



Neutral Citation Number: [2022] EWHC 715 (QB)

Case No: QB-2021-002673

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 30 March 2022

**Before:**

**RICHARD SPEARMAN Q.C.**  
**(Sitting as a Deputy Judge of the Queens Bench Division)**

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**Between:**

**JAMES WILSON**  
**- and -**  
**(1) JAMES MENDELSON**  
**(2) PETER NEWBON**  
**(3) EDWARD CANTOR**

**Claimant**

**Defendants**

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**Gervase de Wilde** (instructed under Direct Access) for the **Claimant**  
**Beth Grossman** (instructed by 3D Solicitors and by Patron Law respectively) for the **First and Third Defendants**

The **Second Defendant** did not appear and was not represented

Hearing date: 16 March 2022  
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**Approved Judgment**

*This judgment was handed down remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 10:30am on 30 March 2022.*

## **Richard Spearman Q.C.:**

### INTRODUCTION AND NATURE OF THE HEARING

1. This is a claim for libel, misuse of private information, harassment, and breach of data rights in large part concerning a Facebook post which was originally published on or about 3 December 2018 (“the Facebook Post”). The author and original publisher of the Facebook Post was the mother of a child at a primary school, and it apparently came into being following interaction between her and the Claimant outside the school. The identity of the mother and the name of the primary school are irrelevant to the issues which arise in these proceedings, and I have therefore omitted them from this judgment.
2. The Facebook Post comprised a photograph of the Claimant, apparently taken by the mother, together with the following text, which appeared underneath that photograph:

“Does anyone have any idea who this weirdo is, think he is from the Birkby area in Huddersfield, I was dropping my daughter off at... Junior school this morning, he has approached me by banging very hard on my car window asking me to turn my car engine off, I replied i am in the drop off zone its raining heavily the windscreen is getting steamed up, i was literally park up for a few minutes, this weirdo then had the nerve to take pictures of my car, of me, and my Daughter, he was very rude and i took a picture of him so that i could inform other parents and the school that this freak takes kids pictures. This is harassment he has my Daughters picture in his phone, I am fuming, I want to find out who he is, please share and help me find out who he is. Thanks.”
3. The photograph which accompanied these words was taken in daylight and shows a man (the Claimant) facing directly at the camera. He is wearing a short double-breasted navy blue coat which is fully buttoned up, pointing his right arm and hand at roughly shoulder height towards his right hand side, and holding the handles of a shopping bag or small item of luggage in his left hand. The expression on his face seems in keeping with the gesture, and suggests that he is making a point or possibly rebuking someone. Around his neck he has what appears at first glance to be a scarf, or the collar of some inner garment, which is predominantly light grey or white in colour, but which can be seen on closer inspection to be a supporting neck brace or collar. Behind him is a wall, a lamppost or similar post bearing what looks like a camera sign, and several trees.
4. On or about 12 August 2020 and 13 August 2020, as part of an extensive thread, the Second Defendant published a number of Tweets, which comprised screenshots of the Facebook Post together with additional messages. For the purposes of the present hearing, the material messages (in correct date order) are the following: (1) “I see yer Da is doing ‘community watch’ again”; (2) ““this freak takes pictures of kids’ apparently”; (3) “Indeed. Quite so. As when this mother described the man who allegedly photographed her children as a ‘freak’ – for instance. One much (sic) uphold her right to free expression in what sounds like a situation of harassment”; and (4) “Ranting at people is so unattractive, don’t you think, eh?”
5. In addition, as part of a separate thread, on or about 15 August 2020, the Third Defendant published a Tweet comprising a screenshot of the Facebook Post together

with the following message: “Define weird”. The Claimant’s case is that this Tweet remained live until around 19 April 2021.

6. The Claim Form is dated 1 July 2021, and was issued on 6 July 2021. The Particulars of Claim are also dated 1 July 2021, and therefore were presumably served at or around the same time as the Claim Form. On 22 November 2021, and by consent, Master Davidson directed the trial of the following preliminary issues in respect of the claim for defamation (“the Preliminary Issues”): (a) the natural and ordinary meaning(s) of the Facebook Post and each of the Tweets complained of in the Claimant’s claim for libel; and (b) in respect of each publication complained of (i) whether each meaning found is defamatory of the Claimant at common law; (ii) whether it made a statement of fact or was or included an expression of opinion; and (iii) insofar as it contained an expression of opinion, whether, in general or specific terms, the basis of the opinion was indicated. Master Davidson further directed that, by 4.30pm on 20 December 2021, each Defendant should file and serve a written notice of his case on each of the Preliminary Issues. The Defendants duly complied with that direction.
7. On 15 January 2022, the Second Defendant sadly died. On his death, the Claimant’s cause of action in defamation against him abated, although the Claimant’s other causes of action against him survived against his estate. However, the Claimant’s pleaded case includes the contentions that the First Defendant (a) is liable “as the ‘author’ of the Facebook Post for the purposes of section 10 of the Defamation Act 2013” in respect of each of the Second Defendant’s Tweets identified in [4] above and also in respect of the Third Defendant’s Tweet identified in [5] above and (b) is liable “in damages or compensation for the ... reasonably foreseeable ... republications” of each of those Tweets (see paragraphs 44.3 and 44.4 of the Particulars of Claim).
8. In these circumstances, by Order dated 14 February 2022, Nicklin J directed (a) that the hearing of the trial of the Preliminary Issues should go ahead to determine the Preliminary Issues in relation to the claim against the First and Third Defendants, (b) that the remaining parts of the Claimant’s claim (being the non-defamation claims) against the Second Defendant should be stayed pending either an application to substitute personal representatives of the Second Defendant’s estate or the filing of a notice of discontinuance, and (c) that the status of the claims against the Second Defendant’s estate should be reviewed at the aforementioned hearing.
9. Thereafter, on 15 March 2022, the Claimant and the Second Defendant’s widow, acting in her capacity as executrix of the estate of the Second Defendant (“the Estate”), entered into a Settlement Agreement. The main terms of that Agreement are (a) the Estate agrees to make a payment “in reflection of the Claimant’s legal costs of dealing with the consequences of [the Second Defendant’s] death and the complexity of resolving any matters as to the involvement of the Estate”; (b) the Estate will conduct a disclosure exercise with a view to providing the basis for an Order for Third Party Disclosure to be sought against the Estate; and (c) in consideration for the foregoing, subject to certain caveats, the Claimant will not apply to join the Estate as a party to the present claim.
10. Accordingly, I am now required to determine the Preliminary Issues (and nothing else). Before me, Gervase de Wilde appeared on behalf of the Claimant, and Beth Grossman appeared on behalf of the First and Third Defendants. I am grateful to both of them for their clear and helpful written and oral submissions.

## THE APPLICABLE LEGAL PRINCIPLES

11. There was no difference between the parties as to the applicable legal principles, which are well settled: see *Koutsogiannis v Random House Group Ltd* [2019] EWHC 48 (QB); [2020] 4 W.L.R. 25 (Nicklin J) at [10]-[12], and *Corbyn v Millett* [2021] EWCA Civ 567; [2021] E.M.L.R. 19 at [8]-[10], where the Court of Appeal (see Warby LJ at [7]-[10]) approved *Koutsogiannis* and summarised the other requirements for establishing a cause of action in defamation, along with the law relating to fact and opinion.
12. Mr de Wilde expanded on those authorities by submitting, first, that principle (iii) in *Koutsogiannis* is taken from the summary of the principles approved by the Court of Appeal in *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130 (Sir Anthony Clarke MR):

“(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.”

13. Second, he submitted that this in turn amounts to a summary of comments in two speeches made in *Lewis v Daily Telegraph* [1964] A.C. 234 in what then became canonical statements of principle cited in *Gatley on Libel and Slander*, 12<sup>th</sup> edn, under the heading “Ordinary meaning and implications” at 3.18. See Lord Reid, at p258:

“What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of words. But that expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural and ordinary meaning.”

And Lord Devlin, at p277:

“My Lords, the natural and ordinary meaning of words ought in theory to be the same for the lawyer as for the layman, because the lawyer’s first rule of construction is that words are to be given their natural and ordinary meaning as popularly understood. The proposition that ordinary words are the same for the lawyer as for the layman is as a matter of pure construction undoubtedly true. But it is very difficult to draw the line between pure construction and implication, and the layman’s capacity for

implication is much greater than the lawyer's. The lawyer's rule is that the implication must be necessary as well as reasonable. The layman reads in an implication much more freely; and unfortunately, as the law of defamation has to take into account, is especially prone to do so when it is derogatory."

14. Third, Mr de Wilde submitted that Lord Devlin's exposition of this fundamental principle was in turn cited in *Skuse v Granada Television* [1996] E.M.L.R. 278 for the basis of the warning that "(4) The court should not be too literal in its approach" (Sir Thomas Bingham MR at p286).
15. Fourth, Mr de Wilde made reference to *Berkoff v Burchill* [1997] E.M.L.R. 139, Neill LJ at 151, for the potential role in ascertaining meaning of the publisher's intention: "It is trite law that the meaning of words in a libel action is determined by the reaction of the ordinary reader and not by the intention of the publisher, but the perceived intention of the publisher may colour the meaning."
16. Fifth, with regard to the particular issues which arise in defamation claims relating to the meaning of publications on the internet, and especially on social media, he cited the speech of Lord Kerr in *Stocker v Stocker* [2019] UKSC 17; [2020] A.C. 593 at p258:

"[41] The fact that this was a Facebook post is critical. The advent of the 21st century has brought with it a new class of reader: the social media user. The judge tasked with deciding how a Facebook post or a tweet on Twitter would be interpreted by a social media user must keep in mind the way in which such postings and tweets are made and read.

[42] In *Monroe v Hopkins* [2017] 4 WLR 68 [35], Warby J said this about tweets posted on Twitter:

'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 much 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.'

[43] I agree with that, particularly the observation that it is wrong to engage in elaborate analysis of a tweet; it is likewise unwise to parse a Facebook posting for its theoretically or logically deducible meaning. The imperative is to ascertain how a typical (i.e. an ordinary reasonable) reader would interpret the message. That search should reflect the circumstance that this is a casual medium; it is in the nature of conversation rather than carefully chosen expression; and that it is pre-eminently one in which the reader reads and passes on.

[44] That essential message was repeated in *Monir v Wood* [2018] EWHC 3525 (QB) [90] where Nicklin J said: ‘Twitter is a fast moving medium. People will tend to scroll through messages relatively quickly.’ Facebook is similar. People scroll through it quickly. They do not pause and reflect. They do not ponder on what meaning the statement might possibly bear. Their reaction to the post is impressionistic and fleeting. Some observations made by Nicklin J are telling. Again, at [90], he said:

‘It is very important when assessing the meaning of a Tweet not to be over-analytical ... Largely, the meaning that an ordinary reasonable reader will receive from a Tweet is likely to be more impressionistic than, say, from a newspaper article which, simply in terms of the amount of time that it takes to read, allows for at least some element of reflection and consideration. The essential message that is being conveyed by a Tweet is likely to be absorbed quickly by the reader.’

[45] And Nicklin J made an equally important point at [92] where he said (about arguments made by the defendant as to meaning), ‘ these points only emerge as a result of close analysis, or someone pointing them out. An ordinary reasonable reader will not have someone by his/her side making points like this. ’

[46] A similar approach to that of Nicklin J had been taken by Eady J in dealing with online bulletin boards in *Smith v ADVFN plc* [2008] EWHC 1797 (QB) where he said:

‘[13] It is necessary to have well in mind the nature of bulletin board communications, which are a relatively recent development. This is central to a proper consideration of all the matters now before the court.

[14] ... Particular characteristics which I should have in mind are that they are read by relatively few people, most of whom will share an interest in the subject matter; they are rather like contributions to a casual conversation (the analogy sometimes being drawn with people chatting in a bar) which people simply note before moving on; they are often uninhibited, casual and ill thought out; those who participate know this and expect a certain amount of repartee or “give and take”.

[16] ... People do not often take a “thread” and go through it as a whole like a newspaper article. They tend to read the remarks, make their own contributions if they feel inclined, and think no more about it.”

17. Sixth, Mr de Wilde referred to *Riley v Murray* [2021] EWHC 3437 (QB); [2022] E.M.L.R. 8, Nicklin J at [14], for an explanation of the relevance of *Stocker* to the exercise which the Court is undertaking when assessing the meaning of a Tweet:

“14. In *Stocker*, the Supreme Court was dealing with the meaning of a posting on Facebook. Reference must be made to the Court of Appeal judgment to see the immediate context in which the words, “he tried to strangle me”, were published: [2018] E.M.L.R. 15 [11]. *Stocker* was an important restatement of existing principles of defamation law in relation to modern methods of communication. It re-emphasised the importance of taking the hypothetical ordinary reasonable reader to be a person who would read, and react to, a publication “in a way that reflected the circumstances in which it was made” [39] and that “the way in which the words are presented is relevant to the interpretation of their meaning” [40].”

18. Seventh, Mr de Wilde submitted that as was noted in *Vardy v Rooney* [2020] EWHC 3156 (QB) (Warby J at [25]) with reference to the authorities on Twitter posts, these propositions may be of “less relevance” in a case where “It would be clear to the ordinary reader from the outset that it was meant seriously, and intended to convey a message of some importance.”
19. Finally, Mr de Wilde expressed concern that Ms Grossman’s Skeleton Argument raised points which had not been foreshadowed in the Defendants’ written notice of their case on the Preliminary Issues, and, moreover, were not correct as a matter of law. In particular, he was concerned that Ms Grossman was seeking to place reliance on the contents of the threads of which the Tweets complained of formed part for the purposes of determining the meaning of those Tweets. Mr de Wilde also took issue with the assertion in Ms Grossman’s Skeleton Argument that the thread which contained the four Tweets published by the Second Defendant had been “begun” by the Second Defendant; and he produced a Tweet by an individual who is not a party to these proceedings which had not been included in the hearing bundle and which the Claimant contended had “begun” the material thread. Against this background, Mr de Wilde referred me to further passages from the judgment of Nicklin J in *Riley v Murray*, which were prompted by the observation in [10] of that judgment that “there is a creeping tendency, under the guise of alleged “context”, to attempt to adduce evidence extrinsic to the words complained of on the issue of the natural and ordinary meaning”.
20. I did not understand Ms Grossman to take issue with any of these legal propositions.
21. With regard to the factual issue of who had “begun” the thread which contained the four Tweets published by the Second Defendant and identified in [2] above, Ms Grossman explained how the contents of the hearing bundle had evolved. Initially, the Defendants had produced a “context schedule” to the written notice of their case, in support of their contention that the Second Defendant’s Tweets and the Third Defendant’s Tweet which are the subject of the claim for defamation “in each instance form[ed] part of a wider conversation”. That led to a debate with the Claimant, as a result of which he produced the chronological threads which appear at pages 38-59 and 60-64 respectively. The first Tweet on page 38 was published by the Second Defendant, and this formed the basis of Ms Grossman’s statement that the thread was “begun” by him. As soon as Mr de Wilde produced the additional Tweet, said by the Claimant to precede the Tweet at page 38, Ms Grossman was happy to accept that it was this Tweet, and not a Tweet published by the Second Defendant, which began the relevant thread.

22. With regard to wider issue of context, Ms Grossman clarified that she was not seeking to use the contents of the Tweets surrounding those complained of as part of the claim for defamation for the purpose of arguing that those contents alter or affect the natural and ordinary meaning of the Tweets which are complained of. Instead, her essential point was that the Tweets complained of formed part of a “spat”, or series of “spats”, between the Claimant on the one hand and the First and Second Defendants and the Third Defendant respectively on the other hand. This does not appear to be contentious. In fact, in their respective Skeleton Arguments both sides invited me, as part of my pre-reading, to read not only the Tweets complained but also the entirety of pages 38-64 in the hearing bundle. More broadly, Mr de Wilde’s Skeleton Argument states: “The parties were, at the material time, involved in debates taking place on Twitter concerning the subject of actual or alleged anti-Semitism in public and political life in this country and elsewhere. In broad terms, [the Claimant] and [the Defendants] were ideologically opposed to each other in the context of that debate”. Ms Grossman’s Skeleton Argument stated that the four Tweets complained of as against the Second Defendant were contained “in a long Twitter thread ... which concerns antisemitism” and that “[t]he context of the publication complained of in respect of [the Third Defendant] is remarkably similar”. It is fair to say that Ms Grossman’s Skeleton Argument also suggested that I could take judicial notice that matters such as the question of whether left-wing criticism of Israel is antisemitic have been the subject of major political debate in recent years, and that Mr de Wilde objected to this approach; but Ms Grossman did not rely on that proposition as part of her argument on meaning.
23. Ms Grossman submitted, first, that while the Court is not confined to the precise meanings advanced by the parties, the Court should not normally make a finding of any meaning which is not either advanced to some extent in the statement of case or submissions of one or other party, or within the same class or range as a meaning so advanced: *Yeo v Times Newspapers Limited* [2015] 1 W.L.R. 971 at [82].
24. Second, Ms Grossman placed particular emphasis on certain of the principles concerning the correct approach to determining the natural and ordinary meaning of the words complained of, as restated by Nicklin J in *Koutsogiannis v Random House Group Ltd* [2020] 4 WLR 25 at [11]-[12]. In addition to principle (iii), which had also been highlighted by Mr de Wilde, Ms Grossman drew specific attention to the following:
- “(vi) Any meaning that emerges as the produce of some strained, or forced, or utterly unreasonable interpretation should be rejected. ...
  - (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. ...
  - (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.



25. Third, Ms Grossman relied upon the same passages from the speech of Lord Kerr in *Stocker* as had been relied upon by Mr de Wilde.
26. Fourth, Ms Grossman relied on the statements of Warby J in *Monroe v Hopkins* [2017] 4 WLR 68 that a tweet “may well need to be read as part of a series of tweets which the ordinary reader will have seen at the same time as the tweet that is complained of, or beforehand” ([34]) and that “a matter can be treated as part of the context in which an offending tweet [is to be read] if it is on Twitter and sufficiently closely connected in time, content, or otherwise that it is likely to have been in the hypothetical reader’s view, or in their mind, at the time they read the words complained of” ([38]). The latter statement builds on Warby J’s statement in [35] of the same judgment (which was cited with approval by Lord Reed in *Stocker* at [42]-[43]) that the impressionistic approach which it is appropriate to adopt when determining the natural and ordinary meaning of a tweet “must take account of the whole tweet and the context in which the ordinary reasonable reader would read that tweet ... [including] (a) matters of ordinary general knowledge; and (b) matters that were put before that reader via Twitter.”
27. Fifth, in the context of addressing the topics of “reasonableness, speculation and avidity for scandal”, Ms Grossman referred to *Bukovsky v Crown Prosecution Service* [2018] 4 WLR 13. In that case, the Court of Appeal upheld at [29] the first instance decision of Nicol J (see [2016] EWHC 1926 (QB)). Nicol J rejected the claimant’s contention that a statement by the CPS that the claimant had been charged with making and possessing indecent images of children bore a natural and ordinary meaning that he had been personally involved in the sexual abuse of children, saying at [32]: “There is nothing in the Charging Announcement to indicate that in levelling this charge at this defendant the CPS were alleging any particular role, or adopting any particular meaning of “making”, limited to or involving the physical presence of the defendant at the indecent scene in the guise of photographer ... At best [that] would represent a “strained, forced or unreasonable” interpretation of the Announcement.” In my view, however, as Mr de Wilde submitted, that is merely a decision on the facts of that case.
28. Sixth, Ms Grossman pointed out that the terms “weirdo” and “sick creep” had been considered in *McNally v Saunders* [2022] EMLR 3 (in which Chamberlain J said at [85] of the description someone in two tweets as a “weirdo” that “that, though certainly not pleasant, is a fairly ubiquitous word.”) and *Kirkegaard v Smith* [2019] EWHC 3393 (QB) (in which Julian Knowles J said at [60]: ““Sick creep’ is obviously a form of (fairly severe) criticism, bordering on vulgar abuse by the Defendant of the Claimant. But Twitter is a medium where people abuse each other regularly and not in a literal way, and a reasonable reader would know that.”). Those are also decisions on the facts.
29. Seventh, Ms Grossman referred to the same quote from the judgment of Neill LJ in *Berkoff v Burchill* [1997] E.M.L.R. 139 as had been relied upon by Mr de Wilde.
30. Eighth, Ms Grossman reminded me of the “repetition rule” as restated by Nicklin J in *Brown v Bower* [2017] EMLR 4 WLR 197 at [28]-[32]. She submitted that, in sum, this rule prevents a defendant alleging that a publication has a different or less serious meaning purely because it is repeating the words of a third party. However, this rule cannot be applied mechanistically and context is everything [28]-[29]. The publication as a whole must be considered to determine the purpose of repeating the hearsay, and whether that amounts to endorsement, repudiation or any other treatment of it [30]-[32].

31. Ninth, Ms Grossman submitted as follows with regard to the distinction between fact and opinion. This distinction is well-established in case law. The relevant principles are summarised in *Koutsogiannis*. She relied upon *Butt v Secretary of State for the Home Department* [2019] EMLR 23 at [37] and [39] for the propositions that the defence is not restricted to “epithets as the commentator may apply to the subject matter” but may also include inferences of fact; and that, when determining whether a statement is discernibly opinion, the subject matter, the nature of the allegation and the context of the relevant words may be important. An expression of opinion must indicate its basis in either general or particular terms. This is a requirement both for the determination of meaning, and for the application of the relevant defence under s3(4) Defamation Act 2013. Neither case law nor the Act provide any set formula as to what must be indicated.
32. Finally, Ms Grossman submitted that mere vulgar abuse does not amount to defamation. She made reference to *Smith v ADVFN plc* [2008] EWHC 1797 (QB), Eady J at [17]:

“From the context of casual conversations, one can often tell that a remark is not to be taken literally or seriously and is rather to be construed merely as abuse. That is less common in the case of more permanent written communication, although it is by no means unknown. But in the case of a bulletin board thread it is often obvious to casual observers that people are just saying the first thing that comes into their heads and reacting in the heat of the moment.”

#### THE PARTIES’ RIVAL CASES

33. The Claimant’s pleaded meaning of the Facebook Post is as follows:

“The Claimant is a paedophile who deliberately concealed his identity in order to take a picture of a child whilst she was in her mother’s car outside school and who habitually takes and stores for his own use pictures of children in such circumstances, misconduct which is so serious that he must be urgently identified with the help of the school, parents and the local community.”

34. The Claimant’s case, in summary, is that the “the Facebook Post, when read in the context of the Tweets by [the Second and Third Defendants] which re-published it and used it to attack him, would readily be understood as alleging that he is a paedophile who requires urgent identification in his community as a result of his misconduct”.

35. In support of that case, Mr de Wilde’s preliminary submissions were as follows:

- (1) Twitter is a fast-moving medium which is consumed impressionistically.
- (2) The Facebook Post would appear in readers’ timelines as an image embedded in a series of Tweets. This would only accentuate the fleeting manner in which it would be absorbed. Without a detailed study of the text of the Facebook Post and a determined effort to understand the possible circumstances in which it was published – which are not immediately apparent from its brandishing against the

Claimant by the Second and Third Defendants – only its most obvious and derogatory implications would be apparent.

- (3) This fleeting impression, moreover, is one which would be obtained by the reader in the context of an ill-tempered spat between the Claimant and the Second Defendant over the course of an extended Twitter thread, in which the Second Defendant had: (a) attacked the Claimant as a “dull, dull man”, with whom there was “no good reason to bother”; (b) described the Claimant as a “living allegory of tedium”; (c) asked a disingenuous question about the Claimant, the implication of which was that he was a racist or anti-Semite (“I can’t think what it is about Jews discussing the racism they face that animates James so. It’s a complete mystery.”); and (d) accused the Claimant by implication of being a psychopath (“Apropos of nothing. Ever read Jon Ronson’s ‘The Psychopath Test’? Illuminating book.”).
- (4) These publications by the Second Defendant concerning the Claimant were the prelude to the Second Defendant blocking the Claimant and leaving the conversation taking place in the material thread, before the Second Defendant returned to the fray to make the publications complained of. The context is therefore one in which he had displayed considerable animosity towards the Claimant, and would have been understood by readers to be prepared to cause him harm by re-publishing the Facebook Post in a context which identified him as its subject.

36. Turning to matters of detail, Mr de Wilde’s principal submissions were as follows:

- (1) The Facebook Post is the 21<sup>st</sup> century equivalent of a “Wanted” Poster. It is a public call for information or action, which could only be merited by some sort of serious wrongdoing on the part of the person who needs to be identified by it.
- (2) This is underlined by the fact that the Facebook Post begins and ends with an urgent demand for information as to the identity of the unknown individual it depicts: “Does anyone have any idea who this weirdo is... I want to find out who he is, please share and help me find out who he is. Thanks”. This alerts the reader to the fact that the person shown is responsible for serious and alarming misconduct, which merits an immediate urgent community-wide effort to identify him. It is obviously intended to be taken seriously.
- (3) The Facebook Post then provides details of an altercation between the author and the individual shown. This took place outside a school, which is a place where children congregate at the beginning and end of the school day. A single man, as here, alleged to be observing or interacting with those attending the school without any apparent proper basis for doing so would inevitably attract suspicion.
- (4) The request to the author to turn her engine off which the Facebook Post describes is the basis for this interaction, but it is not its most notable feature. That is one which is identified repeatedly (on no less than three occasions) by the author, which is that the person shown “had the nerve to take pictures of... my Daughter... this freak takes kids pictures... he has my Daughters picture in his phone” (sic).
- (5) The use of derogatory terms such as “weirdo” and “freak” throws this central feature of the Facebook Post into stark relief: there is in the circumstances something sinister or perverse about the use by the person shown of his phone to take pictures

of the author's daughter. This is further emphasised by the author's explanation of her having taken the picture of the person shown in order to "inform other parents and the school", which clearly implies the need to protect children in the community other than her daughter from him.

- (6) The Facebook Post depicts the person the author wants to identify as the Folk Devil of popular imagination: a sinister and (because of his neck brace) unusual looking lone male, lurking at the school gates and opportunistically obtaining images of children. It evokes the moral panic associated with such a figure, familiar from countless tabloid headlines, in a bid to identify and, potentially, shame its subject within the local community.
- (7) The suggestion that the Claimant is therefore a paedophile is the derogatory implication which the layperson, seeing the Facebook Post in its original context on Facebook itself, or reading it on Twitter in a context where the Claimant was identified by the Second and Third Defendants as the person shown, would freely and readily read into the Facebook Post. This, and the clear implication that this is a type of conduct which is habitual or risks repetition if the perpetrator is not identified so that he can be stopped, is the purported basis for the urgent request for assistance from the local community in discovering the identity of the person which the Facebook Post shows. Only serious and disturbing misconduct could merit a community-wide alert, focused on the need to "inform other parents and the school" about that misconduct, of the kind ostensibly issued in the Facebook Post.
- (8) The Claimant's meaning (or any similar meaning) is one which is defamatory at common law, in that: (a) it satisfies the consensus requirement, since identifying a person as a paedophile who must be urgently identified is perhaps the most likely of all imputations to lower them in the estimation of right-thinking people generally; and (b) it crosses the threshold of seriousness, since this is an imputation which would have a substantially adverse effect on how he was treated by other people.

37. So far as concerns the Second and Third Defendants' Tweets, Mr de Wilde submitted that they highlight the most derogatory and damaging aspects of the Facebook Post:

- (1) The first Tweet comments sarcastically that "I see yer Da is doing 'community watch' again." The reference to "yer Da" is a dismissive and derogatory reference to a middle-aged man. The ironic use of scare quotes around "community watch" serves to emphasise that any purportedly valid explanation for the Claimant's interaction with the author of the Facebook Post, such as asking her to turn her car engine off, is one which should elicit scepticism, i.e. it is likely to be a false justification for more sinister conduct.
- (2) The next Tweet expressly foregrounds what was obviously apparent to the Second Defendant as being the defamatory sting of the Facebook Post, and the reason why he deployed it as part of his argument with the Claimant: "this freak takes pictures of kids' apparently". The Second Defendant's perceived intention in the eyes of the reader of the Facebook Post, this Tweet, or any aspect of the thread of which this Tweet forms part, was to emphasise this sensational and highly damaging aspect of the Facebook Post. Inevitably, this would influence the reader's perception of the meaning of the Facebook Post.

- (3) The same is true of the further Tweet, which in publishing the Facebook Post points out how “this mother described the man who allegedly photographed her children as a ‘freak’ – for instance.” Again, this Tweet highlights this highly defamatory allegation, of photographing a child in suspicious circumstances which merit the Claimant’s condemnation as a “freak”.
- (4) The Third Defendant’s Tweet similarly highlights the focus of the Facebook Post on the Claimant’s alleged status as someone who is perverse, sinister or outside the norm, with its comment “Define weird”.

38. Further, Mr de Wilde submitted:

- (1) The Third Defendant, whose publication of the Facebook Post remained live for around 8 months, engaged further with the Claimant after publication, to observe sarcastically on 15 August 2020 that: “it is claiming that you’re a giant dick. Since you have proven that to be true, I merely ask which bit of it is defamatory? I think that’s a reasonable question. If you are looking for the absolute best in defamation litigation @MLewisLawyer”.
- (2) The following day, on 16 August 2020, after the Second Defendant had rightly removed his own Tweets, the Third Defendant taunted the Claimant, asking “Have you engaged anyone to sue me yet Jimmy?”, implicitly recognising the defamatory nature of the Facebook Post and that the Claimant’s rights had been infringed, but at the same time defiantly asserting that he would not be deterred from continuing to publish it.
- (3) This context is relevant to the meaning of the Facebook Post.
- (4) It also creates a forensic challenge for the Defendants, in that their written case on meaning emphasises the importance of the Tweets, but also seeks to argue that the Second and Third Defendants’ own understanding of the Facebook Post and clear intention in posting it, apparent from the Tweets and surrounding context, is not one which is relevant to the meaning which it reasonably bears for the ordinary reader.

39. The First and Third Defendants contend that the Facebook Post meant:

“The Claimant objected to a mother keeping her car engine running while dropping her daughter at school. He banged on the car window and took pictures of the car, the woman and her daughter. In the woman’s opinion, he is a busybody and a weirdo.”

40. Ms Grossman’s principal submissions in support of this meaning were as follows:

- (1) The words used by the author of the Facebook Post speak for themselves. The Claimant had banged on her car window and taken photographs and been rude to her because he objected to the fact that she was parked with her car engine running. She describes him as a “weirdo” and a “freak” in that context, and only that context.
- (2) The meaning for which the Claimant contends requires not only an avidity for scandal, and a degree of speculation which would take it out of the realms of what

a reasonable reader would understand, but is also divorced from the reality of what the Facebook Post actually says. Plainly, it cannot bear a meaning that the Claimant deliberately concealed his identity when it contains a picture of his full face, from a frontal view. The author poses the question as to who he is only because (as is clear from the words that follow it) he is a stranger to her. The author does not allege concealment of any sort. Reasonable readers would know that a stranger does not “hide” their identity in these circumstances - it is simply unknown.

- (3) The author makes clear her reasons for describing the Claimant as a “weirdo” and a “freak”: he started an argument with her unnecessarily about keeping her engine running whilst dropping her daughter off at school, acted aggressively by banging on her window, and took photographs of her car, her daughter and herself.
- (4) The author does not allege that the Claimant is a paedophile. This would be an allegation of the utmost seriousness. An ordinary reasonable reader would not leap to this interpretation: to do so would be unreasonable, and involve selecting a bad meaning – indeed one of the worst possible – where less serious ones would not only be available, but much more readily apparent from the incident she describes.
- (5) The author does not suggest that the photograph was taken for purposes of sexual gratification. Indeed, the facts stated did not allege that the photograph being taken would be used for any sexual purpose concerning the child: it is a photograph of the author and the car as well, and the obvious inference as to why the photograph was taken was because the Claimant wished to retain some record of the incident himself. The author did not state that she refused to drop her daughter off. For a reader to suppose that there was any sexual purpose in the Claimant’s act would require unreasonableness, a wild degree of speculation and an avidity for scandal.
- (6) It does not follow from the author’s upset at the taking of the photograph of her daughter that she would only have been upset had she suspected the Claimant of ulterior and sexually motivated purposes. A reasonable reader would appreciate that a parent may be protective of their child’s privacy, and upset at a stranger possessing pictures of that child for any reason. Again, it would require an avidity for scandal and impermissible degree of speculation on that the part of the reader to consider that the only reason why a parent would wish to protect their child’s privacy would arise from concerns about paedophilia. A reader would also appreciate the reason why the author was upset, namely that this man had been aggressive and rude.
- (7) While the author uses the phrases “takes kids pictures” there is no suggestion as to this being a habitual action for sexual purposes. It is evident from the medium, and the quality of the language that she uses (i.e. “park up” rather than “parked”; and “kids pictures” rather than “kids’ pictures”) that she is speaking loosely.
- (8) The author’s words speak for themselves as to the reasons why she wishes to alert the school: it is because of “harassment”, that is to say intimidation of mothers going about the normal business of collecting their children. That is not a suggestion of paedophilia or paedophilic activity, and a reasonable reader would not infer that it was. Indeed, along with the absence of any mention of paedophilia, the fact that the complaint is only one which she wishes to make to the school, and not – for instance – to the police would count strongly against such an inference.

41. With regard to the Second Defendant's Tweets, Ms Grossman's principal submissions (modified in light of the clarification which she provided during the course of the hearing) were as follows:
- (1) The Tweets amplify the Facebook Post's criticisms by repeating them in a different context, to the effect: "you [the Claimant] are acting as a busybody who tries to police other people online just as you tried to police this mother outside a school".
  - (2) This would be readily perceived by a reader, who would note from the style, format and language of posting, as well as the use of the name of the author of the Facebook Post that it is the statement of a third party which is being republished and amplified.
  - (3) The first Tweet refers to "community watch", drawing a link between the policing and busybody conduct which is described in the Facebook Post and the like conduct which is evident in the Twitter thread.
  - (4) The next Tweet follows the Claimant's own use of "bit weird" and "frankly odd" in an earlier tweet (which read in full: "Bit weird? You could always engage with the arguments rather than tracking me on social media in a frankly odd way.") and uses quotation marks in the caption provided by the Second Defendant ("this freak takes pictures of kids' apparently") to make it clear that the Second Defendant is drawing on the Facebook author's own description to provide a retort.
  - (5) The next Tweet follows a tweet by the Second Defendant referring to the Claimant as bullying and harassing in a workplace context, and again the caption explicitly picks up the Facebook author's own description. (In fact, there was more than one earlier tweet referring to allegations of bullying against the Claimant. Neither was immediately contiguous to the Tweet in which the Second Defendant wrote: "Indeed. Quite so. As when this mother described the man who allegedly photographed her children as a 'freak' – for instance. One much (sic) uphold her right to free expression in what sounds like a situation of harassment". In the first of those earlier tweets, the words written by the Second Defendant included the following: "Sounds unpleasant. A bit like the sort of person who might, say, be the subject to a workplace inquiry into bullying and harassing a colleague. Perhaps where the allegations were partially upheld". In the second of those earlier tweets, the Second Defendant wrote: "But I'm sure that we can both agree how much of a relief it is that neither of us knows the sort of person who harasses mums on the school run by photographing their children, has been investigated at work for bullying, and trolls Jews. Eh?".)
  - (6) The further Tweet ("Ranting at people is so unattractive, don't you think, eh?") again draws a link between the Claimant's conduct on the Twitter thread and as alleged in the Facebook post by using the word "ranting".
  - (7) The obvious inference to be drawn from these Tweets is that the Claimant is a busybody whose actions in policing the behaviour of strangers – in real life and online – is that of a "weirdo".
  - (8) Accordingly, the meaning of each of these Tweets is that the Second Defendant shares the opinion of the author of the Facebook Post (i.e. on his case as to the meaning of the Post, the opinion that the Claimant is a "a busybody and a weirdo").

42. With regard to the Third Defendant's Tweet, Ms Grossman submitted:
- (1) The context and the manner in which the Third Defendant's publication would have struck a reasonable reader is largely the same as for the Second Defendant's Tweets.
  - (2) The Third Defendant again amplifies the allegations made by the author of the Facebook Post in a different context.
  - (3) The expression "define weird" is an obvious retort to the Claimant himself.
  - (4) Again, the topics which have given rise to this spat are far removed from paedophilia, and a reasonable reader, appreciating that the Third Defendant is willing (i.e. in other tweets which form part of the same thread) to describe the Claimant as a "thick racist", a user of "antisemitic tropes" and a "goader", would also see that the Third Defendant is not one to pull his punches.
  - (5) The meaning of this Tweet is that "In the Third Defendant's opinion, the Claimant is the very definition of a weirdo".
43. As is apparent from this summary, the parties remained divided as to whether the publications complained of, or any of them, contained a statement of opinion.
44. By the conclusion of the hearing, however, I understood Ms Grossman to accept that, even on the Defendants' case as to meaning, each of those publications was defamatory at common law. It seems to me that she gave away nothing by making that concession.

#### DISCUSSION AND CONCLUSIONS

45. In accordance with what is now the well-established practice, I read the Facebook Post and the five Tweets which are complained of as part of the claim for defamation without having read the Particulars of Claim, the Defendants' written case served in accordance with the Order of Master Davidson, or the parties' Skeleton Arguments: see *Tinkler v Ferguson* [2019] EWCA (Civ) 819 at [9] and [37] and *Millett v Corbyn* [2021] EMLR 19 at [8]. This was in order, as far as possible, to place me in the position of the ordinary reasonable reader of the Facebook Post and those five Tweets and to enable me to capture my immediate impression of their meaning or meanings. I was able to discern the extent of the publications complained of because they are outlined in red in the hearing bundle, although they were not outlined in red at the times of publication.
46. My immediate impression was that the first sentence of the Facebook Post contains a number of statements of fact, and that the second sentence contains a statement of the author's opinion based on those facts. Further, the first sentence lists a series of complaints about the behaviour of the man shown in the photograph, which reflect that he is a "weirdo" and a "freak". Among those complaints is the complaint that he has taken photographs of the author's car, of the author herself, and of the author's daughter, and this has caused the author to take a photograph of him to report his behaviour to other parents and to the school. The author considers that those actions, including the retention of the photograph of the author's daughter on the man's phone, amount to harassment, and she is angry, and would like to find out who the man is.
47. In my view, so far as concerns the Facebook Post, this is not a complex case. I find that:



(1) The natural and ordinary meaning of the Facebook Post is:

“The Claimant objected to a mother leaving her car engine running while dropping her daughter off at junior school, banged on her car window, was very rude to her, and took pictures of her, her car, and her daughter, which he retained on his phone. That conduct was unwarranted and worrying, was the conduct of a weirdo and a freak, and amounted to harassment.”

(2) The statement contained in the first sentence is a statement of fact.

(3) The statement contained in the second sentence is a statement of opinion.

(4) The basis of that statement of opinion is clearly indicated, and consists of the sequence of events which is described in that statement of fact.

(5) Both statements are defamatory at common law.

48. When reflecting on these matters in the light of the parties’ submissions, the following points made the greatest impact on me:

(1) Even assuming that the photograph would strike the reader as a “Wanted” poster, that begs the question of “wanted for what?”. The answer is not provided by the photograph itself, which certainly does not convey the impression that it is a picture of someone who is obviously a criminal offender, but is provided by the text.

(2) The like points apply to the fact that the text begins and ends with requests for identification; the question is: why is the author trying to find out who the man is?

(3) The text read as a whole, and even fleetingly and having regard to the context which Mr de Wilde asked me to take into account, is concerned with conduct which is harassing rather than paedophilic; and that is the description the author applies to it.

(4) The act of photographing the author’s daughter was one of a series of acts; the other acts had no conceivable element or connotation of paedophilia; and the photograph itself was not of the daughter alone, was taken in plain view of the child’s mother when the child was in a car with the mother, and has no obvious sexual element.

(5) The use of the words “weirdo” and “freak” do not connote an allegation of paedophilia. On the one hand, if that was being suggested, stronger words would have been used; on the other, these words accord with an allegation of harassment.

(6) The author’s concern about a photograph of her child being retained by the individual who is the subject of the complaint is readily explicable on grounds which have nothing to do with paedophilia: readers would know that many parents would resent any young child of theirs being photographed by a stranger without consent, let alone outside the child’s school and in the context of an altercation.

(7) The author’s reaction is that she is “fuming”. Concern about paedophilia would tend to provoke a different reaction, connoting anxiety and distress rather than anger.

- (8) The need to avoid too literal an approach, and to recognise that the reader may be prone to reading in an implication, do not mean that it is wrong to attach weight to the words actually used, or that the reader should be treated as avid for scandal.
49. The exercise of determining the Preliminary Issues so far as concerns the Tweets is less straightforward. It includes the need to apply the guidance provided by Warby J in *Monroe v Hopkins* that a tweet “may well need to be read as part of a series of tweets which the ordinary reader will have seen at the same time as the tweet that is complained of, or beforehand” ([34]) and that “a matter can be treated as part of the context in which an offending tweet [is to be read] if it is on Twitter and sufficiently closely connected in time, content, or otherwise that it is likely to have been in the hypothetical reader’s view, or in their mind, at the time they read the words complained of” ([38]). This must be done in circumstances where, as Nicklin J observed in *Riley v Murray* at [18]: “Applying these principles can raise sometimes fine questions of judgment—for example ... what constitutes directly available context in a particular mode of publication (e.g. see the discussion about how postings on Twitter appear in *Monroe v Hopkins* [39]).” What Warby J said in *Monroe v Hopkins* at [39] is as follows:
- “I would include as context parts of a wider Twitter conversation in which the offending tweet appeared, and which the representative hypothetical ordinary reader is likely to have read. This would clearly include an earlier tweet or reply which was available to view on the same page as the offending material. It could include earlier material, if sufficiently closely connected. But it is not necessarily the case that it would include tweets from days beforehand. The nature of the medium is such that these disappear from view quite swiftly, for regular users. It may also be necessary, in some cases, to take account of the fact that the way Twitter works means that a given tweet can appear in differing contexts to different groups, or even to different individuals. As a matter of principle, context for which a defendant is not responsible cannot be held against them on meaning. But it could work to a defendant’s advantage.”
50. In the present case, it is not entirely clear what was available to view on the same page as each of the Tweets, still less whether any of those Tweets appeared in different contexts to different groups or individuals. This is because, if my understanding is correct, the contents of the hearing bundle comprise versions of the relevant threads which have been assembled by the Claimant in the form in which they now appear.
51. In any event, it appears to be common ground between the parties that the natural and ordinary meaning of each Tweet comprising (i) a message composed by the Second or Third Defendant (as the case may be) and (ii) an embedded screenshot of the Facebook Post was no different from the natural and ordinary meaning of the Facebook Post. In essence, the difference between the parties as to the meaning and effect of the Tweets is attributable to their rival cases concerning the natural and ordinary meaning of the Facebook Post. Thus, Mr de Wilde contends that the Tweets “highlight the most derogatory and damaging aspects of the Facebook Post”, which, on his case, relate to allegations of being a paedophile. In contrast, Ms Grossman contends that the Tweets “amplify the Facebook Post’s criticisms by repeating them in a different context”. On her case, those criticisms relate to conduct which, in the opinion of the author of the

Post, means that he is a busybody and a weirdo. Ms Grossman then argues that the author of each Tweet is expressing agreement with that opinion of the Post's creator.

52. I find as follows:

- (1) The Second Defendant's Tweet containing the message "I see yer Da is doing 'community watch' again" was basically latching on to the contents of the Facebook Post and using them to convey a message to the effect: "Here is an example of inappropriate behaviour by the Claimant, which supports my view that he deserves to be derided". As such, the natural and ordinary meaning of that Tweet was no different to the natural and ordinary meaning of the Facebook Post, which is as set out above. In republishing the Facebook Post together with that message, I consider that the Second Defendant is to be taken to have adopted the entirety of the Post. I therefore reject the submission, if it is pursued, that the Second Defendant thereby only adopted the statement of opinion which I have held to be contained in the Post.
- (2) The Second Defendant's Tweet containing the message "'this freak takes pictures of kids' apparently" was to the like effect. The tweet to which this Tweet appears to have been an immediate reply was a tweet which was sent by someone who is not a party to this litigation, and which read: "Look at his beetroot face, what a loser". In my opinion, that supports the view that this Tweet bore the same meaning as the Tweet which stated "I see yer Da is doing 'community watch' again".
- (3) The like considerations apply to the Second Defendant's Tweet containing the message "Indeed. Quite so. As when this mother described the man who allegedly photographed her children as a 'freak' – for instance. One much (sic) uphold her right to free expression in what sounds like a situation of harassment". The immediately preceding tweets in the same thread appear to be (i) the Claimant's tweet stating "Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom to speak only inoffensively is not worth having" and (ii) the Second Defendant's initial tweet in response to the Claimant, which read "Much as we would, say, want to uphold the right of work colleagues to pursue allegations of bullying and harassment where they felt they had been victimised. I'm sure we'd all endorse that right most vociferously. Nothing worse than a bully." The latter tweet contains information which the Claimant says concerns an employment dispute in which he was involved, which is the subject of his misuse of private information claim, and which is said in the Particulars of Claim to have been misrepresented and sensationalised by the Second and Third Defendants. In my judgment, these tweets support the view that the message which the Second Defendant was picking up and repeating from the Facebook Post was that the Claimant had been guilty of conduct which (a) could legitimately lead to him being described as a freak and (b) appeared to amount to harassment.
- (4) The same applies to the Second Defendant's Tweet containing the message "Ranting at people is so unattractive, don't you think, eh?" The immediately preceding tweets in the same thread appear to be (i) the Second Defendant's tweet including the words "No – all my attention is taken up by my disgust at the sort of man who harasses women on the school run and bullies colleagues", (ii) the Claimant's tweet stating "Do you think posting a false allegation about me that I go round taking photographs of children together with my photo and details of where

I live might tend to provoke violence against me?” and (iii) the Second Defendant’s tweet stating: “Oh, is that you? I was under the impression it was merely some eccentric individual in the Huddersfield area who allegedly photographs mothers and children on the school run.” Again, all this supports the view that the message that the Second Defendant was picking up and repeating from the Facebook Post was that the Claimant’s behaviour was unattractive and harassing (and eccentric).

(5) The Third Defendant’s Tweet comprising a screenshot of the Facebook Post together with the words: “Define weird” was to the like effect. I consider that the meaning of this was to the effect: “The Claimant, and his behaviour described here, is the epitome of ‘weird’”. In my judgment, this does not alter or add to the natural and ordinary meaning of the Facebook Post which was being republished through the medium of this Tweet. The first part of this message has the effect of reiterating that the Claimant behaved in the manner described by the author of the Facebook Post. The second part of this message has the effect of endorsing the statement of opinion contained in the Post. I do not consider that the wider Twitter conversation of which this Tweet forms part sheds any light on the meaning of the Tweet. As in the case of the Second Defendant’s Tweets, I consider that by republishing the Facebook Post together with this message, the Third Defendant is to be taken to have adopted the entirety of the Post. He did not merely endorse the statement of opinion contained in the Facebook Post by saying that he agreed with that opinion.

53. I therefore decide the Preliminary Issues as set out above. In the event that, contrary to my understanding, it remains part of the case of the Second and Third Defendants that the meanings that I have found are not defamatory at common law, I reject that case.
54. I ask Counsel to agree an order which reflects the above. I will deal with submissions on any points which remain in dispute as to the form of the order, any other issues such as costs and permission to appeal, either (if Counsel agree) on the basis of written submissions, or else on an adjourned hearing on some convenient date. It is my intention that the time for seeking permission to appeal should not start running in the meantime.