Neutral Citation Number: [2021] EWHC 231 (QB)

Case No: QB-2019-0000086

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 February 2021

Before :

MRS JUSTICE STEYN DBE

- -

Between :

SANG YOUL KIM **Claimant**

- and -

SUNGMO LEE **Defendant**

- -
- -

Richard Roberts (instructed by **Andrew & Law Solicitors**) for the Claimant
The Defendant did not appear and was not represented

Hearing date: 26 January 2021

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

....

THE HONOURABLE MRS JUSTICE STEYN DBE

Mrs Justice Steyn :

A. INTRODUCTION

1. This claim for libel arises from the publication by the Defendant of eight posts on Facebook and Instagram between 6 and 11 December 2018. At the material time, both the Claimant and the Defendant worked in the UK as football reporters and journalists for Korean media companies, delivering English and European football news to South Korea and to the Korean community in this jurisdiction. For the Claimant, this was a part-time job alongside his primary occupation as a church pastor in New Malden, Surrey.

2. The trial of this claim took place before me (via a remote video platform) on 26 January 2021. The Defendant, who had been debarred from defending the claim, did not attend the hearing and was not represented. The Claimant was represented by Mr Richard Roberts, of Counsel, to whom I am grateful for his assistance.

B. APPLICATION TO COME OFF THE RECORD

3. At the outset of the hearing, I determined an application by Murray Hays Solicitors, who had been acting for the Defendant, to come off the record. That application was filed on 24 November 2020.

4. Having been notified of the application, but in the absence of a court order confirming Murray Hays Solicitors' removal from the record, the Claimant's solicitors have sent all correspondence, court notifications, including the trial bundle and the notice of trial, directly to the Defendant, as well as to Murray Hays Solicitors.

5. In effect, the application to come off the record is an application pursuant to CPR 42.3 for an order declaring that the solicitors have ceased to act for their former client. The application notice itself incorporates the evidence, attested by a statement of truth, that the firm are no longer able to act on the Defendant's behalf. On the morning of the hearing, I was provided with a (revised) certificate of service confirming that the application was served by Murray Hays Solicitors on their former client, as required by CPR 42.3(2) (albeit it appears he may only have received it on 15 December 2020).

6. Accordingly, at the outset of the hearing, I made an order pursuant to CPR 42.3 declaring that Murray Hays Solicitors had ceased to act for the Defendant.

C. THE PROCEDURAL HISTORY

7. The claim was issued on 10 January 2019. The particulars of claim, bearing the same date, were filed and served with the claim form. A defence was filed on 5 February 2019. An amended reply to the defence was filed on 30 July 2019.

8. A Costs and Case Management Conference was held on 11 June 2019 before Master Davison who made directions to trial. Those directions were varied by Master Davison by an order dated 27 January 2020, pursuant to which the trial was listed for a four-day hearing from 15 to 18 June 2020.

9. On 16 March 2020 the Defendant filed an application to strike out the claim. The trial was vacated and the Defendant's strike out application was heard by Mr Justice Julian

Knowles on 26 June 2020. The application was dismissed: see *Kim v Lee* [2020] EWHC 2162 (QB). By an order dated 11 August 2020, affirmed on 3 September after the court had agreed to receive further written submissions on the question of costs, the Defendant was ordered to pay the Claimant's costs, summarily assessed in the sum of £20,652.

10. The Defendant did not pay the costs as ordered and so the Claimant made an application for an unless order. The application was heard by Master Eastman on 11 November 2020. Both parties were represented by counsel, as they had been at the hearing of the Defendant's strike out application. Master Eastman made an order ("the Unless Order") in these terms:

> "Unless by 4pm on 23 December 2020 the Defendant makes an interim payment of £10,000 towards the costs ordered in paragraph 1 of the order of Mr Justice Julian Knowles dated 3 September 2020 then the Defendant shall be debarred from defending the claim."

11. On 5 January 2021 the matter was listed for a four-day trial, commencing on 15 March 2021. The Claimant's solicitors informed the court that the Defendant had not complied with the Unless Order. Consequently, on 6 January 2021, the listing office gave notice that the trial had been re-listed for one day on 26 January 2021.

12. The Claimant's solicitor, Andrew King, has confirmed in a witness statement dated 25 January 2021:

> "9. The Defendant breached paragraph 1 of the Unless Order by failing to pay the sum ordered by the due date.
>
> 10. I can confirm that no payment has been received at the time of finalising this witness statement. As a result, the Defendant is debarred from defending the claim."

D. PROCEEDING IN THE ABSENCE OF THE DEFENDANT

13. The Defendant did not attend the trial. I therefore considered whether to proceed in his absence. In principle, it is permissible to proceed in the absence of a party, but the court has a discretion (CPR 23.11) which must be exercised in a way that is compatible with the overriding objective.

14. In *Pirtek (UK) Limited v Robert Jackson* [2017] EWHC 2834 (QB) Warby J stated at [20]:

> "I took a two-stage approach, considering (1) whether the defendant had received proper notice of the hearing and the matters to be considered at the hearing; (2) if so, whether the available evidence as to the reasons for the litigant's non-appearance supplied a reason for adjourning the hearing. I considered it necessary to bear in mind that the effect of s.12(2) is to prohibit the Court from granting relief that 'if granted, might affect the exercise of the Convention right to freedom of

> expression' unless the respondent is present or represented or the Court is satisfied that '(a) the applicant has taken all reasonable steps to notify the respondent; or (b) that there are compelling reasons why the respondent should not be notified.'"

15. I have taken the same approach. Section 12 of the Human Rights Act 1998 applies because the Claimant seeks relief which, if granted, would affect the exercise of the Defendant's right to freedom of expression. Section 12(2) provides:

> "If the person against whom the application for relief is made ("the respondent") is neither present nor represented, no such relief is to be granted unless the court is satisfied –
>
> (a) that the applicant has taken all practicable steps to notify the respondent; or
>
> (b) that there are compelling reasons why the respondent should not be notified."

16. Mr King confirmed in his witness statement that, having been asked by Murray Hay Solicitors on 1 December 2020 to communicate directly with the Defendant, his firm served the following documents on the Defendant directly and on Murray Hay:

    i) The Notice of Trial was served on 6 January 2021;

    ii) A draft index of the trial bundle was served on 15 January 2021;

    iii) The trial bundle was served on 19 January 2021.

17. Mr King stated that as Murray Hay Solicitors appear to have been without instructions since 10 November 2020, and the Claimant's solicitors had received no communication from the Defendant, "*it is unclear what part if any the Defendant wishes to take in the trial*".

18. I am satisfied that the Defendant has had notice of the hearing. The fact that he has been debarred from defending the claim does not affect his right to attend the hearing. However, the obvious inference is that he has chosen not to attend or be represented because he has been debarred from defending the claim.

19. Section 12(2)(b) of the Human Rights Act 1998 is obviously inapplicable but I am satisfied that s.12(2)(a) applies. There can be no doubt that the Defendant is aware of the claim. He has engaged in the proceedings, including serving a defence and unsuccessfully seeking to strike out the claim. He was represented by counsel at the hearing before Master Eastman of the Claimant's application for an unless order. It has only been since the Unless Order was made that the Defendant has disengaged. I am satisfied that the Defendant is aware of this hearing and he has chosen not to attend. In any event, the steps taken by the Claimant's solicitor demonstrate that the Claimant has taken all practicable steps to notify the Defendant of this hearing.

20. There is nothing at all before me, by way of evidence or otherwise, that suggests that I ought to adjourn this hearing or that it would be unfair to proceed in the Defendant's absence. Given the effect of the debarring order (which I address below), the

Defendant's absence provided no good reason to adjourn the hearing and I concluded that it was appropriate to proceed.

21. The proposal in the Claimant's suggested trial timetable was that I should give an *ex tempore* judgment. However, I consider that in the Defendant's absence, and bearing in mind that he is now a litigant in person, I should hand down a written judgment and direct the Claimant to serve a copy of it, together with the resulting order, on the Defendant. That will ensure that the Defendant will not be hampered or delayed in getting to know my reasons. In doing so, I have followed the approach taken by Warby J in *Pirtek* at [24].

E. THE EFFECT OF THE UNLESS ORDER

22. The Defendant failed to make an interim payment by 4pm on 23 December 2020 of £10,000 towards the costs he had been ordered to pay the Claimant by Mr Justice Julian Knowles on 3 September 2020. He has not sought to appeal Master Eastman's order, sought relief from sanctions, or made any interim payment in respect of costs in the intervening period prior to the trial.

23. Consequently, the Defendant is "*debarred from defending the claim*". The White Book 2020 provides the following commentary at 29.9.2 on the effect of a debarring order:

> "Subject of course to its precise terms, a debarring order extinguishes any right the debarred defendant would otherwise have to participate in any way in the determination of all the issues which fall for determination at that trial (*Michael v Phillips* [2017] EWHC 1084 (QB)). The order may debar the defendant from making submissions, calling witnesses or cross-examining witnesses called by other parties. The claimants are still required to prove every fact upon which their case depends, except any facts which the debarred defendants had admitted in their struck out pleadings.
>
> A debarring order does not, in fact, override the control which the trial judge always has over procedure at the trial (rr.27.8, 28.7 and 29.9). For example, in *Michael*, at the pre-trial review, which the debarred defendants attended by counsel, Soole J directed that they would be permitted to make submissions at the trial as to what if any order for costs should be made."

24. Counsel for the Claimant, Mr Richard Roberts, has drawn my attention to the judgment of Edwin Johnson QC (sitting as a Deputy High Court Judge) in *Times Travel (UK) Ltd v Pakistan International Airlines Corp* [2019] EWHC 3732 (Ch). The judge helpfully reviewed the authorities, namely *Thevarajah v Riordan* [2014] EWCA Civ 14 (upheld by the Supreme Court: [2016] 1 WLR 76), *Thevarajah v Riordan* [2015] EWCA Civ 41, *Apex Global Management v FI Call Limited* [2015] EWHC 3269 (Ch), *Hall v Elia* [2016] EWHC 1023 (Ch), *Michael v Phillips* [2017] EWHC 1084 (QB) and *Kliers v Schmerler* [2018] EWHC 1350 (Ch) and summarised the guidance he derived from the cases at [35]-[55].

25. The principles applicable to the present case are these:

i) When determining the effect of a debarring order the court should first consider the terms of the order. What does the order state the relevant party is debarred from doing? The wording of the "Unless Order" in this case is clear: the effect is to debar the Defendant from defending the whole of the claim.

ii) If an order debars a defendant from defending the claim, at the trial the defendant should not be permitted to adduce evidence, cross-examine the claimant's witnesses, or make submissions in defence of the claim. In this case, the Defendant was absent, and he did not seek to participate in the trial. In deciding to proceed in his absence I have taken into account that he would, in any event, have been precluded from participating in the trial in any of these ways.

iii) There appears to be a narrow, residual discretion or trial management power to permit a debarred defendant to take some part in the relevant proceedings (e.g., if a debarred defendant considers that a judge is proposing to grant excessive relief based on a misunderstanding of the scope of the claim, the defendant may seek and potentially be granted permission to make submissions on the limited issue of the extent of the pleaded claim). In exercising this power, the court should have regard to the importance of ensuring that a debarring order, which is an important sanction available to the court in the exercise of its case management powers, and an important method of ensuring that the court's case management orders are respected, means what it says and is not undermined by permitting the defendant to escape its effect. This is of relevance in considering the Claimant's application to amend (below).

iv) Where a defendant is not permitted to participate in the trial, by reason of an order debarring him from defending a claim, the claimant does not automatically win by default. At the trial, the claimant must satisfy the court that he is entitled to the relief sought. As Mr Roberts acknowledged, neither the Unless Order nor the Defendant's absence altered the fact that it was for the Claimant to prove his claim and his entitlement to the damages and injunctive relief he sought.

v) An order debarring the defendant from defending a claim does not preclude the court from having regard to the defence. In particular, it is necessary to consider the defence in order to determine the ambit of the dispute: the claimant is not required to prove by evidence facts which have been admitted in the defence.

vi) In *Times Travel (UK) Ltd v Pakistan International Airlines Corp* the judge suggested, without deciding, that a debarred defendant should normally be able to address the court on the form of order and costs that flow from the substantive judgment. In this case, I have given both parties the opportunity, following the hand down of this judgment, to make written submissions on the form of order and costs (in default of agreement).

F. THE CLAIMANT'S APPLICATION TO AMEND THE CLAIM FORM

26. The Claimant particularised his claim for relief in the particulars of claim in the following terms:

> "The Claimant therefore claims:

> (1) <u>An order to prevent the continuing publication of defamatory articles about the Claimant</u>;
>
> (2) Damages for libel in relation to the first to eighth articles to include aggravated damages;
>
> (3) interest;
>
> (4) Costs." (Emphasis added)

27. The Claimant's skeleton argument, which was filed and served the day before the trial, noted that although the Claimant had sought an injunction in the Particulars of Claim, "this relief is not sought in the claim form. The Claimant will make an oral application for permission to amend the claim form to include injunctive relief". As anticipated in his skeleton argument, Mr Roberts applied to amend the claim form at the hearing to including a claim for injunctive relief.

28. I indicated at the hearing that I would grant the application to amend. Although the application is made after the end of the limitation period, the Claimant is not seeking to add a new claim or even a new form of relief. The amendment is sought to resolve an obvious inconsistency between the claim form and the particulars of claim that were served with it. There is no conceivable prejudice to the Defendant. As is clear from §80 of the defence, in which the Defendant addresses the claim for an injunction, the Defendant has been aware since the commencement of the proceedings over two years ago that by this claim the Claimant seeks an injunction to prevent the continuing publication of the posts which he alleges are defamatory.

29. Although the Defendant is debarred from defending the claim, I would have been prepared to hear from him on the Claimant's application to amend. The fact that he could have participated to this limited extent does not alter my view that it was appropriate to proceed in his absence or that the application to amend should be granted. First, the Defendant has been notified of the hearing and he has chosen not to attend. Secondly, as I have said, there is no conceivable prejudice given that the Defendant has been aware that an injunction has been sought throughout these proceedings. Thirdly, I have also borne in mind that, although CPR 16.2(1)(b) provides that the claim form must specify the remedy which the claimant seeks, even if an amendment had not been sought the court would have the power to grant an injunction (see CPR 16.2(5)).

G. <u>THE ISSUES</u>

30. To establish that the Defendant is liable in defamation, the Claimant has to prove:

    i) The defendant published words by making them known to at least one other person, apart from the Claimant.

    ii) The words referred to the Claimant.

    iii) The words were defamatory of the Claimant in that (a) they were defamatory at common law and (b) the publication of the words caused, or is likely to cause, serious harm to the reputation of the Claimant (s.1(1) Defamation Act 2013). At common law, a statement is defamatory of the claimant if, but only if (a) it

imputes conduct which would tend to lower the claimant in the estimation of right-thinking people generally, and (b) the imputation substantially affects in an adverse manner the attitude of other people towards him, or has a tendency to do so: see *Lachaux* at [6]-[9], citing *Sim v Stretch* [1936] 2 All ER 1237, per Lord Atkin at 1240 and *Thornton v Telegraph Media Group Ltd* [2011] 1 WLR 1985, per Tugendhat J at [96].

31. If liability is established, the Claimant's claim for damages (general, special and aggravated) and for injunctive relief gives rise to additional issues, as regards any harm the Claimant has suffered and whether he has proved that the Defendant acted with malice and should be required to pay aggravated damages.

(i) The Defendant's posts

32. The particulars of claim allege that the Defendant published:

i) On 6 December 2018 at 09:42, on Facebook, a post in Korean bearing the title "*Announcement alerting of the acts of 'fraud' being committed for the 3rd consecutive year, particularly against football fans, during coverage of EPL*" ("the first publication"). It received "*1.8k likes, 36 comments, 201 shares*". (PoC §3(a))

ii) The post referred to in (i) above was published on Instagram on 8 December 2018 ("the second publication"). It received "*2607 likes, 223 comments*". (PoC §3(b))

iii) On 10 December 2018 at 15:41, on Facebook, a post in Korean bearing the title "*Look pastor Sang Youl Kim (Daum columnist, Ilgan Sports correspondent)*" ("the third publication"). It received "*879 likes, 30 comments, 44 shares*". (PoC §3(c))

iv) The post referred to in (iii) above was published on Instagram on 11 December 2018 ("the fourth publication"). It received "*1117 likes, 128 comments*". (PoC §3(d))

v) On 10 December 2018 at 16:03, on Facebook, a post in Korean bearing the title "*It just so happens that I'm getting on a plan so*" (the fifth publication"). It received "*395 likes, 8 comments, 5 shares*". (PoC §3(e))

vi) The post referred to in (v) above was published on Instagram on 11 December 2018 ("the sixth publication"). It received "*803 likes, 101 comments*". (PoC §3(f))

vii) On 10 December 2018 at 17:11, on Facebook, a post in Korean bearing the title, "**I ask for your help. This is a part of Sang Youl Kim's post*" ("the seventh publication"). It received "*258 likes, 8 comments, 8 shares*". (PoC §3(g))

viii) The post referred to in (vii) above was published on Instagram on 11 December 2018 ("the eighth publication"). It received "*573 likes, 28 comments*". (PoC §3(h))

33. The Defendant has admitted that he published these 8 posts as alleged (defence §3). The defence clarifies that it was "*4 posts on 2 different platforms*". As is clear from the summary of the posts outlined above, that is common ground. Accordingly, the first element of the cause of action is established.

(ii) Reference to the Claimant

34. It is clear and not disputed that the words of all eight publications in fact referred to the Claimant. In the third, fifth and seventh publications on Facebook (and the identical fourth, sixth and eighth publications on Instagram), the Claimant was referred to by his full name, as well as by reference to his role as a pastor. In the third and fifth (and fourth and sixth) publications, express reference was also made to his role as a Daum columnist and Ilgan Sports correspondent.

35. In respect of the first publication, the Claimant has pleaded that "*the Defendant never used [the] Claimant's real name in the post in question*" (defence, §7). In the amended reply to defence at §6a, the Claimant acknowledges that he was not referred to by name in the first publication. But he has pleaded:

> "The Claimant was clearly identified in the following posts. The posts were all in close proximity to each other and many of the posts were adjacent. Given how social media platforms operate, the Claimant's identity would have been easily accessible to any reasonable reader who knows the basic functions of these social media platforms."

36. If the Defendant intended by his pleading to put in issue whether the first publication referred, or would have been understood as referring, to the Claimant, I find the Claimant has proved his case on this issue.

37. On its face, the first publication provided numerous identifying details regarding the person referred to as 'B', such as that he was a South Korean journalist covering English Premier League ("EPL") football, who had another primary profession, and that he had just published an article described as an 'on-site interview' on 5 December 2018 with Son Heung Min at Wembley Stadium, who had scored his 100th goal in a match that day. The fact that the Claimant was readily identifiable is also evident from the parts of the first publication in which the Defendant directly addressed those who "*have personal relations with Mr 'B', are business partners, have received aid with arranging for places to stay upon visiting the UK*", clearly understanding that such people would have recognised the Claimant was 'Mr B'.

38. In addition, the Claimant was expressly identified in posts which were closely connected in time and proximity on the same two platforms.

(iii) Whether the words were defamatory of the Claimant

39. This ingredient of the cause of action gives rise to several disputed issues which I address below:

    i) The true translation into English of the publications.

ii) The meanings of the words complained of.

iii) Whether those meanings are defamatory at common law.

iv) And whether the publication of those words caused, or is likely to cause, serious harm to the Claimant's reputation.

(iv) The defences raised by the Defendant

40. In his defence, the Defendant relied on defences of truth, honest opinion and public interest. These defences are unsupported by any evidence. The meanings that I have found (below) are statements of fact, not opinion, and the Defendant has not shown that publishing the statements complained of was in the public interest, so the defences of honest opinion and public interest fail. Having regard to the matters which are admitted in the Claimant's amended reply or in evidence, I consider the defence of truth in more detail below.

H. TRANSLATION OF THE PUBLICATIONS

41. Each of the publications was written in Korean. In the particulars of claim, the Claimant pleaded an English translation of those words. In the defence, the Defendant took issue with the Claimant's translation.

42. Master Davison's order of 27 January included the following directions:

> "2) Translation of documents will be provided as follows:
>
> a) By 4pm on 10 February 2020 the parties shall agree a letter of instruction and shall jointly instruct a translator who shall produce an English translation of all documents in Korean which contain the publications complained of and any or any such additional documents in Korean as either party may consider relevant. The translator's fee shall be borne equally by both parties.
>
> b) In default of the parties being able to agree a translator by the abovementioned date, they shall, by 4pm on 17 February 2020, apply to the court for a decision as to the identity of the translator. Each party may suggest no more than two individuals as translators, and provide a brief curriculum vitae outlining those individuals' qualifications.
>
> c) By 4pm on 16 March 2020 the translator shall produce the translation and serve copies on both parties.
>
> d) If the parties have any questions regarding the translation they shall be sent to the translator by 4pm on 23 March 2020, and copied to the opposing side.
>
> e) The translator shall answer any such questions by 4pm on 30 March 2020."

43. The Claimant has exhibited English translations of the first, third, fifth and seventh publications to his witness statement. Translations of the second, fourth, sixth and eighth publications have not been exhibited, but it is common ground, as I have said, that the four posts were published on two platforms.

44. The translator was not jointly instructed by the parties or identified by the court following the application envisaged in Master Davison's order. However, I accept Mr Roberts' explanation that the Claimant took a number of steps to seek to agree a joint letter of instruction to which the Defendant's solicitors did not respond, despite chasing letters, and then, in the immediate run-up to trial, took the view that it would not be proportionate to instruct a further translator in circumstances where they had adduced translations in evidence and the Defendant was debarred from defending.

45. The only evidence before me regarding the English translation of the publications is that which has been exhibited to the Claimant's witness statement. I have considered the translations pleaded by the Claimant and by the Defendant. But where there is any significant dispute on the pleadings as to the meaning of passages, I have accepted the translations that have been provided in evidence. I have no reason to doubt that those are true translations.

I. MEANINGS OF THE WORDS COMPLAINED OF

Meaning: The Law

46. The applicable principles are well settled. The Court's task is to determine the single natural and ordinary meaning of the words complained of. It is well recognised that there is an artificiality in choosing a single meaning from a series of words that individual readers may understand in different ways, but this approach is well-established, and it provides a practicable, workable solution: see *Stocker v Stocker* [2020] AC 59, per Lord Kerr of Tonaghmore JSC at [33]-[34].

47. The focus is on what the ordinary reasonable reader would consider the words to mean. That is the touchstone. It is the "*court's duty to step aside from a lawyerly analysis*": see *Stocker v Stocker* at [37] to [38].

48. The key principles derived from the authorities were helpfully distilled and re-stated by Nicklin J in *Koutsogiannis v Random House Group Ltd* [2020] 4 WLR 25 at [12]:

> "i) The governing principle is reasonableness.
>
> ii) The intention of the publisher is irrelevant.
>
> iii) 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. A reader who always adopts a bad meaning where a less serious or non-defamatory meaning is available is not reasonable: s/he is avid for scandal. But always

to adopt the less derogatory meaning would also be unreasonable: it would be naïve.

iv) Over-elaborate analysis should be avoided and the court should certainly not take a too literal approach to the task.

v) Consequently, a judge providing written reasons for conclusions on meaning should not fall into the trap of conducting too detailed an analysis of the various passages relied on by the respective parties.

vi) Any meaning that emerges as the produce of some strained, or forced, or utterly unreasonable interpretation should be rejected.

vii) It follows that it is not enough to say that by some person or another the words might be understood in a defamatory sense.

viii) The publication must be read as a whole, and any 'bane and antidote' taken together. Sometimes, the context will clothe the words in a more serious defamatory meaning (for example the classic "rogues' gallery" case). In other cases, the context will weaken (even extinguish altogether) the defamatory meaning that the words would bear if they were read in isolation (e.g. bane and antidote cases).

ix) 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.

x) No evidence, beyond publication complained of, is admissible in determining the natural and ordinary meaning.

xi) The hypothetical reader is taken to be representative of those who would read the publication in question. The court can take judicial notice of facts which are common knowledge, but should beware of reliance on impressionistic assessments of the characteristics of a publication's readership.

xii) 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.

xiii) In determining the single meaning, the court is free to choose the correct meaning; it is not bound by the meanings advanced by the parties (save that it cannot find a meaning that is more injurious than the claimant's pleaded meaning)."

49. In relation to the third principle, I bear in mind that modern readers should be treated as having more discriminating judgment than has often been recognised: see *John v*

Times Newspapers Ltd [2012] EWHC 2751 (QB), per Tugendhat J at [19] and *Allen v Times Newspapers Ltd* [2019] EWHC 1235 (QB), per Warby J at [14].

50. As Warby J said in *Allen* at [16]:

> "In the light, in particular, of principles (v) to (x) and (xii), it is common practice among judges dealing with issues of meaning in defamation claims to read the article complained of and form a provisional view about their meaning, before turning to the parties' pleaded cases and the arguments about meaning."

51. That is the approach I took, reading all four publications (in the translations exhibited to the Claimant's witness statement) prior to the trial, before I turned to the Claimant's skeleton argument, the pleadings, or any other documents.

52. Although the Defendant is debarred from defending, given the nature of a determination of meaning, and in particular the fact that evidence beyond the publications themselves is not admissible, I have considered the pleaded meanings given in the defence, as well as those in the particulars of claim. (In the quotations below, I have not sought to correct the linguistic errors that appear in the pleadings and evidence.)

Publications (1) and (2): the words complained of

53. The first publication is lengthy: it covers 10 pages of the hearing bundle. The Claimant has pleaded 14 passages ((a) to (n)) from the first publication as words complained of.

54. **Passage (a)** (POC §4a):

> "Announcement alerting of the acts of 'fraud' being committed for the 3rd consecutive year, particularly against football fans, during coverage of EPL"

55. The translation given in the defence at §6(a) is:

> "A writing for revealing 3 years of act of 'cheating' against Football fans in EPL on-site media zone."

56. The translation of this passage in evidence is:

> "Text charging the acts of 'fraud' being committed for the 3rd consecutive year, and acts deceiving football fans, during coverage of EPL."

57. **Passage (b)** (POC §4b):

> "Unfortunately, I am writing this today in order to tell all of you football fans of a problem I have witnessed these past 3 years and to eradicate this problem; despite this journalist's publishing to the mass media, including two platforms I am a part of, and having a direct conversation with the person I am accusing [or prosecuting] in this text amongst various other attempts, I report that this problem continues to happen, and I am writing this text

> in order to eradicate this problem once and for all and to prevent this problem repeating from this point forward."

58. The translation given in the defence at §9 is:

> "Today, unfortunately, I have something I have to reveal a problem which I had witnessed for last 3 years. Although I tried to root this problem out for the past 3 years by telling the journalist [the Claimant] directly and also to two media companies which he is writing for, the issue still remains there. So, I'm writing this in order that the same problem is eradicated completely from now on."

59. The translation given in evidence is in the same terms as pleaded by the Claimant, save for the omission of the alternative words in square brackets "*or prosecuting*".

60. **Passage (c)** (POC §4c):

> "First, I will tell you in detail of how the problems leading to this accusation [or prosecution] came about."

61. The translation given in the defence at §11 is:

> "First of all, I'll tell you specifically what caused me to reveal this today."

62. The translation given in evidence is:

> "First, I will tell you in detail how the basis of this accusation came about."

63. **Passage (d)** (POC §4d):

> "On the fateful day player Son Heung Min scored his 100th goal, the platform and correspondent that weren't there committed this act of 'fraud' by publishing this article that was so overtly riddled with lies."

64. The translation given in the defence at §13 is:

> "On the day of Son Heung Min scored his 100th Europe goals, a media and journalist who never was at the 'on-site' lied blatantly and an act of 'cheating' has occurred."

65. The translation given in evidence is in the same terms as pleaded by the Claimant.

66. **Passage (e)** (POC §4e):

> "Somebody who wasn't even at the site writing an article that openly states that they were there not only utterly scorns the hard work of all the reporters that did all the legwork but is also an act that cheats and deceives all the football fans that read the article."

67. The translation given in the defence at §15 is:

> "Then, a journalist who didn't come to the stadium publishing an article insisting they were in the stadium itself is ignoring other journalists' effort to work hard on-site and also cheating football fans who read it."

68. The translation given in evidence is the same as that pleaded by the Claimant.

69. **Passage (f)** (POC §4f):

> "Nonetheless, the reason I am reporting this person to all of you, and the problems I have confirmed within the past 3 years, is not just this one article. There were much more serious problems that occurred. The 'fraud' committed by correspondent (and columnist) 'B' that have occurred within the past 3 years, and that I have confirmed myself and obtained evidence and witnesses to prove, are as follows."

70. The translation given in the defence at §16 is:

> "The readers who read this writing until now may think what's the big deal for that 1 case.
>
> But the reason why I reveal this in front of all people, and the problems I witnessed for the last 3 years is not only this. There were much more serious events happened during that time. Here are the acts of 'cheating' which 'B' made for the last 3 years and I witnessed by myself and I can prove by proof or witness."

71. The translation given in evidence is:

> "Nonetheless, the reason I am charging this person in front of all of you, and the problems I have personally confirmed within the past 3 years, is not just this one article. There were much more serious problems that occurred. The acts of 'fraud' committed by correspondent (and columnist) 'B' that have occurred within the past 3 years, that I have confirmed myself and obtained evidence and witnesses to prove, are as follows."

72. **Passage (g)** (POC §4g):

> "- The act of writing an article with 'lies' by writing that they were on site when they were not.
>
> - The act of stating that they were the interviewer when they in fact were not by writing their name in the title and byline of the article.
>
> - The act of suitably modifying the interviewee's statements and introducing fabricated material in their articles.

- The act of using their journalistic qualifications to receive an invite to a certain brand event (only 2 Korean reporters were in attendance) and having their own acquaintance with unauthorised access attend the event, and having that personnel conduct an interview with an EPL star anybody would know.

- The act of falsifying that their various friends and acquaintances (business relationships, personal friends, etc.), who were not football journalists, were reporters so they had access to the press zone of the EPL coverage site.

- The act of allowing a university student with no experience of journalism (not a single article written in their name) into the 'press zone' of the EPL coverage site for 2 seasons in a row simply because they [the student] were part of a 'special group' he ran (and so, in the case of big matches, causing cases of actual Korean reporters with the ability to write articles being unable to access the press zone).

- The act of taking Son Heung Min who had just finished a game out of the mixed zone to acquaintances who were 'Elders' and forcing him to greet them (a Tottenham official even asked me "where is he taking Sonny").

- In front of other journalists and indeed in front of spectators of Tottenham's squad, you brought shirts so that Son Heung Min could sign them to give them to your personal acquaintances in the very public place, and then uploaded such acts on SNS to promote yourself as virtuous and gloat of your feat.

- The act of lying to an English football official "Player----- of the South Korean representative team is my nephew" (a report was made to the relevant football official inquiring if this was true, and after checking it was found to be untrue).

- The act of making reporters from other media companies attempting to interview players he was close to go through him first, influencing and mediating the situation from behind the scenes (eventually leading to a situation where the interview was not conducted at all, and news of this player was not relayed to their fans. He also stated that he had 'allowed' for an interview between player ----- and media company -----)."

73. The translation given in the defence at §6(a) is:

> "(i.) "The act of writing an article with 'lies' by writing that they he was onsite when he was not."
>
> (ii.) "The act of publishing an interview column insisting he had done the interview by himself, putting his name on the title and by-line, when he didn't do the interview himself."
>
> (iii.) "The act of making false quotes which the interviewee never said and used the quotes for his own column."
>
> (iv.) "After getting invited for a specific brand's event, he took along with him his own acquaintance who was not invited and

then permitted him to have an interview with an EPL star player who everybody knows."

(v.) "To bring his own acquaintances (business partner, personal friends) to EPL press zone lying that they are a journalist."

(vi.) "To let a university student who never worked as a journalist or had experience on media coverage (who never wrote articles), to enter EPL stadiums as a 'press' just because he's a member of his own 'special group'."

(vii.) "To bring Son Heung Min to his own acquaintance (calling them 'elders') and inviting him to greet them."

(viii.) "Getting signatures for his own acquaintance from Son Heung Min in the middle of Mixed Zone where all other journalists from the world and Tottenham press officer were watching and boasting himself on social media."

(ix.) "Lying to one of English Football industry person that ("South Korean international player OOO is his nephew."

(x.) "When other media companies are trying to have an interview with the players who are close to him, to lead the interview is arranged via him. (So, sometimes the interview itself didn't happen eventually. He even once said I 'allow' the interview between a player and a journalist.)""

74. The translation of the 10 bullet points given in evidence is the same as pleaded by the Claimant save for the following differences.

i) The 4th bullet point reads: "… (only 2 Korean reporters can attend) and having their own acquaintance with unauthorised access and who was never invited attend the event …"

ii) In the 6th bullet point the word "enabling" is used in place of "allowing".

iii) The 7th bullet point reads:

"- The act of taking Son Heung Min after he'd just finished a match to his personal acquaintances that'd been waiting outside the mixed zone (calling them 'elders') to making him greet them (causing a Tottenham official to ask "Where exactly is that person taking Sonny [Son Heung Min] right now?" to me)."

iv) The 8th bullet point reads:

"The act of getting Son Heung Min to sign uniforms for his friends' personal requests in the joint coverage area where not only foreign reporters were present, but Tottenham officials could also see, to promote himself as if he was committing a

> virtuous act and showing himself off through these series of acts around on his SNS etc."

v) The 10th bullet point reads:

> "When reporters from other media companies attempted to interview players he was close with, he made sure that these interviews had to go through him first and then adjusted the situation from behind the scenes (eventually leading to a situation where the interview could not be conducted, and news of this players could not be relayed to the fans. He also declared that he had personally 'allowed' the interview between player ------ and media platform --------)."

75. **Passage (h)** (POC §4h):

> "Do you it is permissible that something like this has been continuously happening for the past 3 years in the sports news reporting environment of the EPL, the football league that the top players of South Korea, such as Son Heung Min and Ki Sung Yong, have been active and has the highest viewership amongst South Korean football fans?"

76. The Claimant's pleaded translation is accepted in the defence at §19. The translation provided in evidence is in the same terms save for the words:

> "Do you all think that something like this … should be allowed to continue?"

77. Passage (i) (POC §4i):

> "All the issues I have raised above can all be proved to be facts with 'evidence' or 'witnesses' and are merely a 'fraction' of all that has happened. I myself have witnessed acts committed that were so shameless and opprobrious I cannot bring myself to repeat them, that if South Korean football fans were to hear of you all would find a heinous crime."

78. The translation given in the defence at §20 is:

> "All things above can be proven by 'proof' or 'witnesses' and it is only a small part of what has happened until now. There was much more serious incidents which everybody in South Korea will be surprised and feel angry about when they hear about it."

79. The translation provided in evidence reads:

> "All the issues I have raised above can all be proved to be facts with 'evidence' and 'witnesses' or 'eye-witnesses' and are merely a 'fraction' of all that has happened. I myself have witnessed acts committed that I simply cannot repeat s they were

> so conscienceless, that if South Korean football fans were to hear of they all would find it unpardonable."

80. **Passage (j)** (POC §4j):

> "Mr. 'B', despite being somebody who carries out the work of a journalist, and even otherwise is somebody who should not 'lie', has continued to commit big and small acts to which the term 'fraud' (the core of which is a 'lie') is applicable, and now on the historical site of player Son Heung Min's 100th goal, he once again commits an act that disrespects all journalists and football fans other than himself."

81. The translation given in the defence at §22 is:

> "B is a someone who should never 'lie' because of his work in the press and also for another job. However, he continuously committed many acts of 'cheating' (the essence is 'lying') and now he did it again on a historical game when Son Heung Min scored his 100th goal, once again ignoring all other journalists and football fans."

82. The translation provided in evidence states:

> "Mr 'B', being somebody who carries out the work of a journalist, and being somebody who above all people should not 'lie' even outside his profession as a journalist, has continued to commit big and small acts of 'fraud' (the core being 'lies'), and now on the historical site of player Son Heung Min's 100th goal, he once again commits an act that disrespects all journalists and football fans other than himself."

83. **Passage (k)** (POC §4k):

> "Therefore, I no longer have reason to turn a blind eye to these acts and protect his reputation or honour."

84. The translation given in the defence at §24 is:

> "For the past 3 years, I tried hard to avoid the situation where these issues needed to be revealed to the public by letting you and the two media companies you work for to stop these kinds of acts. So, now I don't have any reason to protect your honour."

85. The translation of passage (k) given in evidence is the same as pleaded by the Claimant, save for the addition of the word "any" before "reason". The prior sentence, which is pleaded in the defence, but does not form part of the words complained of, is translated in evidence as:

> "For the past 3 years I have tried my best to at least prevent this issue form being recognised by the public and urged for him to

> refrain form committing these acts and the media platform he works for has also made various attempts to stop these actions."

86. **Passage (l)** (POC §l):

> "Though I could reveal their name, their place of work, and detail the much more serious actions committed that would make it easier to identify them in this post and make this a social issue, I will not do so this time. After a conversation with Mr. 'B' today about this case, for the last time, I will listen to his request."

87. The translation pleaded in the defence at §26 is:

> "I can reveal your name, your main job and disclose much more serious issues and turn this matter into a social issue, but I won't do it this time. I have no reason to accept your request not to take matters further, however I'll accept your asking for the last time of what you asked me in the talk about this matter."

88. The translation given in evidence reads:

> "Although I could reveal his name, his primary profession, and detail the much more serious actions to make him completely identifiable to make this a social issue, I will not do that this time. Although I have no reason to listen to his personal requests, I will listen to his request made in a conversation with him for the final time."

89. **Passage (m)** (POC §m):

> "Despite this, there were no sanctions put on Mr 'B' from the South Korean football journalism field, and so this person was able to freely continue committing these acts, building relationships with other media journalists (and athletes), gaining 'power' so that anybody pointing out his wrongdoings and set him straight is instead made to seem out of place."

90. The translation given in the defence at §28 is:

> "As I wrote above, I have raised this matter with B himself and his media companies a long time ago. Nevertheless, there's nobody stopping B to continue behaving this way and he has been permitted to freely continue what he was doing and creating relationships with other media relatives (also with players), building power and making a person who tried to fix these problems as someone weirdo is not a normal situation at all."

91. The translation given in evidence is the same as pleaded by the Claimant save that in place of "*athletes*" reference is made to "*professional players*" and the final line reads "*is instead made to look like the abnormal person, is not a normal situation no matter how I look at it*". The first sentence of the Defendant's translation, which does not form

part of the words complained of by the Claimant, is translated in evidence as: "*I reiterate that I had already let Mr 'B' and his related media company know the issue a long time ago*".

92. **Passage (n)** (POC §4n):

> "However, regularly attending coverage sites, I soon saw Mr. 'B's fraudulent acts for myself ...
>
> Why, despite being a journalist, was I unable to report the 'fraud' and 'corruption' that I could see happening before my eyes with a clean conscience."

93. The translation given in the defence at §30 reads:

> "Looking back, I tried hard for 2 years from 2013 to 2015 to work in London and then heard about B's wrongdoings right after I arrived in London in September 2015. At that moment, two people (who are no longer working as journalists) told me about this hoping I can solve this problem.
>
> I couldn't believe them in the first place.
>
> At least he looked as a good man to me, so I thought I should judge him based on what I saw rather than what I had heard about him. But as time went on and I was working in the press area, I witnessed B's act of cheating by myself and then I spent time to solve it peacefully telling the person himself and within the media circle thinking 'it will be alright as time goes by'. However, 3 years have now passed. So, why can't I confidently disclose these acts of 'cheating' or corruption' when I'm a journalist."

94. The translation given in evidence is the same as pleaded by the Claimant. The Defendant has translated parts of the passage which are not words complained of. I have considered the meaning of the words complained of in the context of the post read as a whole, as it appears in the translation provided in evidence.

Publications (1) and (2): the parties' meanings

95. The Claimant contends in respect of passage (a):

> "The term 'Fraud' means the act of committing a criminal act for one's own financial gain. The usage of this term by its literal meaning suggests that the Claimant committed a crime. By the meaning of the word itself, it lowers the Claimant's reputation as the audience of the statement would gain the perception that our client is a criminal who should not/cannot be trusted."

96. The Defendant contends:

> "In the natural and ordinary meaning, the words complained of meant and were understood to mean only that the Claimant is someone who had cheated. In any event, even if the correct translation for the word is 'fraud' (which is not accepted), it is contended that the reasonable reader, in the context of the article as a whole, would not have understood fraud to have meant a criminal act having been committed or that the Claimant was a criminal as alleged, or at all."

97. As regards the meaning of passage (b), the Claimant contends:

> "The translation of the word '고발' is to 'prosecute' or 'accuse'. The Defendant's statement that the Defendant would prosecute the Claimant alludes to the falsity that the Claimant has committed a criminal offence, and that the Defendant would be reporting this alleged criminal offence to the police or relevant authorities. The Defendant has shown strong vindication and certainty in his statement that the Claimant has committed a criminal act. The word therefore reinforces this misguided certainty, thereby emphasising the falsity that the Claimant has committed a criminal offence.
>
> The phrase '문제 의근절'means to eradicate this problem. In this situation, the Defendant is stating that the Claimant is the source of this problem. …
>
> …The Defendant has repeatedly suggested that the Claimant is a criminal, and due to his criminal acts, should be viewed as a problem which needs to be removed."

98. The Claimant contends, in respect of passage (c):

> "The phrase 'the problems leading to this accusation [or prosecution]' suggests that the Claimant has committed a criminal act, and that the Defendant is acting justly in 'prosecuting' the Claimant. Again, the usage of the term '고발' or 'prosecute' suggests that the Claimant needs to be prosecuted for committing a crime. This statement is made with the assumption that the Defendant's accusation is in fact correct. However, the audience who read such a statement will not know that you are making an unwarranted assumption and will think that the Claimant has in fact committed a criminal act. The usage of the word 'prosecution', when no criminal acts have been committed, is therefore defamatory."

99. In respect of passages (b) and (c) (and generally in respect of this publication), the Defendant denies that the meaning is that "*the Claimant was a criminal*", that he had "*committed criminal acts*", that "*the Defendant would prosecute the Claimant, or that he was planning on reporting this to the police*" or that the Claimant "*needed to be prosecuted*".

100. In respect of passage (d), the Claimant contends the meaning is that he "has committed a criminal act for his own financial gain" and that the content of the article he wrote on 6 December 2018 was "entirely fabricated".

101. The Defendant contends the meaning is that "*the Claimant is someone who had cheated by writing an article making it seem as though he was at the game when in fact he was not*".

102. In respect of passage (e) the Claimant contends that the meaning is that "*he had fabricated the interview*", "*spread lies to football fans*", been "*deceitful*" and shown "*no respect for football fans*". The Defendant contends that meaning of this passage (which he has not pleaded) is not defamatory.

103. In respect of passage (f) the Claimant contends:

> "The Defendant stated that there were much more serious problems that had occurred, and that it was not simply this one article. The Defendant again stated that the Claimant had committed 'fraud', and further affirmed the Claimant to be an individual who has committed problems much more serious than the Defendant's allegations of fraud. The Defendant's continued usage of the term fraud was an effort to influence the audience into believing that the Claimant was in fact a criminal who had committed such an act. Therefore, this is defamatory to the Claimant."

104. The Defendant contends the words mean "*only that the Claimant is someone who had cheated*", not that the Claimant had committed any criminal act.

105. In respect of passage (g), the Claimant contends that the meaning is that he is "*a dishonest liar*", that he "*does not abide by rules*", that he "*has no care for players and will use them for his own personal gain*" and that the Claimant is "*a selfish, corrupt individual who is making personal gains at the expense of others within the same profession*".

106. The Defendant contends the meaning of passage (g) is that "*the Claimant is someone who has lied in his article of 06 December 2018 and has abused his position in the past which is not befitting of a journalist*".

107. In respect of passage (h), the Claimant contends that the meaning is that he as been committing "*fraudulent acts for the last 3 years*" and that he "*is not performing his duties as a journalist*". The Defendant contends this passage has no defamatory meaning.

108. In respect of passage (i) the Claimant contends:

> "Usage of the terms ' shameless' and 'opprobrious' presents the Claimant as a reprehensible individual. The Defendant stated that he had seen our client commit heinous crimes, which is defamatory as it shows the Claimant as a reprehensible criminal."

109. The Defendant denies that the meaning is that the Claimant committed "*shameless acts*" or "*heinous crimes*" or that he is a "*reprehensible criminal*", alleging that the meaning is only that there are "*other serious acts … which the Claimant has been involved in*".

110. In respect of passage (j) the Claimant contends that the meanings is the Claimant is a "*fraudster and a criminal*" and that he "*committed an act which disrespects all journalists and football fans*". The Defendant contends the meaning is only that "*it is not befitting of a journalist and a priest … to be engaging in acts where he is lying*".

111. In respect of passage (k), the Claimant contends the meaning is "*the Claimant is a criminal who should face sanctions for his acts*". The Defendant contends the meaning is only that it is regrettable the issues had to be made public.

112. In respect of passage (l), the Claimant contends:

> "The Defendant stated that he would be able to reveal the Claimant's name, his place of work, and detail all the more serious acts the Claimant had committed. The Defendant is thereby stating that what the Claimant has already been accused of in the Defendant's statement is incomparable to other alleged serious acts he knows of. The Defendant is presenting our client as an individual whose acts are shameful to society. By stating that he would wield. the choice to reveal the Claimant's identity, the Defendant is reinforcing his image as rightful and just. The Defendant himself has stated that by revealing the identity the Claimant, this would become a 'social issue'. The statement is defamatory as the Defendant is presenting the Claimant as someone who deserves society's scorn."

113. The Defendant denies the words mean that the Claimant deserves society's scorn. He contends they mean that the public would view his acts more severely if they knew he was a priest.

114. In respect of passage (m), the Claimant contends the meaning is that he is an "*immoral*" and "*corrupt*" individual who is "*guilty of wrongdoing*". The Defendant denies the words mean the Claimant is immoral or corrupt or that he gains power to silence those who criticise his wrongdoings. He contends the meaning is only that no one has prevented the Claimant behaving as he has and that by building relationships with people and gaining their trust the Claimant has made anyone who raises concern about his behaviour appear not credible.

115. In respect of passage (n), the Claimant contends the meaning is that he "*committed fraudulent acts*", is "*guilty of fraud and corruption*" and that he is "*an immoral and corrupt individual*". The Defendant contends that the meaning is just that he chose not to believe what he heard about the Claimant's behaviour until he witnessed it himself.

116. During the hearing, Mr Roberts submitted that the essential crux of the first publication is that the Claimant acted fraudulently by publishing the 6 December 2018 article under the heading 'on site' (when he was not on site to carry out the interview), that this was part of fraudulent activity in which he had been engaging for three years, that the Defendant had committed the specific acts referred to in the 10 bullet points contained

in passage (g), and that the Defendant was aware of much more serious acts committed by the Claimant.

Publications (1) and (2): decision as to meaning

117. Applying the principles to which I have referred (and considering the first publication as a whole, rather than taking each individual passage relied on separately) in my judgment, the meaning is:

> An article the Claimant published on 6 December 2018, in which he dishonestly claimed to have undertaken an onsite interview with a player at Wembley stadium, when the Claimant was not there, was permeated with lies. This is only the most recent and relatively minor example of more serious unethical behaviour on his part, which has been unrelenting for three years. He has fabricated the contents of articles. He has lied to an English football official about his relationship to a South Korean player. He has corruptly and dishonestly gained admission to events, and access to the press zone, for his friends and cronies. He has abused his contacts and influence to the detriment of honest journalists and football fans, and for his own self-aggrandisement. Beneath the veneer of being a decent man, he is a shameless liar and fraudster.

118. The meaning is clearly that the Claimant is guilty of lying, cheating and breaching the ethical standards required of journalists. But in my judgment, the publication does not contain an assertion that the Claimant is guilty of, and should be prosecuted for, criminal acts of fraud.

Publications (3) and (4): the words complained of

119. The words complained of, as pleaded by the Claimant (POC §6), are:

> (i) "Somebody accused for lying seems to have told a 'lie' again, I can only see it as a countermeasure suiting of a person with a wide array of connections thanks to having lived a long time within the UK's Korean society."
>
> (ii) "To me, this can only be seen as a 'threat'. I understand it that you wish to hush the mouths of more sources coming forward."
>
> (iii) "Additionally, the two companies that allowed and paid for a person riddled with lies to work as a 'journalist', putting the South Korean journalism field in disarray should keep in mind that they may be forced to take responsibility for the problems caused by this case."

120. The translation of the post in §5(f) of the defence translates the words complained of as:

> "But you broke your promise (It's another 'lying' from a person who's accused of 'lying' again…), without explaining anything about my post and you just mention about a 'Court case'…"
>
> "It was you who asked for no more posting for the sake of your own family, but now you even mentioned about my living status in UK. For me, it's only interpreted as a 'threat'. It's also be seen your attempt to stop other people to talk about this matter."
>
> "Also, two media who gave a right to this person who's fill out of lie should know that they can also take responsibility from this."

121. The translation of (iii) provided in evidence is the same, save for inconsequential differences, as above. The versions of (i) and (ii) provided in evidence read:

> "However, within just 3 days you broke your promise (a person was charge with lying has made another 'lie', it can be viewed as an act to buy himself some time) and without even being able to respond to my points in front of the fans you are now discussing 'legal action'. This is clearly an act from someone who has built many close relations after living for so long as a Korean in English society."
>
> "You asked me to refrain from making further speculations for the welfare of your family yet you are mentioning my (as well as my family's) ability to reside in the UK. To me this cannot be viewed as anything other than 'blackmail'. It is also viewed as an act to silence any further informers."

Publications (3) and (4): the parties' meanings

122. The Claimant contends the meanings are:

    i) The Claimant is an untrustworthy and dishonest individual who has repeatedly made false statements;

    ii) The Claimant is a brute who uses force to silence people who attempt to criticise him; and

    iii) The claimant is an individual, who through his dishonesty and deceit, causes chaos within the professional field of journalism and who is not fit to be a professional journalist.

123. The Defendant has denied that the meaning of (ii) is that the Claimant threatened violence or brute force against him or to silence other people. He has pleaded translations, but he has not otherwise pleaded the meanings of these words.

Publications (3) and (4): decision as to meaning

124. In my judgment, the meaning is:

> The Claimant is an unremitting liar. Having been accused of lying, and at a loss for a response, the Claimant lied yet again. The Claimant then threatened the Defendant regarding his and his family's immigration status, pressuring him and any further informers to cease raising concerns about the Claimant's behaviour. The companies for which he works need to act because he is not fit to be a journalist.

125. The meaning that I have found does not include any suggestion that the Claimant threatened violence or brute force. As the Claimant acknowledged in his Amended Reply, that is not the meaning of the post.

Publications (5) and (6): the words complained of

126. The words complained of, as pleaded by the Claimant, are (POC §8):

> (i) "If you truly have nothing to hide and are confident stop with the embarrassment of taking (uploading) a photo of a lawyer's business card and mentioning about my family's visa status whilst threatening me then amending it as soon as you think it could be a problem. (I already have a source. Don't do anything pointless)."
>
> (ii) "You don't want to hear criticisms from fans (therefore have done something embarrassing), then want to resolve the issue with lawyers you have connections with. (Is not having to pay a fee really something to brag about?)"
>
> (iii) "Now, I'll say it clear. The fact that his Instagram comments are inaccessible is, without my explanation being necessary, absolute evidence that he is without a clean conscience in front of South Korean football fans."

127. In respect of (i), the accuracy of the pleaded translation is admitted (defence, §37), but the accuracy of the translation of passages (ii) and (iii) is disputed (defence §§38 and 39). The translation given in the defence at §6(h) is:

> "I'm sorry that my writing is not in order because I'm on my way to get a plane. I'll just add one more important thing.
>
> Priest Kim (Daum columnist and Ilgan Sports reporter), If you're really proud and innocent, instead of posting your solicitor's name card and threaten my family's living status in UK and changed the part after realising it will become a problem (There are already witnesses, don't do meaningless things), if you're that confident open your Instagram comment area.
>
> You don't want to hear fans' criticism (which means there are shameful acts from you), and deal with this matter with solicitors you know with connection (is it a proud thing for you to say that you are not paying?)

> I'll say clearly here. If you keep close your comment section, it means without my explanation, it is the proof that you're not innocent in front of South Korean football fans."

128. The opening paragraph and the final line of the second paragraph are not part of the words complained of by the Claimant, but I have considered the whole post in the translation given in evidence. The words complained of, in the latter version, read:

> "Pastor Kim Sang Youl (Daum columnist, Ilgan sports correspondent)
>
> If you truly have nothing to hide and are confident, stop with the embarrassment of taking (uploading) a photo of a lawyer's business card and mentioning about my family's visa status to blackmail me then amending it as soon as you think it could be a problem. (I already have a source. Don't do anything pointless.)
>
> …
>
> You don't want to hear criticisms from fans (therefore have done something embarrassing), then want to resolve the issue with lawyers who you know due to your personal connections. (Is not having to pay a fee really something to brag about?)
>
> Now I'll say it clearly here. The fact that your Instagram comments are inaccessible is, without my explanation being necessary, absolute evidence that he is without a clean conscience in front of South Korean football fans."

Publications (5) and (6): the parties' meanings

129. The Claimant contends the meanings are (POC §8):

> (i) "The Defendant alleged that the Claimant had made threats against the Defendant and his family, the Defendant's family's visa status in particular. Such a statement shows the Claimant to be a threatening individual who is willing to blackmail others to avoid culpability. These continuing statements are particularly damaging due to the Claimant's role as a pastor. Stating that the Claimant has made threats against you is defamatory."
>
> (ii) "The Defendant stated that the Claimant has something to be embarrassed about, implying he has committed wrongdoings. Further, the Defendant stated that the Claimant would resolve this issue purely with the help of solicitors who he was closely acquainted with, which is false. This shows the Claimant as an individual who will avoid his personal culpability through using relationships with those in the legal profession to prove his innocence despite in actuality being guilty of such fraudulent actions."

> (iii) "The Defendant is taking the Claimant's silence to be an indication of the Claimant's guilt. The Claimant's stance was entirely different in wanting to distance himself from such negative attention. The statement that the Claimant does not have a clean conscience presents him to be guilty of the acts he was accused of by the Defendant. The Defendant is presenting the Claimant as an individual unrelenting in his refusal to admit his wrongdoings. Such a portrayal of the Claimant would lead readers to think that he lacks morals, a trait that is in direct contradiction with his profession as a pastor."

130. The Defendant denies that he accused the Claimant of blackmailing him or anyone else, but his position appears to be that the meaning is the Claimant threatened to harm his and his family's immigration status in the UK, as he reiterates that such a threat was made (defence, §37). He denies the meaning is that the Claimant had a "*close acquaintance*" with his solicitor or that he accused the Claimant of "*any fraudulent/criminal act*". The Defendant has pleaded (defence, §38) that he was "*stating that the Claimant has chosen to block people's comments on his posts and has instead taken to publicly stating that he is using a "famous solicitor" to bring a claim against the Defendant*". The Defendant denies he accused the Claimant of "*lacking morals*" (defence §39), contending that the meaning is that the Claimant's failure to allow people the right to comment, indicated that he was not prepared to set the record straight and face the criticism from people for that which he had publicly admitted.

Publications (5) and (6): decision as to meaning

131. The meaning of the post is:

> The Claimant knows he is guilty of reprehensible behaviour but he is seeking to avoid culpability by threatening the Defendant regarding his and his family's immigration status to pressure him to drop his accusations, by using his personal connections with lawyers, and by blocking the criticisms of football fans.

Publications (7) and (8)

132. At the hearing, Mr Roberts submitted that these publications do not add significantly to the earlier publications and so it was unnecessary to rely on them. I agree with Mr Roberts' assessment and so it is unnecessary to add to the length of this judgment by addressing publications (7) and (8).

J. DEFAMATORY AT COMMON LAW

133. At common law, a statement is defamatory of the claimant if, but only if (a) it imputes conduct which would tend to lower the claimant in the estimation of right-thinking people generally, and (b) the imputation substantially affects in an adverse manner the attitude of other people towards him, or has a tendency to do so: see *Lachaux* at [6]-[9], citing *Sim v Stretch* [1936] 2 All ER 1237, per Lord Atkin at 1240 and *Thornton v Telegraph Media Group Ltd* [2011] 1 WLR 1985, per Tugendhat J at [96]. This is, of course, now subject to s.1(1) of the Defamation Act 2013 (which I address below).

134. The defamatory nature of the words complained of is only put in issue by the defence to a very limited extent (at §§15, 19 and 38), and based on the translations and meanings pleaded in the defence. In my judgment, the answer to the question whether the meanings that I have found in §§117, 124 and 131 above are defamatory at common law is unarguably 'yes'.

K. THE DEFENCE OF TRUTH

135. Although the Defendant was debarred from defending, it is not disputed that the Claimant did not personally conduct the interview with Son Heung Min on 5 December 2018 which he published the following day, and so I have considered whether the Defendant has shown that "*the imputation conveyed by the statement complained of is substantially true*" (s.2(1) Defamation Act 2013).

136. I heard evidence from Mr Kim (the Claimant), and from Mr Gun Lee and Ms Youmie Hur. Mr Kim and Mr Lee gave evidence with the assistance of an interpreter, Ms Paek. A hearsay notice was served in respect of the witness statement of Youngsook Jung, the Claimant's wife, who was in hospital at the time of the hearing. I admitted her evidence. I found their evidence to be truthful.

137. Ms Hur has been a reporter for Sports Donga in the UK for the past seven years. She knows both the Claimant and the Defendant and explained that she has maintained good relationships with both men. Ms Hur's evidence was that she saw the Claimant at a match between Arsenal and Tottenham Hotspur on 2 December 2018. Son Heung Min is a well-known South Korean footballer who plays for Tottenham. He had scored 99 goals and his team were due to play against Southampton at Wembley Stadium three days later, on 5 December 2018.

138. The Claimant told Ms Hur that he was not going to be able to attend the match at Wembley and asked her, if anything important happened, if she would be able to send him photographs and a recording of the interview. Ms Hur said:

> "I said I'd help if something particular happened. In the event, Son Heung Min made his 100th goal, so I sent the Claimant the interview. He said he would publish his article after other news agencies had released their articles, and I recall him doing as such. I sent him the interview as it was not an exclusive interview, or an act made with personal gain in mind. I would never think that this could be wrongdoing, otherwise, I would never do it for the Claimant. It has never crossed my mind that this could be a serious issue to be raised."

139. Ms Hur's evidence corroborated that given by the Claimant who said that on 2 December 2018, at the Arsenal v Tottenham match, he was the only Korean reporter who was granted access to the mixed zone. He interviewed Son Heung Min one-on-one in the mixed zone, and took a photograph. Mr Gun Lee, Ms Youmie Hur and the Defendant tried on that occasion to get into the mixed zone to interview Son Heung Min but were unable to do so. The Claimant sent the other Korean reporters the recording of his interview as well as the photograph via text message. The Defendant wrote an article entitled "On-site interview" based on the recording that the Claimant had sent him.

140. The Claimant was due to be in Barcelona at the time of the match on 5 December 2018. As Son Heung Min had scored 99 goals, the Claimant anticipated that he might reach his 100th goal during the match at Wembley, and so he asked Ms Hur if she would be able to share her interview and photographs with him, and she agreed to do so.

141. This practice of sharing interviews was common among Korean sports journalists in Europe. The Defendant had received the benefit of it on 2 December 2018. The match on 5 December 2018 was the first time the Claimant received an interview recording from a fellow correspondent from a different news agency, but he had received interviews from colleagues working for the same company as his on two or three previous occasions.

142. On the evidence, although the interview which the Claimant published on 6 December 2018 was not undertaken by him, the Defendant has not established that the Claimant acted dishonestly in describing the interview as 'on-site' from Wembley. Nor is there any evidential support for the allegation that the article was permeated with lies.

143. Another of the Defendant's allegations is that the Claimant lied to an English football official about his relationship to a South Korean player. The Claimant has acknowledged that he used to call Yun Suk Young, who played for Queen's Park Rangers, 'nephew', and Ji So Yun, who plays for Chelsea, 'niece'. They are not blood relatives, but that is how he would refer to them in accordance with the Korean tradition. Ms Hur also gave evidence of this tradition, explaining that she refers to these same players as her 'brother' and 'sister', although they are not related, and young children at the church she attends, refer to her as 'aunty', and sometimes to these same players as 'aunty' or 'uncle'. The sting of the Defendant's allegation was that the Claimant acted dishonestly, which he has failed to establish.

144. It is unnecessary to address each of the Defendant's remaining accusations in detail. The defence of truth fails. The Defendant has not established that any of the meanings that I have found are substantially true. On the contrary, there is no evidence that the Claimant acted in the dishonest, unethical, corrupt and fraudulent way that he was accused by the Defendant of acting.

L. SERIOUS HARM

145. Section 1(1) of the Defamation Act 2013 provides: "*A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant*".

146. The Claimant gave evidence of the damage to his reputation as a pastor and as a columnist. The publications on two social media sites had "*spread very quickly*". The Claimant had not lost his role as a pastor because he has been supported by his deacon. But the publications had had a very serious impact on his reputation as a pastor. As a result, his church had received "*numerous complaints*" and he had lost the trust of "*so many people at the Church*". His work as a columnist was on a freelance basis for two companies. He had been dismissed by both companies because of the publications, and had not worked since, although both companies had indicated they would reconsider his position depending on the outcome of this defamation claim.

147. He and Ms Jung have also given evidence of the impact of the publications on them, and their daughter and son, as a family. Ms Jung described the deep emotional impact on all of them of her husband, and her children's father, being portrayed as a fraudster, liar and a dishonest man.

148. The accusations made by the Defendant against the Claimant were very serious and made more so by his positions as a pastor and a journalist. It is plain that the defamatory publications caused serious harm to the Claimant's reputation.

M. INJUNCTION

149. The Claimant has succeeded in establishing that the statements are defamatory. The defamatory statements have not been taken down. In these circumstances, the Claimant is entitled to an injunction preventing the Defendant from further publishing the statements complained of or any similar statement defamatory of the Claimant.

N. DAMAGES

150. As the Claimant has succeeded in his claim, he is also entitled to recover, as general damages, such sum as will (1) compensate him for the damage to his reputation, (2) compensate for the distress, hurt and humiliation that the defamatory publications have caused him, and (3) to vindicate the Claimant's good name in the eyes of those to whom the libel has been published.

151. I have borne in mind the legal principles as summarised by Warby J (as he then was) in *Sloutsker v Romanova* [2015] EWHC 2053 (QB), [2015] EMLR 27 at [74] to [82] and in *Barron v Vines* [2016] EWHC 1226 (QB) at [20] to [22].

152. The following factors are of particular relevance in this case:

    i) The gravity of the defamatory statements.

    ii) The publication of the defamatory statements on internet sites where they were widely viewed and shared, reaching the Claimant's friends, family, congregation and community in this jurisdiction.

    iii) The impact of the defamatory statements is more damaging because of the Claimant's roles in society. It is very damaging for a journalist to be accused of fabricating articles, lying and corruption in the way the Claimant was accused in the defamatory statements. It is yet more devastating for a church pastor to be accused in such terms. I accept the Claimant's evidence as to the impact of the defamatory statements on his mental health, causing him to become reclusive, and the effect on him of seeing his family suffer.

    iv) The defamatory statements purported to be from someone who was in a position to know the truth and whose statements were based on knowledge of even worse behaviour by the Claimant than he was divulging.

    v) It is important to ensure that the award compensates the Claimant only for the damage caused by the publications that are complained of in the action, that is the publications in this jurisdiction. Vindication is only relevant in so far as it is

required to clear the Claimant's name in the eyes of readers in this jurisdiction, not in South Korea or elsewhere.

vi) The Defendant has behaved in a way which has led the Claimant reasonably to believe that the Defendant acted maliciously, increasing the injury to his feelings. The Claimant's belief that the Defendant was motivated by malice was supported by the independent evidence of Ms Hur and Mr Gun Lee that they believed the defamatory statements were made with malicious intent.

vii) Any award needs to be no more than is justified by the legitimate aim of protecting reputation, necessary in a democratic society in pursuit of that aim and proportionate to that need.

153. Mr Roberts has drawn my attention to the awards given in *Flood v Times Newspapers Ltd* [2013] EWHC 4075 (QB), *Garcia v Associated Newspapers Ltd* [2014] EWHC 3137 (QB) and *Dhir v Saddler* [2017] EWHC 3155 (QB). I accept his submission that an appropriate award for general damages is £44,000 (which sum includes £4,000 aggravated damages).

154. The Claimant has submitted a schedule of loss in which he claims £31,250 loss of income as special damages. He has not made any claim for loss of church income. Nor has he made any claim for future loss of income. The sum claimed represents 25 months' loss of an average net monthly income of £1,050 from Daum Kakao Sports and £200 from Ilgan Sports.

155. I raised the issue of the extent to which the Claimant's income as a reporter might have been reduced, in any event, by the Covid-19 pandemic. Mr Roberts helpfully explored this issue with each of the witnesses. The Claimant did not believe there would have been any reduction due to the pandemic. Mr Lee's evidence was that his income had reduced by about 10% over the course of the 12 months or so of the pandemic. Ms Hur said that she was working on similar contracts to the Claimant. Ms Hur's evidence was that her income from covering EPL matches did not reduce. There was a period during last season when Premier League matches were suspended, but each of those matches was subsequently played (and so she was able to report on them), with the season ending later than usual. However, Ms Hur's income from covering the Champions League reduced by about £350-400 (representing the loss of articles in respect of about seven or eight matches). This was due to a reduction in the number of Champions League matches (due to fixtures that would normally be played both home and away being reduced to one match) and due to restrictions on travel abroad.

156. In my judgment, it is likely that there would have been some reduction in the Claimant's income due to the pandemic, but it is probable that his income would have reduced by a similar amount, and for the same reasons, as Ms Hur's income reduced. I therefore find that the Claimant's loss of income is £30,850, plus interest on special damages of 2.5% per annum from the mid point of the period of loss.

O. CONCLUSION

157. In summary, I find that:

i) The meanings of publications (1) and (2), (3) and (4), and (5) and (6) are, respectively, as stated in §§117, 124 and 131 above.

ii) Each of the meanings is defamatory (in accordance with common law and pursuant to s.1(1) of the Defamation Act 2013).

iii) The Defendant has failed to establish any defence.

iv) The Claimant is entitled to an injunction preventing the Defendant from further publishing the statements complained of or any similar statement defamatory of the Claimant.

v) The Claimant is entitled to general damages of £44,000 (including £4,000 aggravated damages), special damages of £30,850 and interest on the award of special damages.