



Neutral Citation Number: [2021] EWHC 3327 (QB)

Case No: QB-2019-000375

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/12/2021

Before :

The Honourable Mrs Justice Collins Rice

Between :

MR SUENG HA HWANG

Claimant

- and -

MS MI SOON KIM

Defendant

Mr Richard Roberts (instructed by Sperrin Law) for the **Claimant**
Mr Imran Mahmood (instructed by WH Matthews & Co) for the **Defendant**

Hearing dates: 22nd – 24th November 2021

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10.30am on 8th December 2021.

Mrs Justice Collins Rice:

Introduction

1. Mr Hwang, the Claimant, and Ms Kim, the Defendant, belong to the Korean community in the UK. Both have been active, and held leadership positions at national or European level, in the community and political organisations of the Korean diaspora. Both are based in New Malden in South London.
2. Mr Hwang brings this claim to establish that Ms Kim slandered him (in Korean) on three occasions in 2018 at Korean political community events, and that as a result he has lost his good standing in the community.

The basis of the claim

3. This is (or has become) a claim for slander ‘actionable per se’: to succeed, Mr Hwang has to show Ms Kim said something defamatory about him to other people to the effect that he had committed a criminal offence punishable by imprisonment. That is a question of mixed law and fact. What is said has to convey an imputation of criminal conduct to ordinary reasonable people (neither naïve nor scandal-hungry) hearing it in context; and as to that a common-sense, and not overly lawyerly or analytical, approach must be taken. At the same time, what is said must add up to something which really is, in law, recognisable as criminal conduct, specific or general.
4. Mr Hwang also has to show that what was said ‘*has caused or is likely to cause serious harm to his reputation*’ (section 1 of the Defamation Act 2013).

(a) *The first allegations complained of*

5. In the autumn of 2018, Mr Hwang was vice-president of the European Korean Residents Society (EKRS). Ms Kim was vice-president of the UK Korean Residents Society (KRS), and a candidate for its presidency. Mr Hwang supported a rival candidate. They both attended a local KRS registration event, held on 31st October 2018 in Coombe Lane. It seems there was an altercation. Mr Hwang says Ms Kim said angrily to him, in front of about ten people: “*What the fuck are you talking about? I’m not going to stand idle. You said you’d stab me with a knife.*”.

(b) *The second allegations complained of*

6. The AGM of the KRS was held on 1st December 2018 in New Malden, followed by a dinner, upstairs at the same venue, to celebrate 60 years of the Society. There was an altercation at the meeting. Mr Hwang says Ms Kim confronted him and the rest of the meeting participants – around 80 people – with this:

“You fucking bitch, you said you’d stab me with a knife and kill me, all the Koreans in Europe know that. You can’t even use your fucking dick properly and you can’t keep it in your pants. This fucking bitch is fucking around, try stabbing me in the stomach with a knife you fucking bitch. Everything you say is dirty. Who even are you? You were fooling around with a North

Korean woman and got arrested by the police, everyone knows that, you fucking bitch. You can't even use your fucking dick properly and you can't keep it in your pants."

(c) *The third allegations complained of*

7. The dinner afterwards was delayed, and attended by fewer members of the Society than expected, on account of the altercation at the AGM. It was joined by distinguished guests, including the South Korean ambassador to the UK. Ms Kim was sitting with the important guests. Mr Hwang says she was heard to give this account to them:

"That bitch said he would stab me with a knife and kill me. The North Korean woman he was messing around with ended up in a mental institution because of that bitch, and that bitch ended up getting arrested at a golf course because of what he did to her."

(d) *The 'stab with a knife' allegation*

8. Mr Hwang says, in their natural and ordinary meaning, Ms Kim's words contain two slanders 'actionable per se'. First, she accused him of having said he would stab her, or stab her to death, with a knife. He says this allegation amounts to the imputation to him of one or more criminal offences punishable by imprisonment, and would have been so understood.

9. By section 16 of the Offences Against the Person Act 1861 ('threats to kill'):

A person who without lawful excuse makes to another a threat, intending that that other would fear it would be carried out, to kill that other or a third person shall be guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding ten years.

10. By section 4 of the Public Order Act 1986 ('fear or provocation of violence'):

(1) A person is guilty of an offence if he—

(a) uses towards another person threatening, abusive or insulting words or behaviour, ...

(b) ...,

with intent to cause that person to believe that immediate unlawful violence will be used against him or another by any person, or to provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked.

...

(4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 6 months...

(e) *The ‘inappropriate sexual relationship’ allegation*

11. Mr Hwang says the second slander is that he had had an inappropriate sexual relationship with a North Korean woman which had come to the attention of the police and which had harmed her, including causing her to be admitted to a psychiatric hospital.

12. By section 76 of the Serious Crime Act 2015 (‘controlling or coercive behaviour in an intimate or family relationship’):

(1) A person (A) commits an offence if –

(a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive,

(b) at the time of the behaviour, A and B are personally connected,

(c) the behaviour has a serious effect on B, and

(d) A knows or ought to know that the behaviour will have a serious effect on B.

(2) A and B are “personally connected” if—

(a) A is in an intimate personal relationship with B.

...

...

(4) A’s behaviour has a “serious effect” on B if—

...

(b) it causes B serious alarm or distress which has a substantial adverse effect on B’s usual day-to-day activities.

(5) For the purposes of subsection (1)(d) A “ought to know” that which a reasonable person in possession of the same information would know.

...

(8) In proceedings for an offence under this section it is a defence for A to show that—

(a) in engaging in the behaviour in question, A believed that he or she was acting in B's best interests, and

(b) the behaviour was in all the circumstances reasonable.

(9) A is to be taken to have shown the facts mentioned in subsection (8) if—

(a) sufficient evidence of the facts is adduced to raise an issue with respect to them, and

(b) the contrary is not proved beyond reasonable doubt.

...

(11) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;

(b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine, or both.

The basis of the defence

13. Ms Kim does not materially dispute that she made the first allegations complained of. She accepts she said these words, and that, in their natural and ordinary meaning, they contain a potentially defamatory allegation that Mr Hwang had said he would stab her with a knife. She says however this is not a slander 'actionable per se' for two reasons. First, the behaviour she imputed to Mr Hwang does not, in context, allege criminal conduct or the components of any criminal offence. Second, it is a factual allegation, and it is true, so she has a complete answer to defamation under section 2 of the Defamation Act 2013 ('*It is a defence to an action for defamation for the defendant to show that the imputation conveyed by the statement complained of is substantially true.*'). She says he did say he would stab her with a knife in March 2018 at an EKRS conference in Warsaw. (He denies that.)
14. Ms Kim has an account of the events of 1st December 2018 which substantially overlaps with Mr Hwang's but differs in some respects. On her account, what she said at the AGM was this:

"Hey, you said you would stab me to death with a knife didn't you. The people know that you said such words. That git was wandering about without controlling his dick and had an affair with a North Korean woman which resulted in her being sent to a mental hospital, as you know. Son of a bitch, try to stab me in my belly with a knife now. You told me you would stab me to death if I spread the rumour about you didn't you? Fucking git. The way you speak is disgusting. Who do you think you are?"

You were fooling about with a North Korean woman and arrested by the police. They know it all.”

Ms Kim denies she said the third allegations complained of – or anything else relevant – at the dinner afterwards.

15. She accepts that, as well as the ‘stab with a knife’ allegation, what she said, in its natural and ordinary meaning, contained a potentially defamatory allegation that Mr Hwang had had an intimate personal and sexual relationship with a North Korean woman which had been so distressing for her that it had caused psychological damage sufficient to hospitalise her, and had been so inappropriate that the police had been involved. She says, again, this did not in context allege criminal conduct or the components of any criminal offence. She also says it is substantially true. (And again, Mr Hwang says it is not.)
16. She also says the sexual relationship was already widely known or suspected, and condemned, in the community. So any serious harm sustained by Mr Hwang in the community was as a result of the affair, not of her mentioning it or anything else she said.

Litigation history

17. This claim has a somewhat evolutionary litigation history. It began life on 1st February 2019, with Mr Hwang’s wife as a second claimant (that part of the claim was discontinued in May 2019). The particulars of claim were replaced in their entirety following a case management hearing in July 2019. They were amended twice more, and the reply to defence was also amended, following a thorough pre-trial review (PTR) in November 2021, in the weeks immediately preceding trial.
18. The witness evidence has also been evolutionary. That process of evolution continued up to and including the giving of oral evidence at trial. Some of these evidential developments can fairly be described as surprising.
19. Some points may be noted about the trial itself. The first is that all the oral evidence was given in Korean. Language and cultural issues potentially arise in testimony via interpreter. More than usual attentiveness and care is needed in both understanding and assessing what has been said.
20. At the same time, this claim does not turn significantly on disputed points of translation. Although the words complained of appear in different versions, and in none of them in altogether idiomatic English, the parties agree that little if anything turns on textual issues. In a slander ‘actionable per se’ claim, it is the substance of the imputation which matters, and that is not materially disputed. The principal difference between the parties about the words complained of themselves is not about what was said, but where and when it was said on 1st December 2018 – on Mr Hwang’s case, in two separate instalments and before two different audiences, and on Ms Kim’s in one instalment at the AGM only. That difference goes principally to any harm they may or may not ultimately have done to his reputation.
21. The second point about the trial relates to the ‘inappropriate sexual relationship’ issue. I heard evidence both about and from the ‘North Korean woman’. She fled North Korea

and now has South Korean and UK citizenship. She has a troubled psychiatric history, including an episode of harming her children and long-term in-patient care in hospital. She is also a complainant of sexual assault and/or rape in an ongoing police investigation. I concluded it was necessary to anonymise her for the purposes of these proceedings, and she is referred to in this judgment as Ms X.

Factual context and key issues

22. Although the PTR resulted in a list of ‘issues for trial’, matters continued to evolve in the meantime. I summarise below the extent to which the parties converged as to the factual context, and therefore identify what appear to be the key issues outstanding. There is no material dispute as to the relevant legal framework.

(a) The ‘stab with a knife’ allegation

23. The parties agree they both attended an EKRS conference in Warsaw in March 2018. The agenda included selecting the next president of the EKRS. Although that was not an electoral process, there was a certain amount of lobbying and jockeying for position going on.

24. On the second day of the conference, Mr Hwang convened an informal gathering of about a dozen delegates in the bar of conference venue. Some kind of altercation broke out, involving Mr Hwang, Ms Kim and another woman. There are two very different rival accounts of the political purpose of this gathering and the respective roles of the three individuals. This is the context in which Ms Kim alleges, and Mr Hwang denies, that he said he would stab her with a knife.

25. In one of the surprising evidential developments in this case, Mr Hwang volunteered in the witness box, for the first time, that he had used the word ‘knife’ in Ms Kim’s presence in this context. He said, however, it was a benign reference to a proverb, and not a threat.

26. The words Ms Kim spoke in making this allegation, and their ‘meaning’ and ‘defamatory tendency’, are not materially disputed now. So the outstanding issues are these. It is for Mr Hwang to prove that when Ms Kim reported he had said he would stab her with a knife, these are words which in context are capable of being, and would have been reasonably apparent to her audiences as being, imputations of criminal behaviour by him. If he discharges that burden, it is for Ms Kim to prove that that was what did in fact happen at the Warsaw conference. In each respect context is important.

(b) The ‘inappropriate sexual relationship’ allegation

27. By bringing this claim in the way he has, Mr Hwang inevitably chose to put his sexual history in issue. In another surprising evidential development, he accepted for the first time at the PTR that he had had a longstanding sexual relationship with Ms X, and that it led to police investigations into his conduct.

28. It now appears Mr Hwang and Ms X met in 2013 and the relationship became intimate in 2014. At the time, Mr Hwang was married with children and Ms X was a single mother with children from an earlier relationship. In the first half of 2016, there was a crisis in their relationship, and a crisis in Ms X’s mental health. She reported Mr Hwang

to the police in March 2016 alleging sexual assault; he was interviewed and gave a statement. In June 2016 she was so ill and distressed she attacked her own children with a broken bottle. She was detained by the police and discharged to a psychiatric hospital with a diagnosis of paranoid schizophrenia. Her children were removed to foster care.

29. She remained in hospital for three years. During that time, Mr Hwang telephoned her three times a day, at 9am, 1pm and 9pm, and visited her twice a week. She was discharged from hospital into hostel accommodation in May 2019 and then to supported housing in the autumn of that year. She made a second report to the police in November 2020 alleging that, since her discharge from hospital, he had repeatedly subjected her to forced sex – sexual assault and rape. Mr Hwang was again interviewed by the police. It appears that that investigation continues. Ms X is now married.
 30. It was as a result of Ms Kim’s words at the AGM on 1st December 2018 that Mr Hwang’s wife learned about the relationship. It caused a crisis in their marriage and a period of separation. They resumed co-habitation at the beginning of the pandemic, and are now, they say, fully reconciled.
 31. Again, the key remaining issues are these. It is for Mr Hwang to show that when Ms Kim said what she accepts she did about this sexual relationship, these are words which in context are capable of being, and would have been reasonably apparent to her audiences as being, imputations of criminal behaviour by him. If he discharges that burden, it is for Ms Kim to prove that that what she said was substantially true. In each respect context is important.
- (c) *‘Serious harm’*
32. If Mr Hwang establishes in either or both cases that Ms Kim imputed criminal behaviour to him, and Ms Kim fails to establish the truth of what she imputes, then it is for Mr Hwang to establish that *what Ms Kim said* has caused or is likely to cause serious harm to his reputation.

Analysis

(i) The ‘stab with a knife’ allegation

33. The first question is whether – be it true or false – what Ms Kim said Mr Hwang did, imputed criminal behaviour to him. I have to consider that both from the perspective the ordinary and reasonable members of the audience who heard these words of hers – on any of the two or three occasions on which she said them – and by reference to the criminal law.
34. It is an unusual feature of this case that the behaviour alleged by Ms Kim is itself constituted by speech: something Mr Hwang *said*, not something he did. Slander ‘actionable per se’ classically involves an imputation of a crime of action – for example, violence or dishonesty – or of serious criminality more generally. I was not shown any example in the decided cases where the allegation has been of a crime of speech.
35. The criminal law concerns itself with speech sparingly. That is for good reason. Freedom of expression is an important constitutional principle in which there is a strong

public interest, displaced only by explicit and powerful countervailing public interest considerations. Crimes of speech almost always contain elements going beyond the fact of words spoken – for example as to the intention with which they were spoken or the effects produced.

36. The two proposals for relevant criminal offences in this case are crimes of speech heavily qualified by their close relationship with either lethal or immediate real violence. ‘Making a threat to kill’ is a crime if but only if the threat is made *intending that the other would fear it would be carried out*. ‘Using threatening abusive or insulting words’ is a crime if but only if *with intent to cause the person to believe that immediate unlawful violence will be used, or to provoke the immediate use of unlawful violence, or whereby the person is likely to believe that such violence will be used or provoked*.
37. (As an aside, some attempt at trial was made to suggest that the intention qualification in s.4 of the Public Order Act 1986 did not apply to the first limb of subsection (1)(a). That is clearly wrong. The intention qualification appears unmistakably from the structural format of the official version of the statute, and from the heading of s.4, without looking further. It is unarguable that ‘using threatening, abusive or insulting words’ is per se a crime.)
38. On his case as brought, Mr Hwang has to establish that Ms Kim’s words imputed one or other of these crimes to him or made some other imputation of criminal conduct. He has to show in other words that ordinary reasonable hearers of her words would understand he did not just *say* he would knife her, he *literally meant* he would knife her or at any rate put her in real fear of that.
39. That is a high barrier to clear. The language of ‘non-literal’ threats of violence is in thoroughly common currency, certainly in English and I was given no reason to doubt in Korean also. Mr Roberts did note that, as he put it, a threat of violence can be ‘bad joke’ banter between friends (‘if you get between me and my pint I’ll murder you’). But between friendly banter at one end, and an imprisonable crime at the other, there is a vast spectrum of wholly context-specific ‘threats of violence’ which might be considered varyingly in poor taste, unpleasant, bullying or distressing, but not literally real threats to do not just real violence but real violence which is either immediate or homicidal.
40. Ms Kim’s allegations give no contextual detail or clues themselves. They were made to audiences of engaged Korean community activists – people with at least an interest in community affairs and perhaps some political experience or know-how: not so naïve. They were also audiences in which Mr Hwang was known and present. The emotional temperature was high. The glimpse the evidence in this case gives of Korean community politics in the UK and Europe suggests a lively arena in which personal ambitions and loyalties are played out and strong views and sometimes strong feelings are expressed, on occasion in strong language – no doubt much like energetic local politics of any sort. This is not a context especially conducive to literal-mindedness. It is a context conducive to rhetoric, if not hyperbole.
41. The language Ms Kim herself admits to using is, as she acknowledged, strong and coarse. There is some evidence it was viewed as unacceptably emotional and offensive on the occasions in question – off the scale – but there is also some inference to be made

that discourse of a degree of vehemence and robustness was within the tolerated or expected scale. Again, that would not be surprising: where people care passionately about community politics, and meet opposition to their vision and views, passions and language can boil up and over.

42. There is some evidence Mr Hwang was himself given to overblown but non-literal threats of violence. It was the evidence of Ms Kim and another witness that in 2017 Mr Hwang had, in the context of a heated exchange of views about North Koreans in the community, said he would ‘sew up Ms Kim’s mouth with a sewing-machine’ because of something she had said. Mr Hwang denies that this incident happened, but I rather think it more likely that it did and he may have forgotten about it. (That is not only because Ms Kim and the other witness said so, but because of the rather specific setting mentioned – the two of them in the witness’s car and Mr Hwang on speakerphone; because the very oddness of the phrase makes it an unlikely candidate for self-serving fabrication; and because Ms Kim did not seek to deploy it to any particularly strategic or calculating effect in her evidence.) This is a vivid, menacing and thoroughly unpleasant turn of phrase, but its very impracticality and extravagance makes it impossible to be understood literally.
43. I am persuaded that ordinary and reasonable people, hearing the ‘stab with a knife’ allegations in their context on the day, would probably have understood Ms Kim to be accusing Mr Hwang of something similar – no less but no more. She would likely have been taken to be calling him out as an aggressive bully with an ugly and highly-coloured vocabulary for expressing it, which he had deployed to intimidate and distress her. It would certainly not be at the friendly banter or ‘bad joke’ end of the spectrum. It would be taken as an allegation of behaviour not in the least friendly or funny. It would be taken no doubt as intended to put her in some fear of *him* and of thinking of crossing him. But that is a long way indeed from being thought of as putting Ms Kim in fear of ‘immediate violence’ or indeed of being murdered by Mr Hwang.
44. Mr Hwang has not come close to discharging his burden of showing it probable, or even plausible, that anyone could sensibly have thought that in context. It is of course a bad enough thing to be called an aggressive bully with a memorably nasty turn of phrase. But I am not persuaded it is in context an allegation of criminality – the issuing of a literal threat about literal violence. So it is not a slander ‘actionable per se’.

(ii) The ‘inappropriate sexual relationship’ allegation

45. Some preliminary legal scene-setting is necessary. The 2015 offence of ‘controlling or coercive behaviour in an intimate relationship’ was a landmark in the developing modern understanding of ‘domestic’ abuse. It followed high-profile public campaigns around the cases of women convicted of homicide offences following long courses of conduct by their husbands, the true seriousness and impact of which was not at the time fully recognised in public discourse or criminal law. The criminalisation of ‘controlling or coercive behaviour’ in family or intimate relationships was something of a societal shift. It put a label, and a criminal law deterrent, to something – a species of ‘toxic relationship’ – which had been ruining lives but lacked a name by which it could be recognised as such, including by its own victims.
46. There is no statutory definition of ‘controlling or coercive’, but the s.76 offence is accompanied by an unusual power at s.77 for the Secretary of State to issue statutory

guidance about its investigation. Guidance was issued in December of 2015 to the police and other criminal justice investigatory agencies, who must now have regard to it.

47. The purpose of the Guidance is two-fold – to continue the process of raising awareness of the problem, thus ensuring it is effectively tackled, and to help law enforcement agencies fulfil their duties in a manner appropriate to the situation of vulnerable complainants. It also alerts agencies to be wary of ‘offender tactics’: perpetrators of this form of domestic abuse can be adept at manipulating professionals, agencies and systems, seeking to recruit them to their cause, and re-victimising the complainant.
48. The Guidance says this about the purpose of the offence:

The offence closes a gap in the law around patterns of controlling or coercive behaviour that occurs during a relationship between intimate partners, former partners who still live together or family members. This offence sends a clear message that this form of domestic abuse can constitute a serious offence particularly in light of the violation of trust it represents and will provide better protection to victims experiencing repeated or continuous abuse. It sets out the importance of recognising the harm caused by coercion or control, the cumulative impact on the victim and that a repeated pattern of abuse can be more injurious and harmful than a single incident of violence.

49. The Guidance says this about understanding ‘controlling or coercive behaviour’:

Controlling or coercive behaviour does not relate to a single incident, it is a purposeful pattern of behaviour which takes place over time in order for one individual to exert power, control or coercion over another.

This new offence focuses responsibility and accountability on the perpetrator who has chosen to carry out these behaviours.

The cross-Government definition of domestic violence and abuse outlines controlling or coercive behaviour as follows:

- Controlling behaviour is: a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.
- Coercive behaviour is: a continuing act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.

50. I set this out simply as general background; the offence is relatively new, multi-factorial, and has to be understood and approached from some basic understanding of its public policy context. It is not an offence constituted by any single action. It is constituted by a course of conduct ('repeatedly or continuously'). No individual component of that course of action need itself have any criminal quality – indeed it is characteristic of the offence that the constituent components of the course of conduct may be banal or trivial in isolation. That is how it achieves its insidious or corrosive *cumulative* effect. It is in essence a crime of abuse of power, position and trust.
51. It is common ground that the relevant allegations in this case *say* that (a) Mr Hwang had a sexual relationship with Ms X, (b) it was a product of his sexual incontinence, (c) by engaging in it, he was 'fooling' or 'messing' around or 'having fun' with her, (d) it precipitated her admission as an in-patient to a psychiatric hospital and (e) it attracted the serious attention of the police. It may also be relevant that Ms X was consistently referred to by Ms Kim as a 'North Korean woman'; in context that might be understood as drawing attention to her status as a defector from the regime and perhaps as vulnerable on that account. (Ms Kim's words do not, however, include any recognisable allegation of sexual assault or rape.)
52. Mr Hwang proposes that this is a description of a toxic and abusive relationship within the terms criminalised by s.76, and would be so understood in context. That is not a simple proposition. A number of points may be noted at the outset.
53. First, allegations of sexual incontinence are obviously not slanders 'actionable per se'. But I make the point expressly because I formed a view as a result of the oral evidence given at trial that sexual incontinence, and extra-marital sexual infidelity, may be viewed with more opprobrium in this particular community than may be the general contemporary average. I also formed the view that 'fooling' around or 'having fun' in this context is more likely than not to be understood as a euphemism for a sexual liaison, particularly an extra-marital one ('playing away') or a casual one in which one party is solely motivated by sexual appetite and the other by vain hopes of something more, rather than an allegation going to the existence or quality of any other behaviour within the relationship. It is in any event, and on any reasonable reading, a long way short – *taken on its own* – of an allegation of coercive or controlling behaviour.
54. Second, allegations about police involvement – arrest, interview or investigation – are not slanders 'actionable per se'. They may be allegations to the effect that there are good grounds to suspect, or investigate, the commission of a crime. But they are not *on their own* allegations of guilt.
55. The most striking part of the 'inappropriate sexual relationship' allegation is that the relationship is said to have precipitated Ms X's admission to a psychiatric hospital. That is an allegation of a high level of toxicity in the relationship. It is this element which demands serious consideration of the terms of the s.76 offence. It also requires standing back to consider the allegations made about this relationship in the round.
56. Returning then to the definition of the offence, there is no doubt that Ms Kim alleged that Mr Hwang had been in an 'intimate personal relationship' with Ms X. She was also alleging that his behaviour within that relationship had had a 'serious effect' on Ms X, by causing her 'serious alarm or distress which had a substantial adverse effect

on her usual day-to-day activities’ – precipitating a need for mental health inpatient care could hardly be a more egregious example.

57. I also consider her, on balance and in context, to have been alleging Mr Hwang was culpable to the sort of degree envisaged by s.76: he ‘knew or ought to have known that his behaviour would have a serious effect’ on Ms X. This is a crime in which the *mens rea* or mental element can be supplied by reference to an objective test. I am satisfied that Ms Kim’s words meant, and would be understood in context to mean, that a reasonable person in Mr Hwang’s position would know his behaviour would have a serious adverse effect on Ms X, and indeed that Mr Hwang was no such reasonable person.
58. The more difficult issues, however, are whether there is an imputation of a course of conduct: repeated or continuous behaviour towards Ms X; and whether there is an imputation that Mr Hwang’s behaviour was ‘controlling or coercive’. These are important – indeed defining – elements of the offence. They cannot simply be inferred from the presence of the other elements. Domestic abuse and toxic relationships come in many forms, but the *actus reus* of this offence – what a perpetrator must be shown to have in fact done – is specific, albeit not further defined. There is an essential element of systematic control (restriction of autonomy) or coercion (overbearing of autonomy) at its core.
59. Ms Kim’s allegations, on the other hand, are unspecific and impressionistic. I have to try to assess the overall impression created. In my view her allegations do create an impression that Ms X was Mr Hwang’s victim in a serious respect, and that she was vulnerable to, and as a result of, his behaviour within their relationship. They are allegations which are *consistent* with a coercive or controlling course of conduct. But they are also consistent with many other things. They are consistent with other criminal offences being the cause of Ms X’s mental health crisis – a single act of violence for example. And, crucially, they are also consistent, notwithstanding the mention of the police, with a whole range of non-criminal behaviours. They are non-specific allegations, in effect, of a dramatic and traumatic breakdown which was Mr Hwang’s fault and which had a disastrous impact on Ms X. And that is how, in my view, they would have been understood, simply as such.
60. Toxic relationships can precipitate crises of mental health for all sorts of reasons which do not come anywhere near the definitions of any criminal offences. Even where one party is said to be altogether responsible for another’s breakdown, and that party is said or suggested to have been unreasonable, selfish, unkind, or even to a degree exploitative, that does not equate – in law or in the minds of reasonable people on the facts of this case – to an imputation of the s.76 offence or of any other imprisonable criminal conduct. Not even where it is said that the police have taken an active interest. It is common enough to break hearts and minds in relationships without breaking the law. People would not assume the latter from the former.
61. I am quite satisfied that Ms Kim branded Mr Hwang’s relationship with Ms X as immoral, selfish, irresponsible and highly damaging to the point of victimisation. I am not satisfied she alleged the components of the s.76 offence or any other criminality. She roundly blamed him for having the relationship at all, and for Ms X’s mental health predicament. She did not call him a criminal. These allegations are not slanders ‘actionable per se’.

Conclusions

62. I am not satisfied that Ms Kim's admitted and defamatory factual allegations about Mr Hwang amount to slanders 'actionable per se' because I am not satisfied, on the facts of the case and in context, that they amount to an imputation to him of recognisably criminal conduct punishable by imprisonment. I am for that reason alone unable to uphold Mr Hwang's claim.
63. I am conscious that that leaves the parties' factual disputes otherwise unresolved. It is not the function of a defamation trial to resolve all the aspects of a long-standing personal quarrel. I must decide only the points which are necessary to resolve the claim itself.