



Neutral Citation Number: [2025] EWHC 2193 (KB)

Case No: QB-2022-001397

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/08/2025

Before:

THE HON. MRS JUSTICE STEYN DBE

Between:

NOEL ANTHONY CLARKE
- and -
GUARDIAN NEWS AND MEDIA LIMITED

Claimant

Defendant

Philip Williams, Arthur Lo and Daniel Jeremy (instructed by **The Khan Partnership LLP**)
for the **Claimant**

Gavin Millar KC, Alexandra Marzec and Ben Gallop (instructed by **Wiggin LLP**) for the
Defendant

Hearing dates: 5-7 March 2025; 10-14 March 2025; 17-21 March 2025; 24-28 March 2025; 31
March - 4 April 2025; 11 April 2025

Approved Judgment

This judgment was handed down remotely at 10.30am on 22 August 2025 by circulation to
the parties or their representatives by e-mail and by release to the National Archives.

.....

Approved Judgment**Mrs Justice Steyn:***Index*

I		
A.	INTRODUCTION	1-5
B.	THE ARTICLES AND THEIR MEANINGS	6-21
C.	THE DATA PROTECTION CLAIM	22-24
D.	ANONYMITY, REPORTING RESTRICTIONS AND CONFIDENTIAL JOURNALISTIC SOURCES	25-27
E.	THE HISTORY OF THE PROCEEDINGS	28-59
F.	THE WITNESSES <i>Mr Clarke's live witnesses</i> <i>Arnold Oceng</i> <i>Hearsay statements from the Claimant's witnesses</i> <i>The Guardian's live witnesses: truth defence</i> <i>The Guardian's hearsay witnesses: truth defence</i> <i>The Guardian's live witnesses: public interest defence</i>	60-63 64-68 69-86 87-90 91-94 95-96
G.	AUDIO RECORDINGS AND DOCUMENTARY EVIDENCE	97
II		
H.	SERIOUS HARM	98-110
III THE TRUTH DEFENCE		
I.	TRUTH DEFENCE: THE LAW	111-117
J.	TRUTH DEFENCE: THE PRIMARY FACTS <i>Overview</i> <i>(i) Joanne Hayes – Doctor Who (2004)</i> <i>(ii) 'Sophia' – 'Production A' and 'Production B'</i> <i>(iii) 'Penelope' – 'Production A'</i> <i>(iv) Anna Kaiser – Doghouse (2008)</i> <i>(v) 'Mila' – 'Production C'</i> <i>(vi) Thalia Hambi-Fisher (2009)</i> <i>(vii) Naome Morris (2010)</i> <i>(viii) 'Ivy' (2011)</i> <i>(ix) Louise Urwin – The Knot (2011/2012)</i> <i>(x) Leanne Coldwell – London School of Dramatic Arts (2012)</i> <i>(xi) 'Isla' – Production D</i> <i>(xii) Johannah Whyte – Legacy (2013)</i> <i>(xiii) 'Imogen' (2014)</i> <i>(xiv) Gina Powell – Unstoppable (2014-2017)</i> <i>(xv) Synne Seltveit (2015)</i> <i>(xvi) Helen Atherton – Brotherhood (2015)</i> <i>(xvii) Philippa Crabb – Brotherhood (2015)</i> <i>(xviii) Ieva Sabaliauskaite – Brotherhood (2015)</i> <i>(xix) Lisa Graham – Bournemouth Film and Comic Con (2016)</i> <i>(xx) 'Maya' – 'Production C' and 'Production E'</i> <i>(xxi) Hollie Ibson – 'Production E'</i> <i>(xxii) Jing Lusi – SAS: Red Notice (2018)</i>	118-131 132-156 157-193 194-227 228-258 259-287 288-301 302-328 329-370 371-381 382-399 400-421 422-496 497-532 533-615 616-647 648-681 682-704 705-716 717-731 732-808 809-817 818-854
K.	TRUTH DEFENCE: CONCLUSION	855-859

Approved Judgment

IV PUBLIC INTEREST DEFENCE		
L.	PUBLIC INTEREST DEFENCE: THE LAW	860-867
M.	PUBLIC INTEREST DEFENCE: PRELIMINARY MATTERS	868-872
N.	ON A MATTER OF PUBLIC INTEREST	873-882
O.	HONEST BELIEF PUBLICATION WAS IN THE PUBLIC INTEREST	883-892
P.	REASONABLE BELIEF PUBLICATION WAS IN THE PUBLIC INTEREST	
	<i>The initial group of seven</i>	894-896
	<i>The Guardian's team</i>	897-901
	<i>The sources for the first article</i>	902-906
	<i>Alleged involvement of Adam Deacon</i>	907-923
	<i>The Hostility Issue</i>	924-938
	<i>The Verification Issue</i>	939-977
	<i>The Contamination Issue</i>	978-996
	<i>The Reply Issue</i>	997-1011
	<i>The Deletion Issue</i>	1012-1018
	<i>Presentation and Tone</i>	1019-1021
Q.	Public Interest Defence: Conclusion	1022
V CONCLUSION		
	Overall conclusions	1023

I**A. INTRODUCTION**

1. The well-known actor, screenwriter, producer and director, Noel Clarke, brings this action for libel in respect of eight articles published by the Guardian. The general subject-matter of the publications is indicated by the headline to the first article complained of: “*Sexual predator: actor Noel Clarke accused of groping, harassment and bullying by 20 women*”.
2. Mr Clarke rose to prominence with a recurring role as “*Mickey Smith*” in the *Doctor Who* television series and starring roles in the films *Kidulthood*, *Adulthood* and *Brotherhood*, which he also wrote, and, for the two later films, directed. In February 2009, Mr Clarke received the Orange Rising Star Award from the British Academy of Film and Television Arts (‘BAFTA’). In 2013, he appeared in *Star Trek Into Darkness*. By 2021, Mr Clarke had starred in, among other productions, three seasons of *Bulletproof*, a hit television series on Sky One, which he created, wrote and executively produced with his co-star, Ashley Walters. On 10 April 2021, he was awarded the prestigious prize for Outstanding British Contribution to Cinema by BAFTA, but that award and his BAFTA membership were suspended immediately following publication on 29 April 2021 of the first article.
3. The claim is brought against Guardian News and Media Limited (‘the Guardian’) which is the owner and publisher of *the Guardian* newspaper, the Guardian’s website (at www.theguardian.com) and the Guardian app.
4. The principal issues on which I heard evidence and submissions over the course of the six-week trial are, first, whether the Guardian has shown that the meaning of each of the articles is substantially true and so established the statutory defence of truth to the libel claim pursuant to s.2 of the Defamation Act 2013 (‘the 2013 Act’). And, secondly, whether the Guardian has shown (a) that each of the articles was, or formed part of, a statement on a matter of public interest, (b) that those who made the decisions to publish

Approved Judgment

honestly believed it was in the public interest to do so; and (c) that it was objectively reasonable in all the circumstances for the Guardian to believe that publication was in the public interest, so as to establish the statutory defence of publication on a matter of public interest pursuant to s.4 of the 2013 Act. The Guardian relies on both defences, but establishing either one would be a complete answer to the claim.

5. There is also an issue, in respect of the second to eighth articles, whether the “*serious harm*” threshold for actionability in s.1 of the 2013 Act is satisfied. That issue does not arise in respect of the first article which the Guardian admits has caused (or is likely to cause) serious harm to Mr Clarke’s reputation.

B. THE ARTICLES AND THEIR MEANINGS

6. The eight articles complained of (‘the Articles’) are:
- i) An article entitled, “*‘Sexual predator’: actor Noel Clarke accused of groping, harassment and bullying by 20 women*”, by Sirin Kale and Lucy Osborne, which was first published online by the Guardian at 7.35pm on Thursday 29 April 2021 (‘the first article’);
 - ii) An article entitled “*ITV will not air finale of Noel Clarke drama after sexual harassment claims*”, by Jim Waterson, which was first published online on 30 April 2021 (‘the second article’);
 - iii) An article entitled “*How Bafta spent two weeks grappling with Noel Clarke dilemma*”, by Sirin Kale and Lucy Osborne, which was first published online on 30 April 2021 (‘the third article’);
 - iv) An article entitled “*Noel Clarke shows dropped as allegations shake TV industry*”, by Lucy Osborne, Sirin Kale and Jim Waterson, which was first published online on 30 April 2021 (‘the fourth article’);
 - v) A podcast entitled “*Noel Clarke and the allegations that have shaken the film and television industry*”, presented by Rachel Humphreys with Sirin Kale and Lucy Osborne, which was first published online on 7 May 2021 (‘the fifth article’ or ‘the Podcast’);
 - vi) An article entitled “*Noel Clarke accused of sexual harassment on Doctor Who set*”, by Sirin Kale and Lucy Osborne, which was first published online on 7 May 2021 (‘the sixth article’);
 - vii) An article entitled “*After Noel Clarke: can the UK film and TV industry bring an end to on-set bullying?*”, by Sirin Kale, Amelia Gentleman and Lucy Osborne, which was first published online on 27 May 2021 (‘the seventh article’); and
 - viii) An article entitled “*Women’s rights activists dismayed by Met refusal to investigate Noel Clarke*”, by Sirin Kale, which was first published online on 28 March 2022 (‘the eighth article’).
7. Each of the Articles was published in hard copy, online and on the app, save for the second article and the Podcast which were published only online. The text of the

Approved Judgment

Articles is set out in Appendix 1 to the judgment of Johnson J given following the trial of preliminary issues as to meaning: *Clarke v Guardian News & Media Ltd* [2023] EWHC 2734 (KB).

8. The natural and ordinary meanings of the Articles were determined by Johnson J as follows:

The first article

“There are strong grounds to believe that the claimant is a serial abuser of women, that he has, over 15 years, used his power to prey on and harass and sometimes bully female colleagues, that he has engaged in unwanted sexual contact, kissing, touching or groping, sexually inappropriate behaviour and comments, and professional misconduct, taking and sharing explicit pictures and videos without consent, including secretly filming a young actor’s naked audition.”

The second article

“There are strong grounds to believe that the claimant has engaged in sexual harassment and bullying of women.”

The third article

“There are strong grounds to believe that the claimant has engaged in verbal abuse, bullying and sexual harassment.”

The fourth article

“There are strong grounds to believe that the claimant has subjected women to sexual harassment and bullying, and that he wrongly encouraged students to remove their clothes during improvisation workshops.”

The fifth article/the Podcast

“There are strong grounds to believe that the claimant has engaged in sexual harassment, unwanted touching or groping, sexually inappropriate behaviour and comments on set, professional misconduct, taking and sharing sexually explicit pictures and videos without consent, and bullying between 2004 and 2019.”

The sixth article

“There are strong grounds to believe that the claimant was involved in sexual harassment and bullying of women, including inappropriate touching, whilst he was working as an actor.”

The seventh article

Approved Judgment

“There are strong grounds to believe that the claimant abused his position as a star actor by sexually harassing and bullying women who worked with him.”

The Eighth Article

“There are grounds to investigate allegations against the claimant of groping, harassment and bullying.”

9. Paragraphs 2 and 3 of the order of Johnson J dated 1 November 2023 establish that the words complained of are defamatory of the Claimant at common law, and in each case they are statements of fact.
10. In respect of both the truth defence and the public interest defence, the parties have focused on the first article. It is common ground that the meanings of the second to eighth articles do not go beyond the meaning of the first article, save to the extent that the second half of the meaning of the fourth article raises a discrete allegation.

Post-trial submissions regarding the meaning of the meanings

11. It can be seen that the word “*harass*” appears within the meaning of the first article; “*harassment*” is part of the meaning of the eighth article; the meanings of the second, third, fourth, fifth and sixth articles incorporate the term “*sexual harassment*”; while the meaning of the seventh article includes the term “*sexually harassing*”.
12. In his closing submissions, the Claimant contended that “*sexual harassment*” ought to be defined by reference to s.26(2) of the Equality Act 2010 (‘the 2010 Act’). Several weeks after the conclusion of the trial, the Claimant filed further submissions retracting reliance on that provision and his “*concession*” that a single incident can be enough to constitute harassment (para 59 below). The Claimant seeks to rely instead on the Protection from Harassment Act 1997 (‘the 1997 Act’), which he contends is more appropriate in a “*non-employment context*”, and in particular the requirement that to be guilty of an offence of harassment, or the statutory tort, a person must be shown to have committed “*a course of conduct*”.
13. S.7(3) of the 1997 Act states:

“A ‘course of conduct’ must involve –

 - (a) in the case of conduct in relation to a single person (see section 1(1)), conduct on at least two occasions in relation to that person”.
14. In his post-hearing submissions, the Claimant also drew attention to a definition of harassment, given in the Oxford English Dictionary, which he submits implies that repeated conduct is required.
15. I agree with the Defendant that the statutory definitions are irrelevant. The Claimant’s assumption appears to be that because the meanings found by Johnson J contain words which are defined in statutes, the court should apply one of those statutory definitions in determining the truth defence. That is wrong. Johnson J did not find, in relation to any of the Articles, that the words complained of alleged strong grounds to believe that

Approved Judgment

the Claimant had committed an offence of harassment or the statutory tort of harassment, or that he had harassed female colleagues *within the meaning of the 1997 Act* (or the 2010 Act). Indeed, at the meaning trial, neither party contended that the statements complained of would have been understood by ordinary, reasonable readers as conveying a technical legal meaning.

16. In principle, it is possible for the words complained of to convey a meaning that the claimant has committed a particular legally defined wrong or offence, as was the case in *Bukovsky v Crown Prosecution Service* [2017] EWCA Civ 1529, [2018] 4 WLR 13. But when determining meaning, as the authors of *Gatley on Libel and Slander* (13th ed., 2022) observe at 3-017:

“The question is what would the words convey to the mind of the ordinary, reasonable, fair-minded reader? The natural and ordinary meaning of words is not determined by any meaning that the law may attach to the same words. Words may acquire a specific meaning in law that an ordinary person would not understand the words to bear and consequently the same words could be found to have a meaning in a libel claim that is different from their technical legal meaning. Whether they do so is a question of fact that turns on the application of the principles of interpretation.”

17. It is clear that the meanings found by Johnson J are not linked to any statutory definition. In determining whether the Guardian has made out the defence of truth, the focus has to be on the meanings found by Johnson J, without any gloss or qualification.
18. In *Stocker v Stocker* [2020] AC 593 the Supreme Court held that it was not appropriate to have regard to dictionary definitions of words when deciding the meaning of a statement. That is consistent with the well-established principle that no evidence, beyond the statement complained of, is admissible in determining the meaning. Lord Kerr JSC (with whom all members of the Court agreed) observed:

“25. Therein lies the danger of the use of dictionary definitions to provide a guide to the meaning of an alleged defamatory statement. That meaning is to be determined according to how it would be understood by the ordinary reasonable reader. It is not fixed by technical, linguistically precise dictionary definitions, divorced from the context in which the statement was made.”

19. The dictionary definition on which the Claimant seeks to rely would have been inadmissible at the meaning trial. It is even more objectionable to seek to rely after the conclusion of the trial on a dictionary definition to superimpose a gloss on the determined meaning.
20. The Claimant’s contentions as to the meanings of the court-determined meanings are misconceived. But it would in any event be unfair to allow the Claimant to advance arguments in closing submissions, or after the trial has concluded, which – if acceded to – would have the effect of shifting the target that the Defendant must hit to defend the claim.

Approved Judgment

21. The importance of meaning in a libel case can hardly be overstated. For present purposes, the key point is that it is the imputation conveyed by the statement complained of that a defendant must prove is substantially true in order to establish a defence under s.2 of the 2013 Act. Early resolution of any dispute as to meaning fixes, in advance of the trial, the single meaning which is of cardinal importance in evaluating the truth defence. If any argument about the meaning of the meanings was to be raised, it should have been raised long before trial. That is not to encourage arguments about “*the meaning of meaning*” which, as Warby LJ observed in *Riley v Murray* [2022] EWCA Civ 1146, [2023] EMLR 3, are “*rarely productive*”, given that “*Judges are generally very well aware of the need for clarity and precision in their determinations of meaning*” ([30]). That is true here: the meanings determined by Johnson J were clear and precise. But in any event, the Guardian prepared and presented its case based on the meanings determined by the court. It is far too late, in closing submissions or after the trial has concluded, to raise arguments as to the interpretation of those meanings.

C. THE DATA PROTECTION CLAIM

22. On the first day of the trial the Claimant conceded that the meanings of the data in the Articles should be the same for his data protection claim as those found by Johnson J in respect of the libel claim, rather than as pleaded in the Amended Particulars of Claim: see my order of 5 March 2025.
23. The Guardian submitted in opening that the data protection claim was duplicative of the libel claim, and added nothing. Following the conclusion of the evidence, on Friday 4 April 2025, leading Counsel for Mr Clarke, Mr Williams, agreed that the causes of action would stand or fall together. In response to Mr Williams’ suggestion that his closing submissions would be unlikely to touch much on the data protection claim, I indicated that the Claimant’s closing submissions would need to address the data protection claim, and respond to the Guardian’s detailed opening submissions on that cause of action, if the Claimant wished to maintain his data protection claim. I asked the Claimant to confirm his position regarding the data protection claim by the following Monday, so that both parties would know whether it would be necessary to address it in their closing submissions.
24. On 7 April 2025, the Claimant confirmed that as the data protection claim “*does not add anything of substance*” he did not seek a ruling on it. Accordingly, it has been withdrawn and so this judgment addresses the libel claim only.

D. ANONYMITY, REPORTING RESTRICTIONS AND CONFIDENTIAL JOURNALISTIC SOURCES

25. There is an anonymity and reporting restriction order (‘the RRO’) in place in respect of:
- i) four witnesses who attended court, namely, ‘Imogen’, ‘Penelope’, ‘Mila’ and ‘Ivy’;
 - ii) two witnesses for whom hearsay notices were served, namely, ‘Maya’ and ‘Sophia’;

Approved Judgment

- iii) one individual whose statement the Guardian made a late, unsuccessful application to adduce, namely, ‘Anita’; and
- iv) five other non-witnesses, namely, ‘Isla’, ‘Florence’, ‘Mia’, ‘Alice’ and ‘Ella’.

See my order dated 20 January 2025, as amended by my orders dated 4 March 2025 (removing the RRO in respect of Lisa Graham/‘Aria’), 7 March 2025 (enabling accredited members of the press to gain access to the confidential schedule for the purposes of compliance with the RRO), 17 March 2025 (adding the RRO in respect of ‘Anita’) and 18 April 2025 (removing the RRO in respect of Ieva Sabaliauskaite/‘Evelyn’).

26. For source protection reasons, the Guardian’s journalists have referred to a number of confidential journalistic sources (‘CJSs’) by cyphers (e.g. CJS5) or, in instances where the individual was given a pseudonym in one or more of the Articles, by that pseudonym denoted with an asterisk (e.g. Leila*). In this judgment, the names of those whose identities are subject to the RRO are shown in single quotation marks, whereas pseudonyms given to sources by the Guardian are denoted by an asterisk. In some instances, on the basis of the evidence, I have worked out the identity of the CJS – albeit that is neither confirmed nor denied by the Guardian – and so, where relevant, I may make reference to the alternative pseudonym (e.g. ‘Maya’/Kim*) or cypher (e.g. Davie Fairbanks/CJS3).
27. To protect the anonymity of those individuals who are subject to the RRO, I have identified five productions only as ‘Production A’ to ‘Production E’. In a confidential schedule to this judgment I have given the name of each production.

E. THE HISTORY OF THE PROCEEDINGS

Pleadings, meaning trial and listing of the trial

28. Mr Clarke issued a protective claim on the final day of the limitation period, 29 April 2022. On 12 August 2022, his former solicitors, JMW Solicitors LLP, sent a letter before claim, putting the Guardian on notice of the libel and data protection claims he intended to bring. On 26 August 2022, the Claimant served the Guardian with the claim form (as amended the day before to remove the second to twelfth defendants, and to add a data protection claim) and Particulars of Claim. The Claimant re-amended the claim form, pursuant to the Order of Master Thornett dated 26 February 2023, to remove the £10,000 cap on the value of the damages claimed.
29. There was a meaning trial on 1 November 2023, following which Johnson J handed down the judgment to which I have referred, and made an order determining the meanings of the Articles as set out above.
30. The Claimant filed Amended Particulars of Claim on 15 November 2023. The Defence and Reply were filed on 10 January 2024 and 3 April 2024, respectively. The Amended Defence and Amended Reply were filed on 3 May 2024 and 17 May 2024, respectively. The Amended Reply was re-amended and filed on 7 March 2025 (see para 39 below).
31. Case management hearings took place before Master Thornett on 23 May and 4 July 2024, and a costs management hearing took place before Master Brown on 15 July

Approved Judgment

2024. On 11 June 2024, the trial was listed to begin on 3 March 2025 (with two reading days), with a time estimate of six weeks.

Disclosure and Inspection

32. The parties exchanged simultaneous disclosure and inspection on 3 October 2024. That was nearly eight weeks later than originally envisaged in Master Thornett’s order of 23 May 2024, but in accordance with various extensions of time granted by consent, following applications by the Guardian. The Guardian gave inspection of about 4,400 documents. There has been some additional disclosure given by both parties since 3 October.

Exchange of witness statements

33. Following a contested hearing before Master Thornett of the Claimant’s application for an extension of time to exchange witness statements, resulting in the grant of a shorter extension than sought, the parties duly exchanged witness statements on 5 December 2024. The Guardian served 34 witness statements, indicating its intention to call 32 of those witnesses, and to rely on the evidence of the remaining two witnesses (‘Maya’ and ‘Sophia’) as hearsay evidence. The Claimant served 15 statements.

Pre-trial review

34. The pre-trial review (‘PTR’) took place before me on 20 January 2025. I ordered that the trial listed to begin on 3 March 2025 would only determine issues of liability against the Guardian on the currently pleaded claim. I adjourned the Claimant’s application to join six new defendants, to plead a new cause of action in unlawful means conspiracy against the Guardian and the proposed new defendants, and to increase the special damages claim from about £10 million to over £70 million, until a date to be fixed following the trial of the Guardian’s liability in respect of the libel and data protection claims¹: *Clarke v Guardian* [2025] EWHC 142 (KB). The Court of Appeal dismissed the Claimant’s appeal against that order on 21 February 2025: [2025] EWCA Civ 164.
35. I granted the Guardian’s application for special measures in respect of three witnesses, namely screening of Gina Powell and Naome Morris, and permission for ‘Penelope’ to give evidence via a video link. I made the RRO to which I have referred. I refused Mr Clarke’s application for a long extension of time to produce the trial bundles, and I rejected the Guardian’s application for responsibility for producing the trial bundles to be transferred from the Claimant to the Defendant.

Mr Clarke’s application to strike out the defence

36. On 29 January 2025, I heard Mr Clarke’s application to strike out the Guardian’s entire defence, or alternatively its public interest defence. At the outset of the hearing, I heard Mr Clarke’s ancillary application for permission to cross-examine Paul Lewis, the Guardian’s Head of Investigations. For the reasons that I gave in my *ex tempore* judgment, I refused the application to cross-examine Mr Lewis: *Clarke v Guardian* [2025] EWHC 180 (KB). I dismissed the strike out application at the conclusion of the

¹ In respect of the data protection claim, it was agreed that while the issue of damage is one that goes to liability, questions of damage and causation would be addressed at a further trial, and the issue for the ‘liability trial’ would be whether the claimant could establish a breach of the UK GDPR. In the event, this issue has fallen away.

Approved Judgment

hearing, giving my reasons in a judgment handed down on 5 February 2025: *Clarke v Guardian* [2025] EWHC 222 (KB). Permission to appeal the dismissal of the strike out application was refused by Warby LJ on 27 February 2025: *Clarke v Guardian* [2025] EWCA Civ 187.

The Guardian's application to summons Arnold Oceng

37. On 24 February 2025, Mr Clarke's solicitors, The Khan Partnership ('TKP') informed the Guardian's solicitors, Wiggin LLP ('Wiggin') (in an erroneously dated letter):

“the Claimant will call all his witnesses, save for Arnold Oceng, who has recently indicated he is not able to attend trial. His evidence will therefore be relied on as hearsay. A hearsay notice will therefore shortly be provided to the Defendant”.

In the event, no hearsay notice was filed or served. Despite Wiggin's repeated requests, TKP gave no reason for Mr Oceng's stated inability to attend. On 27 February 2025, the Guardian applied for permission to call Mr Oceng for cross-examination on his statement pursuant to CPR 33.4(2) and for permission to serve him with a binding witness summons pursuant to CPR 34.5(2). I gave the Claimant until 10am on 4 March 2025 to file and serve any response, and to indicate whether he was content for the application to be determined without a hearing. In the absence of any response, and for the reasons given in my order, I granted the Guardian's application by an order dated 4 March 2025.

The Guardian's application to call 'Ivy'

38. On 28 February 2025, the Guardian applied for permission to call 'Ivy' as a witness, and to adduce her witness statement dated 25 February 2025 as her evidence-in-chief. The Guardian also sought relief from sanctions, in circumstances where 'Ivy's' statement had not been filed and served by 5 December 2024. The Claimant confirmed on the first day of the trial that he did not object and I granted the order sought on 5 March 2025.

Mr Clarke's application to re-amend the Amended Reply

39. On 3 March 2025, the Claimant filed an application to re-amend the Amended Reply. I heard the application on the first day of the trial, 5 March 2025. I refused the application save to the extent that I gave the Claimant permission to re-amend paragraph 94 of the Amended Reply to add the words: “*The investigation was inadequate and unfair, especially given the complete lack of critical scrutiny of evidently hostile sources*”. I gave my decision on 5 March and provided my reasons in a draft judgment circulated to the parties the following morning, and formally handed down on 7 March: [2025] EWHC 517 (KB).

Mr Clarke's application to rely on his second witness statement

40. In a letter dated 5 December 2024, Wiggin acknowledged that there were three respects in which the Guardian's witness statements (exchanged that day) addressed matters that were unpleaded. Specifically, the Guardian served a statement from 'Imogen' in respect of whom there was no pleaded allegation in the Amended Defence, and Wiggin

Approved Judgment

identified two other unpleaded points addressed in the statements of Gina Powell and Garry Moore. Wiggin indicated that the Guardian would agree to the Claimant serving a supplemental witness statement responding to these matters. On 19 December 2024, TKP confirmed that the Claimant did not require these matters to be particularised by re-amendment of the Defence.

41. On 24 December 2024, Mr Clarke made his second witness statement. It is a 29-page statement which responds to many matters other than those identified in Wiggin's letter. The Guardian indicated it would be prepared to consent to its admission, subject to removal of some parts of the statement to which it took objection.
42. On the first day of the trial, Mr Williams made an oral application to rely on Mr Clarke's second statement. I acceded to that application subject to the removal of a few passages as conceded or identified in my *ex tempore* judgment: [2025] EWHC 534 (KB).

The Guardian's application for evidence to be ruled inadmissible

43. The Guardian gave notice, in its skeleton argument exchanged prior to the PTR, of its application for a ruling that certain parts of the witness statements served by the Claimant are inadmissible and should be struck out. The application was adjourned to the start of the trial and I heard it over the course of the first two days of the trial. In his oral submissions, Mr Williams made concessions in respect of numerous passages, and I gave an *ex tempore* judgment on 6 March 2025 on the admissibility of passages that remained in dispute: *Clarke v Guardian* [2024] EWHC 994 (KB).

Mr Clarke's Transcripts Application

44. The Guardian's standard disclosure included 142 audio files, such as recordings of telephone calls with sources created during its investigation. Of those audio files, 60 were provided to Mr Clarke for inspection and 82 were withheld pursuant to section 10 of the Contempt of Court Act 1981 ('the 1981 Act'). In respect of 77 of the audio files, during the course of the investigation the Guardian had produced transcripts using otter.AI, an artificial intelligence software service ('the contemporaneous transcripts'). All the contemporaneous transcripts were provided for inspection, subject to redactions.
45. After the exchange of standard disclosure, the Guardian decided to commission professional certified transcripts of the audio files ('the certified transcripts'), and Wiggin informed TKP they were doing so on 23 October 2024. The Claimant chose not to share the cost of the certified transcripts. The Guardian chose not to use them at trial and so did not share them, or make the necessary redactions for that purpose.
46. On 27 February 2025, Mr Clarke filed an application for disclosure of all 142 certified transcripts. I heard the application on the second day of the trial, and gave an *ex tempore* judgment refusing the application the following morning: *Clarke v Guardian* [2025] EWHC 550 (KB), [1]-[38]. I made clear that the lateness of the application would not have been decisive if a narrower, more focused application had been made, backed up by a compelling explanation as to why this material was necessary for the fair disposal of the liability trial ([36]). However, no narrower application was ever made.

Mr Clarke's Redactions Application

Approved Judgment

47. Also on 27 February 2025, Mr Clarke filed an application for an order requiring the Guardian to remove redactions which fall outside the protections afforded by the Sexual Offences (Amendment) Act 1992, and which either fall outside section 10 of the 1981 Act or to which the interests of justice exception in that provision applies. His application, as limited by reference to Mr Khan's evidence and his Counsel's submissions, was for the removal of any redactions made in respect of 19 named individuals across the whole of the Guardian's disclosure (the vast majority of which he had had since 3 October 2024).
48. The Guardian's evidence made clear, first, that no redactions had been made pursuant to the Sexual Offences (Amendment) Act 1992 and, secondly, that "*Where a source's contribution to the articles had been published by reference to their true name, they were not treated as a confidential source in relation to that information*". No redactions were applied to documents to protect sources who had "*waived their right to confidentiality*" in relation to the relevant material.
49. I heard the application on the second day of the trial and refused it for the reasons given in my *ex tempore* judgment the following morning: *Clarke v Guardian* [2025] EWHC 550 (KB), [1]-[2] and [39]-[59].

Mr Clarke's withdrawn applications to serve witness summaries and summonses

50. On 3 March 2025, the Claimant filed an application for permission to serve witness summaries on behalf of Nicola Holt and Perry Colin Travers pursuant to CPR 32.9(1). However, the utility of the application was at least questionable as he did not seek to summons either witness. The application was not served on the Guardian and Mr Clarke chose not to pursue the application at trial.
51. On 4 March 2025, the Claimant filed an application for permission to cross-examine and to serve binding witness summonses upon six of the Guardian's witnesses. The Guardian had consistently made clear that it intended to call five of those witnesses, namely, 'Imogen', Johannah Whyte (whose professional name is Jahannah James), Gina Powell, Philippa Crabb and Jing Lusi. The Guardian had given notice of its intention to rely on the statement of the sixth witness, 'Maya', as hearsay evidence on 5 December 2024. In a letter to TKP dated 4 March 2025, Wiggin drew attention to the fact that the application to cross-examine and summons 'Maya' was very substantially out of time (CPR 33.4(2)) and pointed out that "*in any event, Maya is not in the jurisdiction and is therefore not amenable to a witness summons*". At the hearing on 5 March 2025, Mr Williams informed me that the Claimant was withdrawing the application.

Mr Clarke's application for special measures

52. On 10 March 2025 (day 4), the Claimant filed an application for three of his witnesses (Andrew Loveday, Joshua Myers and Nabil Elouahabi) to be permitted to give evidence by way of a video link from within the United Kingdom; and for two of his witnesses to be permitted to give evidence by way of a video link whilst located in California, USA. The application was opposed. I determined it on the papers pursuant to CPR 23.8(1)(b) and granted the application for the reasons given in my order dated 12 March 2025.

Approved Judgment

53. On the evening of Friday 14 March 2025 (day 8), the Claimant made an application for anonymity and a reporting restriction in respect of Mr Elouahabi. On the morning of Monday 17 March 2025 (day 9), the Claimant withdrew that application (see para 71 below).
54. The Claimant had not applied for Philip Dore to give evidence by way of a video link, but on the morning he was due to give evidence in person I was informed that he was not at court but had instead attended TKP's office with a view to giving evidence remotely. It was regrettable that the application for special measures, in respect of Mr Dore, was effectively presented as a *fait accompli*. Nevertheless, to avoid disrupting the trial timetable, I granted permission for him to give evidence by video link.

The Guardian's application to call 'Anita'

55. The Guardian made an application on the evening of Friday 14 March 2025 (day 8) for permission to call at trial a new witness and to adduce her witness statement of the same date. I granted anonymity and reporting restrictions in respect of the proposed new witness, who is pseudonymised as 'Anita'. I heard the application on Monday 17 March 2025 (day 9) and refused it for the reasons given in my *ex tempore* judgment: *Clarke v Guardian* [2025] EWHC 995 (KB).

Applications on the disclosure of explicit photographs of 'Ivy'

56. On the evening of 20 March 2025 (day 12), Wiggin informed TKP that one of the Guardian's witnesses, Davie Fairbanks, had located the explicit photographs of 'Ivy' that the Guardian alleges Mr Clarke sent to Mr Fairbanks (Amended Defence §37). The Guardian gave inspection of the 15 photographs the following morning, after the approval of a consent order establishing a confidentiality ring and imposing related restrictions on inspection and use of the photographs to protect 'Ivy's' article 8 rights.
57. Mr Williams made an oral application for an order requiring Mr Fairbanks to give a supplemental witness statement explaining when and in what circumstances he had found the photographs, and he sought an adjournment of Mr Fairbanks' oral evidence to the following week. For the reasons given in my *ex tempore* judgment on Friday 21 March 2025, I rejected that application: *Clarke v Guardian* [2025] EWHC 996 (KB). However, I did so on the basis that Mr Fairbanks would be asked, briefly, to address the timing and circumstances of his locating of the photographs in examination-in-chief, the Claimant would be provided with the transcript at the end of the day, and would not have to cross-examine Mr Fairbanks regarding the photographs until the following Monday (or thereafter, depending on how long his evidence took).

The Guardian's application for Mr Moore to give evidence by video link

58. On 21 March 2025, the Guardian applied for permission for Garry Moore, who lives in Sunderland, to give evidence by way of a video link from Newcastle. I granted the application which was not opposed.

Post-hearing submissions

59. I gave permission on 11 April 2025 to the Guardian to file a document identifying factual corrections in respect of the Claimant's written closing submissions, and to the

Approved Judgment

Claimant to file a response. The Guardian duly filed a “*Table of Factual Corrections*” on 25 April 2025, to which the Claimant responded on 6 May 2025. On 30 May 2025 the Claimant sought to file further post-hearing submissions. For the reasons given in my order dated 5 June 2025, I permitted that application (and a response from the Defendant) in respect of one paragraph of the Claimant’s “*Clarificatory Submissions*” by which the Claimant sought to correct a legal submission he had made regarding the definition of harassment. The Guardian’s response was filed on 13 June 2025.

F. THE WITNESSES*Mr Clarke’s live witnesses*

60. I heard live evidence called on behalf of the Claimant from nine witnesses (including from Mr Clarke himself), over the course of six days from 10 March to 17 March 2025 (days 4-9).
61. Mr Clarke made two trial witness statements. He gave evidence for more than three and a half days (days 4-7), including three days of cross-examination. As the explicit photographs of ‘Ivy’ had not been provided to the Guardian or disclosed when Mr Clarke first gave evidence, he chose to be re-called to give evidence on the topic. He was re-called on day 18, a week after inspection of the photographs was given.
62. David Wade² gave evidence in person on the afternoon of day 7. Iris Clarke, the Claimant’s wife, gave evidence in person the same afternoon. Louise Urwin (whose professional name is Louise Dylan) gave evidence in person on the morning of day 8. Andrew Loveday gave evidence via a video link on the morning of day 8. Joshua Myers, Philip Dore, Jared Schwartz and Cedric St Clair each gave evidence via video link on day 9.
63. Each of these witnesses had made a single statement on which they were cross-examined. I address the evidence of each of the Claimant’s witnesses who gave live evidence in the context of the allegations to which their evidence is relevant.

Arnold Oceng

64. On 24 February 2025, the Claimant gave notice that Arnold Oceng “*has recently indicated he is not able to attend trial*”. In the absence of any reason for his inability to attend, on 4 March 2025 I granted the Guardian’s application for permission to serve a binding witness summons on Mr Oceng and to call him for cross-examination: see para 37 above.
65. The Guardian instructed a process server who, in the week from 5 March 2025, attended the address given by Mr Oceng in his witness statement on five occasions to serve him with the summons requiring his attendance at court at 10am on 18 March 2025. The process server was met by a woman living at the property who confirmed she was Mr Oceng’s mother, but stated that he did not live at the property. The process server provided Mr Oceng’s mother with her contact details, and asked her to ask Mr Oceng

² Mr Wade averred in oral evidence that “*David Wade*” is his professional name. His real name is David Walker. I shall use his professional name, as that is the name that was used throughout the proceedings.

Approved Judgment

to contact her, which he did not do. The witness summons was also served on Mr Oceng by post sent to the same address.

66. When the matter was raised with the Court, on 14 March 2025, the Claimant indicated, through his Counsel, that he would assist the Guardian by providing Mr Oceng's email address and telephone number. In the event, TKP stated that they only had a telephone number for Mr Oceng (which they provided) and not an email address. The Guardian duly served the witness summons on Mr Oceng via WhatsApp to the telephone number they were given. Mr Oceng did not respond to the summons, and failed to attend court on 18 March as required, or at any other point during the trial.
67. The Guardian submits that since Mr Oceng appears to have calculated that it is better for him to risk being in contempt of court than it is for him to give the evidence in his witness statement on oath, the Court is entitled to draw the conclusion that key elements of that statement are false. I agree.
68. It is a short statement, consisting of 13 paragraphs (two of which the Claimant agreed to strike out). At paragraphs 6 and 7 of his statement, Mr Oceng denied that he sent an explicit video of himself to Mr Clarke on Snapchat while filming Brotherhood, claiming he became a member of Snapchat on 8 November 2022. A post from him on 28 August 2016 shows that he was on Snapchat much earlier than he has claimed, and the Claimant's disclosure shows that Mr Oceng sent explicit images to Mr Clarke and Jason Maza (albeit the disclosed video is not *of* Mr Oceng). I infer that Mr Oceng concluded he would be unable to answer the obvious questions to be put to him in cross-examination. I give no weight to Mr Oceng's evidence as to the circumstances in which Philippa Crabb was (admittedly) late to the set of Brotherhood on 19 December 2015.

Hearsay statements from the Claimant's witnesses

69. The Claimant served statements on 5 December 2024 made by five other witnesses who did not, in the event, give live evidence, namely, Nabil Elouahabi, Enrico Tessarin, Junior Quartey, Shanika Warren-Markland and Stephanie Tripp. Until the trial, the Claimant represented that each of these witnesses would be called.
70. On 12 March 2025 (day 6), TKP informed Wiggin, in an erroneously dated letter:

“As you know, Mr Tessarin is in China for the period during which the Claimant's evidence takes place. He is therefore unable to attend Court and is unable to give evidence in person or by VCR due to the lack of agreement between the Chinese and UK Governments to give evidence in English proceedings from China. His statement shall therefore be relied on as hearsay. A hearsay notice is being prepared.

Separately, we have been informed that Shanika Warren-Markland, Stephanie Tripp and Junior Quartey are no longer available to attend Court. Their statements will be relied on as hearsay, and hearsay notices will be prepared and filed with the Court.”

Approved Judgment

71. The same letter indicated the Claimant intended to call Mr Elouahabi (who I had permitted to give evidence by a video link two days earlier) on 17 March (day 9). On the morning that Mr Elouahabi was due to give evidence, TKP wrote to Wiggin:

“Separately, we refer to the Claimant’s application of 14 March 2025, in which he sought a Reporting Restriction Order in favour of Mr Nabil Elouahabi. Mr Elouahabi is currently extremely busy and on set filming. Unfortunately, Mr Elouahabi confirmed yesterday that his schedule for the week had been changed such that he would not be able to step away from set to give evidence. It is regrettable that this was only brought to the attention of the Claimant’s legal team last night. As such, Mr Elouahabi will no longer be able to give live evidence in these proceedings, and a hearsay notice shall be prepared on his behalf as well. Accordingly, Claimant’s Application of 14 March will no longer be pursued.”

72. The Claimant filed and served hearsay notices pursuant to s.2 of the Civil Evidence Act 1995 on 27 March 2025 (day 17). The reasons given for the witnesses not being called are identified in the notices as follows: (i) Mr Elouahabi: “*his professional commitments*”; (ii) Mr Quartey: “*the media reporting of this trial*”; (iii) Mr Tessarin: “*being in China for the trial’s duration*”; (iv) Ms Tripp: “*professional and childcare commitments*”; and (v) Ms Warren-Markland: “*professional and childcare commitments*”.
73. CPR 33.2 provides that where a party intends to rely on evidence contained in a witness statement of a person who is not being called to give oral evidence, he must inform the other party that the witness is not being called to give oral evidence and give the reason why the witness will not be called “*when he serves the witness statement*” (CPR 33.2(2)) or serve a hearsay notice “*no later than the latest date for serving witness statements*” (CPR 33.2(4)). In this case, the latest date for serving witness statements, and the date on which they were in fact served, was 5 December 2024. The hearsay notices were only served on 27 March 2025, towards the end of the fourth week of the trial.
74. CPR 33.4 provides:

“(1) Where a party—

(a) proposes to rely on hearsay evidence; and

(b) does not propose to call the person who made the original statement to give oral evidence, the court may, on the application of any other party, permit that party to call the maker of the statement to be cross-examined on the contents of the statement.

(2) An application for permission to cross-examine under this rule must be made not more than 14 days after the day on which a notice of intention to rely on the hearsay evidence was served on the applicant.”

Approved Judgment

75. This was the provision on which the Guardian relied when applying to cross-examine Mr Oceng. However, late service of the hearsay notices for these five witnesses deprived the Guardian of the opportunity to seek summonses.
76. Section 2(4) of the Civil Evidence Act 1995 provides:
- “A failure to comply with subsection (1), or with rules under subsection (2)(b), does not affect the admissibility of the evidence but may be taken into account by the court—
- (a) in considering the exercise of its powers with respect to the course of proceedings and costs, and
- (b) as a matter adversely affecting the weight to be given to the evidence in accordance with section 4.”
77. It follows that the five witness statements adduced by the Claimant, and in respect of which hearsay notices have been filed, are admissible despite the late notice that the witnesses would not be called.
78. Section 4 of the Civil Evidence Act 1995 provides:
- “(1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.
- (2) Regard may be had, in particular, to the following—
- (a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;
- (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;
- (c) whether the evidence involves multiple hearsay;
- (d) whether any person involved had any motive to conceal or misrepresent matters;
- (e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;
- (f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.”

Approved Judgment

79. A factor that I bear in mind in considering what, if any, weight to give to the hearsay statements is that none of them state the process by which they have been prepared, as required by CPR PD 32 para 18.1(5).
80. The trial was listed on 11 June 2024, that is many months before the witnesses made their statements. Given that until the trial began the Claimant had represented to the Court and the Defendant that all those who had given statements were going to attend, it is reasonable to infer that arrangements would have been made for them to do so.
81. Mr Elouahabi has given a short, 8-paragraph statement, two sentences of which I struck out on the basis it was inadmissible and irrelevant opinion evidence. The very limited evidence he has given concerns Thalia Hambi-Fisher. I infer from the circumstances in which Mr Elouahabi has chosen not to attend, at the last possible moment, despite being permitted to give evidence via a video link and given the weak assertion in the unsigned and undated hearsay notice that he has “*professional commitments*”, that he was unwilling to give evidence on oath or to be cross-examined on the statement he has given. In the circumstances, I give his statement no weight.
82. The assertion (again unsigned and undated) that Mr Quartey’s non-attendance is owing to “*the media reporting of this trial*”, is equally unsatisfactory. I note that Mr Khan’s ninth statement stated that several witnesses for the Claimant were concerned “*whether they will be portrayed in an unfavourable manner by the press reporting on this trial*”, but that statement did not concern Mr Quartey³, and it was vague, speculating about future publicity without reference to any past publicity (none being exhibited). Mr Quartey’s statement (as amended: see para 43 above) consists of 11 paragraphs. Mr Quartey’s statement contained evidence regarding ‘Ivy’ which I have struck out, and to which I would in any event have given no weight. His statement also contains evidence regarding Mr Clarke and Davie Fairbanks to which, in the circumstances, I give no weight.
83. On the face of it, a better reason has been given for Mr Tessarin’s non-attendance, namely that he is in China, and that is not a country with which the necessary diplomatic arrangements are in place to enable evidence to be given by a video link. However, even in Mr Tessarin’s case, he has not personally given any evidence as to his reason for not attending the trial. The Claimant had represented until the second day of the trial that Mr Tessarin would attend to give evidence. I have been given no explanation as to when Mr Tessarin’s trip to China was arranged, the dates or purpose of his visit, or why he was abroad during a long scheduled trial. A letter from TKP on 12 March 2025 stated that Mr Tessarin would be in China “*for the period during which the Claimant’s evidence takes place*”, whereas the (unsigned and undated) hearsay notice states he is in China for “*the trial’s duration*”. Given this inconsistency, and against the background I have described, I cannot be satisfied that Mr Tessarin was, in fact, in China for the entire six-week trial period. In the circumstances, I give no weight to Mr Tessarin’s untested evidence regarding ‘Ivy’ and Mr Fairbanks, or to his assertions that he never saw any behaviour from Mr Clarke that could be construed as harassment or misconduct. However, I accept his evidence regarding himself and his relationship with

³ The evidence was given in relation to Mr Loveday, Mr Myers and Mr Elouahabi, who sought to appear via video platform.

Approved Judgment

Mr Clarke at paragraphs 1 and 4-7, subject to the caveat in respect of paragraph 4 that it is clear that Mr Fairbanks and Mr Clarke were close friends in 2011.

84. The bald assertion in unsigned and undated hearsay notices that Stephanie Tripp and Shanika Warren-Markland cannot attend due to “*professional and childcare commitments*”, on any day of the six-week trial, is unconvincing, not least when contrasted with the efforts made by many of the Guardian’s witnesses to make suitable arrangements (including for childcare), and in some cases to travel considerable distances, to ensure they were able to attend the trial. The trial had been listed for 10 months by the time the Claimant gave notice, on day 6 of the trial, that these witnesses would be unable to attend. I infer that they were not willing to give evidence on oath or to be cross-examined on their statements.
85. Ms Tripp has given a 17-paragraph statement. In the circumstances, I give no weight to her evidence regarding the circulation of allegations regarding Mr Clarke in 2019, which is in any event vague as to the identity of any complainants. I have addressed her evidence regarding the auditions for the role of Yasmin in *Legacy*, which is broadly uncontroversial, in paragraph 432 below.
86. Ms Warren-Markland has given a 15-paragraph statement. Her evidence that she did not put forward the allegations at paragraph 25P of the Amended Defence, and that she was not contacted by the Guardian’s journalists during their investigation, is uncontroversial. I also accept that she was told, although she does not say by whom, that the Guardian had “*relied on allegations purportedly put forward by [her]*”, although the representation to her was inaccurate. In the circumstances, I give little weight to her evidence regarding her audition for ‘Production A’, and I give no weight to her untested evidence regarding her participation, as a cast member, in ‘Mila’s’ audition for a role in ‘Production C’, or her experience of Mr Clarke when working with him on *The Knot* and *Brotherhood*.

The Guardian’s live witnesses: truth defence

87. In support of the truth defence, the Guardian called 26 witnesses to give oral evidence, of whom 24 gave evidence in person, and two (‘Penelope’ and Garry Moore) gave evidence by video link, over the course of ten days (days 10-18 and 23). Each of them had given a single witness statement.
88. Joanne Hayes, Laura Pugh and ‘Imogen’ gave evidence on day 10. ‘Penelope’, Thalia Hambi-Fisher and Hugh Sherlock gave evidence on day 11. ‘Mila’, Charles Cattrall, Samuel Phillips and Marc Small gave evidence on day 12. Leanne Coldwell and ‘Ivy’ gave evidence on day 13. Davie Fairbanks gave evidence over the course of two afternoons and one morning on days 13, 14 and 18. Due to a chronic pain condition from which he suffers, it was necessary to adjourn a little early on the afternoon of 21 March (day 13), after he had been cross-examined for about 1½ hours. In accordance with the schedule, he resumed his evidence at 2pm on 24 March (day 14), giving evidence for about 2¼ hours (including a short break). As the process of giving evidence took its toll on him, given his health condition, the parties agreed to schedule the remaining cross-examination of Mr Fairbanks for 28 March (day 18), and his evidence was completed that morning.

Approved Judgment

89. Naome Morris and Johannah Whyte gave evidence on day 14. Gina Powell gave evidence for about 6½ hours over the course of days 15 and 16; and Helen Atherton, Philippa Crabb and Synne Seltveit each gave their evidence on day 16. Jonathan Finn, Judy Counihan, Lisa Graham, Hollie Ibson and Garry Moore all gave evidence on day 17. Jing Lusi gave evidence on day 18. Anna Kaiser (née Avramenko) gave evidence on day 23 (having been in Japan from 9 March to 3 April 2025, and flown into London on the morning that she gave evidence).
90. I address the evidence of each of these witnesses in the context of the allegations to which their evidence is relevant.

The Guardian's hearsay witnesses: truth defence

91. The Guardian gave notice of its intention to rely on the statements of 'Maya' and 'Sophia' as hearsay evidence when serving their statements on 5 December 2024. Subsequently, on 13 March 2025, the Guardian indicated that Stuart Wright was unable to attend, and so his statement is also relied on as hearsay.
92. Their statements are admissible. I address the reasons that 'Sophia' and 'Maya' have given for their non-attendance, and the weight to be given to their evidence (having regard to s.4 of the Civil Evidence Act 1995), in the context of the allegations which they address and the corroborative or conflicting evidence.
93. Mr Wright's first statement concerns Mr Clarke's alleged behaviour on 'Production D', about which Mr Sherlock gave evidence concerning 'Isla'. Mr Wright said that, in 2013, he worked alongside Mr Sherlock as the sound mixer on 'Production D'. He said the women on the production crew (who he believed, but was uncertain, were Jenna Wrage and 'Isla') had complained "*about Noel because he was being creepy*". In his second statement, dated 12 March 2025, Stuart Wright states:

"I am currently working as a sound mixer on a production called MobLand for Paramount+. We are currently trying to finish filming and the schedule has become more pressurised than anticipated, as well as being over a longer period than planned. The locations and scheduling change from time to time and will continue to do so. Filming is taking place in many different locations over this period, often from one day to another. The schedule requires me to work long days in many different locations over the coming weeks and to offer flexibility for scheduling changes.

I am unable to attend the trial for cross-examination as I am unable to take leave from this role without causing disruption to my team and the wider production."

94. The fact that Mr Wright has not made himself available to be cross-examined inevitably lessens the weight that can be given to his evidence. The hearsay notice in relation to Mr Wright was given by the Guardian too late for an application for a summons to be made. Moreover, the key paragraph of Mr Wright's first statement is itself recounting a vague allegation that Mr Clarke was "*being creepy*" which he says was given to him by others. In the circumstances, I give no weight to that part of his evidence, but I accept

Approved Judgment

his evidence (which accords with Mr Clarke’s evidence) that the work on ‘Production D’ took place in 2013.

The Guardian’s live witnesses: public interest defence

95. The Guardian called six witnesses to give evidence in support of its public interest defence, all of whom gave evidence in person over the course of five days (days 19-23). Paul Lewis gave evidence for about 8½ hours over the course of days 19 and 20. Lucy Osborne, one of the two main reporters, gave evidence for over 8 hours across three days (days 20, 21 and 22). Sirin Kale, the other main reporter, gave evidence for about 4½ hours over the course of days 22 and 23. Nicole Jackson, the Executive Producer of the Podcast, Owen Gibson, the Deputy Editor of the Guardian, and Katharine Viner, the Editor-in-Chief, each gave evidence on the morning of day 23.
96. I address their evidence in the context of my consideration of the public interest defence.

G. AUDIO RECORDINGS AND DOCUMENTARY EVIDENCE

97. In addition to the witness evidence, I have listened to, and in some cases watched, 50 media files, the majority of which are audio recordings made by the journalists of conversations with identified sources. The parties have also adduced a substantial quantity of documentary evidence going to both the truth and public interest defences, which I have read.

II**H. SERIOUS HARM**

98. At common law, a meaning or imputation is defamatory only if it would tend to have a substantially adverse effect on the way that right-thinking members of society generally would treat the Claimant. This formulation encapsulates the common law threshold of seriousness and the consensus requirement. These are objective tests that turn on the inherent tendency of the words. It is not disputed that the common law test is met.
99. However, the common law rules have been modified by statute. 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*”.
100. 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 v Independent Print Ltd* [2020] AC 612, Lord Sumption, [12]-[16], [21]; *Turley v Unite the Union* [2019] EWHC 3547 (QB), Nicklin J, [107(iv)]. 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.
101. 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

Approved Judgment

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]).

102. The Guardian admits that the first article has caused or is likely to cause serious harm to Mr Clarke's reputation. However, the Guardian submits that there is no properly pleaded case on serious harm in respect of any of the other articles. The amended Particulars of Claim identify a series of separate publications, each of them containing a separate statement with its own meaning, but then amalgamate the Articles to plead that they have caused him serious harm. The Claimant has impermissibly rolled up the alleged effects of all the articles complained of. The Claimant's Reply provided no response to the contention, in the Amended Defence, that the case on serious harm in respect of the Articles (save the first) is not properly pleaded.
103. The Claimant relies on paragraph 49 of *Banks v Cadwalladr* [2023] EWCA Civ 219, [2023] KB 524 for the proposition that there is no requirement to prove that each individual publication caused serious harm.
104. In *Banks v Cadwalladr*, the Court of Appeal was concerned with phases of publication of a TED talk, in circumstances where at the point of initial publication the defendant had a public interest defence, but that defence later fell away. Warby LJ addressed the appellant's contention that serious harm only had to be established once. Having found that the serious harm threshold was passed in respect of the initial publication, the appellant submitted that the court should not have assessed whether serious harm was caused from the point at which the public interest defence fell away. Warby LJ rejected that contention: [40].
105. In the paragraph relied on by the Claimant, Warby LJ observed:

“49. I do not agree that this analysis requires proof that each individual publication caused serious reputational harm. There will doubtless be cases in which an individualised approach is both possible and necessary. That might be so, for instance, in a case of publication to a small number of identified individuals only one of whom turns out to have believed the allegation complained of. But the statutory words ‘its publication’ are flexible enough to embrace other kinds of case, including the typical case of media or online publication involving a mass of individual publications to numerous unknown individuals. There is no principled objection to the application in such a case of a modified version of the traditional pragmatic approach of the common law, which is to consider the relevant publications collectively when assessing reputational harm. The modification is that in a case of this kind the size and shape of the relevant group of publications will not be known for certain until after the public interest defence has been assessed.”
106. The Claimant's submissions fail to appreciate that the terms "*statement*" and "*publication*" in s.1(1) have distinct meanings. In s.1(1) "*publication*" bears its common law meaning: *Banks v Cadwalladr*, [43]-[44]. Each communication of the

Approved Judgment

statement to someone other than the claimant is a “*publication*”, and a separate tort. Thus, for example, each occasion on which the first article was read by someone other than the Claimant constituted a publication. “*Statement*” is a defined term for the purposes of the 2013 Act. It means “*words, pictures, visual images, gestures or any other method of signifying meaning*”. Each of the Articles is a separate “*statement*”.

107. The proposition that, at least in a mass publication case of this nature, there is no requirement to prove that each individual “*publication*” caused serious harm does not assist the Claimant’s case in respect of the second to eighth articles. The effect of that proposition is that, in support of his claim that the serious harm threshold was met in respect of the first article, the Claimant was entitled to rely on the combined effect on his reputation of the publication of the first article to each person who read it. The extent of publication of an article is often a relevant factor in assessing serious harm.
108. However, the law is clear that the court should assess whether the serious harm test is met in respect of each statement – here, each article - individually, not cumulatively: *Banks v Cadwalladr* [2022] EWHC 1417 (QB), [2022] 1 WLR 5236, [51(iii)]; *Sube v News Group Newspapers Ltd* [2018] EWHC 1961 (QB), [2018] 1 WLR 5767, [22]. In *Sube*, Warby J held at [22]:

“Secondly, it could not be right for the Court to consider the cumulative impact on reputation of all the imputations in all the articles complained of. That is contrary to established principle, and at odds with the wording of the 2013 Act. In some unusual circumstances, articles published at different times may be so interlinked that they can be considered in conjunction for some purposes, such as meaning, or reference (see, for instance, *Hayward v Thompson* [1982] 1 QB 47). But in general, for the purposes of assessing defamatory impact, a published article must be considered individually; it will not normally be appropriate or even possible to treat a number of articles as a single ‘statement’ for the purpose of s.1, any more than it was at common law.”

109. In *Amersi v Leslie* [2023] EWCA Civ 1468, refusing permission to appeal, Warby LJ said that the judge was “*plainly right*” to reject the claimant’s argument that he was entitled to rely on “*the cumulative reputational harm caused by the publication of the same or substantially the same allegation across the memos*” ([54], [19]). He observed at [54]:

“Section 1(1) is concerned with the defamatory impact of the publication of a ‘statement’. It would be revolutionary and in my opinion would stretch the statutory language beyond breaking point if the court were to assess whether one statement meets the statutory threshold for what is defamatory by considering collectively the impact on the claimant’s reputation of (a) the publication of that statement and (b) the publication of other different statements conveying an allegation to the same effect. It would be a step further to take account of the publication of two or more different statements conveying imputations that are also different but to *similar* effect.”

Approved Judgment

(In this context, “*meaning*”, “*imputation*” and “*allegation*” can be treated as synonymous, but distinct from a “*statement*” in which a meaning is conveyed: *Amersi*, [53].)

110. The Claimant has not properly pleaded the facts and matters on which he relies to satisfy s.1(1) of the 2013 Act in respect of any of the second to eighth articles. Nor did he adduce evidence of the harm attributable to each of those articles. His approach in evidence, as in his pleading, was to rely on the harm caused, collectively, by the Articles. It follows that the Claimant has not satisfied the s.1(1) requirement in respect of the second to eighth articles.

III THE TRUTH DEFENCE

I. TRUTH DEFENCE: THE LAW

111. Section 2 of the 2013 Act provides that:

“(1) It is a defence to an action for defamation for the defendant to show that the imputation conveyed by the statement complained of is substantially true.

(2) Subsection (3) applies in an action for defamation if the statement complained of conveys two or more distinct imputations.

(3) If one or more of the imputations is not shown to be substantially true, the defence under this section does not fail if, having regard to the imputations which are shown to be substantially true, the imputations which are not shown to be substantially true do not seriously harm the claimant’s reputation.”

112. To rely on s.2 as a defence to the claim, the Guardian has to show that the meaning of each of the Articles is substantially true. In view of my conclusion on serious harm, and given that the meanings of the other articles do not go beyond the meaning of the first article (para 8 above, save for a discrete allegation in the fourth article) I will focus on the first article.
113. The phrase “*substantially true*” retains its common law meaning. The defendant has to establish the essential or substantial truth of the sting of the libel. The court should not be too literal in its approach. See *Vardy v Rooney* [2022] EWHC 2017 (QB), [2023] EMLR 1, [29]-[31] (and the cases cited therein).
114. The degree of certainty with which an imputation is conveyed can vary. In *Chase v News Group Newspapers Ltd* [2002] EWCA Civ 1722, [2013] EMLR 11, the Court of Appeal described three distinct levels of defamatory meaning, the first of which is that the claimant is guilty of some impugned behaviour and the second that there are reasonable grounds to suspect that the claimant is guilty of the impugned behaviour. Here, the overall impression conveyed by the first article was that there were “*strong grounds to believe*” that the Claimant was guilty of the misconduct alleged which is a high *Chase* level two meaning, stopping short of alleging guilt. Where the defamatory

Approved Judgment

imputation is pitched at this level, it is necessary for the defendant to prove the primary facts and matters – which may include strong circumstantial evidence – giving rise, objectively, to strong grounds to believe the claimant was guilty of the misconduct alleged: see *Gatley*, 12-013; *Duncan and Neill on Defamation* (5th ed., 2020), 12.18-12.20.

115. If the imputation is general – alleging a pattern of discreditable behaviour rather than a specific incident – the defence of truth may rely on matters not mentioned in the statement complained of: *Gatley*, 12-010. That is the position here. Even the reference to “*secretly filming a young actor’s naked audition*” does not refer to any particular individual or time or place.⁴ Accordingly, it is open to the Guardian to rely on evidence regarding incidents to which it made no reference in the first article (and of which it may not have then been aware) in seeking to establish the substantial truth of the meaning conveyed by the first article. However, as the Guardian acknowledges, an imputation that there were strong grounds to believe the claimant was guilty of misconduct must be judged at the time of publication, and so evidence of events occurring after publication is inadmissible.
116. A question may arise as to whether, and if so, how far, proof of only one specific instance of misconduct will be sufficient to establish the substantial truth of a more general allegation: *Gatley*, 12-004, p.393. Thus, for example, in *Wakley v Cooke* (1849) 4 Ex. 511, proof that the plaintiff had on one occasion been found to have published a libellous article was insufficient to prove the general allegation that he was a “*libellous journalist*”. In this case, the imputation concerns various kinds of behaviour, pithily summarised at the outset of the meaning of the first article as giving rise to “*strong grounds to believe that the claimant is a serial abuser of women*”. I agree with the Claimant that proof of a single instance of misconduct would be wholly insufficient to prove this general charge of a pattern of misbehaviour. The Guardian did not suggest otherwise.
117. When considering whether the truth defence has been established, it is important to stand back and consider the whole picture. But in doing so the court must avoid, in the face of multiple allegations, succumbing to the crude proposition that there is “*no smoke without fire*” (i.e. that the number of allegations itself demonstrates that there must be some kernel of truth in them). A defamatory imputation is presumed to be false. The burden is on the defendant to adduce convincing evidence to overcome that presumption.

J. TRUTH DEFENCE: THE PRIMARY FACTS

Overview

118. I have addressed each of the allegations in detail below. It is not possible to deal with every aspect of the extensive evidence and submissions. But I have taken all of it into account in reaching my determination.
119. Mr Clarke is evidently a motivated and talented actor, writer, director and producer, who was passionate about his work. He was successful and, as Mr Wade put it, when

⁴ However, such conduct is alleged only in respect of the *Legacy* auditions for the part of Yasmin. So that conduct must be proved (subject only, if it were necessary, to consideration of s.2(3)).

Approved Judgment

speaking about the period 2014-2017, he “*was probably the most prominent black director/producer in the industry at that moment in time*”. Mr Clarke said, and his evidence in this regard was supported by some of the witnesses called by both parties, that he “*placed diversity at the forefront of [his] career and strived to help other individuals from underprivileged or underrepresented backgrounds, have a place in the film industry*”. That is true. Johannah Whyte was among those whom he helped, as she readily acknowledged.

120. In December 2020 and April 2021, Mr Clarke made several phone calls to women in which he apologised or expressed his willingness to apologise for his behaviour towards them, and his business partner, Jason Maza, conveyed the same message on his behalf. In the immediate aftermath of publication of the first article, Mr Clarke put out a public statement in which he said that recent reports “*have made it clear to me that some of my actions have affected people in ways I did not intend or realise. To those individuals, I am deeply sorry. I will be seeking professional help to educate myself and change for the better*”.
121. The stance he has taken in this trial has been different. He has made a few admissions, very largely limited to matters that were established by documentation. Mr Clarke described himself as “*a flawed guy*” but “*not what they branded me*”. He said,

“I have made mistakes and what not and unquestionably, as they have stated, there are things I have to say, man, in today’s lens that might seem inappropriate. You know what, it may have been inappropriate back then, I just did not realise...”

But his case has been almost entirely one of robust denial and counter-allegations.

122. A striking feature of Mr Clarke’s case is that he alleges that almost all of the Guardian’s 29 witnesses to the truth defence are lying, at least in part, in the evidence they have given to the Court. There are a few exceptions. Mr Clarke did not maintain that Thalia Hambi-Fisher lied (although that accusation was put to her); Anna Kaiser and Naome Morris are alleged to have “*exaggerated*” and “*embellished*” rather than lied; and Leanne Coldwell is not accused of lying. The accusations of lying extend to entirely independent corroborative witnesses (e.g. Jonathan Finn and Garry Moore), although not necessarily to all of them (e.g. it was put to Charles Catrall that *either* he *or* ‘Mila’ were telling “*barefaced lies*”).
123. Mr Clarke’s case that there is an unlawful means conspiracy against him, in which many of the witnesses (and some non-witnesses), are said to have engaged, was born of necessity, in the face of the large body of witnesses giving evidence against him. It lacked any proper foundation, and led to numerous witnesses being asked speculative questions as to their connections, without a case being put that they conspired and colluded to invent allegations – or any evidential basis on which such a case could have been put.
124. I have addressed the allegations that specific individuals engaged in a conspiracy when dealing with their evidence below. But in broad terms it is clear that women have been speaking about their experiences of working with Mr Clarke for many years. Some men, including Kevin Proctor, heard of some of their experiences, and some attempt was made in 2019 to bring them to light, but it came to nothing. Jing Lusi was involved

Approved Judgment

at that stage, and it is probable that ‘Maya’s’ experience was one of those of which she was aware. The announcement by BAFTA, on 29 March 2021, that Mr Clarke would receive an award for Outstanding Contribution to Cinema triggered those who were concerned about his behaviour to act, out of concern that it would enhance his power within the industry and so enable him to continue misbehaving.

125. James Krishna Floyd and Sally El Hosaini were approached on 29 March 2021, as a respected actor and director, respectively, with links to BAFTA, with a view to drawing BAFTA’s attention to the concerns raised by a small group of people in the industry, with whom they met via Zoom on 30 March 2021. Although the identities of that group have not been confirmed by the Guardian, it is evident that they were Mr Proctor, Ms Lusi, ‘Maya’, ‘Imogen’ and Pelumi Akindude. Mr Krishna Floyd and Ms El Hosaini acted in good faith as conduits. They wrote to, and spoke to, BAFTA. When those actions had no impact – as they were unable to give BAFTA any details of any allegations – on 1 April 2021, they got in touch with a contact at the Guardian, which led to the Guardian’s investigation.
126. Mr Clarke acknowledged that Mr Proctor, who he accused of being at the centre of the “*conspiracy*”, believed the women were telling him the truth (para 525 below). I have not heard evidence from him, or from Mr Krishna Floyd, Ms El Hosaini or Ms Akindude, but it is plain on the evidence before me that they were seeking to prompt an investigation which they believed was required. I have addressed the evidence of ‘Imogen’, ‘Maya’ and Ms Lusi below, in the sections bearing their names or pseudonyms.
127. There has been much reference to an “*anonymous email campaign*” making false allegations against Mr Clarke. If there was such a “*campaign*” – and it seems BAFTA may have received some vitriolic anonymous emails – it was not something to which any of the witnesses were party. One or two of them wrote anonymously to BAFTA, but the matters they raised were true, as I explain below.
128. I have accepted some of Mr Clarke’s evidence, as I explain below, but overall I find that he was not a credible or reliable witness. He had to acknowledge, in light of the documentary evidence, that his statements that he never intended to have sex with Ms Morris, and that he never propositioned ‘Imogen’, were untrue. They were lies. This was reflective of his general pattern of only being prepared to admit that which was established by documentary evidence (which he had carefully studied), and even then only to the minimum extent shown. This strategy caught him out when anything was added to the bundle (e.g. para 509 below), or newly disclosed (as when he floundered for an explanation as to how his then best friend, Mr Fairbanks, had copies of explicit photographs of ‘Ivy’ which Mr Clarke denied sharing). When faced with incontrovertible evidence, such as the date on which he followed Ms Seltveit on Snapchat, and a screenshot of an explicit photograph he sent her via that medium, Mr Clarke desperately invented a baseless allegation of forgery or falsification of documents.
129. While there are connections among the Guardian’s witnesses to the defence of truth, many of them came forward independently after the first article was published (including Ms Hayes, Ms Coldwell, Ms Graham and Mr Moore) or had no involvement until they were approached by Wiggin last year, and asked to give evidence (e.g. Mr Finn and Ms Counihan). As I have said, there has been no conspiracy to lie. In the

Approved Judgment

absence of a conspiracy, Mr Clarke's case that more than 20 witnesses - none of whom are parties or have a stake in this case, as he does - have come to court to lie is inherently implausible.

130. In contrast to all but one of the Guardian's witnesses (see para 360 below), Mr Clarke has a very clear motive to lie. He says the Guardian's publications have been career-ending and he values success in the claim in excess of £70 million. I have not heard evidence, at this liability trial, as to the true value of the claim. But it is obvious that the first article had a hugely damaging impact on his reputation, his career and his finances. He has sued the Guardian for libel, involving both parties in a long, complex and expensive trial, to try to repair that damage.
131. One aspect of Mr Clarke's evidence that I accept is his belief that he is not what the Guardian "*branded*" him. Although I find that he has been untruthful about most of the allegations, in his efforts to salvage his career, his initial response that "*some of my actions have affected people in ways I did not intend or realise*" was true. Even when his actions have been calculated and deliberate, Mr Clarke has tended to be oblivious to their impact, regarding his own behaviour as merely being "*naughty*", "*cheeky*", "*teasing*" or within his rights as a director or producer. In addition, he does not see himself as reflected in the Articles because there is a kinder, more generous side to him. But that does not detract from the conclusions I have reached.

(i) Joanne Hayes – Doctor Who (2004)

132. Joanne Hayes has worked in costume for film, television and theatre for 20 years. She is now a costume supervisor. During the filming of the first series of the *Doctor Who* revival, from July 2004 to March 2005, Ms Hayes worked as a costume assistant. She had graduated two years earlier, and was then 24 years old, while, at the material time, Mr Clarke was about 29 years old. Mr Clarke played the role of 'Mickey Smith' in *Doctor Who* in many episodes across the first four series between March 2005 and January 2010.
133. The Guardian's pleaded allegation in relation to Joanne Hayes is:
- "18. While filming in Wales the Claimant invited [Ms Hayes] into his trailer ostensibly to check his costume. While they were inside his trailer, the Claimant commented on [Ms Hayes'] long hair saying words to the effect that 'I like girls with long hair. It's nice to have something to hold on to when I do them from behind'.
19. [Ms Hayes] sought to leave the trailer in response to this comment. When she did so, the Claimant repeated that 'it is nice to have something to hold on to' and, through his body language, including sucking his teeth and exhaling, indicated that he was imagining having sex. As [Ms Hayes] understood it, this was with her."
134. In response, Mr Clarke denied the allegations in paragraphs 18 and 19, stating that he did not behave as alleged and does not recall working with Ms Hayes.

Approved Judgment

135. Although he accepts that she was on the production team, in his first statement, Mr Clarke gave evidence that he does not recall meeting or working with Ms Hayes. He maintained in cross-examination “*I do not remember Ms Hayes*”.

136. In his first statement, he denied making the pleaded sexual comments. He said:

“I started working on this production at the beginning of 2005. This was my first time working on Doctor Who. It was therefore imperative that I have had and maintained a stellar reputation, and that I did nothing which would reflect badly on my personality or my professionalism in the film and media industry. I would not, therefore, have ever made such a comment which would have the potential to seriously jeopardise and prejudice my entire career at such an early stage. I also deny, if it is suggested, that I would have abused any position of power in respect of [Joanne Hayes], which would have prevented or intimidated her from making the senior Production team aware of any misconduct or sexual allegations. As a newcomer to the BBC and a show running for over four decades, I had no real power.”

137. In her witness statement, Ms Hayes stated:

“The first block of filming began in Wales in mid-July 2004 for 1 week. We then spent 1 week working in London where Noel Clarke was only around briefly to film scene(s) for the first episode. We then returned for more filming in Wales, which I believe was from August and filming on Block 1 finished in early September 2004. I do not recall the exact location in Wales. I was working in the middle of tall trucks and didn’t see much of the scenery beyond and in any case we moved unit base regularly.

... My job was to deal with the actors at unit base: making sure that they had the right costumes plus jewellery and accessories or other items for continuity, preparing costumes, and organising any additional kit needed on set such as warm coats and umbrellas. Actors would normally get into costume in their trailers after they had visited make-up so their costume wouldn’t get creased or dirty. I was working alone in my role at unit base.”

138. Ms Hayes gave evidence that she did not know who Noel was prior to filming. She first met him at his first fitting when he started on the shoot in London. Ms Hayes’ allegation concerns a filming day “*a few weeks into the filming in Wales*”. Apart from the fitting in London, any interactions she had with him on set would have been “*fleeting*” as she was “*supporting the filming of 3 episodes concurrently and needed to keep moving*”.

139. On the day of the alleged incident, Ms Hayes stated in her witness statement:

“9. ... Noel was standing in the doorway of his dressing room trailer and we exchanged some chit-chat, just polite pleasantries

Approved Judgment

for probably no more than 2 minutes, which was fine and perfectly normal. ...

10. I asked Noel if he had his costume. He invited me into the trailer and I thought nothing of it. Then there was a complete flip of tone and from nowhere Noel remarked on my having long hair (which I had). He said something like ‘I like girls with long hair. It’s nice to have something to hold on to when I do them from behind’. This wasn’t in a jokey or cheeky tone. It was clearly sexual and I understood it as being a sexual advance to me.

11. I felt very uncomfortable and my expression must have visibly changed to show my discomfort. I was standing further away from the door than Noel when he made this comment and I think I stepped back from him. Noel tried to smooth it over and said something like ‘nah nah, it’s alright I’ve got a girlfriend and she’s got long hair’. He was trying to make light of the situation and it seemed to me he was trying [to] excuse his sexual suggestion to me.

12. It was clear to me the conversation was not going to be about work and I instinctively wanted to leave the trailer immediately. I went around Noel the long way (the trailers aren’t big) with Noel on my right to get nearer to the door. There was more room that way and it meant I didn’t have to push past him.

13. As I walked around Noel, I could see his face as he turned towards me and he continued by saying something like ‘but it is nice to have something to hold on to’ and sucked his teeth like he was imagining in detail the sexual act he’d originally referred to, exhaled like he’d enjoyed thinking about it, then laughed again to make light of it or to make fun of me taking it seriously and suggesting I had got it wrong.”

140. When the details of the allegation were put to him in cross-examination, Mr Clarke stated (often repeating in very similar words):

“I do not remember that incident at all. So, I say it did not happen.”

141. In response to the allegation that as Ms Hayes walked past him to leave the trailer, he said something like “*But it is nice to have something to hold on to*” and sucked his teeth, Mr Clarke said that this had been “*thrown*” at him by Ms Hayes “[b]ecause black people sometimes suck their teeth and I think it is slightly racially loaded”. No suggestion was put to Ms Hayes in cross-examination that her allegation was racially motivated, or that she had invented the allegation that he had sucked his teeth or that she did so because of an awareness that “*black people sometimes suck their teeth*”.
142. Mr Clarke alleged in cross-examination that Ms Hayes was lying in her witness statement. She had approached the Guardian after reading the first article. Mr Clarke suggested that her motive in lying was that:

Approved Judgment

“sometimes when people, when things like this happen, stories like this happen and people’s faces are all over the world and stuff, sometimes people who do not always feel seen or do not always feel heard or might have felt upset without other people knowing. They want to feel heard and they want to feel seen, so maybe she felt she wanted to say something.”

143. Ms Hayes maintained her account in cross-examination. In relation to the sentence quoted in paragraph 10 of her statement, when asked if she was sure they were the exact words that were used, Ms Hayes said:

“In my statement I said ‘something like’, because by the time I had realised what he was saying, it had taken a moment to register so I had not heard the very specifics of the start of the sentence. But I had heard the ‘like girls with long hair. It’s nice to have something to hold on to when I do them from behind’. That is when my mind started to race, ‘How did we get here?’”

144. It was put to Ms Hayes that she “*had exaggerated the situation*”, which she denied. It was suggested to her that she had read the first article and convinced herself that his comments had been sexual harassment, which she said was not correct. She denied that she had “*embellished and exaggerated the situation for the attention*”. Ms Hayes acknowledged posting about her involvement on Facebook. She said:

“I did. It was not for any glory. I work behind the scenes. It was [a] real effort. I had to sleep on whether I should contact the Guardian or not. I was nervous about having my name in the paper, but I felt I should add my name to it.”

She explained that reading the first article prompted her to come forward and support others who had had similar experiences.

145. Ms Hayes was cross-examined extensively about her inability to recall the precise location in Wales of the incident. She explained that they moved to different locations to satisfy the needs of the schedule. They were predominantly in Cardiff Bay and Newport but “*every couple of days we could be moving*”, and they stopped “*in a huge number of carparks and bits of scrubland*”. She said that she was surrounded by trucks and “*I did not see much else beyond that to identify where we were*”.
146. In her email to the Guardian Investigation Team on 1 May 2021, Ms Hayes had said “*he implied he was a sex addict/really liked sex*”. She did not include a statement to similar effect in her witness statement. It was put to her that she had made that up. Ms Hayes responded that she had not made it up, but her recollection on that point was vague, and so she had given evidence in her statement only of that about which she was certain.
147. Mr Clarke was cross-examined regarding the nature and seriousness of the incident. He did “*not think it would be considered serious sexual harassment*”, suggesting “*it would possibly be considered inappropriate*”. While denying he made the comments attributed to him, he said “*if you make these comments that are sort of done in a jokey way ... you never know how people are going to take it. ... some people might take it as*

Approved Judgment

a joke and the same comment might not be taken as a joke by other people". He drew a distinction between how seriously such comments might be regarded today, compared to 20 years ago when *"it would not be as serious"*.

148. In closing, the Claimant criticised Ms Hayes' account for lack of clarity, describing it as confused. The Claimant focused on Ms Hayes' lack of recollection of the location and suggested there was an inconsistency between the sentence quoted in paragraph 10 of her statement and her oral evidence. The Claimant placed reliance on an (admittedly "garbled") otter.AI transcript of a telephone conversation that Ms Osborne had with Ms Hayes' husband, contending that he downplays the allegation and suggests it may have been made at a level of generality. The Claimant suggested Ms Hayes' lack of complaint to key figures, such as Russell T. Davies and Helen Raynor, undermines the veracity of her account. In circumstances where Ms Hayes came forward after the first article was published, the Claimant contends that I should reject her account.
149. Ms Hayes gave truthful, careful and reliable evidence. It was to her credit that when making her statement she had only included the details she felt certain of. Ms Hayes had no reason to come forward and lie. I have no hesitation in rejecting the suggestion that Ms Hayes invented her account to seek attention. It was clear that she was not someone who welcomed the attention. She had reflected on whether to reach out to the Guardian, and subsequently to give evidence. She felt it was the responsible course to take, and she acted conscientiously in doing so. Nor did she exaggerate or embellish her account. On the contrary, I find that she was inclined towards understatement, particularly of how threatened she felt.
150. There was no inconsistency between Ms Hayes' statement and her oral evidence (see paras 139 and 143 above). On the contrary, she gave a clear and consistent account of the matters she could recall. The fact that she could not recall the precise location in Wales does not undermine her evidence. Indeed, it is unsurprising, given the indistinguishable nature of the sites, on which Ms Hayes could not see beyond the many trucks and trailers, and the frequency with which they moved. It is also obvious that when Ms Hayes said in a WhatsApp message to Ms Osborne, *"I'd forgotten about the week in London until you checked the location"*, she was referring to Ms Osborne asking her about the location.
151. Nor do I accept that Ms Hayes' account is undermined by the fact that she did not complain to Mr Davies or Ms Raynor. Ms Hayes was 24 years old and in a very junior role. Although Mr Clarke was then 29, he had by then played the central character in *Metrosexuality*, and the role of Wyman in the BBC drama *Auf Wiedersehen, Pet*, for three seasons. He had worked in film and theatre, and he had won the Laurence Olivier Award for Most Promising Actor. He was, as Ms Hayes put it, *"a senior member of the cast"*. She said in her first email to the Guardian that he *"came across as incredibly confident and self-assured, even as a young actor"*. This is consistent with what Mr Clarke said to 'Maya' in a recorded call, in response to 'Maya's' explanation that she had not had the power to say what she felt, that he found that difficult to understand because even being black, and even when he had been the youngest on set, *"I've always been able to say what I wanted to say and so because I'm like that I find it weird when people can't"*.
152. Russell T. Davies was the writer and executive producer. It is understandable that, as a young woman in a very junior role, who felt that those in her position were regarded as

Approved Judgment

readily replaceable, Ms Hayes did not feel able to approach someone in as important a role as Mr Davies to complain about Mr Clarke's behaviour towards her. Ms Hayes did not recall who Ms Raynor was, and there is no apparent reason why she should have known, still less taken a complaint to, Ms Raynor, who describes herself (in an email to Mr Clarke) as having been a "*junior Script Editor*", saying, "*I wasn't on set much, I was kept in the editorial office*".

153. Ms Hayes had told some people about the incident long before the first article which undermines the suggestion that she invented it on seeing that article. After the sixth article was published, in which Ms Hayes' account was described, a friend from university, Liam Sesay, sent Ms Hayes a message on Facebook saying, "*I remember you telling me this at the time*". Ms Hayes expressed surprise that he had remembered, to which he responded, "*I remember because I thought you were talking about Noel from Hearsay and I remember thinking, he was such a nice boy and you clarifying it was a different Noel. We spoke a lot during that time because it was clearly an uncomfortable experience ...*". Ms Hayes recalled telling Mr Sesay, and said that she would have done so once she was back in London, after filming had completed. She had also told her husband. Although the otter.AI transcript of her husband's conversation is garbled, it is reasonably clear that she had told him at least the main elements of the account she later gave in evidence.
154. I accept that Mr Clarke has no recollection of Ms Hayes or of the incident she has described, but I reject his evidence that it did not happen. It is not surprising that he does not remember her. Their interactions prior to the incident had been minimal, and afterwards she kept her distance from him and avoided being alone with him. The conversation lasted a few minutes, and took place more than 20 years ago. I do not accept that, in 2004, Mr Clarke would have considered that the comments attributed to him by Ms Hayes would have had the "*potential to seriously jeopardise and prejudice [his] entire career*", or that for that reason he would not have made them. On the contrary, he would have thought nothing of them. Mr Clarke's behaviour towards Ms Hayes was of a piece with his behaviour on many other occasions, about which I have heard during this trial.
155. In his evidence, while he denied the incident, Mr Clarke also sought to minimise it. It was an alarming incident. Mr Clarke made offensive and inappropriate sexual remarks to a young woman in a professional setting when the two of them were alone. His sexual advance was unsolicited, unwanted and naturally felt to be threatening by Ms Hayes, who removed herself from his presence as quickly as possible. This was an instance of sexual harassment.
156. I conclude that the Guardian has made out the pleaded allegation, with respect to Ms Hayes, set out in para 133 above.

(ii) 'Sophia' – 'Production A' and 'Production B'

157. It is common ground that 'Sophia' was present at auditions for 'Production A', including auditions for the female lead, with whom Mr Clarke's character would have a sex scene. Mr Clarke wrote, directed and played the male lead in 'Production A'. Mr Clarke and 'Sophia' also worked together on 'Production B', which was written by Mr Clarke, and in which he played the male lead. 'Sophia' is still working in the industry and Mr Clarke described her as "*very prominent, very well respected*".

Approved Judgment

158. The Guardian's pleaded allegations in relation to 'Sophia' are:

“22. The Claimant sought unsuccessfully to persuade Sophia the actresses should audition in their underwear. He also sought to exclude Sophia from the room while auditions took place but was unsuccessful in this too. During the course of the auditions he flirted with actresses and sometimes asked for their telephone numbers.

23. After one auditionee left the room, the Claimant grabbed Sophia's hand and placed it on his crotch while undoing his trousers. He told Sophia he had an erection and then showed her his erect penis.

24. During the course of subsequent auditions the Claimant and Sophia were again in the location [for the auditions for the female lead]. Shortly after Sophia had entered the room, the Claimant grabbed Sophia by the throat with his other hand on his groin. He proceeded to rub his erect penis on Sophia through her clothes, including on her groin area. On neither occasion did Sophia consent to this sexual touching and gave the Claimant no reason to think that she was consenting.

25. The Claimant and Sophia subsequently worked together on [Production B]. During auditions, Sophia received news that a colleague had died. Distressed by this news, she asked to be allowed to leave for the day. The Claimant shouted at her, saying she was being unprofessional, and refused to let her leave.”

159. In his pleaded response, Mr Clarke has denied paragraphs 22-24. His pleading states that he “*did not try to persuade Sophia that actresses should audition in their underwear*”, “*it would be unreal to seek to exclude her from the audition process*” given her role, and he denies that he “*behaved improperly*” as alleged in the final sentence of paragraph 22. His reply states that the “*Claimant did not behave as alleged towards Sophia*”, and avers that the audition venue “*had glass walls, such that the auditions (including any auditions in a state of undress) and the alleged conduct, had it occurred (which it did not) would have been visible to passersby*”. In relation to paragraph 25, no admission is made as to whether 'Sophia' received news that a colleague had died, but the Claimant denies that he behaved as alleged, averring that he was “*highly accommodating*”.

160. In his first statement, Mr Clarke said:

“I deny attempting to persuade actresses to audition in their underwear, with or without Sophia's cooperation. These auditions were carried out fully clothed. ... If an audition is required to be carried out semi-clothed, or unclothed, this is done with the actors' prior knowledge and consent. ...

Approved Judgment

Further, I could not have excluded Sophia from the room during auditions, given her position ..., and it was therefore crucial that she be involved in the audition process.

I did not expose myself to Sophia, or place her hand on my penis, or grab her throat, or touch her groin area, with or without consent. The meeting room used for auditions ... was glass-walled, and therefore any conduct of the above nature would have been readily visible, and seen by all present.”

161. He stated in his first statement that given his “*lack of experience*” he “*heavily relied on Sophia’s experience*”. He said that he “*carried out these auditions to a professional standard, and I deny that I flirted with actors during these auditions, or engaged in any form of professional or sexual misconduct with the actors or Sophia*”. Mr Clarke suggested that “*had I engaged in misconduct of the nature pleaded or at all, with Sophia or any actors, Sophia would have never contacted me again*”, whereas, he said, “*I continued to have a positive relationship with Sophia after the alleged misconduct occurred*”. He referred to Sophia having emailed him, in September 2011, a list of potential actors for a role in a production he was exploring, and confirming that she was happy to liaise with some actors; and to her subsequently showing an interest in continuing to work with him, as late as 2018, by requesting a self-tape from him. Mr Clarke said that ‘Sophia’ was “*very well-positioned to contact my agent, or any other agents in the film industry, to inform them of my misconduct, had this occurred*”.
162. Mr Clarke stated that the production of ‘Production B’ predated the auditions for the female lead for ‘Production A’. In his first statement, he denied refusing to allow ‘Sophia’ to leave the auditions for Production B for the death of a colleague. He stated, “*I have let members of crew or staff leave set due to the passing or illness of pets, let alone friends or colleagues*”.
163. In her statement, ‘Sophia’ said that, given her role, she was involved in holding auditions for acting roles for Production A. She said:
- “There was going to be a sex scene involving Noel and the female lead actor. Noel told me in advance of the auditions he wanted actresses to audition in underwear and said this was because he needed to know whether they would be comfortable with playing the role naked. I refused this suggestion.
- Noel also wanted to have private rehearsals with the female auditionees prior to the audition, which was very odd. I said he needed to narrow down the list to the top three candidates and that we would have a chemistry read but not private rehearsals. I asked Noel why he only wanted to do this with the girls and he said it was about having an ‘intimate connection’. The actors were all young, I think around 18 years old.”
164. ‘Sophia’ said that Mr Clarke “*wanted to be involved in all the auditions*” for Production A, and was “*very much on [her] turf*”. She said he “*initially didn’t want me in the room but I said the auditions had to take place in front of me*”. ‘Sophia’ said that the room in

Approved Judgment

which the auditions for Production A were held “*had glass walls, which were frosted up to a height of about 7 feet and then had a clear section at the top*”.

165. ‘Sophia’ acknowledged that when Mr Clarke sat in on the male actors’ auditions he gave them helpful notes. She said:

“With the female candidates he was flirty and sometimes asked for their phone numbers. I would distract everyone when this happened and I made sure their numbers were not shared. I would either change the subject or say I could take care of passing on phone numbers but deliberately not do so.

...

At the auditions Noel became less and less professional. He was flirtatious and constantly making innuendo comments.”

166. She said that she would “*stop things if he was getting too close to actresses*” during the auditions, by finding some excuse to distract him. She would tell the young, female actors “*not to respond if Noel tried to contact them privately*”.

167. ‘Sophia’ gave the following evidence in her statement:

“I would need to leave the room between auditions to call in the next actor. On one occasion, just as the auditionee had left the room, Noel grabbed my hand and put it on his crotch. He undid his trousers. He said something like ‘see, I’m really hard’ and when I showed I was not interested he said ‘no, seriously’ and showed me his erect penis through his open trousers. I rolled my eyes and got up and said I would bring in the next person so he should go away. I made it out to be a joke to avoid angering him and he laughed it off. For the time being the atmosphere was fine.

On another occasion within the following week or 2 we had been out for a quick lunch and then came back to the meeting room to wait for the actors to arrive for casting auditions. I had just come into the room and out of nowhere Noel came over to me and pushed up against me with one hand on my throat and one hand on his groin area. He rubbed his erection against me. He is a similar height to me and so when he pushed himself against me his erection pushed against my groin area. I immediately told him to get off me and pushed him off. I think I probably made some kind of joke to get out of the situation because I knew he had a very bad temper.”

168. ‘Sophia’ said that she only worked with Mr Clarke again on Production B because she “*needed the money*” and that she kept her distance from him. She explained that at the time her business partner was terminally ill and she was experiencing significant personal distress. During an audition she received a message that her business partner (who she did not name) had passed away. She said:

Approved Judgment

“I burst into tears and asked if the others could finish doing the auditions without me. Noel shouted and screamed at me in front of the producers, saying that I was being unprofessional. He said I had to stay and read with the actors. Since it was in front of the producers, I felt I had to carry on and did so. That was the final straw for me. We didn’t work together again and I assume that choice was mutual. He might have contacted me occasionally if there was something he wanted to be cast for.”

169. In his second statement, Mr Clarke responded to ‘Sophia’s’ witness statement. Mr Clarke said that it was “*untrue*” that he “*wanted private rehearsals with the actresses who auditioned for [Production A]*”, or that he tried to “*get close to the girls who auditioned*” for that production, by directing the auditions and trying to get involved in the scene himself. He stated that ‘Sophia’ directed the auditions, and he did no more than was normal and expected of him, reading the alternate lines of his character in the scene. Mr Clarke stated:

“The purpose of an audition is to evaluate an actor’s talent and suitability for a role. Rehearsals only take place once an actor has been cast. It would be nonsensical and entirely contradictory for rehearsals to take place whilst auditions are ongoing, or before an audition has taken place. I was present during the auditions as the audition scene featured my character, so I read the scripted lines. I did not need to rehearse with actresses before their auditions, nor would I have asked for this. Further, auditions are scheduled and timetabled by the Casting Director. Seeking to include rehearsals between these auditions would take up an enormous amount of time, which would not be available given auditions were arranged usually back-to-back.”

170. When cross-examined, Mr Clarke said, repeatedly and vociferously, that ‘Sophia’ is “*lying*” and that is why she “*will not stand in court and say this*”. He alleged that her motives for lying were, first, “*because she wanted attention*” from other women and, secondly, because she was angry that in his response to a right to reply letter sent on 19 May 2021 (Simkins’ letter of 21 May 2021) he had raised a counter-allegation that she had “*bragged to me about which actors she had had slept with and given jobs to*”.⁵ Mr Clarke stated that ‘Sophia’ “*knows a lot of the other people that I call conspirators*”, identifying them in re-examination as Mr Krishna Floyd, Ms El Hosaini, ‘Maya’, ‘Freya’, ‘Florence’ and Ms Powell. But his evidence was that ‘Sophia’ was not, in his view, part of any alleged conspiracy. Although he put forward two motives for ‘Sophia’ when addressing her evidence, subsequently when asked about ‘Penelope’ he said, “*And unlike Sophia, this Penelope does have a motive.*”
171. Mr Clarke denied that the actors being auditioned for the role of female lead were around 18 years old. He said there was “*absolutely no chance*” that he would ever have said he wanted the auditionees to audition in their underwear because he wanted to know if they would be comfortable filming the scene naked. He denied saying that he

⁵ It was open to Mr Clarke to give this evidence, despite the second sentence of paragraph 101 of his first statement having been struck out, in circumstances where he was asked in cross-examination about his belief as to ‘Sophia’s’ motive for (on his case) lying to the Court.

Approved Judgment

wanted to audition them privately, without ‘Sophia’ present, saying “*you absolutely cannot audition people privately without a casting director or producer present, it just would not happen; does not happen; and did not happen*”. He flatly denied flirting with any auditionees or asking for their phone numbers.

172. In relation to ‘Sophia’s’ allegations of sexual assault, Mr Clarke said there was no point at which he was ever alone with her. He described her allegations as “*absolute nonsense*”, saying they are “*very, very serious allegations, and they absolutely did not happen*”.
173. Mr Clarke said that Sophia’s business partner (a woman who he named, and said had been the Casting Director on Production A), had died while they were shooting Production A. He said that ‘Sophia’s’ evidence that she told him during an audition that her business partner had died, that she was in tears, that she asked to be excused from work that day, and that he screamed at her, calling her unprofessional and requiring her to stay at work was “*false*”. He accepted that he did not employ her on any of his films again.
174. The Guardian did not call ‘Sophia’ to give oral evidence, relying instead on her statement as hearsay. ‘Sophia’ gave the reason for her non-attendance in her first statement:

“I do not wish to give oral evidence at trial. I think it would be traumatic to have the truth of my account questioned by Noel Clarke’s lawyers. I have already been through the experiences set out in this witness statement and I do not wish to go through them again in court or to look at Noel Clarke.”

175. ‘Sophia’ made a second statement on 12 March 2025 (day 6) to explain further “*why I could not contemplate undergoing cross-examination in these proceedings*”. ‘Sophia’ states that she was diagnosed with breast cancer in 2021. She has had multiple major surgeries over recent years, both to treat the condition and associated complications, which are ongoing. ‘Sophia’ explains:

“In the last 4 months, I have had 5 different surgeries arising from the ongoing complications. I am still recovering from the effects of these surgeries, namely the healing of wounds and the associated exhaustion and stress.

I have tried to prepare myself to attend this trial while these treatments have been ongoing. I have been discussing with Wiggin the possibility of giving evidence from [the United States] where I live. I have also discussed with Wiggin what is required and tried to ready myself for cross-examination.

While preparing to attend trial in the midst of these treatments, I also discussed my involvement with my oncologist and my therapist. In the course of these preparations I realised that I would need to prioritise my mental and physical health. I am concerned about the impact on my recovery as a result of the stress of preparing for and undergoing cross-examination in

Approved Judgment

these proceedings. In these circumstances I feel that I cannot attend the trial.”

176. The Claimant invites the Court to give no weight to ‘Sophia’s’ evidence, given that he had no opportunity to challenge her evidence through cross-examination. The Claimant submits that he was concerned with maintaining his professional reputation and would not have risked antagonising ‘Sophia’ as it could have harmed his career. He argues that positive interactions with ‘Sophia’ in the form of emails in 2011, a self-tape proposal in 2018, and a friendly Instagram message in 2020, together with the chronological inaccuracy of her account, undermine her allegations. He contends her allegations have evolved over time and are motivated by spite.
177. Although this aspect of the case is early in the chronology, I have reached my conclusions on it having considered the evidence as a whole, and having first reached conclusions in relation to those allegations which were supported by evidence from witnesses who were called.
178. The fact that ‘Sophia’ has not attended trial and been cross-examined on her statement inevitably lessens the weight that can be given to her evidence. No application was made for permission to call ‘Sophia’ to be cross examined on her statement at trial pursuant to CPR 33.4(2), and for permission to serve a binding witness summons pursuant to CPR 34.5(2). However, it may be that is explained by the fact that she does not live within the jurisdiction.
179. In estimating the weight (if any) to be given to ‘Sophia’s’ evidence, I have had regard to all the circumstances from which, in my view, an inference can be drawn as to the reliability or otherwise of her evidence: s.4 Civil Evidence Act 1995. ‘Sophia’s’ wish to prioritise her recovery from breast cancer, treatment for which has entailed multiple recent major surgeries, and to put her physical and mental health first, is natural and readily understandable. Her explanation for her non-attendance shows that there has been no attempt to prevent proper evaluation of her evidence.
180. It is not suggested, and there is no evidence, that ‘Sophia’ has conspired with anyone. Her allegations do not feature in the Articles. It is apparent that she spoke to the Guardian prior to the right to reply email sent on 19 May 2021 but I infer that she had not spoken to them prior to publication of the first article. In that email, the Guardian did not put forward the allegations that ‘Sophia’ has made in her witness statement that Mr Clarke twice sexually assaulted her. However, that shows only that those were not allegations the Guardian was intending, at least at that stage – after publication of the first six articles – to publish. It cannot fairly or reasonably be inferred that ‘Sophia’ had not told the Guardian of the alleged assaults, still less that she invented them out of spite.
181. I am not persuaded that ‘Sophia’ had any motive to come forward and lie to the court about events that occurred about 18 years ago. I bear in mind that the Claimant has not had an opportunity to question ‘Sophia’. Nevertheless, there is no basis for inferring that ‘Sophia’ wanted attention, whether from other women or otherwise. None of her actions are indicative of a wish for attention. Nor is it likely that such a wish would have been so strong as to prompt her to invent and attest to serious allegations, not least in circumstances where there was no published account from her to defend, and she has been coping with serious medical issues throughout these proceedings. The very limited

Approved Judgment

communications ‘Sophia’ has had with Mr Clarke since working with him are not inconsistent with her allegations, in particular of sexual assault. They show only that she was keen not to reveal to Mr Clarke how she felt about his behaviour, or to alienate an important figure in the industry in which she works, while ensuring that she never worked with him again.

182. I accept Mr Clarke’s evidence that ‘Sophia’ is mistaken in her recollection of the chronology: the auditions for ‘Production B’ took place before the auditions for the female lead for ‘Production A’. He did not give evidence as to when the auditions for each production took place, and there is no documentary evidence addressing the dates before me. Having regard to the release dates of each production, and the evidence of Mr Clarke, ‘Sophia’ and ‘Penelope’, it is likely that the auditions for both productions took place in the same year (which I have specified in the Confidential Schedule) but that ‘Sophia’ is mistaken about the month in which the auditions for ‘Production B’ took place.
183. As ‘Sophia’ has not given oral evidence, it has not been possible to clarify the day on which she learned that her business partner had died, and whether it in fact coincided with auditions for ‘Production B’. Nor has it been possible to explore with her why the question whether she could leave fell to Mr Clarke, in circumstances where he was not the Director or Producer. Given these unexplored questions, and bearing in mind that the burden of proof is on the Guardian, I find that the allegation in paragraph 25 of the Amended Defence (para 158 above) has not been made out.
184. I also accept Mr Clarke’s evidence as to the identity of ‘Sophia’s’ business partner, who he described as her “boss”. But I reject the Claimant’s submission that he was keen on making use of ‘Sophia’s’ expertise and would not have risked antagonising her. Although he emphasised how well respected she now is, his evidence was that at the time she was a “casting assistant” who stood in when her “boss” was ill and subsequently died before Production A was released. My impression of Mr Clarke is that he would have been keen to assert his authority and dominance, irrespective of his inexperience in the role of Director.
185. I accept ‘Sophia’s’ evidence that Mr Clarke wanted those auditioning for the female lead to audition in their underwear but she rejected that suggestion. This is consistent with the approach he took to auditions for the role of Yasmin in *Legacy*, and the reason he gave ‘Sophia’ (i.e. to check whether they would be comfortable with the sex scene) is consistent with the language he used on a number of occasions during the hearing.⁶ It is no answer to ‘Sophia’s’ evidence that such matters would have had to have been agreed beforehand. Her evidence is clear that this was a wish he expressed “*in advance of the auditions*”.
186. I accept Mr Clarke’s evidence that the actors auditioning for the female lead in ‘Production A’ were not, or at least most were not, 18 years old. They were all young women, but ‘Penelope’ was about 21 years old, and it is likely that the other auditionees were a similar age. ‘Sophia’s’ evidence that Mr Clarke wanted to exclude her, and to meet privately with these young women has to be viewed in the light of the private

⁶ It is also consistent with language he used in contemporaneous emails e.g. writing to a casting director on 2 November 2015, “*Are these women comfortable with the nude/sex scene. wouldn’t wanna start picking the actress i like most and they are not agreeable to it.*”

Approved Judgment

rehearsal that he, admittedly, invited the female lead, ‘Penelope’, to attend, albeit after she had been given the part. While rehearsals, as such, only take place after an actor has been given the role, the evidence that he proposed meeting the auditionees alone to check for an “*intimate connection*” chimes with ‘Penelope’s’ evidence, and, more generally, with the evidence that he was keen to ensure any intimate scenes looked real.

187. ‘Sophia’s’ evidence that Mr Clarke acted unprofessionally during the auditions, flirting with young women actors, is somewhat lacking in specificity, in that she has not identified the actors towards whom he is said to have behaved in this way. ‘Penelope’ described the audition process as “*straightforward*”. I have also borne in mind Ms Warren-Markland’s evidence that her own audition (for a different role) was “*professional*”, although “*more informal than most*”, albeit for the reasons given above I give limited weight to this hearsay evidence.
188. On the other hand, ‘Sophia’s’ evidence is consistent with Judy Counihan’s evidence as to his similar misbehaviour towards ‘Maya’ during the auditions for ‘Production E’. More generally, it is consistent with his behaviour in subjecting women in the workplace to unwanted advances and sexual remarks (e.g. Ms Hayes and Ms Graham). His contention that he would have behaved professionally in such auditions is also undermined by the conclusions that I have reached that he covertly filmed young women auditioning nude for a role in *Legacy*.
189. The strong impression that I gained is that Mr Clarke felt that he could sexually proposition any woman he wanted – as reflected in his evidence that he has “*been turned down a million times*”, even allowing for the obvious hyperbole – regardless of the circumstances. He had no understanding of how pressuring such conduct could be, or how uncomfortable it could make young women, in subordinate roles to him, feel while performing their jobs. I conclude that it is likely that Mr Clarke flirted in the way ‘Sophia’ has described with more than one of the young women auditioning.
190. As Mr Millar acknowledged, if a written statement is not tested in cross-examination, the court will usually prefer oral evidence to the contrary. That is particularly true in the context of serious allegations. Nonetheless, I conclude that ‘Sophia’s’ evidence that Mr Clarke sexually assaulted her twice is true.
191. I have not found Mr Clarke to be a truthful witness. Unlike Mr Clarke, ‘Sophia’ has no reason to lie about these matters. I do not consider that my finding that she is mistaken about the timing of the auditions for ‘Production B’ undermines the reliability of her evidence about the two sexual assaults. I do not accept that his conduct would have been visible to others outside the room through frosted glass walls. The assaults described by ‘Sophia’ are similar to those which I have found he committed against Ms Powell. I agree with the Guardian that he assaulted Ms Powell after she displeased him, as a way of asserting his dominance, and it is likely that his assaults against ‘Sophia’ were similarly prompted by her clash with him and attempts to manage his behaviour during the audition process.
192. ‘Sophia’s’ evidence is also consistent with the evidence that Mr Clarke exhibits a sense of physical entitlement over women’s bodies (as demonstrated by, for example, his conduct towards Philippa Crabb, in a toilet cubicle, at the Brotherhood wrap party, and towards Lisa Graham at Comic Con).

Approved Judgment

193. Accordingly, I find the allegations at paragraphs 22-24 of the Amended Defence (para 158 above) have been proved.

(iii) ‘Penelope’ – ‘Production A’

194. ‘Penelope’ has been an actor since childhood, working full time as an actor since the age of 17, across theatre, television, film and radio. ‘Penelope’ played the female lead, opposite Mr Clarke, in Production A, which he also directed.

195. The allegations in relation to ‘Penelope’ concern (i) a private rehearsal; (ii) alleged remarks made during a costume fitting; (iii) alleged misconduct during, and in relation to, the filming of a sex scene and “*a prior scene in which their characters appeared intimately engaged on a sofa*” (‘the prior scene’); and (iv) subsequent alleged inappropriate behaviour and bullying.

196. ‘Penelope’ gave evidence that after she accepted the role in ‘Production A’, Mr Clarke invited her to a rehearsal. She said:

“I arrived to discover that Noel was there alone. He met me at ground level and walked me up to the small office space. There were no other staff of any kind. The room was very compact, the blinds were down, there was a computer on a desk and a black leather sofa. I found the space very odd, not at all like a regular rehearsal space or production office but didn’t see it as a red flag.”

197. ‘Penelope’ said that during this one-to-one meeting Mr Clarke told her that for the filming of the sex scene between their characters, in which Mr Clarke’s character would be on top of ‘Penelope’s’ character in bed, they would both need to be naked on their lower body. Mr Clarke explained that he wanted to shoot the scene with a camera viewing the characters from the side, and so even a thin string would be seen. ‘Penelope’ said:

“I discussed perhaps wearing patches or covers which are often used for such scenes. Noel was insistent that he didn’t think this would work and said he wanted to ‘keep it natural’.

I knew that footage of naked lower parts could not be shown in the film anyway and made clear to Noel that I was unwilling to appear topless.”

‘Penelope’ accepted, at the time, that the shot list made covering up more difficult.

198. During the same meeting, ‘Penelope’ said:

“Noel proposed that we rehearsed the blocking of the scenes. This means working out the positions and movements within a scene. Noel had us lie on the floor and he was on top of me. I found this very weird, too intimate, unprofessional and wrong, but I didn’t feel threatened, and I tolerated it.”

Approved Judgment

199. In his first statement, Mr Clarke said he did not recall arranging any rehearsals himself, and understood they were arranged by either the Casting Director or Executive Producers. He said that they were “*fully clothed*” during the rehearsal and that “*any inference or implication that these rehearsals were for my sexual gratification is entirely unfounded and untrue*”. In cross-examination, Mr Clarke denied that he did this because he wanted to have a sexual relationship with her. In her oral evidence, ‘Penelope’ said that she had not known before she arrived that no one other than Mr Clarke would be present at the rehearsal. She said the space was very small and very intimate. She agreed they were fully clothed. She also referred to Mr Clarke asking her, when exploring how she related to her character, to disclose the worst thing that had happened to her. ‘Penelope’ said that she was saddened by her response just being dismissed by Mr Clarke as something which did not count.
200. ‘Penelope’ said that in the period between rehearsal and shooting, with the consent of the Costume department, she bought an item of costume for herself, for which she was reimbursed. This was a pair of denim shorts, as the ones they had supplied did not fit well. She said:
- “I tried on the shorts at a costume fitting and Noel came over and said ‘yeah you’ve replaced the other ones, I like how they look’. He was grinning and flirtatious. He later commented on my bottom saying that I didn’t have a white arse and that it was like a black girl’s. He said something about it not being flat (implying like he thought white girls’ are). I found this embarrassing, but I laughed it off.”
201. In cross-examination, Mr Clarke commented that he did like how the shorts looked on her, but he gave no direct answer to whether he said that to ‘Penelope’. He said he did not attend the costume fittings. Both in his witness statement and in oral evidence Mr Clarke said that he did not recall making a comment about ‘Penelope’s’ bottom. He refrained from alleging that ‘Penelope’ was lying about that but suggested she misheard, misremembered or it is misrepresented. ‘Penelope’ was cross-examined on the basis that Mr Clarke made the alleged comment regarding the denim shorts, but he was simply complimenting her choice. ‘Penelope’ said commenting on what is appropriate for the character would be ok, but that was not what Mr Clarke was doing. She said that it is not appropriate to objectify a woman or an actor at work. He commented on her bottom which was not professional.
202. The prior scene and the sex scene were filmed the same day in the same location. During the prior scene, their characters were clothed. They kiss and then ‘Penelope’s’ character would straddle Mr Clarke’s character while they were sat on a sofa. ‘Penelope’ said:
- “In the rehearsal of this scene, Noel had an erection. I could feel it clearly rubbing on me and he made me aware of it. He was smiling and sort of giggling quietly. There were a lot of people around us. He said ‘look what you’ve done to me’. He made out he was embarrassed and caught out. Noel asked me not to move to avoid the crew seeing he had an erection, even when we otherwise would have left our positions.”

Approved Judgment

She described the situation as awkward, weird and embarrassing but she did not move as she did not want the crew to notice, and at that stage she thought he had lost some control and did not feel threatened.

203. During the filming of the sex scene, ‘Penelope’ said that she and Mr Clarke were both naked below the waist. She said that the camera was at the foot of the mattress, rather than to the side, and she could see that there was no need for her to be nude on her bottom half. She said:

“When we shot the sex scene Noel had an erection from the start. He was ... on top of me in the bed. When he first took down his trousers and pants, I felt his penis land on my pubic area. I tried to move myself up in the bed slightly so there would be distance between our genitals, but then his penis was touching me in-between my legs right at the entry of my vagina.”

204. She said that the scene was shot from various camera angles and there “*may have been 4 or 5 takes in each angle*”, which she estimated took a “*few minutes or more on each angle*”. ‘Penelope’ said, “*His erect penis remained touching me in the same place throughout all these takes.*” ‘Penelope’ continued:

“Then Noel announced to the crew in the room that they should all leave because he said, ‘we need to rehearse’. The crew all left and were waiting outside the door of the room. Noel got off me to one side and was lying next to me. We were both sat up slightly leaning on our elbows. He lifted up the blanket to show his erect penis and was insisting in a hushed but forceful voice that I must look at it. He was saying things like ‘it’s massive, everyone’s told me it’s big’ and that ‘you have to look, you want to look at it, look at it’. It wasn’t even a question of whether I wanted to; he was demanding it. I felt panicked and shocked and was saying ‘no, no, I don’t want to’. I was absolutely adamant that I would not look, and I did not look.”

205. ‘Penelope’ said that she was begging Mr Clarke to bring the crew back into the room. She felt “*disgusted, shocked and frightened*”, and concerned that he had “*created an impression to the crew that I was complicit in whatever was happening behind that closed door*”.
206. ‘Penelope’ denied that the sex scene had been discussed at length beforehand. She said the only conversation she had about it was at the one-to-one rehearsal with Mr Clarke. It was a closed set. She thought there were about 10 people on set.
207. Mr Clarke denied that his penis ever became erect during the rehearsal or filming of the prior scene or the sex scene. He said that “*after the take of the Prior Scene, I immediately got up to speak to the Director of Photography, to ensure the scene was satisfactory*”. In his first statement, he said that it was necessary for the filming of the sex scene that both actors be undressed and that from “*an artistic perspective, the scene could not be filmed with covers or patches, given the material and software available at the time*”. He said:

Approved Judgment

“My penis was not exposed during the sex scene, as I did not remove my trousers or underpants which were slightly lowered to give the illusion that my penis was exposed. I was wearing a nylon sock over my penis. I supported myself on my left leg throughout the scene, to prevent my penis falling over Penelope’s private area. I endeavoured not to touch Penelope’s private area or general body with my penis, whilst trying to make the scene look realistic. The scene was shot for approximately 10 seconds.”

208. In cross-examination, Mr Clarke said ‘Penelope’ was lying about the prior scene and the sex scene. He accepted that in the scene as ultimately shot ‘Penelope’ *“could have worn a modesty patch”*. But he said the production was intended to be *“edgy”*. His intention was to *“make an 18 and then cut bits out of the 18 to make it a 15 rating”*. He said that she had to be nude for the shot they had planned in which *“you were supposed to see my testicles, or just a bit, and you were supposed to see up her leg, up the inside of her thigh, and just what would be the armpit of the leg, the crotch bit, without seeing the bits”*. He said that it had been intended that he would be nude, too, but the (now deceased) Director of Photography (‘the DoP’) gave him nylon ankle tights just before the sex scene, saying, *“Just in case”* and so he had worn that covering. But ‘Penelope’ could not have the same provision as the idea was *“to see up the inside of her leg to the crotch area”*. Mr Clarke said that he and the DoP made three failed attempts to secure that planned shot.
209. Mr Clarke said there was no rehearsal when the crew were sent out. He accepted in cross-examination, in light of the footage, that, contrary to his statement, he had pulled his trousers and underpants down to his thighs and his penis was clearly exposed. He acknowledged that the scene was shot for more than ten seconds, but said *“it is not very long”*. He said that *“Penelope has only come with this because [the DoP] has died unfortunately and is now not able to defend me”*.
210. It was put to ‘Penelope’ that Mr Clarke wore *“a patch”* or a *“nylon sock”*, which she said was completely untrue. She agreed that the DoP was very well respected but denied that he was present on the closed set. She could not recall the name of the cameraman, but said *“there are camera operators as well as the director of photography on any set. There are also assistants to them”*.
211. ‘Penelope’ said that on a later occasion on set, Mr Clarke took her aside and told her he was in love with her, saying words to the effect that other than his mother and his pregnant fiancée she was the only woman he had really loved. She said that she was sympathetic, and told him she was flattered but did not reciprocate his feelings. After filming had wrapped, on her birthday, Mr Clarke sent her a bunch of 100 tulips. She said it was awkward receiving such an extravagant delivery while with her parents and boyfriend. She phoned Mr Clarke immediately to say it was not appropriate. She said, *“Noel was furious and outraged that I would comment on his wife at all.”* After that phone call, during interviews with the press for the production, she said *“Noel refused to look at me, speak to me or refer to me at all”*, which she described as humiliating. At the premiere for the production, she said that Mr Clarke arranged for her to be seated away from the cast, and he *“invited all the cast and contributing musicians and artists onto the stage at the end, except me”*. Mr Clarke denied that he had told her he loved

Approved Judgment

her, and denied responsibility for where she was seated at the premiere or whether she was called onto the stage. He emphasised that she arrived late.

212. I found ‘Penelope’ to be an honest witness who did not embellish or exaggerate her evidence. I reject as unfounded the contention that she has conspired with anyone to harm Mr Clarke. Although she was not identified by Mr Clarke as a “*conspirator*” or an “*associate*”, an attempt to tar her as such in cross-examination quickly collapsed. She clearly did not know who Gina Powell, Kevin Proctor or ‘Imogen’ were, nor did she remember Sally El Hosaini or ever having worked with her. There is no evidence that she was on the Zoom call on 31 March 2021, and it is plain she was not. Nor was she aware of or part of any “*anonymous email campaign*” against the Claimant. The Claimant’s submissions seek to draw a link between ‘Penelope’ and Jaime Winstone, but there is no evidence that she knows her. That proposition was not even put to ‘Penelope’, still less how any such connection would implicate her in a conspiracy. ‘Penelope’ was clear that she knows Adam Deacon, with whom she has twice worked, and they were friendly when working together. But she has never met him outside of work, they are not in regular contact, and she did not think they had been in contact for about five years. There is no evidence that Mr Deacon played any part in ‘Penelope’s’ decision to come forward with her allegations against Mr Clarke, or to give evidence.
213. In an email which I find was from ‘Penelope’ she wrote that other people “*need him so they can tick their diversity boxes, or because they have monetary gain or reputations to be gained by working with him*”. She also wrote that “*His reputation in the industry is a joke, and yet his public reputation is glorious. This shows you what a scandal it is. It is bigger than Noel. I knew when the stories of Harvey Weinstein surfaced it wouldn’t be long before Noels did. This has never, ever been a secret*”. As she declined to answer whether she was a journalistic source, she was not taken to and did not have an opportunity to read the email. In cross-examination she denied that she has ever “*called Mr Clarke Harvey Weinstein*” or that she said that “*Mr Clarke needs to tick diversity boxes*”, saying “*I am not sure of the meaning of it*”. These answers do not undermine her evidence. She had not called Mr Clarke Harvey Weinstein, nor had she said that Mr Clarke needs to tick diversity boxes. The way the questions were put was confusing for the witness, and clearly did not trigger any recollection of the rather different statements that she had in fact made. I also note that although, seemingly with reference to this email, Mr Clarke accused ‘Penelope’ of “*racially charged slurs*”, that serious allegation was not put to her.
214. I find that the one-to-one rehearsal happened in the way that ‘Penelope’ has described. Mr Clarke was attracted to her, and he used his power as the Director to call her to a rehearsal at which no one else was present. Although they remained fully clothed throughout, and they were only blocking the sex scene (that is determining the movement and positioning of the actors), this involved Mr Clarke lying on top of ‘Penelope’ which she understandably regarded as too intimate and unprofessional in those circumstances.
215. There is an email dated 20 April 2021 to Ms Osborne and Ms Kale from a source whose name is redacted. ‘Penelope’ declined to answer whether she was a source, as she was entitled to do. But it is plain from the content that the email was sent by ‘Penelope’. In the email she said, “*As filming commenced we had formed a fairly good relationship. Noel kept complimenting me on my ability, never my looks or body etc.*” Although there is some inconsistency with her evidence regarding the remarks Mr Clarke made about

Approved Judgment

her bottom and how she looked in the denim shorts, I accept the evidence that she gave, and that Mr Clarke’s comment regarding the shorts was directed at her body not her costume choice. It is not uncommon for people to use an all-encompassing word such as “*never*”, particularly in informal documents, when that is an over-generalisation. ‘Penelope’ was clear that Mr Clarke did compliment her on her ability and she felt admired professionally by Mr Clarke during the filming, albeit not all the time. Mr Clarke did not recall making the remarks attributed to him, but it was not suggested that those were not the kind of remarks that he would make. On the evidence, it is clear that he would do so. By way of example, in a phone conversation with Ms Whyte on 12 April 2021, which was recorded without Mr Clarke’s knowledge, when he was begging Ms Whyte to tell Ms Powell not to speak to the Guardian, and not to do so herself, Mr Clarke said:

“The more people they’re trying to reach out to, the more someone might say, ‘Well, yeah, he commented on my bum’ or whatever. But whatever, I’d just say sorry ... And if a bunch of people go, ‘he commented on my bum’, or ‘he mentioned my tits’ it’s like, why do you need to take it this far? I’ll just say sorry to you. Tell me and I’ll be like, I’m so sorry. You’re right, I said that, I was wrong. I’m fucking sorry.”

216. I accept ‘Penelope’s’ evidence regarding the rehearsal of the prior scene. Mr Clarke’s evidence that he immediately got up “*after the take*” of the prior scene may be true but it does not undermine ‘Penelope’s’ evidence regarding the *rehearsal* of that scene. Nor is her evidence undercut by Mr Clarke’s evidence that she patted him on the chest saying, “*that was good*” following the prior scene. Again, his reference is to “*after the take*” and, in any event, that would be no more than a professional response.
217. It was put to ‘Penelope’ that such accidents may happen to which she replied that was not her professional experience, other than with Mr Clarke. In any event, that was not his evidence. In my judgment, ‘Penelope’s’ evidence of Mr Clarke taking pleasure from the experience, despite her evident discomfort, rang true. It is not the case that anyone else on set would have known because ‘Penelope’ was straddling Mr Clarke at the time.
218. As regards the sex scene, it is common ground that ‘Penelope’ had agreed to be naked below the waist before the scene was filmed. The Claimant submits that ‘Penelope’s’ evidence is undermined by an email from Victor Jenkins, in 2015, when discussing a sex scene in a different production, in which he said “*I got the impression it would be more akin to [‘Penelope’] in [‘Production A’] – which I know was a long drawn out conversation*”. ‘Penelope’s’ evidence was that Mr Jenkins had no role in Production A, and the only conversation about what she would wear for the sex scene was with Mr Clarke at the one-on-one rehearsal. ‘Penelope’ was not shown the crew listed on IMDB which was adduced on the final day of the trial. Mr Jenkins is listed as a casting associate. However, I do not doubt her evidence that she had no contact with him on that production and was unaware that he played any role. Mr Jenkins’ statement that he *knows* the conversation with ‘Penelope’ was a long drawn out one does not suggest that he was party to that conversation but that he has heard about it. Nevertheless, I consider it probable that there was a lengthier discussion and negotiation with ‘Penelope’s’ agent regarding nudity than she is aware of or recalls.

Approved Judgment

219. Mr Clarke's evidence regarding the shot that he planned to film was not credible, and it was inconsistent with his first statement in which he said "*it was expressly agreed that Penelope's private parts would not be filmed*". Unsurprisingly, it was not even suggested to 'Penelope' in cross-examination that she had agreed to the filming of any part of her "*crotch*". She gave clear and compelling evidence that she drew the line at appearing topless because that could be shown on film whereas she was prepared to be naked on her bottom half for the filming of the sex scene because she knew that "*footage of naked lower parts could not be shown*" in the production. Nevertheless, I accept that the precise way in which the scene would be shot evolved to a degree and it is only with hindsight that it became clear that 'Penelope' could have worn a patch or some form of covering without affecting the scene.
220. The filming of the sex scene obviously took more than 10 seconds, as Mr Clarke had to accept. The tracking shot is itself a little over twice that length and the scene was not shot in a single take. Mr Clarke's evidence was that there were three failed attempts to shoot the scene before they decided to shoot it a different way. He did not say how many takes there were after the first three, but at the very least on his evidence there were four takes in total, and it is likely to have required more than one take following the change. 'Penelope' could not recall precisely how many takes there were but she said it would be usual for there to be four or five takes from each angle. When the close up shots were taken she was able to wear tracksuit bottoms, so I conclude that there were at least four and probably five takes while her bottom half was naked. That would have taken several minutes, at least.
221. I accept the clear and convincing evidence that 'Penelope' gave regarding Mr Clarke's misconduct during the filming of the sex scene. The account Mr Clarke gave in his statement quickly fell apart in oral evidence. The footage showed that his penis was fully exposed; he had not merely slightly lowered his trousers sufficiently to convey that impression. He was not bearing his weight on his left leg: the footage shows his hips right up against 'Penelope's'. The filming obviously took much longer than 10 seconds, as I have said. I reject his evidence that he wore any form of cover on his penis during the filming of the sex scene. It was agreed beforehand that he would be naked, and it is difficult to understand how a nylon sock would have been fit for purpose, especially if, as Mr Clarke maintained, he did not have an erection during the filming of the scene. Although it was put to 'Penelope' more than once that he wore a "*patch*", that was not his evidence, and her clear evidence was that he did not.
222. Mr Clarke's misconduct during the filming is consistent with his evident attraction to 'Penelope', as evidenced by his earlier remarks and his subsequent behaviour in sending 'Penelope' an enormous bouquet of flowers, and telling her that he was in love with her. Such a declaration was atypical conduct on his part. I accept Davie Fairbanks' evidence, on which Mr Clarke relied, that Mr Clarke told him "*he would always give women a standard speech at these meetings, which was to tell them about how he loved his wife and that this was just sex and would go no further*". That this was, in fact, the approach he often took is supported by Mr Clarke's emails to Naome Morris. Nonetheless, having heard 'Penelope' give evidence, I have no doubt that in this instance he spoke and acted in the way she described.
223. The fact that it would not have been an appropriate moment to send the crew out to rehearse in their absence is irrelevant. Mr Clarke was the Director and the crew would follow his instructions, irrespective of whether they believed he (and 'Penelope', who

Approved Judgment

feared they thought she was complicit) had some other motive for sending them out of the room.

224. Mr Clarke placed heavy reliance on the absent evidence of the now deceased DoP, whose presence on set would have, according to Mr Clarke, made the conduct alleged by ‘Penelope’ impossible. Although ‘Penelope’ could not recall who was the camera operator during the filming of the sex scene, her clear recollection was that it was not the DoP, who was not present. The IMDB credits, on which the Claimant relied to show that Mr Jenkins had a role on Production A, support ‘Penelope’s’ evidence that there were several camera crew on the production, not only the first assistant camera (or focus puller, as Mr Clarke described him), but also a Steadicam operator, as well as a second assistant camera and a camera trainee, who could have been behind the camera (most likely for a tracking shot the Steadicam operator). On balance, I prefer ‘Penelope’s’ evidence that the DoP was not present. But in any event, given the way Mr Clarke was lying on ‘Penelope’ none of the crew on the closed set would have been able to see Mr Clarke’s penis; and Mr Clarke’s comments about it were made in the crew’s absence. The contention that she would not have made the allegations that she has if the DoP had still been alive is manifestly wrong: she had done so before he died.
225. ‘Penelope’s’ account is not undercut by an interview she gave in which she expressed her happiness with the scene. First, she is a professional actor who would not have made a complaint to a journalist about Mr Clarke’s behaviour during an interview which was part of the publicity promoting the production. Secondly, what she was referring to in the interview was the outcome of the filming, not the process of filming it. Her concern was with the latter, not the former.
226. I also accept ‘Penelope’s’ evidence regarding Mr Clarke’s behaviour towards her after she rejected his advances, and took issue with him sending her flowers. In my judgment, it was clear from Mr Clarke’s own evidence that he became seriously vexed by her and I conclude that his behaviour towards her became petulant. I accept that he treated her in a way that felt humiliating, brazenly ignoring her during press interviews promoting the production. I also find that he was responsible for her being seated at a distance from the rest of the cast and crew, and not called onto the stage during the premiere. ‘Penelope’s’ evidence that Mr Clarke was “*absolutely across every level of the production and post production and the press*” strikes me as accurate, and given her role in the production I do not accept that she would have been treated as she was at the premiere other than at his behest.
227. In conclusion, for the footage ultimately taken, it was not necessary for ‘Penelope’ to be nude from the waist down. Contrary to paragraph 25G of the Amended Defence, that was not because she would be covered with a blanket. As she explained, a blanket was available to cover her between takes, not during filming. I have not found that the requirement for ‘Penelope’ to be naked below the waist for the filming of the sex scene was introduced for Mr Clarke’s sexual gratification, but he did then take advantage of it for that purpose. Save to that limited extent⁷, I accept the Guardian’s case in relation to ‘Penelope’. Most disturbingly, his misbehaviour during the filming of the sex scene was a serious abuse of his position as the Director.

⁷ In addition, the evidence did not address paras 25K or the second sentence of para 25L of the Amended Defence.

Approved Judgment**(iv) Anna Kaiser – Doghouse (2008)**

228. Anna Kaiser studied film directing at the German Film and TV Academy Berlin from 2010 to 2018, and she is now an Assistant Director working on film productions in Berlin, Germany. The Guardian’s pleaded allegation regarding Ms Kaiser relates to July and August 2008 when Ms Kaiser, at the age of 22, undertook an unpaid internship as a camera assistant for the film *Doghouse* in which Mr Clarke played the leading role of Mikey. The name by which she was then known, which remains her professional name, is Anna Avramenko. Although English is not her first language, Ms Kaiser lived in England for some of her childhood, graduated from the University of Oxford with a BA in Philosophy, Politics, and Economics in 2007, and her English is impeccable.
229. The Guardian’s pleaded allegation in relation to Anna Kaiser is:
- “30. During filming, the Claimant attempted to kiss [Anna Kaiser] on her lips on a number of occasions. On each occasion, [Ms Kaiser] tried to avoid the kiss but the Claimant persisted in attempting to kiss [Ms Kaiser] despite this and despite [Ms Kaiser] trying to deter him by saying she had a boyfriend.”
230. Mr Clarke’s pleaded response is:
- “Paragraph 30 is denied. The Claimant did not behave as alleged. He did not attempt to kiss [Ms Kaiser] on the lips and to persist doing so when she tried to avoid him doing so.”
231. In his first witness statement Mr Clarke denied these allegations and said,
- “I do not remember this woman, nor do I have any correspondence or relationship with her.
- Doghouse* was filmed during the night, in an abandoned hospital which had been converted with bedrooms for actors to sleep and eat whilst filming. I would rarely mix with the cast and crew, and would often stay in my room, only leaving to attend set. I was simultaneously writing a script, which required a substantial amount of time, energy and focus. I therefore preferred to spend time in my room progressing my script, rather than with the remainder of the crew.”
232. *Doghouse* was a relatively small production. Andrew Loveday, who was a producer on *Doghouse*, said the crew consisted of “*probably about 100 people*”. Ms Kaiser, similarly, thought there were “*probably 80 to 100 people on and around the set*”.
233. Ms Kaiser worked for around 3-4 weeks of the 6-week shoot, on location in and around a disused hospital in Midhurst, West Sussex. As she was unpaid, she was not able to stay for the entire shoot, but she was happy to get the work experience on *Doghouse* (for which she was recommended by the Director of *Rise of the Footsoldier*, having undertaken a one-week internship on that production). In her statement, Ms Kaiser said:

Approved Judgment

“Noel Clarke played one of the lead roles, a character called Mikey. He was generally chatty on set. At first I thought this was a good thing, since he was one of the actors and I was in a very junior role. When he arrived in the morning or when I first saw him each day, he would greet me and, on several occasions, try to pull me in with an arm before going in to peck me on the lips.

As I recall, I pulled away every time and I can’t remember if he ever actually succeeded at kissing me this way. I think this happened around a handful of times. At first it was cheeky but persistent, but it became less playful and his attitude became less friendly after I avoided it each time. My reaction each time, though I didn’t say it in so many words, was ‘oh, not this again’.

To try to deter Noel from continuing to attempt to kiss me in this way, I told him I couldn’t do it because I had a boyfriend.”

234. When cross-examined, Mr Clarke said that he “*would not go so far as to call her a liar*”, but that she was “*misrepresenting the set life*” and the “*misrepresentation is that we were friendly*”, “*I got on with this person quite well. That was the end of it*”. Mr Clarke denied that on several occasions when he saw Ms Kaiser on set he tried to pull her towards him and kiss her on the lips. He said, “*I did not do that*”. In re-examination, Mr Clarke alleged that after being contacted by James Krishna Floyd, Ms Kaiser “*was fully involved in the conspiracy*”, and he stated that Mr Krishna Floyd wrote her statement, describing this as collusion.
235. In his statement Mr Loveday said that he did not recall Mr Clarke “*ever behaving inappropriately in any way*”, and he expressed surprise regarding the allegations that Mr Clarke behaved inappropriately towards Ms Kaiser, suggesting the allegations are “*entirely out of character for him*”.
236. When cross-examined, Mr Loveday did not know Ms Kaiser’s name. When questioning the veracity of her allegations in his witness statement, Mr Loveday had referred to her by the pseudonym used in the Amended Defence, but when giving oral evidence he did not know her real name. He was aware that the complainant was “*someone from the camera team*” because he had been told that by the Claimant’s lawyers, but he did not know she had interned as a camera assistant nor for how much of the shoot she was on set. He did not know the details of “*what the complainant has said that actually happened*”, and was unaware that it did not relate to “*post filming socialising*”. His evidence was that the details at paragraph 4 of his statement regarding the content of the Amended Defence, which he had not seen at the time of signing his statement, were inserted by the Claimant’s lawyers. Mr Loveday expressed surprise at the allegations because he had never heard of any complaints against Mr Clarke on *Doghouse*. Mr Loveday had not witnessed any interactions between Ms Kaiser and Mr Clarke on set.
237. Ms Kaiser had tweeted on 18 January 2021, more than three months before the first article was published:

“Did you include Noel’s sexual harassing of female film crew members on set? #metoo I love a lot of the guardian, but seeing

Approved Judgment

an article about Noel in praising tones... It's beyond hurtful for people who had to deal with his behaviour."

Ms Kaiser subsequently explained to Lucy Osborne, in a conversation on 7 April 2021 (the audio recording and otter.ai transcript of which are in evidence), that she had tried to put a comment on a Guardian article, which was positive about Mr Clarke, but she had not been able to do so, so she had replied to the author's tweet posting the article (also tagging Mr Clarke).

238. There is no evidence that Ms Kaiser knew any of the other complainants prior to posting that tweet. She was subsequently contacted by either Jing Lusi or James Krishna Floyd: she could not recall who she spoke to first. It was suggested to Ms Kaiser that she was contacted a day or two after posting her tweet. She could not recall, however, it is evident from the contemporaneous documents that she was not contacted until early April 2021. On 8 April 2021, Ms Kaiser sent an email to another member of the *Doghouse* crew in which she wrote:

"... about 3 months ago I posted a tweet under a Guardian article tweet which was praising Noel for something, saying that it was hard for survivors of his harassing behaviour to read about him in praising tones. A group of survivors of Noel's harassment and assault got in touch with me because of that about a week ago ..." (emphasis added).

239. Ms Kaiser acknowledged that she deleted her tweet on 10 April 2021. She said nobody had asked her to do so. It was not a big decision. By then she had spoken to Ms Lusi and Ms Osborne. She had thought to herself, "*Actually I do not want to have that published right now*".
240. Ms Kaiser explained, in cross-examination, that in referring in her tweet to "*female film crew members*" she was "*thinking of myself and one other*". When she spoke to Ms Osborne on 7 April 2021, Ms Kaiser said that Mr Clarke had tried to kiss her on the mouth "*three to five times with me, maybe more*" and at some point she had spoken to another woman member of the *Doghouse* crew (the person she had in mind when she said "*one other*", who I shall refer to as "*the Doghouse crew member*"), to complain that she did not like what he was doing and to seek her advice. The *Doghouse* crew member responded to the effect "*it's really not that bad*" "*he just does that, that's normal, don't worry about it. Just let him kiss you sort of thing*". Ms Kaiser said subsequently she saw that Mr Clarke kissed the *Doghouse* crew member on the lips daily, as "*like a thank you*" or a hello/goodbye greeting, and on one occasion the *Doghouse* crew member saw Ms Kaiser and said, "*see it's really not that bad*". Ms Kaiser "*felt very very uncomfortable*".
241. After speaking to Ms Osborne, Ms Kaiser contacted the *Doghouse* crew member by email on 8 April 2021 to see if she was willing and able to corroborate her story. The *Doghouse* crew member responded the same day:

"Thank you for your email which was so open, non-judgemental and nicely worded. I'm sorry to hear how awful he made you feel. And ashamed to admit my memory of that period is foggy at best- I've grown up a lot since then, and no longer work on

Approved Judgment

those kind of films. The culture was pretty gross across the board. The thing is I was a young [redacted] girl and did a lot of inappropriate flirting, had lots of wild nights out and generally behaved in a way I wouldn't dream of doing now. I'm aware that I was favoured by Noel, when you're working with the cast like that there is a sense of intimacy often that feels unthreatening- so he didn't bully me, and perhaps I don't remember those specific incidents because I don't recall feeling threatened or harassed by him. I haven't actually seen him for 12 years and don't feel comfortable testifying to something I don't remember- which is not to say I condone the behaviour you describe. And of course, I fully support any human being that has something they need to express. I just can't remember- I keep wracking my brains. I don't think I slept much on that production and I'm just so sorry that in all honesty I can't corroborate anything.

I'm sorry not to be able to give you greater support, but I don't have any complaint of my own against him. ...”

242. In light of this email, Ms Kaiser accepted in cross-examination that “*there was not an issue*” in relation to Mr Clarke’s kissing on the lips, on a daily basis, of another member of the crew of Doghouse. She recognised that the *Doghouse* crew member had been “*kind of cool with it*” at the time, but she explained:

“I thought it was odd and I was not 100% sure it was consensual, because when she let me kind of watch it and she told me, see it is not that bad, it just felt off to me that someone would say that about that at work.”

243. It was not put to Ms Kaiser that she was lying, or somehow mistaken, in her evidence that Mr Clarke repeatedly attempted to kiss her on the lips, despite her making clear he did not want him to. Rather, it was suggested to Ms Kaiser that she had “*taken it out of all proportion*” and that it was “*quite normal*” in the context of that film set, at that time, for people to give a “*a hug or kiss on the cheek or a kiss*”. Ms Kaiser said, “*I do not remember anybody else pecking each other on the mouth to greet, apart from Noel*”. She characterised this part of his behaviour towards her as sexual harassment.
244. In her witness statement, Ms Kaiser said no more about Mr Clarke’s subsequent conduct towards her than that his attitude became less friendly. In her conversation with Ms Osborne she had gone into more detail, on which she was cross-examined. She was taken to the otter.ai transcript (which contains errors) rather than the audio recording. Ms Kaiser recounted to Ms Osborne that having rebuffed Mr Clarke’s attempts to kiss her on the lips, saying that she had a boyfriend, she had hooked up with another member of the crew, and Mr Clarke had got wind of this. She said the next day Mr Clarke was on set, just before filming began, staring her down “*for a really long time just looking at me like evilly*”, shaking his head, “*so I felt quite embarrassed*”. She said he then “*put his prop [which she said was a walkie talkie or a torch] in the clapperboard so I couldn't hit it*” which “*kind of humiliated me in front of the whole set*”. As she was “*very new*” and felt “*intimidated*”, she approached him to apologise, but he demonstratively turned his head away and avoided her. She said she found the experience “*horrible*”.

Approved Judgment

245. When cross-examined, Ms Kaiser said,

“what I was trying to communicate, to the best of my memory, is that he was kind of staring me down in a kind of mean way and then shook his head like I did something wrong ...

I do not know if it is the correct English term, ‘to stare you down’, but I felt like he looked for my eye contact and then gave me a mean stare or gave me a mean stare and then looked away demonstratively. I hope it is understandable in English. It felt like he was singling me out and showing his displeasure in these kinds of ways.”

246. In relation to the clapperboard incident, Ms Kaiser explained:

“my responsibility was doing the clapper board to synchronise sound and picture. It has to clap together in the camera so that it can take the still image and match it to the sound recording and if you put something in the clapper board, it does not hit so you cannot synchronise. You have to do it again cleanly.”

She said:

“To my best recollection, he was not pausing to talk about something or change something ...

The way it was read, to my recollection, the way it was read in the room was kind of that I was humiliated in front of the crew, that I was doing something wrong and that everybody got wind of it because the clapperboard failed”.

247. Asked if it could have been a joke, Ms Kaiser accepted it could be construed as a “*mean joke*”. Ms Kaiser characterised Mr Clarke’s behaviour after she had drawn a boundary as bullying. She disagreed with Mr Williams’ suggestion that was an exaggeration.

248. Ms Kaiser was cross-examined about her contact with Mr Krishna Floyd, Ms Lusi and other alleged victims. She said that her reference to “*a group of survivors*” getting in touch with her was to Mr Krishna Floyd, as their representative, contacting her. She accepted that she spoke to Ms Lusi about her experience before she spoke to Ms Osborne. She said that Ms Lusi “*helped me draft my first experiences together for the Guardian*”. This took place over a video call. Ms Kaiser explained:

“I told her my memory of what had happened on that set with Noel, and she wrote it down to the best of her ability. Then she showed it to me.”

249. Ms Kaiser did not recall any “*spreadsheet of allegations*” or having ever seen an anonymous email with #MeToo in the email address, and she was not taken to any such documents. Ms Lusi said that Ms Kaiser was not on the Zoom call arranged by Mr Krishna Floyd, Ms El Hosaini and Ms Akindude on 31 March 2021. Ms Kaiser was aware that her story was part of what was put forward to BAFTA. Ms Kaiser did not

Approved Judgment

think it was right that Mr Clarke should receive the BAFTA award. She said there had been “*no sit-down where we all talked strategy or something like this. I was thinking what could my experience, how could it be most helpful to the other victims*”.

250. Ms Kaiser was open about having joined a WhatsApp “*survivors’ group*”, although she could not recall when she had done so. Ms Osborne’s evidence was that the WhatsApp group was only established after she and Ms Kale had conducted their interviews. Ms Kaiser accepted there had been some sharing of stories about Mr Clarke on the chat. She thought there were about 10 people on the group, including Ms Lusi. Ms Powell had been in the group, but Ms Kaiser was not sure whether she remained on the group. She could not recall ever having messaged Ms Powell directly, or the nature of the allegations brought by Ms Powell. The group remained live when Ms Kaiser gave her evidence. There had been messages of support and screenshots from published media sent over the last couple of weeks.
251. Ms Kaiser acknowledged that she had been asked by the Guardian to put forward people who might be able to corroborate her story, and that the crew members she approached were unable to provide corroboration. Ms Osborne gave evidence that she asked Ms Kaiser if she had confided in anyone about Mr Clarke’s behaviour. Ms Osborne stated:

“She told me that she had, and I later spoke to that person, CJS 1, to see if they were able to corroborate her story.

I remember that CJS 1 recalled details of the alleged incident that they said [Ms Kaiser] had told them and detailed how she was upset in recent years about there having been no consequences for Mr Clarke’s actions.”

I reject the suggestion made by Mr Williams that CJS1 was Ms Lusi. Ms Kaiser and Ms Lusi had not known each other for “*years*”. It is far more probable, in light of the conversation between Ms Osborne and Ms Kaiser, and Mr Lewis’s contemporaneous manuscript note that she had provided her husband’s number, that CJS1 was Ms Kaiser’s husband.

252. The Claimant submits that Ms Kaiser’s evidence was unconvincing because, first, it was uncorroborated. Secondly, her account was “*hopelessly confused*” because she complained that Mr Clarke would simultaneously stare her down and conspicuously not look at her. Thirdly, he contended that she embellished her account by alleging bullying to which she had made no reference in her witness statement. Fourthly, the Claimant contended that Ms Kaiser was not an independent witness but had been “*induced into making a complaint against Mr Clarke by James Krishna Floyd who ... is a hostile conspirator against Mr Clarke*”, and “*her evidence is likely hopelessly contaminated*” by reason of Ms Lusi’s involvement in writing her account, and her engagement with Mr Krishna Floyd and other complainants.
253. In my judgment, these challenges to Ms Kaiser’s account are hopeless. She gave a clear, consistent and truthful account, responding openly and candidly to questions about her interactions with others involved in this case. The central part of Ms Kaiser’s evidence, that Mr Clarke (who was by then about 34, and a leading actor on *Doghouse*) had repeatedly tried to kiss Ms Kaiser (a 22 year old unpaid intern) on the lips, on the film set, despite her making clear this behaviour was unwanted, was not challenged. Mr

Approved Judgment

Clarke, whose original stance was that he did not remember her at all, in denying the allegation said only that she was misrepresenting “*set life*” and the friendly nature of their relationship. When he was giving evidence regarding Helen Atherton he said that on set “*it is a very relaxed culture. People hug and kiss and make comments all day long*”.

254. Nor was it suggested – other than by Mr Loveday – that this was not how Mr Clarke would have behaved. On the contrary, the cross-examination of Ms Kaiser proceeded on the basis that he had behaved in such a way towards another female crew member, but that it was normal and not an issue. I give no weight to Mr Loveday’s evidence: he had never seen any interactions between Ms Kaiser and Mr Clarke, and he purported to question her account without knowing who she was or what she had alleged. I accept Ms Kaiser’s evidence that Mr Clarke persisted when she made clear that his attempts to kiss her on the lips were unwanted. Her description of this as sexual harassment was apt.
255. Ms Kaiser did not exaggerate the seriousness of Mr Clarke’s behaviour. She made clear that he tried to kiss her on the lips “*without tongue*”, describing it as a “*peck*”. She described these as *attempts*, as she could not recall whether he had succeeded in kissing her at all, whether on the lips or landing on her cheek as she turned her head away.
256. Nor can Ms Kaiser fairly be criticised for giving an oral account of what she described as his bullying behaviour, having omitted to address it in her witness statement. It is evident that in her statement she focused on what she regarded as the more serious aspect of his behaviour towards her. The Claimant chose to question her about other aspects of Mr Clarke’s behaviour that she had recounted to Ms Osborne. She answered Mr Williams’ questions and gave her account of what had occurred. The alleged inconsistency is non-existent: she did not suggest that Mr Clarke *simultaneously* stared at her and avoided looking at her.
257. It is true that members of the crew of *Doghouse* were unable to corroborate her account so many years on, and two women made clear that they did not themselves have any complaint about Mr Clarke’s behaviour towards them. But Ms Kaiser’s approach to giving evidence was unequivocally independent. She was not “*induced*” into making a complaint. She had a pre-existing complaint as evidenced by her tweet of 18 January 2021, her evidence, and Ms Osborne’s evidence of CJS1’s account. It was her public tweet that had brought her to the attention of Mr Krishna Floyd and Ms Lusi who, shortly after speaking to her, passed on her details on 7 April 2021 to Ms Osborne (who spoke to her the same day). There is nothing to suggest that giving her account to Ms Lusi before Ms Kaiser spoke to Ms Osborne (who took Ms Kaiser’s account without having read the statement taken by Ms Lusi), or Ms Kaiser’s subsequent contact with other complainants via the WhatsApp group, has altered or distorted the account Ms Kaiser gave to Ms Osborne or the Court.
258. I conclude that the pleaded allegation at paragraph 30 of the Amended Defence (para 229 above) is made out. In addition, I accept Ms Kaiser’s account of Mr Clarke’s behaviour towards her after she rejected his attempts to kiss her, which left her, a very junior member of the crew, feeling humiliated and bullied by a lead actor on the set.

(v) ‘Mila’ – ‘Production C’ (2009)

Approved Judgment

259. ‘Mila’ is an actor. When she was about 24 years old, she successfully auditioned for a part in a production (‘Production C’) which was written by Mr Clarke, and for which he was a Director and Producer.
260. The Guardian’s allegations relating to ‘Mila’ are, first, that she was inappropriately pressured by Mr Clarke during an audition to kiss another actor, Shanika Warren-Markland. Secondly, she was only informed after she was offered the part that she would be required to undress during a scene and appear entirely nude. When she expressed her unwillingness to remove her knickers on screen, she was told she would lose the part. Thirdly, during the filming of the scene in which ‘Mila’ undressed, Mr Clarke positioned himself behind a camera facing ‘Mila’s’ bottom and, without prior warning, he persistently pressured her to bend over in a way that would expose her naked vulva to him, despite her evident discomfort and the fact such footage could not have been used in the production. The Guardian alleges he directed her in this way for his own sexual gratification. Fourthly, it is alleged that he showed the rushes of this scene to others, including a driver/runner. And finally, that during the shoot he often asked ‘Mila’ to sit on his lap and he made inappropriate sexual comments to her.
261. The first allegation, regarding the final audition, was addressed in the evidence given by two friends of ‘Mila’ (who do not know each other), Charles Cattrall and Samuel Phillips, neither of whom was present during the audition, but who each recalled what she (separately) told them about it in 2009 and 2010. But ‘Mila’ did not herself address it in her statement. Doubtless because it was not supported by direct written evidence from ‘Mila’, it was not put to Mr Clarke in cross-examination that he inappropriately pressured her to kiss another actor during an audition. In those circumstances, in fairness to Mr Clarke, it necessarily follows that the Guardian has not established that allegation.
262. ‘Mila’ was cross-examined about the absence of that allegation from her statement. She gave a compelling explanation that when she had come to write her statement she had found it difficult to articulate the pressure that Mr Clarke had applied, in circumstances where it was not express. She explained that any physical action, whether it be sexual or violent, is not done in an audition. Such actions are “*left to the day itself when it can be properly managed, properly discussed, and everybody can be happy with how that is going to take place*”. During the audition, if the script calls for such physical action, the director will shout “*cut*” before it takes place. Her script for the audition ended with “*a very sexual kiss*” with the character played by Ms Warren-Markland but ‘Mila’ did not expect to perform a kiss during the audition, because “*you never do those in auditions*”. She felt pressure to continue the scene, and perform what she described as “*a very intense kiss*”, because Mr Clarke did not shout “*cut*” at the end of the text being spoken, as he should have done, and it would have been unprofessional for her, as an actor, to decide when to end the scene. While, as I have said, the Guardian has not established this aspect of its case because Mr Clarke was not given a fair opportunity to address it⁸, the omission of this allegation from ‘Mila’s’ statement does not detract from my overall assessment of her evidence. On the contrary, it was consistent with the

⁸ I would also, in any event, have found that the pressure applied was probably a result of Mr Clarke’s inexperience and lack of formal training, rather than deliberate. Even when filming *Brotherhood* in 2015, he expected Ms Atherton to stop a scene if she spotted mistakes, whereas it was inculcated in her that only the Director could call “*cut*”.

Approved Judgment

careful and measured approach that she adopted throughout her evidence, and to her credit.

263. It was common ground that ‘Mila’ was informed that the role would require her to undress and appear entirely nude only after she had gone through the audition process and been offered the part. She expressed her unwillingness to remove her knickers on screen, and she was told bluntly if she would not then she would lose the part. Given her circumstances at the time – which she readily acknowledged were not attributable to Mr Clarke – she agreed to the nudity requirement, having been reassured that it would be handled sensitively, shot respectfully, and that there would be a closed set.
264. The scene involved ‘Mila’s’ character doing a strip tease for her partner, another female character. ‘Mila’ said it was “*supposed to be very sexy*”. In her statement, ‘Mila’ said there were more people, mostly men, than she would have expected on a closed set. She estimated there were “*approximately 10 people*”. In cross-examination, she said that “*the director does not even need to be in the room. The director would mostly be watching from a monitor in another area out of the room potentially or further away*”. She said, “*I do not think you need two directors in a small space, up close and personal, watching a scene like that*”. In his first statement, Mr Clarke said there were eight people on set, the two actors, himself, his co-Director, the Director of Photography, a focus puller and two female costume assistants. But “*even if there had been 10 people on set, this would have constituted a closed set, and a very minimal amount of people given the number of members of crew who usually attend sets*”. In his oral evidence Mr Clarke said there were seven people on the closed set, but it is probable he forgot the focus puller when detailing who was there. It is likely that there were eight people. Although it would have been possible for the number to have been reduced further, in the way ‘Mila’ described, it was a closed set.
265. In her statement, ‘Mila’ said:

“Noel was directing this scene. At one point he had the camera positioned right behind me when I had to remove my knickers.
...

Noel was sitting behind the camera, behind my bottom, and the crew were mostly standing behind me, too. I was acutely conscious of this and so tried to take the knickers off without bending over too much. By this point, I was expecting to show my naked body upright – being bent over in such an exposing and vulnerable position had never been discussed. Noel was telling me to bend over, repeating things like ‘bend over further, come on’ and ‘do it properly’. I was clearly very uncomfortable and resisting doing this, I was doing the strip tease as requested and this extra request did not feel necessary. He repeated these comments until I bent over further and further until I was bent completely over with my bum in the air. From this position, my vulva would have been visible to him personally and I presume at close range on camera. I felt humiliated and totally powerless.”

Approved Judgment

266. In his statement, Mr Clarke said he was positioned behind the camera which was “*not directly behind Mila’s bottom, it was slightly to the side such that Mila’s vagina was not exposed as she bent over*”. In cross-examination he said “*the camera was to the right of her bottom, specifically so we could not see what we did not want to see*”, subsequently correcting himself that it was to the “*left or right*”, he could not recall. However, he also said that he had told her beforehand that they would be filming “*behind*” her and that she would have to bend over when she took her knickers off. Mr Clarke denied that in positioning himself, and directing ‘Mila’, in the way that he did, he was acting for his own sexual gratification.
267. In her oral evidence ‘Mila’ said the scene was shot from multiple angles. The camera angle in the final cut is to the side. But she was focusing on “*a shot where the camera and Noel were right behind me*”, “*directly behind me, not within my peripheral vision*”, so that she would have to “*turn right round to speak to him*”. That was not a shot that had ended up in the production and she had known or felt at the time that it was “*too explicit*” to be used.
268. In his statement, Mr Clarke said “*I did not comment in the way pleaded [i.e. ‘bend over further’, ‘do it properly’], and did not ask Mila to bend over in any way which made her uncomfortable, or in a way which was not true to the script*”. However, when it was put to him in cross-examination that when she was acting out the removal of her knickers “*you were telling her to bend over and do it properly*” he replied curtly, “*I was directing the movie*”. When the question was put again, he said:
- “Quite possibly. That would mean I was directing the movie which, as my job as director would be to do, so if she had not bent properly, then I would be asking her to bend properly for the reasons that it maybe did not look good on the screen. She might have looked like a flamingo or I might have wanted her to look like a flamingo and she might have looked like an ostrich at that point or whatever. The point is if it did not look the way the co-director and I wanted it to look, I am well within my right to ask it to be done the way that the director wanted it to be done. That is called directing.”
269. ‘Mila’ said in cross-examination that she took her knickers off upright, dropping them, which is what she was expecting to have to do:
- “And then I was told to bend over, bend over further, come on, and at each point I bent over a little bit, and then he said, bend over further. And I paused and it was the pausing that provoked him to give the next direction, because unbeknownst to me he wanted me to bend right over so my bum was in the air.”
- She said that with the camera right behind her bottom, and her bending over to touch her toes, taking her knickers off, her vagina and vulva would have been visible. She agreed that the crew would have had to be slightly spread out, rather than all viewing from precisely the same angle, but she said they were all behind her.
270. Mr Clarke said in his statement, that the “*parameters of the nude scene were entirely agreed with Mila before the commencement of filming*”, rehearsed so that there would

Approved Judgment

be no room for unexpected shots, and he reiterated in his oral evidence that she was told beforehand she would have to bend over when taking her knickers off, while being filmed from behind. However, the cross-examination of ‘Mila’ proceeded on the basis that, as a matter of logic, she would have known it was impossible to perform the scene without bending over. It was not put to her that the requirement to bend over while being filmed from behind was discussed or rehearsed. ‘Mila’ said that there were many ways in which the scene could have been done that were less exposing, including the way in which she initially did it, and that it should have been discussed in detail before the cameras were turned on and before she disrobed.

271. Samuel Phillips recalled going out for dinner with ‘Mila’ and his family shortly after she had worked on Production C. He said that she told him that one day on set “*Clarke required her to get fully naked and he positioned his monitor right behind her where she had to bend down when naked. [‘Mila’] told me on the same occasion that she felt incredibly uncomfortable and wretched about the experience*”.

272. With respect to the fourth allegation, ‘Mila’ said in her statement:

“During the shoot, I became aware that Noel must have been watching the rushes of the stripping scene in which he made me bend over and in which my vulva was on show and allowing others to see them. One day, I was in the back of a car being driven onto set by [a] driver/runner who had not been on set for the filming of the stripping scene, and he made a jokey comment to me about the scene, referring to it as something along the lines of ‘saucy’ and it inferred that he had seen it. My stomach dropped and I felt incredibly embarrassed, and I was horrified to think that Noel had captured those angles and was allowing other people to watch them without my consent.”

273. In cross-examination, ‘Mila’ said she “*felt sure*” he had shared the rushes because of the comment the driver/runner made. She could not recall the exact words the driver/runner used but from what he said she inferred, and felt it was “*very clear*”, that he had seen the scene rather than it being reported to him. Her response to the suggestion that “*you cannot take rushes from film*” (as opposed to when filming digitally) was that:

“I have never heard of a director not having any visible evidence of what is being shot until the end. That does not make any sense to me.”

274. Charles Cattrall was one of several friends of ‘Mila’ who contacted her immediately following the publication of the first article – which contained no mention of her – recalling “*the things you told me you experienced when you were on set with him*”, and offering support. In his statement, Mr Cattrall said that during 2008, 2009 and 2010 he saw ‘Mila’, with whom he was very close friends, frequently. He recalled that in a conversation with her after the filming of ‘Production C’, ‘Mila’ told him:

“she believed Clarke was sharing rushes with various people on set: at least 1 driver and other male crew. She thought Clarke was doing this between days of filming and then the respective crew

Approved Judgment

who had seen the rushes would be audibly discussing the women they'd seen on the rushes, having watched them without consent, and would then make comments of a sexual nature towards these women on set. The comments were provocative and hinted at 'can we have sex?'

['Mila'] told me the girls on set would talk with one another about the sharing of rushes and the comments they were receiving as a result, and the whole atmosphere on set was 'off'. None of the people looking at the rushes were women. The people Clarke was sharing them with were always men."

In cross-examination, Mr Cattrall maintained that his evidence as to what 'Mila' had told him was true and not exaggerated.

275. Mr Clarke denied that he took, or showed anyone, any rushes of the sex scene. In his statement, he said they were "*on DVD*" and he would not have been able to show them to third parties. When cross-examined, Mr Clarke said that 'Production C' was shot on 35mm film. He said:

"There were no rushes that day and I did not show the rushes to anyone, because there were none to show."

Mr Clarke said that "*back in the days*" the film would be transferred onto a CD, and that would be given to the producers or the directors "*so they can review the footage overnight to make sure they do not need to come back the next day or that the location has finished*". On seven occasions, Mr Clarke qualified his statement that there were no rushes with the words "*that day*".

276. 'Mila' gave evidence that following the shooting of that scene, for the rest of the shoot, "*Noel often asked me to sit on his lap and made inappropriate sexual comments*". Mr Clarke denied those allegations.
277. Mr Clarke said that 'Mila' is not a conspirator, but he asserted that she was lying in her witness statement. He said that she regrets being in 'Production C' and having taken part in the nude scene, and because of that regret she has lied to the court. He said that lying to the court "*helps her with her anger towards me ... about how she perceives what happened*". Mr Clarke acknowledged that on 1 December 2020 he messaged 'Mila' asking to speak to her on the phone because he had heard that she was "*annoyed*" about her experience on 'Production C'. He said that he had been aware of this since 2019, but on 1 December 2020 he was "*panicking*" because of a conversation between a woman who he accused of "*blackmail*" and Mr Clarke's business partner, Jason Maza (neither of whom have been called). He did not suggest that the woman said anything about 'Mila', but she is said to have said to Mr Maza that 'Maya' and "*other women were annoyed*" which prompted his call to 'Mila'.
278. Mr Clarke acknowledged that during the conversation with 'Mila' on 1 December 2020, he asked if she was "*cool about her experiences*" on 'Production C'. She said she was not ok with it and she felt very uncomfortable at the time. He apologised. He said that becoming a father had made him reflect and he wanted to bring up his sons to be

Approved Judgment

upstanding young men. He said he was ringing round her and other people to apologise about things, and that he was open to having a meeting with her.

279. For the reasons that I have given in paragraphs 69-80, 84 and 86 above, I have not given weight to Ms Warren-Markland’s hearsay statement when addressing the allegations relating to ‘Mila’.
280. I have no hesitation in finding that ‘Mila’, Mr Cattrall and Mr Phillips each gave honest, straightforward and reliable evidence. Although Mr Clarke made clear that he does not allege ‘Mila’ is a “*conspirator*”, the Claimant’s closing submissions seek to draw a connection between her and Mr Deacon. There is nothing in it. Mr Deacon is an actor with whom she worked on two scenes, over the course of a day or two, over 15 years ago, and with whom she does not have any kind of relationship. Mr Deacon has had nothing whatever to do with ‘Mila’ coming forward with the allegations she has made.
281. Unlike Mr Clarke, ‘Mila’ had no reason to lie. Mr Clarke’s suggestion that she was motivated to lie to the court because of a regret she harbours about taking part in ‘Production C’ made no sense. Nor did his alternative suggestion that she was motivated to lie by anger at him add up, as, if what she says were untrue, she would have no reason to be angry with him. His attempt to label her a liar was contradicted by his own conduct in identifying her as someone to whom he might need to apologise for his behaviour on ‘Production C’, contacting her, apologising and trying to smooth things over with her. I find that he acted as he did because he knew she had cause for complaint. The evidence of Mr Cattrall and Mr Phillips that ‘Mila’ had told each of them of her complaints around 15 years ago, evidence which was supported in Mr Cattrall’s case by his impromptu WhatsApp message, renders the contention that she had any reason to lie even more implausible. She had no reason to lie to them 15 years ago.
282. The challenge to ‘Mila’s’ evidence based on the fact that after ‘Production C’ she had briefly worked with Mr Clarke on a production in which he was an actor, that she had at one stage been considered for a film in which he was involved⁹, and that she responded to a small number of communications from him in friendly terms, was feeble and provides no support for the contention she was lying. In this regard, Ms Counihan’s evidence regarding the pressure on actors to “*stay in favour*”, although given in relation to a message from ‘Maya’, is of more general relevance (para 787 below).
283. Save to the extent that I have found there were probably eight people on the closed set, I accept ‘Mila’s’ account of the filming of the strip tease scene. Contrary to Mr Clarke’s statement, it was evident from his oral evidence that he directed her in precisely the way that she described, despite her evident discomfort. There was a striking contrast between his imperious evidence as to his entitlement as a Director of such a scene (para 268 above) and the evidence of Jonathan Finn, an experienced television and film producer, that:

“there is a sort of thing in film, you know, at any moment, you can go, ‘Actually, I do not feel comfortable doing this’. It is a sex scene, it is people getting naked, you do not have to do it. ...

⁹ There is no evidence that she auditioned for a role, and she manifestly had no recollection of being considered for a part.

Approved Judgment

If somebody says ‘No, I do not feel comfortable doing it’, what do you suggest you do? You cannot force somebody to simulate a sex scene, and nor would I want to, and nor would it be right to.”

284. Mr Clarke’s evidence that he told ‘Mila’ beforehand that she would have to bend over, while taking down her knickers, and while being filmed from behind lacked any credibility. ‘Mila’s’ profound shock and distress at discovering the extremely exposing way she was required by Mr Clarke to perform the scene arose because she had no forewarning or chance to raise her concerns. Mr Clarke positioned himself, together with three other men (the co-Director, the DoP and the focus puller), behind ‘Mila’ so that when she bent over so that her fingers were touching her toes, as he persistently directed her to do, he was able to see and film her vulva. There was a striking similarity between the way he directed ‘Mila’ and the (at times insistent) requests he made of Naome Morris for explicit images standing “*and bend over pussy facing cam*”. The footage taken from behind ‘Mila’ could never have appeared in ‘Production C’ (rated 15) and I infer that he directed and filmed the scene in the way he did for his own sexual gratification.
285. Mr Clarke’s denial that he showed others the rushes was founded on a contention that there were none. But on his own evidence the director would obtain a CD of the footage to review overnight. As a Director, Mr Clarke had to have access to what had been filmed during the course of the shoot in order to ensure that the footage he wanted had been obtained. It is no answer to the allegation that he showed others the rushes of the strip tease scene that he did not receive them *that day*. Mr Cattrall recalled that ‘Mila’ thought Mr Clarke was sharing the rushes “*between days of filming*”, and ‘Mila’ did not assert that the driver/runner saw the footage on the day the scene was shot, or even the following day. I found Mr Clarke’s evidence on this point evasive and unconvincing. I accept ‘Mila’s’ evidence that, although she could no longer recall precisely what the driver/runner had said, it was very clear to her at the time that he had seen the scene. I conclude that this allegation is made out.
286. I also find that Mr Clarke would ask ‘Mila’ to sit on his lap and make inappropriate sexual comments during the shoot.
287. Accordingly, I conclude that the Guardian has proved its case in respect of ‘Mila’, save to the extent the set for the strip tease scene was closed, and the allegation regarding the audition (not having been put to Mr Clarke) has not been established.

(vi) Thalia Hambi-Fisher (2009)

288. Thalia Hambi-Fisher is a choreographer and dance teacher. She first met Mr Clarke in 2006 when they were both volunteers working on the Portobello Panto. The Guardian’s allegation in relation to Ms Hambi-Fisher is that on 9 February 2009, at a lunch to discuss a work project, when Ms Hambi-Fisher stood up to go to the bathroom, Mr Clarke asked her to take a photograph of her “*pussy*” for him because he loved photos of women’s vaginas. She was about 33 at the time of the lunch.
289. Ms Hambi-Fisher said the first time she met Mr Clarke “*he looked at me in a predatory sort of way. You could tell he saw you as a piece of meat and not a person*”. In cross-examination, she acknowledged this was an impression from how he looked at her, not

Approved Judgment

from anything he said on that occasion. She said, “*he approached me and kind of looked me up and down and sort of sucked his teeth at me and I felt straightaway he was someone I should probably keep at arm’s length*”. At the time, she referred to him in an email (dated 13 December 2006) to a friend, saying he is “*well on my case. ... I thikn [sic] he just wants a sh*g so will try and stay away! Don’t really want to be another notch and I’m not after just a sh*g*”. Ms Hambi-Fisher said that she was friendly towards him while working on the pantomime but there was “*no sexual attraction from me, definitely not*”.

290. Ms Hambi-Fisher explained that she had written some children’s books about nutrition and was planning to have them recorded as audiobooks. She had told Mr Clarke and he had offered to lend his voice for the audio recordings. Ms Hambi-Fisher has provided emails from 12 March 2008 which show that she was communicating with Mr Clarke and two other actors she had met on the pantomime in relation to the audiobook recordings. Mr Clarke responded, “*I’ll do any voice you’d like when it’s all up and running.... Lets meet for lunch soon*”, which Ms Hambi-Fisher understood to be a proposal to meet to discuss the work.
291. Ms Hambi-Fisher said that some time later in 2008 she had a production meeting at Radioville in Soho regarding the work on the audiobooks, which Noel and others joined. Then on a later occasion she and Noel met to discuss the work over lunch at Balans café on Kensington High Street. She thought this lunch took place on 9 February 2009 because she recalled that it was the day after Mr Clarke had been awarded the Orange Rising Star Award 2009 by BAFTA. She said he was scrolling through coverage of his award on Twitter and was not that interested in discussing the possibility of recording the audiobooks. In her statement she said:

“When we finished the lunch, I got up to go to the bathroom. Out of the blue Noel asked me, since I was going there, to take a photo of my ‘pussy’ – for him. He said he loved photos of women’s vaginas.”

292. She said that when she came back to the table “*he was smirking and waving his ring finger. He told me that he had just got engaged or married and his wife was pregnant*”. In examination-in-chief, Ms Hambi-Fisher corrected that to read that he either told her his wife had had a baby or that she was due to have a baby. She also corrected a statement that he had been scrolling on his phone, saying he had been doing so on a computer.
293. Ms Hambi-Fisher said she told a few close friends at the time. She remembered telling a friend, Moni, about a year later, when her friend had been “*gushing*”, in an email dated 22 February 2010, about how “*emotional*” the BAFTA speeches were, including “*when they mention their spouses*”. Ms Hambi-Fisher said that she responded, in effect, “*I would not be too swayed by those, last year this happened with Noel Clarke and it was a day after he won the BAFTA and the day before he had been saying, you know, lovely things about his wife. Yet he asked to see a picture of my vagina the next day in a business meeting*”. In the email to her friend, Ms Hambi-Fisher wrote:

“Well, they are acting. Sorry to burst your bubble, but do you remember Noel Clarke’s speech, last year? See below.

Approved Judgment

[link to YouTube]

Very touching. Well, I met him for lunch the day after and, amongst other things, he asked me to go to the loo and take a photo of my you-know-what. I could go on where Noel's concerned."

294. In the amended Reply, it was denied that the Claimant behaved as alleged or that he was considering doing voice work on Ms Hambi-Fisher's audiobook, and not admitted that he attended a lunch with her on 9 February 2009. In his first statement Mr Clarke went further and denied that the lunch took place, saying that he and Ms Hambi-Fisher "*only met at events, in company, where we behaved flirtatiously, but we had no relationship beyond that*". He said that he married on 22 December 2007 and in February 2009 his wife was not pregnant, he had a 9 month old son. He reiterated orally that he would not have said he was engaged or expecting a child in February 2009, as that was not the case.

295. In cross-examination, Mr Clarke said that when working on the Portobello Panto in 2006, there were "*mutually flirty conversations and that was the extent of it*". Mr Clarke acknowledged that they had exchanged emails in March 2008 when she had reached out to ask if he would be willing to voice audiobooks she was producing. He said repeatedly he did not recall having lunch with her. When asked about the alleged request to take a photograph of her "*pussy*" for him he said, "*I do not recall having lunch with her and that does not sound like something I would say*". He acknowledged that he could not say no to the proposition that "*you do love photos of women's vaginas*". Mr Clarke retracted his initial allegation that Ms Hambi-Fisher was lying about what happened at the lunch, saying:

"I do not recall this. If I made that comment, what, 16 years' ago, I am not a perfect guy, I am just not, I do not want to pretend I am. I do not recall making that comment and I do not recall meeting her. I really genuinely do not. If I made that comment, Mr Millar, and she can come here and show I made that comment, I wish we were not in court over it, but I am happy to apologise if that is the case, but I do not remember meeting her, I do not remember making that comment..."

296. Mr Clarke agreed that "*in today's lens, if it was said*" that comment was "*sexual harassment*", but he said that in 2008, 2009 "*it may have been a cheeky comment, that someone could do exactly what she did and say, 'I am not doing that, do not say that to me' and walk out and that would be the end of it*". If he said it back then, "*it would be inappropriate*". He said he would not dream of saying that to someone now, and he did not believe he had said it then.

297. In re-examination, Mr Clarke was asked if he wished to remove anyone from a list of individuals identified in the Claimant's skeleton argument as "*conspirators*" or "*associates*". He said that Ms Hambi-Fisher should "*possibly*" be removed from that list. He said that "*it is a little bit more tenuous, but I set out that she is part of the conspiracy*" because "*Thalia is connected to ... Jaime*", "*Jaime is best friends with, or very close friends with, Mr Deacon*", and he referred to "*Thalia being friends with them*".

Approved Judgment

298. In cross-examination, Ms Hambi-Fisher said she would not have contacted the Guardian (as she acknowledged she did after at least one of the Articles had been published) just based on working with him at the pantomime. She contacted the Guardian because he was sexually inappropriate in a business meeting in 2009. She described his behaviour at that business lunch as “*sexual harassment, inappropriate, demeaning, degrading and unwarranted*”. She denied she was “*jumping on the bandwagon*”, saying “*I have nothing to gain from this at all*”. She said, “*it would have been much easier not to speak to Sirin and Lucy, but I felt that it was an important thing to do, because it happened to me, and it seems to prove a pattern of behaviour in Noel Clarke*”. Ms Hambi-Fisher gave evidence that Jaime Winstone was on the Portobello Panto but she did not work with her at all and does not know her. She said that she does not know Adam Deacon, who she has never met and to whom she has never spoken.
299. For the reasons that I have given in paragraphs 69-81 above, I have not given weight to Mr Elouahabi’s hearsay statement when addressing the allegations relating to Ms Hambi-Fisher.
300. The contention that Ms Hambi-Fisher is party to any conspiracy is worse than “*tenuous*”: it is absolutely baseless. She is not friends with, indeed she does not know, Ms Winstone and Mr Deacon, and in any event there is not a shred of evidence that they played any role in Ms Hambi-Fisher’s decision to approach the Guardian after publication of the first article. The contention that in coming forward she was “*jumping on the bandwagon*”, which I understand to be an allegation that she has invented a story in order to join in with a popular cause, is demonstrably false. There was no “*bandwagon*” to jump on in February 2010 when she told a close friend what had happened, in an email that is in evidence. Ms Hambi-Fisher had no reason to lie and I find that she has given a truthful account, supported by the near contemporaneous documentary evidence. Her uncertainty about precisely what Mr Clarke said when she returned from the bathroom was understandable and does not undermine the reliability of the core elements of her account.
301. I accept that Mr Clarke does not recall the lunch or making the comment attributed to him, but I reject his evidence that it does not sound like something he would have said in 2009. On the contrary, on the evidence before me it is manifestly the kind of inappropriate request and comment he would have made, thinking nothing of it, and regarding it only as “*cheeky*”.

(vii) Naome Morris (2010)

302. The Guardian’s allegations in relation to Naome Morris are, in essence, that Mr Clarke solicited explicit images from her in an exploitative manner, taking advantage of her vulnerability, and that at an event on 27 May 2010 he touched her sexually without consent, and showed her a photograph of his penis. Mr Clarke denies any misconduct towards Ms Morris.
303. The primary facts concerning Ms Morris relied on by the Guardian are largely undisputed. They are the subject of extensive contemporaneous documentation. However, I have borne in mind that it is incomplete. Specifically, in respect of some of the correspondence, it is apparent that direct Twitter messages from Mr Clarke to Ms Morris are in evidence, but her messages to him on the same platform are missing.

Approved Judgment

304. On 1 February 2010, Mr Clarke posted a public tweet inviting readers to send “naughty” photographs to him. This was a request for Twitter users to send explicit, that is naked, photographs of themselves to him. At that time, Ms Morris was an 18-year-old *Doctor Who* fan who followed the Twitter accounts of actors from that programme, including Mr Clarke. She responded positively to Mr Clarke’s request, prompting him to send her six direct messages over the course of 1-2 February 2010 encouraging her to “go for it!”, “be 18 n over. Lets see everything”, “be very daring. It’ll be appreciated”. On 2 February 2010, Ms Morris sent one or two explicit pictures of herself, and a correspondence ensued between them by email and by direct messaging on Twitter.
305. On 8 February 2010, Ms Morris told Mr Clarke about an interview she had with the Guardian for “Beat Bullying”, explaining that she was “airing my story about bullying to try and help others”. On 13 February, Ms Morris said that she had been to London “twice a few years back for a couple of interviews on GMTV (thing I do for Beat Bullying again)”. She informed Mr Clarke that she had been bullied a lot, which resulted in her “spending a lot of time off school...parents went to court cause of my absence and almost went to prison. It got a lot worse...drove me to selfharm and split my family up over arguments. It’s all over now though :)”. On 3 April 2010, Ms Morris told Mr Clarke that the reason she did not work was a “confidence problem thing again”. She said, “I plan to do something; I’m not going to let it affect me forever. I’m actually a hell of a lot better; before I was almost at a point of not leaving the house...I managed to enrol in an art course at college but I couldn’t go; started having panic attacks”.
306. On 11 February, in response to a question from Mr Clarke, Ms Morris told him “I’m a virgin”. From then on, Mr Clarke began to urge her to delete their emails. On 23 March, Mr Clarke asked “And if you haven’t done ‘it’ yet? What have you done?”. Ms Morris answered, “I haven’t done anything lol. At all. Not even a first kiss”.
307. Between 3 February and 27 May 2010 Mr Clarke sent Ms Morris over 150 messages, via email and direct messages, which contained sexually explicit comments and encouraged her to send him more, and more daring, nude images and videos, including asking that she send photographs and videos of herself in particular explicit poses. In cross-examination, Mr Clarke dismissively suggested this was akin to ordering pizza toppings. Ms Morris sent Mr Clarke explicit photographs and videos on many occasions throughout this period, and I infer that she sent a similar number of messages to those she received. Mr Clarke gave evidence that she sent him “hundreds if not thousands of pictures”.
308. When she was hesitant in response to his first request for a particular pose he replied on 10 February, “Don’t feel under any pressure to do requests, I’m sorry if you did”, to which she said that she did not feel under any pressure. But his requests became more demanding. By way of example only:

“Randoms are fine. But I want my filthy ones I requested.” (NC to NM, 8.4.10)

“A couple more pics than that i hope. I want now! Are they really dirty? Are they my requests? Are the vids dirty? I want to see how dirty you are. Want to see that wet pussy waiting to be stuffed.

Approved Judgment

Now.

I'm waiting.

Delete please.” (NC to NM, 8.4.10)

“... Also lets get those dirty pics done. You say you are, I know you are, lets see em. Look forward to em.” (NC to NM, 26.4.10)

“want pic of ***** from behind...now! (demands)” (NC to NM, 14.5.10)

309. The sharing of explicit images was one-sided. On 9 April 2010, Ms Morris asked Mr Clarke to send an explicit picture. He responded that that was “*never part of the deal*”. But he would “*think about it*” if she would “*Send my requests. In pics real dirty legs spread face and pussy showing stuff. Then grow pussy hair for two weeks and send me more*”. Mr Clarke did not, at any stage, send explicit images of himself to Ms Morris.
310. In an email on 13 February 2010, Mr Clarke first proposed that he and Ms Morris should meet to have sex, suggesting that she could come to London for a screening of his film, to which she said “*Maybe*”. Part of the context was her disclosure that she had often thought about how it would feel to have sex with him. They exchanged a number of emails about this, including at Ms Morris’s instigation (e.g. “*I need to know if you are serious about ... meeting up*”, 11.3.10). Mr Clarke made clear it was a serious proposal but that it would be one time only and no-one could ever know because of his family. On 16 March 2010, Mr Clarke invited Ms Morris to a screening of 4.3.2.1 in London, and she was sent a formal invitation on 5 May 2010.
311. In the meantime, Ms Morris remained undecided, saying on 21 April, “*London... is sadly becoming less and less likely...the travelling alone to London thing ...and then I’m worried I won’t be ready when we came to it; I’d hate to waste your time*”. Mr Clarke continued to encourage Ms Morris to meet him in London, with a view to having sex. In her oral evidence, Ms Morris said that she felt “*pressure*” to have sex. She said that she felt like she “*had to impress him and not let him down and he was putting a lot of effort into talking to [her] and making out that he was the perfect person to be [her] first*”. But it is also apparent that Mr Clarke made clear across a number of messages that she should be sure; he did not want her to do anything she would regret; she was “*invited to the screening no matter what*”; and that if she decided she “*couldn’t do it yet*” “*...you watch and hopefully enjoy the film, we meet and you go home*”. Ultimately, Ms Morris decided not to attend the screening in London on 10 May 2010.
312. Mr Clarke accepted in cross-examination that he wanted to have sex with Ms Morris, and that he was “*trying to persuade her and organise the sex*”. He acknowledged that his evidence in his first statement that “*I never intended to have sex with [Ms Morris]*” was untrue. His explanation for that untruthful statement was that he “*said that in panic*”. It is clear to me that by the trial Mr Clarke had read all the messages and knew that, in the face of them, it was impossible to maintain that he had not planned to have sex with Ms Morris. This was just one example of a more general pattern of Mr Clarke only being prepared to admit that which was established by documentary evidence.

Approved Judgment

313. On 20 May 2010, Mr Clarke informed Ms Morris he would be in Birmingham on 27 May, at the Malmaison hotel, doing publicity for 4.3.2.1. At his invitation, Ms Morris went to the Malmaison and met Mr Clarke, who was there with his friend Kayas Irshad, and other fans. Ms Morris was still 18, although not far short of her 19th birthday. Mr Clarke took them all to Nando's for lunch. Ms Morris was not alone with Mr Clarke at any point. Whatever the precise number of people there, and there was a dispute about whether it was fewer than 20, it is clear they were joined by a significant number of people.

314. Ms Morris gave evidence that at lunch:

“Kayas was sitting next to me and Noel told him to move out of way and came to sit next to me. He grabbed my leg under the table and squeezed my thigh – he put his hands in-between my legs in a sexual way. It was very quick but he did this several times. I didn't know how to react as I was totally inexperienced. I did nothing. I froze up as I wasn't expecting this.”

In cross-examination, she denied that she was “*exaggerating*” this touching and said others would not have seen as it was done under the table.

315. Photographs of Mr Clarke and his fans were taken that day, including a photograph of him hugging Ms Morris. She said:

“Just after those photos had been taken, Noel moved his hand down to my bum and squeezed it. I felt shocked but I had to hide my reaction because Noel had told me so many times to keep things secret.”

In cross-examination, she denied she was mistaken about this, saying “*You do not forget the first time that you are touched*”.

316. Ms Morris said that some photographs were taken in front of the film merchandise and Mr Clarke was showing other fans some pictures on his phone of other ideas he had for promotional merchandise. She said that he then:

“showed me a photo on his phone and pretended it was another merchandise picture but it was actually a photo of his erect penis. I froze as I did not expect this. I had to play along that I was looking at pictures of promotional items and said something like ‘it's very nice’ and kept a straight face to keep up the pretence...”

317. On 12 September 2010, in an email to Mr Clarke, Ms Morris wrote:

“Are you going to send any of those pics??? Just one! I want to see it again...I didn't get a proper look :(You have *no* idea how much I want to see it again :(X” (Original emphasis.)

318. In his statement, Mr Clarke said that he did not recall sitting next to Ms Morris at lunch, nor did he recall touching her. He said that he “*would not have touched [Ms Morris's]*

Approved Judgment

leg in any way, sexually or at all, at a public event in this manner”, or without her consent, and he denied touching her backside. In cross-examination, he maintained that he did not touch her but said that if he had “*squeezed her bottom*” “*I would assume it was consensual because of everything we had been sending each other over the last nine months before that*”. In his statement, Mr Clarke denied showing her a photograph of his penis, and said there was no merchandise apart from the T-shirts and so this would not have made sense as an excuse. In cross-examination, Mr Clarke said (hesitantly) that he did not recall showing her a picture of his erect penis. He recalled that he had his phone and he showed her merchandise. He said “*Was it a picture of that [i.e. his penis]? I do not think it was, but I can see what she is saying here, but 100% she was never sent any pictures by me*” (my emphasis). He suggested that when referring to getting a “*proper look*” in her email Ms Morris was referring to having seen the bulge in his jeans. Mr Clarke did not think that showing her a picture of his penis would have been memorable and observed, “*She clearly wanted to see it. She had asked me many times.*”

319. On meeting her, Mr Clarke found her “*strange*” and sought to distance himself from her. In cross-examination he said:

“this was the first time when I thought, ‘Oh, maybe the things she mentioned previously had affected her’. So, what I did, instead of being, as they call me, predatory ... Once I realised that actually some of the trauma she had described to me had affected her in a way that I found her slightly odd, I did what any normal person should do and started distancing themselves.”

320. He slowed his rate of correspondence with her and as time went on she became increasingly distressed at his coldness towards her, and then became anxious, depressed, and indeed suicidal. She continued to try to contact him. Mr Clarke instructed solicitors and contacted the police. He said that she was harassing and stalking him but he did not file a criminal complaint. He said that Ms Morris signed “*undertakings that she would leave me alone*”. Ms Morris recalled signing a document, although she was unsure what it said as she does not have a copy.
321. Ms Morris was an exceptionally quietly spoken and clearly vulnerable witness. On the disputed matters regarding their meeting in Birmingham, I prefer her account. She is inherently more likely to remember what occurred because of the importance of the occasion to her, and the impact on her of being touched and shown a photograph of Mr Clarke’s penis. Her evidence regarding being shown the photograph was supported by near contemporaneous documentary evidence. The suggestion that in her email she was referring to having seen a bulge in his jeans was not credible, and ultimately Mr Clarke’s position was only that he could not recall showing it. It is also inherently likely, against the background of their correspondence over four months, that he would have behaved as she described.
322. However, Ms Morris did not give evidence that Mr Clarke’s behaviour in touching her leg or her bottom, or in showing her a photograph of his penis, was non-consensual. Her evidence that she froze is not evidence that she did not consent. In relation to the photograph, she had specifically asked Mr Clarke more than once to send such a photograph before they met in Birmingham, and she repeated that request subsequently. The touching she has described also has to be viewed in light of their correspondence,

Approved Judgment

and bearing in mind the absence of some of her messages. Accordingly, I reject the Guardian’s contention that Mr Clarke groped Ms Morris or that his actions in showing an explicit photograph of himself were unsolicited.

323. The Guardian submits that the information Ms Morris provided about her history of bullying and self-harm, coming from a very young adult, would have put any responsible older person on alert that she was a vulnerable person. The Guardian contends that Mr Clarke preyed on Ms Morris as a young vulnerable woman, exploiting her for explicit images, and pressuring her to meet with him for sex.
324. Mr Clarke’s position was that this was a consensual adult relationship. While he was “*desperately ashamed*” of his behaviour, which he branded “*disgraceful*”, his shame stemmed only from engaging in such conduct as a married man. He said the only person he owed an apology, and to whom he had apologised 15 years ago, was his wife. Mr Clarke acknowledged, with hindsight, that Ms Morris had mental health issues. But he said that he had little awareness of such issues at that time. It was only when he met her for the first, and only, time on 27 May 2010 that he thought the matters she had mentioned might have affected her, as he found her “*odd*” and “*strange*”, in a way that he described as intangible.
325. Mr Clarke is obviously right that his correspondence and relationship with Ms Morris, who was an adult, was consensual. That, of course, does not preclude it being exploitative. Although it was Ms Morris’s choice to respond to Mr Clarke’s general public request for explicit images, over the course of their correspondence Mr Clarke did exploit her for such images, becoming more demanding over time, after he had learned of her lack of any sexual experience and history of self-harm. I find that Mr Clarke’s lack of awareness or understanding of mental health was such that he was insensible to the clear signs from her correspondence that he was dealing with a very vulnerable young woman.
326. However, it is disturbing that having thought on 27 May 2010 – in his words - “*Oh, maybe the things she mentioned previously had affected her*” and “*realised that actually some of the trauma she had described to me had affected her in a way that I found her slightly odd*”, more than two months later, on 15 August 2010, in cold and domineering terms, he wrote to her (in response to two explicit videos):

“Not bad... 1st was better. prefer it going in the pussy than getting sucked

busy yes...what i want to see is you closer and ramming that thing in your pussy till you come, not just rubbing it on the outside and in positions. from behind on you side etc. pussy looks nice though, just waan see it stretched and filled.”

In the circumstances, such continuing demands were manifestly exploitative and harmful.

327. Although Ms Morris initially responded to Mr Clarke’s public tweet because he was an actor on *Doctor Who*, I am not persuaded that in his behaviour towards Ms Morris was using his power as a well-known actor. That is not the impression conveyed by the documentation. Nor is it clear that she would not have responded if he had not been

Approved Judgment

well-known. She was very vulnerable before she had any contact with Mr Clarke and it is apparent that by Autumn 2010 she was sending explicit images to another man, who is not said to be well-known. Mr Clarke's relationship with Ms Morris was unconnected to his work. I have not been shown any professional standards applicable to Mr Clarke, as an actor and director, in 2010, that would render his exploitative behaviour towards Ms Morris, in the context of a private, consensual, adult relationship, "*professional misconduct*".

328. Nevertheless, Mr Clarke's established behaviour towards Ms Morris is of some relevance in considering whether there are the "*strong grounds*" required to establish the substantial truth of the meaning, as well as in assessing other allegations, and Mr Clarke's credibility, having regard to the admittedly untruthful evidence in his statement (para 312 above).

(viii) 'Ivy' (2011)

329. 'Ivy' met Mr Clarke in late 2010 or early 2011¹⁰ when she undertook work experience as a member of the crew on a production in which he was involved as an actor, writer and producer. She was then 23 years old. She had a consensual sexual relationship with Mr Clarke. The allegation in relation to 'Ivy' is that, without her consent, Mr Clarke shared nude photographs of her with others, by sending them to Davie Fairbanks and showing them to Gina Powell.
330. 'Ivy' stated that she and Mr Clarke had a "*short term consensual romantic relationship*", which lasted around two months. Mr Clarke said that they had a liaison on only one occasion. That was untrue. 'Ivy's' evidence as to the length of their relationship, about which she had no reason to lie, is supported by Mr Clarke's text message to Mr Maza on 29 January 2016, in response to a message from Mr Maza referring to 'Ivy' ("*Oh!! Her!! I've fucked her loads of times. She's texting me like I'm a Stranger...*"). Obviously neither the fact of, nor length of, an affair is a matter going to the truth of the meaning. But it is significant that Mr Clarke lied to the Court about it.

Consensual taking of the photographs

331. The pleaded allegation does not assert that Mr Clarke took or obtained any nude photographs of 'Ivy' without her consent. Both 'Ivy' and Mr Clarke gave evidence that she consensually sent Mr Clarke a small number of nude "*selfies*" taken on her phone. An allegation was put to Mr Clarke (prior to the 15 photographs being unearthed) that he had covertly taken nude photographs of 'Ivy' when they were together in a private hotel room. Mr Clarke said that "*she allowed photos to be taken*", firmly denying that he ever took covert photographs of her. 'Ivy' said in cross-examination (after the 15 photographs had been disclosed), "*I consented to sending him photos that I had taken. I do not remember being okay with him taking photos in a hotel room or keeping them*". When he was recalled after the photographs had been disclosed, Mr Clarke reiterated, "*they are very very consensual. She is smiling and posing...*"

¹⁰ Both parties' witnesses were at odds as to when the filming took place, but it is of no consequence whether it was late 2010 or early 2011. The relevant events occurred afterwards.

Approved Judgment

332. The Defendant submits that it is not clear that ‘Ivy’ is “*posing*” in the late-discovered photographs, as Mr Clarke could have been pretending to look at his phone; and that if ‘Ivy’s’ evidence as to not consenting was to be challenged it should have been explored. Mr Williams put to ‘Ivy’ in cross-examination that the photographs in evidence were taken consensually, and she gave the answer I have quoted above. In those circumstances, the Claimant is not precluded from submitting the Court should prefer Mr Clarke’s evidence on the point, although I agree that it is unfair for the Claimant’s closing submissions to allege that this was “*a lie spouted to back up her friends*” when that accusation was not put to her.
333. ‘Ivy’ was evidently taken aback when she found out, the day before giving her evidence at this trial, that naked photographs of her that she had never seen before existed. She could not have anticipated when she agreed to speak publicly about intensely private matters, at great personal cost, that during the trial various strangers would look at naked photographs of her. She was giving evidence about events that occurred 14 years ago. Her answer that she did not remember consenting to Mr Clarke taking photographs in the hotel room was an honest one. Nevertheless, I accept Mr Clarke’s evidence that the photographs in evidence were taken with ‘Ivy’s’ consent. Even when he had no reason to anticipate that any photographs would be put in evidence, Mr Clarke made clear that, in addition to the selfies sent by ‘Ivy’, he had taken nude photographs of her in a hotel room, with her consent. In addition, the photographs bolster Mr Clarke’s evidence on this point, as in most of them ‘Ivy’ is looking towards the camera and it is probable that at the time she knew and consented to Mr Clarke taking those photographs.

Showing Gina Powell the photographs

334. Gina Powell graduated from Bond University in Queensland, Australia, in February 2013, with a degree in film and television including cinematography and production. She moved to the UK shortly after graduating and undertook a producing course at the Met Film School. In the summer of 2014, Ms Powell undertook a paid internship at the Walt Disney Company EMEA. Ms Powell’s mother, who taught at a school attended by two of Mr Clarke’s children, told Mr Clarke about her daughter and he offered to meet her. She first met Mr Clarke in September 2014, at Soho House. He offered her the role of assistant producer on the film *Scottish Mussel*, on which he was a producer.
335. In practice, Ms Powell worked full-time for Unstoppable, the company founded and run (as joint-CEOs) by Mr Clarke and Mr Maza,¹¹ from September 2014 until 24 March 2017. Unstoppable did not have its own offices. Ms Powell, Mr Clarke and Mr Maza effectively worked from Soho House. For a short period after Ms Powell began working for Unstoppable, Philip Dore also worked with them, and towards the end of Ms Powell’s time at Unstoppable two young women, Molly Rees and Julia Horcajo, were taken on as assistants. Ms Powell worked very closely with Mr Clarke, in a subordinate role to him and Mr Maza, for two and a half years.
336. Ms Powell gave evidence that Mr Clarke “*kept a stash of photos of women and would talk about it openly and frequently. He took photos of girls before they had sex and would sometimes show the photos to other people*”. Ms Powell said he told her “*he*

¹¹ Mr Clarke and Mr Maza were co-founders of Unstoppable Entertainment Ltd and, subsequently, Unstoppable Film and Television Ltd.

Approved Judgment

would take photos so he had something on the women, meaning they would not feel able to tell the press about the encounter, and that way his wife wouldn't find out". She said he had a backpack in which he kept a folder with his hard drive (which was "like a little G-RAID") in it. Ms Powell recalled an occasion in 2016, in the downstairs public area of Soho House on Dean Street ("where Noel always sat"), when he showed her some of the photographs. She described her shock when he "scrolled through numerous photos of naked women". Ms Powell said:

"At one point, Noel started talking about ['Ivy'], who was a friend of Jahannah, and whom Noel had told me he had slept with. Jahannah and ['Ivy'] had told me Noel was lying and I had believed them. In that meeting, when I told Noel I believed my friends, he told me he could prove me wrong and showed me the photos he taken of ['Ivy']. ...

He scrolled through around 2 pages of thumbnails, so I would estimate there would have been in the high tens of photos at least. When he opened the files I saw a photo of ['Ivy'] in a hotel room. The photo was taken from behind and showed her backside – she was naked and it was very close up. Another photo showed her face, which was how I knew it was her. Noel was a bit obsessed with ['Ivy'] and was making remarks to me about how perfect her body was, and pointing out with detailed commentary what was perfect about it, specifically her privates."

337. Ms Powell maintained in cross-examination that Mr Clarke showed her photographs of 'Ivy', saying they were the first ones he showed her. There were "a handful of photos, about three or four. One was of her backside, one was lying on a bed and one was her standing fully naked". It was possible that he had shown her in 2015; she was unsure of the timing, but she knew that by then she "knew Jahannah" (a video of whom she was shown on the same occasion).

338. 'Ivy' gave evidence that she was "a long-term friend of Johannah Whyte" but she had not told her about her relationship with Mr Clarke. 'Ivy' said that in around 2016 or 2017, Ms Whyte told 'Ivy' that "Noel had been talking openly about having had a sexual relationship with me. ... Johannah told me that she had not believed Noel and he had told her that he could prove it and that Gina Powell had seen the photos". 'Ivy' said that she had not known Gina when the photos were taken and, she said:

"As I understood it from Johannah, when Gina later then met me, she realised I was the girl she had seen in the photos.

When Johannah described what Gina had seen in the photos, I believed that she had correctly identified me because she was able to correctly describe the location of a tattoo that she had never seen on me, for example. Her observations convinced me that the photos Noel had shown her were of me.

I was horrified and disappointed that Noel had shown naked pictures of me to other people. It felt degrading."

Approved Judgment

339. ‘Ivy’ said in cross-examination that when Johannah asked her, a long time after she had ended the relationship, whether she had had a relationship with Mr Clarke,

“I denied it because it is not a relationship I ever felt comfortable talking about and it was made evident to me that there was proof of it because of these photographs on a hard-drive and I was identified by someone who had never seen me naked before. I did not have that kind of friendship with that person, Gina.”

‘Ivy’ accepted that her tattoo can be seen in photographs on her Instagram account, and that anyone can look at Instagram, but she said that “*when that happened*” she and Ms Powell did not know each other on Instagram.

340. Johannah Whyte said that on two occasions Mr Clarke bragged about sleeping with ‘Ivy’, with whom she had been friends since they were both in sixth form. She did not believe him. He said he could prove it with a photo on his hard drive, but he did not show it to her. Ms Whyte said:

“... it was only when Gina said she had seen the photos, that I then spoke to Ivy in person and said, ‘Hey, I have been standing up for you but Noel is saying that he slept with you, Gina has said she has seen footage – photos’, sorry, and that is when Ivy burst into tears and told me she had, in fact, and that she was – she had never told me because she was really embarrassed, understandably so, and it happened a long time ago, and Noel was telling the truth.”

341. Mr Clarke gave evidence that, “*Any explicit photographs in my possession were provided by the women in question consensually, and were kept privately and in confidence. They were not shared with or showed to third-parties, including [Ms Powell]*”. He denied there was any “*hard drive that was hiding explicit pictures*”. Mr Clarke recalled Ms Whyte asking to see the photographs of ‘Ivy’, which he never showed to her, but he said she was lying about their conversation on the set of *10x10* as he was not there. Mr Clarke accused Ms Powell of being the “*main conspirator*”, along with Ms Whyte, both of whom he said were lying, whereas he said that ‘Ivy’ was not and never has been a conspirator.
342. Gina Powell was an impressive and compelling witness. My assessment of her, based on seeing her give evidence over the course of about 7 hours, hearing a recording of her speaking to Mr Clarke (when she was unaware she was being recorded), recordings of four phone calls in which she spoke to Ms Osborne, and taking into account the descriptions of her given by other witnesses (including contemporaneously), is that she is quiet, accommodating, and seeks to avoid conflict in a way that could come across as timid. She was undoubtedly and unsurprisingly fearful of the lengthy ordeal to which she was bound to be subjected – as the most central witness for the Guardian, being the one person who had worked with Mr Clarke for a period of years – if she chose to give evidence. Courage is evinced not by the absence of fear but by mastering it, and Ms Powell demonstrated admirable bravery and integrity. I have no hesitation in finding that she was an honest, reliable witness, who did not overstate or exaggerate any of the matters which she addressed.

Approved Judgment

343. I accept Ms Powell’s evidence that Mr Clarke showed her nude photographs of ‘Ivy’ in 2015 or 2016. There can be no doubt that he had such photographs. Ms Powell’s evidence that he showed them to her is consistent with her position, at the time, within Mr Clarke’s trusted inner circle, and with his view of her as “*one of the lads*”, and willing to discuss “*our sexual exploits*”. When Mr Clarke repeatedly pleaded with Ms Whyte, a fortnight before the first article was published, to ask Ms Powell not to speak to the Guardian journalist (Ms Osborne) who he was aware was investigating him,¹² Mr Clarke said, “*Like, she’s one of the lads, right. She knows stuff...*” It is highly probable that the “*stuff*” Mr Clarke was so concerned about Ms Powell divulging to a journalist included his covert filming of auditions and sharing of images of naked women. I accept Mr Clarke’s evidence that when he made that begging phone call he was “*absolutely terrified*”, and he was “*trying to save my life, my company*”. However, contrary to his evidence, he was clearly terrified of her revealing what she truly knew, not of her concocting false stories of sexual misconduct, which he would have had no reason to anticipate.
344. Ms Powell’s evidence that Mr Clarke talked about ‘Ivy’s’ “*perfect body*” when showing her the photographs rings true in light of his own (unprompted) evidence, when explaining why he took the photographs: “*She had at the time a very aesthetic, she is a beautiful lady...I would not say like a Venus, you look at art, you like things that are beautiful, she is beautiful*”. The fact that the disclosed photographs do not include any taken from behind ‘Ivy’ does not undermine Ms Powell’s evidence. It is clear that those were not the only explicit photographs of ‘Ivy’ that Mr Clarke ever held.
345. Ms Powell’s evidence is supported by Ms Whyte’s evidence that around that time Ms Powell told her that Mr Clarke had shown her photographs of ‘Ivy’. She, too, was an honest and reliable witness: see the section below bearing Ms Whyte’s name (para 422 below). Ms Powell would have had no reason, at that time, to say that to Ms Whyte, if it were not true.
346. Further support is provided by the evidence given by ‘Ivy’ that Ms Whyte told her in 2016 or 2017 that Ms Powell had been shown such photographs. ‘Ivy’ was mistaken in thinking that Ms Powell had seen the photographs before they had met. But that is likely to be the result of a natural assumption on her part that if, as she was told by Ms Whyte, Mr Clarke had shown anyone naked photographs of her, he would have done so around the time of their relationship, rather than five years later. Despite Mr Clarke’s own evidence that ‘Ivy’ is not, in his view, a “*conspirator*”, the Claimant’s closing submissions accuse her of “*collusion*”. The flimsy basis for this allegation is that she is friends with Ms Powell and Ms Whyte, and she left a comment on a message posted by Mr Fairbanks on Instagram on 21 March 2024. I reject it. ‘Ivy’ gave a truthful account, and her evidence of when she was told that Ms Powell had seen the photographs was reliable.

Showing and sharing the photographs with Davie Fairbanks

¹² “I would just ask you, even if it’s the last act of communication we ever have, and even if it’s the last thing, that her, interaction that her [i.e. Ms Powell] and I ever have, I would just ask you if the good times meant anything, do not speak to this woman [i.e. the Guardian journalist], please. Just don’t comment. ... I’m just saying Jahannah James as my mate or former mate or still mate or mate but don’t want these things to be true. Whatever it is, can you say to her [i.e. Ms Powell] please to not get involved?”

Approved Judgment

347. Mr Fairbanks and Mr Clarke used to be best friends. They are now, and have been for several years, intensely hostile towards each other. The principal cause of their falling out was a dispute over intellectual property rights in respect of *Bulletproof*, the merits of which are immaterial. They both described the relationship they once had as so close they regarded themselves as “*brothers*”, Mr Clarke saying that in around 2011 Mr Fairbanks was the person he regarded as “*my guy*”. They met and became close friends in 1999 when they appeared together in a pilot episode of, and then the six-part television series, *Metrosexuality*. They formed a company together, with two others, in around 2001, with the aim of writing and producing together. As Mr Fairbanks said, Mr Clarke’s career “*took off*” following *Metrosexuality* and the success of *Kidulthood* “*changed his career trajectory*”.
348. Mr Fairbanks and Mr Clarke worked on a number of productions together. They were both writers and producers of the film *The Knot* (released in 2012), in which Mr Clarke starred; Mr Fairbanks was one of the writers (with Marc Small) of the film *Storage 24* (released in 2012), in which Mr Clarke starred, and Mr Fairbanks (and Mr Small) wrote and directed a Universal film, *Legacy* (released in 2015), on which Mr Clarke was the producer. Mr Fairbanks is also an actor, and he played minor roles in those films. While it is probable that, while they were friends, Mr Fairbanks yearned for the level of success that Mr Clarke was enjoying, Mr Fairbanks’ career was progressing and I am not persuaded that he had, or expressed to others, negative feelings of jealousy towards his best friend.
349. In his statement, Mr Fairbanks gave evidence that:
- “In the time I knew Noel, he enlisted me on several occasions to set up lunch or dinner dates with women he had met through work or on sets. He would ask me to book a hotel room at the same time, as he intended to sleep with them. He referred to these as ‘missions’. He would ask me to make the relevant arrangements and pay up front so that there was no financial trail so his wife wouldn’t see the bills, and then reimburse me later in cash.”
350. He exhibited text messages from an occasion in July 2014 evidencing such an arrangement. Mr Fairbanks recalled that “*this pattern began when he did this with [‘Ivy’] shortly after working on [a production]*”, and it was “*the first of numerous times that Noel asked me to help with this pattern of behaviour*”. Mr Clarke accepted that he had done so, although he claimed he only asked Mr Fairbanks to do this twice, once with ‘Ivy’ and a second time, on the occasion evidenced by the text messages.
351. I did not find Mr Clarke’s evidence that he asked this of Mr Fairbanks only twice credible. The succinct terms of Mr Clarke’s messages in July 2014 (e.g. “*rubbers*” “*Pill etc*” i.e. an instruction to leave condoms and Viagra in the hotel room) are strongly indicative that Mr Fairbanks needed little explanation as this was an established pattern. This was one of many occasions in Mr Clarke’s evidence when he admitted only to the minimum that he knew was undeniable on the documentary evidence, which he had studied meticulously.
352. Gina Powell also gave evidence that Mr Clarke asked her “*to book the Soho Hotel or Charlotte Street Hotel so he could sleep with women*”. She did so twice, but then

Approved Judgment

“*refused to do it again as I disagreed with it*”. Ms Powell exhibited a bank statement showing that she made a payment to the Soho Hotel on 11 March 2016 and received a payment from Mr Clarke three days later. Mr Clarke denied her account, and said the hotel booking she made in March 2016 was for his friend, Aaron Eaton, who was having a bad time. It was put to Ms Powell that the booking was for Aaron Reid (not Eaton) which she denied, saying that would make no sense as he lived in London. I accept her evidence that on both occasions the bookings were “*definitely for Noel*” who asked her to “*put them under a different name*”. Such conduct is relevant in considering the veracity of Mr Fairbanks’ evidence as to the way in which the photographs came to be in his possession; and, insofar as the requests were made of Ms Powell, relied on by the Guardian as inappropriate conduct towards her, as an employee.

353. In his statement, Mr Fairbanks said:

“Noel took photos of [‘Ivy’] in the hotel room when they slept together. Shortly afterwards he showed me a photo and sent it to me by email. The photo showed her standing up, with full frontal nudity, looking at the camera. He asked me to save the photo and to put it into a new email to send back to him straight away, and to then delete the original email. This was so he could keep the photo but it would look as though I had sent it. I did not know in advance that he would send this email; it just appeared in my inbox.”

354. Mr Fairbanks did not, at that stage, exhibit any photograph. As I have said, 15 nude photographs of ‘Ivy’ were disclosed by the Guardian on the evening of day 12 of the trial. In examination-in-chief, the following morning, Mr Fairbanks said that, the day before, he had provided Wiggin with the photographs and a bank statement with regards to a transaction for Soho Hotel. Mr Fairbanks said:

“I received a phone call from solicitors asking about an issue, scheduling issue from the film *Legacy*, I could not recall the specific dates, so I looked at my computer, from an old computer, so I found a hard drive, plugged it in and found a schedule with regards to the enquiry. So I passed that enquiry on. While I had the document open, because it was an old USB hard drive, I thought I would search JPG, as a Jpeg image and let it run on the computer, and after sort of scrolling up quite some way, the photographs appeared to which I thought I needed to let Wiggin know that was the case.”

355. Mr Fairbanks denied an allegation that he had deliberately held onto the photographs until the night before he was due to give evidence. He had given evidence that he had the photographs but he had not found them. He said, “*I would have loved to have come to them earlier. It probably would have saved me coming to court.*” His evidence as to when and how he found them was plainly true. Mr Fairbanks would have been keen to bolster his statement at the earliest opportunity. If he had found the photographs earlier, he would have provided them to Wiggin, just as he had provided them with the text messages to which I have referred. Nor would he have made an error in his statement, referring to only one photograph – which he explained was because he had only remembered one image – if he had been deliberately “*sitting on*” the 15 photographs.

Approved Judgment

The late disclosure of the documents prompted Counsel for the Claimant to allege, in open court, that “*Mr Fairbanks is attempting to pervert the course of justice*”. No foundation for that serious accusation was ever presented. Nor was it put to Mr Fairbanks. It was baseless and should not have been made.

356. Mr Clarke, in the evidence he gave before the photographs were disclosed, denied that he had emailed the photographs to Mr Fairbanks. He said that Mr Fairbanks’ explanation made no sense. He said, “*If I had the photo, I would just keep it. Why would I pretend that he sent it? What is the point of that?*”
357. On the second of the three days across which Mr Fairbanks gave evidence, it was put to him that he and Mr Clarke “*used to use the same machines*”, and that he had obtained the photographs by sending them to himself and then he had “*sat on them for 15 years*”; that he stole the photographs from Mr Clarke’s computers and then retained them “*ready to utilise as a weapon against Mr Clarke to cause him as much collateral damage as possible*”. Mr Fairbanks denied those allegations. He said, “*I would not have waited until he brought the court case on the off-chance that they would call me as a witness in order for that to be put in, so, no, that is so far-fetched, it is ridiculous*”. In 2010 and 2011 he and Mr Clarke were very good friends. Mr Fairbanks acknowledged that Mr Clarke trusted him to stay in his house, but he denied he ever had Mr Clarke’s housekeys, and Mr Clarke confirmed that was never the case.
358. When Mr Clarke was recalled, he acknowledged that the photographs had not been taken 15 years ago (i.e. in 2010), and so obviously could not have been stolen by Mr Fairbanks then. Mr Clarke said he probably stole them in “*2011, 2012, maybe when he stayed with us in Los Angeles. He had access to my devices a lot. He had my passwords, and everything, so he could have done it*”. Mr Clarke expressed a belief that “*Mr Fairbanks took them for his own sexual and perverse gratification*” and then after they fell out, in around late 2015, “*he decided he was going to weaponise them against me*”.
359. The Claimant submits that the Court should reject Mr Fairbanks’ evidence that Mr Clarke sent the photographs to him and conclude that Mr Fairbanks downloaded them or sent them to himself, probably initially for his own gratification, subsequently keeping them to use against Mr Clarke. In support of this contention, the Claimant relies on (i) Mr Fairbanks’ animus towards Mr Clarke; (ii) the absence of the email Mr Fairbanks says was sent to him; (iii) the implausibility of the instructions Mr Clarke is said to have given in the email; (iv) the lack of any explanation as to why Mr Clarke would only deploy this method in respect of photographs of ‘Ivy’, and not any other explicit photographs he held; (v) the implausibility of Mr Fairbanks’ evidence that he paused pursuit of his intellectual property claim (allowing the limitation period to lapse) in order to support the complaints of sexual misconduct made by others; (vi) the curious answers Mr Fairbanks gave when asked whether he had other photographs private to Mr Clarke; and (vii) the untrustworthiness of his evidence in relation to Louise Urwin, Stephanie Tripp and covert filming of auditions. Finally, (viii) the Claimant alleges that Mr Fairbanks is a main conspirator, connected to three others in the same category, Ms Powell, Ms Whyte and Mr Deacon; with “*secondary connections*” to Philippa Crabb, ‘Anita’, Helen Atherton, Ieva Sabaliauskaite, ‘Ivy’, ‘Mia’, Naome Morris, ‘Mila’, ‘Isla’, ‘Florence’, Louise Dylan and Mr Small. I address each of these points below.
360. Although Mr Fairbanks did not accept that his feelings towards Mr Clarke should be labelled as hatred, he was open about his animus and anger towards Mr Clarke. Rightly

Approved Judgment

or wrongly, he genuinely believes that Mr Clarke wrongly deprived him of his (and Mr Small's) intellectual property by taking their idea for a film and turning it into the television series, *Bulletproof*, without giving them credit. He undoubtedly has a grievance against Mr Clarke, and so it is necessary to treat his evidence with caution.

361. Nevertheless, the starting point is that Mr Fairbanks was in possession of nude photographs of 'Ivy' which were, admittedly, taken by Mr Clarke, and which were not provided to Mr Fairbanks by 'Ivy'. It is far more likely that Mr Fairbanks received them from his then best friend, Mr Clarke, than that he furtively accessed and searched his friend's devices, and misappropriated obviously private and sensitive photographs. Mr Clarke said that Mr Fairbanks was "*the only person who knew about the photos*". He did not explain how Mr Fairbanks – who was not present when they were taken – would have known about them. The obvious inference is that he knew because, as Mr Fairbanks said, Mr Clarke showed him a photograph, and then sent him the 15 disclosed photographs.
362. The only motive put to Mr Fairbanks was that he stole the photographs to use them to damage Mr Clarke. It is implausible that he would have had such a motive in 2011 or 2012. As is the far-fetched contention that he has been sitting on them since 2016, waiting nine years following their fall out for an opportunity to use them to damage Mr Clarke. If that had been his intention, he would not have waited for the happenstance of the Guardian calling him as a witness in a claim brought by Mr Clarke.
363. It was not put to Mr Fairbanks that he took the photographs for his own sexual gratification because he "*fancied*" 'Ivy' or that he knew Mr Clarke's computer password. The Claimant has accused Mr Fairbanks of dishonesty and of stealing data. That makes it particularly important that such material points should have been put, in fairness to the witness and the Defendant, and with a view to enabling the Court to make a proper assessment of all the evidence. The inference I draw is that Mr Clarke struggled to devise a coherent explanation for why his (then) best friend would have stolen from him, and so his theory changed over the course of the week following the disclosure of the photographs and during his evidence when he was re-called. In the circumstances, it would not be fair to draw any conclusion that Mr Fairbanks had any sexual interest in seeing the photographs. But even if that were the case, he would not have stolen the photographs: I do not believe that Mr Clarke, in 2011, would have had any qualms about sharing the photographs of 'Ivy' with Mr Fairbanks.
364. The absence of an email which is said to have been sent 14 years ago is understandable and, in my view, a neutral point. Mr Fairbanks said "*that computer does not exist any more, unfortunately, and neither does the email account*". When it was suggested that, if it existed, "*this mysterious email exchange would also be on your hard drive*", Mr Fairbanks responded, "*I dare say it is some place that it might well be. I searched for JPG and I found the photos. I am not sure of where to search for the e-mails, as they are encrypted files from over 20 years ago, and it is at least over two computers ago.*"
365. Given Mr Clarke's pattern of seeking to conceal his activities by asking others to book hotel rooms for him, so that he could avoid any payment being made directly from his account or the booking being linked to his name, it is not implausible that he would have wished to establish an excuse, if his wife found the photographs of 'Ivy', that they had been sent to him by Mr Fairbanks. On the evidence before me it is plain that Mr Clarke considered that while it would be wrong for him to have an affair, he regarded

Approved Judgment

it as acceptable to “*have fun*” (as he put it to ‘Imogen’) by having one-off sexual encounters. That being so, he is likely to have been more than usually concerned to hide his on-going relationship with ‘Ivy’. The evidence that he kept explicit photographs on a hard-drive relates to a later period.

366. The principal point that Mr Fairbanks made in respect of the intellectual property claim was that he could not afford to pursue it, even on the reduced rates that were offered. Due to ill-health, Mr Fairbanks is no longer working, so that was entirely credible evidence, and it is the reason the limitation period was allowed to lapse. Mr Fairbanks also said “*there are other elements*” that there is a “*possibility*” he and Mr Small might pick up after this case. He did not elaborate on what those “*other elements*” might be, but it was those which Mr Fairbanks said he and Mr Small had put on hold because they regarded this case as more important. Mr Small was a compelling witness who gave evidence to the same effect.
367. Mr Fairbanks was unwilling to answer whether he has other photographs on his computer or hard drive which are private to Mr Clarke. But he made clear he had none pertaining to this case, and he agreed that if he had “*more photographs other than Ivy*” he would “*of course*” have disclosed them. He denied that he had stolen any information from Mr Clarke. This was an enigmatic part of Mr Fairbanks’ evidence, but it was insufficient to detract from my clear assessment that Mr Fairbanks’s evidence that Mr Clarke sent him the photographs was true.
368. I have found that Mr Fairbanks was mistaken in his evidence regarding Louise Urwin, but for the reasons I have given below, I do not consider that undermines his credibility. I have accepted his evidence regarding the *Legacy* auditions.
369. The attempt to suggest Mr Fairbanks was part of a conspiracy is misconceived. Unsurprisingly, given they work in the same industry, Mr Fairbanks knows some of those identified by the Claimant, though among that list he is only close to Mr Small, with whom he is good friends. In relation to many of those listed, the connection is slight and distant (e.g. Gina Powell, Johannah Whyte and ‘Ivy’), while in many other instances there is no evidence that Mr Fairbanks knows them (e.g. Adam Deacon, Helen Atherton, Philippa Crabb, Naome Morris, Ieva Sabaliauskaite, ‘Anita’, ‘Isla’). More importantly, there is not a jot of evidence that he has conspired or colluded with anyone to bring forward false allegations, nor they with him.
370. The Guardian has established that Mr Clarke revealed naked photographs of ‘Ivy’ without her consent, specifically, by showing several photographs to Ms Powell, showing one photograph to Mr Fairbanks, and then sending Mr Fairbanks 15 photographs.

(ix) Louise Urwin – The Knot (2011/2012)

371. The Guardian’s pleaded allegation in respect of Louise Urwin is that at the wrap party for *The Knot*, when Mrs Urwin was standing, leaning forward over a table, Mr Clarke went up alongside her and groped her from behind through her dress, in between her legs, in circumstances where she gave no reason to think she was consenting. Mr Clarke denied the allegation, and called Mrs Urwin who said it was untrue.

Approved Judgment

372. Louise Urwin, whose professional name is Louise Dylan, was an actor and producer on *The Knot*, a film in which, as I have said, both Mr Clarke and Mr Fairbanks were involved (para 348 above).
373. In his statement, Mr Fairbanks said:
- “The wrap party for *The Knot* was held at a hotel in the West End of London. Louise Dylan, who was an actor and producer on *The Knot*, was at the party. I had quite liked her and I had told Noel this. I recall an incident at the party. Louise’s parents were sitting at a table and she was standing, leaning forward over the table to talk to them. I was standing about 10 feet from her, and she had her back to me. Noel went up to her on her left side and said hello to her parents but at the same time put his right hand between her legs from behind, groping her. As I recall she was wearing a long evening dress but he still managed to push his hand through the back of her legs towards her genitals. Louise did not appear to me to react at all – she looked frozen. The incident stuck with me because Noel turned around and smiled at me – I took that to mean he wanted to show he could have anything he wanted.”
374. Mr Clarke gave written and oral evidence denying that he groped her. In her statement, Mrs Urwin referred to the relevant paragraph of the Defence and said, “*These allegations are untrue.*” She said Mr Clarke attended the wrap party for *The Knot* for about 10 minutes, and she saw him only “*very briefly*” there before he left. Mrs Urwin said:
- “The Claimant has never committed any of the alleged acts to me, nor has he ever engaged in behaviour which involves sexual assault, sexual harassment, bullying, professional misconduct, non-consensual groping or touching towards me at any point.”
375. When giving oral evidence, Mrs Urwin said that her parents were not at the wrap party for *The Knot*, she thought she was probably wearing jeans “*because I tend to wear jeans*”, and she denied that Mr Clarke groped her (“*Gross. ... No, that did not happen*”).
376. Mr Fairbanks explained in his oral evidence that he had made a mistake in referring to it as the “*wrap*” party: he meant the “*gala*” party. He agreed that Mrs Urwin’s parents were not at the wrap party, which was in a nightclub on Piccadilly, immediately after the filming concluded in 2011. It was the gala party at the hotel, in 2012, that her parents attended and where the incident occurred. He maintained that he “*absolutely 100% witnessed the event*”.
377. The Claimant submits that Mr Fairbanks has been caught lying. The Guardian does not suggest that Mrs Urwin lied when she said that she does not believe that Mr Clarke has ever sexually assaulted her. But maintains that Mr Fairbanks’ account of what he saw is not inconsistent with her evidence: it is entirely possible that Mr Clarke touched Mrs Urwin from behind before turning to Mr Fairbanks and smiling to show that he could “*have anything he wanted*”.

Approved Judgment

378. I find that Mr Clarke did not grope or sexually assault Mrs Urwin, whether at the wrap party, the gala party or at any other time. The evidence of both Mrs Urwin and Mr Clarke that he has never sexually assaulted or groped her is true. Accordingly, this aspect of the Guardian's case is not made out.
379. However, this does not undermine my assessment of Mr Fairbanks' credibility. I find that he honestly believed that he saw what he recounted. Mr Fairbanks' account was always intended to relate to the gala party, and he erroneously used the word "*wrap*" when he meant "*gala*". That is evident from his description of the location, the guests who attended, and the clothes he described Mrs Urwin wearing. It is unlikely that he would have invented an account, knowing that a person independent of Mr Clarke would be able and likely to say it was untrue.
380. It is probable that Mr Fairbanks saw something akin to that which he recounted, involving Mr Clarke indicating a move to touch Mrs Urwin from behind, and smiling in the way Mr Fairbanks described, but which did not involve Mr Clarke actually touching her. Although this was not explored, it is likely that at an evening gala party in a hotel the general lighting would be soft and dimmed rather than bright, and it is likely that Mr Fairbanks' memory has filled in an anticipated act (i.e. actual touching) which Mr Fairbanks did not, in fact, observe. Mr Fairbanks said that Mrs Urwin did not react at all. While it is possible that a person might freeze, it seems more likely that if, in that setting, Mrs Urwin had been touched, unexpectedly, from behind she would have been startled and automatically flinched or pulled away.
381. It is clear from Mrs Urwin's evidence that she was led to understand that the Guardian was relying on a witness statement purportedly made by her, the Guardian had pleaded allegations "*put forward by her*", and that it was alleged that she "*had spoke to these two journalists to somehow corroborate the story*". None of that was true. The Guardian has never suggested that she made any allegation; used a witness statement purportedly in her name; pleaded that any allegations were put forward by her; nor claimed that she spoke to their journalists. Nor did any of the Articles refer to this allegation. She was understandably outraged by what she thought had occurred. It is unfortunate that she was misled. But it would not be fair to criticise Mr Clarke or his lawyers for that outcome. It is possible that Mr Clarke's message became garbled when conveyed to Mrs Urwin via a friend. Or he may, understandably, and it appears he probably did, make mistaken assumptions as to the basis of the Guardian's pleading. His lawyers should have understood the true position, but I cannot assume that they misstated it, rather than that Mrs Urwin misapprehended it.

(x) Leanne Coldwell – London School of Dramatic Arts (2012)

382. Leanne Coldwell is a Medical Workforce Planning & Deployment Team Leader in the National Health Service. In 2011-12, she undertook a series of four 10-week acting courses at the London School of Dramatic Arts ('LSDA'). These were introductory courses (called 'Act101'), designed for novice and amateur actors. They involved attending the LSDA on Sundays. The courses were for adults and Ms Coldwell was 31 years old at the time.
383. The Guardian's allegation is, in essence, that during one such class, Mr Clarke pressured and encouraged students to undress while performing an improvisation, and that he did so for his own personal sexual gratification.

Approved Judgment

384. Mr Clarke was a member of the Board of Directors of the LSDA, and he was regularly invited to speak to each group of students once, in a 55-minute class, during each 10-week course. One such class, led by Mr Clarke and attended by Ms Coldwell, took place on 12 August 2012.
385. There is an issue as to what Mr Clarke was invited to do. Was he there to give an acting class (as pleaded by the Claimant)? Or to talk about the industry in a question and answer ('Q&A') session (as pleaded by the Defendant)? An email dated 20 April 2012, from LSDA's Principal, Jake Taylor, informed Mr Clarke of the schedule for 20 May 2012, when he was due "*to speak to the students again*", and describes each session as a "*Q and A*". The equivalent email regarding 12 August 2012 referred only to Mr Clarke being "*scheduled in to see the 6 different groups on the ACT 101 course*". In cross-examination, Mr Clarke agreed that he was invited "*to give advice on acting and answer questions as a professional*". When it was put to him that he did not have a teaching role, he said simply, "*I was asked to take a class*". Ms Coldwell "*thought he was there to provide advice on the industry as an experienced professional*".
386. Following the publication of the fourth article, on 30 April 2021, the LSDA published an announcement that when it "*came to our attention that on one occasion he took it upon himself to turn one of these Q & A sessions into a practical acting workshop*", and when informed that in "*this unsanctioned class he set up improvisation exercises in which the students were told they had to get undressed and ready for bed*", with immediate effect he was no longer scheduled to take unsupervised sessions. The contemporaneous documentary evidence, endorsed by Mr Clarke's evidence, makes clear that – contrary to what Mr Taylor told Ms Kale during her investigation – Mr Clarke continued to be invited to take sessions for the Act 101 courses for several years after August 2012. There is no evidence that subsequent sessions were "*supervised*", and I accept Mr Clarke's evidence that they were not.
387. I find that the aim of the LSDA in inviting Mr Clarke was for him to give the students the benefit of his advice on acting, and the industry. It is probable that the LSDA anticipated it would be run as a Q&A. But it was left to Mr Clarke to determine how he ran the session. He was not precluded from inviting the students to perform an improvisation, and using that as a medium through which he gave advice about acting and the industry.
388. Ms Coldwell gave evidence that the session she attended on 12 August 2012 was part of her third course. She said:
- “In this class Noel told the students he wanted to challenge us. He suggested undressing or being naked, referencing us committing to the role and pushing ourselves out of our comfort zone. He heavily implied that the further we went the more favourably we would be viewed. The takeaway was that we would be at a disadvantage if we held back. Noel told us that professional auditions would involve doing things one wouldn't be comfortable with. He emphasised very strongly that it was important to do it and gave the impression that anyone serious about their work would be willing to do it.”

Approved Judgment

389. Ms Coldwell said the class were given no prior warning or time to prepare. She said that “*most of the class did not take Noel’s suggestion to its full limit*”. She did not suggest that anyone performed the improvisation naked. She said that some people took off one or two items of clothing, a friend of hers took his top off, leaving a vest on. She thought one student “*might have stripped down to their bra*”. Ms Coldwell said:

“I psyched myself up to make an effort but I wasn’t prepared to take all my clothes off. I went and borrowed a t-shirt from a friend. I replaced my jeans, top and bra with the t-shirt. It was quite long and partially covered my bottom. I wanted to keep covered up because I was wearing a thong. I had a massive rush of fear but told myself that I was actually being brave.

Noel singled me out for praise because I had gone the furthest in terms of removing clothes. ... he pointed out those of us that went the furthest and praised us.”

390. In a tweet on the day of the class, Ms Coldwell wrote:

“Today was just a normal Sunday really. All I did was strip down to my bra&thong in front of @NoelClarke ... like you do, u know”.

391. Ms Coldwell explained that she felt proud of herself on the day, for being brave. But then a week later, when one of the LSDA’s tutors told the class that “*Noel’s request in that class was wrong and would not happen again*”, she felt manipulated and let down.

392. It was apparent during the short time that Ms Coldwell was in the witness box that she found the experience of giving evidence nerve-wracking and upsetting. Nevertheless, she sought to assist the Court by giving an honest account. She said that Mr Clarke:

“opened the session and told us that it was about challenging ourselves and pushing ourselves out of our comfort zone, and suggested that to do that we push ourselves and improvise a scene that involved getting ready for bed and it was kind of up to us how far we took that. So, it was not, he did not tell us that we had to get undressed or get totally naked, but it was implied that if we pushed ourselves and went as far as we could, then we, in a real life situation, that we would be seen more favourably against other auditionees if we took it further, basically. And he kind of said, well, you do not have to, it is up to you, you do not have to do it, but if someone else is going to come in and do it, then they would get the part, sort of thing.”

She stood by her written evidence that Mr Clarke “*suggested undressing or being naked*” but made clear “*we were not forced to do anything*”.

393. Mr Clarke’s evidence was that “*the purpose of this class was to encourage students to face their fears, and become more comfortable*”. He explained to the students that “*some scenes would require feeling uncomfortable*”. As an example, he “*suggested the students improvise getting ready for bed*”. Mr Clarke said they were free to interpret

Approved Judgment

those instructions as they wished. He said, “*I did not encourage or pressure any student to remove any items of clothing*”.

394. Mr Clarke recalled the class, but he did not remember Ms Coldwell or how she interpreted the exercise. In cross-examination, Mr Clarke said:

“The improvisation that was asked of them was an improvisation where they get ready for bed and within this improvisation -- first of all, they were men and women, all adults, they could decide just how much they wanted to get ready for bed and how much they did not want to get ready for bed.”

I agree with the Guardian’s submissions that Mr Clarke was, here, using the words “*get ready for bed*” as a synonym for “*get undressed*”.

395. Mr Clarke said there was “*no encouragement to strip and there was most certainly unequivocally no encouragement to get naked*”; “*there was no encouragement to take off clothes*”. But he did not dispute that he may have praised her and the other students who had gone furthest in removing clothing for the improvisation. In both his written and oral evidence, Mr Clarke denied that he asked the students to perform this improvisation for his own sexual gratification. He said, “*there was no sort of Dick Dastardly kind of let me see what I can see here. There is absolutely none of that.*”

396. The Defendant draws attention to Mr Clarke’s solicitors’ response to the allegation concerning LSDA provided to the Guardian prior to publication of the fourth article, which stated:

“The class was called ‘Facing your Fears’ and it was intended to address and help students with anxieties about acting roles. The students were all adults. As many of the students’ fears related to being required to be partially dressed for roles, part of the workshop was to normalise the removal of their outer clothing and to make them feel that they could do so in a safe environment without being judged or analysed. However, our client categorically denies that as part of this he encouraged or forced anyone to be naked.”

397. On the evidence, it is clear that Mr Clarke did not *require* anyone to take off any clothing. It was open to the students to improvise getting ready for bed without taking off any clothing, but doing so did not meet the object of the exercise, as explained to them by Mr Clarke. His aim was for the students to “*face their fears*” in relation to roles involving nudity or partial nudity, by practising taking off their clothes while improvising a scene in the class, with a view to becoming more comfortable with doing so. It is obvious that he strongly encouraged the students to participate by undressing, while making clear that it was their choice how much clothing (if any) to remove. Although it is likely that Mr Clarke made reference to full nudity or being naked, my assessment is that he was not urging any students to undress fully, or anticipating that anyone would do so, and there was no pressure to be naked. However, I accept Ms Coldwell’s evidence that she felt under pressure to undress to the extent that she did.

Approved Judgment

398. The question is whether there are strong grounds to believe that Mr Clarke did this “*wrongly*”. Although I have rejected aspects of Mr Clarke’s evidence in relation to this allegation, I accept his evidence that he did not set the exercise for his own sexual gratification. The impression I gained is that he often finds actors’ objections to nudity requirements in productions he has written vexing, and he is keen for actors to be less coy. He has experience of actors who are uncomfortable with the level of nudity he sometimes requires in auditions being rejected in favour of those who appear more at ease. Against that background, I find that his aim was to help the students become comfortable with appearing partially nude in acting roles that may require it.
399. The question remains, though, whether it was wrong to set such an exercise in the circumstances. I find that there are strong grounds to believe that it was wrong. On the evidence before me, it is apparent that, in around 2012, any professional actor would have expected, and been given, prior notice that they would be asked to audition or perform in any state of undress. The number of people attending such an audition, or on set, would be reduced. And precautions would be taken, such as having robes or blankets at hand, enabling the actor to cover up swiftly. These were not professional actors. They were (adult) students pursuing an introductory acting course in their spare time at the weekend. They had to perform before their whole class of men and women. At the very least, it was wrong to give such students less protection than professional actors, by springing the exercise on them without prior notice. It is doubtful that it was an appropriate exercise at all on such a course, but it is not necessary to reach a final conclusion and I prefer not to do so given the paucity of evidence as to the practices in this regard at drama schools at the relevant time.

(xi) ‘Isla’ – Production D

400. ‘Isla’ was a member of the production team on ‘Production D’, in which Mr Clarke played a leading role.
401. The Guardian’s pleaded allegation in relation to ‘Isla’ is that:
- “27. During filming in [redacted year] and in front of another member of the production team [Hugh Sherlock] the Claimant put his hands on Isla’s hips and pulled her towards him before saying ‘I know what you want, you want my dick inside you’ and touching her breasts. The Claimant then said to [Hugh Sherlock] ‘that’s what they all want, they want my dick inside them’.
28. Isla did not consent to this touching, which was sexual, and gave the Claimant no reason to think she was consenting.”
402. In the Amended Reply, Mr Clarke denied paragraphs 27 and 28, averring that he “*did not behave as alleged*” and that the “*allegations of sexual misconduct and assault are inconsistent with Isla’s decision to continue to work on the Claimant’s productions and the positive and excited tone of her correspondence*”.
403. ‘Isla’ did not give evidence. The Guardian adduced evidence from Hugh Sherlock and a (hearsay) statement from Stuart Wright (which I have addressed in paras 91-94

Approved Judgment

above). The Claimant adduced evidence from Joshua Myers, as well as Mr Clarke himself.

404. Mr Sherlock was a boom operator and First Assistant in sound on ‘Production D’. He gave evidence that he interacted with Mr Clarke every day for about two weeks. Having referred to emails to work out when his employment on the production started, Mr Sherlock gave the year as one year earlier than that given by Mr Clarke and Mr Myers, but he accepted he could have been mistaken. I accept the evidence of Mr Myers and Mr Clarke regarding the timing of the filming.
405. Mr Sherlock said that ‘Isla’, a member of the production crew, was working with Mr Clarke while Mr Sherlock was “*waiting to attach Noel’s radio microphone*”. His statement as to how Mr Clarke acted and spoke on that occasion was in fundamentally the same terms as paragraph 27 of the Amended Defence. Mr Sherlock said that ‘Isla’ was “*visibly uncomfortable*” when Mr Clarke “*pulled her in and started fondling her breasts*”, and spoke first to ‘Isla’ and then to Mr Sherlock in the terms quoted above. In his statement Mr Sherlock said that “*he put his hands on her hips*”. When asked whether it was her hips or her waist, he said Mr Clarke put his hands “*around the top of the hipbone area*” and he was about two metres away when he witnessed this.
406. Mr Sherlock said that he spoke to ‘Isla’ and Kirsty Wilson, who said that Mr Clarke “*had apparently been behaving like this for a while, although this was the first time I’d witnessed it. They told me there had been multiple complaints against him of sexual harassment and assault made to the producers already but nothing had yet been done about it*”. They said that “*they’d complained to their heads of department*”. Mr Sherlock said that later that day “*we stopped filming and Noel was taken into the back of the pub by the producers, to be spoken to about the complaints [conveyed] by the head of makeup and head of costume*”. He was told that was what was happening by Ms Wrage who was “*waiting in the main room with the rest of the crew*”. Mr Sherlock said:
- “This went on for a while until Noel came out of the back room clearly angry, shouting things like ‘don’t tell me what do to, what are you going to do? Fire me? We’re already halfway through filming, you can’t afford to replace me, what are you going to do, get another actor, you can’t tell me shit’. He completely kicked off in front of everyone. The producers came out looking sheepish. He kept to himself a bit more in general after that but continued to be unpleasant to be around.”
407. In an email to the Guardian on 29 April 2021 (but not in his statement) Mr Sherlock had said that the producers could do nothing “*other than ask Noel not to keep doing it. He ignored their pleas and carried on*”. In cross-examination he explained that his understanding that Mr Clarke had carried on was based on what he had been told, that is, that before the incident he saw Mr Clarke’s behaviour had already been reported to the producers, and nothing had changed. Mr Sherlock did not see any other such incidents.
408. Mr Sherlock said in his statement that later that day, Mr Clarke “*was talking to anyone who would listen. I looked at him while he was talking and he was proclaiming to the room things like ‘threesomes, foursomes, fivesomes I’ve done it all’*. I said to him I thought he was married and he told me to fuck off.” Mr Clarke denied saying this. He

Approved Judgment

acknowledged that what he referred to as “*banter*” can include “*slightly inappropriate comments*” and “*talking about your sex life to members of the crew*”, but he repeatedly evaded the question whether saying “*threesomes, foursomes, fivesomes I’ve done it all*” would be “*banter*”, responding “*I did not say that*”. Mr Clarke said he would never engage in banter with somebody who is not “*engaging with me back*”.

409. Mr Clarke firmly denied every aspect of this allegation. He said that if ‘Isla’ had been annoyed with him she would not have worked with him, and expressed enthusiasm about working on another project with him, later in the year. She had done so in an email addressed to Mr Maza (copying in Mr Clarke and others), in which she said it seems like its “*a great team which I would love to be part of*” and while the money was “*a little lower*” “*working with cool people makes it a little easier!!*” Mr Clarke said he had spoken to the producers, with whom he is still friends, and they had confirmed to him that there was no complaint made to them.
410. Mr Myers is an actor who worked on ‘Production D’. He said the atmosphere was generally positive. He recalled ‘Isla’ getting on well with all the actors but he could not remember whether she was junior or the head of department. He did not remember Mr Sherlock. He expressed surprise at the allegations which he said were new to him. He knew that the allegations were “*about some sort of sexual misconduct*” and “*some sort of inappropriate behaviour*”, but he had no knowledge of what was alleged beyond that. Mr Myers said that he was not aware of any allegations against Mr Clarke being raised at the time, despite there being a clear complaints procedure which “*we were all aware of*”. He was sure that the main producers would have been told “*if something like that was to happen*” and he did not hear that any complaint was raised. He suggested that if “*something terrible*” was to happen on set, “*you would hear about it*”, as “*people talk*”, but he acknowledged that if it was raised confidentially with the producers it would have been kept confidential. I accept that Mr Myers was not aware that any allegations were raised against Mr Clarke at the time, but that goes nowhere. His evidence is of no real assistance in assessing the veracity of the allegations.
411. Mr Clarke said Mr Sherlock was lying. He said that Mr Sherlock is friends with “*a few other people that do have axes to grind*”, “*people that are*” conspirators, naming only Helen Atherton, but he said “*I have absolutely no idea why he is lying about me*”. Mr Sherlock readily acknowledged that he is friends with Ms Atherton but the speculative attempt, in cross-examination, to connect him to any of the other alleged conspirators went nowhere. He knew none of them.
412. Mr Sherlock had no motive to approach the Guardian with an invented story, and, unlike Mr Clarke, he had no reason to lie to the Court. The mere fact that he is friends with Ms Atherton – who I have in any event found to be a truthful and reliable witness – provides no motive to lie. Her account, about which Mr Sherlock gave no evidence, had already been published in the first article, along with the accounts of many others, before Mr Sherlock approached the Guardian. Mr Sherlock freely acknowledged in cross-examination that he did not like Mr Clarke. Mr Sherlock is a mild-mannered man who was evidently deeply unimpressed by the behaviour from Mr Clarke that he witnessed, and he found him very difficult to work with. But I reject the contention that this dislike motivated Mr Sherlock to lie. On the contrary, Mr Sherlock was a careful and truthful witness.

Approved Judgment

413. The Claimant submits that Mr Sherlock’s account of seeing Mr Clarke grope ‘Isla’ is “*entirely hearsay*” and so should be treated with caution. That is inaccurate, as that part of his evidence is direct evidence of what Mr Sherlock says he himself saw and heard. The fact that he is reporting behaviour directed at another does not render it hearsay. Mr Sherlock’s evidence that he was told of “*multiple complaints*” about which nothing had been done was hearsay, and I give little weight to that part of his evidence. His account of the producers reprimanding Mr Clarke was partly hearsay and partly direct evidence. Mr Sherlock was not in the room, and nor was the person who informed him of what she understood was happening; but his evidence is that he was present to hear Mr Clarke’s outburst when he emerged from the room.
414. The Claimant contends that Mr Sherlock’s evidence is undermined by inconsistency with the Guardian journalist’s note of the account which he infers (and I agree) was subsequently given by Mr Sherlock to the journalist following his email to the Guardian on 29 April 2021. The Claimant submits that in contrast to his statement in which Mr Sherlock refers to Mr Clarke “*fondling her breasts*” as being part of the single occasion on which he states he saw Mr Clarke grope her, the journalist’s note states, “*Another situation – put her hands on his breast. She pulled away*”, indicating that these were two separate occasions.
415. I agree that Mr Sherlock told the journalist about a separate incident which has not formed part of his evidence, but it was not an occasion on which he alleged Mr Clarke touched ‘Isla’s’ breasts: he is said to have touched her hands and put them on his chest. It is understandable that Mr Sherlock has focused on the more serious incident. In the journalist’s note, Mr Sherlock’s account of the incident in which Mr Clarke pulled ‘Isla’ in towards him does not include any reference to him touching her breasts. But it cannot reasonably be inferred that this is a later, invented detail given that he had referred to this in his earlier email to the Guardian, in the paragraph addressing the incident, saying that Mr Clarke “*felt up*” ‘Isla’s’ breasts while she was working (referring to her by her role rather than by name).
416. The Claimant contends the reliability of Mr Sherlock’s account is undermined by the lack of support from ‘Isla’ who, when asked by the Guardian, did not remember the incident, and the lack of corroboration from the producers.
417. ‘Isla’ did not report the incident to the Guardian or give evidence. However, there is a note of a conversation between a Guardian journalist and a CJS who I find is ‘Isla’ (as the Claimant submitted). It is evident that after Mr Sherlock contacted the Guardian, a journalist contacted ‘Isla’ and asked her about Mr Sherlock’s account. The transcript records (with errors in the original):

“Hugh might not be lying but i literally can’t remember in terms of what he said

Noel was inappropriate towards me but not in that specific way i can remember

I have worked with him on a few projects over the years

One job he was totally professional and one he wasn’t

Approved Judgment

After the first time of working with him – he seemed to be slightly changed in how he was acting

It's difficult one

He could have said it i have tried to block out what he said on that film. Bc it was horrendous in general. Being a young female in the industry you hear a lot of stuff.

Made sexually inappropriate remarks. He did. Dont remember that specifically happening but thats not to say it didn't. There were so many things he did.

Showed me an inappropriate picture – those words and what he showed me would make sense

Showed it to me – a dick pic – for those words it would make sense – dont specifically remember them. Not to say it didnt happen.

Its normal. Happens all the time. It was when I started 15 yrs ago.

I think he's the worst that i've encountered.

After work. showed it to me and said this is what you do to me. [was his erect penis.]¹³

Ive blocked it out. Was a hard film.

Probably true he did say them. Probably just blocked it out. It was just gruesome

He is a bit of a pest is how i would describe him.

I didnt think about it. Laughed it off. Hearing all the stories you know you're not a one off.

On the next film – he was nowhere near like that.

Told someone about it at the time – [REDACTED]

He probably did. I really tried to block it out. I dont remember much of filming. Bc i really tried to block the film out. I hated filming it hated working alongside it.

I do remember hugh not being happy about it.

...

¹³ These words appear in square brackets in the transcript.

Approved Judgment

He goes in charming and nice and then goes into that as it goes along. That's how he gets away with it.

There is a nice side to Noel. And quite a caring side. But also this dark side to him.

He targeted me rather than her.

Happy to corroborate stuff happened but don't want to have name out there specifically.

Definitely showed me picture – 100%. You don't really forget a picture like that – thrust in front of your face. Definitely.

I've just blocked it out. Don't want to think about that movie and what happened to it."

418. I bear in mind that this is not sworn evidence. The account has not been given to the Court, and it is contained in a note which does not purport to be a comprehensive account, as it contains only 'Isla's' side of the conversation. Nevertheless, it is evident that 'Isla' could not recall the specific incident described by Mr Sherlock but she regarded the words attributed to Mr Clarke as consistent (it "*made sense*") with sexually inappropriate remarks and behaviour which she recalled Mr Clarke had directed towards her on that production. Given what she was told of Mr Sherlock's account, she thought she had probably just blocked out the incident, not least as such behaviour happened "*all the time*" when she started out, in that respect Mr Clarke was "*the worst*" she had encountered (describing him as a "*pest*"), and her approach was to laugh it off.
419. Although 'Isla' gives no evidence in support of the specific allegation, some corroboration for Mr Sherlock's account is given in her account to the journalist insofar as it supports the conclusion that Mr Clarke had a sexual interest in her and propensity to speak and act in a sexually inappropriate way towards her. Nor is Mr Sherlock's evidence undermined by 'Isla's' willingness to work with Mr Clarke again, or the enthusiastic terms of her email to Mr Maza. It shows only that she was keen to secure work and to earn a living, and to that end she was prepared to tolerate the level of inappropriate behaviour displayed by Mr Clarke without fuss.
420. As regards the producers, while I remind myself that the burden of proof is on the Defendant, it is understandable that the Guardian did not call the two producers, given that on Mr Clarke's own account they are his friends. That being the case, it would be reasonable to expect him to have called them, or one of them, if, as he said, they supported his account. There is no direct evidence of what they said to Mr Clarke but I find that his behaviour was raised with him, leading to the outburst of which Mr Sherlock heard the tail-end. It was striking that when denying that he said they could not sack him and get another actor for the role, Mr Clarke said, "*We were three weeks into shoot. They could have still replaced me if need be if this had been true*" (emphasis added). If the conversation with the producers had not occurred, Mr Clarke would not have said that it took place three weeks into the shoot.
421. The evidence that prior to the incident described by Mr Sherlock "*multiple complaints*" were made about Mr Clarke on 'Production D' is weak and I find that has not been

Approved Judgment

established. But the Guardian's pleaded allegations in respect of 'Isla' have been proven. In addition, I conclude that Mr Clarke made the remarks attributed to him by Mr Sherlock which I have quoted in paragraph 408 above.

(xii) Johannah Whyte – Legacy (2013)

422. Johannah Whyte is an actor and digital content creator. Her stage name, by which she is known in the entertainment industry and beyond, is Jahannah James. She graduated from Wimbledon College of Art in 2011 with a degree in Costume Interpretation for Film and Theatre, deciding early in her course that she wanted to act. After she graduated, her friend 'Ivy' put her in touch with the costume department for a film called *Storage 24*. She was offered an internship and worked on the film for free for four or five weeks. Ms Whyte first met Mr Clarke in 2011, on the set of *Storage 24*. Mr Clarke encouraged Ms Whyte to enrol at the LSDA, and helped her acquire a partial scholarship, enabling her to undertake the Diploma in Advanced Acting Studies in the academic year 2011-2012.
423. Over the years, Mr Clarke was a friend and mentor to Ms Whyte, helping her to secure an agent, and at times acting as her agent or manager (on a voluntary and unofficial basis). She said he was "*like my big brother in the industry*". David Wade, a producer, gave evidence that Mr Clarke "*often sought to help people around him trying to be successful in the film industry*". Jared Schwartz similarly said that Mr Clarke "*was always keen to promote his fellow actors' careers, and assist them in gaining traction where he could*". I accept that he did so, and Ms Whyte is one example of the people he helped.
424. The first film on which Ms Whyte worked as an actor with Mr Clarke was *Scottish Mussel* (2015). It was on the set of that film, in 2014, which Ms Whyte attended for a day or two, that she first met Gina Powell and Jason Maza. In 2015, Ms Whyte was cast in the role of Penny in Mr Clarke's film, *Brotherhood* (2016), and became friends (and later, for a time, housemates) with Ms Powell. Ms Whyte said that at that time she was part of Mr Clarke's "*inner circle*", and she would "*often pop in to see Gina, Jason and Noel at Soho House, which they effectively used as an office*". Ms Whyte had a brief relationship with Mr Maza in late 2015 to early 2016.
425. In 2013, Ms Whyte auditioned for the role of Yasmin in *Legacy*. There were three rounds of auditions. The second and third rounds were attended by Mr Clarke, Mr Fairbanks and the Casting Director, Urvashi Chand; and they were held in Ms Chand's home. The first round, on 24 January 2013, was "*a fully clothed read-through*". Those called to attend the second round, on 18 February 2013, were required to audition wearing a bikini or underwear. The second round was openly filmed; and the actors were given prior notification of that filming. Six actors were called back to attend the third and final round of the auditions for the role of Yasmin, held on Thursday 28 February 2013, including Ms Whyte, Ms Tripp, 'Florence', 'Mia' and two other women who it is unnecessary to name. The actors were informed beforehand, orally and in writing, that for the final audition they would be required to audition fully naked and that it "*will NOT be recorded*".
426. The Guardian alleges that Mr Clarke covertly filmed Ms Whyte's naked third round audition, and then showed it to third parties. Gina Powell gave evidence that, on the same occasion as when Mr Clarke showed her naked photographs of 'Ivy' on his

Approved Judgment

computer, he also showed her video footage of Ms Whyte, and then of ‘Florence’, auditioning naked. Mr Fairbanks gave evidence that during the final round auditions for the role of Yasmin, Mr Clarke set up a mobile phone to record the naked women covertly. Mr Clarke denies that he recorded the audition, and denies that he has ever held, or shown anyone, covert recordings of those auditions.

The auditions

427. Ms Whyte said that she met Mr Clarke at Soho House to discuss the role. He explained there would be nudity, but there would be a comic prop (such as a plant, similar to the *Austin Powers* films) to limit exposure, and she would be able to wear modesty stickers on set. However, Mr Clarke later told her that Universal had stipulated a requirement for full frontal nudity, and so she understood that was required prior to entering the audition process. She said that during this meeting, *“Noel joked about going upstairs to find a room if we wanted it. I completely shut down that line and after that he never attempted anything sexual towards me”*.
428. Ms Whyte said that she had had *“huge reservations about being full-frontal nudity in my first ever film role because I am super aware that any images or footage, once it is out in the ether, once it is on the internet, you cannot retract that”*. But she did not know at the time that *“being asked to de-robe in an audition room was not standard industry practice”*. She said it is now firmly against the rules for casting directors to allow anyone to de-robe in an audition, or for them to be held in a private residence. The contemporaneous documents show that a few days prior to the final audition it appeared unlikely that Ms Whyte would accept the invitation to attend the final audition as she was *“not sure about the nudity”*. On 25 February 2013, Mr Clarke spoke to her and encouraged her to attend the final audition. She did so. It is common ground, and the contemporaneous documents show, that auditionees were told in clear terms that the final audition would not be filmed. Ms Whyte said she only undertook the audition on the understanding that *“it was absolutely not going to be recorded”*. After the audition, in view of her concern about the full-frontal nudity requirement, Ms Whyte pulled herself out of the running for the role.
429. Ms Whyte said that the final audition was in an upstairs living room in Ms Chand’s house. The only people present, apart from herself, were Mr Clarke, Mr Fairbanks and Ms Chand. There were chairs and sofas, and it was like a library, with many books. Ms Whyte said that as she was nervous about appearing nude, she ensured she was (unusually) very tanned. She had what was, for her, an unusual haircut. She had modelled for a salon shortly before the audition and *“it went really wrong”*. As a result, instead of having her usual long blonde hair, her hair was *“so short people mistook me for a boy”*, and it was dyed *“dark brown”*. Ms Whyte said that she wore a stretchy, black dress which she took off during the scene. She was asked to perform the naked part of the scene two or three times. Ms Chand was always there while Ms Whyte was in the room.
430. Much of the evidence of Ms Whyte that I have summarised above was uncontroversial. There is no suggestion that Ms Whyte saw Mr Clarke filming the final audition. As Mr Fairbanks fairly observed, *“When you walk into an audition and your heart is in your mouth and you are nervous to get your next role in order to make sure you have food on the plate, the last thing you are doing is looking around the room. ... you are looking at the director and the people who have your next job in their hands.”*

Approved Judgment

431. However, a few points were disputed:
- i) Mr Clarke strongly denied that he had ever propositioned Ms Whyte, saying he had never ever done so in his life. I accept Ms Whyte's evidence that he did so, in the jocular way that she described. She was, at the time, in the midst of an unpleasant divorce, and he accepted her unambiguous rebuff. I note that Mr Clarke had denied that he propositioned 'Imogen' ("*Absolutely not*") until presented with a text message in which he said, in terms, to a friend, "*I propositioned her*". See, too, para 189 above and my conclusions that he propositioned 'Penelope', 'Imogen', Philippa Crabb, Lisa Graham, 'Maya' and Jing Lusi.
 - ii) Mr Clarke said that at the time, in 2013, asking actors to audition nude was not "*irregular practice, it was not improper practice, and it was not something that was not done*". In the absence of any expert evidence on the issue, it has not been shown that it was improper. On the evidence before me, even in 2013, it was "*rare*" for an actor to be required to de-robe fully for an audition, but there were no rules prohibiting it. I accept Marc Small's evidence that he and Mr Fairbanks suggested that auditioning in a bikini was sufficient. Nonetheless, the requirement to audition naked was evidently regarded as acceptable, at the time, by Ms Chand – who it is common ground was a well-respected casting director – as well as by Mr Fairbanks, as otherwise they would not have engaged in the final audition.
 - iii) In relation to their conversation on 25 February 2013, I accept Mr Clarke's evidence that he and Ms Whyte had a close relationship and he felt well placed to discuss with her whether she should attend the final addition. His evidence was that he did not pressure her to do so: she made a choice. I find that Mr Clarke strongly encouraged Ms Whyte to attend the audition, but he did not coerce her, and she understood that it was a matter for her to decide whether to attend the final audition or not.
 - iv) Mr Clarke disputed that Ms Whyte performed the scene more than once in the audition. I prefer her evidence, not least as she was one of the three who were deliberately given longer auditions.
432. I have addressed the (hearsay) statement of Ms Tripp above (para 85). Her evidence regarding the Yasmin character, and the final audition for the role, is broadly uncontroversial, although it appears from the contemporaneous documents that there were six (rather than five) actors in the final round, her audition was first (rather than a slot between two actors), and, although she says it was "*quick*", she (along with Ms Whyte and 'Mia') was one of the "*top three*" following the second round who were given a longer audition slot (45 rather than 25 minutes). Ms Tripp said, "*I recall this final audition was not filmed, given it was nude.*" That was undoubtedly what she was told would be the case, but I do not treat her statement as evidence as to whether any of the final auditions for the role of Yasmin were, in fact, covertly filmed. Ms Tripp also said, "*I did not feel uncomfortable as the Casting Director was female, and she was very well-known and respected. She would not have tolerated any unprofessional behaviour*". Again, I accept this, but Ms Chand would only have objected to unprofessional behaviour if she had been aware of it.

Approved Judgment

433. In an email sent in around September 2021, by Equity, on behalf of ‘Mia’, it is said that during the audition ‘Mia’ “*saw Noel filming, and moved from the position she had been asked to stand in hoping that it took her out of shot*”. Such hearsay evidence, by its nature, is of little value. Mr Fairbanks gave evidence that he spoke to ‘Mia’ on a number of occasions, and her suspicion was that Mr Clarke “*might have filmed her audition because she had noticed him playing with his phone*”. Mr Clarke may have had a phone in his hand, but it is unlikely he used that means to film any of the auditions, and I give no weight to this report of an untested account that an auditionee saw Mr Clarke filming.

The evidence regarding Davie Fairbanks seeing Mr Clarke covertly filming

434. Aside from the women auditioning, the three people present in the audition room were Mr Clarke and Mr Fairbanks, both of whom have given evidence, and Ms Chand, who has not.
435. Mr Clarke gave evidence that he did not film any of the auditions on his mobile phone, and, consequently, he did not share any footage with any third party. He said the room in which the auditions took place was very small and any hidden device would have been easily spotted. He relied on the report in the first article (which is supported by the otter.ai transcript of the call made by a journalist to Ms Chand) that:

“A casting director [i.e. Ms Chand] who was present at James’s audition said there was ‘absolutely no way’ Clarke would have covertly filmed it, even without her knowledge. ‘He’s always been a good guy,’ she said.”

436. Mr Fairbanks said that for the final audition:

“the actors were asked to wait or change downstairs and Ms Chand would go down to call them for each audition and come back upstairs with them. In those in-between periods, Noel put 1 of his 2 phones somewhere in the room to record the audition and re-started the recording for each one. Noel put the phone in different places for different auditions. I recall there were big scatter cushions on the sofa and I think he propped a phone against those and may also have put it on a bookshelf during one audition. He did it in a way that the actors wouldn’t have noticed. There was plenty of time in-between auditions to do this.

I believe Ms Chand would not have known Noel did this. She was outside the room when he set up his phone to film each time.

...

While in the room, I told Noel he shouldn’t do what he was doing. He batted away my comment and just told me to shut up. I called Marc Small as I left the casting and told him what had happened. I don’t remember exactly what I said to Marc, but I remember how I felt: I was in disbelief at what had taken place. I had known Noel for years, I had been on holiday with him and been best man at his wedding, and he had now done this in front of me. I was angry – my job would be immediately gone or at

Approved Judgment

least on the line if I made a fuss about the secret filming and I could see all the possible consequences of what he had done. It put me in an impossible position. I felt shock and disbelief that Noel had crossed this line, especially given the reservations already expressed by Jahannah, who had decided to trust Noel when agreeing to proceed with the audition. I also felt disappointment in myself that I allowed it to go ahead and I didn't stop it."

Mr Fairbanks denied that he was "*making it up*". A draft of the eighth article indicates that Mr Fairbanks probably reported to a journalist that he had told the police he witnessed Mr Clarke "*hide a phone behind cushions*". But the totality of what he told the police is not evident.

437. Marc Small is an actor and theatre director. He co-wrote and co-directed *Legacy* with Mr Fairbanks. Mr Small first met Mr Clarke through Mr Fairbanks in 2009. He said that most of his "*early working relationship with Noel was through Davie*". Aside from acting together on *Brotherhood*, in a part that did not make it into the film, Mr Small said he had not worked again with Mr Clarke following *Legacy*. He had a business dispute with Mr Clarke, on the basis that the series *Bulletproof* was constructed from a film that he and Mr Fairbanks had written, but it did not get as far as court. Mr Small said, "*Mr Clarke and I continued to speak after Mr Fairbanks and Mr Clarke did not*".
438. Due to other work commitments, Mr Small did not attend the auditions for the role of Yasmin. He has been in the audition room and said it was an average size room, disagreeing with the suggestion that it was very small. He gave evidence that:

"Davie phoned me shortly after the final round auditions, I think the same evening of one of the casting audition dates, and was very agitated. I think I was the only person at the time that he could talk to about what happened that day.

Davie was worked up and told me that Noel had been filming the nude auditions without the actors' knowledge. Davie told me that Noel had been setting up the camera on his phone to record when Urvashi left the room in-between auditions to collect the next person. Davie said Noel had put the phone on the sofa or on some cushions. I understood that Davie meant that Noel was using the cushions to mask or hide the filming. Davie said he felt uncomfortable and had told Noel this and told him that he shouldn't do it. He said Noel told him not to be stupid, asked him what his problem was and told him maybe he was gay if [he] didn't want the filming to happen.

Davie told me he wished I had been there because he believed Noel would not have been so brazen to have done it."

439. Mr Small thought that was because his relationship with Mr Clarke was purely professional, and Mr Clarke did not know him well enough to be so brazen. He said that he and Mr Fairbanks did not think there was anything they could do, as Mr Clarke was the producer, he was the one with the relationship with Universal, and it would be

Approved Judgment

Mr Fairbanks' word against Mr Clarke's. He did not think there was any point raising it with Mr Clarke, given his response to Mr Fairbanks doing so, and because in his experience Mr Clarke was sometimes "*intimidating*" and "*an immovable person*".

440. Mr Clarke maintained his firm denial that he filmed any of the *Legacy* auditions, or that he had any conversation with Mr Fairbanks about it.

The evidence regarding Gina Powell being shown covertly filmed videos

441. Ms Powell gave evidence that, in 2016 or 2015 (see paras 336-337 above), immediately after she had "*watched Noel track deep into the folder structure on the hard drive*", seen "*that he had labelled the relevant folder 'Y'*", and Mr Clarke had shown her photographs of 'Ivy':

"Then Noel showed me the video of Jahannah James doing the naked audition for *Legacy*. Again, he talked about her body, and went on about how amazing her boobs were and how she'd ruined her look on that occasion with her short, brown hairstyle. She was completely naked in the video.

I couldn't see anyone else in the audition room in the video of Jahannah, but I remember the footage was taken from a funny angle, like a phone held from a low position out of sight. I remember Noel saying something about it being sneaky and told me not to tell Jahannah.

['Florence'] had also done the naked *Legacy* audition and Noel had footage of hers too, which I remember seeing.

Noel was giggling and seemed very proud of himself when he showed me these files. It shocked me that he had them and that he had hidden them well. I remember saying something along those lines to him and to Jason, who was also there. ...

I didn't work on the *Legacy* production, though it says on the IMDB website that I was an assistant producer. I just helped with some of the marketing during the distribution and release of the film."

442. In cross-examination, Ms Powell said, "*I only ever saw who was doing the audition, not who was in the room*". She did not remember saying that Marc Small was at the audition, and thought she had never said Jason Maza was there. In an audio recording of a conversation Ms Powell had with Ms Osborne on 14 April 2021, when describing what she saw in the video, Ms Powell had said, "*I remember that it was Noel, Jason, Davie Fairbanks and Marc Smalls, the two directors, they were sitting on the couch in front*". When that was played to her, Ms Powell acknowledged that she was mistaken, she could hear that she had said to Ms Osborne that Marc Small and Jason Maza were there, but she did not remember having said that. She said,

Approved Judgment

“I am not lying. I do know what I saw in the videos, and that there were other people in the room, and I have assumed that it was the team who was doing the audition.

...

No, I think I had just put the dots together in my head of who I thought was in the room.

...

As I said, I saw in the video that there were other people in the room. Wrongly – I do not know if it was wrongly – but I assumed that those people were there. I only saw the video, I was not in the room.

... There absolutely was a video. I can tell you because I did not know Jahannah during the time that she looked what she looked like in the video.”

443. Regarding the positioning of the camera, in her (recorded) conversation with Ms Osborne, Ms Powell said, *“I said to him, ‘My gosh, how on earth did you do that?’ He said ‘I put, I just put my phone on the bookshelf behind me’. I think he said he slightly hid it behind a photo or something, a photoframe or something”*. When asked about the positioning in cross-examination, said she assumed it was hidden on a bookcase, but *“whether it was a bookcase or sofa or Noel’s hand, I am not sure”*. She said, *“from what I could see it was hidden, something was slightly obscuring like a corner. It was propped up and behind hidden by something. I assumed maybe it was like a photo frame or maybe it was a cushion”*. It was from a “weird” angle.
444. Mr Clarke vehemently denied Ms Powell’s account, alleging that she was lying and a primary conspirator.
- The former housemates’ conversation in the pub (2017)*
445. Ms Powell, Ms Whyte and Laura Pugh gave evidence that Ms Powell revealed that Mr Clarke held a video of Ms Whyte auditioning naked when they met in 2017, with their friend, Luca, in a pub in Herne Hill. The four of them were, by then, former housemates who met to “catch up”.
446. Laura Pugh works for the St Martin-in-the-Fields charity. She has never met Mr Clarke. She said that she has known Ms Whyte and Ms Powell since around June 2016. Ms Pugh said that, around that time, she and Ms Whyte moved into a guardianship of an empty building in Bermondsey, where they lived together for about a month. They, together with Ms Powell (and Luca), then moved into another guardianship on the Strand. Ms Pugh moved out in November 2016, and the others had also moved out by the end of the year. They first met when moving in together, and quickly became good friends. Ms Whyte thought they moved into the house on the Strand in *“early 2016 ... or it could have been a little bit later and ended around the end of that year”*. Ms Whyte said that in late 2016, she moved to Kingston and Ms Powell moved to North London.

Approved Judgment

447. Ms Pugh said:

“In 2017, I believe in the Spring but possibly later, Gina, Johannah, myself, and our friend Luca went to a pub in Herne Hill called the Prince Regent. We sat in a booth at the back of the pub behind the bar. Gina had left Unstoppable by then. It was at this meeting that Gina shared what Noel had told her about his hard drive with the pictures of women on it, including images of Johannah.

Gina told us about the hard drive Noel kept and that she had seen images of Johannah naked in an audition, which I understood was for Noel’s film *Legacy*.”

448. Ms Pugh said that she did not know when Ms Powell was shown the video. She had “*never heard Gina refer to this hard drive and the video before that night in the pub*”. She said, “*I was aware of the audition for Legacy that Johannah took part in as a result of Gina imparting that information to us in the pub that night*”. Ms Pugh recalled there was a conversation about Ms Whyte’s “*previously short hair as the result of Gina disclosing Johannah’s appearance in the video that she had seen*”.

449. Ms Pugh expressed the view that the term “*images*” that she had used in her statement covered videos as well as photographs. She was not sure why she had used the term “*photograph*” at one point in her statement, as she was very clear that she was told it was a video of Ms Whyte. Ms Pugh described Ms Powell being in tears, as she was very upset to have upset Ms Whyte who was “*completely thrown*”, “*really upset*” and “*angry*” with Mr Clarke. Ms Pugh recalled that, “*We discussed this at the pub that evening for quite a while*”, including discussing what could be done about it. She said that Ms Whyte was terrified Mr Clarke had a hold over her, and felt unable to confront him.

450. Ms Whyte gave evidence that:

“Gina had moved to a new house in North London. Since we hadn’t seen each other for a little while, we met at the Prince Regent pub in Herne Hill to catch up. I believe this would have been in around Spring of 2017 but I am unsure of the exact time. Our friends Laura Pugh and Luca were also there. Gina had by then left Unstoppable, which was a huge development for her because she had been so unhappy there.

...

At the pub we were talking about Noel in general: his cheating and womanising, which led us to talk about my friend who had slept with Noel and the fact he kept nude photos of her on his hard drive and bragged about it.

The conversation turned to Noel’s stash of photos. Gina told us that she had seen a video recording of my naked audition for *Legacy*, which Noel had personally stored. She apologised for

Approved Judgment

not telling me earlier but said she didn't feel safe opening up issues around Noel while she had worked at Unstoppable and felt she needed to leave the company first.

Gina first said I needed to know that Noel had a video of me on his hard drive. Initially, I couldn't understand how this could have been the case, as nothing had ever happened between me and Noel. Gina told me Noel had secretly recorded the naked audition and shown it to her. I asked her how she could be sure and asked what she'd seen. She recounted that I was wearing a black dress which I took off during the scene, and that I was tanned at the time and had short brown hair. When I first met Gina in 2014, I had long blonde hair and have done since. She had never seen me with the hairstyle I had in the *Legacy* audition in 2013..."

451. Ms Whyte said she "*burst into tears in the pub*". She said she felt "*deeply betrayed*", "*violated*" and "*powerless to do anything about it*". She gave evidence that:

"Noel was obsessed with 'aesthetic' vaginas. He would talk a lot about how he liked them to look and made derogatory remarks about the appearance of vaginas that he didn't like. When I found out that he had naked footage of me, I was anxious he would make comments about my vagina to other people, which would obviously have been humiliating."

452. Ms Whyte's evidence chimed with Mr Clarke's use of the word "*aesthetic*", stopping himself mid-sentence, when referring to naked photographs of 'Ivy' (para 340 above). Mr Clarke acknowledged that there "*have been times when I have those conversations*" ("*about women's vaginas*") but he denied that he ever had such conversations with or around Ms Whyte. His evidence was at odds with his actions in begging Ms Whyte not to speak to a journalist, an approach which contrasted with his calm message to 'Florence' around the same time: "*Well up to you. either ignore. Or just say I'm lovely and she shouldn't contact you please.*"

453. Ms Whyte has never seen the alleged recording. She believes it was recorded because she subsequently had it "*described to me accurately*" (by Ms Powell), and it would have been "*very difficult*" for her to have described it accurately if she had not seen it, given the auditions for *Legacy* happened before Ms Powell joined Unstoppable, and Ms Whyte's appearance was different to her every day appearance, both because of her haircut and because she was so tanned.

454. Ms Powell said in her statement:

"In around Spring 2017, but possibly later that year and after I had left Unstoppable, I met up with Jahannah James and two other friends, Laura Pugh and Luca. We had all lived together previously and we organised a catch-up in a pub in Herne Hill. I had told Jahannah that I was leaving Unstoppable, but she didn't know about what Noel had done towards me on the LA trip.

Approved Judgment

We had all started talking about Noel. I knew that Noel had nude audition footage of Jahannah on his hard drive as he had shown it to me before. I had not come to the meet-up expecting to tell her about this footage, but I suddenly got so anxious when she was talking about Noel. Knowledge of the video and also my LA experience were totally eating me up inside. ...

I had been incredibly worried for a long time about what Noel would do to me if I told Jahannah about the filming of the nude audition. I realised that I could be honest with her now because I had left Unstoppable.

I told Jahannah that I had seen the nude footage of her on Noel's hard drive. She instantly burst into tears and believed me straight away – she knew that I had never met her with the haircut she had in that audition. I was also able to tell her details about the room she auditioned in. Jahannah said she felt totally violated and taken advantage of – Noel was someone she looked up to like a big brother, and he'd filmed her and lied about it. I remember her saying that she wanted to get hold of the hard drive so the footage wouldn't go anywhere.

I was very concerned about how distraught Jahannah was. I remember both of us crying and I was consoling her.”

455. Ms Pugh, Ms Whyte and Ms Powell were cross-examined at length about the date of their meeting in the pub and who was there, by reference to the similarity of their accounts as to the timing, and the first article which states:

“Powell told four people about Clarke's alleged secret filming, all of whom confirmed the conversation to the Guardian. They include James, her friend, whom she told about the incident in the winter of 2017, in a pub in south London.”

456. All three witnesses were adamant that there were only the four of them (the “*ex-housemates*”, as Ms Whyte put it) in the pub that evening. When Ms Osborne was cross-examined, she explained that Ms Powell told her that she had told four people about the secret filming, but only three of them were those Ms Powell told together in the pub. The fourth person Ms Powell told Ms Osborne she had told was, Ms Osborne said, a CJS who was not with them in the pub. Contrary to the Claimant's submissions, Ms Powell did not state the name of the fourth person in evidence.
457. As regards the timing of their get-together, all three were clear that it was in 2017, after Ms Powell had left Unstoppable. Ms Pugh said she could not be exact. She thought Luca's presence was indicative that it was from Spring, as he had taken a job in Italy between January and Spring. She also recalled that Luca was not with them on Ms Powell's birthday in May, so that suggested the pub meeting was “*maybe June, maybe later*”. She said, “*I think we spoke about the memory of that day, yes. Each of our conversations with the Guardian were done individually*”. Ms Pugh said they would have arranged to meet on WhatsApp, but past a certain point messages are deleted and she was not able to find messages to pinpoint the date.

Approved Judgment

458. Ms Whyte thought it was soon after Ms Powell had left Unstoppable. She had no direct memory of Luca going away because “*we did not personally stay in that close contact after that time*”, but when trying to work out when the pub meeting was she understood that one of the parameters was that “*in the summer or August, autumn of 2017, Luca was not in the country*”. Ms Whyte said, “*I asked Luca and Laura and Gina did anybody have any texts, is there anything that goes back that far to clarify, because we all can remember roughly when but not exactly when. Nobody has any text message that go back that far, so we cannot verify it.*” Ms Whyte said she did not have any records of WhatsApp going back that far. She said that while she could not remember the season, “*I remember my heart being broken*”.
459. Ms Powell was in no doubt that the pub gathering was after she left Unstoppable. She was sure that it was 2017, first, because she thought she had told Ms Whyte soon after she left Unstoppable, and secondly, because that was the only year she lived in Muswell Hill, she had not had a car when she knew Mr Clarke, and she remembered driving from Muswell Hill to Herne Hill to see her friends. She said, “*I could not remember if it was before or after I left for LA that summer where I was shooting Bros*”, and while she drove “*it was rainy and the weather was rubbish*”. She acknowledged that she had discussed the timing with Ms Whyte, saying, “*I told her my position and she told me hers*”, and Ms Powell had commented that it was “*funny how memories are*”.

Subsequent matters

460. Mr Clarke said that Ms Whyte did not seek to discuss his alleged misconduct with him directly at the time she was supposedly made aware of the covert filming. Although their relationship was not as close as it had been, following Ms Powell’s departure from Unstoppable, “*we were still close*”. However, in cross-examination he acknowledged that after Ms Powell left he stopped speaking to Ms Whyte for over six months. He said he was “*annoyed that my friend, Jahannah James, had become closer to Ms Powell*”, and he did not want her to be a go-between, “*so I thought the best thing to do was for me not to speak to her*”.
461. Mr Clarke said:

“In early January 2018, [Ms Whyte] and I met for brunch on Kensington High Street, in an attempt to make amends following the aforementioned tension, despite the fact that she remained close friends with [Ms Powell]. At the end of the brunch, [Ms Whyte] made an obscure and worrying comment: ‘I’m glad we made up because we were planning to get you. We were going to try and stitch you up like a Harvey.’ When I queried this, she suddenly became nervous and changed the subject, by saying ‘just be careful’. I immediately told Mr Maza and my wife about this comment which I found disturbing.”

In cross-examination, Mr Clarke referred to this meeting being in 2019.

462. When asked about this passage in cross-examination, Ms Whyte responded:

“When I read this statement, I had to ask what ‘like a Harvey’ meant because I did not get the reference and it was explained to

Approved Judgment

me ‘like Harvey Weinstein’. I did not say this. ...My intention clearly was to make as if nothing had changed until I was ready or in space to confront him. ... What I did say was I mentioned to Noel that in the industry, I had come across people that when his name came up, stories were coming out that were not good.”

463. When speaking to Ms Osborne for the first time on 12 April 2021 (a call that is recorded), Ms Whyte said:
- “I warned him, the last time I physically saw him, was a few, er two, years ago, and I warned him, I was just like, Noel, just so you know, your name when it’s mentioned on sets, and the stories that are coming around, I was like, just be careful, because I was like, people are clocking onto the fact that you cheat and he got quite angry with me and said to me I made him feel like Jeffrey Epstein. And I was like, well, that’s just projection.”
464. In cross-examination, Mr Clarke referred to this, suggesting that “*she mentions that, she actually said Epstein, I do not think it was Epstein because that had not happened yet. So I believe it was Weinstein*”.
465. Iris Clarke referred in her statement to an occasion, in or around 2019, when Mr Clarke was upset after meeting Ms Whyte for coffee, as she had told him “*people were after him*”. In her oral evidence this changed to an allegation that he reported that Ms Whyte said to him, “*I’m glad we’ve made up because we were planning to get you’, like Weinstein, or something, something along those lines.*”
466. Ms Whyte said that after Ms Powell left Unstoppable, Mr Clarke “*shut her out*” for about 6 months to a year, and so she did not need to worry about hiding her reaction, as she did not see him. Ms Whyte agreed that she exchanged happy, friendly, professional messages with Mr Clarke in 2018, after she says she had learned about the footage. She said that she was “*devastated and disgusted that he broke that trust*” but she did not confront him, in part because she was scared to do so, but primarily because Ms Powell was “*delicate and traumatised*” and she could not confront Mr Clarke without bringing her friend into it. Ms Whyte said that she spoke to a friend who worked for the police about it. The friend told her the police would not take notice unless Mr Clarke used the footage to threaten her.
467. In 2021, Ms Whyte heard through a drama school friend that an email account had been set up to collect accounts of Mr Clarke’s misconduct. Ms Whyte sent an email to that account, using an anonymous email account, on 12 April 2021. That resulted in Ms Whyte being given Ms Osborne’s email address, who she then contacted.
468. In the email from Equity to Ms Chand, sent on behalf of ‘Mia’ on 6 September 2021, it was said that ‘Mia’ “*was recently notified by a member of staff working on the production that unauthorised filming did take place, that it is likely to still exist, and that they are willing to support [‘Mia’] and others in a testimony*”. Mr Fairbanks acknowledged, as he had said in his statement, that he was the “*member of staff*” who had contacted ‘Mia’ through mutual friends to “*apologise that I hadn’t done more to stop it*”. It was put to him that the email indicated that the contact had been recent, and

Approved Judgment

so after the first article being published. Mr Fairbanks maintained that he had first spoken to ‘Mia’ about the covert filming of the audition “*a few years after the event. It was certainly before 2021, I would say over two years before 2021*”. However, they had had a number of conversations, not just one.

469. Mr Fairbanks acknowledged, as reported in the eighth article, that he contacted the Metropolitan Police shortly after the publication of the first article. It is also clear (although not confirmed by the Guardian) that Mr Fairbanks was not in contact with the Guardian prior to publication of the first article. He contacted the Guardian on 30 April 2021.
470. Jared Schwartz, a manager, who represented Mr Clarke, in his capacity as a writer and actor, on American projects, from about 2009 until 2021, said that he contacted ‘Florence’, who was also his client, on or around the date of publication of the first article. He said that ‘Florence’ conveyed to him that she had never had a negative experience with Mr Clarke, and she had no misconduct to report. She had been approached by “*a supporter of the allegations*”, and she had declined to be involved. I accept that is what she said. However, she would not have known that she had been covertly filmed.

Footage from the film Legacy shown to Garry Moore

471. Although Mr Clarke (admittedly) showed Garry Moore a clip from *Legacy* in which the actor who was cast appeared nude, what he showed was a scene from the film, albeit prior to release. That was not illegitimately obtained footage: as a producer Mr Clarke had access to early clips of the film. Nor can it be said to have been shared non-consensually, given that the actor had agreed to the film being aired publicly.

Conclusions regarding covert filming

472. The Claimant submits that the account given by the Guardian’s witnesses is implausible and littered with inconsistencies. He contends that those witnesses, most notably Ms Powell and Mr Fairbanks, but also others, have worked together to concoct this allegation. They have done so, he submits, because of the personal and financial grudges that they hold against him.
473. In my judgment, the evidence that Mr Clarke covertly filmed Ms Whyte and ‘Florence’ when they were nude, and undertaking a final audition that they had been absolutely assured would not be filmed, is overwhelming. I find that Mr Clarke’s denial is untrue.
474. Ms Powell’s evidence that she was shown both those videos was compelling. As I have said, it is highly likely that these covert videos were among the “*stuff*” which prompted Mr Clarke to plead, via Ms Whyte, with Ms Powell not to speak to Ms Osborne (see paras 342-343 above).
475. Ms Powell’s account was strongly corroborated by the evidence that she told Ms Whyte, and their two friends Ms Pugh and Luca, in 2017; and that the description she then gave of what she had seen included details such as the fact that Ms Whyte was very tanned and had short brown hair, which Ms Powell would not otherwise have known.

Approved Judgment

476. Ms Pugh was an obviously truthful and reliable witness, who gave straightforward evidence. She had no reason to come forward as a witness for the Guardian to lie to the Court. Her friendship with Ms Powell and Ms Whyte does not begin to provide such a motive. Indeed, her evidence that, during the meet-up, Ms Powell had told Ms Whyte about the video of her audition and that Ms Whyte had become very upset and angry, and that Ms Powell had become upset as well, was not challenged. The inaccuracy in her use of the word “*photos*” rather than “*video*” was an innocent error. In her statement Ms Pugh explained that the process of taking her statement had involved the Guardian’s solicitors speaking to her on the telephone, and then they had drafted it based on the information she provided. In the context of her recounting a discussion that began with talking about Mr Clarke’s hard drive of images, it is clear that an inaccuracy crept in which she did not spot when reviewing her statement. However, Ms Pugh was certain that Ms Powell had spoken of a video of Ms Whyte’s naked audition.
477. The inconsistency in the identified season when this social occasion occurred given in the first article (winter) compared to the evidence given by all three witnesses (spring or later), and the consistency in their statements on this point, is a feeble basis for contesting their clear recollections of that social gathering. It is readily understandable that the matters fixed in their memories were what was said that led to both Ms Powell and Ms Whyte breaking down in tears, distraught, rather than precisely when they met. To their credit, all three witnesses readily agreed that there had been some discussion amongst them, subsequent to their giving separate accounts to the Guardian, when they had sought to pin down when they had met in the pub. The inconsistency with the first article only arose because they were trying to remember when they met, not concoct a false narrative. It is probable that they met in late Spring or early Summer, but it is of little relevance when in 2017, after Ms Powell left Unstoppable, they met.
478. The absolute confidence of all three witnesses that there were only four of them gathered when Ms Powell told them about the video was marked, in circumstances where it was suggested to them a different account had been given to the Guardian. They all knew who was there because they remembered the occasion. In fact, as I have indicated, there was no inconsistency between the account Ms Powell gave the Guardian of who she had told, and the evidence.
479. It is not credible that, in 2017, Ms Powell invented a story about secret filming during an audition she had not attended, then falsely told Ms Whyte about it on a social occasion, and faked being upset about it. It is wholly implausible that she would have concocted such a story, for no apparent reason at that time, knowing that it would be bound to upset her good friend, and that there was the potential for Ms Whyte to be upset with her for not having revealed what she knew earlier.
480. Nor is it remotely credible that Ms Powell and Ms Whyte together made up a story about Mr Clarke filming the audition and then staged the encounter in the pub, both feigning upset, for the benefit of Ms Pugh (and Luca), and then kept quiet about it for four years. Ms Whyte’s decision that to protect her friend she could not confront Mr Clarke about what she had been told is readily understandable given Ms Powell’s fragile state at the time, and so it is unsurprising that her limited interactions with Mr Clarke were friendly.
481. Ms Whyte gave powerful evidence of the impact on her of learning that Mr Clarke had betrayed her trust, and filmed her while she was performing naked, contrary to the clear

Approved Judgment

promise that the audition would not be recorded. Her evidence of her distress is supported not only by Ms Powell and Ms Pugh, but also by the audio recording of her tearfully telling Ms Osborne about it. While I have found that Ms Whyte was encouraged rather than coerced into undertaking the final audition, despite her reservations about appearing naked, she did so only on the firm understanding, provided orally and in writing, that it would not be recorded.

482. Ms Powell's recollection when she spoke to Ms Osborne in April 2021 of who she saw in the audition room was inaccurate. But it is likely that, as she said, in her mind she was "*joining the dots*" or filling in the gaps from her knowledge of the production team. She was speaking then about a video she had seen five or six years earlier, and at a time when she was intensely impacted by her younger brother's recent suicide. In the circumstances, although several more years have passed, her evidence that the video did not show who else was in the room, given without realising she had made any error when speaking to Ms Osborne, is more reliable. The earlier inaccuracy does not cast doubt on the veracity or reliability of the key features of her account: that she was shown videos of Ms Whyte's and 'Florence's' naked auditions.
483. Mr Fairbanks was in the audition room and saw Mr Clarke covertly filming. His account provides direct and independent support for the allegation. As I have said, I approach Mr Fairbanks' evidence with caution given the level of animosity between him and Mr Clarke. But strong corroboration for his evidence was provided by Marc Small, who recounted that Mr Fairbanks had telephoned him and told him about the covert filming immediately after the auditions. While Mr Small had an intellectual property dispute with Mr Clarke, their relationship had only ever been a working one, and it was evident that for Mr Small it was merely a business dispute, and not of consuming interest. Mr Small was a calm, measured, truthful and reliable witness. His account that Mr Fairbanks had told him about the secret filming immediately after it occurred, and of Mr Clarke's response to Mr Fairbanks' reproach, rings true and, indeed, it was not challenged. That phone call is important because it rules out the possibility that Mr Fairbanks' evidence on the point is the product of later invention. It is not credible that Mr Fairbanks would, in 2013, have concocted and recounted to his writing partner a story that his then best friend had covertly filmed women performing naked in auditions.
484. Contrary to the Claimant's submission, it is not implausible that Mr Clarke set up a mobile phone, in an inconspicuous position, to record the auditions, without Ms Chand being aware he had done so. I find that is what occurred. Mr Fairbanks' evidence that Ms Chand would go downstairs between each audition, to meet the next actor and show them where they could change their clothes, before bringing them into the audition room, is inherently credible, not least since it was Ms Chand's house. There was no contrary evidence and it was uncontested. Her regular absence would have given Mr Clarke an opportunity to set up the device in the way Mr Fairbanks described, without Ms Chand's knowledge.
485. The contention that Ms Powell and Mr Fairbanks have worked together to bring forward this allegation is baseless. Ms Powell gave convincing evidence that she has not spoken to Mr Fairbanks at any time since she left Unstoppable (i.e. around 24 March 2017), the last time she spoke to Mr Fairbanks was "*around Brotherhood time*". This evidence was consistent with Mr Fairbanks' account of the minimal extent of the interactions they had ever had, none of which were after Ms Powell's departure from Unstoppable

Approved Judgment

eight years ago or his prior cessation of working with Mr Clarke. Ms Powell was clear that she has never spoken to Mr Fairbanks about her evidence. She was unaware of what Mr Fairbanks had said about the positioning of the camera, unsurprisingly given that it appeared in a draft of the eighth article, not the published version.

486. Moreover, Ms Powell informed the Guardian of her account of Mr Clarke showing her two videos of covertly filmed auditions on 14 April 2021, entirely independently of Mr Fairbanks, who approached the Guardian in response to the first article. And, as I have said, they had each independently told third parties in 2013 (Mr Fairbanks) and 2017 (Ms Powell).
487. Similarly, Ms Whyte's connection to Mr Fairbanks is remote. She saw him during the audition process for *Legacy*, 12 years ago. Other than that, she had seen him at Mr Clarke's birthday party after *Brotherhood*. But she was not friends with and does not know him in any meaningful sense. There is no evidence she has ever contacted him, and she had no memory of doing so.
488. I do not accept that Ms Whyte ever said to Mr Clarke that "*we were planning to get you*" or "*we were going to try and stitch you up like a Harvey*", or words to that effect. I reject Mr Clarke's evidence that she did so. There was no reference to this in Simkins' letter, addressing Ms Whyte's allegation. Mr Clarke has latched onto and twisted the effect of a document he received in disclosure. Nor do I accept the account given by Mrs Clarke, orally, of Mr Clarke reporting to her, following his meeting in a café with Ms Whyte, that Ms Whyte had said she had been planning to stitch him up or that she had made any reference to Harvey Weinstein. When giving oral evidence, Mrs Clarke was strident and indignant, and it was difficult to get her to differentiate between matters of which she had first-hand knowledge, what she was told contemporaneously by her husband or others, and matters that she is now recounting based on what she has been told since the articles were published.
489. Contrary to Mr Clarke's evidence, Ms Whyte did not say to the journalist that she had mentioned Jeffrey Epstein: it was Mr Clarke who she recalled complaining that she made him feel like Jeffrey Epstein. The café meeting at which Ms Whyte said that she had heard mention of his behaviour probably was in 2019. That is consistent with Ms Whyte's account, given in 2021, when she said it had been two years ago; Iris Clarke's evidence; and also Mr Clarke's oral (but not written) evidence as to the timing. More broadly, it is consistent with 'Imogen's' evidence that it was in the summer of 2019 that she learned that Mr Clarke had misconducted himself towards other women, "*that somebody was trying to do an exposé about him*"; and Mr Clarke's evidence that allegations were being "*collected and circulated since 2019*". That timing is also consistent with Ms Whyte's account that Mr Clarke referred to Jeffrey Epstein, about whom there was much publicity in 2019. Although it may seem incongruent for Mr Clarke to have referred to Jeffrey Epstein, given that Ms Whyte was not warning him of any allegation remotely akin to those then being raised against Mr Epstein – and there has never been any suggestion of misconduct on his part towards anyone under the age of consent – it would be consistent with his intensely sensitive reaction to questions in cross-examination characterising some of the complainants as having been, at the time, "*young women*".
490. I find that Mr Clarke told Ms Whyte, when she gave him a gentle warning to be careful about his conduct, that she made him feel like Jeffrey Epstein. Given the publicity

Approved Judgment

around the #MeToo movement, and being aware of his own past behaviour, Mr Clarke would have been shaken by his conversation with Ms Whyte. I accept he probably informed his wife (inaccurately) that his anxiety stemmed from Ms Whyte having told him people were after him and trying to set him up.

491. Mr Clarke alleged that Ms Whyte “*has personal grudges against myself and my business partner, Mr Maza*” which he alleged had prompted her to join in conspiring to bring him and Mr Maza down. It is clear that Ms Whyte has no “*grudge*” against Mr Clarke. Her only issue with him arises from her belief, based on what she was told in 2017, that he covertly recorded her audition. Her sense of betrayal arose because Mr Clarke had been her mentor, and he had helped her greatly over many years. Nor do I accept that Ms Whyte has “*a very bad grudge*” against Mr Maza because of how their brief relationship ended a decade ago: she clearly bears him no ill will. Still less that any such grudge motivated her to lie about Mr Clarke. Nor has she worked with Ms Powell “*to concoct these allegations*”, whether because of “*Gina’s financial grudge*”, or otherwise. Ms Whyte’s assertion that “*This is absolutely not about money*” was patently sincere.
492. At one point in cross-examination, Mr Clarke alleged that Ms Whyte “*says there are over a dozen rapes of 60 women*”. When challenged, he swiftly withdrew the allegation. Despite that retraction, and without citing any support for it, the accusation was reiterated in the Claimant’s written closing submissions. Ultimately, in post-hearing submissions, it was accepted it is untrue. There was never any foundation for it, and it should not have been made, still less repeated.
493. Speculative attempts in cross-examination to connect Ms Whyte to a host of individuals failed dismally. She does not know Philippa Crabb, Helen Atherton, Jing Lusi, Sally El Hosaini or James Krishna Floyd. She briefly met Kevin Proctor once when Ms Powell was working for him. She knew of ‘Imogen’ because when she dated Jason Maza, he was friends with her, and she had attended a bar to celebrate ‘Imogen’s’ birthday, but she did not recall ever having had a conversation with her, or ever having contacted her. There are, of course, many others who have made allegations to whom it has never even been suggested that Ms Whyte or Ms Powell have any connection. In any event, a mere connection is not evidence of collusion or conspiracy to lie.
494. As I have said, Ms Whyte sent an anonymous email which led to her speaking to the Guardian. She later learned that her anonymous email was one of the accounts being shown to BAFTA. Ms Whyte readily accepted that the email signed “*anon*” was hers, and was genuinely unaware that the email account she used bore the pseudonym “*Karen Karenson*”.
495. There is not a shred of evidence that Adam Deacon has ever played any part in bringing this allegation forward. I accept Ms Powell’s evidence that aside from one unplanned encounter, while she was working at Unstoppable, when she met Mr Deacon while she was with Jason Maza, when they ran into him in Soho, she had never spoken to or been in contact with Mr Deacon. Similarly, Ms Whyte had never met Mr Deacon as she was “*not on the scene when Adam and Noel were friends*”.
496. I conclude that Mr Clarke covertly filmed the naked auditions of Ms Whyte and ‘Florence’, and showed them to a third party, Ms Powell. It is probable that Mr Clarke also recorded, or sought to record, footage of at least one of the other actors who

Approved Judgment

attended the final audition. Mr Clarke did so knowing that the actors had been firmly assured that their naked auditions would not be recorded. The inevitable inference, bolstered by Mr Small's report of what he said on the day, and Ms Powell's evidence of how he acted and spoke when showing her the videos, is that Mr Clarke acted in this way for his own sexual gratification.

(xiii) 'Imogen' (2014)

497. The Guardian's allegation in relation to 'Imogen' is, in essence, that in July 2014, Mr Clarke propositioned her for sex during a dinner, spoke graphically about his intentions, and implied he was going to the bathroom to masturbate. After the dinner, he tried to kiss her on the mouth and was angered when she avoided his kiss.

498. The allegation was not pleaded (para 40 above), as 'Imogen' had not intended to give evidence. She changed her mind when TKP wrote to her on 5 November 2024 that they understood she was involved in circulating allegations regarding Mr Clarke at the time of publication, stating:

“...We understand you were encouraged to partake in this behaviour by Mr Proctor. These acts are serious, and constitute grounds for legal action and criminal investigation.

In order to understand the extent of your involvement in the above, I would be grateful if we could arrange an informal telephone call or a meeting, at your earliest convenience, to discuss any information in your possession, in particular, in relation to Mr Proctor.

Failing cooperation on your behalf, we will be required to escalate this matter to the police and take further steps, including, if necessary, prosecution. ...”

'Imogen' did not succumb to this threat, although she found it terrifying. She decided it was necessary to give evidence in support of the Guardian's defence.

499. 'Imogen' is an actor, author and playwright. In 2014, she was a 20-year-old actor. 'Imogen' was friends with Jason Maza, who she had met in 2010 at the Royal Court theatre. Mr Maza briefly introduced 'Imogen' to Mr Clarke when they encountered him at the Century Club. 'Imogen' exchanged a few messages with Mr Clarke on Twitter and then he invited her to dinner at Soho House on 9 July 2014 ('the Dinner'). He was a producer, and a client of their mutual agent, Gary O'Sullivan. As an actor, 'Imogen' was accustomed to meeting producers. Mr Clarke was about 39 years old, and she knew he was married with children. She did not think there was anything untoward about the invitation.

500. 'Imogen' wrote a draft Tumblr post ('the Tumblr post') in the evening immediately after the Dinner. She never published it. Mr Clarke accepts that the Tumblr post was drafted on 9 July 2014. It is not a fabricated document. But he contends that the contents of the Tumblr post are a "*fantasy*" from the pen of a "*fantasist*".

Approved Judgment

501. The account of the Dinner given by ‘Imogen’ in evidence is consistent with what she wrote in the Tumblr post. She relies on it as an accurate contemporaneous account of what occurred. ‘Imogen’s’ evidence was as follows. To begin with they had a good conversation. “*We were just having a nice time and I was chatting about work*”. Mr Clarke was showering her with compliments about her career and the work she was doing. She said, “*It was flattering especially from somebody who was successful and powerful in our industry*”. There is a photograph of ‘Imogen’, taken by Mr Clarke at the dinner, of her trying on his glasses, looking over the top of them. She did not deny saying she could be his Secretary, but said she genuinely meant she could work for him as an assistant as she was interested in the company-related side of things. She denied Mr Clarke’s allegation she said “*something along the lines of ‘working late for you, if you know what I mean’*”. ‘Imogen’ said she tried on his glasses before the conversation turned sexual, and trying on other people’s glasses is just something she did, and does. She was not flirting with him. She described herself as “*wide-eyed and innocent at that point in my life*”. She “*had not had any experience*”. She said she was just being friendly, lively, bubbly, and sweet, and even if he (incorrectly) interpreted her action in posing with his glasses on as flirting, it “*does not mean that I deserved what followed afterwards*”.
502. ‘Imogen’ said “*Noel then started complimenting me on looks – I wrote in my draft blog post that he told me I was hot, beautiful, gorgeous, unconventional, sexy, fit and naughty*”. She said Mr Clarke then started telling her about his sex life. He talked about “*his visits to brothels and threesomes that he had*”. She recalled that he mentioned Ukraine and said it was not a good place for a “*red-blooded male*” like him, which she understood to mean because there were brothels where he could use prostitutes. “*He said that as long as his family never found out, sex was his vice; sex was what he wanted and what he got.*” ‘Imogen’ said that she tried, unsuccessfully, to change the subject. She said that “*Noel asked if I like oral sex and he said ‘you’d like it once I’d be done with you’.*” He said, “*you’ve had your fair share of fucking, right?*”. He told her, “*I’ve wanted to fuck you since the moment I met you*” and asked if she wanted to have sex with him.
503. ‘Imogen’ described her reaction at the Dinner as a combination of “*freeze and fawn*”, that is, she initially froze and then tried to placate Mr Clarke, and to make everything better by continuing to smile despite feeling sexually threatened and uncomfortable. She said that it was “*really hard, as a young woman in that situation, to extricate*” herself. ‘Imogen’ said she was scared of him and extremely embarrassed. “*I did not want to have sex with him and so I did not want to say yes, but because I was scared of Noel I didn’t want to offend him by saying no, so I said maybe.*” She told Mr Clarke she was going to the US at the weekend as a reason not to be able to accept his proposition, but he said there was plenty of time before the weekend “*or we could meet when I got back*”. He suggested “*he could come to my place*” and also referred to going “*to his flat to have sex and I specifically remember he said he could take photos of us doing it*”. She said she found that “*really frightening and disturbing*”. He put his phone number in her phone.
504. ‘Imogen’ said that Mr Clarke told her what he wanted to do to her using graphic words. She had never had a conversation about sex in graphic detail with anyone before. She was disgusted but tried not to squirm in her seat. At one point in the conversation, Mr Clarke asked ‘Imogen’ her age. She was, in fact, 20 years old. At the time, she was

Approved Judgment

playing 13, 14 and 15 year olds. When she had been 18, her age had been misreported as a year younger than she in fact was, and guided by her agent, she “*went with it*”. She explained, “*There is a thing in the industry, as most actresses would sadly attest to, that we have to be as young as possible, especially when you are playing those younger teenagers*”. Consequently, the age on her profile at the time was given as 19. But when Mr Clarke asked her age she said 17. She “*hoped it might deter him from talking about sex*”, but he “*continued to speak in the sexually forceful way I have described*”. He reacted angrily when she pointed out that he was married with children, saying “*he didn’t have affairs, he had fun*”. She said, “*Noel said that he needed to go to the bathroom but said it wasn’t to use the toilet; he told me that he was hard at the dinner table because he was so turned on and unmistakably implied that he was going to the toilet to do something sexual*”. ‘Imogen’ said that she “*smiled at him but I wanted to cry*”.

505. On his return, he paid the bill and they left. When they were saying goodbye, out on the road, ‘Imogen’ said he went in for a hug and then “*turned his head to try to kiss me on the lips*”. She turned her head away, jumped backwards, and “*Noel looked furious*”. ‘Imogen’ said she left and cried the whole way home.
506. Mr Clarke vehemently denied and disputed ‘Imogen’s’ account. He said that if her account had been real, “*that would have been harassment*”, but “*her events are not real whatsoever*”. He said that at the start of the Dinner they discussed professional, career-related matters. He said, “*we were having regular conversations before Imogen started flirting*”. “*The conversation was flirtatious and suggestive for a brief time during the dinner*”. He said, “*Throughout the dinner, the conversation became more friendly and flirtatious. At one point, I recall [‘Imogen’] instigating a more flirtatious and suggestive conversation, by making a comment about wanting to be around me more, and maybe being my secretary. She then took off my glasses and put these on, posing in a way which was suggestive and flirtatious, looking over the rim of my glasses*”. Mr Clarke said she was being flirtatious, saying she could be his secretary, and something along the lines of “*working late for you, if you know what I mean*”. He said, “*Any sexual conversations had with [‘Imogen’] were entirely mutual and reciprocated. It is not true that she tried to deflect me, or that she was uncomfortable or disgusted. I was not sexually threatening or otherwise aggressive towards [‘Imogen’].*” He denied that he spoke graphically about sex with ‘Imogen’ or said, “*I’ve wanted to fuck you since the moment I met you*”.
507. Mr Clarke said he has not been to Ukraine or a brothel, and never said anything about visits to brothels or Ukraine. He denied he asked her age, or that she said she was 17: he already knew that she was 19, and he would never have taken a 17-year-old for dinner. He said he did not compliment ‘Imogen’s’ looks or appearance, and her account of the words he had used was fantasy. He denied having any discussion with her about his family, or ever getting angry. He said his flat is where his wife and family live and he would never have suggested to ‘Imogen’ going there to have sex. He said her account of what he said before going to the bathroom was “*nonsense*”. He did not say that and would never say that. He did not have an erection. He was in the middle of Soho House, “*how could I stand up being hard or whatever?*”
508. Mr Clarke said, she did not seem uncomfortable or scared at all, and indeed, appeared to be entirely engaging in and promoting this flirtatious behaviour. He said, “*...She then told me that if we did anything sexual together, we could not tell our agent, Gary*”. He

Approved Judgment

said he was “*quite surprised by this comment, but I agreed to this*”. He recalled ‘Imogen’ “*reaching across the table and touch my hand a few times whilst we were talking*”. He denied putting his number into her phone.

509. In cross-examination, Mr Clarke denied propositioning ‘Imogen’ for sex: “*Absolutely not*”. He said “*I did not fancy her at all*”. After lunch on the same day, Mr Millar put to Mr Clarke a newly added document showing a text conversation between Mr Clarke and his friend, Leeshon Alexander, on 9 April 2021, regarding allegations against him that had resulted in “*a big emergency meeting*” at BAFTA with “*all the lawyers*”, which Mr Clarke was also aware the “*Guardian is digging around*”. The text messages show Mr Clarke saying, “*We think it’s [‘Imogen’] ... and some other people*”. Mr Alexander wrote, “*You had beef?*”. Mr Clarke replied, “*We had lunch once and I propositioned her. She went along with the whole thing then didn’t speak to me and told Jason and made it bigger. So it’s her and others.*” Mr Clarke acknowledged that he was referring to the Dinner. The cross-examination continued:

“Q. So you did proposition her at the dinner?”

A. Well, I guess, bearing this text, yes, but she was flirting first by taking my glasses and saying ‘I would like to be your secretary’. ... I propositioned her after flirting with me.”

Mr Clarke said his earlier answer “*was not intentionally untrue, but she flirted with me first and then I continued the flirtation*”.

510. Mr Clarke said as they were leaving he noticed she was “*petite*”. He denied trying to kiss her, or getting angry, when they said goodbye on the corner of Greek Street and Old Compton Street, he had merely given her a one-armed hug. He said:

“When I left the dinner, I recall feeling as though I should not have entertained [‘Imogen’s’] advances or engaged in suggestive conversations with her. I recall calling Jason straight after the dinner, as he was good friends with [‘Imogen’], to tell him about our conversation. I was upset that I had potentially ruined a friendly and positive professional relationship.”

511. Mr Clarke was questioned about ‘Imogen’s’ motive to lie. He said, “*She is wide-eyed, a lovely person, but she is a fantasist. This is what she does*”. Her motivation was a culmination of “*being annoyed*” because she had been “*unable to secure roles with us she wanted and she got upset about that*”, and because her scene in *10x10* was cut; being a fantasist; being “*very strong on women’s rights*”; and meeting Mr Proctor and Ms Powell.
512. In summary, the Claimant submits that ‘Imogen’s’ account should be rejected on account of (i) its implausibility and factual inconsistencies; (ii) the fictionalised character of the Tumblr post; (iii) her motives and engagement in the alleged conspiracy; (iv) their post-Dinner interactions; and (v) Mr Clarke’s version of events which should be accepted. I address each of these submissions in turn below. The Guardian urges the Court to accept ‘Imogen’s’ account as truthful.

Approved Judgment

513. A challenge was raised in the Claimant’s closing submissions to ‘Imogen’s’ allegation that at the dinner he told her she was “*hot, beautiful, gorgeous, sexy, naughty*”¹⁴ on the basis that “*this is not the type of language which he utilises, and there are no other accounts of him doing so*”. When the Defendant cited examples of him using some of those words, the Claimant reiterated in post-hearing submissions that nowhere do the words “*hot*”, “*gorgeous*” or “*sexy*” appear. The evidence plainly demonstrates the fallacy of this submission:
- i) Mr Clarke’s correspondence with Naome Morris shows that he used the term “*hot*” on numerous occasions (e.g. on 8 February 2010, “*...no prob on the pics. I’m grateful for whatever. So thanks for even sending what you have. Although you would look very hot like that. And probably cause major reaction*” and on 10 February 2010: “*...Smoking hot pic this is. You are a hot girl, with a spectacular bod, beautiful face and the prettiest ***** and this pick [sic] made certain things very hard. ...*”).
 - ii) In his oral evidence regarding the naked photographs of ‘Ivy’, Mr Clarke described her repeatedly as “*beautiful*” (see para 344 above). He wrote to ‘Maya’ on 27 May 2018, “*You are amazing, and beautiful*”. And early on in his correspondence with Naome Morris he described her as beautiful several times (e.g. on 4 February 2010 “*OMG! Amazing. And very very beautiful...*” and on 9 February 2010 “*...have a few more pics of that amazing bod and beautiful *****. I’d love to see*” and see (i) above).
 - iii) There are fewer examples of him using the word “*gorgeous*”, but he did so, for example, in response to a birthday message from ‘Alice’, saying, “*Hello gorgeous girl. How are you?*”
 - iv) Mr Clarke used the term “*sexy*” on numerous occasions in the messages that he sent to Ms Morris (e.g. on 8 April 2010, “*You look like a sexy bug, naughty, dirty girl...*”).
 - v) Mr Clarke acknowledged in his first statement (and confirmed orally) that he posted a Tweet inviting readers to send “*naughty*” photographs to him (see para 304 above). “*Naughty*” is also a term commonly used by Mr Clarke throughout his messages to Ms Morris (e.g. on 3 February 2010, “*tight jeans better? Naughty. That help with encouragement of pics? ...*”; on 3 March 2010, “*If vid Be as naughty as your mind can be. ...*”; and see (iv) above).
514. The Claimant contends that there is an inconsistency between the Tumblr post in which he supposedly threatened “*no one could ever find out or you will go down*” (my emphasis) and ‘Imogen’s’ witness statement in which this was changed to “*we would both go down*”. This is simply wrong.¹⁵ In the Tumblr post she wrote, “*He told me it would have to be a secret, no one could ever find out or we’d both go down*”, which is

¹⁴ This is a misquotation, missing out the terms “*unconventional*” and “*fit*”, so it was not specifically submitted (still less averred in respect of any of these terms) that he does not use those words (but see e.g. his text to Mr Maza on 29 January 2016, in response to Mr Maza’s reference to an “*Asian chick*”, “*The one I thought was fit!*” and Ms Counihan’s evidence regarding ‘Maya’s’ audition for ‘Production E’ (para 742)).

¹⁵ The Claimant’s post-hearing response to this point is incomprehensible.

Approved Judgment

precisely the same as her statement. In cross-examination it was put to her that it was “both” not “you”, and she agreed.

515. I accept Mr Clarke’s evidence that he would not have suggested that ‘Imogen’ could come back to his “flat”. That was only something ‘Imogen’ said in her evidence; she had not recorded him as saying that in her Tumblr post. Rather, she recorded him suggesting they could go to her place. In that regard, I find that ‘Imogen’s’ recollection, over a decade later, is mistaken and her contemporaneous record is more reliable. However, *where* he suggested they have sex is of little relevance, and does not undermine ‘Imogen’s’ credibility. Despite Mr Clarke’s initial absolute denial, when faced with his own written admission, he accepted that he did proposition ‘Imogen’.
516. I also accept Mr Clarke’s evidence that he has never been to Ukraine or visited a brothel. While it is possible that he spoke about Ukraine, without saying he had been there, which would be consistent with ‘Imogen’s’ contemporaneous record, I consider it more probable that he referred to another place name (whether in Eastern Europe or Scotland, where he was working on *Scottish Mussel*), and she misheard him. It is also likely that he spoke about having sex with prostitutes, and ‘Imogen’ drew the inference that involved visiting a brothel. That would be consistent with Ms Powell’s evidence of Mr Clarke boasting of sleeping with prostitutes. These minor inaccuracies do nothing to undermine ‘Imogen’s’ account.
517. I reject the Claimant’s submission that it is implausible that, if Mr Clarke had acted as she claimed, ‘Imogen’ would have sat there, in a restaurant, surrounded by people, rather than leaving or seeking help, particularly as she said she saw someone she knew, and she had the opportunity to leave when Mr Clarke went to the bathroom. ‘Imogen’s’ evidence that as a young woman of 20, who had never encountered such a situation before, she felt helpless and unable to extricate herself was compelling.
518. ‘Imogen’ is now a published author and scriptwriter. The Tumblr post includes one or two turns of phrase which perhaps signal that she is a writer (e.g. “*in that tiny moment as i looked in his eyes I saw anger*”). But I reject the contention that it is written in dramatic, stylised language, indicative of it being creative writing rather than a contemporaneous account. It comes across as being akin to a diary entry written by a young woman, recounting in detail precisely what had happened to her, as well as how it made her feel, and how she wished that she had reacted. Having heard ‘Imogen’ give evidence, and in the context of the whole of the evidence I have heard and read, I have no hesitation in rejecting the contention that her contemporaneous account, written within hours of the Dinner, was a “*fantasy*”: it was not.
519. Being in favour of women’s rights cannot sensibly be put forward as a motivation for ‘Imogen’ to have invented an allegation of sexual harassment in 2014, or to have lied to the Court about it more than a decade later. A further motive posited in the Claimant’s closing submissions is that ‘Imogen’ regretted assenting to his proposition that they have sex. This is baseless. There is no evidence that she agreed to his proposition. Neither Mr Clarke nor ‘Imogen’ said she did.
520. That leaves the contention that she had a work-related grievance. ‘Imogen’ had a three-line part in *10x10* (which was written and produced by Mr Clarke), filmed on 23 January 2017. In the editing process, the scene was cut and so it is not in the film. Text messages show that ‘Imogen’s’ immediate response on being told by Mr Clarke that the scene

Approved Judgment

had been cut was to say “*No worries*” and ask if she could have the clip for her show reel. As Mr Clarke said, if an actor had a scene with a high-level star, even if the scene was only two or three lines, they might want the scene for their show reel in order to show they have worked with high-level stars, and ‘Imogen’ “*may have wanted the scene with Kelly Reilly for her show reel*”. That clearly was the position. The contemporaneous evidence demonstrates that ‘Imogen’ was keen to work with Ms Reilly, and she was grateful for the opportunity to do so. The fact that the scene was cut did not detract from that, and the evidence does not show that ‘Imogen’ – who on Mr Clarke’s own evidence was by then an “*established*”, “*talented*” and “*very successful*” actor – was in the least “*annoyed*” by this edit, still less that the cutting of her tiny role so aggrieved her that she was motivated to lie to the Court.

521. The evidence also shows that ‘Imogen’ auditioned to play a 40-year-old in *Bulletproof*, and she was unsuccessful because she looked too young. As Mr Clarke acknowledged, “*actors audition for lots of parts they do not get*”. There is nothing to indicate ‘Imogen’ was surprised or upset that she was not cast, still less so aggrieved that she was motivated to lie to the Court. Moreover, it is impossible for those work-related matters to have motivated her to invent her account as she had already written it in the Tumblr post.
522. ‘Imogen’ was speaking truthfully when she said, “*I have literally no reason to make this up... all I would be doing is literally making trouble for myself and putting my career at risk ... when my career meant more to me than anything in the entire world at that point*”.
523. The Claimant alleges that ‘Imogen’ was a “*conspirator who played a role in pushing forward the campaign against Mr Clarke*”. Mr Proctor was then her partner, and the Claimant alleges that ‘Imogen’ would have known Ms Powell through Studio POW. The Claimant contends that ‘Imogen’ was involved from the outset with Mr Proctor, Mr Krishna Floyd and Ms El Hosaini “*in spreading allegations about Mr Clarke*”. The Claimant relies on the fact that in the period before the first article was published, ‘Imogen’ was the partner of Mr Proctor who, he alleges, along with ‘Imogen’ was a driving force in the “*crusade against Mr Clarke*”.
524. ‘Imogen’ answered all the questions put to her in an effort to build a conspiracy case in a straightforward and wholly unguarded manner. ‘Imogen’ readily acknowledged that she spoke to Mr Krishna Floyd and Ms El Hosaini on a Zoom call in Spring 2021 (indicating she thought she had taken part in two Zoom calls). She explained that Andrew Gower, who was friends with Mr Krishna Floyd and Ms El Hosaini, “*connected lots of different women*”, in circumstances where the announcement of Mr Clarke’s BAFTA award had been made, giving rise to concern amongst those who had “*heard many things about him in the industry*”. ‘Imogen’ acknowledged that some other women, together with herself, Mr Proctor, Mr Krishna Floyd and Ms El Hosaini were on the Zoom call. She said, “*All it was was women sharing their experiences of what happened to them*”. She said, “*I knew that there was a group of women who had had experiences with Noel who wanted people to know that they had had experiences with Noel and I was asked did I want to be involved, and the whole thing terrified me. And I spoke to them and told them my story, and that was that.*” A journalist from the Guardian spoke to ‘Imogen’ prior to publication of the first article, but she decided against allowing her story to be published, and it was not. ‘Imogen’ did not write any anonymous email and she was not involved in any email campaign. She acknowledged

Approved Judgment

that Mr Proctor was a driving participant: he “*was one of the men that believed the women, and was helping facilitate it*”. But ‘Imogen’ kept out of it as much she could. Those on the Zoom calls did not include Ms Powell or Ms Whyte. ‘Imogen’ gave evidence that she met Gina Powell “*towards the end of 2021*”. To similar effect, Ms Powell gave evidence that she only began working for Studio POW in 2021 and she had not met or had any contact with ‘Imogen’ before the first article was published.

525. On the Claimant’s case, Mr Proctor was at the centre of the “*conspiracy*”. However, in evidence, Mr Clarke did not dispute that Mr Proctor believed the women were telling him the truth: “*I accept that he believes that the allegations may be true. He may still believe that.*” Mr Clarke said, “*I set out that he does not believe he is doing anything wrong. I am fine with that.*” In the light of those admissions, it is impossible to see how any case of conspiracy against Mr Proctor could have been put forward. He has done nothing more, vis-à-vis Mr Clarke, than seek to assist others to bring to light allegations which Mr Proctor believes to be true.
526. Nor has ‘Imogen’ conspired against Mr Clarke. What she did was to tell her true account of what happened at the Dinner to Mr Krishna Floyd and Ms El Hosaini, who were liaising with BAFTA, and to a journalist from the Guardian, but then to decline to have it published. There is not a shred of evidence that she has colluded with anyone to create a false allegation. She plainly has not done so.
527. As regards their post-Dinner interactions, Mr Clarke said that after the Dinner, “*Imogen and I did not speak*” until, about three weeks later he messaged her and “*asked her what was up*”. He said they communicated via Twitter at the end of July 2014. The messages are not available but Mr Clarke said the general thrust of them was that “*she was upset because I was a married man and older than her, and therefore I should not have engaged in a flirtatious conversation with her*”. He said, “*I apologised if I had misinterpreted her position, as I understood the flirtatious behaviour and conversation to be entirely mutual following her suggestive comment about being my secretary*”. He said he told her that she should have told him at the time that he had misinterpreted. Mr Clarke accepted she said she was really uncomfortable. But he also claimed that when he said, “*No, no, you flirted with me*”, she acknowledged that and said that she should not have.
528. Despite Mr Clarke’s assertions, it was not put to ‘Imogen’ that she ever admitted to him (or to Jason Maza or Emily Hargreaves) that she had flirted with him. She was clear that she had never in fact done so. She may well have acknowledged certain facts (trying on his glasses, posing for a photograph, and suggesting she could be his secretary) which Mr Clarke interpreted as flirting, but I do not accept she ever agreed that she flirted with him.
529. Thereafter, until about mid-2019, they maintained “*a positive friendly relationship, albeit somewhat distant*” (as Mr Clarke put it). The Claimant submits ‘Imogen’s’ positive communications undermine her account of his behaviour. Mr Clarke said there was no reason for ‘Imogen’ to be as positive as she was, or to work with him, if she was annoyed with him. However, I accept ‘Imogen’s’ evidence that there was no animosity between them during that period because she had “*just moved on*”. As far as she was aware, he had only behaved as she described towards her, and she thought “*I can live with that*”. However, she said:

Approved Judgment

“Then, in the summer of 2019, I found out through a friend in the industry [Andrew Gower] that there were other women that Noel had treated in the same way as he had treated me, and that somebody was trying to do an exposé about him. I had previously been under the illusion that I was the only person Noel had acted like that towards. At that point 2 of my best friends and I arranged to meet Jason in the Pret-a-Manger that used to be opposite Shaftesbury Avenue.”

‘Imogen’ said that she told Jason Maza what happened at the Dinner in 2014. Once she had raised this matter with Mr Maza, the communications between Mr Clarke and ‘Imogen’ ceased.

530. Reliance was placed by the Claimant on the fact that ‘Imogen’ had inaccurately stated her age as 19 in the Tumblr post, and had more generally represented to casting directors that she was a year younger than her true age. She did not lie to the Court about her age and there is no reason to doubt the obvious fact that female actors may feel pressure to claim to be younger than they are. It is not a matter that undermined her credibility.
531. The account given by ‘Imogen’ was an honest one, and subject to the minor points I have indicated above, I find that it was also reliable and accurate. Mr Clarke lied when he said that he did not “*fancy*” ‘Imogen’ and did not proposition her. He had to accept that he had propositioned her when confronted with his own text message. His denial of her account was untrue, and he knew it was untrue. He recognised that she was “*wide-eyed*”, which I take to mean that she came across to him, as she did to others, as innocent and inexperienced. Nevertheless, he – a powerful director and producer, twice her age – spoke to her in graphic terms, propositioned her, suggested they take explicit photographs, tried to kiss her, and was sexually forceful in the way she described. ‘Imogen’s’ account of how he spoke and acted, far from being implausible, is strikingly redolent of how I have found he behaved towards numerous other young women.
532. However, Mr Clarke may have interpreted her artless act of trying on his glasses, ‘Imogen’ did nothing to invite such behaviour from him. The reality is that Mr Clarke treated anything short of an unequivocal rejection (such as he received from Ms Whyte) as acquiescence. In his eyes, the onus was on the young woman to object. He was always so confident, self-assured and assertive, even when he was young and junior, that he never allowed for the possibility that others, such as ‘Imogen’, would be too scared to stand up to him. Mr Clarke knew that he had “*potentially ruined a friendly and positive professional relationship*” because he understood he had behaved badly. As he acknowledged, the behaviour recounted by ‘Imogen’ was sexual harassment.

(xiv) Gina Powell – Unstoppable (2014-2017)

533. I have addressed Gina Powell’s evidence regarding the showing of explicit photographs of ‘Ivy’ and the covertly obtained video footage of Johannah Whyte above, and I deal with her evidence regarding Synne Seltveit, Helen Atherton, Philippa Crabb and Ieva Sabaliauskaite in the sections bearing their names below. In that context, I have referred to Ms Powell’s background in paragraphs 334-335 and my general assessment of her evidence in paragraph 342 above. In this section, I address the Guardian’s allegations of inappropriate sexual remarks and conduct towards Ms Powell, and that Mr Clarke touched and exposed himself to Ms Powell, without her consent. However, before

Approved Judgment

turning to those allegations, I shall first address the broader challenges to her credibility raised by the Claimant.

Financial matters

534. As I have said, Ms Powell worked full-time for Unstoppable for about two and half years, from September 2014 (para 335 above). When she first spoke to Mr Clarke, she had indicated that she would be prepared to work for free, but that was at a stage where she thought he might only be able to offer her work experience for a few weeks as a runner. Instead, he offered her the role of Assistant Producer on *Scottish Mussel*, but in effect she worked full-time for Unstoppable as an assistant to Mr Clarke and Mr Maza. Both Ms Powell and Mr Clarke gave evidence that he agreed to, and did, pay Ms Powell £5,000 for her work as an Assistant Producer on *Scottish Mussel*.
535. Ms Powell mentioned in her oral evidence that, at her request, the £5,000 was paid to her in weekly instalments of £400. Bizarrely, the Claimant's submissions seek to attack her credibility on the basis that there is no documentary evidence to support the payment being made in instalments. It is unsurprising that there is no documentary evidence before the Court as it is not an issue in the case. There is no complaint made, nor disagreement, regarding the payment of £5,000 for *Scottish Mussel*. It would be of no conceivable advantage to Ms Powell to lie about the payment being made by instalments, in circumstances where she said Mr Clarke agreed to pay her in the way she requested, and he fulfilled that agreement.
536. Ms Powell did not receive a regular wage or salary during the time she worked for Unstoppable, and she did not have a contract of employment. The Claimant's pleaded case is that Mr Clarke and Mr Maza "*would occasionally pay some of her expenses*". On the evidence, Mr Clarke would do so more often than Mr Maza. Nevertheless, for significant periods Ms Powell was struggling financially, at times unable even to afford the tube fare into work, and selling whatever she could on eBay (including items given to her by Mr Clarke for this purpose) to try to make ends meet.
537. In around November-December 2015, Ms Powell received £15,000 for her work as a co-Producer on *Brotherhood*. In late 2016, she was paid £15,000 for her work as a co-Producer on *10x10*. Such fees would have been normal, albeit low, if she had been working freelance, with freedom to take on other work and projects. In the Amended Reply, the Claimant describes Ms Powell as a "*volunteer*" at Unstoppable, who was "*free to decide her own hours and responsibilities*". However, the latter contention contrasts sharply with the angry messages that Ms Powell received from Mr Clarke when she did not respond to emails while she was on holiday (e.g. "*For me this boils down to YOU LET ME down. ME PERSONALLY... I expect you to work whenever you can, every hour possible, except sleep and the obvious times because that's what I/jay/we do*"); or did not immediately respond on a Saturday (e.g. "*Where the damn streeterville thing I asked for*" and "*Jason said there are LOADS of things you've not done. What's happening?*"); and when in about March 2017 she sought to earn some "*easy money*" by undertaking some work for Laura Petit ("*the more I think about it the more it winds me up*").
538. After Ms Powell left Unstoppable, a dispute arose and was aired in lawyers' correspondence, about her fee for *10x10*. Ms Powell's position in late 2017 and early 2018 was that she was owed a further £3,000 deferral fee. In Simkins' response of 27

Approved Judgment

April 2021 to the first invitation to comment sent by the Guardian ('Simkins' letter'), it was acknowledged that the sum had been due for post-production work on the film, but Unstoppable refused to pay it because she went to Australia and did not undertake the work. Mr Clarke's evidence was that the deferred payment had never been agreed. However, in this regard he addressed in his statement, and was asked in cross-examination about, the fee for *Brotherhood*, rather than *10x10*, so the evidence was at cross-purposes.

539. The legal dispute was settled in 2018 without Ms Powell receiving the £3,000. The merits of the contractual dispute *per se* are not relevant. But Mr Clarke relies on Ms Powell's thwarted claim to be paid £3,000 as showing that she had a financial grudge against him, and therefore a motive to lie. The Claimant submits that Ms Powell "*accepted she had a financial grudge concerning £3,000*", that she "*repeatedly denied that the financial dispute went further*" and in doing so she lied, thus undermining her credibility.
540. First, it is manifestly untrue that Ms Powell accepted in evidence that she had a financial grudge. What she said was that when she left Unstoppable she had "*drawn a line in the sand and thought, that £3,000 is just collateral of getting out of this abusive toxic work relationship*". She only said "*let us talk about the £3,000 that you owe me*" when they sent her a message saying she owed them "*£400 for my Soho House membership from the year before*". Secondly, it is not a fair reflection of her evidence to say that she repeatedly *denied* the financial dispute went further, nor did she lie.
541. The documentary evidence supports Ms Powell's evidence, as it shows that on 14 July 2017, Mr Maza asked Ms Powell to reimburse the sum of £466.69 paid by Unstoppable for her Soho House membership in 2016, despite that being a necessary expense while she was working for Unstoppable because the company used Soho House as their office. It was only subsequent to that demand that, on 9 October 2017, Ms Powell attached a copy of her Producer's Agreement, observing that it provided for her to receive "*£18,000, (£15K upfront, £3K deferrals) and 9% producers net profits, as you know I received my full £15K upfront as agreed and fully expect to receive the £3K in deferrals*". I note that while she there referred to the clause regarding producer's net profits, her request related to the £3,000 deferral fee. Mr Maza objected that the agreement was not countersigned, and claimed no deferral fee was due, but said "*We can discuss percentage profit of course there is some give there*". On 11 April 2018, her solicitors made a without prejudice offer to accept, *inter alia*, a "*5% share of producer's share of net profits*".
542. The exchange with Ms Powell in cross-examination regarding her request for a share of the producers' share of net profits was as follows:

"Q. It was not just the £3,000, was it? You went from 9% to 5% of the profit share, did you not? You wanted that as well as the £3,000?"

A. I really do not remember the percentage. I remember just, I do not remember. I would have drawn a line under that, I would not have cared about the percentage. I was lucky, I was happy just to be keeping my credit, because when I did go back and say, if we are going to play that game, then my credit started to come

Approved Judgment

into question. I was told that I was going to lose my credit on the film entirely. So, with that, I signed it and ----

Q. You wanted a percentage of the profits, did you not, which could have run to tens if not hundreds of thousands of pounds?

A. No, I never asked for any percentage of the profits on any of the films that we did.

Q. Really, Ms Powell? You do not recall asking for a percentage, your lawyers asking for a percentage, Wiggin asking for a percentage?

A. I remember being in the original contract that they had done in, that had been drawn up in that January, but it was not a deciding factor, I really....

Q. Do you recall asking for a percentage?

A. No, I do not remember asking for a percentage.

Q. I suggest you did and you instructed your lawyers to ask for a percentage, Wiggin. You really do not recall?

A No, I really do not remember the percentage amount. I just remember the 3,000.”

543. At no point did Counsel for Mr Clarke show Ms Powell any document in which she had referred to any profit share, or in which her solicitor had made a proposal regarding her percentage share of the producers’ share of the profits. It was manifest that Ms Powell could not remember the percentage amount, and that had not been an issue for her. There is no evidence as to what, if any, profit was made or anticipated on this low budget film, nor what percentage share of the net profits was allocated to the producers; and so there is no evidence that 5% (or 9%) of the producers’ share of the profits would have been of *any* tangible benefit to Ms Powell, still less that it would have been worth the fanciful figures put forward by Counsel – or that she would have had any reason to anticipate that it would be worth anything approaching such sums. The evidence Ms Powell gave, that I have quoted above, regarding her lack of recollection of having asked for a percentage was truthful.
544. Ms Powell’s evidence that she was content with the outcome, and happy to be able to leave *Unstoppable* behind, while retaining her Producer credit for *10x10*, rang true. It was supported by the evidence of her friends, Ms Pugh and Ms Whyte, the latter observing, when it was suggested she had worked to concoct allegations with Ms Powell because of Ms Powell’s financial grudge: “*No. This is absolutely not about money*”.
545. Although Ms Powell was entitled to be reimbursed the expenses that she incurred while working for *Unstoppable*, the evidence shows that the way in which Mr Clarke reimbursed some of her expenses, paid for items for her (such as lunches and travel expenses), and repeatedly reminded her of all he had done for her (including in the

Approved Judgment

conversation he clandestinely recorded), left Ms Powell feeling indebted to him, and powerfully demonstrates the striking imbalance of power between them.

Allegations of malice and conspiracy against Ms Powell

546. On 8 April 2021, Ms Powell wrote an email, from Anonymousme2noelclarke@gmail.com (‘the Anonymous MeToo email account’), which she readily acknowledged was hers, to another anonymous email account that was probably held by Kevin Proctor (although Ms Powell did not know that or know him at the time). Ms Powell wrote:

“I have heard through a friend of a friend that you are collecting stories to build a case.

I was in his inner circle for 4 years, he assaulted me in 2016 and I managed to finally cut him out of my life a year later. I know of 9 others that may contribute if they were made aware and felt they could safely come forward. Obviously this is hard, I would like to keep anonymous and I’d need to check your validity before I felt I could elaborate.”

547. When Ms Whyte heard that journalists were investigating Mr Clarke’s conduct, she wished to be able to tell them that he had taken covert footage of her *Legacy* audition. But that was a matter she could only report with the agreement and assistance of Ms Powell, which she had not yet secured when Ms Whyte first spoke to Ms Osborne on 12 April 2021. Shortly thereafter, Ms Powell agreed to help Ms Whyte. On the evening of 13 April 2021, Ms Powell wrote to Ms Osborne, using the Anonymous MeToo email account, that “*I would like to come forward and chat to you about my experiences working for Noel Clarke and Jason Maza from 2014-2017*”. She wrote that Mr Clarke had sexually assaulted her during a work trip to LA, that it had taken her far, far too long get out of the company and “*him out of my life*”. She said that she had been “*too scared to come forward*”, but “*after hearing how courageous these women and men have been speaking to you, I feel I have a duty now to come forward*”. She referred to her feeling of “*tremendous guilt*” about “*what I was involved in with Unstoppable*”. Ms Powell highlighted that “*Jason is just as bad as Noel, in some ways even worse-particularly when it comes to money*”, although in evidence she said that at times he was her “*ally*”, in relation to Mr Clarke’s sexual behaviour.
548. Later the same evening, Ms Powell sent emails from the Anonymous MeToo email account to some women towards whom she believed Mr Clarke had misbehaved, including Helen Atherton, Philippa Crabb and probably Ieva Sabaliauskaite. Adopting and adapting the wording of the anonymous response that she had received to her email of 8 April, Ms Powell wrote anonymously to Ms Atherton:

“The Guardian is conducting an investigation into the sexual abuse, harassment and bullying conducted by Noel Clarke. We are working with and led by the survivors of NC. The number is VERY high, with more women coming forward each day. Everything is anonymous and treated in the strictest confidence and the survivors have bravely communicated to us their often very traumatic stories. Due to the seriousness and volume of

Approved Judgment

allegations, The Guardian are now investigating the matter in the same way Ronan Farrow did with Weinstein, and BAFTA are now involved too.

We understand receiving an email of an anonymous account is odd. But if there is anything you can contribute about Noel Clarke, or Jason Maza, please contact Lucy Osborne at the Guardian directly: [Ms Osborne's email address]

We really hope we can work together to heal and seek justice for all those affected.

Thank you”

549. Ms Powell's anonymous email to Ms Osborne resulted in phone calls between them the next day, and thereafter, during which Ms Powell gave her account to the journalist.

550. Although there was no pleaded case of malice, this allegation was put to Ms Powell as follows:

“Q. You wanted as much negative press for Noel Clarke to put nails in his coffin. You were driven by malice. You were driven, I suggest, by hate; that is right?

A. As I said, I had really put a line in the sand. I was building my life and myself back up. I was trying really hard to distance myself and just to get my life back, really. When I heard things swirling around, I mean, I think I was one of [the] last to come on board. I saw it as, because I had heard – through friends and through actresses, I had heard that Noel was potentially starting to actually grow up a bit and behave himself, particularly on Bulletproof, so I generally thought, ‘Okay, he is trying to change, he is a changed man’ and then I heard later stories through these women and realised that he was still doing what he was doing, he did not feel any remorse, that everyone was being fooled by it still, and I felt like I wanted to prevent him from hurting any other young women. I do not think he should be around young women in the film industry. I do not think he should be around young women in any industry.”

551. When it was put to her that she was doing everything she could to bring Mr Clarke down, she responded:

“I was not doing everything I could. I was incredibly engrossed in my own grief and trauma at the time and it took a long time for me to pull myself together to be able to do anything around - - to be honest, I found Jahannah's strength and courage in that, and her conviction in wanting to tell her story so powerful and inspirational, that I instantly realised that the moment I had sent these e-mails to these women, there was no me remaining off the record like I had wanted, and that I needed to action, where I put

Approved Judgment

my words and follow up with my name in the forefront to try and rewrite some of the guilt that I had felt so much throughout the years. It was just, really, guilt that I was complicit and seeing the things that Noel was doing and I was essentially his shield. Really, it ate me up for many, many years. So this was my way of saying, ‘No, I am putting action behind my words.’”

552. Ms Powell’s responses were a powerful refutation of the allegation that she acted out of malice or in bad faith. She felt that, as a young woman herself, by her presence on the production team, she had made women feel more comfortable around Mr Clarke, and so unwittingly acted as a shield, enabling him to misbehave towards other women. It is manifest that Ms Powell was mortified by that realisation and felt that it is something she will have to bear forever. As a result of her experiences, she has left the film industry and is studying for a new qualification.
553. In his closing submissions, the Claimant alleges that “*many witnesses on behalf of Mr Clarke have been frightened off*” (naming Jason Maza, Leeshon Alexander, Aaron Reid, Molly Rees, Julia Horcajo, Bobbie Ross and ‘Florence’), as well as two witnesses who gave evidence for him. He seeks to attribute their absence to “*flawed allegations*” made against them by Ms Powell, however, in many instances Ms Powell made no such allegation (e.g. Mr Wade, Ms Ross and ‘Florence’), or her account was of the potential witness being a potential victim of misbehaviour not a perpetrator (e.g. Ms Rees and Ms Horcajo), or it is too slight to account for the witness’s absence (e.g. Aaron Reid). There is no evidence, and it is unlikely, that Mr Maza or Mr Alexander would have been aware of anything Ms Powell said about them to Ms Osborne, and in any event this is a feeble excuse in circumstances where many of the Guardian’s witnesses gave evidence despite facing counter-allegations, and the prospect of being questioned about deeply personal matters raised by Mr Clarke.
554. The speculative attempt in cross-examination to build a conspiracy case by fishing for connections between the alleged conspirators, including Ms Powell who was said to be a “*primary conspirator*”, was based on unfounded assertion (see paras 369, 485-486 and 495 above). The attempt to connect Ms Powell to Mr Proctor (and ‘Imogen’: para 524 above) prior to publication of the first article was shown to be wrong. I accept Ms Powell’s evidence that she joined Studio POW in June 2021. She gave a clear account of where she had, in fact, worked from 2017, against which there is only weak hearsay in the form of an email from Nicola Holt (speaking about matters that would not have been within her knowledge), and an attendance note of a telephone conversation with Perry Travers (the accuracy of which could not be tested). In any event, as I have said, the conspiracy case against Mr Proctor was also baseless (para 525 above).

‘Sexual banter’ as a challenge to Ms Powell’s credibility

555. Although Ms Powell did not raise a general allegation that Mr Clarke engaged in talking about sex or sexual exploits with her, in response to the more limited matters she raised regarding his conversations with her (para 611 below), Mr Clarke pleaded that he and Ms Powell “*often spoke about sexual exploits and [Gina Powell] seemed interested and keen to engage in such topics of conversation*”. His evidence was to the same effect. He said they were friends, this was “*a reciprocated conversation*”, often initiated by her. Mr Clarke referred to emails and messages which show that Ms Powell joined in

Approved Judgment

with, and sometimes initiated, jokes, talk and the sharing of links of a sexual nature, as well as occasionally talking about her own sexual encounters.

556. Mr Wade said that they sometimes had “*inappropriate*”, “*vulgar and explicit*”, “*conversations in our safe space*”. But he agreed that he was unable to say one way or another whether Ms Powell was comfortable with those conversations. Ms Whyte acknowledged that Ms Powell would “*openly and willingly*” discuss her sex life with Mr Clarke, and agreed she did so herself, saying “*Everybody discussed sex with Noel.*”
557. Ms Powell was questioned at some length on this topic and she gave clear and consistent answers throughout her evidence:

“Q. You openly and often engaged in sexual conversation with both Mr. Clarke and Mr. Maza, did you not?”

A. They would often talk about sex at work. It was the thing that I quickly realised that would make, that would keep Noel happy and that if he was in a bad mood, if you switched it to sex chat, or if he wanted to go there, I would let it because it would mean I would not be in trouble or that he would not be -- the focus would not be on me and what I was doing.

Q. You engaged in sexual conversations, did you not, freely?

A. Not freely, but with Noel and Jason because they started the conversations, yes. I never started those conversations.

Q. You would brag about your sexual exploits to Mr. Clarke, would you not?

A. No. I was very sexually inexperienced. I was very introverted, very shy. I had had a horrendous first experience in my early 20s and had not had sex since. I had told this to Noel pretty early on. I remember even in Scottish Mussel talking to him about it because I wanted him to know that I just would never, ever go there. For all the chat that he could have around me, I was never going to go there ...

Q. You engaged openly right at the beginning of your working and friendship relationship with Jason and Noel, throughout the time you worked, and even when you left Unstoppable, you would still brag about your sexual exploits, would you not?

A. No, I would use it as a defence to calm Noel down and to keep him sweet. I felt really uncomfortable. I felt like it was necessary. It was like a defence mechanism to get through the day because it was so much around me.”

558. Although there were times when Ms Powell was relatively at ease in engaging with jokes of a sexual nature, her discomfort when asked prurient questions about her own sex life, or when given details of Mr Clarke’s sexual exploits, is clear. Ms Powell’s

Approved Judgment

explanation of how uncomfortable she felt, and why she nevertheless engaged in the way that she did, was clear and convincing.

559. She was confronted when giving oral evidence with a recording of a conversation she had had with Mr Clarke shortly after she had left Unstoppable, in which she had told Mr Clarke about her recent sexual experiences. The recording – and Mr Clarke’s heavy reliance on it – was telling. It strongly reinforced Ms Powell’s evidence about why she played along with Mr Clarke’s desire to discuss sex, as well as more broadly, her evidence of his aggression, that she was scared of him, and that he would use any generosity he had displayed at the outset of their relationship to reinforce her indebtedness to him. Mr Clarke quickly turned the conversation, in which Ms Powell had been talking about work, by asking “*Why would I be proud of you?*” (knowing he was thereby asking about her sex life), and he demonstrated an inappropriate and prurient interest in her sex life, as he had done previously in messages. Ms Powell’s evidence was that:

“I walked into that meeting very fearful because I had definitely left the company by that point and I felt like I had to keep it sweet, keep it on the best terms as possible. I really did not want to aggravate Noel in any way because I was worried about what he would do.”

560. She volunteered information about her sex life, readily acknowledging that when he asked for details she was “*just happily giving them up*”, because she was seeking “*validation from Noel after years of hearing how weird and frigid and all the things he said that I was*”, and because she was trying to “*placate him*”. She knew that he was “*angry at me for leaving*”, she was “*really scared*”, and a friendly chat about sex would “*get him into a better frame of mind*”. Her evidence in this regard was fortified, not undermined, by the audio recording on which Mr Clarke relied.
561. It is revealing that even when he knew that he was being recorded, and so no doubt sought to rein himself in, Mr Clarke’s behaviour reinforced the evidence of Ms Atherton that his personality can be “*very strong, very dominating and intimidating*”, and of Mr Small that Mr Clarke was sometimes intimidating in meetings, such that he “*just changed the air of the room*”.
562. A specific aspect of Mr Clarke’s allegations against Ms Powell was that she suggested that they attend a strip club while they were in Los Angeles. Ms Powell gave evidence that Mr Clarke had asked her to put a visit to a strip club in the schedule. He suggested the venue, The Body Shop, and sent a link to a free pass. She went there with Mr Clarke and Mr Maza on 19 August 2015. Ms Powell said that Mr Clarke bought her “*a lap dance for him to watch*”, although that was something she did not want or ask for. She said:

“Noel told the stripper what to do; he was very prescriptive. I think he even said something like ‘put your titties in her face’. I didn’t even pretend to have a good time. I remember making eye contact with the stripper and thinking ‘neither of us want to be here right now’.”

Approved Judgment

563. Mr Clarke disputed her account, but Ms Powell's evidence on this was not challenged, and nor was his case as to her conduct in the strip club put to her. Fairness requires that, in those circumstances, Ms Powell's evidence should be accepted as true. But in any event I conclude that she gave truthful evidence.
564. The evidence regarding Ms Powell's engagement with talk of a sexual nature did not undermine her credibility. Her answers strengthened, rather than undermined, the Guardian's case.

Los Angeles: non-consensual sexual touching and exposing himself

565. The most serious allegations raised by Ms Powell concern two incidents when she was on a business trip in Los Angeles from 14 to 29 August 2015, which I shall refer to as 'the car incident' and 'the lift incident'.
566. Mr Clarke, Mr Maza and Sam Washington were also on the trip. Mr Clarke's wife and children were with him for a holiday. Mr Maza left Los Angeles on Tuesday 25 August 2015, three days before Ms Powell left on Friday 28 August 2015.
567. Ms Powell said that on the weekend before Mr Maza left, she had been out for the evening with him, Mr Washington and some other friends. Ms Powell was in a taxi with Mr Maza, returning to their Airbnb accommodation. She said, "*I was drunk and lay down on the back seat of the car. During the journey he [Mr Maza] ran his hand down my thigh and I stopped him in his tracks and sat up. He laughed it off.*" When she was shown the contemporaneous schedule of the trip to Los Angeles, Ms Powell identified that this occurred on "*that Saturday night, the 22nd*".
568. In her witness statement, Ms Powell said that "*the next day*" she was in a car with Mr Clarke, but she corrected that in her oral evidence to "*after Jason left to go home early*" (whether that was two, three or four days later). She said, Mr Clarke was driving, she was in the front passenger seat, and they were on the way to the house where he and his family were staying. Ms Powell said:

"I told Noel that Jason had got a bit leery and touched my thigh in the car that weekend and that I thought he had been a bit drunk. I told Noel I had felt uncomfortable and had dismissed Jason's advances, and expressed that I was proud that I had put this boundary down with Jason.

Noel's reaction to me telling him about the incident with Jason was along the lines of 'that's not fair – how come Jason gets to touch you and I don't'. I remember being a bit shocked and saying that Jason was drunk, and I would not be letting it happen again. But I then laughed it off. Then Noel began talking about how he liked me in my bikini and how he could see through my bathing suit, and could see what the outline of my vagina looked like. I kept looking straight ahead and, for a few moments, didn't realise Noel had pulled his erect penis out while he was driving. I was just so shocked when I looked round and realised. He then looked into my eyes and then looked at his penis and said 'go on'. I moved away from him towards the window and said

Approved Judgment

something like ‘what are you doing? Put it away’. I said to him ‘we’re on the way to your wife and kids’. Noel laughed but it was awkward laughter. I did not feel safe after that and stayed plastered to the side of the car for the rest of the journey.”

569. Ms Powell said she was appalled and could not look at him during the next morning’s meetings. The first meeting after lunch was at Mr Clarke’s manager’s office, and so they went to have lunch across the road from his office. When shown the schedule, Ms Powell identified that this lunch and meeting were on 26 August. Ms Powell said,

“During lunch, Noel said to me ‘you made me feel really uncomfortable yesterday – your reaction made me feel like a dirty old man’. Then he suggested we have a chat about boundaries, which I welcomed because it was an opportunity for me to firmly set boundaries with him. I told him that for all the talking about sex that I would hear at work, the line was not to show himself to me and not to touch me. He asked me if I was sure about the touching, if that was the line I wanted to keep. I confirmed that I did not want to be touched at all. Noel said he was glad we’d talked about it.”

570. Ms Powell said that they then headed to the meeting. She was relieved and Mr Clarke seemed happy. They took the elevator to the meeting room floor. She said,

“Noel said something like ‘I’m so happy we’ve had that discussion – lets hug it out’. Before I had registered what was happening, he stepped towards me, and I remember recoiling a lot. I’d probably hugged him once before that. I’m not big on being touched but he would hug other people a lot.

Noel hugged me but then grabbed me in the genitals, through my dress and underwear. He said, ‘I knew you would have a Volkswagen vagina’ or something like that. I don’t know what he meant by that it is not an expression I had heard before, or have heard since. I remember being so shocked and pushing him away and saying ‘what are you doing?’ and then he said that he had finally got what he deserved. It was a sort of sneaky tone ...”

571. Ms Powell said she was in shock as the elevator doors opened and they arrived at reception. Mr Clarke said to her, in a “*stone cold*” tone, “*you don’t deserve to come into the meeting, you can wait outside*”. In cross-examination, Ms Powell maintained that her account was absolutely true, explaining how “*heartbroken*” and “*violated*” she felt, “*like a part of me had died inside that day*”, and it was something she has had to “*bear with and carry with [her] every day*”.

572. Ms Powell said that in October 2015, she spoke to Mr Maza about the incident. Despite his own conduct in Los Angeles, she had had numerous conversations with him in which he had expressed concern about Mr Clarke’s behaviour around women, so she thought he might be able to assist. However, he responded to the effect “*well what are we going to do about it?*”, “*Noel pays my bills too*”. She told Lara Doree, the production manager on *Brotherhood*, at around the same time. Ms Doree has not given evidence,

Approved Judgment

but I infer that she is CJS2 who told Ms Osborne on 17 April 2021 that she remembered Ms Powell telling her “*several years ago*” that “*he pulled out his penis in the car*”.

573. After leaving Unstoppable, when she met her former housemates in the pub (paras 445-459 above), Ms Powell said that she also “*told the group what Noel had done to me in LA*”. Laura Pugh recalled Ms Powell had mentioned “*her own experiences with Noel*” in the pub that day, and that he had been sexually inappropriate in a car and in an elevator when she was in America with him. Ms Whyte, too, said that “*Gina went on to tell us about her business trip in Los Angeles with Noel, during which, she said, Noel had pulled his penis out while she was sat next to him in the car and asked her to touch it. Gina said she had laughed it off and said something like ‘put it away’. Gina told us that the next day, Noel grabbed her vagina while they were in the lift together and said something to the effect of ‘Now we’re even’*”. That was the first time Ms Powell had told her.
574. On 17 April 2021, Ms Seltveit volunteered to Ms Osborne that she remembered “*her talking about this trip to LA where Noel grabbed her*”. She recalled being told “*Noel was like you let Jason flirt with you or something like that*”, it “*came across as if she owes him*”. She recalled being told he “*groped her*”. She said, “*I think they were in a car*”, but could not remember whether he grabbed her while they were in the car, she just knew it was when they were in LA. In cross-examination, Ms Seltveit said Ms Powell told her “*fairly shortly after the LA trip*” and it would have been on a video call.
575. Mr Clarke’s pleaded case, maintained in his witness statement, was that he did not recall Ms Powell informing him of the incident with Mr Maza, and thought it was something he would have remembered, if he had been told. In his oral evidence, he claimed for the first time that Ms Powell had made up “*these allegations against Mr Maza to scare him from appearing*”.
576. Mr Clarke denied every element of Ms Powell’s account of the car incident. He twice denied that he had ever seen Ms Powell in her bikini, citing a reference to a beach trip that he had seen in disclosure in support of his denial. But he then retracted his answer when he was reminded that she had been in the pool at the house in Los Angeles where he was staying. He described the allegation as “*ludicrous*”, saying it “*did not happen*”, pointing out that she makes no earlier allegation akin to this despite the “*multiple opportunities*” there would have been over the previous year and half, including when sharing a bed (for part of the night) during their trip to Glasgow.
577. Mr Clarke said, for the first time in cross-examination, that the alleged incidents across two days were impossible:

“My argument is that actually I was only with her for one day after Mr Maza left and the next day, which is evidenced by my texts in disclosure, she went off to meet a friend for whatever and I went to the outlet with my wife. So this two-day nonsense is impossible because she was only there with me for one day after Mr Maza left.

...what I am telling you is they are an impossibility because when Mr Maza left and I picked her up on that day, we had the

Approved Judgment

lunch and we had the meetings and the next day, she was out with a friend, a man, and I went to the outlet with my family.”

578. Further cross-examination, the following day, regarding the schedule was rather confused as it was put to Mr Clarke that the car incident was on “*Tuesday 26th August 2015*” and the lift incident was on “*Wednesday 27th August 2015*”, whereas the Tuesday of that week fell on 25 August 2015, the 26th was a Wednesday and the 27th was a Thursday. In any event, Mr Clarke maintained that the lunch was on 26th and he and Ms Powell were only together for one day after Mr Maza left.
579. Mr Clarke agreed that they had a meeting scheduled after lunch (while maintaining it was “*the same day*”). In his statement, Mr Clarke said:
- “I recall attending a lunch with Chavo Guerrero, an American professional wrestler and actor, at Soho House, on Sunset Boulevard. ... Chavo was at Soho House when we got there, and we left him there to go to a meeting. I do not recall whether this was at my US manager’s, as [Ms Powell] suggests.”
580. Mr Clarke said the conversation at lunch described by Ms Powell “*did not happen*”. He agreed that after the lunch he and Ms Powell got in the elevator to go up to his manager’s office. But he denied every element of the alleged assault in the elevator. He said he did not even know what the phrase “*Volkswagen vagina*” means.
581. Mr Clarke denied that he told Ms Powell she did not deserve to come into the meeting. He said she attended the meetings she was supposed to attend. The meeting with his manager, Jared Schwartz, was not one she was supposed to be at, she “*had just come with me to wait*”.
582. Jared Schwartz said that he represented Mr Clarke, in his capacity as an actor and writer, not Mr Clarke’s production company Unstoppable. Mr Schwartz saw Ms Powell and Mr Clarke in Los Angeles during the 2015 trip. He did not remember there being “*any signs of there having been an altercation or issue between them*”, although he accepted “*I would not have necessarily known about them*”. He was under the impression that Ms Powell thoroughly enjoyed her role in Unstoppable, and it “*appeared that she had a very good and close relationship with the Claimant*”.
583. Iris Clarke expressed her view vehemently that Ms Powell was lying on the basis that “*you do not act like that when somebody has maybe exposed themselves to you, shouted at you*”. However, she was not present during the incidents, and her view that victims of sexual abuse only act in a certain way conflicts with the long experience of courts that different people react in different ways, as reflected in the warnings given to jurors about the dangers of making assumptions based on how they think they would have acted, or how they think a stereotypical victim of sexual assault would act (Crown Court Compendium Part I, §20.1).
584. I accept Ms Powell’s evidence as to what occurred on the evening of 22 August 2015, in the taxi with Mr Maza (which went unchallenged), and in respect of the car incident and the lift incident. Mr Clarke’s contention that the timetable made it impossible was demonstrably false. Mr Maza was on a flight out of Los Angeles that left at 4.55pm on 25 August 2015. Ms Powell was with Mr Clarke at meetings, alone, on the afternoon

Approved Judgment

of Tuesday 25 August, and for the following two days. The documentary evidence shows that it was not until Friday 28 August (three days after Mr Maza left) that there were no business meetings, and Mr Clarke and Ms Powell went their separate ways for the day. Although it is possible, as the Guardian submits, that the car incident was on 26 August and the lift incident on 27 August (as they were together on those days), it is more probable that the car incident was on the afternoon of 25 August, after Mr Maza left to catch his flight, and the lunch and lift incident were on 26 August. Both Ms Powell and Mr Clarke thought the meeting with Mr Clarke's manager was on 26 August, and that is consistent with the contemporaneous schedule.

585. Mr Clarke's denial of having seen Ms Powell in a bikini (which he then retracted) was one of numerous occasions on which he focused on what he believed he could explain away by reference to what he had seen in the Guardian's disclosure, rather than on giving an honest answer to the question. Ms Powell's evidence that he complained that she made him feel like "*a dirty old man*" has the ring of something he would have said. I note that on 23 March 2010, in an email to Ms Morris, he had said "*I feel like a dirty old man*" when she had told him she had never even been kissed (before he continued to suggest he could be her "*first*"). It is clear that Ms Powell had told Ms Seltveit fairly soon after the incidents occurred, and long before she had left Unstoppable. The fact that Ms Seltveit has, understandably, misremembered some of what she was told by Ms Powell does nothing to undermine Ms Powell's account. What it shows is that it is not a recent invention, and pre-dates any financial dispute.
586. Ms Powell's dignified response to the insensitive way in which her account of sexual assault was challenged, and her palpable sorrow when describing how heartbroken she felt by having been violated by someone who described her as his "*little sister*", only served to fortify her account.
587. I do not accept Mr Clarke's account that anyone was at lunch with him and Ms Powell on 26th August 2015. He probably did have a lunch with Mr Guerrero, at Soho House on Sunset Boulevard, at some point during that trip to Los Angeles, but that is irrelevant: it was not the lunch at a venue opposite Mr Schwartz's office, which occurred immediately before the meeting with him at 2pm on 26 August.
588. On the trip to Glasgow, Ms Powell had felt safe lying down on the same bed as Mr Clarke for a while (clothed), until the hotel room she was sharing with Ms Seltveit became free, in the early hours of the morning, for her to return to it. But that does nothing to undermine her evidence as the incidents in Los Angeles occurred after the trip to Glasgow. Nor is her account rendered implausible by the fact that he had not behaved towards her in such a way before. In the car, he had only recently seen Ms Powell in a bikini for the first time, she had just spoken to him of being touched by Mr Maza, and it is likely that he had less sexual freedom while on holiday with his wife and children than he did in London. He had spoken more than once of a wish to "*fuck*" her (paras 590 and 592 below); and this was not the only occasion on which he exposed, or otherwise sought to demand a woman direct her attention to, his penis (*cf* the sections relating to 'Penelope', 'Sophia', 'Imogen' and 'Maya' and the Lionsgate incident). The following day, Mr Clarke's behaviour was driven by his wish to assert his dominance over Ms Powell, in circumstances where she had displeased him by instinctively displaying her revulsion at his behaviour in the car.

Approved Judgment

589. There undoubtedly were meetings while they were in Los Angeles that were set up for Mr Clarke alone to attend. And there would have been nothing unreasonable in him choosing to have a meeting alone with his manager, Mr Schwartz. But on this occasion Ms Powell was there at his invitation to attend the meeting. The schedule indicates meetings that Mr Clarke was going to attend alone (“*NC only*”), and the meeting with Mr Schwartz was not one of them. Mr Clarke’s evidence that Ms Powell “*had just come with me to wait*” was not credible. Mr Clarke deliberately took Ms Powell with him, sexually assaulted her in the lift, and then told her when they were outside Mr Schwartz’s office that she did not deserve to attend. Mr Clarke chose to assert his dominance and humiliate Ms Powell by making her sit outside the office and wait for him because she had affirmed her boundaries over lunch.

Other inappropriate conduct

590. Ms Powell gave evidence that during a trip to a *Doctor Who* convention in Chicago, in November 2014, while walking through the city with Mr Clarke and Mr Maza, Mr Clarke said to her, “*I can’t believe how quickly you’ve become part of the family, we thought we were going to fuck you and fire you*”. Although Mr Clarke denied doing so, Ms Powell was not challenged on her evidence, which I accept. It is the kind of inappropriate remark Mr Clarke would make to a woman co-worker who was subordinate to him.
591. Garry Moore described himself as an amateur film maker. In January 2014 he had a (third) meeting with Mr Clarke to discuss a script that he had written (called *Brawl*). It was on that occasion that he was shown footage from *Legacy* (para 471 above). Although it was pre-release footage of the film, Mr Moore understandably found Mr Clarke’s actions inappropriate in showing him – someone he barely knew – footage of a naked female actor, saying that he knew a lot of girls who would “*do anything*” to be given work.
592. Mr Moore gave evidence that about two years later, in January 2016, Mr Clarke invited him to visit the *Brotherhood* editing suite for a day. Mr Moore said that he waited outside until Mr Clarke and Ms Powell, who he had previously only interacted with by email, arrived by taxi. In the editing suite he was introduced to the editor, “*Tommy Boulder*”. Mr Moore said:
- “Gina didn’t speak much and sat in a corner. Noel told her to go and get coffee or lunch for everyone, so she left the room not long after I arrived. When she left the room, Noel said to the editor in front of me in a bragging tone that he would be taking Gina away soon ‘*to fuck her*’.”
593. Mr Clarke did not remember Mr Moore ever coming to the edit, and so Mr Moore was cross-examined to the effect that he had never visited the editing suite and had “*made this entire episode up*”. It was suggested that he was angry that *Brawl* had not been made. Mr Moore acknowledged that if the film he sought to make with Mr Clarke had materialised “*that would have been a massive bonus, yes, certainly*”, but he was not too disappointed because he was making his own film at the same time. Mr Clarke said that he attended the studio every day with “*Tommy Boulding*”, the editor, and arrived by tube and walking.

Approved Judgment

594. Although it has not been confirmed by the Guardian, it is evident that Mr Moore/CJS4 contacted Ms Kale and Ms Osborne by email on 2 May 2021, to provide information shortly after the first article had been published. There is no evidence he had been in contact with anyone else prior to sending that email, in which he stated that he was “*not sure if Gina will remember me*”: they had not been in contact since 2016. Mr Moore was a straightforward, honest and independent witness who put himself forward because he found Mr Clarke’s behaviour on two occasions shocking and inappropriate. The contention that he has invented a visit to the *Brotherhood* editing suite is wholly implausible. His slight error in recollecting the editor’s name is indicative that he was remembering who he met rather than inventing a story. The comment Mr Moore recalled Mr Clarke making to a male colleague about Ms Powell is in keeping with his general attitude towards women with whom he worked, and I accept the veracity of Mr Moore’s evidence.
595. Ms Powell gave evidence that Mr Clarke pinched her bottom while they were being photographed, together with Mr Dore, at the *Scottish Mussel* premiere on 28 June 2015. She said she was standing in between them with her hands on their backs. As the photograph was being taken, “*Noel pinched my bum. I remember smiling and looking at the camera but thinking ‘oh my god, that must be an accident surely’ ... but afterwards he said something like ‘haha did you like that? Trying to keep a straight face for the camera?’*” Mr Clarke countered with an allegation that in the photograph Ms Powell “*is groping me*” and that she “*groped [him] multiple times*” during this trip; which Ms Powell denied, saying “*I did not touch Noel in a sexual manner*”.
596. Mr Dore described himself as a childhood friend of Mr Clarke. He gave evidence that at the premiere he saw Ms Powell “*grobe the Claimant, by touching his buttocks, albeit in a friendly manner*”. Although he used the word “*grobe*” – which, when asked if someone had written it in for him, he said “*Not to my knowledge*” – it became apparent during his oral evidence that he was using it without regard to whether any touching by Ms Powell appeared to him to be consensual or even sexual, ultimately describing what he saw as “*a playful tussle between them*”.
597. In this context, two of the Claimant’s witnesses sought to suggest that Ms Powell was attracted to or infatuated with Mr Clarke. Cedric St Clair alleged that Ms Powell bought herself the same designer item as Iris Clarke, a jacket costing in the region of £5-10,000, “*to resemble his wife*”. This was nonsense. What happened was that Ms Powell ordered a coat for Mr Clarke to give his wife. Due to a mix up, a second one was sent. After checking with Mr Maza, Ms Powell sold the second one. Mr St Clair said that he and Mr Clarke are “*close family friends*” and they “*consider each other family*”. He misrepresented his role on the productions about which he gave evidence, and he was not a reliable or credible witness (paras 673 and 687 below). In her oral evidence, Mrs Clarke said that Ms Powell “*Never approached me to say, you know, ‘I am afraid of your husband’. On the contrary, I feel like she was a bit more infatuated with him, but that was just my personal opinion*”. Ms Powell firmly denied having been infatuated with him, saying “*I found his behaviour towards women appalling and disgusting*”.
598. I find that Mr Clarke did pinch Ms Powell’s bottom when they were being photographed, but on that occasion his intent was not sexual. It was intended as a friendly and jocular attempt to provoke a startled expression while she was being photographed. Ms Powell never groped Mr Clarke, nor was she infatuated with him.

Approved Judgment

599. When Ms Osborne directed follow up questions to Ms Powell, during a phone call on 19 April 2021, Ms Powell said that “*after the Helen thing*” (i.e. Ms Atherton raising concerns that unnecessary male support actors had been on set when it should have been closed), when Ms Warren-Markland and Mr Clarke had a sex scene, there was a closed set. Ms Powell said afterwards she checked to see how it all went:
- “And he and Aaron [the DoP] were giggling about how Noel had got really turned on during the scene and how it got really hot and steamy and felt real and he tried to put or did put a finger in. And they were like laughing about it.”
600. In her statement, Ms Powell said that she “*overhead Noel telling Aaron that he had got hard while filming the scene. Noel boasted that he was feeling the edge of Shanika’s underwear with his fingers to see if she would flinch, and because she didn’t flinch he knew he could have taken it further by putting a finger in. He said he knew she wanted that because she was hot down there*”. Ms Powell was questioned about the change from him saying “*he tried to ... or did*” to him saying “*he could have*”. She said she remembered him saying that “*that he felt like he could have, that he almost did, and that it was a touch on the edge*”. She did not believe that she had said “*he did put a finger in*” and agreed that would be untrue. But then explained that she regarded “*feeling that edge of Shanika’s underwear is trying*”.
601. Mr Clarke denied acting inappropriately towards Ms Warren-Markland, or commenting to Mr Reid in the way alleged. Mr Clarke denied the allegation, saying it was “*disgusting*” and that he would never act that way. He said Ms Powell “*could not have heard that because she was not there*”. Mr Reid has given no evidence. Nor is there a hearsay account in Mr Reid’s own words. But Mr Clarke reported that, in a phone call with him, Mr Reid was “*adamant that I did not make those comments or statements about [Ms Warren-Markland] to him*”, and that “*he would not have tolerated these comments being made on set*”. Mr Clarke said that Mr Reid had not given a statement because “*he is terrified*”.
602. In her (hearsay) statement, Ms Warren-Markland said that during the filming of he sex scene in *Brotherhood*, there was a closed set, she felt “*very safe, respected and protected*”, and the “*filming of the scene, notwithstanding its nature, felt very mechanical and professional*”. She did not feel that Mr Clarke was “*taking any sexual gratification from these scenes*”.
603. Although Ms Warren-Markland’s evidence could not be tested, I accept her evidence as to the professional nature of the filming of the sex scene involving her and Mr Clarke in *Brotherhood*. The allegation raised is not that Mr Clarke, in fact, behaved inappropriately on that closed set, it is that he spoke afterwards about it in the way described by Ms Powell. The fact that Ms Powell was not on the closed set does not meet the point, as her evidence concerns a conversation after filming of it had concluded. Although there is some inconsistency in Ms Powell’s recollection of precisely what Mr Clarke said, that is understandable, and it does not undermine the reliability of the essential thrust of her account of the inappropriate remarks he made.
604. I give no weight to Mr Clarke’s report of a conversation with Mr Reid, whose absence is notable. All Ms Powell said about him was that he laughed at Mr Clarke’s remarks (something many of the Guardian’s witnesses have acknowledged doing at times). If

Approved Judgment

he was “*terrified*” of giving evidence, it cannot have been because of Ms Powell’s account of this incident. I did not find Mr Clarke’s denial that he did, or ever would have, made such remarks credible. On the evidence before me, it is clear he would have done so, I accept the account given by Ms Powell in her evidence.

605. Ms Powell gave evidence regarding an incident involving two women who were staff members at Lionsgate, ‘Alice’ and ‘Ella’. Around August 2016, Lionsgate (a North American film and television production and distribution company) were working with Unstoppable to produce a music video for a hip-hop duo to use as promotional material. She said that, at the end of the day, a group consisting of ‘Alice’, ‘Ella’, Mr Clarke, Mr Maza and herself were standing near Angel tube station waiting for taxis to arrive. Ms Powell said:

“Noel always used to try to hit on ‘Alice’. He had repeatedly remarked on the fact her husband was black and said to her that’s what she liked and he could ‘do that’ for her. She would bat these comments away. On this occasion, Noel was telling her that he had a massive penis, ‘like your husband does’ and she was responding with ‘whatever, no you don’t’ so then he pulled his flaccid penis out in front of her. Her reaction was something like ‘put it away’ but I don’t recall her exact words.”

606. She recalled Mr Maza standing in front of Mr Clarke to shield the Lionsgate women, and then commenting after Mr Clarke had got in a taxi that he was a liability.
607. Mr Clarke agreed that the group identified by Ms Powell were waiting outside for taxis. He said Ms Powell, ‘Alice’ and ‘Ella’ were “*discussing the contents of a WhatsApp group called ‘Dick Detectives’ in which the participants circulated photographs of penises either of celebrities or other unknown parties in public*”. He was not on that group chat. Mr Clarke said:

“In the context of this discussion, Alice made a joke about the assumed size of my penis, to which I jokingly responded, making a comparison between her husband’s penis and mine, given Alice’s husband is also black like myself. Everyone laughed, including Alice and [Gina], and Ella dared me to expose my penis, so that this could be photographed and added to the ‘Dick Detectives’ group chat.

To continue with this line of humour, I undid my belt, and pretended that my brown belt strap was my penis. This appeared to entertain everybody. I did not reveal my penis at any point, during this conversation or at any other time. We were in the street, and this would not have been appropriate.”

608. Mr Clarke referred to a conversation with a journalist in which Ella “*says she thinks she saw something*” but asserted “*it was the flap of my belt*”. He relied on the lack of any complaint from ‘Ella’ or ‘Alice’, and supportive messages from ‘Alice’, when he contacted her during the journalist’s investigation, saying:

Approved Judgment

“My experience of you was one of respect, collaboration and humour”

“Hey, managed to get hold of her this morn, it was so long ago, can’t really remember the details but at no point did we ever feel uncomfortable, harassed or bullied, we both enjoyed working with you and Jason. Obviously happy to tell you this direct, but we want to keep it off the record, we can’t speak on behalf of you and Gina”.

609. Ms Powell was cross-examined on the basis that she was “*making this up*” (which she denied), rather than by reference to Mr Clarke’s case regarding the context in which he made the remarks and that he flapped his belt rather than exposing his penis. Nevertheless, in her statement Ms Powell responded to Mr Clarke’s pleaded case that “*he did not show his penis, but rather that he flapped the strap of his belt*”. She said even after Mr Maza stepped in front of Mr Clarke, her view was not blocked as she was standing next to Mr Clarke, and she saw he took his penis out not his belt. She had never heard of the ‘Dick Detectives’ and said that was not mentioned in the conversation.
610. The only people present who have given evidence regarding this incident (‘the Lionsgate incident’) are Mr Clarke and Ms Powell. There is hearsay evidence in the form of a conversation between a source and Ms Kale regarding Mr Clarke “*exposing himself to female colleagues*”, but given its nature and lack of specificity, I give it no weight in the context of the truth defence. Equally, however, the absence of complaints does not weigh against the Guardian. I accept Mr Clarke’s evidence that his comments about the size of his penis were made in the context of a light-hearted conversation in which ‘Alice’, at least, was happily engaging with him. I find that in response to ‘Alice’ saying (as he put it) “*Oh, you are quite braggadocious, I bet yours is little*”, Mr Clarke chose to refute her teasing by exposing his penis to the group. That was obviously inappropriate. But on the evidence before me it appears that the context and way in which he did so was not such that anyone present felt threatened or harassed.
611. Finally, Ms Powell gave evidence that on a number of occasions Mr Clarke told her that he would take photographs of women he slept with so that he had a means of preventing them from speaking to the press or disclosing his sexual exploits to his wife, as well as showing her some of these explicit photographs (para 336 above). These were the limited matters regarding his sexual conversation that she raised, which Mr Clarke countered with the allegations against Ms Powell that I have addressed in paras 555-564 above.
612. The specific occasions Ms Powell mentioned were, first, on the weekend of the Scottish Mussel premiere, “*he boasted to me about seeing 4 prostitutes in 4 days and told me how he took photos of women he slept with so that he had ‘something on them’*”. Secondly, on the same weekend, he “*went home with a girl that night and the next day told me he had hidden her phone (to prevent her from taking pictures) and taken photos of her as ‘back-up’*”. Thirdly, on two occasions Mr Clarke asked Ms Powell to book the Soho Hotel or Charlotte Street Hotel so he could sleep with women (para 352 above). She said that on these occasions he told her that “*he would take photos so he had something on the women, meaning they would not feel able to tell the press about*

Approved Judgment

the encounter, and that his wife wouldn't find out" and he would hide their phones so they could not take photographs of him.

613. Mr Clarke denied taking photographs non-consensually (which was not alleged, save to the extent that I have addressed, and accepted his evidence on this point, in respect of 'Ivy': para 333 above). He also denied sharing or showing them to third-parties, including Ms Powell (as to which see paras 343 and 370 above). Mr Clarke denied taking explicit photographs as "*back up*" or so that he "*had something on them*". He said this was an "*outright lie*". He said,

"As someone who has been blackmailed a few times, for you to suggest that I would blackmail people by saying something like that or that I would have something on people, I would never in my life do that. That is just not who I am..."

614. Mr Clarke said that Ms Powell has changed the allegation from four prostitutes in one day to four in four days. He said it was "*Absolutely ridiculous*", and he did not believe they were even there for four days. In fact, in relation to the weekend of the *Scottish Mussel* premiere, Ms Powell had specified in an email to Ms Osborne, on 19 April 2021, that he had referred to sleeping with "*4 prostitutes in one weekend*". She also made clear that he "*would ask them if he could hide their phones*".
615. Mr Clarke undoubtedly did keep many explicit photographs of women he slept with. It was not alleged that he ever used such a photograph to blackmail anyone, and I accept Mr Clarke's evidence that he never did. But he was concerned to keep these matters from his wife and the press. The combination of those he slept with knowing he had (consensually taken) explicit photographs of them, and that they had no such photographs of him, may have made it less likely they would go to the press. In any event, I accept Ms Powell's evidence that it was a reason he gave her for why he kept such photographs.

(xv) Synne Seltveit (2015)

616. Synne Seltveit lives in Norway, where she is a consultant to the municipality of Oslo. At the relevant time, in 2015, she was an aspiring television producer. She has been a close friend of Gina Powell's since they met at Bond University in Queensland, where they were on the same degree course in 2010-2012 (para 334 above). English is not Ms Seltveit's first language. She speaks it to an excellent standard and so gave her evidence in English, and made clear in her statement that it is given in her own words. But she had understandable difficulty in hearing and comprehending what was said in the recording taken by Mr Clarke of a conversation he had with Ms Powell, in a noisy public place.
617. The Guardian's allegations relating to Ms Seltveit are that Mr Clarke sent her an unsolicited photograph, via Snapchat, of an erect penis on or around 4 June 2015, when they were in Glasgow on 18 July 2015 he smacked her backside, touching which was sexual and non-consensual, and a few days later he sent a picture of his penis and asked for pictures of her "*blonde pussy*".
618. The evidence of Mr Clarke, Ms Seltveit and Ms Powell was in accord that Ms Seltveit and Mr Clarke first met when she visited the UK for a few days in July 2015. On the

Approved Judgment

weekend of 18-19 July 2015, Mr Clarke, Mr Maza, Ms Powell and Ms Seltveit went together by train to Glasgow to watch a UFC bout between Michael Bisping and Thales Leites on the Saturday evening. Ms Seltveit had met Mr Clarke for the first time a day or two before in Soho House. They also agreed that the four of them went out to Mr Bisping’s after-party at a bar following the match. Mr Clarke does not drink alcohol.

619. Ms Seltveit’s Snapchat account shows that Mr Clarke added her as a friend on Snapchat on 12 May 2015. The screenshots state, in respect of his account (“clarkeclassic”): “*Friends with CLARKE since 12 May 2015*”. The Claimant’s closing submissions allege that the screenshot showing that date was “*manipulated*”. Who is alleged to have “*manipulated*” it or how, is unspecified. But I understand the submission to amount to an allegation that the date has been altered and thereby falsified.
620. Ms Seltveit gave clear evidence that “*Noel added me on Snapchat on 12 May 2015*”. There was an exchange during cross-examination, when she was taken to the document:

“Q. We can see a fake date at the bottom of the screen; 12th May 2015. Do you see that?”

A. Yes.

Q. How do we know this is Mr. Clarke because it only says ‘Clarke’? It does not show the telephone number or any contact details?

A. Well that was his Snapchat profile that he sent me this dick pic from.

...

A. I am also very sure it is his because he later sent me snaps from the same account of him and Gina.”

Ms Seltveit’s answer to the initial question indicated no more than that she could see the date that was being pointed out, on the document that was being shown to her. Although Mr Williams used the word “*fake*”, at no point was Ms Seltveit asked if she accepted that the date was “*fake*”, nor was it put that the date was false, or that it had been manipulated or altered in any way, by her or by anyone else.

621. CPR r.32.19 provides:

“(1) A party shall be deemed to admit the authenticity of a document disclosed to him under Part 31 (disclosure and inspection of documents) unless he serves notice that he wishes the document to be proved at trial.

(2) A notice to prove a document must be served –

(a) by the latest date for serving witness statements; or

(b) within 7 days of disclosure of the document,

Approved Judgment

whichever is later.”

In this case, the date by which such a notice was required to be served was 5 December 2024. No notice was served by that date, or at all. Even in his second witness statement, Mr Clarke merely denied adding Ms Seltveit to Snapchat on 12 May 2015.

622. The suggestion that the 12 May 2015 date may be fake was first raised by Mr Clarke in cross-examination when it was put to him that he added Ms Seltveit as a friend on Snapchat before their trip to Glasgow. Mr Clarke said, *“I think I did not, but I can see your evidence. So it is not for me to dispute”*. But then he said *“I think this may also be fake...”*, explaining that as he had not met Ms Seltveit, *“I have no idea why I would possibly add someone I have never met before”*. He suggested that a person could change their screen name to *“Clarke”* or *“clarkeclassic”* before reverting to their own user name. Mr Clarke said, *“So seeing this does not necessarily mean that I followed her. If I did, as set out in your evidence, I acknowledge it”*, before concluding in response to this line of questioning, *“Let us say yes for the avoidance of doubt, let us say yes that I followed her in May 2015. But I did not think I did.”*
623. If the allegation was going to be made that the date on Ms Seltveit’s Snapchat account had been falsified, proper notice should have been given so that the Guardian would have had an opportunity to refute it. However, as there is absolutely no evidence on which to base such a serious allegation, it could not properly have been raised, and ought not to have found any place in the Claimant’s closing submissions.
624. The Guardian disclosed a photograph, provided to them by Ms Seltveit, of a phone being held in a person’s hand. The screen on the phone shows that the signal provider is *“N Telenor”* (a Norwegian signal provider), the time is 19:30, and below the name *“CLARKE”* is a photograph within Snapchat of an erect black penis, across the top of which is written *“Hi”* (‘the penis photograph’ or ‘dick pic’). The metadata shows that the photograph was taken on 4 June 2015 at 19:30:13.
625. Ms Seltveit gave evidence that:

“What I can remember is that Noel sent me a completely unexpected and uninvited photo of a naked erect penis which I presumed was his – a so-called ‘dick pic’. I was shocked that he sent this to me. I knew if I took a screenshot of the picture he would know I had done it, as the app facilitated this, so I instinctively asked the friend I was with – who was just in the next room – to take a photo of the screen with her phone.

I was with my friend and roommate Hilde Sonesen. She also went to Bond University and knows Gina. We were at home in Oslo. I was in the living room and Hilde was in the kitchen. I received the dick pic, called her over and she took a photo of my phone screen with her phone. I later sent a copy of the picture to the Guardian and the metadata says it dates to 4 June 2015 at 19:30. As far as I recall, I did not tell Gina about this at the time.”

She explained further in her oral evidence that if a user of Snapchat takes a screenshot of what they have been sent via that app, the person who sent the message is

Approved Judgment

automatically notified. Ms Seltveit said that if she had taken a screenshot on her phone Mr Clarke would have known and she “*did not want him to think that this was something I wanted*”.

626. The Guardian also disclosed the following contemporaneous documents:

- i) A few days following the weekend in Glasgow, on 23 July 2015, Ms Seltveit sent the following email to Mr Clarke:

“Hi Noel,

Just wanted to thank you again for the weekend. And thank you for the tickets, really appreciate it. Had a great time!

And please think of me if you should need extra help on your projects. I of course would love to work with you and your team one day if possible.

Have a great day!

Regards,

Synne Seltveit / Producer”

- ii) On the same day, 23 July 2015, Mr Clarke sent an email at 15.29, saying:

“Hey Synne.

Great meeting you. Would love to work with you one day.

Glad you enjoyed the day.

NC”

- iii) The same minute, Mr Clarke sent another email which said:

“Also.

Sent you some snapchats. Have a look.

NC”

- iv) On 25 July 2015, Ms Seltveit and Ms Powell exchanged the following messages on Facebook:

Synne Seltveit: “Noel been sending me snaps btw, asking me to send pics of my ‘blond’ pussy’ + sending me a pic of a big black cock (...) That man is crazy! Haha”

Gina Powell: “Ooh enjoy Barcelona! Hahaha! OMG! He mentioned you emailed him and I was like ‘oh really that’s nice’ ha. Did he wrote you back?”

Synne Seltveit: “Yes he did. Second email to say he sent me some snaps and that I should have a look at them. Snaps of you guys walking home and one of them was saying something like

Approved Judgment

nice to meet me and the other asking for a pic of me. And also a pic of you two! So cute!”

Synne Seltveit: “Haha”

Synne Seltveit: “Guess he’ll never stop.”

627. On 17 April 2021, Ms Seltveit sent Ms Osborne the following message:

“Had a closer look at the dates of the pictures here and the timeframe I told you is wrong, or I don’t get it to match up. I got the dickpic in the beginning of June 2015, so I must have gotten that after I meet Noel the first time. Or at least that is the date of the picture taken. I was sure it was after Glasgow in late July but maybe I got more than one dickpic from him... Wouldn’t surprise me. ...”

After expressing herself unsure as to when she first met Mr Clarke, Ms Seltveit continued:

“Would be really weird to send me a dickpic a month earlier if we then hadn’t actually met? Or I don’t know. Sorry. Confusing.”

In cross-examination, Ms Seltveit acknowledged it would be weird to send her such a picture before they had met, but she said, “*he did send me one in June 2015*”, of that she was “*100% sure*”.

628. The Claimant’s closing submissions allege “*the dick pic was a forgery, owing to the various imperfections on the screen, and asymmetric symmetry when looking closely at the borders of the penis picture itself. These flaws would be Impossible for a computerised app and indicate that the photo has been manipulated*” [sic].

629. In his first witness statement, Mr Clarke stated:

“316 ...(d) It is further apparent, upon a clear inspection of the photograph, that this could not have been taken on the Snapchat application, as the photograph is crooked and the borders are not even. This photograph therefore appears to have been manipulated or fabricated.”

“323 Whilst the Defendant has provided a screenshot of the alleged Snapchat, I also believe the photograph provided is likely to have been fabricated, as I could not have sent her this photograph in June 2015.”

The Claimant conceded that paragraph 323 fell to be struck out, and I ruled that paragraph 316(d) should be struck out on the grounds that the Claimant was giving non-expert opinion evidence regarding a technological question: *Clarke v Guardian* [2025] EWHC 994 (KB), [8(i)] and [11(xiv)].

Approved Judgment

630. Despite that concession and ruling, when the penis photograph was put to Mr Clarke in cross-examination, he claimed that it is “*fabricated*”. He said this could be seen clearly with the naked eye. He alleged – for the first time in cross-examination - that it was fabricated by Ms Seltveit and Ms Powell, probably around the time they were speaking to the Guardian (i.e. in April 2021), “*when they were trying to hoodwink the journalists into believing that this was really me*”. At the same time, while maintaining that he could not recall sending a picture of “*a big black cock*” (as stated in Ms Seltveit’s 25 July message), he agreed it was possible that he sent it. He said, “*The possibility is there, as I said from the outset, I never fibbed, I said I do not recall, But I am telling you that if I did so it was not unsolicited whatsoever.*” He said it was “*plainly not unsolicited because of the nature of the conversations we were having all night*” (referencing the night of 18 July 2015). However, he also maintained that it was not a photograph of himself, saying, “*I never sent explicit photographs of myself, ever*”, the implication being that he may have sent a photograph of another man’s penis to Ms Seltveit.

631. The fabrication theory was floated in cross-examination of Ms Seltveit in only the most fleeting and superficial way:

“Q. Mr Clarke’s position is that when you actually analyse it, it is actually a fabricated photograph. It looks like it has been placed on a phone, a photo of a photo with a picture above. Do you know anything about that?”

A. No, it is not fabricated. I was – I can so clearly remember it because it put a reaction in me when I got it. I was in the living room and I instantly called my friend over to take a photo of my phone.”

The allegation that Ms Seltveit fabricated it, and that she did so with Ms Powell in around April 2021, shortly before providing it to the Guardian, was not put to her at all. Nor was the fabrication theory put to Ms Powell.

632. When taken to her Facebook messages, Ms Seltveit said she could not recall “*whether Noel sent me a second dick pic at that time*”. She was challenged on her evidence that he requested a photograph of her “*blonde pussy*” but maintained that he did. She said although she had put “*haha*” she did not find it funny, but she did not want to make a fuss about it.

633. In relation to the question whether such a photograph, if sent, was unsolicited and whether he asked for an explicit picture of her, Mr Clarke said, referring to the trip to Glasgow, “*On that night, [Synne] had shown an interest in seeing my penis, and we had discussed exchanging [explicit]¹⁶ photographs during that night.*” He said, she “*told me that she had blonde hair down there, which is how that ended up coming up. She told me she would like to see a black penis*”. He said she spent the whole evening from the moment they got there talking about her sexual exploits. When it was put to

¹⁶ Mr Clarke confirmed orally that his reference to discussion of exchanging photographs meant explicit photographs.

Approved Judgment

him that he made a request to Ms Seltveit to send him images of her “*blonde pussy*”, Mr Clarke said, “*I am not saying this did not happen... Everything was consensual*”.

634. Ms Seltveit freely acknowledged that she had told Ms Osborne that she is a very flirty person and a very sexual person. But she denied that she flirted with Mr Clarke. In the audio-recorded conversation with Ms Osborne, Ms Seltveit said that at the after party Mr Clarke was “*being a bit flirty and I’m also a very flirty person*”, but she had been told by Ms Powell that he is a “*notorious cheater, hooks up with whoever he wants as that doesn’t count*”, and so she was not “*going to go that way. It’s unprofessional and he’s married*”. When it was put to her that she had a sexual conversation with Mr Clarke she said, “*I did not. But he did with me*”. She was very clear that in relation to the sending of the penis photograph, “*I did not ask for that*”. Ms Seltveit was asked about her own history of sending explicit photographs, but it is not suggested that she ever sent an explicit photograph to Mr Clarke, or that he knew of any relevant history at the time that would have given rise to a justified belief that she was consenting to receive a penis photograph from him; and she was clear that while she would send such photographs to people she had a sexual relation to, she would not send them to “*friends or random people I had met*”.¹⁷
635. Ms Powell’s evidence was that “*Noel was instantly very flirty with Synne. She is a strong, opinionated person, so she would call him out on things, which I could tell he didn’t really like*”. Although Ms Powell could not recall having said that Synne is a flirty person (on an occasion that was not identified in the question), she readily acknowledged that “*at that time I would have described Synne as flirty*”. But she said Ms Seltveit was not flirting with Mr Clarke, saying she “*would just bat it back to him*”, giving an example that “*he made a comment about her body she would just sort of say, like, ‘Don’t talk like that’, or she would just bat it away really quickly*”. “*I remember her sort of firmly saying, like, ‘Do not even go there with me’*”.
636. As regards sexual touching, Ms Seltveit said:
- “After the match was over we went out for the evening to a bar or club and Noel smacked my backside in a very entitled way – like he could just do what he wanted. I had not invited this and didn’t welcome it – I was unhappy about it. I shouldn’t have accepted it but at that time you would try not to make a fuss about things like this, especially with a work contact.”
637. Ms Powell recalled this incident at the after-party with Michael Bisping, which was in a bar in Glasgow. She said, “*We were standing at the bar and I remember Noel smacking Synne’s bum. She turned around and was so shocked. When Synne left at the end of the weekend I apologised to her for Noel’s behaviour*”.
638. Mr Clarke said, “*I did not slap [Synne’s] buttocks at all, let alone in any sexual manner*”. He said that Ms Seltveit is a conspirator. She has misrepresented everything

¹⁷ Her evidence was not undermined by the recorded conversation between Mr Clarke and Ms Powell which contains a passage that suggests Ms Seltveit sent explicit images to Ms Powell. Understandably, neither of those witnesses, but particularly Ms Seltveit, could grasp what was said in that part of the recording when it was played to them in court. There is overspeaking in a noisy environment and it is not clear that Ms Powell was in fact assenting to points made by Mr Clarke, nor that images were shared non-consensually. Ms Powell was seeking to placate Mr Clarke, and talking about Ms Seltveit by analogy with a character in a film project.

Approved Judgment

that she said and/or lied about it. He said, “*what Synne has done is back her friend up with untrue allegations. She is connected to her [Ms Powell] very easily. I think that would be her motive. It would be to back her friend up*”.

639. Mr Clarke acknowledged that in May 2021, which would be after at least the first four articles had been published, and at a time when he acknowledged that Simkins were acting for him, he deleted his Snapchat account. He made the implausible claim that Simkins had not advised him to preserve his social media accounts, and there was nothing on it.
640. I conclude that Ms Seltveit and Mr Clarke became friends on Snapchat from 12 May 2015. That is clearly established by the documentary evidence. As I have said, the contention that the date has been altered is baseless. It is true that they had not yet met, but they had a close mutual connection through Ms Powell and Ms Seltveit’s user name was public.
641. Mr Clarke sent the penis photograph to Ms Seltveit on 4 June 2015. That is what the photograph and the metadata shows. In addition to the fact that no proper notice of the fabrication theory was given, nor was it properly and fairly put to the relevant witnesses, it is in any event without foundation. Mr Clarke has invented a false allegation of forgery because he knows there is no basis on which he can contend that the penis photograph sent in June was solicited or consensual. Ms Seltveit’s confusion when she realised that the photograph was sent prior to the Glasgow trip, does not undermine the contemporaneous documentation. It merely demonstrates that Mr Clarke’s behaviour was odd and surprising, as well as unsolicited.
642. Although Ms Seltveit could not recall whether Mr Clarke had sent her a “*second dickpic*”, and those further messages are unavailable, the inference I draw from the contemporaneous documents is that he did so. First, it would be surprising if Ms Seltveit’s message in late July was referring to the penis photograph sent in early June. Ms Powell would have understood her to be referring to recent “*snapshots*” sent since their visit to Glasgow. Secondly, on analysis, Ms Seltveit tells Ms Powell the messages that Mr Clarke has superimposed on the photographs he sent via Snapchat. Some of them were innocent photographs, including one of “*you guys walking home*” and a “*cute*” one of Mr Clarke and Ms Powell. Across one of the innocent photographs Mr Clarke wrote a message “*saying something like nice to meet me*”. But then “*the other*” (i.e. the “*pic of a big black cock*”) was the one on which he had added a message “*asking for a pic of me*” (i.e. “*send pics of my ‘blond pussy’*”). That is a different message to the one sent in June, which had only said “*Hi*”. Thirdly, the explanation for the messages not being before the Court is clear. As both Mr Clarke and Ms Seltveit explained, the nature of Snapchat (at the time) was that messages would disappear within about 10 seconds unless they were actively screenshotted or saved.
643. It is unnecessary to determine whether he sent explicit photographs of himself or someone else.
644. The allegation that Mr Clarke asked Ms Seltveit, a work contact and aspiring producer who he had only recently met, for an explicit photograph of herself is established by the contemporaneous evidence, and Mr Clarke did not dispute making the request.

Approved Judgment

645. I accept the evidence of Ms Seltveit and Ms Powell, that Mr Clarke touched Ms Seltveit sexually in the way they describe, and that she did not consent, and he had no reason to believe that she was consenting. Ms Seltveit did not embellish or exaggerate. She gave a straightforward account of him smacking her bottom while they were at the bar, as if he had an entitlement to do so, which she did not like. Her evidence chimed with the impression I gained from other witnesses that, at the material time, he showed little restraint and displayed physical entitlement over women's bodies. Mr Clarke could have called his business partner, Mr Maza, who was also there, to give evidence in relation to this and many other allegations. The excuse for not doing so was that the Guardian had "*scared him off*". But there is no evidence to support that assertion, or regarding the pre-trial press reporting of this matter (see para 82 above).
646. Ms Seltveit was a candid witness. Her evidence of the circumstances in which she asked a friend to photograph her phone, was compelling. It was supported by her actions in choosing not to give Mr Clarke any reason to think that she welcomed the penis photograph, by avoiding the simpler course of saving the photograph through the app. Her evidence was very substantially supported by the contemporaneous documents. In relation to the way the conversation with Mr Clarke in the bar went, I prefer Ms Seltveit's evidence, which is supported by Ms Powell's evidence. There was a conversation in the bar concerning sexual matters, but Ms Seltveit did not ask for, invite, or give Mr Clarke any sound reason to believe she wanted to receive a penis photograph from him, would welcome a request for an explicit photograph, or consented to being touched sexually. Mr Clarke had already sent the penis photograph in June, and Ms Seltveit had not reciprocated or done anything to indicate she had welcomed the earlier message.
647. The Claimant draws attention to the lack of evidence of Mr Clarke sending explicit photographs to anyone else. However, that goes nowhere in the face of the contemporaneous evidence that he did so in this case in June, and his acceptance that it was possible he did so in July, indicating that it would not have been out of character.

(xvi) Helen Atherton - Brotherhood (2015)

648. Helen Atherton is a Standby Art Director for film and television productions. She was a member of the production team for the film *Brotherhood*, on which she worked as the Standby Art Director. Mr Clarke was the writer, Director and a Producer, and played the lead role of Sam Peel in *Brotherhood*. Her first and only encounters with Mr Clarke occurred while working on *Brotherhood*. The nature of Ms Atherton's role involved working closely with the Director, usually standing next to him on set, looking at the monitor, to spot any visual flaws, such as equipment, shadows or reflections appearing in shot.
649. The allegations against Mr Clarke concern inappropriate remarks, the way in which he proposed sourcing an explicit photograph for use in the film and inappropriate filming. Mr Clarke made a partial admission to making inappropriate remarks, but otherwise denies these allegations.
650. Mr Clarke said that on two occasions, he commented on Ms Atherton's buttocks. On the first occasion, she smiled and did not indicate that he had made her feel uncomfortable. On the second occasion, Ms Atherton told Mr Clarke that she did not appreciate him commenting on her bottom. Although unsure, Mr Clarke said his

Approved Judgment

comments were something along the lines of “*you have got a lot going on there*”, while indicating towards her backside with his head. He said that the two comments he made to Ms Atherton were “*inappropriate*” and could be perceived as “*sexual banter*”, but he suggested “... *it was sort of appreciation*”. Mr Clarke said that he apologised immediately, desisted from making any further such comments, and arranged a meeting with Ms Atherton on 30 November 2015 so that he could apologise more formally. Mr Clarke denied that he made such comments to Ms Atherton repeatedly or incessantly. However, he acceded to the more general point that he constantly engaged in sex talk on *Brotherhood*:

“Q. You constantly engaged in sex talk when you were making that film, did you not?”

A. As set out, I do have a dirty mouth and have engaged in that sort of talk, but a lot of people do. It does not make me what they have set out. ...”

651. Ms Atherton said that “*Noel came across instantly as very driven by sexual banter: it was constant*”. The cross-examination of Ms Atherton proceeded on the basis that assertion was true. Ms Atherton said:

“Very soon after we began working together on set, Noel made it clear he liked looking at my bum. He sang a lyric from the well known song, ‘Bootylicious’ a lot to me: ‘Cause my body too bootylicious for ya, babe’ and he would do a sassy kind of ‘mmhmm’ noise and look at my bum. A couple of times he said directly ‘you’ve got a nice arse’. There were looks or comments like this most days until it finally stopped.”

652. Ms Atherton recognised that Mr Clarke regarded his comments as jokey, and she did not think there was any “*sinister intent behind them*”. She would “*try to laugh*” but it became “*tiresome*”. Ms Atherton said, that these “*looks, comments and gestures were relentless*” during the first two weeks or so of the job. She said,

“when I went to talk to him about something serious he would give a withering facial expression as if to say ‘oh go on then’ but at the same time would move his finger in a circle to say ‘turn around’ i.e. so that he could see my backside.”

Mr Clarke denied ever making such a gesture.

653. Ms Atherton described Mr Clarke approaching her for a hug with “*suggestive smiles and nod towards my backside*”, heavily implying that a hug would be a “*chance for him to have a sneaky feel*”. Ms Atherton refused to hug him but initially treated it light-heartedly, laughing along with him. Mr Clarke denied that he ever tried to hug her but said, “*had I done so she clearly says that she knew that ... on set was a huggy environment*”.
654. Ms Atherton said she complained to her Head of Department about Mr Clarke’s behaviour towards her, although that did not result in it being brought to Mr Clarke’s attention. She described taking that step as a “*big deal*” as he was the Director, and she

Approved Judgment

would not have complained if it had only been a couple of incidents. She said on other occasions, other people had gauged very quickly that she did not welcome such comments, and desisted without the need for any confrontation.

655. Ms Atherton was asked in cross-examination why she did not ask Mr Clarke to stop his “*banter*” straightaway, and she explained:

“Noel was the producer, director, writer and lead actor, and his personality is also very strong, very dominating and intimidating, and as a crew member and I was nowhere high up in my department, I am middle of the road when it comes to my position, I have been taught I do my job well by assisting the director whenever possible, having a good relationship with the director, which is very important ... And no, I was not comfortable with the comments he was saying, but I judged it at the time that it was not worth causing a problem, potentially causing a problem, potentially breaking down the relationship that I was trying to build with him, by confronting him about it.”

656. Gina Powell, who was a Producer on *Brotherhood*, said that she remembered, “*Noel commenting on her bum all the time, especially in the first few days on set and she told me it made her uncomfortable*”. To Gina, Mr Clarke described Ms Atherton as “*a challenge*”, a phrase she had heard him use before in relation to women who “*didn’t respond to his advances*”. Mr Clarke denied ever so describing Ms Atherton.

657. In a text message to her partner sent on the evening of 23 November 2015, Ms Atherton referred to the “*crazy pressure*” when the prop phones were not working, saying “*noel ended up throwing one across the room*”. Ms Atherton described him as quick to anger, but did not recall this specific incident. Mr Clarke said *Brotherhood* was a “*low budget movie, if you miss a day, it could cost you hundreds of thousands. ... At times in that pressure environment when it is all on my shoulders there are times I was frustrated*”. But he said “*I never threw any prop phone. ...I have worked 20 years in the business and never thrown a prop at anyone for any reason, ever*”.

658. Ms Atherton gave evidence that, in *Brotherhood*, there was going to be a scene where “*a guy shows someone a photo of a woman he has slept with*”, and Mr Clarke wanted a shot showing the photograph that was on his phone. Ms Atherton’s job involved sourcing props. Ms Atherton said, “*Noel presented a potential solution to achieve that photo*” by showing her “*a range of photos of naked women on his phone, which he told me fans had sent him*”. Ms Atherton said she only saw a few as she stopped looking as soon as she realised what they were. She was shocked because she considered it would be wrong to ever use a photograph of this sort without the person’s consent. She said she spoke to the Art Director, who agreed such photographs should not be used without the women’s permission. Soon afterwards a producer confirmed that they could not use the photographs on Mr Clarke’s phone.

659. In text messages sent to her partner at 16:41 and 20:51, respectively, on Monday 30 November 2015, Ms Atherton wrote:

“Feeling really upset baby! I just had to go through pictures with Noel from his personal collection of naked girls (some very

Approved Judgment

graphic) for a picture that they want to see on a characters phone. These are real girls (not porn) who send him dirty photos. Gross thing is, he keeps them all!!!!!! I asked him what his wife thinks and he said she doesn't know. I don't want to use any of them because they are real people and it's not fair on them! This whole production is so crude and gross and really exploits women and it just comes across as two blokes getting a jolly from writing all this naked girl stuff into the story & it's not needed!! You know I hate that kind of men perverting over girls thing anyway and I'm really struggling with it. I don't like Noel at all!! I don't like to be around men that perve over girls and make crude comments!! It's not a very professional production so it just feels really wrong!!”

“Just had a call from the producer about that photo and she said Noel has agreed that it's not on to use an actual real girl so now trying to think what to do a[s] it's first up tomorrow!!”

660. Mr Clarke acknowledges that he and Ms Atherton discussed “*showing a photograph of a woman's vagina in the film, as this was part of the scene*”. He said that together, they looked at potential options of photographs on an adult, public, pornographic website. He confirmed with her that she was comfortable before they began, and she said it was her job to secure an image. Mr Clarke denied that he showed Ms Atherton any photographs sent to him by fans. It is common ground that, ultimately, no shot of the phone showing an explicit photograph was taken.
661. Ms Atherton gave evidence of her concerns about the filming of two scenes involving nudity. The first scene is one “*where the main antagonist character is on the phone and a naked girl is draped next to him*”. Ms Atherton said that in the film (as in the script), “*that is all that happens; he is on the phone, she is next to him*”. But when the scene was filmed, “*she was facing away from the camera straddling him [the main antagonist] and the camera faced directly towards her anus*”. Ms Atherton said that “*as the Director, Noel was responsible for this filming and directing the scene*”, obtaining footage that could never have been used.
662. Mr Clarke said, and it was not disputed, that there was a closed set for the filming of this scene. He acknowledged that “*in one take*” the woman straddled the actor, and bent over. However, he said that was “*improvisation*”, not directed by him, on the part of the woman, who “*adlibbed*” and lent forward. Mr Clarke said that the camera was “*initially focused on the actor on the phone*” and “*the focus puller stayed on the [male] actor's face so anything she was doing below was not in focus. So it was never designed to look up her bottom*”. He said this footage was not saved. Mr Clarke said, “*I did not film explicit shots of women that could never be used in the film.*” Mr Clarke alleged on this occasion, as on many others, that “*they are just attacking my art*”, and that Ms Atherton “*is not to dictate how a film is directed*”.
663. Ms Atherton said that on another occasion, “*we filmed scenes with supporting actors who were naked and the set had not been cleared of unnecessary onlookers*”. In text messages sent to her partner on 1 December 2015, Ms Atherton wrote:

Approved Judgment

17:36: "...And today they had two really [unnecessary] naked girls, one playing with her boobs and one straddles a bloke and bends over totally naked bum facing camera! It's [porn] basically!! ...

17:40: "...They've got strippers to play the naked girls so u guess they [c]an do what they want. It's just gross!!! ..."

17:45: "All the girls stuff wouldn't be that bad if it was handled professionally when the camera cuts but it's not!! All the bloke SA's are watching the monitor, then asking the girls for photos afterwards!! It's sick!!!!!!!"

17:46: "I just can't shake the feeling that it's turned into a lot of guys on set getting their jollies from having naked girls play with themselves and bend over!!"

17:49: "Not really able to do my job to be honest. Just can't stand it all!!! I just suddenly thought when the girl bent over and you could see up her asshole and pussy, what the hell am I working on!!! This is gross!"

17:50: "It's suppose to be a 15 rating!!!"

17:51: "It jut Nowl [sic] being a dirty perve and it makes me feel so uncomfortable!!!"

664. Ms Whyte gave the following evidence in her statement:

"I remember that Noel kept some of the footage of the B-roll from *Brotherhood*, in particular material showing the strippers that had been hired to appear in that film. He had told me that it was easier to hire strippers rather than hiring actors. Noel showed this footage to me on his laptop. As I recall this was some time after the edit of the film in early 2016. When he showed me, he was expanding the image on the screen to focus in on the detail of an actor's vagina in the shot. That footage should usually go in the editor's bin."

Ms Whyte's evidence remained unshaken when it was suggested to her that this was elaboration or exaggeration. She said, "*that is why it was so disturbing when I found out that he had secretly recorded me, because I have fully witnessed how he talks about women's vaginas, how he zooms in on them, makes comments derogatory or positive*".

665. Mr Clarke acknowledged that "*a few ladies were strippers*" on *Brotherhood*, and he knew that to be the case at the time. He denied that he hired them but said it is "*not uncommon to hire people to play a role in the background that have experience in the role that they are playing*". He said that the set was closed, and he denied showing Ms Whyte footage of the B-roll from *Brotherhood*, stating that there was no such footage.

Approved Judgment

666. It is common ground that there was a meeting at which Mr Clarke apologised to Ms Atherton, but the trigger for that meeting, the date, the attendees, and the content of the discussion are disputed. Mr Clarke said in his first statement that it was important to him that the apology he had made to Ms Atherton should be “*properly documented*”. There is no documentary record of the meeting, but he explained orally that he meant that he wanted to make a formal apology. He asked Ms Powell to attend the meeting as “*a female, third-party witness ... to make sure that the apology was above standards*”. Mr Clarke agreed that he most likely said to her that his comments were just banter, observing that “*workplace banter does happen on film sets*” and that “*people hug and kiss and make comments all day long*”.
667. Mr Clarke denied that the (or a) purpose of the meeting was to raise with Ms Atherton concerns about her “*attitude problem*”, or that she raised any concerns about the filming of nudity. He denied commenting that she was “*stuck up*” or suggesting that if she was unhappy she could leave. He said that, although he had not asked her to do so, Ms Powell “*spoke in my support*”, saying the comments were not meant maliciously or to make Ms Atherton feel ill-at-ease. They were just a reflection of Mr Clarke’s joking manner and intended to be complimentary. Mr Clarke acknowledged that Ms Atherton was upset during the meeting.
668. Ms Atherton gave evidence that:
- “On the day of filming the scene with naked supporting actors, when we broke for lunch, Noel asked for a word with me. We then had a discussion with him in the living room of the house we were using as a film set. [Gina Powell] and Jason Maza were also present but the conversation was with Noel and Jason. The meeting felt hostile and confrontational. Noel told me I had a bad attitude.”
669. During that meeting, Ms Atherton said she
- “took the opportunity to tell Noel that I was uncomfortable with the sexual comments and remarks about my body. He said I should have said something earlier and he apologised. Noel said he thought I’d been enjoying it but he agreed to stop. I can’t remember the exact words he used, but he said something to the effect that it was just banter and he hadn’t appreciated that I was stuck up and not able to take it.”
670. Ms Atherton commented that his apology was not sincere and he construed the problem as hers, not his. She said that after the meeting, he “*stopped the sexual banter, but he continued to disrespect me when I was trying to do my job*”.
671. In text messages to her partner on Wednesday 2 December 2015, Ms Atherton wrote:
- [Time obscured] “I was summoned for different conversations so far today. 1 with producers and then the director.

...

Approved Judgment

[15.35] They asked why I was being so negative and if I don't want to be here then I don't have to. I just said why I was having a bad time! Mainly not being allowed to do my job! Also Noel brought up the whole me being uncomfortable with the sexual banter. He apologised but also said I should've said something to him.

Has he backed off now? Did they listen to your side of things or just brush it off?

15:49: Yeah they sort of did. I told them how hard it is with Noel and they agreed but also said he's under so much pressure and we are so short on time. But basically said if I'm not happy then I should leave. It's just so frustrating to not be able to do my job. I'm only throwing negative comments around because of the way the production is, I just speak my mind and if I don't agree with something I say so!! Anyway had a bit of a cry, kip came in and checked I was ok during it all and just said to them that we come as a team so that was nice..."

672. Ms Powell said, "*The meeting was definitely not set up for Noel to go in and apologise for inappropriate remarks he had made to Helen about her body, but to put out a fire by placating Helen and allaying her concerns about the filming*". She said, "*We went into that meeting with Noel saying this is a waste of time, let us try and keep her happy*". Ms Powell said he did not apologise.
673. Cedric St Clair sought to give evidence regarding Ms Atherton's conduct from the perspective of an Assistant Director. He said, "*I am aware the Claimant commented on [Helen Atherton's] bottom, as [Helen Atherton] was wearing very tight clothing, and many other people were commenting on [Helen Atherton's] body*". He was not aware she was offended and said he would have "*intervened*" if she had been particularly put off. Mr St Clair denied that his remark about her clothing was there to signify that it was ok to comment on her body, although it is hard to fathom what other purpose it was designed to serve. He is not credited with any role on *Brotherhood* and in cross-examination he said that Mr Clarke gave him a "*training*" and "*learning*" opportunity, involving him in promotional aspects, behind the scenes interviews and preparation of electronic press kits. He had "*little contact*" with Ms Atherton and I did not find his evidence of any assistance in relation to her allegations.
674. Ms Atherton was an honest, matter-of-fact witness who sought to assist the Court with a truthful account. There is no substance to the allegation that she is a "*conspirator*" or "*associate conspirator*". The sole foundation for this allegation was the means by which she first became involved in providing an account to the Guardian, and her acquaintance with some others who gave evidence.
675. It is clear that Ms Atherton was sent an anonymous email in the evening of 13 April 2021 from the "*Anonymous MeToo*" email account, informing her that the Guardian was "*conducting an investigation into the sexual abuse, harassment and bullying conducted by Noel Clarke*", and providing her with Lucy Osborne's email address. The Anonymous MeToo email was from Ms Powell, but Ms Atherton only found that out "*after the article when we were put in touch*". The Anonymous MeToo email prompted

Approved Judgment

Ms Atherton to contact Ms Osborne on the morning of 18 April 2021, by email, and Ms Osborne telephoned Ms Atherton the same day. Ms Atherton knows Ms Powell but they were not friends, and had not been in contact since *Brotherhood*, prior to being put in touch after they had each given their accounts to the Guardian.

676. The Claimant's submissions that there are "*secondary connections*" between Ms Atherton and Philippa Crabb, Ieva Sabaliauskaite, Davie Fairbanks and 'Anita' go nowhere. Ms Atherton does not know, and did not even recognise the names of, the first three (albeit they each had roles on *Brotherhood*); and she was not even asked whether she knows 'Anita'. It is plain that Ms Atherton has given a truthful account of her own experience, to the best of her recollection, supported by contemporaneous messages, and she has not colluded with anyone.
677. I have no hesitation in concluding that Mr Clarke subjected Ms Atherton to inappropriate sexual comments and gestures, in the way Ms Atherton described, on many more occasions in the first week of filming than the two that he admitted. It is probable that there were only two occasions when he expressly commented on her backside, but his sexual comments were far more wide-ranging than those express comments. Ms Atherton's articulation of the power dynamic on set (para 655 above) which allowed Mr Clarke to behave in the sexually inappropriate and abusive way I have found rings true.
678. Nevertheless, it is likely that Ms Atherton asked him to stop earlier than their meeting, which I find took place on 2 December 2015 (based on Ms Atherton's text messages that day). Her reference to Mr Clarke bringing up "*the whole me being uncomfortable with the sexual banter*" strongly indicates that this was not the occasion on which, for the first time, she mentioned her discomfort. Nor do the text messages between 30 November and 2 December 2015 indicate that he was still making such comments to her. I also note Ms Powell's evidence in this regard relates to the first few days. I conclude that it is probable Ms Atherton expressed her discomfort after about a week of such inappropriate sexual comments. It is probable that Mr Clarke cursorily said sorry, at that point, while also focusing on what he perceived as her failure to tell him.
679. As regards the sourcing of an explicit photograph to use as a prop, I accept Ms Atherton's account that Mr Clarke showed her explicit photographs of women that he told her had been sent to him by fans. It is plausible that Mr Clarke would have shown her explicit photographs provided to him by fans as he undoubtedly had such photographs, and he was insensible to the requirement not to disclose them without consent. Ms Atherton's account is strongly supported by the contemporaneous evidence. Her contemporaneous text messages show that she firmly understood that the photographs he showed her were not on a pornography website, and it was precisely because they had been sent to him by fans that Ms Atherton raised an objection which resulted in her receiving a phone call from one of the Producers that evening, confirming that none of Mr Clarke's personal cache of explicit photographs would be used.
680. I also accept Ms Atherton's account of the filming of scenes involving nudity on *Brotherhood*. While there were properly closed sets for some such scenes, including the scene filmed on 30 November 2015, the exclusion of supporting male actors was less rigorously enforced when the filming involved strippers rather than professional actors. *Brotherhood* was, and was intended to be, a 15 rated film. I accept that Mr Clarke

Approved Judgment

sought to make a film that was as close to the cusp of being an 18-rated film as he could, while remaining a 15. Nevertheless, I find that he did deliberately direct a naked female actor to lean forward when straddling a male actor in a way that enabled him, positioned immediately behind her, to see her genitals and shoot footage from that angle. He was the Director and I do not accept that pose was the result of improvisation on the part of the actor. He knew that footage was unusable in the film. The pose was similar to that which he had required ‘Mila’ to adopt, and had requested of Ms Morris. Bearing in mind Ms Whyte’s evidence as to the use he subsequently put B-roll footage from *Brotherhood*, I conclude that Mr Clarke filmed that pose for his sexual gratification in the knowledge it could not be used.

681. It appears, from the contemporaneous texts messages, that part of the meeting on 2 December 2015 took place with the Producers (who in this context are Mr Maza and Ms Powell) before Mr Clarke joined. It would have been evident to them that Ms Atherton was unhappy, and she had, on her own account, been expressing criticisms of the way the filming of naked women was being handled. Mr Clarke apologised for the sexual comments he had made, but I accept Ms Atherton’s evidence that the tone was not that of a genuine apology. While Mr Clarke was willing to desist from making sexual allusions and advances, and engaging in sexual talk, with those who unequivocally spurned him, he clearly felt the onus was on such a person to object to his behaviour, and he regarded anyone who was unwilling to acquiesce in his “*sexual banter*” as haughty and hostile.

(xvii) Philippa Crabb – Brotherhood (2015)

682. Philippa Crabb is a Production Manager in television. She graduated in 2013 with a degree in Acting from the Academy of Live and Recorded Arts. She was a runner-driver on *Brotherhood*, a role in which she worked between 25 November and 20 December 2015. She was then about 23 years old. The matters raised by Ms Crabb concern alleged bullying, inappropriate sexual remarks and sexual harassment, all of which are denied by Mr Clarke.
683. The runner-driver role was “*incredibly hard work*”, involving very long hours for six days each week. Ms Crabb took the role because she wanted to get into the film industry. The role was “*bottom rank*”, so she never initiated conversations. She had the task of picking up Mr Clarke (from Kensington) and Ms Powell (from Baron’s Court) each morning to take them to the set (the main base being at the Pall Mall Deposit, with filming locations in North Kensington and dotted around London). Ms Crabb would usually pick up Ms Powell first. Ms Crabb said:

“One day, we were late picking up Noel because Gina had been running late. When he got in the car, he immediately started shouting at me. We sat in silence for the rest of the journey to set. It felt horrible.”

684. Gina Powell said that on that occasion she had overslept, making Ms Crabb late, with the consequence that “*we were 10 minutes late to collect Noel*”. She said:

“He absolutely screamed at us. I remember, unfortunately, it just feeling normal to me. He screamed at everybody on set. I regret not stepping in and saying anything, but he was screaming at

Approved Judgment

both of us and it was virtually impossible to challenge him when he was like that.”

685. Mr Clarke alleges that Ms Crabb was late to pick him up on 30 November, and on 1, 2, 7 and 8 December 2015. He states that on 1 December she was 20-30 minutes late. He reprimanded her but states that he “*did not scream or shout at her*”. He said, “*On one occasion, if I got frustrated, I would be well within my right to get frustrated.*” Mr Clarke has produced text messages from Gina Powell on 2 December 2015, warning him that she and Ms Crabb were going to be about 5 minutes late as the “*traffic is so bad*”, and indicating that he was ultimately picked up about 7-8 minutes late. No contemporaneous evidence is relied on in support of his recollection that Ms Crabb was late on the other four days he has identified.
686. In relation to one of the subsequent episodes of lateness, Mr Clarke stated that Ms Crabb was two hours late arriving to set with Arnold Oceng, an actor with whom she was in a relationship. Ms Crabb said that on that occasion she was driving Mr Oceng and other actors from the base to the set. She was at the base, ready to drive the actors when instructed to do so by the Second Assistant Director. For reasons she was unaware of, she was given the instruction to leave for set at a time which resulted in the actors being about half an hour late. Ms Crabb said the First Assistant Director and Mr Clarke “*ambushed*” her in the street, shouting at her. They did not ask for an explanation, and she was too scared to give one.
687. Cedric St Clair also gave evidence regarding occasions of lateness, and a conversation he claims to have had about it with Ms Crabb. Neither that conversation, nor his claim that Ms Crabb confided in him, was put to Ms Crabb. Mr St Clair was not a credible or reliable witness and I have not given weight to his evidence.
688. Ms Crabb recalled Mr Clarke saying things, in the car, “*which I assumed were meant to be intimidating*”. The example she gave was a conversation about Adam Deacon, who she did not know. She said, “*Noel was saying that if you crossed him, your career would end. Adam Deacon was the example he gave, and Noel said he’d got Deacon cancelled*”. Mr Clarke denied that he would “*brag about cancelling a man who is convicted of harassing me*”.
689. Ms Crabb said the first time she saw Mr Clarke on set, he was “*shouting in [‘Anita’s’] face and using expletives*”. She remembered it because it was an unusual first impression. Mr Clarke denied that he had done so.
690. Ms Crabb said while she was driving him he “*raised several conversations in the car about sex that made me feel uncomfortable*”. This included talking about “*the prostitute who he said lived next door to him*”. Mr Clarke said that Ms Crabb drove him on “*multiple occasions over a five-week period*”. He denied that he started inappropriate conversations about sex, but said that over that time, “*if that came up in conversation, I cannot say it did not*”. He initially denied talking to Ms Crabb about a prostitute (“*absolute nonsense*”) but said he may have mentioned his neighbour who was an “*escort*”. Mr Clarke said that Philippa Crabb “*was very happy to talk about things whereas someone like Helen Atherton made it very clear if she was not*”.

Approved Judgment

691. Ms Crabb said that towards the end of filming, when it was pointed out that a one-line “*nurse role*” had not been cast, Mr Clarke suggested her for the part, as she was a trained actor. She was excited to be given the role. Ms Crabb said:

“The next morning, when I picked up Noel, we were driving along and we pulled up and he said something like ‘so I’ve got you this nurse role – what are you going to do for me?’ It wasn’t in a jokey tone; he said it very seriously. I realised he seriously meant he expected a sexual favour in return. I had no idea what to say. I said something like ‘I’m going to act really well in the role’. He responded with something like ‘well of course you’ll do that, but what are you going to do for me?’”

692. Ms Crabb said that Ms Powell was in the car at the time, but the latter does not give evidence about it. Mr Clarke denied this allegation. He relied on the fact that she did the role, and he has not received any favours for it, to show that he was not “*holding her ransom for a sexual favour for the role*”.

693. Ms Crabb described an incident that she said occurred at the *Brotherhood* wrap party, held at a small underground bar in West London:

“Towards the end of the wrap party, I was in the women’s toilets. There was one other person there. Noel then came into the women’s toilets, the other girl left and a costume assistant from the production came in. She was very young, I would say about 18 years old. I went into a cubicle and, as I went to close the door, Noel opened it and came into it after me. I was at the back of what was quite a very small cubicle and he leaned against the door, facing me and blocking the way out. He pulled a condom out of his pocket and said something to the effect of ‘how about it then’. I said something about his wife and 3 kids, as I had seen them before on set. I can’t remember his response in precise words but it was something along the lines of ‘I don’t care’. His attitude in that moment changed. He went from friendly to defensive. I just felt huge pressure from him.

I can’t remember how I got out of the cubicle. He must have moved to the side or something and I pushed past and somehow got away. He didn’t force himself on me and there was no physical contact as far as I can recall. As I left, he followed me out of the cubicle and went into the cubicle with the costume assistant.”

694. Ms Crabb said that she had told Sirin Kale about this incident before the first article was published, but when it was suggested that her name be used in the article she asked for that allegation not to be published.

695. Mr Clarke said this allegation was untrue: “*I would never do that. I am not someone who would do that.*” He said, “*I was not interested in Philippa Crabb and she clearly was not interested in me because, as I have said, she had already shown her inappropriate conduct with other members of the cast*”. That was a reference to her

Approved Judgment

relationship with Mr Oceng, although no reason was given for labelling it inappropriate conduct on her part. Mr Clarke alleged that Ms Crabb is a “conspirator”, observing that she was handed to the Guardian by Ms Powell, who had also contacted her using her anonymous email account. Explaining her motivation to lie, Mr Clarke suggested “*she may be annoyed at what she perceives as being spoken to harshly*”.

696. The Claimant submits that Ms Crabb is not a credible witness. First, he relies on the fact that she only mentioned one occasion on which she was late. Secondly, he contends that her evidence is contaminated by speaking to Jing Lusi, who “*went through everything with her*”, as well as by the “*more shadowy*” influence of Ms Powell and Ms Whyte. Thirdly, the Claimant suggests that Ms Crabb’s evidence was influenced by the way in which Ms Kale “*egged her on*”, describing the anticipated publication as “*fucking empowering and cool*”. The Claimant’s closing submissions also seek to rely on a question put to Ms Crabb in cross-examination regarding her podcast, but Counsel’s question is not evidence and there is no support for the submission in the evidence.
697. Sirin Kale rang Ms Crabb on 20 April 2021, having contacted her by email the evening before. For Ms Crabb, the contact came out of the blue and in their first phone call Ms Crabb was wary. She said, “*I would like to know, if possible, who put my name forward, if that’s ok*”. Ms Crabb said, “*I’m basically not in contact with anyone from that job anymore, so I’m wary that they’ve not contacted me first*”. Ms Crabb’s name had been provided to the Guardian journalists by Ms Powell, but Ms Kale was not at liberty to reveal that, at that stage. Ms Crabb gave her account to Ms Kale during their second phone call, the next day. She had not been in contact with any of the other witnesses in the meantime. It was only after Ms Crabb had given her account that Ms Kale then put Ms Crabb in touch with Ms Lusi, with a view to encouraging her to agree to be named in the first article. I reject the contention that Ms Crabb’s account has been influenced by Ms Powell or Ms Whyte. Ms Powell did no more than provide Ms Crabb’s name. Ms Crabb and Ms Whyte do not even know each other.
698. Ms Crabb was a credible witness. She focused on a single incident when she arrived late to pick up Mr Clarke (although the late arrival was not her fault) because she was recounting Mr Clarke’s outburst. My assessment is that Ms Crabb did not refer in her statement to the occasion when she was late bringing actors to set (due to the lateness of the instruction to leave the base) because that incident was not published and it was evident from Simkins’ letter that Mr Clarke would use any reference to that occasion to drag in details regarding her private life. In addition, although Mr Clarke shouted angrily at her (without enquiring as to the reason she was late), she was principally reprimanded on that occasion by the first Assistant Director, shouting incredibly angrily at her in front of the crew.
699. It is probable that the occasion when Ms Powell overslept, resulted in Ms Crabb arriving about 15-20 minutes late to pick up Mr Clarke. It was important for Mr Clarke, as the Director and lead actor to arrive at set on time. Mr Clarke would have been justified in venting some frustration, but Ms Crabb’s recollection of him screaming at her was compelling and supported, to a degree, by Mr Clarke’s ability to pinpoint the occasion (despite his evidence that she was late on numerous occasions) and reliance on it as motivating Ms Crabb to raise allegations against him.

Approved Judgment

700. Mr Clarke was very precise about the dates on which he claimed Ms Crabb was late. Save for one occasion when a text message indicates she arrived 7-8 minutes late, there was no contemporaneous evidence to support these dates. This was the only occasion on which he purported to have such a precise memory for dates, a decade ago. Moreover, despite the importance of arriving on time, it is common ground that there was no other occasion when Mr Clarke reprimanded Ms Crabb for being late picking him up in the morning. That is unlikely to have been the case unless, across the five week period that she drove him, there were only one or two occasions when, as on 2 December 2015, she was 5-10 minutes late.

701. Although Mr Clarke denied shouting and swearing at ‘Anita’ on set, I accept the evidence that he did so, which is entirely consistent with the attitude he exhibited in text messages exchanged with Gina Powell, on 20 April 2016:

“[Noel Clarke:] What was [‘Anita’s’] problem etc?

[Noel Clarke:] ??

[Gina Powell:] Mother being sick, being sick herself, tired and you yelling at her.

[Noel Clarke:] So she blaming me! For shouting at her on day 3 even though she worked 18 days after that! And you said what to her!

[Gina Powell:] Partly yeah. She said she then was ill but also too embarrassed to come back and come to the wrap party. I just said that everyone was under pressure, I cried at something you said to me that when I look back at now I only cried because I was exhausted. Other than that I just listened. We very briefly talked about it.

[Noel Clarke:] Well she’s fucking done! I hope she knows that. If you can’t be shouted at in a high pressure environment by someone under the most pressure with everyone depending on him then you’ve got no fucking sense. If she can’t see that then she’s absolutely done with me won’t be working on anything I work on and has just made my list of people I have no time for.

[Gina Powell:] You don’t need to worry about working with her again. She’s quit script supervising.

[Noel Clarke:] Quitter. Makes sense.” (Emphasis added)

702. Mr Clarke undoubtedly did engage in talking about sex with Ms Crabb while she was driving him. She raised no objection and so he took it that she was willing to hear such talk.

703. When giving her account to Ms Kale, Ms Crabb did not refer to Mr Clarke using Mr Deacon as an example of why it was important not to cross him. It follows that this was a matter she raised only after speaking to Ms Lusi, who makes a similar allegation.

Approved Judgment

While it is likely that Ms Lusi’s account jogged Ms Crabb’s memory, there is a risk that hearing Ms Lusi’s account has inadvertently influenced her recollection of what Mr Clarke said about Mr Deacon to her. So I have not relied on that aspect of her evidence (and see further para 849 below).

704. Having heard Ms Crabb give evidence, and heard the wariness with which she responded to the Ms Kale’s initial inquiry, I conclude that it is not plausible that being aggrieved about the harsh way in which Mr Clarke spoke to her when she arrived late has motivated Ms Crabb to invent allegations of sexual harassment. Ms Crabb had no motive to lie about those incidents to the Guardian or to the Court. Parts of the recording of the phone call with Ms Kale on 21 April 2021 are redacted, and I accept Ms Crabb’s evidence that she did tell her about the incident in the cubicle. It is probable that part of her account was redacted because, in respect of it, she was a CJS. Ms Crabb’s account is consistent with other evidence I have heard regarding the forceful way in which Mr Clarke felt entitled to proposition young women for sex, and I find she gave an honest account.

(xviii) Ieva Sabaliauskaite – Brotherhood (2015)

705. Ieva Sabaliauskaite was an assistant on the production team for *Brotherhood*. At one point during the wrap party, she was dancing exuberantly and performing gymnastic feats, including doing the splits with one leg up against a wall. This resulted in her knickers showing. Mr Clarke took a photograph of her. The following morning in the production office, Mr Clarke indicated that he had an embarrassing photograph of her. Ms Sabaliauskaite tried to grab his phone to stop him showing it to the people in the office. Mr Clarke’s phone fell to the floor, smashing the screen. Mr Clarke required Ms Sabaliauskaite to get it fixed, but she was reimbursed the cost. Those facts are not in dispute.
706. The disputed facts concern the way in which Mr Clarke took the photograph, whether he deleted it, and whether he showed an inappropriate photograph of Ms Sabaliauskaite to people in the production office, or merely pretended to do so.
707. Ms Powell said that she saw Mr Clarke walking up to Ms Sabaliauskaite “*with his phone in hand, crouching down a bit and going all around her*”. She said that it was normal for people at wrap parties to take selfies, but not to take photographs in the way Mr Clarke did of Ms Sabaliauskaite.
708. Mr Clarke said that he took a photograph of Ms Sabaliauskaite from 10 feet away. He said other people were taking photographs of her, too. He said that she was “*cartwheeling around, and her skirt was around her chin half the time. You could have been on the moon and took a picture and you would have seen her tummy and everything*”. Her knickers were exposed on numerous occasions because of her performance. He said that “*people do silly things*” at wrap parties, and so it is an “*unwritten rule*” akin to “*what happens in Vegas stays in Vegas*”, that “*you do not keep wrap party photos*” of people letting their hair down. For that reason, Mr Clarke said that he deleted the photograph he had taken of her that evening.
709. Ms Powell said that there were a number of people in the production office the following morning. Aside from herself, Ms Sabaliauskaite and Mr Clarke, she recalled Lara Doree, Marshall Leviten, Jason Maza, and Amelia being there. Ms Powell recalled

Approved Judgment

that Mr Clarke was showing off some pictures on his phone, and “giggling” as he did so “*as if he knew that showing it was wrong*”. Ms Sabaliauskaite “*went to see what the fuss was about and reached for his phone. The phone hit the ground and Noel erupted in anger*”. Ms Powell did not see any photograph of Ms Sabaliauskaite.

710. No evidence was given by any witness who did see such a photograph. Ms Sabaliauskaite provided her account to the Guardian but she has not given evidence. Ms Osborne first contacted Ms Sabaliauskaite on 17 April 2021, having been given her name by Ms Powell. Ms Sabaliauskaite responded on 20 April 2021 that she wanted to share her story, and she had a Zoom call with Ms Osborne the following day. After taking Ms Sabaliauskaite’s account, Ms Osborne provided Ms Powell with Ms Sabaliauskaite’s email address, and she provided Ms Sabaliauskaite with Jing Lusi’s phone number, explaining that she was an actor who had worked with Mr Clarke and “*she’s the one providing a support network for those speaking out*”. Ms Sabaliauskaite spoke to Ms Lusi, and subsequently to Ms Powell, before she decided to join them in going on the record.
711. I reject the contention that Ms Powell lied about her contact with Ms Sabaliauskaite prior to publication of the first article. She was asked about her “*last contact*” with her and said that was “*immediately after the article came out*”. Then she was asked about contact in the “*months or the year*” before the article, to which she said she had no direct contact but let her know via the Anonymous MeToo email account that “*Lucy and Sirin were looking into Noel*”. Ms Powell could not remember whether she had spoken to Ms Sabaliauskaite on a Zoom call, and she was not taken to Ms Sabaliauskaite’s message to Ms Osborne indicating they had spoken.
712. Ms Sabaliauskaite told Ms Osborne that she saw a photograph in which her leg was up and “*the centre of the picture was my knickers*”. She described seeing it for a “*split second*” but also said it was so clear in her mind she could “*draw it*”. She asked rhetorically why she would have reacted so forcefully, as a junior member of staff grabbing the Director’s phone, if he had not been showing a compromising photograph of her: it was the least she could do to protect her dignity. She also said that he told her not to worry as the photograph was in his deleted folders.
713. Ms Osborne spoke to two other CJSs who said they were in the production office, but neither of them saw the photograph. CJS15 said that Mr Clarke was “*embarrassing her and humiliating her*”, and Ms Sabaliauskaite was “*really, really upset*”, but “*As far as I’m aware, I don’t believe he had a photograph. I thought he was messing with her. I guess trying to wind her up, but I didn’t see anything*”.
714. Mr Clarke said that the next day, in the production office: “*In the course of the conversation, in a friendly and jokey way, I pretended to show a photograph of Evelyn’s performance at the wrap party, carrying out the splits*”.
715. I accept Ms Powell’s evidence that Mr Clarke specifically sought to take a photograph of Ms Sabaliauskaite’s groin area by crouching down while she was doing the splits against a wall. I infer from his evidence that he deleted the photograph that he knew the photograph he took was inappropriate. It is probable that Mr Clarke moved the photograph into his deleted items folder that evening. But for him that was a method of keeping stored photographs hidden.

Approved Judgment

716. Nevertheless, on the available evidence, it has not been established that Mr Clarke in fact showed the photograph to anyone, rather than taunting and humiliating a very junior member of staff, by making her believe that was what he was doing. It is possible that Ms Sabaliauskaite reacted instantly and instinctively to what Mr Clarke was saying, with the result that she accidentally knocked the phone out of his hands without seeing what he was showing anyone. Her memory may be based on what she anticipated seeing in that moment, rather than on what she in fact saw. In any event, the account Ms Sabaliauskaite gave to Ms Osborne of seeing the photograph has not been given in evidence or tested, and so I give it only limited weight. Accordingly, I find that Mr Clarke took and retained an inappropriate photograph of a very junior employee, and used it to taunt and humiliate her, but I reject the allegation that he showed it to others.

(xix) Lisa Graham – Bournemouth Film and Comic Con (2016)

717. Lisa Graham met Mr Clarke at the Bournemouth Film and Comic Con event held on the weekend of 12-13 March 2016. She was then 27 years old. Mr Clarke attended this event, at which fans could pay to meet and be photographed with him, and to obtain his signature. Ms Graham was a regular volunteer at such events. On the Saturday, she was assigned to assist Mr Clarke during the event. She sat next to him at an allocated desk for this purpose.
718. The Guardian’s allegations in relation to Ms Graham are that Mr Clarke made inappropriate sexual remarks, suggested to her on at least five occasions that she should have sex with him, and twice touched her sexually on her thigh and in between her legs, without her consent. Ms Graham contacted the Guardian after the first article was published to share her experiences.
719. Ms Graham gave evidence that:

“When women walked past our stand he rated them out of 10 for sexual attractiveness and made derogatory and disrespectful remarks. When a pregnant woman walked past, he said ‘10/10, would bang that, because you can’t put another baby in them’. I think he saw a second pregnant woman that day and commented similarly.”

Ms Graham said that when he made that comment she thought it was “*disgusting*”. She did her best “*not to be rude to him, but also not to encourage that conversation*”. She did not completely shut down the conversation because it was not affecting the attendees, who did not hear his comments, and she felt she could “*just tolerate it until the end of the day*”. She did not rank guests. She denied that his comment about a pregnant woman was “*in relation to the fact that his wife was also pregnant*” (a proposition that was inconsistent with Mr Clarke’s own evidence).

720. In cross-examination, Mr Clarke admitted that he had made “*inappropriate comments*” to Ms Graham about women walking past; that he had “*rated women out of ten*” for their sexual attractiveness; and he made comments about pregnant women. He denied making the specific comment about pregnant women that Ms Graham attributed to him, but agreed “*I definitely talked about pregnant women*”. Later in his evidence Mr Clarke appeared to admit the remarks Ms Graham recalled, saying, “*the allegation of talking about people out of ten and pregnancy is true, and I admit that ... I can openly admit*

Approved Judgment

the talking". In his statement, Mr Clarke claimed the "*banter*" was "*mutual and reciprocal*", and Ms Graham was "*telling stories about sexual encounters*" and ranking the physical appearance of guests and attendees. In cross-examination he could not recall what she said, saying only that she was willingly "*involved in the chats*".

721. In relation to being propositioned by Mr Clarke, Ms Graham said:

"There was a semi-private mezzanine floor in the room with seats – similar to an upper circle in a theatre – and Noel suggested we go upstairs and have sex. He was saying 'come on, let's go, let's go'. I think he said this at least 5 times. I said no and told him that I had a fiancé. He said 'so what?' and told me that I didn't have to tell my fiancé. I was shocked that he would suggest this while we were both at work, especially to do so repeatedly after I had said 'no'."

722. In cross-examination, Ms Graham said that a small part of the mezzanine floor, the lower part, hung over the events hall. She denied that she was lying saying:

"Well, Noel did proposition me several times, and was pointing up towards the mezzanine floor, so I can only assume that he was referring to that section when he repeatedly asked me to have sex with him. ... he repeatedly pointed up to this area and said, 'Come on, let's go, let's go, let's have sex'."

"I have absolutely no motive to embellish or make up any of this. I have nothing to gain from being here. With respect to the court, I do not want to be here today. I am here today because I came forward out of genuine concern for other people and I am here today because I believe that it is the right thing to do."

723. Mr Clarke accepted that his attitude in the past has been that casual sex does not count if you do not tell anyone. But he denied suggesting Ms Graham should have sex with him. He said that the mezzanine floor was "*semi-public*" and described this allegation as "*nonsense*".

724. It was common ground that at such conventions "*there are occasionally attendees whom the guest would prefer not to spend too long with*", and when that is the case "*the guest can signal to their assistant that they want help to have the person moved on*". The signal is "*commonly a tap on the shoulder or knee*". Ms Graham said, "*Noel had to do this once or twice and it was not a problem*". However, she also said:

"On a couple of occasions, while still sitting at the table, Noel reached over and put his hand over my thigh and in-between my legs. He touched the outside of my leg and my inner thigh. This was completely different to the signal we had for any difficulties with guests and seemed flirtatious and sexual. The first time he did it I thought for a moment it could be the signal and he had touched me higher up my leg than intended. I moved my chair to an angle to avoid being touched again.

Approved Judgment

The second time it was quite clear that he was not signalling and it was obviously inappropriate. I then had to move my chair further away from him to create enough distance to avoid it.

Noel did this even while there were some women at the desk. I gave him a look that I thought clearly meant ‘pack it in’.”

725. In cross-examination, Ms Graham said that the first time his hand touched the inside of her thigh. On that occasion, there was someone in front of the table, but they would not have been able to see what he was doing beneath the table. At the time, while moving her chair slightly, she gave him the benefit of the doubt, thinking he “*must have meant to touch my knee and overreached*”. The second time “*his hand landed on the inside of my thigh an inch or two away from my panty line*”. At that point, there was no one sat at the desk. Nobody was stood behind them.
726. Mr Clarke’s evidence was that he did not touch Ms Graham other than to tap her knee on a couple of occasions when there was an overzealous fan, and when he shook her hand on first meeting.
727. Mr Clarke acknowledged that Ms Graham approached the Guardian “*on her own initiative*” and that he did not believe she was “*involved in any way, shape or form*” in the alleged conspiracy. The motives that he attributed to her for lying, which he acknowledged were speculative, were that she wanted to be involved in a “*noble cause*” and/or might be “*peed off by*” him.
728. The Claimant submits the court should find that Ms Graham “*set out to mislead the Court*”, that her evidence “*cannot be trusted in any respect*” and should be deemed “*wholly unreliable*”. This submission is based on (i) her presentation; (ii) her (alleged) admission that she participated in light-hearted, sexualized dialogue with Mr Clarke and did not find the conversation unpleasant; (iii) the implausibility of her claim that Mr Clarke propositioned her for sex in an open area, visible to attendees, or touched her inappropriately in a public setting; (iv) alleged inconsistencies, discrepancies and contradictions in relation to the number of photographs Mr Clarke had taken with fans, the number of times he touched her, and her account of warning others; and (v) what is described as an unambiguous lie about Mr Clarke’s schedule at the convention.
729. I found Ms Graham to be an honest and reliable witness with a clear and consistent recollection of events. She had no motive to lie, and Mr Clarke’s speculation that she was motivated by a wish to be part of a “*noble cause*” is internally contradictory and fanciful: if she was lying, she would know there was nothing “*noble*” about the cause. Ms Graham was not keen to become involved, and was reluctant to be named, but she has done so because she felt that it was the right thing to do.
730. Addressing the Claimant’s submissions:
- i) Ms Graham’s evidence was not rehearsed; she engaged fully with cross-examination and responded candidly, carefully and consistently.
 - ii) The assertion in the Claimant’s closing submissions that she admitted to participating in light-hearted, sexualized dialogue with Mr Clarke is patently untrue: she made no such admission. She firmly denied engaging in “*banter*” or

Approved Judgment

rating of attendees. She was with Mr Clarke for the day and she acknowledged that there were times when the conversation was “*chatty back and forth*” and not unpleasant.

- iii) Even on Mr Clarke’s evidence, the mezzanine area was only *semi*-public. It is clear from the description of it that the upper level of it would not have been visible to those in the event hall. It is also plain that he was someone who was prepared to take risks. The account Ms Graham gave of being propositioned was consistent with Mr Clarke’s general pattern of behaviour: he freely acknowledged during cross-examination that he had been turned down “*a million times*”, and there is no reason to disbelieve Ms Graham that this was one of those times. Nor is it unlikely that Mr Clarke would have touched Ms Graham as she alleged in the event hall. Such touching under the table, which was covered with a tablecloth, would not have been visible to others. The way in which he touched Ms Graham under the table in a public setting was similar to his behaviour when he met Ms Morris. But in Ms Graham’s case there was no pre-existing relationship, she did not consent to being touched, and he had no reason to believe she consented.
- iv) The contention that Ms Graham lied about the number of photographs he had taken with fans is absurd. She gave a clear explanation that when she spoke to the Guardian in 2021 she took the number (51) from the online Showmasters gallery. The lower number in the screenshot of the Photo Shoot Library downloaded when she made her statement three years later (23) is likely to reflect the fact that people have a right to ask for their photographs to be removed. In any event, how many fans wished to be photographed with Mr Clarke that day is an obviously inconsequential detail about which she would have had no reason to lie. When speaking to a journalist she had said, “*He commented on my boobs*”, but she did not give evidence about that. The omission was not put to her and it shows only that she was careful to limit her evidence to those matters she clearly recalled in 2024. Nor does the journalist’s note that he “*Tried to touch her half a dozen times*” (my emphasis) undermine her clear evidence that he touched her sexually twice, or provide any support for the contention that the evidence she gave to the Court was exaggerated.
- v) Ms Graham gave a clear and consistent account of telling one supervisor about Mr Clarke’s conduct on the day it occurred. The supervisor was dismissive. Subsequently, after the Bournemouth event, she told “*several people who worked in the conventions*” (plural)¹⁸ “*to keep an eye out for Noel*”. The fact that Mr Clarke only attended one day of the Bournemouth event in no way suggests that Ms Graham lied about making sure she was nowhere near him on the Sunday. She had merely assumed that he would have attended on both days, and so she had been relieved to find that her role on the second day was not one that would bring her into any further contact with him.

731. Mr Clarke admitted to key parts of Ms Graham’s account regarding the sexual remarks he made about women, including pregnant women, attending the conference. To the extent that he denied her account, I reject his evidence as untrue. Ms Graham was a volunteer with whom Mr Clarke worked for a day in a professional setting. Despite the

¹⁸ The Claimant’s closing submissions are based, in part, on a misquotation of Ms Graham’s statement.

Approved Judgment

work setting and their lack of any prior relationship, he groped her, repeatedly propositioned her for sex despite her clear refusals, and made inappropriate sexual remarks about women attending the event, including two pregnant women.

(xx) ‘Maya’ – ‘Production C’ and ‘Production E’

732. ‘Maya’ is a successful actor. The matters alleged by the Guardian in relation to ‘Maya’ primarily concern ‘Production E’, on which she was an actor, and Mr Clarke was a lead actor, a lead writer and executive producer. However, in her statement ‘Maya’ also addressed an audition she attended, for the same role as ‘Mila’ in ‘Production C’, many years earlier. That was when she first met Mr Clarke.

‘Production C’ audition

733. In her statement, ‘Maya’ said:

“I was at the call back and he was in the room with Shanika Warren-Markland, another actress.

I can’t remember the exact words he used, but Noel basically implied that if I didn’t kiss Shanika then I wouldn’t get the job, so I kissed her. I remember feeling clearly that this was the expectation or I would not be considered for the role. I remember not feeling comfortable in that room. As far as I can recall, Noel and Shanika were the only 2 people in the room when I was asked to interact in that way.”

734. As I explain further below, ‘Maya’ did not attend the trial, and so her evidence was not tested in cross-examination. The only corroboration for her allegation that she was inappropriately pressured to perform a kiss in an audition is that given by ‘Mila’, who gave similar evidence, in cross-examination, regarding her own audition. However, for the reasons I have given in paras 261-262 above, the Guardian did not succeed in establishing that allegation in relation to ‘Mila’, and so that corroboration must be treated as having fallen away.
735. Unlike in ‘Mila’s’ case, it was put to Mr Clarke that he had put inappropriate pressure on ‘Maya’ to kiss Ms Warren-Markland in an audition. Mr Clarke denied the allegation, and maintained that the co-Director Mark Davis and the Casting Director, Urvashi Chand, were in the room.
736. The weight that can be given to ‘Maya’s’ evidence is inevitably lessened by her non-attendance. It has not been possible to explore how secure her memory is of there being only two other people in the audition room, or how Mr Clarke conveyed the implication to which she has referred. In the circumstances, I conclude that the Guardian has not established this element of its case.

‘Production E’

737. The Guardian alleges that during the filming of ‘Production E’, Mr Clarke sexually harassed, touched and kissed her when she did not want him to, and propositioned her for sex.

Approved Judgment

738. The evidence in relation to these allegations was given by ‘Maya’, Judy Counihan, Jonathan Finn, Hollie Ibson, Noel Clarke and Iris Clarke. There is also an audio recording of a phone conversation between ‘Maya’ and Mr Clarke, on about 1 December 2020, as well as documentary evidence.
739. ‘Maya’ explained her reasons for non-attendance in her witness statement:
- “I do not want to give oral evidence at trial. The idea of going back over everything I experienced is very upsetting, and especially the idea that people might not believe me when I know categorically that my evidence is true. Since working with Noel Clarke on [‘Production E’] I have been scared of seeing him and have avoided Soho, where I know he spends a lot of time. During the trial, I will be filming for a very important job and I do not feel able to cope with the emotional upheaval that giving evidence would cause.”
740. As I have said, the fact that ‘Maya’ has not attended trial and been cross-examined on her statement inevitably lessens the weight that can be given to their evidence. However, it would have been open to the Claimant to have made an application for permission to call ‘Maya’ to be cross-examined and for permission to serve a binding witness summons, as the Guardian did in relation to Mr Oceng (CPR 33.4(2) and 34.5(2)). If it were to be made, any such application ought to have been made by 20 December 2024. An application was made to summons ‘Maya’ the day before trial (i.e. more than ten weeks out of time), but withdrawn the next day as, by then, she was out of the jurisdiction and so not amenable to a witness summons (para 51 above). She lives in this jurisdiction and there is nothing to suggest there would have been any difficulty serving a witness summons if an application had been made in time, or in any event earlier than the day before trial.
741. Judy Counihan is a Producer for film and television production. She has worked in the industry for over 25 years, as Producer, Executive Producer and Creative Director. She was brought in as an experienced Executive Producer on ‘Production E’. Jonathan Finn is a freelance film, television and theatre producer. He has worked in the film and television industry for over 30 years. After producing the film *Billy Elliot* (2000), he branched out into theatre production, producing *Billy Elliot – The Musical* in various countries. Mr Finn was a Producer on ‘Production E’, and his role involved looking after the budget, the script and all aspects of the production, which meant he was “*on set every day*”. Hollie Ibson worked as a floor runner for five months on ‘Production E’.

Events prior to filming

742. Ms Counihan said that she found Mr Clarke’s behaviour at the original casting auditions “*strange and inappropriate*”. She said:
- “Noel was ogling [‘Maya’], telling her that she was ‘fit’, that she was ‘it’ and he was putting his arms around her waist and I remember thinking ‘why are you doing that?’. ... After [‘Maya’s’] audition, we discussed her suitability for the role, as we did with all candidates. I expressed some mild critical

Approved Judgment

thoughts – as I would in any such discussion – and Noel responded very strongly that she was the one for the role, citing the same reasons: that she was ‘fit’ and ‘hot’. He was very vociferous about that and pushed for her to be given the role.”

Ms Counihan said she had never heard comments like that in an audition before.

743. ‘Maya’ did not address the audition, in her statement. On the day of the audition, prior to securing the role, in response to a text message from Mr Clarke saying “*Well done today [‘Maya’]. Xx*”, ‘Maya’ sent a ‘smiley face’ emoji and said, “*Thanks for making me feel so at ease in the room. Great working with you xx*”.
744. Mr Clarke denied that he pushed for ‘Maya’ to get the role, or that he did so because he wanted to have sex with her. He was not otherwise asked about the audition. Louise Urwin also auditioned for ‘Production E’. She said the final audition was “*an intimate, flirtatious scene*”, following which there was a chemistry read. Ms Urwin said, that these “*are often uncomfortable*” and she was nervous, but Mr Clarke “*was incredibly helpful, kind and encouraging in preparing this scene and carrying out the audition and chemistry reading. He could not have been more professional, notwithstanding the delicate nature of the audition*”.
745. ‘Maya’ described an evening when, at Mr Clarke’s insistence, she joined him, two executive producers, Allan Niblo and Nick Love, and a few others for dinner. She said that she sat next to Mr Clarke, with no one on the other side of her. She said:

“He said various things to me directly that made me feel uncomfortable: that he was a sex addict and that he would never cheat on his wife, but that ‘if it was offered to me on a plate’ then he wouldn’t turn it down. He said that, for him, it wasn’t cheating if it was a one-night thing.”

746. In his first statement, Mr Clarke said he did not recall attending a dinner with ‘Maya’. In cross-examination, he firmly denied that such a dinner ever happened, or that they had any such conversation. He said he got the train straight back to London with Mr Maza that evening.

The football match

747. ‘Maya’ said that she went to a Premier League football match with him and two other actors on ‘Production E’. She said that the seats were in two pairs. She had wanted to sit with the other female actor, but Mr Clarke asked her to join him in the VIP section and so she did so to avoid offending him. She said that on this occasion,

“Noel compared our relationship to that of 2 other actors in [‘Production E’], who also played lovers in the show... He implied [they] were flirting... and asked me why I didn’t call him [Noel] or why we didn’t spend time together. He said, since we were supposed to be lovers, he wanted the characters’ relationship to appear real”.

Approved Judgment

748. Mr Clarke said, “*I do not think she came to the football match, although I have seen your evidence to suggest otherwise*”. Mr Clarke posted Instagram and Twitter posts with photographs of the players in action on the pitch. His evidence was that he was there with the two other actors ‘Maya’ identified, and he “*tagged the people that were there on Instagram*”. In relation to ‘Maya’, he said, “*I tagged her on Twitter because she was not there*”.

Being propositioned

749. ‘Maya’ said that on one occasion during filming, she and Mr Clarke were walking back to their respective apartments in the evening. She said,

“Noel told me ‘if you ever want to hang out on a day off, I am not going to say who but I hung out with another girl, and she came to my apartment and if I had wanted it, it would have been on a plate’. He then asked me if I wanted to go to his apartment, which made me feel uncomfortable given what he had just said to me. I declined: I didn’t feel safe going to his apartment alone because I expected he would likely have made a move on me.”

750. Mr Clarke denied ever inviting ‘Maya’ to his apartment for sex, or inviting her to his apartment alone, or ever saying to her during filming the words she attributed to him. He said he would not have been walking, as he was always driven. He said that he and ‘Maya’ barely spoke outside the parameters of filming because she “*did not spend much time off set with us*”. He said he never “*tried anything on with her*” at any point.

751. In the recorded phone call, in response to ‘Maya’ saying that Mr Clarke “*was always implying*”, in effect, that he wanted to have sex with her, Mr Clarke said:

“Yeah, understood, appreciated. I apologise for that as well. ... That was not my intention to make you feel that way. It was not my intention to try and bed you ...

... And I did have someone in my apartment and it was on a plate. And it didn’t happen because I wasn’t trying to get in trouble. She had someone. I’m married, d’you know what I’m saying.

... I just didn’t ever think that the words I was saying or the subconscious looks or anything like that ... any of the stuff I said or overtly did say in my mind that was banter. I’m just really sorry. I just really am. I can’t apologise enough. I respect you as an artist. I respect you as a woman, as a person. I respect you as an actor. And I never want you to ever think, and I am sorry you have thought, that I’ve encroached on that respect by being remotely sort of insidious in my intentions or trying to bed you, even if I was telling you stories as a like, I probably like, she’s a mate, I’ll tell you this story, I could have had this person. I’m sorry. I’m really sorry.” (Emphasis added.)

Events during filming

Approved Judgment

752. ‘Maya’ said that,

“Noel arrived on set one morning and came over to me and said ‘give me a hug, give me a hug’. I kept saying no, and he kept coming closer, so I was forced to move away and ended up running around a table to maintain distance from him. This happened in front of other colleagues. He treated it as a game so kept going and grabbed me from behind and kissed me on the neck in a sensual way. I was disgusted but I couldn’t say anything because we were about to start a day of filming and I couldn’t be seen as responsible for causing a bad atmosphere or making filming difficult.”

753. Mr Clarke said this “*never happened*”, “*I would never do this. I have never done this and would not do this.*” He denied ever touching her other than for filming and shooting purposes. Mr Clarke said:

“Very early on it was clear that Maya was not someone who was interested in sort of hanging out with the rest of the cast, so absolutely not did I try to hug her or kiss her. Like Ms Atherton, she was very clear that she was not a sort of person that was into that sort of tomfoolery.”

He said ‘Maya’ was quite clear she wanted to separate herself “*and we were all fine with that*”.

754. The recorded call includes the following:

“[‘Maya’] ...you know my boyfriend was in LA ... and I felt like there was a lot of talk from you trying to, trying to kind of like convince me that my boyfriend was cheating and I felt like there was an energy that you were ultimately trying to, you know, if, you constantly told me that you were up for something else, you know, taking it further, if I was up for that, right. And I felt a little bit pressured by that.

...

[Noel Clarke] I would love you to know that had you remotely said anything to me then I would have done my utmost to make sure that those things weren’t said. ... Like the boyfriend stuff is just teasing but I appreciate that ... us teasing and saying ‘hey man, if he’s not around we’re, I’m open, or whatever’. I guess you have to set those parameters if people aren’t happy with those jokes I think you know, it’s easy for me to say they need to say something but I guess if, you know, I’m not a mind reader, so it’s easy for me to say they need to say something. But obviously not hearing you saying anything, you know, sort of made me, us, think those jokes were ok. And I guess they’re not ok.” (Emphasis added.)

Approved Judgment

In his oral evidence, Mr Clarke described “*teasing her about her boyfriend*” as a misstep.

755. ‘Maya’ said that on another filming date, there was a scene filmed in a narrow corridor. She said:

“In between takes Noel was looking me up and down leering at my body, saying ‘if I wasn’t married...’ and making sexual noises like ‘mmmm’. He was complimenting me on my body. I remember feeling really uncomfortable and I felt I couldn’t say anything because he was the producer.”

756. Mr Clarke denied leering at ‘Maya’ or making such comments. He said, “*I do not make sounds like that for any reason to anybody*”.

757. The recorded conversation included the following:

“[‘Maya] ... there would be bits where you’d be looking me up and down and talking about my body, and things like that, which actually did make me feel uncomfortable. But it’s a really weird thing for a woman because you start, you start saying these things and at first it’s like your instant reaction is to laugh it off, right. ... You might do something, or say something in a sexual way, or whatever. And the first thing is, if it’s on set, you know, you just laugh it off. But then when it becomes more consistent it’s hard to, you’ve already laughed it off a few times. So then it feels weird to say, actually. It’s a hard thing. Not for every woman. I’m talking for myself. It’s a hard thing for a woman to then go, ‘actually do you know what, I shouldn’t have laughed back then because that actually was uncomfortable, and I laughed out of feeling uncomfortable’. But then I did. And so now you kind of have to carry on with it and you don’t even realise it’s happening until it is too late.

...

[Noel Clarke] I’ve just never even remotely thought that I was one of those weird, creepy guys that makes people uncomfortable. It’s just not what I’m about. Like, it’s just not me. I’m generous, I’m helpful, I’m friendly. Like, I’m so so sorry. ... I understand your points, completely. So, I’m not saying it didn’t happen. But I’m not that guy. ... Even like you said the looking up and down. I mean. I’m sorry. I can’t. You know, it must have just been one of those things where, like, you know ... You’re attractive, I’m sorry. I don’t mean to make you feel weird, d’you know what I mean. You’re attractive and maybe I just was looking, like caught myself looking up and down. Like I have eyes. God gave me eyes. And I probably was just doing it automatically without thinking about how it made you feel. Like not in, you know I wasn’t intentionally going ‘mmmm yum yum’, d’you know what I mean, I’m not that guy.

Approved Judgment

But you know what I mean, you're not looking like Shrek. So maybe I just was kind of like subconsciously, and excuse me for saying this, subconsciously appreciating you but it came across in a way that was like salacious and like, d'you know what I mean, 'he wants to do stuff'. And that that just wasn't my intention."

758. Later in the filming schedule, she was in a prop car with Mr Clarke, "*and he took the conversation to threesomes and was asking if I had had any. As much as I could, I batted away these conversations, I kept turning the conversation to his wife and kids... Noel told me he had been in a situation with 3 guys and a girl. He said 'I have had everything'*". 'Maya' said that she would work out in advance responses to get out of these sorts of conversations, and even brought her mother to set "*to prevent Noel from approaching me in this way*".
759. When asked about this conversation, Clarke said, "*I do not remember that, but if I had, it is private and nobody's business and I did not say that to her*". He said, "*I never had this discussion with Maya at all*". He said that "*we knew that she would not engage in such banter*" because "*she did not really laugh at the things that other people laughed at*". Mr Clarke said, "*The moment somebody tells me I should not make a comment, I do not do it and I apologise.*"
760. 'Maya' said that although she often turned down invitations to join Mr Clarke and others for dinner, one evening she joined them. She said, "*Noel and a number of the other male cast members had a go at me because I hadn't listened to their advice on how to go about changing my agent. It was overwhelming and I just burst into tears*". She said, they did not apologise and the next day, "*Noel was ignoring me and purposefully excluding me*". She got into the prop car and asked him what the problem was. She said,
- "He got really annoyed and said I was the one who didn't want to hang out with them at night and I was the one not talking to them. I got upset and got out of the car, walked off set and went and cried in the toilets."
761. Mr Clarke agreed that he had spoken to 'Maya' in the car about her keeping herself distant and not going out with himself and other male cast members at night. He had said something like, "*How come you do not come out with us all?*" He agreed that she got upset and left the car.
762. 'Maya' said that Hollie Ibson checked on her in the toilets. She said, "*I told Hollie that I felt I was being sexually harassed by Noel*". Ms Ibson could not hear their conversation when they were in the car. She said that 'Maya' looked "*very withdrawn*", and suddenly opened her door and ran off the set "*visibly crying*". Ms Ibson followed 'Maya' to the ladies' toilets. She was "*visibly upset*". Ms Ibson said,
- "She confided that Noel was bullying her and undermining her, saying to her that she would 'never make it', and insinuating that he could ruin her career and that she was only in this show because of him. ['Maya'] said she felt she was in a '#metoo' situation with Noel."

Approved Judgment

Ms Ibson recalled that it was the first time she had heard the phrase ‘#metoo’ and she went home and looked it up that night.

Attire for the sex scene

763. Mr Finn gave evidence that Mr Clarke and ‘Maya’ were scheduled to film a sex scene quite late on in production. ‘Maya’ said a few weeks prior to filming the sex scene Noel asked what she would be wearing. ‘Maya’ was aware that the script said that her character would be “*down to her bra*”, and told him she would be wearing a bra and pants. She said, “*Noel kept saying ‘it needs to be real’, that I couldn’t wear a bra and pants and that I should wear something like flesh-coloured nipple covers so that I would appear completely naked*”. She said, he may have made other inappropriate comments but the main things she remembers were “*Noel pushing me to be naked, and also making sexual comments and gestures*”.

764. ‘Maya’ said she discussed with the Director how he envisioned the scene. While he said the scene was about love, not sex, and she could wear her bra and pants, he also said he would check “*what Noel wanted*”. Consequently, ‘Maya’ did not feel her concern had been taken seriously, so she called the producer, Jon Finn. ‘Maya’ said, he was helpful and told her that Mr Clarke should not be pressuring her. ‘Maya’ said that Mr Finn told her he would speak to the Director, and that they would call Mr Clarke and tell him not to call her or talk to her about this issue any further. ‘Maya’ said that immediately after receiving a text message from Mr Finn, saying that he had spoken to Mr Clarke, “*Noel called me. He said he was not trying to pressure me but said something like ‘to make it real we need to be naked’. I said ‘no’ to Noel very firmly but I still felt under pressure to appease him*”.

765. Mr Finn said that:

“probably around a week before the [sex] scene was due to be shot, [‘Maya’] came to see me and said she didn’t feel comfortable because Noel was being so weird around her. She told me that when Noel would pass her in the corridor, he would say things like ‘we’re going to fuck later on, we’ll fuck next week,’ and [‘Maya’] would tell him ‘no, we’re shooting a sex scene’.

[‘Maya’] also told me that Noel had been pressuring her to be nude in the scene.”

He assumed that he was the first person ‘Maya’ had spoken to about this, and thought he would have spoken to Ms Counihan about it. Ms Counihan did not know which of them ‘Maya’ had spoken to first.

766. Mr Finn said he told her she did not have to do the sex scene at all, but she was worried it would damage her if she did not. So he agreed to talk to Mr Clarke about his behaviour. Mr Finn said:

“I spoke to Noel and told him that [‘Maya’] felt he had been saying things to her that were unprofessional (specifically his comments about fucking her). I remember Noel denied that he

Approved Judgment

had said anything of the sort. I said to him ‘why would [‘Maya’] make that up?’. I did not believe his denial because [‘Maya’] had been so anxious when she spoke to me.”

767. Mr Finn said that “*Noel’s reaction did not make me feel like this was a misunderstanding*”. When it was put to him in cross-examination that the conversation with Mr Clarke did not happen, he said, “*I know I had the conversation. I can remember it quite clearly. You know, this whole incident is one of the things I remember most strongly about [‘Production E’] because it was a fairly extreme situation*”.

768. Mr Finn said he told Mr Clarke that ‘Maya’ did not want to be nude for the sex scene. “*Noel said something like ‘well I’m going to take my clothes off’*”. Mr Finn said he told him that was not his decision to make. Mr Finn said:

“Noel got really mad at me for addressing this issue with him. Noel felt that [‘Maya’] had read the script and accepted the part knowing that there was a sex scene. His response was along the lines of, ‘well we’ll just have to sack her, get rid of her’ ... His opinion was that if the sex scene wasn’t filmed the way he wanted then it would mess up the character arc of [‘Maya’s’] character. ... I then told Noel that he couldn’t say a word to [‘Maya’] about us having this conversation, which he was not happy about. I said this because it would not have been an appropriate conversation for him to be having with her, given the circumstances.”

769. Mr Finn said during this conversation Mr Clarke was “*very resistant and belligerent*”, telling him to “*fuck off*” when he warned him that his behaviour was liable to lead to him ending up “*on the front of a national newspaper*”.

770. Ms Counihan recalled being on a train when she received a call from ‘Maya’. She said that ‘Maya’ told her that:

“she felt really uncomfortable about Noel. They had a sex scene, which as I recall was to be filmed the next day, and Noel was suggesting that they do it naked. She said it made her flesh crawl. [‘Maya’] said that she really did not like the way Noel was pressuring her. [‘Maya’] also said that she felt Noel was coming on to her because he was being leery and suggestive. She made it clear to me that Noel’s behaviour made her feel deeply uncomfortable.”

In her oral evidence, Ms Counihan said she thought the call was a few days or perhaps a week before the scene was to be filmed. ‘Maya’ recalled Ms Counihan speaking to her and being outraged that Noel was pressuring her.

771. Ms Counihan said that she believed what ‘Maya’ told her. It was “*very unusual*” for ‘Maya’ to call her. ‘Maya’ was “*very professional*” and Ms Counihan thought she would not have called “*unless her concern was real*”. ‘Maya’ sounded “*distressed about what Noel was doing*”. And Ms Counihan thought it was not hard to understand why it would be difficult for ‘Maya’ to speak up, given that “*Noel’s role and influence*

Approved Judgment

was so powerful that she was in a very difficult position in trying to address his behaviour"; and Ms Counihan's experience of him on 'Production E' was that *"he was routinely shouting, aggressive and bullying"*. Ms Counihan said she had already told Allan Niblo, the lead Executive Producer, about *"Noel's shouting and bullying behaviour"*, and been told *"I would have to put up with it because it is how the industry is"*.

772. Ms Counihan said that she felt strongly that Mr Clarke's behaviour was unacceptable. 'Maya' *"did not resist doing the scene. She resisted what she felt Noel Clarke was suggesting she do"*. She said, *"if an actor is this uneasy around demands of intimacy or nudity then something is very wrong"*. Ms Counihan said that she called Mr Finn and he agreed *"to put a stop to Noel's behaviour, which he did by speaking directly to Noel about ['Maya's'] complaint"*. Ms Counihan said that after speaking to Mr Finn, she reported Mr Clarke's behaviour to Mr Niblo, as it was protocol to do so, and the situation was sufficiently serious that Mr Niblo needed to know and *"pull Noel up on his behaviour"*.
773. In his first statement, Mr Clarke said that, *"Maya was aware that her character was required to film an explicit scene and seemingly appear nude, whilst not in fact being nude"*. He said that she had a no nudity clause and so the *"explicit scene was therefore to be filmed with minimal clothing, to create the illusion of nudity"*. He said as it was contractually agreed, he did not *"attempt to pressure her into being nude, or otherwise going against the contractually agreed clause and scene"*. He said,

"We would use covers, and tailor the filming angles to ensure that all intimate body parts remained covered at all times. I therefore did not pressure her to remove all her clothing, or appear fully nude in the film, as I knew this had not been agreed. All parameters for the explicit scene were agreed with her before the commencement of the film.

Notwithstanding this agreement, Maya changed her mind at the last minute, during the course of filming, and decided she was uncomfortable filming the explicit scene.

The director, and other Producers, requested that I call Maya to understand why she suddenly felt uncomfortable filming the contractually agreed scene and how the issue could be resolved. It was important for the scene that the characters gave the illusion that they were fully nude, whilst not in fact being nude."

Mr Clarke said that his wife was present when he called 'Maya'.

774. Mr Clarke's oral evidence on this topic was rather different. He denied having a conversation with 'Maya' in which she insisted she would be doing the scene in her bra and pants. He said, *"She is entirely allowed to do the scene in her bra and pants. We did not have that discussion. I never pressured her to be nude. I knew from the outset that that was not a possibility."* He said that on that type of production you can have *"partial nudity"* and *"the illusion"* of nudity, but *"you cannot have full nudity"*. Mr Clarke said the scene was shot exactly the way 'Maya' wanted it shot.

Approved Judgment

775. Mr Clarke denied having any conversation with Mr Finn about this matter. He said, “*he never spoke to me about this at any point*”. Mr Clarke said that Mr Finn is not a “*conspirator*” but he accused him of lying in his statement. He said, Mr Finn is “*a good guy*”, and he was “*absolutely baffled*” as to why he had given the evidence he had. Mr Clarke denied that he ever said to ‘Maya’, “*We are going to fuck next week*”, or that Mr Finn ever put that allegation to him. Mr Clarke denied shouting or swearing at Mr Finn, who was “*technically my boss*”.
776. In the recorded phone call with ‘Maya’, in response to her saying that she “*felt pressured to be naked*” for the sex scene, Mr Clarke said there was “*definitely no pressure*”:

“From my side, the Producers just said to me ‘well she wants to wear all these clothes’ and I’m like ‘well, that’s not the scene’. So from my side I was just asking what you were wearing. I didn’t want you to be nude. I think the Director was asking me to ask you because he wanted the illusion of nudity.”

777. In her statement, Iris Clarke referred to being present during a phone call her husband made to ‘Maya’, which he put on loudspeaker. In cross-examination, she said that she was present for two calls. The first conversation was with the producers, who she identified as Alan Beale and Allan Niblo. Mrs Clarke said the producers told Noel to call ‘Maya’ and “*reassure her that there were no changes in the script or the scene, and to reassure her that everything had been prior agreed by agents*”. They asked him to say that there was no change to her agreement, and there was to be no nudity in her filming. Mrs Clarke said that Mr Niblo said something to the effect that “*Noel should deal with her because she felt comfortable with him*”. Mrs Clarke said her husband then phoned ‘Maya’. It was “*a very quick conversation, during which he reassured her, and explained that she had already negotiated these parameters (through her agent) and had agreed to these*”. Mrs Clarke recalled that “*Noel was very upset that she had changed her position so late in the filming process*”. Mr Clarke’s evidence was that Mr Niblo had not, at any point, spoken to him about ‘Maya’s’ concerns.

The filming of the sex scene

778. Mr Finn said that ‘Maya’ was concerned that not doing the sex scene would reflect badly on her, and so she decided to film it. She wore underwear “*as originally scripted*”. Mr Finn would not normally have been in the room for the filming of the sex scene, but he attended because ‘Maya’ “*wanted somebody she trusted to be there*”. He said he stood next to the monitor, about four feet away from Mr Clarke and ‘Maya’, and concentrated throughout on the monitor rather than looking directly at the actors. Mr Finn said he kept asking ‘Maya’ if she was ok, and she kept saying yes, “*though it would have been difficult for her to say otherwise in front of the crew even with me there*”. He agreed that nothing untoward happened while he was watching the monitor.
779. ‘Maya’ said she was given a private room to use as a dressing room and told Mr Clarke would not be allowed in there. Theresa Atkinson was doing her makeup when Mr Clarke came into the room. He asked Ms Atkinson to leave. ‘Maya’ said she gave her a pointed look and Ms Atkinson told Mr Clarke she needed to finish ‘Maya’s’ makeup. ‘Maya’ said: “*Noel said something like ‘I am not trying to pressure you’ but then went on to try to persuade me not to wear underwear in the scene*”.

Approved Judgment

780. Mr Clarke denied going into her private room, and denied having that conversation. Mr Clarke said, “*You cannot possibly tell someone they have to go nude*”.
781. ‘Maya’ said that on one take, which she thought was the first, after the Director called ‘cut’ “*Noel asked me to stay where I was for a minute because he was getting an erection; I said ‘okay’ and did*”. ‘Maya’ said, “*Twice between takes, Noel caressed my feet and calves in a sexual way – like he was trying to turn me on. While doing this, he was making faces, smiling suggestively*”. ‘Maya’ said she told him to stop, and Jessica Fell, the costume designer, intervened twice.
782. Mr Clarke denied all these allegations. He said he only touched her when the scene was being filmed and he did not smile suggestively. He said this was an instance of the “*conspirators*” talking and making similar allegations. Mr Clarke said that because ‘Maya’ was nervous he said something like “*don’t worry, you look great*”. He said Ms Fell did not stop anything.

Conclusions regarding ‘Maya’/‘Production E’

783. The Claimant contends that Mr Finn, Ms Counihan and Ms Ibson were each, in their own way, unreliable witnesses. That is a submission that I unhesitatingly reject. Mr Finn and Ms Counihan are both very successful professionals in the industry. Neither of them had any reason whatever to come forward as a witness in these proceedings and lie to the Court. The challenge to Mr Finn’s credibility was based on the alleged implausibility of his evidence that an actor should not be forced to simulate a sex scene, irrespective of what agreements they may have entered into (para 283 above). His evidence in that regard, and generally, was borne of long experience of working considerably with actors: it was not merely plausible, it was convincing.
784. The general challenge to Ms Counihan’s evidence was based on an alleged “*financial motive*” due to her company having lost the ‘Production E’ contract. This is pure assertion. Ms Counihan made clear, and there is no evidence to contradict her, that she was by then a freelancer and so was not affected financially at all. She had no financial incentive to stay involved, nor any desire to do so, as it was “*an aggressively male atmosphere*” which she had found difficult. Nor is Ms Counihan’s credibility undermined by ‘Maya’s’ message thanking Mr Clarke for making her feel at ease in the audition. Such a response to his message is only to be expected given she was hoping to secure a role in which their chemistry mattered. Nevertheless, I have not found Ms Counihan’s account of how Mr Clarke interacted with ‘Maya’ in the ‘Production E’ audition to be established, in circumstances where it was not put to him.
785. I address Ms Ibson’s evidence more fully in the section below bearing her name. The general challenge to Ms Ibson’s reliability is based on the fact that she said that part of her role involved greeting Mr Clarke each morning, and she would “*make him coffee*”, whereas the Claimant’s submissions assert that he does not drink coffee. Leaving aside the lack of evidence, as opposed to Counsel’s assertion, that at the relevant time he only drank hot lemon and honey, misremembering the hot drink he preferred seven years ago is a poor basis on which to contest Ms Ibson’s credibility and reliability. Ms Ibson readily acknowledged that she had come to court to support ‘Maya’s’ allegations, but she has had “*absolutely zero contact*” with ‘Maya’ since she worked with her. She was a careful, honest and reliable witness, who had no reason to lie.

Approved Judgment

786. The Claimant contends that I should give no weight to ‘Maya’s’ evidence. I do not agree. The reasons for her non-attendance are understandable, and as I have said, it would have been open to the Claimant to seek to secure her attendance. But her non-attendance is an important factor in assessing this aspect of the case, as inevitably less weight can be attached to it than if she had made herself available to be cross-examined. I do not consider that the fate of ‘Maya’s’ character has played any part in motivating her to make these allegations. By all accounts, she is very successful, and has not been disadvantaged by the discontinuation of that role. The contemporaneous evidence indicates that she treated that decision with equanimity.
787. Mr Clarke and ‘Maya’ had little contact following ‘Production E’. The Claimant’s reliance on a smattering of friendly messages over the subsequent years is misplaced. ‘Maya’ engaged with public posts about ‘Production E’ because they helped to promote a production she had worked on. Other messages were indicative of nothing more than she was “*trying to stay on his good side for the sake of [her] career*”. Mr Clarke said she did not need him, but she would not have wanted to create an enemy in the industry. Ms Counihan gave an eminently persuasive answer when asked whether she was surprised by the friendly nature of a message:
- “In my experience of actors – I have had a lot of experience with actors – it is very difficult to alienate your co-workers and powerful people that you think are going to help you with your career. That goes for everyone in the business, I am afraid. That is how it works. It is very difficult to badmouth, to complain, to take things further. Most people, most of the experience of particularly young actresses is they care about their careers and they will pretty much do anything to stay in favour because of their careers, so it does not surprise me.”
788. Mr Clarke’s evidence that he did not push for ‘Maya’ to secure the role was not credible. He clearly did so, and I accept Ms Counihan’s account of the reasons he gave. However, while he was obviously sexually attracted to her, Mr Clarke admired her as an actor and his primary purpose in pushing for her was to secure the best actor for the role.
789. The remarks that ‘Maya’ attributed to Mr Clarke at the dinner prior to filming (para 745 above) ring true because they reflect what plainly was his attitude at the time, the language is resonant of phrases he used, and what she described is behaviour that was characteristic of him. I did not find Mr Clarke’s evidence that he was not there credible. As was often the case, once he knew there was nothing in the Guardian’s disclosure to establish his presence, the softer language of lack of recollection turned into an outright denial. I find he made those remarks to her.
790. Mr Clarke’s evidence that ‘Maya’ was not at the football match was not credible. It is plain that he tagged all three fellow actors who were with him at the match on his posts, on whichever social media platforms they were on. ‘Maya’s’ evidence as to what he said to her at the football match (para 747 above) strikes me as typical of him, and I accept he made those comments.
791. Despite his denial in evidence, in the recorded phone conversation, Mr Clarke acknowledged saying the first part of the remarks attributed to him by ‘Maya’ in para 749 above (see para 751 above). He also effectively acknowledged in that phone call

Approved Judgment

propositioning ‘Maya’ (e.g. “*if he’s not around ..., I’m open*”), albeit he suggested there was no serious intent behind his remarks and it was just “*banter*” (paras 751 and 754 above). Mr Clarke’s first question to ‘Maya’ in that recorded call, which came about because he contacted her, was to ask, “[‘Production E’]: *did I make you feel weird?*”. She immediately responded, “*Yes. It was an uncomfortable experience. You know that right.*” Mr Clarke undoubtedly did know that because he knew how he had acted and how she had responded. Mr Clarke’s claim that he did not make the kind of sexual remarks to ‘Maya’ that he labelled “*banter*” is not credible considering that recorded phone call in which, while apologising profusely, he repeatedly said she should have told him. Mr Clarke’s evidence that he never propositioned ‘Maya’ was not credible and I reject it. He plainly did so.

792. Mr Clarke’s evidence that he would never act in the way described by ‘Maya’ at para 752 above is at odds with his evidence (when addressing Ms Atherton’s allegations) that on sets “*people hug and kiss and make comments all day long*” (para 666 above); as well as with my findings as to how he acted on sets (e.g. towards Ms Kaiser); and that he was attracted to ‘Maya’. His assertion that he would not have behaved in such a way towards ‘Maya’ because she kept herself distant is inconsistent with his unguarded comments in the recorded phone call. ‘Maya’s’ evidence is consistent with the evidence that Mr Clarke exhibits a sense of physical entitlement over women’s bodies (para 192 above), and with her contemporaneous discomfort with his behaviour towards her, attested to by Mr Finn, Ms Counihan and Ms Ibson. Accordingly, I find he chased her around the table, grabbed her from behind, and kissed her neck sensually as she described.
793. Both Mr Finn and Ms Counihan gave compelling oral evidence regarding the power Mr Clarke held, in circumstances where ‘Production E’ could not be made without him. I accept ‘Maya’s’ account that she felt unable to complain about being touched by Mr Clarke without her consent because it would have created a bad atmosphere on set.
794. I find that Mr Clarke would look ‘Maya’ up and down, overtly revealing his sexual desire for her by the sounds and comments he made, and the suggestive looks that he gave her. His denial of “*leering*” was genuine, in that he regards such a description as applicable to “*weird, creepy guys*”, and he does not see himself that way. It is apparent that he was insensitive to the discomfort he provoked. But as is clear from his comments in the recorded phone call, and from the evidence generally, Mr Clarke would habitually, and lasciviously, look young, attractive women up and down. He described this as “*appreciation*”. Mr Clarke’s denial that he would ever make the kind of sound attributed to him by ‘Maya’ is contrary to the evidence of Ms Atherton that “*he would do a sassy kind of ‘mmhmm’ noise*” (651 and 677 above). It is also striking that it was the sound he made (unprompted) on the recorded call, albeit he was saying, “*I wasn’t intentionally going mmmm yum yum*”.
795. Mr Clarke’s denial that he made the sexual comments to ‘Maya’ attributed to him at para 758 above was not credible. It undoubtedly was the kind of “*prehistoric banter*” (as Mr Clarke put it in the recorded call) that he would engage in on set (see e.g. the evidence of Hugh Sherlock, para 408, and ‘Imogen’, para 502 above). His reason for contending that he did not subject ‘Maya’ to such conversation, namely that she, like Ms Atherton, had made clear she was not interested, does not stand up to scrutiny in light of what he said in the recorded phone call (one example of which is given in para 754 above). There was some truth in Mr Clarke’s assertion that the “*moment somebody*

Approved Judgment

tells me I should not make a comment, I do not do it and I apologise.” But he took the view that the onus was on the young woman to object to his behaviour (paras 532 and 681 above), and in the absence of unequivocal objection he felt entitled to continue.

796. I find that on the occasion when ‘Maya’ left the prop car crying, her upset was not caused by any sexual comments or harassment. She and Mr Clarke had quarrelled because she asked why he was excluding her and he felt that was a bit rich given his efforts to include her, and her wish, for the most part, not to join him and others socially. Nonetheless, I accept the evidence of both ‘Maya’ and Ms Ibson that during the conversation in the toilets, ‘Maya’ told Ms Ibson, in effect, that she felt she was being sexually harassed by Mr Clarke. She probably did not use the words “*sexual harassment*”, but indicated that by saying she felt she was in a “*#metoo situation with Noel*”. None of those called by the Guardian witnessed ‘Maya’ being subjected to sexual harassment, but their evidence does provide corroboration that that is how she viewed his conduct at the time.
797. Mr Clarke was a powerful and dominating presence on the production but he was not as powerful a figure in the industry as he seemed to ‘Maya’ at the time. I accept that she felt he had the power to ruin her career but it is probable that her belief he was insinuating he could do so is based on a misunderstanding.
798. The evidence powerfully demonstrates that Mr Clarke repeatedly and forcefully pressured ‘Maya’ to agree to remove her underwear during the filming of the sex scene, despite her refusals and manifest discomfort at what he was proposing. I accept that Mr Clarke was not demanding that she appear fully naked *on film*, as that would be avoided by the camera angles adopted and editing, or that she be fully naked during filming, insofar as he accepted that skin-coloured patches could be used. But he was undoubtedly pressuring her to remove her bra and pants.
799. Mr Clarke’s case on this kept changing. The conclusion that he wanted her to wear nothing but patches reflects his own evidence in his first statement, as well as what he said during the recorded phone call about his wish for there to be the “*illusion of nudity*”, rather than for her to “*wear all these clothes*” (i.e. underwear; para 776 above).
800. But by the time Mr Clarke gave oral evidence he was cognisant of the fact that the script said that in the scene ‘Maya’s’ character was to be “*down to her bra*”. Therefore it was obvious that he could not maintain his stance that she had agreed at the outset to remove her underwear. So he then denied having any discussion with her about removing her bra and pants, and he denied having any discussion with Mr Finn about the matter at all. This evidence was not believable.
801. The Claimant’s closing submissions take yet another tack, asserting – without foundation – that the real issue is ‘Maya’ “*refused to appear in the scene full stop*”. Despite Mr Clarke’s repeated denial that Mr Finn spoke to him about this matter, his closing submissions assert that he made a call to ‘Maya’ “*on instruction by Mr Finn and others*”, to let her know “*we wanted to know how she wanted to shoot it*”.
802. ‘Maya’ never refused to appear in the sex scene. She resisted Mr Clarke’s insistence that she should take off her underwear. She knew that was not required by the script, and while the script is not set in stone, she was not obliged to go further, in terms of nudity, than was written in the script. It is probable that she expressed her concerns first

Approved Judgment

to Mr Finn before having a conversation with Ms Counihan. I accept Mr Finn's evidence regarding his conversation with Mr Clarke (paras 766-769 above). Mr Clarke's denial that he would have spoken to someone who was "*technically*" his boss in that way was not believable. Mr Clarke was indispensable on the production, and knew it, whereas Mr Finn was not. And Mr Clarke had always felt able to express himself forcefully, even when he did not have such power (see para 151 above). Although I find that 'Maya' told Mr Finn that Mr Clarke was saying to her "*we're going to fuck later on, we'll fuck next week*", in the absence of any evidence from her that he said those words, it has not been established that he used those words. But I have found that he was speaking and acting towards 'Maya' in a sexually inappropriate way, and she clearly conveyed that to Mr Finn.

803. It is not apparent from Mr Finn's evidence whether he spoke to Mr Clarke in person or over the telephone. In light of Mrs Clarke's evidence, and also 'Maya's' evidence as to how quickly Mr Clarke phoned her after she received a message from Mr Finn, I find it is probable that Mr Finn spoke to Mr Clarke over the phone. Mrs Clarke said that she and her husband are "*largely uninvolved with each other's work*", and it is probable that she is mistaken in her recollection that Mr Beale and Mr Niblo rang him. There is no other evidence that Mr Beale was involved in 'Production E', still less this issue, and it is more likely that the call was from Mr Finn than Mr Niblo.
804. I find that Mrs Clarke's recollection that her husband was told to call 'Maya' is mistaken. Mr Finn told him the exact opposite. It is implausible that any producer would have told Mr Clarke to speak to 'Maya' because she "*felt comfortable with him*", given the issue came about because she had expressed her discomfort. On the other hand, Mrs Clarke's recollection that 'Maya' was to be reassured that there were no changes from the script (i.e., although Mrs Clarke would not have known this, "*down to her bra*") and there was to be no nudity in her filming, was accurate. Mr Clarke was not merely "*very upset*"; he was so angry he suggested sacking 'Maya'. That was an unrealistic outburst, reflecting how incensed he was at not getting his way. Infuriated, Mr Clarke phoned 'Maya' immediately and he pressured her, again, to remove her underwear during the scene, insisting (wrongly) that she had already agreed to do so through her agent.
805. It is probable that Ms Counihan has misremembered how the matter first came to her attention, as it is likely she spoke to 'Maya' after the matter was drawn to her attention by Mr Finn. Nonetheless, her evidence as to the substance of her conversation with 'Maya' was reliable and accurate.
806. I accept 'Maya's' evidence regarding Mr Clarke's further attempt, when she was in a private room that he was not meant to enter, to pressure her to remove her underwear during the scene. As I have said, Mr Clarke did not give truthful evidence on this topic; and I reject his denial that this conversation occurred. Applying further pressure at that stage, while asserting that he was not trying to pressure her, would have been a characteristic step for him to take in the circumstances. His motivation, at that stage, was to reassert his dominance.
807. In relation to the filming of the sex scene, the only evidence that Mr Clarke misbehaved is from 'Maya'. Mr Finn did not see anything untoward, Mr Clarke denies that anything untoward happened, and there is no evidence from Ms Fell that she had to intervene. No other witness was in the room. In view of 'Maya's' non-attendance, the Claimant has not been able to test whether the similarity between her allegation of how Mr Clarke

Approved Judgment

behaved during the sex scene, and the evidence given by ‘Penelope’ (para 202 above), is indicative of her arrogating a claim made by another, rather than of his propensity to behave in this way. In the circumstances, I find that the Guardian has not established this aspect of its case.

808. I conclude that Mr Clarke sexually harassed, pressured and touched ‘Maya’ without her consent in the ways I have described above.

(xxi) Hollie Ibson – ‘Production E’

809. Hollie Ibson works for the BBC as a scheduler. She worked as a floor runner for five months on ‘Production E’. She was then 25 years old. The Guardian’s allegation in relation to Ms Ibson, which is denied by Mr Clarke, is one of bullying and making an inappropriate sexual remark.

810. Ms Ibson explained:

“A floor runner’s main responsibility is making sure everything runs smoothly on set and being the main point of contact for the cast. This meant I would be the first to greet Noel every morning, make him coffee, get his breakfast and get him into costume and makeup on time to travel to set.”

In cross-examination, Ms Ibson acknowledged that greeting Mr Clarke was a joint responsibility with Kieran O’Neal (who Mr Clarke identified had the role of 3rd Assistant Director), although it would usually be her because he would be on different responsibilities. She acknowledged that she could have been mistaken about the type of hot drink he favoured.

811. Ms Ibson said that her experience of working with Mr Clarke was “*extremely unpleasant*”. She said that from the outset he was “*rude and continuously belittling towards me*”. She noticed that he did not behave that way towards the other floor runner (a man). She said that Mr Clarke would “*frequently pretend not to hear me*” when she conveyed instructions, which made her look bad at her job if, for example, he was not in the right place at the required time. She said that he would “*ignore me and listen to the male runner*”. She denied there was any possibility that he simply did not hear her. She said he would be on his own in the quiet space of the green room, she would be stood in front of him, conveying instructions such as come to set or standby, and he would just ignore her. Ms Ibson said, “*he would just be, like. ‘Oh, sorry, did I hear something?’*”. She said he would laugh about it, and ignore her, with the consequence that she had to go and get her (male) counterpart to do the job for her.
812. Ms Ibson said she “*dreaded being alone with Noel as I would be routinely undermined*”. She said she became “*extremely anxious*” and had her first panic attack during filming when “*Noel was ignoring my instructions and I couldn’t carry out my job*”. She described it as humiliating. She did not go to anyone when she had a panic attack. She dealt with it herself by stepping off set.
813. Ms Ibson said that at the wrap party for ‘Production E’, Mr Clarke greeted her and said to her that her “*dress would look really good on his bedroom floor*”. Ms Ibson said that

Approved Judgment

she found the experience of working with Mr Clarke so “*unpleasant and distressing*” that she left drama.

814. In his oral evidence, Mr Clarke said that he did not recall Ms Ibson, and then later that he “*barely recalled*” her. This differed from his first statement where he said, for example, that he did not recall seeing her at the wrap party (from which it may be inferred that he remembered who she was). Mr Clarke denied that he was rude or belittling towards Ms Ibson, or pretended not to hear her, or that he was aggressive or bullying. Mr Clarke said that he was “*juggling multiple roles and was rarely in direct contact*” with Ms Ibson.
815. Mr Clarke said that he was only at the wrap party for 5-10 mins. He described the comment attributed to him by Ms Ibson as “*the stupidest most cheesy line I have ever heard in my life*”, and he denied saying it. Mr Clarke evaded the question whether it was offensive. He said that Ms Ibson was lying but he had no idea of her motive. He said, “*We barely had any interactions, I barely recall her at all and I most definitely did not speak to her at any wrap party*”.
816. I have already addressed the Claimant’s feeble submission that Ms Ibson’s evidence is rendered unreliable by her (asserted) inability to remember Mr Clarke’s preferred hot drink (para 785 above). Further challenges are raised on the basis that Mr Clarke was primarily looked after by Mr O’Neal, and there is no record of Ms Ibson’s panic attack. Mr Clarke gave no evidence that he was primarily looked after by Mr O’Neal: that is, again, Counsel’s assertion. I accept Ms Ibson’s account of her responsibilities. The lack of a record of her panic attack is a natural consequence of the fact that she dealt with it without alerting anyone. In relation to the bullying allegation, the Claimant asserts that there is a completely reasonable explanation, namely that as the co-creator, co-writer and star of the show Mr Clarke had “*other priorities than to listen to a mere runner on a busy set*”.
817. Ms Ibson had no reason to invent the very specific account that she gave of her interactions with Mr Clarke. She gave clear, honest and reliable evidence. The importance of Mr Clarke’s role compared to Ms Ibson’s is not an explanation for his conduct. As he well knew, it was her job to convey instructions to him to ensure he was in the right place at the right time. He deliberately ignored her and ostentatiously pretended not to hear her, undermining her ability to do her job. She was a young woman, in a far subordinate role, who he singled out for this belittling and bullying treatment. It is probable that he acted in this way for no other reasons than that he had the power to do so, and he found it amusing. I also accept Ms Ibson’s account of what Mr Clarke said to her at the wrap party. She remembered it because of the impact it had on her, whereas there was no reason for Mr Clarke to recall making this remark.

(xxii) Jing Lusi – SAS: Red Notice (2018)

818. Jing Lusi is a well-known actor. She has appeared in a number of television, film and theatrical productions. In October 2018, she was cast in the role of Zada in the film *SAS: Red Notice* (released in 2021), in which Mr Clarke played the role of Major Bisset. Unlike on the other productions considered above, Mr Clarke’s sole role on *SAS: Red Notice* was as an actor. *SAS: Red Notice* was filmed in Budapest in November and December 2018.

Approved Judgment

819. The primary pleaded allegation concerns a dinner on 27 November 2018. However, Ms Lusi also mentioned – and the Guardian has pleaded – incidents on two earlier occasions. The first was at a dinner at the Ritz in Budapest, on 10 November 2018, attended by Ms Lusi, Mr Clarke, and two other male actors on the cast. Ms Lusi said that she mentioned her aspiration to establish herself as a writer. Mr Clarke expressed an interest in her writing, telling her he was a writer and that he had his own production company. She said:
- “I suggested that we could do a read-through of my script if we had days off. Noel seemed keen at the idea, so I asked ‘where?’, to which he responded, without missing a beat, ‘in my bed’ or ‘in my bedroom’. I was taken aback and said ‘what?’ and he repeated ‘in my bedroom’, the second time playing mock shy, sipping on this drink.”
820. Later on the same evening, Ms Lusi told her three dinner companions that she was self-conscious about her hands because her mother said that hands are a giveaway of someone’s age, as people tend to neglect their hands. Ms Lusi said:
- “Noel asked to look at my hands and I said no. He said ‘why? You won’t let a black man touch you?’ I felt shocked and manipulated into relenting. I reluctantly gave him my hand. If he had not played the race card, I would not have done this. When he took my hand, he closed it with his hands like a sandwich and started making sex noises – full on groaning noises with a mock orgasmic face. I pulled my hand back immediately.”
821. The second occasion she mentioned was on 20 November 2018. She said that she joined Mr Clarke and others late for dinner at the Big Fish restaurant. She said, “*When I arrived, Noel said ‘where were you? I thought you were busy muff-diving [another female actor]’.*”
822. Ms Lusi described those incidents as “*slightly weird behaviour*” and “*gross*” but “*I did not find it offensive*”. She did not regard either incident as harassment. She said she remained “*absolutely fine with him*” at that point. She said that sexual remarks were made by other male actors during the shoot, not just Mr Clarke. The shoot was generally a very male atmosphere, as there were only three women actors.
823. In his statements, Mr Clarke denied speaking or behaving as alleged on 10 November 2018. He described the “*in my bedroom*” remark as “*entirely nonsensical*” because he would not read a new script in front of the author so as to avoid offending the author if he did not like the material. He denied touching, or asking to touch, her hands. He said, “*I would not use the fact that I was black to manipulate women into letting me touch them against their will; it is nonsensical and very deprecating*”. In cross-examination, Mr Clarke went further and denied that he attended a dinner with Ms Lusi on 10 November 2018. He claimed the hand-touching episode was “*fabricated nonsense*”, saying, “*I would not touch her hands if her hands were the last hands on earth so no, that is not true.*”

Approved Judgment

824. Mr Clarke acknowledged he was at the dinner with Ms Lusi, and other members of the cast, on 20 November 2018. He denied making the comment attributed to him, alleging Ms Lusi had just put that in because he said she was “*harassing a female actress*”.
825. Ms Lusi gave open, unguarded evidence and I accept her account of the dinners on 10 November and 20 November 2018. It is likely that Mr Clarke has forgotten the first dinner, and the remarks he made on those occasions. His current animosity towards Ms Lusi is such that he could not believe he would ever have touched her hand, but that was not the position on 10 November, albeit there was never a point where they particularly gelled. The “*in my bedroom*” remark was intended as a sassy joke. The suggestion that the comment was nonsensical or illogical misses the point that it was not a serious suggestion of a venue for reading her script. The touching of her hand was consensual, albeit she was reluctant. The “*sex noises*” he made when doing so – in front of two other cast members – were, similarly, light-hearted behaviour without serious intent. The comment on 20 November 2018 was rather unpleasant teasing.
826. Ms Lusi acknowledged that she had herself made a flippant sexual remark, writing in a text message to Mr Clarke: “*Let us know where you guys end up too, even if it’s just [a fellow actor] snorting coke of a stripper’s vajajay. I would actually love to see that.*” The above occurrences took place in the context of conversations between actors of equal standing and power, at dinners attended by several members of the cast. Although she found Mr Clarke’s behaviour off-putting, Ms Lusi sensibly did not regard these matters as amounting to harassment. I do not consider that they assist the Guardian in establishing the truth defence.
827. Ms Lusi spent the weekend of 24-25 November 2018 in Berlin. She was meant to be in Budapest but she said she decided, on this occasion, “*to ask for forgiveness rather than permission*” from the producers. She had joined friends for a Thanksgiving dinner. On 24 November, Mr Clarke sent her a text asking “*You back in London or still around?*” Ms Lusi responded, “*I am neither...*” adding two shush emojis (i.e. a face with a finger to the lips). Mr Clarke asked where she was and whether she was “*‘hang out-able’ tomorrow evening*”. Ms Lusi explained, “*I’m in Berlin.... I just had to get away it was killing me and uk was too big a risk. ...*” Ms Lusi said that when she sent the shush emojis it was “*playful*” and intended to mean “*Do not tell anyone, I am being a little bit naughty*”.
828. The following day, Ms Lusi let Mr Clarke know she was not coming back that day. On 27 November 2018, Ms Lusi got in touch with Mr Clarke and said, “*Let’s grab dinner tonight if you fancy*”. They then agreed the time and restaurant. This was the only time they had dinner together where it was just the two of them. Ms Lusi said that she regarded it as a “*work colleague dinner, not a date*”. Mr Clarke said that they were “*trying to get on*”. I accept that was the case. They had had a minor falling out at a poster shoot ten days earlier, which had led to some bickering between them on a group WhatsApp chat. But since then they had been friendly, without seeing much of each other.
829. Ms Lusi described the dinner as being like a play with three acts. First, they talked about the business, then they talked about sex, and Mr Clarke propositioned her, and then she said he threatened her.

Approved Judgment

830. In relation to the part of the conversation where they spoke about sex, Ms Lusi agreed the conversation was “*mutual in that I was volunteering my information*”. She accepted that she told Mr Clarke she likes sleeping with married men, but qualified her answer explaining that it was “*not a preference or liking or a flippancy towards engaging with married men*”. It was just something she had done when she was younger. She gave the following answers in exchange to Mr Williams’ questions in cross-examination:

“Q. ... So, you told him you do not believe in monogamy, you liked sleeping with married men and that ‘what goes on tour stays on tour’, words to that effect; that was the conversation you had with Noel?”

A. A conversation we had over spanning hours did include those things, yes.

...

Q. You engaged in sexual banter and the humour; it was voluntary?

A. I engaged with it, yes.”

Ms Lusi said that Mr Clarke started these conversations and that he had a way of “*probing about your sexual past, your history, what positions you like, all of that*”.

831. Ms Lusi said that on a couple of occasions, while she was still eating her main course, Mr Clarke summoned the waiter and then sent him away again. She said it felt a little rude and she asked him why. She said, he said he wanted the bill. She asked, “*what’s the hurry, where are we going after this?*” (which she said she meant rhetorically as they were not going anywhere, and there was no hurry). She said that Mr Clarke replied, “*my apartment*”. She said “*what for?*” (thinking he wanted to show her audition tapes, share scripts or something). He said, “*to have sex*”. Ms Lusi said that she burst out laughing in shock, and he shushed her, saying something like “*keep it down will you*”. She said,

“I said, ‘oh you’re serious?’ and he said ‘yes’. I realised he was actually serious and I said, ‘oh no this is not what this is’.”

832. Ms Lusi said that Mr Clarke then tried to justify his behaviour, saying that she had been “*giving him all these signs – come-ons – like a green light*”.

833. Ms Lusi said,

“In the same conversation, Noel told me in explicit terms that he had fantasised about me, describing to me what he wanted to do to me. I remember feeling so disgusted when he was describing sexual acts to me. I think I’ve blocked out the specific things he said – I felt so violated.”

834. In relation to what she described as the third Act, Ms Lusi said that Mr Clarke told her: “*don’t tell anyone about this, or I will find out about it. It’s a small world, I know everyone, if you do tell anyone I will find out about it and I’ll come for you’ or ‘I’ll get*

Approved Judgment

you.’ *It was a clear threat.*” She said, “*After Noel threatened me with silence, he spent the next few hours, including the walk back home, telling me how Adam Deacon once crossed him and his career ended thereafter.*” He said that his agent Gary O’Sullivan had dropped Adam Deacon in favour of him, which Ms Lusi took as a warning. Ms Lusi said she was “*threatened with silence if I told anyone*”, and that was followed by “*a really weird story time of three hours of how Adam Deacon’s career went downhill*”.

835. Referring to the whole conversation, Ms Lusi said:

“It was all like ‘how important I am, how important I am’, and then it was, the sex. ‘No, okay, don’t tell anyone’. And then, ‘this is what will happen if you do’. Because he has already paved the way for me to be scared that he is just going to, he has the power to destroy you.”

836. The next day they had the following text message exchange:

[Noel Clarke] Hey. Good munch yesterday. Are you sending the stuff?

[Noel Clarke] Let me know as I’m really interested in your show or in your writing our show. Etc. (Which would become OUR show)

[Jing Lusi] Sorry dude had a late start and a phone call from a disgruntled actor on this film haha. Just meeting Hannah now for a coffee and will send after x

[Noel Clarke] Thanks. Say hi to her for me

[Noel Clarke] [Shush emoji]”

837. Ms Lusi said she took the emoji to mean “*I should remember his demand that I stay quiet*”. Ms Lusi agreed that on its own a shush emoji would not be a threat: “*I would agree if it was not sent after the night of a very, very long sustained threat of ‘why you should not tell anyone and how I will destroy your career if you did’*”.

838. Within three days of the dinner, Ms Lusi had confided in a friend that she had been “*MeToo-ed at work*” by Mr Clarke and “*then sworn to secrecy – and threatened*”. Ms Lusi sought to call out Mr Clarke’s behaviour towards her, first by ringing her agent, Charlotte Davis, at United Artists within 2 or 3 days of the dinner, and subsequently by telling her publicist, Emily Hargreaves, her manager, Kristin Konig at MGMT Entertainment, and then later her agent, Ashley Hanley, at Paradigm Artist Management.

839. Mr Clarke said Ms Lusi suggested they have dinner. There had been tension between them, but the dinner was friendly and they resolved their issues. He said, “*We had an in-depth conversation about both our lives and how we grew up and whatnot and this was in an effort to just ease our dislike of each other*”. He said that Ms Lusi “*voluntarily initiated and told me about various sexual experiences she had engaged in, including her specific desire and aim to have sexual relationships with married men, the fact that*

Approved Judgment

she did not believe in monogamy, and how she liked men to behave sexually". He said that she was *"so clear with what she told me she liked to do that when she went to the bathroom, I wrote down on my phone the things that she actually said to me during the conversation"*. The note on Mr Clarke's phone was created on 8 November 2018 and last modified on 7 March 2019. It includes a couple of matters regarding other people, then records: *"Jing Doesn't believe in monogamy Sleeps with married man And wants a man to own it."*

840. Mr Clarke denied saying to her that she was going to his apartment to have sex. He said:

"Ms Lusi spent a large part of the evening telling me about her exploits as much as I was telling her about some of mine. It was an open conversation so she could not be possibly shocked by this, but this particular moment of the meal did not actually happen."

...

"I did not drag the conversation there [i.e. in the direction of talking about sex]. As is admitted and as we have seen, I have a mouth that probably should be kept more in check than it was, but I 100% did not drag the conversation there. Ms Lusi was more than open to talk about these things, as I set out, by sending me her text on a few days before [see para 826 above] ... My issue is, with my penchant for having those conversations, if I meet somebody like-minded, it goes to a place it is possibly inappropriate to go, but in this regard, even what she says to me is not overly inappropriate because we are two adults having an adult conversation outside of work. So what is the issue?"

841. Mr Clarke denied describing to Ms Lusi sexual acts he had fantasised about carrying out on her. He said, *"I did not proposition her"*, there was no rejection, nor was he annoyed that she was not interested.

842. Mr Clarke denied that he threatened Ms Lusi:

"I did not threaten to destroy [Jing's] career or threaten to destroy hers in the same way as I had supposedly destroyed Adam Deacon's. I did not destroy Adam Deacon's career. I also did not make any references to my position, power or influence in BAFTA. In any event, I was not in a position of power vis-à-vis [Jing]. [Jing] was an established actress, with a more important role in *SAS: Red Notice* than me".

843. He said that, *"After the conversations we had, when we were leaving, we both said, 'Right this dinner was just between us, let us not talk about it.'"* In relation to Mr Deacon, Mr Clarke said:

"I did not ruin his career. He ruined his own career by threatening my children, telling people to bang my wife, trying to find my

Approved Judgment

address online, encouraging people to find my address to the point where they got within a mile away, telling people to stab me, saying he was going to go round their houses after they stabbed me, and all sorts of other disgusting things, including calling me names that I do not want to repeat ... He had been peddling this for years with his friends, who are the people I set out in the conspiracy. So, I did not tell people that I would ruin his career. It is clearly set out what he did to me, which is fact, and he was convicted in a court of law for doing so.”

844. He denied saying that his agent dumped Mr Deacon for him:

“I did not say this. The agent never dumped him for me. He had left his agent almost a year before I obtained that agent so me being with Mr O’Sullivan was nothing to do with Mr Deacon whatsoever.”

845. In relation to the shush emoji, Mr Clarke said he sent it, “*implying that I would not tell anyone about the discussions during the dinner, as [‘Jing’] had requested*”. He said that he used it specifically because she had done so a few days earlier when asking him to keep quiet about her being in Berlin when she should have been in Budapest. He said that he does not use that emoji, he only did so because she had done.

846. On the evidence of both Ms Lusi and Mr Clarke, it is manifest that they engaged in a mutual conversation about sex and their respective sexual exploits. While I accept that this was unusual for Ms Lusi, she acknowledged that she engaged voluntarily in this conversation. It is highly likely, given the nature of the conversation they had, having regard to Mr Clarke’s general behaviour as evidenced in this case, and his belief that they were “*flirting*” (as evidenced by Simkins’ letter) that Mr Clarke did suggest to Ms Lusi that they have sex. I did not find his denial that he propositioned Ms Lusi credible.

847. When Ms Lusi turned him down, Mr Clarke persisted in describing sexual acts he had fantasised carrying out on her. Then, once he understood that she had definitively rejected his proposition, he expressed surprise explaining (touchily) the clear signals he thought she had been giving him. Ms Lusi evidently found his persistence in the face of her rebuff, and graphic descriptions, “*disgusting*”, as reflected in her contemporaneous messages. That is understandable, but Mr Clarke was not in any position of power in relation to Ms Lusi and so it does not seem to me this aspect of his behaviour was an abuse of power.

848. The key question is whether Mr Clarke threatened Ms Lusi. In my judgment, the evidence on this issue is finely balanced. I accept that Ms Lusi honestly believes he threatened her. But I am not satisfied that he did so. I consider it likely that Ms Lusi’s belief has arisen as a result of misinterpretation. Ms Lusi did not purport to be able to remember precisely what Mr Clarke had said, but the words that she attributed to him varied from a threat that was clear and explicit to one that was implied. It is probable that what she initially understood as an implied threat has strengthened in her mind over the time she has considered and discussed this matter. There are several reasons why I reach this conclusion.

Approved Judgment

849. First, Ms Lusi said, “*the only real thing that people know about Noel and Adam is the fallout and that Adam came off very bad and lost his career*”. It is evident that within the film and television industry the prevalent narrative was that Mr Clarke had ruined or “*cancelled*” Mr Deacon, and that this was indicative of his power. That is not a true or fair reflection of what occurred. After working with Mr Clarke on his films *Kidulthood* and *Adulthood*, Mr Deacon made a film called “*Anuvahood*”. Mr Clarke was angered by the implication that this was the third film in his “*Hood*” trilogy, and they fell out. Whatever the merits of that dispute, any damage to Mr Deacon’s career appears to have arisen from behaviour in which he engaged which resulted in him being convicted of harassment, being made the subject of a restraining order, and, it appears, being sectioned under the Mental Health Act for a brief period. Nonetheless, the prevalent narrative has, it seems to me, coloured Ms Lusi’s understanding of what Mr Clarke was saying when he spoke about his interactions with Mr Deacon. It is understandable that as a victim of harassment he sometimes spoke about this at length, although he is unlikely to have described himself as a “*victim*”.
850. Secondly, as Mr Wade put it, Mr Clarke was “*probably the most prominent black director/producer in the industry at that moment in time*”. He was understandably proud of his achievements, including the BAFTA award he received in 2009, and his membership of BAFTA’s board, and probably trumpeted those achievements in a way that she was not used to hearing from others who had achieved success through more conventional routes. It seems to me that Ms Lusi misinterpreted that, too, as Mr Clarke laying the groundwork to threaten her, by highlighting his power in the industry.
851. Thirdly, while it is likely that both Mr Clarke and Ms Lusi would have wanted their discussion to remain private, given the nature of it, it is implausible that Mr Clarke would have been so concerned that he would have threatened to destroy her career. She was a very well established actor, and even taking her account at its highest, nothing had occurred to prompt such an extraordinary reaction.
852. Fourthly, there are two examples in evidence of Mr Clarke asking women (Johannah Whyte and ‘Maya’) to keep certain matters private. On each occasion, he was unaware the call was being recorded. Yet on each occasion, objectively, his request was made in a pleading rather than threatening way (albeit in Ms Whyte’s case the attempt to persuade her and, indirectly, Ms Powell not to talk was very persistent).
853. Fifthly, in written communication tone is difficult to convey. That difficulty is heightened by the use of emojis which are inherently open to misinterpretation. They are visually simple and symbolic, and consequently also both versatile and vague. The shush emoji is particularly prone to misinterpretation. It may suggest, for example, a playful secret (as Ms Lusi averred, in respect of her own use of this emoji), a gentle request to be discreet, a literal request for silence, or a passive-aggressive warning to be quiet. It might be seen as light-hearted or controlling. It must, of course, be interpreted in context and, here, the context was the conversation the evening before, the preceding messages (which were friendly), and Ms Lusi’s use of the same emoji a few days earlier (which she had forgotten). I accept that Ms Lusi read Mr Clarke’s message as a threat, but in my view, on analysis, it is likely that it was no more than a request to be discreet.
854. Save to the extent that I am not persuaded that Mr Clarke threatened Ms Lusi, I have accepted her account. Mr Clarke’s established behaviour towards Ms Lusi is of some

Approved Judgment

relevance in considering other allegations of a similar nature, but in circumstances where his conduct towards her was not an abuse of power, in my judgment, these are not events that, in themselves, assist the Guardian in establishing the truth defence.

K. TRUTH DEFENCE: CONCLUSION

855. In the meaning of the first article, the phrase “*serial abuser of women*” is a pithy summary of the behaviours. The question is whether there are strong grounds to believe that Mr Clarke is a serial abuser of women in that:

- i) over 15 years he has used his power to prey on and harass female colleagues;
- ii) he has sometimes bullied female colleagues;
- iii) he has engaged in unwanted sexual contact, kissing, touching or groping;
- iv) he has engaged in sexually inappropriate behaviour and comments;
- v) he has engaged in professional misconduct; and
- vi) taken and shared explicit pictures and videos without consent, including secretly filming a young actor’s naked audition.

856. In light of my findings as to the primary facts, instances of each of those elements have been established:

- i) Preying on/harassing Ms Hayes, ‘Penelope’, ‘Imogen’, ‘Mila’, Ms Hambi-Fisher, Ms Kaiser, ‘Isla’, Ms Powell, Ms Atherton, Ms Crabb, Ms Graham, ‘Sophia’ and ‘Maya’ (and preying on Ms Morris, post 27 May 2010, albeit not as an abuse of power);
- ii) Bullying behaviour towards Ms Ibson, Ms Crabb, Ms Kaiser, Ms Powell and ‘Anita’;
- iii) Unwanted sexual contact, kissing, touching or groping towards Ms Powell, Ms Seltveit, Ms Graham, ‘Penelope’, ‘Isla’, ‘Sophia’ and ‘Maya’;
- iv) Sexually inappropriate behaviour and comments including towards Ms Hayes, ‘Penelope’, ‘Imogen’, ‘Mila’, Ms Hambi-Fisher, Ms Kaiser, Ms Powell (the car, lift and Lionsgate incidents, comments to/about her and about Ms Warren-Markland), Ms Whyte, Ms Seltveit, Ms Atherton, Ms Crabb, Ms Graham, Ms Ibson, ‘Sophia’ and ‘Maya’;
- v) Professional misconduct encompasses (i), (ii), (iii), (iv) and (vi); and
- vi) Covertly filming Ms Whyte and ‘Florence’; showing that covert footage to Ms Powell; showing explicit photographs to Ms Powell (including of ‘Ivy’); sharing explicit photographs of ‘Ivy’ with Mr Fairbanks; sharing footage of ‘Mila’; showing Ms Whyte B-roll footage from *Brotherhood*; and showing explicit photographs of fans to Ms Atherton – all of which was, or may be inferred to have been, without consent.

Approved Judgment

857. In my judgment, this is more than sufficient to find that the meaning of the first article is substantially true.
858. The meanings of the other articles repeat some of the allegations in the first article, but do not add anything new, save in the fourth article which includes the meaning that there are strong grounds to believe that he “*encouraged students to remove their clothes during improvisation workshops*”. That too is established (see the section entitled Leanne Coldwell). Accordingly, if it is necessary for the Guardian to establish the substantial truth of the other articles (contrary to my conclusions in respect of serious harm), they have done so.
859. Accordingly, the Guardian has succeeded in showing that the defence in s.2(1) of the 2013 Act is established in respect of the Articles. The libel claim therefore falls to be dismissed.

IV PUBLIC INTEREST DEFENCE**L. PUBLIC INTEREST DEFENCE: THE LAW**

860. The applicable law is not in dispute. Section 4 of the 2013 Act provides, so far as material:

“(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 judgement as it considers appropriate.”

861. 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?

Approved Judgment

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’.

862. The first question is an objective one for the Court. Matters of public interest are of “*potentially wide compass save that they exclude purely personal or private matters*”: *Harcombe v Associated Newspapers Ltd* [2024] EWHC 1523 (KB), [2025] 1 WLR 405, Nicklin J, [273].
863. The second question concerns the defendant’s actual state of mind at the time of publication. The importance of contemporaneous documents recording, and evidencing, the decision-making process prior to publication has been emphasised: *Harcombe*, [276]-[277] (citing *Lachaux v Independent Print Ltd* [2022] EMLR 2).
864. The final question, which only arises if the first two questions have been answered affirmatively, is whether, judged objectively, the defendant’s honest belief that publication was in the public interest was reasonable. The public interest defence is not assessed simply by reference to the single meaning, but by reference to the statement complained of and the range of meanings that it bears: *Harcombe*, [281]. The focus must be on things the defendant said or knew or did, or failed to do, up to the time of publication: *Harcombe* [279]. The court should take a fact-sensitive and flexible approach, having regard to practical realities.
865. Efforts to verify are usually regarded “*as an important factor in the assessment of the reasonableness of a defendant’s belief that publication was in the public interest*”: *Harcombe*, [283]. In *Economou v de Freitas* [2016] EWHC 1853 (QB), [2017] EMLR 4, in a statement approved by the Supreme Court in *Serafin v Malkiewicz* [2020] UKSC 23, [2020] 1 WLR 2455 at [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.”
866. When determining the reasonableness of a defendant’s belief that publication was in the public interest, the Court must “*make such allowance for editorial judgement as it considers appropriate*” (s.4(4)). 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 v Cadwalladr* [2022] 1 WLR 5236, [112]-[114] (and the authorities cited therein); and *Harcombe* [280].
867. The Court must have regard to all the circumstances of the case (s.4(2)). Although not to be regarded as a checklist, one or more of the ten illustrative factors identified by Lord Nicholls in *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127, 205A-D (‘the *Reynolds* factors’) may well be relevant.

M. PUBLIC INTEREST DEFENCE: PRELIMINARY MATTERS

Approved Judgment

868. The Guardian relies on s.4 to defend the publication of the Articles. Given my conclusion in respect of the truth defence, it is unnecessary for the Guardian to establish this additional defence. Nevertheless, having heard evidence and argument on it, it is appropriate to address it.
869. I will focus on the first article for two reasons. First, the cross-examination of the Guardian's editorial witnesses did not explore matters arising after publication of the first article, save to the extent that Paul Lewis was asked on a couple of occasions about the eighth article (with which he had no involvement, as he had explained in writing and reiterated orally) and Nicole Jackson (the editorial decision-maker in respect of the Podcast/fifth article) was asked to (and did) confirm her written evidence that the Podcast went no further than the previous articles. The Claimant must therefore be taken to accept that if the public interest defence in respect of the first article succeeds, then it will succeed in respect of the subsequent articles, too. Secondly, this is the third line of defence in respect of the second to eighth articles.
870. I will also focus on the initial decision to publish the first article. A case was advanced in the Re-Amended Reply that the decision by the police, in 2022, not to investigate (which was reported in the eighth article) was a material change in circumstances. However, that case was not put to any of the Guardian's editorial witnesses, most notably Mr Gibson whose evidence on the point went unchallenged, and so it must be treated as having been abandoned.
871. There is a significant overlap between the evidence I have considered above and the information gathered by the Guardian prior to publishing the first article, but there are also many material differences. Some of the witnesses from whom I have heard were not sources to whom the Guardian had spoken prior to the first article: that is true of Joanne Hayes, Naome Morris, Leanne Coldwell, Lisa Graham, Hollie Ibson, Davie Fairbanks, Hugh Sherlock, Marc Small, Garry Moore, Jonathan Finn and Judy Counihan. Equally, the Guardian had spoken to many sources from whom the Court has not heard, including primary sources of allegations against Mr Clarke such as Leila*, Mel*, Becky*, Chantal* and Megan*/'Anita', and other corroborative sources.
872. The cross-examination of Mr Lewis, Ms Osborne and Ms Kale not infrequently veered into putting matters that witnesses had said in evidence at trial. Insofar as I have heard from individuals who were sources for the first article, it remains important to concentrate on the material that was available to the Guardian at the time.

N. ON A MATTER OF PUBLIC INTEREST

873. The Guardian's pleaded case – which was met by a bare non-admission – is that the first article was or formed part of a statement on the following matters of public interest:

“The use by a successful male public figure in the film and television industry (the Claimant) of his power and status to subject women in the industry (and in particular women working for him) to sexual harassment and abuse, unwanted sexual contact, mistreatment and bullying over many years;

BAFTA's decision to make an award to the Claimant for an Outstanding Contribution to Cinema ('the award') and the

Approved Judgment

making of the award after BAFTA had received allegations of such conduct;

The failure of the industry to prevent such conduct and protect women in the industry who might be preyed on in this way.”

874. Ms Viner has been the Editor-in-Chief of the Guardian for ten years, and had previously been Deputy Editor from 2008 to 2015. Ms Viner gave unchallenged evidence that she personally took the decision, with the assistance of colleagues, on 29 April 2021, that it was in the public interest for the Guardian to publish the first article.
875. Ms Viner explained that the Guardian is a major publisher of investigative journalism around the world, giving as examples the Edward Snowden files (2013), the Panama, Paradise and Pandora papers (from 2016), the Windrush scandal (2017), and the Pegasus Project (2021). She expressed her belief that “*sexual harassment is an important subject for the Guardian to report on*”, citing numerous investigations of sexual misconduct on which the Guardian reported between 2016 and 2024. Ms Viner stated that sexual harassment

“intersects with other public interest subjects of workplace culture, misconduct and power imbalances. The public takes sexual harassment more seriously than it did in the past, most notably in light of the exposure of misconduct and sexual abuse by Harvey Weinstein and following the #metoo movement. Those events changed the atmosphere and led the public to think differently about workplace culture and the importance of accountability. Reporting of sexual misconduct allegations can often be beneficial in bringing to the public’s attention the absence of sufficient industrial safeguards. The Guardian’s readership is very interested in culture and the arts, and it is read by many who work in the creative industries. The reporting of sexual harassment in the film and TV industry is pertinent for our readers.”

876. Ms Viner said the first article “*told a story of the specific ways in which imbalances of power and influence were serially abused*”. She considered there was “*a very clear public interest in exposing allegations of misconduct*” in the context of Mr Clarke having recently been celebrated and further empowered by the special and very prestigious award made by BAFTA. She said,

“In the light of the long period over which allegations had been made, it was conceivable that this endorsement of Mr Clarke and consolidation of his influence in the British film and television industry could enable him to continue or escalate the relevant behaviour, potentially with impunity.

877. Owen Gibson is the Deputy Editor of the Guardian. He has worked for the Guardian since August 2001, fulfilling a number of roles, including Head of National News, prior to becoming the Deputy Editor in January 2020. His role “*requires editorial overview of all work being done at the Guardian*”. The Guardian’s Head of Investigations, Paul Lewis, reports directly to Mr Gibson.

Approved Judgment

878. Mr Gibson stated:

“Following the advent of the #MeToo movement, the senior editors had discussed the theme of imbalances of power in the workplace. We had also discussed the way in which patterns of male behaviour could lead to the exploitation of women, including through their work. We considered the subject a matter of public interest and a subject worthy of investigation.”

879. Mr Lewis was the third editorial witness engaged in the decision to publish the first article. He recalled discussing with colleagues the claim in Simkins’ letter that Mr Clarke was “*not a public figure*”. He said,

“Given that he was a well-known actor, writer, producer and director, who had just been awarded one of BAFTA’s highest honours, it was our belief that he was a public figure.”

“Mr Clarke was a public figure, whose public standing had risen in light of the BAFTA award, and he was now facing a large number of allegations of bullying and sexual misconduct. We had taken extensive steps to assess the reliability of these claims and believed them to be credible. We believed that publication would hold Mr Clarke to account over these matters, and contribute to a wider debate about conduct by powerful figures in the workplace.”

880. In opening, the Claimant contended that:

“Although (formerly) a public figure, involvement in (primarily) non-crimes (as opposed to involvement in serious crimes), particularly that which may naturally result in trial by media of worse imputations and consequence, and the risk of loss and destruction of one’s career and livelihood, is not a subject matter of public interest”.

Alternatively, the Claimant suggested that this type of investigation should be dealt with by the police. If they decline to investigate, there is “*no or no proper public interest*” in a journalistic investigation which could “*lead to the cancellation of an individual and the destruction of his entire career*”.

881. In closing, Mr Williams sought to maintain that the first article was not on a matter of public interest. That was a curious stance to take in circumstances where none of the Guardian’s highly experienced senior editorial witnesses were challenged on the evidence they gave on this issue (including that which I have set out above). Nevertheless, ultimately it is a question for the Court whether this criterion is met.

882. In my judgment, the first article was on the matters of public interest identified by the Guardian. The likely consequences of publication were a matter to be taken into account in assessing whether publication was in the public interest, and so fall to be addressed in the context of the other criteria.

Approved Judgment**O. HONEST BELIEF PUBLICATION WAS IN THE PUBLIC INTEREST**

883. The decision that it was in the public interest to publish the first article was taken by Ms Viner. She has given compelling and unchallenged evidence that she believed, and continues to believe, that it was in the public interest to publish.
884. Ms Viner has given a detailed explanation of her involvement in and knowledge of the progress of the investigation. This culminated in two meetings, the purpose of which was to discuss the public interest in publishing. The first such meeting took place in the evening of 27 April 2021. A day earlier, Mr Lewis (with the assistance of Ms Osborne and Ms Kale) had drafted a 56-page document entitled “*Memo: Summary of investigation into allegations against Noel Clarke*” (‘the PI Memo’). The meeting on 27 April was chaired by Ms Viner and attended by Mr Gibson, Mr Lewis, Jan Thompson (then Managing Editor), Kira Cochrane (Head of Features) and Gill Phillips (then Director of Editorial Legal Services). The latest draft of the first article, the PI Memo, and Simkins’ letter (a 29-page response to the right to reply letter) had been circulated prior to, and were considered at, the meeting.
885. A further document entitled “*Supplementary Noel Clarke Memo*” (‘the Supplementary PI Memo’) was drafted by Mr Lewis (with the assistance of the reporters) on 28 April 2021. It records:

“At 7.30pm on Tuesday 27 April, I held a meeting with Kath Viner, Jan Thompson, Owen Gibson and Kira Cochrane in which we discussed Noel Clarke’s response at length and associated editorial and legal issues. We discussed the issues raised in NC’s letter, matters relating to the public interest and privacy, and discussed both the credibility of NC’s denials and the credibility of the 22 women who have been interviewed. We agreed at that meeting to proceed towards publication, although it was agreed that care would be taken in the writing of any article, to ensure that the severity of allegations was not overstated, and to ensure that the article fairly reflected Clarke’s position on all of the matters raised. It was also agreed that publication would be a decision for the editor in chief Kath Viner, and that we would consider anything else Clarke has to say about the issues at hand.”

The 15-page Supplementary PI Memo summarises the results of the reporters’ further engagement with many of their sources to address the contents of Simkins’ letter.

886. The second public interest meeting, with the same attendees, began at about 4.30pm on 29 April 2021. Prior to the meeting, Ms Viner had carefully read the two thorough public interest memoranda provided by Mr Lewis. These were discussed at the meeting, and legal advice was taken. At the conclusion of the meeting, Ms Viner took the decision that it was in the public interest to publish. She has given a detailed account of the factors that particularly weighed with her in reaching that decision.
887. None of her evidence on these matters was challenged. Ms Viner readily accepted the obvious point that her role did not involve on-the-ground investigative journalism: she was reliant on the information provided to her. Nonetheless, it is clear that she was the

Approved Judgment

effective decision maker. Ms Viner used her own judgement in considering the make-up and quality of the investigative and editorial team; the processes that were followed to investigate and verify the sources' accounts; reviewing the assessment of the sources' credibility having regard to the number, nature and consistency of the allegations, and the extent of corroboration; and reviewing the tone and presentation of the article, including the level at which the allegations were pitched and the positioning of Mr Clarke's responses.

888. Ms Viner was the decision-maker and she undoubtedly believed publication of the first article was in the public interest. Those facts suffice to show that the only real question in respect of the public interest defence is whether that belief was reasonable.
889. However, if it were necessary to look beyond Ms Viner's belief, the answer would remain the same. The two other editors who had a role in the decision to publish the first article were Mr Gibson and Mr Lewis. Like Ms Viner, Mr Gibson gave unchallenged and obviously honest and reliable evidence regarding the investigation, the decision-making process, and his belief that publication of the first article was in the public interest.
890. The only editorial witness whose credibility and reliability has been challenged is Mr Lewis. In his closing submissions, the Claimant made the wild and wholly unfounded allegation that ("*without knowledge or encouragement of Ms Viner*" and "*unfortunately for her*") "*Mr Lewis was a rogue journalist with his own agenda*". Although imprecise, it is a serious allegation that was never put to Mr Lewis. He was accused, twice in cross-examination, of lying about specific points, and once of being evasive. Those were points he had an opportunity to address. But it was never suggested to him that he was a "*rogue*", or dishonest, journalist, pursuing his own hidden "*agenda*" (nor what that might have been). Nor were any of the other witnesses, in particular Ms Viner and Mr Gibson, given an opportunity to address this allegation about an employee with whom they worked closely, and who reported directly to Mr Gibson.
891. I address Mr Lewis's evidence in more detail in the section below, but I make clear now that I found him to be an honest and reliable witness. Across the two days that he gave evidence, his conscientiousness, professionalism, integrity and desire to assist the Court shone through. I have no hesitation in finding that he, too, honestly believed that publication of the first article was in the public interest.
892. I have not addressed the evidence of Ms Osborne and Ms Kale in relation to the question of honest belief because they were not the decision-makers. They undertook the investigation and reported, but the decision whether publication was in the public interest was a matter for the editors, not the reporters. Nevertheless, insofar as the Claimant's submissions in relation to their evidence was relied on in relation to honest belief, for the reasons I have given in the section below, if it were appropriate to take into account the reporters' beliefs, the answer would remain the same. The Guardian believed that publishing the first article was in the public interest.

P. REASONABLE BELIEF PUBLICATION WAS IN THE PUBLIC INTEREST

893. The Claimant has raised five areas of challenge: "*the Hostility Issue*", "*the Verification Issue*", "*the Contamination Issue*", "*the Reply Issue*" and "*the Deletion Issue*". Before

Approved Judgment

turning to each of those matters, I will give an outline of the course of the investigation leading to publication of the first article.

The initial group of seven

894. The initial contact was made by Ms El Hosaini to Homa Khaleeli, then the Guardian's deputy features editor. On Thursday 1 April 2021, Ms Khaleeli told Mr Lewis that Ms El Hosaini and her husband, Mr Krishna Floyd, had information about Mr Clarke's past conduct which was surfacing in the context of the announcement by BAFTA, on 29 March 2021, that he would be given the Outstanding British Contribution to Cinema Award at the ceremony on 10 April 2021. Mr Lewis spoke directly to Ms El Hosaini and Mr Krishna Floyd on 1 April 2021. He read the letter that they, together with Ms Akindude, had sent by email to their contacts at BAFTA, including the Chair of BAFTA, on 29 March 2021, and BAFTA's response. The way in which the letter was written, being well-composed, careful and sensitive towards the alleged victims, reinforced the impression Mr Lewis had gained that they were "*acting responsibly and with good intentions*".
895. Mr Lewis learned that a group of seven had recently coalesced. For source protection reasons, the only members of this group that Mr Lewis named were Ms El Hosaini and Mr Krishna Floyd. I find that Ms Akindude, who had been working with Ms El Hosaini, was part of the group. The three of them came together, following BAFTA's announcement on 29 March 2021, with a group of four which I find consisted of Ms Lusi, 'Maya', Mr Proctor and 'Imogen'. Mr Lewis was told that some members of the group of four had written to BAFTA anonymously. One such message was from Mr Proctor.
896. Following further exploratory conversations, and receipt from Ms El Hosaini of information from three anonymous alleged victims, on Tuesday 6 April 2021, Mr Lewis decided, in consultation with Mr Gibson, that the matter warranted investigation.

The Guardian's team

897. Mr Lewis was the principal editor responsible for supervising Ms Osborne and Ms Kale, and the main liaison for the senior editors (Ms Viner and Mr Gibson) and the Guardian's Editorial Legal Team. He had been working for the Guardian since October 2005 (including a five-month secondment to the Washington Post after he was awarded the Stern Fellowship). Mr Lewis was a reporter before he moved into editing, and he has been the recipient of a wealth of prizes in both capacities, most notably for investigative journalism. Mr Lewis was appointed Head of Investigations in January 2020. Ms Viner said that,

"Owen and Paul are both very experienced and we have a well-established way of working together and maintaining accountability in our investigations."

898. Together with Mr Gibson, Mr Lewis decided to hire two freelance journalists:

"who had experience working on investigations involving sexual misconduct in the workplace: Ms Osborne and Ms Kale. I had worked with Ms Osborne before on similar investigations and

Approved Judgment

had always found her work to be excellent. I had not worked with Ms Kale, but I was an admirer of her work and knew of her reputation as one of the most talented journalists who writes for the Guardian.”

Mr Lewis explained that they engaged two journalists to work together “*to ensure we had the resources required to proceed thoroughly but at pace*” on what he sensed could be a “*complex and fast-moving investigation*”.

899. Mr Gibson observed that:

“The allocation of appropriate reporters to investigations into potential sexual misconduct is extremely important and it was essential to assign journalists with suitable skill, experience, and sensitivity. Accounting for the subject matter, I agreed with Paul’s assignment of Lucy Osborne and Sirin Kale to investigate. I was aware that each of those reporters had previous experience in investigating and reporting on sensitive matters of sexual harassment, and abuse of power.”

900. Ms Osborne was inexplicably accused in cross-examination of being “*tainted*” by dint of her “*history of investigating sexual abuse allegations*”. Her earlier work included investigating the sexual misconduct allegations against Harvey Weinstein, while working for BBC Panorama as an assistant producer and producer, and working as a freelancer for the Guardian on long-running investigations into abuse connected to the fashion industry (for which she won the award for Best Investigation at the Freelance Journalism Awards in 2023). No explanation was ever forthcoming as to how such experience “*tainted*” her. It did not: her earlier work enhanced her ability to partake in this investigation.

901. It is readily apparent that none of the reporters and editors involved had any interest in publishing any allegation that they did not believe to be true, or sufficiently verified and corroborated to be fit and ready for publication. On the contrary, as Ms Osborne put it, doing so would have put her “*reputation on the line*”. The Guardian’s choice of experienced personnel to work on this investigation and publication cannot sensibly be criticised.

The sources for the first article

902. The main reporting phase ran from 7-29 April 2021. On 7 April, Mr Lewis shared with the reporters the provisional information and contacts he had received, introduced them to Ms El Hosaini and Mr Krishna Floyd, and outlined the Guardian’s approach to an investigation of this kind.

903. Mr Lewis described Ms El Hosaini and Mr Krishna Floyd as “*intermediary sources*”. They did not raise, or corroborate, any allegations. It is clear that Mr Proctor was in the same category, although he was more proactive in setting up an anonymous email account to receive allegations, and in drawing up spreadsheets. While the information Mr Proctor provided was helpful in “*getting the ball rolling*”, it is apparent that the Guardian had to curb his eagerness to assist and make clear that he needed to leave the investigating to the journalists. Some leads came through Mr Proctor’s anonymous

Approved Judgment

email account, but the majority of the Guardian’s sources were, as Mr Lewis said, “*people who we found or who found us through the natural course of reporting these allegations*”.

904. Ms Osborne and Ms Kale have given evidence of the steps that they took to obtain information from their primary sources, and to seek to test and corroborate their accounts. Ms Osborne’s sources for the first article included Ms Kaiser, Ms Whyte, Ms Powell, Ms Seltveit, Ms Atherton, Ms Sabaliauskaite, Monica Black (who had been the Production Designer on *Brotherhood*), Ms Powell’s therapist, mother and partner; as well as sources whose identity Ms Osborne has not confirmed including Mr Proctor, ‘Imogen’, ‘Anita’/Megan*, CJS2/Lara Doree, CJS15, CJS16/Ms Pugh, CJS17/Luca and CJS19/Urvashi Chand.
905. By the time of publication of the first article, Ms Kale had spoken to “*at least 22 different sources, including at least thirteen primary accusers*”. Her sources for the first article included Ms Lusi (and two friends of hers), Ms Akindude, Ms Crabb, ‘Maya’/Kim* (and friends and work associates of hers), Leila* (and corroborative sources), Chantal* (and her mother), Mel*, Becky*, CJS7, CJS8, CJS9, CJS10 and CJS11.
906. For both reporters, these are not exhaustive lists of their sources for the first article, but they include all the women, whether named or pseudonymised, whose accounts of sexual harassment, sexual assault, inappropriate sexual remarks, bullying and professional misconduct were published in the first article.

Alleged involvement of Adam Deacon

907. Mr Lewis, Ms Osborne and Ms Kale stated that on 7 April 2021, at the outset of the investigation, Mr Lewis advised Ms Kale and Ms Osborne not to approach Adam Deacon as a source, and they did not do so. Mr Lewis was aware of him, as he had been referenced in the letter to BAFTA, and had been referred to by Ms El Hosaini and Mr Krishna Floyd, in the context of recounting an actor’s account of being harassed and threatened. Mr Lewis said:

“I believed that Mr Deacon’s conviction for harassing Mr Clarke on social media meant that Mr Deacon could not be a reliable journalistic source – even if there was a possibility that he might have information that could help us.”

Ms Osborne’s manuscript notes taken on 7 April 2021 confirm that instruction was given. And Mr Gibson gave evidence that he was reassured, at the time, that Mr Deacon was not a source.

908. In oral evidence, Mr Lewis reiterated that “*Adam Deacon was not a confidential source. He was not a source in any shape or form*”. Ms Osborne, too, confirmed in cross-examination that Mr Deacon “*was never a source of ours... He certainly was not behind any of this and he was not a source*”. Likewise, Ms Kale, when asked whether she had communicated with Mr Deacon said, “*Absolutely not. Adam Deacon was never a source for our reporting, never*”. It was not put to any of them that those assertions were lies.

Approved Judgment

909. Further contemporaneous confirmation that they did not contact Mr Deacon appears in the following exchange between Ms Kale and Ms Crabb, in a recorded call on 21 April 2021:

“[Philippa Crabb] Have you spoke to Adam Deacon at all?

[Sirin Kale] So, we’re not speaking to him because of the harassment conviction which makes him an unreliable witness and also his mental---

[Philippa Crabb (overspeaking)]: Yeah, that’s what I thought.

[Sirin Kale] --- his mental health.”

910. Nonetheless, the Claimant’s closing submissions allege that Adam Deacon “*influenced the investigation*”, asserting that:

“The reporters deny speaking to him. Yet it was highly probable that this was a lie, and that he was in some level of contact with the investigating team.”

It is unclear whether this allegation of lying to the Court – which was not put and so is improperly raised – is intended to encompass Mr Lewis, as well as Ms Osborne and Ms Kale. I shall address it on the assumption that it does.

911. The Claimant relies on seven points to found this allegation. First, in the same conversation with Ms Crabb on 21 April 2021 that I have referred to above, Ms Kale made the following statement:

“It’s really interesting though with Adam because like everything he-. Well, he did accuse of Noel of being a paedophile, which was I think one of the reasons he got done for harassment. But a lot of the other stuff he accused him of is 100% true. So it’s like, oof, you know, he got convicted of harassment when all he was actually doing was just being honest.”

The Claimant contends the most likely source of this view, given the way it was put, was Mr Deacon himself.

912. That is an unwarranted leap. Ms Kale was aware through her investigation of the nature of the allegations that Mr Deacon had published. She was expressing some sympathy for Mr Deacon’s position in circumstances where she understood that his conviction was, in part, the result of making allegations which the Guardian’s investigation had found to be true (albeit they had found no evidence to support Mr Deacon’s allegations of paedophilia). There is nothing in this exchange to suggest Ms Kale (or anyone else at the Guardian) had spoken to Mr Deacon, and Ms Kale had just told Ms Crabb that they had not done so. I also reject the accusation, put to Ms Kale in cross-examination, that she was lying when she said, “*I have never endorsed Adam Deacon*”.
913. Secondly, the Claimant contends that “*Kevin Proctor, one of the key hostile sources with whom the journalists worked extensively, has close ties with Adam Deacon*”. There is no evidence to support this assertion, whereas there is some evidence to the contrary.

Approved Judgment

In any event, the existence of a link between Mr Deacon and a source (who was no more than an intermediary, with no direct or corroborative information to provide), does nothing to undermine the powerful evidence to which I have referred showing that neither the reporters nor editors had any contact with Mr Deacon.

914. Thirdly, on 9 April 2021 Ms Osborne sent Ms Kale an email “*I keep hearing a rumour that NC forced someone to give him a blow job on set. No one yet has heard it first hand*”, noting that it was “*talked about on Twitter*”. Ms Osborne pasted into her email a string of tweets including one in which a Twitter user accused Mr Clarke of such conduct (against an unidentified woman, and tagging Adam Deacon), and a tweet from Mr Deacon saying “*noelclarke doesnt get arrested for sexual abuse*”.
915. There is no basis for inferring, from the fact that Ms Osborne sent Ms Kale a public tweet posted by Mr Deacon, that she (or anyone from the Guardian) was in contact with him. It was a message on a public social media site. As Ms Osborne explained, she was letting Ms Kale know in case it came up in any of her conversations with her sources. But it was “*just a rumour*”. It was not something they ever heard firsthand. And so, “*We never relied on it and we never reported it.*”
916. Fourthly, the Claimant asserts, based on a question put to Mr Lewis in cross-examination, that “*Adam Deacon leaked information concerning the complainants to Dan Warburton of the Mirror, implying inside knowledge into the investigation*”. Counsel’s question is not evidence. There is no evidence as to who Mr Warburton may be, or what (if any) communications he may have had with Mr Deacon. But even assuming Mr Deacon gave a journalist at another newspaper information regarding “*complainants*” who were among the Guardian’s sources, that provides no basis for inferring that Mr Deacon had “*inside knowledge*” of the Guardian’s investigation, still less that he obtained any such information from anyone working for the Guardian. An inference of “*inside knowledge*” could only be drawn if whatever information Mr Deacon may have provided was known only to the Guardian. That is not the case. Aside from the “*complainants*” themselves, many of the Guardian’s sources have given evidence regarding the people they told what had happened to them, or who were present.
917. Fifthly, on 4 November 2021, in response to a tweet from Ms Kale saying that she was thrilled to be nominated with Ms Osborne for an award “*for our Noel Clarke reporting*”, Mr Deacon posted “*Congratulations on your nomination for this life changing article*”. The Claimant relies on the fact that Ms Kale replied, “*Thank you Adam*”. A polite expression of appreciation, on being congratulated, six months after the first article had been published, plainly provides no support for the serious accusation that Ms Kale (or any of the Guardian’s witnesses) have lied when they said Mr Deacon was not a source. Nor is there any merit in the allegation that Ms Kale was “*trying to destroy evidence*” when she deleted her public tweets, including this one, using TweetDelete in accordance with the Guardian’s policy.
918. Sixthly, on 11 June 2021, Samantha Anstiss of Wonderhood Studios emailed Ms Osborne regarding a proposed documentary. Ms Anstiss wrote, “*On Noel Clarke I’m speaking to Charlie when he is back from holiday and I am meeting with Noel and his agent v soon and he has signed an NDA*”. Ms Osborne queried whether she meant “*Noel and his agent*”, saying “*assume you meant Adam Deacon?*” And Ms Anstiss confirmed she meant she was “*meeting Adam*”. The Claimant contends that the implication of Mr

Approved Judgment

Deacon having been asked to sign an NDA for the purposes of making a documentary is that “*they had in fact been collaborating on Mr Clarke for some time*”.

919. Ms Osborne explained that following publication of the first article, she was working with a production company on a separate matter. Consequently, at the time, Ms Anstiss was her boss. Anyone was free to make a documentary about the matters reported in the first article, if they wished, and Ms Anstiss was looking into doing so with Mr Deacon. Ms Osborne did not like the fact that Ms Anstiss was “*potentially pairing up and doing a documentary*” with Mr Deacon, without even having a conversation with the Guardian, and was a little upset about it, but given her role she was being polite.
920. It can be inferred from the email that Ms Osborne had already been made aware that the production company was considering working with Mr Deacon. But these emails were sent more than six weeks after the first article was published. There is no reason to infer that Wonderhood Studios had been discussing this documentary with Mr Deacon before the first article, and every reason to believe that such discussions were prompted by its publication.
921. Finally, on 26 April 2021 at 12:00, Mr Deacon posted a tweet depicting acting masks, chains, a stopwatch and laughing emojis. The right to reply letter had been sent to Mr Clarke at 11:34 the same day, and Ms Osborne followed it up by phoning Mr Clarke to inform him that he had been sent an email. The Claimant contends that Mr Deacon could not have posted his tweet in such proximity to that phone call “*without intimate insider knowledge of the progress of the investigation. Someone in the Defendant’s organisation must have been in contact with him and feeding him information*”.
922. This is not a fair or reasonable inference in the circumstances. There were a large number of people outside the Guardian who were aware of the Guardian’s investigation. They had spoken with many sources, and contacted others who did not become sources. BAFTA were aware. Mr Clarke and Mr Maza were aware of the Guardian’s investigation and responded by contacting numerous people. The Guardian was made aware by ten of their sources that they had been contacted by either Mr Clarke or Mr Maza about the investigation, and it is likely that not everyone they sought to persuade not to speak to the Guardian was in fact a source. The evidence shows Mr Clarke told others about the Guardian’s investigation, such as Mr Alexander. In addition, the Guardian had also sent invitations to reply that morning to ITV, BAFTA, Sky Studios, Mr Maza, Ms Hargreaves and Mr O’Sullivan. So if Mr Deacon’s tweet anticipated publication of an article by the Guardian, there are many people outside the Guardian who may have told him. Moreover, it may not even have related to an anticipated Guardian article. Mr Clarke’s own case is that Mr Deacon was working with *The Mirror*, so it is possible he may have been anticipating a publication by that newspaper.
923. Mr Clarke’s insistence that Mr Deacon was “*secretly coordinating these allegations*” is, as Mr Lewis put it, “*a conspiracy theory which was untrue*”. The evidence of Mr Lewis, Ms Osborne and Ms Kale that Mr Lewis instructed the reporters not to contact Mr Deacon, and they complied with that instruction, was obviously true and accurate, and it is borne out by the contemporaneous documents. The assertion that they lied about this is baseless.

Approved Judgment

924. The Claimant contends that the Guardian did not believe, and could not honestly have believed, that publication of the first article was in the public interest given what he describes as the “*sheer malice*” of intermediaries and sources, many of whom are said to have had “*axes to grind*”.
925. Before considering the intermediaries and sources, in view of the way in which Mr Lewis, Ms Osborne and Ms Kale were cross-examined, I emphasise that each of them endeavoured to assist the Court by giving honest and reliable evidence. Each of them approached the investigation from a starting point of having no prior knowledge or opinion about Mr Clarke. Ms Osborne and Ms Kale were each accused in cross-examination of having “*an agenda*”, seemingly to “*get Noel Clarke*”. That allegation has no foundation, and is demonstrably disproved by the materials before me which show the extensive efforts they made to investigate, test and corroborate the information they received, and not to publish allegations which they could not substantiate.
926. Ms Kale was accused of “*bias*” on the grounds that she described John Barrowman’s behaviour in exposing his penis on set as “*tomfoolery*”, in contrast to her description of Mr Clarke’s behaviour. However, this reflected the fact that numerous witnesses described the incidents involving Mr Barrowman as “*inappropriate pranks*”. The fact that those present did not perceive Mr Barrowman’s conduct as “*sexually predatory behaviour*” had to be, and was, fairly reflected in the sixth article.
927. The misperception that Ms Osborne and Ms Kale simply “*believed the women*”, without more, seems in part to have arisen from the approachable way in which they sought to connect with their sources, and show understanding and empathy. However, in doing so, they were using their skills as journalists. As Mr Lewis explained, as an investigative reporter,
- “You do have to be somewhat chameleonic and speak to people in different ways. You intuit your way through those conversations. In a conversation with someone who is a victim of alleged misconduct, I think we are probably particularly aware of trying to put people at ease.”
928. No fair criticism can be levelled at the reporters for adopting such an approach. They continued to exercise their critical reasoning, and to test and further investigate the information they received. I also accept Mr Lewis’s evidence (which was supported by the other Guardian witnesses and the contemporaneous evidence) regarding the role he performed:
- “My job as an editor is not just to edit the copy, it is to stress-test the story, to say, ‘How do we know this is true? Is there another explanation for what may have happened here? To what extent do you really believe this person?’, to play Devil’s advocate. I remember doing that repeatedly with Sirin and Lucy...”
929. The case that Mr Lewis and the reporters themselves became a party to a conspiracy and knowingly deceived Ms Viner and others to secure publication of known falsehoods was not put to them, and cannot be advanced. It is, in any event, wholly unfounded and meritless.

Approved Judgment

930. The Claimant's closing submissions allege that Mr Lewis, Ms Osborne and Ms Kale "*accepted that they were aware of the malicious anonymous email campaign, and the lies and malice of the intermediaries*". That is not true. Their evidence was that one of the group of seven (who I find was Kevin Proctor) had set up an anonymous email account to receive and collate allegations (some of which may have been passed on to BAFTA). Ms Whyte heard about that account through a friend in the industry and sent an anonymous email to it. Later, and separately, Ms Powell set up an anonymous email account from which she emailed a number of people whose contact details she had, informing them of the Guardian's investigation and providing Ms Osborne's contact details. None of those actions were taken at the behest of the Guardian, but Mr Lewis, Ms Osborne and Ms Kale did not accept the characterisation of any of those actions as "*malicious*" or a "*campaign*".
931. Nor did they accept that the anonymous accounts, insofar as they were provided by the Guardian's sources, were "*lies*". There was an anonymous email sent to Ms Osborne (which referenced alleged assault or rape of "*over 2 dozen victims*") which Mr Lewis acknowledged could arguably be malicious. But it was not from someone who became a source. Ms Osborne explained that the Guardian received another anonymous email from the same email address with details of "*what this person was alleging had happened to her*". They were able to work out who they thought had sent these emails, and received some corroborative information, but "*we tried to approach that person and she did not want to talk to us*". The woman who Ms Osborne believes sent that email "*was not somebody whose allegation formed part of the investigation because we were not able to speak to her so therefore she was not going to be someone we would rely on in any way*". As Mr Lewis said, the Guardian "*would never publish anything based on an anonymous email*".
932. The three intermediaries who are accused of hostility towards Mr Clarke are Mr Krishna Floyd, Ms El Hosaini and Mr Proctor. Their views of Mr Clarke are of little consequence in assessing whether the Guardian's belief that it was in the public interest to publish the first article was reasonable, given that they were not the sources of any of the material that was published, nor of any material relied on in assessing the credibility of that which was published. But I do not accept that any of them acted out of malice.
933. Based on the allegations of sexual misconduct that they had heard from people in the industry, it is evident that Mr Krishna Floyd and Ms El Hosaini felt strongly that it was wrong for BAFTA to elevate and further empower Mr Clarke by giving him a prestigious special award. Mr Krishna Floyd expressed concern in a phone call to the Chair of BAFTA that the award may have been "*a box-ticking exercise cos he's black and working class*". Ms Kale did not agree with those comments, which she considered were not well expressed, but reflected Mr Krishna Floyd's opinion that Mr Clarke's body of work did not merit such an award (a view he was entitled to hold, albeit it was immaterial so far as the Guardian was concerned). Nonetheless, Mr Lewis's belief, having spoken directly to both Mr Krishna Floyd and Ms El Hosaini on several occasions in early April 2021, that they were acting responsibly, with good intentions, was well-founded and reasonable in the circumstances.
934. Mr Proctor was in a relationship with 'Imogen' at the time, and Ms Osborne said (without confirming his identity) that he was genuinely upset about how he believed Mr Clarke had treated people he knew through his work in the industry. The submission

Approved Judgment

that Mr Proctor’s acts were malicious is fundamentally inconsistent with Mr Clarke’s admission that Mr Proctor believed the accounts he collated were true (para 525 above).

935. Mr Lewis did not accept that any of the Guardian’s sources had an axe to grind with Mr Clarke. He acknowledged that some people had disputes with him unrelated to sexual misconduct, but he did not think that the sources were speaking to the Guardian for those reasons.
936. The only source for the first article who had such a dispute was Ms Powell. She was Ms Osborne’s source. Ms Osborne spoke to her at length on at least five occasions prior to publication of the first article. Following discussions with Mr Lewis, Ms Osborne went to great lengths to test and corroborate Ms Powell’s account, including seeking documentary evidence regarding the financial dispute (which Ms Powell had revealed long before it was raised in Simkins’ letter), and questioning Ms Powell about it. Ms Osborne said that Ms Powell was “*very willing to send me all her records*”. The assessment of Mr Lewis and Ms Osborne, with which Ms Kale agreed, that Ms Powell was a credible source who was not motivated to come forward by a past financial dispute, cannot be faulted.
937. It was put to Ms Kale that Jing Lusi also had an axe to grind, a proposition with which she disagreed. There is no suggestion in Ms Lusi’s case of any reason, other than the treatment she alleges she was subjected to, for her to be hostile towards Mr Clarke. Ms Kale’s view, having spoken to Ms Lusi on many occasions prior to publication of the first article, was that she is “*quite a passionate person*” who is “*very forceful in her language*”. But she was a credible source whose account was consistent when repeatedly tested, and it was corroborated by contemporaneous documents and other sources who she told of her experience shortly afterwards. That, too, was a reasonable assessment.
938. Mr Fairbanks has been accused of having an axe to grind. But he became a source after publication of the first article, and the only published information for which he was a source was the information (published in the eighth article) that he “*contacted the Met shortly after the Guardian’s investigation was published in April 2021*”, which has never been disputed. More generally, Mr Lewis gave well-founded and persuasive evidence that:

“I believe we had a strong handle over all of our primary sources and the relationship they had with Mr Clarke, including any prior grievances, because they volunteered it to us.”

The Verification Issue

939. A key point in terms of verification is that, as Mr Lewis explained, the Guardian “*only published articles or accounts in articles based on firsthand testimony with people who told us what they said Mr Clarke had done to them*”. The Guardian has relied in the context of the truth defence on two eye-witness accounts of alleged conduct directed towards others, where there is not such firsthand testimony. But that is of no relevance in considering the public interest defence. The Court is concerned with the steps taken to verify that which was published. On numerous occasions the Guardian’s witnesses were accused of failing to verify matters which were never published (e.g. Mr Fairbanks’ account concerning Ms Urwin). This error has persisted in the Claimant’s

Approved Judgment

closing submissions. Allegations relating to ‘Sophia’ and ‘Isla’ were never published by the Guardian. I also note that Mr Fairbanks, Mr Sherlock and Ms Coldwell were not sources for the first article.

940. In respect of the first article, the Claimant has raised issues regarding the steps taken to verify the accounts of Ms Kaiser, Ms Whyte, Ms Powell, Ms Seltveit, Ms Atherton, Ms Crabb, Ms Sabaliauskaite, ‘Maya’ and Ms Lusi.

Anna Kaiser

941. The Claimant contends that Ms Kaiser’s account has not been corroborated. That is correct, to the extent that no source came forward who had witnessed the behaviour towards Ms Kaiser which she alleged. Ms Osborne tried to contact potential corroborating witnesses herself directly, to reduce the chance of the source speaking to them directly beforehand. But this was not always possible, as “*sometimes our sources reached out to potential corroborative sources without us asking them to or they were already communicating with them*”. An example is Ms Kaiser, who contacted some potential corroborating sources herself. They were not able to assist. But Ms Osborne then directly contacted CJS1, a source in whom Ms Kaiser had confided.
942. The Claimant’s closing submissions criticise the Guardian and “*in particular Ms Kale*” for not contacting Andrew Loveday, or members of the cast such as Terry Stone, Danny Dyer and Stephen Graham to assess the veracity of Ms Kaiser’s allegation. None of the Guardian’s witnesses were given an opportunity to address that criticism. None of those names were put to them. The Claimant focuses his disparagement on Ms Kale, despite the fact Ms Kaiser was not her source.
943. The Guardian had Ms Kaiser’s firsthand account, her tweet which showed that she had been concerned about Mr Clarke’s behaviour long before she had any contact with Mr Krishna Floyd or Ms Lusi, and confirmation from CJS1 that she had earlier told that source what had happened. In addition, they tested the credibility of her account by reference to the information that they received, more broadly, regarding Mr Clarke’s behaviour towards women on sets.

Johannah Whyte

944. The Claimant contends that the Guardian failed to make reasonable enquiries regarding the alleged covert filming by not checking whether Ms Powell knew – through past conversations with Ms Whyte – of the short, dark hairstyle Ms Whyte had in the audition. Ms Osborne was clear, having interviewed Ms Powell on at least five occasions, and Ms Whyte at least three times, prior to publication of the first article, that Ms Powell had not known Ms Whyte had ever had that hairstyle until she saw the footage.
945. The Claimant suggests that the Guardian should have approached ‘Florence’ and ‘Mia’ to obtain information from them about their auditions by reference to which Ms Powell’s account could then have been tested – although Ms Powell never said she saw ‘Mia’s’ audition. That is a new contention that was not put to the witnesses. Consequently, there is no evidence as to whether they were approached or, if not, why not. In any event, there would have been no reason to believe they would have witnessed the filming, given that it was covert.

Approved Judgment

946. There was an inconsistency between Ms Powell's reference to Marc Small and Jason Maza being present, and Ms Whyte's account of who was present, which went unnoticed. However, I do not consider that they can be criticised for not approaching Mr Maza or speaking to Mr Small. Ms Osborne explained that given Mr Clarke and Mr Maza were business partners and good friends, it would have "*really upset our sources*" if they had contacted Mr Maza. She could not recall whether she had ever tried to speak to Mr Small, but she had "*manage[d] to track down*" the Casting Director who was in the audition, and her response was carefully considered.
947. The season in which the pub meeting occurred was included in the first article to give it "*colour*". Aside from the fact that it was in 2017, after Ms Powell left Unstoppable, the date was unimportant. In any event, prior to publication, it was not apparent that there was any uncertainty about when the pub meeting took place. Ms Osborne was told it was Winter 2017 and had no reason to seek further verification of the date.

Gina Powell

948. Ms Osborne went to great lengths to test and corroborate the information provided by Ms Powell, in relation to herself and others. In addition to speaking to Ms Powell at length, on numerous occasions, she (and Ms Kale) spoke to 12 individuals whose information assisted the Guardian in assessing Ms Powell's credibility. Ms Whyte, Lara Doree/CJS2, Ms Seltveit, Laura Pugh/CJS16, Luca/CJS17 and Ms Powell's mother each provided information that she had told them about Mr Clarke's conduct towards her in Los Angeles. Monica Black, Helen Atherton, Philippa Crabb and CJS15 (among others) described her character and were witnesses to her behaviour, and Mr Clarke's general behaviour towards her. Ms Whyte, Laura Pugh and Luca each recounted Ms Powell's disclosure in the pub of the secret filming of Ms Whyte's audition. And Ms Osborne spoke to Ms Powell's therapist who, although someone she had been seeing only for a short time, and who had made no diagnosis of Post-Traumatic Stress Disorder, described Ms Powell as having PTSD-type symptoms, in terms of her fear of seeing Mr Clarke.
949. The Claimant asserts that Ms Powell's behaviour following the trip to Los Angeles was not consistent with the "*profile of a person so psychologically traumatised as to require therapy as a result of her alleged treatment by Mr Clarke*". There is no basis for asserting that a victim of the behaviour described would fit a stereotypical psychological "*profile*", nor that Ms Powell's behaviour was at odds with what might have been expected (see para 583 above).

Synne Seltveit

950. Ms Osborne was criticised for not asking Ms Seltveit for the pictures that Mr Clarke sent on 23 July 2015 (para 626 above). She explained, "*It is Snapchat so those pictures disappear. I knew they would not be available.*" Ms Osborne acknowledged that Ms Seltveit was "*confused about the dates*", but she was "*always very clear that she received a dick pic from, at least one dick pic from Mr Clarke. That never changed in her testimony*". Mr Lewis volunteered, "*I do think it is fair to say that it may have been better for us here to say that she was unsure about the date the image was sent*".
951. Both Mr Lewis and Ms Osborne acknowledged that they did not investigate whether Ms Seltveit sent or received explicit photographs (other than from Mr Clarke). Their

Approved Judgment

reporting was focused on Ms Seltveit’s allegation that she had received an *unsolicited* picture of a penis from Mr Clarke. However, when Ms Osborne asked Ms Seltveit whether she had ever sent photographs of herself to Mr Clarke, Ms Seltveit said openly that “*I could definitely send a pic to a guy if he wants it*”, but she had not sent any picture to Mr Clarke. Neither Mr Lewis nor Ms Osborne considered that any consensual sending or receiving of explicit photographs by Ms Seltveit would have any bearing on the allegation. The Claimant contends that if they had known Ms Seltveit sends or receives such pictures, that would have led to the conclusion that any sending by Mr Clarke was not unsolicited. However, Ms Seltveit was clear and unequivocal that it was unsolicited and her account was supported by contemporaneous messages.

952. Mr Lewis and Ms Osborne were both questioned regarding the decision not to go back to Ms Seltveit, following receipt of Simkins’ letter, to ask whether she had flirted with Mr Clarke on their trip to Glasgow. In Signal messages on the “*Final*” group chat between Mr Lewis, Ms Osborne and Ms Kale, on 29 April 2021 at 17:42, there is the following exchange:

“[Lucy Osborne] Should I go back Synne about his suggestion that she instigated discussions of sex?”

[Lucy Osborne] She was open about initially flirting with him on our first call but said she did nothing to invite a dick pic

[Paul Lewis] NO!”

953. Mr Lewis explained in evidence:

“We were in the last stages of fact-checking and copy editing so I did not think it was necessary, given that Lucy had already had a conversation with the source about her flirting, in which she said, ‘I did flirt with him, but I did nothing to invite a dick pic’, for us, on the basis of Simkins saying she was flirting with Mr Clarke, to go back and have that same conversation with her, it would be duplicative.”

954. Ms Osborne agreed that there was no reason to go back to Ms Seltveit “*because we had already stress-tested that allegation*”. In fact, Ms Osborne’s understanding, as reflected in her Signal message, that Ms Seltveit said she initially flirted is slightly inaccurate (as she herself observed in her oral evidence). But the material point is that the journalists’ understanding was that Ms Seltveit had already said that she had initially flirted with Mr Clarke and that did not affect their view of her allegations given the clarity of her account that she did not invite his conduct in smacking her buttocks or sending her a photograph of a penis. They did not need to revert to her in those circumstances.
955. The Claimant’s closing submissions accuse Ms Kale of “*outrageously stat[ing] dates were not important*”, in relation to the photograph sent to Ms Seltveit. She said no such thing. Ms Seltveit was not even her source. The evidence that the Claimant’s counsel appears to be referring to was given by Ms Osborne in relation to the distinct issue of the date on which Ms Powell, Ms Whyte, Ms Pugh and Luca met in the pub. Ms Osborne made the modest and reasonable observation that that date “*did not feel like a hugely important detail*”.

Approved Judgment*Helen Atherton*

956. The Claimant contends that the Guardian should have sought corroboration from “*other producers on set*” because it “*would have been clear from the evidence presented to the Defendant that Ms. Atherton’s source of grievance stemmed from her own unprofessional attitudes as to the filming of explicit scenes*”. There was no such suggestion in Simkins’ letter and nor was that put to the Guardian’s journalists.
957. The Claimant also submits that the Guardian should have contacted people who worked on other productions with Mr Clarke, such as Maggie Monteith and Josephine Rose, to corroborate the allegations regarding his methods of directing. Again, that was not put to the Guardian’s journalists.
958. The Guardian sought to verify Ms Atherton’s account by obtaining her contemporaneous messages, and speaking to other sources on the same production, including Monica Black and ‘Anita’/Megan*. Ms Osborne stated that these women were not friends or in touch yet recalled some of the same details. In addition, the Guardian considered the broader corroboration in the form of similar allegations regarding “*sexualised comments or gestures about women’s bodies at work*” that the reporters had received from ‘Maya’/Kim*, Monica Black and ‘Anita’/Megan.
959. When Simkins’ letter claimed that the scene in which “*a woman straddled a male performer*” was “*as required by the script*”, Ms Osborne checked the script and ascertained that it did not include any direction to that effect.

Philippa Crabb

960. The Claimant contends that there is no evidence that Ms Crabb was asked about the occasion on which she was “*two hours late*”, following the account given in Simkins’ letter. That is wrong. The Supplementary PI Memo shows that Ms Crabb was asked about it in a phone call on 28 April. That memorandum records that, “*Ms Crabb denied in the strongest terms that she was late to set for a personal reason, and stated that she was late because she was not sent to the set at the required time by the production team*”. Ms Kale said that to be on the safe side, given the element of doubt, the allegation of Mr Clarke shouting at her in relation to the second episode of lateness was not published. The Claimant criticised the failure to mention other occasions when she was late, but no other episodes were referred to in Simkins’ letter.
961. Ms Kale was criticised for not listening to Ms Crabb’s podcasts. None of the podcasts are in evidence. Evidence cannot be adduced by providing a link in closing submissions, as the Claimant has sought to do. There is no evidence that Ms Crabb said anything of material relevance, still less that she had done so prior to publication of the first article, in any of her podcasts. In any event, it was not unreasonable for Ms Kale to pursue other avenues of investigation, rather than listening to all of a source’s podcasts on the off chance something of relevance might be said. There was no more reason for Ms Kale to have listened to Ms Crabb’s podcasts than there was for Ms Osborne to view Ms Whyte’s digital content, yet there has been no suggestion that step was required of Ms Osborne.

Ieva Sabaliauskaite

Approved Judgment

962. The Claimant alleges that Ms Sabaliauskaite’s account changed and accuses Ms Kale of an “*inexplicable and unreasonable*” failure to “*follow up on this very obvious and material change of position*”. Ms Sabaliauskaite was Ms Osborne’s source, not Ms Kale’s. Ms Osborne had already been informed of the allegation concerning Ms Sabaliauskaite by numerous witnesses (who did not recall her name) before she first spoke to her on 21 April 2021. Ms Osborne went back to Ms Powell, Lara Doree/CJS2 and CJS15, all of whom were present at the wrap party and in the office the following day, to obtain further information.
963. Ms Osborne spoke to Ms Sabaliauskaite again, twice, following receipt of Simkins’ letter. On both occasions Ms Sabaliauskaite made clear that she could see from the picture that it was taken while she had her leg up against a wall, in a splits position. In the final call, Ms Osborne said to her that “*she*” (who I find is likely to have been CJS15) “*wasn’t sure if he was just threatening to get the photograph out*”. In light of that, and Simkins’ letter, Ms Osborne asked “*How sure are you that you saw it?*” Ms Sabaliauskaite said that she was “*100%*” sure. There was no inconsistency in her account. There were no further steps the Guardian could have taken to verify her account and their assessment of her credibility is reasonable.

*‘Maya’/Kim**

964. The Claimant describes the attempt to corroborate ‘Maya’s’ account as “*limited*”, and the omission to speak to Jon Finn or Judy Counihan prior to publication of the first article as “*strange*”.
965. Ms Kale spoke directly to ‘Maya’/Kim* on several occasions and assessed that she had no cause to seek publicity. Ms Kale spoke to a CJS who worked on the same production, and who gave direct evidence, from speaking to Mr Clarke, that he was adamant that ‘Maya’/Kim* should be nude in the scene, and angry she would not comply with his demands. The same source also remembered how anxious and uncomfortable ‘Maya’/Kim* felt, as a consequence of the pressure applied by Mr Clarke. Ms Kale spoke to another source, CJS8, who also worked on the same production, recalled Mr Clarke’s “*bullying behaviour*” towards ‘Maya’/Kim* because she would not laugh at his sexualised and lewd remarks. Ms Osborne spoke to a third professional who worked on the production who described Mr Clarke “*making out like she [‘Maya’/Kim*] was being problematic for the sake of it*”, and making derogatory comments about her on set, specifically relating to her concerns around the sex scene.
966. In addition, Ms Kale spoke to a friend of ‘Maya’/Kim* in whom the latter had confided in 2018. The friend told Ms Kale that ‘Maya’/Kim* had told her in 2018 that she had been sexually harassed by Mr Clarke, pressured to be naked in a sex scene against her wishes, and that she was “*very concerned*” for her career because she had not “*gone along with it*”. The fifth corroborative source was a work associate of ‘Maya’/Kim*, who said that during a business meeting shortly after she finished the project, ‘Maya’/Kim* told him that Mr Clarke was “*totally inappropriate*” on set and it left her very upset.
967. It was put to Ms Kale that she failed to reach out to Mr Finn who, it was said, would have confirmed that Mr Clarke wanted to keep ‘Maya’/Kim* on the production. Ms Kale said she “*tried to reach out to as many people as possible at the time*”, but she did not remember reaching out to Mr Finn. However, this was not an omission to speak to

Approved Judgment

a source who would have undermined the account given by ‘Maya’/Kim*. On the contrary, it is clear from the evidence he has given that, if he had been approached, Mr Finn would have strongly corroborated her account. Whether he would have said Mr Clarke had wanted to keep ‘Maya’/Kim* is speculation, as that was not a matter about which he was questioned when he gave evidence. But even assuming the Guardian might have gathered information that showed her belief that Mr Clarke had a role in ensuring she ceased to work on the production was mistaken, that would not have undermined her credibility. That belief (which was not published) was based on inference whereas her account of how Mr Clarke behaved towards her was direct evidence.

968. Ms Kale was not asked whether she tried to contact Ms Counihan. It is apparent that she, too, would have been a corroborative source if Ms Kale had succeeded in speaking to her.
969. Simkins’ letter stated that Mr Clarke “*was due to do a sex scene with an actress. She [‘Maya’/Kim*] requested a change to the scene. Our client called her to discuss her proposed change and she agreed to do the scene as originally written. After the call she wanted to do the scene as she asked to do it and they did it they way she wanted to*”. Ms Kale checked the veracity of Mr Clarke’s response by obtaining a copy of the script from ‘Maya’/Kim* on 28 April 2021. As noted in the Supplementary PI Memo, the script “*states that her character was meant to strip down to her ‘bra’ and further nudity was not written into the script, meaning that she was not asking for a change to the script, merely to perform the scene as directed (wearing underwear)*”.

Jing Lusi

970. Ms Kale was criticised for not speaking to the two other members of the cast who attended the dinner on 10 November 2018 with Ms Lusi and Mr Clarke (para 819 above). Ms Kale explained that the Guardian corroborated “*what we intended to publish*”. The Guardian did not publish Ms Lusi’s account of that dinner because “*it did not meet the threshold for publication*”; it did not seem to Ms Kale “*to be serious enough to consider publishing*”.
971. Ms Kale was also criticised for not seeking the entirety of Ms Lusi’s messages with Mr Clarke, with the consequence that the Guardian did not see, prior to publication, the messages from Ms Lusi to which I have referred in paras 826-827 above. Ms Kale said that “*it can be intrusive to ask for the entirety of someone’s message chain*”, so she asked for “*the information that I felt was relevant at the time*”. Ms Kale did not think that messages prior to the dinner on 27 November 2018 would be “*particularly relevant or important to see*”. That was a reasonable judgement and I note that there is nothing in Simkins’ letter to indicate that messages prior to the dinner might be relevant.
972. Mr Lewis did not agree that they should have looked into Ms Lusi’s comments about the BAFTA award: “*I do not think somebody saying that they do not believe the award is warranted is something that, as Mr Williams put it, sort of warrants investigation.*”
973. The Supplementary PI Memo, confirmed by Ms Kale’s evidence, shows that the Guardian went back to Ms Lusi, and tested her account in light of Mr Clarke’s allegations that she flirted with him at the dinner and told him that “*(1) she liked to*

Approved Judgment

*sleep around*¹⁹; (2) *she liked sleeping with married men; and (3) she liked a man to take charge*". Ms Lusi had said in her initial conversation with Ms Kale that Mr Clarke had told her during the dinner that she had said three things that made him think "*game on*". She could only recall one of the comments he had referred to, which was not one he mentioned in Simkins' letter. Ms Lusi told Ms Kale that the first comment was not true, and implicitly that she would not have said it. In relation to the second and third comments, Ms Lusi told Ms Kale "*she may possibly have said she likes men who are strong and take charge, but not to elicit sex, and not flirtatiously*", and the "*conversation around sleeping with married men in the past was in the context of past mistakes she had made*". She did not know at the time that Mr Clarke was married. Ms Lusi denied that she had flirted with Mr Clarke during the dinner, saying she would not have done as she already felt uncomfortable around him. The Guardian reached a reasonable assessment of the credibility of her account, having regard not only to her answers to these specific points, but also the contemporaneous messages showing how she felt about what had occurred within days of the dinner, and her actions in not sending him a script she was working on, despite his repeated requests, and in raising his behaviour with various representatives (para 838 above).

974. The Claimant submits that the Guardian failed properly to assess Ms Lusi's credibility in light of a response from solicitors on behalf of Ms Hargreaves to an invitation to comment. There is nothing in this. Ms Lusi's account that on 14 January 2019 she bumped into Mr Clarke's then publicist at a screening at BAFTA and told her that Mr Clarke sexually harassed and threatened her, is not undermined by a response that Ms Hargreaves "*does not recollect*" Ms Lusi making such allegations about Mr Clarke and "*she would have expected to recall them (albeit significant time has elapsed)*". This was fairly reflected in the first article.

'Anita'/Megan, Leila*, Chantal*, Mel*, and Becky**

975. No issues have been raised in the Claimant's closing submissions regarding the verification of the accounts of the other primary sources whose allegations were published in the first article, namely, *'Anita'/Megan*, Leila*, Chantal*, Mel*, and Becky**. Nor was the evidence given by Ms Osborne and Ms Kale regarding the steps they took to verify and corroborate their allegations challenged. The only question²⁰ put to any of the Guardian's witnesses regarding these sources was in the following exchange between Mr Williams and Mr Lewis:

"Q. 'In 2004, Mel* acted in Clarke's debut feature film *Kidulthood*. She was a teenager when she auditioned', First Article; yes?"

A. This is the First Article, yes.

Q. And that lady has not come forward to support that allegation, has she?"

¹⁹ Mr Clarke has not sought to maintain that she ever said this. It appears to be his distorted interpretation of a conversation about the merits or otherwise of monogamy, which was not referred to in Simkins' letter and so could not be raised with Ms Lusi.

²⁰ It was also put to Mr Lewis that Jaime Winstone, who Mr Clarke believes to be Mel*, is friends with Mr Deacon; a question he declined to answer for source confidentiality reasons.

Approved Judgment

A. Well ----

Q. Mel?

A. Yes, she did, she came forward to us certainly. We interviewed her, and based on the reporting we believed this was, after contacting Mr Clarke and considering what he had to say about the allegation, we believed we were warranted in publishing this.”

I am satisfied that the steps taken to verify their accounts were sufficient.

976. Ms Kale gave evidence that on the day of publication of the first article, after Mr Lewis told her and Ms Osborne that they were going to publish, the three of them on a video call had done final line-by-line fact-checking, going through each quote and fact to check them. She was accused of “*making this up as you go along*”. It is hard to see how this allegation of dishonesty could have been put. There is no contrary evidence. Nor is there anything implausible in her evidence that right up until publication they were fact-checking by, for example, checking quotes against transcripts, confirming that where they gave individual’s ages those were accurate and checking the dates of productions.
977. I have addressed the granular criticisms of the verification process. There is little in them. The only point of significance is that Ms Powell’s erroneous statement that Mr Small and Mr Maza were present during the final *Legacy* audition was overlooked, and so that aspect of her account was less well tested than it should have been. But in all other respects, the Guardian went to great lengths to test her account, and the assessment that she was a credible source was more than reasonable. More broadly, the steps taken by the Guardian to verify and corroborate the matters published in the first article were reasonable in the circumstances.

The Contamination Issue

978. The first aspect of the “*Contamination Issue*” is targeted at the reporters who are said to have used improper journalistic techniques, by asking their sources leading questions and disregarding journalistic neutrality. The Claimant’s closing submissions claim the documentary evidence is “*replete with examples of the reporters asking leading questions in order to influence the complainants’ answers, as well as essentially instigating and pushing the complainants into making their complaints*”.
979. Following receipt of Simkins’ letter, Ms Osborne audio recorded a phone call with Ms Powell. She accidentally left the tape recording after that conversation ended with the consequence that a casual, private conversation she had with her housemate was recorded. Ms Osborne had been working long hours. It was the day prior to publication. She was in the process of having to go back to her sources and put to them counter-allegations made by the Claimant, which she told her friend she found “*horrible*”, and she was giving vent to her anxiety about the prospect of being sued, and having “*everything scrutinised*”. In that context, Ms Osborne said:

“I’ve got just so many conversations with women. There are 24 women we’ve spoken to now. And I’m not, you know, I

Approved Judgment

probably, I'm sure I said something that was a leading question at some point, you know."

980. This is no more than an understandable expression of anxiety, at a particularly stressful moment, that if the many hours of conversations she had had with sources were subjected to minute examination, the way in which she phrased some questions might be found wanting. In fact, the Claimant only identified two purportedly leading questions put by Ms Osborne in any of the disclosed audio recordings or transcripts.
981. The first concerns the venue of the pub meeting. It was put to Ms Osborne that in one of her conversations with Ms Whyte, on 19 April 2021, she "*just went straight in*" and asked the leading question, "*Was it the Prince Regent?*" That is an unfair criticism. At the outset of this conversation, Ms Whyte said they met in a pub in Herne Hill, where two of her former housemates were then living. She could not recall the name but said "*it's by the park*". Later in the conversation, Ms Osborne asked the open question "*do you remember anything else about the pub?*" Ms Whyte responded:
- "Yeah, so it's lovely--it's a gorgeous. I forget the name of it. I think it's something called the Prince Albert. It's in Herne Hill. Or the Princess? No, Prince. I think it has something to do with Prince. It's a lovely like bougee pub."
982. It was only following those descriptions that Ms Osborne asked, "*Is it the Prince Regent?*" and Ms Whyte exclaimed, "*That'd be it! It's on the corner of the park, literally faces Herne Hill*". The way in which the conversation flowed cannot sensibly be said to undermine the usefulness of the answer which was given.
983. During a conversation on 17 April 2021, Ms Seltveit had recounted that on the Glasgow trip Mr Clarke "*smacked my arse*". Ms Osborne asked her whether she would describe it as "*inappropriate behaviour*" or "*consensual flirting behaviour*". Ms Seltveit responded, "*I remember thinking at the Glasgow party when he smacked my arse that 'hmm I did not ask for that'. ... I remember thinking I didn't like that even though I might be a flirty person doesn't mean you can smack my arse right out of the blue*". Ms Osborne then asked the second of the questions that the Claimant criticises as leading: "*Would you describe that as a sexual assault?*" Ms Seltveit responded that, at the time, she "*probably wouldn't*" because it was pre-#MeToo, "*but definitely it is. I didn't ask for that. It's my arse. If you want to grab it, please ask me first. So yes, I would.*"
984. In cross-examination, Ms Osborne said, self-critically, that she "*probably could have put that in a better way*". However, it does not seem to me that the question is objectionable given that she had already ascertained from Ms Seltveit that Mr Clarke had touched her in a way that was sexual, and that he had done so without her consent. By definition, what Ms Seltveit had already described is a sexual assault. Ms Osborne was merely checking whether that was a label that Ms Seltveit herself would apply to the conduct she had described. Her question did not assume any matters that were not already ascertained. In any event, the question and answer were inconsequential as the Guardian reported the conduct which Ms Seltveit had recounted earlier in the conversation without labelling it a sexual assault.
985. The Claimant contends that the "*most outrageous example can be found in Ms Kale's Witness Statement, in which she essentially admitted that she attempted to lead CJS7*

Approved Judgment

into making a rape allegation". Ms Kale's statement contains no such admission. Ms Kale explained that CJS7 was a woman who had met Mr Clarke in a professional capacity. During their first call, CJS7 was "*extremely upset*", crying on the call. She told Ms Kale she felt "*disturbed by her encounter with Mr Clarke, that she was very young at the time and there was power imbalance between them and an age difference between them as well ... she said he was very forceful and she felt it was hard to say no to him when he wanted to have sex with her and she went to the hotel room with him*". Ms Kale said in cross-examination:

"I remember these conversations with this source very well. I absolutely was not leading her; in fact, quite the opposite. I made it very clear that an allegation of non-consensual sex is extremely serious and it was something she needed to think very carefully about before making."

I accept Ms Kale's evidence. Ultimately, although the source felt Mr Clarke's conduct towards her was "*exploitative*" and "*she did not feel like she could say no*", she felt they had had sex consensually. Consequently, her account formed no part of the Articles.

986. The Claimant sought to rely on an article in GQ magazine, by Hanna Flint, entitled "*Sirin Kale and Lucy Osborne: 'Some women genuinely believed their career would be destroyed'*", to establish that Ms Kale was guilty of deception. The article includes the following passage:

"Clarke was born in Notting Hill to Trinidadian parents and had often used his influence to support diversity and people of colour in the industry. It's why some accusers, a lot of whom were black or mixed race, were conflicted about speaking up. With that knowledge, Kale, who is of Turkish-Cypriot and Iranian heritage, believes it's one of the reasons she was asked to colead the investigation. 'One thing that did come up quite a lot was [the accusers'] fears around race and the idea of speaking out publicly about a black man from a working-class background,' she says. 'Those are really valid concerns and me being a woman of colour meant I was able to sort of empathise with that on a level.'"

987. The Claimant contends that the second sentence is inaccurate. Ms Kale said:

"Some of [the] confidential journalistic sources were women of colour, black women, mixed race women. Women we spoke to subsequently for our reporting as well were black women, mixed race women."

She did not put it so high as to say "*a lot*" of his accusers were "*black or mixed race*". Ms Kale thought the author "*might have slightly misunderstood us when we were talking*".

988. It seems to me that the passage was probably meant to convey that "*some accusers ... were conflicted about speaking up*", and of that smaller subset "*a lot*" were black, mixed race or women of colour. On that understanding, it would be accurate. In any event, the

Approved Judgment

line which the Claimant contends is inaccurate, is not directly quoting Ms Kale and I reject the contention that she lied in the interview.

989. The Claimant goes further and claims that Ms Kale’s evidence that “*some*” of the Guardian’s sources were “*women of colour, black women, mixed race women*” is a lie. That contention is baseless. It is apparent, even on the limited information before the Court, that three women of colour (Ms Lusi, ‘Sophia’ and ‘Maya’) and one black man (Mr Small) gave evidence for the Guardian, and one black woman (Ms Akindude) was a source. While Mr Clarke has been able to work out the identity of some of the Guardian’s CJSs, there are many more in relation to whom no identifying details have been given, whose identity neither he nor the Court knows. No basis for the contention that it is “*impossible*” for any CJS to be a black woman has been put forward. Given that the Claimant did not remember several of the women who gave evidence, there is no reason to believe that he is fully aware of the entire cohort of women who would have cause to complain of his behaviour.
990. Ms Kale was also accused of showing a “*complete disregard for journalistic neutrality*” in her conversation with Ms Crabb on 22 April 2021, when she is said to have “*egged her on to make her allegations, saying that it was ‘fucking empowering and cool’*”, and – when asked about the nature of others’ allegations – disclosing Ms Sabaliauskaite’s account. However, it is clear that Ms Kale did not encourage Ms Crabb to *make* allegations against Mr Clarke. Ms Crabb had already done so. What Ms Kale was seeking to do, in ways tailored to appeal to each of her sources, was to encourage her sources, including Ms Crabb, to go on the record with the allegations they had already made.
991. The second aspect of the “*Contamination Issue*” concerns the alleged collusion and connections between sources. The Claimant contends that the journalists were “*wilfully blind to the fact that Imogen, Ms Lusi and Kevin Proctor were inextricably connected*”. However, they knew that Mr Proctor and ‘Imogen’ were in a relationship, and that they were in touch with Ms Lusi. Mr Lewis, Ms Osborne and Ms Kale were well aware that, as Ms Osborne put it “*some of the individuals were in touch because they had come together naturally prior to the investigation*”. Those individuals included Ms Lusi, ‘Imogen’ and Mr Proctor who were part of the group of seven that coalesced following BAFTA’s announcement.
992. More broadly, the Claimant sought to draw connections where there were none. Ms Osborne explained:
- “the vast majority of these women were expressing, using similar language, similar patterns, very similar patterns, strikingly similar patterns of behaviour despite not knowing each other or not being in touch at the time. That is why we individually corroborated each of these women’s allegations, but part of our corroboration efforts was comparing the conversations that Sirin was having independently of me with women who had not met each other, there were the same things coming up repeatedly.”
993. Ms Kale gave an example of a source who worked with Mr Clarke in the USA who told her that Mr Clarke said to her he would “*like to climb her like a tree and finish her like a Happy Meal*”, while one of Ms Osborne’s sources, who worked with Mr Clarke in

Approved Judgment

the UK, told Ms Osborne that he said to her he would “*like to climb her like a tree*”. The reporters reasonably believed that it was highly implausible that two women who lived on opposite sides of the Atlantic Ocean, and did not know each other, fabricated such a specific phrase.

994. Contrary to the Claimant’s submission, many of the Guardian’s sources did not know each other, but even among those who had known each other, in some cases through working on the same production, it is clear that many of the sources were not in touch at the time.
995. There is no evidence to support the Claimant’s contention that there was collusion through “*authoring of allegations*”. In an effort to assist, given her legal background, Ms Lusi took down Ms Kaiser’s account. There is nothing to indicate that in doing so she influenced her account. There is no evidence that any other accounts were written for others, and in any event, the Guardian’s reporting was based on direct questioning and re-questioning of their sources.
996. Heavy reliance is placed by the Claimant on the fact that the journalists brought some of their sources together, so that they communicated with each other in a WhatsApp group called “*NC support*”. However, Mr Lewis and the reporters were clearly conscious of the danger of their sources coming together. They were keen to avoid facilitating any communication between their sources until they had obtained their accounts. The process of putting some sources in touch with each other only began after the Guardian had obtained their accounts. It was a reasonable step to take, at that stage, for the purpose of encouraging their sources to go on the record with the allegations they had already made.

The Reply Issue

997. On 26 April 2021, shortly before midday, the Guardian sent Mr Clarke, by email, a 12-page invitation to reply, outlining the matters they were considering publishing. Ms Osborne phoned Mr Clarke to alert him that he had been sent an urgent email. He asked her to contact his agent, so she forwarded the right to reply to Gary O’Sullivan. The Guardian sought a reply by 12pm on 27 April 2021, giving Mr Clarke about 24 hours to respond. On 27 April 2021, at 8.59am, Simkins wrote to the Guardian, on behalf of Mr Clarke, requesting an extension of a further 48 hours. The Guardian did not agree to that period, but gave an extension to 5pm on 27 April 2021. Simkins responded within that timeframe, providing the detailed 29-page response to which I have referred.
998. On 29 April, at 8.46am, the Guardian sent Simkins a 7-page response with an invitation to answer three further questions by 12pm. Simkins requested an extension to 4pm which the Guardian agreed, and Simkins sent a further 5-page reply that day. At 4.50pm, the Guardian informed Simkins of their intention to publish and gave them an opportunity to provide a comment attributable to Mr Clarke by 5.30pm. Simkins provided a statement for publication which was incorporated high up in the first article.
999. The Claimant submits that:

“The industry standard for a period to exercise one’s right to reply is seven to ten days. It was thus outrageously unreasonable

Approved Judgment

and oppressive for the Defendant to demand a reply within less than 24 hours then another 24 hours.”

The Guardian published in an “*unseemly rush*”, he submits, due to “*commercial and competitive pressure*”, in circumstances where the Guardian wished to beat rival newspapers to the story.

1000. The proposition that there is such an “*industry standard*” was not put to any witness and there is no evidence to support it. The specialist media law firm, Simkins, were well aware they could seek extensions (and prudently did so), but they made no suggestion that the deadline imposed by the Guardian breached any industry standard, nor that a period of seven to ten days was required. Nor has the Claimant sought to derive this “*industry standard*” from the authorities. In *Jameel v Wall Street Journal* [2006] UKHL 44, [2006] 3 WLR 642, the newspaper successfully relied on *Reynolds* privilege in circumstances where the claimants, through their representative, were given a right to reply on the evening before the article was to be published in the following morning’s print edition: [35]. The representative’s request for 24 hours to respond, as one of the claimants was in Japan where it was then 3am, was refused: [9].
1001. The reasonableness of the time given to reply is a fact-sensitive issue. Mr Gibson explained that the “*timing and prominence of publication of larger stories is overseen by a combination of me, Katharine Viner and Nick Hopkins, the Executive Editor for News.*” Despite this unchallenged evidence, the Claimant focused his attack in relation to timing on Mr Lewis, Ms Osborne and Ms Kale. Those attacks went nowhere: I accept their evidence. But it is important to focus on the evidence of the decision-makers.
1002. In relation to timing, Ms Viner was aware Mr Clarke had been contacting individuals, including sources. Ms Viner said,
- “I knew that Mr Clarke was already aware of the Guardian’s ongoing investigation prior to receiving our invitation to comment. I considered it was appropriate in these circumstances that Mr Clarke was given a reasonable but not lengthy period of time in which to comment, as there was a foreseeable risk he might use the information in our communications to further harass or deter those sources. I did not consider Mr Clarke was prejudiced by the time we allowed for comment, since my team had determined that he was aware in advance and had already been contacting sources. The matters in question were also matters wholly within Mr Clarke’s personal knowledge, and I considered that he would be capable of responding to the invitation to comment promptly.”
1003. Similarly, Mr Gibson said that the “*calls that Mr Clarke and Mr Maza had been making to sources did feature in our consideration of timing*”. Mr Gibson was not challenged on his evidence that he considered that to be a legitimate factor when considering the timing, given that certain sources had been distressed by these calls, and “*there was good reason to believe that Mr Clarke, with the benefit of time and identification of sources in the invitations to comment, could cause further intimidation or distress to sources or other women, as well as potentially deterring sources from speaking to us or going on the record*”.

Approved Judgment

1004. Mr Lewis had made Mr Gibson aware that reporters at *The Mirror* were also looking into Mr Clarke but “*this was not a factor in the timing of publication*”. Mr Gibson’s unchallenged evidence was that while the activities of other newspapers could be a “*cause for urgency for some kinds of stories*”, that was not the case here given the level of seriousness, complexity and the potential repercussions for the protagonists.

1005. Mr Gibson explained:

“Editorially we have no commercial or proprietorial pressure to publish any story; our consideration of whether to do so is based on the merits of the story. We are working on numerous investigations and big stories all the time, and we do not feel any commercial pressure to publish purely to validate our investment in an investigation.”

1006. Even at the stage of sending invitations to comment, he said, the story is not “*moving inexorably toward publication*”. Mr Gibson said that he has “*stopped stories at this late stage several times, including with one #MeToo story*”, and that it is part of his role to make those decisions, however disappointing it may be for the reporters whose work is not published.

1007. In my judgment, the time given to Mr Clarke to reply (more than 29 hours prior to Simkins’ letter, and ultimately a period of more than three weekdays) was not unreasonable in the circumstances. While there were many allegations for Mr Clarke to address, they all concerned matters that were within his direct knowledge and the Guardian knew that for Mr Clarke the right to reply email would not come out of the blue. For several weeks, he had been aware, broadly, of the nature of allegations received by BAFTA. He had known that the Guardian was investigating for at least a fortnight. The Guardian understood, from Mr Maza’s disclosure to a source, that Mr Clarke had hired private investigators, and knew that Mr Clarke had sufficient awareness of the nature of the allegations to have enabled him and Mr Maza to contact ten of the Guardian’s sources.

1008. Given the steps he had already taken, including, for example, repeatedly urging Ms Whyte (and through her, Ms Powell) not to speak to a Guardian reporter, and the distress those approaches had caused some of their sources, the Guardian had a reasonable concern that Mr Clarke might use the additional information supplied in the right to reply email to put pressure on their sources to retract their accounts, or their consent to be named. A shorter period of time reduced that risk.

1009. Mr Clarke was, in fact, able to provide two detailed responses in the time he was given, as well as a statement for publication. He was not prejudiced by the short timeframe for response, and it in no way undermines the reasonableness of the editors’ view that publication was in the public interest.

1010. The Claimant also contended, more broadly, that the investigation was rushed. Ms Kale was asked in cross-examination whether she considered she had conducted a thorough investigation. She responded:

“Absolutely. I am really proud of the work that we did. We had 22 women in the First Article. I think by the time of the

Approved Judgment

publication of the Eighth Article I personally spoke to 70 sources. I am really proud of the work we did, and I think it was a thorough investigation.”

There was no basis for the accusation that Ms Kale was lying in expressing her feelings and opinion about the article. In a casual, private message to a friend close to the time of publication, in response to a suggestion that the article “*must be watertight*” as the Guardian had chosen to publish it, Ms Kale said, “*Nope they decided to publish anyway*”. Ms Kale’s comment was not a reflection on the strength of the investigation. She was referring to the litigation risk. The nature of it, for the most part depending on individuals being willing to back up the Guardian with their testimony, if Mr Clarke sued, was such that, at that point, she did not regard the Guardian’s position as unassailable.

1011. The Claimant’s contention that Ms Osborne “*confirmed to Davie Fairbanks ... that the allegations were not looked into properly due to lack of time*” is untrue. In a conversation long after the first article was published, Ms Osborne said the investigation was “*three and a half weeks*” and there were “*lots of things we didn’t look into at the time*”. As Ms Osborne explained, following publication of the first article, the Guardian received many leads which they had not investigated. She was not saying, and does not believe, that their investigation into the allegations that were published fell short. The investigation moved quickly because many sources were willing to talk to them and they worked long hours and weekends throughout the investigation.

The Deletion Issue

1012. On 29 April 2021, prior to publication of the first article, Mr Lewis instructed Ms Osborne and Ms Kale to delete the Signal threads between the three of them, and any one-to-one discussions between them. Ms Viner, Mr Gibson and Mr Lewis explained that this was in accordance with the Guardian’s data minimisation policy. The journalists used Signal only for messaging between themselves, akin to the brief logistical and administrative conversations they would have had in person if they had not been required to work from home due to Covid-19 restrictions. In accordance with the data minimisation policy, journalists were expected to set Signal threads to disappear (which at the time had to be done for each individual thread) or (if they had forgotten to do so) manually delete them.
1013. Mr Lewis forgot to follow his own instruction, and so the “*Last Day*” and “*Final*” Signal threads between him and the two reporters were preserved and disclosed. Aside from the instructions to delete the threads, there is very little in them that the Claimant relies on, and nothing of significance.
1014. Paragraph 7 of CPR Practice Direction 31B provides:

“As soon as litigation is contemplated, the parties’ legal representatives must notify their clients of the need to preserve disclosable documents. The documents to be preserved include Electronic Documents which would otherwise be deleted in accordance with a document retention policy or otherwise deleted in the ordinary course of business.”

Approved Judgment

The duty is one of notification, imposed on the parties' legal representatives.

1015. The Claimant contends that the deletion of relevant Signal messages affects the quality and quantity of the evidential picture. He invites the Court to draw the inference that Mr Lewis, Ms Osborne and Ms Kale had litigation in mind when they deleted Signal messages (or in Mr Lewis's case, gave the instruction to do so), and their intention was "*to influence the outcome of litigation*".

1016. The Claimant's closing submissions state that "*all three journalists gave evidence in response to the Strike Out application that they did not believe litigation was a contemplated likelihood. In a volte face, all three then proceeded to admit to this in live evidence at trial*". This is untrue:

i) In his second witness statement, submitted in opposition to the strike out application, Mr Lewis said:

"I have always understood that the point at which I should take steps to preserve relevant materials in anticipation of legal proceedings is when I receive a preservation notice, or 'litigation hold', from my legal department. The date on which I intended these messages to be deleted was 16 months before the Claimant sent a letter before claim to the Guardian, which is the point at which my legal department sent me a litigation hold notice."

Mr Lewis denied that he believed litigation was "*likely*". He explained that "*almost all of the investigations I work on carry some degree of risk of legal action*" but none of the legal letters he had received prior to publication in respect of other investigations had ever resulted in litigation. He said that based on the strength of the investigation, his assumption was that "*the Claimant, if properly advised, would be told that any litigation would be very unlikely to succeed*". His expectation was that "*the Claimant would, after the article was published, apologise for his behaviour and hire public relations experts to try and rehabilitate his career*". In his oral evidence, Mr Lewis acknowledged that litigation was "*a possibility*", as it was for "*the vast majority of investigations I work on*".

ii) In her second witness statement, submitted in opposition to the strike out application, Ms Osborne said that while investigating Mr Clarke and working on the first article, she knew that litigation was a "*possibility*". She also said, "*I did not believe at this point that I was under any duty to preserve the messages, as we had not received a preservation order from the Guardian's legal team*". In her oral evidence, Ms Osborne referred to the "*potential*" for litigation, describing it as a "*prospect*" and, at times of peak stress, "*a worry*".

iii) In her second witness statement, submitted in opposition to the strike out application, Ms Kale did not address the likelihood of litigation. She said only, "*I did not at the time believe that we were under a legal duty to preserve documents and I was not aware of the practice of litigation hold*". In oral evidence, Ms Kale said that at times she "*feared he might sue us*", but at other times she thought it would be "*ill-advised*" and that "*he would not*".

Approved Judgment

1017. Contrary to the Claimant’s submissions, none of the Guardian’s witnesses said that they knew (or believed) that litigation was “*a likelihood*” or “*a contemplated likelihood*”. Neither formulation was put to any of them, and the thrust of each witness’s evidence was to the contrary. None of them gave evidence that was inconsistent with their second statements. None of them were cross-examined on their second statements. Those statements were placed in the bundle at the Claimant’s request, and with the Defendant’s consent. They are therefore admissible as (unchallenged) evidence of their contents pursuant to CPD PD 32, para 27.2.
1018. The Claimant’s contentions are unfounded. The extensive evidence that has been disclosed demonstrates that the Guardian had carried out a thorough investigation. There is no sensible basis for drawing an inference that the messages that were deleted – none of which were communications with sources – would undermine the Guardian’s case. The threads which Mr Lewis had intended to delete do not assist the Claimant. On the contrary, they include messages showing that Mr Lewis asked the reporters to include in the article any “*positive things about Clarke*” anyone said; and asked Ms Kale to listen carefully to an audio recording of a phone call made by Mr Maza to a source, and include in the article “*as much as possible that undermines our case*”.

Presentation and tone

1019. Everyone at the meetings on 27 and 29 April 2024, was “*cognisant of the seriousness of publishing these sorts of allegations*” (as Mr Gibson put it) and they took the responsibility very seriously. The editorial team decided to run a long article to enable them to tell the story by laying out the allegations individually, in each case, in parallel with Mr Clarke’s response.
1020. Mr Clarke’s statement for publication was included high up in the article. The positioning of Mr Clarke’s individual responses to each allegation provides balance and enables the reader to form their own view of the credibility and significance of the Guardian’s findings. The Guardian excluded from publication matters which they considered were properly matters of the private lives of Mr Clarke, his professional associates and his family.
1021. I agree with Ms Viner that the factual accounts of the Guardian’s sources are presented in “*a measured and accurate way*”, without being “*exaggerated or sensationalised*”.

Q. PUBLIC INTEREST DEFENCE: CONCLUSION

1022. I conclude that the Guardian has succeeded in establishing that the first article was published on a matter of public interest. Ms Viner made the decision to publish and she honestly believed (along with all of the Guardian’s editorial witnesses, as well as the reporters) that publication was in the public interest. For the reasons I have given, that belief was undoubtedly reasonable. Accordingly, the s.4 defence to the libel claim also succeeds.

V CONCLUSION

1023. The Guardian has succeeded in establishing both truth and public interest defences to the libel claim. In addition, in respect of the second to eighth articles, the serious harm

Approved Judgment

requirement was not met. The data protection claim was withdrawn. Accordingly, Mr Clarke's libel and data protection claims against the Guardian are dismissed.