



Neutral Citation Number: [2020] EWHC 188 (QB)

Case No: QB-2019-002596

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 05/02/2020

Before :

**MR JUSTICE NICOL**

Between :

(1) Sir James Dyson	<b><u>Claimants</u></b>
(2) Lady Deirdre Dyson	
- and -	
Associated Newspapers Ltd	<b><u>Defendant</u></b>

**William Bennett QC** (instructed by **Schillings International LLP**) for the **Claimants**  
**Alexandra Marzec** (instructed by **Wiggin LLP**) for the **Defendant**

Hearing date: 15<sup>th</sup> January 2020

**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.

.....  
MR JUSTICE NICOL

**Mr Justice Nicol :**

1. This is the trial of preliminary issues which has been held pursuant to orders of Warby J. of 7<sup>th</sup> November 2019 and 6<sup>th</sup> December 2019.
2. The 1<sup>st</sup> Claimant is the well-known businessman. The 2<sup>nd</sup> Claimant is his wife. The Defendant is the publisher of the ‘Daily Mail’ newspaper and its online equivalent, ‘Mail Online’.
3. On 13<sup>th</sup> July 2019 the ‘Daily Mail’ published an article under the headline ‘My Dust-up with Dyson’. The article had the sub-heading ‘Britain’s richest inventor is moving into a £43m Singapore penthouse - after making the housekeeper of his 51-bedroom stately home suddenly redundant. But then she fought back... and was accused of taking private data from his computer. Now she may lose her home in a legal battle. So whose side are you on?’ I shall refer to this as the ‘Print Article’. A copy of this article with paragraph numbers added for convenience is attached as an annexe to this judgment.
4. From 12<sup>th</sup> July 2019 a very similar article was published in ‘Mail Online’. It did not have the headline or sub-heading of the Print Article. The ‘Mail Online’ article was published under the headline ‘The loyal housekeeper who faces losing her home in legal battle with James Dyson after he made her suddenly redundant before his move to \$43m Singapore penthouse.’ This was followed by three bullet points which said:

- ‘- Billionaire inventor Sir James Dyson bought a “super penthouse” in Singapore.
- It takes up 21,000sq ft over three floors and was bought for £43million
- In the UK one of his former employees is in a bitter legal row with the tycoon.’

The ‘Original Web Article’ as I shall refer to it also included some additional photographs and captions, but neither party suggested that they were significant in relation to the preliminary issues.

5. The Original Web Article remained available in this form until about 14.20 on 13<sup>th</sup> July 2019 when it was amended (‘the Amended Web Article’) as follows:
  - i) Paragraph 5 was amended by deleting the bracketed words,

‘Lynette Flanders, who spent a decade working as house manager for the Dysons at their £20 million Gloucestershire estate, was made redundant last summer. After launching an unfair dismissal claim against Sir James, she found herself accused of [spying on the Dyson family and] stealing secrets in the form of emails, recorded conversations and photographs.’
  - ii) Paragraph 50 of the Print and Original Web Article was supplemented with the underlined words so that it read,

‘A spokesman for the Dyson family said, “The Dysons are seeking the return of their private property which was taken without their consent, running to several thousands of electronic data files, as well as family

photos, videos [and] medical records and covert recordings or private conversations.'

- iii) Three further paragraphs were added. I shall refer to these as 'A62-A64'. They were as follows,

'A62 The Dysons deny that their High Court claim was in retaliation for her intention to sue for unfair dismissal and that Mrs Flanders was given a number of opportunities to return the confidential data between 28 September 2018 and 15 October 2018 but failed to comply.

A63 The High Court claim was filed on 19 October 2018. The Employment Tribunal claim was submitted by Ms Flanders in January 2019.

A64 According to Mrs Flanders' friend, however, the Dysons would have been well aware that she intended to launch a tribunal case when she refused to sign a settlement agreement last summer.'

6. The Amended Web Article remained available until 19<sup>th</sup> July 2019 when the Defendant said it had been 'temporarily suspended'. No further publication after 19<sup>th</sup> July 2019 is relied on by the Claimants. The 'temporary suspension' proved to be permanent.
7. The Claim Form was issued on 19<sup>th</sup> July 2019. It claimed that all three versions of the Article were defamatory of both Claimants. Particulars of Claim dated 2<sup>nd</sup> August 2019 have been served. The words complained of are the entirety of the Print Article, the Original Web Article and the Amended Web Article. There is no defence as yet: the time for filing the defence has been postponed until after these preliminary issues are resolved.
8. Warby J has directed that the following issues should be tried at this stage:
- i) Whether the words complained of contain any imputation about the Claimants or either Claimant that is defamatory at common law.
  - ii) If so, what defamatory imputation(s) the words complained of bear about (a) the First Claimant; and (b) the Second Claimant.
  - iii) Whether any such defamatory imputation is a statement of a factual nature or a statement of opinion.
  - iv) If statements of opinion, whether the words complained of indicate, in general or specific terms, the basis of the statements of opinion.
9. It is sensible at this stage to make some comments about the nature of the issues which I have to try.
- i) Issue i) requires me to consider whether the words complained of contain imputations which are defamatory at common law. By Defamation Act 2013 s.1 further requirements are added to the common law before a claim in defamation can succeed. By the terms of Warby J's order, I am not concerned

with those additional statutory requirements. I am not therefore concerned with the question of whether any defamatory imputation that the words may have borne caused serious harm to the Claimants' reputations.

- ii) Issue i) and issue ii) require me to consider separately the position of each Claimant. However, Ms Marzec, for the Defendant, accepted that their cases stood or fell together. That was a realistic concession. The articles describe Mrs Flanders as working for 'the Dysons' in the plural and that she was sued 'by the Dysons while pursuing her unfair dismissal claim'. So far as the preliminary issues are concerned, there is no sensible distinction between the 1<sup>st</sup> Claimant and the 2<sup>nd</sup> Claimant.
- iii) Issue ii) requires me to consider what (defamatory) meaning the words complained of bore. That is a familiar exercise.
- iv) Issue iii) arose because, in correspondence, the Defendant argued that, if the words had a defamatory meaning it took the form of an opinion to which the defence of honest opinion in Defamation Act 2013 s.3 could potentially apply. The Claimants dispute that the words are an expression of opinion.. They say the words were statements of fact, not opinion and therefore the necessary condition in s.3(2) is not satisfied.
- v) Issue iv) is a reflection of Defamation Act 2013 s.3(3) which says  

'The second condition [for the defence of 'honest opinion'] is that the statement complained of indicated, whether in general or specific terms, the basis of the opinion.'

In correspondence, the Claimants' solicitors had disputed whether that condition was satisfied. Warby J. directed the Defendant to identify which parts of their publication constituted the basis of the opinion. The Defendant complied with that direction.

- 10. In summary the position of the Claimants was that these articles made serious allegations against them. Ms Flanders was presented as the equivalent of David, standing up to the Goliath of the Dysons. The High Court claim which the Dysons had brought against her was in retaliation for the unfair dismissal claim which Ms Flanders either had brought (see the Print Article and the original Web article) or which she intended to bring (see the Amended Web article). These were presented as facts: they were not recognisable as comment. Furthermore, the articles meant that the Claimants had acted oppressively. He argued that these were *Chase* level 1 meanings, not merely *Chase* level 2 or 3.
- 11. In brief, the Defendant's primary contention was that the articles were a neutral report of a dispute between Ms Flanders and the Dysons. Since no endorsement was given to either disputant, the ordinary reader would not think the worse of either side and, for that reason, the articles were not defamatory at common law. If that was wrong and there was a defamatory meaning then, (a) it would be recognised as comment and (b) the ordinary reader would understand that no more was being said than that there were reasonable grounds to suspect that the Dysons' lawsuit had been brought in retaliation

for, or as a reaction to, the actual or anticipated claim by Ms Flanders for unfair dismissal.

*Issue ii) What is the meaning of the articles?*

12. I shall take this issue first because it is a necessary preliminary step to deciding issue i) i.e. whether such meaning or meanings as the articles have is defamatory at common law.
13. The approach which the Court should adopt to deciding the meaning of a publication in the law of defamation is well-travelled. They have been usefully summarised by Nicklin J. in *Koutsogiannis v The Random House Group Ltd* [2019] EWHC 48 (QB) at [12].
14. In paragraph 8 of the Particulars of Claim, the Claimants allege that each of the articles had the following meaning,

‘The Claimants have abused their immense wealth and power by acting vindictively towards a loyal, innocent and devoted housekeeper of modest means. When Lynette Flanders stood up to the Claimants by launching a well-founded claim for unfair dismissal against them, they punished her by bringing an oppressive, malicious and unmeritorious claim against her in the High Court in retaliation. The result of being forced into the High Court claim has been that Mrs Flanders has lost her life savings and that she will probably lose her family home as well. The Claimants’ appalling behaviour has also caused Mrs Flanders to become mentally broken and to have her life ruined.’
15. On the Claimants’ behalf, Mr Bennett drew particular attention to paragraph 5 which said, ‘After launching an unfair dismissal claim against Sir James [Ms Flanders] found herself accused of spying on the Dyson family and stealing secrets in the form of emails, recorded conversations and photographs.’ The David and Goliath metaphor was express in paragraphs 6 and 15 and implicit in the contrasting resources of the Dysons and Ms Flanders in, for instance, paragraph 9. The sympathetic theme towards Ms Flanders was repeatedly emphasised, so that, although the sub-heading to the print article posed the question ‘So whose side are you on?’ the meaning of the article was clear: the article was favourable to Ms Flanders and her position in the litigation. The reader is told that the allegations against her in the High Court claim were of ‘serious criminal acts’ (paragraph 40). The reader is also told that, while Ms Flanders had done some of the acts of which she was being accused in the High Court proceedings, ‘the truth has been twisted against her despite the fact that Dodington Park [the mansion of which Ms Flanders was the housekeeper] knew she used her own phone and home laptop for work matters.’ (paragraph 42). Paragraphs 55-57 refer to another former employee of Sir James Dyson who had been accused of stealing Dyson company secrets (a Max Conze). The article reported Mr Conze’s derogatory views of the allegations which appear to have some truth since, as paragraph 57 said ‘He later received a payout of several million pounds to settle his claim for missing out on long-term share awards.’ The concluding paragraphs (60 and 61) reinforced the view that the High Court claim was not a proper one and was brought in retaliation for Ms Flanders’ unfair dismissal claim.

16. Mr Bennett submitted that the Original Web Article was in substantially the same terms (apart from the differences which I have already noted).
17. Turning to the Amended Web Article, Mr Bennett submitted that the changes did not diminish the defamatory meaning. A62 and A63 set out the correct chronology of the litigation in the High Court and the Employment Tribunal. However, the effect of this correction was only partial. It was blunted by paragraph 8 of the Amended Web Article which still said, 'After launching an unfair dismissal claim against Sir James, she found herself accused of stealing secrets in the form of emails, recorded conversations and photographs.' Furthermore, paragraph A64 then said, 'According to Mrs Flanders' friend, however, the Dysons would have been well aware that she intended to launch a tribunal case when she refused to sign a settlement agreement last summer.' Thus, even if a reader of the Amended Web Article appreciated the correct sequence of events, this Article meant that the Dysons had got their retaliation in first.
18. The overall message of the articles was that there was no proper reason for bringing the High Court proceedings: the Claimants knew that Ms Flanders had used her devices for work purposes and that she was willing to remove the data. The High Court claim was oppressive because the Claimants were using their huge wealth against an ex-employee who had nothing like the same resources. The claim was malicious because it was not properly founded.
19. Mr Bennett submits that these were *Chase* level 1 meanings (i.e. guilt) since nothing was said as to the Claimants' denial that the High Court proceedings were in retaliation for either actual or anticipated Employment Tribunal proceedings. The Claimants' case in relation to the Employment Tribunal claim was not given.
20. Mr Bennett submitted that Ms Marzec's skeleton was incorrect to argue that there could not be a *Chase* level 1 meaning if the allegation was reported without adoption. Such an approach would be contrary to the repetition rule as Nicklin J. explained in *Hewson v Times Newspapers Ltd* [2019] EWHC 650 (QB) at [31] and [37]-[42].
21. Mr Bennett also disputed that this was an example of reportage. The reader was not presented with a fair and balanced report of a dispute. There was nothing from the Claimants as to why the redundancy of Ms Flanders had been fair or why the High Court proceedings had not been in retaliation for actual or anticipated unfair dismissal proceedings.
22. Ms Marzec reminded me that I must consider each article as a whole. She also recalled what Nicklin J. had said *Koutsogiannis* at [27] as to the importance of distinguishing the reaction of an individual reader (which may be dependent on his or her own views and morality) from the meaning of the words complained of which was what the court had to decide.
23. Ms Marzec also submitted that the meaning of the words complained of should be decided independently of the identity of the Claimants. With respect to her, I struggled with this submission. Issues as to the meaning of a publication only arise in the context of a particular defamation claim. Such a claim presupposes a particular claimant has brought an action. What the Court is concerned about is the meaning of the publication for the purposes of that action. It may be that Ms Marzec meant no

more than that a particular dispute may be reported in such a way that it is not defamatory of either party to the dispute. In principle, that is right, as Nicklin J. mentioned in *Hewson* at [42] although whether that is the way these particular publications can be considered is another matter.

24. Ms Marzec argued that the Print Article did give both sides of the dispute between Ms Flanders and the Claimants. It was described in paragraph 4 as a ‘bitter legal row’. The Claimants’ allegations against Ms Flanders were summarised in paragraph 5. The impact of the dispute on Ms Flanders is described, but little is said about the objective merits of the High Court claim.
25. The article recounted Ms Flanders’ devoted service to the Claimants but also notes their kindness towards her (paragraphs 24 and 25).
26. Ms Marzec submitted that the meaning of the articles cannot be *Chase* level 1, since the reader would understand that these are unresolved matters.
27. She submitted that the Claimants’ meanings add words which do not appear in the articles. Thus, the articles say nothing about the Claimants’ power. Nor do the articles say that Ms Flanders was ‘innocent’. The articles explained that she had done some of the acts of which she was accused in the High Court claim, but provided excuses or reasons for them. Ms Marzec submitted that the reader would not understand the articles to be saying that Ms Flanders’ claim for unfair dismissal was well-founded. The reader was only told that she had been informed by a solicitor that she ‘might have a case for unfair dismissal’. She argues that the final two sentences of the Claimants’ meaning (‘The result of being forced into the High Court claim has been that Mrs Flanders lost her life savings and that she will probably lose her family home as well. The Claimants’ appalling behaviour has also caused Mrs Flanders to become mentally broken and to have her life ruined’) speaks to the consequences of the Claimants’ actions rather than the defamatory meaning of the words. The word ‘appalling’ was not in the articles.
28. Ms Marzec clarified that she was not arguing that, absent adoption of the allegations, there could not be a *Chase* level 1 meaning, but the context of the report of a dispute did have to feature in the assessment of meaning c.f. *Roberts v Gable* [2008] QB 502 CA at [56]-57].

***Issue ii) decision on meaning***

29. In my judgment the Print Article meant that the Claimants had behaved oppressively towards Ms Flanders by using their immense wealth to bring High Court proceedings against her in retaliation for her unfair dismissal claim.
  - i) The connection between her unfair dismissal claim and the initiation of the High Court proceedings is made expressly in paragraph 5. Nothing subsequently in the Print Article detracts from the imputation that the unfair dismissal claim was causative of the High Court proceedings.
  - ii) I have not included the Claimants’ meaning that the High Court proceedings were ‘unmeritorious’. Readers are told that some of the allegations against her in that action have been admitted by Ms Flanders (see paragraphs 43 and 44).

Her explanation is also given (paragraphs 42 and 43) but the reader is not told sufficient in the article to conclude that the Dysons' claim lacks merit and this is not a case where the Claimants rely on a legal innuendo, so no reliance is placed on special knowledge which readers (or some of them) would bring to bear. Nonetheless, even if the article does not take a position on the merit of the Dysons' High Court claim, I agree with Mr Bennett that the ordinary reader would understand the words of the article to mean that the High Court proceedings were started because of, and in retaliation for, Ms Flanders bringing her unfair dismissal claim.

- iii) The article repeatedly points out the immense wealth of the Claimants and contrasts this with the relatively modest assets available to Ms Flanders. Ms Marzec is right that the word 'oppressive' is not included in the article, but she fairly accepted in the course of her submissions, that this was not a necessary requirement for a finding that the meaning of the words included that term. In my judgment, that is part of the meaning which the ordinary reader would take from the article.
- iv) This is a *Chase* level 1 imputation. This is not the type of publication where the reader is told no more than that there are reasonable grounds to suspect that the Claimants brought their High Court proceedings because of and in retaliation for the unfair dismissal claim. The Print Article contains nothing to question the link between the two which is made expressly in paragraph 5. My views in this regard are not altered by the discussion concerning the nature of the parties' respective cases as to the merits of the High Court claim. Those go to an issue which is different from the reason why the High Court proceedings were brought.
- v) I have not included in my meaning the Claimants' suggestion that Ms Flanders' unfair dismissal claim was 'well-founded'. There is some suggestion that is so, notably in the information in the article that the ostensible reason for Ms Flanders' dismissal (redundancy since the Second Claimant would take over her role) was suspect, given that Lady Dyson was planning to live in Singapore, 7,000 miles from Dodington Park. Nonetheless, the reasonable reader would, in my view, recognise that the article said that Ms Flanders had been advised no more than she 'might have a case for unfair dismissal'. Mr Bennett commented that that advice, according to the article, had been given to her when she refused to sign the settlement agreement and she started her unfair dismissal claim sometime subsequently. However, no inference could be drawn from that sequence of events that she must have been given more positive advice in order to start unfair dismissal proceedings. The reasonable reader would appreciate that the initiation of legal proceedings is not always preceded by positive legal advice.
- vi) I have not included in my meaning the last two sentences of the Claimants' proposed meaning. I agree with Ms Marzec that one must be careful of distinguishing consequences from meaning. It may be more accurate to say that consequences (unless intended) would not be defamatory at common law and so, strictly speaking, more a matter relevant to issue ii), but I observe that the Claimants do not allege that the words complained of meant that they intentionally caused these consequences to Ms Flanders. Both parties



recognised that, while I am not constrained to accept the meanings advanced by either side, I cannot find that the words bore a more serious meaning than the Claimants have pleaded.

- vii) I also agree with Mr Bennett that the references to Mr Conze in paragraphs 55-57 support the Claimants' contention that the article meant that the 1<sup>st</sup> Claimant had form for making allegations of stealing secrets in retaliation for anticipated litigation from a former employee.
30. The Original Web Article was in substantially the same terms. The headline was different, but I agree with the parties that the Original Web Article bore the same meaning as the Print Article.
31. There were the changes to the Amended Web Article which I have described. It is necessary, therefore, to make a separate finding as to the meaning of the Amended Web Article. In my view it meant that the Claimants had behaved oppressively towards Ms Flanders by using their immense wealth to bring High Court proceedings against her in retaliation for the unfair dismissal claim which she had brought or which she could be anticipated to have in contemplation.
- i) Paragraph 8 of the Amended Web Article still says,
- ‘After launching an unfair dismissal claim against Sir James, she found herself accused of stealing secrets in the form of emails, recorded conversations and photographs.’
- Likewise, paragraph 18 of the Amended Web Article still says,
- ‘In the online appeal she launched this week, Mrs Flanders who has Type 1 diabetes, claims she is “mentally broken” after being sued by the Dysons *while pursuing her unfair dismissal claim.*’ [my emphasis]
- For this reason I have retained the alternative that the High Court proceedings were in retaliation for the Employment Tribunal proceedings which had already been commenced.
- ii) But the second alternative (that the High Court proceedings were in retaliation for Employment Tribunal proceedings in contemplation) is appropriate in view of A62- A64. I agree with Mr Bennett as to the effect of paragraph A64.

***Were the articles or any of them defamatory of the Claimants at common law?***

32. The classic test of whether a statement is defamatory at common law is whether it lowers the claimant in the eyes of right-thinking members of society generally. As Warby J. in *Monroe v Hopkins* [2017] 4 WLR 68 at [50] acknowledged, the phrase has an old-fashioned ring, but it has a continuing purpose. First, the whole purpose of defamation law is to protect reputation and so it is only if the statement would be understood as detrimental to a person's reputation that it will be actionable. Secondly, the benchmark of ‘right-thinking members of society’ is deliberately normative. As Warby J. recalled, this aspect of the test explains why it is not defamatory to call

someone a ‘grass’: right-thinking members of society would not think the less of a person for providing information to the police.

33. I did not understand Ms Marzec to contend that, if the articles had the meanings for which the Claimants contend, they would not have been defamatory at common law. However, the Defendant’s primary position is that the reader of the articles would understand that there is a dispute between the Dysons on the one hand and Ms Flanders on the other. Ms Marzec submits that the articles are an account of this dispute in a neutral manner and the reader is not led to think that one side is wrong and the other in the right. For this reason, she contends, readers of these articles would not think the worse of the Claimants.
34. I do not agree with Ms Marzec.
- i) The meanings which I have found each version of the articles to bear are in my view plainly liable to lower the Claimants in the eyes of right-thinking members of society generally.
  - ii) The disputes, such as they are, which the articles recount are as to the merits of the High Court action. I agree with Mr Bennett, that there is in none of the articles a denial by the Claimants that they have brought their High Court proceedings in consequence of the actual or anticipated Employment Tribunal claim.
  - iii) Nor is anything said as to the answer which the Dysons might have to the unfair dismissal claim.
  - iv) In any case, so far as meaning is concerned, I do not consider that the ordinary reader would take away from any of these articles that they were meant as a neutral report of a dispute between two parties. The contrast between the wealth of the Claimants and the modest assets of Ms Flanders would be understood as a reflection of the ‘David and Goliath’ struggle between them. The Print Article sub-heading posed the question ‘Whose side are you on?’ But the question was more rhetorical than real. It is plain that the meaning which the reader would take away was that right was on the side of David / Ms Flanders. In my view this is not to confuse the reaction of some readers with the meaning which the articles bore.

***Issue iii) – whether the defamatory imputations are of a factual nature or statements of opinion?***

35. The parties were agreed that, for any particular defamatory imputation, this was a binary question: any such imputation had to be either of a factual nature or a statement of opinion. I agree and, it seems to me, this is a corollary of the ‘single meaning rule’. The term is somewhat ambiguous. Any particular publication may, of course, include two or more defamatory imputations. The single meaning rule does not preclude that conclusion. What the single meaning rule does shut out is the response that a particular publication may mean one thing to one group of readers and mean something different to another group of readers. While this is a commonplace response in general discourse, the single meaning rule shuts it out for the purpose of defamation law. The parties before me agreed that the reasons for and the relative

merits of this approach were beside the point since the single meaning rule was undeniably a feature of defamation law.

36. Just as the single meaning rule precludes the response that the words complained of would mean different things to different people, so, too, it precludes the response that some people would regard what was published as a statement of fact and others regard it as comment. For the purpose of the law of defamation a particular defamatory imputation is either a statement of fact or a comment. It is for the Court to decide which it is.
37. This was part of the common law defence of fair comment which has now been abolished – see Defamation Act 2013 s.3(8). It is now part of the statutory defence of honest opinion which has replaced it. Section 3 sets out a number of conditions which must be fulfilled for that defence to apply. The first condition – see s.3(2) - is that ‘the statement complained of was a statement of opinion.’
38. In drawing the distinction between statements of fact from comment or opinion I was referred to the decision of Nicklin J. in *Morgan v Associated Newspapers Ltd*. [2018] EWHC 1850 (QB) at [13] where he said,

‘In relation to the determination of whether defamatory imputations are fact or opinion, again both counsel are agreed as to the law. Drawn from Warby J’s judgment in *Yeo v Times Newspapers Ltd* [2015] 1 WLR 971 [88]-[89]. When determining whether the words complained of contain allegations of fact or opinion, the court will be guided by the following points:

- (a) The statement must be recognisable as comment, as distinct from an imputation of fact.
- (b) Comment is “*something which is or can be reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation, etc*” *Branson v Bower* [2001] EMLR 32.
- (c) The ultimate question is how the word would strike the ordinary reasonable reader: *Grech v Odhams Press* [1958] 2 QB 75. The subject matter and the context of the words may be an important indicator of whether they are fact or comment: - *British Chiropractic Association v Singh* [2011] 1 WLR 133.
- (d) Some statements which are, by their nature and appearance comment, are nevertheless treated as statements of fact where, for instance, a comment implies that a claimant has done something but does not indicate what that something is, i.e. that the statement is a bare comment.

I bear well in mind the warning of the Court of Appeal in *Singh* contained in paragraph 32 that the court must be careful when tackling issues of meaning and fact and opinion together that assessing them in that order may impair the correct determination of the issue of fact and opinion.

39. It is notable that the authorities cited in this passage, namely *Yeo*, *Branson*, *Grech*, *British Chiropractic Association* were all decided in relation to publications prior to

the 2013 Act coming into force on 1<sup>st</sup> January 2014. This shows the continuity of the common law fact and comment distinction when applied to the statutory test in s.3(2) of the 2013 Act, a point made by *Gatley on Libel and Slander* (12<sup>th</sup> edition paragraph) paragraph 12.14.

40. Ms Marzec submits that that condition was satisfied here. She relies in particular on paragraphs 11 and 12 of the Print Article which said,

‘11. A family friend told me: “It’s so ironic that at a time when Lynette [Flanders] is in danger of losing her own home after being forced into litigation with no option to walk away, Dyson is splashing out millions on one worth a hundred times more.

12. “She feels as if she is being punished for not accepting the redundancy was fair and for daring to stand up to the Dysons.”’

41. Thus, Ms Marzec submits, the connection between the High Court litigation and the unfair dismissal claim is presented to the reader as the opinion of Ms Flanders and her anonymous friend.

42. Ms Marzec also submitted that the attribution of motive is commonly (although, she accepts, not invariably) an example of an inference which the reader is invited to draw from stated facts. She points to *Branson v Bower* [2001] EWCA Civ 791 at [13], although the Court of Appeal was there concerned with a decision of the trial judge (Eady J.) that the words complained of were not capable of constituting a statement of fact as opposed to opinion.

43. Mr Bennett submitted that the defamatory imputation that the High Court claim had been brought by the Dysons in retaliation for the actual or anticipated unfair dismissal claim by Ms Flanders was not a recognisable comment. The articles did not purport to be opinion pieces rather than a straightforward account of the disputes between Ms Flanders and the Dysons. The reference to Ms Flanders’ feelings in paragraph 12 of the Print Article (replicated in the other articles) was insufficient to turn this into an opinion. It was not the case that the attribution of motive was always an expression of opinion, as Ms Marzec acknowledged.

44. On this issue, I agree with Mr Bennett. At common law, it was necessary that the defamatory statement was recognisable as comment. I respectfully agree with *Gatley* and Nicklin J. that this requirement has been carried over into the first condition of the statutory defence of Honest Opinion. That, too, cannot succeed unless the imputation is clearly recognisable as comment. I agree with Mr Bennett that it is insufficiently clear that the defamatory imputations of the Claimants were comment or opinion.

***Issue iv) whether the words complained of indicate in general or specific terms, the basis of the statements of opinion.***

45. Since I have concluded that the defamatory imputations were statements of fact and not opinion, this issue does not arise.

## **Conclusion**

46. Accordingly, I determine the preliminary issues as follows:
- i) The words complained of do contain imputations about both Claimants which are defamatory at common law.
  - ii) As agreed between the parties, there is no distinction to be drawn as between the two Claimants so far as defamatory imputations are concerned.
    - a) The Print Article meant that the Claimants had behaved oppressively towards Ms Flanders by using their immense wealth to bring High Court proceedings against her in retaliation for her unfair dismissal claim.
    - b) The Original Web Article had the same meaning as the Print Article.
    - c) The Amended Web Article meant that the Claimants had behaved oppressively towards Ms Flanders by using their immense wealth to bring High Court proceedings against her in retaliation for the unfair dismissal claim which she had brought or which she could be anticipated to have in contemplation.
  - iii) The defamatory imputations which I have found the words complained to bear are all statements of a factual nature. They are not statements of opinion.
  - iv) In the circumstances, the last issue identified by Warby J. does not arise.

#### ANNEXE

Print version of the article, as published on 13 July 2019

- A. **Britain's richest inventor is moving into a £43m Singapore penthouse - after making the housekeeper of his 51-bedroom stately home suddenly redundant**
- B. **MY DUST-UP WITH DYSON**
- C. **But then she fought back . . . and was accused of taking private data from his computer. Now she may lose her home in a legal battle. So whose side are YOU on?**
- D. (*Caption to a number of photographs:*) Taken to the cleaners? Clockwise from top left, the Dysons' Dodington Park home, Michael and Lynette Flanders, and Sir James Dyson with his wife Deirdre
- 1 With its breathtaking views across Singapore's Marina Bay — not to mention five bedrooms, a swimming pool and an eye-watering £43million price tag, Sir James Dyson's new home-from-home in Asia is a lavish affair indeed.
  - 2 The billionaire inventor controversially relocated his company's headquarters to the Asian city state earlier this year, despite being a vociferous advocate of Brexit.
  - 3 The Wallich Residence 'super penthouse' he and wife Deirdre bought last month takes up 21,000sq ft over three floors and is believed to be the most expensive apartment ever

sold in the city.

- 4 But while Sir James sets up home at the very top of Singapore's tallest skyscraper, back in the UK one of his former employees claims to be in danger of losing hers — thanks to a bitter legal row with the bagless vacuum cleaner tycoon.
- 5 Lynette Flanders, who spent a decade working as house manager for the Dysons at their £20 million Gloucestershire estate, was made redundant last summer. After launching an unfair dismissal claim against Sir James, she found herself accused of spying on the Dyson family and stealing secrets in the form of emails, recorded conversations and photographs.
- 6 Now, two months after Sir James launched a £50,000 legal suit against the mother of three, Mrs Flanders, 50, has revealed she is in danger of losing her house after being 'forced into litigation' by one of Britain's richest men. She says she has already spent £60,000 on solicitors representing her in the 'David and Goliath' case.
- 7 This week, as details of the Dysons' fabulous new Singapore home emerged, Mrs Flanders — who denies any wrong-doing — launched an extraordinary appeal for financial assistance towards her hefty legal fees via online fund-raising platform 'CrowdJustice'.
- 8 'The costs are huge,' she said. 'I am confused as to what their ultimate goal actually is. We have paid tens of thousands of pounds. Any money we earn goes in legal fees.'
- 9 Describing herself as a 'normal working-class person' pitted against 'the giant billionaires Sir James and Lady Dyson', she says she and husband Michael have spent their life savings so may now be forced to sell the £400,000 three-bed cottage they bought and lovingly restored in the village of Frampton Cotterell, Gloucestershire.
- 10 'Our home is now in jeopardy but we are unable to walk away,' says Mrs Flanders.
- 11 A family friend told me: 'It's so ironic that at a time when Lynette is in danger of losing her own home after being forced into litigation with no option to walk away, Dyson is splashing out millions on one worth a hundred times more.'
- 12 'She feels as if she is being punished for not accepting the redundancy was fair and for daring to stand up to the Dysons.'
- 13 In the online appeal she launched this week, Mrs Flanders, who has Type 1 diabetes, claims she is 'mentally broken' after being sued by the Dysons while pursuing her unfair dismissal claim.
- 14 'I was completely committed to serving them and my life took second place to their needs,' she writes in an emotional account of her plight. She says she's gone from being a 'happy, hard-working, dedicated person' to someone 'in a desperate position'.
- 15 'I have to appeal to the wider community to help me raise funds — to help the little person against a giant,' she adds.
- 16 'She absolutely loved her job,' adds the family friend. 'Working for the Dysons was Lyn's life.'

- 17 She was devoted to them. In the past, she cancelled holidays to make sure that everything was right for them. She finds it so hurtful that anyone would accuse her of actively trying to harm them.'
- 18 Mrs Flanders first came into contact with Sir James in 2007 via the flooring company she ran with her husband. It was brought in to renovate and maintain wooden and stone floors at Dodington Park, a vast 16th-century, 300-acre estate in Gloucestershire.
- 19 The main house — which has 51 bedrooms, 40 bathrooms and ten reception rooms and was bought by Sir James in 2003 — was built in the early 19th century. Its upkeep requires vast amounts of specialist renovation work and the constant attention of around 100 staff.
- 20 When she was asked to cover the maternity leave of one of the estate's part-time cleaners, Mrs Flanders agreed and worked four hours every weekday morning. When she was given a contract as one of five domestic cleaners and husband Michael also offered full-time employment, the couple folded their flooring company.
- 21 'Lyn loved working for them,' the family friend told me this week. 'Sir James was always pleasant to her and she got on particularly well with Lady Dyson. She used to confide in her about private matters but Lyn would never have dreamed of revealing things she was told.'
- 22 It may have been thanks to this loyalty, not to mention the secretarial skills which Mrs Flanders had learnt as a YTS trainee working for Rolls-Royce in the 1990s, that she was promoted to 'house manager' in 2011.
- 23 By the time she was made redundant, she was earning £39,000 a year. Her job description covered everything from organising events and entertainment at the house to ordering food, stationery and equipment, plus managing staff.
- 24 The Dysons were particularly kind when Mrs Flanders suffered a serious diabetic episode at the end of 2016 which put her in a coma.
- 25 They sent flowers when she was admitted to intensive care and when she returned to hospital in May last year, this time for a scheduled operation which required six weeks' absence from work, Sir James and Deirdre agreed to keep paying her full salary.
- 26 Despite the vast disparity in their wealth, the Dysons perhaps recognised something of themselves in the Flanders. Both were hard-working couples and parents to two sons and a daughter.
- 27 Both had worked hard to build up their own businesses. And if the Flanders' 400-year-old cottage was dwarfed by Dodington Park then they had also worked hard to restore it. After buying two derelict stone cottages in 1999, they spent a year living in a caravan with children Ben, now 28, Kayty, 26, and Scott, 22, while turning them into the much-loved home Mrs Flanders says she may now lose.
- 28 There was a time in the early years of their relationship when the Dysons also struggled to make ends meet. They met as students at art college in London and moved into a run-down house in Fulham after marrying in 1968.
- 29 At times, cash was so tight that Sir James took an evening job in a petrol station while Deirdre helped keep things afloat by teaching life drawing classes in the kitchen.

- 30 It wasn't until 1974 when his first commercial invention — the Ballbarrow version of the wheelbarrow — hit the market that the couple's rise to fame and fortune began.
- 31 They are now said to be worth £12.6 billion. As well as Dodington Park and their Singapore residence, they also own a £20 million London townhouse, a £3 million chateau in Provence and a £50 million New York penthouse.
- 32 Meanwhile, mechanic's daughter Lynette left Downend School in Bristol at 16 before becoming a Rolls-Royce trainee. She met graphic designer and artist Michael Flanders in 1989 and married the following year before setting up their flooring business in 1995. 'They're ordinary people who have worked hard to give their family a good life,' says the friend.
- 33 Last July, just days after she returned to work following her operation, Mrs Flanders was called into a meeting with the estate manager at Dodington Park and presented with a 'redundancy process letter'.
- 34 'Lyn was absolutely stunned and devastated,' says the friend. 'She hadn't seen it coming and couldn't understand why it was happening. She had no warning of any negative issues with her work.'
- 35 According to the friend, Mrs Flanders was told that Lady Dyson, who has a carpet and rug company, had decided to take over as house manager herself — which might seem odd given that the Dysons have relocated to Singapore, some 7,000 miles away.
- 36 The friend added: 'For a redundancy to be genuine, the job itself must no longer exist but if she was taking over Lyn's job that meant that the position couldn't be redundant.' Another source says Mrs Flanders was offered £5,000 on top of statutory redundancy pay if she signed a letter accepting the payment as settlement.
- 37 'She wouldn't sign it,' says the source. 'She was advised to take legal advice and a solicitor told her she might have a case for unfair dismissal.'
- 38 On her final day, on August 31 last year, Mrs Flanders was presented with flowers and given a speech of thanks by the estate manager — but it wasn't long before relations soured.
- 39 The first she realised something was wrong, she said this week as she launched her fund-raising appeal, was at the end of September when she did not receive her final salary or redundancy pay.
- 40 When she phoned to find out what had happened, she received an email accusing her of committing 'serious criminal acts'.
- 41 Among the allegations were that she created a folder called 'Deirdre' on her work laptop containing 'private, confidential and sensitive medical records' of Lady Dyson, then copied it onto a portable USB stick. She was also accused of copying 5,000 emails to her personal email account and sending five photographs taken on her phone inside the Dysons' home.
- 42 Mrs Flanders denies all claims against her and says the truth has been twisted against her despite the fact Dodington Park bosses knew she used her own phone and home laptop for work matters.



- 43 She admits creating a computer folder called 'Deirdre' and moving records of the work she had done to 'tidy the electronic files' but says she copied it to a USB 'in order to retain a profile of the work she had undertaken' as part of her unfair dismissal claim.
- 44 When she handed in her keys and Dodington Park pass before leaving the estate, she admits she 'didn't realise or consider any computer or phone data on my personal devices applied and this was also not brought to my attention.'
- 45 As for the emails — among them a list of guests invited to a 'private opera' that the Dysons were hosting — they were sent to her personal email address because she was working from home and could only print them out from her home computer, not her work laptop.
- 46 The photographs, of a windowsill display of family snaps, were taken before the sill was cleared so the framed pictures could be returned to the correct spot.
- 47 Last October, following a High Court order, Mrs Flanders was forced to hand over her devices to a specialist IT company and still has not had them returned.
- 48 Instead, she has had to review hundreds of thousands of pieces of data under the supervision of a solicitor, a process which is adding thousands to her legal bill.
- 49 'I do not deny having had some of the Dysons' data. I have not done anything with any such data beyond work purposes and I agree data needs to be removed,' she says on her CrowdJustice page.
- 50 A spokesman for the Dyson family said: 'The Dysons are seeking the return of their private property which was taken without their consent, running to several thousands of electronic data files, as well as family photos, videos [and] medical records.'
- 51 'Before the family were forced, as a last resort, to apply to the High Court, Ms Flanders was given numerous opportunities to return the family's property but chose not to. A court subsequently directed Ms Flanders to comply with the family's request and this remains the case. The family has also funded elements of the legal process to help Ms Flanders comply with the court's direction and have at all times acted in a reasonable and proportionate way to protect the property and privacy of themselves and numerous others affected by Ms Flanders' actions.'
- 52 His case against his former employee comes in what has already been an aggravating few months for the billionaire.
- 53 In January this year the outspoken Brexiteer, who has called on the Government to walk away from the EU without a deal, was accused of hypocrisy after quitting Britain and its tax system for Singapore amid claims he was 'future-proofing' his business.
- 54 This week he was also embroiled in a war of words with Honda about his plans to launch a Dyson electric car. The Japanese car manufacturer has reacted furiously to claims which emerged in a letter from Sir James to his local MP in which he suggested his controversial decision to move production and his company headquarters to Asia was partly caused by Honda's refusal to rent him an unused building at its Swindon plant. Honda denies the claims.
- 55 Nor is it the first time that Sir James has found himself pitted against a former employee.

- 56 In 2017, he settled a legal dispute with his former chief executive, Max Conze, fired for allegedly stealing Dyson company secrets.
- 57 Conze responded saying: 'This ridiculous allegation is merely trying to distract attention from the claims that Dyson knows I am to issue.' He later received a payout of several million pounds to settle his claim for missing out on long-term share awards.
- 58 For the time being, the Dyson v Flanders saga looks set to continue. Last night, Mrs Flanders's appeal had reached £4,225, still a way off her £100,000 target.
- 59 But according to the family friend: 'Every penny helps. The attempt to raise funds with CrowdJustice is a last desperate attempt so that she and Mike don't lose their house due to legal costs.
- 60 'Sir James has chosen to go down this route for whatever reason and he won't let it go.
- 61 'Lynette has been broken by this. She doesn't know what his end game is. She feels as if her life has been stolen away.'

