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Case No: KB-2023-003648

**IN THE HIGH COURT OF JUSTICE**  
**KING’S BENCH DIVISION**  
**MEDIA & COMMUNICATIONS LIST**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 14 June 2024

**Before :**

**His Honour Judge Lewis**  
**(sitting as a Judge of the High Court)**

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**Between :**

**RICHARD STEWART TAYLOR**

**Claimant**

**- and -**

**PATHE PRODUCTIONS LIMITED (1)**  
**BABY COW PRODUCTIONS LIMITED (2)**  
**STEPHEN JOHN COOGAN (3)**

**Defendants**

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**William Bennett KC and Victoria Jolliffe** (instructed by Shakespeare Martineau LLP)  
for the claimant

**Andrew Caldecott KC and Hope Williams** (instructed by Wiggin LLP) for the  
defendants

Hearing date 29 February 2024

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**Approved Judgment**

This judgment was handed down remotely at 10.30 on 14 June 2024 by circulation to the parties or their representatives by e-mail and release to the National Archives

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## HIS HONOUR JUDGE LEWIS

1. This judgment follows the trial of a preliminary issue on meaning.
2. These are libel proceedings brought in respect of the feature film *The Lost King* (“the Film”) which was released to the public on 26 September 2022.
3. The claimant is the former Director of Corporate Affairs and Planning and former Deputy Registrar for the University of Leicester (“the University”).
4. The first and second defendants are said to be responsible for the production and publication of the Film.
5. The third defendant is sued in his capacity as the co-author of the Film’s screenplay and one of its producers. He is also a member of the Film’s cast.
6. The Film is a dramatisation about the discovery in 2012 of the remains of Richard III in a car park in Leicester. It tells the story from the perspective of Philippa Langley, who was shown in the Film as the driving force behind the search that led to the discovery of the remains.
7. On 11 December 2023, Nicklin J directed that there should be a trial of a preliminary issues to determine:
  - a. The natural and ordinary meaning of the Film;
  - b. Whether the meaning determined is defamatory of the claimant at common law.
  - c. Whether and to what extent the meaning determined is a statement of fact or opinion.
  - d. If and insofar as the publication complained of is an expression of opinion, whether the Film indicated, in general or specific terms, the basis of the opinion.

### The law

8. The court’s task is to determine the single natural and ordinary meaning of the words complained of, which is the meaning that the hypothetical reasonable viewer would understand the words to bear.
9. In *Jones v Skelton* [1963] 1 WLR 1362 the Privy Council explained what is meant by a natural and ordinary meaning:

“The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words. .... The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader guided not by any special but only by

general knowledge and not fettered by any strict legal rules of construction would draw from the words.” per Lord Morris at 1370-1371.

10. I must first view the Film to form a provisional view on meaning, before turning to the parties' pleaded cases and submissions, see *Tinkler v Ferguson* [2020] EWCA Civ 819 at [9].
11. The long-established principles to be applied when reaching a determination of meaning were re-stated by Nicklin J in *Koutsogiannis v Random House Group Ltd* [2019] EWHC 48 (QB) at [12].

- “(i) The governing principle is reasonableness.
- (ii) The intention of the publisher is irrelevant.
- (iii) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. A reader who always adopts a bad meaning where a less serious or non-defamatory meaning is available is not reasonable: s/he is avid for scandal. But always to adopt the less derogatory meaning would also be unreasonable: it would be naïve.
- (iv) Over-elaborate analysis should be avoided and the court should certainly not take a too literal approach to the task.
- (v) Consequently, a judge providing written reasons for conclusions on meaning should not fall into the trap of conducting too detailed an analysis of the various passages relied on by the respective parties.
- (vi) Any meaning that emerges as the produce of some strained, or forced, or utterly unreasonable interpretation should be rejected.
- (vii) It follows that it is not enough to say that by some person or another the words might be understood in a defamatory sense.
- (viii) The publication must be read as a whole, and any “bane and antidote” taken together. Sometimes, the context will clothe the words in a more serious defamatory meaning (for example the classic “rogues’ gallery” case). In other cases, the context will weaken (even extinguish altogether) the defamatory meaning that the words would bear if they were read in isolation (eg bane and antidote cases).
- (ix) In order to determine the natural and ordinary meaning of the statement of which the claimant complains, it is necessary to take into account the context in which it appeared and the mode of publication.
- (x) No evidence, beyond publication complained of, is admissible in determining the natural and ordinary meaning.
- (xi) The hypothetical reader is taken to be representative of those who would read the publication in question. The court can take judicial notice of facts which are common knowledge, but should beware of reliance on impressionistic assessments of the characteristics of a publication’s readership.

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

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

12. The parties have referred me to decisions about the approach to be taken when considering the meaning of a television programme, *Bond v BBC* [2009] EWHC 539 (QB) (Eady J) and *Poroshenko v BBC* [2019] EWHC 206 (QB) (Nicklin J) at [20]. In *Millett v Corbyn* [2021] EWCA Civ 567, Warby LJ confirmed that the approach to be taken when deciding the meaning of a broadcast was as follows:

“With a broadcast such as this, this is not a matter of studying the transcript, which cannot tell you how the words are spoken, in what tone, or with what emphasis. It means watching and listening to the interview as a whole, bearing in mind that the ordinary viewer will do so only once. The court should avoid over-elaborate analysis and give weight to its own impression”. [18]

13. In this case, the publication complained of is a feature film, not a television programme, although the same principles apply.
14. Whilst I have been provided with a transcript of the Film, both parties acknowledge that I must base my decision on my impression of the Film itself. The transcript does not convey the visual images and sounds used in the Film, including the way in which scenes have been edited, the presentation of a character's general demeanour and the tone of voice, intonation, emphasis and expression used by the actors.
15. The claimant's skeleton for this hearing does, however, include a detailed textual analysis of the words used in the Film, by reference to the transcript, set out across eleven pages. Some of the defendants' submissions are also made by reference to extracts from the transcript. To an extent, this is understandable, since the parties need to be able to refer to what happened in the Film, and some of the things said, to explain their respective cases on meaning. I do, however, need to keep in mind that my role is not to undertake a forensic analysis of the words used. I must focus on the impression that the Film would have left on the hypothetical reasonable viewer, rather than placing undue focus on specific words or scenes.
16. Before considering the parties' respective cases, I do need to say something in broad terms about what happened in the Film. It is relatively simple in structure:
- a. It starts looking at Ms Langley's life. The viewer is told that she has ME and sees that she is unhappy at work and has been overlooked by her boss.
  - b. Ms Langley is then seen going to see a performance of Shakespeare's Richard III with one of her children. The play triggers something in Ms Langley.

- c. Ms Langley then immerses herself in the world of Richard III. She reads many books on the subject, becomes an active member of the local Richard III Society and is also shown attending an academic lecture. She follows up on leads and speaks with people knowledgeable on the subject. She is portrayed as becoming somewhat obsessed, with her ex-husband telling her that she was “starting to sound slightly mad”.
- d. From this research, the Film shows that Ms Langley believed that Richard III might have been buried in the precincts of the former Greyfriars Church in Leicester. She is shown wandering the streets of Leicester, ending up in a local authority car park, and it is made clear to the viewer that Ms Langley has a feeling, or sense, that this is where Richard III’s remains might be found.
- e. The Film then turns to Richard Buckley, an archaeologist. When he is first introduced in the Film, he works for the University. He meets Ms Langley. He is polite but it is apparent that he is not particularly interested in what she has to say. The viewer is told that Mr Buckley was about to give Ms Langley the brush off. However, he changes his mind when the University withdraws his funding, and he revisits Ms Langley’s proposal out of financial necessity.
- f. The claimant’s character Mr Taylor first features an hour or so into the Film. Ms Langley attends a meeting at the local council and asks for £35,000 in funding. Whilst the meeting’s chair is sympathetic to Ms Langley, others, in particular the character Mr Taylor, are shown as being sceptical about what she had to say.
- g. Immediately afterwards, the chair tells Ms Langley that Leicestershire Promotions has agreed to provide all the funding sought.
- h. This funding is later withdrawn. Ms Langley is left to fund the project herself. She is shown raising the money through a crowd funding campaign and the assistance of the Richard III Society and her family.
- i. This funding allows Ms Langley to commission Mr Buckley and his team to start work on the dig.
- j. The character Mr Taylor is then shown turning up at the dig with a film crew, explaining to the crew that it was the University that was “leading” the search for Richard III. The viewer sees Ms Langley challenge this, pointing out that she is leading the search, with the University contributing a small amount of funding at the last minute. As she walks off, the character Mr Taylor is shown making a comment about Ms Langley to his assistant: “someone is getting a little too big for their fancy boots”.
- k. During a later scene, also at the dig, Mr Buckley tells Ms Langley that they have found some bones. There is then a conversation between them about where to focus the remainder of the search, given the limited budget. Later, Ms Langley goes with her intuition and decides – as the client – that she wants Mr Buckley to explore a specific trench, against his advice.

- l. The viewer then sees that Ms Langley was right. Mr Buckley and his team find further bones, which are believed to be of Richard III.
  - m. Straightaway, the viewer sees the character Mr Taylor turn up on site, with a film crew. He is then joined by the Vice Chancellor of the University. There is a conversation between Buckley and the character Mr Taylor, where Mr Taylor says “we’re playing catch up now”. Mr Buckley challenges the claimant’s use of the word “we”, pointing out that the University had pulled Mr Buckley’s funding. The claimant replies by suggesting that it is a “very fluid situation” and that things will change, and are changing very rapidly.
  - n. The University then arranges a major press conference following the discovery of Richard III’s remains. We see posters proclaiming that the University had found him. The viewer sees Ms Langley attend in the belief that she will be involved in the conference, only to find the running order had been settled by the University without reference to her. Mr Taylor introduces Mr Buckley as the conference’s first speaker. Ms Langley is shown sitting in press rows, whilst the University takes credit for the discovery. Afterwards, we see Mr Buckley say to Mr Taylor that Ms Langley should have been on the podium, something that is dismissed by Mr Taylor.
  - o. After the press conference, Ms Langley approaches the character Mr Taylor. He is shown trying to avoid her. He apologises for the seating plan. Ms Langley then challenges him on plans for the burial, making clear that the tomb needs to have the royal coat of arms. I will return to this part of the Film later in this judgment, as it is particularly contentious.
  - p. The Film then wraps up with the reinternment. The character Mr Taylor is shown to play a prominent role, in contrast to Ms Langley who was shown sitting in a pew. That evening, there was a celebratory banquet. The character Mr Taylor is again shown to take centre stage. Ms Langley was not present but is shown instead attending at a school to give a talk about what happened.
17. The Film includes more detail than this, but for a viewer watching the Film once as a piece of entertainment, I am sure many of the finer details would have been lost.
18. Interspersed throughout the Film, I would say well over a dozen times, the viewer sees Ms Langley having conversations with Richard III. It becomes apparent that whilst Ms Langley (and the viewer) can see Richard III, nobody else can. It would appear, therefore, that these were hallucinations on the part of Ms Langley, used as a device to give the viewer an insight into what Ms Langley was thinking.
19. A key theme running throughout the Film is that there are differences of opinion about Richard III. The hypothetical reasonable viewer would not necessarily know anything about Shakespeare’s work, or the wider debate. It would, however, be apparent to the hypothetical reasonable viewer, from what is said in the Film, that there are two main schools of thought. The traditional view – held by mainstream academics, including the University, and portrayed in Shakespeare’s play – is that Richard III, a hunchback, was a “wicked” usurper, responsible for the murder of his

two nephews. The alternative, Ricardian view, does not accept the account given by Shakespeare, and broadly considers many of the negative things said about Richard III to be untrue. This was presented as very much being the outsider's perspective, and the view held by Ms Langley and the members of the Richard III Society.

### The pleaded case

20. The claimant's pleaded case is that the Film meant:
  - a. The Claimant dishonestly misrepresented the facts concerning the search for and discovery of Richard III's remains to the media and the public. He did so by deviously manipulating the public presentation of information about the find, so as unjustly to conceal Philippa Langley's true role, and to take credit that was rightfully hers, for himself and the University of Leicester.
  - b. The Claimant consistently behaved in a dismissive, patronising and misogynistic way towards Ms Langley.
  - c. The Claimant wrongly set out to frustrate a condition set by Ms Langley for Richard III's reburial, that the tomb show a royal coat of arms in order to acknowledge that he had been a legitimate king, not a usurper. However, the Claimant again acted in a devious and manipulative way in order to frustrate Ms Langley by ignoring her emails on the subject and arranging for the University of Leicester to gain control over Richard Buckley by re-employing him and granting him a doctorate for no other apparent reason than to ensure his cooperation with the University, to control the reburial and prevent a royal coat of arms being placed on his tomb. In explaining why this decision had been reached to Ms Langley, the Claimant behaved in a deeply unpleasant and disablist manner by publicly mimicking Richard III's "hunchback" and equating his physical deformity with his wickedness/moral failings.
21. The claimant says these are statements of fact, and they are defamatory at common law. The defendants accept that the claimant's pleaded meanings are defamatory at common law.
22. The defendants' pleaded case is:
  - a. The Claimant acting on behalf of the University, publicly exaggerated the University's role in searching for and locating Richard III's remains, and marginalised Ms Langley's role despite her major contribution to the find.
  - b. At times the Claimant's conduct towards Ms Langley in relation to (a) was unduly dismissive and patronising.
23. The defendants say that (a) is a statement of fact and is defamatory of the claimant at common law.
24. The defendants say that (b) is a statement of opinion. They say it adds little to the defamatory sting of (a).

The claimant's case:

25. The claimant says:

- a. The relevant context is the “good versus bad” narrative which runs through the Film – with Ms Langley as the “gutsy underdog heroine struggling against opposition” and the claimant as the “arrogant villain”, who not only takes steps to make sure that people do not know about Ms Langley’s role but takes the credit which was rightfully hers for himself and the University, causing the public to be misled and for Langley to be wrongly “airbrushed from history”.
- b. In the first scene involving the claimant, he is presented as a “suited bean-counter”. He scoffs at some of Ms Langley’s answers, ridicules her for referring to her feelings, and then talks over her.
- c. After Ms Langley leaves the room, the claimant says that the character Mr Taylor was shown as being dismissive of the project:

“Now I’m sure this woman means well but I think it’s important to acknowledge that she’s an amateur, and she has an emotional dynamic which I don’t think is helpful... My concern is for the reputation of the university should the whole thing become a fiasco. Huh! I mean Richard III under a car park”.

- d. The meeting chair then comes out of the meeting to inform Ms Langley that Leicestershire Promotions would be funding the project, but advises her not to mention her “feelings” again: “People love to use that as a stick to beat you with, especially if you’re a woman”. The claimant says this is a reference to what the character Mr Taylor had said, and shows sexism on part of the claimant and his dismissive and patronising approach towards Ms Langley.
- e. In the second scene involving the claimant, when the dig starts, the theme of the claimant wrongly taking credit away from Ms Langley is introduced. It would have been apparent to viewers that he was doing so dishonestly, knowing that the University had not been involved with the funding. The character Mr Taylor was also shown using a dismissive tone towards Ms Langley.
- f. In the third scene involving the claimant, the viewer sees the claimant “marching at speed” past Ms Langley looking for Mr Buckley, who was late. The claimant says the viewer soon learns how the claimant will manipulate this “fluid situation”, and that he is the obvious architect of the University’s PR bid to portray the find falsely as being the work of the University.
- g. The fourth scene involving the claimant is the press conference. This was the key dramatic event used to portray and to emphasise the mistreatment of Ms Langley, where the claimant was “shown to be his most villainous”. The claimant is shown to have organised the event, presenting University staff as the ones responsible for the find, and denying Ms Langley any credit or acknowledgement for it. It is said Mr Buckley looked embarrassed when Ms



Langley asked him who was chairing the event. The claimant says the viewer would be shocked, if not outraged, that Langley was not on the podium and would appreciate that this was all down to the claimant and the University.

- h. The Film then shows Mr Buckley challenging the claimant about Ms Langley's exclusion. The claimant replies "Don't go off piste, the world's press are here. It's about putting you and the University front and centre", to which Mr Buckley replies "At least I've got the good grace to feel guilty". The claimant says this tells the viewer that the claimant had been instrumental in ensuring that Ms Langley did not get the credit she deserves.
- i. There is then the conversation between the character Mr Taylor and Ms Langley, which I will consider separately.
- j. At the reinternment/burial, the Film showed Ms Langley to be sidelined, in contrast with the role played by the claimant, who was front and centre in the procession, and later he enters the banquet with others to standing ovation and applause, accepting the glory.
- k. Taken as a whole, the Film showed the claimant's mission as being to "steal" the credit for Ms Langley's decisive role, and the way he did this was dishonest, leading to the public being deceived. He was the Svengali. Whilst he was employed by the University, the Film showed that he was the one taking decisions, and responsible for his misdeeds. It showed him treating Langley in an abominable way.
- l. The Film made clear on a number of occasions that the University was not contributing any money towards the project, including immediately after the funding meeting, when the funding was then withdrawn, when Ms Langley spoke with Mr Buckley about his future involvement, and when Ms Langley raised funds herself to remedy the funding issue.
- m. The claimant was shown as being dishonest because it would be apparent to viewers that he was aware that the University's involvement was marginal, that Buckley had been sacked, and that Langley had led the dig. The viewer would have understood that the claimant knew what he was doing when he misrepresented the position.
- n. The claimant's pleaded case is that viewers would have believed the allegations made against the claimant because (i) the Film was presented as a true account of events; (ii) even making allowance for the need to condense events into a cohesive film, the viewer would not expect the Film to state matters to be true which were not true; (iii) the claimant's real name was used in the Film, and he was in fact the principal point of contact between Ms Langley and the University.
- o. Finally, the claimant says that in all the scenes showing the claimant and Ms Langley, he was seen to be dismissive and patronising. He was as bad at the start of the Film as at the end.

## The defendants' case

26. The defendants say:

- a. The dominant perspective of the Film is that of Ms Langley, who plays a role close to a narrator. The Film starts by saying it is based on a true story, her story. Ms Langley is depicted as experiencing visions of Richard III throughout the Film, assisting in the depiction of Ms Langley's thought processes.
- b. The Film explores several key themes, which would drift past the viewer. These include the contrast between professional and amateur, between reason alone and reason harnessed to instinct, and the priority given by the University to its commercial interests at the expense of giving Ms Langley sufficient credit.
- c. The defendants do not accept the claimant's "saint and sinner" narrative. The Film represents Ms Langley as a flawed and complex character who is not easy to deal with, being unwell, under serious stress, prone to delusional episodes and bordering on the obsessive. She is not right about everything, nor reasonable about everything. The defendants say she is also depicted as "emotional, lacking confidence and requiring constant reassurance from her husband." On the other hand, she is also shown as intelligent, determined and dogged with an instinctive gift.
- d. The Film represents Ms Langley as infatuated with Richard III and his innocence, and her correctness on various contentious historical issues. It shows that she is not easy to deal with on these issues.
- e. In the first scene with the claimant, it shows the claimant and others being sceptical about Ms Langley's proposal, theories and feelings. The claimant was shown being cynical about amateurs, and questioning spending. The hypothetical reasonable viewer would have seen Ms Langley pitch on the basis of "feeling" and so would see that she has an "emotional dynamic". The viewer would realise that Mr Taylor's reaction was driven by scepticism of amateurs and instinct.
- f. In the second and third scenes with the claimant, at the dig site, the claimant's clear motive was to exploit the discovery to further the University's commercial interests, not to take personal credit. The viewer would understand that the claimant sees the University as a business.
- g. The hypothetical reasonable viewer would not consider the claimant's treatment of Ms Langley in isolation but would take into account her wider character and relations with others. The claimant's actions in side-lining Langley are shown to be motivated by the fact she is portrayed as sometimes prickly and dogmatic. The viewer would understand that the decision to exclude her was in the context of her controversial views and tendency to be blunt and forthright.

- h. There is no room for hyperbolic adverbs “dishonestly” and “deviously”. The claimant is shown to be upfront that his world is one where commercial opportunities must be maximised. The side-lining criticism is the “abiding and central criticism” of the claimant and the University. This side-lining is overt, unattractive and unfair, but neither dishonest nor devious.
- i. Where the Film does include criticism of the claimant, the court must consider whether this amounts to a general criticism of him, or only relates to his behaviour in the particular situation shown.

### Misogyny

27. The claimant’s second meaning is that “The Claimant consistently behaved in a dismissive, patronising and misogynistic way towards Ms Langley”. Mr Bennett KC clarified during the hearing that the term “misogynistic” is not used here to mean a hatred of women, but rather sexist prejudice directed at women, and so an alternative formulation could be to replace “misogynistic way” with “sexist manner”.
28. The claimant’s pleaded case is that one of the two major themes dealt with in the Film was “the putting down/side-lining of Ms Langley by the claimant and others, at least in part because she was a woman”. It is also said that the Film establishes Ms Langley as “the underdog who faces unfair prejudice, particularly from the men she encounters”, and that this narrative is important to how the viewer interprets the claimant’s actions. Reliance is placed in particular on the claimant being shown to tell Ms Langley to “calm down”. The claimant also relies on the initial meeting with the claimant, where he is dismissive of Ms Langley’s initial proposals, referring to her as “that woman” and casting doubt on Ms Langley for her emotion, which the claimant says is a classic misogynistic trope. When the chair tells Langley afterwards not to refer to emotion again, it is said that this reinforces the suggestion that the claimant had acted in a misogynistic way against Langley.
29. The claimant then seeks to analyse how the Film depicts Ms Langley’s interactions with men. It is important though to keep in mind that the court is to focus on the impression that the Film leaves, and not to seek to undertake a detailed analysis about underlying themes. I do not, in any event, think that the claimant’s analysis assists. Counsel for the claimant has focussed on the way that five different men are shown to interact with Ms Langley:
  - a. Ms Langley’s boss, who is not portrayed positively. He clearly side-lines Ms Langley, and the viewer is made aware of possible reasons for this, including Ms Langley’s chronic fatigue, her age and her gender.
  - b. An arrogant parent at the play, who is very dismissive of Ms Langley’s views – not because she was a woman, but because she was expressing views that were at odds with those underpinning the play. I do not think the hypothetical reasonable viewer would see this as an example of a man treating someone badly because she is a woman – it rather shows Ms Langley being fanatical and challenging the entrenched orthodoxy.

- c. Mr Buckley – who was shown to be dismissive of Ms Langley’s original proposal, stropky when she determined the dig priorities, and opportunistic in allowing the University to take the credit for the find. There is no suggestion that this poor treatment was because of Ms Langley’s gender. In the first two circumstances, this appears to have been because Ms Langley was an amateur, and in the third, this was shown as being because of self-interest. The fact that Mr Buckley was sceptical that Richard III was buried in the car park, and was more interested in finding the Greyfriars Church, seems perfectly understandable and is not evidence of Ms Langley being treated poorly by Mr Buckley because of her gender.
  - d. Academic RR Lawrence – Ms Langley challenges him during a lecture, putting across views that were supportive of Richard III, and Mr Lawrence is shown putting her down, highlighting the fact that she is not an academic.
30. There are, however, plenty of men shown to be supportive of Ms Langley. There is her ex-husband, the author John Ashdown-Hill, who features at key times during the Film, and the male members of the Richard III Society. Also, female professionals are shown being dismissive of Langley and her gut instinct, including the female archaeologist and Mr Taylor’s assistant.
31. The defendants say that no reasonable viewer would conclude that the claimant’s motive was sexism or misogyny, and nobody makes such accusations in the Film. It is said that the viewer would understand that the claimant’s treatment of Ms Langley was due to her status as an amateur with unorthodox views and his over emphasis of the University’s commercial interests.
32. The defendants also say that throughout the Film, Ms Langley is shown as being an emotional person, and so the viewer would not consider the claimant’s comments to be misogynistic tropes, as alleged. Looked at in context, telling Ms Langley to calm down was understandable. The meeting chair advising Ms Langley not to talk about feelings was a general comment, and not an allegation about the claimant, and to suggest that this is what she was doing borders on grotesque.
33. The defendants also say that words such as disablist and misogynistic suggest characteristics of a person, and so care is needed not to treat a couple of one-off remarks as suggesting a general tendency.

#### After the press conference

34. The third limb of the claimant’s proposed meaning arises out of a brief, single scene towards the end of the Film after the University’s press conference.
35. Both parties have taken me to the relevant part of the transcript:
- C: “Philippa! How are you? Sorry about the seating”.
- PL: “You haven’t responded to my emails – what’s happening with the burial?”
- C: “Oh the tomb? Have you seen the design? Very striking. I’ll get them to email it to you.”

PL: "It needs to have a royal coat of arms on it. That's very important. A proper acknowledgment of who he was. A sign of respect."

C: "Yeah I think this was discussed by the burial committee and they didn't think that a coat of arms was the correct protocol."

PL: "Sorry why not?"

C: "The committee felt that the physical evidence gathered from the dig – the hunched spine and so on - does tend to support the historical view that Richard was a usurper." C pulls a hunchback gesture.

[... other matters... walks off, but PL moves around and stands in his path]

PL: "He was not a usurper. And the diagnosis was scoliosis, curvature of the spine not a hunchback."

C: "Well the committee felt that the condition - whatever its precise label – does suggest that there is more truth to Shakespeare's account of Richard's life than perhaps you and your supporters would like to admit to?"

C moves off. PL speaks loudly, and others start paying attention

PL: "So twisted spine equals twisted personality does it?"

C: "No, no no – that's not what the committee is saying. Let's just calm down."

PL: "He was a legitimate king and his right to a royal coat of arms on his tomb is unarguable. I will fight you all the way on this Richard."

C: "Well, the decision of the burial rests with the holder of the exhumation licence which, through Richard Buckley, is the University of Leicester."

PL: "I thought you fired him?"

C: "We reinstated him. And we've awarded him a doctorate."

PL: "when did that happen?"

C: "Quite recently".

PL: "I specified a royal coat of Arms on his tomb as a condition of his reburial – but Richard Buckley didn't include it on the exhumation licence!"

C: "Well that is unfortunate for you."

36. The claimant says that the Film depicted his behaviour after the press conference as appalling, Machiavellian and despicable.
37. In respect of the decision on the coat of arms, the claimant says the Film showed how the claimant had excluded Ms Langley from even putting her case on this issue and frustrated her aims through his "devious machinations". It is also said that it showed how the claimant had been involved in Buckley's reinstatement (and doctorate) "just to get control of the exhumation licence, and therefore control over the burial".
38. The claimant also says the Film showed Mr Taylor mocking a disability, with a crude impression of a hunchback, and pulling a face, and linking physical deformity with wickedness/moral failings. It is said this showed the claimant reverting to the "damaging disablist trope" that an ugly disability is linked with, and proof of, Richard III's wrongful behaviour as a usurper.
39. The defendants say this proposed meaning is fanciful, completely unrealistic, and so legalistic that nobody would come away with that impression.
40. The defendants say that this was a fleeting scene, and even an uncharacteristically attentive and memory retentive viewer would not understand the Film to mean that

claimant set out to frustrate a condition set by Ms Langley for the burial. Such a viewer would have observed that Buckley was responsible for the situation with the burial licence, that the burial committee had taken the decisions, and that the royal coat of arms was, in fact, included on the tomb. It is also said that the claimant is not the kind of person anyone would think was taking a decision on such an issue, involving as it does a matter of significant historical dispute.

41. Mr Caldecott says that the suggestion that the claimant behaved in a disablist manner “borders on the absurd” in its proper context. Only a viewer avid for scandal would interpret the claimant’s mimicking of a hunchback in the way the claimant suggests. By this stage of the Film, the viewer would have been alive to the traditional view that Richard III had a hunchback and was a usurper. In context, the claimant was simply saying that the fact that the remains showed that Richard III had a hunched spine gives credence to the other aspect of the traditional view, namely that he was a usurper: if one aspect of the Shakespearean view has been proven correct, this tends to support other aspects.

#### Fact or opinion

42. In *Koutsogiannis* at [16] Nicklin J provided a summary of the common law principles to be applied in relation to the “first condition”, which were approved by Warby LJ in *Corbyn v Millett* [2021] EWCA Civ 567 at [12]:

“... when determining whether the words complained of contain allegations of fact or opinion, the court will be guided by the following points:

(i) The statement must be recognisable as comment, as distinct from an imputation of fact.

(ii) Opinion is something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation, etc.

(iii) The ultimate question is how the word would strike the hypothetical reasonable reader. The subject matter and context of the words may be an important indicator of whether they are fact or opinion.

(iv) Some statements which are, by their nature and appearance opinion, are nevertheless treated as statements of fact where, for instance, the opinion implies that a claimant has done something but does not indicate what that something is, i e the statement is a bare comment.

(v) Whether an allegation that someone has acted ‘dishonestly’ or ‘criminally’ is an allegation of fact or expression of opinion will very much depend upon context. There is no fixed rule that a statement that someone has been dishonest must be treated as an allegation of fact.”

43. In *Triplark v Northwood Hall* [2019] EWHC 3494 (QB) at [17] Warby J (as he then was) said:

“Although an inference may amount to a statement of opinion, the bare statement of an inference, without reference to the facts on which it is based, may well appear as a statement of fact: see *Kemsley v Foot* [1952] AC 345. As Sharp LJ, DBE, pointed out in *Butt* at [37], not every inference counts as an opinion; context is all. Put simply, the more clearly a statement indicates that it is based on some extraneous material, the more likely it is to strike the reader as an expression of opinion.”

44. The claimant notes that the question is whether the *statement complained of* was a statement of opinion, not whether the meaning or imputation found is an expression of opinion. Mr Bennett says that there is nothing in the Film where a third party is shown commenting on, or interpreting the claimant’s actions, giving rise to a discrete defamatory statement which could be interpreted as an opinion. Whether a viewer might interpret conduct in such a way is not relevant to whether the Film itself makes statements of opinion.
45. The claimant says that the Film depicts real events, and the viewer would expect the individuals to be carefully portrayed. The reference at the start to this being a true story mitigates against this being opinion of the type contended for by the defendants.
46. The defendants say that their second proposed meaning is a statement of opinion about the way the claimant treated Ms Langley. The defendants say that the Film does not state in express terms that the claimant had been dismissive or patronising, and he is not accused of this. It is accepted that the Film does show the claimant being dismissive or rather patronising, but this is a “very light” suggestion. It is an inference, which it is said is one of the classic hallmarks of an opinion. The defendants say that suggesting that someone spoke to another in a patronising manner is plainly capable of being opinion. They say the Film must be interpreted as a whole, and the basis for the opinion was generally indicated by the entirety of Ms Langley’s dealings with the claimant and the University in the Film.

## Discussion

47. In this case, the publication complained of is a film, which is significantly longer than a drama series, TV documentary or a news story. The hypothetical reasonable viewer would have appreciated that the Film was neither a documentary, nor a work of fiction. It was a dramatisation of events, and the viewer would appreciate that this means that the dialogue in the Film was not a verbatim record of what occurred. The hypothetical reasonable viewer would have watched it in one go, for entertainment. They would not take notes, nor rewind or seek to cross-check what has been said.
48. It is necessary to look at the entire Film for context when reaching a decision on meaning. The drama is being told from the perspective of Ms Langley. It opens by telling viewers that the Film is telling “her story” – something that would have been apparent to the viewer in any event given the way in which the story is told.
49. It is apparent to the viewer of the Film that Ms Langley was the driving force behind the remains being found. She was the person who undertook the preliminary research, persuaded Mr Buckley to get involved, raised the funds and identified the correct area in which the search should be conducted. She was shown as tenacious,

and being someone able to stand up to the archaeological and academic community in order to pursue something that she believed in passionately. Although Ms Langley was shown as a complex character, the impression left by the Film on the hypothetical reasonable viewer would have been sympathetic to her, particularly given the way she was at times treated by others.

50. What the Film was saying about the claimant needs to be considered against this background. It would have been apparent to the hypothetical reasonable viewer that the claimant was providing an incorrect narrative about the extent of the University's involvement in the discovery of the remains. The Film suggested that the role of the University had, in fact, been minimal. It would have been clear to the hypothetical reasonable viewer that Mr Buckley was not working for the University during the project, having had his funding pulled. It would also have been apparent that the University had not contributed to the funding of the project, save for a small amount provided at the last minute.
51. I agree with Mr Caldecott that the Film does not suggest that the claimant was conducting himself in this way for his own personal benefit. It would have been apparent to the viewer that he was promoting the University. It would, however, also have been apparent to the viewer that the claimant was in a senior role at the University and was the person responsible for the narrative being put forward by the University about the project and the discovery of the remains.
52. A key point of disagreement is whether the Film alleged that the claimant was dishonest. The hypothetical reasonable viewer would have understood the Film to be saying that the claimant knowingly put across a false narrative about the University's role in the project. The Film suggests that he knew that Ms Langley had been the driving force, who had funded and pursued the project, and that the University's role had been minimal. Nevertheless, he is shown taking credit for the University in circumstances where he was aware this was not due. At the same time, the viewer would have understood the Film to be saying that the claimant knowingly played down Ms Langley's involvement, including by excluding her from the platform at the press conference.
53. In respect of the claimant's proposed second meaning, the claimant does not come across as a particularly likeable character. Throughout, he appears smug, patronising and condescending. We also see him make a snide aside about Ms Langley getting too big for her boots (at a time when she was wearing particularly distinctive wellingtons). If the Film is considered and analysed carefully, it may well be that some viewers would have come away thinking that the Film was making a wider statement about the claimant's general character. I am not sure, however, that the hypothetical reasonable viewer, watching the Film as a piece of entertainment, would have stopped to think through whether the Film was making a wider comment on the claimant, or just showing how he reacted in this particular situation.
54. I do not think the hypothetical reasonable viewer would have come away from the Film thinking that it was saying that the claimant was a misogynist, or sexist, although some viewers might have done. The comments identified by the claimant need to be considered within the context of the Film. There is of course an express reference to Ms Langley's gender in the first scene involving the character Mr Taylor, and I



acknowledge that the phrase “calm down” can be used as a sexist putdown against women. In this instance, the viewer would understand that the character Mr Taylor’s main problems with Ms Langley were that she was an amateur, presenting at the outset a bizarre and fanciful plan, that she was stubborn, difficult to get on with, and obsessed with promoting a view of history that was at odds with conventional thinking. When Ms Langley was told to “calm down” this was shown to be in response to Ms Langley being anything but calm, making serious allegations about the claimant in front of others.

55. I struggle with the claimant’s proposed third meaning.
56. The hypothetical reasonable viewer would not have leapt to such conclusions.
57. The viewer is told very clearly that the University’s burial committee had taken the decisions about whether the tomb should show a royal coat of arms. The viewer would not think that the claimant himself (or indeed the University) had set out to frustrate Ms Langley’s wish for the coat of arms to be shown. That said, the viewer would understand that Ms Langley had been shut out of the process and was not being listened to. The viewer would also have taken the scene to be showing the claimant, once again, treating Ms Langley in a smug, condescending and dismissive manner.
58. The Film does not show the claimant as equating Richard III’s physical deformity with wickedness or moral failings. This is something that Ms Langley accuses him of saying, but it would be apparent to the hypothetical reasonable viewer that she is being provocative, misrepresenting what the claimant had said and speaking loudly to get attention in the room. Furthermore, the viewer would see the claimant’s response to this allegation, making clear that he is saying nothing of the sort, and that the relevant decisions had been taken by the burial committee.
59. In respect of the mimicking of a hunchback, I do not think the viewer would take this to be an example of the claimant behaving in a disablist manner. I accept that some viewers might have done so, but the hypothetical reasonable viewer would just have seen this for what it was, further evidence of the claimant being dismissive and patronising about Ms Langley’s views about Richard III.
60. The claimant is Mr Taylor, not the University. The natural and ordinary meaning in respect of the claimant is:
  - a. The claimant knowingly misrepresented facts to the media and the public concerning the search for, and discovery of, Richard III’s remains. He did so by presenting a false account of the University’s role in the project, and marginalising Ms Langley’s role, despite her major contribution to the find.
  - b. The claimant’s conduct towards Ms Langley in respect of the project was smug, unduly dismissive and patronising.
61. Limb (a) is a statement of fact.
62. Limb (b) is an expression of opinion.

63. Whilst the words in the Film do not expressly accuse the claimant of being dismissive or patronising, the Film clearly does through the audio and visual presentation. The Film is telling Ms Langley's story. The Film is expressing the view – from her perspective – that the way in which the claimant was behaving was dismissive and patronising. This would be clearly recognisable as comment on the way in which she was treated by the character Mr Taylor.
64. It is accepted that the first meaning is defamatory of the claimant at common law.
65. In respect of the second meaning, the defendants query whether it is, in fact, defamatory, and whether this is really something that should be actionable.
66. In *Millett v Corbyn* [2021] EWCA Civ 567 at [9], Warby LJ summarised the principles to be applied when determining whether a meaning is defamatory at common law:

“At common law, a meaning is defamatory and therefore actionable if it satisfies two requirements.

The first, known as “the consensus requirement”, is that the meaning must be one that “tends to lower the claimant in the estimation of right-thinking people generally.” The Judge has to determine “whether the behaviour or views that the offending statement attributes to a claimant are contrary to common, shared values of our society”: *Monroe v Hopkins* [2017] EWHC 433 (QB), [2017] 4 WLR 68 [51].

The second requirement is known as the “threshold of seriousness”. To be defamatory, the imputation must be one that would tend to have a substantially adverse effect” on the way that people would treat the claimant: *Thornton v Telegraph Media Group Ltd* [2010] EWHC 1414 (QB), [2011] 1 WLR 1985 [98] (Tugendhat J)”

67. I am satisfied that the second meaning is defamatory of the claimant at common law.
68. The character Mr Taylor was portrayed throughout the Film in a negative light. At no point was he shown in a way that could be described as positive, or even neutral. Whilst an individual scene may not in itself cross the threshold of seriousness, taken together the Film makes a powerful comment about the claimant and the way he conducted himself when undertaking a senior professional role for a university. The poor way in which he was depicted as behaving towards Ms Langley was contrary to common shared values of our society and would have been recognised as such by the hypothetical reasonable viewer.