



Neutral Citation Number: [2021] EWHC 1723 (QB)

Case No: QB-2020-000224

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 28 June 2021

**Before :**

**THE HONOURABLE MR JUSTICE MURRAY**

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**Between :**

**NEAL WATKINS**

**Claimant**

**- and -**

**(1) DECLAN MACKLE**

**(2) GROSVENOR HILL CAPITAL LIMITED**

**Defendants**

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**Mr Steven Reed** (instructed by **DFA Law LLP**) for the **Claimant**  
The First Defendant appeared in person on behalf of the Defendants.

Hearing date: 22 June 2021  
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**Approved Judgment**

I direct that copies of this version as handed down may be treated as authentic.

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**THE HONOURABLE MR JUSTICE MURRAY**

**Covid-19 Protocol:** This judgment was handed down remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down are deemed to be 10:30 am on 28 June 2021.

**Mr Justice Murray :**

1. This matter concerns a claim for libel brought by Mr Neal Watkins against Mr Declan Mackle and Grosvenor Hill Capital Limited in relation to four email messages sent by Mr Mackle, two to Mr Gary Forrest and two to Ms Sally Milliner during the period 2 December 2019 to 7 January 2020 (“the Messages”).
2. I have before me the Claimant’s application dated 26 March 2020 (“the Meaning and Strike-out Application”), in which the Claimant asks that:
  - i) the Court determine the meaning of each of the Messages;
  - ii) the defence of honest opinion set out by the Defendants in their Defence be struck out pursuant to CPR r 3.4; and
  - iii) the Claimant be permitted to file and serve an amended Reply within 14 days of determination by the Court of (i) and (ii) above.
3. Under a consent order dated 6 May 2021, the Meaning and Strike-out Application was listed for hearing together with the Claimant’s application dated 28 April 2021 (“the Injunction Application”) for an interim injunction restraining the Defendants from further publishing statements defamatory of the Claimant.
4. Having considered the papers in preparation for the hearing, I indicated at the beginning of the hearing that I was minded to adjourn the Injunction Application, pending determination of the Meaning and Strike-out Application, on the basis that the determination of the natural and ordinary meaning of the Messages and whether they constitute statements of fact or expressions of opinion, would potentially be relevant to the determination of the Injunction Application. Neither party opposed an adjournment of the Injunction Application on the basis that whether and, if so, when to list it prior to the trial of the claim should be decided after determination of the Meaning and Strike-out Application.
5. The Meaning and Strike-out Application seeks the determination of the following preliminary issues:
  - i) the natural and ordinary meaning of each of the Messages; and
  - ii) whether the meaning conveyed in each case is a statement of fact or an expression of opinion.
6. Paragraphs 11 and 15 of the Defence plead the defence of honest opinion in relation to the Messages. If the natural and ordinary meaning of words in a Message constitutes a statement of fact rather than an expression of opinion, then the defence of honest opinion falls to be struck out in relation to those words on the basis that the first condition under section 3 of the Defamation Act 2013 is not satisfied.
7. It therefore makes sense to determine the preliminary issues first. The application for permission to amend the Reply can be dealt with as a consequential issue once the preliminary issue and strike-out elements of the Meaning and Strike-out Application have been dealt with.

8. The Claimant's case on the meaning of the Messages is set out in his skeleton argument filed for this hearing. It has been refined since the Particulars of Claim were filed. In the Claimant's Reply, innuendo meanings are pleaded, but it appears that these arguments are no longer pursued.
9. The Defendants' case on the meaning of the Messages is set out in a letter dated 9 June 2021 sent by Mr Mackle to DFA Law LLP, the Claimant's solicitors. Mr Mackle is, at present, acting as a litigant-in-person. In his letter of 9 June 2021, he indicated that he had the assistance of direct access counsel in the preparation of the letter. The Defendants' case on meaning has been refined since the Defence.
10. At the hearing, Mr Mackle provided some additional background on the circumstances giving rise to his dispute with Mr Watkins, but he was content to rely on his submissions in the 9 June 2021 letter in relation to the issues of meaning and fact/opinion and did not seek to elaborate on those at the hearing.

#### *Background*

11. Mr Watkins is a tax consultant and a director of Vulpes Holdings Limited. From 15 November 2017 to 26 February 2019, he was a director of Lupa Land Limited, which prior to 26 February 2018 was known as Camborne Land Investments Limited ("CIL"). From 15 November 2017 to 1 November 2019, he was a director of KSB Birmingham Limited.
12. Mr Mackle is the sole director and shareholder of the Second Defendant. From 24 February 2015 to 15 November 2017, he was a director of CIL. From 26 January 2017 to 15 November 2017, he was a director of KSB Birmingham Limited.
13. The Second Defendant is a limited company in the business of providing venture and development capital services.
14. In the Defence it is stated that the First Defendant sent each of the Messages in his capacity as Chief Executive of the Second Defendant.

#### *The email messages to Mr Gary Forrest*

15. The Particulars of Claim set out four email messages sent by Mr Mackle to Mr Gary Forrest, a business associate of the Claimant, which are said to be defamatory of the Claimant. Two of those email messages are no longer alleged to be defamatory but are relied upon by the Claimant as relevant context, as they shortly preceded the two email messages to Mr Forrest that are said to be defamatory of the Claimant.
16. The first of the two email messages now relied on as context by the Claimant was an email message sent by Mr Mackle to Mr Forrest on 4 November 2019 at 15:59 with the subject heading "Lupa Land Ltd (formerly Camborne Land Investments Ltd/KSB Birmingham Ltd – URGENT" and reads:

"Dear Mr Forest [sic]

Further to my email on Friday 1st November 2019.

I can confirm that a significant issue exists between the previous Directors at Camborne Land Investments Ltd (renamed Lupa Land Ltd) and also between current and previous Directors at KSB Birmingham Ltd.

I am currently taking advice on this issue and related matters. I will be in touch with a final update by 4pm on Wednesday 6<sup>th</sup> November 2019.

Kind regards

Declan

Declan Mackle”

17. The second of the two email messages now relied on as context by the Claimant was sent by Mr Mackle to Mr Forrest on 6 November 2019 at 15:58 with the subject heading as before and reads:

“Dear Mr Forrest

Further to my email dated Monday 4th November 2019.

I can confirm that a dispute and fraud issue exists and relates directly to Lupa Land Ltd (formerly Camborne Land Investments Ltd) and KSB Birmingham Ltd.

There will be a detailed forensic criminal investigation conducted by the relevant authorities who will be directly in touch in due course. I am unable to comment further due to the nature of this very serious issue.

The civil matter will be handled separately.

Kind regards

Declan

Declan Mackle”

18. The first of the two email messages to Mr Forrest alleged to be defamatory of the Claimant was sent by Mr Mackle to Mr Forrest on 2 December 2019 at 18:04 (“the 2 December Message”) with the subject heading “Lupa Land Ltd (formerly Camborne Land Investments Ltd/KSB Birmingham Ltd) – FRAUD: Disclosures/Warranties” and reads:

“Dear Mr Forrest

I can confirm that a formal investigation into fraud and other matters will now be conducted by the relevant authorities.

The formal investigation will reach into both Lupa Land Ltd and KSB Birmingham Ltd.

Neal Watkins served as a Director at KSB Birmingham Ltd until 1st November 2019, therefore KSB is likely to be in breach of any loan and/or forward fund agreements due to non disclosure of the fraud matter and related dispute.

Kind regards

Declan Mackle”

19. The Claimant contends that the natural and ordinary meaning of the 2 December Message is:

“The Claimant is entangled in a fraud involving Lupa Land Limited and KSB Birmingham Limited, which is to be formally investigated by the relevant authorities, and, despite being a director of KSB Birmingham Limited, has failed to disclose the fraud thereby causing the company to be in breach of loan and/or forward fund agreements.”

20. The Defendants contend that the natural and ordinary meaning of the 2 December Message is:

“There are grounds to suspect (1) individuals involved in Lupa Land Ltd and KSB Birmingham Ltd of fraud and (2) Neal Watkins of non-disclosure of the existence of a legal dispute arising from the fraud to KSB Birmingham Ltd.”

21. The second of the two email messages to Mr Forrest alleged to be defamatory of the Claimant was sent by Mr Mackle to Mr Forrest on 10 December 2019 at 10:46 with the subject heading “Lupa Land Ltd (formerly Camborne Land Investments Ltd/KSB Birmingham Ltd) – FRAUD: Disclosures/Warranties” (“the 10 December Message”) and reads:

“Dear Mr Forrest

I can confirm that Neal Watkins/Vulpes Holdings Ltd have been using threats, harassment and intimidation to silence me. I will not be silenced on fraud and non disclosure/fraudulent misrepresentation. Unfortunately, Neal Watkins and Vulpes Holdings Ltd continue to put KSB Birmingham Ltd and all related parties at very serious risk.

Kind regards

Declan

Declan Mackle  
Chief Executive  
Grosvenor Hill Capital”

22. The Claimant contends that the natural and ordinary meaning of the 10 December Message is:

“The Claimant has threatened, harassed and intimidated the First Defendant in an attempt to prevent the First Defendant from disclosing a fraud involving Lupa Land Limited and KSB Birmingham Limited and continues to put KSB Birmingham Limited and related parties at very serious risk.”

23. The Defendants contend that the natural and ordinary meaning of the 10 December Message is:

“Neal Watkins and Vulpes Holdings Ltd are guilty of using threats, harassment and intimidation to silence Declan Mackle and prevent him from disclosing that there are grounds to suspect them of fraud and failing in their disclosure obligations, conduct which is sufficiently serious to put the interests of KSB Birmingham Ltd at risk.”

*The email messages to Ms Sally Milliner*

24. The Particulars of Claim set out two email messages sent by Mr Mackle to Ms Sally Milliner that are said to be defamatory of the Claimant. Ms Milliner is a solicitor who was the Company Solicitor and Company Secretary for Camborne Land Investments Limited (“CLI”) and a number of related companies, including Camborne Capital Group Limited (“CCG”), from around 2012 until 15 November 2017. She was also a director of CLI until 15 November 2017 and a director of CCG until 20 April 2019.
25. The first of the two email messages to Ms Sally Milliner alleged to be defamatory of the Claimant was sent by Mr Mackle to Ms Milliner on 30 December 2019 at 12:04 (“the 30 December Message”) with the subject heading “KSB Birmingham Ltd/Lupa Land Ltd (formerly Camborne Land Investments Ltd)/Vulpes Holdings Ltd/Vulpes Group Ltd/Vulpes Ltd + others – FRAUD” and reads:

“Dear Sally

I am writing to inform you that my legal advisors will be in touch with you and others this week. You must co-operate fully and openly with them and the relevant authorities in due course.

I can confirm that Neal Watkins / Vulpes have blatantly lied and defrauded a number of parties to date. In an extremely inaccurate letter from DFA Law dated 28th June 2019 they confirmed in writing that the initial £15,000 unlawful bribe payment (first of many) paid to Mary Walsh by Gareth Hughes in October 2017 was board approved. As former company solicitor and secretary you will obviously dismiss this lie in your formal statements and interviews. Clearly, the truth is evidenced in the CCG board minutes. I am assuming they have

forged documentation and coerced, blackmailed and/or bribed others to support their lies and fraud.

I have taken specialist advice and have been advised that only a detailed forensic investigation will reveal the full extent of the fraud across the companies. As you are acutely aware, the court and the authorities will take a harsh line with any party blatantly lying and / or attempting to collude or tamper with evidence, particularly Solicitors and Accountants.

I have raised my concerns in writing relating to collusion and fraud throughout 2019, however Neal Watkins / Vulpes and others are determined to cause significant harm to themselves and others through lying, collusion, fraudulent misrepresentation and cover up. Please note that all unlawful payments are subject to a full investigation under the Proceeds of Crime Act.

I would strongly advise you to fully co-operate with the lawyers and the authorities and avoid contact with the parties under investigation.

I note that David Williams has distanced himself from the other parties. DFA did not act for him during 2019.

Please note that CES matters are being handled separately. HMRC and others were defrauded of very large sums. Mary Walsh and Dan Taylor led on that fraud.

I am attaching a copy of this email to the evidence file.

Kind regards

Declan

Declan Mackle  
Chief Executive  
Grosvenor Hill Capital”

26. The Claimant contends that the natural and ordinary meaning of the 30 December Message is:

- “(1) The Claimant is a barefaced liar, who has committed fraud against numerous people.
- (2) The Claimant is suspected of forging documents and coercing, blackmailing or bribing others to support the lies he has told and cover up the fraud he has committed.

- (3) The Claimant is a liar, who has colluded with others to misrepresent the truth in order to cover up the fraud he has committed.
- (4) The Claimant is dishonest, cannot be trusted and is likely to take steps to the detriment of investors and developers alike for his own benefit.
- (5) The Claimant will shortly be the subject of a formal criminal investigation looking into the fraud committed by him.”

27. The Defendant contend that the natural and ordinary meaning of the 30 December Message is:

“Neil Watkins is guilty of serious dishonesty as a result of his lawyers DFA Law falsely claiming on his behalf in writing that a £15,000 payment to Mary Walsh by Gareth Hughes in October 2017 was lawful, and there are strong grounds to suspect him of having carried out forgery, and of having pressurised or bribed others in support of and in order to cover up his dishonest conduct.”

28. The second of the two email messages to Ms Sally Milliner alleged to be defamatory of the Claimant was sent by Mr Mackle to Ms Milliner on 7 January 2020 at 13:02 (“the 7 January Message”) with the subject heading “KSB Birmingham Ltd/Lupa Land Ltd (formerly Camborne Land Investments Ltd)/Vulpes Holdings Ltd/Vulpes Group Ltd/Vulpes Ltd + others – FRAUD” and reads:

“Dear Sally

I am writing to confirm that the formal criminal investigation will be launched soon by the relevant authorities.

I have taken advice and due to the nature and extent of the unlawful activities, all parties including, board members, shareholders, lenders and professional advisors will need to co-operate fully with the investigation teams.

As former company Solicitor and Secretary you must submit truthful and accurate statements and documentation to the relevant parties on all related matters. It’s likely that you will be put under pressure by the individuals under investigation to lie, conspire, cover up and tamper with evidence.

I would remind you of Gareth Hughes’ email that you received in which he admitted the first unauthorised and unlawful £15,000 payment to Mary Walsh.

You must avoid committing any unlawful acts and fully support the investigations going forward.



Please note that I am attaching this email to the evidence file.

Kind regards

Declan Mackle  
Chief Executive  
Grosvenor Hill Capital”

29. The Claimant contends that the natural and ordinary meaning of the 7 January Message is:

“The Claimant will shortly be the subject of a formal criminal investigation looking into the fraud committed by him.”

30. The Defendants contend that the natural and ordinary meaning of the 7 January Message is:

“There are reasonable grounds to suspect those involved in Lupa Land Ltd and KSB Birmingham Ltd of unlawful criminal conduct in relation to a £15,000 payment to Mary Walsh by Gareth Hughes in October 2017 and of intending to pressurise Sally Milliner to act unlawfully and dishonestly by covering up their activities.”

*Procedural history*

31. On 21 January 2020 the Claimant issued this claim for libel against the Defendants in relation to email messages sent to Mr Forrest and Ms Milliner, as set out above. By his claim, the Claimant seeks damages, including aggravated damages, and an injunction to restrain further publication of the words complained of or any similar words defamatory of the Claimant.
32. On 13 February 2020 the Defendants filed their Defence in which they, among other things:
- i) denied the meanings of the words complained of as pleaded by the Claimant;
  - ii) pleaded defences of truth, honest opinion, and public interest; and
  - iii) denied that the publications were capable of causing serious harm to the reputation of the Claimant.
33. On 26 March 2020, the Claimant made the Meaning and Strike-out Application.
34. On 1 September 2020, the Court sent a hearing notice to the Claimant’s solicitors notifying them that the Meaning and Strike-out Application would be listed on 9 March 2021. On 5 October 2020 the Court sent a further letter asking them to ignore the previous hearing notice and notifying them that the Meaning and Strike-out Application would be re-listed for hearing before Master McCloud on 31 March 2021 with a time estimate of 2.5 hours. In the hearing notice, the Claimant’s solicitors were asked to “serve a copy of this notice on all parties or alternatively their Solicitors to inform them of the hearing details”. The Defendants did not, however, receive notice

of the listing in sufficient time for the hearing on 31 March 2021 to proceed. It was vacated by consent, to be relisted in due course.

35. On 28 April 2021, the Claimant made the Injunction Application.
36. On 4 May 2021, without a hearing, Nicklin J ordered that there be a directions hearing on 7 May 2021 to consider directions for the hearing of the Meaning and Strike-out Application and the Injunction Application.
37. On 7 May 2021 I ordered, by consent, that the hearing listed on 7 May 2021 be vacated, gave directions in relation to the filing and service of further evidence, and listed the Meaning and Strike-out Application and the Injunction Application to be heard on the first available date after 8 June 2021 with a time estimate of 1½ days.

*Legal principles: natural and ordinary meaning; fact or opinion*

38. The relevant principles governing the determination of the natural and ordinary meaning of a statement are conveniently summarised in the recent case of *Koutsogiannis v The Random House Group Limited* [2020] 4 WLR 25 [11]-[13] (Nicklin J). The relevant principles governing the determination of whether words complained of contain allegations of fact or expressions of opinion are also helpfully summarised in *Koutsogiannis* [16]-[17]. I have had regard to the relevant principles.

*Submissions on meaning and fact/opinion*

39. As I have already noted, Mr Reed submitted that it was necessary to consider Mr Mackle's email messages of 4 and 6 November 2019 to Mr Forrest as context relevant to the meaning of the Forrest Messages, with the first Forrest Message also relevant context for the second Forrest Message.
40. In relation to the first Forrest Message, Mr Reed submitted that the Claimant is clearly implicated as involved in the fraud alleged by the Defendants by virtue of the juxtaposition, in the final paragraph, of the clause "Neal Watkins served as a Director at KSB Birmingham Ltd until 1<sup>st</sup> November 2019," and the clause "**therefore** KSB is likely to be in breach of any loan and/or forward fund agreements due to non disclosure of the fraud matter and related dispute" (emphasis added). He submitted that the only sensible inference one can draw from the introduction of the Claimant in this message in this way is that the Claimant is involved in the "fraud and other matters" affecting companies of which he is a director. This is particularly clear having regard to the context provided by the email messages of 4 and 6 November 2019, the first of which confirms a "significant issue" between relevant directors and the second of which confirms "that a dispute and fraud issue exists and relates directly to Lupa Land Ltd (formerly Camborne Land Investments Ltd) and KSB Birmingham Ltd".
41. Mr Reed observed that each of the Forrest Messages begins with the words "I can confirm that ...", clearly signalling that what followed were statements of fact rather than expressions of opinion. He submitted that, although the Court might be inclined to view the words following "therefore" in the first Forrest Message as an expression of opinion, that would be wrong. In other words, he submitted, it is clear that the first Forrest Message states as a fact that "KSB is likely to be in breach of any loan and/or

forward fund agreements due to non disclosure of the fraud matter and related dispute”.

42. In relation to the Milliner Messages, Mr Reed submitted that the natural and ordinary meaning of each message is made particularly clear by the first and last sentences of the second paragraph of the first Milliner Message, the fourth paragraph of the first Milliner Message and the first paragraph of the second Milliner Message.
43. Mr Reed submitted that, as in the case of the Forrest Messages, each Milliner Message begins with words indicating that what follows are statements of fact. The first Milliner Message begins “I am writing to inform you ...” and the second paragraph of that message begins “I can confirm ...”. Similarly, the second Milliner Message begins “I am writing to confirm ...”. Mr Reed submitted that it is clear that each of the Milliner Messages sets out various statements of fact, rather than expressions of opinion.
44. In his letter of 9 June 2021, Mr Mackle sets out the Defendants’ natural and ordinary meanings of the Forrest Messages but does not elaborate, other than to say that the 2 December Message is clearly divided into two parts, with only the latter half referring to Mr Watkins, alleging against him only the non-disclosure of the existence of a legal dispute arising from fraud in relation to KSB Birmingham Limited. Mr Mackle set out no positive case in his letter of 9 June 2021 on whether the Forrest Messages involve statements of fact or expressions of opinion.
45. In relation to the Milliner Messages, Mr Mackle, in his letter of 9 June 2021, set out the meaning that I have reproduced at [27] above and admitted that it is defamatory of Mr Watkins at common law. In relation to the second Milliner Message, Mr Mackle submitted that it does not refer to Mr Watkins and is therefore not defamatory of him.
46. In relation to the first Milliner Message, Mr Mackle submitted in the 9 June 2021 letter that the allegations made against the Claimant are expressions of opinion. In relation to the second Milliner Message, Mr Mackle submitted that the statements made there were also expressions of opinion, although there is no reference to Mr Watkins.

*Decision and reasons*

47. My findings are as follows. In relation to the first Forrest Message:

- i) The natural and ordinary meaning is:

- “(1) A formal investigation into fraud and other matters will be conducted by the relevant authorities in relation to Lupa Land Limited (formerly CLI) and KSB Birmingham Limited.

- (2) The Claimant served as a director at KSB Birmingham Ltd until 1<sup>st</sup> November 2019 and therefore there are reasonable grounds to suspect that the Claimant is involved in the fraud and other matters that will be investigated.

(3) KSB Birmingham Limited is likely to be in breach of any loan and/or forward fund agreements due to non-disclosure of the fraud matter and related dispute.”

ii) Each of (1), (2) and (3) is a statement of fact.

48. In relation to the second Forrest Message:

i) The natural and ordinary meaning is:

“(1) The Claimant has been using threats, harassment and intimidation to prevent the First Defendant from disclosing fraud and non-disclosure/fraudulent misrepresentation relating to Lupa Land Limited (formerly CLI) and KSB Birmingham Limited.

(2) The Claimant continues to put KSB Birmingham Limited and all related parties at very serious risk.”

ii) (1) is a statement of fact. (2) is an expression of opinion.

49. In relation to the first Milliner Message:

i) The natural and ordinary meaning is:

“(1) The Claimant has blatantly lied and defrauded a number of parties to date.

(2) In a letter dated 28 June 2019 sent by his solicitors, DFA Law, the Claimant lied that the initial £15,000 unlawful bribe payment (first of many) paid to Mary Walsh by Gareth Hughes in October 2017 was approved by the Board of CCG.

(3) There are reasonable grounds to suspect that the Claimant has forged documentation and coerced, blackmailed and/or bribed others to support his lies and frauds.

(4) The Claimant is determined to cause significant harm to himself and others through lying, collusion, fraudulent misrepresentation and cover-up in relation to the fraud he has committed.

(5) There will be a criminal investigation under the Proceeds of Crime Act in relation to payments made unlawfully by the Claimant and others.”

ii) Each of (1), (2), (3) and (5) is a statement of fact. (4) is an expression of opinion.

50. In relation the second Milliner Message:
- i) The natural and ordinary meaning is:
    - “(1) The criminal investigation referred to in my message of 30 December 2019 will soon be launched by the relevant authorities.
    - (2) Gareth Hughes has admitted that the first £15,000 payment to Mary Walsh was unauthorised and unlawful.
    - (3) It is likely that you will be put under pressure by the Claimant and other individuals under investigation to lie, conspire, cover up and tamper with evidence relating to unlawful activities of the Claimant and others relating to Lupa Land Limited (formerly CLI) and KSB Birmingham Limited.”
  - ii) Each of (1), (2) and (3) is a statement of fact.
51. I accept that the email messages of 4 and 6 November 2019 from Mr Mackle to Mr Forrest are relevant context for both Forrest Messages and the first Forrest Message provides context for the second Forrest Message. Nonetheless, in determining the natural and ordinary meaning of each Forrest Message it is necessary to read each one individually. The context may support certain inferences from the text of each Forrest Message, but those inferences are not necessarily part of the natural and ordinary meaning of the relevant Forrest Message.
52. I agree with Mr Reed that the effect of the reference to Mr Watkins in the final paragraph of the first Forrest Message, adjoined to the next independent clause with the introductory word “therefore” is relevant to the determination of the natural and ordinary meaning of the first Forrest Message. Strictly speaking, the latter half of this sentence (after “therefore”) is a non sequitur.
53. Without “over-elaborate analysis”, the introduction of Mr Watkins at that point in the message makes it clear that, by virtue of his role as a director of KSB Birmingham Limited, there are reasonable grounds to suspect that he is involved in the “fraud and other matters” that are said by Mr Mackle to be the subject of a formal investigation. Accordingly, I reject Mr Mackle’s submission that the hypothetical ordinary reasonable reader would understand the reference to Mr Watkins as limited to responsibility for the non-disclosure of the alleged “fraud and related dispute”. Furthermore, the statement that KSB Birmingham Limited is “likely to be in breach” goes beyond, in my view, “reasonable grounds to suspect”, as set out in the Defendants’ meaning of the first Forrest Message.
54. Mr Reed has relied on the use in various messages of phrases such as “I can confirm that ...” to indicate that what follows are statements of fact. I accept that it is a marker that would tend to indicate that what immediately follows is a statement of fact, although one still has to consider each part of the natural and ordinary meaning separately and bear in mind that a statement of fact may be followed by an expression

of opinion. As indicated, I have found only two of the meanings of the various Messages to be an expression of opinion, namely, meaning (2) of the second Forrest Message and meaning (4) of the first Milliner Message . I consider that each of these statements is recognisable as comment and that this is how it would strike the ordinary reasonable reader. Otherwise, the meanings I have found are all clearly statements of fact.

*Application to strike out honest opinion defence*

55. Section 3 of Defamation Act 2013 provides in relevant part that:

- “(1) It is a defence to an action for defamation for the defendant to show that the following conditions are met.
- (2) The first condition is that the statement complained of was a statement of opinion.
- (3) The second condition is that the statement complained of indicated, whether in general or specific terms, the basis of the opinion.
- ... .”

56. Paragraph 11 of the Defence, which relates to the Forrest Messages, reads:

- “11. Further, and/or in the alternative, the words of each of the said emails constituted an opinion held by the First Defendant and the basis for that opinion is sufficiently explained in the said emails. The Defendants will aver that such an opinion could have been held by an honest person on the basis of the facts which existed at the time the emails were published. In order to establish that the said opinion could have been held by an honest person the First Defendant will rely upon the matters set out at paragraph 10 herein.”

57. Paragraph 10 of the Defence sets out in 17 sub-paragraphs various factual matters that comprise the background and circumstances giving rise to the dispute between the First Defendant and the Claimant, in particular, in relation to a payment of £15,000 on or after 10 October 2017, which Mr Mackle says was unlawfully made out of the funds of CCG to Ms Mary Walsh, a director of CCG.

58. Paragraph 15 of the Defence, which relates to the Milliner Messages, reads:

- “15. The Defendants deny that the said words are defamatory. Paragraphs 10, 11 and 12 herein apply to the words set out in the emails to Sally Milliner just as they apply to the emails to Gary Forrest.”

59. Under CPR r 3.4(2), the Court has the power to strike out a statement of case if it appears to the Court that (a) the statement of case discloses no reasonable grounds for

bringing or defending the claim, (b) the statement of case is an abuse of the Court's process or is otherwise likely to obstruct the just disposal of the proceedings; or (c) there has been a failure to comply with a rule, practice direction or court order.

60. Mr Reed submits that the nature and ordinary meaning of each of the Messages conveys statements of fact. The first condition of section 3 of the Defamation Act 2013 is therefore not satisfied. He submits that, accordingly, the Court should strike out the defence of honest opinion on the basis that there is no reasonable ground for pleading this defence and/or it is an abuse of the Court's process to plead it.
61. I have found that one part of the natural and ordinary meaning of the second Forrest Message is an expression of opinion. I have found the same in relation to one part of the first Milliner Message. In relation to each of those, the first condition of section 3 of the Defamation Act 2013 is satisfied. In my view, there is no good reason to exercise the Court's power under CPR r 3.4(2) to strike out the defence of honest opinion in relation to the remainder of the meanings of the Messages. It is clear where the defence of honest opinion applies and where it does not apply. The Defence was pleaded before there had been a determination of meaning by the Court. There is nothing abusive about paragraph 11 or paragraph 15 of the Defence.
62. The strike-out element of the Meaning and Strike-out Application will therefore be refused.