



Neutral Citation Number: [2019] EWHC 2830 (QB)

Case No: HQ17M04246

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/10/2019

Before :

THE HONOURABLE MRS JUSTICE STEYN DBE

Between :

Robert Ager

Claimant

- and -

(1) Career Development Finance Ltd
(2) Metropolitan International Schools Ltd
(3) Jan Telensky

Defendants

Victoria Jolliffe (instructed by Guy Williams Layton LLP) for the Claimant
Timothy Atkinson (instructed by Taylor Walton LLP) for the Defendant

Hearing date: 15 October 2019

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I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Mrs Justice Steyn :**A. Introduction**

1. This claim for libel and harassment arises from the publication of a 43-page booklet (“the Booklet”). The Booklet was sent in December 2016, under cover of a letter, by Career Development Finance Ltd (“CDF Ltd”, the First Defendant) to William Logan.
2. The Claimant, Robert Ager, is an independent film maker and former Chair of the Liverpool branch of the UK Independence Party. In 2007, Mr Ager enrolled on a course with Metropolitan International Schools Ltd (“MIS Ltd”, the Second Defendant), via its “SkillsTrain” brand. He subsequently sought and obtained a refund for the course. In 2012, MIS Ltd brought proceedings for libel against Mr Ager, in respect of his online account regarding his dealings with MIS Ltd. Those proceedings were discontinued after service of the defence.
3. CDF Ltd provided loans in relation to MIS Ltd’s educational courses. Jan Telensky (“the Third Defendant”) was, until January 2017, a Director of CDF Ltd and Mr Ager contends that he was closely associated with MIS Ltd.
4. The question ‘who compiled the Booklet?’ is for another day. This judgment addresses preliminary issues as to the meaning of the words complained of, whether those words are fact or opinion, and whether the words are defamatory at common law.

B. The preliminary issues

5. The Claim Form was issued on 23 November 2017 and Particulars of Claim were served on 15 March 2018. The Defence was served on 5 June 2018. The Reply was served on 20 July 2018.
6. On 8 January 2019, with the agreement of the parties, Master Eastman ordered that there be a trial of the following preliminary issues:
 - “(a) the actual meanings of the words complained of;
 - (b) whether the words complained of, in the meanings found by the Court, are fact or opinion; and
 - (c) whether the words complained of, in the meanings found by the Court, convey any serious defamatory imputation or imputations concerning the Claimant.”
7. The order further stated: “*For the avoidance of doubt, the preliminary issues do not include the determination of the issue of serious harm.*”
8. The question whether the words convey serious defamatory imputation(s) was framed in the light of the Court of Appeal’s judgment in *Lachaux v Independent Print Ltd* [2017] EWCA Civ 1334, [2018] QB 594. I raised with the parties at the outset of the hearing whether I should determine the third preliminary issue, having regard to the judgment given by the Supreme Court in *Lachaux* on 12 June 2019: *Lachaux v Independent Print Ltd* [2019] UKSC 27, [2019] 3 WLR 18.

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9. At common law, a statement is defamatory of the claimant if, but only if (a) it imputes conduct which would tend to lower the claimant in the estimation of right-thinking people generally, and (b) the imputation substantially affects in an adverse manner the attitude of other people towards him, or has a tendency to do so: see *Lachaux* at [6]-[9], citing *Sim v Stretch* [1936] 2 All ER 1237, per Lord Atkin at 1240 and *Thornton v Telegraph Media Group Ltd* [2011] 1 WLR 1985, per Tugendhat J at [96].
10. Section 1(1) of the Defamation Act 2013 provides: “A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant”. The effect of s.1 of the Defamation Act 2013 is that “the defamatory character of the statement no longer depends only on the meaning of the words and their inherent tendency to damage the claimant’s reputation”: *Lachaux*, per Lord Sumption at [17].
11. Lord Sumption (giving the sole judgment) explained in *Lachaux* at [14]:

“...section 1 necessarily means that a statement which would previously have been regarded as defamatory, because of its inherent tendency to cause some harm to reputation, is not to be so regarded unless it “has caused or is likely to cause” harm which is “serious”. The reference to a situation where the statement “has caused” serious harm is to the consequences of the publication, and not the publication itself. It points to some historic harm, which is shown to have actually occurred. This is a proposition of fact which can be established only by reference to the impact which the statement is shown actually to have had. It depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated. The same must be true of the reference to harm which is “likely” to be caused. In this context, the phrase naturally refers to probable future harm.”
12. When I raised the issue, Ms Jolliffe, Counsel for the claimant, suggested that it may be better to limit my determination to whether the words are defamatory at common law. Mr Atkinson, Counsel for the Defendant, agreed to that proposal. It seemed to me that it would be sensible to limit the issue in that way, as it will be a matter for the judge who determines whether the words are defamatory within the meaning of s.1 of the Defamation Act 2013 to consider how serious the inherent tendency of the words is in combination with any evidence as to historic or probable future harm.
13. Accordingly, I amended the third preliminary issue to read:

“(c) whether the words complained of, in the meanings found by the Court, convey any imputation (or imputations) concerning the Claimant which is (or are) defamatory at common law.”

C. Preliminary issue (a): Meanings

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14. There was no disagreement between the parties as to the applicable principles regarding the determination of the natural and ordinary meanings of the words complained of. My attention was drawn to recent summaries of the principles in *Stocker v Stocker* [2019] UKSC 17, [2019] 2 WLR 1033, per Lord Kerr of Tonaghmore JSC at [33] to [40]; *Bukovsky v Crown Prosecution Service* [2017] EWCA Civ 1529, [2018] 4 WLR 13, at [11] to [16]; *Koutsogiannis v Random House Group Ltd* [2019] EWHC 48 (QB), per Nicklin J at [10] to [15]; and *Allen v Times Newspapers Ltd* [2019] EWHC 1235 (QB), per Warby J at [12]-18].
15. The Court’s task is to determine the single natural and ordinary meaning of the words complained of. It is well recognised that there is an artificiality in choosing a single meaning from a series of words that individual readers may understand in different ways, but this approach is well-established and it provides a practicable, workable solution: see *Stocker v Stocker* at [33]-[34].
16. The focus is on what the ordinary reasonable reader would consider the words to mean. That is the touchstone. It is the “*court’s duty to step aside from a lawyerly analysis*”: see *Stocker v Stocker* at [37] to [38].
17. The key principles derived from the authorities were helpfully distilled and re-stated by Nicklin J in *Koutsogiannis* at [12]:
 - “i) The governing principle is reasonableness.
 - ii) The intention of the publisher is irrelevant.
 - iii) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. A reader who always adopts a bad meaning where a less serious or non-defamatory meaning is available is not reasonable: s/he is avid for scandal. But always to adopt the less derogatory meaning would also be unreasonable: it would be naïve.
 - iv) Over-elaborate analysis should be avoided and the court should certainly not take a too literal approach to the task.
 - v) Consequently, a judge providing written reasons for conclusions on meaning should not fall into the trap of conducting too detailed an analysis of the various passages relied on by the respective parties.
 - vi) Any meaning that emerges as the produce of some strained, or forced, or utterly unreasonable interpretation should be rejected.

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vii) It follows that it is not enough to say that by some person or another the words might be understood in a defamatory sense.

viii) The publication must be read as a whole, and any 'bane and antidote' taken together. Sometimes, the context will clothe the words in a more serious defamatory meaning (for example the classic "rogues' gallery" case). In other cases, the context will weaken (even extinguish altogether) the defamatory meaning that the words would bear if they were read in isolation (e.g. bane and antidote cases).

ix) In order to determine the natural and ordinary meaning of the statement of which the claimant complains, it is necessary to take into account the context in which it appeared and the mode of publication.

x) No evidence, beyond publication complained of, is admissible in determining the natural and ordinary meaning.

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

xii) Judges should have regard to the impression the article has made upon them themselves in considering what impact it would have made on the hypothetical reasonable reader.

xiii) In determining the single meaning, the court is free to choose the correct meaning; it is not bound by the meanings advanced by the parties (save that it cannot find a meaning that is more injurious than the claimant's pleaded meaning)."

18. As Warby J said in *Allen* at [16]:

"In the light, in particular, of principles (v) to (x) and (xii), it is common practice among judges dealing with issues of meaning in defamation claims to read the article complained of and form a provisional view about their meaning, before turning to the parties' pleaded cases and the arguments about meaning."

19. That is the approach I have taken to this trial of meaning. I read the Booklet without knowing which words within it were the subject of this claim.

20. I approach the assessment of meaning on the understanding that, in relation to the distinction between the naïve and unduly suspicious reader (principle (iii)), "*modern readers should be treated as having more discriminating judgment than has often been recognised*": *John v Times Newspapers Ltd* [2012] EWHC 2751 (QB), per Tugendhat J at [19]; and *Allen*, per Warby J at [14].

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21. As regards principle (xiii), the Court is not absolutely barred from finding a meaning which is more serious than one contended for by the claimant. But caution is required, bearing in mind that civil litigation is an adversarial process. The Court should not normally find that words bear a meaning which is not advanced in the statement of case or submissions of either party and which is not within “the same class or range” as a meaning so advanced. See *Allen*, per Warby J at [45], [50] and [55].
22. It is common ground that the hypothetical reasonable reader must be taken to have read the whole Booklet. If the words complained of are part of a book, the Court should bear in mind, when seeking to avoid an over-elaborate and over-analytical approach (principles iv and v), that the hypothetical reader would be very unlikely to compare one passage of the book with another many pages apart: see *Charman v Orion Publishing Group Ltd* [2005] EWHC 2187 (QB) at [11]; *Oduro v Time-Life Entertainment Group Ltd* [2003] EWHC 1787 (QB) at [18]; *Koutsogiannis* at [14]. Although the context here is a 43-page booklet, rather than a book, it is a dense document and I accept the Defendants’ submission that I should apply the same caution when considering passages around 40 pages apart.

The words complained of

23. The words from within the Booklet which are complained of are set out in paragraph 9 of the Particulars of Claim which states:

“The Booklet which is attached at Appendix A contained the following words defamatory of the Claimant:

(1) In prominent words on the front and back pages: “*We are very reliably informed that Mr Ager is currently under investigation for tax and DSS fraud*”

(2) On the front page and page 3 under the headline “*Loving son is internet weirdo who dumped his dying dad*” and accompanied by a prominent photograph of the Claimant and a photograph captioned: “*Ager left his father to live like this*”: “*But one of his films is shocking for another reason, it reveals the chairman of a branch of a party which claims to want to make the UK’s welfare system ‘fairer’ abandoned his own father to die in a small grimy flat in a Liverpool slum.*”

In an amateurish YouTube video, Rob admits dumping his dying father saying he never visited him. Then he has the cheek to harangue local social services for not offering his alcoholic father any help.”

(3) On the front page and page 3:

“*and the school failure’s reviews are so controversial – in one he accuses Jesus of being a child molester – which he has endured accusations on the internet of being a paedophile and pervert.*”

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But films like his amateurish 31 minute feature, the Sex Game, made in 2004, about a half-naked man held in chains a Liverpool house, suffering sexual abuse and whippings don't help his protestations.

He said of the paedophile accusations: "People were calling me a paedophile, pervert, asshole, idiot, retard, for having written a review. I found it fascinating and amusing that people would lower themselves to such tactics over differences of opinion about a fictional film.

His films – which inexplicably he posts links to on children's websites – carry warnings about their unsavoury content ...

... Things take a much more worrying light though when you visit a site he hosts for children's furniture. One link is from a site designed to help autistic children – this leading Liverpool politician has put links to Pulp Fiction, the Big Lebowski, a video of him and his friends wearing grotesque monster masks and even some of his outrageous political comments."

(4) In a series of reproduced tweets on pages 39 to 43 from a twitter account @exposeager:

"Kids web sites should NEVER be polluted with horror movies, even if Mr Ager watched them at 7 years old with his father"

"Rob Ager Post on the web site Children's Bedroom Furniture – we are happy to pass full details to law enforcement officers #robager"

24. The Particulars of Claim plead four meanings. However, Ms Jolliffe informed me at the outset of the hearing that the Claimant would not pursue the allegation that it was defamatory to state that he had "accuse[d] Jesus of being a child molester", which is pleaded as the Claimant's meaning (4) and the Defendant's meaning (3). Accordingly, I address only the meanings pleaded in paragraphs 10(1), (2) and (3) of the Particulars of Claim, and the Defendant's meanings (1), (2), (4), (5) and (6).

MEANING (1): "THE FRAUD ALLEGATION"

Meaning (1): the words complained of

25. At the top of the front page of the Booklet are the words "We are very reliably informed that Mr Ager is currently under investigation for tax and DSS fraud". These words are in a very large font above the article to which I refer below when addressing meanings (2) and (3). The first few words ("We are reliably informed that") are white against a black background. The words "Mr Ager is currently under investigation for tax and DSS fraud" are in red. Precisely the same words, presented in the same font size and colour, appear in the middle of the back page of the Booklet. These are the only words the Claimant complains of in respect of meaning (1).

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26. The Claimant's pleaded meaning in respect of these words is:

“There are reasonable grounds to suspect that the Claimant is guilty of tax fraud and benefit fraud.”

27. The Defendant's pleaded meaning is:

“The Claimant was at the time of publication under investigation as to whether or not he had committed tax and/or DSS fraud.”

Meaning (1): the parties' submissions

28. In respect of this first passage, there was disagreement between the parties regarding the “Chase” levels of meaning. As Warby J explained in *Allen* at [17]-[18]:

“17. Defamation lawyers often talk of “Chase” levels of meaning ... This is a convenient shorthand way of referring to different levels of gravity, which derives from the judgment of Brooke LJ in *Chase v News Group Newspapers Ltd* [2003] EMLR 11 [45]. Brooke LJ identified three types of defamatory allegations, broadly, (1) the claimant is guilty of the act; (2) there are reasonable grounds to suspect that the claimant is guilty of the act; and (3) grounds to investigate whether the claimant committed the act.”

18. It is important to recall, however, that not every published statement conveys a meaning at one or other of the “Chase” levels. “Reflecting the almost infinite capacity for subtle differences in meaning, they are not a straitjacket forcing the court to select one of these prescribed levels of meaning...”: *Brown v Bower* [2017] EWHC 2637 (QB) [2017] 4 WLR 197 [17] (Nicklin J). As ever, all depends on the context.

29. Ms Jolliffe contended that the words complained of are within Chase level 2 i.e. reasonable grounds to suspect the Claimant was guilty of tax and benefit fraud. She submitted, and Mr Atkinson accepted, that although the reader is not told who is doing the investigating, the implication is that the relevant authorities are investigating. And it naturally follows that there must be some grounds to suspect that Mr Ager is guilty of tax and benefit fraud.
30. In support of her submission, Ms Jolliffe relied on the speech of Lord Devlin in *Lewis v Daily Telegraph Ltd* [1964] AC 234, emphasising Lord Devlin's observation at 285:

“In the libel that the House has to consider there is, however, no mention of suspicion at all. What is said is simply that the plaintiff's affairs are being inquired into. ... But a statement that an inquiry is on foot may go further and may positively convey the impression that there are grounds for the inquiry,

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that is, that there is something to suspect. Just as a bare statement of suspicion may convey the impression that there are grounds for belief in guilt, so a bare statement of the fact of an inquiry may convey the impression that there are grounds for suspicion.”

31. Ms Jolliffe also drew support for her submission that I should find the meaning is at Chase level 2 from *Gatley on Libel and Slander*, 12th ed., at 3.28, where the authors express the view in fn. 327:

“In practice a statement that C is under investigation will almost always justify the inference that the police have some basis for suspicion, though there are some situations where an investigation might be automatic (e.g. where a person is killed by police firearms).”

32. Mr Atkinson submitted that the words complained of contain no hidden allegation that there are reasonable grounds for the investigation (Chase level 3), let alone reasonable grounds for suspicion of guilt (Chase level 2). His primary submission was that there is a fourth level, where the meaning is limited to the mere fact of the investigation, and that the words complained of here are at that lower level. In the alternative, he submitted that the words complained of bore a meaning at Chase level 3.
33. Mr Atkinson also drew attention to fn.327 of *Gatley* (cited above) in which the authors state:

“It is arguable that there is a fourth level, viz. the mere statement that the claimant *is* being investigated. This may have been the view of Lord Devlin in *Lewis* at 285-286, who considered that in principle it was defamatory to state that a person had been charged with a crime and acquitted of it.”

34. Mr Atkinson contended that *Lewis and Jameel v Times Newspaper Ltd* [2004] EWCA Civ 983 at [9]-[11] does not rule out the possibility of a lower meaning than Chase level 3. Lord Devlin did not tease out the levels of meaning, but his view (cited in the footnote above) allows for the possibility of a meaning that is limited to the mere fact of inquiry. As is common ground, the Court should not treat the three Chase levels as a straitjacket into which every case must be fitted, therefore a lower meaning than level 3 is permissible.
35. Mr Atkinson submitted that the meaning pleaded by the Defendants is the plain meaning of the words. He sought to draw support for this meaning from the fact that it is unclear from the words which official person or body is investigating Mr Ager, who is the source of the allegation, or what information is being investigated. In addition, he submitted it is clear the author has no personal knowledge of the relevant facts.

Meaning (1): decision

36. In my judgment, the Defendants’ meaning does not reflect what the ordinary reasonable reader would understand the words complained of within the Booklet to mean. There may be room for a fourth level in some cases, but this does not come

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close to being such a case. The impression conveyed by the words, and the way in which they appear as a bold headline on the front of the Booklet and then repeated on the back, is not that of a lawyerly statement that there is an investigation as to whether or not Mr Ager had committed tax and/or DSS fraud.

37. I also reject the Defendants' introduction of the words "was at the time of publication". The ordinary reasonable reader is told that Mr Ager "is currently under investigation". There is no date or any other indication on the Booklet that might suggest to the reader that the investigation is no longer ongoing. Mr Atkinson sensibly did not seek to maintain this aspect of the Defendants' meaning.
38. The impression created is, clearly, that Mr Ager is being investigated by the relevant authorities for tax and DSS fraud. The ordinary reasonable reader may not know which authorities would be engaged in such a fraud investigation, but the impression given is no less serious than it would be if reference was made to a police investigation. The ordinary reasonable reader would infer that the authorities have some basis for suspicion. Broadly, I accept Ms Jolliffe's submissions as to the meaning, however, I consider that the way she put it in her submissions, namely "some grounds to suspect", better reflects how an ordinary, reasonable reader (who is not a lawyer) would understand the words, than "reasonable grounds to suspect".
39. The meaning I find that the words complained of bear is:
- "There are some grounds to suspect that the Claimant is guilty of tax fraud and benefit fraud."

MEANING (2): "THE ABANDONMENT ALLEGATION"*Meaning (2): the words complained of*

40. On the front page of the Booklet, under the words relied on in respect of meaning 1, the remainder of the page is in the form of a newspaper article. As Mr Atkinson submitted, with the words "The Son" in a very large white font against a red background, the article is obviously intended to look like it is from "The Sun" newspaper. It is presented as if it were an existing, external article that has been reproduced in the Booklet.
41. The words relied on by the Claimant in respect of meaning 2 are:
- i) "LOVING SON IS INTERNET WEIRDO WHO DUMPED HIS DYING DAD". These words are the headline of the article. They are prominent, although in a considerably smaller font than the words referred to in respect of meaning (1).
 - ii) "AGER LEFT HIS FATHER TO LIVE LIKE THIS". These words appear in capitals above two pictures of what looks like, and is described in the text as, a "small grimy flat".
 - iii) The seventh and eighth paragraphs of the article (which consists of eleven paragraphs) read:

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“But one of his films is shocking for another reason, it reveals the chairman of branch of a party which claims to want to make the UK’s welfare system ‘fairer’ abandoned his own father to die in a small grimy flat in a Liverpool slum.

In an amateurish YouTube video, Rob admits dumping his dying father saying he never visited him. Then he has the cheek to harangue local social services for not offering his alcoholic father any help.”

42. The same article, under a different headline to that which is the subject of meaning (1), is repeated on page 3 of the Booklet.

Meaning (2): the parties’ meanings

43. The Claimant’s pleaded meaning in respect of these words is:

“The Claimant callously and reprehensibly abandoned his father to die in slum like conditions, and then hypocritically complained about social services not offering his father any help.”

44. The Defendant’s pleaded meaning is:

“The Claimant’s failure to ensure that his father was living in minimally decent conditions and being adequately cared for, and his permitting his father to live in squalor until he died, was shocking, and then he had the cheek to harangue social services for not helping his father.”

Meaning (2): the parties’ submissions

45. Ms Jolliffe submitted that the words “callously” and “reprehensibly” capture the express thrust of the allegation which is that Mr Ager *actively* chose to dump/abandon his dying father; there is no suggestion that there might be some understandable or legitimate reason why he was unable to care for his father. She contended that the article portrays Mr Ager as being the very opposite of a loving son. Ms Jolliffe submitted that the words “has the cheek to” would be commonly understood as alleging hypocrisy.
46. Mr Atkinson submitted that the Defendants’ meaning faithfully reflects the words used, such as “shocking” and “cheek”, rather than adding layers of meaning. His contention was that the impression is not that Mr Ager made an active choice, but rather one of passive failure: he left his father to his own devices, did not visit him or care for him.

Meaning (2): decision

47. In my judgment, the clear impression given to the ordinary, reasonable reader by the repeated use of the verb “dump”, as well as the verb “abandon”, together with the description of what Mr Ager was said to have done as “shocking”, is that he actively abandoned “his dying” dad/father, rather than passively omitted to care for him. The

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meaning conveyed is that he shockingly abandoned his father to die. It seems to me that it is unnecessary to add words such as “callously” or “reprehensibly” as the words used adequately convey the impression that he acted appallingly.

48. The term “squalor” used by the Defendants aptly conveys the impression of the father’s living conditions created by the words and images.
49. The article would clearly convey to the ordinary reasonable reader the impression that Mr Ager has acted hypocritically. I agree with Ms Jolliffe that the reference to Mr Ager having “the cheek” to harangue social services is an accusation of hypocrisy. It seems to me that this impression of hypocrisy would be further reinforced in the reader’s mind by the juxtaposition of a “loving son” who “dumped his dying dad”, as well as by the contrast drawn between his position in a party which claims to wish to make the UK’s welfare system fairer and his abandonment of his own father in the conditions described.
50. It does not seem to me that the meaning conveyed to the hypothetical reader would be that Mr Ager complained *about* social services, rather, the impression is that he has berated them.
51. The meaning I find that the words complained of bear is:

“The Claimant shockingly abandoned his father to die in squalor, and then hypocritically berated social services for not offering his father any help.”

MEANING (3): “THE CHILDREN’S WEBSITE ALLEGATION”***Meaning (3): the words complained of***

52. Most of the words the Claimant draws on for meaning (3) appear in the same article that is the front page of the Booklet, and which appears again on the third page. The fourth, fifth, sixth, seventh and final paragraphs of the article read:

“And the school failure’s reviews are so controversial – in one he accuses Jesus of being a child molester – which he has endured accusations on the internet of being a paedophile and pervert.

But films like his amateurish 21 minute feature, the Sex Game, made in 2004, about a half-naked man held in chains a Liverpool house, suffering sexual abuse and whippings don’t help his protestations.

He said of the paedophile accusations: “People were calling me a paedophile, pervert, asshole, idiot, retard, for having written a review. I found it fascinating and amusing that people would lower themselves to such tactics over differences of opinion about a fictional film.”

His films – which inexplicably he posts links to on children’s websites – carry warnings about their unsavoury content.

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...

Things take a much more worrying light though when you visit a site he hosts for children's furniture. One link is from a site designed to help autistic children – this leading Liverpool politician has put links to Pulp Fiction, The Big Lebowski, a video of him and his friends wearing grotesque monster masks and even some of his outrageous political comments.” (Errors in the original.)

53. However, the Claimant also relies on tweets which are reproduced on pages 39 to 41 of the Booklet. The tweets are all from a twitter account labelled “@exposeager”. The first tweet appears once on page 39 and states:

“Kids web sites should NEVER be poluted with horror movies, even if Mr Ager watched them at 7 years old with his father.”

54. The second tweet is reproduced eight times across pages 39-41. It states:

“Rob Ager Post on the web site Children's Bedroom Furniture – we are happy to pass full details to law enforcement officers #robager”.

Meaning (3): the parties' meanings

55. The Claimant's pleaded meaning in respect of these words is:

“There are reasonable grounds to suspect the Claimant is a paedophile or otherwise acts inappropriately in a criminal manner towards children in that he posts links to his obscene films showing scenes of bondage, incarceration and flagellation, along with horror film reviews on children's websites, and hosts a Children's Bedroom Furniture website for that very purpose.”

56. The Defendant's pleaded meanings are:

“(4) Following the Claimant's controversial reviews of films such as Clockwork Orange and Hellraiser, and one review in which he had made the accusation against Jesus of child molestation, he had endured accusations on the internet of being a paedophile, pervert, asshole, idiot and retard. However, the unsavoury content of his strange 'gimp' films which he directed and starred in, showing sick scenes of bondage, incarceration and flagellation, like one called the Sex Game about a half-naked man held in chains in a house, suffering sexual abuse and whippings, did not help his protestations that others were indulging in the tactics of accusing him of these things, simply for having written reviews which had given rise to differences of opinion about a fictional film.

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(5) It was inexplicable and worrying that the Claimant had posted links to his films (including a video of him and his friends wearing grotesque monster masks and some of his outrageous political comments) on children’s websites (one of which he hosted) with warnings of their unsavoury content, and also other well-known films designed for an adult audience (Pulp Fiction and The Big Lebowski).

(6) It was legitimate for a person to be happy to pass on full details of these postings by the Claimant to law enforcement officers for investigation concerning any possible breach of the law of any kind.”

57. The Defendants’ meaning (4) drew on the second and third paragraphs of the article, which read:

“Rob Ager, who claims to have invented his own education system for children, stars in and directs ‘gimp’ films showing sick scenes of bondage, incarceration and flagellation. He also enjoys parading around his lounge in shocking animated monster masks.

Rob, aged 31, who came out of the shadows to take on the chairmanship of his local branch of UKIP recently also spends up to fifteen hours at a time writing bizarre sexual-laden reviews of banned and unsavoury horror films such as Clockwork Orange and Hellraiser, picking through the most shocking scenes with seedy relish.”

Meaning (3): the parties’ submissions

58. Ms Jolliffe sought to support the Claimant’s meaning on the basis of the juxtaposition of:
- i) the description of the Claimant’s films and quotation from the Claimant addressing allegations he has faced regarding his film work including allegations of being a “paedophile”; with
 - ii) the allegations that the Claimant posts links to the said films on children’s websites, and that he hosts a Children’s Bedroom Furniture website to post his films on; and
 - iii) the reference to “full details” being passed to “law enforcement officers”.
59. The Defendants’ meaning (4) draws on the second and third paragraphs of the article, which read:

“Rob Ager, who claims to have invented his own education system for children, stars in and directs ‘gimp’ films showing sick scenes of bondage, incarceration and flagellation. He also

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enjoys parading around his lounge in shocking animated monster masks.

Rob, aged 31, who came out of the shadows to take on the chairmanship of his local branch of UKIP recently also spends up to fifteen hours at a time writing bizarre sexual-laden reviews of banned and unsavoury horror films such as Clockwork Orange and Hellraiser, picking through the most shocking scenes with seedy relish.”

60. Ms Jolliffe made clear that the Claimant does not make any complaint about the first three paragraphs of the article. The Claimant accepts that it is not defamatory to say, for example, that he makes adult films, appears in them wearing monster masks or even (as the opening paragraph of the article says) that his video life is “perverted”. The Defendants’ meaning (4) is misdirected because no complaint is made about those matters.
61. Ms Jolliffe also clarified in reply that no reliance is placed on the reference in the article to unnamed people on the internet throwing abusive terms at the Claimant, including “paedophile”. As Mr Atkinson submitted, that is the kind of abusive language which is (unfortunately) often used online and it would be wholly illegitimate to impute reasonable grounds to suspect the Claimant is a paedophile.
62. Nevertheless, Ms Jolliffe submitted that the meaning conveyed by the words complained of is that the Claimant is inappropriate with children and the warning is being given, in effect, “watch out for this man”. She contended that what makes the words complained of defamatory is the implication that Mr Ager is posting such material on children’s websites and even that he hosts a children’s website on which he posts such inappropriate material.
63. Mr Atkinson submitted that it is wholly unreasonable to say that the words convey the meaning that there are reasonable grounds to suspect the Claimant is a paedophile or to suspect him of any criminality towards children. He pointed out that the only express suggestion of criminality is by reference to copyright; and posting links on children’s websites to inappropriate adult films may be described as odd, stupid and inappropriate behaviour, but it does not convey an impression of grooming or otherwise come close to imputing paedophilia. Mr Atkinson submitted that even if it was legitimate to bring in tweets nearly 40 pages on from the article, they do not add anything. They are vague and can readily be seen to be expressing the views of someone who is not authoritative in any way and is evidently lacking in neutrality and hostile towards Mr Ager.

Meaning (3): decision

64. In my judgment, an ordinary reasonable reader would not understand the Booklet to mean that there are reasonable grounds to suspect the Claimant is a paedophile or otherwise acts in a criminal manner towards children. Such a reader would understand a reference, such as in the article complained of, to people on the internet throwing around abusive terms such as “paedophile and pervert” is no more than abuse, however unpleasant. They would not leap to the conclusion that there are any grounds at all to suspect that the person may be a paedophile or otherwise act criminally

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towards children. As I have said, Ms Jolliffe did not seek to maintain any reliance on such internet accusations. Consequently, the juxtaposition on which the first part of the Claimant's meaning was founded falls away.

65. What is left are the allegations that Mr Ager inexplicably and worryingly posts links on children's websites, including one he hosts, to his films (which are described) and to other inappropriate adult films, such as Pulp Fiction and the Big Lebowski.
66. The impression conveyed is not altered by the tweets where the focus is also simply on the inappropriateness of what is posted on a children's website. The fact that an anonymous person on Twitter who conveys the impression of being hostile to Mr Ager, and gives no impression of having any knowledge or authority in relation to criminal law, thinks the posts should be passed to law enforcement officers, does not add to the meaning.
67. The meaning I find that the words complained of bear is:

“The Claimant inappropriately posts on children's websites, including a Children's Bedroom Furniture website which he hosts, links to his films showing sickening scenes of bondage, incarceration and flagellation, with warnings of their unsavoury content, along with a video of him and his friends wearing grotesque monster masks, links to other inappropriate adult films such as Pulp Fiction and The Big Lebowski, and even some of his outrageous political comments. This is inexplicable and worrying.”

D. Preliminary issue (b): Fact or Opinion***Fact or opinion: The Law***

68. Section 3 of the Defamation Act 2013 provides a defence to an action for defamation of honest opinion. One of the conditions that must be met for the defence to apply is that “the statement complained of was a statement of opinion”: s.3(2). Accordingly, the question whether the words complained of are statements of opinion arises.
69. There was no dispute between the parties regarding the applicable principles. These were reiterated recently by the Court of Appeal in *Butt v Secretary of State for the Home Department* [2019] EWCA Civ 933, per Sharp LJ at [33] to [39] and helpfully distilled from the authorities by Nicklin J in *Koutsogiannis* at [16]:

“...when determining whether the words complained of contain allegations of fact or opinion, the Court will be guided by the following points:

- i) The statement must be recognisable as comment, as distinct from an imputation of fact.
- ii) Opinion is something which is or can reasonably be inferred to be a deduction, conclusion, criticism, remark, observation, etc.

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iii) The ultimate question is how the word would strike the ordinary reasonable reader. The subject matter and context of the words may be an important indicator of whether they are fact or opinion.

iv) Some statements which are, by their nature and appearance opinion, are nevertheless treated as statements of fact where, for instance, the opinion implies that a claimant has done something but does not indicate what that something is, i.e. the statement is a bare comment.

v) Whether an allegation that someone has acted “dishonestly” or “criminally” is an allegation of fact or expression of opinion will very much depend upon context. There is no fixed rule that a statement that someone has been dishonest must be treated as an allegation of fact.”

Fact or opinion: meaning (1)

70. The words complained of, in respect of meaning (1), constitute an allegation of fact. This was common ground.

Fact or opinion: meaning (2)

71. The Claimant contends this is a statement of fact. The Defendants accept that meaning (2) is a statement of fact save to the extent that they contend that the description of Mr Ager’s conduct as “shocking”, and of him having the “cheek” to harangue social services, constitutes opinion. In other words, having regard to the meaning that I have found, they contend that the adverbs “shockingly” and “hypocritically” constitute opinion rather than statements of fact. Ms Jolliffe submitted that the descriptive words are part of the description of the behaviour.
72. In my judgment, the description of Mr Ager’s conduct as shocking and hypocritical would strike the ordinary reasonable reader as being the (critical) opinion of the author. Those descriptors are not statements of fact but of opinion.

Fact or opinion: meaning (3)

73. The Claimant contends that this, too, is a statement of fact. The Defendants accept that meaning (3) is a statement of fact, save to the extent that they contend the description of the Claimant’s alleged act of posting the links as “inexplicable” and “worrying” constitutes opinion.
74. In my judgment, that is clearly right. The ordinary reasonable reader would recognise that whereas the statement that Mr Ager has posted links to the material described is clearly factual, the view that his behaviour is inexplicable and worrying is clearly an expression of opinion by the author.

E. Preliminary issue (c): Defamatory at common law

75. I have set out the test for whether words are defamatory at common law in paragraph 9 above.

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76. In relation to the meanings that I have found, there was no dispute that meanings (1) and (3) are defamatory at common law.
77. As regards meaning (2), Mr Atkinson submitted that the allegation of abandonment would have a neutral effect so far as right thinking or reasonable members of society generally are concerned. He emphasised that the father was an adult and so not usually the responsibility in law of his child. Further, the conduct might have been explicable by reference to Mr Ager's own position or circumstances, or the relationship between father and son (bearing in mind, not least, the father's alcoholism).
78. In my judgment, meaning (2), in the terms I have found, is defamatory at common law. The impression conveyed by the words is that Mr Ager chose to dump and abandon his dying father in squalid living conditions. The impression is also conveyed that this was shocking behaviour, not that there might have been complex and justifiable reasons for such conduct. The imputation of such conduct would tend to lower the Claimant in the estimation of right-thinking people generally, and it would substantially affect in an adverse manner, or tend to so affect, the attitude of other people towards him.
79. Accordingly, I find that meanings (1), (2) and (3) are defamatory at common law.