Neutral Citation Number: [2022] EWHC 2891 (KB)

Case No: QB-2019-002452

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/11/2022

Before :

THE HON. MRS JUSTICE STEYN DBE

- -

Between :

RACHEL RILEY	**Claimant**
- and -	
MIKE SIVIER	**Defendant**

- -
- -

John Stables (instructed by **Patron Law**) for the **Claimant**
David Mitchell (instructed by **George Green LLP**) for the **Defendant**

Hearing dates: 18, 19 and 20 July 2022

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 16 November 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HON. MRS JUSTICE STEYN DBE

Mrs Justice Steyn DBE :

A. Introduction

1. This is the judgment following a trial of a libel claim brought by the claimant, Ms Rachel Riley, against the defendant, Mr Mike Sivier. The claimant is a television presenter and the defendant is a blogger who runs a website called voxpoliticalonline.com ('the Website').

2. The claim concerns an article bearing the headline "*Serial abuser Rachel Riley to receive 'extra protection' – on grounds that she is receiving abuse*" ('the Article') first published by the defendant on 26 January 2019, and which he continues to publish on the Website. The words complained of are set out in the Appendix to the judgment of Warby LJ in *Sivier v Riley* [2021] EWCA Civ 713, [2021] EMLR 22.

3. On 11 December 2019, Nicklin J determined that the words complained of in the Article mean:

> "(1) The Claimant has engaged upon, supported and encouraged a campaign of online abuse and harassment of a 16-year-old girl, conduct which has also incited her followers to make death threats towards her.
>
> (2) By so doing, the Claimant is a serial abuser and has acted
>
> (a) hypocritically: by complaining about being the victim of online abuse and death threats herself whilst at the same time committing serial abuse of someone who has in consequence herself now been subjected to death threats (but someone who, unlike the Claimant, cannot afford additional security protection);
>
> (b) recklessly and irresponsibly: by provoking her followers to subject the 16-year-old to further abuse and harassment, including death threats; and
>
> (c) obscenely."

I shall refer to this as the 'single meaning'.

4. Nicklin J also held that meaning (1) is a statement of fact, whereas meaning (2) is an expression of opinion, and the meaning as a whole is defamatory at common law.

5. The defendant sought to rely on three defences: (a) the defence of truth, pursuant to s.2 of the Defamation Act 2013 ('the 2013 Act'), in respect of meaning (1); (b) the defence of honest opinion, pursuant to s.3 of the 2013 Act, in respect of meaning (2); and (c) the public interest defence, pursuant to s.4 of the 2013 Act, in respect of the whole meaning. Each of those defences was struck out by Collins Rice J on 20 January 2021: *Riley v Sivier* [2021] EWHC 79 (QB). Refusing permission to appeal in respect of the defences of truth and honest opinion, Arnold LJ observed that on analysis what the judge had done was to grant summary judgment dismissing the defences on the basis that they had no real prospect of success and there was no other compelling reason to

permit the defendant to raise them; and there was no real prospect of the Court of Appeal reaching a different conclusion.

6. However, Arnold LJ granted permission to appeal against the order striking out the public interest defence and, on 14 May 2021, the Court of Appeal allowed the defendant's appeal, setting aside that part of Collins Rice J's order. Warby LJ observed that the appropriate course was for the public interest defence to be assessed at trial: *Sivier v Riley*, [2].

7. Consequently, the primary issues for determination in this trial have been whether the Article has caused or is likely to cause serious harm to Ms Riley's reputation, within the meaning of s.1 of the 2013 Act; and, if so, whether Mr Sivier has established a public interest defence to the claim pursuant to s.4 of the 2013 Act. If Ms Riley succeeds on liability, a further issue arises as to what sum should be awarded in damages. The defendant accepts that if the claim succeeds it would be appropriate to grant an injunction.

B. History of the proceedings

8. The claim form, attaching Particulars of Claim, was issued on 8 July 2019. On 25 October 2019, Saini J ordered a trial of preliminary issues concerning the meaning of the words complained of, whether they constitute statements of fact or opinion, and whether they defame the claimant at common law. That trial took place before Nicklin J on 11 December 2019 and resulted in the determinations to which I have referred in paragraphs 3-4 above.

9. In compliance with the order of Nicklin J, the claimant served Amended Particulars of Claim on 16 December 2019. The defendant served a Defence on 29 January 2020. The appendix to the Defence set out 67 tweets on which the defendant relied.

10. On 4 June 2020, the claimant applied for an order:

> "1. That the Defence be struck out in its entirety, alternatively that the following paragraphs of the Defence be struck out, on the grounds set out at paragraph 2 below:
>
> 1.1 the final sentence of §1;
>
> 1.2 §§8 to 35 inclusive;
>
> 1.3 §§48 to 50 inclusive.
>
> 2. The grounds for striking out the Defence in its entirety or alternatively striking out the paragraphs listed in paragraph 1 above are:
>
> 2.1 The defence of truth and its particulars are impermissibly and/or irrelevantly pleaded and disclose no proper defence.
>
> 2.2 The particulars of truth specified in the application notice do not allege primary facts in relation to the Claimant's conduct that are properly arguable, or are impermissible as not

> alleging primary facts at all, or are irrelevant, or seek to reverse the burden of proof, and ought not to have been pleaded.
>
> 2.3 The impermissible inclusion in the Defence at §1 and §50 of matters pleaded being neither related to the claim nor admissible as Burstein particulars. These ought not to have been pleaded."

11. On 8 June 2020, Nicol J made directions for the hearing of the claimant's application, including a direction enabling the defendant to file and serve any evidence on which he wished to rely in opposition to the claimant's application by 22 June 2020. The defendant applied for permission to make some limited amendments to his defence, including the addition of four tweets relied on at paragraph 21.

12. Following a hearing on 11 December 2020, Collins Rice J gave the judgment to which I have referred in paragraph 5 above on 20 January 2021. The order of 20 January 2021 struck out the defences of truth, honest opinion and publication on a matter of public interest. No order was made in respect of the claimant's alternative application for particular paragraphs or parts of paragraphs to be struck out. Collins Rice J considered the application to strike out each of the amended defences by reference to the defendant's draft amended defence. Having concluded that those defences fell to be struck out, the defendant's application for permission to amend (which did not affect the remaining aspects of his case) was dismissed.

13. The defendant appealed. On 22 February 2021, Arnold LJ granted permission on ground 1 by which the defendant challenged the striking out of his public interest defence and refused permission on grounds 2, 3 and 4 which challenged the striking out of the defences of honest opinion and truth, respectively, and the costs order. Accordingly, the defences of truth and honest opinion provided by sections 2 and 3 of the Defamation Act 2013 have been dismissed.

14. As I have said, on 14 May 2021, the Court of Appeal allowed the defendant's appeal, setting aside the order striking out the public interest defence. On the same date, the Court of Appeal made directions, including an order that:

> "By 4pm on 23 June 2021 the Defendant do file and serve an Amended Defence. Such Amended Defence must not rely on sections 2 or 3 of the Defamation Act 2013. No permission is given to make any amendments other than the deletion of reliance on those defences. If permission to amend is to be sought an application must be made to the court of first instance."

15. The defendant filed and served an Amended Defence ('AmDef') on 7 July 2021. In the Amended Defence, the defendant has retained the particulars that had been pleaded in support of the defences of truth and honest opinion on the basis that "*they are relevant to his defence of publication on a matter of public interest*" (AmDef, §§4 and 37). In addition, about nine pages of material were added to the particulars in support of the public interest defence, and the original appendix of 67 tweets was expanded to incorporate an additional 176 tweets, bringing the total to 243 (including a few

duplicates). No application for permission to amend was made but the claimant consented to the amendments, albeit maintaining that parts of the pleading were impermissible.

16. The claimant filed and served a Reply to the Amended Defence ('Reply') on 29 July 2021 (erroneously dated 29 January). In the Reply, the claimant asserted (among other matters) that the following parts of the Amended Defence are irrelevant and stand to be struck out: the final sentence of §1, §§27-35, the first two sentences of §45, the first sentence of §46, §§56-60 and §§70-72.

17. On 4 July 2022, the claimant's solicitor wrote to the defendant's solicitor inviting the defendant to agree to strike out the final sentence of §1 and §§70-72, as well as the corresponding paragraphs of the defendant's trial witness statement at §§20-21. The claimant's solicitor stated:

> "The basis of our objection to these parts of the AmDef and the corresponding parts of your client's statement is that they are impermissible pleading of – and witness evidence as to – allegations not complained of, particulars that are not admissible under the *Burstein* principle, and an attempt at pleading inadmissible particulars of general bad reputation.
>
> If you do not agree to remove the parts of the AmDef and witness statement as above, we reserve the right to apply for their strike out at the start of trial."

The defendant did not accede to these parts of the Amended Defence or his witness statement being struck out.

18. The trial was heard on 18-20 July 2022. In the claimant's skeleton argument filed one week prior to the trial, the claimant indicated her intention to apply at the outset of the trial to strike out §1 (final sentence) and §§70-72 of the Amended Defence and §§20-21 of the defendant's statement for trial. Counsel for the claimant, Mr Stables, made that application on the first morning of the trial, as anticipated in his skeleton argument. He sought to rely on the application notice filed on 4 June 2020, in which the claimant had applied to strike out §1 (final sentence) and §§48-50 of the Defence, which were now contained in §1 (final sentence) and §§70-72 of the Amended Defence.

19. Mr Stables submitted that when the application dated 4 June 2020 was heard on 11 December 2020, those parts of the application were not argued for lack of time and were not decided. In support of this contention he relied on Collins Rice J's judgment at [70] where she said:

> "The defence also pleads matters relating to Ms Riley's pleaded particulars as to publication, serious harm to her reputation (section 1 of the Defamation Act 2013), and remedy. Unlike the substantive defences, these are matters which it [is] Ms Riley's responsibility to establish in due course, if so advised, and Mr Sivier is entitled to put her to proof. <u>They were not canvassed in detail before me, and I am not satisfied of a clear basis for a</u>

> ruling at this stage relating to these aspects of Mr Sivier's defence." (Emphasis added.)

20. I do not read that passage as indicating that any part of the claimant's application was adjourned to be determined as a preliminary issue at a later stage, rather than left for determination at trial. In any event, in circumstances where the claimant had not sought to have this aspect of her application determined as a preliminary issue at any stage during the 14 months following the judgment of the Court of Appeal, and it was not anticipated that determining the issues raised by the claimant at the end of the trial would result in the trial overrunning the time estimate, I rejected the claimant's application for these matters to be determined as preliminary issues. In the event, the trial that had been listed for 3½ days was completed within 3 days.

C. The witness evidence

21. Ms Riley and Mr Sivier each gave written and oral evidence. Ms Riley's evidence was completed on the morning of the first day of trial. Mr Sivier gave evidence on the afternoon of the first day and the morning of the second day of the trial. I found Ms Riley to be a credible and reliable witness. However, save to the limited extent that Ms Riley gave evidence going to the issue of serious harm or damages, her evidence – and in particular the matters on which she was cross-examined – was largely irrelevant to the issues for determination. Mr Sivier came across as intransigent. Although I accept he gave honest evidence, he was more intent on arguing his case than trying to remember what steps he had taken prior to publication of the Article, and to a considerable extent I found his evidence to be unreliable.

22. In addition, Ms Megan Tolkien a trainee solicitor at the firm representing the claimant, gave unchallenged evidence as to the times of publication of Mr Sivier's articles on the Website, the tweets which were hyperlinked in two articles published by Shaun Lawson on Medium.com and the circumstances of search for certain tweets and Facebook posts disclosed by the claimant.

D. The facts

Rose's initial tweets to Ms Riley

23. On 12 December 2018, Owen Jones, a well known journalist and prominent Labour Party supporter, tweeted: "*Celebrate good times, come on!*" adding a celebration emoji and a link to an article with the headline "*Lord Sugar says he will leave the country if Jeremy Corbyn is PM*". The same day, David Collier quote tweeted Owen Jones' tweet and commented: "*This is disgusting. A Jewish man says he will leave the country out of concern for the safety of his children and grandchildren if @jeremycorbyn takes power @OwenJones84 wants to celebrate 'good times'. He thinks it is funny? 4.3k likes? What has this country become?*"

24. On 14 December 2018, Ms Riley, whose Twitter account had about 610,000 followers, quote tweeted Mr Collier's tweet (incorporating Mr Jones' tweet) and commented:

> [Tweet 1] "I love comedy. Equal opportunities offensive works for me…
> I'm not laughing at this.

> I've heard it too many times from scared families.
> Seriously."

(Where tweets are given a number that is the number assigned to the tweet in the appendix to the Amended Defence; unnumbered tweets do not appear in the appendix.) Mr Jones sent a reply tweet to Ms Riley the same day saying: "*Mocking Alan Sugar has absolutely nothing to do with him being Jewish and it is absolutely disgraceful that you would imply this.*" (Tweet 2)

25. On 15 December 2018, at 9.16am, Ms Riley tweeted:

> "The Jewish man was @Lord_Sugar, the commentator @OwenJones84.
> Out of context, this could have nothing to do with antisemitism. For the thousands agreeing with Owen, many, as they've said, had no idea he was Jewish, just think he's a #%*$. To those people, fine. No AS, obviously"
>
> "But IN context, Alan Sugar, has echoed the voices of 40% of British Jews who've said they would seriously consider leaving if Corbyn was elected.
> IN context 85% of British Jews (along with over 30%+ of others) have said they believe JC is an antisemite, and they worry about it."

26. These tweets prompted a response from a 16 year old girl, whose name was initially given as Rosie and then as Rose ('Rose'), who had campaigned on mental health issues, and who had about 10,000 followers on Twitter. On 15 December 2018 at 9.48am Rose sent a reply tweet to Mr Jones and Ms Riley, stating:

> "The fact that Alan Sugar is Jewish has nothing to do with him being nasty. Also, a little reminder that Jeremy Corbyn is a PACIFIST and has won peace prizes. Do you really think that man would willingly persecute and spread racial abuse towards Jews? The Tories are racist enough".

This was the first communication between Rose and Ms Riley.

27. At 10.01am on 15 December 2018, Rose sent a further tweet in which she tagged Ms Riley (with the consequence that Ms Riley would have been notified of the tweet) in which Rose said:

> [Tweet 3] "Disappointed with @RachelRileyRR. Please don't believe the bias of the media that brings Jeremy Corbyn down. He is a man that would never spread hatred in society – he fights for equality. Use your platform to inform worried Jewish people that they're being fed lies by the media."

28. At 10.04am and 10.06am the same day Rose tweeted:

> [Tweet 4] "And having the nerve to call @OwenJones84 ignorant and racist? He's stated many times that his comments about @Lord_Sugar had NOTHING to do with his religion. It is frustrating that time and time again we are being labelled as racists whilst Tommy Robinson is let off the hook"
>
> [Tweet 5] "True Labour members would never be antisemitic. We believe in equality and using what is a few individuals to bring down the whole party is disgusting. Should we talk about islamophobia in the @Conservatives? @BorisJohnson calling Muslim women bank robbers and letter boxes? ['quizzical face' emoticon]"

29. At 12.09pm the same day Rose sent a further reply tweet to Ms Riley stating:

> "Rachel, Owen wasn't antisemitic and in fact, Lord Sugar being Jewish wasn't even mentioned in the interview! It's just so upsetting that you're encouraging people to have these opinions when so many of us are desperate for a labour government to change our lives".

30. At 6.05pm the same day, Rose again sent a reply tweet to Ms Riley (and to Piers Morgan and one other) in which she said:

> "She won't reply because she doesn't have enough common sense to understand".

31. On 16 December 2018, at 11.52am, Rose sent a tweet in which she again tagged Ms Riley, stating:

> "Now @RachelRileyRR is going for @georgegalloway. Does nobody understand that it is just as offensive to accuse someone of being antisemitic when they're not? I wish this smear would come to an end, it is damaging and I thought Rachel would be intelligent enough to understand that". (Emphasis added.)

32. The same day Rose added:

> "It's not being ignored. You will find that the majority of the Labour Party stand with Jewish people, including Jeremy Corbyn. As I've said before, it's the media and people like Rachel who wrongly use their platforms to spread the propaganda against Corbyn." (Emphasis added.)

33. One twitter user replied to Rose and Ms Riley, "*Rosie what drugs are you on*" (Tweet 6), while another replied to them both "*Are u pissed you dumb clown [clown face emoji] corbyn is antisemetic [sic] and the evidence is overwhelming!!*" (Tweet 8). Another twitter user sent a reply tweet to Rose and Ms Riley at 2.25pm (Tweet 7) stating: "*No Rosie it's still being ignored by the LP and if you really think that Jewish people believe Corbyn would stand with them, you are deluded. Not even your own Jewish MPs are*

protected within the party – look at the abuse @lucianaberger and @RuthSmeeth get in a daily basis". Rose responded:

> "I think you'll find that the 'evidence' you have seen is from right wing media and has been debunked, so don't you dare call me deluded. I would never support a racist party, my great grandad liberated Jewish concentration camps and I wouldn't align myself with antisemitism
>
> Because true labour members would never send racist abuse, they are often trolls. Racism is more rife in the Conservative Party and UKIP. I would recommend watching the video on antisemitism that was made by momentum facebook.com/PeoplesMomentu…@tania_shew".

34. At 5.44pm on 16 December 2018, Rose again sent a reply tweet to Ms Riley (and two others):

> "Being anti-Israel doesn't = antisemitism. Being anti-Israel is because of this. As @tania_shew has said, Israel is a country that many Jewish people have never visited and is far away but simply shares the same ethnicity of many British Jews [link to Guardian article 'Palestinian minister delivers Israel 'war crimes' referral to ICC']"

35. On 16 December 2018, Ms Riley tweeted (in a message that was not a reply to Rose, and in which she was not tagged):

> "On a separate note, a HUGE, MASSIVE heartfelt thank you to each and every person calling #Antisemitism out, showing your support, challenging the ignorant or the bigoted, or even just by fact checking what you're reading in this whole awful tale.
> It's been a long weekend. [heart emoji]"

36. Rose sent a reply tweet to Ms Riley at 9.59pm on 16 December 2018 stating:

> [Tweet 9] "Antisemitism means a lot to me but <u>you should feel ashamed of yourself Rachel</u>. I have been subject to horrible abuse for standing up against some of the awful media you have been sharing on here. I hope you can use this to learn and listen from those wanting a better future". (Emphasis added.)

37. A couple of minutes later Rose tweeted:

> [Tweet 10] "That's my final comment and now I have muted antisemitism and likewise from twitter so I can stop being trolled [unamused face emoji]. Night everyone and happy #socialistsunday to you all. x"

38. At 10.02pm on 16 December 2018, a twitter user ('Jimmy') responded "*Pathetic tweet*" (Tweet 11) and then sent a reply to Tweet 3 at 10.27pm (Tweet 14) in which he said

"*There are the words of someone is either antisemitic herself, or so incredibly ignorant of the issue she has no business lecturing a JEWISH WOMAN about racism directed against her"*. Although Rose had said she had given her final comment, at 10.45pm she sent a reply tweet to Jimmy, Ms Riley and another twitter user ('Matt', who had come to her defence suggesting it was pathetic to attack a 16 year old girl who complained of online abuse), in which Rose said:

> [Tweet 15] "I'm not lecturing a Jewish woman [woman facepalming emoji] @RachelRiley is an atheist. I don't know how many times I need to say that I think antisemitism is vile but so is making false accusations to people who've done nothing wrong" (Emphasis added.)

39. Further tweets were exchanged between Jimmy and Rose in which Jimmy accused Rose of being "*incredibly ignorant AND arrogant*" for claiming that Ms Riley was not Jewish (Tweets 16-17). At 10.51pm Rose sent a reply tweet to Jimmy, Matt and Ms Riley in which she said:

> [Tweet 18] "How dare you call me antisemitic? You nasty man, please go and educate yourself some more because Rachel Riley has said she is not Jewish, therefore I am in no means lecturing her about her religion or ethnicity". (Emphasis added.)

40. In response to a tweet from Matt to Jimmy saying that Rose "*clearly is a victim of your dogpiling*" (Tweet 21), Jimmy responded (Tweet 25): "*... You must see that what she tweeted was wrong. I'd be happy to delete my tweets if she deletes hers and apologises to Rachel. I'll even point her towards some reading on modern antisemitism. What I won't do is ignore it when I see it*". Rose sent a reply tweet to Jimmy, Matt and Ms Riley at 11.21pm on 16 December 2018:

> [Tweet 26] "Apologise to Rachel? She has been encouraging a smear campaign. We all accept that there is unfortunately some antisemitism but TRUE labour members believe in equality". (Emphasis added.)

Ms Riley's first thread replying to Rosie

41. Between 12.25am and 12.38am on 17 December 2018, Ms Riley sent a thread of seven tweets in reply to Rose. This was the first communication that Ms Riley sent to Rose in response to the many tweets that Rose had sent her over the course of the previous two days. Ms Riley's first thread stated:

> [Tweet 27] "Rosie, I'm sure you mean well. Abuse is horrible for anyone to receive. But what possible motive could I have for wanting to smear with lies about AS? He[re]'s a pic of [me] with my friend of many years @_NatashaDevon, Labour supporter & mental health legend, and @lucianaberger…
>
> [Tweet 28] Labour MP, MH champion and subject of the most hideous Antisemitic abuse from outside and within her own party. Plenty of Labour member[s] are up in arms with what's

> going on within their party, is it all a smear? @JohnMannMP @IanAustinMP @margarethodge @RuthSmeeth to name a few.
>
> [Tweet 29] I've rarely mentioned being Jewish before as religiously I'm atheist, culturally I'm Man United and I've always felt like a strange hybrid. But I've known Ian [sic] from studying the Holocaust that that's irrelevant to Antisemites, and I feel the injustice extremely strongly.
>
> [Tweet 30] Since entering this conversation, I've seen the hideousness that I learnt about in all its waking glory. I've seen bizarre and appalling conspiracy stories that's made me research Jewish history pre-Holocaust for the first time. & I'm trying to work out where AS comes from & why.
>
> [Tweet 31] I listened to the voices of the Jewish community who've been stamping their feet to get this issue recognised, and I've researched it. Far more than I'd ever want to. There are far more fun things I could be doing. Receiving abuse, & tackling controversial issues is not the best
>
> [Tweet 32] Career move. Quiet, un-opinionated women are much more marketable, but I don't care. Because this is serious. You can have a @UKLabour party who fight for people AND don't promote or ignore antisemitism. But you'll have to fight for it now.
>
> [Tweet 33] I imagine you've received a lot of praise for echoing popular opinion on this, but they're not the type of people I'd be wanting praise from. If you have ANY questions on this, just ask. I have nothing to hide, and I'm far from ashamed." (Emphasis added.)

42. The evidence shows that six other twitter users joined the conversation before Rose replied, one critical of Ms Riley and others critical of Rose (Tweets 34-44).

Rose's first reply thread to Ms Riley

43. On 17 December 2018, between 9.13am and 9.19am Rose sent a thread of four tweets in reply to Ms Riley and five others:

> [Tweet 45] "Thank you for replying Rachel. I have never dismissed the fact that antisemitism unfortunately exists in the party and that we are let down by a few that I will never call true labour members. However, this debate has come from how I believe it is weaponised by the media
>
> [Tweet 46] As the conservatives are just as guilty of it, yet the media go for Jeremy Corbyn as this country is predominantly ruled by a right-wing press, I made a mistake yesterday by

> assuming that because you're an atheist, you are not Jewish. For that, I apologise for offending anyone
>
> [Tweet 47] I am by no means an expert in any of this, I'm sixteen and admittedly just learning about the whole situation. One thing I am certain of is that I would never be racist to anyone and I condemn the antisemetic [sic] abuse from people who claim to be 'labour members' and I'm ashamed of
>
> [Tweet 48] them being affiliated with our view for equality. I get frustrated at the bias of the media that bring Jeremy Corbyn down as an antisemite for being anti-Israel. I also get frustrated that nobody seems to be angered with the racism of other parties who are just as guilty". (Emphasis added.)

44. Rose sent a further tweet, without tagging or replying to Ms Riley, at 9.26am in which she said:

> "Before I have a break from Twitter, I would like to say this. Yesterday, I made a mistake in confusing religion and ethnicity by saying Rachel wasn't Jewish as she's an atheist, which caused offence. For that, I apologise – mistakes happen and I take responsibility for that."

45. Another Twitter user replied, "*Omg this is a prime example of ignorance*" (Tweet 50).

Ms Riley's second thread replying to Rose

46. On 17 December 2018, between 11.20am and 12.04pm Ms Riley sent Rose a thread of 16 tweets:

> [Tweet 51] "I understand your position, and I'm absolutely sure you're not racist. But if you look at it objectively, I believe Labour hasn't stood up to the AS in its ranks and by not tackling it strongly, by denying it and encouraging the 'smear' notion for political purposes it's …
>
> [Tweet 52] Allowing it to fester and grow. Complaints in the Jewish community that it is being dismissed, ignored and mocked, are inflamed every time someone calls it a smear without reference to any of the incidents in question. @LabourAgainstAS is a group of volunteers who were doing…
>
> [Tweet 53] Much more interesting things with their lives before they saw this perceived injustice and decided to do something about it. Time and time again these cases were ignored until they were leaked to the press… [screenshot of LAAS tweet from 16 Dec 18]
>
> [Tweet 54] I'll give you a couple of examples of where I've seen this. I understand you view Labour as an anti-racism party, it

traditionally has been, which is one of the reasons Jews have historically found it their political home. I know you don't want Labour to be AS, none of us do…

[Tweet 55] And I know once your ideas are ingrained it's hard to change them. You don't have to be an expert in all of this, it's really complicated & nuanced, but please stop labelling it a smear, and me a liar without knowing all the detail, as that's pretty hurtful.

I'll send links now.

[Tweet 56] Labour Party member @steve_cooke's first hand account is on twitter to check the facts of this. Couldn't condemn a synagogue massacre. He was warned about not speaking publically (sic) about his CLP not (sic) refusing to entertain having AS training he'd suggested [link to article in the Independent]

[Tweet 57] When discussing 'cutting all ties' with Zionist Jews in Israel, Labour official publicly quipped on Facebook that he'd like to cut somewhere else, but close to where the tie goes.

No action against him. [link to article in the Jewish Chronicle]

[Tweet 58] @laas post weekly round ups of displays of Antisemitism that have been ignored and would still be ignored unless they were there to tirelessly campaign. The reason they're so pissed off with Labour, is that they're ex-Labour people themselves, having felt unwelcome & forced out.

[Tweet 59] Here's Luciana's recounting of the abuse she's experienced. She's now accused of lying about needing police protection when there's clear photographic evidence. The disdain for views is horrible. [link to an article in the Guardian]

[Tweet 60] Here's Ruth Smeeth's.
You may of seen someone on this thread yesterday calling her racist for calling out antisemitic actions from now expelled Labour member Marc Wadsworth. (I would call that a smear)

[Tweet 61] Here's Chief Rabbi Lord Sack's address to the Lords as to why Jews are worried right now, so much so that many are considering where they would escape to, should they need to. [link to YouTube video]

[Tweet 62] Understanding the mentality about "having bags packed" stems from hundreds of years of Jewish persecution across Europe. (My family fled Russian violent AS pogroms in 1900 odd.) The Holocaust was unique in its scale and industrialisation of this, not in its sentiment.

> [Tweet 63] @tashkimo could you please send the links to Lord Popat's testimony in the Lords and the subsequent backlash he faced for speaking out please, I can't find them but they're so illustrative of the problem.
>
> [Tweet 64] Jews aren't the enemy in this. They're just standing up for themselves. Disagree with any of these facts but please note that calling fears a 'smear' is deeply hurtful and helping to spread the virus that is Antisemitism. [link to Financial Times article]
>
> [Tweet 65] Please know, none of what I'm saying is meant to attack you, or single you out. Unf you've become a figurehead for all the wrong people in this and my aim is to attack the facts, and not you personally. Anyone doing that can equally f the F off. [heart emoji; link to an article in the FT]
>
> [Tweet 66] I'll leave you alone now. But again if you have ANY questions, please ask.
> Online pile-ons can be horrible, I know your heart is in the right place, hope you're ok." (Emphasis added.)

Rose's second reply thread to Ms Riley

47. On 17 December 2018, between 12.22pm and 12.34pm, Rose sent a thread of five tweets (Tweets 67-71), replying to Ms Riley (and others):

> [Tweet 67] "Thank you, I understand everything you say and how the Labour Party do need to act more on antisemitism. To me, people in the party such as @EmilyThornberry are doing a good job at speaking out (she did a speech but I can't remember where) but there is still more that needs to
>
> [Tweet 68] be done. Unfortunately others on twitter are not quite able to have a sensible debate without name calling and throwing abuse. I will always be willing to learn from others and recognise when I am wrong but also stand by my opinions
>
> [Tweet 69] I support Jeremy Corbyn for these main reasons – he is promising improved children's mental health services, which is something that has affected me and in my opinion, is offering a better society for those of us that aren't from privileged backgrounds.
>
> [Tweet 70] It is a shame that I personally find the media will pick holes in anything and everything that Jeremy Corbyn does it is also a shame that there are a lot of nasty people who identify on the left that let the rest of us down.
>
> [Tweet 71] Have a lovely Christmas, I'm putting this debate behind me now". (Emphasis added.)

Ms Riley's final messages to Rose

48. On 17 December 2018 at 12.43pm Ms Riley sent a reply tweet to Rose (and others) saying "*You too*". Five minutes letter she sent a reply tweet to Rose (only) which said:

> [Tweet 72] "Thank you for listening Rosie, I would appreciate an update to this please, so as not to encourage the smear rhetoric, if you now think there's more to the story?"

49. Rose did not reply to Ms Riley and Ms Riley sent her no further tweets; nor were there any further tweets in which they tagged each other.

50. The evidence shows that on 17 and 18 December 2018, eight other Twitter users sent tweets replying to Rose's second reply thread, describing what she had written as "*typical whataboutery*", suggesting that she had been "*brainwashed*", was "*naïve*" and "*racist*" (Tweets 73-80).

Rose's 18 December thread

51. On 18 December 2018, between 7.24am and 7.33am Rose sent a thread of five tweets:

> [Tweet 81] "I'm not finding Rachel Riley to be a nice person at all. I said I wanted to move on from this debate and end it, then she tweets me about retracting my comments after I said I stand by my opinion but will always listen to others.
>
> [Tweet 82] I apologised for the ethnicity and religion mix up but what I won't apologise for is saying that antisemitism is used by the right wing media in order to bring Jeremy Corbyn down. She only believes what she wants to believe.
>
> [Tweet 83] She said that she isn't singling me out but all she has done has encouraged an onslaught onto me. I tried to be respectful and mature to her by saying I understood her stance but she's just thrown it in my face. Not to mention the patronising "I'm sure you mean well"
>
> [Tweet 84] I may be sixteen but that doesn't automatically make me an idiot. I will not sit here and let her dictate what I say and how I feel. I do not feel threatened by you, Rachel and I would have hoped you could have listened to everyone else's opinions instead of just your own
>
> [Tweet 85] She has been (once again) blocked". (Emphasis added.)

It is unclear what the words "*once again*" in the final tweet refer to as there is nothing to indicate any communications between Rose and Ms Riley prior to those referred to above.

52. On 18 and 19 December 2018 three Twitter users sent replies to Rose (and in one case to Ms Riley) in the following terms:

> [Tweet 86] "Oh look a 16 year-old leftie, who thinks Corbyn is the messiah [two crying with laughter emojis]"
>
> [Tweet 87] "You are an idiot and worse still an anti Semitic idiot"
>
> [Tweet 88] "No it doesn't make you an idiot. Just a 16 year old know nothing, with no life skills or experience. A child with a platform. You are still in school uniform, in a childs world, and trying to discuss and get involved in something you know nothing about."

53. On 20 December 2018 at 9.46pm Rose tweeted that other teenage supporters of Mr Corbyn had been "*trolled relentlessly*" and had been "*suffering harassment from nasty individuals*", then continued (Tweet 89):

> "I got death threats this morning. Will it stop us? Nope.
>
> We're young people fighting for a better future and nobody will silence us. Solidarity guys x" (emphasis added).

Rose's Twitter conversation with others on 31 December 2018 and 1 January 2019

54. On 31 December 2018 at 9.39am Rose tweeted:

> [Tweet 90] "I had to block Rachel Riley because honestly, she's such a self entitled knob. Somebody put it perfectly to me – she has a mouth but no ears. Instead of listening to evidence, she shouts racist to everyone making a valid point."

55. A Twitter user, 'Christopher', replied to Rose tagging @TwitterSupport and one other (but not Ms Riley):

> [Tweet 91] "you *state that you "are campaigning for an improvement to children's mental health." and /post a tweet/ referring to someone as a 'knob', inciting a mob to communicate vile responses, including statements on a person's /mental health/. nice work."

56. Rose replied to Christopher the same day:

> [Tweet 92] "It's okay for her to relentlessly bother me? This situation has nothing to do with my mental health campaign. @LabLeftVoice can tell you how much abuse we have received. Calling someone a knob is nothing in comparison to what we have recurved [sic]" (emphasis added).

57. Another Twitter user, 'Chametz', replied to Rose and Christopher:

> [Tweet 93] "I don't think you are who you say you are. I saw the original thread and your apology and no it wasn't pretty but she hasn't mentioned you again. This is not helping the party. Also

> your tweet about AS is a disgrace. I'm a Labour voting Jew & been receiving it. You're clueless". (Emphasis added.)

58. Rose responded to Chametz, Christopher and others that her "*great grandad liberated Jewish people from concentration camps in WW2*", to which another Twitter user responded, "*Well you show him up and are a black spot on his memory. He would be disgusted at you*". Rose quote tweeted the latter describing it as "*some of the abuse I receive*" (Tweet 94).

Rose's tweets about Ms Riley in January 2019

59. On 3 January 2019 Rose tweeted:

> "Me: : I don't think I could get anymore pissed off tonight
> Rachel Riley: [gif]"

60. On 6 January 2019 Rose tweeted:

> "How come I blocked Rachel Riley but she's still replying to me?!? [frowning face emoji] What have I done wrong?"

There is no evidence that Ms Riley had sent any reply to Rose in the preceding 20 days since Rose stated that she had blocked her.

61. Ms Riley recorded a podcast with the Channel 4 journalist Krishnan Guru-Murthy. In the podcast Ms Riley spoke about her "*opposition to Labour Party antisemitism and the abuse [she] received for speaking out against it*". The podcast was released on 9 January 2019 but it was promoted, including on Twitter, a few days beforehand. The Twitter promotion for the podcast explained the subject matter.

62. On 8 January 2019, at 8.58pm, in response to the promotion of Ms Riley's podcast, Rose tweeted:

> "<u>Rachel Riley releases a podcast about antibullying when she</u> …
>
> - <u>Encouraged a pile on</u> – I had people calling me an antisemite to my face
> - <u>Continued to pester me</u>
> - Told her I could never be antisemitic – people calling me a dark spot on my relatives who fought against holocaust" (emphasis added).

63. Rose added a few minutes later that she condemns "*ALL TRUE*" antisemitism, on the left or right, and all forms of racism (Tweet 95). Two Twitter users responded critically (Tweets 96 and 97).

Ms Riley's 9 January thread

64. On 9 January 2019, at 7.38am, Ms Riley sent simultaneously a thread of 12 tweets (Tweets 99-110). The first message in the thread (Tweet 99) showed Rose's tweet of 8

January at 8.58pm (paragraph 62 above), as retweeted by another Twitter user but with Rose's Twitter handle removed. Ms Riley commented:

> [Tweet 99] "Upon hearing this, some people are worried.
> I've deleted her handle to avoid a pile on, also I really want nothing to do with her.
> Rosie is a 16 year old girl who claims I'm a bully.
> I could ignore this, but 1st, it's wrong. And 2nd, it's being spread by some dangerous people." (Emphasis added.)

65. The second and third messages in Ms Riley's thread (Tweets 100 and 101) showed what Ms Riley described as "*the messages of abuse aimed at me from replies to Rosie's msgs*". Again, Ms Riley removed Rose's Twitter handle where it appeared in their messages. The final sentence of the third message said, "*But if I'm such a bully, maybe I deserve it? Let me show you what I've said…*"

66. In the fourth message in the thread (Tweet 102), Ms Riley quote tweeted her tweet of 16 December 2018 (see paragraph 35 above) and Rose's reply at 9.59pm (Tweet 9, see paragraph 36 above). Ms Riley commented:

> [Tweet 102] "This is how it all started.
> I've taken screengrabs of the conversation so I could remove Rosie's handle. I'll add the links in as I go.
> They're important, they contain all the evidence as to why this is such an enormous problem." (Emphasis added.)

67. The fifth, sixth and seventh tweets in Ms Riley's threads showed screenshots of the Twitter conversation that Ms Riley and Rose had had on 17 December 2018, with Rose's Twitter handle removed. Ms Riley added comments and links in these three tweets regarding the examples of antisemitism that she had given; her comments did not refer to Rose. In the eighth message, Ms Riley showed screenshots of further messages from the exchange between herself and Rose on 17 December 2018, as well as Rose's earlier Tweet 3 (see paragraph 27 above), with Rose's handle removed, and Ms Riley wrote:

> [Tweet 106] "FT article I took the peach quote from.
> [link]
>
> Rosie's replies.
>
> I said have a good Christmas, and the last message I sent is here, asking if she'd reconsider her comments about Jews being fed lies considering the evidence I'd shown her.
>
> I didn't hear back."

68. The ninth tweet in Ms Riley's thread showed Rose's tweet of 31 December 2018 at 9.39am (see paragraph 54 above), with her handle removed, and commented:

> [Tweet 107] "This was the last thing I knew Rosie had written about me, I shrugged & moved on with my life.

> I wouldn't call that bullying myself.
>
> It would have taken all of minutes to smear me and spread hate, but I've now sat for a couple of hours to compile this and defend myself."

69. In the final three tweets in her 9 January 2019 thread Ms Riley wrote:

> [Tweet 108] "This has a direct parallel with the spread of Antisemitism.
>
> Antisemitism is a whole bunch of conspiracy theories about the Jews. Control the world, media, banks, wars, any BS people want to say, they can.
>
> It takes effort to fight this, and we need help.
>
> We need #ActiveAllies
>
> [Tweet 109] It took lots of learning to get to grips with what on Earth is happening, why, and how
>
> To talk about Antisemitism, a cause so important to so many people is quite daunting, personal and exhausting.
>
> Thanks for taking the time to read this.
>
> If you want to help #BeLouder [heart, thank you and star of David emojis]"
>
> [Tweet 110] Finally, I don't blame any one person for this, no one has anything to gain from a pile-ons [sic], so pls don't.
> But this culture has developed, with those who've created it, doing so in the name of today's incarnation of Labour.
> There's nothing kinder nor gentler about it." (Emphasis added.)

Responses to Ms Riley's 9 January thread

70. On 9 January 2019, at 8.50am, Rose tweeted:

> [Tweet 111] "One final thing, I'm not a victim whatsoever. The conversation between Rachel and I was amicable until all her gang started sending abusive messages to me. After this, I said I wanted to end the debate. Then she sent another tweet to which I did not reply and got further abuse"

71. At 5.47-5.48pm Rose tweeted:

> [Tweet 114] "One thing I would like to apologise for is calling Rachel a knob. I did this in a fit of anger after I was persistently harassed and it was immature of me to do that. I should have

> been more dignified in my debate – I had blocked Rachel when I tweeted this."
>
> [Tweet 115] "I didn't think she would see this but she has used another account or her web to stalk my account to screenshot this. All her screenshots were obtained this way as I blocked her in November/December" (emphasis added).

72. On 9 and 10 January 2019 nine other Twitter users responded to Ms Riley in highly critical terms, accusing her of "*bullying 16 year old kids*", stalking Rose and "*putting her at risk*" by enabling people to identify her from her Twitter photograph (Tweets 112 and 117-124). Two others were supportive of Ms Riley (Tweets 113 and 116).

The first Lawson article

73. In January 2019, an article bearing the headline "*Enough is Enough: Rachel Riley, GnasherJew, and the Political Weaponisation of Antisemitism*" was published by Shaun Lawson, a blogger who lives in Uruguay, on an open access American website ('the first Lawson article'). On its face, the article states it was published on 11 January. Mr Sivier's oral evidence was that it was published on 12 January. The divergence may perhaps be due to the time difference. It is of no consequence and I accept Mr Sivier's evidence that it was published on 12 January. Mr Sivier acknowledged that he was aware of where Mr Lawson lived, that he was not a journalist (though he described him as a "*citizen journalist*"), and of the nature of the website on which his articles were published.

74. This was a 64-page article. Mr Lawson described himself as being one of those who had been "*targeted by GnasherJew*". In paragraph 6, Mr Lawson first alluded to Rose, saying that "*thousands of good, decent, anti-racist Corbyn and Labour supporters have been smeared, bullied, attacked in positively McCarthyite fashion: simply for being Corbyn and Labour supporters. Including, in the latest horrifying example, a 16-year-old girl*". The subheading "*'Riley enters the fray'*" appears on page 27 and the section about Ms Riley runs to page 50 of the article. Mr Lawson addressed the Twitter communications with Rose in these terms:

> "105. … A 16-year-old girl named Rosie has an account called [Rose's Twitter handle]. Wise well beyond her years, she, like me, had been disgusted at Riley's promotion of vicious bullies such as GnasherJew, and called her out on it.
>
> [Ms Riley's tweet at paragraph 35 above and Rose's tweet (Tweet 9) at paragraph 36 above.]
>
> 106. As is her wont, Riley rather dodged the point altogether. Rosie responded. Aged 16, she has a grasp of events miles in advance of our global laughing stock of a media.
>
> [Mr Lawson inserted a tweet from Ms Riley which was not part of her thread addressed to Rose, in which she said, *"Or Ruth Smeeth was the victim of racism and for that she was abused. Meanwhile Wadsworth is eventually expelled by the NCC*

following a 2 year enquiry and you spout this inflammatory rubbish. [link to YouTube video]". He also inserted Rose's Tweet 45 (paragraph 43 above) and then Rose's Tweet 3 (paragraph 27 above).

107. Instead of truly listening to Rosie's concerns, Riley replied with the sheer, self-important conceit that "I would appreciate an update to this please". Polite, not so subtle code for: "Don't you dare suggest that I, the all-seeing, all-knowing Rachel Riley, am wrong on any of this. I would appreciate an apology. And my views are more important than yours." [The underlined words were hyperlinked to Tweet 72 (paragraph 48 above).]

108. Wisely, Rosie went on to block Rachel. Unfortunately though, the way Twitter works, if you block someone with a large following, you still receive replies from everyone else commenting on the same thread. Not only that, but Riley's supporters were offended, so a pile-on began. Against a 16-year-old child.

109. This was not Riley's responsibility exactly; not at this stage, at least. She never wrote directly to Rosie again; she didn't directly encourage the dogpiling. But as a public figure, the lack of responsibility or remorse she's demonstrated for the horrendous bullying Rosie has experienced has been horribly instructive. And as I noted above, she has no compunction with encouraging it towards … more or less the entire Labour support on Twitter either.

110. Poor Rosie pleaded for Riley to do something. Instead, Riley took a screenshot of Rosie's latest comments, posted them for her followers, doubled down on the Palestinian flags, red roses and GTTO hashtags, and quite unbelievably, decided to include Rosie's original comments to her in a tweet saying "every week @LabourAgainstAS does a review of the last 7 day's worth of AS, if you're interested, follow them". Not only was she still tweeting about a 16-year-old girl who had blocked her weeks beforehand; but many reading that post might well have wrongly assumed that Rose herself was an anti-Semite. [The underlined words were all hyperlinked to Ms Riley's 9 January thread (Tweets 99-110, paragraphs 64-69 above).]

111. Riley went on to re-post Rosie's comment from several weeks ago – for which she subsequently apologised – that she's a "self entitled knob". No need to apologise Rosie, it's a statement of fact. Which Riley only confirmed yet again by despicably re-posting this after she was told Rosie (aged 16, remember) had been bullied. And then, something even worse. Something positively sinister.

> [Ms Riley's Tweet 107 (paragraph 68 above); Rose's Tweet 90 (paragraph 54 above; Ms Riley's Tweet 108 (paragraph 69 above).]
>
> 112. The idea that a 16-year-old girl calling Riley out on her lies, her support for fascists and bullies, her disgracefully disingenuous approach to this entire thing, is comparable with "the spread of antisemitism" is utterly risible, shameful nonsense. My interpretation of all this is she wanted Rosie taught a lesson. I have never seen a public figure behave in such a way towards a child.
>
> …
>
> 118. Remember: this is someone who has encouraged continual abuse, wilfully so; who works hand in hand with bullies and thugs; and is even oblivious when groups she endorses issue death threats in public. …" (The paragraph numbers were added by the parties for ease of reference.)

Communications between Rose and Tracy-Ann Oberman

75. On 10 January 2019, Tracy-Ann Oberman, who is described in the Amended Defence as "*a celebrity actress and friend of the Claimant*", with 84,200 Twitter followers, sent a reply tweet to a twitter user ('Phil') and Ms Riley (Tweet 125). Her tweet did not refer to or tag Rose. Ms Oberman referred to having been trolled and been the subject of a "*pile on*", and she said "*1 yr of this & I've become immune & very wise to the 'Corbyn games'*".

76. On 11 January 2019, between 8.11 and 8.15am, Rose sent a reply thread to Ms Oberman, Phil and Ms Riley (although if Ms Riley was blocked by Rose she may not have seen it):

> [Tweet 126] "You have no idea of the distress having a huge pile on has caused. I spoke about my anxiety way before this but it's me that is the bad person. You ask anyone who knows me personally and they will tell you how upset I have been about this, the abuse reduced me to tears.
>
> [Tweet 127] I am absolutely sickened that you have used me to make me out as an attention seeker. This whole time I have been debating politely but I was forced to block people after I was piled on and abused. I have never been racist once in this whole thing, just simply trying to make
>
> [Tweet 128] MY voice heard too, as a Labour member who's sick the idea that condemning the actions of Israel means someone is antisemitic."

77. Ms Oberman responded in a series of tweets to Rose beginning at 9.41am on 11 January 2019 with the following:

> [Tweet 129] "Rosie meet [Charli] she is a young person too. Charli was about to head to university & tweeted me that she was scared to say she was Jewish at Uni because of Campus LW abuse. Charli knows what it's like to be a young person trying to find a voice & feeling cowed. X"

78. Ms Oberman followed this up with nine further tweets over the course of the next hour (Tweets 130-138) in which she offered to take Rose and Charli for tea in London, saying that she thought it "*would be great to connect young people who could maybe open a dialogue*". Another twitter user, 'Mike', responded, referring to this being "*the young girl Rachel was bullying*" and to "*Rachel's pile on*", and Ms Oberman exchanged polite tweets with him (Tweets 139-148).

79. At 11.19am another Twitter user, 'Kyla', replied to Ms Oberman, Mike and Rose:

> [Tweet 149] "Hi, I'm a friend of Rosie's and without trying to sound harsh. This is kind of creepy [sic] Rosie out. She's got really bad anxiety and doesn't like going places to meet new people especially after recent events. Her parents also won't allow her to travel to London by herself."

Ms Oberman responded:

> [Tweet 150] "Oh no. We didn't mean to creep Rosie out. I would absolutely love to meet her and I think she love to meet Charlie. She can bring her parents too. Genuine offer."

80. Ms Oberman sent a further 27 tweets (151-157, 159-168, 170-175, 177 and 179) over the next two and half hours to Rose and others, including responses to other Twitter users who accused Ms Oberman of a "*blatant PR exercise*" and of "*grooming*" a minor with unacceptable offers of free lunches, and another who said she was "*a friend of Rosie's*" and tweeted

> [Tweet 176] "Rachel Riley's actions, and now yours, have resulted in people harassing Rosie and digging up her personal info. You're harassing her to go to London even though you know she has anxiety. Use your platform to promote real positivity rather than hate towards a 16 yo [heart emoji]" (Tweet 176).

81. At 2.07pm on 11 January 2019 Rose's father sent a reply tweet to Ms Oberman and Rose (but not Ms Riley):

> "Debating issues is one thing. Bullying, aggressive, & insulting is something entirely different. To have left wing views is not a crime, nor is supporting Corbyn. By all means debate, but keep it within acceptable boundaries."

82. In response to a tweet from another Twitter user, Sally Eason, who said she was "*in direct communication WITH Rosie … she is terrified and wants Oberman to leave her alone. …*", Ms Oberman tweeted at 2.40pm:

> [Tweet 182] "A politically motivated pile on via smearing by Sally Eason @LLV. This is politically and race motivated. See how an honest invitation got turned into this by @jeremycorbyn attack trolls. @RachelRileyRR @jk_rowling @francesbarber13 @eddiemarsan @almurray we endure this every day"

Ms Oberman sent five further tweets (Tweets 183-186 and 188) to Rose, or about her, between 3.16pm and 4.42pm.

83. At 7.30-7.32pm on 11 January 2019 Rose tweeted:

> [Tweet 189] "I didn't really want to acknowledge this. Tracy Ann Oberman has persistently contacted me to go to lunch for her, which she'll pay for. I'm not sure if this is innocent or not but either way, I feel very uncomfortable. I can assure you all I won't be going to lunch with her."
>
> [Tweet 190] The main reason for this is because of my anxiety (which I mentioned to her) and I wouldn't be able to go to London or meet up with a fifty two year old who I've never met. I was willing to let this pass but today, I've got SIXTY THREE tweets from her when I want to be left alone
>
> [Tweet 191] I've felt very uncomfortable by Tracy showering me in compliments. I apologise if this is innocent but I do feel sixty three tweets is a bit excessive. Account is going on private again – hopefully we can celebrate 10,000 signatures on my petition very soon".

84. Although Rose referred to 63 tweets, and the defendant relies on that figure, I note that the defendant has put in evidence 45 tweets from Ms Oberman prior to 7.30pm on 11 January 2019, which replied to or tagged Rose, and a further four tweets that referred to Rose. Ms Riley was a reply recipient or tagged in only five of those 49 tweets.

85. At 7.24pm, in response to a Twitter user who wrote, "*Rachel has behaved abominably towards you and her close association with Tracy doesn't fill me with confidence as to her motives for this offer xx*" (Tweet 192), Rose replied, "*They've all been blocked x*" (Tweet 193).

86. A number of Twitter users were highly critical of Ms Oberman's behaviour, suggesting it was abusive and that she should be reported for harassment. Between 9.51pm on 11 January and 3.08am on 12 January, Ms Oberman sent nine tweets in which she responded that this was "*smear nonsense*", she had tried to "*engage sweetly*" with a young woman because she was sad that she had apparently been "*piled on*". None of those tweets replied to or tagged Ms Riley.

87. At 10.45am on 12 January 2019, Rose tweeted:

> [Tweet 210] "In all honesty, this has really scared me and I need to have some time off twitter now. Anyone with serious concerns should contact my dad, as I probably won't reply to DMs."

88. At 2.24pm on 12 January 2019, Ms Riley tweeted a gif of a cat sat at a computer with the words:

> [Tweet 213] "Sending loads of love to @TracyAnnO today and an internet hug. You've been indefatigable in speaking out against antisemitism and hatred, and you've been hugely targeted for doing so – it's disgusting.
> In solidarity w your call for cat gifs instead of abuse – my offering! [kiss, heart and cat emojis]"

Ms Riley's 15 January thread

89. On 15 January 2019 at 4.45pm, Ms Riley tweeted a thread of 13 tweets:

> [Tweet 216] "A VERY long thread on the scale of deception, lies and intimidation I've had since speaking out about #LabourAntisemitism, and the lows those seeking to hide it will stoop to.
>
> Since exposing evidence of AS, the attempts to smear me & others have become more and more elaborate.
>
> [Tweet 217] A frequent lie spread about me, is that I've been bullying/encouraging the bullying of a 16 year old girl.
>
> I've posted my entire interaction with her, defending myself politely against claims I'm lying, with evidence to the contrary of antisemitism in Labour.
>
> Proveably untrue.
>
> [Tweet 218] I last spoke to her in December, following which she posted that she'd blocked me, at which point I wouldn't have been able to contact her even if I wanted to, which I didn't.
>
> Since January however, her father [Twitter name given; 'Tony'] has perpetuated the lies and encouraged the narrative."

Ms Riley included a screenshot of a tweet from Rose's father in which he said that Rose "*has been the victim of unbelievable abuse & bullying from Ms Riley & her supporters*".

90. Ms Riley's 15 January thread continued:

> [Tweet 219] "He quotes her name and Twitter handle, simultaneously claiming I'm orchestrating bullying and dog-piling whilst himself, doing just that.
>
> For offering to meet her for tea with a Jewish girl who's suffering abuse, @TracyAnnO has been accused by Tony & others of child grooming."

Ms Riley included a screenshot of tweets describing Ms Oberman as a "*Jimmy Savile wannabe*".

> [Tweet 220] "Aaron Bastani has added his commentary to the mix, as welcome as a Hitler impersonator at a bar mitzvah, and the lies have in part inspired an odiously inaccurate article by Shaun Lawson, smearing anyone speaking out against antisemitism.
> RTd many times by [Rose's father]. [Screenshot of tweets from Mr Bastani, Mr Lawson and Rose's father.]
>
> [Tweet 221] 25% of Shaun Lawson's 11500 word conspiracy theory version of reality, is about me. In large part, claiming I'm a bully and making up claims of antisemitism to smear Labour. This has in turn, been shared by the who's who of antisemites. Nazi salutes and all. [Screenshot of tweets of the first Lawson article.]
>
> [Tweet 22] You'd be forgiven for thinking Walker, Atzmon and Hands are far right from their posts.
> In fact, they are all Corbyn supporters and cheerleaders. Walker was the vice-chair of @PeoplesMomentum before being suspended from Labour over antisemitism. (At least someone was.) [Screenshot of tweets]
>
> [Tweet 223] Some of the accounts [Rose's father] follows and RTs aren't any better.
>
> Here's some of their charming material and stuff Tony RTs.
>
> Hajo Meyer's Violin
> LabourLeftVoice
> Wolfie, Skwawkbox, Canary, Rachael Swindon
>
> All dangerous, unofficial @UKLabour propaganda machines. [Screenshots of tweets]
>
> [Tweet 224] Yet more.
>
> And before it's cried smear over calling George Galloway antisemitic, here's a video of him on Iran's PressTV (the Channel @jeremycorbyn was infamously paid to go on) being overtly antisemitic about half-Jewish actress Scarlett Johansson… [YouTube link and screenshot of tweets]
>
> [Tweet 225] What's more worrying for the 16 yr old who cites mental health concerns, is the list of people connecting with her, and using this story to stoke the fires of antisemitism, encourage the cries of smear re #LabourAntisemitism, and abuse, harass & discredit those standing up to it.

91. Ms Riley showed a screenshot of two tweets from Rose (without showing her name, Twitter handle or photograph) in which she asked to be put in contact with Owen Jones, George Galloway and Aaron Bastani and later wrote, "*There are so many people to thank for helping me. @georgegalloway @martynware @Rachael_Swindon @StanCollymore, who have been kind enough to listen to me, @LabLeftVoice for offering help and advice when I needed it and of course all LP members, too many to name, who supported me x*"; as well as the tweet from Ms Eason referred to in paragraph 82 above.

92. The thread continued:

> [Tweet 226] "LabourLeftVoice's Sally is a particularly 'virulent/reabid [sic] /known/infamous' antisemite, who claims Jewish heritage so she cannot be accused of antisemitism (a false argument). And has been reported to the police and @CST_UK for doxing and harassment of Jews amongst other things.
>
> [Tweet 227] Adults using a child's profile and exploiting MH issues to fuel campaigns of hate & intimidation is DISGUSTING.
> I hope her friends, teachers or social workers reading this, step in and help, but using nefarious tactics don't mean we have to accept blame or not refute lies
>
> [Tweet 228] If you've read this far, you may be surprised by what you've seen.
> I'd hazard a guess that most who've spoken out against antisemitism probably won't be, as they've seen it all before.
> The haters are sick, and they are loud.
>
> Thank you to everyone who continues to #BeLouder [thank you emoji]"

93. A Twitter user ('Phil') replied to Ms Riley's thread:

> [Tweet 232] Why have you retweeted Rosie's picture, and now given out her father's name? What is wrong with you? Why involve a 16 year old girl in any of this? I've been in contact with Rosie, helping her with her anxiety issues. She is completely freaked out by you repeating this!
>
> [Tweet 233] Rosie's account has been hacked three times in the last few days. And she's received death threats. One even suggested she be sent to the gas chamber. And you bang on about left wing abuse? You should be ashamed of yourself for using Rosie in this way.
>
> [Tweet 234] All this is now in the hands of the police. Please delete ALL references to this young girl & her family from your twitter feed. Leave her our of this and leave her alone.

Others accused Ms Riley of "*gaslighting techniques*" and "*encouraging pile ons*".

94. Between 10.32pm and 10.34pm 'Nonny Nay' posted a thread purportedly on behalf of Rose:

> [Tweet 237] Message from Rosie [Twitter handle given]
>
> Thank you for your lovely tweet. I have been in bits all evening. I hate having my family dragged into it and using my mental health problems as a mockery has really upset me. I have anxiety – I can still have an opinion. It's harassment 1/3
>
> [Tweet 238] and the police have been called. My parents have only been standing up for me after I got requests to meet a stranger in London, some of these at 3am. It's so horrific to have had my dad called a groomer for protecting me, my mum's privacy has been violated too. I have been 2/3
>
> [Tweet 239] crying and panicking, it's just horrible and I want to be left alone, especially my family. My accounts have been hacked and I've had death threats. I'm just done.
>
> Rosie is too fearful to let people know herself what is being done. 3/3

The second Lawson article

95. On 18 January 2019, Mr Lawson published an article bearing the headline "*Beneath Contempt: How Tracy Ann Oberman and Rachel Riley harassed, dogpiled and slandered a 16-year-old child and her father"* on the same open access American website ('the second Lawson article'). This was a 79-page article.

96. In paragraph 3, Mr Lawson referred to "*Rosie, the 16-year-old girl whose deplorable treatment by Rachel Riley was at the heart of my weekend piece*" (hyperlinked to the first Lawson article). Pages 12-64 consist of a section headed "*Oberman disgraces herself*" in which Mr Lawson addressed communications between Ms Oberman and Rose (or others on her behalf). In this section, Mr Lawson referred back to the first Lawson article, alleged that Rose had been subjected to "*a horrendous, bullying dogpile*" when she "*so much as challenged Riley*", described Ms Riley as a friend of Ms Oberman, and said Ms Riley's behaviour was "*disgraceful*". He included within his article most, if not all, of the tweets referred to in paragraphs 75-88 above.

97. Mr Lawson wrote:

> "49. …Tracy was harassing her in plain sight; and none of her allies, including other public figures, had done anything to stop it. Not one. Including Riley, who'd also been copied into many of the tweets above. As, on a significant number of occasions, had Al Murray, Frances Barber and JK Rowling.
>
> …

> 67. …up popped Riley to lend her support to someone who had relentlessly harassed a child and abused her father for good measure.
>
> [Ms Riley's Tweet 213 (paragraph 88 above).]" (Paragraph numbering has, again, been added by the parties for ease of reference.)

98. Mr Lawson began a new section entitled "*Riley sinks to a new low*" on page 64 which ran to the end of the article on page 79. Mr Lawson referred back, again, to the first Lawson article, and provided hyperlinks to Ms Riley's 9 January thread, describing her conduct towards Rose as "despicable". He then wrote:

> "88. In my article, I suggested that Riley "wanted Rosie taught a lesson"; which probably explains her standing back and watching her great pal Oberman harass Rosie to within an inch of her life, before interjecting to support the aggressor.
>
> …
>
> 95. But entirely true to form, she reserved her absolute, contemptible worst for, yet again, poor Rosie… and her father. On Tuesday, Riley authored an execrable thread which can only be described as targeted harassment towards both of them. …
>
> 96. First, she attacked Rosie's Dad for the obviously damnable crime of … standing up for his daughter against Riley and Oberman's disgusting bullying.
>
> [Ms Riley's Tweets 217 and 218 (paragraph 89 above.]
>
> 97. Then she <u>defended</u> Oberman, lying through her teeth in so doing. Remember: Riley had been privy to a huge number of tweets which Oberman had sent Rosie. She knew exactly what was going on. [The underlined words are hyperlinked to Ms Riley's 15 January thread (Tweets 216-218; paragraphs 89-92 above).]
>
> …
>
> 99. And then she turned her attentions towards Rosie herself. Limbo dancing under a lower bar than ever, Riley used a 16-year-old child's mental health issues against her: repeating Oberman's vile slurs, before concluding with probably the worst, most disgusting tweet I've ever seen from a public figure not named Donald Trump.
>
> [Ms Riley's Tweets 224, 225 and 227 (paragraphs 90 and 92 above).]
>
> 100. No Rachel. No adults are 'using a child's profile'; it's **you** who is abusing a child. In public. In plain sight. While your

> pathetic, amoral followers watch on. 'Social workers'? Shame on you.
>
> 101. Rosie's teachers have, thank heavens, already stepped in. The consequences of Riley and Oberman's obscene conduct have been as follows:
>
> (1) Rosie's Twitter account has been hacked several times, by people trying to delete screenshots. Now why might that be…?
>
> (2) People have tried to track down her family address and her devastated mother's Facebook page.
>
> (3) Someone eavesdropped on Rosie in class and tried to sell the story to The Sun. Which in keeping with its reputation of being lower than vermin, printed something … before deleting it hours later.
>
> (4) She has people in college believing she's an anti-Semite.
>
> (5) She, a 16-year-old child, has received *death threats.*
>
> 102. Thanks entirely to Riley, Rosie was subjected to yet another pile-on from the effluent tendency. She spent all Tuesday evening in floods of tears … and later, a friend issued the following heartbreaking tweets:
>
> [Rose's Tweets 237-239 (paragraph 94 above).]"

99. Mr Lawson stated, "*this is [Rose's] story: which she's given her full consent for me to write*".

The day of publication of the Article: 26 January 2019

100. On 26 January 2019, at 12.01am, *The Times* published an article, having interviewed Ms Riley, with the headline "*Rachel Riley of Countdown finds her Jewish roots to take on the Corbynistas*". *The Guardian* picked up the story and, at 11.29am, published an article under the headline "*Rachel Riley to get extra security after receiving online threats*" ('*the Guardian* article'), stating:

> "The Countdown co-presenter Rachel Riley has revealed she is to be given extra security on the Channel 4 game show after being abused online for her criticism of antisemitism in the Labour party.
>
> Riley, who is Jewish, said she had been targeted by Labour supporters on Twitter for her criticisms of the party and its leader, Jeremy Corbyn.
>
> She has already spoken about being trolled online, but said the problem had worsened and included physical threats. …"

Neither article made any reference to Rose or her family.

101. Mr Sivier wrote the Article in response to *the Guardian* article because he "*was disappointed that it did not say anything about Ms Riley's own conduct*" and he "*thought that Ms Riley was a hypocrite for complaining about receiving abuse while saying nothing about her, her friend's and her followers' harassment of Rose*". The Article was published at 5.41pm on 26 January 2019. Mr Sivier circulated the Article via Twitter at 5.42pm and 5.48pm.

E. Serious harm to reputation: s.1 Defamation Act 2013

102. Section 1(1) of the 2013 Act provides that "*A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant*". This provision was considered by the Supreme Court in *Lachaux v Independent Print Ltd* [2020] AC 612, and by Nicklin J in *Turley v Unite the Union* [2019] EWHC 3547 (QB), [107]-[109] and *Riley v Murray* [2021] EWHC 3437 (QB), [2022] EMLR 8, [34].

103. Drawing on these authorities, in *Banks v Cadwalladr* [2022] EWHC 1417 (QB), [2022] EMLR 21, I summarised the applicable principles at [51] as follows:

> "i) The protection of reputation is the primary function of the law of defamation and section 1 is concerned with harm to the reputation of the claimant, being harm of the kind represented by general damage, rather than special damage: *Lachaux*, Lord Sumption JSC (with whom all members of the court agreed), [15] and [19].
>
> ii) Section 1 imposes a higher threshold of seriousness than the common law rules 'which were seen unduly to favour the protection of reputation at the expense of freedom of expression': *Lachaux*, Lord Sumption [1], [12]; Turley, Nicklin J, [107(i)]. The provision was intended to effect 'a substantial change to the law of defamation': *Lachaux*, Lord Sumption, [16]. As Saini J emphasised in *George v Cannell* [2021] EWHC 2988 (QB); [2021] 4 W.L.R. 145, [117], it is important not to lose sight of the statutory qualifier serious harm.
>
> iii) The court should assess whether the serious harm test is met in respect of each statement individually, not cumulatively: *Sube v News Group Newspapers Ltd* [2018] EWHC 1961 (QB); [2018] 1 W.L.R. 5767, Warby J, [22].
>
> iv) There is no presumption of serious harm. A claimant must demonstrate as a fact that the publication of the statement he complains of has caused or is likely to cause harm to his reputation that is 'serious': *Lachaux*, Lord Sumption, [12]-[16], [21]; *Turley*, Nicklin J, [107(iv)].
>
> v) The propositions that (i) the publication 'has caused' serious harm to the claimant's reputation and that (ii) it 'is likely to'

cause such harm are each propositions of fact which necessarily call for an investigation of the actual impact of the statement. When determining whether a statement 'has caused' serious harm, the focus is on historic harm. What were the consequences for the claimant's reputation, in terms of the actual impact on those to whom the statement was communicated? When determining whether a statement 'is likely to' cause serious harm, the focus is on probable future harm. *Lachaux*, Lord Sumption, [14]-[15]; *Turley*, Nicklin J, [107(ii)-(iv)].

vi) Whether a publication causes serious harm depends on the reactions of others, rather than the perception of the claimant: *Economou v De Freitas* [2016] EWHC 1853 (QB); [2017] E.M.L.R. 4 , Warby J, [131]. The assessment of harm to the claimant's reputation may take account of the impact of the publication on those who do not know the claimant but might get to know him in the future: *Lachaux*, Lord Sumption, [25].

vii) A claimant who has the burden of proving that a statement caused, or is likely to cause, serious harm to his reputation may do so by evidence directly going to prove such harm, or by inference from other facts. A claimant may produce evidence from those who watched, heard or read the statement complained of about its impact on him, but his case will not necessarily fail for want of such evidence: *Lachaux*, Lord Sumption, [21], *Turley*, Nicklin J, [107(vi)]. The difficulties of obtaining such evidence from those in whose eyes the claimant's reputation was damaged are obvious and well-recognised: *Sobrinho v Impresa Publishing SA* [2016] EWHC 66 (QB); [2016] E.M.L.R. 12 , Dingemans J, [48]; *Economou v De Freitas* [2018] EWCA Civ 2591; [2019] E.M.L.R. 7, Sharp LJ (with whom all members of the court agreed), [28] and [31]; *Turley*, Nicklin J, [109(ii)]. Comments posted online by those who have watched, heard or read the publication 'can be evidence of reputational harm, to the extent they can be said to be a natural and probable consequence of the publication complained of': *Economou*, Warby J, [129].

viii) Sometimes inference may be enough, but it cannot always be so. The evidence may or may not justify an inference of serious harm. Inferences of fact as to the seriousness of harm done to a claimant's reputation may be drawn from the evidence as a whole, including the meaning of the words, the scale and circumstances of publication, the claimant's situation and the inherent probabilities: *Lachaux*, Lord Sumption, [21]; *Turley*, Nicklin J, [107(vi)-(vii)] and [108] (citing Warby J's judgment in *Lachaux*, which Lord Sumption considered to be 'coherent and correct, for substantially the reasons he gave': *Lachaux*, Lord Sumption, [20]). Even a seriously harmful allegation about a person may not cause serious harm to their reputation if those within the jurisdiction to whom it has been made consist only of

people whose opinion of the claimant is of no consequence to the claimant and/or those who are unlikely to have believed the words complained of: see *Ames v Spamhaus Project Ltd* [2015] EWHC 127 (QB); [2015] 1 W.L.R. 3409, Warby J, [92(8)]; *Economou*, Warby J, [68].

ix) If it is shown that the claimant already had a bad reputation in the relevant sector of his life, that will reduce the harm: see, albeit in the context of assessment of damages: *Lachaux v Independent Print Ltd* [2021] EWHC 1797 (QB); [2022] E.M.L.R. 2 , Nicklin J, [209]; and *Lachaux*, Lord Sumption, [16] (and see the recognition that assessment of whether the serious harm test is met and assessment of the measure of general damage 'raise a similar question of causation': *Lachaux*, Lord Sumption, [24]). The evidence that is admissible is limited to evidence of general bad reputation in the sector: *Gatley on Libel and Slander*, 13th ed., 34.081-34.091. Rumours are not admissible: *Umeyor v Innocent Ibe* [2016] EWHC 862 (QB), Warby J, [78].

x) Evidence of damage to the claimant's reputation done by earlier publications of the same matter is legally irrelevant to the question whether serious harm was caused, or is likely to be caused, by the publication complained of: *Lachaux*, Lord Sumption, [24] (accepting that Warby J was entitled to apply the *Dingle* rule in applying s.1 of the 2013 Act). However, in circumstances where a claimant 'points to some hostile remark or other adverse event in his life as evidence of harm to reputation caused by the publication complained of, and there are other possible causes of the remark or event, in the form of other publications to the same or similar effect', the Dingle rule has no bearing in determining causation: *Economou v De Freitas*, Warby J, [19].

xi) The court should not 'consider the issue of serious harm in blinkers'. Directly relevant background context (see Burstein v Times Newspapers [2001] 1 W.L.R. 579 , May LJ, [47]) may be relevant to the assessment of whether the serious harm test is met: *Umeyor v Innocent Ibe*, Warby J, [77]-[78].

xii) In general, a libel has greater potential to cause harm if it is published to the world at large, and if it has been published repeatedly, than if it has been published to a single person on a single occasion: *Cairns v Modi* [2012] EWCA Civ 1382; [2013] 1 W.L.R. 1015, Lord Judge CJ, [24]. But assessment of harm to reputation is not a 'numbers game': 'one well-directed arrow [may] hit the bull's eye of reputation' and cause more damage than indiscriminate firing: *King v Grundon* [2012] EWHC 2719 (QB) [40], Sharp J. Very serious harm to reputation can be caused by publication to a relatively small number of publishees: *Sobrinho* [47]; *Dhir v Saddler* [2017] EWHC 3155 (QB); [55(i)];

> *Monir v Wood* [2018] EWHC 3525 (QB) [196]: *Turley*, Nicklin J, [109(iii)]. Moreover, in an appropriate case, a claimant 'can also rely upon the likely 'percolation' or 'grapevine effect' of defamatory publications, which has been 'immeasurably enhanced' by social media and modern methods of electronic communication: *Cairns v Modi*, Lord Judge CJ, [26] and *Slipper v British Broadcasting Corporation* [1991] 1 Q.B. 283, Bingham LJ, at 300': *Turley*, Nicklin J, [109(i)].
>
> xiii) A vindictive or vengeful motive for bringing the claim is not relevant to the assessment of whether the test in s.1 of the 2013 Act is met: see *Economou v De Freitas*, Warby J, [134]."

In this case, the parties have emphasised (vi), (vii), (ix), (x), (xi) and (xii), and made submissions on those points which I address below.

Gravity and extent of publication

104. The claimant emphasises the gravity of the defamatory meaning of the statement complained of, by reference to the single meaning, and the extent of publication. So far as the extent of publication is concerned, in correspondence the defendant's solicitors stated that the number of views of the Article from 26 January 2019 until 11 March 2022 was 51,367. The defendant has also provided a monthly and daily breakdown of the views from January 2019 to October 2021. None of these figures are in dispute. The number of views per day and per month was at its height in the period immediately following publication of the Article on 26 January 2019.

105. Based on the figures provided by the defendant, it is apparent that in the 12 months to March 2022, there were a mean average of 768 views per month, with the figure falling to a mean average of about 205 views per month during the last 5 months of that period. As the Article has remained online, the number of views is bound to have increased since 11 March 2022. There is no direct evidence as to how many more views there have been in the eight months since then, but bearing in mind the figures for November 2021 to March 2022, it is probable that the total number of views to date is at least 53,000. As the figures provided suggest that views increased substantially around the time the case was in court in April 2021, and there is likely to have been a similar increase during the trial which is not reflected in the figure of 53,000, that total is more likely to be an underestimate than an overestimate.

106. The defendant submits that as the figures provided do not represent unique views, there should be a percentage reduction to account for the number of readers who viewed the Article more than once. The defendant submits the total should be reduced by 50%, whereas the claimant submits there is no justification for reducing the figure by more than 5%. In principle, I accept that there should be some reduction to reflect the fact that some of the 53,000 'views' will represent people who have viewed the Article more than once. However, in the absence of any evidence to support the defendant's contention that the percentage of repeat viewers would be so high, I consider that a reduction of about 5% fairly represents the likely number of repeat viewers. Accordingly, I find that about 50,000 people have read the Article.

Inferential case and specific evidence of harm

107. With respect to (vii), the claimant emphasises that in *Lachaux* "*a combination of the meaning of the words, the situation of Mr Lachaux, the circumstances of publication and the inherent probabilities*" provided a sufficient basis for inferring serious harm: *Lachaux*, Lord Sumption, [21]. The claimant submits that those matters provide a sufficient basis to find serious harm to her reputation. As regards her situation, Ms Riley gave evidence that she is a television presenter, largely known as one of the presenters and the "*numbers expert*" on the Channel 4 programme "*Countdown*". She performs the same role on "*8 out of 10 Cats does Countdown*" which is a spin-off show on Channel 4 that uses the Countdown formula as a backdrop to a satirical comedy show. A by-product of her role as a mathematician is that she is a supporter of a number of charities, including charities with a particular interest in encouraging the education of children and young people, particularly girls, in STEM subjects (i.e. science, technology, engineering and mathematics).

108. The claimant's case on serious harm is an inferential one. There were only two matters on which Ms Riley gave evidence in support of her case on serious harm. She said that a "*left-wing friend, Natasha Devon, told me around the time the bullying allegations were at their height that she had friends questioning her as to why we were friends since I bullied children. She had to set her friends straight.*" Ms Riley's evidence was that the narrative that she had bullied Rose began to spread on Twitter and elsewhere in early January and, when the podcast was released on 9 January 2019 the abuse she was subjected to "*rose massively from that time on", the dominant theme being that she had bullied a child on Twitter. She said the "abused continued and worsened*" following the publication of the first Lawson article on 11 January 2019. Ms Riley could not recall whether her conversation with Ms Devon took place before or after Mr Sivier published the Article on 26 January 2019. I accept the defendant's contention that she has not shown, on the balance of probabilities, that the conversation took place before the Article was published. That being so, it does not assist in assessing whether the Article caused serious harm.

109. Ms Riley also gave evidence that on 7 March 2019 her agent arranged a meeting with the Head of Daytime Programming at Channel 4, her employer, as she and her agent "*thought we needed to get on the front foot and address complaints that had been made about me by people on Twitter*". One of the matters that she said was raising in the meeting was the accusation of "*child bullying*". Ms Riley could not recall whether this was raised by her, her agent or by her employer, but she considered at the time that it needed to be explained to her employer as the "*bullying and harassment allegations were highly active at the time*". She did not suggest any reference was made to the Article. Ms Riley acknowledged that this was the same meeting as she had referred to in her evidence in the claim she brought against Laura Murray regarding the "*Good Advice Tweet*": *Riley v Murray* [2021] EWHC 3437 (QB), [2022] EMLR 8, [142]. It seems likely, given the proximity of the meeting to the "*Good Advice Tweet*", that the meeting was prompted by the responses to that tweet, although I accept Ms Riley's evidence that the allegation that she had bullied a child on Twitter was referred to during the course of that meeting. It is probable, as the meeting was held at Ms Riley's instigation, that that too was a matter raised by her or her agent, rather than by her employer.

110. The defendant acknowledges that a case on serious harm based on inference is permissible, in principle, but submits it is highly pertinent that in this case the claimant

has not provided any evidence showing any detrimental effect upon her professional or public work, nor any direct evidence of the reaction of others to the Article.

Alleged lack of reputation among readers/dearth of evidence that readers' views of the claimant changed

111. With respect to (viii), the defendant contends that the claimant had no reputation among the readers of his Article because they had already made up their minds about the claimant before reading the Article. He relies on the fact that the two Lawson articles had already been published, Rose and her father had made allegations on Twitter, and he contends that the claimant herself had spread those allegations by means of her threads in response. In my judgment, this is no more than an attempt to repackage his argument that the *Dingle* rule does not apply and that the claimant had a bad reputation such that the Article did not seriously harm her reputation. For the reasons I give below, those arguments fail, as does this attempt to repackage them.

112. In any event, there is no evidential basis for the contention that the readers of the Article would have already reached the conclusion that the claimant has "*engaged upon, supported and encouraged a campaign of online abuse and harassment of a 16-year-old girl, conduct which has also incited her followers to make death threats towards her*". Or that they would have formed the opinion that by doing so the claimant was "*a serial abuser*" and has acted "*hypocritically*", "*recklessly*" and "*obscenely*". There is no evidence that readers (or substantial proportion of them) had already read the Lawson articles, nor any basis for inferring that the readership would have largely overlapped. There is also no basis for inferring that the readers of the Article, or a substantial proportion of them, would have already read the tweets accusing the claimant of bullying and harassing a 16 year old, nor that if they had done so they would have already reached the same patently untrue conclusions as were expressed by the defendant in the Article.

113. Although the defendant highlights the absence of evidence that readers changed their view of the claimant as a result of reading the Article, he does not contend that readers of the Article would, or would largely, have disbelieved the meaning he conveyed. On the contrary, he maintains the truth of it, despite the dismissal of his defence of truth. In the Article, the defendant stated that his allegations were supported by "*evidence*" and he described Mr Lawson's articles, from which he drew support, as "*evidence-packed*". As Warby J observed in *Monroe v Hopkins* [2017] 4 WLR 68, at [71(4)], a dearth of evidence that the allegation was believed is "*a commonplace of litigation in this field and understandable for reasons identified by Dingemans J in Sobrinho*". In my judgment, it is inherently probable that a substantial proportion of the readers of the Article would have believed the single meaning conveyed by the defendant to be true.

114. The fact that the Website was, politically, strongly left-wing and vociferously supportive of the (then) leader of the Labour Party, Jeremy Corbyn MP, whereas the claimant had been highly critical of anti-Semitism in the Labour Party under Mr Corbyn, and of his leadership on that issue, probably means that a significant proportion of the readers of the Article would have regarded the claimant as someone to whom they were politically hostile. But this does not lead to the conclusion that the claimant's reputation could not be harmed in their eyes. As Warby J stated in *Monroe* at [71(8)]:

> "… A person can have a low opinion of another and yet the other's reputation can be harmed by a fresh defamatory allegation. An example is provided by serious allegations made against a politician of a rival party. I have recently held that it does not follow from the fact that a publishee is a political opponent of the claimant, that they will think no worse of the claimant if told that he or she has covered up sexual abuse: *Barron v Collins* [2017] EWHC 162 (QB) at [56]. The same line of reasoning is applicable to the different facts of this case. As Mr Bennett puts it, if someone is hated for their sexuality or their left-wing views, that does not mean that they cannot be libelled by being accused of condoning the vandalisation of a war memorial. It can add to the list of reasons to revile her."

115. The accusation of engaging upon, supporting and encouraging a campaign of online abuse and harassment of a 16-year old girl was a fresh allegation that would have made readers of the Article think worse of the claimant.

General bad reputation/directly relevant background context

116. In support of his contention that the claimant has failed to prove the Article caused (or will cause) serious harm to her reputation, the defendant contends that she had a pre-existing bad reputation. It is well established that only evidence of general bad reputation, confined to the sector of the claimant's character relevant to the libel, is admissible; evidence of particular acts (or alleged acts) of misconduct on the part of the claimant tending to show her character and disposition is inadmissible: see *Gatley on Libel and Slander*, 13th ed., 34.081-34.091.

117. Warby J summarised the established principles regarding proof of bad reputation in *Price v MGN Ltd* [2018] EWHC 3014 (QB), [2018] 4 WLR 150 at [46]:

> "Mitigation of damages/disproof of harm:
>
> (1) A defendant may seek to show that the claimant's reputation has not in fact suffered, or not much, by proving that at the time of publication the claimant had an existing bad reputation. This was a clear common law principle in relation to mitigation of damages. The same point holds good, but with greater force, in the modern legal context where a claimant must establish "serious harm" under section 1. In principle, a defendant can establish that there is no cause of action because the claimant's reputation is so bad that the offending publication did not cause serious harm. *Ahmed* [2017] EWHC 1845 (QB) is a case where it was so clear that this would be the outcome that summary judgment was appropriate.
>
> (2) But there are clear limits to what is considered relevant and admissible for the purpose of, and the means by which a bad reputation can be proved. (a) Reputation is not considered for this purpose to be a single indivisible thing. It is only the claimant's reputation in the relevant "sector" of his life that

> matters for this purpose. (b) It is not legitimate to plead or prove in mitigation of damages specific acts of misconduct, even if they concern the same "sector" of the claimant's life: the rule in *Scott v Sampson* (1882) 8 QBD 491. (c) It is not legitimate to rely in mitigation of damages on the fact that the publication complained of contains other defamatory allegations about the claimant of which he has not complained: *Plato Films Ltd v Speidel* [1961] AC 1090, where the House of Lords refused to reverse or qualify *Scott v Sampson*. At p 1125 Viscount Sampson said this:
>
> > 'It surprises me that it should be considered a proper matter for pleading that a plaintiff has not thought fit to include in his action every libellous statement made about him by a defendant. It is, in my opinion, wholly improper.'
>
> (d) Further, 'it is not legitimate for a defendant to seek to reduce damages by proving [other] publications of the defendant or others and inviting an inference that those other publications have injured the claimant's reputation.' *Lachaux v Independent Print Ltd* [2015] EWHC 2242 (QB); [2016] QB 402, para 15(9), summarising 'the rule in *Dingle*' (*Dingle v Associated Newspapers Ltd* [1964] AC 371). Bad reputation must be proved by calling witnesses to speak of a person's actual reputation in the relevant sector. (e) By way of exception to these general principles, criminal convictions may be admitted in evidence to prove a bad reputation in a relevant sector of a person's reputation, as 'they are the very stuff of reputation': *Goody v Odhams Press Ltd* [1967] QB 333. This is the principle applied in Ahmed."

118. In this case, the defendant has pleaded and sought to prove that the claimant "*has a reputation for being highly controversial and offensive*". In support of this allegation, he has put forward seven specific "*examples*" of the claimant's conduct or statements, the first four of which are allegations made in the Article that have not been sued upon, and all of which concern her contributions to the debate on anti-Semitism. The defendant's argument, and attempt to adduce evidence in support of it through cross-examination of the claimant, falls foul of the "*clear limits*" identified by Warby J in *Price*.

119. *First*, the relevant sector of the claimant's reputation concerns her treatment of children, and in particular whether she has a pre-existing reputation for harassing and abusing them. Even if it were established that the claimant has a reputation for being "*highly controversial and offensive*", this would not show that she has a bad reputation in the relevant sector. *Secondly*, even if (contrary to my view) the examples given could be said to concern the relevant sector of the claimant's life, it is not legitimate to plead or prove, in disproof of serious harm, specific acts of misconduct. Subject to the exception for criminal convictions, which has no application in this case, bad reputation must be proved by calling witnesses to speak of a person's actual reputation in the relevant sector. No such evidence has been called in this case. *Thirdly*, it is not legitimate to rely in disproof of serious harm on the fact that the publication complained of contains other

defamatory allegations about the claimant of which she has not complained. That is precisely what the defendant has sought to do.

120. For the same reasons, the defendant's attempt to dress these examples up as "directly relevant background context" – which they are not – and cross-examine the claimant about them is illegitimate and the evidence is inadmissible.

The Dingle rule

121. In support of his contention that the claimant has failed to prove the Article caused (or will cause) serious harm to her reputation, the defendant also seeks to rely on earlier publications of his own and by others, most notably the two Lawson articles. The defendant submits he is entitled to do so, laying stress on my statement in *Banks* that "*in circumstances where a claimant 'points to some hostile remark or other adverse event in his life as evidence of harm to reputation caused by the publication complained of, and there are other possible causes of the remark or event, in the form of other publications to the same or similar effect', the Dingle rule has no bearing in determining causation: Economou v De Freitas, Warby J, [19]*": *Banks,* [51(x)].

122. This submission is misconceived. The defendant seeks to ignore the point made in the first half of subparagraph (x). Evidence of damage to the claimant's reputation done by the two Lawson articles, or any other earlier publications, is *legally irrelevant* in determining whether serious harm was caused, or is likely to be caused, by the publication of the Article. That is the effect of the *Dingle* rule.

123. The point made in the second half of subparagraph (x) is that if a claimant gives evidence about a specific incident, in support of their contention that the statement complained of caused serious harm to their reputation, such as that a stranger shouted abusive comments, a question of causation would arise that is not answered by the *Dingle* rule. Was the abuse prompted by the article complained of, or does the evidence show there was some other cause? An example has arisen in this case. I have not been prepared to place any weight on the evidence that the claimant's reputation was harmed in the eyes of friends of Ms Devon because, given the uncertainty about whether her conversation with Ms Devon was before or after the Article was published, the claimant has not established, on the balance of probabilities, that her reputation was harmed in their eyes by the Article. The defendant's submission is, in effect, that if I find the claimant's reputation was seriously harmed by the accusation that she engaged upon, supported and encouraged a campaign of online abuse and harassment of a 16-year old girl, conduct which incited her followers to make death threats against the girl, I should infer that the damage was done by earlier publications rather than the Article. That is directly contrary to the *Dingle* rule and an illegitimate approach.

Conclusion on the serious harm issue

124. For the reasons that I have given, I reject the defendant's contentions on the issue of serious harm. Nevertheless, the burden is on the claimant to establish that the test in s.1 of the 2013 Act is met. In my judgment, the claimant has succeeded in demonstrating that the statement complained of has caused serious harm to her reputation. My conclusion is based on a combination of the meaning of the words, the extent of publication, the claimant's circumstances and role, and the inherent probabilities.

125. The libel was grave: see paragraph 3 above. I have found that it was published to about 50,000 people. In *Riley v Murray* [2021] EWHC 3437 (QB, [2022] EMLR 8, Nicklin J observed at [140] that publication (in that case of a tweet) "*to between 10,000 and 15,000 people*" was "*of an equivalent scale to the likely readership of the print edition of a local regional newspaper*". The extent of publication in this case is significantly higher. The nature of the accusation, taken together with the claimant's role as a well-known television presenter, is such that the libel is likely to have spread, as a result of the '*grapevine effect*', to many more people beyond those who read the Article: *Barron v Vines* [2016] EWHC 1226 (QB), Warby J, [21(3)(d)], *Banks,* [50(xii)]. In these circumstances, it is inherently probable that the harm to the claimant's reputation caused by the statement complained of is serious.

F. Public interest defence: s.4 Defamation Act 2013

The law

126. The defendant relies on the defence contained in section 4 of the 2013 Act. The defence is available in respect of statements both of fact and of opinion: s.4(5). The key relevant subsections of s.4 provide:

> "(1) It is a defence to an action for defamation for the defendant to show that –
>
> (a) the statement complained of was, or formed part of, a statement on a matter of public interest; and
>
> (b) the defendant reasonably believed that publishing the statement complained of was in the public interest.
>
> (2) Subject to subsections (3) and (4), in determining whether the defendant has shown the matters mentioned in subsection (1), the court must have regard to all the circumstances of the case.
>
> …
>
> (4) In determining whether it was reasonable for the defendant to believe that publishing the statement complained of was in the public interest, the court must make such allowance for editorial judgment as it considers appropriate."

127. I addressed the applicable principles in detail in *Banks* at [100] to [135]. The key points for the purposes of this case are these.

128. There are three questions to be addressed:

i) Was the statement complained of on a matter of public interest, or did it form part of such a statement?

ii) If so, did the defendant believe that publishing the statement complained of was in the public interest?

iii) If so, was that belief reasonable?

129. It is for the defendant who seeks to rely on the public interest defence to satisfy the court that the answer to all three questions is 'yes'. The first and third questions are objective ones for the court, whereas the second concerns the defendant's actual state of mind at the time of publication.

130. In assessing whether the public interest defence is established, the court is required to have regard to all the circumstances of the case: s.4(2) of the 2013 Act. In summary:

i) The circumstances to be considered are those that go to whether the statement was on a matter of public interest, whether the belief was held, and whether it was reasonable.

ii) In assessing whether s.4(1)(b) is met, the focus must be on things the defendant said or knew or did, or failed to do, up to the time of publication.

iii) The court should take a fact-sensitive and flexible approach, having regard to practical realities. One or more of the ten illustrative factors identified by Lord Nicholls in *Reynolds*, 205A-D ('the *Reynolds* factors') may well be relevant, but those factors should not be used as a checklist.

iv) The public interest defence reflects the appreciation that a journalist is not required to guarantee the accuracy of their facts. The truth or falsity of the defamatory statement is not one of the relevant circumstances to which the court should have regard in assessing whether s.4(1) is met; it is a neutral circumstance. On the other hand, whether the journalist *believed* a statement of fact they published to be true, at the time of publication, is relevant (leaving aside reportage cases to which s.4(3) of the 2013 Act applies). Indeed, a journalist who has published a statement of fact which they did not believe to be true is unlikely to be able to show that they reasonably believed publication was in the public interest.

v) Efforts to verify the statement complained of "*will usually be regarded as an important factor in the assessment of the reasonableness of a defendant's belief that publication was in the public interest. That is not to say that a failure to verify will necessarily lead to the s.4 defence being rejected; everything depends upon the particular circumstances of the case*": *Lachaux*, Nicklin J, [137]. In *Economou*, in a statement approved by the Court of Appeal at [101] and by the Supreme Court in *Serafin*, [67], Warby J observed at [241]:

> "I would consider a belief to be reasonable for the purposes of section 4 only if it is one arrived at after conducting such inquiries and checks as it is reasonable to expect of the particular defendant in all the circumstances of the case."

vi) A failure to invite comment from the claimant prior to publication will "*no doubt always at least be the subject of consideration under subsection (1)(b) and may contribute to, perhaps even form the basis of, a conclusion that the defendant has not established that element of the defence*". But an invitation to comment cannot be described as a "*requirement*" of the s.4 defence: Serafin, Lord Wilson, [76].

See *Banks*, [106]-[111] and the authorities cited therein.

131. When addressing the third question, the court is required to make such allowance for editorial judgement as it considers appropriate (s.4(4) of the 2013 Act). The importance of giving respect, within reason, to editorial judgement is relevant when considering the tone and content of the material and the nature and degree of the steps taken by way of verification prior to publication. Even if the court considers that the journalist has fallen short in some respects, it is important to consider the process and the publication in the round, reaching an overall judgement as to the availability of the public interest defence. It is well established that the court must tolerate recourse to a degree of exaggeration or even provocation on the part of a journalist. See *Banks,* [112]-[114] and the authorities cited therein.

132. The public interest defence is not assessed by reference to the single meaning, but by reference to the statement complained of and the range of meanings that it bears. If the single meaning is "*obviously one possible meaning*" (or "*glaringly obvious*") it would not have been reasonable for the defendant to have ignored it. But if that threshold is not reached, the reasonable belief of a defendant who did not perceive the more damaging meaning falls to be assessed by reference to the less damaging meaning. This is known as the *Bonnick* principle: see *Banks*, [115]-[123] and the authorities cited therein.

133. Section 4 of the 2013 Act has to be interpreted and applied in conformity with the parties' respective rights under articles 8 and 10 of the European Convention on Human Rights, although those rights do not give rise to any separate and distinct issues to those which fall to be determined pursuant to s.4 of the 2013 Act. The special importance of expression in the political sphere, a freedom which is at the very core of the concept of a democratic society, is well recognised; and the concept of political expression is a broad one. The limits of acceptable criticism are wider in respect of political expression concerning politicians and other public figures who, though not professional politicians, "*exercise great practical power over the lives of people or great influence in the formation of public opinion or as role models*" (*Reynolds*, Lord Cooke, 220B-C). On the other hand, as Lord Nicholls observed in *Reynolds* at 201A-C:

> "Reputation is an integral and important part of the dignity of the individual. It also forms the basis of many decisions in a democratic society which are fundamental to its well-being: whom to employ or work for, whom to promote, whom to do business with or to vote for. Once besmirched by an unfounded allegation in a national newspaper, a reputation can be damaged for ever, especially if there is no opportunity to vindicate one's reputation. When this happens, society as well as the individual is the loser. … Protection of reputation is conducive to the public good. It is in the public interest that reputation of public figures should not be debased falsely."

See *Banks*, [124]-[133] and the authorities cited therein.

134. Where a defendant acts as a "*citizen journalist*", as Mr Sivier did in this case by publishing the Article on the Website, the same standards apply to him as are expected of a professional journalist: *Doyle v Smith* [2018] EWHC 2935 (QB), [2019] EMLR

15, Warby J at [81], [95], [96]. In any event, in this case, the defendant emphasised his journalistic and editorial training, and many years of experience as a journalist since he qualified in 1994.

Applicability of the Bonnick principle

135. The defendant asserts that the meaning he intended to convey, and which he reasonably believed the Article conveyed, was:

> "The Claimant is a hypocrite. She complains in national print and broadcast media interviews about online abuse and receives extra protection at her TV recordings whilst at the same time, on Twitter, she abuses her power and status as an adult and a celebrity to harass and bully a defenceless child with anxiety problems, including references making it possible for onlookers to believe the child is an anti-Semite. As a consequence of her irresponsibility and recklessness, others have felt encouraged to subject the child to abuse, including death threats."

136. I accept that these were meanings that Mr Sivier intended to convey. Indeed, they broadly reflect a substantial part of the single meaning. But it is so obvious that his words also conveyed the meaning reflected in the remainder of the single meaning that it would not have been reasonable for Mr Sivier to ignore that meaning.

137. The Article is not lengthy; it runs to a little less than 900 words. Mr Sivier repeatedly described Ms Riley as a "*serial abuser*", first in the headline and then in the 9th paragraph. He identified her as a person "*abusing or threatening*" another (8th-9th paragraphs). Mr Sivier expressly accused Ms Riley of acting "*in such a way that her (Ms Riley's) supporters subjected her [the teenage girl] to an appalling amount of abuse (known as dogpiling)*", of "*Doubling-down on this behaviour*", and then of "*attack[ing] that teenage girl yet again*" (12th and 14th paragraphs); a teenager who he described as having "*suffered so much abuse from*" Ms Riley. Mr Sivier wrote that Ms Riley's behaviour "*encouraged others to threaten a teenage girl's life*" (2nd paragraph), that she "*has herself provoked death threats against a teenage girl*" (20th paragraph); and Mr Sivier described Ms Riley's conduct as "*obscene*" (18th paragraph).

138. It would have been obvious that his words conveyed the meaning that this was not a one-off incident of bullying or harassment. He was saying in clear terms that Ms Riley was a *serial* abuser who had engaged in, and encouraged others to take part in, a *campaign* of online abuse and harassment of a 16 year old girl. He was saying not only that her conduct was hypocritical, reckless and irresponsible, but also that it was obscene. He was also saying that by her conduct Ms Riley incited and provoked her followers to make death threats towards the teenage girl. Having read Mr Sivier's statement and heard him give evidence, it is manifest that he intended to convey, and understood that his words conveyed, the full extent of the single meaning.

139. Accordingly, both the second and third questions fall to be determined by reference to the statement complained of and the range of meanings that it bears, including the single meaning and the meaning set out in paragraph 135 above.

Matters of public interest

140. It is not in dispute that the publication complained of was, or was part of, a publication on a matter or matters of public interest. The claimant has accepted, in her Reply, the defendant's pleaded case that the statement complained of was a statement on the following matters of public interest:

> "(1) Online bullying and harassment including death threats.
>
> (2) The power of an adult celebrity compared to the relative powerlessness of a vulnerable child suffering anxiety.
>
> (3) Mental Health.
>
> (4) Anti-Semitism.
>
> (5) The public conduct of the Claimant, a prominent public figure and, in particular statements she had made or caused to be made publicly a) in national print and broadcast media and b) on Twitter."

141. Accordingly, the answer to the first of the three questions identified in paragraph 128 above is 'yes'; and the requirement in s.4(1)(a) of the 2013 Act is met.

Belief that publication was in the public interest

142. Mr Sivier has given evidence that he believed that publication of the Article was in the public interest. This issue is contested. The claimant contends, and it is not disputed, that to have had such a belief Mr Sivier would have had to have applied his mind to the matter: *Turley v Unite the Union* [2019] EWHC 3547 (QB), Nicklin J at [138(vii)]. The claimant further contends, and this point is disputed, that I should infer that the defendant failed to give any thought to whether publication was in the public interest *prior* to publishing the Article.

143. The foundations for the inference that the claimant invites me to draw are these. First, the Article was published at 5.41pm on 26 January 2019. The article in the *Guardian* that Mr Sivier drew on in accusing Ms Riley of hypocrisy, and which prompted him to publish the Article, was published at 11.29am the same day i.e. 6 hours and 12 minutes before the Article was published. The undisputed evidence shows that Mr Sivier published other articles on 26 January 2019 at 2.45am ("New plan means local Labour members will have a chance to choose election candidates"), at 2.25pm ("Now Conservative donors are saying they'll rebel – but will they? Really?"); and at 3.09pm ("Jaguar Land Rover to halt production for a week BECAUSE OF BREXIT"). The claimant submits that these timings show that the defendant spent the earlier part of the afternoon of 26 January 2019 preparing and publishing other articles. The strong likelihood is that the defendant saw *the Guardian* article at some point in the afternoon, probably between about 3pm and 5pm, and the Article was written in a short space of time immediately prior to publication. This constricted timing renders it doubtful, the claimant submits, that the defendant considered whether it was in the public interest to publish.

144. Secondly, the claimant submits that the absence in the Article of any denial by the claimant, in circumstances where the defendant states he was aware the claimant denied

bullying Rose – and admitted in evidence that the lack of any reference in the Article to her denial was an "*omission*" - provides compelling evidence that the defendant gave no consideration to the public interest in publication. If he had given any consideration to the public interest, he would have been bound to have realised that the Article needed to reflect the claimant's denial and rebuttal of the allegations.

145. The claimant contends that the defendant considered publication to be in his interest, and that of his favoured political interests, but failed to consider whether publication was in the public interest.

146. Mr Sivier had read the Lawson articles when they were published on 12 and 18 January 2019, prior to publication of *the Guardian* article. He also claimed that he had undertaken about 24 hours of research, to check and analyse the material underlying Mr Lawson's articles. I do not accept that he conducted the level of research he claimed: see paragraph 154 below. But I accept that, having read the Lawson articles, Mr Sivier had not at that time intended to write an article on the topic himself as he had no new angle. Once he saw *the Guardian* article, Mr Sivier decided to present a counter-view to it "*as soon as possible so that its impact and relevance was not lost*". Mr Sivier described his approach as being to get his piece out as a "*short, sharp shock*" before "*falsehoods*" had a chance to circulate. Having regard to the timings of the various articles published on 26 January, the length of the Article and the degree to which the content was drawn from the Lawson articles, particularly the first Lawson article, it is highly probable that the Article was written at speed in the hour or two immediately prior to publication.

147. Nevertheless, although the opportunity to consider the matter was brief, I accept Mr Sivier's evidence that he believed publication was in the public interest. For the reasons that I give below, I have found that his belief was wholly unreasonable. But I accept it was honestly held. Mr Sivier believed that the account Ms Riley had given to *The Times*, as reported in *the Guardian*, was hypocritical, contained lies, and needed to be countered swiftly. Although I accept that Mr Sivier was motivated by his own political allegiance to publish the Article, it is readily apparent that he would have viewed promoting those political interests as in the public interest.

148. Accordingly, the answer to the second of the three questions identified in paragraph 128 above is 'yes'.

Reasonable belief

149. As in most cases where reliance is placed on the public interest defence, the major point of contention is whether the defendant's belief that publication of the statement complained of was in the public interest was reasonable.

150. As a well-known television presenter, and with a substantial platform on Twitter, Ms Riley is a public figure. But she is not a politician. Nor is she a public figure who exercises "*great practical power over the lives of people or great influence in the formation of public opinion*": *Reynolds v Times Newspapers Ltd*, Lord Cooke, 220B-C; Banks, [129], [132]. In my view, this is not a case in which the wider limits of acceptable criticism apply.

151. In support of his case that his belief was reasonable Mr Sivier has given evidence regarding the steps that he took prior to publication and regarding the content of the Article. As I have said, Mr Sivier acknowledged that he decided to write the Article on 26 January 2019, after reading *the Guardian* article. He wrote it at speed in about an hour or two immediately prior to publication, with a view to countering the account of abuse she had suffered as a result of her engagement in the anti-Semitism debate given by Ms Riley to *The Times*, as reported in *the Guardian*. Neither *The Times* nor *the Guardian* article made any reference to Rose.

152. His evidence that he had read the two Lawson articles around the time they were published on 12 and 18 January 2019 was not challenged. Mr Sivier provided links to them in the Article, and clearly drew from and quoted them, so he was undoubtedly aware of them. Mr Siver gave evidence that, having read the two Lawson articles, he

> "checked the tweets that Mr Lawson was referring to, as well as all the information in both articles. I subsequently reviewed further tweets surrounding those and in response to those mentioned in [the Lawson articles], including checking them to make sure they said what Mr Lawson had inferred. I annex the relevant tweets to my Amended Defence. This research took me about 24 hours on aggregate, over the two weeks and two days between publication of [the first Lawson article] and that of my Article, on top of the time I had spent reading Mr Lawson's articles previously. In view of my own experience of having my articles selectively quoted and taken out of context on this topic, I took my time to carefully review the underlying material Mr Lawson relied upon so that I could read and analyse it for myself."

153. I accept that Mr Sivier was sufficiently interested in the two Lawson articles that he probably clicked on the hyperlinks to tweets provided within the articles. Ms Riley's 9 January and 15 January threads were both hyperlinked. In addition, most of the tweets to or from Ms Oberman were reproduced within the second Lawson article. But the Lawson articles did not refer to or hyperlink (among others):

i) the messages preceding Ms Riley's first thread (paragraphs 23-40 above), save for Tweets 3 and 9 and the tweet set out in paragraph 35 above;

ii) Ms Riley's first thread (paragraph 41 above);

iii) Rose's first reply thread (paragraph 43 above), save for Tweet 45;

iv) Ms Riley's second thread (paragraph 46 above);

v) Rose's second reply thread (paragraph 47 above);

vi) Rose's 18 December thread (paragraph 51 above); or

vii) Rose's tweets preceding Ms Riley's 9 January thread (paragraphs 56, 60 and 62 above).

154. I do not accept Mr Sivier's evidence that he spent as much as 24 hours reviewing the material underlying the Lawson articles. Nor do I accept that he read and analysed all of the 243 tweets annexed to his Amended Defence, still less that he read the other tweets to which I have referred which do not appear in that annex. I reach these conclusions for these reasons:

i) At the time when Mr Sivier says that he undertook this research and analysis, he was not intending to write an article on the matter. That being the case, it is improbable that he would have assiduously searched for material on the topic which was not hyperlinked in the Lawson articles, and spent 24 hours reading and analysing the material underlying those articles.

ii) Mr Sivier made no reference in the Article to any material not referred to in the Lawson articles, other than *the Guardian* article. The Article is very largely drawn from Mr Lawson's articles. This is evident from the examples in paragraph 12 of the Article which have been lifted from paragraphs 76, 78-79, 87, 89-90 and 98 of the first Lawson article, the quotation in paragraph 18 of the Article, the reliance in paragraphs 13, 15 and 16 of the Article on the Lawson articles as providing the evidence supporting the allegations in the Article, and the close resemblance in the language used to describe the allegations. If Mr Sivier had spent 24 hours independently researching the matter, it is likely that some of the product of his research would have been evident in the Article.

iii) The clear impression I gained from Mr Sivier's evidence was that he had not realised the degree to which the Lawson articles omitted to refer to or hyperlink tweets and threads which were key to the assessment of whether his allegations were justified. If Mr Sivier had researched the matter in the depth he claimed, it is probable that he would have noticed the lack of reference to the messages I have identified in paragraph 153 above).

iv) Mr Sivier acknowledged that he kept no record of any research that he says he undertook. There is no contemporaneous record of the tweets he read prior to publication of the Article. The unreliability of memory, and the impact on memory of the civil litigation process, is well recognised: *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm), Leggatt J, [15]-[20]. Although Mr Sivier was confident that he remembered which tweets he had read in January 2019, rather than seen later in the context of this litigation, I consider it unlikely that in this respect his memory is reliable.

v) In December 2019, following Nicklin J's determination of meaning, Mr Sivier wrote on the Website:

> "Mr Justice Nicklin said my article had asserted that Ms Riley "has engaged upon, supported and encouraged a campaign of online abuse and harassment of a 16-year-old girl, conduct which has also incited her followers to make death threats towards her."
>
> So I have spent the last week looking up evidence to prove the claims in that sentence.

> I have succeeded in that task – in all respects."
>
> Although Mr Sivier claimed in evidence that he was gathering material he had read prior to publication of the Article, that is not the impression given by what he wrote. The defence, and subsequently the Amended Defence, was based on materials gathered a substantial period after publication of the Article.

155. Mr Sivier did not make any enquiries of any of the individuals involved before publishing the Article. In his oral evidence he mentioned for the first time that he had been in contact with Mr Lawson, but he did not say this contact took place prior to publication of the Article, nor did he give any evidence as to what information he sought or gained from such contact.

156. Mr Sivier acknowledged that he did not give Ms Riley any opportunity to comment prior to publication of the Article. The reason he gave for this striking omission was that he "*was aware Ms Riley had already given her side of the story*" in *the Guardian* article, an article published in *The Times* the same day, and the 15 January thread. In fact, Ms Riley had given no defence of her communications with and about Rose in *The Times* or *the Guardian*. Neither article referred to Rose. Ms Riley had said that she had suffered abuse for criticising Mr Corbyn's failure to tackle anti-Semitism. Plainly, that was not "*her side of the story*" in response to the allegations made by Mr Sivier in the Article. Ms Riley had responded to the accusation that she had been bullying/encouraging the bullying of a 16 year old girl in the 15 January thread. But the accusations in the Article were broader, and encompassed allegations about what Ms Riley had written in the 15 January thread.

157. Mr Sivier also stated:

> "I did not believe that, even had I approached Ms Riley for comment, that she would have commented. I also did not want to encourage a further tirade of abuse to be hurled at Rose. Therefore, knowing that the adage that "a lie can circle the world before the truth has got its shoes on" is a truism in the modern world of the internet, I knew that an article presenting a counter-view would need to appear as soon as possible so that its impact and relevance was not lost. I therefore published my Article on the same day as the Guardian article."

158. It was not reasonable for Mr Sivier to assume, without giving any reason for his belief, that Ms Riley would not comment, rather than provide her with an opportunity to do so. Moreover, his reasoning suggests that, in fact, he believed that she would have responded to the allegations, given the opportunity, and he was keen to publish the allegations without giving Ms Riley the chance to rebut them.

159. The importance of giving Ms Riley an opportunity to comment prior to the publication of the Article is particularly evident in light of the numerous matters on which Mr Sivier made assumptions. Three examples will suffice. Mr Sivier said that he believed that when Ms Riley wrote to Rose "*I have nothing to hide, and I'm far from ashamed*" (Tweet 33, paragraph 41 above), in response to Tweet 9 (paragraph 36 above), that "*Ms Riley was saying very clearly that she believed her followers had been right to attack Rose*". That is a perverse interpretation of what Ms Riley wrote, made more

unreasonable by the failure to put it to her. Mr Sivier said that he believed Ms Riley lied in Tweets 99 and 107 (paragraphs 64 and 68 above) in saying that she had "*shrugged & moved on*" and wanted nothing to do with Rose, because "*Ms Riley must have been monitoring Rose's behaviour, despite having been blocked*". Mr Sivier gave no consideration to the possible alternative explanations (e.g. that Ms Riley saw retweets of Rose's messages, as is evidently the case in at least one instance: see paragraph 64 above); and he gave Ms Riley no opportunity to respond. Mr Sivier believed that Ms Riley saw "*the entire, if not the majority, of the set of tweets*" from Ms Oberman, and he concluded that Ms Riley's tweet of a cat gif (Tweet 213, paragraph 88 above) could "*only be an indication of support for Ms Oberman's campaign of harassment against Rose*". Mr Sivier did not consider how few of those tweets were replies to or tagged Ms Riley (see paragraph 84 above), or that she may have been expressing support for Ms Oberman in response to the unfair allegations of "*grooming*", and made no enquiry to ascertain which tweets Ms Riley had seen or why she sent a message of support.

160. It is equally striking that having relied on the fact that Ms Riley had already given her "*side of the story*" to explain why it was unnecessary to give her an opportunity to comment, Mr Sivier did not include any reference to the fact that Ms Riley denied the allegation that she had bullied, or encouraged the bullying, of a 16 year old girl. Mr Sivier accepted, when giving oral evidence, that the Article should have referred to her denial. The fact that it did not was, he said, an accidental omission.

161. Mr Sivier quoted paragraph 101 of the second Lawson article (paragraph 98 above), stating as a fact what the consequences of Ms Riley's alleged conduct had been for Rose. Mr Sivier acknowledged that in respect of this information he was reliant on Mr Lawson's articles. He chose not to making any inquiries of Rose. Mr Sivier explained that he did not consider it appropriate to contact Rose directly as she was a 16 year old girl who was suffering with anxiety, and who had said she wished to be left alone. In addition, she had set out her position in her tweets. Mr Sivier's reasons for choosing not to make enquiries of Rose in order to check the veracity of the consequences referred to in the second Lawson article are understandable and reasonable. But the admitted fact that he was unable to verify any of those matters ought to have had an impact on the terms in which he chose to report them.

162. For the reasons I have given, I have concluded that the defendant failed to conduct such inquiries and checks as it is reasonable to expect of him in all the circumstances, and consequently his belief that publication of the statement complained of was in the public interest was not reasonable.

163. The flaws in the process are, in my view, clearly sufficient in themselves to render Mr Sivier's belief unreasonable. But I have also concluded that, even leaving aside those flaws, his belief was manifestly unreasonable. Despite the summary dismissal of his truth defence, Mr Sivier maintained that his allegations were true, and in any event that it was reasonable for him to believe them to be true. Although the issue does not strictly arise, I have no hesitation in agreeing with Collins Rice J's conclusion that the statement complained of was not only untrue, it was not even arguably true. More to the point, for the reasons I give below, Mr Sivier had no reasonable grounds to believe that his intended meaning, or the single meaning which his words obviously conveyed, was true. I shall focus primarily on the allegation of engaging in, or encouraging others to engage in, online abuse, harassment or bulling of Rose, and of provoking others to make

death threats against her, as that alleged conduct was the basis for Mr Sivier's expressed view that Ms Riley acted hypocritically, recklessly, irresponsibly and obscenely.

164. First, Ms Riley's engagement with Rose has to be seen in the context of the series of tweets that Rose sent directly to Ms Riley, inviting and challenging her to respond (see paragraphs 23-40 above). Rose expressed disappointment that Ms Riley believed a biased media that was set on bringing Mr Corbyn down. She said she was upset and offended that Ms Riley was encouraging or making false accusations of anti-Semitism, and wrongly using her platform to spread propaganda and encourage a smear campaign. She said she had been subjected to abuse for standing up against such material. Rose told Ms Riley she should feel ashamed of herself; and challenged Ms Riley for not replying.

165. Second, although Rose said, prior to Ms Riley's first thread, that she had made her "*final comment*" and was muting "*antisemitism and likewise from twitter so I can stop being trolled*": (i) that tweet was not a reply to Ms Riley and she was not tagged; (ii) in fact, Rose sent further tweets that evening; and (iii) in those tweets, Rose repeatedly asserted that Ms Riley is not Jewish. As Collins Rice J observed at [31], "*whether or not one agrees with Ms Riley's decision to tweet Rose, or with the content of her tweets, it is plain beyond any argument that she was responding to a direct challenge from Rose to explain herself and her point of view*".

166. Third, the terms of some of the messages Rose received prior to Ms Riley's first thread were rude and abusive. But no responsibility for those tweets could sensibly be laid at the door of Ms Riley, who had not yet engaged with any of Rose's unsolicited messages.

167. Fourth, neither the number of tweets sent by Ms Riley to Rose nor the timing of them provides any reasonable basis for Mr Sivier's belief. As Collins Rice J observed, "*it is routine practice, including in mainstream journalism, to develop a point of any complexity over a thread cumulating the word limits of a number of individual tweets*" and the "*time of day (or night) is irrelevant to an exchange not itself time-sensitive or expecting immediate response*" ([32]).

168. Fifth, there is nothing in Ms Riley's first thread to Rosie that provides any reasonable foundation for Mr Sivier's allegations and his belief it was in the public interests to publish them. Mr Sivier's evidence about this thread, in which he alleged that Ms Riley's intention was to intimidate Rose, undermine her position as a mental health advocate, gaslight and patronise Rose, and to express the view that her followers had been right to attack Rose, bore no rational connection to the messages Ms Riley in fact conveyed. The way in which Ms Riley corrected Rose's mistaken belief that she is not Jewish, and responded to the accusation that she was engaging in a smear campaign and should be ashamed of herself, was gentle, civil and measured. The content and tone of Ms Riley's first thread was in sharp contrast to the insulting messages some other Twitter users had sent Rose, and manifestly provided no encouragement to anyone to abuse, bully or harass her.

169. As Collins Rice J observed:

> "Rose's own response to Ms Riley's tweets, and in the ensuing exchange, is instructive. She gracefully acknowledged her own mistake in assuming 'Jewish' and 'atheist' mutually exclusive.

> She articulates her political viewpoint, and acknowledges Ms Riley's perspective without sharing all of it. She notes the role of *others* including in the mainstream media in degrading the conduct and tone of the wider political debate. Rose's reaction is cordial, engaged and self-possessed. She says herself in a later tweet of 9th January that this conversation had been 'amicable'."

170. Sixth, Rose's message in which she said she was about to "*have a break from Twitter*" (paragraph 44 above) was not a reply to Ms Riley and she was not tagged. Rose engaged in the discussion with Ms Riley in her first thread in reply, and she acknowledged that at the age of only 16 she was "*just learning*" about anti-Semitism. There was nothing in Rose's reply to Ms Riley to indicate that she did not wish to engage in any further discussion, or to learn more.

171. Seventh, whether or not one agrees with the views Ms Riley articulated in her second thread to Rose, Ms Riley expressed herself in a polite and cordial way, providing information to a teenager who had sought to engage with her, and who had said this was a topic about which she was just learning. Ms Riley expressed the point that she found it hurtful to be accused of lying and encouraging a smear campaign in restrained and mild terms. Ms Riley clearly sought to discourage anyone from attacking Rose by accepting unequivocally, at the outset of the thread, Rose's statement that she would never be racist to anyone and condemns anti-Semitism, and by stating at the end of the thread that she knew Rose's "*heart is in the right place*", expressing the view that "*online pile-ons can be horrible*" and stating that anyone attacking Rose could "*f the F off*".

172. Mr Sivier's evidence that in the second thread Ms Riley made a further attempt to gaslight Rose, and that by contacting her on public Twitter, rather than using the direct message system, Ms Riley sought to intimidate, abuse and harass Rose again bears no rational relation to the messages that she sent. Ms Riley used the same public platform on which Rose had sought to engage with her. Moreover, I note that Ms Oberman was criticised for sending direct rather than public messages to Rose (although there is no evidence that she had done so), and it would not have been possible for Ms Riley to send a direct message to Rose unless she was a follower. The height of Mr Sivier's argument was that Ms Riley was ignoring the subject raised by Rose (Owen Jones/Jeremy Corbyn) in favour of a different argument. Even if that were true, it is far from uncommon for people to speak at cross-purposes, and it would not begin to provide any reasonable grounds for the allegations Mr Sivier made about what was plainly an amicable discussion.

173. Eighth, Rose, in her second reply thread, recognised that the debate that she was having with Ms Riley was a "*sensible*" one. She contrasted their discussion with those engaged in by others on twitter which involved "*name calling and throwing abuse*". She also said that she would "*always be willing to learn from others and recognise when I am wrong but also stand by my opinions*". It was in that context that, and against the background of the allegations that Rose had earlier made, that although Rose said, "*I'm putting this debate behind me now*", Ms Riley sent two brief final tweets to Rose, the first reciprocating her Christmas greeting, and the second querying whether she now thought there was "*more to the story*". Rose did not respond and Ms Riley did not seek to communicate with her again.

174. It is not unreasonable to think that it would have been *better* if Ms Riley had "*let it lie*" when Rose said she was putting the debate behind her. But Ms Riley's final tweet to Rose does not provide any reasonable grounds for accusing Ms Riley of abusing, harassing or bulling Rose, or of encouraging others to do so. Nor did it provide any encouragement to anyone to make death threats against her. Notably, this cordial discussion between Ms Riley and Rose took place over the course of a single day on 17 December 2019, and had concluded before 1pm.

175. Ninth, Ms Riley was accused of bullying Rose, relentlessly bothering and pestering her, and encouraging an "*onslaught*" or "*pile on*" against her. The accusation spread. In order to counter it, Ms Riley sent her 9 January thread (paragraphs 64-69 above) in which she set out the entirety of her interaction with Rose. Ms Riley stated at the outset that she was deleting Rose's twitter handle "*to avoid a pile on*" and reiterating at the end of her thread that no one has anything to gain from a pile-on, "*so pls don't*". While deleting Rose's Twitter handle did not, of course, make it impossible for "*malcontents*" who wished to send her abusive messages to track down her handle and do so, it is wholly unreasonable to suggest that Ms Riley was *encouraging* such conduct when she was expressly urging the precise opposite.

176. In his statement, Mr Sivier asked, "*What possible reason could she have had for publishing this thread, other than to create animosity against the girl who had challenged her?*" The answer was patently obvious: her reason for publishing the 9 January thread was to defend herself against an unfounded allegation of bullying a 16 year old girl online.

177. Tenth, Ms Oberman's communications with Rose began in response to a message from Rose to Ms Oberman. In response, Ms Oberman offered to arrange for Rose to have tea with a Jewish girl, Charli, to support an exchange of views and create connections. It is readily understandable that, even if well-intentioned, Rose may have found this offer, and more particularly its repetition in a deluge of emails, unwelcome and overwhelming; so much so that her father intervened online to protest against this attention.

178. But these interactions did not involve Ms Riley, save to the extent that (i) she sent a message to Ms Oberman the day afterwards in terms that were warm and supportive of her stance on anti-Semitism (Tweet 213); and (ii) she criticised Rose's father and others for accusing Ms Oberman of "*child grooming*" and being a "*Jimmy Savile wannabe*". There was no foundation for those serious allegations. Whatever the merits of the other criticisms of Ms Oberman's communications with and about Rose, Ms Riley's support of a friend who was so unfairly being accused of "*grooming*" provides no reasonable grounds for Mr Sivier's belief that the statement complained of was true. It is, as Collins Rice J observed ([58]), fanciful to suggest that by sharing a cat gif in response to Ms Oberman's "*call for cat gifs instead of abuse*" Ms Riley was engaging in or encouraging such abuse.

179. Eleventh, in the 15 January thread Ms Riley responded to continuing accusations that she was "*bullying/encouraging the bullying of a 16 year old girl*" on Twitter, and in the first Lawson article, which was itself spread on Twitter. Rose was not the focus of this thread. Ms Riley did not include any reference to her name or Twitter handle, or her Twitter profile. Ms Riley's criticism was directed at adults, including Rose's father, who Ms Riley considered were using the bullying allegation to "*stoke the fires of*

antisemitism". Ms Riley expressed the view that adults were "*using a child's profile and exploiting MH issues to fuel campaigns of hate & intimidation*". Mr Sivier takes issue with Ms Riley's view. But that does not assist his case. Even if she were wrong, or could reasonably be said to be wrong, in her view as to who was responsible for spreading the allegation made against her, the fact remains that Ms Riley was plainly not blaming the 16 year old girl or encouraging anyone else to do so, or encouraging anyone to subject her to a campaign of abuse and harassment.

180. The defendant's belief that publication of the statement complained of was in the public interest was not reasonable. That is because he failed to make such enquiries as were reasonably required in the circumstances; he had no reasonable grounds for making the factual allegations that he did, which misrepresented the evidential picture; and the Article was wholly unbalanced.

Summary of conclusions on public interest defence

181. Although the answer to the first and second questions identified in paragraph 128 above is 'yes', the answer to the third and last question is 'no'. Consequently, the requirement in s.4(1)(b) of the 2013 Act is not met. It follows that the defendant's public interest defence has failed and the claim succeeds.

G. Injunction

182. The claimant seeks "*an injunction to restrain the defendant, by himself, his servants or agents or employees or otherwise howsoever, from further publishing or causing or permitting the publication of the words complained of or of any similar words defamatory of the claimant*". The defendant did not dispute that such an injunction should be granted, if the claim were to succeed.

183. The defendant has not taken down the Article, retracted any of the allegations, or apologised for it. I agree with Mr Stables that the claimant has an irresistible case for an injunction requiring the defendant to remove the Article and not to repeat it or words to similar effect again. I will grant the injunction sought.

H. Damages

The law

184. As Nicklin J observed in *Turley* at [171], the relevant principles were gathered by Warby J in *Barron v Vines* [2016] EWHC 1226 (QB:

> "[20] The general principles were reviewed and re-stated by the Court of Appeal in *John v MGN Ltd* [1997] QB 586. … Sir Thomas Bingham MR summarised the key principles at pages 607—608 in the following words:
>
> > 'The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must [1] compensate him for the damage to his reputation; [2] vindicate his good name; and [3] take account of the distress,

> hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is [a] the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. [b] The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. [c] A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place. It is well established that [d] compensatory damages may and should compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way. Although the plaintiff has been referred to as "he" all this of course applies to women just as much as men.'

[21] I have added the numbering in this passage, which identifies the three distinct functions performed by an award of damages for libel. I have added the lettering also to identify, for ease of reference, the factors listed by Sir Thomas Bingham. Some additional points may be made which are relevant in this case:

(1) The initial measure of damages is the amount that would restore the claimant to the position he would have enjoyed had he not been defamed: *Steel and Morris v United Kingdom* (2004) 41 EHRR [37], [45].

(2) The existence and scale of any harm to reputation may be established by evidence or inferred. Often, the process is one of inference, but evidence that tends to show that as a matter of fact a person was shunned, avoided, or taunted will be relevant. So may evidence that a person was treated as well or better by others after the libel than before it.

(3) The impact of a libel on a person's reputation can be affected by:

> a) Their role in society. The libel of Esther Rantzen [*Rantzen v Mirror Group Newspapers* (1986) Ltd [1994] QB 670] was more damaging because she was a prominent child protection campaigner.

b) The extent to which the publisher(s) of the defamatory imputation are authoritative and credible. The person making the allegations may be someone apparently well-placed to know the facts, or they may appear to be an unreliable source.

c) The identities of the publishees. Publication of a libel to family, friends or work colleagues may be more harmful and hurtful than if it is circulated amongst strangers. On the other hand, those close to a claimant may have knowledge or viewpoints that make them less likely to believe what is alleged.

d) The propensity of defamatory statements to percolate through underground channels and contaminate hidden springs, a problem made worse by the internet and social networking sites, particularly for claimants in the public eye: *C v MGN Ltd* (reported with *Cairns v Modi* at [2013] 1 WLR 1051) [27].

(4) It is often said that damages may be aggravated if the defendant acts maliciously. The harm for which compensation would be due in that event is injury to feelings.

(5) A person who has been libelled is compensated only for injury to the reputation they actually had at the time of publication. If it is shown that the person already had a bad reputation in the relevant sector of their life, that will reduce the harm, and therefore moderate any damages. But it is not permissible to seek, in mitigation of damages, to prove specific acts of misconduct by the claimant, or rumours or reports to the effect that he has done the things alleged in the libel complained of: *Scott v Sampson* (1882) QBD 491, on which I will expand a little. Attempts to achieve this may aggravate damages, in line with factor (d) in Sir Thomas Bingham's list.

(6) Factors other than bad reputation that may moderate or mitigate damages, on some of which I will also elaborate below, include the following:

a) ‘Directly relevant background context’ within the meaning of *Burstein v Times Newspapers Ltd* [2001] 1 WLR 579 and subsequent authorities. This may qualify the rules at (5) above.

b) Publications by others to the same effect as the libel complained of if (but only if) the claimants have sued over these in another defamation claim, or if it is necessary to consider them in order to isolate the damage caused by the publication complained of.

c) An offer of amends pursuant to the Defamation Act 1996.

> d) A reasoned judgment, though the impact of this will vary according to the facts and nature of the case.
>
> (7) In arriving at a figure it is proper to have regard to (a) Jury awards approved by the Court of Appeal: *Rantzen*, 694, *John*, 612; (b) the scale of damages awarded in personal injury actions: *John*, 615; (c) previous awards by a judge sitting without a jury: *John*, 608.
>
> (8) Any award needs to be no more than is justified by the legitimate aim of protecting reputation, necessary in a democratic society in pursuit of that aim, and proportionate to that need: Rantzen …This limit is nowadays statutory, via the Human Rights Act 1998."

Submissions

185. The parties were far apart in their submissions as to the appropriate award of damages. Mr Stables submits that general damages should be of the order of £120,00, with aggravated damages set at a further 30% of that figure, giving a total of £156,000. Whereas Mr Mitchell submits the claimant should recover no more than nominal damages and "*no sum close to the £10,000*" awarded in *Riley v Murray*.

186. In support of a high award, Mr Stables emphasises the gravity of the libel, the substantial publication, the upset that it has caused the claimant (a matter on which she gave unchallenged evidence), the defendant's persistence in maintaining the truth of the libel, and lack of any apology for it, even after the summary dismissal of his defence of truth, and the claimant's role as a person in the public eye who is reliant on the goodwill of the public. With respect to factor (3)(b), the claimant submits that the defendant's role as a long-standing publisher, the description of him by *The Independent* newspaper as a "*campaigning journalist*" for his work promoting disability rights, and his repeated references to the "evidence" underlying his allegations, provided some credibility for the Article.

187. The claimant cites as relevant comparators the awards in *Turley* (£75,000), *Harrath v Stand for Peace Ltd* [2017] EWHC 543 (QB) (£140,000), and *Sloutsker v Romanova* [2015] EMLR 637 (£110,000). The defendant submits these authorities have no bearing on the facts of this case.

188. The defendant contends that any award of damages should be reduced to reflect the claimant's bad reputation and/or the "*directly relevant background context*". In this regard he relies on the matters that I have addressed in the context of considering the issue of serious harm. Whereas the claimant submits that the pleading of such irrelevant matters, and cross-examination of the claimant on them, should be reflected in an aggravated award.

189. The defendant also contends that any award should be reduced having regard to the claimant's settlement of a separate claim concerning the re-tweet by the defendant of the second Lawson article: *Riley and Oberman v Heybroek* [2020] EWHC 1259. The defendant relies on s.12 of the Defamation Act 1952, and the fact that the claimant

would not disclose details of the settlement when asked in cross-examination, as she was concerned to abide by the terms of confidentiality.

190. In her claim form, the claimant sought damages valued at no more than £50,000. Mr Stables relies on CPR 16.3(7) for the proposition that, "*The statement of value in the claim form does not limit the power of the court to give judgment for the amount which it finds the claimant is entitled to.*" In *Harrath* the claimant had issued for no more than £10,000 ([22]), but Sir David Eady found that the appropriate award was £140,000 ([23]). The claimant made clear that he was willing to pay any additional fee, if necessary ([22]). In view of the possibility that it might prove impossible to recover even the sum of £10,000, counsel for the claimant in *Harrath* floated the possibility of an order that the judgment should not be enforced beyond £10,000 without leave of the court. It appears that form of order was not pursued as the claimant was concerned that such an order "*might lead to the outcome being 'spun' or misrepresented*". In this case, the claimant does not wish to pay any additional fee. Mr Stables submits that, if I make an award above the £50,000 claimed, then it should be made in terms that the judgment should not be enforced beyond the level claimed without leave of the court.

Decision on damages

191. This was a serious allegation to make, at *Chase* level 1 (as the defendant acknowledged even in the intended meaning he put forward), against a public figure. The extent of publication was substantial, equivalent in scale to the likely readership of the print edition of a large regional newspaper. The defendant has continued to publish the Article. There has been no retraction, amendment or apology to mitigate the damage to the claimant's reputation or to provide any element of vindication. The award of damages, together with this judgment, will have to provide that. The claimant's evidence as to the distress caused both by publication and by her own cross-examination at trial was not challenged, and I accept it.

192. It is an aggravating feature that the defendant has continued to maintain the truth of his untrue allegations even after the summary dismissal of his defence of truth was upheld by the Court of Appeal. The defendant's pleading of matters that were alleged to demonstrate the claimant's bad reputation or to constitute directly relevant background context was misconceived: see paragraphs 116-120 above. His reliance, and cross-examination of the claimant, on those matters is a further aggravating factor.

193. I consider that the settlement in *Riley and Oberman v Heybroek* is a mitigating factor. However, the publication in issue was a re-tweet of the second Lawson article, whereas the Article was drawn to a more significant degree from the first Lawson article. The meaning of the statement complained of in the *Heybroek* case was substantially different to the meaning in this case, not least because unlike in this case the allegations that the claimant had subjected a vulnerable 16 year old girl to repeated harassment and abuse, and by her actions had encouraged others, were expressed as opinions rather than fact. The defendant only sought disclosure of the settlement figure when the claimant was in the witness box. It is unsurprising in those circumstances that she was concerned not to breach the confidentiality of the agreement. In all the circumstances, it seems to me that this factor warrants only a moderate reduction.

194. I have borne in mind the need to retain a sense of proportion when fixing the appropriate sum for damages. I have considered the comparator cases that were cited to me, but

every case is different and I do not consider that those cases provide any close parallel to this one.

195. Assessing these various factors and applying the legal principles I have identified, the sum in damages I award is £50,000. The figure includes all elements of aggravation. I do not fix a separate award for aggravated damages. If I had made an award above £50,000, I consider the appropriate course would have been to give the claimant an opportunity to amend the statement of value in her claim form. However, as the award does not exceed the statement of value, that is unnecessary.

I. Conclusion

196. The claimant has succeeded in her defamation claim. She is entitled to an award of damages in the sum of £50,000 and an injunction.