



Neutral Citation Number: [2020] EWHC 1778 (QB)

Case No: QB-2018-006666

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/07/2020

Before :

MR JUSTICE SAINI

Between :

WILLIAM ALEXANDER SPICER
- and -
THE COMMISSIONER OF POLICE OF THE
METROPOLIS

Claimant

Defendant

Robert Sterling (instructed by **Carruthers Law**) for the **Claimant**
Gervase de Wilde (instructed by **Legal Services for the Metropolitan Police**) for the
Defendant

Hearing dates: 26th June 2020

Approved Judgment

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Baillii. The date and time for hand-down is deemed to be 10.30am on Monday 6 July 2020.

MR JUSTICE SAINI :

This judgment is in 7 parts as follows:

- I. Overview - paras. [1-6]
- II. The Pleadings- paras. [7-10]
- III. Abuse of Process: principles- paras. [11-31]
- IV. The Abuse of Process Application: arguments and analysis- paras. [32-50]
- V. The Defamation and the Free Speech Context- paras. [51-65]
- VI. The Pleading Application- paras. [66-85]
- VII. Conclusion- para. [86]

I. Overview

1. This is my judgment in respect of two applications made in proceedings for defamation brought by the Claimant (“Mr. Spicer”) against the Defendant, the Commissioner for Police of the Metropolis (“the Commissioner”). In broad terms, the first application raises the issue as to whether it is an abuse of process for a defendant advance a defence of truth when the claimant argues that this defence is in substance a form of collateral attack on the result of earlier criminal proceedings, in which the claimant was acquitted. The second application concerns claimed deficiencies in the Reply served on Mr. Spicer’s behalf. Complaint is made about the failure of Mr. Spicer in his Reply to address (beyond bare denials) the facts and matters pleaded in the Commissioner’s Defence (on the issues of truth and privilege). The applications were heard by way of a SKYPE hearing.
2. The proceedings arise out of an article headed “*Two guilty of killing a woman while racing their cars*”, published on 26 January 2017 (“the Article”). In the body of the Article, the reader was told that Mr. Spicer was one of the two racers, and that he had been found guilty by a jury. However, the reader was also told that whilst both men had faced a charge of causing death by dangerous driving, as well as one of causing serious injury by dangerous driving, Mr. Spicer had been acquitted of both those charges, and convicted of careless driving. It was the other man, Farid Reza, who was convicted of causing death and causing serious injury by dangerous driving. The reader was told that, for his offending, Reza was sentenced to five years and three months’ imprisonment for the killing and three years concurrent for the serious injury, as well as being disqualified from driving. Mr. Spicer, it was reported, was fined £1,000, given nine penalty points, and ordered to pay costs of £500.
3. The Article was published on the Metropolitan Police website, for which the Commissioner is responsible in law. In the now common way, the meaning of the Article was determined by Warby J following a trial of the issue of meaning in a judgment handed down on 7 June 2019: [2019] EWHC 1439 (QB) (“the Meaning Judgment”). Warby J found the meaning was as follows:

“The Claimant (1) took part with an acquaintance, Farid Reza, in a car race in the streets of Kingston upon Thames, in which they showed off by driving their high-performance cars at speeds of almost 70mph along public roads in an urban area at around 9pm, to see who had the fastest car; (2) did so with three friends in his car; (3) when Mr Reza’s car struck and killed a pedestrian, Hina Shamin, failed to stop but drove past

the accident and away from the scene; (4) was for those reasons reasonably suspected of being jointly responsible with Mr Reza for causing the death of Hina Shamin, and of causing serious injury to a young boy who was one of Mr Reza's passengers, by dangerous driving; (5) was arrested for, charged with, tried for and convicted of those offences (Reza being convicted of both); but (6) was guilty and convicted of careless driving."

4. The fuller background facts are set out in that judgment and I will not repeat them. I will need to refer in due course to Warby J's judgment in more detail and to the terms of the Article (which was appended by Warby J to his judgment). I will also need to refer to certain passages in the summing up of the trial Judge, His Honour Judge Marks QC, in the criminal proceedings, because they provide the foundations for one of Mr. Spicer's principal arguments in support of his abuse of process application.
5. Following the Meaning Judgment, Mr. Spicer incorporated the meaning found by Warby J into his Amended Particulars of Claim dated 17 June 2019. The Commissioner filed and served a Defence dated 8 July 2019, which included at paragraph 9 a case that the Article in the meaning found by the Court is substantially true, and at paragraph 10 a case that the Article was published on an occasion of absolute or qualified privilege. Mr. Spicer filed and served a Reply dated 12 September 2019.
6. The two applications before me arise out of these responsive pleadings (that is, the Defence and the Reply):
 - i) As to the Defence, Mr. Spicer made an application dated 28 February 2020, for an order that paragraph 9 of the Defence be struck out as an abuse of process on the basis I have outlined above ("the Abuse of Process Application"); and
 - ii) As to the Reply, the Commissioner made a cross application dated 6 May 2020 for an order pursuant to CPR r3.4(2)(a) and/ or (b) and/ or (c), that, unless Mr. Spicer amends his Reply to cure certain deficiencies, the relevant paragraphs of the Reply which it is said consist of essentially bare denials (in response to the truth and privilege defences) should be struck out ("the Pleading Application"). This application has been modified as regards the privilege aspect, as I explain towards the end of this judgment at para. [80].

II. The Pleadings

7. The precise nature of the Commissioner's pleaded case is central to both applications. I will accordingly set out the relevant paragraphs of the Defence in full followed by a description of the response in the Reply.
8. Paragraph 9 of the Defence (which is the subject of the Abuse of Process Application) and paragraph 10 of the Defence (relevant to the Pleading Application) are as follows:

"Substantial truth

9. The Article in the meaning found by the Court at paragraph 7 (which is the imputation conveyed by the statement complained of) is substantially true for the purposes of s2 of the Defamation Act 2013.

PARTICULARS OF TRUTH

The race

9.1 In an interview with Acting Detective Sergeant Sekhon and Detective Constable Haffenden on 13 April 2015 (“the Interview”), the Claimant admitted that he knew Farid Reza by sight as an Asian man who owned a computer shop on Pehrhyn Road, and that he recognised the high-performance white BMW, M3, registration YH61WOD, driven by Mr Reza on 30 March 2015, as Mr Reza’s vehicle. This amounts to an admission that Mr Reza was an acquaintance of the Claimant.

9.2 Just before 21:00 on 30 March 2015, the Claimant was driving through Kingston-upon-Thames Town Centre in a high-performance BMW, 330d, registration LP64CHV, with three friends (“the Friends”) in the vehicle with him. The Claimant knew that the said vehicle was powerful and capable of accelerating quickly to very high speeds.

9.3 At 20:58 the Claimant was driving along Fairfield North before turning left into Wheatfield Way. At Fairfield North, the Claimant’s vehicle was ahead of Mr Reza’s vehicle, which was about 5 seconds behind.

9.4 When the Claimant reached College Roundabout, Mr Reza’s vehicle was just behind the Claimant’s vehicle.

9.5 The Claimant left College Roundabout and joined Penrhyn Road in lane 1, closest to the pavement, while Mr Reza was just half a car length behind the Claimant in lane 2.

9.6 As both the Claimant and Mr Reza passed Kingston Crown Court, the Claimant’s vehicle in lane 1 was behind that of another driver in a silver Vauxhall (“the Vauxhall”), and Mr Reza’s vehicle passed both the Vauxhall and that of the Claimant.

9.7 The Claimant pulled out from behind the Vauxhall from lane 1 into lane 2 and overtook the Vauxhall. The Court will be asked to infer that he did so because he wanted to keep up with Mr Reza, whose vehicle had overtaken his own, and was racing him.

9.8 In the Interview, the Claimant admitted that the friends asked him how fast his own vehicle went after seeing Mr

Reza's similar vehicle, and suggested that the Claimant's vehicle was faster than Mr Reza's.

9.9 The Claimant accelerated harshly away from the Vauxhall in pursuit of Mr Reza, going from 38 mph to 58 mph over 3 seconds.

9.10 The Claimant continued to accelerate to 69 mph in his pursuit of Mr Reza, and the Claimant's vehicle maintained close proximity (of about 20 metres or approximately two car lengths) to Mr Reza's vehicle, and travelled at approximately the same speed, as the two vehicles travelled together along Penrhyn Road.

9.11 In the premises, the Claimant took part took part with an acquaintance, Mr Reza, in a car race in the streets of Kingston upon Thames, in which they showed off by driving their high-performance cars at speeds of almost 70mph along public roads in an urban area at around 9pm, to see who had the fastest car, and did so with three friends in his car.

The accident and its aftermath

9.12 Mr Reza's vehicle struck and killed a pedestrian, Hina Shamin, on Penrhyn Road, and then crashed into a 418 double-decker bus, before spinning and coming to rest on the pavement with its rear against a brick wall and its bonnet facing the road. One of the five children in the vehicle with Mr Reza, a young boy, suffered a serious injury as a result of the collision.

9.13 The Claimant's vehicle was close to Mr Reza's vehicle when Mr Reza struck Ms Shamin, and the Claimant's vehicle was subject to a "High G" force event around the site of the collision, but continued past the collision without stopping on Penrhyn Road. The Claimant then braked harshly in order to make an illegal right turn into Surbiton Road. The Defendant will say that this amounted to the Claimant failing to stop at the scene of the accident, and driving away from the scene.

9.14 In the premises, when Mr Reza's car struck and killed a pedestrian, Hina Shamin, the Claimant failed to stop but drove past the accident and away from the scene.

Responsibility for death and serious injury

9.15 It was on the basis of the facts and matters alleged at paragraphs 9.1 to 9.14 above that the Claimant was reasonably suspected of being jointly responsible with Mr Reza for causing the death of Hina Shamin, and of causing serious injury to a

young boy who was one of Mr Reza's passengers, by dangerous driving.

Prosecution of the Claimant

9.16 The Claimant was interviewed by the Police under caution as a witness to the accident on 2 April 2015.

9.17 The Claimant was interviewed by the Police in the presence of a solicitor as a suspect on 13 April 2015.

9.18 The Claimant was jointly charged along with Mr Reza on an indictment containing two counts of causing death by dangerous driving and causing serious injury by dangerous driving.

9.19 The Claimant was prosecuted at the Central Criminal Court between 9 January 2017 and 26 January 2017.

9.20 On 26 January 2017 the Claimant:

9.20.1 was acquitted of causing the death of Hina Shamin and of causing serious injury to a young boy who was one of Mr Reza's passengers by dangerous driving; but

9.20.2 was found guilty and convicted of careless driving.

9.21 In the premises the Claimant was charged with, tried for and acquitted of causing the death of Hina Shamin and of causing serious injury to a young boy who was one of Mr Reza's passengers by dangerous driving (Reza being convicted of both) but was guilty and convicted of careless driving.

9.22 In respect of the allegation that the Claimant was arrested, further or alternatively in relation to the defence of truth generally, the Defendant will rely upon subsection 2(3) of the Defamation Act 2013."

Statutory Absolute and Qualified Privilege

10. The Article consisted of a fair and accurate report of legal proceedings in public brought against the Claimant which was published contemporaneously. Accordingly, the Article was published on an occasion of absolute privilege pursuant to s14 of the Defamation Act 1996. Further or alternatively, the Article was published on an occasion of qualified privilege pursuant to s15 and Schedule 1 of the Defamation Act 1996.

PARTICULARS

...."

9. In response to paragraph 9 of the Defence (substantial truth), Mr. Spicer's Reply is in two parts. First, he pleads his case on abuse of process. Second, in relation to the substantive particulars of truth, on several occasions what he pleads is essentially a series of bare denials without any substantive response. To take just one example, in the Reply at paragraph 8 there is a bare denial of the contention in paragraph 9.2 of the Defence (set out above) that Mr. Spicer knew that his vehicle was powerful and capable of accelerating quickly to very high speeds.
10. In response to paragraph 10 of the Defence (privilege), the Reply contains no more than a denial with the plea that the report was not a fair and accurate report of proceedings. The basis for such denial is not identified by an attempt to address the Commissioner's particularisation of her case.

III. Abuse of Process Application

11. Mr. Spicer argues that paragraph 9 of the Defence should be struck out under CPR 3.4(2)(b), on the grounds that it is an abuse of the process of the court. A substantial number of authorities were cited to me and following the oral submissions it seemed to me there were important differences of substance between the parties as to the underlying applicable principles. The doctrine of "abuse of process" in civil proceedings covers a range of different but related sub-doctrines and clarity as to which sub-doctrine was said to be in play was essential.
12. Although at various points the authorities have referred to a judge hearing an abuse application being engaged in a broad, merits based, assessment, it is clear that I need to proceed by way of principle, and that I am not exercising some form of open-ended discretionary judgment.
13. Accordingly, I will proceed below by identifying and summarising what I consider to be the operative principles, but without necessarily citing every case to which reference was made. It seems to me that there are two general boxes into which the relevant abuse of process cases can be put. First, there is what I call "relitigation" of issues which were raised or should have been raised in earlier proceedings (which includes a form of "res judicata"). Second, there is the "collateral attack" doctrine (where a party in ongoing litigation seeks to contradict an earlier relevant determination of a competent court or tribunal). See, further, the commentary on CPR r3.4 in the White Book 2020 at pp. 84-105.
14. Counsel for Mr. Spicer explained, in his clear and attractively presented submissions, that the head of abuse invoked was the collateral attack doctrine; it being argued that the matters relied upon in paragraph 9 of the Reply, cited above, are "an attack on the Criminal Court's acquittal of Mr. Spicer on 26 January 2017 of the charge of causing Ms. Shamin's death by dangerous driving" (Reply, para 6(1)).
15. That said, in certain important respects it did seem to me that the pleadings and oral arguments on behalf of Mr. Spicer strayed into the re-litigation doctrine. So, for example, it is pleaded that "the Defendant had the full opportunity of contesting those charges" in the criminal proceedings (Reply, para. 6(2)); and it was argued that the

Commissioner (party to the current claim) and the CPS (party to the criminal proceedings) were to be regarded as one because they are both “representatives of the State” (Skeleton, para 17(2)). These are submissions which are more properly directed towards a complaint of relitigation.

16. Accordingly, in my summary below, I will consider both strands of the doctrine, as it is explained in the case law.
17. As to relitigation, attempts to re-litigate issues which were raised, or should have been raised, in previous proceedings come under the umbrella term “*res judicata*”. This was described in Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd [2013] UKSC 46; [2014] A.C. 160 (by Lord Sumption) at [17], as “a portmanteau term which is used to describe a number of different legal principles with different juridical origins.” The fifth of the six principles outlined by Lord Sumption was the one “first formulated by Wigram V-C in Henderson v Henderson (1843) 3 Hare 100, 115, which precludes a party from raising in subsequent proceedings matters which were not, but could and should have been raised in the earlier ones”.
18. The rule in Henderson v Henderson was considered by the House of Lords in Johnson v Gore Wood & Co (No.1) [2002] 2 A.C. 1, HL. Lord Bingham observed at p.30, in relation to what he called “the underlying public interest... that there should be finality in litigation and that a party should not be twice vexed in the same matter” that:

“*Henderson v. Henderson* abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all

the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before.”

19. In Aldi Stores Ltd v WSP Group Plc [2007] EWCA Civ 1260; [2008] 1 WLR 748, Thomas LJ referred to an earlier summary of the principles in Dexter Ltd v Vlieland-Boddy [2003] EWCA Civ 14:

“6. It is, however, helpful to refer to the judgment of Clarke LJ in Dexter Ltd v Vlieland-Boddy [2003] EWCA Civ 14 at [49]-[53], where he summarised the principles to be derived from Johnson v Gore Wood & Co:

“49. ... (i) Where A has brought an action against B, a later action against B or C may be struck out where the second action is an abuse of process. (ii) A later action against B is much more likely to be held to be an abuse of process than a later action against C. (iii) The burden of establishing abuse of process is on B or C or as the case may be. (iv) It is wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. (v) The question in every case is whether, applying a broad merits based approach, A's conduct is in all the circumstances an abuse of process. (vi) The court will rarely find that the later action is an abuse of process unless the later action involves unjust harassment or oppression of B or C.

“50. Proposition (ii) above seems to me to be of importance because it is one thing to say that A should bring all his claims against B in one action, whereas it is quite another thing to say that he should bring all his claims against B and C (let alone against B, C, D, E, F and G) in one action. There may be many entirely legitimate reasons for a claimant deciding to bring an action against B first and, only later (and if necessary) against others.”

20. Thomas LJ explained, in Aldi at [10] that:

“The fact that the defendants to the original action and to this action are different is a powerful factor in the application of the broad-merits based judgment; it does not operate as a bar to the application of the principle. This was plainly the view of Clarke

LJ in Dexter's case [2003] EWCA Civ 14 at [49]-[53] in the passage I have set out with which I agree.”

21. In relation to the approach to be taken by the appellate court and the judge at first instance, in Aldi he said at [16] that the decision as to whether or not there has been an abuse is *not* the exercise of a discretion:

“In considering the approach to be taken by this court to the decision of the judge, it was rightly accepted by Aspinwall that the decision to be made is not the exercise of a discretion; WSP were wrong in contending otherwise. It was a decision involving the assessment of a large number of factors to which there can, in such a case, only be one correct answer to whether there is or is not an abuse of process.”

22. The notes to the White Book 2020, at 3.4.3.2, list “[o]ther case examples of the rule in *Henderson*, decided post 2001 (after *Johnson v Gore Wood*)”. Ten examples are given. Counsel for the Commissioner was right to observe that regardless of the outcome, each appears to be an instance of a defendant seeking to argue that a second action by the same claimant (either against the defendant, or another party) was an abuse of process.

23. Turning to the collateral attack doctrine, this is a form of abuse of process where a party mounts an attack on a final decision adverse to them which has been made by a court of competent jurisdiction. The leading case remains Hunter v Chief Constable of the West Midlands Police [1982] A.C. 529 (HL) and it was at the forefront of Mr. Spicer’s case. As is well known, this case involved civil claims brought by the “Birmingham Six” for damages against the police for injuries caused by assaults, which were the same allegations as had been ruled on in a *voir dire* taking place during the trial in the Crown Court. The House of Lords dismissed an appeal by the claimants against an order by the Court of Appeal striking out their statements of case. The following parts of the speech of Lord Diplock are relevant.

24. At 536B, Lord Diplock said:

“My Lords, this is a case about abuse of the process of the High Court. It concerns the inherent power which any Court of Justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to administration of justice into disrepute among right-thinking people. The circumstances in which abuse of process can arise are very varied; those which give rise to the instant appeal must surely be unique. It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories

the kinds of circumstances in which the court has a duty (I disavow the word discretion) to exercise this salutary power.”

25. At 541B Lord Diplock said:

“The abuse of process which the instant case exemplifies is the initiation of proceedings in a court of justice for the purpose of mounting a collateral attack upon a final decision against the intending plaintiff which has been made by another court of competent jurisdiction in previous proceedings in which the intending plaintiff had a full opportunity of contesting the decision in the court by which it was made.”

26. In Secretary of State for Trade and Industry v Bairstow [2003] EWCA Civ 321; [2004] 1 Ch. 1, reviewing the cases subsequent to the decision in Hunter, Sir Andrew Morritt V-C) summarised the propositions that those decisions established at pp16-17:

“38. In my view these cases establish the following propositions. (a) A collateral attack on an earlier decision of a court of competent jurisdiction may be but is not necessarily an abuse of the process of the court. (b) If the earlier decision is that of a court exercising a criminal jurisdiction then, because of the terms of sections 11 to 13 of the Civil Evidence Act 1968, the conviction will be conclusive in the case of later defamation proceedings but will constitute prima facie evidence only in the case of other civil proceedings. (It is not necessary for us to express any view as to whether the evidence to displace such presumption must satisfy the test formulated by Lord Cairns LC in Phosphate Sewage Co Ltd v Molleson 4 App Cas 801, 814, cf the cases referred to in paragraphs 32, 33 and 35 above.) (c) If the earlier decision is that of a court exercising a civil jurisdiction then it is binding on the parties to that action and their privies in any later civil proceedings. (d) If the parties to the later civil proceedings were not parties to or privies of those who were parties to the earlier proceedings then it will only be an abuse of the process of the court to challenge the factual findings and conclusions of the judge or jury in the earlier action if (i) it would be manifestly unfair to a party to the later proceedings that the same issues should be relitigated or (ii) to permit such relitigation would bring the administration of justice into disrepute.”

27. In Amin v Director General of the Security Service (MI5) [2015] EWCA Civ 653, the Court of Appeal considered a similar question to that which was in issue in Hunter. The claimant appealed against the lower court’s decision striking out his civil claim

for damages for false imprisonment and personal injuries as an abuse of process. The judge had held there was an overlap with findings made against him in the Crown Court in a *voir dire* taking place in the course of his earlier conviction and sentence. Moore-Bick LJ held at [45] that:

“If the former decision was made in criminal proceedings leading to a conviction, it is proper to focus attention on the question whether the later proceedings, if successful, would in substance undermine the conviction.”

28. In Barnett Waddington Trustees (1980) Ltd v Royal Bank of Scotland Plc [2017] EWHC 834 (Ch), Mann J underlined, at [78], the point made by Lord Bingham in Johnson v Gore Wood regarding the general applicability of the doctrine to both sides in litigation. After citing Lord Bingham’s speech, Mann J explained that:

“I have emphasised words which make it plain that the doctrine of abuse involved is capable of applying to defendants and defences as it applies to claimants and claims, though it may be less often invoked against a defendant.”

29. In that case, the application by the claimants succeeded, because it was held that following a first set of proceedings ([2015] EWHC 2435 (Ch)) between the same parties over the same subject matter (a secured loan given to the claimants by the defendant bank), the defendant bank was not entitled to rely on an “external swap” in a second set of proceedings, because to advance such a claim would have been an abuse of process within Johnson v Gore Wood.
30. For completeness, and because it was strongly relied upon by Mr. Spicer, I should also refer to Secretary of State for Business, Innovation and Skills v Weston (2014) EWHC 293 (Ch). In that case, His Honour Judge David Cooke refused to allow the Secretary of State to bring a claim seeking disqualification orders against the defendants under s 2 Company Directors Disqualification Act 1986, following their convictions on counts of fraud where the Crown Court before which the defendants were convicted had considered the matter and declined to make such orders.
31. The Judge explained at [52]:

“...this claim is no more than an attempt by the Secretary of State to obtain a different decision from this court than was given on identical issues by the criminal court, which had the issues placed before it and made a positive decision to refuse an order. It is in my view unfair that the defendants should be thus exposed to the same claim on two occasions. The unfairness is not relieved by the argument that the claim is being pursued by a different entity; firstly I am not persuaded that in fact there is a complete separation between the two applicants, because it appears that the Insolvency Service was in liaison with the

prosecutor when he made his application for HHJ Rundell to consider disqualification, so that even if as Mr. Morgan submits, there are criticisms that can be made of that application, it would appear the Secretary of State was content at the time to allow the matter to be pursued in the criminal court rather than at that stage bringing it to the civil court and to some extent at least participated in the application made. Secondly there is the general point that where the basis of the claim and the relief sought is essentially identical it is just as much unfair to the defendant to have to face it twice at the hands of two applicants as it would be if there were only one”.

III. The Abuse of Process Application: arguments and analysis

32. I was addressed in helpful detail both orally and in writing by Counsel for Mr. Spicer and the Commissioner. In this section I will summarise the broad nature of the submissions and then proceed to my analysis and conclusions.
33. Counsel for Mr. Spicer focussed on Warby J’s determination of the meaning (set out at para. [3] above) and highlighted the themes of “racing” and “showing off” alleged against Mr. Spicer. He rightly submitted that they are central to the defence of truth at paragraph 9 of the Defence. Counsel took me to a helpful analysis produced by his Solicitors which shows that the provenance of the defence of truth is the evidence at the criminal trial. He also relied upon the fact that the Commissioner’s directions questionnaire shows that her expert witness (Raymond Ford) and two of her witnesses of fact for the libel trial (Simon Palmer and Rose Jones) were witnesses for the prosecution on the criminal trial. All of this, he argues, shows that the Commissioner intends a form of “re-run” of the prosecution case at trial. This is because the essential component to the defence is the allegation of “racing” and “showing off” and because without those allegations the remainder of the defence of truth has no relevance as a defence of truth.
34. Mr. Spicer’s Counsel also relied heavily on the summing up of HHJ Marks QC to the jury on 20 January 2016 when the Judge said as follows:

“Turning now to the case against Mr Spicer. You will, of course, appreciate that he is in a different position to Mr Reza in that his vehicle was not in collision with the victim and, indeed, emerged from this incident entirely unscathed. The way in which the prosecution put the case against him is that he was driving at a grossly excessive speed and that he was, in effect, racing with Mr Reza and was thereby encouraging Mr Reza to drive at the same or a similar speed which in turn was a contributory cause of the accident. If you are sure so far as Mr Spicer was concerned that that was the case he would in law be equally responsible for the fatal collision provided that you are sure that the manner of his driving was dangerous as per the definition at paragraph 7 above, and that: (a) he intended to encourage Mr Reza and did encourage him to drive

dangerously and (b) his actions thereby contributed to the cause of the collision.”

35. It was argued the burden is on the Commissioner to show that the defamatory imputation contained in the meaning of the Article is substantially true. Unusually, therefore, as the burden of proof is upon the Commissioner, she is to be regarded as the effective “claimant” for the purpose of the primary issue in the action, which is the truth or substantial truth of the meaning. Mr. Spicer argues that the defence of truth in the present case falls foul of the principles in Hunter which I have set out above.
36. Counsel for Mr Spicer emphasised that in Hunter there had been a criminal trial, where a claimant, in the subsequent civil proceedings before the House of Lords, had been convicted of murder. That claimant was seeking to re-open an allegation of assault on him by the Police, which allegation was rejected by the jury in finding him guilty of murder. It was therefore submitted that there is no principle that prevents a civil case, which follows a criminal trial, from being an abuse of process. It was argued that the effect of Hunter is that where a final decision has been made by a criminal court of competent jurisdiction, there is a general rule of public policy that the use of a civil action to initiate a collateral attack on that decision is an abuse of process. Paragraphs 9.7, 9.8, 9.9 and 9.11 of the particulars of truth under paragraph 9 of the Defence self-evidently rely upon a car race between Mr Reza and C, seeing who had the fastest car (showing off) as the foundation of the defence of truth.
37. For these reasons it is said that the Commissioner must be seeking to establish as her primary defence that Mr. Reza and Mr. Spicer were taking part in a car race in which they showed off by driving their high-performance cars at excessive speeds. This is said to be a straightforward collateral attack on the decision of the jury on 26 January 2017, which it is said found Mr. Spicer not guilty of racing and showing off so that he was acquitted of the charge of death by dangerous driving.
38. As to the point that there is a difference between the Commissioner and the CPS, it was argued that the CPS and the Police should be regarded as representatives of the State and allowing a defence of truth based upon racing and showing off would be manifestly unfair to Mr. Spicer and would bring the administration of justice into disrepute among right-thinking people. Reliance was placed on Secretary of State for Business, Innovation and Skills v Weston (2014) EWHC 293 (Ch) at paras 15, 50 and 51. I have summarised this case above. Consequently, Counsel for Mr. Spicer argued that abuse of process does not apply merely as between the same parties to the original proceedings but as between the parties to the subsequent proceedings, even if one of those parties had not been a party to the original proceedings.
39. A number of supporting supplementary submissions were also advanced for Mr. Spicer. First, it was said to be wrong for the Commissioner to make an attack on Mr. Spicer’s acquittal, when there was a full opportunity in the criminal proceedings to put before the criminal court the evidence that was alleged to sustain guilt on his part of death by dangerous driving. Second, it was argued that if the Commissioner succeeds in her defence of truth, there will be a conflicting decision of this court, as a civil court, and the criminal court. Third, it is said to be oppressive and unfair for there to be a re-trial in a civil court, when it will be more than 3 years since Mr. Spicer’s trial and acquittal in the criminal court. Finally, Counsel invokes the principle that there should be finality in litigation and no party should be twice vexed

in the same manner. As I indicated at the start of this judgment, these submissions seem to be based more on the re-litigation form of abuse than the collateral attack doctrine.

40. In conclusion, Counsel for Mr. Spicer argued that on the broad approach to the abuse of process doctrine, where the criteria are manifest unfairness to the claimant and bringing the administration of justice into disrepute among right-thinking people, the whole of the defence of truth at paragraph 9 of the defence should be struck out.
41. In his forceful and attractive submissions, Counsel for the Commissioner submits that the abuse application should be dismissed for the simple reason that the Commissioner's defence of truth does not amount to an abuse of process by reference to how that doctrine is applicable generally.
42. As regards the aspects of the application which appear to raise relitigation abuse, Counsel for the Commissioner argued that the court cannot be satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. He relied upon a number of facts: (i) the parties to the two sets of proceedings are not the same; and (ii) the jury's verdict that Mr. Spicer was not guilty of the more serious charges which he faced did not amount to positive factual findings or conclusions about his conduct which led to the criminal proceedings (rather, they simply meant that Mr. Spicer's criminal liability was not established).
43. Before leaving this summary of the arguments, I should record that I have not overlooked the powerful submissions of Counsel for the Commissioner concerning the specific context in which the abuse application arises, that is defamation proceedings where common law and Article 10 ECHR engage the right to defend the words complained of in any meaning pleaded by Mr. Spicer. I will address the Abuse of Process Application in the first instance without reference to that context but these are important points which I will address separately in **Section V** of this judgment.

Analysis and conclusions

44. Independently of the defamation context in which this application falls to be considered, in my judgment there is no abuse of process by the Commissioner pursuing her truth defence. The major and overriding point is that Mr. Spicer seeks to draw support from his acquittal which fact, as a matter of law and logic, does not provide the support he places upon it.
45. I have come to my conclusions adopting the broad merits based approach commended by the authorities but I have separated out, in my reasons below, the considerations which seem to me to be more apt to relitigation abuse and those which are relevant to collateral attack abuse.
46. I should record that I will proceed on the basis that Counsel for Mr. Spicer is correct to submit that if the Commissioner is allowed to maintain paragraph 9 of the Defence, the trial judge in the libel claim will of necessity have to decide (in relation to the truth defence) whether the allegations of "racing" and "showing off" have been

established by the Commissioner on the balance of probabilities. Those are central parts of the meaning of the Article found by Warby J.

47. The ultimate question then becomes, does the abuse of process doctrine prevent the Commissioner in the circumstances of this case from running such a case?
48. My reasons for deciding this question in the negative are as follows:
- i) First, the parties to the two sets of proceedings are not the same, and this is a “powerful factor” in any merits based assessment by the Court (see the summary of the principles in Aldi Stores to which I make reference above). The Crown Prosecution Service prosecutes criminal cases that have been investigated by the police and other investigative organisations in England and Wales. As an important constitutional principle of our law, the CPS is independent, and must make their decisions independently of the police and government. In the context of public law and EU law the police and the CPS may well be emanations of the State. That concept however has no place in the context of a private law claim and I was not persuaded by the submission that “right thinking people” would regard the CPS and the police as the same person and that they should therefore be treated as one for the purposes of the abuse doctrine.
 - ii) Second, I do not find assistance in the Weston case where the facts were very different and it is to be noted that the Judge found that the Secretary of State had participated to some extent in the criminal trial in the failed attempt to obtain a disqualification order. It is hardly surprising that His Honour Judge Cooke considered this to be an abusive attempt by the Secretary of State to take a second “bite at the cherry”.
 - iii) Third, the jury’s verdict that Mr. Spicer was not guilty of the more serious charges which he faced did not amount to positive “factual findings or conclusions” about the conduct by him which led to the criminal proceedings. It simply meant that his criminal liability was not established (which could have been for a number of reasons, none of which can be known with certainty). This is very different to the situations in Hunter and Amin, which are both cases in which positive findings had been made in relation to evidence by the trial judge, during a *voir dire*, which the convicted criminal defendant then effectively sought to challenge in civil proceedings. That is far from the situation before me.
 - iv) Fourth, even if one could infer that the jury had rejected the “racing” and “showing off” allegations, they did that asking themselves if they were “sure” that this had been established, as opposed to applying the civil standard which the libel judge will apply (whether or not the Commissioner has been able to establish a defence “on the balance of probabilities”).
 - v) Fifth, as to the argument that there is a nexus between the Particulars of Truth and the charges faced by Mr. Spicer, the offences with which he was charged were those of causing Ms. Shamin’s death by dangerous driving, and causing serious injury to the young boy who was one of Mr Reza’s passengers, that only goes so far. HHJ Marks QC’s summing up explained that the questions

for the jury at the criminal trial were whether Mr. Spicer was guilty of causing death or serious injury by dangerous driving because he was (1) driving at a grossly excessive speed, (2) in effect, racing with Mr Reza, (3) thereby encouraging Mr Reza to drive at the same or similar speed, and that this in turn was a contributory cause of the accident. By contrast, the meaning found by Warby J is not focused on whether or not Mr. Spicer did in fact through his driving encourage Mr Reza so as contribute to the accident and its consequences. Rather, its focus, and the resulting focus of the Commissioner's defence of truth, is on the conduct by Mr. Spicer in driving his car in the short period of time before the accident took place, which then led to him being reasonably suspected of causing death and serious injury by dangerous driving.

- vi) Sixth, I do not accept that these proceedings will result in conflicting decisions of the civil court and the criminal court. In my judgment, Mr. Spicer's acquittal did not involve any positive decision by the jury on the evidence in those proceedings, in the course of a *voir dire* or otherwise. A determination in the libel proceedings that the Commissioner's defence of truth is made out will not result in any decision by the libel court which will positively conflict with anything decided in the criminal proceedings.
 - vii) Seventh, as to the general points relied upon as supplementary arguments by Counsel for Mr. Spicer (para. [39] above), I do not accept that the libel proceedings will amount to a "*re-trial*" of Mr. Spicer "*on the same evidence as was before the Criminal Court*" and that this is oppressive and unfair, where it takes place more than two and a half years after the Prosecution was determined. I also do not consider it will involve him being "*twice vexed in the same manner*". The Commissioner's defence in these proceedings is not a "*re-trial*" of Mr. Spicer, since the proceedings will not determine whether or not he caused or contributed to the death of Ms Shamin; and the submissions that the Commissioner's approach to these proceedings is oppressive, or unfair, or that it involves him being twice vexed in the same matter is unsustainable where they are proceedings which he has chosen to bring against the Commissioner in the first place, and in which he has then chosen to adopt the meaning found by the Court in the Meaning Ruling as the basis for his claim.
 - viii) Eighth, although my reasons above have considered both the relitigation and collateral abuse arguments, I have also stepped back and asked the broad question whether allowing the Commissioner to run her truth defence would bring the administration of justice into disrepute amongst "right-thinking people". Although that is a somewhat dated concept, it does not seem to me that the ordinary and reasonable member of society would consider that it was an affront to justice to allow the Commissioner to defend the allegations of "racing" and "showing off" in libel proceedings which Mr. Spicer has brought against her.
49. My decision above has been reached applying the general principles of common law and without reference to the defamation and free speech context. In my judgment, when that context comes into play, it strongly reinforces the conclusion that there is no abuse of process in the present case.

50. As I set out below, if domestic law had the effect of preventing the Commissioner from defending the proceedings by asserting the truth of the meaning found by Warby J, it is hard to see how that would be compatible with clear jurisprudence in relation to Article 10 of the ECHR. Unsurprisingly, however, English law on abuse of process mandates no such result.

IV. The Defamation and Free Speech Context

51. The starting point is the long-established common law entitlement of a defendant to justify what he or she has said. So, under the heading “Justifying the words in their natural and ordinary meaning”, *Gatley on Libel and Slander*, 12th edition, says at 27.8 that:

“Where a claimant complains that words are defamatory of him in their natural and ordinary meaning, the defendant is entitled to justify those words in any meaning which those words are capable of conveying to a reasonable man.”

52. The footnote to that proposition, Fn. 41, says:

“Prager v Times Newspapers Ltd [1988] 1 W.L.R. 77 per Purchas L.J. at 86

“... it is still open to a defendant to plead so as to justify any reasonable meaning of the words published which a jury, properly directed, might find to be the real meaning At the heart of this case, of course, is the proposition which asserts that the scope of the defence of justification should not depend upon the way the plaintiff pleads his case, but on the meanings which the words published are capable of bearing”.

It would seem that the defendant is entitled to justify any meaning which the claimant himself puts on the words complained of, however outlandish that meaning may be: Maisel v Financial Times (1915) 31 T.L.R. 193.”

53. Maisel was a decision of the Court of Appeal in which, as the headnote to the report at [1915] 3 K.B. 33 explains, the Court held that:

“in a case of libel on character and reputation, where justification was pleaded, evidence of facts which occurred within a reasonable time after the publication of the libel and went to show the existence of an alleged tendency was admissible.”

54. All three judges dismissed the appeal, each giving their own reasons. Pickford LJ considered the parties' pleaded cases in detail and observed at p.341 that "Therefore the defence, as finally settled, follows exactly the innuendo of the plaintiff". Similarly, at pp.342-343, Warrington LJ introduced his short concurring judgment by saying that:

"The plaintiff complains, amongst other things, that the defendants had said that he would have misappropriated the funds of the particular company if he had the opportunity. The defendants have justified that statement."

55. Two of the most significant changes to the legal context in which defamation litigation takes place since the decision in Maisel are the passing of the Human Rights Act 1998, and of the Defamation Act 2013. The Convention rights introduced into English law include Article 10 ECHR, the terms of which are well known, and I do not need to reproduce.

56. Unsurprisingly, the Strasbourg jurisprudence emphasises that the ability to defend a defamatory publication as true is an aspect of the rights afforded by the Convention. In Castells v Spain (1992) 14 EHRR 445 the applicant, who had published in a weekly magazine an article criticising the government, was convicted of insulting the government, and was disqualified from public office. The Spanish courts had ruled that evidence of the truth of the applicant's statements was inadmissible. The applicant complained that his prosecution and conviction violated his freedom of expression within the meaning of Article 10. The Strasbourg Court focused on the fact that the domestic courts had precluded the applicant from offering any evidence as to the truth of his assertions, holding at [48] that:

"It is impossible to state what the outcome of the proceedings would have been had the Supreme Court admitted the evidence which the applicant sought to adduce; but the Court attaches decisive importance to the fact that it declared such evidence inadmissible for the offence in question. It considers that such an interference in the exercise of the applicant's freedom of expression was not necessary in a democratic society."

57. In Csanics v Hungary [2009] ECHR 90 the Strasbourg Court held in finding an infringement of Article 10, that the Applicant had been given "no opportunity at all to prove the veracity of his assertions" by the Hungarian Courts, at [42]. It went on to conclude, at [43] that:

"Consequently, the Court considers that the domestic authorities should have provided the applicant with an opportunity to substantiate his statements. It would go against the very spirit of Article 10 to allow a restriction on the expression of substantiated statements solely on the basis of the manner in which they are voiced. In principle, it should be

possible to make true declarations in public irrespective of their tone or negative consequences for those who are concerned by them.”

58. In the domestic context, in Commissioner of Police of the Metropolis v Times Newspapers Ltd [2011] EWHC 2705 (QB); [2014] EMLR 1, Tugendhat J referred, at [192], to the newspaper defendant’s pleading of a defence in terms of its Article 10 rights:

“It follows that, as at the time this judgment is delivered, I do not need to consider more than TNL’s right to use the information and documents for the purpose of pleading its Amended Defence in the Libel Action. That is the exercise of their art.10 rights that is in prospect in the immediate future.”

59. The Defamation Act 2013 provides at s11 “*Trial to be without a jury unless the court orders otherwise*” and this has effectively signalled the end of jury trials in this area of the law. One consequence of this is that, where it is in dispute between the parties, meaning is now typically decided at an early stage in the proceedings at the trial of a preliminary issue.
60. In my judgment, the Commissioner is right to submit that the Abuse of Process Application violates two fundamental principles which apply in this particular area of the law. The first is the one described by Gatley as the defendant’s entitlement to justify any meaning which the claimant himself puts on the words complained of. Its existence is implicit in the observations in Maisel, regarding the scope of the pleaded cases in that claim, where the defendant had sought to justify the meaning pleaded by the claimant.
61. The operation of this principle in practice has altered in the new legal environment created by the 2013 Act. Rather than being left to the jury, the issue of meaning is now, as here, decided at an early stage in the proceedings. However, the fact that the Court has ruled on the issue does not mean that it is not then a meaning specifically complained of by the claimant. It is up to a claimant to amend their Particulars of Claim to incorporate the meaning found by the court, before a defendant then pleads their Defence. While the Court has intervened in the process, it is still the claimant who, by amending his Particulars of Claim has “put” that meaning on the words complained of, and it remains open to the defendant then to justify it.
62. The second principle, which seems to me to be broadly analogous to the approach taken in the common law at least as long ago as Maisel, is that depriving a party of their right to establish that the facts recounted by them are true is a violation of their right to freedom of expression under Article 10 ECHR. To take such an approach is what the Strasbourg Court in Castells held was an interference with the exercise of the applicant’s freedom of expression, which was not necessary in a democratic society. It is clear that providing a defendant with what the Strasbourg Court in Csanics called “an opportunity to substantiate” their statements is a central aspect of the rights

protected by the Convention. The Court in Commissioner of Police of the Metropolis v Times Newspapers clearly viewed the pleading of a defence in English defamation proceedings as an aspect of a party's Article 10 ECHR rights.

63. In seeking to constrain the terms of, or prevent her from advancing, a defence of truth, Mr. Spicer's application asks the Court to interfere with the Commissioner's right to freedom of expression. To the extent that there is any infringement of the public interest in finality in litigation (which I have not found to be made out) the factors relating to a party's entitlement to put forward a defence to a claim in defamation which are well-established in domestic and European jurisprudence are a powerful countervailing public interest which means that the application should be dismissed.
64. Counsel for Mr Spicer submitted orally that Mr. Spicer's Article 8 rights fell to be balanced against the Commissioner's Article 10 rights. I raised the question as to which precise Article 8 rights were in issue and was told it was the general right to private life. I find it hard to see how being required to respond to a defence of truth in libel proceedings which a claimant has brought engages any Article 8 rights of Mr. Spicer. Insofar as it might be argued that being required to go through the stress of litigation (including giving evidence again) is an interference with the Article 8 rights of Mr. Spicer, I would have no hesitation in concluding that the balance comes down in favour of the Commissioner's Article 10 rights to pursue her truth defence. Neither right has any priority but in the circumstances of this case invoking Article 8 to silence the Commissioner from justifying the truth of what she said in proceedings the claimant decided to bring would require very strong factors which are not present.
65. Indeed, I find it hard to conceive of circumstances where a court, by way of procedural bar, would allow a claimant to assert a libel but tie a defendant's hands to prevent her saying that what was published was true. The protections for free speech both at common law and under Article 10 would not allow this.

VI. The Pleadings Application

66. The Commissioner argues that I should make an "unless" order in respect of Mr. Spicer's response to the defence of truth in the Reply, to the effect that those parts of it which consist of bare denials should be struck out, unless he amends his Reply to comply with the requirements of PD53/PD53B.
67. At the hearing, there was no real dispute that Mr. Spicer had not complied with these requirements. His Counsel argued that if he had complied Mr. Spicer would have had to enter the arena (his defence to the criminal proceedings) which he sought to avoid by making the Abuse of Process Application. Further, success on that application would have led to a striking out of paragraph 9 of the Defence and would have made the Commissioner's application academic. I have not struck out paragraph 9, so I do need to rule upon the Commissioner's application.
68. In defamation proceedings it is the defendant who bears the burden of proof. As *Gatley* puts it at 1.9:

"The starting point of the law is that the words complained of are presumed to be false, and it is up to the defendant to rebut

that by proving the truth of the defamation or by establishing, in mitigation of damages, that the claimant has a general bad reputation.”

69. Practice Direction 53B – Media and Communications Claims, which supplements Part 53, came into force on 1 October 2019. Under the heading “General”, it provides:

“1. This practice direction applies to media and communications claims.

(Rule 53. defines “media and communications claim”.)

Statements of case

2.1 Statements of case should be confined to the information necessary to inform the other party of the nature of the case they have to meet. Such information should be set out concisely and in a manner proportionate to the subject matter of the claim

(Part 16 and the accompanying practice direction contain requirements for the

contents of statements of case.)”

70. Under the heading “Defamation”, it provides:

“Statements of case

4.7 Where a defendant relies on a defence under section 2 (truth), section 3 (honest opinion), or section 4 (publication on a matter of public interest) of the Defamation Act 2013, the claimant must serve a reply specifically admitting, not admitting, or denying that defence and setting out the claimant’s case in response to each fact alleged by the defendant in respect of it.”

71. The predecessor Practice Direction, PD53, provided at paragraph 2.8 that:

“2.8 Where a defendant alleges that the words complained of are true, or are honest opinion, the claimant must serve a reply specifically admitting or denying the allegation and giving the facts on which he relies.”

72. Chapter 28 of *Gatley* is specifically concerned with “Reply and Defence to Counterclaim”. At 28.2, it says:

“Admission or denial of facts pleaded in support of a plea of honest comment or justification

Where a defendant alleges that the words complained of are true, or are honest comment, the claimant must serve a reply specifically admitting or denying the allegation and giving the facts on which he relies. Prior to the introduction of this rule, it had been recognized that the failure of the court to exercise with sufficient frequency its acknowledged power to order a claimant to plead properly to particulars of justification often left defendants in genuine ignorance as to the nature of the claimant’s case. However, the court will be astute to ensure that this requirement of pleading does not weaken the position which the claimant enjoys as regards to the burden of proof.”

73. The first proposition in that paragraph refers to Fn. 2, which says:

“CPR PD 53, para.2.8. Although the rule does not on its face contemplate a non-admission on the part of the claimant, it seems unlikely that it was intended to exclude this form of response, bearing in mind that the general rule permits a claimant simply to require a matter to be proved: see CPR r.16.7(2)(b) and cf. CPR r.16.5(1)(b). However, non-admissions ought not to be made in a reply by a claimant in respect of matters raised in a plea of justification or fair comment which are within his knowledge. To do so would be to obfuscate rather than define the issues and therefore contrary to the overriding objective. In such a case, the court may order the claimant to provide further information: see, e.g. *Gaddafi v Telegraph Group Ltd*, unreported, December 20, 2000 (QB), per Eady J. In *Moss v Channel Five Broadcasting Ltd*, unreported, February 3, 2006 (QB), Eady J., having held that the defendant was entitled to justify the broadcast complained of in the general meaning that the claimant was “a serious cocaine abuser”, ordered the claimant specifically to plead in her reply her case in answer to the particular instances of cocaine abuse relied upon by the defendant in its defence.” (Emphasis added.)

74. Both PD53 (at para 2.7) and PD53B (at para 4.) require the defendant to “*specify the circumstances*” relied on in support of a defence of privilege. Neither PD53, nor PD 53B impose any express requirements on a claimant in respect of their Reply in response to a plea of statutory qualified or absolute privilege. However, 28.4 of *Gatley* is concerned with “Pleading an affirmative case”. The editors explain that:

“It is good practice, e.g. for a claimant to respond in a reply to a defence of qualified privilege, particularly a plea of Reynolds privilege, with the same specificity as one is required to in response to a defence of justification or honest comment.”

75. The Footnote to that proposition, **Fn. 6**, says:

“In *Charman v Orion Publishing Group Ltd* [2007] EWCA Civ 972; [2008] 1 All E.R. 750, Hooper L.J. took the claimant to task for failing to plead in the reply criticisms of the defendant journalist’s conduct in response to a defence of Reynolds qualified privilege: see [101], [122], [219], [228] and [230]–[231]. In particular, at [228], Hooper L.J. observed:

“I do not agree with Mr Tomlinson ... that McLagan’s failure to say that Smith was profoundly tainted was ‘a fact which was of great importance in considering these events’ and therefore undermines the defence of responsible journalism. I should add that this is one of the complaints which was to be found in neither the reply nor the amended reply, albeit ... it was raised in the skeleton and in the opening. If it was seen as a fact of such great importance, one might expect to see it in the pleadings.”

Whilst it is not necessary to respond to a defence of statutory qualified privilege unless raising malice, if a defendant raises a statutory qualified privilege defence and the claimant challenges fairness and accuracy or that the words complained of were of public concern and for the public benefit it would be sensible to raise those points in a reply: see *Qadir v Associated Newspapers Ltd* [2012] EWHC 2606 (QB); [2013] E.M.L.R. 15 for an example where such points were pleaded and succeeded. Note s.7(2), Defamation Act 2013 substitutes ‘public interest’ for ‘public concern’ under s.15(3), Defamation Act 1996.”

76. In my judgment, the Reply (which was filed and served shortly before the replacement of PD53 with PD53B) plainly fails to comply with either set of rules. As I have set out above, the Commissioner has pleaded a detailed case in her defence of truth, setting out particulars relating to Mr. Spicer’s alleged conduct, specifically his driving, on the night of the accident. In response to that detailed case, Mr. Spicer has pleaded a series of bare denials, in the majority of instances failing to set out any substantive response at all to the facts relied on by the Commissioner.
77. Both the defendant to Mr. Spicer’s claim, and the Court, as the tribunal which will adjudicate upon it, are entitled to understand the case which he will put forward at trial. This is particularly important in defamation proceedings, where it is the defendant who bears the burden of rebutting the presumption of falsity. The practical consequence of this in terms of the pleaded cases is that, until a claimant serves their Reply, in a case where a defence of truth is pleaded, there is only one account of the material facts before the Court, which is that given by the defendant.
78. Counsel for the Commissioner is accordingly correct to submit that there is a gaping void at the heart of the case. Mr. Spicer says next to nothing about either his driving

or his interactions with Mr Reza preceding the accident while they were in their respective vehicles, which is the conduct which is alleged by the Commissioner to have given rise to reasonable grounds to suspect him of the offences with which he was charged.

79. I will accordingly make an order against Mr. Spicer but will hear counsel as to whether it should be on “unless” terms.
80. In relation to the defence of statutory absolute or qualified privilege, the Commissioner argues that Mr. Spicer’s approach gives rise to similar problems. In her Defence at paragraph 10, the Commissioner pleads “Particulars of Privilege”, which relate to the Prosecution and its coverage in the Article, and extend to setting out the specific paragraphs of the Article which were a fair and accurate report of the Prosecution.
81. However, in his response, Mr. Spicer puts forward nothing more than a bare denial in paragraph 30 of his Reply, saying that the Article “was not nor did it consist of a fair and accurate report”. There is no response to the individual particulars pleaded by the Commissioner, nor is there any explanation of the nature of the challenge which Mr. Spicer makes to the defence.
82. I was taken to *Gatley* which suggests that it is not “*necessary*” to respond to such a defence unless raising malice, but points out that if elements of the defence are challenged, then it would be “*sensible to raise those points in a reply*”.
83. In my judgment, modern case management principles suggest that one should go further than *Gatley* and that it should be the normal course for a claimant to identify in a reply pleading the nature of the case intended to be deployed at trial in response to a plea of privilege. This should not have to await revelation at trial or late ambush.
84. It does seem to me that, consistently with the “General” requirements of PD53B, a detailed plea of this kind amounts to “*information necessary to inform the other party of the nature of the case they have to meet*”, for the purposes of the exchange of pleadings in a defamation claim. As I observed during oral argument, a claimant who had provided the limited form of response in the nature of the Reply in this case would not be able to resist a Part 18 request for particulars as to the basis for his denial of the privilege plea. It is hard to see why a defendant should be required to go to this trouble. The obligation should be on the claimant to do this work in his pleading.
85. I was not asked to make any order in relation to the privilege pleadings but to express a provisional view as to the desirability of a more fully pleaded case in the Reply. It is desirable for the reasons I have given above.

VII. Conclusion

86. The Abuse of Process Application is dismissed and I will direct that Mr. Spicer should amend his Reply to comply with the Practice Direction as regards the truth defence.