Neutral Citation Number: [2013] EWHC 1342 (QB)

Case No: HQ12D05281

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/05/2013

Before :

THE HONOURABLE MR JUSTICE TUGENDHAT

- -

Between :

The Lord McAlpine of West Green	**Claimant**
- and -	
Sally Bercow	**Defendant**

- -
- -

Sir Edward Garnier QC & Kate Wilson (instructed by **RMPI**) for the **Claimant**
William McCormick QC & David Mitchell (instructed by **Carter Ruck**) for the **Defendant**

Hearing dates: 16 May 2013

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Approved Judgment

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

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THE HONOURABLE MR JUSTICE TUGENDHAT

Mr Justice Tugendhat :

1. This hearing is to determine the meaning of the words complained of in this libel action ("the Tweet"), and whether they are defamatory of the Claimant. The Tweet was published on 4 November 2012. The question of its meaning is being tried separately as a preliminary issue. That is not uncommon in libel actions nowadays, in cases where it is agreed that the trial will be by a judge sitting without a jury.

2. If I find that the Tweet is not defamatory of the Claimant, that will be the end of the action. If I find that it is defamatory, then the case will proceed to the assessment of damages (unless the parties reach an agreement). If I find that the Tweet is defamatory, the Defendant does not seek to defend any defamatory meaning as true, or on any other basis. I am not asked to decide the number of people who read the Tweet and understood it in a defamatory meaning.

THE TWEET

3. The Tweet reads:

> "Why is Lord McAlpine trending? *Innocent face*"

4. People who are not familiar with Twitter may not understand the words "trending" and "innocent face". But users of Twitter would understand.

5. The Twitter website has a screen with a box headed "Trends". It lists names of individuals and other topics. Twitter explains that this list is generated by an algorithm which

> "identifies topics that are immediately popular, rather than topics that have been popular for a while or on a daily basis, to help you discover the hottest emerging topics of discussion on Twitter that matter most to you. You can choose to see Trends that are tailored for you…"

6. The Defendant accepts that the question in her Tweet impliedly states that the Claimant was trending on 4 November.

7. It is common ground between the parties that the words "innocent face" are to be read like a stage direction, or an emoticon (a type of symbol commonly used in a text message or e-mail). Readers are to imagine that they can see the Defendant's face as she asks the question in the Tweet. The words direct the reader to imagine that the expression on her face is one of innocence, that is an expression which purports to indicate (sincerely, on the Defendant's case, but insincerely or ironically on the Claimant's case) that she does not know the answer to her question.

8. Twitter permits users to express themselves in tweets of no more than 140 characters. Tweets are used in a similar way to ordinary conversation. People tweet descriptions of what they are doing or would like to do, jokes and gossip, and comments on people or topics at large, and anything else they want to say. They tweet using conversational words and expressions. The print outs of the Defendant's tweets illustrate how she uses Twitter in these ways.

THE PARTIES TO THE ACTION

9. The parties to this action, and the action itself, are now very well known. Apart from publicity about them on other occasions in the past, the parties have received extensive publicity since the publication of the Tweet. But I have to decide the meaning of the Tweet without the benefit of hindsight. I must decide the meaning as at the date on which it was read.

10. The Defendant is well known to the public for a number of reasons. Amongst these is that she is the wife of the Speaker of the House of Commons. She has appeared on television on a number of occasions in well known broadcasts. For present purposes what is most relevant is that she has a Twitter account on which she has tweeted regularly. On 4 November 2012 she had over 56,000 followers.

11. The Claimant is a former Deputy Chairman of the Conservative Party and a former Party Treasurer. He was a close aide to Margaret Thatcher during her time as Prime Minister. As a result of his positions and his work with the Conservative Party, he had a significant political profile during the late 1970s and the 1980s. He was made a life peer in 1984. He retired from working for Conservative Party Central Office in 1990 (that is over twenty years ago) and since 2002 has lived in southern Italy out of the public eye.

THE CIRCUMSTANCES IN WHICH THE TWEET WAS PUBLISHED

12. For reasons which I will explain, it is important that I should distinguish between facts which are agreed, or which I find to be facts, and those facts which were also known to readers of the Tweet.

13. There has been no witness called at the trial of this preliminary issue. That is mainly because, as a matter of law, evidence is not admissible as to what any individual reader claims to have understood a publication to mean.

14. The Claimant has proved a fact in this case if the Defendant has admitted it in her Defence. But he will also have proved a fact if it is an inference which I find ought properly to be drawn, as being more probable than not, arising from those facts which the Defendant has admitted.

15. The relevant circumstances are largely agreed. They include the following. On the evening of Friday 2 November 2012, the BBC's current affairs programme Newsnight broadcast a report ("the Newsnight report") which included a serious allegation of child abuse. The allegation was made by a complainant, a Mr Messham, who was undoubtedly abused when he was a boy living at the Bryn Estyn care home in Wales in the 1970s and 1980s. He alleged that one of his abusers was a person who was variously referred to in the Newsnight report by expressions such as "a leading Conservative from the time", "a leading Conservative politician from the Thatcher years", "a senior public figure", "a shadowy figure of high political standing", "a prominent Tory politician at the time". But sadly for all concerned, it was a case of mistaken identity. The person who abused Mr Messham was not the politician who he had believed him to be.

16. As lawyers, journalists, and many other people, are all too well aware, some of the worst miscarriages of justice have occurred when a person has been the victim of a serious crime, but makes a mistake in identifying the criminal. It is not relevant to the question I have to decide, but it is important as a matter of fairness to the parties, that I should say that the Claimant has vehemently denied that he was ever engaged in the sexual abuse of anyone. It is accepted by the Defendant, and by the complainant, and by the public at large that the Claimant was entirely innocent of any of the very serious crimes of which the children in Wales were undoubtedly the victims. The Defendant accepted that very soon after 4 November.

17. The Newsnight report did not broadcast the name of the politician Mr Messham had identified. Towards the end of the report the presenter said they did not have enough evidence "to name names".

18. There then followed a number of publications in the media. The Claimant has alleged in his Statement of Case, and the Defendant has admitted:

> "The Newsnight report itself and its contents immediately became a prominent news story. Between 2 and 4 November, online and traditional media widely reported upon, and repeated, Newsnight's allegations. The coverage included, but was not limited to the following articles: *The Guardian* on 3 November …' www.telegraph.co.uk on 3 November …*The Sunday Telegraph* for 4 November and www.telegraph.co.uk … and *MailOnline* on 4 November…"

19. The Tweet is not timed. But in a printout of the tweets published by the Defendant, it appears as the third of fourteen which she published on that day. I infer, as Mr McCormick submits I should, that it was probably published early on that Sunday.

20. Sir Edward draws my attention particularly to those newspaper and web reports which give some details of the description of the man alleged to have been the abuser.

21. In the issue of *The Guardian* dated 3 November 2012 the article includes the following:

> "Man claims he was sexually abused by Tory politician
>
> …
>
> A victim of the sexual abuse at north Wales children's homes in the 1970s has called on the Prime Minister to launch a fresh investigation into the scandal, claiming that he was sexually assaulted at the time by a former senior Conservative figure.
>
> … The former political figure, who was not named but was reportedly a senior official during the Thatcher era, has 'vehemently denied' the allegations, according to Channel 4 news. …".

22. In the article in *The Telegraph* published on its website on 3 November there appeared the following:

> "BBC's Newsnight airs claims of child abuse against 'leading Tory politician'.
>
> A senior Conservative Politician has been accused by the BBC's current affairs programme Newsnight of abusing under-aged boys at a children's home in North Wales.
>
> The unnamed politician was said to have taken part in the rape and abuse of young boys from the homes, as part of a paedophile ring operating in Wales during the 1970s and 1980s.
>
> Steve Messham told Newsnight that he was abused by a leading Conservative politician while he was a child in care… He and another victim also told the BBC a leading Thatcher era Conservative politician took part in the abuse.
>
> But there was criticism of Newsnight's handling of the latest revelations, after Iain Overton, one of the contributors to its investigation, tweeted earlier yesterday that the programme would expose 'a very senior political figure who is a paedophile'.
>
> That set off a frenzy of unsubstantiated speculation on social networking sites, with several politicians being named as the likely subject. Newsnight did not name the politician in its Newsnight report on Friday night…
>
> The politician at the centre of accusations has denied the claims and said he is prepared to sue the BBC for libel.
>
> He told *The Telegraph* the allegations were totally untrue ... I have never been to this children's home. The fact is that if they publish anything about me they will get a writ in the morning, I wouldn't wait two minutes.
>
> Since the Jimmy Savile sex abuse allegations surfaced, politicians have been raising questions about other historic abuse cases…"

23. In the *MailOnline* website as from 00:45 on 4 November 2012 there was published the following:

> "Tory rapist told me he'd kill me if I told police": …
>
> Steven Messham… said on one occasion he was abused in a hotel room by the political figure …
>
> Two senior Conservatives accused of being involved with a 'paedophile ring'…

> A sex abuse victim who told the BBC's Newsnight he was raped by a 'leading politician from the Thatcher years' as a child has said the top Tory told him he'd be killed if he told police.
>
> Steven Messham revealed he was contacted by detectives yesterday following Friday's programme which alleged he was raped 'more than a dozen times' by the man described by Newsnight as a 'shadowy figure of high public standing'. …
>
> Despite a string of damning allegations, Newsnight said it didn't have 'enough evidence' to name the politician, sparking angry claims on Twitter that the Beeb had 'bottled it'.
>
> [The article includes an image of two tweets which read]
>
> > 'P… M… So #Newsnight bottled it again tonight re exposing a paedophile?…'
> >
> > 'B … Speculation and gossip now rife'…
>
> Newsnight took the decision despite Mr Overton's crystal clear message online: 'If all goes well we've got a Newsnight out tonight about a very senior political figure who is a paedophile' [and it printed an image of Mr Overton's tweet]…
>
> It piles more pressure on the beleaguered corporation after last month it was revealed Newsnight dumped an investigation into paedophile Sir Jimmy Saville, even though they had interviewed his victims…"

24. In the issue of *The Sunday Telegraph* dated 4 November there is included:

> "Senior Tories accused over child abuse…
>
> During the Waterhouse inquiry it was claimed that abuse took place at the country home of a senior Tory politician…
>
> One of the politicians named at the inquiry, a former confidant of Baroness Thatcher who is still alive but retired from public life, has firmly denied any involvement.
>
> The latest allegations follow claims last week that another of Lady Thatcher's closest aides was implicated in the north Wales scandal".

25. On the other hand Mr McCormick draws my attention to other media reports which contain either no details, or fewer details, about the alleged abuser which might identify him. He also reminds me that the media reports to which the Claimant refers are not in the tabloid newspapers which have the largest circulation figures.

26. In the issue of *The Daily Mirror* dated 3 November 2012 there is included:

> "Newsnight in battle to out paedo at No 10; Beeb in new pervert scandal. Report will expose a 'senior political figure' …
>
> The BBC was yesterday preparing to expose a 'senior political figure' as a paedophile… [then it too quotes Mr Overton's tweet] …
>
> There was an internet frenzy of speculation about the identity of the pervert following the tweet.
>
> Channel 4's Michael Crick, who used to work on Newsnight, also took to Twitter to claim he had spoken to the man involved, who had not been contacted by the BBC.
>
> He tweeted: 'Senior political figure due to be accused tonight by BBC of being paedophile denies allegations + tells me he'll issue writ against BBC'.
>
> The battle to expose the public figure comes weeks after the BBC was rocked by revelations that a Newsnight investigation had uncovered evidence of Jimmy Saville's sick activities last year but was axed by the editor".

27. The print issue of *The Daily Telegraph* for 3 November identifies the accused person only as 'politician', 'senior figure' and 'senior political figure'. It quotes Mr Overton's tweet in full.

28. The print issue of *The Guardian* for 3 November contains similarly limited identifying details:

> "Senior figure from Thatcher years 'vehemently denies' allegations of paedophile activity, according to Channel 4 News. A former senior political figure is said to have rejected claims that he sexually assaulted one of the hundreds of children who were abused over two decades in Welsh children's homes".

29. It is common ground between the parties that these very well known news media, and other news media which published similar stories, are widely read in England and Wales.

30. I infer the following matters are more likely than not, and so that the Claimant has proved them: (1) there were a substantial number of viewers of the Newsnight report itself, not least because of the unusual way that it had been trailed on Twitter by Mr Overton; (2) by early on 4 November a very large number of people in England and Wales had read one or more of the media reports I have quoted; (3) the people who viewed the Newsnight report and the people who had read one or more of the media reports referred to by Sir Edward included a substantial number of readers of the Tweet.

31. Mr McCormick asks me to note certain matters that the Claimant has not attempted to prove in court. The Claimant has not pleaded in his Particulars of Claim tweets dated earlier than the Tweet which referred to the Claimant. There are afew in the bundle which are of later in date, and which do not assist me in what I have to decide.

32. Obviously if the Claimant was trending (as the Defendant's Tweet said he was) then there must have been many tweets referring to him which preceded her own. The Claimant does not ask me to make, and I do not make, any finding as to what those other tweets said about the Claimant. I find that there were such tweets, because the Defendant's Tweet said there were (and it is not suggested she was mistaken about that). There are in the bundle a few tweets dated on 2nd and 3rd November which name the Claimant. They are of assistance to me only to this extent: they do not name him in connection with any story other than the Newsnight report.

WHAT THE PARTIES CONTEND THAT THE TWEET MEANT

33. The Claimant's case is that in their natural and ordinary meaning, and/or in the alternative, by the way of innuendo (a legal term I explain below) the Tweet meant that he was a paedophile who was guilty of sexually abusing boys living in care.

34. The Defendant denies that her Tweet meant that, or that it meant anything defamatory of the Claimant. Her case is that the question she asked in her Tweet was simply a question. She accepts that the question implied that the Claimant was trending, but that by itself is entirely neutral, and there is nothing else to be inferred from the question she asked. Her question does not suggest any reason why the Claimant was, or might have been, trending. Her question was as neutral as the statement on the Twitter screen itself which listed the Claimant under the heading "Trends".

35. It will be necessary to return in more detail to the contentions of the parties. But before doing that it is necessary to set out the relevant law which I have to apply in resolving this dispute.

WHAT DOES THE LAW MEAN BY THE WORD DEFAMATORY?

36. The applicable law is well established and not in dispute. As a matter of law, words are defamatory of a claimant if (1) they refer to that claimant and (2) they substantially affect in an adverse manner the attitude of other people towards the claimant, or have a tendency so to do.

37. There is no dispute that the Tweet refers to the Claimant, because it names him. The issue here is what the Tweet means, and whether it defames him.

38. If the Tweet does mean that the Claimant abused children, then there is obviously no dispute that that is one of the most seriously defamatory allegations which it is possible to make against a person.

39. In libel actions there is often room for argument as to what a statement means. Even if it is defamatory, there can be argument as to whether the allegation is a very serious one, or some less serious one.

40. A classic example is *Rubber Improvements Ltd and Lewis v Daily Telegraph Ltd* [1964] AC 234. In that case *The Daily Telegraph* had published an article headed "Inquiry on Firm by City Police" and the *Daily Mail* had published an article headed "Fraud Squad Probe Firm". The plaintiffs claimed that those articles meant that they were guilty of fraud. The defendants admitted that the articles were defamatory, but they maintained that the articles did not go so far as to include actual guilt of fraud, but something less. The House of Lords held that the articles could not mean that the plaintiffs were guilty of fraud. As Lord Devlin put it at p286:

> "If the ordinary sensible man was capable of thinking that wherever there was a police inquiry there was guilt, it would be almost impossible to give accurate information about anything…"

41. More recently three different levels of possible defamatory meaning have been explained by the Court of Appeal in *Chase v Newsgroup Newspapers Ltd* [2003] EMLR 218, [2002] EWCA Civ 1772 at 45:

> "The sting of a libel may be capable of meaning that a claimant has in fact committed some serious act, such as murder. Alternatively it may be suggested that the words mean that there are reasonable grounds to suspect that he/she has committed such an act. A third possibility is that they may mean that there are grounds for investigating whether he/she has been responsible for such an act."

42. The court is not bound to choose between the contentions of the parties as to what the Tweet means. I must make up my own mind. Mr McCormick submits that if, contrary to his case, I find that the Tweet is defamatory, I should not find that it means that the Claimant was guilty of child abuse. Instead I should find that it means something less, that is to say, that there are grounds for investigating whether he had committed child abuse, or that there are grounds to suspect that he had committed child abuse.

43. In the course of argument Mr McCormick referred to what he called "reportage". So it is necessary to explain two further rules of law.

44. One of these is known as the repetition rule. Under that rule a defendant who repeats a defamatory allegation made by another is treated as if he had made the allegation himself, even if he attempts to distance himself from the allegation: *Flood v Times Newspapers Ltd* [2012] UKSC 11; [2012] 2 AC 273 para [5] and *Gatley on Libel and Slander* 11th ed (2008) para 11.4.

45. The harshness of that rule is tempered by another rule, known as reportage. As Lord Phillips explained in *Flood* at para [34] a defence known as *Reynolds* privilege could be made out:

> "in respect of a report in a newspaper of defamatory allegations made in the course of an ongoing political debate, notwithstanding that the publishers had made no attempt to verify the allegations. The newspaper had not adopted or endorsed these allegations. … [in] circumstances where both

> sides to a political dispute were being reported "fully, fairly and disinterestedly" and where the public was entitled to be informed of the dispute. In such circumstances there was no need for the newspaper to concern itself with whether the allegations reported were true or false. The public interest that justified publication was in knowing that the allegations had been made, it did not turn on the content or the truth of those allegations. A publication that attracts *Reynolds* privilege in such circumstances has been described as "reportage". In a case of reportage qualified privilege enables the defendant to avoid the consequences of the repetition rule."

46. The Defendant has not raised a defence of privilege or reportage in this case. Mr McCormick was using the term "reportage" in a different sense. He was submitting that if (contrary to her case) I find that the Tweet was defamatory of the Claimant, then it was not adopting Mr Messham's allegation of guilt of child abuse, but she was instead suggesting something less serious.

HOW THE COURT MUST DECIDE AN ISSUE AS TO MEANING

Two different kinds of meaning

47. The meanings of words for the purposes of defamation are of two kinds. There may be a natural and ordinary meaning and there may be an innuendo meaning.

48. In *Jones v Skelton* [1963] 1 WLR 1362 at 1370-1 the court explained what is meant by a natural and ordinary meaning as follows:

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

49. An innuendo meaning (in the technical legal sense) is something more than a meaning that can be implied from the words complained. It is a meaning which can be implied from the words complained of, but only if the reader also knows other facts (which are not general knowledge). These are generally called extrinsic facts.

50. In respect of an innuendo meaning, a claimant must, in addition to identifying the meaning complained of, prove the extrinsic facts relied upon and prove that these facts were known to readers (*Gatley on Libel & Slander* 11th ed. §3.19). The claimant will have been defamed in the minds of those readers, but not in the minds of the readers who did not know the extrinsic facts.

51. There may be an issue between the parties whether the circumstances of a publication amount to extrinsic facts, which have to be proved as such to support an innuendo, or whether they are general knowledge, which can be relied on in support of its natural and ordinary meaning. Either way, the court must find that the facts are known to the reader.

52. In the present case there is no dispute about the truth of the fact that the Claimant was a prominent Conservative politician from the Thatcher years. The issue is as to whether any reader of the Tweet knew who the Claimant was.

53. In the present case the Tweet would mean little to a reader who had no knowledge of any of the Claimant, of the Newsnight broadcast or of the media reporting of the Newsnight broadcast in the period immediately preceding the Tweet. So in the present case I have to decide whether the Newsnight report and the media reporting are to be treated as part of the general knowledge of the Defendant's followers who read the Tweet on 4 November 2012, or whether they are to be treated as extrinsic facts, that is to say, knowledge that would be known only to a limited number of people. If they would be known only to a limited number, then the Claimant must prove that there were readers in that number, and how big that number was.

54. In cases where the extrinsic fact is obscure a claimant will have to adduce evidence from witnesses or documents to prove that the readers of the words complained of knew the extrinsic facts. But in other cases a claimant may rely on an inference prove that some readers had the necessary knowledge of the extrinsic facts.

55. In *Fullam v Newcastle Chronicle & Journal Ltd* [1977] 1 WLR. 651 the plaintiff complained that an article in a local newspaper meant that he had fathered an illegitimate child. But the meaning in question could only be understood by readers of the newspaper who knew facts about the plaintiff's wife and child (the date of the marriage and the date of the birth) which were not set out in the article he complained of. At 659 Scarman LJ explained:

> "There may well be cases in which it would not be necessary to plead more than the fact of publication by newspaper and the extrinsic circumstances, leaving it to be inferred that there would be readers with knowledge of the facts [about his wife and child].
>
> For instance, the facts may be very well known in the area of the newspaper's distribution — in which event I would think it would suffice to plead merely that the plaintiff will rely on inference that some of the newspaper's readers must have been aware of the facts [about his wife and child] which are said to give rise to the innuendo."

56. In the present case the Claimant's primary case is that his having been a politician, the gist of the Newsnight report, and the reporting of it by the media, were so well known to Twitter followers generally that these facts should be treated as part of their general knowledge. If he is wrong about that, his alternative case is that he relies on inference. He submits that the court should infer that there probably were some readers who knew these facts, as explained in the *Fullam* case.

The test of reasonableness

57. The legal principles to be applied when determining the question of meaning are in part derived from the *Rubber Improvements* case. They were summarised by Sir Anthony Clarke MR in *Jeynes v News Magazines Limited* [2008] EWCA Civ 130 at [14]-[15] (where "he" means "he or she"):

> "The legal principles relevant to meaning have been summarised many times and are not in dispute.... They may be summarised in this way: (1) The governing principle is reasonableness. (2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. (3) Over-elaborate analysis is best avoided. (4) The intention of the publisher is irrelevant. (5) The article must be read as a whole, and any "bane and antidote" taken together. (6) The hypothetical reader is taken to be representative of those who would read the publication in question."

58. It is important in this case to stress point (6). The Tweet was not a publication to the world at large, such as a daily newspaper or broadcast. It was a publication on Twitter. The hypothetical reader must be taken to be a reasonable representative of users of Twitter who follow the Defendant. What the characteristics of such people might be is in part agreed, and in part for submissions by the parties as to what I should infer from what is agreed.

59. The Defendant's tweets which are in the court bundle include a number which relate to politics or current affairs as well as a number which do not. Because of that, and because of her political links, Sir Edward submits that followers of the Defendant probably included a significant number who shared her interest in politics and current affairs. A significant number retweeted the Tweet to their own followers. The fact that the Defendant's followers use Twitter implies that they like to be up to date with such matters. I did not understand Mr McCormick to dispute this, and I would infer that it is the case.

60. It is also common ground between the parties that, in the past, some Twitter users have used Twitter to identify alleged wrongdoers, and others whom the traditional media have not identified when reporting a story. An example of this was in 2011 when Twitter users identified a footballer who had obtained a privacy injunction in an action where he was identified in the public court papers only by initials. Although the Defendant does not dispute this, she does not admit how great a number of readers of the Tweet would have known this fact about how Twitter was used (or any of the other facts which she agrees to be facts). And she does not accept that even those readers who did know that Twitter had been used in this way in the past (or the other agreed facts) would understand the Tweet to mean what the Claimant contends it means.

61. There are, of course, also references in the newspaper reports I have quoted above to Twitter being used in this way in this very case. Examples are the "frenzy of unsubstantiated speculation on social networking sites, with several politicians being named as the likely subject" (paras 22 and 26 above) and the tweets of which *The MailOnline* published images (para 23 above).

62. The law is clear that words may be defamatory in whatever form they are used. A question, or a rhetorical question, or any other form of words may, in principle, be understood to convey a defamatory meaning. The meaning of a statement or question depends on the context. The extent to which a reader can draw defamatory inferences from neutral words depends on the context. The writer is not responsible for an inference unless it is one that a reasonable person would draw: *Gatley* para 3.17.

63. Although there is no dispute that the principles listed in *Jeynes* set out the law to be applied, there is a difference of emphasis between the parties in relation to the words in principle (2) "and someone who does not and should not, select one bad meaning where other non-defamatory meanings are available".

64. There was in the early 17th century a rule of law that words alleged to be defamatory were always to be construed in the most inoffensive sense reasonably possible (see *Ajinomoto Sweeteners Europe SAS v ASDA Stores Ltd* [2010] EWCA Civ 609 at para [1]). This rule was to discourage suits and prosecutions. Or as we would express it today, it was to discourage litigation which might interfere with the right of freedom of expression. But that has not been a rule of law since then, and it is not one now. Sir Edward notes that the editors of Duncan & Neill 3rd ed para 5.15, at footnote 3, caution that a jury could be confused if those words from *Jeynes* were included in a direction on the law from the judge.

65. On the other hand, as Mr McCormick rightly submits those words from principle (2) in *Jeynes* were specifically approved by the Court of Appeal in *Tesla Motors v BBC* [2013] EWCA Civ 152 at para [19].

66. I interpret those words as being part of the description of the hypothetical reasonable reader, rather than as a prescription of how such a reader should attribute meanings to words complained of as defamatory. If there are two possible meanings, one less derogatory than the other, whether it is the more or the less derogatory meaning that the court should adopt is to be determined by reference to what the hypothetical reasonable reader would understand in all the circumstances. It would be unreasonable for a reader to be avid for scandal, and always to adopt a bad meaning where a non-defamatory meaning was available. But always to adopt the less derogatory meaning would also be unreasonable: it would be naïve.

SUBMISSIONS FOR THE CLAIMANT

67. Sir Edward submits that the Tweet taken just by itself, consisting of its seven words, suggests that the Claimant has done something wrong. It is not neutral, even to a reader who knew none of the events of the preceding two days. The question is followed by the words "innocent face".

68. The parties differ as to what the words "innocent face" should be understood to mean in this context. Sir Edward submits that the words "innocent face" are to be read as

irony, that is, as meaning the opposite of their literal meaning. People sometimes ask a question to which they already know the answer. They may do that as an indirect way of bringing out into the open something they already know, or believe to be, a fact. They sometimes seek to conceal what they are up to (or pretend to conceal what they are up to) by putting on an expression which suggests that they do not already know the answer to the question. Sir Edward submits that the reasonable explanation for the Defendant inserting the words "innocent face" in the Tweet is to negate a neutral interpretation, and to hint, or nudge readers into understanding that the Claimant has been doing wrong.

69. He submits that the court should infer that (by Sunday 4 November) a substantial number of Twitter followers of the Defendant would reasonably recognise that the Claimant fitted the description of the abuser given in the Newsnight report and the other media referred to above. Against the backdrop of that report and those media publications, the answer to the question the Defendant asked in the Tweet would, to the reasonable reader, be that the Claimant was trending because he was the senior Tory politician from the Thatcher years who Mr Messham had identified as his abuser in the children's home in Wales.

70. Sir Edward accepts that many of the Defendant's followers were too young ever to have heard of the Claimant in the days when Margaret Thatcher was Prime Minister, and others had probably forgotten about him before he started the trending to which the Tweet referred.

71. Sir Edward submits that the Defendant has not suggested any reason why he should have been trending in 2012, other than because his name had been linked to the abuse allegations. So the question in the Tweet is just a device the Defendant used to draw the readers' attention to an answer which a reasonable reader would understand that she already thought she knew.

72. A reasonable reader of a Tweet, or anything else, does not just look at the words. A reasonable reader would ask him or herself what the Tweet is about, if it was not pointing the finger of blame at the Claimant. And there would not be a reasonable alternative meaning that would spring to mind.

73. Sir Edward submits that if the circumstances in which the Tweet were published do not amount in law to general knowledge known to the Defendant's followers, then, because they had been reported in public sources to so great an extent, the court should infer that they were probably known to a substantial number of readers of the Tweet. He submits that I should infer that the Newsnight report, and the allegations made in it, were one of the biggest domestic news stories that weekend.

74. So if the Tweet is not defamatory in its natural and ordinary meaning, he submits that it is defamatory in an innuendo meaning to that substantial number of readers who did know of the Newsnight report and the other media reports referred to above.

SUBMISSIONS FOR THE DEFENDANT

75. Mr McCormick submits that the words "innocent face" are to be read literally: that the expression which the reader is being invited to imagine on the Defendant's face in asking the question is "deadpan". It is an expression to convey that she is asking it in

a neutral and straightforward manner. She has noticed that the Claimant is trending and all she is asking is that someone should tell her why.

76. He emphasises that the Claimant's career, distinguished as it was, ended some 20 years ago. Newsnight is not a programme that attracts particularly large numbers of viewers. It is notable that the Claimant has been unable to include in the media reports he relies on reports on other TV programmes, or on radio broadcasts. The media reports he relies on are not front page coverage, and are not in the mass market tabloid press. The media reports to which he drew my attention, as set out above, give very little detail to describe the person accused of abusing Mr Messham.

77. The position as at 4 November 2012 must not be confused with the position as it became later that week, when, in a notorious incident, an interviewer could be seen on TV handing to the Prime Minister a list of names on which the Claimant's name could be seen by viewers. The coverage after that, he submitted, could be described as blanket coverage, but not the coverage before 4 November. That is why, submits Mr McCormick, the Claimant has to rely on an innuendo meaning in this case.

78. Mr McCormick submits that the reasonable reader of the Tweet would not understand the Defendant to be referring to the allegations in the Newsnight report or suggesting any wrongdoing. The question was consistent with her having noticed he was trending, but not having investigated the reason. Only an unreasonable reader, avid for scandal, would read the Tweet as asking anything other than a straightforward question. If readers were to take this Tweet as meaning that the Claimant was guilty of child abuse it would be almost impossible to tweet about anything. She cannot reasonably be understood as adopting Mr Messham's allegations. Even if she is understood to refer to those allegations at all, she is referring only to a controversy, and IS not taking sides.

79. Mr McCormick submits that the Defendant's followers would know that there can be any number of reasons why a person might trend, and it is not necessary for the Defendant to suggest any particular reason why the Claimant might have been trending. That is why she asked the question.

80. Mr McCormick emphasises that the Claimant had not been named in the Newsnight report or the media relied on by him, and that by 2012 very few people would be likely to know or to remember what he had done some 20 years before. At best he was only one of a number of people from the Thatcher years who would have fitted the very vague description given of the alleged abuser. The Newsnight report and other media reports did not just report Mr Messham's allegation. They also reported that the person who he identified had unequivocally denied the allegation, and that the BBC had insufficient information to name that person. Just because Twitter was sometimes used by tweeters to disclose the names of people when others were trying to keep the names out of the public eye, it would not be reasonable for a reader to infer that that was what the Defendant was doing with her Tweet.

DISCUSSION

81. In my judgment followers of the Defendant on Twitter probably are very largely made up of people who share her interest in politics and current affairs. They probably are people who, by 4 November, knew these elements of the story told in the Newsnight

report: that Mr Messham had been abused at a children's home in Wales some 20 years or so before, that the man he identified as his abuser was a leading Conservative politician from that time, and that the decision of the BBC not to name the person Mr Messham identified was the subject of public controversy.

82. In my judgment some followers of the Defendant probably did also have prior knowledge of the Claimant as a leading Conservative politician of those years. Some followers probably did remember him in that capacity, and some others probably had sufficient interest in politics to have read about him. 56,000 is a substantial number of people, although I do not find that all of those read the Tweet.

83. However, in my judgment it was not necessary for a reader of the Tweet to have had any prior knowledge of the Claimant as a leading politician of the Thatcher years in order for them reasonably to have linked the Tweet naming him with what I have found they knew about the allegations in the Newsnight report. This is because the Tweet identified him by his title, Lord McAlpine, that is to say, as a peer of the realm. It is common knowledge that peers nowadays are generally people who have held prominent positions in public life, in many cases in politics, including as members of the House of Lords. The Tweet asked why the named Lord was trending, in circumstances where (1) he was not otherwise in the public eye on 4 November 2012 and (2) there was much speculation as to the identity of an unnamed politician who had been prominent some 20 years ago.

84. In my judgment the reasonable reader would understand the words "innocent face" as being insincere and ironical. There is no sensible reason for including those words in the Tweet if they are to be taken as meaning that the Defendant simply wants to know the answer to a factual question.

85. The Defendant does not have any burden of proof in the issue I have to decide. She does not have to offer an alternative explanation of why a peer, whose name and career is known to few members of the public today, might have been trending on 4 November 2012 without her knowing why he was trending. But where the Defendant is telling her followers that she does not know why he is trending, and there is no alternative explanation for why this particular peer was being named in the tweets which produce the Trend, then it is reasonable to infer that he is trending because he fits the description of the unnamed abuser. I find the reader would infer that. The reader would reasonably infer that the Defendant had provided the last piece in the jigsaw.

86. That leads to the question: what is the level of seriousness of the allegation that the Claimant fits the description of the unnamed abuser?

87. The Newsnight report was not a report of an investigation by the police (or by anyone else). Nor do the media reports suggest that they were reporting on an investigation. The Newsnight report, and all the other reports are of the allegations of a man who complained he was sexually abused. It is true that some reports also included that the unnamed person who is accused of the crime has vehemently denied it. But what is reported is the accusation. The Tweet is linked to those reports, in that it adds a name that was not in the reports themselves. So it is by implication a repetition of the accusation with the addition of the name which had previously been omitted.

88. The effect of the repetition rule is that the Defendant, as the writer of the Tweet, is treated as if she had made, with the addition of the Claimant's name, the allegation in the Newsnight and other media reports which had previously been made without his name. It is an allegation of guilt. I see no room on these facts for any less serious meaning. The fact that the accused's denial was also reported in media (other than Newsnight) may be one of a number of factors that the Defendant can rely on in mitigation of damage, but it does not reduce the seriousness of the allegation.

89. If the Defendant wished to avail herself of a public interest defence, such as *Reynolds* privilege or reportage, she would have had to plead it. She has not done so. Given the well known risk that a victim of a real crime may make a mistaken identification of the criminal, I do not find it surprising that she has not pleaded any defence of that kind.

CONCLUSION

90. It follows that, for these reasons, I find that the Tweet meant, in its natural and ordinary defamatory meaning, that the Claimant was a paedophile who was guilty of sexually abusing boys living in care.

91. If I were wrong about that, I would find that the Tweet bore an innuendo meaning to the same effect. But if it is an innuendo meaning it is one that was understood by that small number of readers who, before reading the Tweet on 4 November, either remembered, or had learnt, that the Claimant had been a prominent Conservative politician in the Thatcher years.

92. At this stage I am not asked to find how many followers of the Defendant read the Tweet or understood it in the meaning I have found it bore.