Neutral Citation Number: [2019] EWHC 1349 (QB)

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

Nos. HQ13D03735
HQ14D02898

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7 June 2019

Before:

RICHARD SPEARMAN Q.C.
(sitting as a Deputy Judge of the Queen's Bench Division)

B E T W E E N :

FRANK KOFI OTUO

Claimant

- and -

WATCH TOWER BIBLE AND TRACT SOCIETY OF BRITAIN

Defendant

A N D B E T W E E N :

FRANK KOFI OTUO

Claimant

-and-

(1) JONATHAN DAVID MORLEY
(2) WATCH TOWER BIBLE AND TRACT SOCIETY OF BRITAIN

Defendants

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The Claimant appeared in person.

Mr Shane Brady (instructed by Legal Department, Watch Tower Bible and Tract Society of Britain) appeared on behalf of the Defendant.

Hearing dates: 11, 12, 13, 14, 25, 26, 27, 28 and 29 March 2019, 15 April 2019

J U D G M E N T

RICHARD SPEARMAN Q.C.:

The dispute in outline

1. This is the trial of two claims for slander, brought by Frank Kofi Otuo. Mr Otuo is intelligent and articulate. He is also a very experienced litigant, having appeared in person throughout this long-running litigation, as he did before me, as well as in other proceedings to which I was referred in passing in the course of the trial. Mr Otuo argued his case ably and persuasively, as, for his part, did Mr Brady on behalf of the Defendants in both claims. However, Mr Otuo has no formal legal qualifications; and the Defendants' lawyers are not defamation specialists. The trial bundles comprised 4 bundles produced by the Defendants and 2 further bundles produced by Mr Otuo, but they included neither a core bundle nor any bundle of documents arranged in chronological order. In addition, I was referred to literally dozens of authorities, many of which transpired to be of little, if any, relevance to the issues that I have to decide. These factors have resulted in additional challenges for the Court.

2. The first claim ("Claim 1") is brought against the Watchtower Bible and Tract Society of Britain ("Watch Tower Britain"), a company limited by guarantee and a registered charity with the objects of advancing in various ways the Christian religion "as practised by the body of Christian persons known as Jehovah's Witnesses", in respect of an announcement made on 19 July 2012 at a meeting of the Wimbledon Congregation of Jehovah's Witnesses ("the Announcement"). The Announcement was made by Mark Lewis, a member of that congregation who had been appointed as an Elder, and consisted of the following words: "Frank Otuo is no longer one of Jehovah's Witnesses". The Announcement had the effect that Mr Otuo was "disfellowshipped". Claim 1 was commenced by a claim form which was issued on 19 July 2013. In a judgment handed down on 9 March 2017, the Court of Appeal held that Claim 1 had been brought marginally within the time limit specified by section 4A of the Limitation Act 1980, rather than marginally outside it, and allowed Mr Otuo's appeal against orders made by the Courts below which had the effect of ruling that it was time barred: see *Otuo v Watchtower Bible and Tract Society of Britain* [2017] EWCA Civ 136.

3. The second claim ("Claim 2") is brought against Watch Tower Britain and Jonathan Morley, the coordinator of the body of Elders of the Wimbledon Congregation, in respect of words spoken by Mr Morley at a meeting on 22 July 2013. Claim 2 was commenced by a claim form dated 18 July 2014. That meeting was attended by Mr Otuo and by four Elders: Mr Morley, Mr Lewis, Andrew Sutton (all of whom were from the Wimbledon Congregation) and Colin Smith (who was from the Banstead Congregation). It was triggered by a letter from Mr Otuo to the Elders of the Wimbledon Congregation dated 17 June 2013, in which he sought reinstatement "to the congregation of Jehovah's Witness forthwith". It has therefore been referred to as "the reinstatement meeting" at times in this litigation. No one else was present, or heard the words complained of. The precise nature of those words is not in dispute, because Mr Otuo surreptitiously tape recorded the meeting. They are as follows:

> "So just going back to July of last year when you were disfellowshipped, I think it was July 19 that it was announced to the congregation, is that correct? I think it was … do you… how do [you] view then what you were disfellowshipped for? Do you understand what you were disfellowshipped for? … Just to summarise what I thought you have said, is that even today you would not accept it was fraud … That is what you seem to be saying?"

4. The principal issues raised by the parties' arguments in these claims are as follows:

   (1) Whether there is any difference between "Scriptural fraud" and "fraud" in other contexts which is material in the particular circumstances of either of these Claims.

   (2) Whether the slanders complained of are actionable *per se* (i.e. without proof of special damage), or in other words whether they impute a crime for which Mr Otuo could be made to suffer physically by way of punishment (i.e. be imprisoned).

   (3) Whether Mr Otuo consented to publication of the words complained of.

   (4) Whether the publications were made on occasions of qualified privilege.

   (5) If so, whether the defence of qualified privilege is defeated by malice.

   (6) Whether it is true that Mr Otuo had been disfellowshipped for fraud.

   (7) Whether the decision to disfellowship Mr Otuo was *ultra vires*.

   (8) Whether Watch Tower Britain authorised or is vicariously liable for the publications.

   (9) Whether the Claims unjustifiably interfere with the Defendants' rights guaranteed by Articles 9, 10 and 11 of the European Convention on Human Rights.

   (10) Whether Mr Otuo is entitled to any, and, if so, what, relief.

Meaning

5. In a judgment handed down on 5 December 2013, HH Judge Moloney QC, sitting as a Judge of the High Court, ruled that the words comprising the Announcement were not capable of being defamatory in their natural and ordinary meaning. He therefore ordered that in so far as Claim 1 was based on natural and ordinary meaning it should be struck out. However, Mr Otuo also pleaded that the Announcement was defamatory in a true innuendo meaning.

6. In one of a series of judgments that he handed down arising from what he described as the "prolonged" Pre-Trial Review in these claims, Warby J said, that, on analysis, Mr Otuo's pleaded case suggested two distinct innuendo meanings: first, the meaning which would have been conveyed to all those who were familiar with the general principles regarding disfellowshipping ("the Informed Audience"); and, second, the meaning which would have been conveyed to the sub-group who knew not only those matters but also that there had been a fraud investigation involving Mr Otuo ("the Insiders"). Warby J pointed out that there could be a third material group if, as alleged by Mr Otuo, members of the general public were present when the Announcement was made, but that it was hard to see how any of them could have drawn any defamatory meaning from the neutral wording adopted, as demonstrated by the judgment of HH Judge Moloney QC. Against the background that Mr Otuo's pleaded case alleged that 10 Insiders were present when the Announcement was made and Watch Tower Britain admitted that 6 Insiders were present (comprising 6 Elders who knew that there had been a fraud investigation involving Mr Otuo), Warby J concluded that he could, to a limited extent, decide the actual innuendo meaning of the words.

7. Warby J accordingly ruled that to an Insider, considered objectively, the words complained of will have conveyed the following true innuendo meanings: (1) that Mr Otuo had been disfellowshipped on the ground of fraud, and (2) that Mr Otuo was guilty of fraud. Warby J further determined that the words complained of were not capable of conveying any defamatory innuendo meaning to the Informed Audience. See *Otuo v Watchtower Bible and Tract Society of Britain* [2019] EWHC 571 (QB) at [32]-[59]. Before me, neither party sought to go beyond those rulings. In these circumstances, one issue for trial in this context is how many of the following 4 individuals pleaded by Mr Otuo and relied on in his evidence (see [137] of his witness statement dated 5 February 2019) were in fact Insiders: Anna Newitt, Richard Newitt, Sonia Greenidge, Olivier Da Silva. Once that factual issue has been resolved, it will be possible to say whether the Announcement bore a defamatory meaning to only the 6 Elders who already knew that there had been a fraud investigation involving Mr Otuo (one of whom was Mr Lewis, who made the Announcement, and was thus not a publishee), or to as many as 10 persons in total who already had that knowledge.

8. As set out in his Order dated 13 May 2016, following a hearing before him on the same date, Sir David Eady, sitting as a Judge of the High Court, ruled that the words complained of in Claim 2 bear the following natural and ordinary meanings: (1) that Mr Otuo had been disfellowshipped a year before the reinstatement meeting on the ground of fraud; (2) that Mr Otuo was guilty of fraud; and (3) that Mr Otuo was unrepentant.

9. In *Otuo v Watchtower Bible and Tract Society of Britain* [2019] EWHC 571 (QB), relying on a case summary prepared by the Defendants pursuant to an Order of HH Judge Parkes QC (sitting as a Judge of the High Court) dated 17 September 2018, Warby J stated at [24] that in relation to Claim 1 the following facts are not in dispute:

    (1) Mr Otuo was baptised as one of Jehovah's Witnesses on 26 December 1992. By virtue of his baptism he voluntarily accepted certain Bible-based beliefs and practices of Jehovah's Witnesses.

    (2) On or around 30 March 2012, Mr Otuo was disfellowshipped (excommunicated) as one of Jehovah's Witnesses, for the Biblical sin of fraud, by an Ecclesiastical Judicial Committee.

    (3) The disfellowshipping decision was upheld by an Ecclesiastical Appeal Committee in or around May 2012.

    (4) The Britain branch office of Jehovah's Witnesses, acting through the Christian Congregation of Jehovah's Witnesses ("CCJW"), subsequently reviewed the decision and on 11 July 2012 confirmed that the decision should stand.

    (5) Thus it was that on 19 July 2012, in accordance with the religious beliefs and practices of Jehovah's Witnesses, the Announcement was made by Mr Lewis.

10. In relation to Claim 2, the words spoken at the meeting on 22 July 2013 referred back to the disfellowshipping of Mr Otuo on 19 July 2012 and to the ground on which he had been disfellowshipped, namely "fraud". Moreover, those words were spoken by Mr Morley, who was the Chairman of the Judicial Committee which made the decision that Mr Otuo ought to be disfellowshipped, to Messrs Lewis, Sutton and Smith, who were the other 3 members of that Judicial Committee. Their decision was upheld by the Appeal Committee, also on the ground of "fraud". It was in issue before me whether the Appeal Committee's finding of "fraud" was made on the same basis as the finding of the Judicial Committee. If there was any difference, I consider that the Announcement must have reflected the finding of the Appeal Committee, as it was the decision of that Committee which led to the making of the Announcement. However, if there was some difference between the findings of the two Committees, on the evidence before me that difference was plainly known to Messrs Morley, Lewis, Sutton and Smith. In these circumstances, it seems to me that at the meeting Mr Morley must have used the word "fraud" in the same sense as he and Messrs Lewis, Sutton and Smith and indeed all Insiders (a group which knew about the fraud investigation involving Mr Otuo which

had taken place) would have understood from the making of the Announcement. I did not understand either Mr Otuo or the Defendants to suggest the contrary before me.

11. The parties referred at trial to various publications of Jehovah's Witnesses (some of which are written or published in the USA, and therefore use some American spellings):

    (1) "Insight on the Scriptures" states that fraud is "The intentional use of deception, trickery, or perversion of truth for the purpose of inducing another to part with some valuable right or thing belonging to him or to give up a legal right" ("the Primary Definition"). That definition goes on to state: "Fraud, as dealt with in the Bible, is generally associated with business relationships. Dishonest business dealings are forbidden by God's law". It also states (among other things) that "False forms of religion likewise are considered fraudulent in the Scriptures" and that Paul had stated that Christians who took one another to court were "wronging and defrauding their brothers by this action of going to court before unrighteous men and not before the holy ones in the congregation". According to these later references, expressions which relate to "fraud", such as "fraudulent" and "defrauding" have wider meanings in the Scriptures than apply in other contexts.

    (2) "Shepherd the Flock of God" is a publication which states that it "has been designed as a handbook for elders to supply vital information that will help them care for congregation matters". It contains detailed guidance on topics such as "Determining Whether a Judicial Committee Should be Formed", "Preparing for the Judicial Hearing", "Judicial Hearing Procedure", and "Appeal Hearing Procedure". Under the sub-heading "Offenses Requiring Judicial Decisions" it defines fraud in terms of the Primary Definition. It appears on the evidence before me to have been used as the basis for the procedure which was followed by the Elders who were involved in the material decisions concerning Mr Otuo.

    (3) By a letter addressed to Watch Tower Britain dated 15 December 2011, Messrs Morley, Lewis, Sutton and Smith asked for "some guidance in handling a judicial matter concerning an allegation of fraud on the part of Brother Otuo by Brother Wee". Under the heading "Refusal to pay – a judicial offence?" this letter referred to a statement in "Organised To Do Jehovah's Will" ("OJW") that the sins considered at Matthew 18 include "those involving financial and property matters – failure to make proper payment for something or some action involving a measure of fraud", and, further, suggested that, in accordance with a particular edition of "Watchtower", the non-payment of a loan or "a degree of deceit, fraud or trickery in business or financial matters" are sins.

    (4) By letter to the Body of Elders of the Wimbledon Congregation dated 4 January 2012, CCJW (as opposed to Watch Tower Britain) replied that "You believe that fraud as defined in *ks10 5:23* has taken place". Later, in response to a letter from the Body of Elders of the Wimbledon Congregation dated 16 February 2012 which was not in evidence, CCJW stated in a letter dated 16 March 2012: "Concerning the definition of fraud, we cannot go beyond what is referred to in

ks10 5:23". These two references to *ks10 5:23* are to the Primary Definition. Mr Morley accepted in evidence that the Judicial Committee followed this guidance from CCJW, and there is no reason to doubt that the Appeal Committee also acted in accordance with it.

12. Section 1 of the Fraud Act 2006 provides as follows:

> "1 Fraud
>
> (1) A person is guilty of fraud if he is in breach of any of the sections listed in subsection (2) (which provide for different ways of committing the offence).
>
> (2) The sections are—
>
> (a) section 2 (fraud by false representation),
>
> (b) section 3 (fraud by failing to disclose information), and
>
> (c) section 4 (fraud by abuse of position).
>
> (3) A person who is guilty of fraud is liable—
>
> (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both);
>
> (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine (or to both) …"

13. Sections 2, 3 and 4 of the Fraud Act 2006 provide:

> "2 Fraud by false representation
>
> (1) A person is in breach of this section if he—
>
> (a) dishonestly makes a false representation, and
>
> (b) intends, by making the representation—
>
> (i) to make a gain for himself or another, or
>
> (ii) to cause loss to another or to expose another to a risk of loss.
>
> (2) A representation is false if—
>
> (a) it is untrue or misleading, and
>
> (b) the person making it knows that it is, or might be, untrue or misleading.
>
> (3) "Representation" means any representation as to fact or law, including a representation as to the state of mind of—
>
> (a) the person making the representation, or
>
> (b) any other person.

(4) A representation may be express or implied …

3 Fraud by failing to disclose information

A person is in breach of this section if he—

(a) dishonestly fails to disclose to another person information which he is under a legal duty to disclose, and

(b) intends, by failing to disclose the information—

(i) to make a gain for himself or another, or

(ii) to cause loss to another or to expose another to a risk of loss.

4 Fraud by abuse of position

(1) A person is in breach of this section if he—

(a) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person,

(b) dishonestly abuses that position, and

(c) intends, by means of the abuse of that position—

(i) to make a gain for himself or another, or

(ii) to cause loss to another or to expose another to a risk of loss.

(2) A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act."

14. In these circumstances, it seems to me that for the purposes of both Claim 1 and Claim 2, the words complained of made reference to fraud within the scope of section 1 of the Fraud Act 2006. In my judgment, the Primary Definition plainly connotes dishonesty. Further, the Primary Definition falls within or overlaps with "making a false representation, and intending, by making that representation, to make a gain for the person making the representation or another, or to cause loss to another or to expose another to a risk of loss" (to paraphrase section 2(1) of the Fraud Act 2006). In reaching this conclusion, I find myself in agreement with Sir David Eady, when dealing with one of the numerous interlocutory hearings in this case. Sir David responded to a submission that the notion of "fraud" in the context of the present case was not such as to entail criminality, but rather bore a specific religious connotation, encapsulated in the Primary Definition, by observing that "I confess to some puzzlement, as it seems to be a distinction without a significant difference". Sir David further remarked with regard to the suggested distinction between "criminal" fraud and the type of fraud encapsulated in the Primary Definition that "I find it a difficult boundary to draw". See *Otuo v Morley & Anor* [2015] EWHC 1839 (QB) at [3], [4], and [9].

15. In *Otuo v Watchtower Bible and Tract Society of Britain* [2019] EWHC 571 (QB), Warby J also made reference to these observations of Sir David Eady when considering the meaning of "fraud" in the context of the true innuendo meanings which Warby J held that the Announcement would have conveyed to an Insider. Warby J stated at [52]: "As to the argument that fraud in this context bears some special meaning, nothing is pleaded to justify any special interpretation of the term in this context". Warby J thus rejected a submission that the words complained of in Claim 1 are not and cannot be defamatory: see [53].

16. It seems to me that, on the one hand, Warby J's rulings on meaning did not preclude the possibility of further argument at trial as to whether "fraud" bears some special meaning in the context of the present claims, but, on the other hand, they are consonant with the conclusion that it does not. If Warby J had considered for the purposes of the two true innuendo meanings that he found that "fraud" bore the wider meaning (extending beyond the Primary Definition) that is suggested by "Insight on the Scriptures", I do not consider that he would have reached the conclusions that he did. The reason for this is that not everything falling within the wider meaning suggested by "Insight on the Scriptures" would be likely to impute some conduct which is contrary to values which are shared by society in general (as opposed to only some part of society, such as Jehovah's Witnesses, or indeed Christians more generally). Therefore, if the words complained of in one or other or both of the present Claims referred to "fraud" in that wider sense, they would not be defamatory in accordance with the common law test discussed by Warby J in [53]. In other words, I consider that Warby J's rulings on true innuendo meaning are based on the premise that Insiders understood that the fraud investigation involving Mr Otuo related to fraud within the meaning of the Primary Definition (and not, for example, "false forms of religion"). This is understandable, because that investigation did, in fact, relate to financial dealings involving Mr Otuo.

17. For the purposes of the present Claims, I do not consider that the meaning of "fraud" is affected by the fact that the words complained of were spoken by Elders of the Wimbledon Congregation in the context of the outcome of an investigation as to whether Mr Otuo was guilty of the Biblical sin of fraud, and a discussion about whether he had shown repentance. Although there may be circumstances in which references to "Scriptural fraud" would fall outside the concept of "fraud" as used in the criminal law (or, for that matter, in civil law claims concerning deceit, fraudulent misrepresentation, and so forth), those circumstances do not arise on the facts of these particular Claims.

18. However, that context may be highly relevant to the state of mind of the individuals who spoke the words complained of or who were responsible for those words being spoken, and in particular to the issue of whether those individuals did or did not honestly believe that Mr Otuo was guilty of the sin of fraud and was unrepentant of it.

Slanders actionable per se

19. For these reasons, I hold that both the Announcement and the words complained of in Claim 2 that were spoken by Mr Morley at the meeting on 22 July 2013 are slanders actionable *per se*. Each imputed a crime for which Mr Otuo could be imprisoned.

20. This conclusion accords with the provisional view of Warby J, who, like Sir David Eady before him, has vast experience of this area of the law (although the fact that Warby J's view was only provisional also supports the view that his limited rulings on meaning were not intended to preclude further argument at trial as to whether "fraud" bears some special meaning in the context of (at least) Claim 2). In *Otuo v Watchtower Bible and Tract Society of Britain* [2019] EWHC 571 (QB), Warby J said at [59]:

> "I have not addressed the question of whether the defamatory meanings I have found are actionable *per se* without proof of special damage, which is not raised for decision on this application, but my provisional view would be that the imputation of fraud is actionable *per se* on the simple footing that it imputes a crime for which a person may be imprisoned."

The threshold of seriousness

21. The law of defamation is concerned with damage to reputation. For a publication to be actionable as a libel or a slander, it is a requirement that the words complained of convey a defamatory imputation. In addition, it is a requirement that the publication of the words complained of occasioned sufficient harm to the reputation of the claimant. In some cases, these requirements are not met because the imputation is not sufficiently serious. Gatley on Libel and Slander, 12th edn., (*"Gatley"*) states at para 2.4:

> "In addition to the requirement that the imputation conveyed must have an effect identified in one of the definitions discussed above, the imputation must meet the necessary level of seriousness. As Tugendhat J explained in *Thornton v Telegraph Media Group Ltd* [2011] 1 WLR 1985: 'Whatever definition of 'defamatory' is adopted, it must include a qualification or threshold of seriousness, so as to exclude trivial claims.'"

22. However, that is not the only basis on which the threshold of seriousness may not be met: "seriousness is a multi-factorial question" (*Cammish v Hughes* [2013] EMLR 13, Arden LJ at [40]). Decided cases illustrate some of the factors which may be material.

23. In *Jameel (Yousef) v Dow Jones & Co Inc* [2005] QB 946 (*"Jameel"*), Lord Phillips MR said at [68]-[70]:

> "… At the end of the day the trial will determine whether the publications made to the five subscribers were protected by qualified privilege. If they were not, it does not seem to us that the jury can properly be directed to

> award other than very modest damages indeed. These should reflect the fact that the publications can have done minimal damage to the claimant's reputation. Certainly this will be the case if the three subscribers who were in the claimant's camp prove to have accessed the Golden Chain list in the knowledge of what they would find on it and the other two had never heard of the claimant.
>
> If the claimant succeeds in this action and is awarded a small amount of damages, it can perhaps be said that he will have achieved vindication for the damage done to his reputation in this country, but both the damage and the vindication will be minimal. The cost of the exercise will have been out of all proportion to what has been achieved. The game will not merely not have been worth the candle, it will not have been worth the wick.
>
> If we were considering an application to set aside permission to serve these proceedings out of the jurisdiction we would allow that application on the basis that the five publications that had taken place in this jurisdiction did not, individually or collectively, amount to a real and substantial tort."

24. In *Lachaux v Independent Print Ltd* [2018] QB 594 (*"Lachaux"*) the Court of Appeal considered the requirement of serious harm contained in section 1 of the Defamation Act 2013. That provision is not applicable to either Claim 1 or Claim 2 due to their antiquity. However, some of the matters discussed by the Court of Appeal are of relevance to the position at common law, which has been discussed in cases such as *Thornton v Telegraph Media Group Ltd* [2011] 1 WLR 1985. In *Lachaux*, Davis LJ said at [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. Whether such evidence is in truth unanswerable and whether such matters are best resolved on a summary judgment application or best left to trial is then for the court to determine."

25. In the present case, at earlier stages of the litigation both Sir David Eady and Warby J declined to dismiss either Claim 1 or Claim 2 on the footing that they could be said to represent an abuse of the process of the court on the basis explained in *Jameel* at [55]:

> "Keeping a proper balance between the Article 10 right of freedom of expression and the protection of individual reputation must, so it seems to us, require the court to bring to a stop as an abuse of process defamation proceedings that are not serving the legitimate purpose of protecting the claimant's reputation, which includes compensating the claimant only if that reputation has been unlawfully damaged."

26. However, the fact that matters like those referred to in *Jameel* and *Lachaux* are left to trial does not mean that they cannot properly be revisited at trial. The contrary is true.

27. Besides Mr Otuo, who is irrelevant for these purposes, the only persons present when the words complained of in Claim 2 were spoken by Mr Morley were Messrs Lewis, Sutton and Smith. Together with Mr Morley, Messrs Lewis, Sutton and Smith were the members of the Judicial Committee which, in 2011-2012, had considered the grievance against Mr Otuo of Robert Wee, who had made a loan of all or most of his life savings at a time when both of those men were members of the Wimbledon Congregation, and had reached the decision that Mr Otuo should be disfellowshipped. In addition, Messrs Lewis, Sutton and Smith were well aware of subsequent events: specifically, the later findings of the Appeal Committee, Mr Otuo's application for a review of the decision of the Appeal Committee, and the making of the Announcement. Moreover, those 3 men (as well as Mr Morley) were also the recipients, or among the recipients, of Mr Otuo's two requests for reinstatement contained in his letters addressed to "The Body of Elders, Wimbledon Congregation" dated 29 October 2012 and 17 June 2013, the first of which they had turned down on the basis that it had been made too soon and the second of which (at least so far as all 4 of those Elders attending the reinstatement meeting were concerned) they were meeting with Mr Otuo to consider at the reinstatement meeting.

28. When Mr Morley spoke the words complained of, I have absolutely no doubt that Messrs Lewis, Sutton and Smith and each of them had already formed their own views about Mr Otuo, the decision to disfellowship him, and whether he was guilty of fraud. It is equally clear that they had also made their own assessment of whether he appeared repentant. Indeed, it was Mr Otuo's own case before me that he was demonstrably unrepentant, as was plain from both of his letters seeking reinstatement and from what he said at the reinstatement meeting before Mr Morley spoke the words complained of. In referring in brief and essentially clarifying terms to the events and findings of the previous year, and to whether Mr Otuo was unrepentant, those words said nothing harmful to Mr Otuo's reputation that was not already well known to Messrs Lewis, Sutton and Smith, and in respect of which they had not already formed their own views.

29. Mr Lewis gave evidence at the trial, although Messrs Sutton and Smith did not. Mr Otuo did not suggest, and it is hard to see how he could have suggested, to Mr Lewis that the words complained of caused Mr Lewis to think any less well of Mr Otuo than he did before those words were spoken. Nor was it suggested, or could it realistically have been suggested, that different considerations apply to Messrs Sutton and Smith. To put the words complained of in Claim 2 in context, the relevant part of the reinstatement meeting followed a lengthy statement by Mr Otuo of all the antecedent material events as he saw them. The relevant part reads as follows ("JM" refers to Mr Morley, "FO" refers to Mr Otuo, and the underlining identifies the words complained of in Claim 2):

> JM: "Alright. <u>So just going back to July of last year when you were disfellowshipped and it was, I think it was the 19th, but it (inaudible), is</u>

that correct? Yeah, I think it was. Yeah. Do you, how do you view then what you were disfellowshipped for? Do you understand what you were disfellowshipped for?"

FO: "Well the, you know, the allegation before me, before what you alleged was that I defrauded Robert."

JM: "Right."

FO: "I think my position at the time was that, you know, I think there's a misunderstanding and, you know, hence I wouldn't put it in that respect … And I still cannot, you know, pray to Jehovah many times, I can't find where, you know, the issue of fraud fits into the situation which is the business arrangement with Robert … So if you what you are asking me is that the reason why I was disfellowshipped, which [is] the accusation of fraud, then after a year I feel very strongly about it."

JM: "Strongly in what regard?"

…

FO: "… But as far as, you know, fraud is concerned, it's an extremely heavy allegation which has to be dealt with lots of care. And I've been trying to find out, you know, I don't think we ever got to the bottom for me to really understand why this was classified as fraud, even within the definitions of our own guidelines. So, yes, I would accept that the business arrangement has put Robert through a lot, which I'm very, you know, disappointed and sorry about what has happened. But as far as the fraud situation is concerned, I think that is too heavy to carry."

JM: "Okay. So, I mean, just to summarise what I thought you said, is that even today you wouldn't accept that it was fraud? That's what you seem to be saying. Is that your position?"

FO: "I think, John, that's my position … And I don't want to sit here … and lie to any of you."

…

JM: "Okay. That's alright. And we respect that and appreciate, we wouldn't want you to lie to us, that would be counterproductive anyway …

I guess the other question I would like to ask you, Frank, though is you've got four brothers here who've spent a lot of time on this matter as you know. You had three other brothers on the appeal committee who spent a lot of time on it. And after that, the branch had a look at all of it, yeah? So do you, have you not considered that with that process that was gone through, and that the conclusion was, on the part of the original committee, the appeal committee and the branch, that it was a fraudery situation, do you not feel you ought to really reflect on whether you've understood the matter correctly?"

30. In these circumstances, I am unable to accept that the utterance of the words complained of in Claim 2 occasioned any, let alone more than trivial, harm to Mr Otuo's reputation. In my judgment, from the perspective of the Defendants, the facts of Claim 2 are plainly and markedly stronger than those contemplated in *Jameel* and *Lachaux*: it is not in dispute that the number of publishees was limited to 3 individuals; those 3 individuals cannot have been remotely surprised to hear Mr Morley speak the words complained of (not least because, so far as Mr Morley and they were concerned, the essential purpose of the reinstatement meeting was to explore the extent to which Mr Otuo had demonstrated repentance); those words told those 3 individuals nothing they did not already know; those words referred to matters in respect of which they had already formed their own views, which those words did not influence in any way, let alone in a manner that was harmful to their perception of Mr Otuo's reputation; there is no suggestion of any wider publication whether by means of grapevine percolation or at all; and, overall, no suggestion was made and nor could any such suggestion credibly have been made that anyone thought any the less of Mr Otuo by reason of the publication. I put this latter point to Mr Otuo during the course of the trial, so as to afford him an opportunity to answer it, but he was unable to provide a cogent answer.

31. For these reasons, I would dismiss Claim 2 on the simple basis that I am not satisfied that publication of the words complained of caused any harm to Mr Otuo's reputation.

32. Turning from Claim 2 to Claim 1, the same reasoning leads to the conclusion that the publication of the Announcement to the 6 Elders who are admitted to have been present in the Wimbledon Congregation on 19 July 2012 caused no harm to Mr Otuo's reputation. With regard to 3 of those Elders – Messrs Morley, Lewis and Sutton – the same considerations apply as apply with regard to the words complained of in Claim 2, save only that the true innuendo meanings of the Announcement as found by Warby J contain no imputation that Mr Otuo was unrepentant. With regard to the other 3 Elders – Mani Rahmani, William Dallas and Ken Gracias – there were no more than 6 Elders in the Wimbledon Congregation at that time. Further, disfellowshipping was a rare occurrence. In addition, all the Elders, or at least all the Elders who were available from time to time to take part, would have had some role in the investigation involving Mr Otuo, and, in any event, I have no doubt that they would all have taken an interest in, and been informed about, the various stages of that investigation. In this regard:

    (1) Mr Gracias (who gave evidence in response to a witness summons which was served on him by Mr Otuo) told me that he believes that he was party to the decision to appoint Messrs Lewis and Sutton (i.e. to carry out an initial investigation of Mr Wee's then complaint against Mr Otuo) in 2010; that he recollects them reporting back to the other Elders of the Wimbledon Congregation, he believes at a meeting; that the process of appointing a Judicial Committee would only have been justified if there was material before the Elders that raised a serious question; that in selecting the Elders to serve on the Judicial Committee the Elders of the Wimbledon Congregation would "try for the most appropriate brothers"; and that (for various reasons

which he explained) that left Messrs Lewis, Sutton, Morley and him, out of which Messrs Lewis, Sutton and Morley were chosen, with the decision to appoint Mr Morley as chairman being made by "the body of Elders".

(2) Further, it is Mr Otuo's own case, contained in Further Information dated 31 May 2014 concerning his Particulars of Claim in Claim 1, that Mr Dallas "knew of the specific allegation of fraud" and that Mr Otuo had spoken to Mr Rahmani about the allegation after the Judicial Committee had decided to disfellowship him and that Mr Rahmani "was thus in full knowledge prior to [the Announcement being made]".

33. It can readily be inferred, and I find, that, before the Announcement was made, Messrs Rahmani, Dallas and Gracias had also formed their own views about the subject matter of the investigation, and accordingly about whether Mr Otuo was guilty of fraud and whether he ought to be disfellowshipped on that ground. There was no suggestion that they disagreed with, or indeed had any reason why they might have disagreed with, the decision of the Judicial Committee, which had been upheld by the Appeal Committee, and endorsed by CCJW. There is no basis in logic or reason or on the evidence that was before me to support the conclusion that the Announcement caused any of them to think any less well of Mr Otuo than they did before the Announcement was made.

34. This is especially so because, as would have been known to all the Elders in the Wimbledon Congregation (and indeed, according to Mr Otuo's evidence in his witness statement dated 5 February 2019, this was "inarguably common knowledge to at least the seventy-five members who were present [on 19 July 2012]"), the fact and form of the Announcement were prescribed as the culmination of a disfellowshipping process. In this regard, OJW (which was pleaded by Watch Tower Britain in its Amended Defence, but which was in fact deployed at trial by Mr Otuo) provides as follows:

> "ANNOUNCEMENT OF DISFELLOWSHIPPING
>
> When it is necessary to disfellowship an unrepentant wrongdoer from the congregation, a brief announcement is made, simply stating: "[Name of person] is no longer one of Jehovah's Witnesses". There is no need to elaborate. This will alert faithful members of the congregation to stop associating with that person.(1 Cor. 5:11) The presiding overseer should approve this announcement."

35. In fact, it forms part of Mr Otuo's pleaded case that all 6 of the Elders who were present when the Announcement were made had come to know of the allegation of fraud against him because "they were "Elders" of the congregation who allegedly formed a judicial committee of four persons to hear the case". Even in the absence of the evidence of Mr Gracias and the above Further Information, it could readily have been extrapolated from this that all 6 of them also knew the outcome of the investigation, and that it had resulted in a decision upholding that allegation which would result in the Announcement being made, before the Announcement was made on 19 July 2012. I am unable to accept that, so far as any of those 6 Elders were concerned, the Announcement

caused any harm to Mr Otuo's reputation. It alleged nothing against him that was not already known to them, and in respect of which they had not already formed their own views, which views would not have been affected by the making of the Announcement.

36. So far as concerns the other individuals who Mr Otuo relies on in support of his case on innuendo meaning, his pleaded case is that Mr and Mrs Newitt "had picked up the information [i.e. that the investigation of Mr Otuo concerned an allegation of fraud] in the chatter rooms of the elders at the time". His pleaded case concerning Ms Greenidge and Mr Da Silva is that they were friends with his wife and "she had confided in them regarding the enormity of the allegation that was being levied against [him]".

37. Mrs Otuo, a midwife, attended to give evidence in response to a witness summons which had been served on her by Mr Otuo. With regard to Mr Da Silva and Ms Greenidge (who is also known as Mrs Da Silva), Mrs Otuo said that she spoke to them to find solace, and told them in conversations before the Announcement was made but "after the decision" that Mr Otuo was being investigated for fraud. With regard to Mr and Mrs Newitt, Mrs Otuo said that they had heard on the grapevine that an investigation was going on with regard to Mr Otuo and that he was being disfellowshipped for fraud, that they approached her, and that she provided details of the problem, and specifically that Mr Otuo was facing an allegation of fraud. Under cross-examination, Mrs Otuo said that, before she discussed matters with them, all these individuals already knew that allegations of fraud were being made against Mr Otuo.

38. When asked by Mr Otuo "Anyone else [i.e. in addition to Mr Da Silva, Ms Greenidge, and Mr and Mrs Newitt]?", Mrs Otuo replied "Mrs Donoghue was also aware". However, Mr Otuo's pleaded case concerning innuendo meaning makes no mention of Mrs Donoghue. Indeed, no one of that name is mentioned anywhere in his pleaded case, whether in the Particulars of Claim or in the Further Information dated 31 May 2014 in which he listed, as far as he was able, all those present when the Announcement was made. Nevertheless, during the course of closing arguments, Mr Otuo told me that Mrs Donoghue is included under another name as being one of the persons he pleads to have been present in the Wimbledon Congregation when the Announcement was made.

39. In these circumstances, I am unable to treat Mrs Donoghue as an additional Insider to the 4 individuals pleaded by Mr Otuo. There is no evidence that she and any individual included under another name in Mr Otuo's pleaded case as being present when the Announcement was made are one and the same person. Further, Mrs Otuo's evidence as to what Mrs Donoghue knew was both terse and vague. In addition, Mr Otuo's question had the appearance of expecting an affirmative answer, although it was not preceded by any intimation of an intention to add to the 4 individuals relied upon in support of his case on innuendo meaning. In particular, there was no witness statement from Mrs Otuo, because, although Mr and Mrs Otuo are married and live together as part of a family with children, she did not provide a witness statement, and only attended to give

evidence in response to a witness summons which he served on her; and nor was any summary of her evidence provided by Mr Otuo. It is therefore unsurprising that Mrs Otuo's brief reference to Mrs Donoghue was not pursued any further by either Mr Otuo or Mr Brady. For these reasons, I propose to say nothing further about Mrs Donoghue.

40. Neither Mrs Otuo's evidence nor any evidence given by Mr Otuo either in his witness statement or orally sheds any light on what Mr Da Silva, Ms Greenidge and Mr and Mrs Newitt made of the allegations against Mr Otuo, and whether in fact they thought any the less of Mr Otuo after the Announcement was made than they did before it was made. If (as seems to be true of Mr Da Silva and Ms Greenidge at least) they knew in advance of the Announcement that a decision to disfellowship Mr Otuo had been taken, following an investigation for fraud, and especially if (as suggested by Mr Otuo's evidence) they knew that the Announcement was no more and no less than a consequence of that decision, I find it difficult to see that the making of the Announcement had any or any significant adverse effect on his reputation so far as they were concerned. Borrowing from the judgment in *Jameel*, all or some of them may have been "in the claimant's camp" and may have attended meetings of the Wimbledon Congregation in the knowledge that sooner or later they would access the Announcement if they did so. On the other hand, if and to the extent that they knew nothing more than that Mr Otuo was being investigated for fraud, and they only learned of the outcome of that investigation for the first time due to the Announcement being made, I can see force in the argument that the publication of the Announcement caused more than trivial harm to his reputation. In those circumstances, the Announcement converted the defamatory imputation that they knew to be levelled against him from one that there were grounds to investigate him for fraud to the much more serious one that he was guilty of fraud: see *Chase v News Group Newspapers Ltd* [2003] EMLR 218.

41. The points discussed above can be illustrated by the following examples:

    (1) If someone complains about the conduct of a candidate in an examination, and a board of examiners meets to consider the complaint and decides that the candidate has cheated and should be disqualified for that reason, the posting of a notice of the examination results in which the candidate's name is either omitted or listed together with some neutral expression such as "Not placed" will not harm the candidate's reputation when published to the members of the board. If the members of the board inform other examiners about their decision before the results are posted, the notice will not harm the candidate's reputation when published to those other examiners. If the candidate or the candidate's spouse or partner decides to tell a number of friends about the decision and the basis for it after the decision has been made and before the results are posted, the notice will not harm the candidate's reputation when published to those friends. In contrast, if friends learn of an allegation of cheating against the candidate and that it is being considered by the board of examiners, and learn for the first time as a result of the publication of the notice that the board of examiners has decided that the candidate has cheated, then the publication of the notice to them will probably

cause appreciable harm to the candidate's reputation. An allegation of cheating (and, similarly, of fraud) is very serious, and whether any publication causes more than trivial harm to reputation is not a "numbers game". As was said by Davis LJ in *Lachaux* at [82(3)], for example: "If the meaning ... is evaluated as seriously defamatory it will ordinarily … be proper to draw an inference of serious reputational harm". However, if the friends take the side of the candidate, and do not in fact believe that the candidate has cheated in spite of the decision of the board of examiners, that inference may be negated in part or even entirely.

(2) If A receives and reads an email from B which accuses C of fraud, that publication will cause harm to C's reputation for which, on the face of it, C will be entitled to compensation. If A reads the email twice, or for that matter a number of times, that will not increase the harm that B's single accusation of fraud occasions to C's reputation, or C's entitlement to compensation. If A is sent emails by B in identical terms at two different email addresses, and reads both of them, I consider that the better view is that the same applies; at least, the additional harm to C's reputation occasioned by the second email would be trivial, and C's entitlement to additional compensation would be minimal. The same applies if B sends an email to A's secretary saying that B has sent the accusatory email to A's home email address and asking the secretary to make sure that A reads it because it contains important information about C, and the secretary passes that information on to A after A has already read the accusatory email, such that the secretary's message reminds A of what A has already read.

42. In the present case, the decision of the Judicial Committee to disfellowship Mr Otuo on the ground that he was guilty of fraud was made in March 2012, the decision of the Appeal Committee to uphold that decision was made in May 2012, and the Announcement was not made until July 2012, and about a week after the CCJW had reviewed the latter decision and decided that it should stand. CCJW's decision was communicated to Mr Otuo, although no material letter was before me. It is clear from the evidence of Mr and Mrs Otuo, and I would readily infer in any event, that they found these decisions distressing, and that they had a profound and dramatic effect on their lives. As a practising Jehovah's Witness, Mrs Otuo is likely to have attended many meetings of the Jehovah's Witnesses during those months. Mr Da Silva, Ms Greenidge and Mr and Mrs Newitt were all members of the Wimbledon Congregation, who Mrs Otuo had turned to for support, or who had approached her to provide support in connection with her predicament resulting from Mr Otuo being investigated for fraud. I consider that it is far more likely than not that Mr Da Silva, Ms Greenidge and Mr and Mrs Newitt learned from Mrs Otuo at least the major events as that investigation unfolded, including that the Judicial Committee and later the Appeal Committee had decided that the allegation of fraud against Mr Otuo had been made out and that he should be disfellowshipped for that reason. In my view, it is improbable that Mrs Otuo would have told them the nature of the allegation against Mr Otuo and not also have told them how the investigation was progressing, and specifically with what results as far as Mr Otuo and she were concerned. I consider Mrs Otuo's evidence that she spoke

to Mr Da Silva and Ms Greenidge "after the decision" and that she provided Mr and Mrs Newitt "with details of the problem" accords with, and supports, this conclusion.

43. Therefore, before the Announcement was made these 4 individuals already knew about these decisions and the basis for them, and harm had already been caused to Mr Otuo's reputation by Mrs Otuo's publication to them of findings that he was guilty of fraud and should be disfellowshipped for fraud. I am unable to see how the publication of the Announcement to these 4 individuals caused any additional harm to his reputation. The Announcement itself was in neutral terms, and, moreover, on Mr Otuo's own evidence, was something that all 4 of these individuals would expect to follow inexorably from the decision that he should be disfellowshipped for fraud. In these circumstances, although I consider the position is more complicated than with regard to Claim 2, I have reached the conclusion that Claim 1, also, does not cross the threshold of seriousness.

44. These findings are sufficient to dispose of both claims. However, as all the other issues were argued in full, and in case these claims go further, I will consider them as well.

What the documents show

45. The Memorandum of Constitution of the London Wimbledon Congregation of Jehovah's Witnesses is dated 29 May 1997. It is in standard form: the words "London Wimbledon" and the address of the Wimbledon Congregation have been inserted in manuscript in an otherwise printed text; and the papers before me include a resolution dated 29 May 1997 to adopt the "Model Constitution for the use of Congregations of Jehovah's Witnesses in England and Wales as approved by the Watch Tower Bible and Tract Society of Pennsylvania [which I will refer to as "Watch Tower Pennsylvania"] and the Charity Commissioners". It defines "the Body of Elders" as "The Congregation Members from time to time appointed by the Society as Elders of the Congregation". It defines "Ministerial Servants" as "The Congregation Members from time to time appointed by the Society to serve the Congregation as Ministerial Servants". It defines "the Society" as "The incorporated body known as [Watch Tower Pennsylvania] … in association with the incorporated body known as International Bible Students Association [which I will refer to as "IBSA"] … (or such incorporated or unincorporated body as may be used by or succeed to the Society in respect of the organisation of Jehovah's Witnesses in Great Britain)". Both Watch Tower Pennsylvania and IBSA were registered charities, and in keeping with the terms of the resolution to adopt the Model Constitution, it appears that the requirements of the Charity Commissioners were the driver, or one of the drivers, behind this form of Constitution coming into existence.

46. Mr Otuo relied on the Constitution for two principal points. First, the statement that it was "the Society" (which he argued to be Watch Tower Britain as the successor of Watch Tower Pennsylvania) which appointed the Elders of the Wimbledon

Congregation. This is relevant to Mr Otuo's case on vicarious liability. Second, the fact that the Constitution makes no mention of disfellowshipping. This is at the heart of his case that the decision to disfellowship him was *ultra vires*. I shall return to these points.

47. The Articles of Association of Watch Tower Britain are dated 25 October 1999. The version before me states that they have been altered by Special Resolutions passed on 19 April 2000, 21 November 2013, and 13 April 2016, but it does not reveal what alterations were made or when they were made. Article 10 provides: "In the Memorandum and in these Articles … 'elder' means a person appointed by the Governing Body of Jehovah's Witnesses to serve in that capacity". Mr Brady relied on these Articles in support of his case that, whatever may have been correct or may have been envisaged in May 1997, from at least October 1999 the appointment of Elders was not the responsibility of Watch Tower Britain. This was part of a wider submission that Watch Tower Britain "had no role whatsoever in the events in either of these claims".

48. Mr Brady also relied on Article 1.5.4 of the Articles of Association of Watch Tower Britain, which provides: "Membership is terminated if the member concerned … ceases to be one of Jehovah's Witnesses, on the date on which a determination is made that he is no longer one of Jehovah's Witnesses ([OJW] pages 154, 155)". Pages 154 and 155 in OJW refer to the processes of disfellowshipping and "disassociation" respectively. Mr Brady relied on this Article as illustrating and supporting a wider proposition, namely that becoming or ceasing to be one of Jehovah's Witnesses is a matter of religious process which is not addressed, and which one would not expect to be addressed, in the Memorandum of Constitution of the London Wimbledon Congregation, which (1) proceeds on the footing that "Congregation Members" are "Persons belonging to the beliefs and practices of the denomination known as Jehovah's Witnesses … as shown in the records of the Congregation" (see the definitions in Article 1 of the Constitution), and (2) does not purport to be a complete code of the religious rules and procedures of Jehovah's Witnesses, but is instead drawn up for the limited purpose of complying with charity registration requirements. Mr Brady submitted that such a distinction, between religious powers on the one hand and instruments which operate in the discrete area of the law of charities on the other, is not unique, but, on the contrary, was recognised and applied by Simon Brown J (as he then was) in *R v Chief Rabbi of the United Hebrew Congregation of Great Britain and the Commonwealth* [1992] 1 WLR 1036 at 1043:

> "… the United Synagogues Act 1870 … as its long title states, it is no more than an Act to confirm a scheme of the Charity Commissioners to enable the synagogues encompassed within it to enjoy charitable status, assuming always they organise their affairs in accordance with its provisions. The subsequent deed of foundation and trust is merely an instrument amending the scheme. In short, the Act operates in the discrete area of the law of charities. Unsurprisingly, it recognises the existence and essential role of the Chief Rabbi. It cannot, however, be construed either as conferring upon him disciplinary powers that he would not otherwise have

had or as indicating Parliament's interest in, and concern to underpin, such powers."

49. On 22 June 2008, a loan agreement ("the Loan Agreement") was signed by Mr Otuo and Mr Wee. It was witnessed by Mr Dallas, an Elder of the Wimbledon Congregation who attended to give evidence before me in response to a witness summons that was served on him by Mr Otuo. Mr Dallas is 85 years old (he was born on 3 April 1934), and he could not remember most of the matters which he was asked about by Mr Otuo. However, Mr Dallas did feel able to confirm that Mr Wee "gave the loan voluntarily".

50. The Loan Agreement is expressed to be made "Further to the agreement entered into on the 22nd of June 2008 by Messrs Frank Otuo … and David Raymond Brierley … and 'The Company' Brierley and Otuo Ltd [which I will refer to as "the Company"]". That further agreement is headed "Declaration of Assets for Purpose of Loan Guarantee" and it is signed by Mr Otuo, Mr Brierley, and by Mr Otuo a second time "For & On behalf of" the Company ("the Further Agreement"). The Loan Agreement states that, further to the Further Agreement, Mr Otuo as the "Executive Director" of the Company "is authorised to proceed as follows", that is to say (among other things):

> "To receive into the bank accounts of The Company … £175,000 from [Mr Wee] … to finance various business of The Company …
>
> [Mr Wee] will receive gross interest … based on an annual interest rate of 7.75% …
>
> The loan is repayment (sic) in full on 30th of June 2009.
>
> Consequently the amount payable to [Mr Wee] … shall be [£188,562.50] which is due on 30th June 2009.
>
> This contract shall be interpreted in conjunction with the earlier contract entered into, copies of which are held by [Mr Wee]."

51. The Further Agreement begins by confirming that Mr Otuo and Mr Brierley are directors of the Company, which is in the business of property development. It then acknowledges that Mr Otuo "has secured a loan of £175,000 from [Mr Wee] … to finance various business transactions on behalf of the Company". It then states that "All parties have agreed that interest will be paid at 7.75% per annum", that the loan shall be redeemed on 30 June 2009, and that £188,562.50 (defined as "the payment") shall be payable on 30 June 2009. Before listing the assets "mentioned hereunder" which comprise 7 London properties in SE27, SW11 and SW2, it then provides as follows:

> "In the event that the payment has not been made [Mr Otuo and Mr Brierley] and 'the Company' will have by virtue of this agreement authorised the sale at current market values of all their assets mentioned hereunder to pay the debt owed to [Mr Wee]."

52. Mr Otuo's case is that Mr Wee's loan was made to the Company, that the Company alone assumed any obligation to pay £188,562.50 to Mr Wee, and that the Loan Agreement and the Further Agreement gave rise to no personal obligations on his part (or on the part of Mr Brierley) towards Mr Wee. Although it is unnecessary for me to decide whether that case is right, I do not consider that it is. More importantly, in my judgment Mr Morley and the other Elders who were involved in considering Mr Otuo's dealings with Mr Wee could, and as I find on the evidence before me in fact did, both honestly and reasonably take the view that the Loan Agreement and the Further Agreement gave rise to obligations in favour of Mr Wee not only on the part of the Company but also on the part of Mr Otuo (and for that matter Mr Brierley) personally.

53. Although the Loan Agreement makes clear that Mr Wee's loan is to be received by the Company, it does not state that Mr Otuo signed it "for and on behalf" of the Company. Further, it refers to the Further Agreement, and would appear to fall to be interpreted in conjunction with the Further Agreement. The statement in the Further Agreement that Mr Otuo "has secured a loan of £175,000 from [Mr Wee]" to provide finance for the Company may reflect either (i) that Mr Otuo borrowed the money personally (albeit for the purposes of the Company), which is consistent with Mr Otuo's signature on the Loan Agreement not being expressed to be "for and on behalf of the Company", or (ii) that although Mr Otuo had secured the loan he had done so only for and on behalf of the Company. In any event, it is clear not only from the language used but also from the fact that they signed it personally as well as for and on behalf of the Company, that Mr Otuo and Mr Brierley assumed personal obligations under the Further Agreement. As the Further Agreement is to be read together with the Loan Agreement, it is apparent that those obligations were assumed towards Mr Wee. Those obligations appear to extend to an obligation to sell the 7 properties listed in the Further Agreement (whether owned by Mr Otuo, Mr Brierley, or the Company) to pay £188,562.50 to Mr Wee if it was not otherwise paid on 30 June 2009. That is the effect of the "Loan Guarantee".

54. In fact, it appears from an agreement dated 11 January 2011 ("the Partnership Dissolution Agreement") that Mr Brierley and Mr Otuo were partners pursuant to an agreement dated 22 July 2008, that Mr Brierley was the registered proprietor of (among others) the properties listed in Schedule 1 to the Partnership Dissolution Agreement (which included all 7 of the properties listed in the Further Agreement), and that Mr Brierley held some of the properties listed in Schedule 1 to the Partnership Dissolution Agreement on trust for himself and Mr Otuo as tenants in common in equal shares. All this accords with the conclusion that the Further Agreement contained personal obligations on the part of Mr Brierley and Mr Otuo to sell the 7 properties listed in the Further Agreement to pay £188,562.50 to Mr Wee if it was not paid on 30 June 2009.

55. In a document entitled "Overview of judicial matter" which he prepared in late 2011 for the purposes of briefing Mr Smith after the decision to set up a Judicial Committee had been taken ("the Overview"), Mr Morley stated that Mr Wee had been paid nothing by 30 June 2009, that Mr Wee initially agreed to wait for a further 6 months (until about 1

January 2010) for payment, and that Mr Wee then followed "the Matthew 18 procedure". This is a reference to the steps to be followed where "your brother commits a sin" extracted from Matthew 18: 15-17, comprising (1) laying bare the fault to the sinner alone, (2) if the sinner does not listen, taking along one or two witnesses to establish the matter, (3) if the sinner still does not listen, speaking to the congregation, and (4) following which, if the sinner does not listen even to the congregation "let him be to you just as a man of the nations and a tax collector". On the evidence before me, for the Jehovah's Witnesses compliance with step 3 is achieved by referring matters to the Elders, and compliance with step 4 by the process of "disfellowshipping".

56. The Overview states that, in these circumstances, Messrs Lewis and Sutton "were involved in March 2010 and after meeting with both parties determined that the matter was not fraud but rather the failure to repay a loan … Bro[ther] Otuo was urged on several occasions to find a way to resolve this matter with Bro[ther] Wee satisfactorily. He promised to do so." The evidence at trial clarified that Messrs Lewis and Sutton were also of the view that Mr Wee had not yet properly followed steps 1 and 2 of Matthew 18:15-17. At the trial, Mr Otuo suggested that Mr Wee did not approach the Elders until June 2010. However, the precise date of the approach is immaterial. In any event, I consider it more likely than not that the date given in the Overview is correct.

57. Mr Otuo further contended that Mr Morley's suggestion in the Overview that there were grounds for considering the issue of fraud at the time when Mr Wee approached the Elders in 2010 was untrue, and that this was evidence of malice on the part of Mr Morley. I consider that much of Mr Otuo's argument on this issue depended on his contentions that (1) no suggestion was made to the Elders that Mr Wee was subjected to any form of fraud at the time the Loan Agreement was made, (2) this was the only time at which Mr Otuo could have been guilty of the sin of fraud in accordance with the Primary Definition, and (3) therefore Mr Morley (and other Elders) could not honestly have formed the belief that Mr Wee's complaint involved an allegation of fraud against Mr Otuo. In my opinion, however, as discussed further below, the second and third of these contentions are unsound. In fact, I do not consider that it is clear that Mr Morley's words should be read as suggesting that an allegation of fraud had been made in 2010. Mr Morley wrote the Overview in late 2011, and after the receipt of Mr Wee's letter dated 23 September 2011 which is discussed below, and I consider that his words could be read as intended to convey the message that Messrs Lewis and Sutton "determined that the matter was not (in contrast to what has subsequently been suggested) fraud but rather the failure to repay a loan". In any event, I reject the suggestion that Mr Morley's summary is evidence of malice: if Mr Morley had been motivated to skew the narrative adversely to Mr Otuo, it would have made no sense for him to fabricate that Mr Wee's complaint provided grounds for considering the issue of fraud only to say (as he did) that Messrs Lewis and Mr Sutton did not find fraud but only a failure to repay a loan. It was their conclusion which mattered most for purposes of the Overview. To state or suggest that they had considered and rejected an allegation of fraud which Mr Morley knew that Mr Wee had not made would reflect badly on Mr Wee, and not on Mr Otuo.

58. There is no doubt that (whatever the exact trigger for it may have been) an investigation was carried out by Messrs Lewis and Sutton. This was in accordance with the procedures of Jehovah's Witnesses at the time. As set out above, it would seem that the Elders in the present case took their guidance from "Shepherd the Flock of God". However, the same procedures are set out in OJW, a book which Mr Otuo relied upon and which describes itself as "the basic procedure manual for members of the religion Jehovah's Witnesses" and as being "only provided to members". OJW was published in 2005 by Watchtower Bible and Tract Society of New York Inc ("Watchtower NY"), although the copyright is owned by Watch Tower Pennsylvania. Under the heading "Handling Serious Wrongdoing", OJW states:

> "Regardless of the manner in which the elders first hear reports of serious wrongdoing on the part of a baptized member of the congregation, an initial investigation will be made by two elders".

59. At the time of these events, Mr Otuo was a ministerial servant. OJW states that ministerial servants render practical services, and that their work generally involves non-teaching responsibilities, but that in time they may be recommended to serve as elders. In the meantime, they are "expected to lead a wholesome Christian life, be responsible men, and give proof that they are able to care for assignments properly". Mr Wee's complaint resulted in Mr Otuo being deleted as a ministerial servant. According to OJW, whenever a branch office is established, local congregations under each branch are organised into circuits and "A circuit overseer is appointed to serve the congregations in each circuit". The circuit overseer for the Wimbledon Congregation was Justin Shaw, and he explained the reasons for Mr Otuo's deletion in a letter dated 7 May 2011, which was signed by Messrs Shaw, Morley, Gracias and Lewis. That letter stated that Mr Otuo had taken out a business loan for £175,000 from Mr Wee, promising to repay the loan plus interest on 30 June 2009 and offering 7 properties that he owned as a guarantee, which were to be sold if the loan was not repaid on the given date. It then stated that, although Mr Wee had tried various approaches, almost 2 years had passed since the agreed repayment date, and no repayment had been made, and no properties had been sold. It then stated: "The elders unanimously recommend that Frank be deleted as a ministerial servant, and I agree. They feel he does not qualify on the basis … He is no longer 'irreprehensible' and lacks 'great freeness of speech' (1 Tim 3:2, 13)". It concluded by saying that, after repeated meetings with the elders, Mr Morley and Mr Shaw had met with Mr Otuo and explained the reason for the recommendation, and that he had agreed that he did not qualify as a ministerial servant.

60. It was Mr Otuo's case that the matter came to be raised with Mr Shaw because when Mr Morley suggested that he no longer qualified as a ministerial servant he did not agree. It was also Mr Otuo's case that when he met with Mr Shaw he did not agree that he was not qualified to continue as a ministerial servant, but nevertheless agreed to stand aside because he was persuaded that he could not easily continue in a working relationship with Mr Morley and the other Elders of the Wimbledon Congregation once Mr Morley had expressed an adverse view about him. Mr Otuo's version of the reason he was

deleted is contradicted not only by the evidence of Mr Morley but also by the terms of this letter from Mr Shaw, who Mr Otuo did not suggest to be unreliable or biased against him, and I reject it. However, the terms of the letter do not assist as to whether Mr Morley became hostile towards Mr Otuo because he did not bow down to Mr Morley's perception of his conduct and his suitability to continue as a ministerial servant. According to Mr Otuo, this incident and the antipathy towards him that it engendered, which Mr Morley denies, explains why Mr Morley was thereafter actuated by malice towards him, and I shall have to return to it when I consider malice below.

61. The formal recommendation that Mr Otuo should be deleted as a ministerial servant was contained in a form dated 3-8 May 2011 that was signed by Messrs Shaw, Morley, Gracias and Lewis. This form states that Mr Otuo "No longer qualifies (see attached letter)", and that Mr Otuo agreed with this. It also contains (i) a section for "New Elder Recommendations", (ii) a recommendation for the appointment of a new ministerial servant, and (iii) the names and other details of the individuals who were at that time appointed as Elders and ministerial servants of the Wimbledon Congregation. It is addressed to "Branch Office Jehovah's Witnesses". Mr Brady relied upon it in support of a submission that (contrary to Mr Otuo's case, based primarily on the Constitution of the Wimbledon Congregation) by May 2011 at least the responsibility for the appointment of Elders lay not with Watch Tower Britain but with the Branch Office.

62. In the meantime, Mr Wee had moved to the Blackheath Congregation and had been pursuing attempts to resolve matters with Mr Otuo, assisted by an Elder of that congregation, Andrew Davidson. These events were summarised in the Overview as follows: "Bro[ther] Wee assisted by Bro[ther] Davidson (elder from Blackheath) has followed Matthew 18 procedure in an attempt to resolve the matter. They have also been in contact with Bro[ther] Brierley in Dubai (the other party to the loan agreement). They have had no success." It formed part of Mr Otuo's case on malice that Mr Morley involved himself in these events by corresponding with Mr Davidson, without Mr Otuo's knowledge, and in a way that gave rise to Mr Morley seeing his private emails.

63. On 19 July 2011, CCJW was formed. It is a non-profit unincorporated association. According to its Constitution dated 19 July 2011 its purpose is to "provide spiritual guidance and direction emanating from the ecclesiastical Governing Body of Jehovah's Witnesses to the body of Christian persons known as Jehovah's Witnesses … specifically by … administering the congregations of Jehovah's Witnesses, including the appointment of elders and ministerial servants". That Constitution also provides that the CCJW shall consist of members "who shall be only dedicated and baptized Jehovah's Witnesses who are serving as elders appointed by the ecclesiastical Governing Body of Jehovah's Witnesses and who are members of the Worldwide Order … who are assigned to the Britain branch … that serves the United Kingdom and Ireland." Those provisions are consistent with the conclusion that the appointment of elders had been the responsibility of the Governing Body and would in future be the responsibility of CCJW, although they do not exclude either (1) the possibility that both

the Governing Body and CCJW continued to be responsible for appointing different elders or (2) the possibility that some other body (such as Watch Tower Britain) also previously had, or would continue to have, that responsibility. According to a later Constitution, dated 8 March 2017, which is all that was originally in evidence before me, the purpose of CCJW is "to communicate spiritual guidance and advice to elders, congregations, groups and individual members of Jehovah's Witnesses". According to the unchallenged evidence of Liam Paul Trythall, a Jehovah's Witness who works with corporate matters in the legal department of the Britain Branch Office of Jehovah's Witnesses in London, in 2011 to 2013 (1) the primary functions of CCJW included (i) communicating spiritual guidance and advice to congregation elders to assist them to care for their congregation responsibilities and (ii) making appointments of elders and ministerial servants (assistants to the elders) in local congregations and (2) the primary functions of Watch Tower Britain included (i) printing and distributing Bible-based literature and (ii) financing matters such as the construction of places of worship and (iii) purchasing goods and literature and donating/exporting to countries outside the EU. Further, although both Watch Tower Britain and CCJW are used by the Britain Branch Office of Jehovah's Witnesses (which oversees and supports the religious activities of Jehovah's Witnesses in the UK, and which is overseen by 12 Elders appointed by the Governing Body of Jehovah's Witnesses, an unincorporated body with offices in the USA) they are separate legal entities, with distinct constitutions, personnel and functions.

64. The Constitution of CCJW dated 19 July 2011 is signed by both members of a coordinating committee and founder members. However, the letters emanating from CCJW which are referred to below bear references which do not match the initials of any of these individuals. Mr Otuo sought to rely upon this to argue that those letters were not sent by anyone acting on behalf of CCJW, and that this supports the conclusion that CCJW was no more than a branch or agency of Watch Tower Britain, the entity which he has chosen to sue. That argument was met by evidence from Mr Trythall, which I accept, first, that letters from CCJW could have been written by volunteers who were recruited to assist in dispensing advice, and, second, that references in letters of this type relate to "desk symbols" rather than the initials of the writer. Mr Trythall explained that his own desk symbol is LEF, although he did not know why these particular initials had been allocated to him. In any event, it was clear from Mr Trythall's evidence, which again I accept, that CCJW is one of a number of unincorporated associations which were set up by the Branch Office to perform various functions, and that CCJW is and was not a department of the Branch Office and is and was separate from both the Branch Office and Watch Tower Britain. In these circumstances, this point does not assist Mr Otuo.

65. The decision of the Governing Body to approve the formation of CCJW as one of a number of additional corporations formed "to care for certain needs of Jehovah's witnesses" was communicated to all bodies of Elders by a letter from Watch Tower Britain dated 12 August 2011. Among other things, the letter asked Elders to direct all

future correspondence concerning "spiritual direction dealing with congregations" to CCJW. It also stated that other activities "such as providing Bible-based literature and any financial matters" would continue to be handled by Watch Tower Britain or IBSA.

66. On 23 September 2011, Mr Wee wrote to Mr Morley requesting assistance from the body of Elders of the Wimbledon Congregation to resolve what he described as "a long-standing issue with Brother Frank Otuo". The letter stated (among other things):

> "In line with the scriptural principle at Matthew 18 I repeatedly attempted to resolve this issue with Brother Outo [sic] over a sixteen month period (i.e. August 2009 to November 2010). I then 'took along a witness' (Brother Andrew Davidson) and have continued in my attempts to regain my brother. However, as the situation now appears to be getting worse, I feel it is necessary to 'speak to the congregation' in the hope of a resolution.
>
> …
>
> Unfortunately, although more than £210,000 is now outstanding no attempts have been made by either party to repay any of this money.
>
> …
>
> A number of contradictory statements were made by Frank during this discussion [in December 2010] and it became apparent, as Brother Davidson can confirm, that Frank and David conducted their business dealings through a complex web of transactions and Frank was unwilling to bring any transparency to such matters or to broker a meeting where all four of us could discuss the best way forward.
>
> At the time Frank did suggest that he could transfer one particular property into my name which could be sold be me to settle the debt. However, our discussion later revealed that this property was mortgaged and, without the bank's approval, had been subdivided into two flats and let to tenants without the necessary building certificates or warrants being sought (i.e. it was unsellable and may not have sufficient equity to repay the debt).
>
> …
>
> In early 2011 Frank had received a substantial sum of money—acknowledged by both parties to be approximately £165,000—to transfer full ownership of the properties listed as collateral in my agreement to David Brierley. Unbeknown to me this transaction appeared to be the true focus on Frank's efforts to obtain building certificates etc. on the property referred to above.
>
> …
>
> I am also concerned that recent actions may have been intended to take advantage of me further or even defraud me i.e. in the last week, Frank has sent me legal papers to sign indicating that this is the only way to get David to repay the debt via a court action. However, I do not want to drag brothers through the courts and I have since discovered that these papers (which I did

not sign on advice from Brother Davidson) would have assigned my full outstanding debt to Frank removing any obligation to repay me.

Given the deteriorating state of affairs and the pressure on my own finances I would like to follow the next step when Jesus said: 'If he does not listen to them, speak to the congregation.'"

67. In short, the letter stated that Mr Wee had complied with Matthew 18, steps 1 and 2, and was now invoking step 3. Mr Otuo's case at trial focussed on the nature of the complaint that was being made in the letter. It was his case that it did not allege fraud against him, and indeed could not honestly have been read by Mr Morley (or any of the Elders) as alleging fraud. He argued that most of the letter is concerned with a failure to repay, which is different from fraud, and that the most that is alleged in the penultimate paragraph is a possible (and unsuccessful) attempt at fraud. In my view, that is not a correct reading of the letter, not least because the references to contradictory statements, lack of transparency, unwillingness to broker a meeting, and the suggestion that Mr Wee was invited to take an assignment of a property which would not be a satisfactory substitute for the obligation to repay the debt, all seem to me to be capable of constituting or being indicative of "The intentional use of deception, trickery, or perversion of truth for the purpose of inducing another to part with some valuable right or thing belonging to him or to give up a legal right". In my judgment, Mr Otuo's argument that there could be no parting with a valuable right or thing and no giving up of a legal right save at the time the Loan Agreement was made is simply not correct. For example, if, after the Loan Agreement was made, Mr Wee had been induced to refrain from demanding the sale of the 7 properties which had been offered as collateral for his loan, or from enquiring into what was happening with those properties, so that those properties or the proceeds of sale of those properties could be disposed of or diverted instead of being used to repay Mr Wee, this might well constitute "The intentional use of deception, trickery, or perversion of truth for the purpose of inducing another to part with some valuable right or thing belonging to him or to give up a legal right".

68. In addition, the words "for the purpose of inducing" are, in my view, wide enough to cover not only deception, trickery and perversion of the truth which succeeds but also the like behaviour which does not. The distinction between fraud and attempted fraud is, in any event, an unattractive one for Mr Otuo to rely upon. The central concern of Mr Wee, as it was of the Elders, was that Mr Otuo should act towards a fellow Jehovah's Witness in accordance with Christian principles – in the language of Mr Wee's letter dated 23 September 2011, that he should act so as to enable Mr Wee to "regain my brother". The considerations that Mr Wee had entered into a business transaction, that the Company was involved, and that there was no intention at the outset that Mr Wee should be defrauded, did not mean that there was no room for dishonesty, and no grounds for asserting the commission of a sin, in Mr Otuo's later dealings with him.

69. In any event, I consider that someone reading the letter and viewing the concept of fraud through a Biblical lens and from a Scriptural perspective could readily have formed an

honest belief that it did allege fraud against Mr Otuo. It was the evidence of both Mr Morley and Mr Lewis, which I accept, that they did in fact view the letter in that way. In this regard, it is important to bear in mind that they (and, for that matter, each of the Elders who were involved in considering Mr Wee's complaint against Mr Otuo) were not looking at matters as a lawyer would do. Instead, as appears from the contemporary documents as well as their evidence before me, they were seeking to apply Scriptural principles. For this reason, they prayed for guidance at various stages of the investigation concerning Mr Otuo, and had regard, for example, to Matthew 5:37: "But let your 'Yes' be 'Yes' and your 'No' be 'No'. Whatever is more than these is of the evil one". As Jehovah's Witnesses who were considering a complaint between "brothers", they also applied strict moral standards based on the Scriptures (or, perhaps more accurately, on their personal understanding of the Scriptures, as interpreted by various publications of the Jehovah's Witnesses). The boundaries of what constitutes fraud, which may be unclear even in the context of prosecutions under the Fraud Act 2006 or civil claims for the tort of deceit or fraudulent misrepresentation, are even more difficult to define with certainty when considerations of this kind are factored in.

70. In light of Mr Wee's letter, the Elders decided to form a Judicial Committee. This was in accordance with OJW, which states under "Handling Serious Wrongdoing":

> "If it is established that there is substance to the report [of serious wrongdoing] and that evidence is available showing that a serious sin has actually been committed, the body of elders will assign a judicial committee of at least three elders to handle the matter."

71. The Elders who were appointed comprised Messrs Lewis and Sutton (who had conducted the initial investigation into Mr Wee's complaint), Mr Morley, and Mr Smith. After Mr Smith had received the Overview, a decision was taken to seek guidance before proceeding further with the matter. Guidance was sought by a letter dated 15 December 2011 from all 4 members of the Judicial Committee. A postscript to that letter records, and I find, that the Circuit Overseer had invited Mr Smith to assist in handling the matter at the request of the Wimbledon body of Elders. The letter was addressed to Watch Tower Britain because the Judicial Committee appears not to have taken on board the message that with effect from 12 August 2011 all future correspondence concerning "spiritual direction dealing with congregations" should be directed to CCJW.

72. It appears from the documents, and I accept, that the letter was drafted primarily, if not exclusively, by Mr Morley and Mr Smith. I do not regard this as sinister. Mr Morley was the chairman of the Judicial Committee, and Mr Smith had been brought in from another congregation to assist in handling the matter. It made sense for them to take the lead. In addition, whether or not he was unfairly tainted in his approach towards Mr Otuo by the Overview that he had received from Mr Morley, Mr Smith was taking a keen interest in the matter. It was Mr Morley's evidence, which I accept, that Mr Smith was particularly interested in a previous transaction involving Mr Otuo and Mr Wee,

which Mr Smith was concerned might have been used as a "lure" to persuade Mr Wee to lend the £175,000 which was in issue. It is apparent from a consideration of the draft of the letter which travelled between Mr Morley and Mr Smith, and accords with Mr Morley's evidence, that this is the explanation for the wording of the following item out of a total of 6 items of "evidence of Brother Otuo using deception" listed in the letter:

> "(i) Obtaining this huge loan in the first place, having shortly before obtained an even larger loan from Brother Wee and paid spectacular interest for this seven day loan, which was repaid on time."

73. Among other things, the letter expressed the view that, although the Loan Agreement "is very poorly constructed", nevertheless "it seems that each of the parties to whom the money was loaned are jointly and severally responsible for its repayment". As I have already indicated, I consider that this interpretation of the Loan Agreement is at least arguable, and certainly was one which the Elders could honestly have believed was right. The letter further stated "Most recently Brother Otuo has claimed that he is no longer responsible for the debt since he has an agreement with Brother Brierley which makes Brother Brierley 100% responsible for its repayment". In this regard, Mr Otuo's case at trial was that that he never accepted that he was personally liable for the debt and that the true position was set out in the Partnership Dissolution Agreement, namely that (among other things) (1) he relinquished to Mr Brierley any interest that he had in the 7 properties listed in the Further Agreement and (2) Mr Brierley agreed to pay him £160,000 on or before 31 January 2011 and a further £60,000 within the 12 months of the date of the Partnership Dissolution Agreement. In my opinion, however, so far as material to the present case, the net effect of the Partnership Dissolution Agreement is the same, namely that it purported to place the obligation to repay Mr Wee (who was one of the "Creditors" listed in Schedule 2 to the Partnership Dissolution Agreement) on Mr Brierley alone (although Mr Otuo retained an entitlement to pay such Creditors under Clause 4.3, and to seek an indemnity from Mr Brierley if he did so).

74. In addition, in my view, the Partnership Dissolution Agreement placed Mr Otuo in breach of the Further Agreement, because, in the event that Mr Wee had not been repaid on 30 June 2009, it included personal obligations on the part of both Mr Otuo and Mr Brierley to authorise the sale of the 7 properties listed in it in order to pay Mr Wee, but Mr Otuo did not perform that personal obligation. Instead, Mr Otuo relinquished any interest he had in those properties to Mr Brierley in exchange for payments adding up to £220,000, and, further, disabled himself from performing that personal obligation. Even if Mr Otuo believed that Mr Brierley would repay Mr Wee sooner or later, Mr Otuo thereby, in effect, realised his interest in those properties for his own benefit, and not, as he had promised in the Further Agreement would be done, for benefit of Mr Wee.

75. On the footing that, in light of those personal obligations, Mr Otuo ought not to have acted in this way without informing Mr Wee, it could be said that he failed to disclose to Mr Wee information that he was under a legal duty to disclose. Further, if that is right, the question whether Mr Otuo's conduct was dishonest is to be determined by applying

to that conduct the (objective) standards of ordinary decent people (see *Ivey v Genting Casinos (UK) Ltd (t/a Crockfords)* [2018] AC 391, Lord Hughes at [74]). In these circumstances, if Mr Otuo had been charged with fraud contrary to section 3 of the Fraud Act 2006, it is far from obvious that he would have had no case to answer.

76. The letter also stated "It is also of considerable concern to us that Brother Otuo has continued to enjoy what appears to be a comfortable lifestyle throughout the period since the loan became due. However, he has failed to offer or make any repayments of the loan." Mr Otuo contended that his lifestyle was beside the point, and suggested that Mr Morley's focus on this topic was a further indicator of malice towards him. However, whether Mr Otuo spent money on himself which he could have used to make payment to Mr Wee was a relevant consideration in accordance with the discussion concerning a true Christian attitude towards the repayment of debts contained in the April 1999 edition of *"Awake!"* (a religious publication of Jehovah's Witnesses which Mr Morley had consulted and refers to in his evidence). That guidance includes express references to the borrower's spending patterns and to those who allow their "desires and wishes [to] come first", and also the statement: "A Christian who deliberately and knowingly refuses to pay his debts endangers his standing before God". Accordingly, in my judgment, it cannot be said that the Elders were wrong to have regard to this factor.

77. The Data Summary Sheet prepared by CCJW covering correspondence between 15 December 2011 and 11 July 2012 summarises the guidance that was sought in this letter as follows: "Ask advice on: Is it judicial? Does his ability to repay affect his standing? How can he show works that befit repentance – does he need to repay or start to repay the money?" It seems clear from this that this is how CCJW understood that letter.

78. The reply to that letter came from CCJW, not Watch Tower Britain. It was dated 4 January 2012. The reply letter stated "At the outset, can we say that based on what you tell us, we are quite happy with the way that you are handling this matter". The thrust of the guidance that was provided in it was that, on the basis that the members of the Judicial Committee considered that fraud as defined in *ks10 5:23* had taken place, their "focus should now be on whether Brother Otuo is repentant". The letter suggested various questions which might be asked in that context, and, with regard to Mr Otuo's ability to make repayment, advised that "It is not his *ability* to provide full restitution but his evident *desire* to make restitution, which can determine repentance". I interpret this advice as meaning that a willingness to make restitution could demonstrate repentance even if there was, in fact, no means of making restitution. Conversely, a failure to make restitution in spite of having the means to do so – which might be demonstrated by a high level of personal expenditure – would tend to show the reverse. In cautioning the Judicial Committee not to become involved in the dispute between Mr Otuo and Mr Brierley, the letter stated "As shepherds your role is to discuss Bible principles". The letter ended, referring to James 3:17, with a prayer that Jehovah would give the Judicial Committee "wisdom from above" as "you seek to keep the congregation clean".

79. Following that exchange, the Judicial Committee met with Mr Otuo on 13 January 2012, after which it again sought guidance from CCJW by letter dated 16 February 2012. That letter was not in evidence, but the Data Summary Sheet contains a summary of its contents which includes the following:

> "Committee explained Scriptural reasons why situation is very serious. FO feels he has done nothing wrong. Ask about definition of fraud, since FO says he did not deliberately deceive RW [i.e. Mr Wee] - just a deal that went wrong. Committee concerned that FO cannot show repentance since he feels he is innocent. Ask advice before concluding case."

80. CCJW replied by letter dated 16 March 2012. As set out above, with regard to the topic of fraud CCJW stated: "Concerning the definition of fraud, we cannot go beyond what is referred to in *ks10 5:23*". The letter further stated: "You explain that you have no reason to suggest it was the intention of Brother Otuo, when initiating the transaction, to deprive Brother Wee of his money. However, you believe his actions since that time led the judicial committee to believe that fraud has occurred. If that is the decision of the judicial committee who have all the facts before them, then they have the responsibility to continue with the judicial hearing". It was part of Mr Otuo's case that in truth and in fact (i) the Judicial Committee purported to proceed on the basis that he had committed fraud at the outset, but (ii) they could not honestly have considered or believed that this was so, and (iii) realising this, and realising that their actions would be exposed as being actuated by malice towards him if these matters were subjected to scrutiny, they had subsequently come up with the excuse or pretext that they had not proceeded on that basis but had instead proceeded on the basis that their finding of fraud related to his later conduct. That case is contradicted not only by the evidence of Mr Morley and Mr Lewis but also by this contemporary letter, which was sent at the time that the Judicial Committee proceedings were ongoing, and I reject it. There is no reason to suppose that CCJW misunderstood the position of the Judicial Committee, or that the Judicial Committee thought to misrepresent its own true position to CCJW at the time.

81. The Data Summary Sheet records that the next event occurred on 30 March 2012: "Judicial committee decided to disfellowship, FO appealed". The Judicial Committee completed and signed a "Notification of Disfellowshipping or Disassociation" form ("S-77") setting out the reasons for their decision. This form is date stamped 31 July 2012, and the date of Mr Otuo's disfellowshipping has been typed in to it. It also states that Mr Otuo has appealed the decision. It therefore seems that it was not fully completed until sometime after 30 March 2012, although the section which includes "the reasons why you judged the person to be unrepentant" may have been completed earlier. That section states: "The testimony of Brother Wee and his witness, Brother Davidson along with the testimony of Brother Otuo himself provided the committee with ten examples of "deception, trickery or perversion of truth" on Brother Otuo's part over this matter. … During the hearing, despite repeated highlighting of relevant scriptural principles by the committee, Brother Otuo failed to acknowledge any wrongdoing or fault on his part.

He blamed his accuser and his business partner. No repentance or works that benefit repentance were evident". Those "ten examples" were set out on a separate sheet.

82. According to the oral evidence at trial, the two hearings before the Judicial Committee lasted roughly 10 hours in all, and Mr Otuo spoke for much of that time, perhaps as much as 70%. Mr Otuo took a number of points about the fairness of the Judicial Committee's procedures. These included the contention that he wanted to rely on the evidence of Mr Brierley, but was refused an opportunity to call him as a witness, and that an attempt to enable Mr Brierley to give evidence over the telephone was also frustrated. However, I did not understand Mr Otuo to dispute that he did not accept that he was guilty of any wrongdoing, and, in consequence (as it is effectively impossible to show repentance without accepting fault) that he did not demonstrate repentance. His main contention was that the "ten examples" went back to the inception of the Loan Agreement, and that this was inconsistent with the Defendants' case that the Judicial Committee had never asserted fraud at the beginning but only as matters progressed.

83. In advancing this contention, Mr Otuo pointed out, correctly, that the first three examples refer back to events at the time the Loan Agreement was made. However, in my view importantly, item 1 includes the words "We accept that Brother Otuo did not believe this debt to be at risk when the money was taken". Moreover, when referring to initial matters, the text shows that the writer(s) were concerned not only with those matters but also with later events. For example, item 3 reads "A "guarantee" attached to the agreement turned out to be illusionary, i.e. collateral has not been realised – Matt 5:37 "*yes* means yes"". In any event, it is clear, and Mr Otuo accepted, that a large part of the ten examples relates to his conduct after the Loan Agreement was made. Item 8 stated, in my view accurately, and certainly reflecting a view that could honestly and reasonably have been held by the members of the Judicial Committee: "The repayment of Brother Wee was not adequately addressed in the dissolution of the Partnership".

84. OJW makes provision for an appeal against a decision of a Judicial Committee to disfellowship which is "granted as a kindness to the accused and allows him a further hearing of his concerns". Mr Otuo duly appealed against the decision of the Judicial Committee. OJW provides that upon receipt of a written appeal, the Elders should contact the Circuit Overseer, who should then designate "experienced and qualified" Elders "to serve on the appeal committee and rehear the case". In this instance, Mr Shaw asked Peter Davey, Timothy Eagles, and Mark Greenway, who were all Elders from other congregations, to serve on an Appeal Committee to deal with Mr Otuo's appeal.

85. According to an email from Mr Davey to Mr Shaw dated 29 May 2012: "… the AC did not meet until 19th May. The decision was to uphold the JC conclusion … the JC … spent 10 hours with FO in addition to which the AC hearing was four hours".

86. Mr Otuo made clear that he did not accept the Appeal Committee's decision, and he sought a review of that decision by a letter addressed to "The Service Desk, The Watchtower Society" dated 20 May 2012, which is 40 pages long. It is clear from this letter that, by this time at least, Mr Otuo was familiar with the contents of OJW: the letter (using the term "OD") makes extensive reference to it. It is also clear from this letter that Mr Otuo understood and accepted that his reinstatement would depend upon accepting whatever sin he had committed. One of the points made in it is that while Mr Otuo had been disfellowshipped "on the grounds of being found fraudulent in a commercial arrangement" this finding was insupportable, such that it was wrong that "My reinstatement will hinge on accepting to have defrauded my Brother and being genuinely contrite about it". Mr Brady relied on this in support of the Defendants' case that Mr Otuo consented to the publication of the words complained of in Claim 2 (the argument being that, although in May 2012 Mr Otuo was complaining about the findings against him, it is apparent from the letter that Mr Otuo was well aware that if he sought reinstatement, as he did for a second time in 2013, it would be necessary to explore whether he accepted that he had defrauded Mr Wee and was contrite about it).

87. Mr Otuo also wrote a shorter letter to Mr Davey dated 25 May 2012 on the subject of a review. In this letter Mr Otuo stated that he was "unable to conclude how the panel felt that the charge of fraud should be upheld" in circumstances where "the appeal panel, again, [was] unanimously agreeing that there was no malice aforethought". This suggests that it was Mr Otuo's understanding at the time that both the Judicial Committee and the Appeal Committee had found fraud, but not at the inception of the loan transaction. This letter also refers to "Insight on the Scriptures", which contains very similar provisions concerning disfellowshipping, reinstatement and so forth as are contained in OJW, all of which is of relevance to Mr Otuo's knowledge of, and indeed to his apparent acceptance of and reliance on, those procedures well in advance of the publication of both the Announcement and the words complained of in Claim 2.

88. Mr Davey had already sent an email to Messrs Eagles and Greenway dated 20 May 2012 asking for "your observations during the next week which will help me formulate a report to send to the Society along with the necessary forms". Mr Otuo's letters prompted a fuller exchange of emails between the members of the Appeal Committee.

89. Mr Otuo was critical of the contents of those emails (which he did not see at the time) and cross-examined Mr Davey and Mr Eagles about them. In my judgment, however, having regard to both the contents of the contemporary documents and the evidence of Mr Davey and Mr Eagles, who were honest and reliable witnesses, that criticism is misplaced. The main features of these email exchanges may be summarised as follows:

    (1) On 21 May 2012, Mr Davey wrote to Mr Eagles and Mr Greenway, noting that Mr Otuo "has appealed" and asking them to let him have their comments "which you feel highlight Frank's deception (Fraud) in his dispute with Bro. Wee".

(2) Mr Eagles replied setting out his reasons for agreeing "with the original JC". These included that Mr Otuo's actions "do not meet the standard of honesty and concern for his brother R[obert] that reflect the viewpoint of someone applying scriptural council in his life. There is no doubt that FO found himself in a difficult position due to the state of the property market, but … He allowed the problems with his business partner and a desire to protect his own financial situation to cloud the issue" and that "while [Mr Otuo] has a love of Jehovah, he has not applied basic principles … rather than a technical rationale … The simple fact is that he borrowed money and has not paid it back and not done all that he could to remedy the situation whilst he has protected his own interest as best he could over the period. The sum total of his actions over nearly a four year period are sufficient for the original JC to reach the conclusion that they did". In my view, it is clear from this that Mr Eagles was not focussing on the inception of the dealings with Mr Wee, but rather on Mr Otuo's actions subsequently, when problems about making repayment arose. Moreover, in assessing what honesty required, Mr Eagles took into account the particular circumstances of the case, drew a distinction between what might be expected of someone who had been instrumental in borrowing a large sum from a less financially astute and more vulnerable member of the same congregation and reliance on technical arguments, and, in essence, thought that Mr Otuo had engaged in sharp practice. That does not necessarily involve dishonesty, or fraud, but it may well do so.

(3) Mr Eagles sent a longer reply later on 21 May 2012. This fleshes out his reasoning in some detail over 8 numbered paragraphs. It then concludes: "Due to the above, the original decision of the JC that the prolonged actions of FO have deprived RW of his money amount to fraud over the period of time, is in my opinion supported although I do not think that the intent to defraud was there at the time that the loan was requested by FO. His subsequent actions are not open and honest, information has been withheld, blame and responsibility have been shifted, personal interests have been taken care of whilst RW has been left entirely without redress. This is not in harmony with the requirement to conduct ourselves in line with Jehovah's standards which require that our words and our actions are in harmony … To keep the congregation clean before Jehovah, it is necessary to demonstrate that his actions are not those of an approved servant of Jehovah, hence the original decision of the JC and my support of that action". The like observations apply as apply to Mr Eagles' earlier email of that date.

(4) Also on 21 May 2012, Mr Greenway sent an email which concentrated on the issues of "Fraud Definition" and "Repentance". Under the first heading, Mr Greenway referred to not only the Primary Definition but also part of the extended definition contained in one of the Jehovah's Witnesses' publications, including the following: "The Hebrew term rendered "defraud" … has the basic sense of misusing one's strength, power, or authority over others". Mr Greenway then wrote: "Whilst it would seem there is no evidence

that FO set out with the deliberate intention to defraud RW, I believe that his subsequent actions do constitute fraud on the basis of the above definition". In providing reasons for this belief, Mr Greenway made clear that he considered (among other things) that Mr Otuo had "misused his position of 'strength, power or authority'", had "deprived RW of vital information relevant to the loan" and had "demonstrated no *desire* to repay even when he had the *ability* to repay, at least in part". Under the second heading, Mr Greenway recorded that Mr Otuo had provided "no evidence of repentance or heartfelt regret". In my judgment, there is a close similarity between Mr Greenway's reasoning and the definition of "fraud" in the Fraud Act 2006, which, as set out above, extends not only to the dishonest making of false representations but also to the dishonest failure to disclose information and the dishonest abuse of certain positions. Because there is no defence of justification to the allegation that Mr Otuo was guilty of fraud (but only to the allegation that Mr Otuo had been disfellowshipped for fraud), it forms no part of my task to determine whether the reasoning of Mr Greenway (or, for that matter, any of the other Elders who were involved in dealing with Mr Wee's complaint) was correct. In my view, however, there is nothing in Mr Greenway's email to suggest that he did not honestly hold the beliefs that he sets out in it. Further, I consider not only that Mr Greenway provides a rational basis for those beliefs but also that it is at least arguable that they are right. These points support the conclusion that they were honestly held. It is also clear that, like Mr Eagles, Mr Greenway based his views on Mr Otuo's conduct after the loan was made.

(5) On 28 May 2012, Mr Eagles sent a further email in which he clarified 4 points. Under the heading "Was there a scriptural basis for the disfellowshipping", Mr Eagles stated: "The basis for disfellowshipping that the original JC gave was Fraud. The JC gave us a list of actions on the part of FO that over a period of time constitute[d] Fraud in their opinion. We gave consideration to each of these points and the actions of FO over a three year period since the loan should have been repaid. It was felt that all bar one, the points could be upheld. The action of Fraud deprives the defrauded one of something that they have a right to and involves trickery and deception. It was felt that this had occurred in the ongoing treatment of RW by FO". Under the heading "Was there acceptable evidence of the wrongdoing", Mr Eagles stated (among other things, and repeating points made in the earlier emails from himself and Mr Greenway that I have not already quoted above): "Part of [Mr Otuo's] evidence clearly shows that he withheld a large sum of money (£80k) for his personal use after the date that the loan should have been repaid and after specific request to pay any amount that he could to reduce the balance of the loan … He hid major changes to his business set up from RW and once these had been made expressed in writing that he was no longer responsible for the loan in any way". Under the heading "Was the wrongdoer unrepentant at the time of the original JC hearing", Mr Eagles stated: "At the time of the original JC hearing and at the AC hearing, FO stated that he had not had the intent to defraud when the original loan was taken and therefore

he could not be guilty of anything other than unsuccessful business and therefore had nothing to be repentant of and could not be disfellowshipped". Under the heading "What convinces the AC of this", Mr Eagles stated (among other things): "The properties offered as security are still owned and rental income is still derived from them but as FO has dissolved the business partnership that offered the guarantees, he maintains that he is unable to make repayment via the portfolio as they are not under his control". It is apparent from this email that Mr Otuo based his case before the Appeal Committee on the same or similar propositions, in particular as to whether fraud could be perpetrated other than at the inception of the loan and as to the legal effect of the material agreements, to those which he relies upon in support of his case on malice in the present proceedings. As indicated above, I consider those propositions are wrong. However, even if they were right, I am in no doubt that the Elders who were involved in considering Mr Wee's could honestly have taken the view that Mr Otuo's stance was ill founded, and there is nothing in this (or any other) email from Mr Eagles to suggest that he did not honestly hold the views expressed.

(6) These matters were confirmed by Mr Davey and Mr Eagles in oral evidence at the trial. In answer to questions from Mr Otuo, Mr Davey said: "Well, you felt that there had been a misjudgement in terms of the thought of being fraudulent. You had said and suggested that you had never set out to be fraudulent, which we appreciated and recognised, but clearly it was a matter we could see that had gone through a situation where we felt that no attempt had been made to make restitution to the person [from] whom you borrowed money … There were promises made … an agreement was drawn up, and you didn't keep to that agreement … we're here today because you didn't honour that agreement." Further, according to my note, when Mr Otuo referred Mr Davey to the Primary Definition and asked him whether he concluded that this is what had happened he said "Yes". Mr Eagles said: "What we found is that a course had been entered into which over a protracted period of time did not meet with scriptural standards of a Jehovah's Witness acting towards his brother in Christ and that fraud had taken place over a period of time … I had absolutely no doubt whatsoever that after having discussed the situation with Mr Otuo over a long time that it was fraudulent towards Mr Wee. My email dated 21 May 2012 contains an exact statement of my position. I am categorical that his subsequent actions amounted to fraudulent behaviour."

90. On 29 May 2012, the Appeal Committee sent a letter explaining its reasoning. That letter was not in evidence, but the Data Summary Sheet summarises it as follows: "AC upheld disfellowshipping because: There was Scriptural wrongdoing – no fraud in initial agreement, but deception and trickery in later failure to repay debt over several years. Evidence provided, no sign of works befitting repentance. FO justifies actions, denies any wrongdoing, but AC agree with JC that he has defrauded RW". This supports the view that the Appeal Committee found fraud to have been made out. The

Data Summary Sheet also refers to, and summarises, Mr Otuo's letter to Mr Davey dated 25 May 2012. It further records receipt of the 40 page letter from Mr Otuo "explaining his side of the affair".

91. On 15 June 2012, CCJW wrote to the Appeal Committee asking for clarification on a number of points "before concluding the matter". These points arose from Mr Otuo's letters. They comprised, in summary: (1) whether the procedure in Matthew 18 had been followed correctly (as Mr Otuo had alleged that it had not been, essentially on the grounds that no compliance had occurred with steps 1 and 2 in relation to a charge of fraud); (2) a request for clarification of what the Appeal Committee meant by "trickery"; (3) in light of the "difficulty in the past" between Mr Otuo and Mr Morley, whether the Appeal Committee had enquired why Mr Morley had sat on the Judicial Committee; and (4) a request for clarification concerning Mr Brierley, and, specifically, whether he had not been telephoned during the original hearing as Mr Otuo said he had expected to happen, or whether Mr Otuo had just thought of this request with hindsight, and whether there was a reason why Mr Brierley had not been called as a witness.

92. These questions were answered by a letter from the Appeal Committee dated 3 July 2012. In sum, the letter stated (1) that Matthew 18 had been followed; (2) that trickery had occurred for, in essence, the reasons rehearsed in the emails that had been exchanged between the members of the Appeal Committee in May 2012 (this section of the letter concludes: "A trick is often designed to make it appear that something that has not happened, has happened. FO, in a word, has tried to make it appear that he has done all that he could to repay the loan when in fact he has not. Several of the attempts would have improved his situation, removed his responsibility to repay the loan, or placed RW in a worse situation while none of them would have returned RW his outstanding loan"); (3) that the Appeal Committee were unaware of any problems between Mr Otuo and Mr Morley, that no point about Mr Morley's involvement in the Judicial Committee had been raised by Mr Otuo before the Appeal Committee, that when forming the Judicial Committee some 10 months after Mr Otuo had raised issues concerning his removal as a ministerial servant the Board of Elders of the Wimbledon Congregation did not think that there would be an issue about having Mr Morley on the Judicial Committee, and that Mr Otuo had raised no objection when he was told who would be handling his case; and (4) that the onus to present witnesses rested on Mr Otuo, that Mr Otuo had not made any arrangements for Mr Brierley to be present at either the original or the adjourned hearings before the Judicial Committee (on 13 January 2012 and 30 March 2012 respectively), that Mr Otuo could have provided a written statement from Mr Brierley if he had chosen to do so, and that at the time of the hearing before the Appeal Committee they understood from Mr Morley that Mr Brierley had returned to the UK but could not come to the hearing but might be prepared to discuss the situation by telephone, but that Mr Otuo had not requested that a call be made to Mr Brierley and they did not feel that it formed part of their role to pursue that matter if Mr Otuo did not make any such request.

93. On 11 July 2012, CCJW wrote to the Judicial Committee saying that it had carefully considered all the correspondence that it had received, including "correspondence from the judicial committee, appeal committee, and lengthy and detailed correspondence from Frank Otuo", and that: "Based on the evidence before us, we believe that the decision by both committees to disfellowship Frank Otuo is correct. In view of this, the original judicial committee should inform Frank Otuo of this and arrange to make an appropriate announcement to the congregation at the earliest opportunity".

94. On 29 October 2012, and again on 17 June 2013 in terms that were not materially different, Mr Otuo wrote to the Body of Elders of the Wimbledon Congregation seeking reinstatement to the congregation of Jehovah's Witnesses "forthwith".

Authorisation and vicarious liability

95. Mr Otuo contends that Watch Tower Britain authorised or is vicariously liable for both (a) the Announcement and (b) the words complained of that were spoken by Mr Morley at the meeting on 22 July 2013. The Defendants plead in answer to these allegations that:

    (1) Watch Tower Britain did not authorise the Announcement or the decision to disfellowship Mr Otuo. (Claim 1)

    (2) Watch Tower Britain was not involved in providing spiritual guidance to the Elders in the Wimbledon Congregation in relation to their dealings with Mr Otuo. (Claim 1)

    (3) The Judicial Committee sought the advice of the CCJW, "an unincorporated association used by Jehovah's Witnesses to provide ecclesiastical support and guidance to congregations of Jehovah's Witnesses in the United Kingdom and the Republic of Ireland", with regard to the decision to disfellowship Mr Otuo, and did so in advance of the Announcement being made. (Claim 1)

    (4) As one of the body of Elders for the Wimbledon Congregation, Mr Morley was responsible for the oversight of the spiritual activities of the Wimbledon Congregation, which was an independent charity with its own trustees. (Claim 2)

    (5) At the material time Mr Morley acted within the scope of his duties and role as an Elder of the Wimbledon Congregation. (Claim 2)

    (6) After the disfellowshipping decision had been upheld by the Appeal Committee, "an independent committee of elders from outside the Wimbledon Congregation" on 29 May 2012, and following a further request for a review by Mr Otuo, the CCJW, "an unincorporated association used by Jehovah's Witnesses to provide ecclesiastical support and guidance to congregations of Jehovah's Witnesses in

the United Kingdom and the Republic of Ireland", agreed with the decision to disfellowship on 11 July 2012. (Claim 2)

96. In response to those pleaded contentions, Mr Otuo pleads, in summary, as follows:

(1) Following the Appeal Committee's decision to uphold the disfellowshipping by the Judicial Committee, Mr Otuo "appealed directly to [Watch Tower Britain] in accordance with the directions as provided by [it] in its publication to the Elders of various congregations" in "Shepherd the Flock of God" at page 107, paragraph 14. (Claim 1)

(2) Watch Tower Britain authorised the publication of the Announcement writing "under the guise of" CCJW on 11 July 2012. (Claim 1)

(3) The final authorisation needed before publication of the Announcement was given by Mr Morley and the Announcement was published by Mr Lewis "who were both appointed by [Watch Tower Britain] as its agents within the Wimbledon Congregation". (Claim 1)

(4) In an earlier version of its Amended Defence dated 19 June 2014, Watch Tower Britain admitted it was responsible for the appointment of Elders of the Wimbledon Congregation and that "it is ultimately liable to indemnify them against valid claims made arising out of such of their lawful acts as properly fall within the area of responsibilities delegated to them as elders and attract legal liability". (Claim 1)

(5) "Considering the above statement … [the] letter dated 15 December 2011 purportedly seeking directions in the matter that led to the publication of [the Announcement] was addressed to [Watch Tower Britain], not to CCJW". (Claim 1)

(6) The relationship between Watch Tower Britain and the Elders of the various congregations in the United Kingdom and the Republic of Ireland was expounded by Globe J in *A v Trustee of Watch Tower Bible and Tract Society of Britain & Others* [2015] EWHC 1722 (QB) at [67]-[71]. (Claim 1)

(7) Accordingly, Watch Tower Britain is vicariously liable for the actions of its elders in the various congregations in the United Kingdom including the Wimbledon Congregation. (Claim 1)

(8) The letters from the Judicial Committee dated 15 December 2011 and 16 February 2012 did not seek the advice of CCJW but that of Watch Tower Britain. (Claim 1)

(9) Mr Morley was appointed to oversee Watch Tower Britain's organisation of Jehovah's Witnesses in Wimbledon. (Claim 2)

(10) Mr Otuo made a request to Watch Tower Britain for a review of the decision to disfellowship him, any suggestion that Mr Otuo appealed to CCJW is denied, and Mr Morley and Watch Tower Britain are put to strict proof that Mr Otuo's request was made to CCJW instead of Watch Tower Britain. (Claim 2)

97. As is apparent from the above summary of both sides' statements of case, the issue of vicarious liability is raised more clearly and in greater detail in Claim 1. Nevertheless, I can discern no difference of substance in the case of either side as to the basis on which Watch Tower Britain either should, in accordance with the contentions of Mr Otuo, or should not, in accordance with its contentions, be held liable for the alleged slanders spoken by Mr Lewis in Claim 1 and by Mr Morley in Claim 2 respectively. In particular, the words complained of in Claim 2 referred back to the same matters as were referred to in the Announcement, and there is no suggestion on the part of either side that the entity under the authorisation of which or on behalf of which the Elders of the Wimbledon Congregation were acting changed between 19 July 2012 (when the Announcement was made by Mr Lewis) and 22 July 2013 (when Mr Morley spoke the words complained of in Claim 2). Claims 1 and 2 are being tried together, and it would be unrealistic and could lead to anomalous results to approach the issue of vicarious liability differently in the two claims.

98. Clerk & Lindsell on Torts, 22nd edn., *("Clerk & Lindsell")* states the general position as follows at para 6-01:

> **"**A person is liable not only for torts committed by himself, but also, classically for those torts he has authorised or subsequently ratified. Authorising a tort involves instigating or procuring another to commit a tort. While this classical understanding of vicarious liability tends to relate simply to the commission of a common law tort by an employee, it is clear that vicarious liability is neither limited to the commission of common law torts, nor the commission of torts by those who are employees in the strict sense."

99. In *Various Claimants v Catholic Child Welfare Society* (*"Christian Brothers"*) [2013] 2 AC 1, Lord Phillips PSC, speaking for the Supreme Court, said at [20] (citation omitted):

> "[T]he courts have developed the law of vicarious liability by establishing the following propositions. (i) It is possible for an unincorporated association to be vicariously liable for the tortious acts of one or more of its members. (ii) D2 may be vicariously liable for the tortious act of D1 even though the act in question constitutes a violation of the duty owed to D2 by D1 and even if the act in question is a criminal offence. (iii) Vicarious liability can even extend to liability for a criminal act of sexual assault. (iv) It is possible for two different defendants, D2 and D3, each to be vicariously liable for the single tortious act of D1."

100. At [21], Lord Phillips stated that the question of whether D2 can be held liable for the torts of D1 involves a two-stage test. Stage 1 is to consider the relationship of D1 and D2 to see whether it is one that is capable of giving rise to vicarious liability. Stage 2 requires there to be a sufficient connection between the relationship between D1 and D2 and the act or omission of D1.

101. In *Armes v Nottinghamshire County Council* [2018] AC 355, Lord Reed JSC, speaking for the Supreme Court, referred to *Christian Brothers* and *Cox v Ministry of Justice* [2016] AC 660 (*"Cox"*) and said at [54]-[58]:

> "Under the doctrine of vicarious liability, the law holds a defendant liable for a tort committed by another person. Plainly, the doctrine can only apply where the relationship between the defendant and the tortfeasor has particular characteristics justifying the imposition of such liability. The classic example of such a relationship is that between employer and employee. As was explained in *Cox's* case and in the earlier case of the *Christian Brothers* [2013] 2 AC 1, however, the doctrine can also apply where the relationship has certain characteristics similar to those found in employment, subject to there being a sufficient connection between that relationship and the commission of the tort in question.
>
> In *Cox's case* [2016] AC 660 reference was made to five incidents of the relationship between employer and employee which had been identified by Lord Phillips in the *Christian Brothers* case as usually making it fair, just and reasonable to impose vicarious liability, and which could properly give rise to vicarious liability where other relationships had the same incidents and could therefore be treated as akin to employment. They were: (i) the employer is more likely to have the means to compensate the victim than the employee and can be expected to have insured against that liability; (ii) the tort will have been committed as a result of activity being taken by the employee on behalf of the employer; (iii) the employee's activity is likely to be part of the business activity of the employer; (iv) the employer, by employing the employee to carry on the activity will have created the risk of the tort committed by the employee; and (v) the employee will, to a greater or lesser degree, have been under the control of the employer.
>
> … In relation to the fifth factor … the significance of control is that the defendant can direct what the tortfeasor does, not how he does it.
>
> [As to factors (ii), (iii) and (iv)] … It was explained in *Cox's* case that those factors are inter-related, and reflect the principal justifications which have been put forward in our law for the imposition of vicarious liability, at para 23:
>
> > "23. … The first has been reflected historically in explanations of the vicarious liability of employers based on deemed authorisation or delegation, as for example in *Turberville v Stampe* (1697) 1 Ld Raym 264, 265, per Holt CJ and *Bartonshill Coal Co v McGuire* (1858) 3 Macq 300, 306, per Lord Chelmsford LC. The second, that the tortfeasor's activity is likely to be an integral part of the business activity of the defendant, has long been regarded as a justification for the imposition of vicarious liability on employers, on the basis that, since the employee's

> activities are undertaken as part of the activities of the employer and for its benefit, it is appropriate that the employer should bear the cost of harm wrongfully done by the employee within the field of activities assigned to him: see, for example, *Duncan v Findlater* (1839) 6 Cl & Fin 894, 909–910; MacL & Rob 911, 940, per Lord Brougham and *Broom v Morgan* [1953] 1 QB 597, 607–608, per Denning LJ … The essential idea [of the third factor] is that the defendant should be liable for torts that may fairly be regarded as risks of his business activities, whether they are committed for the purpose of furthering those activities or not."
>
> … The resultant position was summarised in *Cox's* case as follows:
>
> > "24. … The result of this approach is that a relationship other than one of employment is in principle capable of giving rise to vicarious liability where harm is wrongfully done by an individual who carries on activities as an integral part of the business activities carried on by a defendant and for its benefit (rather than his activities being entirely attributable to the conduct of a recognisably independent business of his own or of a third party), and where the commission of the wrongful act is a risk created by the defendant by assigning those activities to the individual in question."
>
> As was explained, words such as "business" do not confine vicarious liability to activities of a commercial nature: para 30. That is apparent from *Cox's* case itself, which concerned a prison operated by the prison service, and from the *Christian Brothers* case, which concerned a religious organisation, as well as from many other cases concerned with hospitals and public authorities."

102. So far as concerns ratification, *Clerk & Lindsell* states at paras 6-02, 6-86 and 6-87 (omitting citation):

> "Ratification of a tort involves, in effect, its subsequent authorisation. The act of authorisation or ratification renders the tort the act of the authoriser or ratifier, so that he becomes vicariously liable."
>
> "An act done for another, though unauthorised by him, becomes his act if he subsequently ratifies it."
>
> "'Ratification must be evidenced by clear adoptive acts, which must be accompanied by full knowledge of all the essential facts', and there can be no ratification unless the party on whose behalf the acts complained of were done 'ratified the acts of the agents with knowledge that they did them not according to authority, or unless he meant to take upon himself, without inquiry, the risk of any irregularity which they might have committed, and to adopt all their acts'.
>
> … where a railway company's inspector arrested a passenger on a charge of travelling without a ticket and took him before a magistrate, the mere fact of the company's attorney appearing to support the charge was, in the absence of any evidence that he or the company knew that the inspector had proceeded by arrest instead of summons as he should have done, held to be no evidence of ratification by the company of the arrest."

103. In *A v The Trustees of the Watchtower Bible and Tract Society, The Trustees of the Loughborough Blackbrook Congregation of Jehovah's Witnesses, The Trustees of the Loughborough Southwood Congregation of Jehovah's Witnesses* [2015] EWHC 1722 (QB), Globe J had to consider a case that was presented in two ways: (1) that the defendants were vicariously liable for the sexual assaults committed by Peter Stewart when he was or had been a Jehovah's Witness ministerial servant ("the assault claim") (see [6]) and (2) that the defendants were vicariously liable for the actions of the Limehurst Elders who, in 1990, negligently failed to take reasonable steps to protect the claimant from Peter Stewart once they knew he had sexually assaulted AM, another child in the congregation ("the safeguarding claim") (see [7]). With regard to the differing roles of the defendants in that case, Globe J explained at [4]:

> "The first defendants are the over-arching body of the second and third defendants. It is common ground that, if the second and/or third defendants are liable, then the first defendants will satisfy the judgment on behalf of the other defendants. The Blackbrook and Southwood Jehovah's Witness Congregations are the direct or indirect successors of the congregation that was originally known as the Loughborough Limehurst Jehovah's Witness Congregation, then split into two congregations known as the Limehurst Jehovah's Witness Congregation and the Garendon Park Jehovah's Witness Congregation, which congregations are central to the factual matrix of the case."

104. Applying the two stage test identified by Lord Phillips in *Christian Brothers*, Globe J held that "the defendants" were vicariously liable in respect of the assault claim and that the second and third defendants were vicariously liable for the breach of the elders in respect of the safeguarding claim, as appears from [90] and [123]-[124]:

> "My conclusion in relation to the second stage is that, on the facts as I find them to be, the sexual abuse of the claimant by Peter Stewart was not as a result of the mere opportunity of his presence in the claimant's company for reasons outside any role he was playing as a Jehovah's Witness. Whether the abuse took place at or after book study at whoever's home, on field service, at Kingdom Hall or at the Convention, he was ostensibly performing his duties as a Jehovah's Witness ministerial servant. I am satisfied that the progressive acts of intimacy were only possible because he had the actual or ostensible status of a ministerial servant that meant no one who saw him questioned his being alone with the claimant … it is that that provides the close connection between the abuse and what he was authorised to do. In the words of Lord Steyn, they were "inextricably interwoven" with the carrying out of his duties. In such circumstances, in my judgment, it is fair and just to hold the defendants to be vicariously liable for his acts.
>
> … As such, I find that there was a breach of the duty properly assumed by elders on the particular facts of Peter Stewart's case.
>
> That leaves the issue of vicarious liability for the elders. As summarised earlier in paragraphs 10-18, the elders had additional responsibilities to those held by ministerial servants. They were even closer and more integrated with congregational issues than were ministerial servants. They had a spiritual role and partly exercised that role, via the judicial committee, and decisions of the

body consequent upon decisions of the judicial committee. The decisions that emanated from the judicial committee and thereafter from the body of elders were a fundamental part of the role of the elders within the organisation. The second and third defendants are the trustees and successors of the Garendon Park and Limehurst Congregations. They are unincorporated associations who have taken over the responsibility of the congregations. In circumstances where, having applied the two-stage test, I have already found they are vicariously liable for the actions of Peter Stewart, I also find they are vicariously liable for the actions of the elders in relation to the above breach of duty arising from the findings of the judicial committee in 1990." (emphasis added)

105. It is not entirely clear whether Globe J's finding that "the defendants" were vicariously liable in respect of the assault claim was a finding that related to all three of the defendants, or whether it related to only the second and third defendants. His reference to having "already found" the second and third defendants vicariously liable in respect of the assault claim could be read as meaning either (i) that he had found them alone vicariously liable or (ii) that he had found them vicariously liable together with the first defendant. What is clear, however, is that if and in so far as Globe J's judgment was concerned with vicarious liability for the actions of the elders (and, moreover, for their actions arising from the findings of a judicial committee), the entities that he held to be vicariously liable were the second and third defendants, and not the first defendant.

106. Accordingly, this decision does not assist Mr Otuo. On the contrary, applying the same approach in the present case would lead to the conclusions that (1) the trustees of the Wimbledon Congregation (further or alternatively, in view of the involvement of Elders from the Banstead Congregation at the Appeal Committee stage, the trustees of the Banstead Congregation) would be vicariously liability for the Announcement, and (2) the trustees of the Wimbledon Congregation would be vicariously liable for the words complained of in Claim 2, spoken by Mr Morley at the meeting on 22 July 2013.

107. Globe J reached the conclusions that he did after giving detailed consideration to the structure and governance of Jehovah's Witnesses. Globe J's analysis was as follows:

> **"**11 The organisational structure of Jehovah's Witnesses is modelled on first century Christianity as described in the bible. Jehovah's Witnesses rely on passages from the bible to set their policy and religious practices. This distinguishes them from other religious denominations who use the bible to shape thinking, guide behaviour and teach lessons, but do not use it directly to set policy and religious practices. As a result, written documents, including worldwide monthly Jehovah's Witness publications such as *Watchtower* and *Awake!*, that describe the policy and religious practices of Jehovah's Witnesses, often quote biblical references.
>
> 12 Worldwide Jehovah's Witnesses now comprise about 8 million people who live in many different countries. There is a hierarchical organisational structure. A Governing Body coordinates

organisational arrangements and doctrinal matters (*Acts 15*). The Governing Body supervises over 100 branch offices worldwide, each of which is supervised by a branch committee. One of the branch offices is the United Kingdom office based in London. The branch office has a branch committee. The committee oversees districts within the branch and assigns a district overseer to oversee each district. Within each district, there are about 12 circuits. A circuit overseer is assigned to oversee each circuit. Within each circuit, there are about 20 congregations. Within each congregation, there are elders, ministerial servants and members of the congregation.

13 Notwithstanding its hierarchical organisational structure, in accordance with the model of the early Christian communities as described in the bible, there is no hierarchical structure of setting apart a clergy class from the laity. All members are expected to teach and can lead bible study. Congregational responsibilities are split between "overseers and ministerial servants" (*Philippians 1:1*). Overseers are also referred to as elders. Generally, there are a number of elders and ministerial servants in each congregation. Members of the congregation are called "publishers" and call each other "brother" and "sister" (*Matthew 23:8-12*).

14 Elders are selected for appointment based on scriptural qualifications and will be mature spiritual men who have been baptised for many years, will be viewed as good examples in Christian living and previously will have served as ministerial servants (*1 Timothy 3:1-7* and *Titus 1:5-9*). However, elders are not considered to be closer to God or superior persons (*Job 32:21,22*). They do not adopt an elevating title, such as Father, Reverend or Pastor, or take a superior position with reference to other members because there is only one leader who is Christ (*Matthew 23:8-11*). As such, they are not required to make any particular pledge or promise of obedience or loyalty to others within the governing structure of the organisation and there is therefore no relationship between an elder and a circuit overseer in the way that there is, for example, between a pastor and a bishop. They are not to be viewed as masters over others, but as fellow workers (*Romans 12:8; 1 Corinthians 3:5; 4:1-2*) who are appointed to shepherd the congregation of God (*Acts 20:28*). They therefore have no unique or advanced academic background and are volunteers of the congregation who are appointed to do the work of shepherding and overseeing spiritual matters (*Watchtower 1 October 1977*). Their primary role is to guide and protect the congregation spiritually, including taking the lead in evangelising and presiding over all types of congregational meetings.

15 Ministerial servants are members of the congregation who are also selected for appointment based on scriptural qualifications which require them to be serious individuals who hold the secret of the faith with a clean conscience (*Timothy 3:8-12; 12:13*). They provide voluntary practical assistance to the elders and service to the congregation. They care for organisational and physical tasks that must be handled in the congregation. Tasks include keeping the Kingdom Hall clean and tidy, arranging the platform and

microphones as circumstances require, manning and controlling the sound system and microphones for the use of the congregation, organising and making available literature for the congregation, serving as attendants at meetings, assisting in emptying collections boxes, keeping accounting records for the money, managing records to help to co-ordinate field service and any other tasks to which the elders may assign them from time to time (*The Organised Book: Organised to Accomplish Our Ministry*, chapter 6 *p.55-59*).

16 … Whether or not a ministerial servant is supposed to have any independent pastoral or shepherding role is an issue in the case …

17 Jehovah's Witness meetings are generally held in a place of worship called "Kingdom Hall". They are open to the public. Meetings are held twice each week, once on a weeknight and once on a Saturday or Sunday. On a weeknight, the programme consists of the congregational bible study, the theocratic ministry school and the field service meeting. In the 1980s and early 1990s, the congregational bible study was called the congregational book study and normally occurred in small groups, either at Kingdom Hall or in members' private homes. The format for that activity was a one hour question and answer discussion of a bible topic using a printed publication of Jehovah's Witnesses. The theocratic ministry school includes talks from the elders with contributions from members about various bible readings. The field service meeting relates to house to house activities. At a weekend, the programme consists of the public meeting and the *Watchtower* study. The *Watchtower* study is a one hour question and answer discussion of a bible subject using an article in the *Watchtower* magazine. Generally, an elder takes the lead in teaching at congregational meetings. Members have the opportunity to give comments and to speak for a few minutes during the meetings. Families remain together. There are no separate arrangements for children. Parents are primarily responsible for their own children's secular and spiritual education (*1Timothy 5:8; Deuteronomy 6:6-7*). There is no bar, though, on parents seeking additional help from others.

18 Bible study is conducted in a variety of ways, including group bible study, family bible study, individual study and the door to door ministry of field service. Regular door to door ministry is expected to be the life of all Jehovah's Witnesses (*Acts 20:2*). It is not limited to religious leaders or a chosen few, but should be carried out by all (*Acts 5:4*). Members are instructed to go and make disciples of all people (*Matthew 28:18-20*). It is performed voluntarily and without pay (*Matthew 10:7-10*).

19 Jehovah's Witnesses strive to live by a strict code of moral conduct based on the scriptures. However, when a member of the congregation is accused of committing a sin, the body of elders will assign two elders to investigate if there is evidence that the sin was committed. If there is, the body of elders will appoint a judicial committee of three or more elders to provide spiritual assistance to the person who committed the sin. If they find the individual

> genuinely repentant they will provide spiritual counsel and reproof to help avoid recurrence of the sin and may restrict the individual from full participation in meetings (*Acts 26:20; Watchtower 1976, 1 December 1981, 15 September 1994, 15 July 2007*). There may be an announcement to the congregation during a regular scheduled meeting that the individual has been "reproved", but the sin itself should not be mentioned (*Shepherd the Flock of God p.98; Watchtower 1 December 1976*). If the reproved individual is an elder or ministerial servant, he will be "deleted", that is removed, from that position and an announcement of the deletion should also be made to the congregation at a meeting (*Shepherd the Flock of God p.42; Watchtower 1 December 1976*). If the judicial committee finds an individual is not repentant, he or she may be "disfellowshipped", that is excommunicated, from the congregation. In that case, an announcement should be made to the congregation that the individual is no longer one of the Jehovah's Witnesses, but again the sin itself would not be mentioned (*Shepherd for The Flock of God p.101*). The information received by and the deliberations of a judicial committee are supposed to remain confidential (*Proverbs 25:9*). Those who are disfellowshipped should be "shunned" by all those who wish to have a good relationship with Jehovah *(Pay Attention to Yourselves and to All The Flock 1991 p.103)."*

108. That analysis contains no mention of CCJW, as CCJW was not in existence when the events that were material to either the assault claim or the safeguarding claim took place. Moreover, Globe J was not concerned with the Elders' implementation of spiritual guidance, which is of relevance in the present case. On the face of it, however, the considerations that (1) CCJW was in existence by the time of the events which form the subject of Claim 1 and Claim 2, (2) CCJW provided spiritual guidance to the Elders and approved the steps that they took in response to Mr Wee's complaint against Mr Otuo, and (3) on the evidence before me, by the time of the events which are material to these Claims (which occurred long after the time with which Globe J was concerned) Watch Tower Britain had become, in essence, a publishing and capital financing operation, can only serve to strengthen the argument that if any entity is vicariously liable for the slanders that Mr Otuo complains of that entity is not Watch Tower Britain.

109. On the evidence before me, it is clear that Watch Tower Britain played no role in authorising or directing the actions of any of the Elders who were involved in the material events. On the contrary, so far as Claim 1 is concerned that role was performed by CCJW, including and in particular by the sending of the letter dated 11 July 2012, in which CCJW directed or approved the making of the Announcement "at the earliest opportunity". CCJW appears to have had no involvement in the Judicial Committee's responses to Mr Otuo's requests for reinstatement, the second of which led to the reinstatement meeting at which Mr Morley spoke the words complained of in Claim 2. However, neither did Watch Tower Britain have any involvement in, or indeed any knowledge of, Mr Morley's utterance of those words or any material antecedent events.

110. Mr Otuo's contention that the letter dated 11 July 2012 was in fact a letter from, or represented the authorisation of, Watch Tower Britain writing "under the guise of" CCJW is unsupported by the evidence. In particular, this allegation is contrary not only to the evidence of the Defendants' witnesses, but also to the contents of the contemporary documents, which tell a clear (and clearly different) story. Although Mr Otuo is right in saying that the letter from the Judicial Committee dated 15 December 2011 was addressed to "Watch Tower Society of Britain", in my judgment what matters is that the reply to that letter, dated 4 January 2012, came from CCJW. There is no evidence that the letter from the Judicial Committee dated 16 February 2012 was addressed to anyone other than CCJW, and I infer that it was addressed to CCJW in light of both the fact that CCJW had written to the Judicial Committee on 4 January 2012 and the fact that CCJW replied to the letter dated 16 February 2012 on 16 March 2012. In any event, not only those letters but all the subsequent material correspondence emanated from CCJW, and in that way CCJW authorised or ratified all the actions of the Elders from both the Wimbledon Congregation and the Banstead Congregation which led to the decision to disfellowship Mr Otuo and the upholding of that decision on appeal. Moreover, although Mr Otuo is right in saying that he did not address his request for a review of those decisions to CCJW, it was CCJW which dealt with that request and decided to reject it, and it was that rejection which resulted in the Announcement.

111. In accordance with the authorities, the fact that CCJW may be vicariously liable for the making of the Announcement does not preclude the possibility that Watch Tower Britain is also vicariously liable for that act. In any event, Mr Otuo also contends that Watch Tower Britain is vicariously liable for the publication of the words complained of in Claim 2. In this connection, there are three main strands to Mr Otuo's case:

    (1) First, Mr Otuo relies on *A v The Trustees of the Watchtower Bible and Tract Society, The Trustees of the Loughborough Blackbrook Congregation of Jehovah's Witnesses, The Trustees of the Loughborough Southwood Congregation of Jehovah's Witnesses* [2015] EWHC 1722 (QB). In my view, however, as set out above, that decision does not support Mr Otuo's case, and indeed suggests that, regardless of the creation of CCJW, Watch Tower Britain would not be vicariously liable for the actions of the Elders of any congregation.

    (2) Second, Mr Otuo contends that Mr Morley (and, in respect of Claim 1, Mr Lewis as well) was appointed by and/or was an agent of Watch Tower Britain. In this regard, Mr Otuo placed considerable reliance on the Memorandum of Constitution of the Wimbledon Congregation, whereas Mr Brady relied not only on the evidence of the Defendants' witnesses but also on documents such as the Articles of Association of Watch Tower Britain and the form dated 3-8 May 2011 relating to the deletion of Mr Otuo as a ministerial servant. I have already summarised their respective arguments when discussing those documents above. I prefer the submissions of the Defendants on this issue.

Whatever may have been the position, or in contemplation, when the Constitution was drawn up, it seems to me that by May 2011 at least, and therefore well before the events which are material to either Claim 1 or Claim 2, Watch Tower Britain had no responsibility for the appointment of elders, and that responsibility lay instead either with the Governing Body of Jehovah's Witnesses, which operated through the medium of the Branch Office, or with CCJW. On the evidence before me, and in keeping with the detailed analysis of Globe J which I have quoted above, the Governing Body and its Branch Offices are separate and distinct from Watch Tower Britain; and on the evidence before me the same applies to CCJW.

(3) Third, Mr Otuo relies on an admission made in an earlier version of Watch Tower Britain's Amended Defence in Claim 1. In so far as that is a forensic point, I have taken it into account when reaching my conclusions on the second strand to Mr Otuo's case under this heading. In so far as that is advanced as a point of substance, to the effect that Watch Tower Britain has made an admission from which it cannot or should not be permitted to resile, I do not consider that it can prevail. It is not easy to track the history of amendments in this case, because as the litigation has progressed (including after Warby J ordered substantial parts of Mr Otuo's Replies to be struck out at the PTR) the parties have adopted the course of lodging clean fresh copies of the statements of case, without showing the previous text and what has been added or deleted. However, it appears that by Order dated 20 May 2014 Master Leslie granted Mr Otuo permission to amend his Particulars of Claim, and granted Watch Tower Britain permission to serve a consequentially amended Defence, but Watch Tower Britain went beyond the permission granted and served an Amended Defence which removed the admission in question. At that stage, albeit as a result of a change of pleaded case for which permission had not been granted, authorisation and vicarious liability became an issue on the face of the statements of case in Claim 1, and it was treated as a substantive issue thereafter. For example, in *Otuo v Watch Tower Bible and Tract Society of Britain* [2019] EWHC 571 (QB), Warby J said at [26]: "A fundamental issue in Claim 1 is whether the defendant authorised or was otherwise responsible for the publication of the Announcement. Its case is that it bears no responsibility, vicarious or otherwise, for the conduct of Mark Lewis". In these circumstances, on the first day of the trial I granted an application that was made by Watch Tower Britain by notice dated 5 March 2019 for permission to withdraw the admission in question. I did so on the basis that this was merely formalising what had long been treated by the parties and the Court as setting out the issues for trial, and having regard to the overriding objective and the very well-known case law concerning late amendments.

112. Applying the guidance that is provided by the authorities, the relationship between, on the one hand, Watch Tower Britain and, on the other hand, Mr Morley, Mr Lewis, and

for that matter any of the individuals who were involved in the material events (comprising Elders of the Wimbledon and Banstead Congregations and the Circuit Overseer) was not, at the time of any of those events, one that was capable of giving rise to vicarious liability. Nor was there a sufficient connection between the relationship (if any) between Watch Tower Britain and Mr Morley, Mr Lewis or any of those individuals and the actions of Mr Morley, Mr Lewis (or, if relevant, any of those individuals) complained of in either of the Claims.

113. In particular, the actions complained of in both Claims were not part of the activities (business or otherwise) of Watch Tower Britain carried on by it and for its benefit; and neither was the commission of those actions a risk created by Watch Tower Britain by assigning those activities to Mr Morley, Mr Lewis, or any of those individuals.

114. I do not consider that a case of authorisation or vicarious liability against Watch Tower Britain has been made out in respect of either Claim 1 or Claim 2. I would therefore dismiss Claim 1, and Claim 2 as against Watch Tower Britain, on that further basis.

The *ultra vires* issue

115. In his Reply in Claim 1, in response to Watch Tower Britain's "Particulars of Qualified Privilege", Mr Otuo pleads as follows:

> "It is *ultra vires* for the Defendant's agent (First Defendant) to embark on any action with the intention of expelling or disfellowshipping a member. It is not disputed that congregation elders have a responsibility to investigate an allegation of Scriptural wrongdoing for the purpose of assisting such ones to readjust. However, they are not to make up an allegation of serious wrongdoing against a congregant in order to advance their own resentful agenda. It is not disputed that qualified privilege may be extended to elders who seek to discharge a legitimate moral, religious or social duty."

116. In his Reply in Claim 2, in response to the Defendants' claim that he consented to the publication of the words spoken by Mr Morley at the reinstatement meeting, Mr Otuo pleads as follows:

> "The Constitution [i.e. the Memorandum of Constitution of the Wimbledon Congregation] makes no provision for members to be expelled or disfellowshipped and therefore no reinstatement needed. Therefore, the actions of the Defendants were *ultra vires*."

117. Mr Otuo concentrated on the second of these contentions at the trial. Although only pleaded in Claim 2, it seems to me that as a matter of logic this second contention, if right, would apply not only to the words complained of in Claim 2 but also to the Announcement. Moreover, it seems to me that, logically, it relates not only to the issue

of consent but also to the issue of qualified privilege: if there is no power to disfellowship an individual, it is difficult to see how there can be a duty to communicate to anyone the fact that the individual has been disfellowshipped, let alone the reasons for that *ultra vires* disfellowshipping.

118. As to the first of these pleaded contentions, it seems to me that (consistently with the heading under which the contention appears) although the words *"ultra vires"* are used in Mr Otuo's Reply, the pleading in truth relates not so much to whether there is a power to expel or disfellowship an individual but rather to issues of misuse of a privileged occasion and malice. As such it falls for consideration under those headings. In any event, I do not consider that it would be appropriate to allow the pleading of this first contention to lead to an exploration of whether the material decision-making process was procedurally proper, as Warby J expressly ruled that this was not an issue which ought to be tried when striking out other parts of the same paragraph of the Reply in Claim 1. See the Appendix to the judgment of Warby J in *Otuo v Watch Tower Bible and Tract Society of Britain* [2019] EWHC 344 (QB), and his reasoning at [74(3)].

> "… There is a dispute here, about the propriety of the procedural steps taken by the defendants … As the Supreme Court of Canada observed in *Judicial Committee of the Highwood Congregation of Jehovah's Witnesses v Wall* [2018] SCC 26 [38], "The courts lack the legitimacy and institutional capacity to determine whether the steps outlined in Matthew have been followed. These types of procedural issues are also not justiciable". But this inquiry would in any event plainly take up considerable resources, and seems to me to be incapable of adding much if anything of value to Mr Otuo's case. Ruling out such an enquiry not only eliminates needless prolixity, but also avoids the waste of time on what would be an unnecessary and disproportionate examination of the intricacies of procedural rules based on Biblical teaching."

119. Mr Otuo's pleaded case does not identify any particular entity or entities which is or are said to have lacked the power to disfellowship him (and, thus, according to his case, to lack the power to consider his reinstatement). However, the thrust of his case as argued at trial, which appears consistent with his pleaded case, is as follows: (1) on being baptised, an individual becomes a member of a congregation of Jehovah's Witnesses, (2) thereafter, if the individual moves from one place to another, the individual's papers may be transferred from one congregation to another, and in this way the individual may become a member of a different congregation, (3) all matters concerning the individual's membership of the congregation (and thus, if I understand Mr Otuo's case correctly, of the body of persons known as Jehovah's Witnesses) are set out in the constitution of the congregation to which the individual belongs, and (4) the Constitution of the Wimbledon Congregation contained no power to disfellowship him, and accordingly there was no power to disfellowship him.

120. As the Constitution of the Wimbledon Congregation is in a form that is standard within this jurisdiction, Mr Otuo accepted that, if right, this line of argument would produce the result that there is no power to disfellowship any member of any congregation in

this country (no matter how venal the sin(s) committed by that individual, and in spite of the extensive references in the materials of the Jehovah's Witnesses to which I was referred to disfellowshipping, the circumstances in which disfellowshipping may take place, and the procedures which should be followed before disfellowshipping occurs). Mr Otuo was also undeterred from advancing this line of argument by the considerations that before and at the time of the slanders complained of in Claims 1 and 2 he made no complaint about powers to disfellowship and to consider reinstatement being invoked against him, and instead had raised complaints about the propriety of various procedural steps which assumed the existence of those powers. He explained that he did not realise that these steps were *ultra vires* until the Constitution of the Wimbledon Congregation was disclosed in these claims.

121. In my judgment, Mr Otuo's contentions are flawed, and cannot succeed. I consider that the correct analysis is as follows: (1) on being baptised, an individual becomes a member of the body of Christian persons having the beliefs and practices of the denomination known as Jehovah's Witnesses (which means that, in essence, as stated by Globe J, they will "strive to live by a strict code of moral conduct based on the scriptures"), (2) typically, all such individuals will become members of a congregation, and if they move from one place to another they may move from one congregation to another, but whether or not they continue to be Jehovah's Witnesses does not depend on whether, at any given time, they are a member of a congregation, (3) the Constitution of the Wimbledon Congregation did not set out, and there was no reason to expect that it would set out, all matters concerning the individual's membership of the body of persons known as Jehovah's Witnesses, but, on the contrary, as discussed above, it covered discrete matters relating to the law of charities, (4) the fact that the Constitution of the Wimbledon Congregation contained no power to disfellowship Mr Otuo does not mean that there was no such power, (5) on the contrary, on the materials before me, there is such a power and it is exercised by the elders, whose appointment is not governed by the Constitution (although the trustees of their congregation may be vicariously liable for their actions, as I consider was found by Globe J), and (6) the suggestion that no such power exists would produce extremely surprising and far-reaching results for members of congregations of Jehovah's Witnesses in this jurisdiction, such that although "members of a religious association who are dismissed or otherwise subjected to disciplinary procedure may invoke the jurisdiction of the civil courts if the association acts *ultra vires* or breaches in a fundamental way the rules of fair procedure" (see *Shergill v Khaira* [2015] AC 359, Lords Neuberger, Sumption and Hodge at [48]) it is a conclusion that I consider the Court should be very slow to reach in the absence of compelling reasons.

122. There are no such reasons. On the contrary, in accordance with Matthew 18: 15-17 (the procedural compliance with which is not itself justiciable), it is to be expected that a religious body which is guided by and which seeks to apply scriptural principles will have the power to procure that in an appropriate case a sinner can be expelled. Among other things, this is sensible, if not essential, because someone who is unable or

unwilling to abide by scriptural principles not only does not properly belong as a member of such a body but also, unless removed, may have an undesirable influence on the faithful. Accordingly, in my judgment, Mr Otuo's *ultra vires* arguments are without substance and must be rejected.

The issue of consent

123. The availability of a defence of consent for the purposes of the law of defamation is recognised in the case law. See, for example, *Chapman v Ellesmere* [1932] 2 KB 431 (Lord Hanworth MR at pp11-12, Slesser LJ at pp18-19, Romer LJ at pp 23-24), *Friend v Civil Aviation Authority* [1998] IRLR 253 (Hirst LJ at [40-42] and [45], Brooke LJ at [69-71]), *Spencer v Sillitoe* [2003] EWHC 1651 (QB) and *Crossland v Wilkinson Hardware Stores Ltd* [2005] EWHC 481(QB) (Tugendhat J at [70]). Because in this area of the law each case turns upon its own particular facts, those decisions are of limited assistance. However, it is also right to note that in *Tesla Motors Ltd & Anor v British Broadcasting Corporation* [2011] EWHC 2760 (QB), Tugendhat J observed at [84] that "it is most unusual for a defence of consent to be raised in the context of libel or a related cause of action. One reason for this is that the law on consent generally requires that the person alleged to have given the consent should have done so freely and with full information".

124. The general principle is stated in *Gatley* at para 19.10 as follows:

> "It is a defence to an action for defamation that the claimant consented to the publication of which he now complains by participating in or authorising it. Thus, if the claimant has consented, expressly or impliedly or by conduct, to the publication of the words substantially as they were used … there is a good defence to the action; but the proof of consent must be clear and unequivocal."

125. Dealing first with Claim 2, the procedure for reinstatement is described as follows in OJW:

> "A disfellowshipped person may be reinstated when he gives clear evidence of repentance, demonstrating over a reasonable period of time that he has abandoned his sinful course and is desirous of having a good relationship with Jehovah and His organization. The elders are careful to allow sufficient time, perhaps many months, a year, or even longer, for the disfellowshipped person to prove that his repentance is genuine. When the body of elders receives a written plea for reinstatement, the judicial committee that disfellowshipped the person should, if possible, be the committee that speaks with the individual. The committee will evaluate the evidence of works of godly repentance on his part and decide whether to reinstate him at that time or not."

126. As set out above, OJW is "the basic procedure manual" for members of the Jehovah's Witnesses, which is "provided to members", and the contents of which Mr Otuo

contends to have been "inarguably common knowledge" to Wimbledon congregants. In any event, as appears from his letter of 20 May 2012, he knew about them by that date.

127. Further, when making submissions in relation to timing and limitation issues with regard to Claim 1, Mr Otuo told HH Judge Parkes QC that "after he learned of the cause of action on 29 June 2013 [and therefore after he had sent his second letter seeking reinstatement dated 17 June 2013], he waited for a meeting to take place, in the hope that the outcome would make it unnecessary to issue a claim form" (see *Otuo v The Watchtower Bible and Tract Society of Britain* [2015] EWHC 509 at [26]). This supports the Defendants' case that Mr Otuo expected whoever was considering his reinstatement to speak with him at a meeting. Also, the contents of his letters dated 20 May 2012 and 25 May 2012 (referred to above) are hard to reconcile with the suggestion that any request for reinstatement that he might make would or could be considered without consideration of the ground on which he had been disfellowshipped, and consideration of whether he had demonstrated contrition in relation to that ground.

128. In his evidence and submissions at trial, it was Mr Otuo's primary stance that he did not expect either of his requests for reinstatement to be dealt with at a meeting. He accepted that his first request was dealt with face to face, but only briefly, and he contended that he did not expect his second request to be deal with any differently. However, as a result of the transcript of the tape recording which Mr Otuo himself surreptitiously made, it is not in issue that (1) a meeting in fact took place on 22 July 2013 between him and the members of the Judicial Committee who had been involved with the disfellowshipping decision concerning him the previous year, (2) very near the outset of that meeting Mr Morley said: "… thank you for making yourself available to us … We've had your letter dated the 17th of the 6th which we received by post … the purpose of tonight's meeting is obviously you've put in a request for reinstatement … obviously we've had your letter, but we'd like to hear from you personally as to why you think you should be reinstated", and (3) Mr Otuo not only expressed no surprise at, or objection to, these observations, but also proceeded exactly as Mr Morley had suggested, by explaining why, in Mr Otuo's own words spoken at the meeting: "I just feel that the time's right, you know, for me to be back in the congregation".

129. In these circumstances, I am unable to accept Mr Otuo's evidence that he did not consent to his request for reinstatement being discussed at a meeting. I consider that Mr Otuo was an unreliable witness, who was prepared at times to say whatever he considered helpful to his case. It is hard to say, and unnecessary for me to decide, whether this is because he was being deliberately untruthful or because he has a capacity for persuading himself of matters in a way which favour his interests, which has burgeoned during the course of this protracted litigation. However, the fact that I found his evidence on the topic of the reinstatement meeting to be incredible is one of the main reasons why I consider that he was an unreliable witness. Another significant reason was his propensity, which manifested itself a number of times, to gloss over

documents or parts of documents which did not suit his case, and to rely on partial versions of both documents and events when the full picture favoured him less.

130. In this regard, Mr Otuo focussed on the statement in OJW that the Judicial Committee considering a request for reinstatement "will evaluate the evidence of "works of godly repentance" on [the applicant's] part". As part of his primary stance, Mr Otuo contended that it was obvious on the face of his letter dated 17 June 2013 that he was putting forward no evidence of "works of godly repentance", and that the Judicial Committee ought not to have allowed his request for reinstatement to be taken any further for this reason. As part of his secondary stance (which, if right, would meet the difficulties arising from the fact that he attended the meeting and participated in it), Mr Otuo contended that any consent on his part to his request for reinstatement being considered at a meeting went no further than consenting to the Judicial Committee evaluating whatever evidence of "works of godly repentance" he sought to put forward, and that after they had heard him explain why he considered that he should be reinstated they should have said nothing further. In particular, this secondary stance, if right, would enable Mr Otuo to avoid the suggestion that he consented to the allegation of fraud being discussed at the meeting. In this context, Mr Otuo relied on the fact that he did not mention the word "fraud" at any time before Mr Morley spoke the words "just going back to July of last year when you were disfellowshipped". Mr Otuo's evidence in [147] and [148] of his witness statement dated 5 February 2019 is as follows:

> "… It [is] worth noting that he [i.e. Mr Morley] did not say that they will like to hear from me and interrogate me thereafter …
>
> … I took up the offer to set out why I wanted to be reinstated. I carefully gave my reasons without traversing the allegation of fraud … [Mr Morley] then attempts to lure me to talk about the fraud charge by asking if I understood what I was disfellowshipped for? It must be borne in mind that those present knew of the allegation of fraud and did not need the words fraud to be spelt out to know where Jon wanted to take the conversation. I responded by saying that it was alleged I had defrauded Robert. I immediately felt that I was under attack again for a matter that I did not want to repeat in my application for reinstatement. I needed to reply in defence of my reputation. He then went on to publish the words complained of."

131. In my view, which was confirmed by Mr Otuo's oral evidence and his demeanour under cross-examination, this narrative is tailored to meet the argument that, by attending the meeting on 22 July 2013 and participating as he did in the dialogue which is set out in the transcript of that meeting, Mr Otuo consented to the publication of the words complained of in Claim 2. Mr Otuo made no objection at the time to the course that was taken at the meeting. He expressed no concern that the words spoken by Mr Morley were harmful to his reputation. Further, although the words complained of in Claim 2 were spoken between pages 3 and 5 of the transcript, the conversation continues for a further 15 pages. All this is more consistent with consent than with its absence.

132. In circumstances where the initial exposition of an applicant for reinstatement does not satisfy the Judicial Committee that the applicant ought to be reinstated, I consider that it is fair and reasonable and entirely unsurprising that the Judicial Committee should afford the applicant an opportunity to make good a case for reinstatement. Indeed, unless perhaps the applicant's exposition reveals that the applicant is clearly beyond redemption, I consider that a Judicial Committee which does not afford the applicant that opportunity might well be criticised for not carrying out its role fairly or justly, such that it may be said that it needs to act in that way. On the basis of both Mr Morley's evidence, which I accept, and the contents of the transcript, that was the essential purpose and effect of the questions which Mr Morley asked. Accordingly, in my judgment for Mr Morley to ask Mr Otuo questions in terms of the words complained of in Claim 2 was entirely proper and in no way unexpected, and indeed was probably necessary. Moreover, and in particular judging by his reaction as appears from the transcript, I consider that this is how Mr Otuo viewed matters at the time. In my view, having regard to the requirements for reinstatement contained in OJW, the contents of his letters dated 20 May 2012 and 25 May 2012 which are referred to above, his letter dated 17 June 2013, and the words spoken near the outset of the meeting on 22 July 2013, Mr Otuo consented to this process, including that publication, in advance of that meeting. However, even if that is not correct, it is clear from the transcript that Mr Otuo consented at the time.

133. I consider that Mr Otuo's case that, because his letter made no mention of fraud and contained no admission and displayed no contrition, he either made clear to the Judicial Committee that he was not prepared to discuss the issue of fraud at the meeting or, by attending, "was daring [Mr Morley] to publish [in the knowledge that he] was likely to face a suit on publication, and [Mr Morley] accepted the risk" is not only, on the face of it, far-fetched and contrived, but also entirely inconsistent with what occurred at the meeting. I have no doubt that the members of the Judicial Committee convened the meeting in good faith, in order to consider to the best of their abilities and in accordance with their religious beliefs and their duties as Elders whether Mr Otuo ought to be reinstated as one of Jehovah's Witnesses in light of the time that had elapsed since they had rejected his first request for reinstatement and in all the circumstances as they appeared to them in light of what Mr Otuo had to say. They could not be expected to detect, whether from the terms of his letter or from his conduct at the meeting, that Mr Otuo was making a request which, in accordance with their guidelines, had no prospect of success; and nor do I consider that this was, in fact, the true position. On the contrary, I consider that, viewed both objectively and subjectively having regard to his state of mind at the time, Mr Otuo's application for reinstatement was genuine, and one that he hoped might succeed. For his part, he adopted the stance that although his business dealings with Mr Wee might have taken an unfortunate course he had not acted in breach of any legal or moral obligation, and that there was nothing he should be reproached about, and he adhered to that stance during the meeting. But that does not mean he did not expect there to be an exploration of the different view which he knew to have been taken by the Elders who had considered Mr Wee's complaint and to have resulted in his disfellowshipping; and the transcript shows that he did expect this.

134. Mr Otuo submitted that, even if the ground for his disfellowshipping had to be traversed in order to assess his repentance on the matter, this afforded no basis for Mr Morley to make reference to the accusation of fraud, because fraud was not the basis upon which the decision to disfellowship Mr Otuo had been upheld by the Appellate Committee (whose decision Mr Otuo had failed to have reviewed). In my judgment, that argument is wrong. Both the Judicial Committee and the Appellate Committee decided that Mr Otuo should be disfellowshipped on the ground of fraud, albeit fraud arising after the inception of the loan from Mr Wee. This is reflected in Mr Morley's words on the transcript that "the conclusion was, on the part of the original committee, the appeal committee and the branch, that it was a fraudery situation". Moreover: (1) it was Mr Otuo, not Mr Morley, who first used the word "fraud" in the reinstatement meeting; and (2) the word "fraud" was used by Mr Otuo in answer to a question from Mr Morley about what Mr Otuo had been disfellowshipped for. In my opinion, these matters do not sit well with complaints by Mr Otuo that, without his consent, the ground for his disfellowshipping which was stated at the meeting (a) was wrong or (b) did not reflect the decision of the Appeal Committee which resulted in him being disfellowshipped.

135. Mr Otuo further submitted that he could not be taken to have consented to the procedures that the Defendants were implementing if those procedures were carried out unfairly or if they were implemented maliciously. I am prepared to accept, without deciding, that this is correct. However, as appears from the discussion above, and in any event, I do not consider that there was anything unfair about the procedure that was adopted with regard to Mr Otuo's request for reinstatement and the conduct of the reinstatement meeting. In addition, as discussed further below, I reject the allegation that Mr Morley was actuated by malice in publishing the words complained of in Claim 2 (or at all). In particular, there is no evidence that Mr Morley lacked an honest belief in the truth of those words, which essentially comprised a very brief rehearsal of what had in fact transpired in the previous year, including, as I find, an accurate reference to the ground on which Mr Otuo had, in the result, been disfellowshipped. Further, neither the contents of the transcript nor any other evidence before me warrants a finding of any misuse of the occasion of the reinstatement meeting or of any dominant improper motive on the part of Mr Morley on that occasion, and nor do I consider that Mr Otuo had any genuine concern about these matters at the time.

136. If and to the extent that the implementation of the procedures which led to the decision that he should be disfellowshipped provided Mr Otuo with grounds for complaint, that matter either was or was not justiciable. If it was justiciable, it was open to Mr Otuo to seek a remedy from the courts. If it was not justiciable, he was unable to seek a remedy for sound legal reasons. For purposes of determining the issue of consent, whether Mr Otuo chose not to seek a remedy or whether he was unable to seek a remedy, his request for reinstatement falls to be approached on the basis that it is a request that he chose to make, and that his decision to engage with that procedure cannot be said to be vitiated by any unfairness or malice that may have affected his prior disfellowshipping.

137. The like points apply to Mr Otuo's contention that he cannot have consented to the reinstatement procedure because that procedure only applies to Jehovah's Witnesses, and, at the time he made his request for reinstatement, he was no longer a Jehovah's Witness because he had been disfellowshipped. The short answer to this argument is that Mr Otuo knew that the Jehovah's Witnesses operated a procedure to deal with requests for reinstatement, he chose to make such a request, and he therefore agreed to that procedure – indeed, it is clear from the materials before me that he knew the details of that procedure, and, further, that he took care in invoking it accordingly.

138. For these reasons, in my judgment the defence of consent is made out in Claim 2.

139. Turning to Claim 1, Mr Otuo produced draft amended Particulars of Claim on 8 November 2015, verified by a statement of truth signed by him, upon which he relied when seeking permission (in the event, unsuccessfully) to amend his pleaded case in Claim 2 to add a claim for breach of contract. That draft statement of case alleged that, when (after being associated, as he pleads, with Watch Tower Britain for over 20 years) Mr Otuo applied to be baptised in 1992 he was admitted (as he pleads, to Watch Tower Britain) on a list of terms. Those terms included, in short, that the procedures set out in OJW (and, for that matter, in "Shepherd the Flock of God") would be followed, including that in the event that an allegation of serious wrongdoing was made against him and was properly investigated and upheld his membership could be revoked by disfellowshipping if he was found guilty and remained unrepentant of the act of which he had been found guilty. In his answers in cross-examination, Mr Otuo took the point that these procedures did not apply to him because no provision was made for any of these matters in the Constitution of the Wimbledon Congregation. Subject to that point, Mr Otuo accepted that: (1) certain sins are serious enough to merit disfellowshipping, (2) if an individual is disfellowshipped, the congregation needs to be informed of this, because, according to the Bible, such a person should be shunned, and Jehovah's Witnesses believe that there is a duty to shun such a person; and (3) the elders have a duty to provide that information, and the members of the congregation have an interest in receiving it. Mr Otuo further accepted that when he wrote his letter dated 20 May 2012 he was conversant with these procedures to the extent set out in that letter, and that he understood that a person could be disfellowshipped for serious wrongdoing.

140. Based on these matters, and the fact that Mr Otuo participated in the process which resulted in the decision that he should be disfellowshipped and the making of the Announcement, Mr Brady submitted that Watch Tower Britain had made out a defence of consent in Claim 1.

141. While I can see the force of that submission, I am concerned that it is only well-founded if these procedures were applied properly and fairly in Mr Otuo's particular case. However, and although I consider that on proper analysis a large part of Mr Otuo's case before me related to that very issue, that is an issue which Warby J was concerned to

remove from the issues to be tried, and, indeed, is an issue which (in light of the religious features which are involved) may well not be justiciable in any event. Even if those obstacles could be overcome, the determination of that issue would, in line with Warby J's concerns, involve the examination and determination of a great number of sub-issues, which would inevitably be both detailed and lengthy. Those problems do not apply to the reinstatement meeting, where the relevant history is brief, and where what occurred can be gleaned from the documents, and not least the transcript. The proportionality of such an exercise has to be viewed in the context of the amount of Court time and resources which these Claims have already occupied, and against the background that I have decided both Claims in favour of the Defendants on a number of other grounds, as appears from the rest of this judgment.

142. For these reasons, I decline to explore this issue any further with regard to Claim 1.

Partial truth

143. As set out above, Sir David Eady ruled that the words complained of by Mr Otuo in Claim 2 bear the following natural and ordinary defamatory meanings: (1) that Mr Otuo had been disfellowshipped a year before the reinstatement meeting on the ground of fraud; (2) that Mr Otuo was guilty of fraud; and (3) that Mr Otuo was unrepentant. In that Claim, the Defendants plead a defence of truth in relation to the first of those 3 meanings. It is no part of their case in Claim 2, or indeed in Claim 1, that Mr Otuo was in fact guilty of fraud. Although the Defendants' reasons for adopting this course may not matter, it appears from [34] of the judgment of Warby J in *Otuo v The Watch Tower Bible and Tract Society of Britain* [2019] EWHC 344 (QB) that they are as follows: "The Defendants would have wanted to plead a full defence of justification, asserting the truth of the imputation of fraud, but they have not done so because the issue thus raised would not have been justiciable. That is because the plea would have asserted that, as a matter of religious doctrine, Mr Otuo was guilty of fraud. The Court could not have adjudicated on the question."

144. In response, Mr Otuo denies that the ground for the decision to disfellowship him was "the sin of fraud (according to the religious practices and beliefs of Jehovah's Witnesses)".

145. This issue did not play a major part in the proceedings. It is not mentioned at all in Mr Brady's closing submissions, and is only mentioned in Mr Otuo's submissions in the context of an Order of Sir David Eady dated 18 March 2016, which is said to state that the Defendants' plea of truth does not meet the defamatory sting of the words complained of in Claim 2. This slight attention is unsurprising in light of the ambit of all other issues which arise. Those other issues appear to me to have the consequence that the plea of partial truth only assumes significance if the Defendants fail on all their other defences in Claim 2, and then only to the extent that if they succeed on this plea

alone that will or may reduce to some extent the damages to which Mr Otuo would otherwise be entitled.

146. In these circumstances, I consider it is possible to deal with this issue briefly. Having regard to the findings that I have made above, I decide it in favour of the Defendants.

Qualified privilege

147. In *Otuo v The Watch Tower Bible and Tract Society of Britain* [2019] EWHC 344 (QB), Warby J helpfully summarised this aspect of the Claims as follows at [22], [26] and [51]:

> "… The privilege relied on is the common law privilege that protects statements made in good faith by a person with a duty to communicate on a given topic or legitimate interest in doing so, to others with a common or corresponding interest in receiving information on that topic. The pleaded case is that the elders in the Congregation had a legitimate religious and moral interest and duty to inform members of the Congregation and other interested parties of their decision to disfellowship the claimant; and the Congregation and interested persons had a reciprocal legitimate religious and moral interest to be informed of the decision.
>
> …. [Claim 2 contains] a plea of qualified privilege on similar lines to the plea in Claim 1
>
> … Putting it very broadly, there seem to be two central issues in these two claims: first, (assuming, for this purpose that the process was undertaken in good faith), is the defence of qualified privilege defeated by reason of some procedural irregularity or impropriety of such gravity as to undermine the validity of the conclusions arrived at, so that the publishers and publishees did not have the reciprocal duties and interests relied on; secondly, if not, were the publishers malicious, that is to say did they have some improper collateral motive which was the dominant reason for making the statements complained of? This question, in this case, is essentially a question of honesty. It may be that in that context the Court will have to assess whether Mr Lewis and Mr Morley genuinely believed that Mr Otuo had committed the sin of fraud."

148. The classic statements of this form of qualified privilege are to be found in older cases.

149. In *Toogood v Spyring* (1834) 1 CM & R 181, Parke B said at 193:

> "In general, an action lies for the malicious publication of statements which are false in fact, and injurious to the character of another, and the law considers such publication as malicious, unless it is fairly made by a person in the discharge of some public or private duty, whether legal or moral, or in the conduct of his own affairs, in matters where his interest is concerned. In such cases, the occasion prevents the inference of malice, which the law draws from unauthorised communications, and affords a qualified defence depending upon

> the absence of actual malice. If fairly warranted by any reasonable occasion or exigency, and honestly made, such communications are protected for the common convenience and welfare of society; and the law has not restricted the right to make them within any narrow limits."

150. In *Adam v Ward* [1917] AC 309, Lord Atkinson said at 334:

> "a privileged occasion is … an occasion where the person who makes a communication has an interest or a duty, legal, social, or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential."

151. In *Watt v Longsdon* [1930] 1 KB 130, Scrutton LJ, having cited that passage from *Adam v Ward*, continued at 147–148:

> "With slight modifications in particular circumstances, this appears to me to be well established law, but, except in the case of communications based on common interest, the principle is that either there must be interest in the recipient and a duty to communicate in the speaker, or an interest to be protected in the speaker and a duty to protect it in the recipient. Except in the case of common interest justifying intercommunication, the correspondence must be between duty and interest. There may, in the common interest cases, be also a common or reciprocal duty. It is not every interest which will create a duty in a stranger or volunteer. This appears to fit in with the two statements of Parke B already referred to [including that in *Toogood v Spyring*], and with the language of Erle CJ in *Whiteley v Adams*, that the communication was made in the discharge of some social or moral duty, or on the ground of an interest in the party making or receiving it. This is approved by Lindley LJ in *Stuart v Bell*, but I think should be expanded into 'either (1) a duty to communicate information believed to be true to a person who has a material interest in receiving the information, or (2) an interest in the speaker to be protected by communicating information, if true, relevant to that interest, to a person honestly believed to have a duty to protect that interest, or (3) a common interest in and reciprocal duty in respect of the subject matter of the communication between speaker and recipient'."

152. These and other cases were considered by the Court of Appeal in *Kearns v General Council of the Bar* [2003] 1WLR 1357. In that case, a firm of solicitors brought proceedings for defamation in respect of a communication between the defendant and the heads, senior clerks and practice managers of barristers' chambers which stated, inaccurately and as a result of a mistake, that the claimants, who had been instructing counsel, were not solicitors and entitled to instruct counsel. The Court of Appeal upheld the decision of Eady J to grant summary judgment to the defendant on the ground that the claimant had no real prospect of defeating the pleaded defence of qualified privilege. In support of his submission that both of the material occasions were protected by qualified privilege, Mr Brady argued that the present Claims fell within the category discussed by Simon Brown LJ (as he then was) at [30] and [39]:

> "The argument, as it seems to me, has been much bedevilled by the use of the terms "common interest" and "duty-interest", for all the world as if these are clear-cut categories and any particular case is instantly recognisable as falling within one or other of them … To my mind an altogether more helpful categorisation is to be found by distinguishing between on the one hand cases where the communicator and the communicatee are in an existing and established relationship (irrespective of whether within that relationship the communications between them relate to reciprocal interests or reciprocal duties or a mixture of both) and on the other hand cases where no such relationship has been established and the communication is between strangers (or at any rate is volunteered otherwise than by reference to their relationship) … Once the distinction is made in this way, moreover, it becomes to my mind understandable that the law should attach privilege more readily to communications within an existing relationship than to those between strangers.
>
> … What matters is that the relationship … is an established one which plainly requires the flow of free and frank communications in both directions …"

153. In *Chapman v Ellesmere* [1932] 2 KB 431 the plaintiff was a trainer who was licensed by the Jockey Club on terms which included a provision that his licence might be withdrawn or suspended by the stewards of the Jockey Club in their absolute discretion, and that such withdrawal or suspension might be published in the Racing Calendar for any reason which might seem proper to them. Following an inquiry into a race run by a horse which the plaintiff had trained, the stewards of the Jockey Club reached a decision which their agents communicated to the Press agencies and the Times, and which was published by them as well as in the Racing Calendar. The decision included the words "The stewards of the Jockey Club .... after further investigation, satisfied themselves that a drug had been administered to the horse for the purpose of the race in question. They disqualified the horse for this race and for all future races under their rules and warned C. C. Chapman the trainer of the horse off Newmarket Heath." The plaintiff's claim for libel succeeded at first instance, but on appeal the Court of Appeal (1) the claim in respect of the publication in the Racing Calendar was held to be privileged and (2) a new trial was ordered with regard to the claims in respect of the publication in other newspapers. The Court of Appeal addressed issues of consent as well as issues of qualified privilege, but on the latter topic Lord Hanworth MR and Romer LJ said at 449 and 473 respectively:

> "It was of deep importance to persons interested in horse-racing - and they are many - to know that a certain horse had been found to be doped, and that the responsibility in respect of this had been visited upon the trainer."
>
> "In my opinion the stewards of the Jockey Club and Messrs. Weatherby are protected from liability in respect of the publication in the Racing Calendar upon the ground that it was made upon a privileged occasion. I cannot myself doubt that the stewards owe a duty to all persons interested in racing under the Rules of the Jockey Club to keep them informed of their decisions arrived at upon the matters that from time to time are brought before them in accordance with those rules."

154. So far as concerns Claim 1, as set out in the materials to which I have referred, and as Mr Otuo accepted subject only to his point about the meaning and effect of the Constitution of the Wimbledon Congregation, and adopting for this purpose the words of OJW, in the event that it was "necessary to disfellowship an unrepentant wrongdoer from the congregation" there was clearly a need to communicate that information in order to "alert faithful members of the congregation to stop associating with that person". The persons tasked with the duty of communicating that information were the Elders, and the persons who had a corresponding interest in receiving it were the members of the Wimbledon Congregation. For reasons which are apparent from the contemporary documents above, there was no procedural irregularity or impropriety of such gravity as to undermine the validity of the decision that Mr Otuo should be disfellowshipped, such that these reciprocal duties and interests did not arise. On the contrary, the Jehovah's Witnesses operate a relatively refined procedure for considering grievances like those raised by Mr Wee, all of the stages of that procedure were gone through, and the final decision was the product of consideration by the Appeal Committee and CCJW, against which any allegations of impropriety are hollow.

155. So far as concerns Claim 2, again adopting the words of OJW for this purpose, when considering Mr Otuo's request for reinstatement it was essential to ascertain whether there was "clear evidence of repentance, demonstrating over a reasonable period of time that he [had] abandoned his sinful course" and also to "evaluate the evidence of works of godly repentance on his part and decide whether to reinstate him at that time or not." The persons tasked with the duty of ascertaining and evaluating that evidence and of making that decision were the Elders who were present at the reinstatement meeting, and Mr Otuo had a corresponding interest in providing that evidence and in having that decision made. It was reasonable, and indeed probably necessary, for Mr Morley to speak the words complained of to all those present at the reinstatement meeting both in order to carry out that duty, and to satisfy the interest of Mr Otuo in having his request for reinstatement properly considered by the Elders who were present at that meeting. Nor were that duty and interest vitiated by any procedural irregularity or impropriety.

156. In these circumstances, applying the guidance contained in the authorities to the facts of the present case, I consider that both the Announcement and the words complained of in Claim 2 are protected by qualified privilege on the basis succinctly outlined by Warby J.

Malice

157. Both sides relied on passages in the classic exposition of malice in the present context, contained in the speech of Lord Diplock in *Horrocks v Lowe* [1975] AC 135 at 149-151:

> "… So [the maker] is entitled to be protected by the privilege unless some other dominant and improper motive on his part is proved. 'Express malice' is the term of art descriptive of such a motive. Broadly speaking, it means malice in the popular sense of a desire to injure the person who is defamed and this is

generally the motive which the plaintiff sets out to prove. But to destroy the privilege the desire to injure must be the dominant motive for the defamatory publication; knowledge that it will have that effect is not enough if the defendant is nevertheless acting in accordance with a sense of duty or in bona fide protection of his own legitimate interests.

The motive with which a person published defamatory matter can only be inferred from what he did or said or knew. If it be proved that he did not believe that what he published was true this is generally conclusive evidence of express malice, for no sense of duty or desire to protect his own legitimate interests can justify a man in telling deliberate and injurious falsehoods about another, save in the exceptional case where a person may be under a duty to pass on, without endorsing, defamatory reports made by some other person.

Apart from those exceptional cases, what is required on the part of the defamer to entitle him to the protection of the privilege is positive belief in the truth of what he published or, as it is generally though tautologously termed, 'honest belief'. If he publishes untrue defamatory matter recklessly, without considering or caring whether it be true or not, he is in this, as in other branches of the law, treated as if he knew it to be false. But indifference to the truth of what he publishes is not to be equated with carelessness, impulsiveness or irrationality in arriving at a positive belief that it is true. The freedom of speech protected by the law of qualified privilege may be availed of by all sorts and conditions of men. In affording to them immunity from suit if they have acted in good faith in compliance with a legal or moral duty or in protection of a legitimate interest the law must take them as it finds them. In ordinary life it is rare indeed for people to form their beliefs by a process of logical deduction from facts ascertained by a rigorous search for all available evidence and a judicious assessment of its probative value. In greater or in less degree according to their temperaments, their training, their intelligence, they are swayed by prejudice, rely on intuition instead of reasoning, leap to conclusions on inadequate evidence and fail to recognise the cogency of material which might cast doubt on the validity of the conclusions they reach. But despite the imperfection of the mental process by which the belief is arrived at it may still be 'honest', that is, a positive belief that the conclusions they have reached are true. The law demands no more.

Even a positive belief in the truth of what is published on a privileged occasion - which is presumed unless the contrary is proved - may not be sufficient to negative express malice if it can be proved that the defendant misused the occasion for some purpose other than that for which the privilege is accorded by the law. The commonest case is where the dominant motive which actuates the defendant is not a desire to perform the relevant duty or to protect the relevant interest, but to give vent to his personal spite or ill will towards the person he defames. If this be proved, then even positive belief in the truth of what is published will not enable the defamer to avail himself of the protection of the privilege to which he would otherwise have been entitled …

Judges and juries should, however, be very slow to draw the inference that a defendant was so far actuated by improper motives as to deprive him of the protection of the privilege unless they are satisfied that he did not believe that what he said or wrote was true or that he was indifferent to its truth or falsity. The motives with which human beings act are mixed. They find it difficult to

> hate the sin but love the sinner. Qualified privilege would be illusory, and the public interest that it is meant to serve defeated, if the protection which it affords were lost merely because a person, although acting in compliance with a duty or in protection of a legitimate interest, disliked the person whom he defamed or was indignant at what he believed to be that person's conduct and welcomed the opportunity of exposing it. It is only where his desire to comply with the relevant duty or to protect the relevant interest plays no significant part in his motives for publishing what he believes to be true that 'express malice' can properly be found.
>
> There may be evidence of the defendant's conduct upon occasions other than that protected by the privilege which justify the inference that upon the privileged occasion too his dominant motive in publishing what he did was personal spite or some other improper motive, even although he believed it to be true."

158. In *Bartholomew Umeyor v Innocent Ibe* [2016] EWHC 862 (QB), Warby J said at [89]:

> "The following, however, is a list of characteristics or behaviour which have been held over the years not to amount to malice: forming a belief not based on any reasonable grounds, or on inadequate research, or conduct which is hasty, credulous, foolish, involves jumping to conclusions, or is irrational, stupid, pig-headed, obstinate, or the product of 'gross and unreasoning prejudice'."

159. In *Henderson v London Borough of Hackney* [2010] EWHC 1651 (QB), Eady J said at [33]:

> "It has been confirmed by the Court of Appeal in *Telnikoff v Matusevitch* [1991] 1 QB 102 and in *Alexander v Arts Council of Wales* [2001] 1 WLR 1840 that, in order for a claimant to succeed in proving malice, it is necessary both to plead and prove facts which are more consistent with the presence of malice than with its absence. This is one of the reasons why, in practice, findings of malice are extremely rare."

160. With regard to the assessment of the credibility of the individuals who he accuses of malice in the present case, Mr Otuo referred me to what Tugendhat J said in *Cambridge v Makin* [2011] EWHC 12 (QB) at [211]: "The most important tests of credibility are the consistency of a witness's evidence with what can be shown to have occurred, and with what he has said or done previously". In the present case, as is so often true, the most reliable evidence as to what occurred and as to what the witnesses said or did previously is to be found in the contemporary documents. The documents in the present case are reasonably extensive. I have analysed many of those documents in some detail above in large part for these reasons.

161. Mr Otuo invoked each of the ways of establishing malice to which Lord Diplock made reference, alleging (1) knowledge that the Announcement and the words complained of in Claim 2 were untrue, (2) reckless publication, and (3) dominant improper motive.

Further, Mr Otuo relied on conduct on occasions other than the occasion when the Announcement was made and the occasion of the reinstatement meeting as justifying the inference that on each of those privileged occasions publication was driven by a dominant improper motive. These allegations are made against Messrs Morley, Lewis, Sutton and Smith in Claim 1 and against Mr Morley in Claim 2, and are set out in paragraphs 28-66 of the latest version of Mr Otuo's Reply in Claim 1 and paragraphs 16-42 of the latest version of his Reply in Claim 2.

162. Those versions are the product of substantial pruning down as a result of Warby J's rulings at the PTR. Warby J went through Mr Otuo's pleaded case on malice with meticulous care and "refashioned the Replies so as to focus on what Mr Lewis and Mr Morley knew and believed in relation to the facts relating to the alleged fraud, which seems to me to be at the heart of the case": see *Otuo v The Watch Tower Bible and Tract Society of Britain* [2019] EWHC 344 (QB) at [74]. In the detailed Appendix to that judgment, Warby J addressed what should and should not be retained in those Replies almost line by line. In the few instances where Warby J referred to text by reference to its location on the page, this provided a basis for argument before me (which he could not have foreseen) about the layout of the printed versions of the Replies which were before him, which, regrettably, was utilised. The parties' points of difference were eventually reduced to a number of discrete issues, which I was required to rule on during the course of the trial. In the result, although the final shape of Mr Otuo's pleaded case was only determined after the commencement of the trial, it is a pleaded case which has been subjected to no shortage of careful judicial scrutiny.

163. Nevertheless, Mr Otuo's case on malice is far from narrowly confined, and, as expounded at trial, it also involves allegations that he was the victim of a conspiracy or conspiracies of a kind which are often at the boundaries of what can credibly be argued.

164. At the same time, Mr Otuo advances no case of malice against Messrs Davey, Eagles and Greenway (the members of the Appeal Committee who, in May 2012, upheld the decision of the Judicial Committee that Mr Otuo should be disfellowshipped) or against CCJW (which considered Mr Otuo's request for a review of the decision of the Appeal Committee, decided on the basis of what it was told by the Appeal Committee that "the decisions of both committees to disfellowship Frank Otuo is correct" and, on those grounds, directed the Judicial Committee to make the Announcement to the Wimbledon Congregation).

165. In my opinion, this presents a fatal difficulty for Mr Otuo's case on malice in Claim 1. Although the Announcement was read out by one of the individuals against whom allegations of malice are made, namely Mr Lewis, it is clear from the contemporary documents that, in reading out the Announcement, Mr Lewis was acting in accordance with the decision of the Appeal Committee, and was implementing a direction from CCJW. Even if one or more of he and Messrs Morley, Sutton and Smith were actuated

by malice, in the events which happened there was in fact no causal connection between that malice and the making of the Announcement. Indeed, even if, in principle, it might be possible to characterise the actions and decisions of the Appeal Committee and, beyond them, CCJW, as dishonest or reckless or driven by a dominant improper motive due to the alleged malice of one or more of Messrs Morley, Lewis, Sutton and Smith, Mr Otuo has not pleaded any such case. Although Mr Otuo is appearing in person, it is right to hold him to his pleaded case, in light of the number of interlocutory hearings which have occurred in these proceedings and the rulings of Warby J in particular.

166. I consider that Mr Otuo also faces formidable threshold difficulties with regard to his case on malice in Claim 2. As set out above, Mr Otuo had in fact been disfellowshipped in the previous year, and on the ground of fraud; and it is his own case that he was unrepentant. Any suggestion that Mr Morley was dishonest in publishing the words complained of in Claim 2 must therefore rest on the contention that he was dishonest in saying that Mr Otuo was guilty of fraud. However, the finding of fraud which had resulted in Mr Otuo being disfellowshipped arose from the decision of the Appeal Committee, which CCJW considered to be correct. In light of that finding by the Appeal Committee and CCJW's endorsement of the same (among other things, having considered a 40 page letter from Mr Otuo, and having asked the Appeal Committee for its explanation of a number of matters) I consider that any allegation that Mr Morley was dishonest in stating that Mr Otuo had been guilty of fraud is unsustainable. Whether or not Mr Otuo was in fact guilty of fraud, it is hard to see why anyone knowing those matters should not honestly think he was guilty. Looking at the contents of the Data Summary Sheet by way of a single example, while it may be open to argument as to whether "deception and trickery in later failure to repay debt over several years" is necessarily "fraud", the upshot as stated in that document is that "AC agree with JC that [FO] has defrauded RW". The same considerations apply to the suggestion that in publishing the words complained of in Claim 2, Mr Morley was publishing untrue defamatory matter recklessly. Much of what Mr Morley published was true, but if and to the extent that it was untrue it is extremely hard to see how he was reckless, when, in essence, he was merely repeating the outcome of a process which included an appeal to the Appeal Committee and an unsuccessful request for review by CCJW. As to the suggestion that Mr Morley had a dominant improper motive, this is substantially covered by my findings in relation to the defence of consent above. By affording Mr Otuo an opportunity to demonstrate repentance, which Mr Otuo needed to do if he was to succeed in his request for reinstatement, Mr Morley was only doing what was required of him in order to perform his function and duty as an Elder in the circumstances. It is difficult, if not impossible, to see how he could have avoided saying what he did in light of the need to deal with Mr Otuo's request appropriately.

167. I consider these points are sufficient by themselves to dispose of Mr Otuo's case on malice. In addition, I have considered a number of his more detailed allegations in the course of discussing the contemporary documents above. I will nevertheless consider these allegations further. In carrying out that task, due to the fact that Mr Otuo's pleaded

case on malice includes allegations of procedural impropriety, it will be relevant to consider a number of procedural points, but only if and to the extent that they bear on the state of mind of the individuals who he alleges to have been actuated by malice. Before doing that, it is important to make some general points.

168. First, in not holding back from making extremely serious allegations against others, it seems to me that Mr Otuo has not paused to ask himself whether there is another side to the story, and more innocent explanations for the matters he relies on as evidence of malice. He impressed me as being self-absorbed, self-righteous and lacking in insight.

169. As Mr Eagles explained: "The process is not adversarial". As Mr Davey stated: "We are not judgmental. We are balanced and reasonable people… In no way would we be saying that he was going to use the money for a luxurious lifestyle. The transaction and what occurred afterwards concerned us. It was not reasonable. We proceeded on what the scriptures say: that you do not owe anyone a single thing except love. It is very simple, not complicated".

170. Mr Otuo does not appear to have seriously entertained the possibility, either during the course of the investigation which led up to his disfellowshipping or during the course of these proceedings, that the Elders who looked into Mr Wee's grievance were genuinely dismayed by what they learned of his conduct and the attitude that he displayed before them. Mr Otuo is critical of the Elders for (as he contends) misunderstanding key elements of his dealings with Mr Wee and not being open and fair with him, when at the same time he has not given proper weight to other, and in my view more important, aspects of those dealings, in respect of which their understanding was right and their concerns about his failure to honour his obligations were not without foundation. Mr Otuo has focussed either on arguing that the Elders could not properly look into his actions, or on justifying his actions, without asking himself whether they were honestly trying to apply Scriptural principles in assisting Mr Wee, and without grappling with the substance of their concerns. Finally, Mr Otuo has demanded of the Elders a level of analytical sophistication which was beyond the reach of at least some of them, and a degree of legal and textual analysis which was not reasonably to be expected of them in all the circumstances. Using the words of Lord Diplock, he has required from them something akin to "a process of logical deduction from facts ascertained by a rigorous search for all available evidence and a judicious assessment of its probative value", when they were not sitting as a court of law and were partly guided by faith and prayers.

171. Second, and allied to this first point, in spite of his obvious intelligence, and in spite of the fact that he relied upon the passages from Lord Diplock's speech cited above, having identified what appeared to him to be valid grounds of criticism, Mr Otuo did not seek in his own mind or in his arguments to distinguish between instances which evidence or may evidence (1) being "swayed by prejudice, rely[ing] on intuition instead of reasoning, leap[ing] to conclusions on inadequate evidence and fail[ing] to recognise

the cogency of material which might cast doubt on the validity of the conclusions … reach[ed]" and (2) in contrast, dishonesty or recklessness. This is particularly striking because, as his case unfolded, Mr Otuo's allegations of malice extended so widely.

172. Third, and before descending into the detail of the allegations, I can say straightaway that all the witnesses who were called by the Defendants (and, for that matter, all the witnesses who attended to give evidence at the instigation of Mr Otuo, and who were summoned by him although in each instance he had no idea what they were going to say) struck me as both honest and earnestly religious. Nothing that was put to them or elicited from them in cross-examination persuaded me that they were in fact actuated by malice as alleged by Mr Otuo. The points relied on by Mr Otuo, whether viewed separately or cumulatively, were not more consistent with malice than with its absence.

173. Mr Lewis is a taxi driver who left school with 2 GCSEs. He struck me as an essentially simple soul, a devout Jehovah's Witness, and a dedicated and trusting believer in the Scriptures. Mr Otuo's suggestions to the effect that Mr Lewis was playing dumb, did not care about how he carried out his religious duties, and merely fell in with the views dictated by the others fell on stony ground as far as I was concerned. I accept his evidence, including answers to the following effect that he gave in cross-examination:

> "I took from Mr Wee's letter that it was an allegation of Biblical fraud."
>
> "Whether failure to repay is the same as fraud is probably a judgment call really. It would depend on the reasons that were given for failing to repay."
>
> "I tried to care. We should have love for each other. The time I spent looking at this situation shows that I did care. I try to treat people with care and kindness."
>
> "I feel that I investigated to the best of my abilities. I tried my best, and it was honest at the time. I felt from my point of view I was thorough."
>
> "We listened to Mr Wee regarding the allegations that he had made as to the reasons why the money had not been repaid. Going back to his letter, he indicated some interesting facts and observations, and we felt that fraud had taken place."
>
> "I can only give you how I perceived it at the time … It was my view … As far as I can remember it was my view all along that there was no fraud at the beginning … The letter [drafted by Messrs Morley and Smith] is a reflection of my position …"
>
> "Mr Sutton was a very spiritual man. He was raised in the truth. He had an excellent knowledge of the Scriptures. As a Christian and in his Christian life I found him to be experienced … He was a window cleaner … He was not that inexperienced in business and financial matters."
>
> "The suggestion that Mr Morley and Mr Smith dictated suggests to me that they were dominant over us. I am my own man. I will make decisions I think

necessary even if more quietly. I feel I have a contribution to make, maybe a small one in some people's minds. I was appointed by the body of Elders to sit on this matter, and I felt I contributed to it."

"I did attend the Appeal Committee hearing … [At the end of the hearing] the Appeal Committee went off separately… I did not go with the Appeal Committee and neither did the other members of the Judicial Committee."

"I was not dishonest in following the ruling [of the Judicial Committee] and alleging fraud. I am not one of a number of co-conspirators and not thoroughly dishonest."

174. With the benefit of having seen him being cross-examined by Mr Otuo over the course of two days, I consider that Mr Morley, also, was an honest and reliable witness. Among other things, Mr Morley confirmed that Mr Otuo had been disfellowshipped on the ground of fraud by the Judicial Committee, and that it was Mr Morley's understanding that the Appeal Committee "upheld the decision on the same basis." When asked by Mr Otuo whether, on any view, Mr Wee's letter dated 23 September 2011 did not comprise an accusation of fraud, Mr Morley answered: "We took that to be an allegation of fraud. When the body of Elders considered the letter we felt that it was an accusation of fraud." When I sought to summarise some important aspects of Mr Otuo's case, Mr Morley answered as follows:

Q: "Is the central allegation that you want to put to him that he did not honestly believe that there was fraud?"

A: "I clearly disagree with that. This was an onerous activity. We would not have got into it unless it was warranted."

Q: "You were looking to portray Mr Otuo in a bad light, skewing the interpretation and steering the whole exercise to 'get a conviction'?"

A: "Of course, the purpose is not to exclude. It is trying to help a sinner. If they are repentant, they wouldn't be excluded. Our motive in holding the judicial committee is to deal with a serious sin that we believed was committed and to restore the sinner so he could remain. This was not a case of us seeking to exclude him at all."

Q: "Mr Otuo is putting to you, based on *KS* [i.e. "Shepherd the Flock of God"], paragraph 38, that it would seem during the investigation there was no discussion with Mr Otuo and that this was because you didn't care whether it was true or not."

A: "Who [Messrs Sutton and Lewis] spoke to [during their investigation] is a matter for them … As far as I understand they interviewed those concerned."

[Clarifying that evidence and other answers the following day in these terms: "I would maintain that [Messrs Sutton and Lewis] were not under an obligation to interview Mr Otuo as we had two witnesses in line with *KS*, paragraph 37."]

175. It is necessary to refer to two further specific points concerning Mr Morley**.** First, in support of his case that Mr Morley was motivated by spite or ill will towards him, Mr Otuo placed reliance on Mr Morley's description of him as "tricky" in the Overview. In response, Mr Morley said that this was an accurate statement, and also reflected his honest opinion. I accept that evidence. I also accept Mr Brady's submission that the credibility of this evidence is corroborated by Mr Otuo's conduct during the trial, which, as indicated above, included both asking questions in cross-examination and making submissions in reliance on selective extracts from documents which were contradicted by other parts of the same documents or other materials in the trial bundles. Second, Mr Otuo submitted that Mr Eagles had admitted that (contrary to the evidence of Mr Lewis and Mr Morley, and for that matter Mr Davey, but in accordance with the evidence of Mr Otuo, supported, as he submitted, by the evidence of Mrs Otuo) the members of the Judicial Committee (including Mr Morley) had remained with the Appeal Committee when they deliberated over their decision at the conclusion of the appeal hearing. However, although Mr Eagles did appear at one time to accept this, he later clarified that this was not what happened. I find that this did not in fact occur.

176. Because the Defendants did not call Messrs Sutton and Smith to give evidence, Mr Otuo suggested that his allegations of malice against them had not been answered and had to be upheld. I do not consider that this correct. These are allegations in respect of which Mr Otuo bears the burden of proof. Moreover, it is a burden which is not readily discharged. In deciding whether these allegations are made out, the Court is not only entitled but required to have regard to all the evidence, which includes not only the evidence of Mr Otuo and the witnesses he summoned but also the contemporary documents and the evidence of Messrs Lewis and Morley and the other witnesses who were called by the Defendant. These materials provide ample grounds for acquitting Messrs Sutton and Smith of that charge.

177. Mr Davey and Mr Eagles were also patently honest and, in my view, reliable witnesses. I have cited some important passages from their evidence above, and I do not propose to add to those citations here.

178. The evidence of all these witnesses was consistent in all major and important respects. In the absence of a conspiracy to act towards Mr Otuo with ill will and/or to give untrue evidence in these proceedings, all of which I reject, this supports their credibility.

179. Mr Otuo placed particular reliance on part of Mr Davey's evidence, from which he sought to extract the propositions that (1) Mr Davey accepted that it was his view that Mr Otuo had obtained the loan from Mr Wee by false pretences, (2) this contradicted the explanation for finding "fraud" which had been put forward by Mr Eagles (and others) and (3) this inconsistency supported Mr Otuo's case on malice. I do not consider that this is a fair or accurate interpretation of Mr Davey's evidence, but, even if it was, I would not regard it as supportive of an allegation of malice. Mr Davey is 70 years old,

and not in the best of health (his evidence had to be interrupted to accommodate a hospital appointment), and he was being asked about events which occurred almost 7 years ago. I consider that the contemporary documents tell a clear story, and, in the event of a conflict between Mr Davey's evidence (or recollection) and the contents of those documents, I would have been strongly inclined to prefer the latter.

180. This point was regarded as of sufficient importance by Mr Otuo to warrant obtaining a transcript of the evidence of Mr Davey. The delay while that transcript was obtained has meant that this judgment could not be finalised or handed down for a number of weeks. When the transcript became available, Mr Otuo focussed on the following exchange:

> "Q: And the issue was fraud?
> A: Scriptural fraud.
> Q: Yes.
> A: Yes.
> Q: What do you say scriptural fraud is, Mr Davey?
> A: Well, I wrote it down. I mean this puts it quite succinctly. It is deception, trickery, or a perversion of truth for the purpose of inducing anyone to part with some valuable thing, using one's power or authority over others. So it's inducing someone to part with something, for example money, on false pretences.
> Q: So you concluded that that was what had happened?
> **(Silent pause follows – no audible answer)**."

181. In an email which accompanied the provision of this transcript, Mr Otuo stated "…my notes, as recorded, have him as saying "Yes" … There are only two possible answers … to the question: he either said "Yes" or "No", both of which go against the Defendant's case. If he said "No", then I was not disfellowshipped for fraud as he had just defined … it and if he said "Yes", then he contradicts the evidence of Messrs Morley, Lewis and Eagles that they do not believe I obtained the money from Mr Wee on false pretences".

182. My own note of Mr Davey's evidence (to which I have already made reference above) accords with the note made by Mr Otuo. I consider that Mr Davey answered "Yes" to the question of whether he had "concluded that that was what happened". However, I do not attach to this answer the significance that Mr Otuo considers it bears. As set out above, Mr Davey gave evidence that "[Mr Otuo] had said and suggested that [he] had never set out to be fraudulent, which we appreciated and recognised", and he then went on to say "but clearly it was a matter we could see that had gone through a situation where we felt that no attempt had been made to make restitution". It is clear to me that, properly understood, Mr Davey was saying that the Appeal Committee accepted that Mr Otuo had not perpetrated fraud at the outset, but they considered that Mr Otuo's subsequent words and deeds did amount to fraud. This is also consistent with the contemporary documents. Mr Otuo may say that "no attempt … to make restitution" is not the same as "inducing someone to part with … money … on false pretences", but the evidence, not only of Mr Davey but also more generally, has to be viewed more

broadly than that. I have no real doubt that at the time the Appeal Committee honestly considered that Mr Otuo's treatment of Mr Wee could properly be regarded as "fraud". Mr Otuo's reliance on this single answer from Mr Davey illustrates his approach more broadly, which was to view bits of material in isolation from their broader context, and to argue with some ingenuity that they favoured his case however they were read.

183. Mr Otuo's central Particulars of Malice in Claim 1 are, in sum: (1) the members of the Judicial Committee could not have had an honest belief in the innuendo meanings of the Announcement because Messrs Lewis and Sutton had previously investigated the nature of the business transaction between the Company and Mr Wee in 2010 and had determined that there was no fraud; (2) the members of the Judicial Committee were indifferent to the truth or falsity of the allegation of fraud; and (3) Mr Morley was motivated by personal spite for Mr Otuo, following Mr Otuo's earlier refusal to be removed as a ministerial servant "upon the say so of Mr Morley". The first of these allegations is illogical: there is no reason why the outcome of the initial investigation should be the same as the outcome of the process triggered by the complaint contained in Mr Wee's letter dated 23 September 2011. More than 12 months had elapsed in the intervening period, and the two processes were conducted differently in any event. The second allegation is a bare assertion. The third allegation is also no more than an assertion, although it attributes an improper motive to Mr Morley.

184. Mr Otuo's Particulars of Malice are then arranged under a number of headings. I do not propose to deal with each and every allegation he makes, but I would summarise what seem to me the most important allegations, together with my conclusions, as follows.

185. Under "Background", Mr Otuo rehearses that Mr Morley took strong exception to his refusal to comply with the suggestion that he should resign as a ministerial servant and had declined to do so, and thereafter, "[having] covertly engaged in prying into the business affairs of Mr Wee and [Mr Otuo] even though [there was] no [live] complaint to the Body of Elders … was lying in wait for the relationship between Mr Wee and [Mr Otuo] to deteriorate to the point where he could find the excuse to make it a 'Judicial' matter, thereby giving him the opportunity to harm [Mr Otuo] through disfellowshipping, to avenge [Mr Otuo's] failure to resign". The allegations under this heading proceed along the lines that the procedure following Mr Wee's complaint in September 2011 was unfair and contained inconsistencies, including that: Mr Morley poisoned Mr Smith against Mr Otuo (among other things by calling him "tricky"); the hearings before the Judicial Committee were conducted in a manner that was unfair to Mr Otuo (in particular, by denying Mr Otuo the opportunity to adduce evidence from Mr Brierley); Mr Smith was brought in to do Mr Morley's bidding, and, thereafter, Mr Morley and Mr Smith controlled the entire process, without effective input from Mr Lewis and Mr Sutton; the letters dated 15 December 2011 and 16 February 2012 that were answered by CCJW only "purportedly" sought guidance, and the first of these letters "knowingly and dishonestly assert[ed] that an allegation of fraud against [Mr Otuo] had been received from Mr Wee"; and that there was no basis for the Judicial

Committee's decision to disfellowship Mr Otuo on the grounds of fraud, or for the Appeal Committee and CCJW to uphold that decision, essentially because it was accepted that Mr Otuo did "not set out to defraud" Mr Wee. I have already dealt with the majority of these matters, and rejected the suggestion that they support a case of malice. As to the allegation that Mr Morley was wrong to "pry" into Mr Otuo's affairs between 2010 and 2011 and was "lying in wait" for Mr Wee's complaint, I consider that this is a very one-sided view of what truly happened. In brief, Mr Wee enlisted the help of Mr Davidson, an Elder from his then current Congregation, in his endeavours to get Mr Otuo to procure repayment of his loan, and only when those endeavours failed did Mr Wee (with the assistance of Mr Davidson) write his letter of complaint in September 2011. I do not consider that Mr Morley acted improperly, still less maliciously, in offering input on those endeavours from the side-lines (in essence, through email communication between him and Mr Davidson), or that Mr Morley "lay in wait" as alleged. The simple fact is that if Mr Otuo had behaved towards Mr Wee better, and with greater candour, there would have been no need for Mr Wee to complain; and, when Mr Wee finally complained, he did so in his own way, at a time of his choosing, and in keeping with the guidance of Mr Davidson, whose integrity is not in issue.

186. Under the heading "Conspiracy to levy allegation of fraud", Mr Otuo alleges that the email communications between Mr Morley and Mr Smith reveal that Mr Morley was concerned that an allegation of fraud should be pursued against Mr Otuo for fear that a lesser charge of "failure to repay" might allow Mr Otuo to avoid being disfellowshipped, and that "Mr Morley was so determined to ensure that he charged [Mr Otuo] with fraud, that, in his purported letter … dated 15 December 2011, he stated that Mr Wee was the one who had in fact accused [Mr Otuo] of fraud". I have dealt with the second of these allegations above. Not only did Mr Morley summarise Mr Wee's complaint honestly, he also included Mr Wee's letter with the letter dated 15 December 2011, such that CCJW was able to see for itself the nature of Mr Wee's complaint. This is inconsistent with the alleged dominant improper motive. As to the first of these allegations, it appears from the contemporary emails that Mr Morley was concerned that an allegation of "failure to repay" might readily be answered by Mr Otuo, but I am unable to conclude that Mr Morley's dominant motive was to harm Mr Otuo rather than to ensure that Mr Wee's complaint was considered in a manner appropriate to both men.

187. Under the heading "Evidence and Witness suppression at 'Judicial' hearing", Mr Otuo relies on three matters: first, Mr Morley's refusal to allow him to call Mr Brierley as a witness at the hearings on 13 January 2012 and 30 March 2012; second, Mr Morley's prior contact with Mr Brierley, as a result of which Mr Morley "collected witness statements from him and relied on them privately to come to his conclusions … [and] prevented the cross-examination [on] these witness statements and likely shared them with the rest of the [Judicial Committee]"; and, third, that Mr Morley telephoned Mr Brierley to discourage him from attending. As to the first of those matters, although Mr Otuo may have attached importance to what Mr Brierley might have been able and willing to say, the issues which the Judicial Committee had to consider revolved around

what Mr Otuo had said and done in his dealings with Mr Wee (assisted by Mr Davidson). Accordingly, I am entirely unsatisfied that Mr Morley was actuated by malice (as opposed to an honest belief that Mr Brierley's evidence was not significant) even assuming (without finding) that the issue about Mr Brierley's availability was raised by Mr Otuo along the lines that Mr Otuo contends. As to the second and third matters, there is no evidence that Mr Brierley provided any witness statement(s), and I am satisfied that neither Mr Morley's brief contact with Mr Brierley nor any reliance that Mr Morley or the Judicial Committee may have been placed on anything derived therefrom supports a case of malice against Mr Morley (or at all).

188. Under the heading "Interfering with the 'Judicial' review", Mr Otuo alleges that Mr Morley lied (a) in stating that "an investigation was commissioned which involved all those concerned in the dispute and concluded that there was evidence to support the allegation of fraud … [when in] fact [Mr Otuo] had not been involved in any such investigation prior to the 'Judicial' hearings" and (b) in giving Mr Davey an account of Mr Wee's complaint in 2010 which "contradict[ed] Mr Morley's own account in December 2011 of the 2010 complaint from Mr Wee, where he stated that Mr Wee had alleged fraud, followed Matthew 18 procedure in 2010, but investigation by Messrs Lewis and Sutton found there was no fraud but a failure to repay". Mr Otuo alleges "This was a desperate attempt by Mr Morley to ensure that [Mr Otuo's] 'Judicial review' failed and the disfellowshipping of [Mr Otuo] [was] upheld. There is no other reason to ascribe to this flagrant dishonesty other than Mr Morley's dominant motive to cause harm to [Mr Otuo]". In my judgment, Mr Otuo's resort to detailed analysis of the wording of documents emanating from Mr Morley provides a classic instance of not seeing (or of professing not to be able to see) the wood for the trees. I do not consider that Mr Morley "lied" in either of these instances – in particular, I have dealt above with Mr Morley's evidence as to whether the investigation in fact "involved all those concerned" - and Mr Otuo's allegations of "flagrant dishonesty" are without foundation.

189. Under the heading "Labelling [Mr Otuo] 'tricky'", Mr Otuo alleges that there was no proper basis for Mr Morley to describe him in these terms "except for his disdain and ill-will toward [him]". I have already dealt with, and rejected, that allegation above. Mr Otuo further alleges that Mr Morley lied to Mr Smith with regard to the facts concerning an earlier transaction between Mr Otuo and a certain Mr Preston (a building contractor), describing this as a failure to repay a loan when it was nothing of the sort and was "immaterial to the issues in Mr Wee's case", and that Mr Morley decided to communicate these matters to Mr Smith "with the sole purpose of damaging [his] reputation … so that Mr Smith [would] form a dim view of [him]". Having heard Mr Morley give evidence, and without deciding the rights and wrongs of that historic transaction which is not one of the issues that are before me for trial, I am satisfied that Mr Morley did not lie and that this was not his motivation. Mr Otuo further alleges that Mr Morley prevented him from calling Mr Brierley as a witness "whilst dishonestly failing to disclose that he had in fact been in secret contact with Mr Brierley in order to obtain a witness statement against [Mr Otuo] which he failed to disclose", that Mr

Smith "was also in support of Mr Morley despite being aware that they were in receipt of witness statements from Mr Brierley", that Mr Morley denied that he had communicated with Mr Brierley prior to the hearing before the Appeal Committee "knowing well that he was in fact lying, and that Mr Morley's persistent dishonesty before and after the 'Judicial' hearing is a clear indicator that his dominant improper motive was to ensure that [Mr Otuo] was disfellowshipped". In fact, however, as set out above, there were no witness statements from Mr Brierley. Further, whatever shortcomings there may or may not have been with regard to the way in which Mr Otuo's desire to call Mr Brierley as a witness was dealt with and with regard to disclosing to Mr Otuo the extent to which Mr Morley had been in contact with Mr Brierley, I acquit Mr Morley of dishonesty, and I consider the allegation that he had any such dominant improper motive is baseless. I accept his evidence as to these matters.

190. Under the heading "[The Judicial Committee] could not have had honest belief in the innuendo meaning/s of the words complained of", Mr Otuo alleges that Messrs Lewis and Sutton found no fraud or serious wrongdoing but merely a "failure to repay", that this was known to Messrs Morley and Smith, that Mr Wee's letter of September 2011 contained no allegation of fraud, and that each of the members of the Judicial Committee therefore could not have had an honest belief that Mr Otuo had defrauded Mr Wee, not least because "the loan in question was not to [Mr Otuo] personally but was made to [the Company], [and] the monies were advanced to the Company account and not [Mr Otuo's] personal accounts". These allegations repeat points which I have already considered and answered when discussing the documents. Mr Otuo further alleges that Mr Morley "further lied" to Mr Davey that "an investigation was first carried out by Messrs Lewis and Sutton which involved all parties in the dispute" and that Mr Morley "was so desperate to see that [Mr Otuo's] 'Judicial review' [should] fail that he met with Mr Davey at least on one occasion (which he should not have done) to ensure that he had sight of [Mr Otuo's] letter of application for the 'Judicial review'". The first of these allegations involves repetition of a point that I have already dealt with above. As to the second allegation, I am not persuaded that anything that passed between Mr Morley and Mr Davey (who I regarded as a man of conspicuous integrity) provides any basis for a finding of dishonesty or dominant improper motive, or that any involvement that Mr Morley had or sought to have in fact had any influence, let alone an improper influence, on the conduct of the Appeal Committee or on CCJW's review.

191. Under the heading "[The Judicial Committee] were indifferent to the truth or falsity of the allegations", Mr Otuo alleges that the members of the Judicial Committee "failed to investigate the real issues that were before them and further failed to follow laid down procedures for forming a 'judicial committee'", and that "no investigation was carried [out] at all into purported allegation of fraud because there was no such allegation and if there was [the members of the Judicial Committee] were indifferent to the truth or falsity of the allegation". As appears from the discussion of contemporary events above, these allegations are entirely unfounded. In my view, the contrary is true on each count.

192. Under the heading "Mr Morley's refusal to disclose Mr Wee's letter of 23 September 2011 to [Mr Otuo] as evidence of the purported allegation, knowing very well that no such allegation was made" Mr Otuo repeats various contentions which I have already considered and rejected above. In my view, Mr Otuo's reliance on Mr Morley's failure or refusal to provide a copy of Mr Wee's letter to Mr Otuo does not take matters any further. It certainly cannot outweigh or displace the other matters that I have taken into account in arriving at the conclusions that I have reached. Mr Otuo further pleads that in one of his communications with Mr Wee he expressly suggested that Mr Wee should seek legal advice before signing documents, that Mr Morley knew this, and that "No fraudster will ask the potential victim to seek legal advice before engaging in the transaction [in] which he intends to defraud his victim", such that it was or should have been "patently clear that no attempt to defraud Mr Wee had been made by [Mr Otuo]". Mr Morley did not agree with these points when they were put to him in cross-examination. He suggested that someone dishonest might make such a suggestion in the belief that the person who was being invited to obtain legal advice would be unlikely to do so, and indeed might not be able to afford to do so. I consider that this is a view which Mr Morley could reasonably and honestly have formed. In any event, the contents of this communication formed only a small part of a bigger picture, and taking into account that bigger picture there was, in my judgment, ample and sufficient basis for Mr Morley and others to reach the views that, on their evidence, they honestly did.

Interference with Convention rights

193. As expounded by Mr Brady at trial, the arguments under this heading involved the following principal steps: (1) these Claims for slander in respect of words spoken by Messrs Lewis and Morley respectively in the course of "making two congregation membership decisions" interfere with the Defendants' freedom of religion under Article 9 of the European Convention on Human Rights, read in light of Articles 10 and 11 of the Convention, (2) the threat of an award of damages is an additional interference, (3) the Defendants do not dispute that defamation law is "prescribed by law" and generally pursues a "legitimate aim", (4) however, the interference which arises in the present case is not "necessary in a democratic society" as it does not pursue a "pressing social need" and it is not proportionate to a legitimate aim, (5) in particular, the Announcement "was Biblically necessary so [that] the Congregation knew [that] [Mr Otuo] was no longer recognised as one of Jehovah's Witnesses. Congregation members would then know it was up to them to exercise their individual religious consciences to avoid associating with [Mr Otuo] as commanded by the Bible in 1 Corinthians 5:11, 13", (6) further, the words complained of in Claim 2 spoken by Mr Morley "were heard only by [Mr Otuo] and the three other elders of the ecclesiastical judicial committee during the reinstatement meeting convened at Mr Otuo's request. Those elders already knew that [Mr Otuo] had been disfellowshipped for unrepentantly committing the Biblical sin of fraud. The purpose of the meeting was to determine whether [Mr Otuo] was repentant for that sin so that he should be reinstated", (7) the Defendants "took the least intrusive measures available while still exercising their Convention rights to decide

the congregation membership within their religious community", and (8) any interference with Mr Otuo's right to reputation under Article 8 of the Convention is "minimal or non-existent". Reliance was placed on *Sindicatul "Păstorul cel Bun" v. Romania* No 2330/09, 9 July 2013, *Izzettin Doğan and Others v Turkey* No 62649/10, 26 April 2016, *Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland* No 931/13, ECHR [2017], *Associated Society of Locomotive Engineers & Firemen (ASLEF) v United Kingdom*, No 11002/05, 27 February 2017, and *Lee v Ashers Baking Company Ltd and Others* [2018] 3 WLR 1294.

194. I am far from clear that it is open to the Defendants to advance these arguments, in light of the decision of Warby J in *Otuo v The Watch Tower Bible and Tract Society of Britain* [2019] EWHC 344 (QB). Warby J summarised some of the submissions that were made before him at [44], and stated his conclusions at [48] and [49], in the following terms:

> "Mr Brady's overarching submission is that the application of defamation law in this unique case to Watch Tower's two membership decisions is an obvious interference with the defendants' rights to freedom of religion, freedom of expression, and freedom of association guaranteed by Articles 9, 10, and 11 of the Convention, which cannot be justified as prescribed by law, pursuing a legitimate aim, and necessary in a democratic society. The claims are said to represent an interference with Watch Tower's membership decisions, under the guise of defamation law, which cannot be justified. They are … a collateral attack on those decisions …
>
> I regard the claims in these two actions as, in themselves, falling clearly outside the prohibited zones identified in the domestic jurisprudence. It is not suggested, nor could it be, that the English authorities afford religious bodies a privilege akin to Parliamentary Privilege, such that whatever is said within the context of an official meeting or ceremony of a church or other religious institution is absolutely immune from suit in defamation, or any other tort. The thrust of the domestic authorities is quite different. It is that claims to enforce civil rights should generally be entertained by the Courts, even if they involve some determination of the internal rules or practices of a religious institution, unless that process necessitates an investigation of some matter that is, by its nature, incapable of being objectively assessed. The validity of religious beliefs or rites is such a question, at least as a general rule …
>
> To characterise these claims as a collateral attack on religious decisions is, in my judgment, unjustified. The claims seek to vindicate the civil right to the protection of reputation. That, in a case such as this, engages Article 8 of the Convention. There is a clearly pleaded case that Mr Otuo's ordinary enjoyment of his private and family life have been materially interfered with as a result of the publications complained of. The merits of that case remain to be determined. But it would require strong grounds to justify denying Mr Otuo the right to a determination of his civil rights in that context. I do not consider that, objectively analysed, the pleaded case makes it inescapable for the Court to determine matters of religious doctrine, still less (to quote the Convention jurisprudence relied on) "whether religious beliefs or the means used to

express such beliefs are legitimate". Put another way, I do not believe the claims represent an interference with the Article 9(1) right."

195. A ruling on an interlocutory hearing does not necessarily preclude arguments to similar effect being revisited at trial. In the present case, however, it seems to me that nothing has changed since the Claims were before Warby J which would justify reaching a different conclusion. The evidence adduced at trial does not affect these points of principle. In any event, I am not persuaded that my consideration of, and my rulings on, any of the issues which I have decided above by applying entirely orthodox principles of the law of defamation has resulted in any unjustified interference with any of the Defendants' Convention rights, or would have done so if I had decided matters in Mr Otuo's favour. If and in so far as Mr Brady's submissions under this head are directed not so much at contending that the bringing of the Claims constitutes an unjustified interference with the Defendants' Convention rights, but instead at contending that a decision in favour of Mr Otuo would have that consequence, Mr Brady has not, in the result, needed these arguments to obtain an outcome in favour of his clients. To that extent, these arguments add nothing.

196. In these circumstances, I do not consider that it is necessary or appropriate to say anything more about these contentions. It remains open to the Defendants to seek to revive them, if so advised, in the event that this case goes further.

What relief is appropriate

197. For all these reasons, these Claims must be dismissed, and so this issue does not arise.

198. If it did arise, I would be hard-pressed to determine the appropriate level of damages, having regard to the findings of fact that I have made. Not least in light of the evidence of Mrs Otuo, which described in sincere and touching terms the effects on their family life, I accept that the history of Mr Otuo's disfellowshipping, including his profound and lingering feelings that he has always been in the right and that he has been treated in a manner that he did not deserve, has caused enormous upset and distress. However, these Claims are concerned solely with remedies for defamation. They are not concerned with providing compensation for such (if any) justifiable complaints or grievances as Mr Otuo may have arising from the fact that he was disfellowshipped, or the manner in which the disfellowshipping procedure was carried out. Separating one from the other may not be entirely straightforward, but it seems to me that much of Mr Otuo's case on damages is properly referable to the latter rather than the former. I would also reject Mr Otuo's claim based on the contention that the Defendants are liable to compensate him for publication in the print media of reports identifying Mr Otuo as the claimant in the present proceedings and summarising his claims. Finally, in circumstances where the words complained of were spoken about 6 or 7 years ago, where Mr Otuo makes no complaint of repetition in the intervening period, and where

the factual matrix which resulted in the words which are complained of being spoken no longer exists and seems unlikely to be replicated (in that Mr Otuo has long been disfellowshipped, and appears to have no desire to seek reinstatement) I am doubtful that it would be appropriate to grant an injunction even if the Claims succeeded.

Conclusion

199. In summary, I hold that:

(1) There is no difference between "Scriptural fraud" and "fraud" in other contexts which is material in the particular circumstances of either of these Claims.

(2) The slanders complained of are actionable *per se*.

(3) Mr Otuo consented to publication of the words complained of in Claim 2.

(4) The publications were made on occasions of qualified privilege.

(5) The defence of qualified privilege is not defeated by malice in either Claim.

(6) It is true that Mr Otuo had been disfellowshipped for fraud.

(7) The decision to disfellowship Mr Otuo was not *ultra vires*.

(8) Watch Tower Britain did not authorise and is not vicariously liable for the publications.

(9) The Claims do not give rise to unjustifiable interference with Convention rights.

(10) Mr Otuo is not entitled to any relief, and both Claims must be dismissed (not least because neither Claim 1 nor Claim 2 crosses the threshold of seriousness).

200. I ask the parties to try to agree an order which reflects these rulings. I will hear argument on any points which remain in dispute, and on any other issues such as costs and permission to appeal, either when judgment is handed down, or at some other convenient date.