Neutral Citation Number: [2020] EWHC 1496 (QB)

Case No: QB-2019-003422

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/06/2020

Before :

MRS JUSTICE ELISABETH LAING

- -

Between :

(1) HAYLEY WARNES
(2) RAYMOND ROBSON

Claimants

- and –

DAVID FORGE **Defendant**

- -
- -

MR WILLIAM BENNETT QC
(instructed by **SEDDONS SOLICITORS**) for the **Claimants**
MISS CLAIRE OVERMAN
(instructed by **CLARKSON WRIGHT AND JAKES LIMITED**) for the **Defendant**

Hearing dates: 20 MAY 2020

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Approved Judgment

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 ELISABETH LAING

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII. The date and time for hand-down is deemed to be 10:30am on 12 June 2020.

The Hon. Mrs Justice Elisabeth Laing :

Introduction

1. This is my judgment after a 'remote' preliminary hearing. The hearing was listed to resolve disputes about the meaning and legal effect of passages in three emails published by the Defendant (D), which the Claimants ('C1'and 'C2') allege, defame them.

2. C1 and C2 were represented by Mr Bennett QC. D was represented by Ms Overman. I am grateful to both counsel for their written and oral arguments.

The issues in summary

3. The issues for the hearing were listed in an order made by Warby J on 4 February 2020. They are whether:

    i. the words complained of at paragraphs 20, 24 (and appendix) and 27 of the particulars of claim convey the meanings pleaded at paragraphs 23.1-23.4, 26.1-26.3 and 29, and if not, what they do mean;

    ii. the words complained of, in the meanings found, defame the First and/or Second Claimant at common law;

    iii. those words complained of, in the meanings found, are statements of fact, or statements of opinion within the meaning of section 3(2) of the Defamation Act 2013 ('the Act'); and

    iv. if the answer to question iii is that all or any of the words complained of were such statements of opinion, the basis of those opinions was indicated (for the purposes of section 3(3) of the Act).

4. I will approach the issues in this order.

5. The last two issues concern the defence of honest opinion. I say more about that defence below.

6. D contends that the meanings he attributes to the first publication are 'very close to text-book' examples of opinions, consisting of an expressed opinion based on indicated facts. The meaning he attributes to the statements about C1, he contends, consist, respectively, of a statement of fact, (i), and a statement of opinion, (ii), based on the facts stated at (i) and on his witness statement and exhibits, also referred to in the first publication. He contends that if the words about C2 mean what he contends they do, (i) is a statement of fact, and (ii) and (iii) are statements of opinion. Those statements are based on C2's conduct described in (i) and the general background described in the first publication.

7. D accepts C1's pleaded meaning of the second email is a statement of fact. D contends that what is said about C2 is a 'textbook example' of opinion. D's case is that elements (i) and (ii) of his pleaded meaning are statements of fact, and elements (iii) and (iv) are statements of opinion based on those facts, as well as on other examples of C2's conduct described in the second publication.

8. D accepts that the words in the third publication were a statement of fact.

The structure of this judgment

9. There is little apparent dispute about the background. I describe it briefly, in terms broadly drawn from the particulars of claim and D's skeleton argument. I then explain how each email was published. I summarise the three emails, with some direct quotations in an Appendix to this judgment. In the light of the parties' submissions, I decided to summarise the three emails, not just the passages on which Cs rely, as the emails as a whole are the immediate context of those passages, and, in my judgment, would be relied on by the reasonable reader in deciding what those passages mean. I then describe the parties' contentions about the meaning of each email, and summarise the law where necessary (and briefly, as there is little dispute about it). I then make my findings on the issues, commenting, where necessary, on the parties' submissions.

The background

10. C2 is a chartered surveyor and managing director of RR Surveyors Limited. Mariners Walk is a residential estate in Erith, consisting of 272 flats and 140 houses. C2 owns five properties in Mariners Walk. Mariners Walk is managed by Mariners Walk Management Company ('the Company'). The Company has a board of elected directors. C2 was a director until 11 March 2016. Everyone who owns a property on the estate is a member of the Company.

11. D's children own a flat in Mariners Walk.

12. Until July 2015, the estate was managed by Amax Estates and Property Services Limited ('Amax') as the Company's agent. Amax is owned by Ms Fothergill. C1 was employed by Amax from 13 February 2008 until 19 December 2014. While she was employed by Amax, she was responsible, with the directors of the Company, for managing Mariners Walk. She was employed by C2 from 5 January 2015.

13. Ms Fothergill sent letters in May 2015 and July 2016 to the residents of Mariners Walk, accusing C1 of fraudulently stealing money from Mariners Walk and C2 of trying to obstruct a police investigation into C1's alleged crimes and thus of attempting to pervert the course of justice. C1 was arrested. A criminal investigation started. C1 was never charged. Cs sued Ms Fothergill for defamation. On 14 November 2017, Ms Fothergill joined in a statement in open court. She formally acknowledged that her allegations were false. She undertook not to repeat the allegations.

14. Cs' case is that D is a close ally of Ms Fothergill. Cs allege that they work together in order to damage them. They allege that D gave information to the police to support Ms Fothergill's allegations, and that he was 'enraged' that the police did not agree with analysis. Their case is that D has continued to make the same allegations against them.

15. In her skeleton argument, Ms Overman further explained that, at a Company meeting in July 2015, members of the Company were told that there might have been some fraudulent spending at the Company's expense, and that C1 and others had been arrested.

16. As she also explained, after that, the parties have made, or have been the subject of, various complaints to the Royal Institution of Chartered Surveyors ('RICS').

    a. In June 2016, D complained to the RICS about C1's conduct. The RICS has not resolved that complaint.

    b. In 2018, D complained to the RICS about an email C2 sent on 5 June 2018 to Luay Al-Khatib, a Director for Regulation at the RICS. The first of the three

emails I mention in paragraph 1, above, refers to this. The RICS decided to take no action on this complaint.

c. In 2018, Ms Fothergill complained to the RICS about C2's conduct towards her and towards Amax. This complaint has also been dealt with. No action was taken against C2.

d. At about the same time, C2 complained to the RICS against Ms Fothergill in relation to the alleged fraud. This complaint has not been resolved.

The publications

The first publication

17. The first publication was an email sent by D to C2 on 13 June 2018 at 23.31 and copied to 25 email addresses (including, apparently, the email addresses of C1, of some of C2's colleagues, Ms Fothergill's and other Amax email addresses, and those of officers of the RICS). That email was part of a chain consisting of an email from D to Ken Wilson, to which D replied, and which he then forwarded to C2 and the others. The subject line of D's email to C2 and others was 'Robson Dirty Tricks'.

The second publication

18. On 22 February 2019, D sent an email to Ms Fothergill of Amax. The subject line of the email to Ms Fothergill was 'RICS/Robson Bundle of 18 January 2019'. D also sent the email, with the subject line 'Bye Bye Bertie', to nine other email addresses, which did not include Cs' email addresses, between 24 February and 1 March 2019 (at 22.19). This email contained a note, entitled 'NOTE ADDED BY DAVID FORGE ON 24 February 2019'. The note was addressed to 'misguided members of [C2's] fan club'. The note said, '**as you will understand**' (emphasis in the original), it was his public duty to bring the email he had sent to Ms Fothergill to their attention. D added that if any of the addressees needed clarification about anything, they should not hesitate to contact him.

The third publication

19. The third publication was a further email with the subject line 'Bertie's claim!!' sent to Ken Wilson's email address at 19.40 on 6 March 2019. It was then sent to ten email addresses between 14.24 and 14.26 on 8 March 2019. Those included two email addresses apparently belonging to C2. D apparently wished C2 to understand (see below) that the email had also been sent to his staff and friends. This further email had the subject line 'Bertie Lunatic'. There was a cover email entitled 'NOTE ADDED BY DAVID FORGE ON 8 MARCH 2019'. There was an attachment; a print-out of the Google definition of 'lunatic'. The importance of this email was described as 'High'. The covering email, addressed to 'Bertie', which, the reasonable reader would infer from the context, is a name by which C2 is known, says, 'More evidence that you have lost the plot – you threaten to lay out £300 with a negligible chance of getting back just £46.41 so you lose over £250!! It's not rational behaviour – see below. Hopefully your son or misguided staff/friends, some bcc'd in, will persuade you to seek medical help. In the meantime, **Word of the Week** is attached' [emphasis in the original].

Meaning

The law

20. The parties agree Nicklin J accurately summarised the relevant principles in paragraph 11 and 12 of *Koutsogiannis v The Random House Group Limited* [2019] EWHC 48 (QB); [2020] 4 WLR 25. I summarise some of them.

i. The court has to decide the 'single natural and ordinary meaning' which a hypothetical reasonable reader would gather from the words used. This is artificial, because different readers may understand the words differently.

ii. The intention of the publisher is irrelevant.

iii. The hypothetical reader is not naïve, but is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer, and may think loosely, but he is not avid for scandal. He does not choose a bad meaning when there are other possible non-defamatory meanings.

iv. The court should not be too analytical or too literal.

v. A judge giving reasons for his decision should not fall into the trap of overanalysing the publications.

vi. The publication must be read as a whole. Its context and the way it was published must be taken into account. In paragraph 15, Nicklin J said that context was important when the words complained of are in a book; the ordinary reasonable reader is taken to have read the whole book.

vii. No evidence, beyond the publication complained of, is admissible in deciding what the word mean.

viii. The hypothetical reader is taken to be representative of those who would read the publication. The court can take judicial notice of facts which are common knowledge, but should be slow to assess the characteristics of the readers of the publication in an impressionistic way.

ix. Judges should take into account the impression the publication makes on them in considering its impact on the hypothetical reasonable reader.

x. The court is not bound by the parties' pleaded meanings, but cannot find a meaning which is worse than the claimant's pleaded meaning.

21. Cs also rely on dicta in *Charleston v News Group Newspapers Limited* [1995] 2 AC 65, pages 65 and 72, per Lords Nicholls and Bridge, about the dangers of using defamatory headlines. The reader might not be expected to notice 'curative words tucked away further down the article'. The balancing effect, if any, of the body of an article will depend on various factors, including the nature of the libel conveyed by the headline, the language of the text relied on to neutralise it, and the way in which all the relevant material is set out and presented.

22. I endorse what Nicklin J said about the artificiality of this exercise. I am obliged to treat this as a matter of impression, and not to take too an analytical approach, but, at the same time, I am obliged to give reasons for my decisions about meaning, and, it seems to me, I cannot altogether avoid dealing with the detailed submissions about the meaning of the publications which the parties made orally and in writing.

The parties' contentions about the meaning of the first publication

23. Cs rely on much of this publication (see paragraph 20 of the particulars of claim). C1 contends that the words mean that '*C1 is a thoroughly and fundamentally dishonest person who committed fraud at Mariners Walk and other estates*'.

24. D contends that the words mean *'i) There are reasonable grounds to suspect C1 of having committed fraud in respect of spending at estates including Mariners Walk in 2014; ii) accordingly C1 is dishonest and is rightly being investigated by RICS for breach of its rules and professional standards.*'

25. As D points out in his skeleton argument, part of the difference between the parties is whether D alleged that C1 was guilty of fraud, or merely that there were reasonable grounds to suspect that she was guilty.

26. C2's case is that the words mean

    i) *'C2 negligently failed to notice and to take action to stop C1 and other people committing fraud.*'

    ii) '*Despite the fact that C2 had read compelling evidence showing that C1 was committing fraud, he instead falsely accused Maxine Fothergill and Amax of committing the fraud. He did so in the knowledge that this accusation was false and in order to achieve his unethical aim of putting Amax out of business.'*

    iii) '*C2 is mentally ill and in need of psychiatric help*'.

27. D's case is that the words mean

    '*Following the discovery of overspends at Mariners Walk and other residential estates that occurred in 2014, C2 has*

    i) *Obsessively pursued a vendetta against Amax, and its owner, Maxine Fothergill, with the aim of putting Amax out of business;*

    ii) *Targeted Ms Fothergill and Amax in this way because he is seeking to deflect his own responsibility, as director of Mariners Walk's management company, for matters that occurred under his directorship;*

    iii) *Accordingly acted in a way that is unprofessional and unethical, and which warrants investigation by RICS for breach of professional standards.*'

My findings about the meaning of the first publication

28. The apparent addressees are a varied group, and no assumptions can be made about their shared knowledge of the background. The overall tone of the email of 13 June, and of the chain as a whole, is unpleasant. The reasonable reader would gather that D has an agenda.

C1

29. C1 is not referred to in the subject line of the email of 13 June. She is described, without qualification, in its third paragraph, as 'the most dishonest person' D has had 'the misfortune to meet'. The fourth paragraph of the email refers to 'fraud at Amax clients in 2014'. That sets the scene for D's description of the RICS investigation of C1, and his contribution to that investigation, which he describes as 'detailed' and 'forensic'; informed by his long experience.

30. In that context, the reasonable reader, who is neither naïve nor avid for scandal, would understand that the deliberate placing of inverted commas round "alleged breaches" is sarcastic. It does not detract from the impression created in the reasonable reader that C1 is guilty of the professional breaches alleged against her, which are connected with 'the fraud at Amax clients'. Rather, it reinforces that impression by drawing attention to the word 'alleged', and by subverting the presumption of innocence which the use of

that word normally conveys. That impression is supported by D's reference to the 'compelling evidence' which he says C2 has ignored (and the source of that evidence, which D has just described). In context, a reasonable reader would understand that to mean compelling evidence of C1's guilt of the professional breaches alleged against her which are linked to the 'fraud at Amax clients'.

31. The reasonable reader would also understand, in that immediate context, that the next passage 'I also believe that there was fraud at Mariners Walk…and in light of the evidence contained in my Witness Statement this was, in my opinion, committed by your beloved [C1] …I believe the evidence against them is compelling, notwithstanding the Police's failure to prosecute...' is a re-statement of C1's guilt of fraud. The evidence is, again, stated to be 'compelling', and the reader would bear in mind D's description of his researches which produced that evidence. The word 'failure' suggests that the police made a mistake in not prosecuting C1; it does not convey doubt about her guilt.

32. I am not impressed by the submission that because D's views are said not to be shared by the police or by the RICS, D has stopped short of alleging guilt. I have just explained why in the case of the police. The point about the RICS is that they are still investigating and so have not yet reached a view; that fact does not detract from what D says about C1's guilt. Nor am I impressed by the submission that D qualifies what he says by the use of the word 'alleged'. Any mitigating effect which might otherwise be attributed to that word is negated, as I have explained, by D's use of inverted commas.

33. For those reasons, I find that the words complained would convey to the reasonable reader that C1 is an exceptionally dishonest person who committed fraud at Mariners Walk and other estates in 2014.

C2

34. The text of the 13 June email is introduced by the subject line 'Robson Dirty Tricks'. Each word of those words is capitalised, drawing attention to their importance. The subject line would influence the expectations of the reasonable reader about the contents of the email as regards C2. D refers to C2 twice in the email chain as 'Scum of the Earth' (again, capitalised for emphasis). The email sent on 13 June refers to C2's unprofessional and unethical conduct, accuses him of acting maliciously, and for the purpose of 'inflicting maximum damage on Amax and for no other substantial purpose'. D describes C2 as 'sad, nasty, lying and vindictive'. This language would leave the reasonable reader in no doubt that C2 is a bad person, and would condition that reader's understanding of what is said about C2.

35. D says that this is 'All…because you will not admit you are wrong and accept responsibility for your own failings e.g. the £52,000 overspend…for which you, as the Director, were responsible…I also believe that there was fraud at Mariners Walk (under your watch)…'. The reasonable reader would understand D to be saying that C2 was negligent in 2014. However, I do not consider that a reasonable reader would understand that D is saying that C2 knew about the fraud in 2014. The general tenor of the first email is that C2 will not now admit, in the light of D's evidence, that C1 was guilty of fraud, which is different.

36. Ms Overman submits that there is no textual basis for the suggestion that the words mean that C2 accused Ms Fothergill despite knowing that the allegation was false. The reasonable reader would understand the words to mean that C2 has sent information to the RICS for the sole purpose of damaging Amax. The reasonable reader would infer that the information sent to the RICS was not, therefore, true (C2 is also described as a

'lying' person). The reasonable reader would also understand the words to mean that, astonishingly, C2 has 'totally' ignored 'compelling evidence' of C1's guilt gathered by D in his extensive expert investigation, and, instead, 'without a shred of evidence' tried to blame Ms Fothergill, for the sole (and unethical) purpose, which has he has been pursuing for several years, to put Amax out of business. In this context, and in the context of what D has already said, the reader would understand that C2 blamed Ms Fothergill, with no supporting evidence, and for an ulterior motive, and that that was also dishonest. The reasonable reader would not conclude that D is only alleging wilful blindness. Ms Overman prays in aid C2's wider campaign against Amax of which the overspend forms a part. The reasonable reader, she submits, could not overlook that. In my judgment, that does not help D. The repeated references to C2's campaign or vendetta describe C2's motive, and found the clear inference that C2 does not have an honest reason, founded in evidence, for blaming Ms Fothergill.

37. D refers to C2's mental state at the end of the 13 June email, explaining that he has copied in 'some mutual contacts so that they are also aware of my views about the state of your mental health'. The list of addressees apparently includes C2's work colleagues and officers of the RICS. D says that C2's statements about D and Ken Wilson in C2's email of 5 June are 'a total figment of your seriously warped and deluded imagination'. D then describes his belief that C2 is 'mentally deranged and in need of psychiatric help, as it appears to me that there is clearly something seriously wrong here'.

38. D contends that the reasonable reader would not understand these words as a diagnosis. That is said to be an over-literal approach, which ignores the context. The sting of D's remarks, in context, D argues, is that C2 is engaged in an obsessive vendetta. I consider that the reasonable reader would understand that D is saying that C2 is mentally ill; that D has decided to draw that to the attention of some mutual contacts, including, apparently, professional contacts. A reasonable reader would conclude that the words mean that C2's mental illness should be taken into account by those who make judgments about what weight to give to C2's emails, to the RICS, for example: 'I believe you are best ignored by everyone'. In other words, C2's assertions should not be accepted at face value by his colleagues or by officers of the RICS because he is mentally ill.

39. For those reasons, I find that the words complained of would convey to the reasonable reader that C2 negligently failed to notice an overspend at Mariners Walk in 2014, that he obsessively pursued a vendetta against Amax, and its owner, Maxine Fothergill, with the aim of putting Amax out of business; that he targeted Ms Fothergill and Amax in this way because he was seeking to deflect his own responsibility, as director of the Mariners Walk management company, for matters that occurred under his directorship; that he did so dishonestly, and that he is mentally ill and should not be listened to for that reason.

The parties' contentions about the meaning of the second publication

40. Cs complain about the entire email (particulars of claim, paragraph 24, and the appendix to the particulars of claim). They say that the email means that '*C1 committed the criminal offence of fraud by stealing in excess of £100,000 from her employer*'.

41. D's case is that the email means that '*There are strong grounds to suspect C1 of having participated in fraudulent activity that culminated in 800 property owners losing a total of over £100,000.*'

42. C2's case is the email means that '*i) C2 dishonestly covered up the fraud committed by C1 and successfully frustrated a police investigation into it for an ulterior motive, thereby acting criminally by perverting or attempting to pervert the course of justice. ii) C2 negligently failed to notice that C1 had committed the fraud "on his watch" and this was one reason why he sought to cover up her crime.*'

43. D's case is that the email means that

'*i) C2 submitted an unmeritorious complaint to RICS against Maxine Fothergill and Amax;*
ii) C2 also meddled in an ongoing police investigation into C1;
iii) C2 acted in this way: (a) in order to detract from other RICS investigations against Cs; (b) as part of his continued vendetta against Amax and Ms Fothergill; and (c) to deflect his own responsibility, as director of the Mariners Walk management company, for matters that occurred under his directorship;
iv) In so acting, C2 behaved in a highly unprofessional and unethical manner.'

My findings about the meaning of the second email
C1

44. The dispute about C1 concerns whether or not D asserts her guilt, or says that there are strong grounds to suspect that C1 was involved in a fraud. The reasonable reader would see, that in paragraph 7 of the email, D says that C2 succeeded in 'getting C1 off'. The police dropped their fraud investigation, for various listed reasons, 'not because there was no fraud,' but because it was not in the public interest to prosecute her.

45. I consider that the reasonable reader would be influenced by D's reference to C1's emails which are said to be sources of 'significant and damning evidence of professional misconduct and suspected fraudulent activity'. D says that he was asked for 'hard copy evidence of wrongdoing' by C1 and that that was 'exactly' what D provided in his 52-page witness statement, 'in bucket loads'. D was in no doubt that C2 accepts that that there was fraud at Mariners Walk and at the other developments managed by C1, but has 'throughout maintained' her 'innocence for his own ulterior motives'.

46. Later on, D says that C2 'to this day considers [C1] innocent of the alleged fraud, and this is despite all the evidence he has seen' in D's witness statement. Then, highlighted, and in bold, D says 'In my opinion [C2] is WRONG – he mistakenly believes that because the Police did not prosecute [C1] then there was no fraud or when it suits his purpose there was fraud and it was admitted/committed by you and not [C1]!'. He says that in his professional opinion as a chartered accountant and KPMG head of audit, 'Mariners Walk and other estates managed by [C1] suffered fraud in 2014 and that was committed by [C1] and her associates…' D describes C2 as 'the principal victim of [C1's] actions'. D says that C2 'clearly accepts there was fraud otherwise there would have been no need to defend her'.

47. Later (item 3, third bullet point) D asserts that he knows that he is right and that C2 is wrong. Under the fifth bullet point, he refers to what 'she [C1] got up to', which is treated as a fact which has happened. If Ms Fothergill had micromanaged C1, rather than place trust in her 'the suspected fraud would never have happened – you would not knowingly allow a trusted employee to substantially destroy your business'. His witness statement confirms that 95% of the invoices were approved by C2, and it was

her and her associates who benefitted financially and not Ms Fothergill. Both of those are described as 'facts'.

48. D says that C2 can clearly detect fraudulent activity when it suits him. It is extraordinary/remarkable that C2, despite having seen 'all the evidence of [D's] [C1] fraud investigation, still maintains that the papers wholly exonerate [C1] of the alleged fraud.'

49. Ms Overman submits that the overall impression is important. I agree. She also submits that it is not clear that D is asserting C's guilt because of the inconsistency and equivocation in his use of words like 'alleged' and 'suspected'. There are three answers to this.

50. First, in the final bullet point under item 3, D tells the reader that he is alive to the need to 'pop in' the word 'alleged' a couple of times in order to avoid having to concede a libel claim. Ms Overman submits that D is signalling to the reasonable reader that he knows that these words have a dampening effect, that he is using them with that intention, and that that is how the reasonable reader would interpret them.

51. In my judgment, a reasonable reader would not understand that such words, in this context, show that D has suspended judgment. On the contrary, the reasonable reader would see from this passage, and from D's reference in item 4 to instructing a libel lawyer, that D is a sophisticated user of the words 'suspected' and 'alleged'. He is sympathising with Ms Fothergill on the grounds that her failure to say 'alleged' a couple of times meant that she had to concede a libel claim. The point the reasonable reader would take from this passage is that D thinks he is too clever to make the same mistake.

52. Second, the passages which I have quoted at length, above, signal to the reasonable reader that, despite using words like alleged and suspected, D has not suspended judgment, but is treating fraud at Mariners Walk, C1's involvement in it, and benefit from it, as facts, and is so sure that they are facts that he cannot avoid giving that impression to the reasonable reader. In the light of these two points, a reasonable reader would not give the words 'suspected' and 'alleged' a literal interpretation.

53. Third, D refers more than once to the weight and compelling nature of the evidence he has examined in his detailed professional investigation.

54. My conclusion is that the words mean that C1 was guilty of an offence of fraud which caused a loss estimated at over £100,000.

C2

55. I do not consider that the reasonable reader would understand from the farrago of criticisms that D makes of C2 that he is accusing C2 of committing the offence of attempting to pervert the course of justice. That is an accusation of a specific criminal offence, and it is asking too much of the reasonable reader who is not a lawyer to draw that conclusion from the second publication. D does not use the phrase 'perverting or attempting to pervert the course of justice'. He implies, instead, that C2 contributed to the police's confusion, lack of understanding of the transactions, and lack of investigative zeal. D does refer to C2's success in 'getting [C1] off', but his ultimate conclusion about the decision of the police not to prosecute C1 is that the costs and length of a trial set against the loss per individual made a trial disproportionate and thus not in the public interest.

56. The email does, however, suggest to a reasonable reader that C2 has obfuscated C1's involvement in a fraud, and that the only person 'who has prevented justice from being obtained by Mariners Walk for the suspected fraud is [C2] who was the director responsible and whose failings allowed this to happen and to go unchecked', although I do not consider that the reasonable reader would understand D to be saying that C2 knew in 2014 that C1 was guilty of fraud. D says he has no doubt that [C2] accepts that there was fraud at Mariners Walk and other developments managed by [C1] but he has throughout maintained [C1's] innocence for his own ulterior motives. This email as a whole, and this passage in particular, would lead a reasonable reader to conclude that C2 did so in bad faith, and for a discreditable motive, and, it therefore follows, that he did so dishonestly. Ms Overman's submissions about this in paragraph 35.1 of her skeleton argument, it seems to me, miss the point, by conflating the covering up of a fraud with the covering up of a fraud by C1.

57. I have noted the two allegations that C2 fabricated evidence. They are serious, but are made in the context, not of the police investigation of C1, but of the complaints and cross-complaints to the RICS. The reasonable reader would not understand them to relate to the police investigation.

58. What is also stated, clearly enough for the reasonable reader to understand, is that D is alleging that C2 breached his professional duty as a surveyor and his fiduciary duty as a director in 'allowing' a fraud 'to happen' on his watch, when he was 'effectively sole director'.

59. I therefore find that, as regards C2, the reasonable reader would understand that the second email means that C2 interfered in the police investigations of C1, and that interference contributed to their decision not to prosecute her, that C2 negligently failed to notice that C1 had committed fraud on his watch, and that this is one reason why C2 has, from the point when D confronted C2 with his evidence, dishonestly refused to accept C1's obvious guilt.

The parties' contentions about the meaning of the third publication

60. Cs' case is that the words they complain about mean

    '*C1 stole data from her employer and C2 received the stolen data from her; they were therefore guilty, respectively, of the criminal offences of theft and receiving stolen goods.'*

61. D's case is that the words mean

    '*There are reasonable grounds to suspect that, in the course of her employment as a Property Manager for Mariners Walk, C1 impermissibly made a copy of an invoice and provided it to C2 without the knowledge of her employer*.'

My findings about the meaning of the third email

62. Ms Overman submits that the passage only means that there are reasonable grounds to suspect that C1 'impermissibly made a copy of an invoice and provided it to C2 without the knowledge of her employer'. Even if she were right about the first part of her case, there is nothing in the language of the email to support 'impermissibly etc'. That is a wordy and sanitised version of what D said, much more concisely. He said, twice, that C1 stole the data ('the data theft'/'stolen property'). In any event, for the reasons I have just given, I do not consider that there is any basis for the suggestion that a reasonable reader would understand the words to convey, only, that there are reasonable grounds to suspect theft and handling.

63. She also submits that the introductory rhetorical question, the mention of the alternative theory, and D's equivocal language signal that D is not expressing a final view. The rhetorical question is no more than that, and D answers it as soon as asking it. The alternative theory is mentioned, but only to be discounted immediately. The immediate rejection of the alternative theory reinforces the primary contention. The use of phrases like 'I suspect', and 'It appears' does not, in the context of the two assertions that C1 stole data, and of the phrases 'I believe' and 'I am sure', and of the stated presence of uncontradicted prima facie evidence, undermine the meaning which, I have found, the reasonable reader would understand D's words to have.

64. Ms Overman accepts that D referred, in terms, to a 'criminal offence'. But, she submits, it is not, and would not be understood as, a charging announcement. That is nothing to the point. A person can be understood to say that another person is guilty of a criminal offence, without the reasonable reader thinking for a moment that he is reading a charging announcement. She then submits that because C2 is said to have used the invoice to found a legal claim, a reasonable reader would 'recognise that such legitimate use is inconsistent with the invoice being stolen property and Cs' having a committed a criminal offence to obtain it'. There are two problems with this submission. First, it does not cohere with D's assertion that the legal claim is 'an abuse of legal process'. Second, an assertion that the copy of the invoice was stolen does not imply either that the document is not genuine (rather the reverse), or mean that it could not be used to found a legal claim. Ms Overman's description of this passage, that 'readers would understand from D's reference to a "criminal offence" that he was expressing his (characteristically forthright) view that Cs' suspected actions constituted wrongdoing' is a bland understatement.

65. D's answer to the rhetorical question he poses about how C2 'manage[d]' to acquire the invoice 'in the first place' is that he believes it was 'part of *the* data theft' (emphasis supplied) by C2's 'beloved' C1, who was property manager for Mariners Walk and then went to work for C2. A reasonable reader would conclude that D is saying that C1 stole data, including the invoice. D goes on to say that 'It appears that we have prima facie evidence that [C2] has received stolen property and that in, in itself, is a criminal offence, as I am sure a Member of the Academy of Experts will know'. The reasonable reader's first conclusion about the meaning of the phrase 'part of the data theft' is reinforced by the description 'stolen property', which contains an assertion that the property was stolen. The reasonable reader would conclude that this passage means that C1 stole data, including the invoice. That impression, having been lodged in the mind of the reasonable reader by those two phrases, would not be displaced by the later use of the phrase 'I suspect'. That weak 'antidote' is an inadequate salve for the 'bane'.

66. The reasonable reader would be left in no doubt that D is also saying that C2 committed a criminal offence. First, D refers to 'prima facie evidence'. Second, the last part of the sentence points to the conclusion that a criminal offence has been committed, by the use of the phrase 'criminal offence', and, third, points to C2's knowledge that he was committing a criminal offence by imputing to him knowledge that receiving stolen goods is a criminal offence, knowledge attributed to C2's professional expertise ('that, in itself is a criminal offence, as I *am sure* a Member of the Academy of Experts knows' – emphasis supplied). C2 can only have known that he was receiving stolen property if he knew that C1 had stolen it, and that is what those words would convey to a reasonable reader. There is nothing in the context to suggest that there is any material to rebut the prima facie evidence; indeed, the reverse, since D immediately discounts a potentially

innocent explanation (that C2 copied the invoice in 2013), by asserting that the invoice presented by C2 was a scanned copy taken from the Amax server, 'by, I suspect, [C1]'.

67. For those reasons, I find that the reasonable reader would understand the third email to mean what Cs contend it means (see paragraph 60, above).

Defamation

The law

68. The only legal issue about which the parties disagree is whether an imputation that someone is mentally ill can be defamatory.

69. Ms Overman submits that if it once was defamatory to say that a person is mentally ill, that is no longer so. She relies on *Ibrahim v Swansea University* [2012] EWHC 290 (QB). The claimant in that case was a litigant in person. He made various claims against the regulator and the University after the University decided to require him to withdraw from his course, having rejected his application for an extension of time, which was supported in a letter by the School of Business. The University had mistakenly relied on a letter which described the mental health difficulties of a different student (judgment, paragraphs 4-6). The University offered to discuss reinstatement when it discovered this mistake, but the claimant was not interested.

70. The defendant applied to strike out his claim. Eady J, giving a judgment which appears to have been ex tempore, said, at paragraph 10, that the nature of the claimant's claim was obscure, but that it appeared to include a claim for defamation. A Master had ordered him to clarify his case, and if it was a claim for defamation, what words he complained of. He relied on a letter of support from the School of Business, which said, among other things, that he had suffered mental health difficulties. Eady J accepted the defendant's submission that 'no reasonable person would nowadays think any the worse of someone who had suffered from mental health difficulties or from chronic fatigue syndrome and anxiety', and held that no defamation claim could arise in respect of those publications (judgment, paragraph 15). He referred to no authority.

71. Mr Bennett referred me to the summary of the law by Tugendhat J in *Thornton v Telegraph Media Group Limited* [2010] 1414 EWHC (QB); [2011] 1 WLR 1985. A class of statements which can be defamatory is those which would cause a person to be shunned and avoided, even if they impute something to the claimant which is not his fault, such as an illness. Ms Overman was disposed to submit that there is no more recent authority supporting the existence of the 'shun and avoid' category, but showed me no authority overruling that part of Tugendhat J's summary of the law. In that situation it seems to me that I must treat it as accurate.

72. In the *Ibrahim* case it was not arguable that the accounts of the claimant's, or of the other student's, mental health difficulties would have caused them to be shunned or avoided. The statements could not arguably have led to ostracism. They were an explanation of each student's failure to make academic progress. The statements in *Ibrahim* explaining that students had not finished their courses because of mental health difficulties was, therefore, not arguably defamatory. I do not consider that I am bound by *Ibrahim* to hold that a statement imputing mental illness to a claimant could not now, as a matter of law, ever be defamatory. I consider, rather, that whether such a statement is defamatory must depend on the context in which it is made.

73. The context of this imputation is quite different from the context in *Ibrahim*. D says that what C2 has said to the RICS in an email is 'a total figment of [his] seriously

warped and deluded imagination'; which is why D has copied in an officer of the RICS. It is in that context that D expresses his belief that C2 is 'mentally deranged and in need of psychiatric help', and that he is best ignored by everyone. That statement is precisely designed to persuade a reasonable reader to shun and avoid C2 by ignoring what he says. It is a statement that a person who has made complaints to the RICS, and against whom complaints have been made, should be ignored, because he is deranged and needs psychiatric help. I agree with Ms Overman that the reasonable reader would not think that this was 'a stand-alone diagnosis of the state of C2's mental health'. But the reasonable reader would understand D to be saying that the publishees (who appear to include officers of the RICS and C2's colleagues) should pay no attention to him because he is deranged. I consider that that is plainly capable of being defamatory.

Are the words defamatory?

The first publication

74. Ms Overman accepts that if the words mean what Cs argue they mean, they are defamatory, save to the extent that they include an allegation that C is mentally ill. I have accepted Cs' pleaded case, in the main, and rejected her submission about mental illness. I conclude that the words in the meanings I have found are defamatory.

The second publication

75. I did not understand Ms Overman to argue that if the words have the meanings I have found, they were not defamatory.

The third publication

76. I did not understand Ms Overman to argue that if the words have the meanings I have found, they were not defamatory.

Fact or opinion?

The law

77. Section 3(1) of the Act created the defence of honest opinion. Section 3(8) abolished the common law defence of fair comment. To establish the defence, a defendant has to show that three conditions are met. They are that the statement was a statement of opinion (section 3(2)), that the statement 'indicated, whether in general or specific terms, the basis of the opinion (section 3(3)), and that 'an honest person could have held the opinion on the basis of (a) any fact which existed at the time the statement complained of was published' (section 3(4)). Section 3(4)(b) is not relevant.

All three publications

78. I did not understand D to argue that, if I accepted Cs' pleaded meanings, or something resembling those, D was stating his opinion, rather than facts, with two exceptions. First, D's case was that in so far as the first email contained an allegation of dishonesty against C1, that was a statement of opinion. Second, element (ii) of D's pleaded meaning against C2, which I have accepted, was, it is argued, also a statement of opinion. I

79. do not consider it arguable, for reasons which overlap with my reasons for finding what the words about C1 meant, that D was expressing an opinion. A reasonable reader would understand him to be asserting, as a fact, that C1 is an exceptionally dishonest person. I would have accepted, if that is wrong, that D indicated, in general terms, the basis of any opinion (that, is, his witness statement). I would not, however, have accepted that the section 3(4)(a) test is met. There is no relevant 'fact'.

80. I do not consider, again, for reasons which overlap with my reasons for attributing to the first email the meanings which I have found it bears, that D was expressing an opinion about C's actions and motives. The overall impression created by the relevant passages in the first email is that D is making factual assertions about C2's conduct and motives. If I am wrong about that, I do not consider that D has indicated, in general terms, the basis of any opinion. D's witness statement is not such a basis, because D does not claim that his witness statement contains evidence about C2's motives. I do not consider, either, that D has satisfied the test in section 3(4)(a). There is no relevant 'fact'.

Conclusion

81. For the reasons I have given above, the publications bear the meanings which I have found, those meanings are defamatory, and D's defence of honest opinion fails.

Appendix

The first publication

1. In the first email in the chain, D told Ken Wilson that he had a copy of an email from 'Ray (Scum of the Earth) Robson' to Luay Al-Khatib (whom he identified by reference to his post). D quoted from C2's email, which was said to suggest that D had told the director of an estate, whom D inferred was Ken Wilson, that if Amax had one more PII notification its PII would not be renewed. C2 went on to say in his email that D 'is such a fool' that he should have realised that C2 would be told. It was possible that D had provided C2's source with deliberate misinformation, but C2 did not think D was that clever. D then said that he did not know anything about Amax's PII arrangements, other than that the premium had gone up because of the 'Robson/Warnes litigation'. Bertie was living up to 'his full name' but D would be interested to know whether Ken Wilson had had a conversation with C2 about Amax's PII.

2. In his reply to the first email in the chain, Ken Wilson said that C2 had waffled on about being sent 'details of her policy' perhaps by mistake and deducing that the renewal date was 6 May, hence his rush to get Amax to put their insurers on notice before renewal, which Ken Wilson had not done. Ken Wilson knew nothing of 'one strike and you are out', or of having discussed it with D.

3. In his email to C2 and others, D introduced his email to Ken Wilson, 'lead Director of Mariners Walk'. He asked Kathryn Walmsley of the RICS to forward the email to Luay Al-Khatib if his guess about Luay Al-Khatib's email address was wrong. D said it was 'blindingly obvious to him' that Ken Wilson must be the 'director of an estate' to whom C2 had referred in his email to Luay Al-Khatib. D supposed that C2 did not expect D to get hold of C2's email to Luay Al-Khatib. It was quite clear to D that that email had been sent to inflict maximum damage on Amax 'and for no other substantial purpose'. D had also received copies of C2's emails and letters of 2 May to many Amax clients or former clients 'to inflict maximum damage' around the time of Amax's PII renewal the previous month.

4. D said that as C2 well knew, the PII insurers were told about the likely fraud as soon as it was discovered in 2015 'so exactly what are you doing 3 years on and why?' As a fellow of the RICS, 'I think you are acting unprofessionally, unethically and maliciously'.

5. This was all because C2 could not admit he was wrong and admit his own failings, such as the £52,000 overspend at Mariners Walk in 2014 for which he as director was responsible. C2's statement that he supported C1 because she was the most honest person he knew did not say much for the other people C2 knew. C1 'is the most dishonest person I have ever had the misfortune to meet'.

6. D then referred to C2's emails the previous month asking others to ask Amax to put their insurers on notice. Ken Wilson said in the attached email that 'I can't see any merit in his claims'. D suspected that many others whom C2 was bombarding with emails at ungodly hours were sick and tired of this nonsense. The game was finally up, and people could all see C2 for what he was, that is, in D's view, "the Scum of the Earth". D stood by that description and knew that others agreed with him. 'I consider you to be a sad, nasty, lying, and vindictive person who brings the good name of RICS and your profession into disrepute'.

7. D said that there was 'absolutely no substance or evidence' for the references to D or to Ken Wilson in the 5 June email to the RICS. It was 'a total figment of [C2's] seriously

warped and deluded imagination'. D believed that C2 was acting 'unprofessionally and in likely breach of the RICS [Code]'. D had copied in Kathryn Walmsley so that she could separately consider his complaint against C2. Further evidence would follow. D believed C2 was mentally deranged and in need of psychiatric help. There was clearly something seriously wrong. D suspected that many of C2's contacts would be of a similar view, but had not had the courage to say so. Indeed, C2 had said that his own son had advised him to stop 'this nonsense' 18 months ago; C2 clearly did not even listen to his own family. In the meantime, D believed that C2 was best ignored by everyone.

8. While writing, C2 seemed unduly concerned about fraud at Amax clients in 2014. As C2 knew, D had done a 'detailed forensic investigation (in light of my 40+ years of Audit and Accounting experience)'. The results were in his 52-page witness statement and the 92 exhibits attached to it. A copy was available on request. RICS had the witness statement. As C2 knew, they were investigating C1 for 'numerous "alleged" breaches of RICS rules and professional standards'. D knew that C2 had received this and replied on her behalf. D was 'astonished' that C2 saw fit totally to ignore the 'compelling evidence' in his witness statement, and 'instead, and without a shred of evidence, seek to pass the blame to Maxine Fothergill and Amax because, and only because, that suits the unethical cause you have been battling with for several years to try and put Amax out of business'. That was not the conduct D or anyone else would expect of a Chartered Surveyor. No doubt RICS would consider that in their investigation.

9. D also believed that there was fraud at Mariners Walk '(under your watch) and other Estates in 2014 and in light of the evidence [in D's witness statement] this was, in my opinion, committed by your beloved [C1], Ben Quaye and others acting in association with them. I believe the evidence against them, is compelling (notwithstanding the Police's failure to prosecute). If only you could admit this to yourself'. D asked C2 to let him know if there was anything he disagreed with. 'In the meantime, I have copied in some mutual contacts so that they are also aware of my views about the state of your mental health'.

The second publication

10. The email to Ms Fothergill is just under 5500 words long. D highlighted several passages, which are also in bold font, presumably to draw them to readers' particular attention. D referred to C2's 'trumped up allegations' against Ms Fothergill and to a bundle of papers sent by C2 to the RICS '(98 pages in total!)' in support of those. There was material in that bundle which needed to be added to Ms Fothergill's complaint to the RICS about C2 – 'he has really shot himself in the foot!'. D had now, as requested, reviewed C2's complaint, in the light of 'the knowledge I obtained from my forensic investigation of [C1]'. He referred to his witness statement of 17 November 2017. There were some things he could not comment on, for example, Amax operational matters.

11. 'First and foremost I think we need to understand what is actually happening here'. D believed that C2's allegations and complaints against Ms Fothergill were 'unfounded and without merit and are made solely to detract attention and RICS resource away from the [C1] investigation and the complaints Ms Fothergill had 'rightly now made to RICS about [C2's] unethical and relentless conduct over the past 4 years'. C2 wanted RICS not to be able to see the wood for the trees. RICS needed to focus on their other investigations to see if their Code had been breached 'as I most certainly believe there have been - both by [C1] and [C2] individually'.

12. He found it remarkable that C2's bundle of evidence showed that C2 had sent numbers of emails, many with attachments, in his capacity as Managing Director of his firm of surveyors, using 'bcc' to unknown recipients, 'in order to promote and publicise their sustained attack and unethical campaign against [Ms Fothergill] to put Amax out of business'. D suspected that there 'literally hundreds of recipients'. He 'suspected' that they were people with business and other connections of Ms Fothergill. 'We also know', he said, that C2 had provided 'volumes of confidential information' to Malcolm Knight, the publisher of the Bexley is Bonkers website, 'and no doubt may others in likely breach of the High Court'. C2 had re-circulated old emails in order to 'publicly discredit' Ms Fothergill and even D. D believed C2 was buckling under pressure 'from my very well founded complaint to RICS about him acting dishonestly and, as such, he is now acting with malicious intent against [Ms Fothergill]'.

13. C2 had always maintained that C1 was innocent and that Ms Fothergill '/Amax/admitted/committed the suspected fraud'. What D found remarkable was that C2 did so even after seeing all D's evidence (followed by two exclamation marks). C2 was warned about interfering in the police investigation and 'generously given the benefit of the doubt'. C2 was successful in getting C1 off, 'I believe the Police were confused… exactly what [C2] sought to achieve, and he is now doing the same with RICS'. The Police dropped the investigation not because there was no fraud but 'because it was not in the public interest to pursue the prosecution of [C1]…' The trial would have lasted two weeks, with legal aid, the total loss was estimated as more than £100,000, but it was split among 800 owners. As D and Ms Fothergill both knew, C2 had a history of over-complicating things, to use smoke and mirrors to confuse people 'not as clever as him – or so he thinks'. D hoped that RICS did not fall for C2's 'antics'.

14. D said that he had been involved in the fraud investigation of C1 since 2016 and Ms Fothergill had given him full access to the Mariners Walk records and the records of other developments managed by C1, including her emails which 'were a source of significant and damning evidence of professional misconduct and suspected fraudulent activity'. D had not found any evidence of wrongdoing by Ms Fothergill or by her staff 'other than [C1] and those reporting directly to her'. Andy Shaw was constantly asking for 'hard copy evidence of wrongdoing by [C1] and that is exactly what I provided to him [in the 52-page witness statement] in bucket loads. I am in no doubt that [C2] accepts that there was fraud at Mariners Walk and other developments managed by [C1] but he has throughout maintained [C1's] innocence for his own ulterior motives.' C2' s evidence against Ms Fothergill was 'at best circumstantial and wishful thinking'. C2 needed to put up with credible evidence, or shut up.

15. C2 (followed by his professional initials) had 'shown a disregard or even a contempt for RICS, his own professional body '!!'. C2 had said in his reply to RICS that as RICS had failed to protect the public, it was his publicly stated duty to put Amax out of business. An RICS member was telling the RICS that they had failed and he was therefore taking the law into his own hands: '…who the hell does he think he is – God?' How could he make such a remarkable statement to RICS 'and get away with it !!'.

16. D then referred to two questions the RICS asked C1 in their letter of 18 January 2019; whether the court had found that Ms Fothergill had forged a contract of employment or had lied in her evidence, which C2 had maintained for some years to many people. In his reply of 17 January 2019 [sic] C2 said that there was no trial, but that that was 'irrelevant'. D said, on the contrary, 'that is critical to [C2's] entire case against you'. Finally, RICS were seeing C2 for 'what he is – I have previously described [C2] as

"scum of the earth" and for very good reason". D was 'in no doubt' that C2 and his firm were no longer fit to be members of the RICS 'given their unprofessional and unethical conduct over the past few years'. D would be 'very surprised' if the RICS did not agree with him.

17. D again mentioned the size of C2's bundle. He then commented at length on items 1-5. He said that it appeared to him that item 1 had been included as 'solely an attempt by [C2] to try and discredit myself in the eyes of RICS and for no other purpose'. He thinks that Ken Wilson, 'who had only just joined the board, now accepts that he was misled by [C2] and there are a number of inaccuracies in his letter of 27 December 2015.'

18. D considered that item 2 was nothing 'whatsoever' to do with Ms Fothergill and Amax. 'Simply a further attempt by [C2] to discredit me! I must have upset him?'

19. D then considered item 3, a collection of documents he itemised in nine bullet points. D said that in his email to the RICS of 19 December 2018, C2 had admitted making his complaint about Ms Fothergill in retaliation for D's complaint about him: 'unbelievable!!'. To this day, C2 considered C1 to be innocent of the alleged fraud, despite all the evidence he had seen in D's witness statement. 'in my opinion [C2] is wrong'. He 'mistakenly believes' that there was no fraud when the police did not prosecute C1, or 'when it suits his purpose' that there was fraud, and it was committed by 'you and not by [C1]'. In D's 'professional opinion as a Chartered Accountant and former Head of Audit in KPMG', Mariners Walk and 'the other estates managed by [C1] suffered fraud in 2014 and that was committed by [C1] and her associates, as detailed in my Witness Statement'. He found it amazing that C2, 'the principal victim [original emphasis] of [C1's] actions' takes credit that 'had it not been for his intervention it is highly likely that [C1] would have been convicted of fraud'. D then says 'So [C2] clearly accepts there was fraud otherwise there would have been no need to defend her?'. If anyone needed to be removed from the RICS it was C2 and his firm. 'All the malicious and unethical correspondence signed off by [C2]…so Robsons are as responsible for all the false accusations and statements as much as he is'.

20. C2's credibility 'to the extent he had any' was shot to pieces by a statement made by C2 that Ms Fothergill was a 'publically [sic] proven liar in two High Court actions' who had produced forged documents. C2 had later admitted that the case did not get to trial and 'there were no such findings against you!!'. C2 had referred to Ms Fothergill's issues 'publically [sic] aired on Bexley is Bonkers…in her status as councillor'. D understood that Ms Fothergill had proof that C2 had provided volumes of information to Bexley is Bonkers in his 'attempt to discredit you and put you out of business - your status as a councillor was solely an excuse to [C2's] evil end'. He continued 'This looks like harassment to me'.

21. C2 has questioned the competence of his professional body with 'perhaps hundreds of unknown recipients'. D accuses C2 of being 'a vindictive and evil bully who brings the good name of [the RICS] into disrepute''. He says that C2 is trying to discredit him, but that C2 does not worry him in the slightest, because 'I know I am right and he is wrong'.

22. D refers to an email to Kent Police in which C2 claimed to have carried out his own investigation and proclaimed C1's 'innocence'. D said that C2 did so, 'I suspect' because what she 'got up to' was 'on his watch when he was effectively sole director and therefore he would be heavily criticised for having allowed this to happen.' C2 was

trying to direct the attention of the police away from C1 and towards Ms Fothergill. C2's actions were a response to the pressure put on him by D's complaint. This appeared to be 'desperate measures…seeking to justify his own unethical campaign to put you out of business'. He refers to this 'unethical campaign' twice in the space of four sentences.

23. He considers some WhatsApp exchanges between C1 and Leah Fraser. He says, 'I love the comment about you micro-managing [C1] – if you had micro-managed her rather than place trust in her as your Head of Block Management the suspected fraud would never have happened – you would not knowingly allow a trusted employee to substantially destroy your business'. His witness statement 'confirms' that some 95% of the invoices were approved by [C1] for payment and that it was [C1] and her associates who benefitted financially and not you – both facts seem to have accidentally on purpose escaped [C2]'s attention'.

24. Commenting on the documents described in the sixth bullet point, he says that he knows 'that C2 fabricated evidence/support' for his complaint to the RICS. D was in no doubt that C2 was an evil and vindictive bully who had gone to extraordinary lengths to try to justify his obsession to destroy Ms Fothergill and her business. In a highlighted passage in bold font, D said that he believed that C2 was 'mentally deranged' and he had said so before; that did not, however, excuse professional misconduct and unethical behaviour. It was on that that the RICS 'will need to opine'.

25. C2 had sought to capitalise, 'in a substantial way and for his own unethical purposes to put [Ms Fothergill] out of business', on the fact that Ms Fothergill had withdrawn a civil claim and had become liable for its costs. D also referred to a consent order in a defamation claim. D refers to the 'failure' of the police to prosecute C1 for the 'alleged fraud'. 'Regrettably your 2 letters to the 270 odd members of Mariners Walk following discovery of the suspected fraud could have been better drafted and if you had popped in the word "alleged" a few times, this would never have happened'. That was a civil action which, D believed, C2 had 'milked it for all it is worth to support his unethical campaign against you'.

26. Item 4 consists of six bullet points. C2's email of 19 December 2018 referred many times to D. If D had still been in practice, rather than retired, he would have consulted a libel lawyer. D says that C2 is the only person who has prevented justice being obtained by Mariners Walk for 'the suspected fraud'. He was the director who was responsible 'and whose failings allowed this to happen and to go unchecked'. C2 could clearly detect fraud when it suited him. D found it extraordinary that 'having seen all the evidence from my [C1] fraud investigation, still maintains that the papers totally exonerate [C1] of the alleged fraud'. C2's conduct in pursuit of his avowed mission to put Amax out of business was 'plainly unethical'.

27. Referring to other correspondence under the third bullet point, D repeated that despite having seen D's witness statement for the C1 investigation, C2 'is maintaining that the suspected fraud was not committed by [C1]'.

28. Under the fourth bullet point, D repeated that he knows that C1 fabricated evidence in support of his unethical campaign, a point he repeated under the sixth bullet point. He also repeated that he had 40 years' experience of examining accounting records.

29. Item 5 consists of one bullet point and three numbered points. Under the bullet point D referred to an email in which C2 said that his replies had been verified 'by accuracy and

truth' (bold, highlighted) by C1. He continued, C1 'BA (Hons.)?? Assoc. RICS, MIRPM is one of the most dishonest professionals I have ever had the misfortune to meet'. He referred to C2 as a lunatic and then gave three examples of 'extraordinary statements' by C2.

30. The first example is C2's statement that it was his public duty to put Amax out of business. C2, D said, was the director of Mariners Walk 'responsible for the 2014 service charge year and for the substantial and I consider to be fraudulent overspend incurred by [C1] and I am in no doubt that he failed in his professional and fiduciary duties to the Members of Mariners Walk and has continued to do so to this day in his defence of [C1]'.

31. One of the conclusions stated by D in the penultimate paragraph of the second publication is that the emails sent by C2 show unprofessional and unethical conduct against Ms Fothergill. It confirmed a 'relentless and sustained attack against Ms Fothergill and her business. C2's unethical conduct was 'substantial'. D was 'appalled' that a chartered surveyor and a firm of chartered surveyors had 'seen fit to behave in such a manner' for more than four years. D hoped that his actions would enable the RICS to see and understand, and stop, C2's motives and unethical objectives, by removing him and his firm from their membership of the RICS.

The third publication

32. The email to Ken Wilson concerned a letter said to have been written by C2 to Ken Wilson on 5 March 2019. D had had an opportunity to consider C2's 'unbelievable and pathetic claim', going back to 2013, to recover £46.41 in relation to Robsons' portfolio of 12 properties at Mariners Walk. 'If that is the best he can do in 4 years with his suspected fraudster [C1] you really have nothing to concern yourself about'. Cs complain about this last sentence (particulars of claim, paragraph 27).

33. C2's tribunal claim was 'an abuse of legal process. C2 was 'desperate for any victory before a Tribunal to support this unethical campaign to put Amax out of business'. D said that 'The question which needs to be asked is how did [C2] manage to acquire the 2013 QUBE invoice in the first place? I believe this was part of the data theft by [C2's] beloved [C1], the then Property Manager for Mariners Walk who then went to work for him. It appears that we have prima facie evidence that [C2] has received stolen property and that in itself is a criminal offence…' Cs complain specifically about these three sentences (particulars of claim, paragraph 27). D added to this passage the clause 'as I am sure a member of the Academy of Experts will know'.

34. D then refers to an alternative explanation (that C2 took a copy of the invoice at the time) but immediately discounts that, on the grounds that the copy C2 presented to Ken Wilson was a scanned copy taken from the Amax server, by 'I suspect' C1. The invoice was authorised for payment by C1, who was then the Head of Block Management at Amax and 'a Qualified Member of the Institute of Residential Property Managers'. D then explained that C1 and the directors would have considered at the time whether the sums were properly due, and must have been satisfied that they were. C2 was appointed a director in 2004 and by 2013 was very much the lead director. When D bought a flat in Mariners Walk in 2014, he took comfort in the professionalism and experience of the managing agents and directors. Everything D saw in relation to the invoice and the annual service charge accounts had been properly dealt with.

35. D concluded that it was 'quite clear' to him that C2 was 'playing games for his own political purposes to support his unethical mission to put Amax out of business' rather

than ‘genuine concern or need’ to recover less than £4 per property nearly six years later. He wanted ‘a victory, any victory’ so that he could ‘tell everyone fool enough to listen to him that he is right. To put it bluntly, [C2] is bonkers’

D then said that it was quite clear to him that C2 lied to the RICS in his email of 5 June 2018. D ‘believe[d]’ that he had lied on many other occasions in pursuit of his unethical mission. That was why he was being investigated by the RICS and ‘The Academy of Experts for unethical conduct and rightly so’. D’s conclusion was that C2 ‘has more than a screw loose’. He advised Ken Wilson to direct any further emails from C2 to his junk folder. There was no need for Ken Wilson to ‘entertain this lunatic’.