Neutral Citation Number: [2021] EWHC 1225 (QB)

Case No: QB-2019-003478

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07 May 2021

Before :

THE HONOURABLE MRS JUSTICE COLLINS RICE

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Between :

MR ANTHONY GALE **Claimant**

- and -

MR CALOGERO SCANNELLA **Defendant**

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- -

Mr David Hirst (instructed by Pinder Reaux Solicitors) for the Claimant
Mr John Stables (instructed by direct access) for the Defendant

Hearing dates: 8th December 2020 & 24th March 2021

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Judgment

Mrs Justice Collins Rice :

Introduction

1. These are proceedings to determine quantum of compensation in a defamation action which has been settled under the Offer of Amends procedure (sections 2 and 3 of the Defamation Act 1996).

Factual Context

2. The context is the fiercely loyal and partisan world of local football. Powerfully felt grievances have divided two football families and their respective friends and supporters.

3. The Claimant, Mr Anthony Gale, was manager and coach at Walton Casuals Football Club, which plays in the Southern League. It is a family-run club: the chairman is Mr Gale's father, former Blackburn Rovers player and current Sky TV commentator Mr Anthony Gale Sr, and the vice-chairman and the general manager are another father and son, the Saunders. From 2003 to 2008 Mr Gale had coached the boys' and ladies' academies at Chelsea FC, before moving to Millwall FC to another role working with young players. He was appointed first team manager of Walton Casuals FC in 2016, and ran the club's academy scheme, providing football training and development to some of the schools in Walton-on-Thames. He also ran a private youth football academy enterprise called AGA Fit, offering after-school coaching to youngsters.

4. The Defendant, Mr Calogero Scannella, was the teenage student son of Mr Frank and Mrs Jo Scannella. The Scannellas had key roles in running and promoting Walton Casuals Juniors FC. Despite the name, the Juniors Club was entirely separate from Walton Casuals FC; it was a non-profit community club run on a voluntary basis with a focus on nurturing local grass-roots football involvement among young people.

5. A major rift opened up between the two organisations, and between the two families personally, in 2018. The rival accounts of the causes are at variance. It may have had to do with irreconcilable differences in the vision for local youth football in the area, with competition for resources and facilities, or with views

about the organisation, success or failure, and interrelationships between the clubs, or simply with the ambitions, preferences and personalities of the different people involved. In any event, by all accounts, the rift became increasingly disruptive, bitter and personal.

The Publications

6. In October 2018, Mr Scannella created some pseudonymous Twitter accounts for the purpose of posting and 'discussing' defamatory tweets about Mr Gale. Four tweets are complained of in these proceedings. They give the impression of a conversation among the accounts questioning why Mr Gale had been "kicked out" of Chelsea FC and suggesting the truth lay in a "darker secret" being kept quiet. The nature of the secret was indicated by the hashtag #MeToo: ubiquitous shorthand at the time for the experience of women subjected to unwelcome sexual attention from men in a position of power, particularly in the workplace. The tweets wondered whether the schools Mr Gale worked with, and the leadership of the Walton Casuals women's teams, knew about the secret, and questioned if he was fit to be trusted around or to teach young girls and kids.

7. Mr Scannella '@-ed' (mentioned by addressing) 16 organisations in the tweets. These included Walton Casuals FC, the chair of the Walton Casuals women's team, Walton Casuals Juniors FC, Chelsea FC and Chelsea Women's FC, a number of local football clubs, the national and local Football Association, the local borough council, a number of accounts in the education system and the Metropolitan Police.

8. Mr Gale says he became aware of the tweets because his own Twitter settings alerted him that he had been mentioned in them. Of course, it was not apparent

who had sent them. The police were involved, and in March 2019 they traced the origin of the tweets to Mr Scannella's home. Mr Scannella immediately acknowledged that he was the source.

Procedural History

9. Mr Gale's solicitors sent a letter before action to Mr Scannella on 3rd May 2019 complaining of defamation. Mr Scannella's solicitors responded on 11th June 2019 with an Offer of Amends pursuant to s.2 of the Defamation Act 1996. The offer was of a full written apology, and correction and retraction sent to the '@-ed' accounts. It confirmed the pseudonymous Twitter accounts had been deleted some months previously. It did not accept any of the consequences to Mr Gale alleged in his letter before action, nor that compensation was payable.

10. Mr Gale's solicitors responded on 1st July 2019 seeking clarification, and suggesting a formal defamatory 'meaning' of the tweets (that Mr Gale *had MeToo form for abusing kids/women*) which was *unfounded and totally wrong*, and indicating in broad terms that the Offer was likely to be accepted. However, on 16th July, Mr Scannella's solicitors emailed back saying they had been told by Surrey Police that Mr Gale was facing criminal proceedings for assaulting a woman, his former partner; they sought confirmation that in these circumstances Mr Gale would be discontinuing his defamation claim.

11. Next, Mr Gale issued his defamation claim on 1st October 2019, filing and serving particulars of claim on 30th January 2020. Acknowledgment of service followed on 12th February. On 23rd March 2020 Mr Scannella wrote to make an unqualified Offer of Amends: a suitable correction and sufficient apology to Mr Gale, published in a reasonable manner, and 'such compensation (if any)

and costs as may be agreed or determined to be payable'. He repeated his original unreserved apology and offer to make a correction and retraction to the '@-ed' accounts. He took issue, however, with the form of words suggested by Mr Gale's solicitors on 1st July 2019, saying it would be wrong for his apology to be worded in a way that might be taken to absolve Mr Gale of the conduct alleged in the criminal proceedings (to which he in due course pleaded guilty). The letter then set out why Mr Scannella said no compensation was due to Mr Gale. He said publication of the tweets had been limited: the pseudonymous accounts had no followers who could have read them, and there was no evidence they had been read or shared at the '@-ed' accounts or retweeted by them. He said Mr Gale had not suffered any of the specific 'serious harm' pleaded in his particulars of claim, and these particulars were 'apparently false'.

12. Mr Gale's solicitors responded on 4th May 2020 accepting the Offer of Amends and suggesting a revised form of apology as follows:

> "*I suggested in 2018 football coach @AnthonyGale1983 was an undisclosed MeToo perpetrator who repeatedly exposed female players he coached to unwanted sexual attention, for which he was kicked out of his club – matters which presented a safeguarding risk as he also coached children. These suggestions were unfounded and totally wrong. Following contact from Mr Gale's solicitors @PinderReaux, and the issuance of a claim in the High Court against me, I can confirm that I am very sorry for the hurt and embarrassment caused to Mr Gale, his family and his business.*"

The letter, however, characterised the apology as by now 'belated', and responded in some detail on the questions of publication and serious harm, reasserting Mr Gale's claim to be entitled to compensation.

13. Mr Scannella responded on 20th May agreeing the form of apology subject to the deletion of "*his family and his business*" and the arrangements for

publication. He denied the apology was 'belated', and pointed to delays in Mr Gale's conduct of his claim (itself issued days before the expiry of the limitation period). He expanded his case on the evidence relating to publication and serious harm and on the 'falsity' of Mr Gale's particulars. He continued to assert no compensation was payable.

14. Mr Scannella tweeted his public apology and retraction on 12th June 2020, in the form proposed. He sent it to the '@-ed' accounts. Correspondence however continued on the issues of compensation and costs. On 10th September 2020 Mr Scannella made an open offer to pay Mr Gale £4,500, but stating that "*as your client's costs have been run up in the pursuit of a dishonest claim for damages and have been wasteful, I decline to pay any of his costs*". This proposition was rejected by Mr Gale on 21st September 2020.

15. On 28th September it appears that Mr Gale's solicitors purported to agree to settle the compensation claim at £4,500 but sought to list a hearing to determine the claim for costs. This in turn was rejected by Mr Scannella. Evidence and submissions on quantum of compensation were heard over two days in December 2020 and in March 2021.

Legal Framework

16. The Offer of Amends procedure under section 2 of the Defamation Act 1996 is the agreed relevant legal context. By subsection 2(4), an offer to make amends has three constituent elements. It is an offer: (a) to make a suitable correction of the statement complained of and a sufficient apology to the aggrieved party, (b) to publish the correction and apology in a manner that is reasonable and practicable in the circumstances, and (c) to pay to the aggrieved party such

compensation (if any), and such costs, as may be agreed or determined to be payable. Here, it is agreed that a suitable correction and sufficient apology have been made, and published in a reasonable manner, and that the case is now proceeding under s.2(4)(c) to the determination of the compensation 'if any' to be paid, the parties not having agreed.

17. Where an offer of amends is accepted by the aggrieved party, by section 3 of the 1996 Act that is an enforceable settlement of the defamation proceedings. By section 3(5), if the parties do not agree on the amount to be paid by way of compensation, it is to be determined by the court on the same principles as damages in defamation proceedings. The court is to take account of steps taken in fulfilment of the offer and may reduce or increase the amount of compensation accordingly.

18. There is no dispute as to the broad principles to be applied to the assessment of damages in defamation cases in general. I have been directed to the guidance from the decided authorities on assessing quantum of general damages in defamation proceedings, including *Barron v Vines* [2016] EWHC 1226 (QB).

19. The purpose of an award of damages in defamation proceedings is to compensate for injury to reputation and to feelings, so far as money is able to do that. The court takes account of the gravity of the defamation, the extent of its publication, and evidence of the harm it has done. The sum awarded must be an outward and visible sign of vindication, sending a message restoring a claimant's good name 'sufficient to convince a bystander of the baselessness of the charge'.

20. The calculation of damages in defamation cases is undertaken in a broad and holistic way, taking all of these considerations into account. Regard may be had to the (very differently assessed) awards in personal injury cases to ensure that damages for defamation are, and are seen to be, proportionate. Regard may also be had to other awards in defamation cases of a comparable nature, for similar purposes.

21. Particular considerations arise where compensation is assessed in proceedings settled on the basis of an accepted Offer of Amends. I have noted the relevant guidance provided by the case law, including *Warren v Random House Group Ltd* [2009] QB 600, *Cleese v Clark* [2004] EMLR 37, and *Tesco Stores Ltd v Guardian News & Media Ltd* [2009] EMLR 90. Offer of Amends procedure itself provides a claimant with 'vindication without litigation', and is intended to be undertaken in a spirit of conciliation and compromise. On that basis, and depending on all the relevant facts relating to the making and acceptance of any Offer of Amends, it is expected to result in a percentage reduction in any award of compensation of up to 50% (the decided cases give a range of examples and outcomes).

22. In Offer of Amends cases, therefore, the court adopts a two-stage approach to assessing compensation: first, assessing general damages on ordinary principles, and second, assessing any appropriate discount for the Offer of Amends (*Cairns v Modi* [2013] 1 WLR 1015; *Lisle-Mainwaring v Associated Newspapers Ltd* [2017] EWHC 543 (QB)) – taking care to avoid any double-counting.

23. The issue of double-counting arises because Offer of Amends cases are a particular example of the general principle that the conduct of a defendant may be capable of having an impact one way or the other on the overall award of general damages. Another example of the specific issues that arise in Offer of Amends cases where compensation is disputed is given in the decision in *Undre v Harrow LBC* [2017] EMLR 8. Although the *extent* of harm caused may be a live issue in the assessment of compensation, a defendant making an Offer of Amends concedes that his defamatory publication 'has caused or is likely to cause serious harm to the reputation of the claimant' within the terms of section 1 of the Defamation Act 2013. The court in *Undre* held (paragraph [16]) that these two legal principles "*co-exist and must be made, where it is appropriate, to operate in harmony*".

24. A further issue arises in this case about the interaction of the general rules on assessment of defamation damages and Offer of Amends procedure. That is because Mr Scannella alleges Mr Gale's case and evidence on extent of publication and harm are knowingly or recklessly untrue (*Ivey v Genting Casinos* [2017] UKSC 67; [2018] AC 391; *North of England Coachworks v Khan* [2020] EWHC 2596 (QB)). I am directed to guidance given by cases such as *Joseph v Spiller* [2012] EWHC 2958 (QB), [2012] EWHC 3278 (QB), and *FlyMeNow Ltd v Air Jet Charter* [2016] EWHC 3197 on the effect of findings of dishonesty on the award of defamation damages up to and including reducing awards to a nominal level only.

Analysis

(i) Assessment of Compensation for Injury to Reputation and Feelings

(a) Gravity of the Defamation

25. Mr Scannella has acknowledged that his tweets called Mr Gale *an undisclosed MeToo perpetrator who repeatedly exposed female players he coached to unwanted sexual attention, for which he was kicked out of his club – matters which presented a safeguarding risk as he also coached children.* These are serious allegations. They suggest a pattern of disrespect for women, abuse of power and trust, and sexual impropriety. They suggest this lost Mr Gale a responsible professional role, about which he had not been candid. They question his fitness therefore for his existing roles and, most seriously of all, imply a history of sexual impropriety and abuse of trust of potential relevance to his work with children.

26. In the context of the 'Me Too' public debate, and the emergence in recent years of shocking evidence about past sexual exploitation of young people in the world of football, these insinuations seriously impugn Mr Gale's personal and professional integrity, suggesting both are compromised to a degree potentially incompatible with his continuing career. I consider the gravity of the defamation, in and of itself, to be correspondingly high.

(b) Extent of Publication

27. The undisputed minimum publication by Mr Scannella was to the 16 '@-ed' accounts. It is accepted that the pseudonymous accounts were deleted a maximum of 6 months after the tweets were sent. The extent of publication is otherwise heavily contested. Most of the written evidence before me, and most of the evidence I heard over the two days of the quantum hearing, was addressed to this issue.

28. In his particulars of claim, Mr Gale said the contents of the tweets quickly reached a wide audience. He said he had been forced to explain and defend himself against the serious accusation they contained to: the president and board of directors of Walton Casuals FC, the staff and players of Walton Casuals FC women's team; senior staff at two schools he worked with; managers of teams who had competitive fixtures against Walton Casuals FC during the 2018/19 season; and parents of children booked on AGA Fit courses. He said that because the tweets had raised child safeguarding issues, the teachers at the two schools had reported them to the Board and the PTA at each school. He said that at away matches during that season opposing fans had frequently chanted that he was a paedophile (these games had taken place across the south of England, with matches as far away as Devon being said to be particularly memorable for the chanting). He said that some Walton Casuals fans had demanded he be sacked on account of the allegations. He said that Surrey FA had placed him on a watchlist on account of the allegation that he was a risk to women and children players and that Surrey FA had told him they would need to alert the FA's central safeguarding team.

29. By the time the proceedings came to trial in December 2020, Mr Gale accepted that some clarifications of his particulars and his witness evidence were necessary. It was not right to say the teachers at the schools had escalated matters to Board and PTA level; that was something he had just assumed. He had not been put on a watchlist in the sense of an alerts system or blacklist. By the time of the second day of the trial in March 2021 it was established that one of the away games in Devon (Tiverton) at which he had remembered the chants

of 'paedo' to have been particularly upsetting had taken place weeks before the publication of the tweets.

30. These points aside, Mr Gale's own evidence was firm that there had been widespread publication. People could have found the tweets if they had searched on the #MeToo hashtag. He had been confronted by many people about the allegations. He was known in his community and the content of the tweets was 'around' in that community – 'everyone knew'. The story spread by word of mouth and it spread far and fast. The chanting at away matches had been regular.

31. There is, it is agreed, no documentary evidence to support any of the claimed particulars of publication. Mr Gale put forward a relatively limited amount of witness evidence. Apart from his own account, he relies on: his father's evidence that more than 15 people came up to *him* in the street to mention the allegations; the evidence of his aunt, a member of staff at one of the schools he worked with, and her line manager the deputy head of the school, that the latter had seen the tweets independently and at least 6 pupils had mentioned them to her; and the evidence of a parent of a Walton Casuals player who says he attended an away match in Taunton in November 2018 and heard 'paedo' being chanted at Mr Gale. All of this evidence is strongly contested. All of these witnesses were directly challenged as to their recollection and truthfulness under cross-examination on the first day of the hearing. Mr Scannella and his mother, giving evidence on the second day of the hearing, put forward further accounts of their own, challenge Mr Gale's.

32. In deciding what to make of the evidence before me, and how to reconcile the very different versions of history I was offered, I start with some general observations.

33. Mr Gale makes a large claim of extensive publication. It is his task in these proceedings to persuade me that publication was wider than may be simply inferred from the undisputed facts. He offers no contemporary records to support his claim. I must make due allowance in his favour for the difficulties inherent in producing evidence of the spread of unpleasant rumour (*Sobrinho v Impresa Publishing SA* [2016] EWHC 66 (QB) at paragraph 48). I must also note, and fairly test, the small number of witness accounts, and principally his own, on which he relies.

34. On the other hand, what may be simply inferred from the undisputed facts is not necessarily minimal publication. In the memorable imagery of *Slipper v BBC* [1991] 1 QB 283 (CA), defamatory publication has a tendency seep out and poison underground springs of rumour. Mr Gale relies almost entirely on word-of-mouth spread. He says this a 'grapevine' case. The question then is one of degree.

35. A number of considerations point to starting modestly in this case. First, I am not persuaded the tweets would have been accessed to any degree by searching on #MeToo. The very ubiquity of #MeToo at the time would have made the probability of turning up and reading the tweets on a general search something of the order of finding a needle in a field full of haystacks.

36. Second, so far as the organisations '@-ed' are concerned, I discount the relevance of large Twitter followerships. There is no indication, and little

probability, that any organisation retweeted the material or that it was otherwise apparent to followers. Third, in the absence of any contemporary record, I consider it improbable that the tweets gained significant currency within the organisations – or at any rate the larger ones. In organisations with any volume of incoming social media traffic, the probability is that the tweets would, if read at all, have been regarded as exactly what they were – informal and unsubstantiated insinuation from an unverifiable source of no obvious authority – and ignored. Indeed, it might have taken an unusual amount of curiosity for a busy account manager to read the tweets as far as the hashtag and form a clear view as to what they were insinuating at all.

37. What Mr Scannella intended was an exercise in rumour-mongering with a specifically local focus. On his own account, he was making an ill-judged manoeuvre in the local family-focused dispute, designed to pull Mr Gale and his associates at Walton Casuals FC up short. I accept that the tweets reached their target readership at Walton Casuals FC, either directly or indirectly. The other '@-ed' organisations mentioned added colour and mischief. The right starting place for assessing publication in all these circumstances is in my view local.

38. The principal feature of the tweets which was likely to generate any wider onward spread of the rumour was the device of the pseudonymous fake accounts. They suggested an already extant rumour. In the disputatious context into which they were released, they were calculated to provoke anxiety and speculation, in Mr Gale himself and his circle, about their origins. They therefore did contain within themselves seeds of their own propagation.

39. I accept the evidence that by one means or another the tweets were discussed, and repeatedly, within Mr Gale's close family circle – his former partner, his father and his aunt. I accept the obvious victimisation was apparent to them, and forced them to imagine who might have wished Mr Gale sufficiently ill to send them. It would be no surprise if hurt and indignation ran high. It would be natural for the circle of angry and puzzled conversations to widen, and for the story of the tweets to get about, perhaps gaining something of a life of their own. What may have started as a conversation point among friends and family about the tweets could have become a wider story about their content.

40. That is the essence of the grapevine effect. I have no difficulty in identifying the potential for this sort of dissemination on the facts of this case. The question is how far the evidence before me suggests it spread in fact. There is evidence, for example, of an echo-chamber effect: people to whom Mr Gale or his immediate circle might have told the story repeating it back to others in the circle. Mr Gale's immediate colleagues at Walton Casuals FC and at the schools he worked with may have been involved on this basis. He says however that the spread went much wider: local people knew the story who could only have heard it by means other than from him or his family.

41. The only *first-hand* evidence put forward of local dissemination from witnesses *outside* Mr Gale's immediate family circle was that of two members of school staff. Mr Gale said that in one case this showed independent accessing of the tweets themselves, and in the other a pre-existing awareness of the matter of the tweets. I heard both witnesses live (remotely). The former's evidence was not unequivocal; he was the line-manager of Mr Gale's aunt and was open to the

possibility that she might have shown or sent him the tweets. The latter's evidence seemed to me to suggest that the affair was learned about from Mr Gale himself rather than from other sources.

42. Mr Gale's case for widespread local knowledge therefore rests largely on his own account, and that of his father and aunt, that people raised the story with them who could have known about it only from sources other than themselves. Some of the factual context of this case makes it necessary to take care with the weight which it is fair to place on this evidence.

43. The first is the passage of time. For one reason or another the best part of two years have elapsed between the events in question and the preparation of evidence. Without contemporary records, recollections naturally evolve and superimpose over time. That is especially likely where explanations have evolved with hindsight (including as to the revealed authorship of the tweets) in the shared and mutually reinforcing context of a family or close group. Where that context also includes intense loyalties and personally hostile factionalism, then the risk increases that the larger truth of a grievance can overwhelm the smaller truths on which litigation relies, and that witnesses can become profoundly convinced of their own shared narrative and that their worst fears were realised. Being at the centre of their own story, and with clearly defined opponents and counter-narratives, it is easy to assume that the wider world is more aware of and preoccupied with the matter in dispute than is the objective case.

44. These are familiar problems with evidence in litigation more generally. In defamation actions in particular, while the fear of what other people are thinking

and saying about you is a legitimate head of harm (and considered further below) that is not a shortcut to establishing extent of publication. I have to be alert to these risks on the facts of the present case.

45. The lack of clear first-hand evidence beyond the Gale family for local dissemination is notable. The Gales themselves gave *specific* examples of conversations with perhaps a couple of dozen people unlikely to have heard the rumour first-hand from their own circle. Beyond that I heard about subjective inference and assumption; Mr Gale was candid about that in his second witness statement, but I thought it a more generally present feature. Inference and assumption do have a place in an exercise in balancing probabilities, but they must be fairly tested. The fact that the Gales subjectively felt the topic of the tweets to be omnipresent and the subject of many unwanted conversations does not itself establish general local currency as objectively probable. On the evidence presented and tested before me I am persuaded on balance of some local grapevine effect, and that the story of the tweets seeped out to some degree beyond the family circle, but I am not persuaded that the seepage was more than modest to moderate.

46. Against that background, I turn to consider the hotly contested issue of chanting at away matches. Mr Gale makes a big claim about this: that the rumours generated by Mr Scannella's tweets had percolated right across the Southern League and was a regularly-heard preoccupation of a significant number of away fans. The evidence for this is Mr Gale's own, and that of the father of a Walton Casuals FC player who said he attended most of his son's matches and specifically remembered chants of 'paedo' directed to Mr Gale at Taunton; he

thought he had heard it at other matches but could not be sure given the passage of time. (Mr Gale Sr made an ambiguous reference in his oral evidence to having 'heard the chanting'.)

47. Mr Scannella's mother wrote to many or most of the clubs at which Walton Casuals FC played that season and none accepted that this chanting had happened. That does not mean that it did not. On the other hand, it might be thought surprising if such a significant phenomenon had left no trace other than in the recollection of Mr Gale and his club acquaintance. Mr Gale's recollection must have been mistaken with regard to the Tiverton match – which he had singled out as a particularly memorable example.

48. I have to decide on the balance of probabilities whether the evidence I have of chanting is sufficient to discharge Mr Gale's burden of proving very widespread dissemination of the tweets across the local footballing world of the south of England. I do not think it is. He makes a big claim to which the supporting evidence is not proportionate. That does not mean that I am sure no chanting happened. It means that Mr Gale has not provided enough evidence to persuade me I should assess the compensation due to him on the basis that, more likely than not, word of the tweets had travelled extremely far and wide and become general knowledge throughout the Southern League.

49. My conclusion on extent of publication is that the combination of pseudonymous publication and the polarised context into which the tweets were released was fertile ground for at least some grapevine growth and that I have been provided with sufficient evidence to persuade me of modest to moderate local circulation of the story of the tweets.

(c) Harm Caused

50. The next question is what evidence I have of the harm this caused to Mr Gale. I start by accepting that he found the entire episode personally distressing. Even allowing for the effects of bitter and partisan context on their own, I am satisfied on the evidence, particularly of Mr Gale and his witnesses, that he and his family were preoccupied with and upset by this affair to a real degree. Indeed, if I have had to be careful about the weight I am fairly and objectively able to give some of their evidence, it is precisely for that reason.

51. There has been no suggestion that anyone in Mr Gale's own close circle was tempted to believe the rumours or to think the tweets other than malicious. But even a modest to moderate seepage beyond that circle can give a rumour currency, including among those less well placed or motivated to dismiss it. I accept that Mr Gale and his family were preoccupied with what other people might be saying or thinking about him, not least given the puzzle over where the tweets had come from.

52. I also accept that at the relevant time a lot of things seemed to be going wrong for Mr Gale. He was asked to step down from Walton Casuals FC for performance-related reasons. His performance was an issue at the schools he worked with. His AGA Fit enterprise did not prosper as he had hoped. By his own account he had a gambling issue. His relationship with his partner broke down in circumstances which culminated in a police investigation, prosecution and conviction.

53. What is less clear is the proper place of Mr Scannella's tweets in this troubled state of affairs. Mr Gale does not claim special damages. He accepts the tweets

are not the whole cause of his misfortunes. But he says his emotional turmoil over the tweets directly impacted his professional performance, and his private coaching failed because parents withdrew their children on the strength of the tweets' rumours about him. Mr Scannella says Mr Gale's troubles more likely stem from the police investigation and the problems in his home life that led up it.

54. Again, it is Mr Gale's task to show that his adversities were attributable to Mr Scannella's defamation rather than to anything else. Again, he puts forward no documentary or contemporaneous evidence. The undisputed facts are that the tweets were published in October 2018. The assaults to which Mr Gale pleaded guilty took place in December 2018, February 2019 and March 2019. Mr Scannella's authorship of the tweets was unmasked in March 2019. Mr Gale stood down from his role at Walton Casuals FC in May 2019. He was formally charged in June 2019. He obtained a new job as first team manager of Staines FC in the same month. His plea and conviction for assault came in August 2019. His position at Staines was terminated in October 2019 after discussions about the criminal proceedings and he returned to a role at Walton Casuals FC.

55. Looked at objectively, and from the perspective of the inevitable publicity attending criminal procedure (of which I was shown some evidence in local press cuttings), this sequence is strongly suggestive of a connection between Mr Gale's departure from Walton Casuals and the impending formal criminal charges he was to face the following month. Mr Gale says that in fact the decision to stand him down was taken the previous December, and was

performance-related, the performance issues themselves stemming from the impact of the tweets.

56. By all accounts, Mr Gale was distressed and underperforming. I note that his narrative of underperformance is not identical to his parallel narrative of simply being confronted in his places of work with the story of the tweets and asked to explain himself or having consequences imposed on him as a direct consequence of the implications of the tweets. Nevertheless, I accept that Mr Gale was at a low ebb personally and that that affected his performance at work. I accept that his distress at the tweets was a part of his troubled life at that time. But as between an unfounded rumour about his conduct of a decade before, and his very present ordeal of a broken and violent relationship about to be exposed in criminal proceedings, I consider the latter the overwhelmingly more likely explanation for his performance problems, and the attribution of these in turn to the tweets, in anything more than a marginally incremental manner, improbable.

57. Mr Gale's evidence is insufficient to persuade me of more. I accept that in the ordinary course of human experience when a number of misfortunes pile up each can at any time seem either to exacerbate or to distract from the other and there is no place for attempting forensic analysis of cause and effect. But in quantum litigation there is no avoiding the issue. If Mr Gale wished to fix Mr Scannella with significant liability for his misfortunes it was incumbent on him to go to the trouble of showing me in detail, preferably with contemporary and independent evidence, how the objectively less probable explanation was after all the more probable one. He has not discharged that burden.

58. My conclusion on the extent of harm demonstrably caused by the publications is that, beyond the natural hurt and distress occasioned by the modest to moderate spread of the rumour locally and the subsequent discovery of Mr Scannella's responsibility for it, Mr Gale has not discharged his burden of establishing that the defamation was a significantly operative cause of adversities and disappointments in his personal, professional and business expectations, where other more probable explanations suggest themselves. Nevertheless, I consider the natural hurt and distress apparent in this case to qualify as serious harm for the purposes of section 1 of the Defamation Act 2013, and indeed Mr Scannella is in no position to suggest otherwise.

(d) Comparator Awards

59. Before considering the conduct-related points addressed below, I note the proposed comparator awards of damages, based on gravity of defamation, extent of publication and demonstrable harm, suggested by each party. Inevitably, given the wide disparity between the parties on the latter issues, the range is wide.

60. On Mr Gale's behalf, it is suggested that a starting point £50,000 would have been awarded at trial as being necessary to demonstrate vindication of his reputation in his community. My attention is drawn to what are said to be relevant comparator awards in *Monir v Wood* [2018] EWHC 3525 (QB) and *Tardios v Linton* [2015] EWHC 2552 (QB).

61. Mr Gale accepts that his conviction would have had some mitigating or downward effect on that sum. But he says that it would be marginal, on the basis that the conviction was some months after publication, and only partially

relevant to the defamation – going to the mistreatment of a woman in a domestic context, but not going to sexually predatory behaviour in the workplace nor to minors. He suggests that a 10% reduction on the starting figure would have been appropriate.

62. On Mr Scannella's behalf, my attention is drawn to the damages awards in *Suttle v Walker* [2019] EWHC 396 (QB), *Monroe v Hopkins* [2017] EWHC 433 (QB) and *Stocker v Stocker* [2016] EWHC 474 (QB) as pointing to a starting award of somewhere between £5,000 and £18,000.

(e) Conclusions on Value

63. I have found that Mr Scannella's defamatory tweets contained allegations of some gravity. That is a factor which I must regard as important. I have found them to have had a publication spread of a modest to moderate local degree. I have found Mr Gale to have sustained serious harm to the extent of personal distress and the humiliation of wondering what others thought of him, as well as the reputational damage attending the spread of the rumours to the degree I have found established.

64. In these circumstances, and having regard to the comparators I am invited to consider, I would have concluded a starting award of £15,000 appropriate to mark vindication and to compensate for injury to reputation and to feelings. I would however have considered Mr Gale's contemporaneous conduct towards his partner and subsequent charge and conviction for domestic violence as a significantly reductive factor. I accept that it is distinguishable from Mr Scannella's allegations as not arising in the workplace or relating to children. However it shares with them features of abuse of trust and power, failure of

restraint and respect, and gender-based victimisation, and undoubtedly raises overlapping issues of professional and personal reputation. The value of an award to restore reputation must in fairness reflect no more than the differential damage inflicted, and I would on this account have reduced the starting award to £12,000.

(ii) Conduct Issues

(a) The Claim of Dishonesty

65. Mr Scannella wishes me to reduce the award to a nominal or nil quantum on the basis that Mr Gale's claim for compensation, particularly as regards his claims about extent of publication and causation of harm, are false and fraudulent.

66. These are grave allegations. The burden is on any litigant alleging dishonesty to make good the allegation, and bar for doing so is high. It is not sufficient that I have found Mr Gale not to have proved the full extent of his claim on the evidence he has put before me. It is not even sufficient for me to find that Mr Gale's claim was exaggerated. There is a difference between the exaggeration of passionate overstatement and the exaggeration of dishonest manufacture. It is for Mr Scannella to convince me that I have before me the latter rather than the former.

67. As already set out, I have been minded to attribute the difference between Mr Gale's claims and my conclusions, where I have not placed determinative weight on his evidence, to the passage of time, the factional and partisan context, and the natural human propensity to externalise subjective emotion to objective causes. I note that Mr Gale himself demonstrated insight into a degree

of initial exaggeration in acknowledging, in his second witness statement, the need to modify some of his original particulars of claim. I consider myself able to attribute any further exaggeration to mistaken recollection, overstatement and the dominance of emotional thinking, in so far as it signals anything other than simple failure to discharge a burden of proof.

68. Mr Scannella's own vehement and confrontational claims of deliberate or reckless dishonesty in his evidence before me are not exempt from an equivalent sober and objective evaluation. I accept that he and his family feel in the strongest terms that Mr Gale's claim for compensation is unmeritorious, opportunistic and oppressive. I accept that gaps in Mr Gale's evidence have left Mr Scannella feeling a need to take positive steps to try and disprove the assertions he considers to be unsustainable. I accept that the heightened emotion and partisanship of this dispute and the background quarrel between the families can easily blur perceptions of the boundary between disagreement and denunciation. Nevertheless, a boundary exists.

69. Unlike the cases on dishonesty to which I have been directed, I do not have before me clear and sufficient evidence that this is a case of either calculated and deceptive falsification, or a slapdash disregard for truth, amounting to abuse of the court's process. Mr Scannella's assertions of dishonesty will not suffice any more than Mr Gale's assertions of entitlement. A burden of proof as to probability has to be discharged, in each case. Where an alternative and objectively probable explanation is available, as I apprehend it to be in this case, it is for the proponent of dishonesty to establish on the evidence that his

preferred explanation is after all the more probable. Mr Scannella has not discharged that burden.

(b) The Offer of Amends Discount

70. I turn finally to the question of the extent to which the notional award of compensation in this case falls to be reduced by Mr Scannella's engagement of the Offer of Amends procedure. I have sought to avoid the risk of double counting by reserving the question of Mr Scannella's conduct to this second stage of quantum assessment.

71. Offer of Amends discounts can be substantial – up to 50% – reflecting the inherent merits of the procedure and the incentives for defendants to provide vindication (without litigation) by way of suitable correction and sufficient apology, published in a reasonable manner. I have more generally directed myself to the summary guidance provided at paragraphs 29 to 36 of *Barron v Collins* [2017] EWHC 162 (QB) as to the factors relevant to the scale of discount.

72. Here, although the amends and vindication are accepted, Mr Gale says that no more than 25% should be allowed. That is because he says Mr Scannella's engagement with the Offer of Amends was not prompt, unequivocal and conciliatory. He says the original Offer in June 2019 (already some time after he was unmasked as the author of the tweets) was resiled from once the criminal procedure came to light, and that forced Mr Gale into issuing proceedings to keep his claim alive. The final, fully statutorily compliant, Offer was not made until March 2020, a year and a half after publication of the tweets and at the last possible moment for entering a defence in the alternative. It was accompanied

by sustained and vigorous denial that Mr Gale's claim was worth anything in compensation and by the assertions of dishonesty considered above. In all these circumstances, Mr Gale says that Mr Scannella is trying to take the benefit of Offer of Amends procedure while continuing to attack Mr Gale and his case, and should be penalised for that.

73. Mr Scannella says Mr Gale's own conduct of his case and his correspondence was dilatory and equivocal. He says Offer of Amends procedure is entirely consistent with vigorous contestation of compensation, and that, without disavowing the acceptance of serious harm, which is intrinsic to the Offer of Amends, a defendant is entitled to call out what he considers to be an unfair and unsubstantiated case on quantum without being penalised.

74. I have set out some of the procedural history of the Offer of Amends above. It has its complexities and its long intervals. I take into account that Mr Scannella did not equivocate over his responsibility when confronted by the police and moved relatively swiftly to indicate a wish to make Offer of Amends. I note some hesitancies in the response he received. I consider Mr Scannella entitled to test Mr Gale's litigation position in the summer of 2019, and that Mr Gale did not take the opportunity to clarify that before issuing his claim at the last available minute. I also accept that Mr Scannella's initiative in pressing on with the Offer of Amends, up to and including publication of his apology, and in the face of some further equivocal conduct and silences by Mr Gale's team, is to his credit.

75. I also agree that Offer of Amends procedure is consistent with a firm challenge to quantum of compensation. I do not understand Mr Scannella's position to

have been that Mr Gale had not suffered serious harm *at all* (and I note that the dispute on this point in *Undre* is distinguishable in that it appears to have related to contestation of meaning rather than to the facts of publication and harm). That would not have been consistent with Offer of Amends procedure. What he was asserting was that the specific components of Mr Gale's pleaded case on compensation were substantially dishonest and that that in itself was grounds for a reduction of his entitlement to compensation at a nominal level only. The question is how far *that* is consistent with retaining the maximum benefit of Offer of Amends discount.

76. Every case turns on its own facts. In this case, I am satisfied that Mr Scannella genuinely regretted his actions and has not hesitated to offer a full and fair apology as a sensible means of making amends. The fact that the final apology was a long time in issuing is not something for which I think that Mr Scannella should bear sole responsibility. He was fairly entitled to test Mr Gale's appetite for litigation in the light of the outcome of the police investigation, to challenge the components of his quantum claim when he saw it and to put him to proof of that claim in full. He was also entitled to make a relatively small open offer of compensation with a view to a sensible compromise and the avoidance of litigation of the quantum claim.

77. The allegations of dishonesty, however, represented a step which is harder to reconcile with entitlement to the maximum benefit of Offer of Amends discount. It seems to me that Mr Scannella had a straightforward choice. In one direction lay a path which could have led to a negotiated settlement of compensation and costs, albeit possibly not at a minimal level (although at one

point Mr Gale appeared to be willing to settle the compensation component at £4,500). That would not have ruled out the possibility of a straightforwardly contested compensation claim with a focused challenge to extent of publication and to harm. In the other direction lay the prospect of making out a dishonesty claim and minimising costs and compensation entirely. He chose the higher stakes option. But as I have said, making out a dishonesty claim is a high hurdle for a defendant to clear, and Mr Scannella's rhetoric on this topic was not in my view sufficiently supported by his evidence. An unsubstantiated dishonesty allegation is a course of conduct by a defendant which can be expected to sound against him in quantum.

78. In these circumstances, while I allow Mr Scannella the benefit of his Offer of Amends notwithstanding a vigorous challenge on quantum, and do not discount it significantly for any defaults of his in the procedural history of this matter, I must in fairness withhold a proportion of the maximum discount on the grounds of the unsubstantiated introduction of dishonesty into the equation. I do consider that also to be in the realms of overstatement rather than malice, but it is aggravating conduct none the less.

79. I consider a discount of one third to be a fair reflection of vindication already provided by the Offer of Amends in all the circumstances.

Conclusion

80. Mr Gale is entitled to compensation quantified at £8,000 on the basis set out and for the reasons given.