



Neutral Citation Number: [2022] EWHC 1591 (QB)

Case No: QB-2020-000659

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/06/2022

Before :

MR JUSTICE JULIAN KNOWLES

Between :

RODNEY GOLDSMITH
- and -
MICHAEL BISSETT-POWELL

Claimant

Defendant

The Claimant appeared in person
Hazel Hobbs (instructed by Green Wright Chalton Annis) for the Defendant

Hearing dates: **13-14 January 2022**

Approved Judgment

Mr Justice Julian Knowles:

Introduction

1. This is a claim for libel by Rodney Goldsmith, the Claimant, against Michael-Bissett-Powell, the Defendant. The Claimant drafted his own pleadings (with assistance) and represented himself, assisted by a *McKenzie* friend, Trevor Cree, to whom I am grateful. The Defendant is represented by Ms Hazel Hobbs of counsel.
2. The trial bundle runs to over 700 pages. Much of it has little or no relevance to the issues I have to decide and was not referred to by either side during the trial. I also received a trial skeleton argument from Ms Hobbs.

The Claimant's case

3. The Claimant and Defendant both live in Steyning (pronounced 'Stenning'), which is a town and civil parish in the Horsham District of West Sussex. The matters complained of concern Steyning Parish Council (SPC).

4. The Claimant describes himself thus in his Amended Statement of Claim (ASoC):

“1. The Claimant has been Chairman of Steyning Parish Council (SPC) since May 2019 when a new council was elected, and he served as an SPC parish councillor for four years prior to that.

2. The Claimant is a very well-known and respected figure in the Steyning community - not only because of his role as a parish councillor, but also because he was for many years the proprietor of a very successful DIY shop in Steyning which was extremely well used by residents and he also employed significant numbers of local residents over the years.

3. The Claimant has for many years also arranged the transport for Brighton and Hove Albion football supporters from Steyning,

4. The Claimant has arranged many charity fund-raising events at the Steyning Cricket Club, of which he is an honorary life member in recognition of his contributions to local sporting activities, including the forming of Steyning Golf Society.

5. For all these reasons the Claimant is very well-known and respected in the Steyning community. He is probably the best-known resident within Steyning with the Defendant himself having coined the nickname 'Mr Steyning' in recognition of this.”

5. Not all of this is accepted by the Defendant, for example, that the Claimant is a 'respected figure' in Steyning.
6. The Defendant was an SPC parish councillor from May 2019 until he resigned on 22 August 2019. Following that resignation, according to the Claimant, the Defendant became a major contributor to a Facebook page entitled 'Steyning Parish Council

Watch ... Keeping an Eye on the Parish Council' (the Watch Site) of which, at the relevant time, he was one of the administrator/moderators. According to the ASoC, [9], the Watch Site is an open public site and so one does not need to be a member to view all postings. The Claimant said there are 400+ members from the Steyning community, but many local people view it without being members. The Claimant said that when he was first elected, the Defendant and he were allies but, following the Defendant's resignation, he become hostile to the Claimant.

7. This claim concerns postings on the Watch Site which the Claimant says were defamatory of him.
8. Section C of the ASoC is headed 'The Libellous Statements Complained of and the Dates of Publication.' Some posts are alleged to have been made by the Defendant. Others are said to have been posted by third parties, and that the Defendant as an administrator of the Watch Page is liable for them by virtue of s 5 of the Defamation Act 2013 (DA 2013). This provides that where an action for defamation is brought against the 'operator' of a website in respect of a statement posted on the website (s 5(1)), it is a defence for the operator to show that it was not the operator who posted the statement on the website (s 5(2)). However, this defence can be defeated in various ways, including if the operator is shown to have acted with malice (s 5(11)). For the avoidance of doubt, there is no claim that the Defendant was a common law publisher of these posts by others: the claim is brought under s 5 on the basis that the Defendant was a statutory 'operator'.
9. The posts complained of were published in August, October, November and December 2019.
10. Paragraph 10 of the ASoC avers:

"10. On 28 August 2019 the Defendant posted to the Watch Site the libellous claim that the Claimant had cost the public purse a large amount of money (representing around 10% of the SPC annual budget) and was thrilled at that fact:-

'I know one councillors [sic] who will be thrilled to have cost the public purse £23,000 - plus £8000 in lost grant money ... the close and destructive working relationship between our Chairman and Vice-Chairman going back for many years'"

11. Paragraphs 11-13 aver:

"11. On 12 December 2019 the Defendant made the third in a series of postings to the Watch Site under a thread relating to the Victoria Sponge (*sic*) coffee shop in Steyning which taken together libellously claim that the Claimant as Chairman of SPC had committed criminal acts including threatening the female proprietor of the said shop with a weapon and thereby reduced her to tears:

“I was going to keep quiet, but we all know respect should be earned. I will never respect anyone who threatens a woman with a stick, is verbally aggressive towards her and abuses his position as Chairman of the Parish Council in this way. A real man would apologise publicly and at least consider his position.””.

12. Because it was under the Victoria Sponge coffee shop thread, the posting of 12 December 2019 clearly related back to an earlier posting on 23 November 2019 by the Defendant in the same thread:

‘I HAVE A DILEMMA Earlier this evening I requested further information about an incident reported to me which involved a High Street shop and the alleged poor behaviour of a Parish Councillor. It has been pointed out to me that the shop's owner might not want to ‘make a fuss’, which is why I have now deleted the post, BUT...

This Facebook site would not exist if our Parish Council behaved properly and, when they didn't, could be brought to account. Like many residents, I am frustrated that firm action has not been taken by Horsham District Council or anyone else to stop this situation from deteriorating even further. By agreement with me, even the police are delaying further action on an alleged criminal verbal abuse matter - while HDC reach a decision on the Parish Council. If they ever do.

My dilemma is this: I now have three separate accounts of the incident, all of which are so similar that I believe them to be accurate; in the absence of any sanctions, do I name the Councillor and demand that he resigns immediately?

I may, of course, receive a threat of litigation from the usual suspect if I do, but honestly, someone has to DO something.

Avoiding any further distress to the shop owner, what would you do? Nothing? Wait for ever for SPC or HDC to act? Or name and shame?’

13. The said posting of 23 November 2019 in turn was linked back to a previous posting earlier on 23 November 2019 by the Defendant by reason of being in the same ‘Victoria Sponge’ thread.

‘OUR WONDERFUL COUNCILLORS I have been told that a Councillor visited the admirable new "Victoria's Sponge" and then behaved in such a disgraceful way that one of the staff (perhaps the owner) was reduced to tears.

If true, this should be reported to HDC as a breach of the Code of Conduct, so if you were there or have any more details please personal message me.”

12. The next section of the ASoC is headed ‘Postings by third parties for which Defendant is said to be liable as a site operator and publisher due to malice by reason of s 5(11) Libel Act 2013’ (*sic*; this should read the Defamation Act 2013):

“14. ‘ ... corruption here ... ‘ - SPC councillor Simon Alexander and site moderator, 22 October 2019

15 Michael Bissett-Powell can possibly fill you in about this. There was reportedly an incident at this cafe involving a member of the PC I imagine that's why this post is here." - Dr Suzanne Conboy-Hill, on or about 28 November 2019

16. ‘Rick Hosburn because a Parish Councillor acted extremely inappropriately in this establishment victimised her and vandalised and stole her property. Victoria being a new business in Steyning does not want to cause trouble or draw attention to herself. she only wants positivity around her business he has stepped way above what he is allowed to say and do acting as a Parish Councillor and did not use the proper channels to remove her Board that only HE had a problem with If he has problems with Boards· why has he not stolen all !he other Boards along the High Street. What I would like to know is who voted these people in to make rational sound decisions that affects all our lives living in Steyning.’ - Louise Abbott, 17 December 2019

17 ‘Victoria has been victimised by the Parish Council. The gentleman in question sorry ... not a gentleman ... the way he spoke to her and his actions thereafter ... so I will say MAN ... vandalised her Board outside then it totally disappeared so was stolen ... not to mention speaking down to her and frightening her telling her who he was ... she asked why all the other business in the High Street were allowed Boards but not her. The Estate Agent next right next door (*sic*) puts a board out as do most others all along the High Street. The question is why was she picked out and victimised maybe the Councillor has connections to another cafe and is trying to sabotage Victoria Sponge ... He should be reported to the Police and also to @horshamdistrictcouncil. A man like this who intimidates women should not be sitting on The Parish Council’ - Louise Abbott, 17 December 2019

18. ‘It has come to my attention today that a councillor possibly mentioned above is trying to now sue a member of the public over the whole affair. May I ask all members to reach out and come back to me with witnesses to the event questioned This is totally unacceptable behaviour o[f] one of my fellow councillors, the

actions of which I intend to stop here and now.’ - Cllr Simon Alexander (co-moderator with the Claimant), 20 December 2019.

The said posting carries the implication that the Watch Site allegations against the Claimant are true.

As the posting was in response to service of the pre-action protocol letter on the Defendant, and was allowed to stand by the Defendant, the Claimant seeks aggravated damages.

19. "The altercation had an independent witness" SPC councillor Tim Lloyd, 9 January 2020, thus implying that the Defendant's assertion of a weaponised threat by the Claimant was true. A video of the Committee's meeting was uploaded to the Watch Site on 9 January 2020.

As the posting was allowed to stand by the Defendant despite the pre-action protocol letter served on the Defendant, the Claimant seeks further aggravated damages.

20. ‘Circumstances alter cases; broken noses alter faces’ - a threat posted by the Defendant on 12 January 2020 in response to service of an amended pre-action protocol letter.

The Claimant seeks further aggravated damages in consequence.”

13. Section D of the ASoC is headed ‘The Libellous Imputations the Claimant Contends were Conveyed by the Statements Complained of’:

“21. The words at 10 above carry their ordinary meaning, namely that: -

- The Claimant either has deliberately cost SPC and thus the public purse £31,000
- That the Claimant will gain great pleasure from achieving the loss of £31,000
- That the Claimant has malign intent towards SPC and the public purse or alternatively that he is incompetent and either way takes great pleasure from this.

In addition, they carry the innuendo that the Claimant has acted outside the normal democratic decision-making process of SPC and accordingly that any adverse consequences (the existence of which are denied by the Claimant) are his responsibility and not those of the Council as a body

22. The words at 11 to 19 above carry their ordinary meaning, namely that

- The Claimant is a man who has threatened a woman with being struck with a stick being used as a weapon and reduced her to tears.
- The Claimant was verbally aggressive towards the woman
- The Claimant abused his position as Chairman of the Council to benefit a rival business
- The Claimant has committed criminal threats, damage and theft.
- There is also the imputation that the Claimant is a violent bully and is a liar.”

14. The Claimant’s case on serious harm under s 1 of the DA 2013 is set out in Section E. He asserts the following:

“23. Because of the Claimant's high profile in a very close-knit community, the serious allegations made on a website with wide reach within the community are by their very nature highly injurious and are likely to affect his charitable fund-raising activities and his football transport activities which involves working with a wide section of the community as well as undermining his status as Chairman of the parish council. Unless the Claimant is vindicated, the allegations are likely to seriously prejudice the Claimant's re-election prospects in May 2023 when the term of the current council ends and those wishing to serve on SPC need to stand for re-election.

24. The Defendants' statements have demonstrably caused serious harm to the Claimant because the false allegations have been picked up and amplified by others on the same Facebook site as set out at 15 to 19 above.”

15. The Claimant’s case on malice is set out at Section F. I will not set this out verbatim, but in summary he says that the Defendant, after initially being an ally, became embittered towards him as a consequence of disagreements over Parish Council politics. The Claimant says that after the Defendant resigned from SPC on 22 August 2019, he performed a *volte face* and subsequently ‘devoted himself to ‘getting even’ with his former friends by using the Watch Site to post frequently and with malice in support of those he had hitherto opposed as undemocratic. It is said that, as a co-moderator, the Defendant took inadequate, belated or no action to remove the frequently highly abusive or inaccurate postings from his co-moderators and from members of the public towards members of the new council.

The Defendant’s case

16. The Defendant’s case as set out in his Amended Defence is as follows.
17. Paragraph 3 avers that SPC has a varying reputation amongst the Steyning community, and that some view it as corrupt and undemocratic. He denied that the

Claimant had a successful DIY shop. The Claimant's business became insolvent and went into liquidation. The Claimant was put to strict proof as to the role his DIY shop played in the community and the extent to which it now contributes to his alleged good reputation.

18. Paragraph 6 avers that the Claimant does not have a particularly good reputation or is respected within the Steyning community as a whole, particularly given the view of SPC by some members of the community.
19. Paragraph 8 admits [7] of the ASoC save that there are only now two moderators. Also:

“... the Watch Site now goes by the name of Steyning PC Watch. As referenced on the Watch Site, the page was created for the purpose of:

‘this group is intended to be a community led discussion board for residents of Steyning and neighbouring parishes to share observations on matters associated with Steyning Parish Council. Unless expressly stated otherwise, all posts and comments are to be considered the personal opinion of the author as an individual and not attributed to any other person or organisation.

Members are responsible for their own posts and are reminded that this is an open group, so please do not post anything you would not want made public. Administrators will attempt to moderate posts, but will not be responsible for checking the factual accuracy of members 'posts or comments. Facts, honest opinion and well directed satire is welcome, but the group will not tolerate bullying, swearing or offensive posts of any kind. ”

9. In accordance with the Watch Site's aforementioned rules, the Defendant, and his fellow administrators, only moderate ‘bullying, swearing or offensive’ posts after they are made. There is no definition of the term operator of website contained within Section 5 of the DA 2013. The Claimant is put to strict proof that Section 5 applies to the Defendant.”

20. With regard to [9] of the ASoC, while the Watch Site does currently have over 450 members, [11] of the Amended Defence responds that the Watch Site is a publicly accessible site, and that it is only accessed when a party is interested in its content at that particular time. Parties can be a member of a Facebook group without regularly viewing the content. There are only a small number of people that play an active role in posting and commenting on the Watch Site. The majority of the Watch Site's members are not active.
21. Moving to the publications complained of, the Defendant’s case is as follows.
22. As to [10] of the ASoC, (the August post), publication is admitted. The Claimant has only pleaded part of the August post, taking parts out of context. It is denied that the

words referred to the Claimant, or were understood to refer to him. In posting the August post the Defendant was referring to an unnamed councillor, not the Claimant. The Claimant had not been involved on any committee or steering group which had an involvement in the neighbourhood plan. It is also denied this post was libellous because:

- a. The words complained of were a statement on a matter of public interest and so not defamatory by virtue of s 4 of the DA 2013, in that the community was entitled to know how public money was being spent and what had happened to the neighbourhood plan to which they all had an interest.
 - b. It was a matter of opinion, within the meaning of s 3 of the DA 2013, that the unnamed councillor would be pleased to have utilised the public money in such a manner.
23. As to [11] of the ASoC, ('I was going to keep quiet, but we all know respect should be earned ...') (the December post) publication by the Defendant of the quote is admitted. It is averred that the Defendant removed the post three days later and as such any harm would have been *de minimus*. (In fact, in his evidence, the Defendant said that he removed the specific reference to the Claimant within hours). It is denied that in their natural and ordinary meaning the said words, in their proper publication context, bore or were capable of bearing, the meanings or either of them pleaded in [11]. (I think this should be a reference to [22]).
24. As to [12], publication of the quote in the post (the November post) is admitted. It is denied that the November and December posts were part of the same thread.
25. The Defendant's principal case in relation to the October - December posts is that, if and insofar as the words contained within them in their natural and ordinary meaning bore and were understood to bear the imputations set out below, then they were substantially true and hence not defamatory by virtue of s 2 of the DA 2013 because:
- a. the Claimant attended the Victoria's Sponge Cafe in Steyning in his role as Chairman of SPC;
 - b. the Claimant's role as Chairman did not extend to the reason for his visit, which was to seek removal of the café's 'A' board from the pavement;
 - c. during the visit there was verbal altercation caused by the Claimant, in which he abused his role as Chairman;
 - d. during the visit he shook his walking stick at the female owner of the café.
26. The pleaded Particulars of Truth are as follows:
- (a) The Claimant did attend the Victoria Sponge (*sic*) Cafe in Steyning.
 - (b) The Claimant attended in his role as councillor and chairman of the Steyning Parish Council.

(c) In attending the Victoria Sponge Cafe the Claimant announced that he was doing so in his role as the Chairman of the Steyning Parish Council.

(d) The Claimant's attendance was for the purpose seeking removal of the Victoria Sponge Cafe's "A" sign from the pavement outside the cafe.

(e) The Claimant had spoken to the owner of the Victoria Sponge Cafe.

(f) The Claimant had spoken in a manner which the owner of the Victoria Sponge Cafe felt was aggressive and intimidatory.

(g) In speaking to the owner of the Victoria Sponge Cafe, the Claimant raised and shook his walking stick at her.

(h) As a result of the Claimant speaking to the owner of the Victoria Sponge Cafe, she was upset and cried as a result but recovered as the Claimant departed.”

27. Further or alternatively, the Defendant’s case is that these posts were on a matter of public interest:

“22. The December and November Posts were about matters of public and general concern and interest in that they dealt with; transparency and accountability, promotion of public understanding, safeguarding democratic processes, policing standards of integrity, ensuring justice and fair treatment for all, securing the best use of public resources and ensuring fair commercial competition in a mixed economy. Accordingly, the Posts complained of were, or formed part of, a statement on a matter of public interest.”

28. The reasons why the Defendant thought the statements were on a matter of public interest are set out in [23].

29. Paragraph [24] avers that he spoke to the owner of the Victoria Sponge café and witnesses immediately afterwards.

30. The quote in [13] is denied and it is denied this was posted on the Watch Site. The defence of substantial truth is also pleaded.

31. In relation to [14] to [18], it is denied that the Defendant is in any way responsible for these, they having been made by independent third parties. The postings are the opinions of their respective writers, in the exercise of their right to freedom of speech.

32. As to serious harm, this is denied, and it is denied the Claimant has a high profile in the community. It is denied the prospect of him not being re-elected amounts to serious harm. There are, it is averred, that there is an array of factors which will

determine whether or not the Claimant is re-elected, such as the reputation and popularity of those he is running against. It is denied that the postings would have any effect on these factors or his ability to be re-elected.

33. The Claimant's claim for aggravated damages is denied.
34. In [36], malice is denied. The Defendant has only ever sought to express his own opinion and bring matters of public interest to the attention of the constituents of the Steyning Parish Council.

The evidence and findings of fact

35. This section summarises the relevant evidence given at the trial and sets out my findings of fact. The principal factual disputes relate to what occurred when the Claimant visited the Victoria's Sponge café on the afternoon of 30 October 2019. The fact of the visit was not in dispute, but what occurred very much was.

The evidence in summary

36. I heard evidence from the Claimant; from the owner of Victoria's Sponge, Victoria Russell (as she was at the time of her statement; she is now Victoria Nicks); from the Defendant; from Angelique Saunders, a friend of Ms Nicks who attended the café shortly after the Claimant's visit and who saw her in tears and to whom Ms Nicks gave an account of what happened; and from Nick Muggridge, a former member of SPC who spoke to Ms Nicks about the incident the following day and reported it to the Parish Clerk.
37. Because it is relevant to some of the issues I have to decide, I note at the outset that the Claimant uses a long walking stick or staff, which he had with him in court. This is not a typical waist-high walking stick, but somewhat longer, more akin in length to a bishop's or shepherd's crook, or a 'Gandalf' staff. As I shall explain, this stick featured in the evidence.
38. The Claimant adopted his two witness statements as his evidence in chief. I have also had regard to what he wrote in his ASoC, which is verified by a statement of truth. In those he said that his visit to the café had been 'wholly benign' and that Ms Nicks was unduly sensitive.
39. He described the state of local politics in Steyning and disputes within the SPC. He said the Watch Site was a 'mendacious propaganda tool' for one side of the divide. He described how he and the Defendant had initially been allies. The Watch Site had been set up by a member of the rival faction, Councillor Northam. He had been a prime mover of the (failed) Neighbourhood plan. Mr Muggridge was a moderator.
40. The statements go into very great detail about Steyning politics and various feuds and disputes between individuals and different factions. I do not need to set out all of the detail. The Claimant makes a number of points which he says undermine the credibility of Ms Saunders and Mr Muggridge in particular, and in reaching my conclusions I have had regard to those.

41. The Claimant said that the Defendant (wrongly) believes he was bullied into resigning from SPC, and that is what caused him to turn on the Claimant and 'drives his desire for revenge' against the Claimant and another councillor allied to the Claimant.
42. The Claimant said that he initially regarded hostile and critical postings on the Watch Site as legitimate free speech and so took no action, but that the Defendant had 'crossed the line' with the postings that are the subject of this claim. He said the allegations in the postings are 'completely untrue'.
43. The Claimant said the two councillors being criticised in the August post were him as Chairman and Councillor Campbell as Vice-Chairman. He denied having cost the SPC a large sum of money. He said he had safeguarded public funds.
44. In relation to what I will call the 'Victoria's Sponge' allegations, the Claimant's case is that he attended the café in connection with his SPC duties. He said an issue had been raised at a council meeting in September 2019 about advertising 'A' boards outside shops, etc, which were said to have been encroaching on the pavements and blocking floral displays. It had been suggested the Parish Clerk should write to the businesses concerned to ask for more careful positioning. The Claimant said that pavements and highways are the responsibility of West Sussex County Council (WSCC) and not the SPC, but that WSCC would take the matter up if a complaint was made (eg by Steyning in Bloom, which provided the floral displays), which he did not think would be in the interests of the businesses concerned, as WSCC might order their complete removal. Hence, the SPC had decided to take informal pre-emptive action to avoid WSCC becoming involved. He said it was then resolved at an October SPC meeting that he as Chairman should visit the two businesses particularly concerned, one of which was the café. He therefore said that his visit was authorised, and he denied the suggestion in the Amended Defence at 23(a) and (b) that he had been acting outside his powers.
45. He said that on 30 October 2019 at about 11am he first went to an estate agent next door to the café and spoke to them about their 'A' board. After that he decided not to go into the café because there were a lot of customers present and so he returned at about 4.30pm when the last customers were leaving. He introduced himself to Ms Nicks and described what had prompted his visit. He said he was sympathetic as a former trader himself. She said the 'A' board was important for her business. He said that at that point she burst into tears in a way which was sudden and unprovoked. When she recovered, she explained that his visit had been the last straw, and that a rival trader had been in several times and made it clear that her business was unwelcome, and that a complaint had been made about it to Horsham District Council Environmental Health.
46. The Claimant said he 'felt vulnerable' and decided he wanted to be in a public place and so he suggested they step outside to examine the options. They had a conversation outside about positioning the 'A' board and parted on friendly terms, with Ms Nicks inviting him in for a coffee next time he was passing.
47. He said there was no altercation, no abuse of position, and no threats or verbal aggression.

48. He said the first time he knew that allegations were being made of improper behaviour by him was the 23 November 2019 post. He spoke to the Parish Clerk on 25 November 2019, who told him of the report by Mr Muggridge (who, as I have said, spoke to Ms Nicks on 31 October 2019); he said the Parish Clerk had not told him about this as the Clerk hoped the matter would blow over.
49. Later on in his main statement the Claimant described his perception of his reputation in the community. He described various charitable and other activities he had organised over the years, and described himself as 'Mr Steyning'.
50. On serious harm, he said that it was hard to provide evidence (a problem that had been acknowledged in case law on serious harm such as *Doyle v Smith* [2019] EMLR 347) but that had been subjected to 'banter' in the pub about his stick. He also referred to it possibly harming his chances of re-election to SPC in 2023; harming his charity work, and his role of organising transport for games at Brighton and Hove Albion FC.
51. In support of his case of malice against the Defendant, he referred to statements allegedly made by him, such as 'Give me a plate and I will serve up some revenge served cold', as well as other postings.
52. The Claimant was then cross-examined by Ms Hobbs.
53. He denied what he did was outside the remit of the SPC. He said he was just asked to go and have a chat with the relevant businesses. He had no authority to give instructions but just wanted to get the matter sorted out to stop WSCC getting involved. Steyning in Bloom had already made one complaint. He made it clear to traders that the chat was informal.
54. He arrived at 4.30pm as it was getting dark. Ms Nicks had burst into tears 'out of nowhere'. It was a shock. She told him about the complaint to Horsham District Council. He was embarrassed by her becoming upset. She apologised. He did not threaten her. He did not go in 'all guns blazing' and tell her to remove her 'A' board. He said that WSCC could order the removal of all the boards on the High Street. He had explained who I was and that I had been asked to come and have a chat. He did not behave in a demanding way. He did not shake his stick at Victoria. It was put to him that he had attended and was aggressive and intimidating and demanded that she remove her board, which he denied. When he said in his statement that he felt 'vulnerable' that was because initially the meeting had been amicable but the atmosphere changed when she burst into tears.
55. He was shown the minutes of a meeting of SPC's Amenities Committee on 26 November 2019, which he had heavily edited afterwards, including in relation to his visits about the 'A' boards, about which a significant amount had been inserted. He denied the suggestion that this had been an attempt by him to 'cover his back' after the Victoria Sponge incident. He said when he left Ms Nicks (Russell) 'that was the end of it'. A month later he then reported to the Committee.
56. He said his statement had been made a year later from notes he made at the time.

57. He said he had a high profile in Steyning, having lived there for 50 years and had had a business on the High Street.
58. It was put to him that he had not been harmed by the posts, to which he replied that he still got 'banter' in the pub. He said the matter causes him 'embarrassment' and that 'there may be people who don't know me as a friend. They may get the wrong impression.' He agreed he was not aware of the incident being discussed in the community.
59. He agreed that he had had differences of opinion with Mr Muggridge, but 'that's Council life'. It was put to him that he did not get on with a lot of people, and he agreed as a councillor people told him when they disagreed with him. He agreed that a petition had been started in March 2021 to have him removed from the Council. This alleged bullying by him, He said there had been a big division in the town and a lot of dislikes. He agreed he had been involved in controversies but that he had been a diligent councillor. He said there had been heckling from former councillors at meetings, which was something he had never done.
60. He said he would run again for the SPC in 2023. It was put to him that by then no-one would remember Facebook posts from 2019, to which he replied that someone might reproduce them, which could damage him.
61. That was the Claimant's case.
62. Ms Nicks (Russell) then gave evidence for the Defendant. She adopted her witness statement of 23 June 2020. In it she said that she had been alone in her café on the late afternoon of 30 October 2019 and that she had been preparing to close for the day.
63. The Claimant, who is a large man, came in and introduced himself as Chairman of SPC. As he spoke to her, he 'gesticulated' with his long walking stick, which she found 'intimidating'. His manner was 'rather rude'. He demanded she remove her board from the pavement because it was blocking a plant trough.
64. She had already received a visit from two Parish Councillors and Steyning in Bloom and was surprised that the Chairman of SPC had now become involved. She had hoped the Council would be supportive of her business in difficult times. She felt harassed and 'a bit threatened'. She did not think her board was causing any obstruction.
65. She said the Claimant insisted she take her board in immediately, which she declined to do. She said she became tearful and felt stressed. He told her if she did not remove the sign he would go to 'a higher authority'.
66. Shortly after he left, she was visited by her friend Angelique Saunders. She was still very upset and she told Angelique what had just happened.
67. Ms Nicks was then cross-examined by the Claimant.
68. It was put to her that it was not dark when he visited but that it was sunny. She replied that all her machines were off and they turn off at 5.30pm. The café was

empty. She disagreed there were two customers just paying up and about to leave when he arrived. She agreed he had introduced himself as a Parish Councillor. She said that, 'you might have been doing it subconsciously but you were waving your stick. I felt intimidated.' He put to her that he was using his stick for support and replied she 'did not see it that way'.

69. She was asked what she meant about him being rather 'rude' and she said it was his statement along the lines of 'if you don't move your sign I will have to take it to a higher authority.'
70. He put his version of what happened and she replied, 'It did not happen that way. I would not have been upset if that is what you said.' She said she had been alone in the café and felt threatened. She said she was not 'tearful' but had had had tears in her eyes. When she first opened her business she had had Environmental Health come, but they would not say what had prompted their visits.
71. She said that she could not now remember exactly what she said, but that she knew that no rival trader had ever been in to say that they had reported her to Horsham District Council.
72. Again the Claimant put his version of events, to which she replied she could remember him being rude and aggressive and that is why she had been reduced to tears.
73. It was put to her that he had suggested going outside to talk about the board. She said she could not remember going outside but doubted she would have done with someone who had been rude to her.
74. She denied having had a general discussion with him about the boards and the next-door estate agent. She also denied having a conversation outside and wanting the paving for her table and chairs.
75. She denied offering the Claimant a coffee next time he was passing. She was firm in her denial, because he had made her feel threatened and upset.
76. She was asked whether she was saying he threatened her with his stick. She replied, 'It was threatening behaviour. The words you were saying and gesticulating made me feel threatened. You did not threaten to hit me with your stick.'
77. He put to her that he never said anything about going to a 'higher authority' if she did not remove the board, but she said that he had.
78. In response to a question from me she said the conversation was inside the café. The machines are on timers. It was getting dark. After the incident she would not have told anyone about it, however someone had come in straight afterwards. She was still tearful and they asked me what had happened and I told them. The door was not closed.
79. The Claimant asked her why she had not reported it if he had threatened her. She said, 'I am not that kind of person. For me that was the end of it.'

80. The next witness was the Defendant. He adopted his two witness statements as his evidence in chief. In them he said that the Claimant had not quoted the whole of the August post, from which the words complained of had in been taken by the Claimant. He said the post centred on money spent on a neighbourhood plan which had been pared back and matters relating to housing removed – which had been the point of the plan - and that the criticism for the waste of money had not been directed at the Claimant, who was not the councillor he was referring to, but Councillor Campbell. He said that when he typed ‘I know one councillors ...’ there was a superfluous ‘s’ on the end of ‘councillors’ but that this was a typographical error and he was in fact referring to just one councillor, who was not the Claimant. He said Councillor Campbell had emailed him after this post, in which he acknowledged that he was the councillor being referred to. The Defendant agreed that his reference to a ‘destructive working relationship’ did identify the Claimant but that it is true and also an expression of opinion by him.
81. He said that neither this post, nor the November post, had been referred to in the Claimant’s letter of claim and that they had been added as an afterthought to bolster a weak case.
82. The Defendant did not witness whatever occurred in the café, and the rest of his witness statement is really just a commentary on the witness statements of Ms Nicks, Ms Saunders and Mr Muggridge.
83. He maintained by reference to SPC minutes that the Claimant had acted outside his powers when visiting the shops.
84. The Defendant maintained that the Claimant would have suffered trivial harm from the posts about the café incident. The December post had been removed soon after. None of the posts had been reported to the moderators or to Facebook. He said this was because the Claimant knew they were not defamatory and that he was bringing this claim because he, the Defendant, had stood up the Claimant and Councillor Campbell.
85. He corrected his first witness statement, where he had said the 12 December 2019 post was removed on 24 December 2019. The reference to the Claimant in it was removed within hours and then the edited post was removed on 24 December 2019.
86. The Defendant went on to deny that the Claimant has a good reputation in Steyning and that there was ‘much unrest’ during his time as Chairman. That was because of his perceived rudeness, inability to control his temper, and his inability to show respect, and evidenced this by reference to Facebook posts (not the ones being sued on). For example, in August 2019 someone posted a rhetorical question whether the Claimant was a fit and proper person to ‘do his duty and best’ for the residents of Steyning, which attracted a large number of ‘Nos’
87. The Defendant accepted that the Claimant might have supporters in Steyning, but there was video evidence of his rude behaviour at meetings in particular towards females.
88. He denied he was an operator within s 5 of the DA 2013.

89. He said all of his posts relating to the café incident had been taken down within days, and the posts of others by 2 January 2020.
90. He denied there some sort of conspiracy between him, Ms Nicks, Ms Saunders and Mr Muggridge to 'bring down' the Claimant. He said he did not know Ms Nicks and barely knew Ms Saunders or Mr Muggridge.
91. He was then cross-examined by the Claimant. It was put to him that Ms Saunders and Mr Muggridge are not independent, to which he reiterated that he did not know Ms Nicks and hardly knew the other two, and pointed out that when they made their statements they never referred to each other.
92. He said that [9] of his witness statement was incorrect. There, he had said the December post (12 December), referring specifically to the Chairman (ie the Claimant), had been removed by 24 December; in fact, the reference to the Chairman was removed within a few hours. A modified version without that reference was up for a period of days and was then removed.
93. He agreed that he heard Ms Russell say the Claimant did not threaten her with his stick. He was asked in light of that how he had come to write in his Facebook post that the Claimant had threatened her. The Defendant said that he had put himself into her position: the Claimant is large and Ms Nicks is diminutive. He said, 'I felt she would have been feeling threatened.' The stick which is large would have added to that impression. He said he assumed she had felt threatened by the Claimant carrying a large stick.
94. The next witness was Angelique Saunders. In her witness statement she described herself as a friend of Ms Nicks who would regularly visit the café pre-pandemic and kept in contact with her in other ways during it. She had helped her in the café in the past. She went to the café on 30 October 2019. Victoria told her what had just happened with the Claimant, that he had been rude; demanded she remove her board; and shaken his stick at her. He had said that he would sit where he wanted. She broke down in tears and rushed to the back of the café. Ms Saunders was extremely shocked. She believes she was there within 60 minutes of the incident.
95. In cross-examination she agreed she had not been present when the Claimant was at the café. Various matters were put to her in relation to her credibility. She agreed that she had been a member of a Facebook group called Steyning Justice (which the Claimant perceives as being hostile to him). She said that she had joined for about three weeks because he had laughed at mental health. There had been a discussion about mental health and he had sniggered. The Steyning Justice video referred to in the evidence, which the Claimant perceived as critical of him, she described as 'sort of sinister' but made clear that it was nothing to do with her. She emphasised she was independent.
96. She was shown an email she had sent to a Parish Councillor, Joanna Norcross, in March 2021 complaining about an incident involving the Claimant. In the email, Ms Saunders told Ms Norcross that the Claimant had called her a 'bitch' when he passed her in his car in the town. Ms Saunders copied in the Defendant to the email. When asked why, she said it was because she felt the Claimant was harassing her. She had reported the matter to the police and got a crime reference number. Ms Saunders said

she felt she was being harassed because she had become a witness in this action. She said she did not think the incident would have happened had she not been a witness. She confirmed that the contents of the email were true.

97. The final witness was Nick Muggridge. In his witness statement he said he is a regular visitor to the café, and went on 31 October 2019. Ms Nicks relayed to him what had happened and how the Claimant had demanded she remove her board. Mr Muggridge said Ms Nicks became tearful and upset as she relayed the Claimant's visit. She said she told the Claimant the board was not an obstruction. At the end of the visit she said that the Claimant had waved his walking stick and said she would be hearing further about. Mr Muggridge asked her if she wanted to report the matter. She said that she wanted to concentrate on her new business and customers, but she agreed that he could report the matter to the Parish Clerk so that the matter could be dealt with internally. This he duly did, and said the Clerk was shocked to hear of the incident. He said he was later informed that the Claimant and Councillor Campbell had demanded that Ms Nicks be asked to meet with them both in order to 'sort the matter out' and that it had been suggested that Mr Muggridge accompany her. The Clerk asked for his advice, and he said he did not think further pressure should be put on Ms Nicks and that they should respect her wish not to make a formal complaint.
98. Mr Muggridge was cross-examined. He agreed he had not witnessed the incident. He said Ms Nicks had not wished to pursue a complaint in order to focus on her business. She had said it was 'fine' for Mr Muggridge to report the matter to the Parish Clerk. He was a founding member of Steyning PC Watch and a moderator.
99. He was asked why he had not removed the post of 12 December about the Claimant threatening with his stick. He said he had not seen it initially but only saw it some days later. They relied on people to moderate their own posts as the rules were clear. At the time the Admins were not moderating posts. The rules were clear, and they relied on people to moderate their own posts.
100. He did not agree that the Defendant's posts were defamatory and he did not agree he was a site operator but was an administrator of a Facebook group.
101. It was put to him that because he was a member of Steyning PC Watch he was not independent. He replied that he was saying what he witnessed. He denied bearing a grudge against the Claimant but had commented in Council about the Claimant's behaviour he had observed, which was not the same as bearing a grudge.
102. In re-examination he was asked about what sort of behaviour he was talking about. He said it was things like questions being disallowed from the public and rudeness to other councillors and the current Chairman of the Council, and sometimes accusations against other people which to his mind were unfounded. He was referring to the Claimant, but he had not been the only one. He said such behaviour had occurred 'quite a few times'. He had been a councillor with the Claimant and attended a lot of meetings and seen a lot of behaviour.
103. He said he had reported the café incident because he thought that what the SPC had intended was not what had occurred and that a new business owner had been upset by a councillor and that although there was to be no formal complaint he needed to be

aware so the matter could be handled internally. He did not think the Council intended the business owner to be upset. He had become aware of the 12 December posting because he kept himself 'vaguely aware' of postings on the page.

104. He knew the incident had begun to be spoken about in the community but he was not the instigator.

Findings of fact

105. I turn to my findings of fact on the evidence. In so doing, I bear fully in mind all of the points made by the Claimant in which he questioned the credibility of the Defendant's witnesses and their independence. I also bear in mind the obvious animosity which exists between some people in Steyning's local political community, and within SPC in particular. I well understand that feelings can run hot on local issues in a small town, and that people can easily form entrenched views that others are not behaving properly or performing their role well, and so develop feelings of animosity towards them, whether justified or not.
106. In relation to the Defendant's evidence, I am satisfied that he did not intend to refer to the Claimant in the August post, save in relation to his perception of the working relationship between the Claimant and SPC's Vice-Chairman, whom he specifically named. I will return to this post later.
107. In relation to the café incident, I am satisfied on the balance of probabilities that the Claimant was authorised by the SPC to go and speak to those business owners whose 'A' boards were perceived as a possible source of complaint to the WSCC. I am also satisfied that the SPC's intention, notwithstanding that pavements are not its responsibility, was to head off any possible sources of complaint by resolving any issues informally in case WSCC decided to ban the boards completely, with adverse consequences for Steyning's shops. The minutes of the meeting in October bear this out. I am unable to make a finding that the November minutes were somehow falsified to 'cover up' for the Claimant's actions. I also do not find that the Claimant vandalised or stole Ms Nicks' 'A' board, or that he was seeking to benefit a rival business.
108. However, I am also satisfied on a balance of probabilities that when the Claimant attended the café on the late afternoon/early evening of 30 October 2019, he behaved in a rude, bullying and domineering way towards Ms Nicks, which reduced her to a tearful state. I reject his case that she is just 'over sensitive', and other matters he refers to in his written evidence about her, which I have read, considered, but do not need to refer to.
109. I am satisfied that he did indeed issue a peremptory demand that she remove her board; that he waved or brandished his large walking stick in such a way that made her feel threatened, albeit that he did not actually threaten to hit her with it; and that he made threats of unspecified future action if she did not remove her board. Having seen him give evidence I can understand how he could come across as bullying. I reject his account that the interaction between them was as he described it and that she had become tearful for no apparent reason which was nothing to do with his behaviour, in a way which embarrassed him. I reject his account that they spoke outside. I reject his evidence that she said she had been threatened by a rival trader

who had reported her to the Environmental Health authorities. I also reject his evidence that she offered him coffee in the café next time he was passing.

110. I am satisfied that the only Facebook post which identified the Claimant specifically was posted on 12 December 2019 by the Defendant; that the specific reference to the Claimant was deleted by the Defendant within hours although the post in edited form remained up for a further period of a few weeks.
111. I have reached those conclusions for the following reasons.
112. Firstly, Ms Nicks struck me as being an honest and straightforward witness. She plainly did not relish giving evidence in the High Court. There is no room for concluding that the two conflicting accounts of what happened are the product of a misunderstanding, or genuinely held (but different) recollections of a meeting. Ms Nicks was quite clear about that, and firmly rejected the suggestions put to her (quite properly) by the Claimant. I regard it as deeply implausible that she would have made up false allegations against the Claimant. Whilst I think he probably has an exaggerated sense of his own importance in the town (whether or not he is known as 'Mr Steyning' as he claimed), there is no doubt that he is a well-known figure who, at the time, held a position of influence as Chairman of the SPC. As a new business owner who wished to have the support of the SPC in building her business, it seems to me to be inherently implausible that Ms Nicks would wish, or have wished, to make an enemy of its Chairman by making up false accusations against him. Also, had she been threatened by a rival trader, and told the Claimant so, there is no credible reason I can think of why she would not have said that in her evidence before me.
113. Next, there is the evidence of Ms Saunders and Mr Muggridge. I find that to be persuasive and significant. Ms Saunders was quite clear that she must have arrived at the café shortly after the incident. The fact that Ms Nicks was closing when the Claimant arrived, and was still there when Ms Saunders arrived, bears this out. I accept Ms Nicks' evidence that her coffee machines turn off at 5.30pm; that they were off when the Claimant arrived; and so his visit must have been around that time. The fact that Ms Nicks was still in a distressed state when Ms Saunders arrived is telling evidence that something sufficiently serious had occurred not long before. I accept Ms Saunders' evidence. The account Ms Nicks gave to Ms Saunders, and repeated before me, was broadly consistent with what Ms Nicks said in evidence. Any inconsistencies are to be expected, and do not cause me to doubt either woman's credibility. If the Claimant's case is right, in the short period between him leaving and Ms Saunders arriving, Ms Nicks must have decided to fabricate her allegations against him and then to repeat them to her friend. I regard that possibility as deeply unlikely and I reject it.
114. I also place considerable weight on Mr Muggridge's evidence that Ms Nicks was still distressed the following day when he spoke to her. The point I made earlier about Ms Nicks not wanting to make trouble for herself perhaps applies with even greater force here. She was content for Mr Muggridge to pursue the matter with the Parish Clerk, although she herself (for what I find to be understandable reasons) did not wish to do so. She would not have agreed to the matter being escalated – which was quite a serious step - had her allegations been untrue, and she knew she was making matters up.

115. I was also impressed by the restraint which Ms Nicks showed in her evidence. Had she been making up her account, it would have been easy for her to have ‘gilded the lily’ by claiming, for example, that the Claimant had actually physically threatened to strike her, rather than just behaving in a rude and bullying way and brandishing his stick (probably for emphasis). The fact she did not do so strongly suggests her account was true.
116. I also place weight on the contextual evidence about the Claimant’s behaviour at other times and places, including in relation to SPC matters. I am satisfied that he did call Ms Saunders a ‘bitch’. She would not have reported him to Ms Norcross, nor taken the serious step of reporting the matter to the police, had he not done so. Again, there is no room for misinterpretation or misunderstanding. Nor would she have voluntarily attended the High Court to swear on oath that her allegation was true, if it was not.
117. From all the evidence, I am satisfied the Claimant has a propensity to behave in a rude manner, and that he had behaved in such a way on a number of previous occasions, and continued to do so even after 30 October 2019. His behaviour was sufficiently serious to lead to the March 2021 petition (entitled ‘Bullies Out’) demanding his removal, and the adverse online comments about him. I am not in a position to, and do not, make any findings about the specific allegations which led to the petition and are made elsewhere. But it is plain from all the evidence that the Claimant is a divisive figure. I am satisfied from Mr Muggridge’s evidence that he personally witnessed rude behaviour by the Claimant on a number of occasions at SPC meetings. Again, Mr Muggridge struck me as an honest and straightforward witness. The Claimant’s behaviour (and that of others) was sufficiently serious to be one of the reasons the Watch Site was set up, as well as Steyning Justice.
118. I am satisfied from the way the Claimant described himself in his written evidence, the way he gave his evidence, and the other evidence to which I have referred, that he regards himself as an important figure in Steyning. I conclude that he is a person who is used to, and expects to, get his own way in relation to Steyning matters. I am satisfied on a balance of probabilities that: he behaved in such a way towards Ms Nicks, alone as she was in her café on that afternoon/evening; that he expected her to comply with his demands without demur; and that he behaved the way he did at least in part because she did not do so. I find, as she said, that he was rude from the beginning. I accept she felt threatened and intimidated because of his behaviour.
119. It may be that the Claimant does not always appreciate how he is coming across, and that he can be seen as rude and bullying. But he is certainly aware, as he admitted in his evidence, and that he is capable of rubbing people up the wrong way. I find on a balance of probabilities that he did so in Victoria’s Sponge on the late afternoon of 30 October 2019.
120. In relation to the Facebook posts, following the circulation in draft of this judgment, the Claimant sent in several pages of comments by email, taking issue with some matters, including how long the 12 December 2019 post naming him had been ‘up’ for. He said the Defendant may have misled the Court. The Claimant pointed out that in the Defendant’s main witness statement of he had written at [9] that:

“The only post identifying the Chairman of the Parish Council, posted on 12 December 2019 was removed voluntarily and without prompting by 24 December 2019 by me because it was poor behaviour by a Council representative that I was keen to highlight and not one particular individual in it.”

121. The Claimant also said that two of the postings were not taken down until 2 January 2020, after he served had served a pre-action protocol letter on the Defendant.

122. In light of the Claimant’s comments, which I considered carefully, I went back and checked my note of the evidence. According to my note, which I am satisfied is accurate, the Defendant said this:

“Para 9 of my witness statement is incorrect. The post referring to Chairman was removed within 2 hours. That was an error. I removed “Chairman ...” because I was not attacking you. I had no knowledge. As soon as I knew you were concerned on 24/12 I removed the whole post.”

123. I also note that the matter was corrected in [7] of the Defendant’s Second Witness Statement of 19 May 2021.

124. For the avoidance of doubt, I accept this evidence and especially about the removal of the one specific reference to the Claimant having taken place within two hours. Whether the edited post was removed unprompted or because of the Claimant’s letter does not seem to me be material, nor does whether (as the Claimant says) two of the posts were not removed until 2 January 2020 rather than earlier, in December.

125. In his comments the Claimant also made a number of points about the Watch Site, the other Facebook group/page Steyning Justice, and the March 2021 petition. He described them as ‘malign’ and said the petition had been a ‘malicious joke’ with only 33 signatories (nearly all anonymous) . I reiterate the point I made earlier about well-understanding what local politics can be like, and how deeply entrenched views can become. The petition was only part of the evidence which led me to reach my conclusions about the Claimant that I set out earlier.

126. Following receipt of the Claimant’s comments, I invited a response from the Defendant, which I have also read. Having received that response, the Claimant then sent in by email a second set of representations, raising a number of new points that were not in his first document.

127. I decline to consider the Claimant’s second document. I considered the first one as a (perhaps over-generous) indulgence because he is a litigant in person. However, the time for the Claimant to argue his case was at the trial. It is not permitted to try and re-argue a case in writing following receipt of a draft judgment, as I made clear at the end of the trial. Judgments are supplied in draft purely for the correction of typographical errors and obvious errors of fact. In *R (Edwards) v Environment Agency* [2008] 1 WLR 1587 the losing party’s counsel did a similar thing to this Claimant, ie, they sought to re-argue the case following receipt of the draft judgment. Lord Hoffmann said at [66]:

“In my opinion the submission of such a memorandum is an abuse of process of the procedure of the House. The purpose of the disclosure of the draft speeches to counsel is to obtain their help in correcting misprints, inadvertent errors of fact or ambiguities of expression. It is not to enable them to reargue the case.”

128. Lord Hope added at [73] that what counsel had done:

“... was an attempt to re-submit submissions already made and to make new submissions. It was an abuse of the procedure.”

129. If I had acceded to the Claimant’s request that I consider further arguments then I would have had to have asked for a response from the Defendant, which no doubt would then have produced yet further representations from the Claimant, and so on. I will not permit that to happen. As US Circuit Court of Appeals Judge Kozinski wrote in *Facebook Inc v Pacific Northwest Software Inc* 640 F.3d 1034 (9th Cir 2011), ‘At some point, litigation must come to an end.’ In this case, that point has now been reached.

Discussion

The law

130. In order for a publication to be defamatory, the first condition the claimant must prove is that the statement complained of was published about them. In *Sadgrove v Hole* [1901] 2 KB 1, 4, AL Smith MR said:

“The plaintiff to succeed in the action must prove a publication of and concerning him of libellous matters, and if he does not satisfy the onus of proof which is on him in this respect there is no cause of action.”

131. The general test for identification is stated in *Duncan and Neill on Defamation* (Fifth Edition), [7.02], thus (citations omitted):

“In every case where identification is in issue the question is: would reasonable people reasonably understand the statement to refer to the claimant? If reasonable people would so understand the statement, the defendant will not escape liability though they may have tried to disguise the reference to the claimant by using initials or asterisks or a fictitious name or some other subterfuge. Nor will they escape liability even if they had never heard of the claimant or intended to refer to someone else. The test is an objective one and the intention of the defendant is therefore regarded as irrelevant on the issue of identification in the same way as where the meaning of the statement complained of has to be decided.”

132. In *Economou v De Freitas* [2016] EWHC 1853 (QB), Warby J (as he then was) said at [9]-[11]:

“9. ‘It is an essential element of the cause of action for defamation that the words complained of should be published ‘of the [claimant]’”: *Knupffer v London Express Newspaper Ltd* [1944] AC 116, 118. This does not mean that defamatory words that do not name the person to whom they refer are immune from action for libel. A person may be libelled without being named. There may be some other way in which readers would identify the claimant as the person to whom the words complained of refer. The question in all cases is whether reasonable people would understand the words to refer to the claimant: *Gatley on Libel & Slander*, 12th ed (2013) para 7.1.

10. This can be the case because of some feature or features of the words themselves. They may, for instance, contain a description sufficient to lead reasonable people who know the *claimant* to identify him or her as the person referred to. Or it may be that there are extrinsic facts and matters, known to some readers, which would lead a reasonable person to identify the claimant as the person referred to: see, eg, *Morgan v Odhams Press Ltd* [1979] 1 WLR 1239. This last situation is commonly referred to as involving a "reference innuendo". The comparison is with a "true innuendo" meaning of words: one that arises only in the mind of a person who knows "special facts", which are not matters of common knowledge. As a rule, the cause of action must be complete at the time of publication; a claimant cannot rely on facts that occur, or knowledge that is acquired by readers, after the time of publication to support a reference innuendo: *Grappelli v Derek Block (Holdings) Ltd* [1981] 1 WLR 822. A limited exception to this rule was recognised in *Hayward v Thompson* [1982] QB 47, CA: a publisher may be liable where it defames an unnamed person who is identifiable to a small number, but later identifies that person to its readers generally.

11. The test that I have described is an objective one, which does not depend in any way on what the defendant knows or intends will happen: see *Morgan v Odhams Press* (above) and *Baturina v Times Newspapers Ltd* [2011] EWCA Civ 308, [2011] 1 WLR 1526, where *Morgan* and other well-known earlier authorities are reviewed. Some suggest that there is a subjective element, in the sense that a claimant has to prove that there were people who did in fact understand the words to refer to him. I do not believe this is the law: see *Lachaux v Independent Print Ltd* [2015] EWHC 2242 (QB), [2016] QB 402 [15] and *Undre v Harrow LBC* [2016] EWHC 931 (QB) [24-26], [31]. In *Baturina* the majority expressed the view that such evidence was not even admissible: see [56] (Sedley LJ) and [57] (Hooper LJ). This was *obiter*, but consistent with the view I take as to the objective nature of the test. It would not matter in this action, as the claimant's case does rely on evidence or inference of actual identification, as will

normally be the position now that claimants have to prove serious harm.”

133. Assuming the claimant proves that a reasonable person would have understood the publication referred to them, they must then prove that the statement was defamatory at common law. This requires them to show that the statement substantially affects in an adverse manner the attitude of other people towards him, or has a tendency so to do. In *Allen v Times Newspapers* [2019] EWHC 1235 (QB), [19], Warby J summarised the common law test as follows:

“(1) At common law, a statement is defamatory of the claimant if, but only if, (a) it imputes conduct which would tend to lower the claimant in the estimation of right-thinking people generally, and (b) the imputation crosses the common law threshold of seriousness, which is that it '[substantially] affects in an adverse manner the attitude of other people towards him or has a tendency so to do': *Thornton v Telegraph Media Group Limited* [2010] EWHC 1414 (QB) [2011] 1 WLR 1985 [96] (Tugendhat J).

(2)'Although the word 'affects' in this formulation might suggest otherwise, it is not necessary to establish that the attitude of any individual person towards the claimant has in fact been adversely affected to a substantial extent, or at all. It is only necessary to prove that the meaning conveyed by the words has a tendency to cause such a consequence': *Lachaux v Independent Print Limited* [2015] EWHC 2242 (QB) [2016] QB 402 [15(5)].”

134. The time-honoured bane and antidote principle must also be borne in mind in deciding whether a publication is defamatory. In *Chalmers v Payne* (1835) 2 Cr M & R 56, 159, Alderson B said:

“[If] in one part of the publication something disreputable to the plaintiff is stated, but that is removed by the conclusion, the bane and the antidote must be taken together.”

135. Most cases turn on the ‘natural and ordinary meaning’ that the ordinary reasonable reader would take from a statement. But there are cases in which the answer to the question, ‘what does statement X mean?’ will be altered by facts outside the statement itself, which are not matters of common knowledge. If readers of the statement complained of were aware of such extraneous facts, and that knowledge would affect the way that an ordinary reasonable person would understand the statement, there will be an ‘innuendo’ meaning. By these means an otherwise innocent statement may be defamatory, or an otherwise defamatory statement innocent, in the eyes of readers aware of the ‘innuendo facts’. The principles are stated in *Fullam v Newcastle Chronicle & Journal* [1977] 1 WLR 651 and *McAlpine v Bercow* [2013] EWHC 1342 (QB) [49]-[55]. I can give an example, which I make clear is a million miles away from the facts of this case. Suppose someone (C) is accused by a defendant (D) of being, ‘Just like Robert Maxwell’. Robert Maxwell is widely regarded as having committed a large pension fund fraud in the period leading up to his death. It would be open to C to plead that as an innuendo fact, which would have lead a reasonable

reader to conclude that the statement complained of was accusing him of similar behaviour even though, on its face, D's statement did not do so.

136. If the claimant proves that the statement was defamatory at common law, they must then prove that it caused them serious harm. The requirement for serious harm was added to the ingredients of a defamatory statement by s 1 of the DA 2013, which provides:

“(1) A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant.

(2) For the purposes of this section, harm to the reputation of a body that trades for profit is not 'serious harm' unless it has caused or is likely to cause the body serious financial loss.”

137. In *Monroe v Hopkins* [2017] EWHC 433 (QB), [23(4)], Warby J succinctly explained the effect of s 1 as follows:

“This provision ... means that it is not enough to prove that a statement had a defamatory tendency. A claimant must prove as a matter of fact that their reputation suffered, or is likely to suffer, serious harm as a result of the publication complained of.”

138. I emphasise that it must be the publication(s) sued on which caused the serious harm. I will return to the question of causation later.

139. In *Napag Trading Ltd v GEDI Gruppo Editoriale Spa* [2020] EWHC 3034 (QB), [41]-[42], Jay J said:

"41. The second issue concerns 'serious harm' within s.1 of the Defamation Act 2013. It is common ground that this has intensified the common law and requires proof of harm which is actually or likely to be serious rather than proof of substantial harm and a tendency to cause it. 'Serious harm' may be established by inference from such matters as the extent of the publication, the gravity of the allegation, and whether the statement was read by people who knew the claimant or will come to know him in the future.

42. These basic principles are well-established following the decision of the Supreme Court in *Lachaux v Independent Print Ltd* [2020] AC 612 ...”

140. On the method of proof, Warby J said in *Monroe*, [69]:

“Where an allegation has a seriously defamatory tendency and is widely published a claimant may choose to rely on those facts alone, perhaps in conjunction with evidence as to the identity of the publishees, as the basis for an inference that serious harm was actually caused ... In some cases it may be enough. It is certainly

not necessary in every case to engage in a detailed forensic examination of the precise factual picture, in order to determine whether the serious harm requirement is satisfied.”

141. The principles relating to serious harm were recently summarised by Richard Spearman QC sitting as a Deputy High Court Judge in *Hills v Tabe* [2022] EWHC 316 (QB), [19]-[23], from which the following is gratefully adapted. I do not think any of them is controversial.
142. Lord Sumption explained in *Lachaux v Independent Print Ltd* [2020] AC 612, [14], that whether a statement has caused serious harm falls to be established 'by reference to the impact which the statement is shown actually to have had', and that, in turn, 'depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated'. Further, as appears from [16] of his judgment, in light of the wording of s 1(1) of the DA 2013, a statement may not be defamatory even if it amounts to 'a grave allegation against the claimant' if (for example) it is 'published to a small number of people, or to people none of whom believe it, or possibly to people among whom the claimant had no reputation to be harmed.' He said:

“16. Finally, if serious harm can be demonstrated only by reference to the inherent tendency of the words, it is difficult to see that any substantial change to the law of defamation has been achieved by what was evidently intended as a significant amendment. The main reason why harm which was less than "serious" had given rise to liability before the Act was that damage to reputation was presumed from the words alone and might therefore be very different from any damage which could be established in fact. If, as Ms Page submits, the presumption still works in that way, then this anomaly has been carried through into the Act. Suppose that the words amount to a grave allegation against the claimant, but they are published to a small number of people, or to people none of whom believe it, or possibly to people among whom the claimant had no reputation to be harmed. The law's traditional answer is that these matters may mitigate damages but do not affect the defamatory character of the words. Yet it is plain that section 1 was intended to make them part of the test of the defamatory character of the statement.”
143. At the same time, as has often been said, the assessment of harm of a defamatory statement is not simply 'a numbers game': *Mardas v New York Times Co* [2009] EMLR 8, [15], per Eady J. Indeed. ‘reported cases have shown that very serious harm to a reputation can be caused by the publication of a defamatory statement to one person’: *Sobrinho v Impresa Publishing SA* [2016] EMLR 12, [47].
144. That said, the scale of publication, whilst not determinative, is a relevant factor in the assessment of the likelihood of serious harm or serious financial loss being caused by the publication: *Napag*, [96]-[97].
145. Other points which arise from the *Sobrinho* case include the following:

“46. ... [F]irst, a claimant must now establish in addition to the requirements of the common law relating to defamatory statements, that the statement complained of has in fact caused or is likely to cause serious harm to his reputation. ‘*Serious*’ is an ordinary word in common usage. Section 1 requires the claimant to prove as a fact, on the balance of probabilities, that the statement complained of has caused or will probably cause serious harm to the claimant's reputation. It should be noted that unless serious harm to reputation can be established an injury to feelings alone, however grave, will not be sufficient.

47. Secondly, it is open to the claimant to call evidence in support of his case on serious harm and it is open to the defendant to call evidence to demonstrate that no serious harm has occurred or is likely to do so. However, a Court determining the issue of serious harm is, as in all cases, entitled to draw inferences based on the admitted evidence

...

48. Thirdly, there are obvious difficulties in getting witnesses to say that they read the words and thought badly of the claimant, compare *Ames v The Spamhouse Project* [2015] EWHC 127 (QB) at [55]. This is because the claimant will have an understandable desire not to spread the contents of the article complained of by asking persons if they have read it and what they think of the claimant, and because persons who think badly of the claimant are not likely to co-operate in providing evidence.”

146. In *Doyle v Smith*, to which the Claimant referred in his pleadings, Warby J cited these passages with approval at [116]. He went on to emphasise the importance of the point about inference, and (among other things) approved at [117] the following words of HHJ Moloney QC in *Theedom v Nourish Training (trading as CSP Recruitment)* [2016] EMLR 10:

“Depending on the circumstances of the case, the claimant may be able to satisfy section 1 without calling any evidence, by relying on the inferences of serious harm to reputation properly to be drawn from the level of the defamatory meaning of the words and the nature and extent of their publication.”

147. Although the Supreme Court stated the law differently from the Court of Appeal in *Lachaux v Independent Print Ltd* [2018] QB 594, the following passages from the judgment of Davis LJ are consonant with the correct legal analysis of s 1 as set out in the judgment of Lord Sumption:

“72. ... serious reputational harm is capable of being proved by a process of inference from the seriousness of the defamatory meaning ... there is no reason in libel cases for precluding or restricting the drawing of an inference of serious reputational

harm derived from an (objective) appraisal of the seriousness of the imputation to be gathered from the words used.

73. ... The seriousness of the reputational harm is ... evaluated having regard to the seriousness of the imputation conveyed by the words used: coupled, where necessary or appropriate, with the context in which the words are used (for example, in a newspaper article or widely accessed blog).

...

79. There may, for instance, be cases where the evidence shows that no serious reputational harm has been caused or is likely for reasons unrelated to the meaning conveyed by the defamatory statement complained of. One example could, for instance, perhaps be where the defendant considers that he has irrefutable evidence that the number of publishees was very limited, that there has been no grapevine percolation and that there is firm evidence that no one thought any the less of the claimant by reason of the publication ...”

148. In *Dhir v Saddler* [2018] 4 WLR 1, [55] Nicklin J said at [55]:

“In my judgment, the authorities demonstrate that it is the *quality* of the publishees not their *quantity* that is likely to determine the issue of serious harm in cases involving relatively small-scale publication. What matters is not the extent of publication, but to whom the words are published. A significant factor is likely to be whether the claimant is identified in the minds of the publishee(s) so that the allegation 'sticks' ...

(ii) A feature of the 'sticking power' of a defamatory allegation that has potential relevance to the assessment of serious harm is the likelihood of percolation/repetition of the allegation beyond the original publishees ('the grapevine effect') (*Slipper v BBC* [1991] 1 QB 283, 300 *per* Bingham LJ). In *Slutsker v Romanova* [2015] EWHC 545 (QB); [2015] 2 Costs LR 321, Warby J said at [69]:

'... It has to be borne in mind that the assessment of whether there is a real and substantial tort is not a mere numbers game, and also that the reach of a defamatory imputation is not limited to the immediate readership. The gravity of the imputations complained of... is a relevant consideration when assessing whether the tort, if that is what it is, is real and substantial enough to justify the invocation of the English court's jurisdiction. The graver the imputation the more likely it is to spread, and to cause serious harm It is beyond dispute that the imputations complained of are all extremely serious ...”

149. Drawing the threads together, in *Riley v Murray* [2021] EWHC 3437 (QB), [34], Nicklin J set out the approach by reference to what was said in *Turley v Unite the Union* [2019] EWHC 3547 (QB), [107]-[108]:

"[107] ... The Supreme Court [in *Lachaux*] held:

(i) s 1 raised the threshold of seriousness above the tendency of defamatory words to cause damage to reputation; the application of the test of serious harm must be determined 'by reference to actual facts about its impact and not just to the meaning of the words': [12]-[13].

(ii) Reference to the situation where the statement 'has caused' serious harm is to the consequences of publication, and not the publication itself [14]:

'It points to some historic harm which is shown to have actually occurred. This is a proposition of fact which can be established only by reference to the impact which the statement is shown actually to have had. It depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated.'

(iii) Reference to the situation where the statement 'is likely to cause' serious harm was not the synonym of 'liable to cause' in the sense of the inherent tendency of defamatory words to cause damage to reputation: [14].

(iv) The conditions under s 1 must be established as facts [14] and 'necessarily calls for an investigation of the actual impact of the statement': [15]; a claimant must demonstrate as a fact that the harm caused by the publication complained of was serious [21].

(v) If serious harm could be demonstrated simply by the inherent tendency of statements to damage reputation, little substantive change would have been effected by the Act [16]:

'The main reason why harm which was less than serious had given rise to liability before the Act was that damage to reputation was presumed from the words alone and might therefore be very different from any damage which could be established in fact. If, as Ms Page submits, the presumption still works in that way, then this anomaly has been carried through into the Act. Suppose that the words amount to a grave allegation against the claimant, but they are published to a small number of people, or to people none of whom believe it, or possibly to people among whom the claimant had no reputation to be harmed. The law's traditional answer is that these matters may mitigate damages but do not affect the defamatory character of the words. Yet it is plain that

section 1 was intended to make them part of the test of the defamatory character of the statement."

(vi) A claimant may produce evidence from publishees of the statement complained of about its impact on them, but his/her case does not necessarily fail for want of such evidence; inferences of fact as to the seriousness of harm done to reputation may be drawn from the evidence as a whole [21].

(vii) In Mr Lachaux's case, the finding that serious harm had been proved was based on a combination of (a) the meaning of the words; (b) the situation of the claimant; (c) the circumstances of publication; and (d) the inherent probabilities.

(viii) A judge's task is to evaluate the material before him/her and arrive at a conclusion, recognising that this is an issue on which precision will rarely be possible [21].

(ix) The judge can consider the impact of the publication upon people who do not presently know the claimant but might get to know him/her in the future [25].

[108] At first instance in *Lachaux* Warby J expressed his conclusion on s.1 as follows:

‘[65] In summary, my conclusion is that by section 1(1) of the 2013 Act Parliament intended to and did provide that a statement is not defamatory of a person unless it has caused or will probably cause serious harm to that person's reputation, these being matters that must be proved by the claimant on the balance of probabilities. The court is not confined, when deciding this question, to considering only the defamatory meaning of the words and the harmful tendency of that meaning. It may have regard to all the relevant circumstances, including evidence of what has actually happened after publication. Serious harm may be proved by inference, but the evidence may or may not justify such an inference.’

[109] Finally, and consistently with Lord Sumption's analysis in *Lachaux* there are three further relevant principles:

‘... the law would part company with the realities of life if it held that the damage caused by publication of a libel began and ended with publication to the original publishee. Defamatory statements are objectionable not least because of their propensity to percolate through underground channels and contaminate hidden springs.”

(ii) It is well-recognised that a claimant may struggle to identify, or to produce evidence from, all those to whom an article was published and in whose eyes the claimant's reputation was damaged: *Doyle v Smith* [2019] EMLR 15 [122(iv)]; *Sobrinho v Impresa Publishing SA* [2016] EMLR 12 [48]; *Ames v Spamhaus* [2015] 1 WLR 3409 [55].

(iii) Assessment of harm to reputation has never been just a 'numbers game': 'one well-directed arrow [may] hit the bull's eye of reputation' and cause more damage than indiscriminate firing: *King v Grondon* [2012] EWHC 2719 (QB) [40] *per* Sharp J. Very serious harm to reputation can be caused by publication to a relatively small number of publishees: *Sobrinho* [47]; *Dhir v Sadler* [2018] EWHC 2935 (QB) [55(i)]; *Monir v Wood* [2018] EWHC 3525 (QB) [196].”

150. I also need to mention what was said in *Sube v News Group Newspapers* [2018] 1 WLR 5767, [22], [31], namely, that generally and absent some special closeness or 'inter-weaving' of publications, imputations in separate publications cannot be 'added together' to produce serious harm; the effect of each article must be assessed separately and a publication will only be actionable if, taken alone, that effect satisfies the serious harm test.

151. The DA 2013 also codified, or introduced, defences to a claim in defamation.

152. Section 2 is entitled 'Truth' and provides:

“(1) It is a defence to an action for defamation for the defendant to show that the imputation conveyed by the statement complained of is substantially true.

(2) Subsection (3) applies in an action for defamation if the statement complained of conveys two or more distinct imputations.

(3) If one or more of the imputations is not shown to be substantially true, the defence under this section does not fail if, having regard to the imputations which are shown to be substantially true, the imputations which are not shown to be substantially true do not seriously harm the claimant's reputation.

(4) The common law defence of justification is abolished and, accordingly, section 5 of the Defamation Act 1952 (justification) is repealed.”

153. Section 3 is entitled 'Honest opinion' and provides:

“(1) It is a defence to an action for defamation for the defendant to show that the following conditions are met.

(2) The first condition is that the statement complained of was a statement of opinion.

(3) The second condition is that the statement complained of indicated, whether in general or specific terms, the basis of the opinion.

(4) The third condition is that an honest person could have held the opinion on the basis of -

(a) any fact which existed at the time the statement complained of was published;

(b) anything asserted to be a fact in a privileged statement published before the statement complained of.

(5) The defence is defeated if the claimant shows that the defendant did not hold the opinion.

(6) Subsection (5) does not apply in a case where the statement complained of was published by the defendant but made by another person ('the author'); and in such a case the defence is defeated if the claimant shows that the defendant knew or ought to have known that the author did not hold the opinion.

(7) For the purposes of subsection (4)(b) a statement is a 'privileged statement' if the person responsible for its publication would have one or more of the following defences if an action for defamation were brought in respect of it -

(a) a defence under section 4 (publication on matter of public interest);

(b) a defence under section 6 (peer-reviewed statement in scientific or academic journal);

(c) a defence under section 14 of the Defamation Act 1996 (reports of court proceedings protected by absolute privilege);

(d) a defence under section 15 of that Act (other reports protected by qualified privilege).

(8) The common law defence of fair comment is abolished and, accordingly, section 6 of the Defamation Act 1952 (fair comment) is repealed."

154. Section 4 is headed 'Publication on matter of public interest':

"(1) It is a defence to an action for defamation for the defendant to show that—

(a) the statement complained of was, or formed part of, a statement on a matter of public interest; and

(b) the defendant reasonably believed that publishing the statement complained of was in the public interest.

(2) Subject to subsections (3) and (4), in determining whether the defendant has shown the matters mentioned in subsection (1), the court must have regard to all the circumstances of the case.

(3) If the statement complained of was, or formed part of, an accurate and impartial account of a dispute to which the claimant was a party, the court must in determining whether it was reasonable for the defendant to believe that publishing the statement was in the public interest disregard any omission of the defendant to take steps to verify the truth of the imputation conveyed by it.

(4) In determining whether it was reasonable for the defendant to believe that publishing the statement complained of was in the public interest, the court must make such allowance for editorial judgement as it considers appropriate.

(5) For the avoidance of doubt, the defence under this section may be relied upon irrespective of whether the statement complained of is a statement of fact or a statement of opinion.

(6) The common law defence known as the Reynolds defence is abolished.”

155. The reference in s 4(6) is to the common law defence established in *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127.

156. In *Economou*, [139], Warby J set out the following principles in relation to s 4 which he said were not controversial:

- a. it is not enough for the statement complained of to be, or to be part of, a publication *on* a matter *of* public interest. It must also be shown that the defendant reasonably believed that publication of the particular statement was *in* the public interest;
- b. to satisfy this second requirement, (the Reasonable Belief requirement), the defendant must (i) prove as a fact that he believed that publishing the statement complained of was in the public interest, and (ii) persuade the court that this was a reasonable belief;
- c. the reasonable belief must be held at the time of publication.
- d. the ‘circumstances’ to be considered pursuant to s 4(2) are those that go to whether or not the belief was held, and whether or not it was reasonable.

- e. the focus must therefore be on things the defendant said or knew or did, or failed to do, up to the time of publication. Events that happened later, or which were unknown to the defendant at the time he played his role in the publication, are unlikely to have any or any significant bearing on the key questions;
- f. the truth or falsity of the allegation complained of is not one of the relevant circumstances;
- g. it is not only those who edit media publications who are entitled to the benefit of the allowance for 'editorial judgment' which s 4(4) requires (see [33] of the Explanatory Notes to the DA 2013).

157. So far as malice is concerned, this in the libel context means that the defendant makes the statement for some dominant improper motive. If it can be shown that defendant did not believe the words to be true, or was reckless as to their falsity, then that is generally conclusive evidence to show that the defendant has acted with a dominant improper motive. Malice has been defined by the House of Lords in *Horrocks v Lowe* [1975] AC 135 and *Reynolds v Times Newspapers Ltd* [2001] 2 AC 12. The applicable principles are summarised at *Duncan & Neill*, [19.06], as follows (and see also *David v Hosany* [2017] EWHC 2787 (QB), 5.2:

“(a) The motive with which a person published defamatory matter can only be inferred from what he did or said or knew. Evidence of the defendant's state of mind can therefore be tendered by either or both sides.

(b) The defendant is entitled to be protected by the privilege unless the claimant proves that the defendant had an improper motive for publishing the words and that the improper motive was the sole or dominant motive.

(c) If the defendant did not believe that when he published was true this fact is generally conclusive evidence of express malice, for no sense of duty or desire to protect his own legitimate interest can justify a man in telling deliberate and injurious falsehoods about another.

(d) If the defendant made the publication recklessly, being indifferent to the truth of what he published and neither considering nor caring whether it was true or not, he will be treated as if he knew it to be false. But carelessness or impulsiveness or irrationality in arriving at a positive belief in the truth of what was published does not amount to indifference to the truth.

(e) Even where the defendant did believe the words to be true the claimant may still be able to prove that the publication was actuated by an improper motive, for example, a desire to injure the claimant or to achieve some personal advantage unconnected with the duty or interest which constitutes the reason for the privilege. But in such a case, that is, where the defendant believed

the words to be true, judges and juries should be very slow to draw the inference that the sole or dominant motive for publication was the improper motive.”

Application

158. I turn to my conclusions on the application of these principles to the facts I have found and the publications in question.
159. I begin with the August post. It is right, as the Defendant pointed out, that the words complained of by the Claimant were selected by him from a much longer Facebook post by the Defendant. The full post was as follows (the words complained of by the Claimant in his ASoC are italicised for clarity):

“Former Cllr Bowett told I me I only had to be true to one person – myself ! He and I have crossed swords before, but I want to thank him publicly because he made me realise that I could do nothing inside the Parish Council to correct all the things going wrong. Although seeing my former post advertised on the SPC website today I still think I made the right decision for the community to highlight what I believe to be gross mismanagement of Council business by just two Councillors.

For, example I saw the final Draft of our Neighbourhood Plan today and it made sorry reading. Without housing it was a very thin 27-page document and that included the front cover and four pages of useless maps because they didn’t tell you anything ! The whole production will cost about £1000 per page, or £28000 – in total, much of it devoted to housing, which will not now be included. I have no doubt that the Steyning Committee members and former members, and all the volunteers who devoted so much time to this enterprise will be truly saddened by the resultant document. Even Councillors who were misled into voting into removal our control over housing (*sic*) may be thinking twice now. *I know one Councillors, however, who will be thrilled to have cost the public purse £23000, plus £8000, in lost Grant money.* That is using power without responsibility, but as they say, ‘What comes around goes around’ and the damning letter showing *the close and destructive working relationship between our Chairman and Vice-Chairman going back many years,* because an FoI has been submitted. It is definitely in the public interest and if it isn’t published then I will do it myself !

Finally, former NP Steering Group Chairman Russell Barnes is preparing to document, so watch this space ...”

160. It is trite that words complained of have to be read in their proper context: *Koutsogiannis v The Random House Group Limited* [2019] EWHC 48 (QB), [11-13].
161. The Claimant’s complaint about this post focusses on the first italicised passage. His pleaded defamatory meaning refers to that part of the post, and there is nothing about

the Chairman/Vice-Chairman allegation. I find it quite impossible to conclude that reasonable people would reasonably have understood this passage to refer to the Claimant. I leave out of account that the Defendant was intending (the typo aside) to refer to a single councillor who was not the Claimant. As set out earlier, the test is objective and the author's intent is irrelevant (although I have found as a fact that the Defendant was in fact referring to another councillor, and not the Claimant).

162. I recognise the principle that a person who is part of a group or class may have a claim in defamation in some circumstances where the allegation is made against that group or class, as discussed in *Duncan and Neill*. [7.14] et seq. But that is not this case. The post only referred to 'one councillor' – and SPC has a significant number of councillors – and there was nothing to single out the Claimant. No innuendo facts (ie, per *Economou*, [10], 'special facts') are pleaded from which it is said the reasonable reader would have identified the 'councillor' as the Claimant. Added to that is the fact that the post went on to specifically identify the Claimant as Chairman; this would have strongly suggested to the reasonable reader that the earlier reference to 'one councillor' was to a different councillor, and not the Chairman (ie, the Claimant).
163. The Claimant's case on this post therefore falls at the first hurdle. But even if I am wrong about that there are other difficulties in the way of the Claimant. To the extent that he does allege the Chairman/Vice-Chairman passage is defamatory, this was plainly a statement of opinion by the Defendant which is covered by s 3 of the DA 2013. And, in addition, the whole post is covered by the s 4 public interest defence. It is obvious that publicly commenting on the performance, or sub-standard performance, of democratically elected representatives will in the vast majority of cases (and this is one) be in the public interest. Among other reasons, that is because bringing such matters to the attention of the electorate gives them the opportunity to evaluate matters so as to make an informed decision at the next election.
164. The Claimant also faces a difficulty in proving serious harm arising *from this post*. I have emphasised the last three words because of the rule in *Sube*. No serious harm arising specifically from this post is pleaded in the ASoC, nor is there any evidence about the impact it had on anyone who might have read it. The allegations within it are not, in my judgment, of the type where the very nature of the allegations can properly lead to an inferential conclusion of serious harm even in the absence of evidence. Criticism of elected representatives for incompetence are commonplace: some will agree, some will disagree. The law of defamation must not be allowed to stifle such criticism. As Warby J said in *Monroe*, [50]:
- “In a diverse society, there are many with views of which some people approve and some disapprove. The demands of pluralism in a democratic society make it important to allow room for differing views to be expressed, without fear of paying damages for defamation.”
165. In this case, given: (a) the readership of the Facebook page in question (whatever its size, a matter which was in issue but which I am not in a position to decide), most of whom I think can be assumed not to be fans of the Claimant; and (b) the Claimant's controversial reputation within Steyning, I am unable to say that this post would have caused serious harm to his reputation. I will come back to the general nature of

Facebook later. So far as the Claimant's case is that it might impact on his chances of re-election in 2023, that is far too remote and speculative a basis for a finding of serious harm. Should he stand for election, and should he not be elected, then that might be for one or more of any number of reasons, including: the prevailing political mood at the time; his existing reputation before this post; his campaign; or that there are better or more appealing candidates, etc.

166. I turn to the other posts of which complaint is made, relating to the incident in Victoria's Sponge.

167. It seems to me that the first question is what posts I am concerned with, given that the bulk of these were made by identified third parties. I will assume in the Claimant's favour that the Defendant is responsible for them under s 5 as the operator/administrator of the Facebook page in question. There is no authority that I am aware of relating to Facebook administrators and whether they fall within s 5. The pertinent provisions of s 5 are as follows:

“(1) This section applies where an action for defamation is brought against the operator of a website in respect of a statement posted on the website.

(2) It is a defence for the operator to show that it was not the operator who posted the statement on the website.

(3) The defence is defeated if the claimant shows that -

(a) it was not possible for the claimant to identify the person who posted the statement,

(b) the claimant gave the operator a notice of complaint in relation to the statement, and

(c) the operator failed to respond to the notice of complaint in accordance with any provision contained in regulations

...

(11) The defence under this section is defeated if the claimant shows that the operator of the website has acted with malice in relation to the posting of the statement concerned.

(12) The defence under this section is not defeated by reason only of the fact that the operator of the website moderates the statements posted on it by others.”

168. However, that notwithstanding, the Claimant runs into difficulties in relation to identification. The 12 December post did identify him, but that reference was deleted within a few hours and there is no evidence that anyone ever read it. That post was removed but days later. The rest of the posts did not identify him, and no innuendo or special facts are pleaded from which it is said that the Claimant would have been

identified by a reasonable reader (at the time of publication, see *Grappelli v Derek Block (Holdings) Ltd* [1981] 1 WLR 822) as the subject of these posts. Nor is there anything else from which a reader could have identified him. Reading the posts, the authors were at pains not to identify the Claimant. There is simply no evidence - as there sometimes is - that someone read the posts and knew they referred to the Claimant notwithstanding he was not named in them.

169. But even if I am wrong about that, the Claimant again faces further difficulties.
170. In relation to serious harm, even taking all the posts together for the purposes of assessing serious harm as inter-linked publications (per the rule in *Sube*), his case on these posts also fails on that issue. I reject any suggestion that the allegations in the posts are of a sufficiently serious type such that serious harm can be inferred even in the absence of evidence from those who read them, as to their view of the Claimant afterwards, notwithstanding the allegations of theft and seeking to benefit a rival business (which I have found not to have been the case). Not only is there no evidence from anyone who said they read them, there is also no evidence that anyone believed those allegations. The central thrust of the posts was what happened in the café. There is no evidence of percolation of the theft or vandalization allegations. The Claimant's own evidence was that, at most, he has been subject to 'banter' (his word in evidence) in the pub and elsewhere about his stick. He said he would be greeted with comments such as, 'Watch out girls, here he comes.' He said he had suffered 'embarrassment' as a consequence. None of this amounts to serious harm. I have already rejected his case that his re-election prospects in 2023 could amount to serious harm. Furthermore, as I have already said and do not wish to labour, it is apparent that the Claimant is a controversial Figure in Steyning who does not enjoy a good reputation in the eyes of many in relation to his SPC activities (although no doubt some others do think well of him). Such evidence of bad reputation - ie, evidence that the claimant had no reputation to lose - is admissible: *Scott v Sampson* (1882) 8 QBD 491; *Burstein v Times Newspapers* [2001] 1 WLR 579. [20]-[21]; *Monroe*, [71(7)]; *Lachaux*, [16]. The Claimant's own evidence is that the Watch Site was set out by those critical of his performance on the SPC, and that of the Claimant's allies. As I have already said, I can therefore conclude that most of the likely readers of the posts on the Watch Site already did not have a high opinion of him. His pleaded case on the potential effect on his charitable activities and football transport in my judgment are not serious harm.
171. Further, in assessing the issue of serious harm, I take into account the nature of Facebook. In *Stocker v Stocker* [2020] AC 593, [43], Lord Kerr that that Facebook is:
- “... a casual medium; it is in the nature of conversation rather than carefully chosen expression; and that it is pre-eminently one in which the reader reads and passes on.”
172. The Claimant also faces causation difficulties, an issue I said would return to. Section 1 of the DA 2013 requires the serious harm to be caused *by the publications in question*. In my judgment, the Claimant has failed to show that to the extent that the café incident became known in the community, that that was because of the Facebook posts. Within a day of the incident it was known to at least two other people besides Ms Nicks, and no doubt in a small community like Steyning - which the Claimant himself described as 'close-knit' - word and gossip travels fast, especially in relation

to SPC matters which are controversial, as the café incident undoubtedly was. By the time of the Defendant's first Facebook post about the incident in late November 2019, nearly a month had passed, and it was obviously plainly already widely known about as a result of percolation by word of mouth, and not because of the postings. The Defendant's posts on 23 November and 12 December 2019 which the Claimant complains about in ASoC, [12], made clear that the café incident had come to the Defendant's attention by word of mouth. The latter post said, for example:

“My dilemma is this: I now have three separate accounts of the incident, all of which are so similar that I believe them to be accurate; in the absence of any sanctions, do I name the Councillor and demand that he resigns immediately? ...”

173. The café incident had therefore become known to the Defendant through the ‘Steining grapevine’, which is what caused him and others to start posting about it. It is also clear from the third party postings that others had also become aware of the incident from sources other than Facebook posts by the Defendant. The Claimant had been identified as the café visitor in SPC meetings (which are open to the public) in October and in November. Mr Muggridge also confirmed that the incident was spoken about in Steining (but not at his instigation).
174. Hence, even if the Claimant could show serious harm within s 1 of the DA 2013 – which he cannot – he cannot show that it was as a result of the Facebook posts, as opposed to town chatter and word of mouth. His case therefore fails on causation in any event.
175. I also conclude that the Defendant succeeds on the defence of truth (s 2, DA 2013). Assuming in the Claimant's favour that he could be identified from them, the imputations arising from the posts are, in my judgment, substantially true. I have found as a fact that: (a) he attended the Victoria's Sponge in his role as Chairman of SPC; (b) during the visit there was verbal altercation caused by the Claimant, in which he abused his role as Chairman by rudely demanding that Ms Nicks remove her board; (c) during the meeting he shook or gesticulated with his walking stick or staff; (d) Ms Nicks was left tearful as a consequence of his behaviour. I have not found that the Claimant was knowingly acting outside his powers, or that there was vandalism, or that he was trying to benefit a rival business, however it seems to me the sting relates to how the Claimant treated Ms Nicks, which I have found to be true. Here, s 2(3) of the DA 2013 applies, given there is no evidence anyone read the two posts by Louise Abbott referring to theft, etc, or if they did, that they believed them.
176. Even if I am wrong about that, I am also satisfied that these posts, concerning as they did the alleged behaviour of a democratically elected representative acting as such, are covered by the public interest defence in s 4 of the DA 2013. As the page itself declared, it was intended to be a:

“... a community led discussion board for residents of Steining and neighbouring parishes to share observations on matters associated with Steining Parish Council.”

177. Further, and for the avoidance of doubt, the Defendant is able to rely on s 5(2) in respect of the third party posts made by named individuals, so that that defence is not

defeated by s 5(3). There is also no evidence of malice such as would defeat the defence *per* s 5(11).

Conclusion

178. For all of these reasons, the Claimant's claim fails and there will be judgment for the Defendant.