



Neutral Citation Number: [2024] EWHC 1860 (KB)

Case No: QB-2022-003558

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/07/2024

Before :

DEPUTY HIGH COURT JUDGE SUSIE ALEGRE

Between :

JOHN ALEXANDER MELVIN HEMMING

Claimant

- and -

SONIA VANESSA POULTON

Defendant

Mathew Dodson (instructed on a direct access basis) for the **Claimant**
Sonia Poulton representing herself

Hearing dates: 11 July 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 19 July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives

.....

Susie Alegre :

Factual Background

1. The Claimant in this case, Richard Hemming, is a former MP who is currently a businessman. He was represented by Mr Hodson at the Trial on a Preliminary Issue (TPI) on meaning on a direct access basis. The Defendant is Sonia Poulton, a freelance journalist, who represented herself at the TPI.
2. This is a claim for libel in which the Claimant, Mr. Hemming seeks damages and an injunction arising out of publications by the Defendant. The case more broadly concerns claims in relation to further publications and counter-claims by the Defendant, but those are not relevant to this judgment on meaning as they are not defamation claims. The wider proceedings also involve a third and fourth party but the issues relating to them are not relevant for the TPI on meaning before me which only concerns the Claimant and the Defendant. This judgment will, therefore, only deal with the meaning of what are described as “Publication 1” and “Publication 5” in these proceedings.

Publication 1

3. The first publication is a segment of a YouTube video published online with the title “*Prince Andrew, Epstein, Savile And McCann Part 1: Sonia Poulton / True Crime Podcast 59*”. The Defendant was interviewed by the podcast host, Shaun Atwood, in the video for two and a half hours on 3 November 2019. The words complained of appear between 1h17 and 1h21 of the video. The interview was published on YouTube by the podcast host on 19 November 2019 and also published in audio form on Spotify and Stitcher. The video has since been taken down by Shaun Atwood. The words complained of were:

“Shaun Atwood [Host] (‘SA’): Today we have Sonia Poulton on the podcast. This podcast is gonna go over everything from Jimmy Saville to more contemporary big story in that category Epstein. We’ve a whole slew of political names that are gonna come up and I have watched Sonia’s documentary three times now. It’s just absolutely blown my mind the level of research she has done into this and whereas you see some people putting videos out really sensationalising and getting into the most extreme claims, what I like about Sonia is that she draws the line at an appropriate place and it enhances the reliability of what she’s about to tell us. But before we go to that dark realm, how are you qualified to speak on this subject?”

Sonia Poulton (‘SP’): Well um apart from the fact that I was actually abused as a child so I do understand that, um but that isn’t really my entrance. My entrance was meeting people who had been extensively abused as children, finding an empathy with them, understanding them, where they were coming from, seeing that their biggest problems were actually dealing with the system and challenging the system that had enabled them to be abused.

...

SA: So, going back to “Paedophiles in Parliament” then Esther Baker and Hemming, we’ve not discussed them yet, have we? [...]”

“SP: What I can say to you is, Esther Baker came out several years ago, I think her first interview was, was Sky News. I know Esther, I’ve talked to Esther several times. And she came out and she was saying that she had been abused as a child in – at Cannock Chase and she said it was an MP - and she never named the MP, she never said the M... - it was actually John Hemming who outed himself, on his own blog...”

John Hemming was the first person to threaten me with legal action for when I released “Paedophiles in Parliament” and said he needed it to be removed that day otherwise, and he’s very au fait with legalese, I think he has a legal background. Erm, and I think, that, to me, I’m not making any accusations about John Hemming but it is quite clear that Esther Baker, feels that she has a case that needs to be examined - appropriately examined - and what I have seen with Esther is Esther has been savaged by some of the most AWFUL trolls online. Now there, some of them, cross over with my stalkers, some of them are my stalkers. Some people, who stalk me and in fact, Esther and I had a case against the same stalker at the same time and it was thrown out, so if you can imagine how she felt as someone is, I’m saying alleging, alleging that she is a victim of child abuse at the hands of a politician. So, imagine how she felt to be told not only is the case not going through for your stalker but he’s given a core participant role on the Child Abuse Inquiry. Pretty awful stuff really, so I don’t know the truth of the story, what I do is that John Hemming is extremely pro- active at any suggestion to do with anything to do with reputation and I don’t have a problem with that either, coz I’m extremely pro-active about my reputation because my reputation is important to me. So I don’t have a problem with that. What I had a problem with was the way that he approached me and was basically insisting that I remove it, like there and then, as if I’m just going to do it at your behest, you’ve got to be crazy mate. So I didn’t, and I withstood the pressure, and the ... err ...threats of what would happen and nothing has happened since. So yeah...

SA: So did he actually take any court action to you or did he try and get you to do like a strike against those documentaries?

SP: Well, I don’t know if he tried to get a strike. I don’t know that. But he approached me directly and said that what I had said was wrong, it was damning and he was going to take legal action unless I removed it there and then. I was like, nah, nah, I’m not. Coz I’m not accusing him of anything in it, I’m telling the story, we are allowed to tell stories, I’m a journalist, my job is to report what other people are saying, it isn’t to furnish opinion - that’s when I have an opinion role. But my job as a journalist is to report the story, and he had a problem with me just reporting the story, which I thought was quite interesting given that he had outed himself. She never outed him - he’d outed himself.

SA: Did you have any other legal action from any other quarters?

SP: I have threats, almost on a regular basis. Erm, I have been, oh now let me see, I’ve been, fallen foul of the McCanns several times, as everybody does, everybody who speaks out and err I’ve... their spokesman, Clarence Mitchell, went into a newspaper and called me a conspiracy theorist which was absolutely designed to just say ignore her, you know, as soon as you start that person dabbles in conspiracies, we know what it’s about. It’s the... might as well have just said, you

know, she's got mental health problems, it would've had the same impact. So, I've had that kind of stuff where people use their establishment contacts to demonise me, to smear me, to try and make me lose work, but I'm still around.

SA: Just adds more credibility to you as far as I'm concerned.

SP: Well the thing is, honestly, you know and I said this to you two earlier [pointing at the production team] is my attitude very much is: we're all gonna die, so I'd rather go down in a hail of bullets than on my knees. [SA laughs]. That's really the bottom line. Right, because I'm not going to submit to anybody, right but if that's the way it has to be then that's the way it has to be.

SA: You're the personification of a Spitfire."

4. The words above are taken from the transcript of the video provided by the Claimant. I have also watched the video and am satisfied that the transcript does not diverge in any material way from the video in relation to the words complained of.

Publication 5

5. The words complained of were published on the Defendant's fundraising page and are as follows –

"September 10, 2021

POLICE UPDATE

Earlier this year I was interviewed by the police about a potential breach of a reporting restriction regarding an old case. The police have come back to say No Further Action will be taken. All involved were satisfied with the interview I gave. There is a general feeling that this all went too far. There is a reason for that.

There was inordinate pressure applied to the Attorney General's office, the Metropolitan Police and the CPS by people who are desperate to stop me reporting on matters of public interest including child abuse.

My brilliant criminal lawyer, Sophie Hall, attended the interview with me – as did Muhammad Butt of BNT – and both witnessed me putting on record the names of people pushing for me to be charged and to take me away from exposing Establishment abuse. These names have been noted by all involved.

It is important for people to know that there are some dark characters out there who spend a huge chunk of their day trolling and harassing survivors of child abuse as well as attacking those who bring awareness to the issue of child abuse.

I would recommend that these people cease and desist from publishing defamatory statements about me regarding this issue. Particularly as it brings the spotlight to them.

I work for the public good, it's time to start asking who these people work for. And why."

The Issues

6. On 13 May 2024 Deputy Master Sabic made an order for there to be a trial to determine the preliminary issue of the natural and ordinary and/or inuendo, meaning of each of Publications 1 and 5 as defined in the Amended Particulars of Claim.
7. In that order, Deputy Master Sabic also struck out the relevant parts of the Defendant's amended defence related to reference. The issue of reference in relation to Publication 5 was, therefore, not addressed at the hearing before me although I note that there is no summary judgment on that issue.
8. There was previously a judgment by Deputy Master Bard dated 11 June 2021 rejecting an application for summary judgment by the Claimant which touched on the question of meaning, but that judgment does not bind me in relation to my present assessment following a TPI on meaning with a full hearing on the issue.
9. In addition to deciding the natural and ordinary and/or innuendo meaning of the two publications, I have also considered whether the meaning of each of the publications complained of, as determined by the Court, is defamatory of the Claimant at common law.
10. This is the judgment on those issues following a trial hearing on 11th July 2024.

The Law on Meaning

11. In reaching a conclusion on meaning, the court should first reach a provisional meaning that the hypothetical reader would understand the words to mean (*Millett v Corbyn* [2021] *E.M.L.R.* 19 at [8]) before considering the application of the legal principles to determine a meaning.
12. The relevant principles on meaning as they apply today have been helpfully set out by Nicklin J in *Koutsogiannis v Random House Group Limited* [2020] 4 *W.L.R.* 25 at [11] – [12]:

“[11] The Court's task is to determine the single natural and ordinary meaning of the words complained of, which is the meaning that the hypothetical reasonable reader would understand the words bear. It is well recognised that there is an artificiality in this process because individual readers may understand words in different ways: *Slim -v- Daily Telegraph Ltd* [1968] 2 *QB* 157, 173D-E, per Lord Diplock.

[12] The following key principles can be distilled from the authorities: see e.g. *Slim -v- Daily Telegraph Ltd* 175F; *Charleston -v- News Group Newspapers Ltd* [1995] 2 *AC* 65, 70; *Gillick -v- Brook Advisory Centres* [2002] *EWCA Civ* 1263 [7]; *Charman -v- Orion Publishing Co Ltd* [2005] *EWHC* 2187 (*QB*) [8]-[13]; *Jeynes -v- News Magazines Ltd & Anor* [2008] *EWCA Civ* 130 [14]; *Doyle -v- Smith* [2018] *EWHC* 2935 [54]-[56]; *Lord McAlpine of West Green -v- Bercow* [2013] *EWHC* 1342 (*QB*) [66]; *Simpson -v- MGN Ltd* [2016] *EMLR* 26 [15]; *Bukovsky -v- Crown Prosecution Service* [2017] *EWCA* 1529 [2018] 1 *WLR* 18; *Brown -v- Bower* [2017] 4 *WLR* 197 [10]-[16] and *Sube -v- News Group Newspapers Ltd* [2018] *EWHC* 1234 (*QB*) [20]:

- a. The governing principle is reasonableness.
 - b. The intention of the publisher is irrelevant.
 - c. The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. A reader who always adopts a bad meaning where a less serious or non-defamatory meaning is available is not reasonable: s/he is avid for scandal. But always to adopt the less derogatory meaning would also be unreasonable: it would be naïve.
 - d. Over-elaborate analysis should be avoided and the court should certainly not take a too literal approach to the task.
 - e. Consequently, a judge providing written reasons for conclusions on meaning should not fall into the trap of conducting too detailed an analysis of the various passages relied on by the respective parties.
 - f. Any meaning that emerges as the produce of some strained, or forced, or utterly unreasonable interpretation should be rejected.
 - g. It follows that it is not enough to say that by some person or another the words might be understood in a defamatory sense.
 - h. The publication must be read as a whole, and any 'bane and antidote' taken together. Sometimes, the context will clothe the words in a more serious defamatory meaning (for example the classic "rogues' gallery" case). In other cases, the context will weaken (even extinguish altogether) the defamatory meaning that the words would bear if they were read in isolation (e.g. bane and antidote cases).
 - i. In order to determine the natural and ordinary meaning of the statement of which the Claimant complains, it is necessary to take into account the context in which it appeared and the mode of publication.
 - j. No evidence, beyond publication complained of, is admissible in determining the natural and ordinary meaning.
 - k. The hypothetical reader is taken to be representative of those who would read the publication in question. The court can take judicial notice of facts which are common knowledge, but should beware of reliance on impressionistic assessments of the characteristics of a publication's readership.
 - l. Judges should have regard to the impression the article has made upon them themselves in considering what impact it would have made on the hypothetical reasonable reader.
 - m. In determining the single meaning, the court is free to choose the correct meaning; it is not bound by the meanings advanced by the parties (save that it cannot find a meaning that is more injurious than the Claimant's pleaded meaning).”
13. Meanings will be considered defamatory at common law if they “*substantially affect in an adverse manner the attitude of other people towards a Claimant, or have a tendency to do so*” - **Triplark v Northwood Hall [2019] EWHC 3494 (QB)** at [11].

14. A Claimant may, by pleading innuendo, show that the words complained of are defamatory because of some particular fact not contained in the statement itself but which is known to those to whom it is published (*Gatley on Libel and Slander 13th Edition* at 3-015). Evidence is admissible as to the sense in which those to whom the publication was published understood it, but such evidence is not a requirement where, based on the extrinsic facts in question, it is reasonable for a court to infer that some readers must have had that particular knowledge (see, e.g. *Wright v Caan [2011] EWHC 1978 (QB)* at [26]; *Lord McAlpine of West Green v Bercow [2013] EWHC 1342 (QB)* at [54].).
15. The question is the meaning a reasonable person with that knowledge would have given to those words, not the meaning derived by a particular individual as explained by Greer LJ: “*It is not proof of a special fact ... merely to call a number of people to say that they understood the words in a defamatory sense; they would have to prove some fact known to them which would be sufficient to entitle any reasonable man with such knowledge to interpret the words in a defamatory sense.*” in *Tolley v Fry [1930] 1 K.B.* 467 at 480, approved by Slessor LJ in *Hough v London Express Newspaper Ltd [1940] 2 K.B.* 507 at 514.
16. In order to decide on the seriousness of a particular meaning, Brooke LJ, in the case of *Chase v News Group Newspapers Ltd [2002] EWCA Civ 1772; [2003] EMLR 11* at [45] provided guidance, identifying three different levels of, meaning (“the Chase Levels”):
 - Level 1:** The sting of a libel may be capable of meaning that a Claimant has in fact committed some serious act, such as murder.
 - Level 2:** Alternatively it may be suggested that the words mean that there are reasonable grounds to suspect that he/she has committed such an act.
 - Level 3:** Is that they may mean that there are grounds for investigating whether he/she has been responsible for such an act.
17. These levels are shorthand for the broad spectrum of levels of meaning (*Brown* per Nicklin J at [17]) and the reality of a given meaning may be more nuanced on that spectrum. All three levels may be defamatory of a Claimant but the “sting” of the libel is highest at Level 1 and lowest at Level 3.
18. The “repetition rule” is “deeply embedded” in defamation proceedings (*Shah -v- Standard Chartered Bank [1999] QB 241*, 261G per Hirst LJ). Its effect has been summarised by May LJ in the Court of Appeal in the same case at p.266D-F:

“The repetition rule in its simplest application is that, if you publish a statement that Y said that X is guilty, it is not a defence to an action for defamation to establish the literal truth of the publication, i.e. that it is indeed true that Y said that X is guilty. You are repeating and endorsing Y's publication and your justification must address the substance of what Y said, not the fact that he said it. The obvious underlying reason for the rule is that statements of this kind in substance restate the original publication. It is ... a rule which encapsulates the fact that publications of the bald kind under consideration do in substance amount to a republication of the reported publication and that that is their meaning.”

19. However, the effect of repetition will depend on the context. In *Hewson v Times Newspapers Ltd [2019] EWHC 650 (QB)*, Nicklin J explained, at [40]-[41]:

“40. There are myriad ways in which the allegations of others can be reported in a publication. It is impossible to lay down hard and fast rules. Over and over again the authorities make clear that it is the effect of the publication overall that matters. In determining meaning, the cardinal principle is that “it is the overall effect of the article that counts”: *Poulter -v- Times Newspapers Ltd [2018] EWHC 3900 (QB)* [43]-[44]; and *Poroshenko -v- BBC [2019] EWHC 213 (QB)* [28].

41. The effect of the repetition rule is that the use of verbs like “alleged” or “claimed” (however often they are repeated in a publication) is unlikely, in itself, to insulate a publisher from the effect of the rule. If the impact of the repetition rule on the meaning of reports of allegations made by others is to be mitigated or avoided, the material that has that effect must be found elsewhere in the publication.”

20. In his earlier judgment in *Brown v Bower [2017] 4 W.L.R. 197* at [28]-[29], Mr Justice Nicklin, having described the evolution of the repetition rule, went on to say:

“The repetition rule clearly applies when the court is considering the meaning of words, but it takes its place alongside all the other matters to which the Court must have regard when determining meaning. The task is to determine what the ordinary reasonable reader would understand the words to mean. The repetition rule cannot be applied mechanistically to the determination of meaning. If Ms Page’s strict application of the repetition rule were correct, then it would make no difference to meaning whether the words complained of were: “X proved/alleged/suggested/hinted that Y was a thief”. Although each of those four verbs is apt to convey a subtly different meaning, because each is a repetition of X’s charge against Y, Ms Page’s contention would mean that it would make no difference; applying the repetition rule, the resulting meaning would always be guilt.

29. It seems to me that, as is nearly always the case in determining meaning, context is everything. It is easy to imagine cases where a publication refers to an allegation because the author wants to establish the fact that the allegation was made rather than any suggestion on her part that the allegation is true. Borrowing from Lord Devlin’s analogy, it may be difficult to repeat the allegations of others without suggesting to the reader that the allegations are true, but it can be done. “One always gets back to the fundamental question: what is the meaning that the words convey to the ordinary man: you cannot make a rule about that”....”

Meaning

21. In applying legal analysis to the meaning of both publications, I have borne in mind the principles set down by Nicklin J in *Koutsogiannis*. In particular, I have considered the approach to deciding meaning taking account of the “hypothetical reasonable reader”:

“c. The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. A reader who always adopts a bad meaning where a less serious or non-defamatory meaning is available is not reasonable: s/he is avid for scandal. But always to adopt the less derogatory meaning would also be unreasonable: it would be naïve.

...

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

22. Both publications appear online, Publication 1 in a ‘true crime’ podcast about high profile paedophiles, Publication 5 on Ms Poulton’s ‘Fighting Fund’ page which is dedicated to giving updates on her legal battles with people, including the Claimant, in relation predominantly to her online content about child abuse. The hypothetical reader is, therefore, someone who is interested in online content, outside the “mainstream media”, that relates, in particular, to child abuse allegations about people in power. While I refrain from making “impressionistic assessments” of the readership, it is clear that the readers of both publications are people who are looking for information that they feel may be missing in “mainstream media” coverage of these issues. While the reasonable reader should not be “avid for scandal”, they should not be considered to be “naïve”. The hypothetical reasonable reader of both publications is someone who, while not “avid for scandal”, is clearly interested in scandal of a certain type and looking for information about abuses of power, including child abuse by people in power. This perspective informs the analysis of meaning in the words complained of in both publications against the wider context of extrinsic facts pleaded in support of the innuendo meaning of Publication 5.

Publication 1 - Arguments on Meaning

23. In the Amended Particulars of Claim, the Claimant submits that, in its natural and ordinary meaning, Publication 1 meant and was understood to mean that:
- i) the Claimant is a paedophile who raped Esther Baker when she was a child;
 - ii) the Claimant has used baseless legal threats to attempt to hide his sexual misdeeds with children.
24. The Defendant denied the meaning put forward by the Claimant but did not offer a specific meaning of her own in her Amended Defence or in submissions before me. She submitted that the Claimant’s first meaning was ‘based on an overly simplistic and mechanistic approach to the repetition rule.’ As to the second meaning, she said that the words did not mean that any legal threats were baseless. In summary, she said that the natural and ordinary meaning needed to be understood in the broader context of the video and with the caveats that she included to clarify that the allegations were not proven.

25. Mr Hodson drew my attention to the judgment of Steyn J in the separate case of *Baker v Hemming* [2019] EWHC 2950 (QB) dated 5 November 2019. I note that the judgment was handed down after the recording of the publication complained of here although before it was published online. I do not find that the judgment in *Baker v Hemming* has direct relevance to my decision on the meaning of Publication 1 in this case and therefore I have not considered it further in this part of my analysis.
26. For the Claimant, Mr Hodson submitted that the appropriate “Chase level” that should be applied to the proposed meaning was Chase level 1, particularly in relation to the first limb of meaning. He said that, given the very serious nature of the allegations relating to child abuse, this was the appropriate level. In the alternative, he said that Chase level 2 would be the lowest possible level attributable to such an appalling allegation that would undoubtedly provoke outrage and public condemnation of the Claimant. Ms Poulton argued that ‘the reasonable viewer would not have understood the words complained of to bear such serious meanings’ but did not put forward a specific alternative meaning.

Decision on Meaning – Publication 1

27. I have the rather artificial task of determining the “single, natural and ordinary meaning” of the words complained of taking account of the principles set out in *Koutsogiannis*. I reached my conclusions on meaning by, firstly, viewing the video which contains the short clip with the words complained of and noting the impression it made on me. I also took account of the impression it would make on the reasonable hypothetical viewer bearing in mind the likely hypothetical viewer of this content. I then went on to apply legal analysis to the meaning without taking an overly analytical approach. I note that I am not bound to adopt the meaning put forward by the Claimant in the absence of a concrete submission on meaning from the Defendant but that I may not adopt a meaning that would be more seriously defamatory than the meaning put forward by the Claimant.
28. I accept, as Mr Hodson submitted, that the overall context of the video, including the title, would put the viewer in the frame of mind that those featured in the video would be criminals and, in particular paedophiles. However, there is a notable contrast in the tone and style of the clip relating to the Claimant as compared to the way the Defendant talks about other people in the video. The short section complained of appears in the middle of the two and half hour interview and is much more measured and qualified in tone and substance than the way the Defendant speaks about allegations made against other politicians and famous people. This gives the impression that the Defendant does not endorse the allegations made by Esther Baker in the way she does the other topics discussed.
29. In her submissions before me the Defendant suggested that using the word “allegedly” took the sting out of any repetition. But it is clear that, in law (Nicklin J in *Hewson* [41]), simply caveating the repetition of a defamatory statement with terms like “allegedly” does not protect the publisher from a claim of defamation by repetition. While using the words “allegedly” or similar caveats does not remove the “sting” of the repetition, taking account of the broader context of the video, it is noticeable that the Defendant did not use those terms when discussing other people she said were involved in child abuse, including those she said had threatened her with legal action. Considering then the “bane and antidote” in relation to the

allegations by Esther Baker, the hesitancy of the Defendant when talking about this and her insistence that she did not know the facts, set this segment apart from the rest of the video in a way that does have the effect of moderating the very serious sting, and therefore the seriousness of the meaning, when considering the wider context.

30. The single, natural and ordinary meaning that I find in the words complained of in Publication 1 can be divided into two limbs:
- (i) Esther Baker made public allegations of child abuse by an MP and John Hemming revealed that those allegations were about him. Esther Baker must feel that those allegations have not been thoroughly investigated.
 - (ii) John Hemming is very proactive in protecting his reputation, including through the use of legal threats.
31. The underlined sentence in the first limb is opinion and the rest of the meaning is fact. Meaning may include inferences or implications derived from the specific words used as per Lord Morris in *Jones v Skelton* [1963] 1 W.L.R. 1362 (PC) at 1370–1371: “*The ordinary and natural meaning or inferred or indirect meaning—any meaning which does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be part of the ordinary meaning of words.*” Given the very serious nature of the allegations made by Esther Baker relating to child abuse along with the potentially negative connotation of the use of the word “outed” which gives the impression of revealing something true but hidden, meaning (i) is defamatory at common law.
32. The Claimant’s arguments for Chase level 1 meaning, however, stretch the level of seriousness beyond its natural and ordinary meaning. It appears from the repeated caveats such as “I am not making any accusations about John Hemming” that the Defendant did not ascribe guilt to the Claimant in the way required for a Chase level 1 meaning. I am not persuaded by the alternative argument that the publication reached the level of Chase 2 either. When publication 1 is viewed in the wider context of the video as a whole, it stands out in comparison to segments about others such as Epstein or Saville where the Defendant is very direct in her assessment of their guilt. This contrast combined with the reticence and repeated caveats from the Defendant about her lack of knowledge in relation to the allegations about the Claimant does, in my view, temper the seriousness of the meaning so that I find it has a Chase level 3 meaning- that there are grounds for investigating whether the Claimant was responsible for child abuse. This is borne out in the Defendant’s expressed opinion about how Esther Baker must feel about the need for an effective investigation.
33. It cannot be right, as submitted by Mr Hodson, that the serious nature of child abuse allegations alone merits Chase 1 level seriousness, if that were the case, the levels of seriousness would be irrelevant. The allegations are, clearly of a defamatory nature, but the Chase levels refer, more pertinently, the level of certainty expressed around guilt or the likelihood of guilt, rather than the level of seriousness of any alleged crime underlying the words. While both may be defamatory at common law,

to say that X is guilty of murder is very different to saying there are grounds for questioning X as part of a murder investigation.

34. The elements of the publication in relation to strand (ii) of the meaning do not, in my view, suggest that the Claimant's legal threats are baseless or that they are an "attempt to hide his sexual misdeeds with children." That would be an extremely strained interpretation. The discussion in Publication 1 tends to indicate that both the Claimant and the Defendant are regularly involved in legal action related to protecting their reputations. This, in my view, tempers the meaning of any reference to the Claimant's legal threats. Because of this wider context, I do not find that second limb of meaning of Publication 1 is defamatory at common law.

Publication 5 – Arguments on Meaning

35. In the Amended Particulars of Claim, the Claimant submits the following meaning of the words in Publication 5:

- i) The natural and ordinary meaning that the Claimant together with the 3rd Party and the 4th Party DL had falsely reported the Defendant to the police for a crime she did not commit and applied pressure to the Attorney General's Office to question and prosecute the Defendant.
- ii) The innuendo meaning that the Claimant, the 3rd Party and the 4th Party had the motive of covering up child abuse by those, such as the Claimant himself, who were or had been members of the 'Establishment' such as MPs or former MPs.
- iii) The innuendo meaning that the Claimant's motive was to cover up the allegation that he is a paedophile who raped Esther Baker when she was a child.

36. The Claimant provided three witness statements from third parties intended to support the innuendo meaning of parts (ii) and (iii) of the proposed meaning. It is unusual for evidence to be called at a TPI on meaning although it may be permissible in relation to innuendo. The witness statements, however, indicated that the witnesses were more focused on the wider disputes between the parties and the intention of the Defendant, none of which is directly relevant to the issue of meaning. I therefore decided that the witnesses would not provide useful testimony on the issue of innuendo meaning beyond demonstrating that some individuals were aware of the extrinsic facts and it was unnecessary to hear from them. Those extrinsic facts were broader publications on the Defendant's fundraising website and other publications by the Defendant including her documentary "*Paedophiles in Parliament*" which refer to the Claimant and others. As this point was not materially contested by the Defendant, no oral evidence was taken at the hearing.

37. The Defendant did not put forward a clear alternative meaning for Publication 5 beyond denial. In her skeleton argument she said:

"The Defendant was not claiming Mr Hemming was a paedophile and has never done so. However, the Claimant has worked in concert with other parties and that includes attacking survivors of child abuse, those alleging it and those who are reporting on it."

She went on to explain that Publication 5 referred more broadly to her talking about ‘dark forces’ which she says is ‘an accepted and regularly used statement for the attacks she has endured...’. In the hearing, she said that the meaning of Publication 5 referred to others inaccurately accusing the Defendant herself of being a child abuser. Her “Fighting Fund” page, she said, talked more broadly about her various legal cases and that her followers, who would have read it, would understand that she did not accuse the Claimant of being a paedophile. She said that Publication 5 was not defamatory.

38. The issue of innuendo meaning in the submissions on behalf of the Claimant was somewhat confused with innuendo reference although it was submitted that reference was no longer in issue in the case following the order to strike out aspects of the Defendant’s Amended Defence by Master Sabic. That Order has not been the subject of an appeal and therefore the arguments before me, and my conclusions in this judgment, only address innuendo meaning without considering further the question of reference which appears to be no longer in question.

Decision on Meaning - Publication 5

39. Having considered the broader context of the Defendant’s “Fighting Fund” website which includes references to threats of legal proceedings by the Claimant and others, as well as the extrinsic facts pleaded by the Claimant, and the context of the likely readership, I find the following natural and ordinary and innuendo meaning of publication 5 which can be separated into three limbs:

i) The Defendant was interviewed by the police about a potential breach of a reporting restriction relating to an old case, but she was told no further action would be taken. The interview came about due to improper pressure on the police and the Attorney General from powerful interested parties who wanted her to stop reporting on public interest issues including child abuse.

ii): The Defendant gave the names of those people to the police. They use harassment and defamation as a way of silencing survivors of child abuse and those who raise awareness on the topic.

iii) (Innuendo): Their motivations for trying to cover up child abuse by members of the Establishment should be questioned. Those motivations could include the desire to cover up their own criminal activities.

40. The first and second meanings are statements of fact while the third innuendo meaning, underlined, is a statement of opinion. The first and second limbs do not lend themselves to a clear analysis of the relevant Chase levels, particularly because, despite the strike out of the Defendant’s defence relating to reference, it is unclear how far the Claimant is implicated in the improper actions described in those two limbs. To ascribe direct specific involvement of the Claimant in those activities would be to overly strain the natural and ordinary meaning of the words. The level of seriousness in relation to those meanings is to note that the Claimant was involved, in some way, in those activities. The third limb, which refers to the motivation to cover up child abuse, however, amounts to Chase level 3 seriousness – that this needs to be investigated.

41. In relation to the innuendo meaning of limb 3, the primary extrinsic facts of relevance are the allegations of child abuse made by Esther Baker against the members of the establishment including politicians, police and VIP's starting in 2015. Those allegations were aired on television news broadcasts, in particular on Sky News in 2015. Due to the inclusion of details in reports on those allegations that led to "jigsaw" identification of the Claimant, once the police investigation was dropped, he revealed that he was one of the people Esther Baker accused in a statement on his blog in 2017. He strongly denied the allegations and no further action was taken by police. Esther Baker sued the Claimant for defamation and he counterclaimed. In her judgment of 5 November 2019 in that case, Steyn J found that: "*It follows from the decision I have made in respect of the counterclaim that the Claimant cannot contend that the Defendant raped her or anyone else, or that he sexually assaulted her or stalked and defamed her to cover it up. She is precluded from contending that her Tweet, in the natural and ordinary meaning pleaded by the Defendant, was true.*" (***Baker v Hemming*** [107]). The defamation proceedings were covered extensively in the media including in the Daily Mail. Given the wide media coverage naming the Claimant in relation to allegations of child abuse and also in connection with defamation proceedings in relation to those allegations, I am satisfied that some readers of the Defendant's Fighting Fund page would have had knowledge of these extrinsic facts and their understanding of the words complained of would have been coloured by those facts.
42. Further extrinsic facts pleaded by the Claimant include additional content on the Fighting Fund page about ongoing legal proceedings as well as videos in which the Defendant referred to the allegations made by Esther Baker about the Claimant and to the threat of legal proceedings made by the Claimant. Of particular note is the Defendant's video, "*Paedophiles in Parliament*" (PiP) published online on 2nd August 2018 along with the livestream video "*The Raw Report 04 – Sued, attacked and fighting back*" (SAFB) published on 6 November 2020.
43. I consider it reasonable to assume that the likely audience of Ms Poulton's Fighting Fund page who would have read Publication 5 would be aware of her work more broadly and some of them would have seen one or other of the videos discussing both the allegations by Esther Baker and the legal proceedings against both Esther Baker and the Defendant. This would have had an impact on their understanding of Publication 5 in relation to the Claimant and the wider context of allegations of child abuse and the use of harassment and defamation claims as a means of covering up allegations.
44. Considering the three limbs of meaning of publication 5 above, I find that all elements of meaning, assuming reference to the Claimant in some capacity, would "*substantially affect in an adverse manner the attitude of other people towards [the Claimant] or have a tendency to do so.* - ***Triplark v Northwood Hall*** [2019] EWHC 3494 (QB)) at [11].
45. The first limb meaning includes the use of improper pressure on public authorities, a matter which is extremely serious, implies some form of corruption, and is liable to lower the Claimant and others involved in the estimation of other people. The second limb adds to the first limb of meaning by introducing other tactics to cover up serious criminality, namely the use of harassment and legal proceedings. The third limb questions the motivations of those involved in bringing legal action

suggesting that they may, themselves, have been involved in criminality that they are trying to cover up. All three limbs would clearly have a tendency to adversely affect other people's attitudes towards the Claimant by virtue of his connection with these activities. Therefore, the meaning of all three limbs is defamatory at common law.

Conclusion

46. The single natural and ordinary meaning of Publication 1, with the underlined portion being opinion while the rest is fact, is:
- (i) Esther Baker made public allegations of child abuse by an MP and John Hemming revealed that those allegations were about him. Esther Baker must feel that those allegations have not been thoroughly investigated.
 - (ii) John Hemming is very proactive in protecting his reputation, including through the use of legal threats.
47. The first limb is defamatory at common law, the second limb is not defamatory at common law.
48. The natural and ordinary and innuendo meanings of Publication 5 are as follows with the underlined portion being opinion while the rest is fact:
- i) The Defendant was interviewed by the police about a potential breach of a reporting restriction relating to an old case, but she was told no further action would be taken. The interview came about due to improper pressure on the police and the Attorney General from powerful interested parties who wanted her to stop reporting on public interest issues including child abuse.
 - ii): The Defendant gave the names of those people to the police. They use harassment and defamation as a way of silencing survivors of child abuse and those who raise awareness on the topic.
 - iii) (Innuendo): Their motivations for trying to cover up child abuse by members of the Establishment should be questioned. Those motivations could include the desire to cover up their own criminal activities.
49. All three limbs of the meaning of Publication 5 are defamatory at common law.

Costs

50. The Claimant, the Defendant and the 3rd Party provided written submissions on costs. In summary, Mr Hodson, for the Claimant, argued that, if any part of the meaning was found to be defamatory at common law, costs should be awarded to the Claimant for the TPI on meaning taking note of the Defendant's earlier resistance to agreeing for a TPI on meaning and her failure to provide alternative meaning to that proposed by the Claimant simply denying the Claimant's meaning was correct which has resulted in additional work for the Claimant in responding to the Defence. The 3rd Party, in summary, supported the Claimant's position and responded to points made by the Defendant related to him, but, as he was not involved in the TPI

on meaning, his submissions have little or no relevance to the decision on costs for this part of the proceedings.

51. Ms Poulton argued that costs should be costs in the case as is the usual approach to a TPI on meaning. She submitted that the oppressive way the wider case has been run by the Claimant and the 3rd Party has prevented her from having her own effective legal representation while costs have been mounting and said that she had repeatedly tried to settle. In addition, she submitted that the unusually long hearing time set aside for the TPI with two days requested when the hearing was, in fact, concluded in under three hours, and the proposal of witnesses that were deemed unnecessary has added disproportionate costs to this hearing.
52. The outcome of a TPI on meaning, including a finding that meanings are defamatory at common law, helps to clarify the potential defences in a case and narrow issues for trial or potential settlement. While I have found that the meanings of the publications are defamatory at common law, at this stage, no findings are made on the potential defences and therefore the ultimate outcome of the case is not decided here. These proceedings are much broader than the issue of defamation in the two publications I have considered in this judgment and the behaviour of the parties' in relation to the proceedings overall raises questions that go far beyond the issues before me. Elements of the submissions on costs for this hearing make it clear that it would be inappropriate to address costs in relation to the TPI on meaning separately from the costs in the proceedings as a whole. As the outcome of a TPI on meaning is not dispositive of the case but is inextricably linked with the outcome of the wider case, I do not think it is appropriate make a separate costs order for this part of the proceedings. Therefore, I make an order for costs in the case.

Deputy High Court Judge Susie Alegre