



**THE COURT OF APPEAL
CIVIL**

Neutral Citation Number [2020] IECA 157

Record Number: 2019/515CA

**Noonan J.
Murray J.
Binchy J.**

BETWEEN/

PADRAIG HIGGINS

RESPONDENT

- AND -

THE IRISH AVIATION AUTHORITY

APPELLANT

JUDGMENT of Mr. Justice Binchy delivered on the 16th day of June 2020

1. This is a decision on an appeal brought by the appellant against an award in damages made in favour of the respondent in defamation proceedings. The award was made by a jury, and followed upon an offer of amends made by the appellant to the respondent, pursuant to s. 22 of the Defamation Act 2009 (the "Act of 2009"), which offer was accepted by the respondent. This is the first case in which an award was made by a jury following an offer of amends, and it followed upon a decision of the Supreme Court, in these and other proceedings, which determined that where the parties in defamation proceedings cannot reach agreement on damages in such circumstances, that the assessment of damages is a matter for a jury.
2. The respondent is a senior commercial airline pilot working for Aer Lingus. He is originally from Ballinasloe, County Galway and, having left school in 1984, he worked for a year so that he could then take up a place studying engineering in University College, Galway. Three years into that degree course, he was offered a prestigious cadetship to embark upon pilot training in Aer Lingus, and so he left college to avail of that opportunity. This training took around two years to complete, after which the respondent qualified as a pilot. In 2001 the respondent was promoted to the position of captain, and in 2016 began flying transatlantic flights in Aer Lingus' largest plane, the Airbus A330. In his leisure time, the respondent is a light aircraft enthusiast, and for some years prior to the matters giving rise to these proceedings, was the owner and pilot of a microlight aircraft.

3. In April 2013, the respondent and a friend travelled with two others to Italy to collect two microlight aircraft, which they intended to fly back to Ireland. Their plan was to fly the aircraft in stages, via the United Kingdom, to Ireland, in a journey that would last four or five days. On arrival in Ireland, it was the respondent's intention to land in a small private airfield in Rathvilly, Co. Carlow. Towards the end of this journey, both aircraft were required to make an emergency landing near Swansea owing to poor visibility. Both aircraft landed safely, although the respondent's plane hit a small block causing some damage to the nose wheel and propeller of the same. Prior to all legs of the journey, the respondent had made the necessary notifications to the relevant aviation authorities and, following the landing in Swansea, he notified the emergency landing both to the local police and the Air Accident Investigation Bureau in the U.K. (the "AAIB"), as required by law. Subsequently, the AAIB entered into communications with the U.K. Civil Aviation Authority (the "U.K. CAA") about the incident. The U.K. CAA then opened an investigation into the matter, in order to be satisfied that all regulatory requirements in relation to the flights in U.K. air space had been satisfied. The day after the incident, the respondent flew the undamaged plane to Rathvilly, having first made any necessary filings in relation to that flight.
4. On 11th July, 2013, a Mr. Robert Webb of the U.K. CAA wrote to the respondent informing him that an investigation into the incident in Swansea had been opened. In this letter, Mr. Webb identified five possible offences: flying into UK airspace without the permission of the U.K. CAA, flying without having registered the aircraft, flying without a certificate of airworthiness, flying without a permit to fly and flying without an appropriate flight crew licence. In the course of its enquiries, the U.K. CAA entered into correspondence with the respondent, who replied promptly, expressing concern about the possible impact of the investigation for his work. Accordingly, the U.K. CAA dealt with the matter expeditiously. By 26th July, 2013, the U.K. CAA had satisfied itself that all of the necessary documentation for the flights had been filed by the respondent, and was in order, and that no further action was required. The respondent was notified accordingly. In his e-mail to the respondent of 26th July, 2013, Mr. Webb stated: "The regulations in relation to flying these types of aircraft from Italy in UK airspace and the associated airworthiness considerations has been fairly complex". He goes on to say that having taken advice from colleagues, he has been satisfied that the respondent's documentation for the flights was correct.
5. Before the U.K. CAA investigation, in June 2013 the respondent had heard rumours about the incident in Swansea. Whether it was as a result of these rumours and/or the U.K. CAA investigation, or both, on 26th September, 2013, the respondent made a data protection request of both the appellant and the U.K. CAA in connection with the matter. In due course, he received a reply (with documents) from both authorities. Included in the material that he received from the U.K. CAA, were three e-mails from the appellant to personnel in both the U.K. CAA and the appellant organisation itself, which were issued on behalf of the appellant by a Mr. John Steel, in response to e-mails received from the U.K. CAA. The former e-mails i.e. those sent by Mr. Steel (hereafter the "E-mails") are the publications that gave rise to these proceedings. Although the appellant responded to the

respondent's data protection request, and provided some e-mails that it had exchanged with the U.K. CAA, it did not provide the respondent with the E-mails. The following is the text of the e-mails received by the appellant from the U.K. CAA, and the responses thereto from Mr. Steel (i.e. the E-mails):-

E-mail 1:

E-mail from Ms. Diane Park of the U.K. CAA to Mr. John Steel of the appellant on 21 June 2013 at 15:21

"John
Copy of the AAIB notification."

Response of Mr. John Steel sent to a Mr. Lou Fine and Mr. John Murray (of the appellant), copying Ms. Diane Park and Mr. Terry O'Neill, of the U.K. CAA on 21 June 2013 at 15:35

"Gents,

It would appear that Mr. Padraig Higgins and A. N. Other, believed to a Mr. David Bolger carried out a flight from Milan to the Dublin area (Rathvilly) on or around 22 April 2013. As per the content of the attached ACCID from the UK AAIB, one of the aircraft had an incident on landing.

Can you liaise with Diane and give her any assistance she needs in tracking down and contacting the individuals, including their licence details. Additionally, can you check with our the Gardai and Revenue to see if they complied with their requirements to advise of the intended flight and also with AWSD to see if any validation was applied for or issued in respect of the Foreign Permit(s) to Fly.

Once we have all of the available information we can liaise with Diane and see how we wish to proceed."

E-mail 2:

E-mail from Ms. Diane Park (U.K. CAA) to Mr. John Steel (of appellant) on 21 June 2013 at 15:57

"He would need permission from the Italians to fly on this licence in an Italian registered aircraft and Italian airspace and also seek your permission as well wouldn't he?"

E-mail from Mr. John Steel to Ms. Diane Park on 21 June 2013 at 16:05

"As I understand it he would in all cases as his Microlight Rating is valid only within Ireland unless validated by the relevant NAA for use in their territory or on their aircraft."

E-mail 3:

E-mail from Mr. Robert Webb (U.K. CAA) to Mr. John Steel, copying Ms. Diane Park and Ms. Mary-Anne Chance, on 26 July 2013 at 14:35

"Dear John

I have attempted to call you to give an update to the investigation. It is the one relating to the two microlights that made a forced landing in Swansea en route to Haverford West on 22 April 2013.

I have made many enquiries, looked at many documents and consulted with [unreadable] at Gatwick. I have received documentation from both pilots and all seems to be in order. There is no evidence to substantiate any offence being committed. Both aircraft are now on the IAA register.

I have, therefore, concluded the investigation and informed both parties that there will be no further investigation and our file will be closed. ..."

E-mail from Mr. John Steel to Mr. Robert Webb on 26 July 2013 at 14:41

"Hi Robert

Sorry for not being available to take your call. Thank you for the update, we still have a couple of issues to deal with this side of the Irish Sea so the two boys will not be getting away 'scot free'."

6. The E-mails were sent to five people, three of whom were internal staff members of the appellant, and two of whom were officers of the U.K. CAA. As is apparent, all of the E-mails were sent by a Mr. John Steel of the appellant, and were sent within minutes of receiving an e-mail from the U.K. CAA, and in each case were sent by way of reply or response to an incoming e-mail of the U.K. CAA.
7. On 14th October, 2013, the respondent wrote directly to the appellant expressing his concern about the damage to his reputation caused by the E-mails and also drawing to the attention of the appellant that, while he had received the E-mails from the U.K. CAA in response to his data protection request to that organisation, they had not been provided in response to his request to the appellant. He requested a full and complete response, from the appellant, to his data protection request, and also requested copies of any correspondence that the appellant had with members of An Garda Síochána and/or the Revenue Commissioners.
8. The appellant responded by letter of 21st October, 2013. In this response it was stated, inter alia, that:-

"Due to the volume of e-mail correspondence received by the Flight Operations Department, material has to be cleared out very quickly. The Flight Operations Department considered that it was unnecessary to retain records in relation to this matter and the only items found were the e-mails sent to you (and a copy of the AAIB's initial form)."
9. The appellant then went on to explain the necessity to make checks with the Gardaí and the Revenue Commissioners as regards the notification of a general aviation flight coming

into the country to an airfield other than a nominated Customs and Immigration airport. This letter, which was sent to the respondent by the appellant's company secretary, a Miss Aideen Gahan, concluded by stating that:-

"The IAA does not have (and has not had) concerns regarding your compliance or professional standards."

10. The respondent instructed solicitors who sent a detailed letter before action to the appellant on 17th December, 2013. In this letter, it is stated, *inter alia*, that the E-mails were defamatory of the respondent in suggesting that he embarked upon flights without the appropriate flight licence, that he failed to obtain the necessary clearances for such flights, and that he placed his own life and that of a passenger in danger. The letter requests an apology and proposals for payment of compensation. Notwithstanding the significant detail contained in this letter, and the threat of proceedings, no response was issued to this letter (other than by way of acknowledgement) and proceedings were issued on 16th April, 2014. A Statement of Claim was delivered on 1st July, 2014. In September and October of 2014, correspondence was exchanged between the solicitors for the parties as regards the defence of the appellant, and in the usual way of such correspondence the solicitors for the respondent threatened to issue a motion for judgment in default of defence.
11. On 11th November, 2014, the solicitors for the appellant sent a detailed letter to the solicitors for the respondent in which they stated that they had been instructed to defend the proceedings vigorously, and in which they provided detailed reasons for this instruction. Amongst other things, they stated that the content of the E-mails was justified, and that they attracted qualified privilege. Detailed explanations were provided as regards the content of the E-mails. It is unnecessary to set out those explanations here, in light of later developments, save to observe that this letter states that, at the time of sending the E-mails, Mr. Steel was under the impression that the respondent had in fact flown his aircraft all the way to Ireland, landing in Rathvilly, Co. Carlow, attracting all the regulatory requirements of such a journey. Also on 11th November, 2014, the solicitors for the appellant served a notice for particulars on the solicitors for the respondent. The respondent's solicitors replied to the notice for particulars on 5th March, 2015, and at the same time served another letter demanding a defence within twenty-one days. The appellant did not deliver a defence. Instead, on 25th May, 2015, the solicitors for the appellant sent an offer of amends to the solicitors for the respondent, pursuant to s. 22 of the Act of 2009 in respect of the entire of the statements complained of, i.e. in respect of the entire content of the E-mails. The respondent's solicitor immediately communicated this development to the respondent, informing him "we've won". The respondent gave evidence in the High Court that he was greatly relieved by this development, which was followed by an exchange of correspondence about the precise wording of the offer of amends, and on 22nd June, 2015 the respondent accepted the offer of amends.

12. There then followed further correspondence between the parties as to the terms of a letter of apology to be issued by the appellant, as well as to the compensation to be paid by the appellant to the respondent. Agreement was not reached in either respect, and a dispute between the parties then erupted as to whether or not damages fell to be determined by a judge or jury in circumstances where an offer of amends had been made under s. 22 of the Act of 2009. This dispute concerned whether s. 23 of the Act of 2009, in providing that the High Court shall determine the amount of damages to be paid in a defamation action where an offer of amends has been made, and accepted, but the parties have been unable to agree on compensation, the reference to the High Court means a judge sitting alone or a judge sitting with a jury. That dispute made its way to the Supreme Court from the High Court, via this Court, and on each occasion each of those courts held in favour of the respondent, holding that, in the absence of agreement, damages fell to be determined by a jury, notwithstanding the offer of amends.
13. The case came on for hearing on 5th November, 2019 before a jury, with Barton J. presiding. The proceedings concluded after seven days of hearing when the jury awarded the respondent the sum of €300,000 in respect of general damages, and €130,000 in respect of aggravated damages. The jury also decided that, in view of the offer of amends, the appellant should be given a discount on the damages so awarded of 10%, resulting in a net overall award to the respondent in the sum of €387,000. In this appeal, the appellant seeks to appeal the entire decision of the jury on the grounds that the awards of both general damages and aggravated damages were unreasonable, excessive and disproportionate, and that the level of discount afforded to the appellant was deficient, in all of the circumstances.
14. The appellant seeks an order allowing the appeal and setting aside the verdict of the jury and, in addition, the substitution by this Court of an appropriate award in respect of the damages and an appropriate percentage reduction of the same having regard to the offer of amends. The respondent denies that the award of the jury was in any way unreasonable, excessive or disproportionate or that the level of discount was in any way unreasonable or deficient. The respondent did not cross-appeal, and instead asked this Court to dismiss the appeal and affirm the judgment of the High Court. This appeal came on for hearing by way of remote hearing before this Court on 28th April, 2020.

Statement of Claim

15. In his Statement of Claim, the respondent pleads, at para. 8 thereof (as regards the content of the E-mails) as follows:-

"8. In their natural and ordinary meaning, the words mean and were understood to mean that the Plaintiff: -

- (a) Flew an aircraft without the appropriate flight crew licence;
- (b) Flew an aircraft over British Airspace without obtaining the relevant clearance or did so when he was not licenced to do so;
- (c) Somehow concealed the flight and/or the incident from the relevant authorities by the suggestion that the Civil Aviation Authority (UK) needed

“assistance” in “tracking down and contacting the individuals, including their licence and details”;

- (d) Did or would fly an aircraft without clearance from the relevant Irish authorities;
- (e) Was required to and did not clear his flight plans with either the Gardaí or the Revenue Commissioners;
- (f) Was in breach of Irish Criminal law;
- (g) Was in breach of Revenue Law;
- (h) Put the safety and life of himself and, a passenger, at risk by flying an aircraft when not properly licenced to do so.

Further or in the alternative, the words carry these meanings by way of innuendo.”

- 16. It is pleaded that the respondent suffered enormous but incalculable damage to his reputation. He further pleads that it is clear that there has been a wide publication and/or re-publication of the defamatory material.
- 17. It is pleaded that the appellant aggravated the defamation, because the appellant knew or should have known of the inaccuracies contained in the E-mails (whether the inaccuracies were expressly stated or arose by implication) and further the appellant knew or ought to have known that casting doubt on the respondent’s qualifications, licencing circumstances or responsibility as a pilot had the potential to cause irreparable damage to the reputation of the respondent as a senior commercial pilot.

Offer of amends and form of apology

- 18. The offer of amends was sent by letter dated 25th May, 2015 from the solicitors for the appellant to the solicitors for the respondent, in the following terms:-

“Our client has instructed us to make an offer of amends to your client pursuant to section 22 of the Defamation Act 2009 in respect of the entire of the statements complained of. Our client offers:

- (1) To make a suitable correction of the statements concerned and a sufficient apology;
- (2) To publish the correction and apology in a manner that is reasonable and practicable in the circumstances; and
- (3) To pay such compensation and such costs as may be agreed or determined.

We await hearing from you.”

- 19. By letter dated 12th June, 2015, the solicitors for the respondent sought clarification of two matters arising out of the offer of amends:-
 - (1) The first clarification sought concerned the offer to pay compensation. The solicitors for the respondent requested confirmation that the offer to pay compensation also included an offer to pay such damages as might be agreed or determined. In their reply of 18th June, 2015, the solicitors for the appellant confirmed this to be so.

- (2) The solicitors for the respondent sought confirmation that the appellant intended to retract all statements set out in the letter of the appellant's solicitors of 11th November, 2014. In their reply to this query, the solicitors for the appellant stated that their client was under no obligation to specify the nature of any proposed apology until such time as the offer of amends has been accepted. By letter dated 22nd June, 2015, the solicitors for the respondent wrote to confirm the acceptance by the respondent of the offer to make amends.
20. Following upon acceptance of the offer of amends, there followed correspondence between the parties as to the terms of an apology and the amount of compensation to be paid. However, as already mentioned above, it was not possible for the parties to reach agreement in respect of either of these matters. In relation to compensation, in a letter dated 16th July, 2015 the respondent's solicitors refused an offer put forward by the appellant's solicitors by letter dated 13th July, 2015, rejecting it as "totally unacceptable". The respondent's solicitors at the same time suggested a meeting to discuss and try and reach agreement on compensation, but this approach was firmly rebuffed. In their reply, the solicitors for the appellant stated that their client considered the offer made represented the true and fair value of the case, and that in the event that the respondent persisted in rejecting the offer, he should make application to the court to have damages assessed. The letter went on to state that in the event that damages were assessed in an amount less than the sum then offered, the appellant would apply to court to hold the respondent responsible for all costs incurred after the offer.
21. As to the terms of the apology, the parties continued to correspond in this regard, and exchanged eight letters and four drafts and counter drafts between 13th July, 2015, the date on which a specific form of apology was first offered by the appellant and 19th February, 2016, when the solicitors for the respondent put forward a fourth draft. There the matter rested until 7th January, 2019, when the solicitors for the appellant proffered another draft. This draft was not accepted by the respondent either, although it must be said that the differences between the parties at this point as to the content of the apology were frustratingly minor, and frankly, of no practical difference to either party. In the period between the fourth draft apology (19th February, 2016) and the fifth draft (7th January, 2019), the parties were engaged in the proceedings referred to in para. 12 above to determine whether or not damages fell to be determined by a judge sitting alone or by a jury. The matter was listed for hearing on 12th February, 2019 but did not proceed on that date. The draft apology sent by the solicitors for the appellant on 7th January, 2019 was rejected by the respondent through a letter from his solicitors dated 18th January, 2019, and the solicitors for the appellant sent a further draft on 1st February, 2019. As agreement had still not been reached when the trial eventually opened in November 2019, the appellant then brought an application to seek approval of the terms of the apology, in the form last proposed by the appellant, and the Court granted that application, which application the respondent opposed. Nonetheless, in the course of his evidence the respondent confirmed that he was fully satisfied with the apology. Since the terms of the apology were neither the subject of written submissions

nor any oral submissions of consequence before this Court, there is no necessity to address the same any further in this judgment, although at the trial of the action before the High Court, the respondent made much of the delay in having the form of apology approved, in the context of addressing the jury as regards the conduct of the appellant.

The Trial

Evidence of the respondent: Effect on him of defamatory publications

22. In his evidence, the respondent describes how, upon seeing the E-mails, he was "gobsmacked". He said that if it were established that he had flown without a licence or that some part of his paperwork was not in order, that his career would have been over. He said that he was at the top of his career working with "the best company you can work for with a large salary". He feared losing his career and everything that he had built up over the years. He feared losing the ability to provide for his children and fund their education, he considered he was being accused of a criminal offence or offences. In suggesting that the respondent had put his own life and that of a passenger at risk, the appellant could not have made a more serious allegation against the respondent as a pilot. He was devastated.
23. However, at the time the respondent expected that the matter would be resolved quickly. He knew the author of the E-mails, who with his wife, had previously flown with the respondent, and he knew the Chief Executive of the appellant who had also flown with the respondent. The appellant had access to particulars of the respondent's licence to fly the microlight. The respondent stated that following his initial correspondence with the appellant, he thought that somebody at a high level in the appellant's organisation would realise the error and take steps to deal with the matter appropriately. He said that had he received an appropriate apology at this point in time, he would have been satisfied to accept a small sum by way of payment of compensation. Instead, as it became apparent that the appellant intended to defend the proceedings, and in particular after the letter of their solicitors of 11th November, 2014, he became stressed both at home and at work, worried about vindicating his good name and protecting his livelihood. He was also worried about the costs implications of the proceedings, in the event that he was unsuccessful.
24. While the respondent made no claim for loss of opportunity brought about by reason of the E-mails, in the course of his evidence he said that by reason of the publicity attending the proceedings, he would be unable to pursue a prospect that he had intended pursuing, i.e. he had intended taking early retirement and then going to work in tax friendly jurisdictions for a period. He felt that this was no longer likely to be available to him because prospective employers would probably consider him to be "trouble", having read of these proceedings. He said that while he was not advancing a claim based on lost opportunity, this was a consequence of the damage to his reputation.
25. As I have noted earlier, when the appellant made its offer of amends, the respondent was contacted by his solicitor, who told the respondent he had "won". The respondent was greatly relieved, and believed the matter would soon be fully resolved. However, when the appellant refused to negotiate further, after his rejection of its offer, he felt he was

again “back on the merry go round”, with the matter continuing through the courts, and ever more exposure to costs.

26. In cross-examination, it was put to the respondent that his career in Aer Lingus had not been affected in any way as a result of the E-mails. The respondent accepted that, from a financial point of view, this was correct, but said that the publication of the E-mails had left him more cautious and self-conscious and concerned about how he did things. He was worried that his actions might expose him to some adverse consequence. The respondent also considered it necessary to inform his employer about the investigation by the U.K. CAA, and his belief that the appellant was determined to undertake or continue an investigation of its own and to “get” him. However, on being so informed, his employer did not consider it necessary to take any action of any kind.

Evidence of Captain Ted Murphy

27. The respondent called in evidence a Captain Ted Murphy, a former Aer Lingus pilot with forty-five years flying experience. Captain Murphy also has experience working in several other airlines, as well as working for a period of three years in the International Civil Aviation Organisation, the U.N. body responsible for aviation which sets the standards for aviation throughout the world. He is also the author of a handbook for light aircraft and another handbook on emergency response to incidents involving dangerous goods in aircraft. He has also been President (on two occasions) of the Irish Airline Pilots Association. Captain Murphy confirmed that he is acquainted with the respondent (although he says that he and the respondent are not friends as such), and that while he was an Aer Lingus captain, he had worked with the respondent who had flown with him as co-pilot.
28. Captain Murphy was asked what would be the consequences for a pilot if the defamatory conduct as described in the Statement of Claim were true. He replied that he did not believe that any airline could continue to employ such a pilot. He said that it is essential for an airline to have absolute trust in its pilots and that they would behave properly and in compliance with regulations. Similarly, he said that it is essential that the Regulator should have the same trust in pilots. It was put to Captain Murphy that it had been suggested on behalf of the appellant that the allegations comprised merely a few e-mails sent to a small number of people and that this was not of any great consequence. However, Captain Murphy replied that if he was in a position of authority over the respondent or if he were in a position where he might be asked to hire the respondent, he would be very concerned about such allegations and would not hire him, and, if he were his employer, he would be very concerned about the allegations contained in the E-mails. Moreover, the respondent would not, as a pilot, get the necessary clearance from the State authorities to work as a pilot if such allegations were pending. This clearance is known as an “airside pass”.
29. Under cross-examination, Captain Murphy agreed that the respondent is a pilot in very good standing, with a very high reputation. He said that he never had any reason to think otherwise of the respondent. He said that he was aware that some issue had arisen

as between the respondent and the appellant, but that was the extent of his knowledge before becoming involved as a witness for the respondent.

30. Captain Murphy's attention was brought to the e-mail sent by Mr. Robert Webb of the U.K. CAA dated 26th July, 2013 in which Mr. Webb confirmed that the investigation carried out by the U.K. CAA had exonerated the respondent and that there would be no further enquiries or action taken, and that the investigation would now be closed. It was put to Captain Murphy that any reasonable person in the respondent's shoes would be reassured once he received such an e-mail that the matter was now closed as far as the U.K. CAA was concerned. Captain Murphy agreed, unequivocally, with this proposition.

Evidence of Captain Cummins

31. Captain Niall Cummins was called to give evidence on behalf of the appellant. Captain Cummins has been flying as a pilot for almost thirty years. He spent ten years working as a pilot for Ryanair, during which he was based both in Dublin and in London Stansted. He also flew for Ryanair around Europe generally. In 2005, he took up a position working with the appellant in the position of Chief Flight Examiner, having previously worked on a part-time basis with the appellant as a Flight Examiner. The role of Chief Flight Examiner involved, *inter alia*, setting standards for Flight Examiners and flight schools, as well as dealing with pilot licencing. This involved ensuring that pilot licences issued in this country are issued to an international standard. In 2015, Captain Cummins replaced Mr. Steel as manager of general aviation. He explained that general aviation is aviation that is not airline work, so therefore it includes the operation of any aircraft that is not in use in an airline, be it large or small.
32. Captain Cummins said that he had had no involvement at all in 2013 in the matters the subject of the proceedings, and nor did he have any awareness of these matters until he took over from Mr. Steel as general aviation manager. He said that at that point in time he knew Captain Higgins by reputation only, as a man who had made a very significant contribution to aviation, but he had never met Captain Higgins personally. Captain Cummins said that he was asked to attend a meeting with two directors of the appellant at the offices of its solicitors on 13th May, 2015. This was the first time he became aware of the nature of the litigation and he was shown the E-mails. He said that he was a little bit shocked when he saw the content of the E-mails. One e-mail in particular (the third e-mail) struck him as being objectionable and he thought that some of the language used was inappropriate. He said that as the meeting developed, he formed the view that the respondent had done nothing wrong and had followed correct procedures in making a precautionary landing. He said that it was perfectly normal for the local authority in that region to investigate the landing, and for those same authorities to make contact with the authorities here seeking information regarding the licencing and associated documentation issued to the pilots concerned. He added that pilot licencing and certification, in particular where small aircraft are concerned, is complicated and the requirements vary from jurisdiction to jurisdiction. He said that on receipt of a query regarding the validity of a person's licence, he would expect the person receiving the query to check with a suitably qualified or experienced person whether or not the person

concerned holds the necessary licence or certification. In this instance, when the U.K. CAA formed the conclusion that everything was in order and that it was not carrying out any further investigations, and so informed the appellant, the appropriate reply would have been to thank the U.K. CAA for that information and to leave the correspondence at that; the additional text in the reply in this case to the effect that “the boys won’t get away scot free” was inappropriate and should not have been stated. In the opinion of Captain Cummins this was wrong, and he expressed the view to his superiors and the appellant’s legal team (at the meeting of 13th May, 2015) that they should apologise and bring the litigation to an end.

Issues to be decided by this appeal

33. Four issues are raised by this appeal: -

- (1) Should this Court set aside the award made by the jury to the respondent in the sum of €300,000 in respect of general compensatory damages?
- (2) Should this Court set aside the award made by the jury to the respondent in the sum of €130,000 in respect of aggravated damages?
- (3) If the answer to either or both of questions (1) and (2) above is in the affirmative, should this Court substitute its own award for that of the jury?
- (4) Should this Court increase the discount of 10% on the damages awarded, as determined by the jury, to reflect adequately the offer of amends?

Submissions of the parties

34. The parties are substantially agreed as to the authorities that are relevant to the consideration of the question as to whether or not to set aside an award of a jury in defamation proceedings. Both parties referred in particular to *Leech v. Independent Newspapers (Ireland) Limited* [2015] 2 I.R. 214, *McDonagh v. Sunday Newspapers* [2018] 2 I.R. 79, *Christie v. TV3 Television Networks Limited* [2017] IECA 128, *Nolan v. Sunday Newspapers Limited* [2019] IECA 141 and *Kinsella v. Kenmare Resources Plc & Another* [2019] IECA 54.

35. It is well established that an appellate court should be very slow to interfere with an assessment of damages by a jury. Both parties referred to the following passage from the decision of Dunne J. in *Leech* at para. 120:-

“Thus it is clear that while the assessment by a jury of damages for defamation is not sacrosanct, it does carry considerable weight such that appellate courts have been slow to interfere with assessments by a jury and an appellate court should only set aside such an award if the appellate court is satisfied that the award is so disproportionate to the injury suffered and wrong done that no reasonable jury would have made the award in all the circumstances of the case.”

36. At para. 119 of her judgment, Dunne J. quoted the following passage from the decision of the Supreme Court (Hamilton C.J.) in the case of *de Rossa v. Independent Newspapers Plc* [1999] 4 I.R. 432, at pp. 462 and 463:-

“The ‘sanctity’ of such awards is recognised in the passage from the judgment of the Court of Appeal in *John v. M.G.N. Ltd.* [1997] Q.B. 586 where it is stated at p. 616 of the report as follows:-

‘The jury must, of course, make up their own mind and must be directed to do so. They will not be bound by the submission of counsel or the indication of the judge. If the jury make an award outside the upper or lower bounds of any bracket indicated and such award is the subject of appeal, real weight must be given to the possibility that their judgment is to be preferred to that of the judge.’

Both judgments recognise that the assessment of damages is a matter for the jury and that an appellate court must recognise and give real weight to the possibility that their judgment is to be preferred to that of the judge.

Consequently, an appellate court should only set aside an award made by a jury in a defamation action if the award made is one which no reasonable jury would have made in the circumstances of the case and is so unreasonable as to be disproportionate to the injury sustained.”

37. It is submitted on behalf of the respondent that the test is not whether or not a reasonable jury would have thought that the award was necessary to compensate the respondent and to re-establish his reputation. It is submitted that the test is whether or not the award is so disproportionate to the injury suffered and the wrong done that no reasonable jury would have made such an award.
38. Counsel for the respondent relies in particular on the following passage from the decision of the Court of Appeal of England and Wales in *John v. MGN* (approved by Hamilton C.J. in *de Rossa v. Independent Newspapers plc.*, and quoted by Dunne J. in *Leech* at para. 125):-

“The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation, vindicate his good name and take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation, the most important factor is the gravity of the libel; the more closely it touches the plaintiff’s personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of

damages to vindicate his reputation; but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place. It is well established that compensatory damages may and should compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action as when he persists in an unfounded assertion that the publication was true or refuses to apologise, or cross examines the plaintiff in a wounding or insulting way."

39. For its part, the appellant does not dispute that the passages relied on by the respondent correctly reflect the principles to be applied when considering the reasonableness and proportionality of an award made by a jury.
40. In the same judgment, Dunne J. held that in considering whether or not a jury award in a defamation case is disproportionate, the following matters should be considered: -
 - (a) The gravity of the libel;
 - (b) The effect on the plaintiff;
 - (c) The extent of the publication and
 - (d) The conduct of the defendant.

I turn now to consider each of these matters in turn, in the light of what are the undisputed facts in this case.

Nature and gravity of the defamation

Submissions of the respondent

41. It is argued on behalf of the respondent that the defamation could hardly have been more serious for a commercial aviation pilot. By its offer of amends, the appellant admitted the claims of the respondent as set forth in para. 8 of the Statement of Claim (see para. 15 above). The respondent relies upon the statement by Captain Murphy in his evidence, that, if the allegations made by the appellant against the respondent in the E-mails were true, the respondent would be finished as a pilot, which evidence was (it is submitted) corroborated by the evidence of Captain Cummins in his evidence.
42. The respondent also submits that, throughout these proceedings, the appellant has failed to engage in any meaningful way with the gravity of the defamatory statements. Nor did the appellant offer an explanation for those statements. Instead the appellant has placed considerable emphasis on the limited nature and limited extent of publication of the E-mails (i.e. that the defamatory statements were contained in three e-mails circulated to just five people).
43. The respondent relies upon *Turner v. Newsgroup Newspapers* [2006] EWHC 892 in which case Eady J. stated, in the context of considering the gravity of the libel, that the court must proceed, in a case where an offer of amends is unqualified (as in this case), on the basis of the meaning or meanings that the plaintiff put forward prior to the offer being made. In this case there is no dispute as to the meaning of the allegations, and it was

open to the jury on the evidence before it to come to the conclusion that the allegations made by the appellant against the respondent were extremely serious and in the range of the most damaging things that could be said about a commercial airline pilot.

Submissions of appellant

44. In addressing the nature and gravity of the defamatory content of the E-mails, counsel for the appellant focuses on the following:-

- (1) Each e-mail was sent in reply to an e-mail received from its counterpart in the U.K. i.e. regulator to regulator, and, as part of the same response, to others within the appellant organisation itself (save for the third e-mail);
- (2) Each e-mail was sent within a short number of minutes of the e-mail received from the U.K. CAA, and
- (3) The first two of the three e-mails were sent to five persons, three in the appellant organisation itself, and two in the U.K. CAA. The third e-mail was sent only to one person in the U.K. CAA, namely Mr. Robert Webb.

45. In relation to the first e-mail, while accepting that the content of the e-mail is defamatory, the appellant says that this was based on a misunderstanding or mistake on the part of the appellant i.e. at the time of sending the e-mail, Mr. Steel was under the impression that there had been a flight into Ireland that day and the e-mail was premised on that basis. The second e-mail arose out of the same error. In mitigation, the appellant argues that the respondent accepted that he had originally intended to fly into this country, to a private airfield in Rathvilly, Co. Carlow, and that had he done so there would have been a number of regulatory components to be addressed in advance. The respondent accepted that these issues are fairly complex.

46. As regards the third e-mail, the comment that "the boys" won't be getting away "scot free" was a mistake, but was communicated to just one person, Mr. Webb in the U.K CAA.

47. In his submissions to the jury as regards the nature and gravity of the defamation, counsel for the appellant, while acknowledging that the E-mails were false and defamatory, asked the jury not to ignore the context in which they were sent, and submitted to the jury that to do so would be "unreal".

Extent of publication

Submissions of respondent

48. It is submitted on behalf of the respondent that the submissions of the appellant that the E-mails were sent to just five people is facile, unreal and contrary to the evidence. Mr. Webb of the U.K. CAA confirmed in his e-mail to Mr. Steel that he had "consulted with colleagues at Gatwick" about the matter, and he therefore had necessarily communicated with others in relation to the contents of the E-mails. It was also clear that there had been communications with members of the Gardaí and with Customs Officials, but the respondent had been unable to establish the extent of these communications or with whom they were made, because the appellant had declined to disclose this information and had resisted (successfully) the respondent's application for discovery in this regard.

49. Furthermore, it was submitted that the reputation of a commercial airline pilot with the regulatory authorities in whose jurisdiction he or she is flying is very important. This was confirmed by Captain Murphy in his evidence. It was also submitted on behalf of the respondent that it was clear that rumours of the matter had seeped out, because the respondent himself heard such rumours in Newcastle Airfield within days of the first and second of the three e-mails.
50. Finally, it was submitted on behalf of the respondent that it does not follow that because a defamatory publication had a limited circulation it does not have very damaging reputational consequences. In this regard the respondent relied on the decision of the Supreme Court in *Crofter Properties Limited v. Genport Limited (No. 2)* [2005] 4 I.R. 28 in which Denham J. (as she then was) stated: -

“The third issue on this ground of appeal was the submission on behalf of the plaintiff that publication was only to a very limited class of persons and that damages should be reduced accordingly. While the publication was limited, *i.e.* in contrast to publication by a newspaper, it was published to an important group - police officers. Further, it could be envisaged, and it did happen, that this information would then proceed to other police forces, including to members of the Garda Síochána. The consequences of publication of such false information to such a group would be serious and disproportionate to the number of people to whom it was published. Indeed, a significant part of the information given to the Garda Síochána was investigated by them and found to be without foundation. I am satisfied that the fact that the publication was to this limited number of people is not a ground to reduce the award of general damages given the influential people to whom it was published and the fact that the publication was made with a view to damaging the defendant.”

Submissions of appellant

51. The appellant submits that the circulation of the defamatory material was very limited *i.e.* just three personnel within the appellant organisation itself, and two within the U.K. CAA. The appellant submits that there have been very few cases in which the circulation of the defamatory material was so limited. The appellant refers to the decision of O'Connor J. in *Nolan v. Sunday Newspapers* [2017] IEHC 367 in which he conducted an analysis of nineteen cases in this jurisdiction. Of those, sixteen were concerned with mass media publications. Three involved more limited publications. One of these was concerned with a telefax to the plaintiff's firm of solicitors alleging that the plaintiff was guilty of professional misconduct. This resulted in an award of €6,550 (€5,700 for general damages and €850 for aggravated damages). Another involved a case of a 'poison pen' letter and was undefended. The jury in that case awarded €50,000 for general damages and €10,000 for aggravated damages. The third case involved a plaintiff who was defamed having been brought into a principal's office and who was falsely accused of causing a Garda investigation. The plaintiff was awarded €28,000, and the matter was then settled on appeal. In this case, it is submitted that the award of the jury was

unreasonable and disproportionate having regard to the very small number of people to whom the E-mails were sent.

The effect of the defamatory publications on the respondent

Submissions of respondent

52. The respondent's own evidence in this regard is summarised at paras. 22-26 above. In the light of that evidence, it was submitted on his behalf that there is no question but that the publication of the defamatory statements and subsequent conduct of the appellant had a profound effect on the respondent that endured for six and a half years.

Submissions of appellant

53. The appellant submits that the evidence established that the E-mails had no effect on the respondent's career, employment or relationships. In fact, the respondent subsequently secured a more senior position within Aer Lingus (albeit that the respondent said in evidence that this was owing to seniority only) and from time to time fulfilled the role of Line Standards Captain, which is a position that required the respondent to assess the standards of other pilots within Aer Lingus. This, it is submitted, is in contrast to the impact on the plaintiff in *Christie* (which case I address in more detail below) who, in spite of having received a prompt and well published apology, was subjected to significant opprobrium by clients and other members of the public for a significant period after the defamatory broadcast.

The conduct of the appellant

Submissions of respondent

54. The respondent submits that the conduct of the appellant, for a period of almost two years after the defamation, was both dismissive and threatening. It was submitted that the appellant initially concealed the E-mails, in the face of a data protection request from the respondent. While, in light of the acceptance of the offer of amends the respondent chose not to pursue allegations of malice on the part of the appellant, nonetheless the evidence of the respondent was that the appellant's conduct was malicious, and this evidence was not challenged. The letter of the appellant's solicitors of 11th November, 2014 made it clear that the proceedings were to be defended on every ground possible, including qualified privilege. The respondent was threatened that he would be pursued for the costs of the proceedings, if unsuccessful, and this caused him considerable worry that everything that he worked for over the years would be lost. The appellant stood over the E-mails for a period of up to two years, and at no time provided a satisfactory explanation as to why it did so. When the appellant finally made an offer of amends, it then refused to enter negotiations with the respondent. Finally, the appellant did not issue its letter of apology to the respondent until just before the trial. In so far as this may be because the terms of the letter had not been agreed, it was open to the appellant (and only the appellant, pursuant to s. 23(1)(b) of the Act of 2009) to apply to court for approval of the form of apology at any time, and by failing to do so, it prolonged, unnecessarily, the damage caused to the respondent's reputation.

Submissions of appellant

55. It is submitted on behalf of the appellant that there was no evidence to suggest that what occurred in the issue of the E-mails occurred by reason of anything other than a mistake.

While the respondent may have given evidence as to his belief that the appellant was motivated by malice, this was not pleaded and the trial judge in addressing the jury made it clear that there was no question of malice in the case. Moreover, the appellant's letter to the respondent of 21st October, 2013 made it plain that the appellant had no concerns about the conduct of the respondent.

56. As regards the letter of the appellant's solicitors of 11th November, 2014, that letter reflects the complexity of the issues involved, and the appellant was entitled to have adequate time to consider those issues, to consider the issue of qualified privilege and its approach to the defence of the proceedings. As soon as the appellant heard from Captain Cummins, the appellant, within a matter of days, chose not to enter a defence to the proceedings and made an offer of amends. Accordingly, it is submitted that there was nothing about the conduct of the appellant that should serve to increase the award of general compensatory damages or to justify an award of aggravated damages.

Damages: Comparisons with other cases

57. Before the High Court, counsel on both sides, and the trial judge, addressed the jury as to awards made to plaintiffs in other cases of defamation, and also as to the maximum usually applicable to awards of general damages in personal injuries cases. This was the first time a jury had been provided with information concerning exact figures awarded in other cases. It was, however, made clear to the jury by both counsel and the trial judge that no two cases are the same, and that each case must be assessed on its own merits. The jury was told that the figures were being provided so that they would have some idea as to the range of awards in defamation cases. In his address to the jury on the issue of damages, the trial judge stressed that the jury should be fair to both sides, and that its award should be reasonable and proportionate to the damage to the respondent's reputation. The trial judge's address to the jury on the subject of damages is a model of clarity and is in no way criticised by the appellant on this appeal.
58. Counsel for the appellant referred to and placed some significant emphasis on the case of *Christie v. TV3*. In that case, the plaintiff was a highly respected solicitor representing Mr. Thomas Byrne, a former solicitor, who was charged with multiple fraud offences. In the course of an evening news bulletin, the plaintiff was seen entering the criminal courts of justice (by himself) and was mistakenly identified as his client, Mr. Byrne. In a voice over, it was stated in the course of the news bulletin that Mr. Byrne had pleaded not guilty to 50 counts of theft, forgery, using forged documents and deception. It was also stated that the total amount involved in the fraud was almost €52m. The plaintiff caused a letter to be sent on his behalf to the defendant three days after the broadcast, and received an almost immediate reply and apology, and an apology was broadcast the following day, just four days after the original broadcast. By way of compensation, the defendant proposed a charitable donation of €1000. At the trial, the plaintiff gave evidence as to the very significant abuse that he suffered as a result of the broadcast. This included abusive remarks made to him on social occasions, being spat upon, threats of violence and concerned clients making enquiries about their affairs. In the High Court, O'Malley J. assessed damages at €200,000, which she discounted by one third in light of the offer of

amends and the apology made in that case, resulting in a net award of €140,000. The award was reduced, on appeal to this Court, to €60,000 and this was in turn discounted by 40% in light of the offer of amends and the apology. In the conclusion of his judgment, Hogan J. stated:-

“50. First, while this was a serious defamation of the plaintiff, it was not at the level which would merit a starting point of €200,000. Factors such as the one-off nature of the broadcast, the relatively short duration of the broadcast, the failure to name the plaintiff, the lack of animus towards the plaintiff and the fact that it was an obvious error which those closest to Mr. Christie - his family, friends, work colleagues and clients - would surely know all take from the seriousness of the defamation. The appropriate starting point is, accordingly, a figure of €60,000.

51. Second, while the apology published was satisfactory so that TV3 are entitled to a substantial discount, that discount figure could itself have been higher had, for example, the apology acknowledged that he had been defamed and had apologised for the distress and embarrassment which the publication it caused.

52. Third, in the circumstances I would allow the appeal to the extent that I would reduce the starting figure of €200,000 to €60,000 and increase the level of discount from one-third to 40%. I would accordingly substitute a figure of €36,000 for the award of €140,000 made by the High Court as the sum to be paid to Mr. Christie by way of damages for defamation.”

59. Counsel for the appellant submitted to the jury that on its facts, *Christie* was a far more serious defamation, while at the same time acknowledging that it was a very different case. In effect, what he was saying to the jury was that in a more serious case than this, in terms of both the nature and gravity of the defamation and its impact upon the plaintiff, the Court of Appeal considered that €60,000 would be an appropriate sum to compensate the plaintiff, before application of any discount to reflect the offer of amends and apology in that case. At the same time, counsel for the appellant also informed the jury that in catastrophic injury cases, there is a maximum amount payable of €500,000 for general damages, although that might be exceeded in some cases, such where there is no simultaneous award of substantial special damages. This had happened in one case resulting in an award of €700,000 in general damages.
60. Counsel for the respondent on the other hand informed the jury of the damages awarded by the Supreme Court in *Leech v. Independent Newspapers*. In that case, the plaintiff was the victim of a series of defamatory articles in the Sunday Independent whereby it was suggested that she, a married woman with children, had an adulterous relationship with a government minister, and that she received financial benefits from that relationship in the form of government contracts. The plaintiff suffered appalling personal and financial consequences as a result of the defamatory publications. She initially received an award of €1.87m from a jury in the High Court, and this was reduced by the Supreme Court to €1.2m. Counsel for the respondent very clearly informed the jury that he was not

contending that the defamation of the respondent in this case was comparable to that in *Leech*, but, in his submission, nor was it appropriate to compare this case with *Christie*.

61. Before this Court, counsel for the appellant submitted that the award made by the jury in this case is exceeded (in terms of final awards) only by that made by the Supreme Court in *Leech*. He submitted that cases such as *de Rossa v. Independent Newspapers*, *O'Brien v. The Irish Mirror*, *Nolan v. Sunday Newspapers* and *Ward and Quinn v. Donegal Times* all involved defamatory publications of a more serious nature and, in some cases at least, also had more serious consequences for the plaintiff. So, for example, the plaintiff in *Nolan* (who received an award of €310,000, but €50,000 of which related to damages for breach of his constitutional right to privacy) lost access to his children and his former wife changed the surnames of the children as a result of the publication in that case. The Supreme Court in *de Rossa* (who received an award of IR£300,000) described the defamatory publication as amongst the most serious that could be alleged against a person, involving as it did an allegation that the plaintiff, a member of Dáil Éireann and former leader of a political party, had been involved in serious crime and had personally supported anti-Semitism and Communist oppression. *O'Brien* (who initially received an award of €250,000, which was considered by the Supreme Court to be excessive) was concerned with an allegation of bribery of a government minister. *Ward and Quinn* was concerned with allegations of financial impropriety in the affairs of a company, and the defamatory articles had a significant impact on the plaintiffs in their local community. The plaintiffs in that case each received a gross award of €120,000, which was reduced in each case by 20% (to €96,000) to reflect the offer of amends. In this appeal, it was submitted on behalf of the appellant that when account is taken of all relevant matters, and the award in this case is compared with awards in previous cases, the award in this case is manifestly unreasonable and disproportionate.
62. Counsel for the respondent submitted to this Court that the appellant, having insisted that the jury be provided with figures in other cases, including catastrophic injury cases, cannot now complain when the jury brings in an award in the mid-range of those cases. The jury made the award that it did in the light of the information provided to it, and after the most careful direction from the presiding judge, and it did not therefore arrive at the award "out of the blue". Moreover, it is submitted that the defamation in this case is of a far more serious character than that in *Christie*, because in that case the plaintiff was not identified by his name in the broadcast, and those who knew the plaintiff in that case had to know that the criminal charges referred to in the broadcast related to Mr. Byrne, who was named in the broadcast, and not Mr. Christie, whose picture was shown. These were amongst the reasons for the reduction damages in that case.

Aggravated damages

63. The Court also received submissions on the matters of aggravated damages, and the quantum of discount to be allowed by the jury on its award, having regard to the making of an offer of amends.

Submissions of respondent

64. Firstly, it is submitted on behalf of the respondent that it was open to the appellant to apply to the trial judge for a ruling that the question of aggravated damages should not go to the jury. Not having done so, the appellant cannot now ask the Court to find that the determination of the jury on the issue was disproportionate. It is submitted that the Judge correctly charged the jury on the issue of aggravated damages, and in particular that he explained that aggravated damages, if awarded, must be commensurate and proportionate. He explained to the jury the circumstances in which aggravated damages may be awarded.
65. The trial judge also explained to the jury that neither the failure to agree on the terms of an apology nor the time spent in clarifying the law as regards whether or not "court" means jury for the purposes of s. 23(1)(c) of the Act of 2009 prevented the appellant from making application to court at any time after the making of an offer of amends to have the terms of the apology approved. Accordingly, having regard to the conduct of the appellant, which included the letter of its solicitors of 11th November, 2014, a refusal to negotiate further after its first offer of compensation was refused by the respondent, and a delay of more than six years in issuing an apology, the jury was entitled to determine that an award of aggravated damages was justified, and that the amount awarded was reasonable, proportionate and supported by the evidence.

Submissions of appellant

66. Counsel for the appellant pointed out that the amount awarded under the heading of aggravated damages (€130,000) amounts to approximately 43% of the award of compensatory damages (€300,000). Accordingly, it is submitted that if the Court is of the view that the award for compensatory damages should be set aside, then so too should the award for aggravated damages.
67. The appellant submits that while it may be fairly criticised for taking as long as it did to make an offer of amends, and, in the intervening period for stating that the proceedings would be defended on the grounds of justification as well as qualified privilege, ultimately when it came to the time to file a defence, the appellant made the offer of amends. It is submitted that it is unreasonable to impose aggravated damages in such circumstances, and that to do so would mean that aggravated damages should be awarded in almost every case, save where liability is admitted at the very commencement of proceedings.
68. Moreover, the matter should be seen in the light of the letter of the appellant of 21st October, 2013 in which the respondent was informed by the appellant that it did not have any concerns regarding the respondent's compliance with professional standards.

Discount for offer of amends

Submissions of the respondent

69. It is submitted on behalf of the respondent that the appellant's attitude has throughout been at odds with the conciliatory approach represented by an offer of amends. The approach of the appellant served only to increase the hurt and stress felt by the respondent. The delay of two years in making the offer of amends is also inconsistent with the conciliatory stance contemplated by the procedure.

70. The respondent relies upon the decision of the High Court of England and Wales in the case of *Barron v. Collins* [2017] EWHC 162 in which Warby J. identified the following factors that bear on the level of discount to be allowed on foot of an offer of amends: -
- “(1) Whether the offer is prompt or delayed. If the latter, the discount may be reduced: see *Angel v. Stainton* [2006] EWHC 637 (QB) and *Undre v. The London Borough of Harrow* [2016] EWHC 2761 (QB), where the offer took 3 months and the discount was reduced to 25%;
- (2) Whether any correction or apology that is published is prompt and fulsome. An apology that is published late or is off-hand or only grudging is likely to lead to a reduced discount ...
- (3) Whether the defendant has acted in a way inconsistent with the conciliatory stance which an offer represents. If the defendant has advanced an ill founded defence in correspondence, or indicated that the claimant’s character may be attacked, the mitigating effect of the offer may be reduced ...
- (4) Whether a Defendant’s conduct has increased the overall hurt to the Claimant’s feelings. For instance, correspondence may increase hurt to feelings by treating the Claimant dismissively, or by expressing a grudging attitude ...”
71. In *Barron v. Collins*, Warby J. allowed a discount of just 10%. In *Ward v. Donegal Times Ltd.* [2016] IEHC 711, McDermott J. allowed a discount of 20%, noting that there was a complete failure on the part of the defendant to accept the fact of defamation until the offer of amends, and that the apology was not offered at an early stage. In this case also, there was a very significant delay in offering the apology and then in applying to court to have the same approved. While there were proposals and counter proposals as regards the terms of an apology, the last proposal of the respondent was not responded to by the appellant for over three years, and only then when the trial was imminent.
72. For all of these reasons, in the submission of the respondent, it is arguable that there should be no reduction at all in the award to the respondent to reflect the offer of amends, but in any case the discount of 10% as determined by the jury should not be interfered with by this Court.

Submissions of appellant

73. The appellant submits that the offer of amends was both unqualified and fulsome and accepted without qualification that the statements made in the E-mails were false and defamatory. In those circumstances, it is submitted that a discount of just 10% on the award is such a low discount as to be a dissuasive precedent in the use of the offer of amends procedure.
74. The appellant refers to the cases of *Christie* and *Ward* in which cases much higher discounts were allowed by the courts, notwithstanding that in each case there were problems with the offer of amends that are not present in this case. In *Christie* a discount of 40% was allowed by this Court even though the Court identified three

deficiencies, the first of which was that the defendant in that case did not acknowledge that Mr. Christie had been defamed. The second was that the Court considered the offer to make a donation to charity of €1,000 by way of compensation to be somewhat demeaning, and the third was that there was a qualification for “any” distress caused, suggesting that the plaintiff in that case might not have suffered distress at all. In *Ward*, the defendant was allowed a discount of 20%, notwithstanding that the court found that the offer of amends was late (about eighteen months after the publications) and that they did not address the central core of the defamatory statements. In *Ward*, McDermott J. also said that he considered that there was a certain hollow ring about the apologies offered in that case because further articles were published after the initial article. Counsel for the appellant submitted that, on the facts of this case, a discount in the range of 35%-45% of the damages (as finally determined) would be appropriate.

Decision

Proportionality of award

Nature and Gravity of defamatory publications

75. The first question for consideration is whether or not the award of the jury was, in all of the circumstances, not just disproportionate to the defamation of the respondent’s character but so disproportionate that no reasonable jury would have made the award in all the circumstances of this case. At first glance, the content of the E-mails does not appear to be seriously defamatory of the respondent’s character. In fact, it is only the third of the three E-mails that makes it plain that, as far as Mr. Steel and the appellant are concerned, the respondent had done something wrong, and would be sanctioned for it in due course. But of course that is far from the full story, and it is first necessary to consider nature and gravity of the defamatory content of the E-mails in the light of the information given to the jury as regards the meaning and full implications of the E-mails, as well as the evidence in the case.
76. Firstly, the jury was told that the appellant accepted that the E-mails had the meanings contended for by the respondent in the Statement of Claim. This meant, *inter alia*, that the respondent, a pilot, undertook a journey without having obtained all necessary consents required for that journey, including the consents required by the various aviation regulatory authorities, the Revenue Commissioners and the Gardaí. It meant that in operating in such a manner, the respondent endangered his passenger on the journey. The respondent also violated criminal law and revenue law. These interpretations of the E-mails were accepted by the appellant. All the appellant could say in reply in this regard was that they should be seen in the context in which the E-mails were written i.e. by way of reply to incoming e-mails. That might well serve to demonstrate that there was no premeditated intent to cast a slur on the respondent’s character, but it hardly renders the content of the E-mails any less defamatory.
77. Secondly, the jury heard evidence from two very experienced pilots, one called by the respondent himself, and the other called by the appellant. The evidence of each was consistent with the evidence of the other; Captain Murphy said that in his opinion an airline could not continue to employ a pilot if it was established that that pilot had

engaged in the conduct described in the Statement of Claim. He expressed the view that it did not matter that the E-mails had only been sent to a small number of individuals. He said that he, as an employer, or a potential employer, would be very concerned about the conduct that the E-mails implied. Captain Cummins said that he was shocked when he saw the E-mails. He confirmed that he knew the respondent by reputation only before he became involved in these proceedings, the implication of that statement being that the respondent had a good reputation in the industry. As against all of that, Captain Murphy confirmed that the clearance issued by Mr. Webb of the U.K. CAA on 26th July, 2013 should have reassured the respondent that the matter was closed as least as far as that authority was concerned. Nonetheless, it is very clear that the nature and gravity of the defamation was presented to the jury as being one of the most serious kind for a pilot, with career threatening implications, and the appellant did not demur from this characterisation of the E-mails. It is on this basis that the jury made the award that it did, and I agree with the submission of counsel for the respondent that, in considering whether or not the award of the jury was so unreasonable as to be disproportionate to the injury sustained by the respondent to his reputation, the Court must consider the nature and gravity of the defamatory content in the same light as the jury.

Conduct of the appellant

78. As to the conduct of the appellant, thirteen months after itself informing the respondent (on 21st October, 2013) that it had no concerns regarding the respondent, it caused its solicitors to send to the respondent's solicitors a robust letter, making it absolutely plain that the appellant intended to defend the proceedings vigorously by standing over the contents of the E-mails and also invoking qualified privilege. There can hardly be any doubt that this caused the respondent great anxiety, and understandably so. On the subject of aggravated damages, counsel for the respondent, in addressing the jury, focused on the delay of the appellant in making the offer of amends, and invited the jury to make an award of aggravated damages on account of the delay of the appellant in accepting responsibility for its conduct and in making the offer of amends. Very little was offered by the appellant by way of explanation for this delay, other than to say that when Captain Cummins became involved the appellant, upon legal advice, realised that this was the appropriate course to take. While it was submitted on behalf of the appellant that establishing compliance by the respondent with the various regulatory issues raised by the E-mails was a matter of some complexity, this explanation does not withstand scrutiny. The U.K. CAA, which had to consider the situation from the point of view of a regulator through whose airspace the respondent was flying when forced to make an emergency landing, but which was not the regulator responsible for the issue of the respondent's licence, was able to investigate the matter and come to the correct conclusions within a matter of weeks from the respondent's landing in Swansea. There does not seem to be any reason at all why the appellant could not have done likewise.
79. Another feature in the conduct of the appellant which is criticised by the respondent is the fact that the appellant, having made an offer of amends, declined to engage in negotiation as regards the amount of compensation offered. The approach was described by counsel for the respondent as high handed. While it must be said that this may be

more a matter of negotiation style than a matter of substance, and while it hardly needs to be said that there could be no assurance that any meeting, had it occurred, would have resulted in a settlement of the matter, to rule out any engagement after making just one proposal, almost two years after publication of the defamatory statements, could hardly be described as conciliatory conduct as envisaged by the Act of 2009.

80. It is also argued that the failure on the part of the appellant to issue an apology or to seek approval for the form of apology until the trial itself is conduct to be taken into account, adversely to the respondent. The delay in making the offer of amends, and with it, the offer to apologise, is an aggravating factor in the case which should be taken into account accordingly. This is addressed further below. However, it would in my view be unreasonable to penalise the appellant for any delay in the subsequent issue of the apology after the offer of amends. The appellant engaged fairly and reasonably in relation to the precise wording of the apology and offered to send it to any parties nominated by the respondent. While it is true that the appellant did not respond to the respondent's proposal of February 2016 until January 2019, for much of this period the parties were engaged in the proceedings concerning the role of a jury in assessing damages in cases involving offers of amends. That litigation did not conclude until the decision of the Supreme Court was handed down on 10th July, 2018 and that decision also made it plain that the jury had no function in approving the terms of an apology. While the respondent argues, correctly, that the appellant could have made application to court at any time to have the form of apology approved (and that this was not open to the respondent), so too the respondent could have asked the appellant to move such application, in view of the impasse in reaching agreement on the precise terms of the apology. The respondent not having made any such request of the appellant, it is difficult to see why the appellant should be penalised for the delay in making application to court to approve the terms of the apology, having regard also to what I consider to be the reasonable efforts of the appellant to reach agreement on its terms.

Extent of publication

81. As to the extent of publication, it is self-evident that the E-mails were communicated to just five people. The most damaging of the E-mails, the third, was communicated to Mr. Webb only. However, it is submitted by counsel for the respondent that the Supreme Court, in *Crofter*, held that publication of defamatory material to a small but important group is not a ground upon which to reduce an award of general damages, because the consequences of publication of false information to such a group would be serious and disproportionate to the number of people involved. It is submitted that in this case, the same can be said of the transmission of the E-mails to those responsible for regulating an aspect of the industry in which the respondent earns his living. Of course, it is correct to say that the identity of the parties to whom the publication was made is important. However, care must be taken in comparing the facts of this case to those in *Crofter*.
82. Those proceedings were part of a decades long dispute between two businessmen, Hugh Tunney and Philip Smyth, concerning Sachs Hotel in Dublin. Mr. Tunney's company, Crofter Ltd, owned the hotel and Mr. Smyth's company, Genport Ltd., was the lessee.

There were multiple acrimonious proceedings between the parties, mostly involving attempts by Crofter to regain possession of the hotel. As part of that campaign, Mr. Tunney's personal assistant made anonymous telephone calls to police in the UK alleging that Mr. Smyth and his brother, Chief Superintendent Paul Smyth, were assisting the IRA in laundering drug money through the Hotel. These calls were made for the express purpose of damaging Mr. Smyth and his company with a view to evicting the company. The defamation claim was in fact a counterclaim to an ejectment action by Crofter. It came before McCracken J., sitting in the High Court without a jury. He awarded £50,000 damages for defamation together with £250,000 for punitive and exemplary damages. Crofter's appeal to the Supreme Court failed on the general damages aspect but succeeded on the exemplary and punitive damages. In the course of her judgment, Denham J. observed (at p. 33):-

"I am satisfied that the fact that the publication was to this limited number of people is not a ground to reduce the award of **general damages given the** influential people to whom it was published and the fact that the publication was made with a view to damaging the defendant."

Thus the Supreme Court declined to interfere with the award of general damages of £50,000 made by a judge sitting alone where the publication was made for the express purpose of causing damage to Genport. The limited extent of the publication was a factor urged by Crofter in arguing for a reduction and this was rejected for the reasons explained by Denham J. However, she reduced the award of £250,000 for exemplary and punitive damages to £100,000.

83. I do not think one can extrapolate from the foregoing that the Supreme Court endorsed a general proposition that the limited extent of publication can never be a ground for reduction of damages on appeal merely because the persons to whom publication is made constitute an important group. To that extent, I cannot accept counsel for the respondent's argument, although I readily accept that the status of the group to whom the publication was made is an important factor to be borne in mind by this Court.
84. So, therefore, while limited circulation of defamatory material may operate to reduce the quantum of damages reasonably payable, this factor may to some extent be offset by the identity of the recipients of the material, and the importance of those persons in the life of the respondent. In my view, that is just what has occurred in this case. While the circulation of the materials was indeed very limited, those receiving it were all people employed in the sphere of aviation regulation. It is not difficult to see how the respondent would have been very concerned about such personnel receiving the E-mails.

Impact on the respondent

85. Finally, it is necessary to consider the evidence as to the impact of the E-mails on the respondent. That impact must be considered in the light of the meanings attributed to the E-mails in the Statement of Claim, since those meanings were accepted by the appellant upon delivery of the offer of amends. The respondent was greatly upset by the E-mails. They undermined his confidence; he started second guessing his own

performance and worrying that his actions at work could lead to sanctions and possibly even lead to the loss of his employment. The respondent had started from humble origins, and having made a great success of his career, he now worried about the prospect of losing everything and not being able to afford to fund the education of his children. While those fears should, arguably, have been put to rest, following the closure of the U.K. CAA investigation on 26th July, 2013, and the e-mail from the appellant to the respondent of 21st October, 2013, all of those worries were again inflamed by the letter from the solicitors for the appellant of 11th November, 2014. This had the inevitable consequence of causing the respondent to remain worried about the outcome of these proceedings, and the very significant associated costs risks, until the appellant made its offer of amends in May, 2015. While he then experienced great relief, this was short lived because of the peremptory attitude of the appellant to settlement discussions, and the delay in securing an apology from the appellant. Notwithstanding the offer of amends, he remained worried about the outcome of these proceedings, and the associated costs risks.

86. I should mention one further impact on the respondent that is referred to at para. 24 above, was referred to in the submissions of counsel for the respondent, and was also mentioned in the course of this appeal in an exchange between counsel for the respondent and the Court. Although not pleaded, the respondent, in the course of his evidence mentioned that the proceedings had also impacted on him, and he would not be able to avail of the opportunity to retire early from Aer Lingus, and work overseas in a tax favourable environment. The respondent said that he was not advancing a claim for loss of opportunity, but this was an impact on him, flowing from the defamation of his character. It is difficult to see how the Court can have any regard at all to this evidence. To ask the Court, in assessing damages, to have regard to this impact on him, presumably by increasing damages, is to advance a claim for loss of opportunity, albeit unscientifically, and unsupported by any evidence, other than that of the respondent himself. This case was not pleaded, and cannot form the basis for any part of the award to the respondent.
87. Returning then to the stress, worry and anxiety caused to the respondent, and without wishing to diminish in any way the impact of all of that, it is clear that that is the extent of the impact of the defamatory publications on him. He was not subjected to any regulatory investigation, never mind any sanction. Having informed his employer about the E-mails, it appears his employer was unconcerned and there were no adverse consequences for his employment with Aer Lingus. Indeed the respondent followed his natural career path and was promoted after these events, even though he attributed that to the inevitable reward of seniority. But the regard in which the employer held him was surely reflected in his being asked to fulfil the role of Line Standards Captain. It is apparent therefore that in spite of his initial fears, the content and publication of the E-mails did not have any adverse impact upon the career or indeed the personal life of the respondent, save for the worry and distress caused to him, which, as I have said above, should not be treated with lightly.

88. It is also apparent that, while damage to reputation is presumed once the defamatory nature of the publication is established, the damage to the respondent's reputation in this particular case was confined to a very small number of people, albeit that those people work as regulators in the respondent's own career sector.
89. The jury was provided with information about damages awarded in previous cases of defamation, as well as the maximum level of general damages in personal injury cases. This was the first case in which a jury was provided with such information, following upon arguments made by counsel on the issue (in the absence of the jury) in which counsel for the appellant argued that the jury should be provided with this information, and counsel for the respondent argued against doing so. Barton J. ruled in favour of the appellant on the issue. The jury was then informed as to the amount of the awards initially made in the cases of *Leech* (€1.87m) and *Christie* (€200,000) and the subsequent reduction of those awards on appeal (to €1.2m in *Leech* and €60,000 in *Christie* (before application of the discount)). The jury was also informed about the maximum amount payable for general damages in catastrophic injury cases (€500,000), although in his charge to the jury, the trial judge pointed out that this was increased to €700,000 in one case. Counsel for the appellant explained to the jury in some detail the facts of the *Christie* case and the reasons for the reduction of the award in that case. Counsel for the respondent explained to the jury the difficulties of comparing one case of defamation with another and in his charge to the jury, the trial judge did likewise. The trial judge also emphasised to the jury the need to be fair to both parties and to arrive at an award that was proportionate in all of the circumstances.
90. While previous cases are of some assistance to the Court in deciding whether or not the award to the respondent was unreasonable and disproportionate, as has been observed in other cases, such assistance is necessarily limited by reason of the very different circumstances surrounding each case. Nonetheless, as O'Donnell J. observed in *McDonagh*, at para. 119:-

“...broad comparisons can be made with personal injuries awards and awards in other defamation cases. These can provide some sense check for the assessment of damages because they represent a system which attempts to put monetary values on injuries, whether physical, psychological, or reputational.”

91. This is the first case in which this Court has been required to consider whether or not an award made by a jury, following an offer of amends, was reasonable and proportionate. The only other case involving an offer of amends that has come before this Court to date is *Christie*, being an appeal from a judge of the High Court, and not a jury, and upon which the appellant places some significant reliance. In *Christie*, this Court reduced the award of the High Court in the sum of €200,000 for general compensatory damages to €60,000 for the reasons referred to earlier in this judgment. While the Court in *Christie* recognised that the defamation of Mr. Christie was of a most serious kind, nonetheless the Court was persuaded that there were a series of mitigating factors that mandated a

very significant reduction in the award. Those factors were very specific to that case and are not present in this case.

92. However, there is a significant mitigating factor present in this case that was not present in *Christie*. In stark contrast to *Christie* the defamatory publications in this case had no practical consequences for the respondent, other than the worry and distress they caused to him, which I do not underestimate. However, the complete absence of any consequence for the respondent arising from the E-mails is very significant. In both *Leech* and *Christie*, the plaintiffs suffered dreadful consequences from the defamatory publications. While in this case, the nature and gravity of the defamation was, as stated above, of the most serious kind for a pilot, and was exacerbated by the appellant in its subsequent conduct up to the offer of amends, and in particular by its solicitors' letter of 11th November, 2014, the absence of any practical impact on the life of the respondent is, in and of itself, sufficient for me to conclude that the sum awarded by the jury for general compensatory damages was so unreasonable as to be disproportionate to the injury sustained.
93. Moreover, as was pointed out by counsel for the appellant, if the award made by the jury in this case were to stand, it would be the second highest award (by reason of others having been reduced on appeal) in a defamation case in Irish legal history, after only *Leech*. Allowing for inflation, it may also rank after *de Rossa*. Even allowing for the serious nature and gravity of the defamation in this case, it does not appear to me that the damage caused to the respondent's reputation by reason of the E-mails could, on any reasonable analysis of their contents, and having regard to all the other factors discussed above, be such as to place it so high in the rankings of such cases. In both *Kinsella* and *Christie*, Irvine J. and Hogan J. respectively expressed concern that if the awards in those cases were to stand, the knock-on effect for more serious cases in the future would be unsustainable. At para. 39 of *Christie*, Hogan J. stated:-

"None of this is to say that it was not a serious defamation, because it was. As I have already observed, the potential for confusion, distress and embarrassment was considerable and should not be minimised. It is rather to say that it was not a defamation of such a character as would merit a starting point in the region of €200,000 in terms of the assessment of damages. If that were indeed the starting point in a case of this kind, then, adapting the language of Henchy J. in *Barrett*, the damages in respect of a deliberate, calculated accusation of serious wrongdoing by the plaintiff in which he had been mentioned by name would be 'astronomically high'."

Should the Court assess damages itself?

94. The Court heard arguments from both sides as to the appropriate course to take in the event of the Court finding that the award of the jury was so unreasonable as to be disproportionate. On behalf of the respondent, it was submitted that the Court should remit the matter back to the High Court for assessment of damages by a jury. It was submitted that this is not a case that depends on the recall of witnesses and that much of the dispute lies in correspondence. Furthermore, since this is a case in which an offer of

amends has been made, and would not involve a full retrial on all issues, it lends itself more to this course than a case involving a full retrial. Moreover, a significant portion of the trial in the High Court was taken up with legal argument which will not be repeated in the event of a retrial. Counsel for the respondent referred to the judgment of O'Donnell J. in *McDonagh*, where, after considering the merits of sending that case back for a retrial on the one hand and the Supreme Court assessing damages on appeal on the other, he said, at para. 110, that if that were a case in which the appeal had been heard very shortly after trial, then the difficulties with the substitution of an award by an appellate court might indeed have led him to take the course of directing a retrial. In contrast, this is a case in which the appeal has been heard very shortly after the trial. Finally, it was submitted on behalf of the respondent that it would be an extraordinary irony, if, having fought and won a battle to have his damages assessed by a jury, the respondent's damages are in the end assessed by a court.

95. The arguments put forward by the appellant against sending the matter back to a jury for determination largely revolved around costs. Very significant costs have already been incurred by the parties in these proceedings. Further significant costs will be incurred if the matter is remitted to the High Court, with the possibility of further appeals. There is no need for these costs to be incurred in circumstances where the court has approved an apology that has been issued to all parties requested by the respondent, and the respondent's reputation has been fully vindicated.
96. On balance, I favour the arguments put forward on behalf of the appellant on this issue. I say "on balance" because I am very mindful of the lengths to which the respondent went in these proceedings to have damages assessed by a jury. But the proceedings at this point cannot become a hostage to that earlier litigation. Nor, in my view, should the Court – if it is of the view that it is otherwise appropriate to determine the level of damages – refuse to do so because of the earlier applications. This is either a case in which an appellate court should itself measure the damages or it is not. The fact of the earlier application and appeals should not change the answer to that question.
97. Moreover, that issue is, in my opinion, in any event outweighed by the fact that the respondent's reputation stands fully vindicated, to his satisfaction, the fact that further litigation will inevitably add significantly to what are almost certainly already disproportionate costs, and the need to bring to an end litigation that has been going on now almost seven years. Of course it is true to say that this case is by no means unusual in that latter respect, but that is no reason to continue litigation any longer than is necessary, where it is possible and otherwise appropriate for the Court to exercise its powers in such a manner as to bring it to a fair and just conclusion. I will therefore proceed to assess damages, rather than send the matter back to the High Court for a retrial.
98. Counsel for the appellant submitted to the Court that €50,000 would be an adequate sum to compensate the respondent for the damage to his reputation. In my view that sum would not be adequate and would not properly reflect the very serious nature of the

defamation of the character of the respondent that the appellant, through its offer of amends, has acknowledged to have occurred, and as was also recognised in the evidence given by both Captain Murphy and Captain Cummins. It is fortunate that the damage to the respondent's reputation did not result in any adverse consequences for his career or personal life, but the damages should nonetheless reflect the acknowledged seriousness of the defamation. It is my view that the sum of €70,000 is in all the circumstances of this case an appropriate sum to compensate the respondent for the damage to his reputation and the ensuing distress and upset caused to him by reason of the publication of the E-mails, which, while limited in distribution, occurred within a sector of crucial importance to the respondent in his career. To this I would add that the Court has assessed this sum on the basis that the E-mails were not sent with malicious intent. While the respondent expressed the view in the course of his evidence that there was malice involved, and that a person or persons within the appellant organisation had placed a "target" on his back, the fact remains that the respondent, for good reasons of his own elected not to pursue the plea of malice on the part of the appellant, and it is not open to him to do so indirectly.

99. It is next necessary to consider whether or not it is appropriate to make an award of aggravated damages. Although the appellant argues that there should have been no award of damages under this heading, the appellant nonetheless agreed to this issue going to the jury and the jury was therefore entitled to come to a view on it. The jury considered it appropriate to award aggravated damages, and in my view the conduct of the appellant up to the date of the offer of amends and, in particular, the letter of the solicitors for the appellant of 11th November, 2014, provided the jury with reasonable grounds for that decision. While an award of aggravated damages is warranted, it follows from the reduction in the award of general damages that there should also be a very significant reduction in the award of aggravated damages. I consider that the sum of €15,000 properly reflects the conduct of the appellant between the publication of the defamatory statements and the making of the offer of amends.
100. Finally, it is necessary to consider the extent of the discount which the appellant should be accorded by reason of the making of the offer of amends. In considering this issue, I consider useful the factors identified by Warby J. in *Barron v. Collins* (see para. 70 above). In this case, the jury allowed a discount of 10% of the total damages. It has been submitted that such a small discount, if allowed to stand, would operate as a disincentive to defendants in future cases, and that defendants must be allowed a reasonable period within which to consider their position before making an offer of amends. There can be no doubt that this is true, i.e. that defendants should have a reasonable period within which to consider their position, but at the same time there is an obligation on defendants in defamation proceedings to move very quickly to redress, as effectively as possible, the damage caused to the reputation of the person who has been defamed. The appellant in this case, in taking almost two years to make its offer of amends, failed utterly to do so. Apart from relying in a general way on the "complexity" of the issues involved, it has not been explained why it took the appellant so long to get to

the truth of the matter, in sharp contrast to the U.K. CAA which presumably was faced with matters of comparable complexity.

101. Moreover, having made an offer of amends, the appellant then demonstrated a high handed approach to negotiations in refusing to meet with the respondent for discussions thereafter, after the respondent had rejected the appellant's offer of compensation. In all of these circumstances, it is my view that the discount of 10% of damages which the jury considered appropriate should not be interfered with.
102. Accordingly, I would reduce the combined total of general and aggravated damages, of €85,000, by 10% (€8,500) and make an award in favour of the respondent in the reduced amount of €76,500.
103. As this judgment is being delivered electronically, Noonan J. and Murray J. have authorised to record here their agreement with it, and with the consequent reduction in the award to the respondent.
104. The Court will receive submissions from the parties as regards the costs of this appeal. The appellant should make its submissions in writing within 14 days from the date of delivery of this judgment, and the respondent should deliver his submissions by way of reply within a further period of 14 days, following upon which the Court will deliver its ruling on costs, unless it considers that further submissions are necessary.