



Neutral Citation Number: [2020] EWHC 1988 (QB)

Case No: QB-2020-001683

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/07/2020

Before :

THE HONOURABLE MRS JUSTICE STEYN DBE

Between :

**SCARSDALE GRANGE LLP t/a SCARSDALE
GRANGE NURSING HOME**

Claimant

- and -

**(1) JPIMEDIA NSMY LIMITED
(2) JPIMEDIA PUBLISHING LIMITED**

Defendants

**Adam Speker QC and Victoria Jolliffe (instructed by McDonaghs Solicitors Limited) for the
Claimant**

Lord Garnier QC and Ben Gallop (instructed by Jaffa Law Ltd) for the Defendants

Judgment without a hearing pursuant to CPR 23.8(b)

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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THE HONOURABLE MRS JUSTICE STEYN DBE

Covid-19 Protocol: This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 23 July 2020 at 10:00

Mrs Justice Steyn :

A. Introduction

1. This claim for libel arises from the publication of an article in *The Star* on 16 April 2020 (“the Hard Copy Article”) and an article published on the website www.thestar.co.uk the same day (“the Online Article”).
2. The claim was issued, and Particulars of Claim were filed, on 14 May 2020. The parties are identified in the Particulars of Claim in the following terms:
 - i) The Claimant is a limited liability partnership incorporated in 2011 which is the owner/operator of a nursing home business in Sheffield trading under the name Scarsdale Grange Nursing Home (“the Scarsdale Nursing Home”).
 - ii) The First Defendant is the publisher of *The Star* (also known as *The Sheffield Star*), an evening newspaper. The Claimant has also pleaded that the First Defendant authorised the publication of its newspaper on the Second Defendant’s website.
 - iii) The Second Defendant is the publisher of the website associated with the hard copy of *The Star*: www.thestar.co.uk (“the Website”).
3. By an order sealed on 12 June 2020, and made by consent, Nicol J ordered (“the consent order”):

“1. There be a trial of a preliminary issue of the following matters:

 - (a) The meaning of the words complained of in the Hard Copy Article and the Online Article.
 - (b) Whether those meanings are defamatory at common law.
 - (c) Which of those meanings is a statement of fact or a statement of opinion.”
4. Neither Defendant has filed a defence. In accordance with paragraphs 4 and 7 of the consent order, the Defendants filed their joint case on meaning on 12 June 2020 and time for service of the defence is extended until 28 days after the determination of the preliminary issue.
5. The parties have not sought preliminary determination of the question whether the words complained are defamatory within the meaning of s.1 of the Defamation Act 2013. In addition, the Defendants draw attention to the separate question of whether the Claimant itself has a business or trading reputation capable of being injured, while noting that it does not arise for resolution on this application.
6. The consent order provided for the trial of the preliminary issue to be determined by a Judge from the Media and Communications List on the basis of written submissions only. Accordingly, I have determined the preliminary issue without a hearing, on the basis of written submissions. Save to the extent that this judgment has been handed

down in accordance with the Covid-19 Protocol, I have adopted the procedure described by Nicklin J in *Hewson v Times Newspapers Ltd* [2019] EWHC 650 (QB) at [25].

B. The Law

(a) Meaning

7. There was no disagreement between the parties as to the applicable principles regarding the determination of the natural and ordinary meaning of the words complained of. The principles are well-established. My attention was drawn to recent summaries of the principles in *Stocker v Stocker* [2019] UKSC 17, [2020] AC 593, per Lord Kerr of Tonaghmore JSC at [33] to [40]; *Bukovsky v Crown Prosecution Service* [2017] EWCA Civ 1529, [2018] 4 WLR 13, at [11] to [16]; *Koutsogiannis v Random House Group Ltd* [2019] EWHC 48 (QB), [2020] 4 WLR 25, per Nicklin J at [10] to [15].
8. The Court’s task is to determine the single natural and ordinary meaning of the words complained of. It is well recognised that there is an artificiality in choosing a single meaning from a series of words that individual readers may understand in different ways, but this approach is well-established and it provides a practicable, workable solution: see *Stocker v Stocker* at [33]-[34].
9. The focus is on what the ordinary reasonable reader of *The Star* newspaper and website would consider the words to mean. That is the touchstone. It is the “*court’s duty to step aside from a lawyerly analysis*”: see *Stocker v Stocker* at [37] to [38].
10. When determining meaning it is necessary to have regard to the “*repetition rule*”, “*namely that where an allegation by a third party is repeated by the defendant, the words must be interpreted by reference to the underlying allegations of fact*”: *Koutsogiannis* at [15].
11. The key principles derived from the authorities were helpfully distilled and re-stated by Nicklin J in *Koutsogiannis* at [12]:
 - “i) The governing principle is reasonableness.
 - ii) The intention of the publisher is irrelevant.
 - iii) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. A reader who always adopts a bad meaning where a less serious or non-defamatory meaning is available is not reasonable: s/he is avid for scandal. But always to adopt the less derogatory meaning would also be unreasonable: it would be naïve.

iv) Over-elaborate analysis should be avoided and the court should certainly not take a too literal approach to the task.

v) Consequently, a judge providing written reasons for conclusions on meaning should not fall into the trap of conducting too detailed an analysis of the various passages relied on by the respective parties.

vi) Any meaning that emerges as the produce of some strained, or forced, or utterly unreasonable interpretation should be rejected.

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

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

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

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

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

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

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

12. In this case, the parties draw particular attention to principles (iii), (viii), (ix), (x) and (xi).

13. I approach the assessment of meaning on the understanding that, in relation to the distinction between the naïve and unduly suspicious reader (principle (iii)), “*modern readers should be treated as having more discriminating judgment than has often been recognised*”: *John v Times Newspapers Ltd* [2012] EWHC 2751 (QB), per Tugendhat J at [19]; and *Allen v Times Newspapers Ltd* [2019] EWHC 1235 (QB), per Warby J at [14].
14. Context is “*a factor of considerable importance*” (*Stocker* at [39]). The court can take judicial notice of facts which are common knowledge (principle (ix)). However, as Nicklin J observed in *Riley v Murray* [2020] EWHC 977 (QB) at [17]

“The fundamental principle is that it is impermissible to seek to rely on material as “context”, which could not reasonably be expected to be known (or read) by all the publishees. To do so is to “erode the rather important and principled distinction between natural and ordinary meanings and innuendos”: *Monroe v Hopkins* [40]. When I considered this principle very recently, I explained that the distinction was between “material that would have been known (or read) by all readers and material that would have been known (or read) by only some of them. The former is legitimately admissible as context in determining the natural and ordinary meaning: the latter is relevant only to an innuendo meaning (if relied upon)” (emphasis in original): *Hijazi v Yaxley-Lennon* [2020] EWHC 934 (QB) [14].”

15. The meaning of common knowledge, and its applicability to the determination of the natural and ordinary meaning, was considered by Bean J in *Fox v Boulter* [2013] EWHC 1435 (QB) at [15]-[16]:

“15. The meanings of words for the purposes of defamation are of two kinds: the natural and ordinary meaning, and an innuendo meaning. The distinction was explained by Lord Morris of Borth-y-Gest, delivering the advice of the Board in *Jones v Skelton* [1963] 1 WLR 1362 at 1370–1, as follows:

“The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words. See *Lewis v. Daily Telegraph Ltd* [1964] AC 234. The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction would draw from the words. The test of reasonableness guides and directs the court in its function of deciding whether it is open to a jury in any particular case to

hold that reasonable persons would understand the words complained of in a defamatory sense”.

16. There is, surprisingly, a dispute as to what is comprised under the heading of “general knowledge” in the passage just quoted. Mr McCormick suggested that at least the broad outline of the Defendant's dispute with 3M would be a matter of general knowledge, since it had been the subject of articles in the months leading up to the broadcast in several national newspapers, or at least in their online versions. I cannot accept this submission. I regard “general knowledge” as referring to what Lord Mansfield CJ in *R v Horne* [1775 – 1802] All ER Rep 390 at 393E called “matters of universal notoriety” – that is to say, matters which any intelligent viewer or reader may be expected to know. Anything which requires assiduous reading and a good memory so as to recall the facts of a story dating back several weeks or months cannot fall within that definition. To give the term “general knowledge” such a wide interpretation would erode the distinction between ordinary and natural meaning on the one hand and innuendo meaning on the other, and would breach the well established rule that evidence is inadmissible on the issue of the natural and ordinary meaning of the words complained of.”

16. The Claimant’s pleaded case is that it is the owner/operator of the Scarsdale Nursing Home, which is referred to repeatedly in the Articles, and photographs are used showing the nursing home’s name and address. The Claimant submits, and I accept, that in the context of corporate claimants, a corporation may be defamed and its business damaged even though the publishees are unaware of the claimant’s formal legal name: *Gatley on Libel & Slander* 12th ed. at 7.2, citing *Channel 7 Sydney Pty Ltd v Parras* [2002] NSWCA 202 at [49]; *Universal Communication Network t/a New Tang Dynasty v Chinese Media Group (Aust) Pty Ltd* [2008] NSWCA 1 and *Euromoney Institutional Investor plc v Aviation News Ltd* [2013] EWHC 1505 (QB) at [62]. In correspondence the Defendants indicated that the question of reference - that is whether the Claimant might reasonably be understood to be referred to by the words complained of - should be determined as a preliminary issue. However, reference has not been put in issue in the Defendants’ Case on Meaning.
17. In *Allen*, Warby J said at [16]:

“In the light, in particular, of principles (v) to (x) and (xii), it is common practice among judges dealing with issues of meaning in defamation claims to read the article complained of and form a provisional view about their meaning, before turning to the parties’ pleaded cases and the arguments about meaning.”
18. That is the approach I have taken to this trial of meaning. I read the Articles without knowing which words within them were the subject of this claim.

(b) Fact or opinion

19. There was no dispute between the parties regarding the applicable principles for determining whether a statement is one of fact or opinion, as summarised in *Koutsogiannis*, per Nicklin J at [16]-[17] and *Triplark*, per Warby J at [14]-[18].

(c) Defamatory at common law

20. It was common ground that the correct approach to determining whether a statement is defamatory at common law of a corporate claimant is summarised in *Triplark Ltd v Northwood Hall* [2019] EWHC 3494 (QB), per Warby J:

“11. The relevant common law test for whether a meaning is defamatory is uncontroversial. The authoritative formulation is that a statement will be defamatory if it is one that "substantially affects in an adverse manner the attitude of other people towards him, or has a tendency so to do": *Lachaux v Independent Print Ltd* [2019] UKSC 27 [2019] 3 WLR 18 [9], approving *Thornton v Telegraph Media Group Ltd* [2010] EWHC 1414 (QB) [2011] 1 WLR 1985 [96] (Tugendhat J). The word "substantially" in the *Thornton* formulation is an important element of the common law test, incorporating as it does a threshold of seriousness or gravity that serves to exclude trivial allegations. In one respect, however, this formulation can be slightly misleading. At common law, a claimant does not need to prove the actual impact of a statement; the common law looks exclusively to whether the words have a defamatory tendency. As Lord Sumption put it in *Lachaux* at [17]. "... the defamatory character of the statement ... depends only on the meaning of the words and their inherent tendency to damage the claimant's reputation." See also my judgment at first instance in *Lachaux* [2015] EWHC 2242 (QB) [2015] EMLR 28 [15(5)].

12. These principles apply, albeit in slightly modified form, in a case like the present where the claim is brought by a company. It has long been established that a company can sue in respect of an imputation which tends to injure its reputation in business or trade. The authoritative statement of this aspect of the law is that of Lord Keith in *Derbyshire County Council v Times Newspapers Ltd* [1993] AC 534, 547, which again focuses on whether the offending statement has a defamatory tendency:

"... a trading corporation is entitled to sue in respect of defamatory matters which can be seen as having a tendency to damage it in the way of its business. Examples are those that go to credit such as might deter banks from lending to it, or to the conditions experienced by its employees, which might impede the recruitment of the best qualified workers, or make people reluctant to deal with it."

Other examples given in *Gatley* include statements which are "such as to lead ordinary people of ordinary sense to the opinion that it conducts its business in a dishonest, improper or inefficient manner", in respect of which "the law is the same as in the case of an individual" (*Gatley on Libel & Slander* 12th ed para 8.16). These principles are consistent with Article 10 of the Convention: *Jameel v Wall Street Journal Europe SPRL* [2006] UKHL 44 [2007] 1 AC 359.

13. In view of *Thornton*, an imputation will only be actionable by a corporation if it has a tendency to cause a substantial adverse effect on people's attitudes towards the company."

C. The words complained of

21. The text of the Articles is set out in the Appendix to this judgment with paragraph numbers added in square brackets. The text of the Online Article is the same as the Hard Copy Article, save that paragraphs 40-40d of the Online Article contain additional wording which replaces paragraph 40 of the Hard Copy Article.
22. The words selected for complaint by the Claimant are shown underlined in each Article. The words complained of are identical in the Hardcopy Article and the Online Article.
23. The front page of *The Star* on 16 April 2020 carried the headline "CARE HOMES IN CRISIS", against the background of a large photograph of Balmoral Care Home (including a sign identifying the name and telephone number of the home) and a smaller inset photograph of the Scarsdale Nursing Home sign (which included the telephone number and address of the home). Across the bottom of the photograph of Balmoral Care Home on the front page, the text reads:

"> We're too scared to go to work, say staff
> Carers hailed as boss pleads for more help
> Virus-free a month after staff lockdown

SPECIAL REPORT AND COMMENT: PAGES 6, 7, 8, 9 & 14"
24. A section of *The Star* published on 16 April 2020, running from pages 6-9, was headed "CARE HOMES – SPECIAL REPORT".
25. Pages 6-7 carried articles bearing the headlines:
 - i) "Home 'virus-free' a month after staff lock down with residents";
 - ii) "Care firm's warning about shortages of PPE";
 - iii) "MP hits out over lack of personal protection equipment in homes";
 - iv) "Homes boss calls for support as 11 residents die"; and

- v) “Staff ‘perform miracles’”.
26. The Hard Copy Article appeared on pages 8-9, as part of the section headed “CARE HOMES – SPECIAL REPORT”. A larger copy of the front page photograph of the Scarsdale Nursing Home sign is printed on page 8, above the text that runs from paragraph 1 to part way through paragraph 33. The front page photograph of Balmoral Care Home is printed again on page 9 above the remaining text of the Hard Copy Article.
27. Page 14 carried an editorial opinion piece with the headline “Read it and weep ... tears of happiness and heartbreak”.

D. The parties’ meanings

28. The Claimant’s meaning, pleaded in paragraph 13 of the Particulars of Claim, is:
- “In their natural and ordinary meaning, the words complained of in the Hardcopy and Online Articles (“the Articles”) meant and were understood to mean that the Claimant is in part responsible for the death from Covid-19 of one resident in its nursing home, Scarsdale Nursing Home, and is knowingly putting all its residents and employees at increased risk of death or serious illness from Covid-19 by:
- (1) unreasonably withholding personal protective equipment (PPE) from the nursing home’s staff because it chose not to spend money on adequate PPE;
 - (2) operating an unhygienic environment allowing Covid-19 to spread rapidly;
 - (3) failing to put in place a care plan for residents to protect against the spread of Covid-19; and
 - (4) admitting new residents and allowing residents to return from hospital who have had symptoms without first being tested for the virus.”
29. The Claimant’s case is that this meaning is entirely factual.
30. The Defendants’ meaning, pleaded at paragraph 2 of the Defendants’ Case on Meaning, is:
- “In their natural and ordinary meaning, the words complained of in the Online and Hard Copy Articles (the “Articles”) meant and would be understood to mean that the Claimant’s home is just one of a number of nursing homes in Sheffield that is in crisis as a consequence of the Coronavirus pandemic and the inadequate support that it and the nursing home sector generally has received from national and local government with regard to the provision of financial support, the adequate supply of Personal Protective Equipment (“PPE”), and the safe

discharge of affected patients from hospitals back to nursing homes, which have forced its staff to make difficult decisions about resource allocation and patient care.”

31. The underlining indicates the words the Defendants contend are a statement of opinion.

E. The parties’ submissions

32. At paragraph 5 of their Case on Meaning, the Defendants rely, as context, on the Articles as a whole, other articles published on the same day under the banner “Care Homes – Special report”, and

“c. The fact that it was general and common knowledge at the time of publication that:

(i) the country, including the care home sector, faced an unprecedented public health challenge from a novel and highly contagious coronavirus;

(ii) there was a nationwide shortage of PPE affecting care homes and the NHS; and,

(iii) the Government had been widely criticised for failing to provide adequate testing, and had made a high profile promise to increase testing to 100,000 people per day by the end of April 2020.”

33. The Claimant accepts that the facts pleaded at paragraph 5(c)(i) and (ii) were general and common knowledge. As regards paragraph 5(c)(iii), the Claimant submits that the purported fact is inaccurate, as the “promise” referred to was to increase testing to 100,000 tests per day, not to test 100,000 people per day. The Claimant contends that this factual error demonstrates that the level of detail the Defendants have included was not common knowledge at the time of publication.

34. In brief summary, the Claimant submits:

i) The headline and opening paragraphs of each of the Articles sends a clear message that the target of the allegations in the Articles are the owners of certain care homes;

ii) Allegations about the management are made by staff only about some care homes. Others, such as the home which is the focus of the positive article on page 6, are making different choices.

iii) The impression is created that a highly dangerous environment has been created because of what the Claimant has chosen to do, in circumstances where the Claimant “could have massively reduced the risk as other care homes have done”.

iv) Within the Claimant’s pleaded meaning:

- a) Allegation (1) is derived from paragraphs 5 and 6 of the Articles;
 - b) Allegation (2) is derived from paragraphs 7, 8, 9 and 14 of the Articles;
 - c) Allegation (3) is derived from paragraph 8 of the Articles;
 - d) The opening allegation together with allegation (4) is derived from paragraphs 10 to 14 of the Articles.
- v) As regards bane and antidote, there is nothing which detracts from the allegations made by the source and the impression given by paragraphs 32 and 33 is that the Claimant does not dispute the accusations because it is guilty as charged.
- vi) The focus of the Articles is not the pandemic, or the shortage of PPE or the failure of the Government to provide adequate testing, but is a direct attack on the conduct of the Claimant in relation to the running of its nursing home, and the matters of context relied upon by the Defendants are irrelevant to the issue of meaning.
35. The Defendants submit that the “responsibility for death” sting is absent from the Articles, as are the words “knowingly” and “unreasonably”. The Defendants contend that there is a core dispute as to whether the Articles allege that the Claimant was jeopardising the safety of staff and patients as a result of its own improper decisions or practices, or whether the reasonable reader would understand that the focus of the Articles was on the most dramatic public health crisis of the modern era on safety in care homes.
36. In brief summary, the Defendants contend:
- i) The reasonable reader would read the Articles, and understand the concerns being raised, as ones which arose in the context of an unprecedented public health crisis affecting care homes. The crisis has dominated public consciousness and it is the prism through which the Articles would be read.
 - ii) In this context, the reasonable reader would be slow to find fault.
 - iii) The Articles discuss a crisis common to care homes across Sheffield which has been caused or exacerbated by external factors.
 - iv) Where specific concerns are raised in the articles about each home, they come from individual staff members who are obviously (and understandably) afraid. The reasonable reader would adopt a common-sense and relatively impressionistic approach to their criticisms, and would consider them in the round.
 - v) There is very little by way of direct criticism of the corporate management of the Claimant’s home and, given the context, this would not be implied.
 - vi) The overall impression is of crisis rather than fault.

F. Decision

(a) Meaning

37. I read each of the Articles through once and noted the impression each had on me, before turning to consider the parties' submissions and the other articles relied on as context. Although I have assessed the meaning of each Article individually, I have concluded that they bear the same meaning and I note that neither party has suggested otherwise.
38. The Articles contain and report the allegations of others and so the repetition rule applies to them. The practical effect, for the purposes of determining meaning, is that the Defendants have adopted the allegations made by a care worker from Scarsdale Nursing Home as reported in paragraphs 5 to 14 of the Articles.
39. However, it is the overall effect of the Article that counts. This is a bane and antidote case. First, this is not a publication in which a refutation is given a mere paragraph or line at the end of the article. On the contrary, as matter of first impression, most of the second half of the article addresses external factors, beyond the control of individual care homes, which have resulted in a shortage of personal protective equipment ("PPE") in care homes.
40. Secondly, at the time of publication, the hypothetical reasonable reader would have had three points of general and common knowledge, in the sense described in *Fox v Boulter*, well in mind, namely:
 - i) The country, including the care home sector, faced an unprecedented public health challenge from a novel and highly contagious coronavirus;
 - ii) There was a nationwide shortage of PPE affecting care homes and the NHS; and
 - iii) The Government had been widely criticised for failing to provide adequate testing and had made a high profile promise to significantly increase testing.
41. It is common ground that the first two facts were general and common knowledge at that time. As regards the third fact, I accept the Claimant's contention that paragraph 5(c) of the Defendants' Case on Meaning contains an inaccuracy and the precise details of the commitment do not meet the *Fox v Boulter* test. But once that level of detail is removed, it is plain that this too meets the test of being general and common knowledge.
42. I agree with the Defendants that it is difficult to identify another example of a crisis which has so dominated public consciousness as the COVID-19 (coronavirus) pandemic. Far from being irrelevant to the determination of meaning, this context adds to the antidote contained within the Articles.
43. Thirdly, the hypothetical reasonable reader would not read into the text an allegation, which is nowhere expressly made, that the Claimant is responsible for a resident's death or *knowingly* putting the lives of staff and residents at risk.

44. Fourthly, although the allegation is made in the text that the reason for withholding PPE is because of a choice not to spend money, when each Article is read as a whole, and in the context I have described, the hypothetical reasonable reader would be left with the impression that the Claimant's decision to withhold or ration PPE was a consequence of a shortage of PPE, rather than a money-saving measure.
45. Fifthly, given the hypothetical reasonable reader's knowledge that Covid-19 is highly contagious, s/he would not gain the impression that the Claimant is operating an unhygienic environment.
46. Sixthly, the Defendants go too far, however, in suggesting that the overall impression is of crisis *rather than* fault. The overall impression is of a crisis in the Claimant's care home, and more widely, which is being ineffectually managed.
47. For these reasons, and avoiding over-elaborate analysis, in my judgement, the meaning of the Articles is:

The Claimant's nursing home is one of a number in Sheffield that is ineffectually managing the crisis that has arisen in its home as a consequence of the Covid-19 pandemic, thereby putting its residents and employees at risk, in particular by

- a) failing to provide the nursing home's staff with adequate personal protective equipment to protect its residents and employees from Covid-19; and
- b) admitting new and returning residents from hospital who have not been tested for Covid-19, increasing the risk of the virus being brought into the home.

(b) Fact or opinion

48. The allegations in (a) and (b) are statements of fact. The remainder of the meaning that I have found, expressing criticism of the Claimant's management of the crisis in its home is a matter of opinion.

(c) Defamatory at common law

49. In my judgement, the opinion that the Claimant is managing the crisis in its home ineffectually, and thereby putting its residents and employees at risk, is defamatory at common law. The Claimant has a duty to protect its staff and residents of its homes, and the opinion that it is failing adequately to discharge its responsibilities has a tendency to substantially affect, in an adverse manner, the attitude of other people towards the Claimant.
50. However, the factual statements at (a) and (b) of the meaning that I have found the words convey are not in themselves defamatory at common law. In the context of a public health crisis, a nationwide shortage of PPE and inadequate availability of testing, external factors for which the Claimant would not be held responsible, the statements at (a) and (b) do not in themselves convey an allegation of fault or mismanagement on the part of the Claimant.

Appendix: Articles complained of

(A) *The Star*, 16 April 2020 (“the Hard Copy Article”)

‘We risk our lives to help people and all they give us is one mask’

- [1] Staff at Sheffield care homes have criticised the working conditions during the coronavirus outbreak, accusing bosses of deliberately limiting PPE and bringing in new residents despite people ‘dropping like flies’ as the disease spreads in the facilities.
- [2] Care workers have spoken anonymously to The Star to expose the way some Sheffield care homes are being run during the pandemic.
- [3] However, the care homes insist that they are correctly giving out PPE as required and that their ‘focus’ is on the wellbeing of staff and residents in the face of the strain caused by coronavirus cases, significant cost of equipment and cuts to funding.
- [4] The care workers have said that the lack of protective equipment and support, and the constant threat of coronavirus in homes means they will soon no longer feel able to go to work.
- [5] One care worker, from Scarsdale Grange nursing home in Meersbrook, said: “All the care staff are panicking. We are walking into the building without masks and told to limit what we use when we do have masks.
- [6] “The manager had a box of masks in her office and did not give them out until there was a confirmed case. They limit what masks and protection staff have because they do not want to spend the money on the equipment. It is the same with aprons and gloves. We are doubling up on everything.
- [7] “Staff are dropping like flies and going off sick.
- [8] “We don’t know what we are walking into when we go to work. There is no care plan in place. There are just germs on top of germs.
- [9] “It is going to come to a point where no care staff are going into nursing homes because they are scared. It is going to spread, and the old people are being left to catch it and it is not fair.”
- [10] The carer also said that the risk of disease spreading was being increased as new, untested residents were brought into one care home in spite of the confirmed cases in the facility.
- [11] “Two residents have been taken to hospital in the last couple of weeks,” they said.

- [12] “The first one has died. Four days later, another lady was sent to hospital with symptoms, who has now been brought back to the home.”
- [13] “All this is happening, and then last week we had a new resident move in. We don’t know if they have been tested.
- [14] “If we have cases we should not be taking new residents. Coronavirus is airborne in the building.”
- [15] A care worker at Balmoral Care Home in Woodhouse, which is run by Four Seasons, also said that staff were given limited access to PPE, with workers relying on donations from elsewhere as the care management is limiting access.
- [16] They said: “Staff are breaking. Not at breaking point: breaking.
- [17] “We have had 11 Covid-19 deaths in just two weeks and there are suspected cases throughout all units.
- [18] “PPE was first locked in the manager’s office, and then when given even though an outbreak had occurred, we were only given the basics and told ‘to ration’ or not to wear just yet because ‘it might scare the residents’.
- [19] “Staff are relying on people donating PPE and have been hospitalised after testing positive for Covid-19.”
- [20] The care worker also said that staff at homes were being expected to carry out medical tasks for which they have no training and no equipment.
- [21] “Care staff aren’t trained to recognise deteriorating patients yet are expected to do so,” they said.
- [22] “No equipment has been provided, and staff bring their own thermometers.
- [23] “Staff are upset, tired and angry at the company for the lack of support.
- [24] “Sickness has taken its toll on the team, and staff are working 9 or 10 shifts in a row to support their teams and care for the residents.
- [25] “Nurses have worked 24-hour shifts. When staff have raised concerns they’ve been told ‘there’s nothing we can do’.
- [26] “There has been no support within the home. It’s appalling.” Another care worker said the situation is similar at Lower Bowshaw View nursing home in Lowedges, where they say there has been nine deaths in the past fortnight.
- [27] “We are risking our lives and have bare minimum PPE,” they said. “We are made to use one mask throughout the 12 hours of our shift, we have the home on lockdown as most residents have the virus symptoms. It’s ridiculous.

- [28] “I know we have been given masks by the NHS but they are locked in a cupboard and we cannot get to them.
- [29] “We have not seen the owner in a week. They do not check how we are doing or support us.
- [30] “It is terrifying. Staff are scared to come into work. We risk our lives and our families to help people and all they give us is one mask.
- [31] “By next week there will be nobody left to care for the residents.”
- [32] All three of the care homes mentioned in this story have been approached by The Star for comment.
- [33] Upon contacting Scarsdale Grange nursing home again by telephone, we were informed by a member of staff that the owner would not be taking any calls from the press.”
- [34] A spokesperson for Four Seasons Health Care, responding on behalf of Balmoral, said: “With deep sadness, we can confirm that a number of residents who were displaying symptoms associated with coronavirus have passed away in our homes across the country.
- [35] “Like all organisations in the health and social care sectors, we have been affected by the global and local shortages of personal protective equipment.
- [36] “The demands on PPE and changing guidelines on its use present a challenge to everyone within the sector and distracts from the excellent care being provided inside and outside of the wider social care sector and the NHS.
- [37] “All of our homes have received deliveries of PPE and we are working closely with our suppliers and the NHS to access further supplies to be distributed where needed, updating our teams daily on these efforts. We take our responsibility to provide a safe working environment for all our colleagues very seriously and we will continue to put all our resources and energy into supporting and protecting everyone in our homes.
- [38] “We are immensely grateful for the dedication and commitment shown by our colleagues in all of our homes.
- [39] “Our focus is on ensuring that staff are properly supported throughout this period, and that they have continued access to the equipment and resources they need to care for our residents safely.”
- [40] A manager at Lower Bowshaw View said that the claims made by the employee were untrue but declined to speak on the record.
- [41] The allegations against the homes come as the Sheffield care sector responds to sharp government funding cuts.
- [42] An email to care homes, sent during the peak of the crisis, set out what the local authorities called a funding increase of 4.9 per cent.

- [43] However, when taking into account the 6.2 per cent minimum wage increase and inflationary costs, care homes calculate that this actually represents a real-terms cut.
- [44] It has also emerged that Sheffield City Council is not passing on the recommended 15 per cent uplift in finances to care homes following emergency government funding to help meet the costs of responding to the COVID-19 pandemic.
- [45] Instead, in an email to care homes, the council has provided a vague assurance that additional costs' will be met.
- [46] One industry association said that care homes are struggling to cope with the prices for PPE, explaining why the supply may be limited in some facilities.
- [47] Nadra Ahmed, chairwoman of the National Care Association, said the Government had removed VAT on essential personal protective equipment for the NHS but claimed it had not done the same for the social care sector.
- [48] Ms Ahmed said one provider had paid £8,500 for just one week's worth of PPE, describing it as "unsustainable", and told ITV's Good Morning Britain: "To be told at the very beginning of this by our suppliers that all supplies were being requisitioned to the NHS, which we absolutely understand, but what did it do for our sector?"
- [49] "Absolutely nothing but drive the prices up. My mailbag is absolutely full every single day with members asking us where they can get PPE."
- [50] Jayne Connery, director of not-for-profit care sector organisation Care Campaign for the Vulnerable, said that the group had been inundated with calls from care home staff raising concerns about their working conditions and lack of protection for staff and residents.
- [51] She said: "Carers are contacting us torn between their duty of care but also fearing for their health and the health of their family when they go back home after their shift.
- [52] "The increase in distressing messages from care staff regarding the lack of PPE is palpable with care staff telling us they are not being given sufficient protective clothing, putting their lives at risk."

The Hardcopy Article included, above the headline, a large photograph of the Scarsdale Nursing Home sign, giving the address and telephone number. The caption under the photograph states: "Scarsdale Grange Nursing Home, Meersbrook".

(B) www.thestar.co.uk, 16 April 2020 (“the Online Article”)

‘We’re scared to go to work’: Sheffield care home staff accuse bosses of limiting PPE to ‘bare minimum’

- [1] Staff at Sheffield care homes have criticised the working conditions during the coronavirus outbreak, accusing bosses of deliberately limiting PPE and bringing in new residents despite people ‘dropping like flies’ as the disease spreads in the facilities.
- [2] Care workers have spoken anonymously to The Star to expose the way some Sheffield care homes are being run during the pandemic.
- [3] However, the care homes insist that they are correctly giving out PPE as required and that their ‘focus’ is on the wellbeing of staff and residents in the face of the strain caused by coronavirus cases, significant cost of equipment and cuts to funding.
- [4] The care workers have said that the lack of protective equipment and support, and the constant threat of coronavirus in homes means they will soon no longer feel able to go to work.
- [5] One care worker, from Scarsdale Grange nursing home in Meersbrook, said: “All the care staff are panicking. We are walking into the building without masks and told to limit what we use when we do have masks.
- [6] “The manager had a box of masks in her office and did not give them out until there was a confirmed case. They limit what masks and protection staff have because they do not want to spend the money on the equipment. It is the same with aprons and gloves. We are doubling up on everything.
- [7] “Staff are dropping like flies and going off sick.
- [8] “We don’t know what we are walking into when we go to work. There is no care plan in place. There are just germs on top of germs.
- [9] “It is going to come to a point where no care staff are going into nursing homes because they are scared. It is going to spread, and the old people are being left to catch it and it is not fair.”
- [10] The carer also said that the risk of disease spreading was being increased as new, untested residents were brought into one care home in spite of the confirmed cases in the facility.
- [11] “Two residents have been taken to hospital in the last couple of weeks,” they said.
- [12] “The first one has died. Four days later, another lady was sent to hospital with symptoms, who has now been brought back to the home.”

- [13] “All this is happening, and then last week we had a new resident move in. We don’t know if they have been tested.
- [14] “If we have cases we should not be taking new residents. Coronavirus is airborne in the building.”
- [15] A care worker at Balmoral Care Home in Woodhouse, which is run by Four Seasons, also said that staff were given limited access to PPE, with workers relying on donations from elsewhere as the care management is limiting access.
- [16] They said: “Staff are breaking. Not at breaking point: breaking.
- [17] “We have had 11 Covid-19 deaths in just two weeks and there are suspected cases throughout all units.
- [18] “PPE was first locked in the manager’s office, and then when given even though an outbreak had occurred, we were only given the basics and told ‘to ration’ or not to wear just yet because ‘it might scare the residents’.
- [19] “Staff are relying on people donating PPE and have been hospitalised after testing positive for Covid-19.”
- [20] The care worker also said that staff at homes were being expected to carry out medical tasks for which they have no training and no equipment.
- [21] “Care staff aren’t trained to recognise deteriorating patients yet are expected to do so,” they said.
- [22] “No equipment has been provided, and staff bring their own thermometers.
- [23] “Staff are upset, tired and angry at the company for the lack of support.
- [24] “Sickness has taken its toll on the team, and staff are working 9 or 10 shifts in a row to support their teams and care for the residents.
- [25] “Nurses have worked 24-hour shifts. When staff have raised concerns they’ve been told ‘there’s nothing we can do’.
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- Another care worker said the situation is similar at Lower Bowshaw View nursing home in Lowedges, where they say there has been nine deaths in the past fortnight.
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- [39] “Our focus is on ensuring that staff are properly supported throughout this period, and that they have continued access to the equipment and resources they need to care for our residents safely.”
- [40] Responding to the allegations, Claire Rodgers, Home Manager at Lower Bowshaw said: “Our thoughts and sympathies are with those families who have lost loved ones at this exceptionally difficult time, and we are doing all we can to support them.
- [40a] “We have had and continue to have a comprehensive coronavirus contingency plan in place, which was created by our management team and reflects the latest government guidance.

- [40b] “We have and continue to have full support from the Sheffield Contracts team and partners in the Sheffield Clinical Commissioning Group.
- [40c] “We are extremely proud of our whole staff currently working at the home that have risen to the challenges of the coronavirus outbreak by showing huge dedication and continued commitment to our residents.
- [40d] “We continue to provide round-the-clock care and support for all our residents, teams and extended families, and we are also grateful to all involved for their ongoing support and understanding.”
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The Online Article contained a copy of the same photograph of the Scarsdale Nursing Home as the Hardcopy Article.