



Neutral Citation Number: [2019] EWHC 3265 (QB)

Case No: QB-2018-000159

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/11/2019

Before :

THE HONOURABLE MRS JUSTICE STEYN DBE

Between :

Sarah James
- and -
Julian Saunders

Claimant

Defendant

William Bennett QC (instructed by **Pattinson & Brewer**) for the **Claimant**
Caroline Addy (instructed by **Shakespeare Martineau LLP**) for the **Defendant**

Hearing date: 19 November 2019

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MRS JUSTICE STEYN DBE

Mrs Justice Steyn :

A. Introduction

1. This claim for libel arises from the publication by the Defendant of one tweet and four blog posts during the period from January to August 2018.
2. The Claimant is employed by Sandwell Metropolitan Borough Council. She is also a Facility Representative, Branch Equality Officer and National Equality Women’s Lead for the GMB trade union and an active member of the Labour Party. The Defendant publishes a website known as “The Sandwell Skidder” (“the Website”).
3. This judgment addresses preliminary issues as to the meaning of the words complained of, whether those words are fact or opinion, whether the words are defamatory at common law and the Defendant’s application for permission to amend to plead defences of honest opinion and public interest.

B. The preliminary issues

4. On 3 May 2019 the Claimant applied for an order that:
 - “1. There be a trial of preliminary issues concerning: (1) the meaning of the words complained of pleaded at §§5, 8, 11, 13 and 15; (2) whether the Claimant is defamed by the relevant publications; and (3) whether an inference is to be drawn that the publications caused serious harm to the Claimant’s reputation.
 2. Trial of a preliminary issue concerning whether the Claimant published the publication referred to at §5 of the Particulars of Claim (alternatively the Claimant’s summary judgment application on that issue).
 3. Summary judgment/strike out in favour of the Claimant in regard to the truth, qualified privilege and honest opinion defences pleaded at paragraphs 7.2, 7.3, 7.4, 11, 12, 13, 18 and 19.”
5. Following a Costs and Case Management Conference, Master Davison made an order dated 3 July 2019 and, by consent, gave the following directions in a further order dated 4 July 2019:
 - “1. Further to the Claimant’s application notice of 3 May 2019, the following matters shall be adjudicated upon by a Judge of the Media and Communications List ...
 - a) The trial of the preliminary issues concerning the meaning of the words complained of pleaded at paragraphs 5, 8, 11, 13 and 15 of the Particulars of Claim and whether the Claimant has been defamed by those publications.

- b) The trial of the preliminary issue concerning whether the Defendant published the publication referred to at paragraph 5 of the Particulars of Claim.
- c) If the Judge in his discretion permits it, the trial of the preliminary issue as to whether an inference is to be drawn that the publications caused serious harm to the Claimant's reputation.
- d) The Claimant application for summary judgment in [her] favour in regard to whether the Defendant published the publication referred to at paragraph 5 of the Particulars of Claim (in the alternative for that matter to be tried as a preliminary issue).
- e) The Claimant's application for summary judgment in [her] favour and/or the striking out of the defences of truth, qualified privilege and honest opinion set out in paragraphs 7.2, 7.3, 7.4, 11, 12, 13, 18 and 19 of the Defence."
6. On 16 October 2019 the Defendant's solicitors sent a proposed Amended Defence ("the Amended Defence" or "AmD") to the Claimant's solicitors and indicated that the Defendant would make an application to amend at the preliminary issues hearing (which was listed for 5 November and subsequently adjourned to 19 November). The Defendant's application for permission to amend the Defence was filed on 22 October 2019.
7. In a letter dated 24 October 2019, the Claimant's solicitors set out the extent to which the Claimant opposed or consented to the Defendant's proposed amendments. The Claimant did not consent to the amendments in respect of (i) reverse innuendo; (ii) the defences of honest opinion; and (iii) the public interest defences. Nevertheless, the letter continued:
- "In reality, the test for allowing the amendments and striking out/granting summary judgment re the existing parts of the Defence to which objection is taken are the same. We therefore propose that the court proceeds by considering the case as set out in the Amended Defence. The Amended Defence will then, ultimately, consist of those parts not struck out in conjunction with those amendments which the court permits."
8. The Defendant agreed with this proposal regarding the procedure to be adopted. Accordingly, I have addressed the issues by reference to the Amended Defence.
9. Issues (b) and (d) (see paragraph 5 above) have fallen away as the Defendant admits that he published the words complained of in paragraph 5 of the Particulars of Claim: AmD §5.1.
10. Accordingly, it was common ground that I should determine as preliminary issues:

- i) The meanings of the words complained of in each of the publications which the Claimant contends are defamatory;
 - ii) Whether the words complained of are statements of opinion or of fact; and
 - iii) Whether the words complained of are defamatory at common law.
 - iv) Whether to refuse permission in respect of the amendments to the Amended Defence pleading defences of (a) honest opinion and (b) public interest, on the grounds that these defences have no real prospect of success.
11. The parties were in agreement that they could not usefully make submissions regarding the Defendant's defence of truth until the meanings have been determined and so I was asked not to consider the Claimant's application for summary judgment or strike out in respect of the defence of truth or the Defendant's application to amend insofar as the amendments address the defence of truth.
12. The parties disagreed as to whether I should make any determination regarding the issue of serious harm.
13. In a letter dated 4 October 2019, the Defendant's solicitors wrote:
- “...we believe that the first point that should be dealt with by the Court in any preliminary assessment ... logically has to be whether serious harm has been caused to your client's reputation. It seems sensible that that should be the starting point for any preliminary assessment because if no serious harm is found all other points become an irrelevance.”
14. The Claimant's solicitors responded by email on 10 October 2019:
- “We disagree that the issue as to whether serious harm was caused could be resolved at the forthcoming hearing. At the hearing before Master Davison your client did not apply for this issue to be determined. At present the issue concerning the serious harm test is dealt with at §1(c) of the Master's order: “If the judge in his discretion permits it, the trial of the preliminary issue as to whether an inference is to be drawn that the publications caused serious harm to the Claimant's reputation.” Save for “If the judge in his discretion permits”, this wording is taken from our application notice. However, it was issued prior to the Supreme Court's decision in *Lachaux v Independent Print Ltd* [link given] [2019] UKSC 27, which established that serious harm was to be tried on all of the evidence, not just whether a particular allegation could as a matter of inference be said to cause serious harm or not. In the circumstances, the final issue as to whether serious harm was caused would be best left to trial.”
15. The Claimant's solicitors reiterated in their letter of 24 October 2019:

“Serious harm to reputation

The application notice was drafted prior to the Supreme Court’s decision in *Lachaux v Independent Print Ltd* [2019] UKSC 27, [2019] 3 WLR 18. The application notice is dated 3 May 2019 whereas the judgment was handed down on 12 June 2019. The Supreme Court judgment requires a different approach to the issue of serious harm, it needs to be considered on all of the evidence, therefore it is an issue best left for trial.”

16. I heard argument at the outset of the hearing as to whether I should make any determination regarding the issue of serious harm. Mr Bennett QC, Counsel for the Claimant, maintained that s.1 of the Defamation Act 2013 should be considered by reference to the totality of evidence at trial, citing the approach I took in *Ager v Career Development Finance Ltd* [2019] EWHC 2830 (QB) at [10] to [12]. Miss Addy, Counsel for the Defendant, submitted that serious harm should be considered as a preliminary issue. In particular, she contended that the paucity of the pleaded case in respect of serious harm is such that I should strike out the Claimant’s Amended Particulars of Claim (“Particulars of Claim” or “PoC”).
17. I decided that I would not address serious harm as a preliminary issue in this case. Whether the statements caused or are likely to cause serious harm to the reputation of the Claimant depends on more than the inherent tendency of the words. There was no evidence before me addressing the issue and so I declined to hear it as a preliminary issue. The Defendant has not made any application to strike out any part of the Particulars of Claim, which he has had since November 2018. Although the Defendant had suggested in correspondence that serious harm should be considered as a preliminary issue, there was no response to explain why, following the Supreme Court’s judgment in *Lachaux*, that would be sensible, still less any warning that the Defendant would seek to strike out the Claimant’s pleading of serious harm pursuant to CPR 3.4(2)(a). In those circumstances, it would not have been fair to determine an application to strike out the Claimant’s pleaded case.

C. Meanings

Meaning: The Law

18. There was no disagreement between the parties as to the applicable principles regarding the determination of the natural and ordinary meanings of the words complained of. My attention was drawn to recent summaries of the principles in *Stocker v Stocker* [2019] UKSC 17, [2019] 2 WLR 1033, per Lord Kerr of Tonaghmore JSC at [33] to [40]; *Bukovsky v Crown Prosecution Service* [2017] EWCA Civ 1529, [2018] 4 WLR 13, at [11] to [16]; *Koutsogiannis v Random House Group Ltd* [2019] EWHC 48 (QB), per Nicklin J at [10] to [15]; and *Allen v Times Newspapers Ltd* [2019] EWHC 1235 (QB), per Warby J at [12]-18].
19. 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* at [33]-[34].

20. 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].
21. The key principles derived from the authorities were helpfully distilled and re-stated by Nicklin J in *Koutsogiannis* 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)."

22. 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*, per Warby J at [14].

23. Miss Addy emphasised the importance of the ninth principle in the context of the tweet and blog posts in issue in this case, which she described as "*informal, vernacular statements published in newsy snippets online*". In *Smith v ADVFN plc* [2008] EWHC 1797, Eady J likened posts on a bulletin board to a casual chat in a bar. In *Monroe v Hopkins* [2017] EWHC 433 (QB), [2017] 4 WLR 68, a case concerning statements made on Twitter, Warby J said at [35]:

"The most significant lessons to be drawn from the authorities as applied to a case of this kind seem to be the rather obvious ones, that this is a conversational medium, so it would be wrong to engage in elaborate analysis of a 140 character tweet; that an impressionistic approach is more fitting and appropriate to the medium; but that this impressionistic approach must take account of the whole tweet and the context in which the ordinary reasonable reader would read that tweet. That context includes (a) matters of ordinary general knowledge; and (b) matters that were put before that reader via Twitter."

24. The maximum length of a tweet has doubled since *Monroe* to 280 characters, but the character of the medium, and the approach to considering meaning, remains the same.

25. Words may be defamatory either in their natural and ordinary meaning or by way of innuendo, that is, because of some special knowledge possessed by some or all of those to whom the words were addressed. The same is true in reverse: special knowledge may cause words that are on their face defamatory to bear an innocent meaning.

26. *Duncan and Neill on Defamation*, 4th ed., explains in relation to “reverse innuendo” at §5.36:

“Occasionally, a statement which is on its face defamatory may be published to people who know of facts or circumstances which displace that apparent meaning in favour of one which is innocent (for example, a word normally derogatory may, to the knowledge of the publishees, be one which the defendant habitually uses as a term of affection). The defendant would succeed in such a contention – sometimes called a ‘defendant’s innuendo’ or ‘reverse innuendo’ – if he were able to prove that all of the publishees were aware of the extrinsic facts or circumstances which convert what would otherwise be a defamatory statement into one which is innocent. Further, if it could be shown that most (but not all) of the publishees knew the relevant extrinsic facts, the defendant might seek to argue that the publication of the statement to those who did not understand it in an entirely innocent sense had not caused, and was not likely to cause, any serious harm to the claimant’s reputation and, therefore, that it was not defamatory within the meaning of s 1 of the Defamation Act 2013.”

27. 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.”

28. That is the approach I have taken to this trial of meaning. I read all five publications and the blog posted on 20 December 2014 before turning to the parties’ skeleton arguments, pleadings or any other documents.

FIRST PUBLICATION: TWEET OF 24 JANUARY 2018

The words complained of

29. The tweet complained of was published on a Twitter account named “Ian Crow Multimedia @CrowMultimedia”. It states:

“It takes a lot to shock me but rumours that bullying @GMB_union nasty Sarah James being lined up by @UKLabour and Tom Watson for Telford constituency. This cannot be true surely? @Telfordlabour @lucyallan @Peoples Momentum”.

The parties’ meanings

30. The Claimant contends that in their natural and ordinary meaning the words complained of mean that “the Claimant is a bully” (PoC §7).

31. The meaning contended for by the Defendant is that “the Claimant had exhibited bullying behaviour towards him on a previous occasion” (AmD §7.2).

The parties’ submissions

32. The Claimant contends that the obvious meaning of the words “that bullying @GMB_union nasty Sarah James” is that she is a bully. The reference to “bullying” implies a character trait, reinforced by the word “nasty”; and that she has bullied on more than one occasion.
33. The Claimant submits that the Defendant has not pleaded a natural and ordinary meaning, only a reverse innuendo meaning. And in respect of that meaning the Defendant has not pleaded the extrinsic facts relied on, as required by Practice Direction 53A. The Claimant assumed that the incident of alleged bullying of the Defendant to which his pleaded meaning intended to refer related to a blog post entitled “Skidder Shorts No.22 – Hilarity at Oldbury Wetherspoons!”, published on 20 December 2014 (“the 2014 post”).
34. Therefore, on the Defendant’s case, the Claimant contends, there are two categories of readers namely, those who interpreted the publications merely from reading them and those who interpreted them with extrinsic knowledge derived from having read the 2014 post. The Claimant contends that the only relevant meaning in respect of the first group is the natural and ordinary meaning of the words complained of. In respect of the second group, the Claimant contends that there is no pleaded case as to why those who had read the 2014 post would remember it or, even if they did, be influenced by it to understand the Defendant’s words as meaning that on a single occasion four years earlier the Claimant had bullied him. The Claimant submits that I should reject the reverse innuendo meaning as even readers who had read the 2014 post would have understood the words complained of in their natural and ordinary meaning.
35. On behalf of the Defendant, Miss Addy submits that his blog deals with important local matters, often in a caustic tone. In a similar way to Private Eye giving nicknames to prominent individuals, such as calling Rupert Murdoch the “dirty digger”, the Defendant often gave those who were prominent in his blog nicknames, such as referring to one individual as “the Milkman”. His references to “bullying Sarah James” were in the same category. It was an epithet which readers of his tweets and blogs would have understood as referring to the 2014 post.
36. In his 2014 post the Defendant described going to a pub on 19 December 2014 in these terms:

“But what of Wetherspoons? My research complete for the day I ventured into the Oldbury outlet. My phone was virtually dead and it was far too busy to plug it in. And so I simply stood enjoying a pint and the general festive atmosphere. I was tapped on the shoulder by the manageress and asked if I would step out the back and I readily complied. She told me that she had received a “complaint” that I was taking photos inside and putting them on Twitter. If I did not desist I would have to

leave! I satisfied her that this was, in fact, untrue and she was happy to let me re-enter and, indeed, stay for a second beer.

I make no complaint whatsoever about the staff member who explained later that she had to act on a complaint and, it has to be said, she dealt with the whole thing most professionally. New readers might be wondering what this is all about but the irony of this is that the leader [sic] of Sandwell's Labour Council Darren "The Turdmeister" Cooper had ME covertly photographed in the very same pub and then put my photo on his Twitter account that night! You may wish to read the letter I sent to Ed Mili-bland and Tim Martin (the boss of Wetherspoons) which is set out in my blog of 12th November, 2014 ...

And so yet another dirty trick from Sandwell Labour fails spectacularly. There are now a whole series of Twitter accounts set up in variations of the "Vernon Grant" name and so I am going to be under sustained troll attack over the festive season (if Tweets look "odd" they probably are. The police are fully aware of the harassment). What other stunts will Cooper and the Comrades pull next? (Incidentally, I could not see Unite's local Regional Officer in the pub but Rickers is fond of making complaints about mythical photographers. Looks like someone has picked up where he left off)."

37. Interposed at this point of the 2014 post, after it was originally written, are the following words:

"ADDENDUM 20/12/14: The following tweets have been brought to my attention posted by one **Sarah James of Wednesbury** who is the **Senior Rep/Equality Officer for the GMB trade union "Sandwell Community Branch" based at Smethwick Council House** and who apparently **campaigns against domestic violence (!)**:

19/12 "Lovely post-work drinks to celebrate the holidays (at Wetherspoons) Oldbury who needs to have alcohol to have fun, #Designated driver"

19/12 "Even if someone was trying to take pics of me and my colleagues, to be used for no good no doubt lol. Merry xmas ya filthy animal"

Now look at the people Ms James then contacts to make sure they read the tweets:

19/12 "See my previous tweet @brianrickers1 lol"

19/12 "See my previous tweet @sandwellleader lol"

This is what the White Ribbon Campaign, which this woman purports to support, says as its “headline”:

“Even when it isn’t physical, abuse is abuse. Find out more about psychological abuse.....

“Lol” – as some might say!

Further addendum 20/12/14: Mrs James, as she wants to be called, has contacted me and the story seems to be changing. Although she supports the White Ribbon campaign it is apparently OK to try and have me thrown out of a pub and then call me a “filthy animal” on Twitter. The latest version of events is that she didn’t witness the non-existent photography herself but was “told about it by a stranger”. This was apparently enough for her or one of her group to complain about me and to publicly abuse me whilst seeking the approbation of Cllr Cooper and Unite’s Rickers. Very charitable indeed!” (Original emphasis.)

38. The Defendant submits that although he did not use the term bullying in the 2014 post, that is an accurate précis of abuse, stunts and tricks by Mr Cooper and his “Comrades”, including the Claimant, to which the Defendant had referred.
39. On instructions, Miss Addy stated that the 2014 post had been mentioned in posts in March 2015, July 2015 and October 2017, so it had not dropped out of sight since it was published in December 2014.

Decision

40. Applying the principles to which I have referred, the clear and obvious natural and ordinary meaning of the words complained of is (as submitted by the Claimant): The Claimant is a bully.
41. Although not expressly pleaded as a reverse innuendo meaning, the Defendant’s meaning is patently not a natural and ordinary meaning of the words: it depends on extrinsic knowledge. In my judgment, the words complained of do not bear the meaning pleaded by the Defendant. There is no reason why those who read the tweet, even if they had read the 2014 post, would have understood the tweet to be referring back to that single incident and alleging that the Claimant had bullied the Defendant on that one occasion.
42. First, to make such a connection, readers would have had to have remembered the 2014 post. No reason why readers would have recalled a chatty and informal post about a minor incident in a pub more than three years later has been pleaded. Secondly, any readers who remembered the 2014 post would have had to have connected what had been said about the Claimant in that post to the tweet. The 2014 post did not allege, in terms, that the Claimant bullied the Defendant. While such an allegation may be said to be implicit in the addenda, the fact that no such allegation is made expressly renders the prospect of readers making a connection between the tweet and the 2014 post even more remote. Thirdly, in any event, even if readers

remembered and connected the 2014 post as an occasion on which the Claimant had bullied the Defendant, there is no reason why they would have read the reference to the bullying, nasty Claimant as limiting the allegation to that single occasion.

SECOND PUBLICATION: BLOG POST OF 1 FEBRUARY 2018

The words complained of

43. The second publication is a blog post published on 1 February 2018. The headline is “Corbyn’s Evil Wench – Sarah James”. The post is 13 paragraphs long, with four photographs/pictures interspersed within it. I have had regard to the whole post, but the words particularly complained of are these:

“[1] Sarah James claims to be against bullying – at least if women are the victims. She and husband Darren are officers of the GMB Trade Union. Darren used to work for Sandwell Leisure Trust (SLT). They are both on a very good screw financially thanks to the dues of hard-working Union members and yet it is said that Labour Sandwell Council mysteriously gave then a council house thanks to the direct intervention of Councillor X (a very close associate of Tom Watson MP.) Certainly SMBC are shown as the owner of the house at HM Land Registry! Hope with all their money they weren’t on the waiting list too long!

...

[12] Incredibly, Tom Watson and the GMB are pushing to find her a parliamentary seat! Marginal Telford has been mentioned even though local Labour figures describe her as utterly talentless!

[13] But Sarah is a nasty piece of work as regular readers of this blog will know. If Labour want yet another vicious bully she fits the bill perfectly (and she can’t even lie convincingly – a downside for a would-be MP.) You can see that from my earlier post:

[Link to the 2014 post].”

The parties’ meanings

44. The Claimant contends that in their natural and ordinary meaning the words complained of mean that:

“the Claimant is a vicious bully who corruptly obtained a council house by exploiting her political connections” (PoC §10).

45. The Defendant contends that

“the natural and ordinary meaning of the said words is that the Claimant:

- i. had exhibited bullying behaviour towards the Defendant on a previous occasion; and
- ii. there were grounds to investigate whether the Claimant, with her husband, had sought to obtain or had obtained a council tenancy to which she were [sic] not entitled, including by prevailing upon councillors and/or council staff to favour their application or by benefitting from such interventions.” (AmD §10)

The parties’ submissions

46. Mr Bennett submitted that the allegation of being a bully and the council house allegation reinforce each other and should be read together, whereas Miss Addy contended that they are two distinct allegations.
47. In general terms, I have addressed the submissions made in respect of the bullying allegation in the context of the first publication. However, the context in which bullying is referred to in the second publication is different to the first.
48. Mr Bennett drew particular attention to the fact that the publication describes the Claimant as a “vicious bully”; and this description is given in the context of an article with headline describing the Claimant, by name, as “Corbyn’s Evil Wench”, as well as within a paragraph describing her as a “nasty piece of work”. In addition, the first paragraph of the article suggests that the Claimant is only against the bullying of women, not men.
49. In relation to the headline, he relied on the guidance of the House of Lords in *Charleston v News Group Newspapers Ltd* [1995] 2 AC 65, in which Lord Bridge observed at 72:

“Whether the text of a newspaper article will, in any particular case, be sufficient to neutralise the defamatory implication of a prominent headline will sometimes be a nicely balanced question for the jury to decide and will depend not only on the nature of the libel which the headline conveys and the language of the text which is relied on to neutralise it but also on the manner in which the whole of the relevant material is set out and presented.”

50. As Lord Nicholls put it at 74C-D:

“Those who print defamatory headlines are playing with fire. The ordinary reader might not be expected to notice curative words tucked away further down in the article”

51. In relation to the council house allegation, in support of the pleaded meaning, the Claimant relied on:

- i) the statement that the Claimant and her husband are financially well-off (“both on a very good screw financially” and the reference to “with all their money”), carrying the implication that they do not qualify for a council house;
 - ii) the sarcasm in the Defendant’s use of the word “mysteriously” and in his hope they weren’t on the waiting list too long;
 - iii) the description of the councillor who is alleged to have made a “direct intervention” resulting in their obtaining a council house as being a “very close associate of Tom Watson MP”, who is described in the same article as “the bully-boy-to-beat-them-all” and as the Claimant’s sponsor, pushing to find her a parliamentary seat;
 - iv) The description of the Claimant’s husband as a “big cheese in the Labour Campaign Forum with the power to select and deselect candidates” and the reference to the “local GMB (i.e. the James’s)”, suggesting they are powerful;
 - v) The description of the Claimant as “evil” in the headline;
 - vi) The statement “What a bunch of f***** c****!”, referring to the Claimant and her husband; and
 - vii) The description of the Claimant as a “nasty piece of work” and a “vicious bully”.
52. In support of the Claimant’s contention that the meaning is at *Chase* level 1 (i.e. an allegation that she is guilty of the act), Mr Bennett referred me to the judgment of Nicklin J in *Poroshenko v British Broadcasting Corporation* [2019] EWHC 213 (QB). Nicklin J observed at [26]:
- “Publications that result in a meaning at *Chase* level 2 or 3, tend to flag clearly to viewers/readers that there are reasons why they should be cautious before accepting allegations made by others, perhaps for motives of their own, for example.”
53. In finding that the meaning was at *Chase* level 1, Nicklin J continued at [28]:
- “The presentation of the evidence is entirely one-sided. There is no evidence presented to the viewer that s/he might regard as providing reason to doubt the allegations being made.”
54. Mr Bennett submitted that, here too, the allegation regarding the way in which the Claimant and her husband had obtained a council house was one-sided. There was no antidote to lessen the implication that the Claimant was guilty of improperly obtaining a council house through political connections.
55. In relation to the bullying allegation, Miss Addy relied strongly on the express link to the 2014 post, and the words “you can see that from my earlier post”, in support of the Defendant’s meaning.
56. In relation to the council house allegation, Miss Addy submitted that nowhere does the Defendant endorse and adopt the allegation as true. She submitted that the words

“it is said that” convey a lack of certainty which reduces the *Chase* level. The Defendant’s words suggested that it was strange and mysterious, not corrupt. Miss Addy denied that the article suggests that the Claimant and her husband are powerful. She also submitted that it is relevant that the allegations which the Defendant repeated were widespread in the Claimant’s own party and so were what she described as “friendly fire”.

Decision

57. In my judgment, the meanings of the second publication are:
- i) The Claimant is a vicious bully.
 - ii) The Claimant corruptly obtained a council house by exploiting her political connections.
58. Although the bullying and council house allegations are intertwined to a degree, both supporting the Defendant’s description of the Claimant as a “nasty piece of work”, I accept Miss Addy’s submission that they are discrete and address different aspects of the Claimant’s reputation. Save to the extent that I have separated the Claimant’s meaning into two, I consider that the natural and ordinary meaning is as pleaded by the Claimant.
59. In relation to bullying, the ordinary and natural meaning I have found reflects the words used. Although the second publication includes a link to the 2014 post with a suggestion that what is said in the final paragraph of the second publication “can be seen” from what was written in the 2014 post, it is not realistic to suggest the words complained of would be read, even by those who followed the link or recalled the 2014 post, as meaning only that the Claimant had bullied the Defendant on one previous occasion more than three years earlier.
60. The words “vicious bully” suggest a character trait and that the Claimant has engaged in particularly nasty bullying on more than one occasion. The implication from those words is reinforced by their occurrence in an article with a headline describing the Claimant as an “evil wench” and in a paragraph describing her as “a nasty piece of work”. Those descriptions are general and wholly at odds with the Defendant’s claim that his allegation was limited to one incident more than three years earlier.
61. In respect of the council house allegation, there was disagreement between the parties regarding the *Chase* levels of meaning. As Warby J explained in *Allen* at [17]-[18]:

“17. Defamation lawyers often talk of “Chase” levels of meaning ... This is a convenient shorthand way of referring to different levels of gravity, which derives from the judgment of Brooke LJ in *Chase v News Group Newspapers Ltd* [2003] EMLR 11 [45]. Brooke LJ identified three types of defamatory allegations, broadly, (1) the claimant is guilty of the act; (2) there are reasonable grounds to suspect that the claimant is guilty of the act; and (3) grounds to investigate whether the claimant committed the act.”

18. It is important to recall, however, that not every published statement conveys a meaning at one or other of the “Chase” levels. “Reflecting the almost infinite capacity for subtle differences in meaning, they are not a straitjacket forcing the court to select one of these prescribed levels of meaning...”: *Brown v Bower* [2017] EWHC 2637 (QB) [2017] 4 WLR 197 [17] (Nicklin J). As ever, all depends on the context.”

62. The repetition rule reflects the legal policy that repeating a defamatory statement made by someone else is as bad as making the statement directly; a defendant cannot evade liability by proving that a rumour he has repeated in fact existed. The Defendant seeks to evade the effect of the repetition rule by relying on the fact that he was repeating what others had said to lessen the defamatory statement to *Chase* level 3.
63. I accept the Claimant’s submission that the natural and ordinary meaning is that the Claimant is guilty of the act alleged. The account is one-sided. The clear implication is that the Claimant and her husband are too well-off to be entitled to a council house. A clear statement is made that there was a direct intervention by a councillor which secured the property for the Claimant and her husband. The Defendant was using the word “mysteriously” sarcastically, and the hope that “with all their money” they had not been on the waiting list too long was also sarcastic. The Defendant gives his readers no reasons to question or be cautious about accepting the allegation he reports. It does not seem to me that the fact that the allegation was made by members of the Claimant’s party rather than a different party has any effect on the meaning.

THIRD PUBLICATION: BLOG POST OF 18 MARCH 2018

The words complained of

64. The third publication is a blog post bearing the headline “Sadders Odds and Sods”, dated 18 March 2018. The words complained of appear at the end of paragraph 5 and read:

“(I remain very interested in the alleged actions by Watson to further the career of the bullying Ms Sarah James – see posts passim.)”

The parties’ meanings

65. The Claimant contends that in their natural and ordinary meaning the words complained of meant that “the Claimant is a bully” (PoC §12).
66. The Defendant avers that the imputation conveyed by the statement complained of is that the Claimant had exhibited bullying behaviour towards him on a previous occasion (AmD §17).

The parties’ submissions

67. I have addressed the parties’ submissions in respect of the bullying allegation above. In relation to this particular post, Miss Addy relied upon the reference to “posts

passim” as indicative of the fact that the Defendant’s readers were familiar with his previous posts, and that in applying the adjective “bullying” to describe the Claimant he was referring back to his 2014 post. She also relied on this as an example of the Defendant using this description as a nickname.

Decision

68. The words complained of mean: The Claimant is a bully.
69. I have explained my reasons for rejecting the Defendant’s meaning in respect of the first and second publications. In the context of the third publication, the description is, again, general. Like the tweet, this post contains no reference or link to the 2014 post. The reference back to unidentified, plural “posts passim” would not suggest to the ordinary reader that the Defendant is alleging only that the Claimant bullied him on one occasion more than three years earlier.

FOURTH PUBLICATION: BLOG POST OF 23 MAY 2018

The words complained of

70. The fourth publication is a blog post entitled “Hackett’s Army Gets the Shaft” published on 23 May 2018. The words complained of read:

“I have blogged about Darren and Sarah James* - well paid GMB officials who were mysteriously given a Sandwell council house allegedly thanks to the direct intervention of one of Tom Watson’s pet Councillors. The bullying Ms James, a woman who was obsessed with the soft porn sado masochistic novels of E. L. James, has caught the eye of two of Labour’s most notorious shaggers (no, not you Dave) Corbyn and the aforementioned Watson.

* [Link to the second publication]”

The parties’ meanings

71. The Claimant contends that in their natural and ordinary meaning the words complained of mean that “the Claimant is a bully who corruptly obtained a council house by exploiting her political connections” (PoC §14).
72. As in respect of the second publication, the Defendant contends

“the natural and ordinary meaning of the said words is that the Claimant:

- i. had exhibited bullying behaviour towards the Defendant on a previous occasion; and
- ii. there were grounds to investigate whether the Claimant, with her husband, had sought to obtain or had obtained a council tenancy to which she were [sic] not entitled, including by prevailing upon councillors and/or council staff to favour their

application or by benefitting from such interventions.” (AmD §22.1)

The parties’ submissions

73. The submissions in respect of the fourth publication were essentially the same as those which I have addressed above. In respect of the bullying allegation, the Defendant relied on the fact that the post included a link to the second publication, which itself included a link to the 2014 post and submitted that this was an example of the name being used as an epithet or nickname.
74. In respect of the council house allegation, the Claimant submitted that the same elements are present as in the second publication: the Claimant and her husband are described as “well paid”, with the implication that they are too well off to be entitled to a council house; “direct intervention” to secure the house is again stated; the intervention is said to be by a “pet” Councillor of Tom Watson, whose eye the Claimant is alleged to have caught.
75. The Defendant’s submissions were to the same effect as in relation to the second publication.

Decision

76. In my judgment, the meanings of the fourth publication are:
- i) The Claimant is a bully.
 - ii) The Claimant corruptly obtained a council house by exploiting her political connections.
77. I have explained my reasons in the context of the similar statements addressed above. I only add that the use of the word “allegedly” in respect of the council house allegation does not lessen the sting of the statement.

FIFTH PUBLICATION: BLOG POST OF 7 AUGUST 2018

The words complained of

78. The fifth publication bears the headline “Racist GMB Man Finally Goes!”, was published on 7 August 2018, and begins:

“I wrote about Steve Dowson on 22nd March, 2018 and told the tale how, in 2015 (yes 2015!) he had racially abused a co-worker in front of an independent witness. In the real world he would have ... faced immediate disciplinary action but he was “one of the boys” in Jan Britton’s bent paid service and was duly protected.

Just three days ago I blogged about Jan Britton’s close association with Unison’s main man in the corrupt Labour Council, Tony Barnsley, and we all know now about how the GMB have sold out their members in the benighted Council.

(There is, of course, no connection between this and the GMB’s Darren and Sarah James being given a council house – alleged via the influence of a Labour councillor close to Tom Watson MP.)”

79. The words complained of are those in the second paragraph above.

The parties’ meanings

80. The Claimant contends that in their natural and ordinary meaning the words complained of meant that “the Claimant corruptly obtained a council house by exploiting her political connections” (PoC §16).

81. The Claimant had originally pleaded a *Chase* level 2 meaning, that is, that the words meant “it is reasonably suspected that ...” However, the Claimant made an application to amend the Particulars of Claim to plead the meaning now relied on. The application was filed on 12 November 2019. The Defendant did not object and I granted permission to amend at the outset of the hearing.

82. The Defendant again contended that the natural and ordinary meaning is that there were grounds to investigate whether the Claimant, with her husband, had sought to obtain or had obtained a council tenancy to which she was (or they were) not entitled, including by prevailing upon councillors and/or council staff to favour their application or by benefitting from such interventions. (AmD §25.1)

83. I have set out the parties’ submissions in respect of the council house allegation above.

Decision

84. In my judgment, the words bear the meaning pleaded by the Claimant, that is, “The Claimant corruptly obtained a council house by exploiting her political connections”.

85. This publication is rather less explicit than the second and fourth publications, referring to “influence” rather than “direct intervention” and making no mention of the Claimant and her husband being well paid or well-off. Nevertheless, in the same paragraph the Defendant makes allegations of corruption on the part of the Labour Council and accuses the GMB of having “sold out” their members. The statement that there is of course no connection between the GMB selling out its members to the Council and the Claimant and her husband being given a council house is obviously sarcastic.

D. Fact or Opinion

Fact or opinion: The Law

86. Section 3 of the Defamation Act 2013 provides a defence to an action for defamation of honest opinion. One of the conditions that must be met for the defence to apply is that “the statement complained of was a statement of opinion”: s.3(2). Accordingly, the question whether the words complained of are statements of opinion arises.

87. There was no dispute between the parties regarding the applicable principles. These were helpfully distilled by Nicklin J in *Koutsogiannis* at [16]:

“...when determining whether the words complained of contain allegations of fact or opinion, the Court will be guided by the following points:

i) The statement must be recognisable as comment, as distinct from an imputation of fact.

ii) Opinion is something which is or can reasonably be inferred to be a deduction, conclusion, criticism, remark, observation, etc.

iii) The ultimate question is how the word would strike the ordinary reasonable reader. The subject matter and context of the words may be an important indicator of whether they are fact or opinion.

iv) Some statements which are, by their nature and appearance opinion, are nevertheless treated as statements of fact where, for instance, the opinion implies that a claimant has done something but does not indicate what that something is, i.e. the statement is a bare comment.

v) Whether an allegation that someone has acted “dishonestly” or “criminally” is an allegation of fact or expression of opinion will very much depend upon context. There is no fixed rule that a statement that someone has been dishonest must be treated as an allegation of fact.”

Decision

88. In my judgment, each of the meanings that I have found constitutes a statement of fact, not opinion. The statement that the Claimant corruptly obtained a council house by exploiting her political connections is obviously a statement of fact. The statements that the Claimant “is a bully” or “is a vicious bully” are bare comments as described in *Koutsogiannis* at [16(iv)].
89. The Defendant’s contention that the meanings for which he contended constitute statements of opinion falls away because I have rejected the meanings he put forward.

E. Defamatory at common law

90. 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 provides: “A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant”.

91. The only question for determination at this stage is whether each of the meanings I have found is defamatory at common law. The Defendant accepted that the council house allegation is defamatory at common law, and so is describing someone as a “vicious bully”.
92. Miss Addy contended that merely calling the Claimant a bully does not meet the test because the allegation has to be seen in context as the Defendant referring back to the incident in December 2014, rather than inviting people to believe that the Claimant habitually bullies people. However, the meaning that I have found – that the Claimant is a bully rather than that she had bullied the Defendant on one previous occasion – does invite people to believe that she habitually bullies people. It is clear that it, too, is defamatory at common law.

F. Defence of honest opinion

93. It follows from my conclusion that the words complained of were each statements of fact, not opinion, that the statutory defence of honest opinion pleaded at paragraphs 7A, 12, 18A, 22A and 25A cannot succeed: see s.3(2) of the Defamation Act 2013. Accordingly, I refuse permission to plead that defence.
94. It is unnecessary to consider the Claimant’s alternative submission that the defence of honest opinion was insufficiently pleaded.

G. Defence of public interest

The law

95. Section 4(1) of the Defamation Act 2013 provides:

“It is a defence to an action for defamation for the defendant to show that –

 - (a) the statement complained of was, or formed part of, a statement on a matter of public interest: and
 - (b) the defendant reasonably believed that publishing the statement complained of was in the public interest.”
96. In considering both elements referred to in subsection (1), the court must have regard to all the circumstances of the case: see s.4(2) of the Defamation Act 2013.
97. Practice Direction 53 stipulates at paragraph 4.5 of Schedule 3:

“Where a defendant alleges that the statement complained of was, or formed part of, a statement on a matter of public interest under section 4 of the Defamation Act 2013, they must –

- (1) specify the matter of public interest relied upon; and
- (2) give details of all matters relied on in support of any case that they reasonably believed that publishing the statement was in the public interest.”

The parties' submissions

98. The Claimant accepts in relation to both the bullying and council house allegations that the Defendant's pleading sufficiently specifies the matter of public interest relied upon as required by para 4.5(1) of Sch.3 to PD53. However, Mr Bennett contended, in respect of both allegations, that the Defendant had failed to comply with para 4.5(2).

99. Mr Bennett submitted, relying on *Serafin v Malkiewicz* [2019] EWCA Civ 852, [2019] EMLR 21, that although 'Reynolds privilege' has been replaced by the s.4 'public interest' defence, "the two tests are not materially different" (*Serafin* at [41]) and the *Reynolds* checklist for use when determining whether the defendant reasonably believed that publishing the statement complained of was in the public interest remains relevant (*Serafin* at [36]). He emphasised the fourth item in Lord Nicholls' checklist: "The steps taken to verify the information".

100. In *Serafin* the Court of Appeal held:

“47. When determining the issue whether defamatory material is published in the “public interest” under s.4, the public interest in publication is to be balanced with the fact that an individual's Article 8 right to reputation will be breached by the publication of unproven allegations without a remedy. ... The s.4 defence needs to be confined to the circumstances necessary to protect art.10 rights.

48. When considering whether or not an article is in the public interest, the Court needs to consider not merely the bare subject-matter, but also the context, timing, tone, seriousness and all other relevant factors. In this respect, Lord Nicholls' check-list in the *Reynolds* case remains relevant not only to the issue of whether the journalist acted responsibly, but also the issue of the existence of public interest in the article.” (original emphasis)

101. Mr Bennett submitted that the Amended Defence fails to plead any steps taken to verify the information before it was published. The way the public interest defence has been pleaded, at paragraphs 7B, 13, 19, 22B and 25B of the Amended Defence, is to repeat the particulars of truth. He relied on *Doyle v Smith* [2018] EWHC 2935 (QB), [2019] EMLR 15 as demonstrating that mere repetition of particulars of truth is insufficient.

102. In *Doyle* Warby J said:

“75. This seems to me to be an important point of distinction between the public interest defence and the defence of truth. A

defendant who asserts the truth of what was published is not restricted to pleading or proving facts that were reported in the words complained of. Any fact may in principle be established in evidence, if it is capable of contributing to proof of the truth of the defamatory imputation conveyed by those words. Reliance may be placed on facts that were unknown at the time of publication, and even facts which post-date publication. The reason is that the defence is concerned with the truth or otherwise of a defamatory meaning or imputation conveyed by the published words. The defence of truth is made out by proof "that the imputation conveyed by the statement complained of is substantially true": Defamation Act 2013 s.2(1). By contrast, the public interest defence is not assessed by reference to a meaning or imputation. It is concerned with protection, on public interest grounds, for the publication of "the statement complained of". A key criterion is the defendant's state of mind about that "statement" at the time of publication. This has always been true of the common law defence of qualified privilege, including the *Reynolds* defence which was the predecessor of s.4.

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

103. Mr Bennett submitted that the bullying allegation was nothing more than a personal attack on the Claimant. The Amended Defence seeks to support the public interest in publishing the 2014 post which bears no relationship to the words complained of.
104. The council house allegation amounts to nothing more than repeating rumours. It is not sufficient for the Defendant to suggest these matters merited thorough investigation. He can only rely on the public interest defence if he can show he made proper investigations. Mr Bennett submitted that the public interest defence as pleaded does not pass the test for avoiding strike out or summary judgment and so I should refuse permission for it to be added to the Defence.
105. For the Defendant, Miss Addy submitted that the political context in this case is very different to that in *Serafin*. In relation to the bullying allegation, she contended that the need to investigate cannot be a substantial factor where the Defendant relies on a first-person report.
106. In relation to the council house allegation, Miss Addy submitted that even if the current pleading of the public interest defence is insufficient, it would be unjust to preclude the Defendant from pleading the defence in circumstances where he has been forthcoming about his state of knowledge by serving witness statements.
107. The Defendant's second affirmation dated 10 June 2019 states that on 2 October 2017 he had a meeting with a "third party" and "three labour councillors". He has exhibited

part of his notes from that meeting which include a note of the Claimant's husband's name, together with the words "got a council house" and "Watson supporters". The Defendant's second affirmation states that between 2 October 2017 and 4 December 2017 he had a conversation with an anonymous source who "also made the allegation about the Claimant and her husband allegedly getting help to find a council house". The note of the conversation refers to Mr Watson and then records "V close SJ & DJ. CH even though both earn at SMBC". He states that he was inclined to heed what the anonymous source told him because he had checked out other matters that the source had told him and found them to be true. The Defendant states that as he had another source for the council house allegation, he undertook a Land Registry search on 14 December 2017 and established that the Claimant's house was a council property.

108. In relation to the house allegation, Miss Addy also referred to witness statements made by two Councillors of Sandwell Metropolitan Council, Ian Jones and Mahboob Hussain, as well as a statement made by a Regional Organiser for Unite, Brian Rickers. However, she acknowledged that these statements do not address the meetings referred to by the Defendant or his state of knowledge or belief at the time.

Decision

109. In relation to the allegation that the Claimant is a bully/vicious bully, the Defendant has pleaded the single incident in December 2014 referred to in his 2014 post. In relation to that specific incident, I accept Miss Addy's submission that it cannot be said the Defendant has failed to investigate given that he is relying on his own report of what he says happened to himself.
110. Nevertheless, there is no pleading that the Defendant believed at the time of the relevant publications that the Claimant was a bully, or a vicious bully, or that he had taken reasonable steps to verify his allegations. On the contrary, the Defendant claims that he was not inviting people to believe that the Claimant habitually bullies people, only that she had bullied him on one occasion. The public interest defence in respect of the bullying allegation has not been adequately pleaded. It has no real prospect of success and so I refuse permission to make the amendment sought.
111. As regards the council house, the Defendant has not pleaded the steps he took before publishing the words complained of to verify the allegation that the Claimant acted corruptly in obtaining a council house by exploiting her political connections. As it stands, the pleading is manifestly deficient and the public interest defence has no real prospect of success.
112. This is an application for permission to amend and so, in refusing permission, the Defendant is not necessarily shut out from re-amending to plead the defence of public interest properly in respect of the council house allegation.
113. However, I observe that transposing what is said in the witness statements to which Miss Addy referred me into a pleading would not suffice. Those statements do not specify what the Defendant was told at the meeting with Councillors and a third party on 2 October 2017, other than that the Claimant and her husband had obtained a council house and were supporters of Mr Watson. Equally, no details are given as to what the anonymous source said, other than that he "made the allegation" about them "getting help to find a council house".

114. Mr Jones' statement says that he "had heard the allegation that the James's may have been "helped" to obtain a council property but knew no concrete details at that stage". Mr Rickers describes being "aware of plenty of gossip about this" and a "prevalent rumour that a council house could be obtained by payment of "a monkey" to certain councillors. If the Defendant was merely informed of such gossip and rumours and took no steps to verify the allegation beyond checking that the property in which the Claimant and her husband were living was owned by the council, the defence of public interest would have no real prospect of success.

H. Conclusion

115. For the reasons that I have given:
- i) The meanings of the publications are:
 - a) The Claimant is a bully: first, third and fourth publications;
 - b) The Claimant is a vicious bully: second publication;
 - c) The Claimant corruptly obtained a council house by exploiting her political connections: second, fourth and fifth publications;
 - ii) These are statements of fact;
 - iii) The words complained of are defamatory at common law; and
 - iv) I refuse permission to amend the defence to add the defences of honest opinion and public interest.