



Neutral Citation Number: [2024] EWHC 888 (KB)

Case No: KB-2021-004305

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST
MANCHESTER DISTRICT REGISTRY

1 Bridge Street West
Manchester
M60 9DJ

Date: 19/04/2024

Before :

THE HONOURABLE MRS JUSTICE FARBEY

Between :

RICHARD PARSONS **Claimant**
- and -
DOUGLAS ATKINSON **Defendant**

William McCormick KC (instructed by **Carter Ruck**) for the **Claimant**
Robert Sterling (instructed by **Bell Park Kerridge**) for the **Defendant**

Hearing dates: 26-28 February 2024

Approved Judgment

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

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THE HONOURABLE MRS JUSTICE FARBEY

MRS JUSTICE FARBEY :

INTRODUCTION

Overview

1. By a claim form issued on 22 November 2021, the claimant seeks damages and injunctive relief for defamation and misuse of private information. The trial took place before me over the course of 2 ½ days.
2. As regards defamation, the claimant claims that on 24 November 2020 the defendant published one of a number of copies of a “poison pen” letter. Although at least 16 copies of the letter were probably in circulation, the content of each copy was materially the same. There is no need for me to distinguish any of the letters by their number. The claimant claims that the defendant published a copy of the letter by reading it aloud to a number of fellow firefighters in the fire station at Broughton-in-Furness, Cumbria.
3. It is no longer in dispute that the multiple elements of the content of the letter related to the claimant and that each element of the letter was defamatory in meaning. The defendant denies reading aloud the letter and so claims that he did not publish it. In the alternative, the defendant claims that the alleged publication did not cause and was not likely to cause serious harm to the claimant’s reputation. As regards the claim for misuse of private information, the defendant’s case is that the letter did not contain the claimant’s private information; alternatively, that there was no actionable misuse of the information.
4. The claimant’s skeleton argument aims considerable fire at the defendant’s defence, emphasising that it is in “unconventional form” and “appears to elide or misunderstand a number of issues.” The claimant contends in his skeleton argument that the defendant’s own witness statement appears to show that certain aspects of the defence cannot be maintained. Irrespective of the merits of those criticisms, I am satisfied that no prejudice was caused to the claimant at trial by anything in the way the defence was pleaded.

The parties

5. Both the claimant and the defendant live in Broughton-in-Furness. They have known each other for very many years, having attended the same primary school. The claimant is a successful businessman and landowner. He is the owner and chairman of Coordination Group Publications Ltd (“CGP”). The company is an educational publisher based in Broughton-in-Furness, employing around 270 people from the local area.
6. The claimant has for many years been active in local life. In the 1990s, CGP bought the local Pit Stop Filling Station, a petrol station which has been run at a net loss for the benefit of the community since then. CGP bought the butcher’s, baker’s and grocer’s shops when they were faced with closure. These shops remain in business even though they do not make a profit. CGP has bought two pubs and a café with a commitment to refurbish and re-open them for the benefit of the local community. The claimant has also undertaken individual philanthropic actions, such as letting a woman live in a property bought by CGP Estates after the break up of her marriage. The

claimant took this step so that the woman's children would not be at risk of being taken into care as a result of inadequate housing conditions.

7. The defendant is 60 years old and is a self-employed joiner. In November 2020, he was also the part-time Watch Manager of the fire station. He resigned from the Cumbria Fire and Rescue Service on 6 June 2022. By the time that he left on 8 July 2022, he had accrued 36 years of service to Broughton-in-Furness fire services including around 25 years in charge of the station.

Other proceedings

8. The claimant has launched proceedings against other local residents who have published copies of the letter. In *Parsons v Elizabeth Garnett, Allan Garnett & Katie Armistead* [2022] EWHC 3017 (KB), Collins Rice J allowed the claimant's application for a default judgment (on his claim issued on 18 February 2022) under the provisions of Part 12 of the Civil Procedure Rules. The third defendant in that case, Katie Armistead, is the daughter of the first and second defendants. Applying the statutory cap for damages under section 9(1)(c) of the Defamation Act 1996, Collins Rice J ordered Mr and Mrs Garnett to pay £8,000 for which they were jointly and severally liable. She ordered Ms Armistead to pay £2,000 in damages. The court considered a separate harassment claim against Mr and Mrs Garnett relating to other conduct and ordered that they jointly and severally pay damages of £12,000. I shall refer to this litigation as the *Garnett* case.
9. In *Parsons v Gary McClure* (QB-2021-004304), Deputy Master Fine (in relation to a claim issued on 22 November 2021) allowed an application for judgment to be entered in default of an acknowledgement of service and of a defence, assessing damages at £10,000. Deputy Master Fine noted that Mr McClure had published the letter to around 700 people on Facebook in November 2020, which was far in excess of the number of people who had received copies of the letter from the Garnett family. As it has transpired, I do not need to refer to the *McClure* case again or to the evidence relating to what Mr McClure did (which was put before me in the form of a written statement and exhibit from a Broughton resident named Heather Tavares).

THE LETTER

The meanings of the letter

10. By the time that his skeleton argument was served, the defendant had set out the meanings of the letter for which he contended, pursuant to the case management directions of Chamberlain J at a pre-trial review. Adopting the wording of Collins Rice J's Order in the *Garnett* case, the defendant accepts that the letter has the following meanings:

“(1) Mr Parsons has destroyed the community of Broughton-in-Furness and the local economy by his greed and selfishness;

(2) Mr Parsons has been responsible for many unethical business dealings;

(3) Mr Parsons treats his staff appallingly;

(4) Mr Parsons has treated his wife badly by having adulterous relationships with their live-in housemaid and a vulnerable single woman; and

(5) Mr Parsons has exploited a vulnerable single woman by providing her with accommodation in return for sex.”

11. These meanings are formulated in a slightly different way to the meanings set out in the Particulars of Claim. I agree with Mr William McCormick KC (who appeared on behalf of the claimant) that nothing turns on any slight difference of wording which is a distinction in form only. I accept that the letter had the meanings found by Collins Rice J.
12. The defendant concedes (and I find) that each of these five meanings is defamatory of the claimant at common law. The claimant’s evidence that he found the letter highly distressing is unsurprising: the false allegations in the letter are horrible. I would gratefully adopt Collins Rice J’s description of the letter as “salacious and tendentious” (*Garnett* case, para 34). It is designed as a purpose-built engine of local gossip (*Garnett* case, para 36).

Libel or slander

13. The Particulars of Claim set out the claimant’s primary case that the reading of the letter is a libel but also an alternative case that, if the reading was a slander, it is actionable without proof of special damage by virtue of section 2 of the Defamation Act 1952. The question whether the reading of the letter would constitute libel or slander is academic as the defendant is willing to accept that it would be actionable as a libel. I do not need, therefore, to reach any decision on this question and shall for the purposes of this judgment refer to it as a libel.

THE ISSUES

14. Against this background, the issues between the parties in the libel claim are:
 - i. Publication: Did the defendant publish the letter as, and to whom, alleged?
 - ii. Serious harm: Has the alleged publication caused or was it likely to cause serious harm to the claimant’s reputation? To what extent did the defendant’s alleged publication cause serious harm or was he likely to cause serious harm additional to the serious harm caused by the publication of the letter by the Garnetts and by Mr McClure?
 - iii. Remedies: To what remedies (if any) is the claimant entitled?
15. The claim for misuse of private information is founded on the defendant’s publication of the letter (see Particulars of Claim, para 15; claimant’s skeleton argument, para 6). The discrete issues in the claim for misuse of private information are:
 - i. Private information: Did the letter contain the claimant’s private information?
 - ii. Misuse: Did the defendant misuse that private information by the alleged publication of the letter? For the purpose of this issue, was the alleged private

information already in the public domain so that any misuse of the private information was not actionable?

- iii. Remedies: To what remedies (if any) is the claimant entitled?

BURDEN AND STANDARD OF PROOF

16. The question whether the defendant published the letter is a question of fact. The claimant bears the burden of proving it. The claimant's pleaded case is that the defendant published the letter by reading it aloud to four part-time firefighters: Chris Hull, Sir William Jardine, John Jardine and Katie Armistead. The defendant's case is that he did not read aloud the letter. Neither of the parties suggested that the defendant read the letter audibly, or mumbled it, by speaking the words to himself, as sometimes happens when people want to concentrate on a piece of text. I did not hear evidence or receive submissions from counsel on this alternative scenario. In the absence of evidence directed to the point, I would be speculating by reaching any conclusions about it.
17. It follows that I must consider the parties' diametrically opposed cases on whether the letter was published. The opposing nature of the parties' respective cases is reflected in the claimant's position that the defendant has (i) lied in his witness statement and in his evidence to the court about what he himself did; and (ii) intimidated Sir William and John Jardine into refusing to give evidence in accordance with earlier statements. It is reflected in Mr McCormick's cross-examination of the defendant. It is further reflected in his closing submission that there is no room for mistaken recollection and that a finding that witnesses were mistaken - as opposed to committing perjury - would be unreal in this case.
18. Mr McCormick qualified what he himself described as a stark submission by reminding me that the facts are at large. He submitted that, in order for the claimant to meet his burden of proof, I do not need to find that the defendant has mounted a dishonest case. I can decide the issues on the basis that one or more witnesses are mistaken. As a matter of law, Mr McCormick is correct. Nevertheless, the force of cross-examination and of the closing submissions on behalf of the claimant was that the defendant and his witness Ms Armistead had lied. The defendant likewise maintained that the claimant's principal witness – Mr Hull – had lied.
19. There was discussion before me about the approach that the court should take before making a finding that a witness has lied. The standard of proof remains the balance of probabilities. Somewhat belatedly and without providing a copy of the relevant authorities, Mr Robert Sterling (on behalf of the defendant) relied on case law that the more serious the allegation, the less likely it is that the event occurred and hence the stronger should be the evidence before the court concludes that the allegation is established on the balance of probabilities (see eg *In re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] A.C. 563, 586). I accept Mr McCormick's unanswerable submission that there is one single balance of probabilities and that points such as that made in *In re H* are no more than a statement of sensible ways of applying the test. The inherent probability or improbability of an event is simply a matter to be taken into account (*In re B (Children)* [2008] UKHL 35, [2009] 1 A.C. 11, para 70). I make plain that I have applied the balance of probabilities to all my factual findings.

20. In a nutshell, I find that none of those who gave oral evidence lied. I was provided with various different and conflicting accounts of what happened when the letter was brought by Ms Armistead to the fire station. That is perhaps not surprising when it was a relatively short-lived event some time ago. It has been a challenging task to work out whose account is reliable and in what respects. In these circumstances, the burden of proof has played a significant role.

FINDINGS OF FACT

The relationship between the claimant and defendant

21. Although the claimant and defendant attended Broughton-in-Furness Church of England Primary School at the same time, they were not particularly friendly there and did not have much contact with each other growing up. It is not in dispute that the claimant's son (now 19) knew the defendant's daughter from school. The claimant and his wife would host annual summer parties from around 2010 for their son and his friends. The parents of the friends were invited. The defendant's daughter and his wife would attend but the defendant did not attend. I accept the defendant's evidence that he did not attend because he did not enjoy socialising at children's parties.
22. The defendant lives in a property called the Coach House which is in a yard opposite the village hall which is known as Victory Hall and owned by Duddon Parish Council. Both the claimant and the defendant refer in their evidence to the claimant's involvement with a proposal for planning permission by Broughton Information Centre around 15 years ago to build a car park on a piece of land owned by the Centre at the rear of Victory Hall. Access to the car park would have depended (at least to a large degree) on a right of way through land owned by the defendant. The gist of the evidence of both the claimant and the defendant is that they had a conversation in which the defendant said that there was no right of way but the claimant refused to accept what the defendant said. The defendant's then lawyers wrote to the Lake District Planning Committee objecting to the proposal. The claimant eventually withdrew from the scheme and planning permission was not granted. In later years (most recently in 2020), CGP's property department raised with the claimant the question of using the same land as a car park but the claimant recommended that nothing be done as he knew that the defendant would not be happy.
23. The defendant maintains at paragraph 13 of his defence that the claimant raises "unfounded and untrue allegations...on the basis that he has a grudge or vendetta against the Defendant arising from an historical disagreement between the parties in relation to a right of way". I accept the claimant's evidence that he did not bear a grudge which would be at odds with his having invited the defendant and his family to parties at around that time. It is implausible that, after so many years have passed since the planning application, the claimant would bring proceedings as the result of a grudge. I reject this part of the defendant's case.
24. The claimant made a public request for information about the origin and circulation of the poison pen letter in the parish magazine ("Parish Pump"). The bundle of documents contains three articles dating from September 2021, October 2021 and March 2022. The articles – posted in the name of CGP – explained that CGP was engaged in preparing a legal case against those who had circulated the letter in November 2020. The September article asked anyone who had received a copy of any defamatory letter

or who had information about the circumstances under which the letter was produced or circulated to let CGP know. The update in October 2021 said that CGP had already gathered substantial information and were still receiving further information. CGP asked anyone who had received the letter, passed it on, or simply been shown it to let them know, so that the company could “construct a complete picture of how the letter was passed around.” In the March 2022 edition, CGP stated that a number of people had come forward and provided information on how the letter originated and spread. Legal proceedings were ongoing.

25. In cross examination, the defendant said that he felt that the claimant was on a “witch-hunt” by placing articles in the Parish Pump. He expressed the view that the claimant was just trying to gather information from whoever he could because he did not have any evidence about the letter. Mr McCormick suggested in cross examination that it had been reasonable for the claimant to want to gather information and that the description of the articles as a “witch-hunt” flowed from the defendant’s hostility towards the claimant. This caused the defendant to withdraw the comment about a witch-hunt. He denied that he was hostile towards the claimant.
26. When pressed, the defendant accepted that he had seen the September article before receiving the first solicitors’ letter in these proceedings, so that he knew that the claimant was trying to identify those who had circulated the letter before he received any intimation of litigation. In closing submissions, Mr McCormick suggested that the defendant had failed to respond to the Parish Pump request for information because he was hostile to and did not want to help the claimant.
27. In terms of establishing whether the defendant published the letter, I found this line of cross examination and submissions to be a red herring or circular. The defendant’s case is that he did not publish the letter. If the defendant’s case is correct, it is understandable that (i) he did not tell the claimant that he did publish it (whether in response to the Parish Pump or otherwise); and (ii) he feels embittered for being pursued. The same applies if the defendant is mistaken about whether he published the letter. If he is lying about publishing the letter, he may well have wanted to avoid contact with the claimant. But I cannot tell from the use of the word “witch-hunt” or the failure to respond to the Parish Pump which of these scenarios is more probable.
28. In these circumstances, the relationship between the parties does not advance matters one way or the other.

The fire station personnel

29. Broughton-in-Furness fire station is manned by part-time firefighters. As the Watch Manager, the defendant was essentially in charge but accountable to Cumbria Fire and Rescue Services. Chris Hull worked part-time as a Crew Manager from 2002 to 2023. Mr Hull is the Managing Director of his own building and roofing company. He has known the defendant for about 50 years as they went to primary school together.
30. Katie Armistead is the daughter of the Garnetts. She has known the defendant for a long time as she went to school with his daughters. She began work as an on-call firefighter at the fire station in 2015. After becoming pregnant, she went on maternity leave from the fire brigade in April 2022.

31. John and Sir Willian Jardine are brothers. Unlike Mr Hull and Ms Armistead, they did not give oral evidence. Statements by each of them were served under cover of a hearsay notice to which I shall return. It is not in dispute that Sir William Jardine works for Mr Hull as a builder and that John Jardine has in the past worked for Mr Hull as a labourer. Mr Hull thinks that John worked for him in around 2021. In his witness statement, dated 8 February 2022, John Jardine says that he works as a builder, mostly for Mr Hull's company, which is broadly consistent with Mr Hull's recollection.
32. There were a number of other firefighters, including Dean Leech and Jordie Scowcroft who were employees of CGP. It will readily be recalled that, in November 2020 when the defendant is alleged to have read aloud the letter, the United Kingdom was in the grip of the Covid-19 pandemic. Before the pandemic, the firefighters would all attend fire practice nights together each week from 7pm to 9pm. The requirements of "social distancing" during the pandemic meant that the firefighters could not all attend fire practice at the same time. They were on a rota. The night when the defendant is alleged to have read aloud the letter was a fire practice night but Mr Leech, Ms Scowcroft and other firefighters were not present. None of the absent firefighters has given any evidence in these proceedings.

The evening of 24 November 2020

33. The fire station comprised a small office and an appliance bay where (among other things) the fire engines were kept. There was some dispute as to the exact size of the office. Mr Hull thought it was about 2.5 m long and 1 m to 1.5 m wide. The defendant's case is that it was about 9 feet long and 7 feet wide. It is common ground that the office was separated from the appliance bay by a single door. The defendant (as the person effectively in charge) would use the office in order to undertake administrative tasks and paperwork.
34. On 24 November 2020 at around 7pm, Mr Hull and the defendant were sitting at the desk in the office. There was a third chair for the desk. Mr Hull's recollection is that Sir William Jardine was sitting in the third chair and that Ms Armistead came to the doorway with the letter and stayed in the doorway. The defendant says that no one was sitting in the third chair but that Sir William Jardine was in the doorway until Ms Armistead arrived. At that point, she walked into the office doorway and Sir William Jardine stood behind her outside the doorway.
35. It is not in dispute that Katie Armistead brought a copy of the letter to the fire station and handed it to the defendant. There is starkly opposing evidence about what happened after that.

The claimant

36. The claimant confirmed that, from around 13 July 2020, copies of the letter were sent out to specific individuals, including people in CGP. They all had the same content. The claimant believes that he learned about events at the fire station on the evening of 26 November 2020 when he was told by a third party (the same person he had housed after her marriage ended, as mentioned above). John Jardine had mentioned the incident to her.

37. The claimant was not present at the fire station. He did not see or hear what happened but relies entirely on what others have reported to him. Mr McCormick accepted as much.

Chris Hull

38. Mr Hull says that Ms Armistead handed the letter to the defendant and that he himself saw the letter briefly when she handed it over. The defendant read the letter out loud for about 5 minutes. Mr Hull himself carried on with paperwork at the computer in the office but was also trying to listen. Ms Armistead was smiling while the letter was being read. She and the defendant started to laugh together a couple of times. After reading the letter, the defendant handed it back to Ms Armistead.
39. Mr Hull believes that Ms Armistead brought the letter into the fire station for his benefit, in the sense (as I understand it) that she wanted to taunt him or make him unhappy as he was one of the claimant's friends. It appeared to him to be a deliberate act to have him, as one of the claimant's friends, listen to the defendant read aloud the letter.
40. I do not accept the defendant's allegation that Mr Hull is lying in the sense of being dishonest. The question is whether his recollection is accurate.
41. I am not satisfied that Mr Hull's evidence that the defendant read aloud the letter is accurate on the balance of probabilities. First, on 28 November 2020, the claimant contacted Mr Hull about the letter by WhatsApp. He asked Mr Hull whether he had any ideas about where the letter came from. I have been provided with screenshots of the string of messages between the claimant and Mr Hull on that day and then again on 29 November 2020. As Mr Sterling submitted, there is no mention of the defendant reading the letter aloud in the messages between Mr Hull and the claimant in the days after the incident. Mr Hull said in the messages that "a certain female was showing it at the fire station" and that "I saw it briefly". The inference is that Mr Hull saw the letter because Ms Armistead was showing it to people.
42. That inference is supported by other parts of the message thread. When the claimant said in a further message that he expected that Ms Armistead was keen to "show" the letter and "spread it around", Mr Hull did not correct that impression by saying or at least implying that Ms Armistead gave the letter to one person (the defendant) and then took it back (which is the thrust of his witness statement).
43. I would not expect a complete description of the incident in a short string of WhatsApp messages. However, Mr Hull says in his witness statement that he did not read the letter and was only aware of its content as it was read out by the defendant. If it is right that the entirety of his knowledge of the content of the letter came from the defendant reading it aloud, it is odd that he did not say anything at all in the messages that could be regarded as a reference to the defendant or to the letter being read – whether expressly or by contextual implication. I accept Mr Sterling's submission to this effect.
44. By way of explanation, Mr Hull said in cross examination that he did not immediately inform the claimant about what the defendant had done because he did not want to tell the claimant "until he knew." He had concentrated in the WhatsApp messages on the fact that Ms Armistead had brought the letter into the fire station. Mr Hull doubtless focused in the messages on Ms Armistead and the Garnetts for good reason. However,

there was no particular reason for Mr Hull to tell the claimant about the letter being brought to the fire station but then to protect the claimant by withholding his account of what the defendant did until the claimant had learned of what happened in another way (which is how I understand the evidence that Mr Hull did not want to tell the claimant “until he knew”).

45. Secondly, the claimant instructed solicitors (not those instructed in these proceedings) because he wanted to launch a private prosecution against the Garnetts after the police had shown disinterest. In order to gather evidence for a criminal case, a private investigator was instructed who interviewed a number of people. I have seen an unsigned statement taken by the investigator from Mr Hull in January or February 2021. A few months had therefore passed before Mr Hull gave his version of events to the investigator.
46. The claimant confirmed in oral evidence that he had had nothing to do with the content of the statement and did not ask the investigator about the content. Although a private prosecution did not proceed, he received advice from the investigator not to have anything to do with witness statements in case it tainted the prosecution.
47. I accept that the claimant may well have been advised of the risks of appearing to have coached or otherwise influenced potential witnesses in an intended criminal trial. But there would have been time and opportunity for Mr Hull to inform the claimant of the defendant’s role in the incident at some stage before his statement to the investigator. There is no evidence that he did so.
48. Mr Hull said in cross examination that in the period before he gave his account to the investigator, he told his former wife about the defendant reading the letter but no one else. He accepted, however, that he told his former wife about what the defendant did as part of his account to her of “the whole thing, how it happened.” I am not satisfied that the conversation with his wife contained all the details claimed in cross examination. The claimant has not proved that Mr Hull mentioned the defendant reading aloud the letter before he told the private investigator.
49. The events of the evening of 24 November 2020 were comparatively brief. The passing of time before Mr Hull spoke to the investigator is a factor that I take into consideration in determining whether his recollection is accurate. As Mr Sterling submitted, human memory fades and may become unreliable with time.
50. Thirdly, the claimant made a complaint against the defendant and Ms Armistead to Roger Exley of Cumbria Fire and Rescue Service on 30 March 2022. I have been provided with a statement signed by Mr Hull on 6 February 2022 which was sent to Mr Exley (though an unsigned version was emailed to him, presumably for convenience). It recounts that the defendant read the letter aloud. It contains a statement of truth and ends with the words “I am willing to attend Court if required to do so.” Mr McCormick emphasised that Mr Hull would not have given the statement in this format if he were lying. Mr McCormick is correct to the extent that Mr Hull has not lied. However, the repetition or reiteration of matters already recounted in a previous statement does not necessarily make the later statement any more or less accurate. If Mr Hull was mistaken when speaking to the investigator a year or so previously, he did not then become correct when he signed the later statement.

51. Fourthly, the claimant and Mr Hull have known each other since primary school and are close friends. Mr Hull worked for the claimant for around 6 to 8 months when the claimant bought the Eccle Riggs Hotel. Although they had some sort of fall-out, their friendship resumed. The claimant and Mr Hull go cycling together a couple of times per month. Mr Hull lived rent-free in property owned by the claimant (called The Rookery) between late January 2022 and May 2023. While this accommodation post-dated the incident, it shines light on the nature of their relationship. The claimant bought Mr Hull's matrimonial home and enabled his former wife to live there as a tenant. Within a week of the incident, in a WhatsApp message on 29 November 2020, he had sent an electronic file to the claimant raising the prospect that it is illegal for someone to forward or circulate an anonymous letter. I am not saying that Mr Hull is obsequious or favour-seeking. However, as Mr Sterling submitted, he is on the claimant's side in this small community.
52. In addition, Mr Hull did not strike me as giving a full account of the incident. He said in cross examination that the defendant began to read aloud the letter - fluently and without pausing - as soon as it was handed to him. He did not read any of it to himself before reading it aloud. Given that the defendant would have had no idea what the letter was, it is odd that he did not glance at it for even a few seconds before reading it aloud to an audience. I accept Mr Sterling's submission to this effect.
53. Mr Hull said in cross examination that the incident came to a close (so far as he recalls) after the defendant handed back the letter to Ms Armistead. He does not describe any reaction from Sir William Jardine or from the defendant after Ms Armistead took back the letter. He says that he himself was very unhappy about the letter but (as Mr Sterling submitted) he does not describe saying anything to the defendant, whether by way of confronting him about his conduct or otherwise. He simply says that he told Sir William Jardine that he did not agree with someone writing the letter or with Ms Armistead bringing it into the fire station. Sir William Jardine mentions in his statement that after the defendant had finished reading the letter, it was passed to him and he read it silently. On Mr Hull's evidence, Sir William was sitting at the same desk as him. It is therefore odd that Mr Hull did not say that Sir William read the letter. An alternative explanation is that Sir William's witness statement is inaccurate. Neither of these scenarios assists the claimant.
54. In light of these factors, I am not satisfied that Mr Hull's evidence that the defendant read aloud the letter is reliable.

Thomas Parsons

55. Thomas Parsons is the claimant's nephew (his mother is the claimant's sister). Having previously lived in Broughton-in-Furness, he has lived for the past ten years in Liverpool where he studied for a master's degree. He now works as the general manager of a micropub. He gave clear and careful evidence.
56. On 24 November 2020 at 7.22pm, he received a message from his friend John Jardine on Facebook Messenger along with two blurry but legible photographs of the letter. The screenshot of John Jardine's message shows that it said:

“Thought I should send this to you before I put it on the group chat. It’s pretty funny like. Trying to figure out who wrote it. Sorry if the pictures are blurred”.

57. Thomas Parsons knew that the allegations in the letter concerned the claimant. The group chat mentioned in John Jardine’s message was a Facebook Messenger group of 8 people (including John Jardine and him) who were all from Broughton-in-Furness. Thomas Parsons told John Jardine not to post the messages to the group and so John Jardine did not do so.
58. Thomas Parsons spoke to his mother about the letter some days afterwards. She was very upset and began to scream and shout at her son demanding to know who wrote the letter. They decided not to tell the claimant about the letter because he would be upset by it. In a later person to person discussion, John Jardine told Thomas Parsons that the letter had been brought to the fire station. In a subsequent conversation, John Jardine told him that Ms Armistead had brought the letter into the fire station and that the defendant had read it out to the people who were present in the main office. Thomas Parsons did not recall when these conversations took place but he sensibly surmised that they would have happened during the Easter or summer holidays when he returned from university to Broughton-in-Furness. If that is correct, it would mean that some months had passed before John Jardine told Thomas Parsons that the defendant read aloud the letter.
59. Thomas Parsons did not give evidence about how John Jardine knew about the letter being read aloud (which is no criticism of Thomas Parsons). John Jardine says in his statement that he heard what was happening because he was standing outside the office. On the other hand, Mr Hull said that John Jardine was elsewhere when the letter was read out and that he would not know if other people were standing outside the office doorway. The defendant also says that he could not see John Jardine at the material time. The defendant does not think that John Jardine could have seen inside the office or probably even have heard what was said in the office. If Mr Hull and the defendant are correct, it is not clear how John Jardine heard the letter being read aloud. Given the lack of clarity about how John Jardine was in a position to report to Thomas Parsons that the defendant read aloud the letter, I do not regard what he told Thomas Parsons as having significant weight.

The defendant

60. The defendant’s evidence is that he was sitting in the office with Mr Hull. The door was open. Owing to Covid restrictions, the firefighters kept to a maximum of two people in the office at any time. He thought that Sir William Jardine was stood in the doorway and was not in the office. This account is more likely than Mr Hull’s account that Sir William Jardine was in the office. It makes sense that, in order to respect social distancing, only two people were allowed in the small office.
61. The defendant says that when Ms Armistead arrived, she walked into the doorway of the office, stepped forward and handed him the letter, saying something like “look what I have got.” He did not know what the piece of paper was; it looked like a letter but there was no envelope. He assumed that the letter was Fire Service business because it had been brought into the fire station by a firefighter.

62. He began to read the letter to himself. He did not read the letter aloud. Despite its content and despite appreciating that the letter was an attack on the claimant, he did not know that it was not going to contain Fire Service business until he reached the end.
63. After he had read the letter, he said nothing. He did not hand the letter back to Ms Armistead but put it down on the desk in the office as he did not want anything more to do with it. He did not think that it was his responsibility to do anything with the letter. Without any invitation or encouragement from the defendant, Mr Hull picked up the letter from the desk and read it silently. He does not believe that Sir William Jardine (who was standing behind Ms Armistead) could see what was going on in the office. No one else read the letter in his presence.
64. The defendant cannot remember Ms Armistead or anyone else making any comment while he was reading the letter. He himself did not laugh at any point. After Mr Hull had read the letter, the defendant just got on with fire station business. That was the end of the matter, so far as he was concerned, and there was no further discussion about the letter in his presence on that evening. In cross examination, he added that Mr Hull took the letter out of the office after reading it.
65. The defendant did not see anyone take a photograph of the letter in the office while he was there. He did not hear any more about the letter or the events of 24 November 2020 until he received a letter from the claimant's previous solicitors accusing him of defamation.
66. The defendant's account of what happened after he read the letter lacks detail. I do not accept that it was Mr Hull who took the letter out of the office: I agree with Mr McCormick that this was a late addition, raised in cross examination only. However, the key point is whether the defendant read aloud the letter. I reject the submission that his denial is a lie. He is said by Mr Hull to have taken several minutes to read a letter to an audience of firefighters and to have laughed about it. The allegations against the defendant are allegations about what the defendant himself did. In my judgment, he is in the best position to recall whether that is what he did. He is less likely than other witnesses to be mistaken about what are alleged to be his own actions.

Katie Armistead

67. The default judgment against Katie Armistead was entered on the basis of the claim that she had published the letter by handing the copy provided to her by her mother to the defendant at the fire station on 24 November 2020; and that the defendant read it aloud to Mr Hull and the Jardine brothers (para 15 of the Particulars of Claim in the *Garnett* case).
68. This is the first time that Ms Armistead has given oral evidence capable of being tested. She filed a witness statement but did not give oral evidence in the *Garnett* case. Collins Rice J did not make findings on the balance of probabilities about her truthfulness (see e.g. paras 49-51 of the *Garnett* judgment). She noted that Ms Armistead and her parents were not asking to be allowed to defend the claim but simply wished the litigation with its attendant stresses to be over (para 21 of the *Garnett* judgment).
69. In her evidence, Ms Armistead said that she took the letter to fire practice as a "bit of fun" as there is usually quite a lot of "banter" between her and her colleagues - less so

with the defendant who was always very professional. She expanded her account in cross examination, saying that she had also brought the letter to see if anyone else had seen it or knew anything about it. She said that, so far as she recollects, she went into the office and put the letter on a table.

70. While the letter was on the table, it was read by the other firefighters in turn. Ms Armistead is wrong about putting the letter on the table but the defendant accepts that he read the letter to himself so that Ms Armistead's evidence is consistent with his evidence in this regard. Sir William Jardine says in his signed statement that he read the letter silently so that the claimant cannot complain that Ms Armistead says that he read it. John Jardine was sufficiently interested in the content of the letter that he went to the trouble of photographing it with a view to sending it to a Facebook group. I infer that he was sufficiently interested in the content to have read at least some of the letter to see what it said before he photographed it. I find that Ms Armistead is accurate when she says that John Jardine read the letter.
71. The only other person present was Mr Hull who denies reading the letter. Ms Armistead says in her witness statement that he read and took photographs of the letter and joined in the banter, making jokes. Accused of lying about this in cross examination, she said that he most definitely did so. It is probable that Ms Armistead is wrong about Mr Hull taking photographs and making jokes. I am less clear that she is wrong about Mr Hull reading the letter (see paras 43-44 above).
72. I do not accept that Ms Armistead is dishonest or that she has lied. She gave evidence under witness summons. It would be simple to characterise her as a witness forced to come to court and who, having attended the trial against her will, proceeded to give vindictive and false evidence to punish the person who had successfully sued her family for damages. The problem with that hypothesis is that it does not properly reflect how she presented or what she said. She struck me as bitter and as disliking the claimant. Nevertheless, she struck me as forthright. Her evidence was consistent with a person who, having already been ordered to pay damages, had little to lose by telling the truth.
73. Mr McCormick put to Ms Armistead that she was lying to protect the defendant because she did not want the claimant to win this case. Ms Armistead admitted that she does not like the claimant. She accepted that she should not have taken the letter to the fire station at all. She accepted that she wanted everyone to know what the letter said. But she said that it did not matter to her who won the present case. It made no difference to her life. The reason she wants the defendant to win is that the claimant is wrong. I do not regard any part of this evidence as a lie.
74. Ms Armistead was clear that the defendant did not read aloud the letter.

John Jardine and Sir William Jardine

75. The hearsay notice says that John Jardine "will not be called as a witness to give oral evidence because he has stated that he does not wish to be involved further in this matter." Sir William Jardine "will not be called as a witness to give oral evidence because he has stated that he does not wish to give evidence in accordance with the statement that he signed on 9 February 2022." The brothers did not attend court and their statements have not been tested.

76. In his signed statement, John Jardine says that he has worked as a retained fire fighter since January 2020. He lives near Broughton-in-Furness which he describes as “a small village where people know a lot about each other.” He is in the same friendship group as Thomas Parsons but had not really spoken to the claimant before the issues raised by the letter.
77. On the evening of 24 November 2020, he arrived at “drill night” at around 6.30pm. He was standing outside the office. The defendant was inside the office with Mr Hull and his brother William. Some time after he had arrived, Ms Armistead approached the entrance of the office and produced a letter which seemed to amuse her.
78. Ms Armistead handed the piece of paper to the defendant who started to read it aloud. He could hear what the defendant was saying and realised that the letter was about the claimant. The defendant continued to read the letter all the way through. There was “a sense of amusement at the contents as it was being read.” After reading the letter, the defendant handed it back to Ms Armistead.
79. John Jardine says that he then talked to Ms Armistead in the presence of the defendant. He does not give details of what they talked about. The conversation is not mentioned by Mr Hull, the defendant or Ms Armistead.
80. John Jardine believes that Ms Armistead brought the letter to the fire station because she found it amusing and wanted to ask people who they thought it could be from. In his respect, his evidence is consistent with Ms Armistead’s evidence about her motivation for bringing the letter, as expanded in cross examination, albeit that Mr McCormick accused Ms Armistead of lying about it. He took a photograph of the letter on his phone and subsequently shared it with some other people including Thomas Parsons.
81. Sir William Jardine’s signed statement says that he has worked part-time as a fire fighter at Broughton since September 2014. He is now an Acting Crew Manager. He lives near Broughton-in-Furness which he too describes (in the same terms as his brother) as “a small village where people know a lot about each other.” He had not spoken to the claimant until recently.
82. On the evening of the incident, he arrived at around 6.30pm. He was in the very small office with the defendant and Mr Hull. His brother John was standing outside the office. At around 7.00pm, Ms Armistead approached the entrance to the office and produced a letter. She handed it to the defendant who started to read it aloud. Sir William could hear what he was saying and quickly realised that the letter was about the claimant. The defendant carried on reading the letter to the end.
83. Ms Armistead “seemed pleased that the letter was being read out and [the defendant] was clearly aware of that.” After the defendant had finished reading the letter, it was passed to him. He read it silently.
84. Ms Armistead suggested that the letter had been delivered to her house. Sir William adds (as a matter not mentioned by anyone else) that questions were asked among those present about whether anyone else had received a copy. Nobody had done so. Over 12 months later, in January 2022, Sir William became aware that his brother had taken a photograph of the letter.

85. The claimant did not seek a witness summons in relation to either of the brothers. Both John and Sir William Jardine live in the same part of Cumbria. They could have been the subject of summonses. The defendant submits that it was open to the claimant to put this in train if the view was taken that they were telling the truth about the claimant reading aloud the letter.
86. By virtue of CPR 33.4(1), it was open to the defendant to apply for the court's permission to call the Jardine brothers for the purpose of cross examination on their statements. The claimant contends that if their evidence were open to challenge, the defendant could and should have brought the Jardine brothers to court to be cross-examined.
87. During the course of closing submissions, I floated the idea that if either party would wish the Jardine brothers to be called, they should let me know. Neither party asked me to arrange for that to happen. I was provided with no authority to assist me in my consideration of which party ought to have taken steps to bring the Jardine brothers to court.
88. In my judgment, it cannot sensibly be maintained that the defendant accepted what the Jardines have said in their statements, whether expressly or impliedly: their evidence that the defendant read aloud the letter is contrary to the defendant's key evidence and to the core of his pleaded case. The claimant has at all material times been aware that the content of their statements was controversial and under challenge. In such circumstances, the claimant's criticism of the defendant for not seeking the court's assistance to bring the witnesses to court is an exercise in passing the buck. If the claimant had wanted to call the Jardine brothers to give oral evidence in support of his case, he could have done so.
89. The claimant maintains that John and Sir William Jardine have refused to give evidence because they were pressurised or unduly influenced by the defendant. Neither of the brothers says anything like that in any statement. I cannot see how the defendant was under a duty to seek to call either of the brothers in order to put to them matters that not only go beyond their statements but that are solely part of the claimant's, and have nothing to do with the defendant's, case.
90. In all the circumstances, it would in my judgment have been reasonable and practicable for the claimant (being the party by whom the evidence was adduced) to have produced the makers of the statements as witnesses by serving them with witness summonses. There was no real reason for the claimant not to call the Jardine brothers other than that they did not want to give evidence. In these circumstances, I have reached the conclusion that the risks associated with witnesses whose evidence has not been tested should lie with the claimant.
91. It seems to me that the Jardine brothers could have withdrawn their co-operation from the claimant either because they were lying; or because they appreciated that they were mistaken; or because they decided to change sides in the sense of no longer wanting the claimant to win. None of these alternatives is palatable: each of them gives cause to doubt the brothers' reliability. Even if they simply changed allegiance, the inference is that they are fickle.

92. The statements are dated respectively 8 February 2022 (John Jardine) and 9 February 2022 (Sir William Jardine). They were therefore produced well over a year after the incident and not when events were fresh in their memories.
93. In cross examination, the claimant said that he thought that the Jardines had been interviewed by a private investigator in December 2021. This was a different investigator to the person who had gathered evidence for the private prosecution. The claimant's written complaint to Cumbria Fire and Rescue Service in March 2022 states that the Jardine brothers were interviewed by an independent investigator in December 2021. The investigator took notes which "formed the basis of their statements." The claimant then arranged to meet John and Sir William Jardine (as well as Mr Hull) to "finalise their witness statements and make sure they were happy with the contents before signing them."
94. In his closing submissions, Mr McCormick accepted that the statements were not CPR-compliant so that they were unlikely to have been drafted by solicitors. He was unable to give a clear account of who drafted them. He accepted that the claimant had some input into their production.
95. The lack of clarity as to who took the statements and how the information was provided to the statement taker reduces the weight that I am prepared to give them. Mr McCormick showed me a number of ways in which the Jardines' draft statements differed from their signed statements. He submitted that the differences proved that the brothers had taken great care in checking their statements before they signed them, leading to the inference that they were trustworthy witnesses. I reject these submissions. There is no evidence at all about who decided to make the changes between the drafts and the final statements. It cannot possibly be maintained on the evidence before me that the brothers asked for the changes to be made for the sake of accuracy.
96. For example, in paragraph 14 of his draft statement, John Jardine says: "Douglas carried on reading the letter to the end." In his signed statement, John Jardine says: "Douglas continued to read the letter all the way through." This is a difference in form not substance. In paragraph 15 of both his draft and his signed statements, Sir William Jardine uses exactly the same words as were in John Jardine's draft: "Douglas carried on reading the letter to the end." Quite why John started by expressing matters in the same way as his brother and then made a change of wording in his final statement is not clear.
97. Also in paragraph 15 of his draft statement, Sir William Jardine says: "Katie seemed amused the whole time. While Douglas was reading the letter they were laughing together." The equivalent passage in his signed statement is: "Katie seemed pleased that the letter was being read out and Douglas was clearly aware of that." In his draft statement, John Jardine says: "Katie did not stop him and seemed amused the whole time. While Douglas was reading the letter they were laughing together." This reflects what Sir William says in his draft statement. In the equivalent passage of his signed statement, John Jardine says: "I would say that there was a sense of amusement at the contents as it was being read." Mr Sterling asked me to compare what Mr Hull said in the equivalent part of his witness statement: "Katie did not stop him and was smiling all the time Doug was reading the letter...A couple of times while reading the letter they started to laugh together." I have been provided with no properly evidenced or

adequate explanation as to why the draft statements of the Jardine brothers resembled each other and also resembled Mr Hull's statement but were then changed.

98. Other changes appear to be editorial and may not even have involved any meaningful input from the brothers as opposed to the author of the statement. It is in the circumstances too much of a leap to say that the changes should give the statements an enhanced status when too little else is known about how the substance of the evidence in the statement was captured.
99. It is tempting to conclude that the claimant has the strength of numbers: three witnesses (Mr Hull and the Jardines) against the defendant and Ms Armistead. But two of the claimant's witnesses have not been tested. On the other hand, the defendant's and Ms Armistead's evidence has been tested. I have found that they have not lied and Mr McCormick's first and principal submission was that it would be hard for the defendant to be mistaken (as opposed to lying) about whether he read the letter. On the question of whether the defendant read aloud the letter, I prefer the defendant's and Ms Armistead's tested evidence to the Jardines' untested evidence to which I give little weight.

Events after 24 November 2020

100. I turn to consider whether events after 24 November 2020 cast any different light on whether the defendant read aloud the letter.
101. On 1 November 2021, the claimant's former solicitors sent a letter of claim to the defendant. By letter dated 16 November 2021, the defendant's solicitors responded by saying that the defendant had been handed a copy of the letter at the fire station but denied reading the letter to others as alleged.
102. By letter dated 15 March 2022, the claimant's solicitors (a second firm; not his present solicitors) wrote to the defendant's solicitors saying that they were in possession of three witness statements confirming that the defendant had read out the letter and that he had appeared to enjoy doing so. The letter continued:
- “We will ask the Court to draw appropriate inferences from your client's **false denials** in respect of his actions. Should he repeat that **false claim** in a document served under a Statement of Truth we will ask the Court to impose the appropriate sanction” (emphasis added).
103. The defendant's solicitors responded to that letter on 16 March 2022. By that date, therefore, the defendant knew that the claimant was accusing him of lying on the basis of three witness statements made against him, albeit that the statements were not sent to him at that stage.
104. A few days later, on 18 March 2022, the claimant met Mr Exley who was a Station Manager for a “cluster” of fire stations including Broughton-in-Furness. He had power to investigate complaints about fire station personnel on behalf of Cumbria County Council. By email dated 23 March 2022, Mr Exley asked the claimant to send him an overview of his complaint about events on 24 November 2020 together with supporting documents.

105. Under cover of email dated 30 March 2022, the claimant sent a written account of his complaint; the letter before claim against Ms Armistead; the Particulars of Claim in the present proceedings; a copy of the letter; unsigned versions of witness statements from John Jardine, Sir William Jardine and Mr Hull; a series of “denials” by the defendant (the details of which I am unaware); and the articles posted in the Parish Pump from September 2021, October 2021 and March 2022.
106. By email to the claimant dated 4 April 2022, Mr Exley confirmed receipt of the documents and said that there would be an internal investigation. By letter dated 17 May 2022, Mr Exley informed the claimant that there would be no formal investigation as the complaint related to a “civil matter and could result in court proceedings.” He would nevertheless carry out some informal gathering of information and was proposing to speak to the Broughton crew over the new few weeks.
107. Mr Exley visited the fire station on the evening of 17 May 2022 which was a fire practice night. He spoke to the Jardine brothers and Mr Hull. He informed the defendant that the claimant had made a complaint against him. The defendant recalls that he gave a statement to Mr Exley and there is evidence in the form of email correspondence that he made a subject access request to Cumbria County Council on 26 July 2022 with a view to obtaining a copy of that statement. By email dated 15 August 2022, the Council responded by saying that it had not located any personal information relating to the complaint. The defendant’s solicitors were not in a position before me to take the matter further.
108. Returning to 17 May 2022, Mr Hull says that Mr Exley told the defendant that Mr Hull and the Jardine brothers had made statements that the defendant had read out the letter. The defendant says that he believes that Mr Exley asked the Jardine brothers and Mr Hull if they wanted to make witness statements on that evening but that they all declined. Given that (i) Mr Exley already had statements and (ii) he was not conducting a formal investigation, which might have necessitated further statements, I prefer Mr Hull’s evidence on this point.
109. After fire practice on 17 May 2022, the fire fighters went (as was usual) to a pub. The defendant accepted in cross examination that, by that time, he knew that three colleagues had made statements against him. In breach of the fire station’s alcohol policy, the Jardine brothers went to the pub in their uniforms. I accept Mr Hull’s evidence that it was normal for the brothers not to change out of their uniforms before going to the pub as they live quite a long way from the fire station. Mr Hull accepted in cross examination that he too was in the pub in his uniform.
110. Mr Hull says that he saw the defendant take pictures of the Jardine brothers in their uniforms and then speak with them privately outside the pub. He accepts that he was not privy to their conversation.
111. Mr Hull connects what happened at the pub with the decisions of the Jardine brothers to “retract” or “withdraw” their statements (to use his descriptions). He says that Sir William Jardine told him in “later conversation” that he had been “under pressure” from the defendant to withdraw his statement but that he did not explain the nature of the pressure. Mr Hull’s view is that the defendant would not have taken photographs of the Jardine brothers in their uniforms unless he intended to use the photographs to pressurise them into retracting their statements.

112. The defendant says that, while they were at the pub, Sir William Jardine asked him to go outside to have a word. He told the defendant that he did not know that the 24 November incident was “still going on”. The investigator had told him that his statement would not be used in court. The defendant accepts that he was “quite angry with William as I could not understand why he had lied and told people that I had read out the letter...when I had not.”
113. The defendant says that, after he had gone back into the pub, John Jardine asked him to go outside with him, which he did. John Jardine told him that he could not remember who if anyone had read out the letter. He apologised to the defendant and started to cry. The defendant went back into the pub where Mr Hull put on his coat as he saw that the defendant had his phone out. The defendant believes that Mr Hull wanted to cover his uniform as he feared being photographed in the pub wearing his uniform.
114. There is no evidence from either of the Jardine brothers about what happened on the night of 17 May 2022. A WhatsApp message from Mr Hull to the claimant sent on the following morning (18 May 2022) says that John Jardine was threatening to quit, which suggests a serious disagreement of some sort with the defendant.
115. On the evidence before me, I have concluded that the defendant was angry with the Jardine brothers and with Mr Hull because they had given statements to Mr Exley accusing him of reading aloud the letter. Out of anger, he lost patience with their wearing their uniforms in the pub in breach of policy when he had previously and on other occasions tolerated the situation. It is probable that he took out his phone with a view to taking photographs but it seems that he did not report the firefighters at any stage.
116. Mr McCormick put to the defendant that he had threatened to take photographs of the firefighters wearing their uniforms to get some form of leverage with them in the hope that he could pressurise them into retracting their statements. The defendant said that that was not true.
117. Mr McCormick put to the defendant that he had threatened or pretended to take pictures as a threat to those who had signed statements against him. The defendant responded by pointing to the chronology of his resignation from the Fire Service to which I now turn.
118. On 6 June 2022, the defendant wrote to Mr Exley giving formal notice of his resignation as Watch Manager. The letter states (and it is not in dispute) that in accordance with his contractual period of notice, his last day was 8 July 2022. The reason for his resignation is stated to be “recent events.” He confirmed in cross examination that he had resigned because three of his colleagues signed statements saying that he had read aloud the letter.
119. On 27 July 2022, Sir William Jardine sent a WhatsApp message to the defendant which is worth recording in full:

“I have rescinded the ‘statement’ I gave.

I have been trying to find the solicitors that Parsons is using and succeeded.

Just spoke to them and have asked them to retract the statement.

Just need to say I did not give a statement against you. I was interviewed and the statement was written for me by them. I honestly did not know he was gunning for you.”

120. The defendant responded:

“Thanks Will, I could do with catching up with you at some point to explain a few things.”

121. Mr McCormick made the point that the message from Sir William Jardine does not say that his statement is wrong. In my judgment, it is hard to reconcile that submission with the words: “Just need to say I did not give a statement against you.”

122. Mr McCormick submitted that Sir William Jardine merely seeks to distance himself from his statement (rather than saying that the statement was wrong) because he did not know that the claimant was “gunning” for the defendant. In my judgment, Sir William Jardine’s assertion in the message that he did not know that the claimant was “gunning” for the defendant lacks realism. Sir William’s statement was produced for, and at least to some degree compiled by, the claimant. It is about the defendant reading aloud a letter. It involves criticism of what the defendant did. It starts by saying that he knows that the statement may be used in court and ends by saying that he is willing to attend court if required to do so. I reject the proposition that Sir William Jardine made his statement at a time when he did not appreciate the seriousness of the consequences for the defendant.

123. By the time that Sir William Jardine told the defendant that he had “rescinded” or “retracted” his statement, the defendant had resigned from the Fire Service. The defendant made the point in cross examination that his resignation meant that there was nothing that he could have done if Sir William Jardine had not retracted his statement. It followed that Sir William was not under any pressure to withdraw his statement.

124. Mr McCormick put to the defendant that the date of his resignation carried less weight when it was clear that Sir William Jardine had been trying to retract the statement for some time before the defendant resigned. For this proposition, Mr McCormick relied on the wording of the message from Sir William that he had been trying to find the solicitors that the claimant was using. However, there is no evidence to show that Sir William made contact before the defendant’s resignation letter.

125. It is possible that the defendant held some sort of sway over the Jardine brothers after events on 17 May and before he left the Fire Service on 8 July 2022 in that they knew he could report them or take some other adverse action for wearing uniforms in the pub (irrespective of whether he actually had photographs about which there is disagreement between the parties). However, I find it difficult to accept on the balance of probabilities that the defendant would have taken such a risky course. He told the court that he had never been accused of anything like this before and that he had been invited to a Royal Garden Party for services to Cumbria Fire Service. He had 36 years’ service to throw away if it emerged (under the spotlight of the claimant’s solicitors or Mr Exley) he had intimidated witnesses. It is not clear why wearing a firefighter uniform in a pub

would not pale into the background when set against witness intimidation, such that the greater risk lay with the defendant than the Jardine brothers.

126. In addition, I accept the defendant's assessment that any influence he had over them would have become much less strong after his resignation and, even more so, after he had left the Fire Service. By the time of Sir William Jardine's message to the defendant on 27 July 2022, he would have had no need to tell the defendant that he disowned his statement. Mr McCormick submitted that the intimidation could have continued after the defendant left the Fire Service in so far as his successor as Watch Manager could have pursued the misconduct involved in wearing uniforms in the pub. The hypothetical and speculative nature of this submission renders it tenuous. The defendant cut his links to the fire station so that the prospects of any disciplinary action for wearing uniforms in the pub would have been increasingly remote.
127. Mr McCormick (both in cross examination of the defendant and in his closing submissions) suggested that the defendant had manoeuvred the order of paragraphs in his witness statement with the intention of concealing the chronology of events in May 2022 so that the court would be misled about what the defendant knew of the progress of the claimant's complaint to Mr Exley on the evening of 17 May 2022. I did not find this line of attack to have merit. It formed part of an attack on the defendant's credibility that was overblown.
128. Drawing these threads together, it is altogether too speculative for me to infer on the balance of probabilities that the defendant's actions at the pub in May 2022 were part of a plan to intimidate witnesses. I do not accept that that was the case on the balance of probabilities. Despite some weaknesses in the defendant's evidence, I regard it as more likely that relations between the defendant and the three other firefighters were so soured after Mr Exley's visit that the defendant was demonstrably angry in the pub (taking his phone out in a threatening way) and subsequently, having reflected on the deterioration in relations, decided to tender his resignation.
129. For these reasons, I do not accept that events on 17 May 2022 are part of a tapestry which, when its pieces are stitched together, prove on the balance of probabilities that the defendant has lied when he says that he did not read aloud the letter.

THE LIBEL CLAIM

Issue 1: Did the defendant publish the letter?

130. As urged by Mr McCormick, I have considered the evidence in the round and not on a compartmentalised basis. I prefer the evidence of the defendant (supported by Ms Armistead) that he did not read aloud the letter to other firefighters as alleged. At any rate, the claimant has not met his burden of proving that the defendant read aloud the letter as alleged. The claimant fails to prove that the defendant published the letter.
131. Accordingly, the libel claim fails.

Issue 2: Serious harm

132. By virtue of section 1(1) of the Defamation Act 2013, a statement is not defamatory unless its publication has caused or is likely to cause serious harm. I have considered whether to go on to deal with the question of serious harm in this case.
133. The claimant's case for serious harm is founded in large part on the "percolation" or "grapevine" effect (explained in *Riley v Murray (No. 2)* [2021] EWHC 3437 (QB), para 109(i)), and the potential for small publications to cause serious harm (*Riley v Murray (No. 2)*, para 109(iii)). The existence of percolation is in my judgment a fact-specific matter even in relation to a poison pen letter. In order to reach any conclusion, I would need to set out considerable findings of fact. I would be dealing with a hypothetical situation: I would have to make further findings of fact founded on a hypothetical publication which would be a complex and risky task. As the claim fails on the issue of publication, there is no need for me to deal with serious harm and I decline to do so.

Issue 3: Remedies

134. No question of remedy arises.

CLAIM FOR MISUSE OF PRIVATE INFORMATION

135. As I have mentioned, the claim for misuse of private information depends on the defendant's publication of the letter. I have found that the defendant did not publish the letter. Accordingly, the claim for misuse of private information fails.
136. I decline to consider any other issues raised by the claim which would involve considerable factual findings for no purpose.