. Here, as there, I fail to see any, or any sufficient evidential basis for such an inference.

129. I turn to injured feelings. It is clear from the contemporary correspondence and from his evidence to me that Mr Doyle's reaction to the original publication was emotionally charged. The fact that he felt it necessary to inform business contacts of what had been going on is an obvious source of distress. Mr Doyle advances a claim for aggravated damages in respect of Mr Smith's state of mind and conduct at and after the time of

publication of the Second Article. He maintains that the article was part of a personal campaign against him, and contained deliberate falsehoods. He complains of the inclusion of the photograph in the Second Article, the dismissive response to his solicitors' letter of claim sent in August 2016, and the provocative and offensive conduct in which Mr Smith engaged in the wake of that letter. I have examined most of these aspects of the history already, and I find that in all but one respect, Mr Doyle is justified in these complaints. I am persuaded that his feelings have been significantly hurt by Mr Smith's conduct, including the way that Mr Smith has doggedly persisted in attempting to defend by all manner of means a publication which I have concluded is ultimately indefensible.

130. The one respect in which I have not been persuaded by Mr Doyle's case concerns the source of the photograph. Mr Doyle complained that it was a photograph taken by one of the Boyles in or about 2008-9, before the falling out, and then stolen in a burglary at his home in 2012. He reasoned that it was either obtained from a thief or handler of stolen property, or from the Boyles. For his part, Mr Smith took offence at this, maintaining that the photo was a screen grab created by him from a video recording of some unspecified but legitimate origin. Mr Vassall-Adams suggested that Mr Doyle had known there might be an innocent provenance, but dishonestly suppressed that fact. My conclusions are that Mr Doyle was understandably sensitive, and he had some reasons to suspect that Mr Smith was serving the interests of the Boyles and might be in league with them (it is unnecessary to go into the details here). Mr Doyle believed what he said and did not suppress an innocent explanation, because there was no innocent explanation present to his mind. But Mr Smith probably did get the photo in the way he described. Mr Doyle was unduly suspicious. I do not think that Mr Smith did anything to justify the suspicions he harboured, and I do not increase the damages on account of Mr Smith's use of the photograph.

131. The authorities suggest that the Court should have regard to other awards made by Judges and/or approved by the Court of Appeal, in respect of comparable libels. I have been referred by Mr Spearman to a number of awards for allegations of fraud, including *Gur v Avrupa Newspaper Ltd* [2008] EWCA Civ 594, where the Court of Appeal dismissed an appeal against an award of damages of £85,000; *Emlick v Gulf News* (unreported, July 23, 2009) where an award of £25,000 was made for the English element of an international publication alleging fraud. These cases are of some help, but I find myself in the same position as Eady J in *Al Amoudi v Kifle* [2013] EWHC 293 (QB) where he said (at [24]) that references to "comparable awards … are, of course, of limited assistance only because circumstances vary so much from one case to another".

132. In my judgment, applying the principles I have identified and taking account of all the factors mentioned, the award for the Second Article cannot be less than £30,000. Anything less would fail to serve the relevant purposes, and in particular the purpose of vindication.

The Third Article

133. I have already dealt with the main factors bearing on the quantum of damages for this article. The allegation was rather less serious than the imputation in the Second Article, and it was less widespread, and had less impact. The fact that the article was taken down and substituted with the Fourth Article is a mitigating factor. I am sure that the distress

suffered by Mr Doyle was increased by this further serious allegation. But I must ensure that I avoid double-counting, and that my overall award is just and proportionate. Bearing those points in mind, my award for the Third Article is one of £7,500.

Injunction

134. The question is whether there is a threat or risk of repetition that requires an injunction to prevent it. I have found Mr Smith to be a careless journalist who acted with a closed mind and in some respects irrationally. Mr Spearman's submission is that although the Second and Third Articles have been removed from the website, an injunction is appropriate because, "it can be seen from the contemporary documentary materials and his response to the Claimant's complaints alone that the Defendant is big-headed, self-satisfied, unrepentant, [and] lacks insight into the harm and distress to which his actions give rise …. The Claimant is rightly concerned that without the protection of an injunction the Defendant will repeat these or similar libels in future." These seem to me to be well-founded submissions, supported by the content of the evidence given by Mr Smith in his witness statement and from the witness box at trial.

135. Many examples could be given to bear out this point. It is enough to refer to paragraph 101 of the witness statement and a short passage from his cross-examination. In paragraph 101 he said, "I feel vindicated by subsequent events." He was asked by Mr Spearman whether this meant he was pleased with the effect of the articles complained of. His answer, and the rest of the exchange were as follows:

> "A: I would not say I was pleased, sir. What I would say is that the articles brought out the truth.
>
> Q. Is there any part of what you did and wrote in those three articles that you regret?
>
> A. No. Nothing."

Conclusions

136. I have found for the claimant on liability in respect of the Second Article and the Third Article. For the reasons I have given, judgment will be entered for the claimant for damages of £37,500, comprised of £30,000 for the Second Article and £7,500 for the Third Article. I will grant an injunction to restrain repetition. The precise terms of that injunction can be the subject of discussion, and I will have to deal with costs.