Neutral Citation Number: [2015] EWHC 1987 (QB)

Case No: HQ13D04680

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/07/2015

Before :

MR JUSTICE NICOL

- -

Between :

Frederick Leslie Starr	**Claimant**
- and -	
Karin Ward	**Defendant**

- -
- -

Dean Dunham (instructed by **Debello Law**) for the **Claimant**
David Price QC of **David Price Solicitors and Advocates** for the **Defendant**

Hearing dates: 15th - 19th June, 22nd – 24th June 2015

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Approved Judgment

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

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THE HONOURABLE MR JUSTICE NICOL

Mr Justice Nicol :

1. This has been the trial of claims for slander and libel brought by the comedian and entertainer, Freddie Starr, against Karin Ward. They arise out of an interview which Ms Ward gave to the BBC in November 2011 and to ITV in October 2012 and the subsequent broadcasts of parts of those interviews and also out of online publications made by Ms Ward.

1974: the background

2. Ms Ward was born on 25th March 1958. She had a troubled family background including, she says, sexual assault by her step father. She also shoplifted on a number of occasions. When she was about 14 she was sent to Duncroft Approved School ('Duncroft') in Surrey. There were about 25 girls at the school. The Headmistress was Margaret Jones.

3. While Ms Ward was at Duncroft she met Jimmy Savile ('Savile'). She says that she and other girls at Duncroft were sexually abused by Savile. In return they were given cigarettes and also the opportunity to attend Savile's TV shows. Savile was particularly known for a show called 'Jim'll Fix It'. But another show was a programme called 'Clunk Click' on which guests appeared with Savile in front of a studio audience. 'Clunk Click' was not broadcast live, but recorded in advance of transmission.

4. One episode of 'Clunk Click' was filmed on 7th March 1974. Ms Ward and about 4 other girls from Duncroft attended as part of the studio audience. On that date Ms Ward was 15. One of the guests on that episode of 'Clunk Click' was Freddie Starr. He was 32 at the time and was well known as a comedian and entertainer.

5. After the show, Ms Ward says that she and the other girls from Duncroft were able to meet with Savile and others connected with the show including Mr Starr. Precisely what took place then is hotly disputed between the parties and I will need to return to it but, in very brief terms, Ms Ward's case is that Mr Starr felt her bottom. She protested vigorously. She says that he then made a crude remark referring to the flatness of her chest. She found this deeply humiliating. Mr Starr denies touching or attempting to touch Ms Ward. He denies saying anything humiliating.

The publications complained of

6. Ms Ward wrote an account of some of the incidents in her life on a website called 'FanStory'. She says that she started this exercise in 2008. For that reason it is convenient to take it first. However, the Particulars of Claim pleaded that the words were only defamatory of the Claimant after 8th October 2012, by which time the Defendant says she had taken this part of her account down from the website. In the course of his closing submissions, Mr Dunham, on the Claimant's behalf, accepted that he had no evidence to contradict what the Defendant said about the date when the story was taken down. He accepted that this part of the Claimant's case could not succeed.

7. Nonetheless, what the Defendant said in 'FanStory' is relevant to other parts of the evidence and so it is still useful to set it out. What are conveniently called 'the FanStory words' were as follows:

> "The first time we were taken to London there were eight of us. All the rest of the girls had gone home for the weekend. We were escorted into Television Centre and taken to see Sir Jimmy in his 'dressing room'.
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> The air hung thick with his foul cigar smoke. He laughed and joked with Miss Jones, Theo and every girl close enough to speak to. We were to be introduced to some of his guests on the show before it began.
>
> Now my recollections of meeting with these guests are very vivid, not least because at least one of them has since been prosecuted for sexual misconduct with minors. Don't get me wrong. Not every celebrity we met was a closet paedophile.
>
> Over several weeks, I met a great many male and female celebrities, some of whom I remember fondly for their intelligence, wit and general pleasant demeanour. However, of those who had similar tastes to Jimmy Savile – a liking of under-age girls, I can only recall vague disgust and horror.
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> One particular celebrity, a very popular comedian of the time, whom I shall simply refer to as 'F', absolutely stank of booze and sweat. His hands wandered incessantly; he had absolutely no qualms whatever about any one of the girls seeing what he was doing to any of the others. The fact that we sat in his dressing room with him, drinking vodka or Bacardi rum whilst he blatantly selected which girl to humiliate amazes me. I cannot recall where Miss Jones and Theo were. Surely, they must have known what was going on?
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> …
>
> Even so there were no acts of violence or threats. No-one was hit or taken against their will. I refused 'F' because getting anywhere near him made me heave. He smelled far too much like my step-father for my liking. 'F' made some rather cruel remarks about my lack of breasts by way of getting back at me for refusing him. Everyone laughed whilst I burned with humiliation."

8. On 14th November 2011 the Defendant was interviewed by Liz MacKean of the BBC. In the course of the interview, the Defendant spoke these words:

> "That's when the other guests on the show would come in, generally after the show had finished they would come in and they clearly saw girls and, well, kids, male and female, as being there to be used. I had a famous person who would try, he smelled awful, he smelled of sweat and alcohol and it made me heave just to be near him, so I certainly didn't want him to do anything to me."

9. For this publication the Claimant relies on words spoken by the Defendant. It is therefore a claim in slander[1]. He pleads that the words were defamatory of him in an innuendo meaning. An innuendo meaning is one which is dependent on certain facts being known to the person or people to whom they were published. In this case, the Claimant alleges that Ms Ward told Ms MacKean that the famous person in question was him. It is also alleged that Ms Ward told Ms MacKean that she had visited Savile's dressing room when she was a 14 year old schoolgirl and that the Defendant's words were in answer to the question 'What sort of things happened in Jimmy Savile's dressing room?'

10. With the knowledge of those facts, it is alleged that these words were defamatory of the Claimant in that they meant that he saw children in Savile's dressing room as being there to be sexually abused and that he had tried to abuse the Defendant when she was a fourteen year old schoolgirl. I will refer to this publication as 'the BBC words'.

11. Savile had died on 29th October 2011. Liz MacKean had interviewed the Defendant for the purpose of an item which she was helping to make for BBC 'Newsnight' on Savile's sexual offending. The BBC decided not to go ahead with the item before it was completed. The interview with the Defendant was not therefore broadcast on 'Newsnight' or anywhere else immediately after it was recorded. A part of it was broadcast later (see below).

12. One of the people who had helped to work on the 'Newsnight' report was a consultant called Mark Williams-Thomas. In the autumn of 2012 he was preparing a programme on Jimmy Savile for ITV which was to be called 'Exposure: the Other Side of Jimmy Savile' ('Exposure'). The Defendant and Mr Williams-Thomas were in contact and she agreed to give him an interview which took place on 2nd October 2012. Ms Ward said in her interview, the following:

> "I was horribly, horribly humiliated by Freddie Starr who had a very bad attack of wandering hands and had groped me and I didn't like him because he smelled like my step-father and it frightened me and freaked me out and I rebuffed him and he humiliated me in front of everyone in the dressing room."

13. I will refer to these as 'the ITV words'. Since they were spoken by the Defendant to Mr Williams-Thomas, the Claimant's claim in respect of them is again in slander[2]. Again the Claimant relies on an innuendo meaning. He alleges that Ms Ward told Mr Williams-Thomas that she was a fourteen year old schoolgirl at the relevant time and, with the knowledge of that, the ITV words meant to Mr Williams-Thomas that the Claimant was a paedophile who had groped and thereby sexually assaulted the Defendant when she was a fourteen year old schoolgirl and that he had humiliated and frightened her.

14. 'Exposure' was broadcast on 3rd October 2012. Mr Williams-Thomas explained that its focus was Jimmy Savile. The programme did not include the ITV words.

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[1] At one point in his closing submissions, Mr Dunham suggested that words spoken which were recorded on film could, alternatively, be treated as a libel, but on reflection he accepted that they were pleaded as slander and he did not apply to amend to plead them as libel in the alternative.

[2] As with the BBC words, Mr Dunham accepted that the claim for the ITV words was pleaded in slander and he did not apply to amend to plead libel in the alternative.

15. In order to explain how, nonetheless, the ITV words and BBC words came to be broadcast, it is necessary to interpose an account of further developments.

16. Others within ITV had access to the material which Mr Williams-Thomas had accumulated, including his interview with the Defendant. On 3rd October 2012, a senior news editor at ITN emailed the Claimant's solicitor (Mr Dunham) and asked him to respond to the allegation that the Claimant had groped and humiliated a 14 year old girl in Jimmy Savile's changing room in the 1970s. Shortly afterwards, Mr Dunham responded by saying that the allegation was false and defamatory and he asked ITN to confirm that they would not report it, failing which the Claimant would seek an injunction. ITN responded by saying that it did not intend to identify the Claimant and it was carrying out journalistic inquiries. If circumstances changed, Mr Dunham would be notified. That evening (3rd October 2012) the Claimant applied without notice for a temporary injunction. This was granted by Cox J. A hearing on notice took place the following day (4th October 2012) before Tugendhat J. who discharged the injunction and ordered the Claimant to pay costs on an indemnity basis. Tugendhat J. was careful in his judgment not to set out the allegation as to what the Claimant was said to have done. Nevertheless, his judgment was public and the Claimant's unsuccessful attempt to obtain an injunction was widely reported.

17. The Claimant then gave media interviews in which he denied meeting the Defendant, let alone groping her. He also denied being with Jimmy Savile on BBC premises. He said that he had only met Savile twice and those were quite different occasions. His remarks were widely reported.

18. On 8th October 2012 Channel 4 News obtained footage of the episode of 'Clunk Click' which had been filmed on 7th March 1974. The Claimant could be seen as one of the guests on the show. The Defendant could be seen in the audience on the set.

19. That same day, 8th October 2012, Channel 4 News broadcast part of the interview which Mr Williams-Thomas had conducted with the Defendant on 2nd October and which included the ITV words. It did so as part of its coverage of developments following 'Exposure'. It included the apology of the Director-General of the BBC to victims of Jimmy Savile's abuse. It also included a report of the Claimant's attempts to obtain an injunction (initially successful, but then unsuccessful), his denial that he had ever met the Defendant or appeared on a Savile show, and the 'Clunk Click' footage showing the presence of both the Claimant and the Defendant. It also included a statement by Mr Dunham that the Claimant accepted he had been mistaken about appearing on the Savile show, but that he maintained his denial of the Defendant's allegation.

20. On 10th October 2012 the Claimant was interviewed on an ITV show, 'This Morning' together with his fiancé Sophie Lea. An extract of the Defendant's interview with Mr Williams-Thomas (which included the ITV words) was played. The 'Clunk Click' footage was also played. The Claimant was allowed to give his response to both. He denied the Defendant's allegation.

21. On 1st November 2012 the Claimant was arrested on suspicion of sex abuse. An extract from the Defendant's interview with Mr Williams-Thomas (again including the ITV words) was broadcast on ITV News. The broadcast also included the Claimant's full denial.

22. It is helpful to refer to these three broadcasts as 'the ITV broadcasts'. The Claimant has not sued ITV. He alleges that the Defendant is responsible in law for the harm which they caused him by two alternative routes. First, he submits it is a consequential loss flowing from the original slander in the ITV words and that the Defendant is liable for this further loss since she knew or should have known that there was at least a significant risk that the ITV words would be broadcast to a wide audience. Secondly, he submits, the Defendant is liable for them as a co-publisher since, he alleges, she intended or authorised the ITV words to be broadcast. He argues as well that, even if the Defendant did not intend or authorise these further broadcasts, the reasonable foreseeability that they might occur would be sufficient to make her liable as a co-publisher of them.

23. The 8th October broadcast was preceded by the words 'Karin Ward was a schoolgirl when she claims she was assaulted.'

24. The natural and ordinary meaning which the Claimant attributes to the ITV broadcasts is that the Claimant was a paedophile who had groped and thereby sexually assaulted the Defendant when she was a schoolgirl and that he had humiliated and frightened her. A defamatory publication by TV broadcast is a form of libel and, so far as the Claimant relies on the ITV broadcasts as giving rise to an independent cause of action, it is therefore in libel.

25. On 22nd October 2012 BBC broadcast a 'Panorama' programme. It included footage of the Claimant. A narrator then said,

> 'Among the guests on Clunk Click were young people from hospitals and other institutions, including girls from Duncroft. Karin Ward, aged just 14, was one of them. After the show, she was invited with other young people to join more famous guests in the dressing rooms. She told Newsnight about this 11 months ago in the interview that was dropped'.

Liz MacKean was then heard to say,

> 'What sort of things happened in Jimmy Savile's dressing room?'

The BBC words were then broadcast. They were followed by footage of the notorious paedophile, Gary Glitter and these words,

> 'Gary Glitter also appeared on Clunk Click. He, too, would join Jimmy Savile and his young guests in the dressing room after the show.'

I shall refer to this as 'the BBC broadcast'.

26. The Claimant says the BBC broadcast had the natural and ordinary meaning that he saw children in Jimmy Savile's dressing room as being there to be sexually abused, and that he had tried to abuse the Defendant when she was a fourteen year old schoolgirl.

27. The Claimant has not sued the BBC. As with the ITV broadcasts, the Claimant alleges that the Defendant is liable for the harm which flowed from the BBC broadcast either because it was reasonably foreseeable that there was a significant risk that the BBC

words would be broadcast and she is liable for the harm which flowed from the broadcast as consequential loss from her slanderous BBC words, and/or because she is a co-publisher of the broadcasts since she intended or authorised them, or, because the broadcast was a reasonably foreseeable consequence of her interview with Liz MacKean.

28. On 13th October 2012 the Defendant published an eBook for the Kindle device. It was entitled, 'Keri Karin: the shocking true story of a child abused, continued' and included the following words:

> "The first time we were taken to London there were eight of us. All the rest of the girls had gone home for the weekend. We were escorted into Television Centre and taken to see JS in his 'dressing room'.
>
> The room was large and well appointed. The air hung thick with his foul cigar smoke but most of us were smoking cigarettes as well so it all combined into a kind of hazy fog at ceiling height. JS laughed and joked with Miss Jones, Theo and every girl close enough to speak to. We were to be introduced to some of his guests on the show before it began.
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> Now some of my recollection of meeting with these guests are very vivid, not least because at least one of them has since been prosecuted for sexual misconduct with minors. Don't get me wrong. Not every celebrity we met was a closet paedophile.
>
> Over several weeks, I met a great many male and female celebrities, some of whom I remember fondly for their intelligence, wit and general pleasant demeanour. However, of those who had similar tastes to JS – a liking for under-age girls, I can only recall vague disgust and horror.
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> One particular celebrity, a very popular comedian of the time, whom I shall simply refer to as 'F', absolutely stank of old sweat and the same cologne my step-father used to use. His hands wandered incessantly; he had absolutely no qualms whatever about any one of the girls seeing what he was doing to any of the others. The fact that we sat in JS's dressing room with both of them, being encouraged to drink vodka, gin or Bacardi rum whilst they blatantly selected which girl to humiliate amazes me. I cannot recall where Miss Jones and Theo were. Surely, they must have known what was going on?
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> …
>
> Even so, there were no episodes of violence or threats. No-one was hit or taken against their will. I refused 'F' because getting anywhere close to him made me heave. He smelled far too much like my step-father for my liking. 'F' was furious that I dared refuse him; he made an exceptionally cruel remark about my lack of breasts by way of getting back at me for refusing him. So that everyone could hear, he said loudly, 'I wouldn't touch you anyway, you're a titless wonder!' Everyone laughed while I burned with humiliation. I carried that humiliation for the rest of my adult life because I was always stick thin and never, ever had any breasts; I could barely fill a double A cup bra."

I shall refer to these as 'the eBook words'.

29. The Claimant alleges that, although he is not named in the eBook words, he could be identified as the popular comedian (which is what he was) whose name began with 'F' (which his did) and because of the ITV broadcasts and (after 22nd October 2012) the BBC broadcast.

30. The Claimant alleges that the eBook words meant that he was a paedophile with a sexual liking for underage girls; that he groped and thereby sexually assaulted underage girls; that he, with Jimmy Savile, encouraged a group of underage girls to drink alcohol while blatantly choosing which of them to humiliate; and that he humiliated the Defendant in front of other girls.

31. The Claimant has claimed general damages for harm to his personal and professional reputation and because of the distress, upset and embarrassment which the Defendant's publications have caused him. He has also alleged that he suffered special damages in the form of lost earnings when a number of venues cancelled his previously booked appearance with them.

The Defendant's defences in outline

32. The Defendant takes issue with the meanings attributed to each of the different publications and the facts relied on to support the innuendo meanings of the BBC words and ITV words.

33. She accepts that she spoke the ITV words and the BBC words. She argues that to be actionable slander the Claimant would have either to prove special damage or he would have to show that the publications came within one of the specific categories of case where proof of special damage is unnecessary. Although the Claimant pleaded that he had suffered special damage in the form of lost bookings, she had provided evidence which disputed each of them and the Claimant had not challenged any of that evidence. Accordingly, the Claimant could not show special damage. His Particulars of Claim did not allege that any of exceptional cases where slander was actionable *per se* (i.e. by itself and without proof of special loss) applied to either the ITV words or the BBC words. She does not accept that she is liable for the ITV broadcasts or the BBC broadcasts, whether as consequential loss or as co-publisher.

34. She denies that the eBook words identified the Claimant.

35. For each of the publications, the Defendant pleads in the alternative that the words were true in the meanings which she sets out.

36. In the further alternative, the Defendant says that she is entitled to rely on the same privilege as was established in *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127 ('*Reynolds'*), or that each of the publications was on an occasion of qualified privilege since there was a duty and interest relationship between herself and those to whom each publication was made. She says also that the claims (except the ones based on the BBC and ITV broadcasts) are an abuse of process.

37. She argues that the claim in relation to the BBC words is time barred because the claim was issued on 23rd September 2013, which was more than 1 year after her interview with the BBC on 14th November 2011.

38. The Claimant denies that *Reynolds* privilege is available to a person such as the Defendant who is not a journalist, but the source of the allegations in question. In any case, he denies that the necessary foundation for a *Reynolds* privilege has been established. The Claimant does not accept that any of the publications were on an occasion of qualified privilege since she had no duty to publish and the journalists had no interest in receiving her communications. He disputes that any of the Defendant's allegations are true.

The oral evidence

39. The Claimant gave evidence. He also called Susan Bunce who had also been at Duncroft. She was 15 when she, too, went with the Defendant and other girls from the school to the recording of 'Clunk Click' on 7th March 1974. She recalled meeting Freddie Starr after the show. I will return to other parts of her evidence.

40. The Defendant gave evidence. She also called Meirion Jones. He was the nephew of Margaret Jones, the headmistress of Duncroft at the time the Defendant was there. He worked as an Investigations Producer for the BBC on 'Newsnight' in 2011 and the proposed item on Jimmy Savile in particular. He made contact with the Defendant and encouraged her to give an interview on camera (primarily about Savile). Liz MacKean conducted the interview with the Defendant for the 'Newsnight' item. She, too, gave evidence. Mark Williams-Thomas was a consultant for 'Newsnight' and then worked on the 'Exposure' programme for ITV. He, also, was called by the Defendant.

41. Another of the girls who had been at Duncroft had also been in contact with Ms MacKean. She was unwilling to give evidence voluntarily but she was witness summonsed by the Defendant. Before she was called, I heard an application made on her behalf that she should be able to conceal her name from the public and press in court. I agreed for reasons which I gave orally in a judgment on Monday 22nd June 2015. Accordingly, I will refer to her as 'Witness C' in this judgment.

Applications by the Claimant

42. In the course of his closing submissions on behalf of the Claimant, Mr Dunham made two applications: (a) to amend the Particulars of Claim and (b) to disapply the ordinary period of limitation in respect of the claim in slander for the BBC Words. Both applications were opposed by Mr Price QC for the Defendant and I said that I would give my decision on them in my Judgment. Since they raise discrete issues, it is convenient to deal with them now.

Extension of time to bring the claim in slander for the BBC Words

43. As I have noted, the BBC Words were spoken by the Defendant in her interview with Liz MacKean on 14th November 2011. The Claim Form was issued on 23rd September 2013. That is more than the 1 year which is the ordinary limitation period for defamation claims – see Limitation Act 1980 s.4A. Mr Dunham's application was for the limitation period to be extended pursuant to the Court's power in s.32A. This says,

"(1) If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which –

(a) the operation of section 4A of this Act prejudices the plaintiff or any person whom he represents, and

(b) any decision of the court under this subsection would prejudice the defendant or any person whom he represents,

the court may direct that that section shall not apply to the action or shall not apply to any specified cause of action to which the action relates.

(2) In acting under this section the court shall have regard to all the circumstances of the case and in particular to –

(a) the length of, and the reasons for the delay on the part of the plaintiff;

(b) where the reason or one of the reasons for the delay was that all or any of the facts relevant to the cause of action did not become known to the plaintiff until after the end of the period mentioned in section 4A –

(i) the date on which any such facts did become known to him, and

(ii) the extent to which he acted promptly and reasonably once he knew whether or not the facts in question might be capable of giving rise to an action;

(c) the extent to which, having regard to the delay, relevant evidence is likely -

(i) to be unavailable, or

(ii) to be less cogent than if the action had been brought within the period mentioned in section 4A.

…."

44. The Claimant was arrested by the police on 1st November 2012 on suspicion of having sexually assaulted the Defendant. The Amended Defence pleads (and the Re-Amended Reply admits) that some 14 additional complainants made similar allegations to the police. The Claimant was on police bail until May 2014 when the CPS announced that he was not to be charged with any offence.

45. The letter before claim was written by the Claimant's solicitors on 2nd September 2013. The letter began by saying,

'Please note that this letter has nothing to do with the current police investigation in relation to your allegations and therefore that it relates to a civil matter, not criminal.'

The letter concluded,

> 'Please note that this letter is in no way meant to interfere with the current police investigation relating to you and our Client. In this respect we can confirm that we have fully informed the police of the action that our Client is taking against you and provided them with a copy of this letter.'

46. Mr Dunham submitted that section 32A conferred a broad discretion on the Court. The Claimant could not have known about the interview with the BBC until the broadcast took place and he had issued proceedings less than a year after that. The limitation defence was only applicable to one of the Claimant's causes of action. In consequence, the Defendant would anyway have had to face a trial in respect of the other causes of action and these covered broadly the same territory. It was obvious that the Claimant was inhibited from taking action by the police investigation. The final paragraph of the letter before claim showed that he had, properly, liaised with the police before proceeding.

47. Mr Price accepted that the Claimant could not have known about the Defendant's interview with the BBC until 'Panorama' was broadcast on 22nd October 2012. However, it was obvious from 'Panorama' that the Defendant had been interviewed. The words she had spoken - the BBC words – in the course of that interview were included in the programme. In addition, the commentator in the programme had said precisely when the Defendant had been interviewed – 14th November 2011. Consequently, the Claimant had all the information he needed for his claim in slander for the speaking of the BBC words as from 22nd October 2012. Section 32A(2)(b) directed the court to have specific regard to the date when the Claimant became aware of the necessary facts and the extent to which he acted promptly when he had that knowledge. But, this paragraph began with the words, 'where the reason or one of the reasons for the delay was that all or any of the facts relevant to the cause of action did not become known to the plaintiff *until after the end of the period mentioned in section 4A.*' Mr Price emphasised the words I have italicised because the Claimant could not satisfy this opening condition. He knew about the BBC words on 22nd October 2012, which was less than a year after the interview on 14th November 2011.

48. The Re-Amended Reply pleaded that the Claimant had acted promptly after he did become aware of the interview but, Mr Price submitted, that was not so. He would have been aware of the interview from the 'Panorama' broadcast on 22nd October 2012. His solicitors did not write their letter before claim until 2nd September 2013, some 9 months later and the Claim Form was issued on 23rd September, over 10 months after 'Panorama' was broadcast. This was not the prompt action which s.32A(2)(b)(ii) expected. The letter before claim did refer to the Claimant's liaison with the police, but it did not say when this took place or why it could not have occurred earlier. The police investigations had, of course, been ongoing, but they were still continuing when the Claimant's solicitors did write on 2nd September 2013 and they were still continuing when the Claim Form was issued on 23rd September 2013. Nor was there any evidence at all from the Claimant to explain or expand on the reasons for the delay.

49. I turn to the specific matters to which I must have regard in accordance with s.32A(2):

    i) The length of the delay is a little over 10 months beyond the 1 year ordinary limitation period.

ii) I accept that until 22nd October 2012 the Claimant was unaware of the BBC interview, but, as Mr Price submitted, the ordinary limitation period had not by then expired. If 'delay', as I believe, refers to the time which elapsed after the expiry of the ordinary limitation period and before proceedings commenced, then there is no explanation at all. When a claimant is seeking to have an ordinary limitation period disapplied, the absence of an explanation for the delay can be of great importance – see for instance *Steedman v BBC* [2002] EMLR 318 (CA) per Brooke LJ at [45].

iii) Because all the facts relevant to the cause of action arising out of the BBC words were known before the ordinary limitation period expired, s.32A(2)(b) is not applicable. I accept that I must take account of *all* the circumstances, but particular regard must be had to the matters referred to in sub-paragraphs (i) and (ii) and they do not assist the Claimant. The date on which the facts were known to the Claimant was 22nd October 2012. Waiting 9 months thereafter to write a letter before action and almost another month before issuing the Claim Form was not in my judgment an example of acting promptly or reasonably. When the Claim Form was issued the sensible course was taken of staying proceedings until the police investigation was concluded. There is no evidence before me as to why a similar procedure could not have been adopted if the Claim Form had been issued earlier.

iv) The Defendant has not suggested that evidence is unavailable or less cogent because of the delay.

50. Those are the specific matters to which I must have regard, but the essential test is in s.32A(1), namely whether it would equitable to allow the action to proceed having regard (I paraphrase) to the degree to which the Claimant would be prejudiced if this claim is time barred and the degree to which disapplying the time bar would prejudice the Defendant. In my view, the prejudice on either side would not be very great. The Claimant will lose the opportunity of obtaining redress (assuming, as I must, that the claim in slander for the BBC words would otherwise be a good one) for the BBC words. The immediate audience for the BBC words were few – probably only Liz MacKean and the camera operator. I appreciate that the Claimant alleges that the Defendant is liable as well for the onward broadcast by 'Panorama' on 22nd October 2012. As I have already said, he does so on two bases. If he is right in his contention that the Defendant is liable as a co-publisher of her words on 'Panorama' then he will still recover because that cause of action is not time-barred. If he is right only in his contention that the Defendant's liability is for consequential loss caused by the broadcast then, I recognise, he will lose compensation for that loss as well if the action for slander in the BBC words is barred by limitation. This is not a situation where allowing the ordinary time bar to operate will preclude the Claimant from seeking vindication of his reputation. He has his other causes of action which will be a vehicle by which he can seek to achieve that end. Conversely, this is not a case where if the time bar operates the Defendant will be free of litigation worry. I recognise, of course, that the features of each of the causes of action differ somewhat, as do the defences advanced by the Defendant.

51. I have considered all of these matters, but what seems to me to be of particular importance is the absence of any evidence as to why the Claimant delayed. 'Time is always "of the essence" in defamation claims' – see the Defamation Pre-Action

Protocol paragraph 1.4. It is for the Claimant to persuade the Court that the equitable jurisdiction which he invokes under s.32A ought to be exercised. In my judgment he has failed to do that. I will not disapply the ordinary time limit.

52. This has the consequence that his claim in slander for the BBC words is time barred. That in turn means that the Defendant is not liable for any consequential loss caused by the 'Panorama' broadcast. I will consider below his case that the Defendant is liable as a co-publisher of the BBC words in the 'Panorama' broadcast.

Amendment of the Particulars of Claim to plead that the ITV words and BBC words were actionable without proof of special loss

53. There is no dispute that, ordinarily, slander is only actionable on proof of special damage which means, in essence, some financial loss. The Particulars of Claim did allege that the Claimant had suffered such loss because bookings for his appearance were later withdrawn. The Defendant served a witness statement from Helen Morris of David Price Solicitors and Advocates, the Defendant's solicitors, which explained why, in each case, it was not accepted that the bookings had been withdrawn as a result of the publications on which the Claimant was suing the Defendant. Mr Dunham in his closing submissions accepted that the Claimant had put in no evidence in response. He accepted that the claim for special damage must fail.

54. There are, though, four categories of case where slander is actionable without proof of special damage. In those cases, as with all libels, the slander is said to be actionable *per se* (by itself). In their current form, the Particulars of Claim do not allege that the slanders on which the Claimant sues (i.e. the ITV words and the BBC words) were actionable *per se*. Mr Dunham accepted in his closing submissions that, in order for the Claimant to make a case out that the slanders were in one of these exceptional categories, the Claimant would need to plead the necessary facts. This concession prompted Mr Dunham to apply to amend the Particulars of Claim so as to rely on two of the exceptional cases where slander is actionable *per se*.

55. I will concentrate on the ITV words since my decision above means that the claim in relation to BBC words is anyway time barred.

56. The Defamation Act 1952 s.2 provides,

> 'In an action for slander in respect of words, calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of publication, it shall not be necessary to allege or prove special damage, whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business.'

57. Mr Dunham wishes to add to the pleading of the ITV words that '[they were] calculated to disparage him in his profession as an entertainer and comedian'.

58. A second category of case where slander is actionable *per se* is where the words impute a criminal offence that is punishable by imprisonment.

59. In the paragraph of the Particulars of Claim which allege the meaning of the ITV words, Mr Dunham wishes to add that the words complained of 'impute a criminal

offence namely s.14 of the Sexual Offences Act 1956 for which the Claimant could have been punished by imprisonment.'

60. By Section 14 of Sexual Offences Act 1956 it is an offence for a person to make an indecent assault on a woman. Section 14(2) provides that a girl under 16 cannot in law give any consent which would prevent an act being an assault for the purposes of this section. Where the victim was over 13 and the offence was committed prior to 1985, the maximum sentence was 2 years imprisonment. Section 14 of the 1956 Act was repealed by the Sexual Offences Act 2003. There was no specific transitional provision preserving the 1956 Act for historic offences in either the 2003 Act itself or the commencement order bringing it into force. However, the Interpretation Act 1978 s.16 is regarded as having that effect – see Archbold 2015 paragraph 20-1.

61. Mr Dunham argued that the ITV words alleged that the Claimant had 'groped' the Defendant and that would amount to an indecent assault which was punishable with imprisonment. For this reason as well, he submitted, the ITV words were actionable *per se.*

62. Mr Price opposed the application to amend. He accepted that an accusation of groping would be an allegation of sexual assault under the present law (Sexual Offences Act s.3). He submitted that it was rather more ambiguous as to whether the ITV words alleged an 'indecent' assault which was necessary for the words to impute an offence under s.14 of the 1956 Act. He submitted that the alternative relied upon by Mr Dunham was not arguable. The pleaded audience for the ITV words was the journalist, but the journalist in question, Mr Williams-Thomas was already aware of the Defendant's account of what Freddie Starr had done to her through having read her online account on FanStory and because he had learned from the Defendant that 'F' referred to the Claimant. So far as he was concerned, therefore, the allegation could make no difference to the Claimant's reputation, whether in connection with his business or otherwise. Mr Price refers me to *Andre v Price* [2010] EWHC 2572 (QB) in which Tugendhat J. considered a case of slander before a studio audience (in relation to words which were not subsequently broadcast). Tugendhat J commented that 'calculated' in Defamation Act 1952 s.2 meant 'likely' and this meant something less than 'more likely than not'. 'Disparage' could cover a wide range. It should be interpreted flexibly, but it meant something more than minimal. There had to be a degree of seriousness to justify imposing liability consistent with Article 10 of the European Convention on Human Rights - see [98] and [103]. Tugendhat J. also said that the effect of s.2 had to be considered, not just by reference to the words themselves. Their context was also important - see [99].

63. Mr Price argued as well that it would not be fair to allow the amendments to be made. He had prepared for the case on the basis that there was an obvious answer to the claims in slander: there had been no special loss proved and slander *per se* was not pleaded. In a case where the Claimant relied on multiple causes of action, the Defendant was entitled to adopt a proportionate approach to preparation for trial. It was notable as well that the Claimant had provided no evidence as to why this application was made so late in the day. That was a significant obstacle in the Claimant's path –see *Swain-Mason v Mills and Reeve* [2011] 1 WLR 2735 (CA) at [82], [104] – [106].

64. At this stage, I am only considering whether the Claimant should be permitted to amend his Particulars of Claim rather than ruling on whether the pleaded case can succeed. If it was hopeless, there would be no point in allowing the amendment, but I do not consider that to be so. The imputation of a criminal offence punishable by imprisonment is plainly arguable.

65. I also consider that the Claimant can arguably allege that the words were likely to disparage him in his profession. Mr Price's argument based on the limited audience for the ITV words is in my view flawed. If the Claimant in a slander claim cannot come within one of the special cases and has to prove special damage, the damage in question can arise from the repetition of the words by others, if that is the natural and probable consequence of the original publication – see Gatley 12th edition paragraph 5.9. That is the common law. However, I see no reason why the test of 'calculated' (for which read 'likely to') in Defamation Act 1952 s.2 should not be viewed in a similar way. If it was likely that the interview with the Defendant would be broadcast and so seen by a much wider audience and that was in turn likely to disparage the Defendant in his profession, I find it difficult to see why the test in s.2 would not then be satisfied. This issue did not arise in *Andre v Price* either because the words in question were not in fact broadcast or because the point was not argued.

66. While I understand that a legal representative in Mr Price's position has to make choices as to how to prepare for a trial, an argument based on prejudice has to be rather more clearly particularised. I could not discern in Mr Price's submissions any particular questions which he would have wished to put to any of the witnesses if the Particulars of Claim had stood as Mr Dunham wishes to amend them. In the course of the argument on the application to amend, Mr Price has taken the opportunity to make his submissions as to why amendments do not assist the Claimant. I accept that there is no evidence to explain why the application is made so late in the day, but I accept as well the point made by Mr Dunham, that this amendment is very different from what was being considered in *Swain-Mason*. The present amendment is clear and straightforward (which was plainly not the case in *Swain-Mason* - see [107]). It was also a position anticipated by the Defendant since her Amended Defence in terms denied that the ITV words were actionable *per se* (see paragraph 5 of the Amended Defence).

67. I shall give permission to the Claimant to amend the Particulars of Claim in the way sought in paragraphs 3 and 5 (which are the ones relating to the ITV words). I will refuse permission in relation to paragraphs 9 and 10 (which are the ones relating to the BBC words) since the claim in slander arising out of the BBC words is anyway time barred.

The 'Panorama' broadcast

68. I have found that the slander for the BBC words is time barred. That means that the Claimant cannot recover for the 'Panorama' broadcast as consequential loss. He does, though, rely as an alternative on his claim that the Defendant is responsible for the repetition of the BBC words in 'Panorama' as a co-publisher of that part of the broadcast. I turn to that claim now.

69. A publication is only actionable in defamation if it is 'of the claimant'. Another way of putting this requirement is that it must be apparent to the readers or audience of the

words in question that it is the claimant who is identified as the subject of those words. In her BBC interview the Defendant spoke only of what 'a famous person' had done. That would not be enough to identify the Claimant.

70. Identification does not have to be by name. The makers of 'Panorama' showed footage of the Claimant immediately before they broadcast the extract from the Defendant's interview with the BBC words. In combination the resulting broadcast was, I accept, 'of the Claimant'. But the question is whether the Defendant is liable as a co-publisher of what I will call that composite broadcast.

71. Mr Price accepts that she would be so liable *if* she intended or authorised the BBC to put out the composite broadcast. But, he submits, she neither intended it to do so, nor authorised it to do so.

72. Her evidence was that she did not intend Freddie Starr to be identified in what the BBC put out. That was why she referred to him as a 'famous person' rather than naming him. That approach was consistent with the fact that she had not named him in the FanStory words. She said the BBC promised her that Freddie Starr would not be identified. This evidence is corroborated by Liz MacKean and Meirion Jones. I accept their evidence. Of course, at the time of the Defendant's interview with the BBC, Mr Jones, Ms MacKean and their team were preparing an item for 'Newsnight'. The focus of the item was the behaviour of Jimmy Savile. Ms Ward had a great deal to say about the sexual abuse which she had suffered from Savile. What she had to say about Freddie Starr was of some relevance (because it had taken place on the occasion of a Savile TV show), but it was by no means certain that it would be included in an item which anyway was expected to last only about 10 minutes. It may be that no great thought was given by anyone to what use might be made of the interview if, as happened, the item was not included in 'Newsnight'. Nonetheless, given the content of the BBC words (deliberately not naming the Claimant) and the promises which the Defendant received (that the Claimant would not be identified) it seems to me impossible to infer or imply an intention on the part of the Defendant that a composite broadcast should take place which *did* identify the Claimant. For the same reason, it cannot be said that she impliedly or inferentially authorised the BBC to put out such a composite broadcast.

73. Mr Dunham argued that the Defendant would also be liable as a co-publisher if it was reasonably foreseeable that her words would be subsequently broadcast.

74. There are, though, several reasons why this argument is not open to the Claimant.

75. First it is not how the claim is pleaded. Paragraph 11 of the Particulars of Claim pleaded liability for the 'Panorama' programme. The Defendant served a Part 18 request which asked the Claimant to, 'Confirm that the broadcast referred to in paragraph 11 is merely being relied on as consequential damage arising from [the BBC words].' The Claimant responded, 'The publications referred to in paragraph 11 *were intended and/or authorised by the Defendant and are therefore sued upon as an independent torts* for which the Defendant is liable; further or alternatively they were a sufficiently foreseeable consequence of the publication of [the BBC words] such that the Defendant is liable for the enormous damage that the publications caused to the Claimant…' The emphasis is mine and shows that the claim that the Defendant was a co-publisher was premised on intention or authorisation. Reasonable

foreseeability was put forward as the basis for liability for consequential loss, consequent on the original slander.

76. Second, the law does not support this alternative. It is sufficient to say in the circumstances that I share the views of Laws LJ in *Berezovsky v Terluk* [2011] EWCA Civ 1534 at [27] – [28]. He expressed his views tentatively because it was not necessary to reach a conclusion on the facts of that case. I also follow his views tentatively because in this case, as well, it is not necessary to reach a firm conclusion on the law.

77. The third obstacle in Mr Dunham's way is that his argument fails on the evidence. Once again, it is necessary to emphasise that it is only if one has regard to the composite broadcast that the Claimant is able to say the 'Panorama' broadcast was 'of him'. The Claimant therefore has to prove that the composite broadcast was a reasonably foreseeable consequence of the interview which the Defendant gave to the BBC. He cannot do that. Far from it being reasonably foreseeable that the BBC would broadcast the Defendant's interview in such a way as to identify the Claimant, the exact opposite was the case. The Defendant, Ms MacKean and Mr Jones expected that, if the BBC words were broadcast, the Claimant would *not* be identified.

78. For all of these reasons, I conclude that the Defendant is not liable as a co-publisher of 'Panorama'. Accordingly, the Claimant's claim for libel against the Defendant for that BBC broadcast fails.

The ITV words

79. I remind myself of what the Defendant said in her interview with Mark Williams-Thomas on 2nd October 2012. It was,

> "I was horribly, horribly humiliated by Freddie Starr who had a very bad attack of wandering hands and had groped me and I didn't like him because he smelled like my step-father and it frightened and freaked me out and I rebuffed him and he humiliated me in front of everyone in the dressing room."

80. Unlike with the BBC words, the Defendant did name Freddie Starr in this interview. There is, therefore, no dispute that these words were spoken by her 'of the Claimant'. The pleaded natural and ordinary meaning of the words is not really disputed. In any event, I accept that they meant that the Claimant groped the Defendant. This would be taken to mean that he had touched her in a sexual way and, in this sense, had sexually assaulted her. I also accept that the words meant that he had humiliated and frightened the Defendant.

81. The Claimant also argues that the words had an innuendo meaning. He has pleaded that the ITN journalist was told by the Defendant that at the relevant time she was a fourteen year old schoolgirl. With that knowledge, the words which the Defendant spoke meant to him that the Claimant had groped and thereby sexually assaulted a fourteen year old schoolgirl whom he had also humiliated and frightened and, for this reason, he was a paedophile.

82. The ITN journalist was Mark Williams-Thomas. He says that he cannot recall the Defendant telling him that she was 14 at the time. He does remember knowing that

she was still at school at the time and was under 16. He was not cross examined about this evidence.

83. While this means that the Claimant has not proved precisely the facts on which the innuendo meaning is based, in my judgment he has established sufficient for an innuendo meaning which is more serious than the natural and ordinary meaning. Frightening and humiliating a girl who is under 16 is more serious than doing the same to an adult. Groping and thereby sexually assaulting a girl who is under the age of consent is also more serious than doing the same to an adult woman. The allegation that the words also meant that the Claimant was a paedophile adds nothing to the meaning that he had sexually assaulted a girl who was under 16. So far as they do, that is not an additional meaning which I consider the words bore with the limited additional facts known to Mr Williams-Thomas that the Claimant was able to prove.

84. The Claimant has sued in slander for the ITV words. Mr Dunham has accepted that he cannot prove financial loss. By his amendments to the Particulars of Claim he relies on two categories of slander which are actionable without proof of special loss. He need only establish one. In my judgment he can rely on both.

    i) I accept that the words were calculated (for which read 'likely') to disparage him in his profession as an entertainer and comedian. I have, in considering the application for permission to amend, referred to Mr Price's argument that Mr Williams-Thomas was already aware of the Defendant's account of what Freddie Starr had done (from his work on the 'Newsnight' item) and her repetition of that account in the ITV words could have had no impact on the Claimant's reputation so far as he was concerned. In my view, though, in deciding whether words are likely to have the relevant effect, it is permissible to take into account any repetition which is reasonably foreseeable. Whether or not the Defendant authorised or intended the ITV words to be broadcast (and I return to this below in the context of the ITV broadcasts), it was in my judgment reasonably foreseeable that they would be. The Claimant was about 69 when the Defendant was interviewed, but he was still performing and still active as a comedian and entertainer. The ITV words did not allege the most serious form of sexual assault, but I accept that they were likely to disparage the Claimant in his profession.

    ii) In considering the application to amend, I explained that even in 2012 and long after the repeal of the Sexual Offences Act 1956, a person was still amenable to prosecution for something which was an offence under that Act at the time it was done. Section 14 of the Act prohibited an indecent assault on a woman. The prosecution would have to establish that the assault was 'indecent', but I am not concerned with whether the prosecution would necessarily succeed, but whether the words imputed that the Claimant had committed that offence. In my judgment, they did. To be relevant for these purposes, the imputed offence has to be punishable with imprisonment. An offence under s.14, committed in 1974, would have been punishable with a maximum of 2 years imprisonment. It is not necessary, as I understand it, for the Claimant to show that he was actually likely to be sent to prison if convicted of the particular act which was imputed.

    It follows that the ITV words are actionable even without proof of special damage.

85. Mr Price argued that the claim in slander for speaking the ITV words was an abuse of process. Since that publication was only to Mark Williams-Thomas and he already knew of the allegation, it could have had no adverse impact on the Claimant's reputation.

86. As I have said above, it seems to me plain that it was at least reasonably foreseeable that the ITV words would be broadcast. If that is so, it is wrong to confine attention to the immediate audience of the ITV words at the time the interview was filmed. They had a potential for a much wider audience which was reasonably foreseeable. I would not dismiss the claim based on the ITV words as an abuse of process.

87. The remaining defences on which the Defendant relies for this claim (justification, *Reynolds* privilege, qualified privilege) are more conveniently dealt with when I consider the claim based on the ITV broadcasts.

The ITV broadcasts

88. These were the Channel 4 News on 8th October 2012, 'This Morning' on 10th October 2012 and ITV News on 1st November 2012. On each occasion, ITV played a clip from the interview which the Defendant had given to Mark Williams-Thomas. On each occasion the clip included the ITV words and a statement to the effect that she had been a schoolgirl when she claims she was assaulted.

89. The Claimant alleges that the Defendant intended or authorised the ITV words to be broadcast. In her witness statement the Defendant said that she agreed to be interviewed by Mr Williams-Thomas for the 'Exposure' programme. This was essentially about Jimmy Savile and his sexual abuse. As I have already noted, the Defendant had a good deal to say about how she had been sexually abused by Jimmy Savile. She claimed that, while she had been a pupil at Duncroft, he had visited and encouraged her to perform oral sex on him on several occasions. She accepted that, in the course of the interview, she was also asked about the Claimant. She spoke the words complained of, but said, in her witness statement that she did not know or intend that they would be broadcast. In her evidence she said that she had understood from Mr Williams-Thomas that he was building up a dossier on Freddie Starr and her comments on him were for that purpose. She agreed that she did not know what particular part of her interview was going to be included in the broadcast. She agreed that anything which she said to him in the course of the interview was 'broadcastable'.

90. In his evidence Mr Williams-Thomas confirmed that the focus of 'Exposure' was Jimmy Savile. The programme had been largely completed when he had interviewed the Defendant on 2nd October 2012 and she was told that this was so. However, they still wanted to gather supporting information regarding Savile. He was asked what authorisation the Defendant gave for the interview to be broadcast. He said that there would either have been a written authorisation or (which was more likely since this was an interview for a news, rather than a current affairs, programme) she would have signified her agreement on camera. In one way or another the Defendant had indicated that she was happy for him to use the material in any way he saw fit.

91. I accept Mr Williams-Thomas's evidence which is consistent with the Defendant's. It is also consistent with her evidence that there were several takes of the interview and

that at various times he asked her to express herself more clearly (including in what she was saying about the Claimant). All of this is compatible with Mr Williams-Thomas wanting (and obtaining the Defendant's authorisation for) film which could potentially be broadcast.

92. The Defendant will not have known the precise circumstances in which her interview would be broadcast, but I accept that she was prepared to leave that to the discretion of ITV. She had made no secret of the fact that she was a school girl at the time of the incident with Freddie Starr and I accept that she impliedly authorised her interview to be accompanied by a statement to this effect.

93. It follows that I agree she was a co-publisher of the ITV broadcasts.

94. The meaning of the ITV broadcasts was that the Claimant had groped the Defendant when she was a schoolgirl and that he had thereby sexually assaulted her. It also meant that he had frightened and humiliated her.

Justification and the ITV words and ITV Broadcasts

95. In essence the meanings which I have said the ITV words and the ITV broadcasts bear are meanings which the Defendant has said are true. Thus she is relying on the common law defence to a claim in defamation (whether libel or slander) of 'justification'. This defence is abolished and replaced with a statutory defence of 'truth' by Defamation Act 2013 s.2, but that provision only came into force on 1st January 2014 and is not relevant to the claims which I am considering.

96. It is for the Defendant to establish that the meaning of the words she published was true. The parties were agreed that I must apply the ordinary civil burden of proof. Thus I must consider whether it is more likely than not that they are true. I bear in mind that the words, as I have found, imputed a criminal offence. That does not change the standard of proof. It does mean that I must look rather harder at the evidence to see whether that standard is satisfied since 'the more improbable an allegation the stronger must be the evidence that it did occur before, on the balance of probabilities, its occurrence will be established.' *Chase v News Group Newspapers Ltd* [2002] EWCA Civ 1772 at [35] per Brooke LJ. That said, the sexual assault which was imputed was not, as I have said, of the most serious kind.

97. The Defendant's evidence was that her allegations were true. She had been a pupil at Duncroft since she was 14. On 7th March 1974 she was 15. She was among a group of about 5 girls from the school that went to a recording of an episode of 'Clunk Click' which was a programme hosted by Jimmy Savile. She can be seen among a group of young people on the stage in footage of the programme. One of the guests on the show was Freddie Starr. He, too, can be seen in the footage.

98. The Defendant says that, after the show, she with the other Duncroft girls and some other people met with Savile. Freddie Starr joined them. She says that there came a point where he grabbed or squeezed her bottom. She says that this was something she commonly experienced at the time from men, despite her age. In her evidence she said that she recognised it as the first stage in what was called a 'goose'. The next stage of a goose was that the man would grab or touch the woman or girl's breasts. That, too, had often happened to her. On this occasion, though, she was repelled by Freddie

Starr's smell. It was a male smell, a mixture of stale sweat, halitosis and stale cologne. The smell strongly reminded her of her step-father who had sexually assaulted her since the age of 4. She recoiled and made a fuss. Freddie Starr then said 'I wouldn't touch you anyway. You're a titless wonder.' She says she was frightened. She was also humiliated. Her breasts were small. She was self-conscious of them. To have attention drawn to them in this manner was deeply hurtful.

99. The Claimant said that nothing of this kind took place. He had not touched the Defendant. He had said nothing of the kind which she attributes to him. As I have mentioned previously, when first asked about the occasion in 2012, he denied that he had ever appeared on television with Jimmy Savile. He agreed that that was a mistake. He had been in business for 55 years and had done about 3,000 – 4,000 television shows in the course of his career. In the interview which he gave on camera for 'This Morning' on 10th October 2012, he said that he had shot straight off with his manager after the show. He added, 'We never stayed behind'. In his evidence he said that he and his manager, stayed behind for 10 minutes in the Green Room. When he was asked about what he had said on 'This Morning' he responded, 'That night we did go straight off, after we finished a coffee or something.' A little later in his evidence he said that his wife had also been with him (this was his second wife, Sandy). His witness statement had made no mention of his wife being present. He explained, that this was because he had been trying to get her to come to court but her present husband would not let her come. After hearing Mr Starr give evidence, my conclusion is that he has very little, if any, recollection of that night at all.

100. The Claimant's case is that the Defendant is mistaken. Either these things never occurred or they were done by someone completely different. In a Part 18 Request of his Particulars of Claim he was asked whether it was alleged that the Defendant knew her allegations were false. He replied,

> 'The Claimant does not need to and does not make any allegation about whether the Defendant knew that her allegations were false.'

In her Amended Defence the Defendant has relied on qualified privilege. In his Re-Amended Reply, the Claimant has not pleaded that the Defendant was malicious. While malice may be demonstrated in a number of ways, a classic form is where the Defendant knew that what was said was untrue. That, as I say, was not pleaded by the Claimant. There is little scope for a plea of malice in response to a defence based on *Reynolds* privilege. The Amended Defence does rely on *Reynolds*, but it does also plead qualified privilege of the duty/interest kind. To this malice would be an answer since the privilege is only *qualified*. Because of this state of the pleadings, I agreed with Mr Price that it was not now open to the Mr Dunham to cross examine the Defendant on the basis that she had made her allegations about the Claimant knowing them to be untrue or that she had deliberately manufactured a false account. He did not do so.

101. He did put to the Defendant that she was mistaken. She accepted that these events had taken place over 40 years ago, but she said that the insult about her breasts and what led up to it had been particularly hurtful and had stayed with her. She agreed that she had been prescribed Lithium at the time and her memory of some of the surrounding circumstances was hazy, but she said, of the core elements – the grabbing of her bottom, the expression 'titless wonder' and the fact that it was Freddie Starr who had

done these things she was certain. She agreed that she could not be certain if the smell which came from the Claimant included alcohol (the Claimant does not and did not drink alcohol), but she was sure that the odour had reminded her of her step-father. She denied that she had changed her story from saying that the Claimant had attempted to molest her to saying that he had succeeded in grabbing her bottom. She said he had succeeded in touching her bottom. He had attempted to go further with the 'goose' but he had not been able to do so because of her protests.

102. Susan Bunce gave evidence for the Claimant. As I have said, she was another of the Duncroft girls who attended the recording of 'Clunk Click' on 7th March 1974. She, too, was 15 at the time. She recalls that, after the show, they were taken to a room behind the theatre. There were 15-20 people present. She remembers that the Defendant was wearing rather old-fashioned clothes which led to her being teased by the other girls. At one point, while the Claimant was in the room, one of them said aloud to him, 'she [i.e. the Defendant] wants to know if she is attractive and if you would fancy her.' The Claimant went towards her in a playful manner and inspected her as if he was an army parade sergeant. Ms Bunce says the Claimant did not touch the Defendant and was not even within touching distance, but suddenly the Defendant jumped back as if a wasp had flown in her face and waved her hands in front of her. There was no obvious cause for this behaviour. The Claimant did not insult the Defendant. I will need to return to this and other aspects of Ms Bunce's evidence later.

103. Witness C gave evidence that when she was 15 and also a pupil at Duncroft she went to the BBC. There was only one occasion when she made such a trip. A Jimmy Savile programme was filmed. Afterwards they went to a room and Freddie Starr came in. She asked him for something to remind them of the trip. He said that she could have a lock of his hair. He then put his hand down the front of his trousers and said, 'you can have a lock of my pubic hair.' Jimmy Savile was there and he laughed.

104. In his evidence the Claimant denied doing any such thing as Witness C described. He said that he had been wearing tight trousers and a wide belt, as can be seen in the footage of the 'Clunk Click' recording, and it would have been physically impossible for him to do what Witness C alleged. However in her evidence, Ms Bunce had said that after the show when Freddie Starr came into the room, she asked him for a cigarette. He said she could help herself from a packet in his pocket. She recalls reaching into his trousers' pocket and the trousers were loose. I agree with Mr Price that the likely explanation is that the Claimant had changed after his appearance on the show. The Claimant said that it would be standard for him to be allocated a dressing room when he appeared on TV. Ms Bunce had no recollection of an incident of the kind which Witness C described and thought that Witness C had attended a different episode of 'Clunk Click', yet Freddie Starr appeared on only one BBC show with Jimmy Savile. The Defendant's evidence makes no mention of this incident either.

105. Witness C accepted that her memory of this visit was incomplete. She could not recall the name of the show or the celebrities who appeared on it or the month in which it had taken place. She was not sure if Freddie Starr had been on the show itself. However, she was sure that it had been Freddie Starr who offered her some of his pubic hair as a memento of the occasion.

106. Witness C had first been contacted by Liz MacKean on 16th November 2011 (and so two days after Ms MacKean interviewed the Defendant). As part of her investigation on Jimmy Savile, Ms MacKean tried to make contact with as many of the girls who had been at Duncroft as she could. She had succeeded in contacting 45-60 of them, mostly through the Friends Reunited website. When Witness C spoke to Ms MacKean she remembered Jimmy Savile coming to the school. She recalled as well that a number of girls had said that he had encouraged them to perform oral sex on him. She did not say this had happened to her. But she did mention the incident with pubic hair which had taken place in Jimmy Savile's presence and Savile had laughed. She did not name Freddie Starr but she said he was 'A certain person who is now in the celebrity Jungle.' Ms MacKean said that made it obvious that she was referring to the Claimant since he was on that show at the time that she was in contact with Witness C.

107. I said I would return to another aspect of Ms Bunce's evidence. Before the recording of the show, she said she bumped into Freddie Starr in the corridor and recognised him. He came and joined a group that was waiting for the show to start. There was a jocular atmosphere. Ms Bunce who says that she was particularly small was picked up by the Claimant and held in the air. One of the Duncroft girls then said 'why don't you kiss him?' Ms Bunce did. In her interview with the police subsequently on 9th May 2013, she said,

> '"Well I'm up for it" he said …
>
> So I kissed him. Still, he's still holding me, and, but instead of just like, erm, just a kiss, and he did actually, looking back, it could wrong, it did actually linger on rather, it was a bit of, er, you know, the tongues tangled up there, and it was an extended long kiss.'

Later in her interview she described it as,

> 'one of the more passionate kind of kisses that people would do in private.'

She said that the Claimant offered to give her a lift home after the show, but she declined.

108. The Claimant has no recollection of kissing Ms Bunce. He said the entire thing was fiction and lies. He says he did not offer her a lift because, after the show, he had to go elsewhere urgently.

109. Ms Bunce also recalled a conversation with the Claimant about her age. She had asked him to guess. He suggested 18. She said he was good at guessing and left him with the impression that she was older than her true age at the time of 15. In her police interview, she said that this conversation took place after her kiss with the Claimant. In her evidence she said it was before.

110. In the end I have to decide whether the Defendant's account is true on the balance of probabilities. I must do so, taking account of the oral evidence of these witnesses (which, necessarily, I have only summarised above), the documentary evidence that

has been put before me and the submissions of Mr Price and Mr Dunham. In my judgment the Defendant's account is true.

i) It is, of course, a matter which took place a long time ago. But I find that the Claimant's remark to the Defendant, 'you're a titless wonder' was a striking one. It lodged in her memory. She was sensitive about her appearance (as are many teenage girls) and this remark in a crowded room which included some of the other girls at her school was understandably humiliating. I reject the submission by Mr Dunham that the Defendant had confused the Claimant with some other celebrity.

ii) I find as well that the Defendant's account of what led up to this remark by the Claimant is also more likely to be true than not, that is the Claimant touched or grabbed her bottom and she recoiled. The recoil, at least, was seen by Susan Bunce. Ms Bunce did not see what caused the Defendant to behave in this fashion. I have considered Mr Dunham's submission that it may have been the Claimant's smell which the Defendant associated with her step-father, but I have decided that it was more likely than not the smell, plus the sexual advance which grabbing of the Defendant's bottom was.

iii) The Defendant was being given Lithium at Duncroft at this time. She has accepted that this affected her memory. On peripheral matters her account has varied. Thus she said at some points that the Claimant's smell included a component of alcohol. She has accepted that she may have been wrong about that. In her BBC interview she said she was 14 at the time. We know that she was in fact 15. But in its core elements, her account has been consistent.

iv) In her BBC interview the Defendant had said 'I had a famous person who would try, he smelled awful, he smelled of sweat and alcohol and it made me heave just to be near him, so I certainly didn't want him to do anything to me'. Mr Dunham emphasised the word 'try' and suggested that the Defendant had later in her ITV interview sexed up what was previously described as an attempt to an actual grope. I reject this argument. In the first place, in the BBC interview she did not go on to explain what was 'tried'. In her evidence she said that the Claimant had tried to complete the 'goose', but got no further than grabbing her bottom. Secondly, the account which the Defendant gave in her FanStory words (and which was written in about 2008 so well before the BBC interview) was that the Claimant's hands 'wandered incessantly' and the meaning attributed to this in the Particulars of Claim was that the Claimant had groped and sexually assaulted her. Next, I do not accept that Mr Williams-Thomas encouraged the Defendant to elevate an 'attempt' to a 'grope' for the purpose of the ITV interview. I agree with his response that that would have been unprofessional. Mr Williams-Thomas, like Ms MacKean and Mr Jones, impressed me as a professional reporter and broadcaster. It would also be a curious thing to do in relation to a person who was not the focus of the programme he was making and where the difference between an attempted grope and an actual grope was not of the highest magnitude. I do not attach significance to the Defendant's omission to use the word 'goose' until she gave evidence. It is not a common idiom now and she would be right to consider that her audience (whether readers of FanStory, watchers of

'Newsnight' or viewers of the ITV interview) would be mystified if she used it.

v) As I have said, I find that in truth the Claimant has no recollection of what actually happened on this evening. He originally said that he could not remember being on a show with Jimmy Savile at all. I accept that the Claimant has appeared on several thousand TV shows and he could not be expected to remember each one, but his response when initially approached was to deny his appearance categorically – not to say he could not remember. He then said that he had left immediately after the show. In his evidence he said he may have stayed for a short time with him manager, Mr Cartwright. Later in his evidence he said that his wife remained as well with him and Mr Cartwright. There has been no evidence from either Mr Cartwright (whose absence in the USA would not have prevented him providing a witness statement) or the Claimant's wife at the time (who could have been witness summonsed if she was unwilling to attend voluntarily).

vi) In his evidence, Mr Starr accepted that he had a voracious sexual appetite in 1974. Slapping a girl's bottom is what people did in the 1970's, he said. It did not mean anything and was acceptable. He revelled in the reputation of being a 'cheeky bastard' as he put it in his autobiography. He agreed that he did make jokes about women's breasts. 'Every man does it, even my 15 year old son', he said in evidence. He was asked about a passage in his autobiography which recounted his first meeting with Sandy, whom he later married in the mid-1970s. The book recorded him as saying to this woman to whom he had not previously spoken and, when learning her name, 'Hello Sandy. Can I play with your fur purse?' He said in his evidence this was inaccurate. In fact he had asked if he could play with her fur clitoris.

vii) In his witness statement, the Claimant said 'my humour was and remains the opposite of humiliation.' That is difficult to reconcile with an extract which Mr Price played from one of the Claimant's shows in which he takes two women from the audience on to the stage: one beautiful; the other, not so. The audience is repeatedly invited to laugh at the latter. Mr Starr emphasised that this was an adult show to which children were not admitted. That may be and it may explain why the jokes could be sexually frank. But it also showed that the Claimant felt free to raise a laugh at another person's embarrassment about her body.

viii) The Claimant's response was to say that his behaviour towards young girls was different. He said he didn't like younger women. In his interview for 'This Morning' he had said 'I always kept away from girls because I knew it spelt trouble.' In his evidence he said the cut off point was 22 or 23. However, his behaviour on the very same occasion as the Defendant spoke about tells a different story. Susan Bunce was a small 15 year old. He picked her up, held her in the air and gave her a long passionate kiss. Later in the evening he offered to drive her home. There was, according to Ms Bunce, a conversation about her age in which she allowed the Claimant to believe that she was 18. In her evidence she said that this took place before the Claimant had kissed her. Even if this was the case, it would mean that the Claimant's cut off below which he avoided girls was lower than he was prepared to admit. However, I

prefer the account which Ms Bunce gave in her more detailed interview with the police. In this she said the conversation about her age took place only after the incident in which she and the Claimant had kissed. I also accept the evidence of witness C. When she, also a 15 year old school girl, asked for a memento, he offered her a tuft of his pubic hair. I reject the claim that this was impossible because of the tightness of his trousers or the width of his belt. Ms Bunce had described him as wearing loose trousers when he invited her to look in his pocket for a packet of cigarettes. He had obviously changed from the trousers he had been wearing during the 'Clunk Click' show.

ix) The accounts of the Defendant, Witness C and Ms Bunce appear to be independent of each other. There is no evidence to the contrary. Indeed, Ms Bunce was called in the Claimant's support. Ms Bunce did not see what the Claimant did and said to Witness C. Witness C and the Defendant gave no evidence about what took place between Ms Bunce and the Claimant. I do not find this surprising. There were lots of people in the room. Each of these three remembered most clearly what happened to her. The accounts of Ms Bunce and Witness C however, provide support as to the Claimant's behaviour towards 15 year old girls that night. They contradict the Claimant's evidence that below 22 or 23 was the cut off for his interest in women. They support the Defendant's account that it included girls of 15.

111. The ITV words also meant that the Claimant had frightened the Defendant. She said in her evidence that it was his smell which frightened her because it resembled her step-father. In my judgment the ITV words made the same link. It may be that in this sense the words were not defamatory of the Claimant, but, to the extent that they were, I find they were true.

Other defences for the ITV words and ITV broadcasts

112. Justification is a complete defence to a claim for slander or libel. This means that it is not necessary for me to rule on the Defendant's alternative defence of *Reynolds*. A further reason not to do so is that the *Reynolds* defence has been abolished by Defamation Act 2013 s.4(6) and replaced with the statutory defence of publication on a matter of public interest. It is sufficient for me to record that *Malik v Newspost Ltd* [2007] EWHC 3063 (QB) would in my view have been a formidable obstacle to the Defendant succeeding in the *Reynolds* defence despite Mr Price's submissions to the contrary.

113. It is a disputed issue as to whether a defendant who fails on *Reynolds* can succeed on qualified privilege – see *Hays plc v Hartley* [2010] EWHC 1068 (QB) at [69] and *Seaga v Harper* [2009] AC 1, 15. Since I am not reaching a concluded view on the applicability of *Reynolds* it would not be right for me to consider the hypothetical applicability of a residual qualified privilege defence.

114. However, for the reasons which I have given the claims based on the ITV words and ITV broadcasts fail.

The eBook

115. In view of my conclusions in relation to justification above, I can be relatively brief in relation to this claim.

116. The words are not identical to the ITV words but the sting of the libel in the eBook is the same. Assuming that the reader would recognise the Claimant as 'F' (as to which see below), the essential allegation is that the Defendant when an under-age girl refused a sexual advance from the Claimant who then humiliated her by making the same remark as was alleged in the ITV words. I have found that the Defendant has proved these allegations to be true. I do not accept that the words meant that the Claimant assaulted underage girls in the plural. However, as it happens, I have also found that he did engage in a passionate kiss with another underage girl and did offer yet another underage girl a tuft of his pubic hair.

117. I accept that the eBook words also meant that the Claimant and Jimmy Savile had encouraged underage girls to drink alcohol. The Defendant has not shown this to be true. However, as Mr Dunham realistically accepted in the course of his closing submissions, this allegation was put in the shadows by the others. This is another way of saying that although the Defendant has not proved the truth of this particular matter, the Claimant's reputation was not materially affected because of the truth of the remaining charges. I find that the Defendant is thus able to rely on s.5 of the Defamation Act 1952.

118. There are, though, two interconnected matters which Mr Price raises which mean that the Defendant does not need to rely on the defence of justification to the eBook publication.

119. The first concerns identification of the Claimant. He is not named, but referred to as 'F', a popular comedian of time. The Claimant pleads that this refers to him because (a) he was a popular comedian in the time referred to, (b) his name begins with 'F', and (c) millions of people saw the ITV broadcasts and (after 22nd October 2012) BBC Panorama and, when they read the eBook, would make the link between the person to whom the Defendant referred.

120. There are a number of difficulties in the way of the Claimant making good this case:

i) The eBook does not say that the name of person concerned began with 'F', simply that was the code which the Defendant was going to use. But, even if I assume that some readers made the (correct) assumption that it did mean that the comedian's name began with F (a) and (b) alone give insufficient clue as to the identity of the person about whom she was speaking. The evidence of Ms MacKean, Mr Jones and Mr Williams-Thomas was that none of them knew who F was until the Defendant told them. Mr Dunham argued that a reader of the eBook could have consulted the internet and found that the Claimant was a popular comedian in the 1970's whose name began with F. However, there is no pleading or evidence to this effect. Nor do I know how many other comedians whose names began with F would have been thrown up. The size of that group would make a difference as to how realistic it would be for a reader to assume that 'F' was the Claimant.

ii) The Claimant relies as well on (c), but a reader of the eBook who was able to identify the Claimant as F because of the broadcasts would have learned that

he vigorously denied the Defendant's allegations. Furthermore, Channel 4 News broadcast the item because of the Claimant's actions in applying unsuccessfully for an injunction and because of his denials in the media of the Defendant's allegations (which had not at that stage been published by her). Mr Dunham acknowledged the force of these points which had been made by Mr Price. He responded by saying that there would be some readers of the eBook who had not seen the broadcasts. However, that brings him back to the difficulty which I mentioned in (i) above.

iii) The numbers of those who read the eBook in this jurisdiction is uncertain. The Claimant pleaded that there was a significant number. This was not admitted and he called no evidence in support of the contention. In cross examination the Defendant said she had sold 100 copies of Part 1 of her book (an earlier part than the eBook which contained the words complained of). At least some of those were to the United States of America and there is no claim in respect of publications outside the jurisdiction. There was no cross examination and no other evidence in relation to sales of the eBook.

121. The related point is that a claim in defamation will be an abuse of process if it did not seek redress for a real and substantial tort because the publication within the jurisdiction was minimal or the damage to the Claimant's reputation by the publication was insignificant - see *Jameel v Dow Jones Inc* [2005] QB 946 (CA). That seems to me to describe the position in relation to the eBook, given (at most) the very small number of copies sold in the jurisdiction and that readers of them would only have identified the Claimant if they had seen the broadcasts for which I have held the Defendant is not liable, but which anyway would have included the Claimant's denials of the Defendant's allegations.

122. For all of these reasons the claim in relation to the eBook fails.

Summary of conclusions

123. The claim in slander based on the Defendant's interview to the BBC is time barred. I have refused to disapply the ordinary limitation period. Accordingly, the claim fails.

124. The claim in libel based on the broadcast of a clip from the BBC interview in 'Panorama' was only recognisably about the Claimant because the BBC also included footage of the Claimant. The Defendant did not authorise or intend the BBC to broadcast a section of her interview in conjunction with material which identified the Claimant as the 'famous person' about whom she spoke. Accordingly, she is not liable for this composite broadcast and this claim fails.

125. The interview which the Defendant gave to ITV did name the Claimant. He sues her for this in slander. He has accepted that he cannot establish any financial loss in consequence, but that in itself is not an obstacle to this claim since the Defendant's words imputed that he had committed a criminal offence (indecently assaulting a woman) and was likely to disparage him in his profession as a comedian and entertainer. However, she has proved that it was true that he groped her (an under-age school girl) and humiliated her by calling her a 'titless wonder'. His behaviour and smell also frightened her because it reminded her of her step-father who had sexually abused her as a child. Because her words were true, this claim fails.

126. A clip from the ITV interview was broadcast three times. The Defendant authorised its broadcasting and she is therefore to be treated as a co-publisher of those broadcasts. However because her words were true, this claim also fails.

127. The Claimant has sued the Defendant for publication of her memoir on FanStory only after 8th October 2012. He has not been able to prove that it was still available after this date. He accepts, therefore, that this claim fails.

128. The Claimant has also sued the Defendant for the publication of her eBook. The essential allegations were the same as she had made in the ITV interview. They were true. Her eBook also alleged that the Defendant (along with Jimmy Savile) had encouraged her to drink alcohol, although she was underage. This was not true, but in view of my finding that she has proved the more serious allegations, this matter did not seriously injure the reputation of the Claimant. In consequence, she can successfully defend the claim against her in relation to the eBook. In any event, no evidence was called as to the readership of the eBook which, at most, was very small. The eBook did not name the Claimant but referred only to 'F', a popular comedian. On their own, there is not the evidence that these matters would have been sufficient to identify the Claimant as 'F' to a significant number of readers. Those who saw the ITV broadcasts might have been able to join the dots, but if they saw the broadcasts they would, inevitably, have also seen the Claimant's denials of the allegations. Putting all of this together, the claim in relation to publication of the eBook does not represent a real and substantial tort. For this reason as well, the claim in relation to the eBook fails.

129. I have found that all of the Claimant's claims fail. It follows that judgment must be entered for the Defendant.