Case No: HQ14X01588

Neutral Citation Number: [2014] EWHC 2831 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/08/2014

Before :

MR JUSTICE BEAN

- -

Between :

(1) RUTH COOKE **(2) MIDLAND HEART LIMITED**	**Claimants**
- and -	
(1) MGN LIMITED **(2) TRINITY MIRROR MIDLANDS LIMITED**	**Defendants**

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- -

Hugh Tomlinson QC (instructed by **Wragge Lawrence Graham**) for the **Claimants**
David Price QC (of **David Price Solicitors and Advocates**) for the **Defendants**

Hearing date: 23rd July 2014

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Judgment

Mr Justice Bean :

1. *Benefits Street* was a series of six weekly television programmes broadcast on Channel 4 from 6th January to 10th February 2014. It focused on the lives of residents of James Turner Street in Birmingham, in particular those residents dependent on social security benefits. It attracted great attention and contributed to a widespread national debate about benefits.

2. On 26th January 2014 the Sunday Mirror published an article ("the Article") with the front page headline "MILLIONAIRE TORY CASHES IN ON TV BENEFITS STREET" which covers all or nearly all of pages 1, 4 and 5. The main focus of the Article is Paul Nischal, also described as "Mr Goldfinger", the person referred to in the front page headline. Mr Nischal is also pictured on the front page, where the secondary headline reads "He rents out damp and mouldy dump for £215 A WEEK". In the headlines at the top of the spread across pages 4 and 5 he is referred to again, with the words "Mr Goldfinger is raking it in from Benefits Street". Nearly half of page 5 is taken up with a headline in large font:- "Riddled with damp, a broken boiler, leaking pipes, peeling walls… for £11,000 A YEAR."

3. Most of page 4 relates to Mr Nischal, including an interview with one of his tenants who lives in what are described as "appalling conditions" and complains in particular of the property being so damp that "you can see water running down the walls". Page 4 also has a small part devoted to an insert about another landlord in James Turner Street, a "wealthy dentist" who is "believed to receive more than £1,000 a month paid out as housing benefit for three homes he owns in James Turner Street" (although confusingly in the headline it is said he is pocketing "thousands of taxpayer cash for two homes"): there is no suggestion, however, that any of these is damp ridden or otherwise unfit for occupation.

4. The main text of the Article continues onto page 5 where, after recording comments from two Members of Parliament, it says:-

> "Mr Nischal, once an aide to India's assassinated Premier Rajiv Ghandi [sic], is not alone in making money from the misery of James Turner Street. Our probe reveals a string of well-off property owners are paid up to £650 a month by the Government through the housing benefit system. The owner of homes occupied by two of Benefits Street's main characters is a wealthy dentist who also owns a third property in the street.
>
> Three more homes in the road where residents claim they have been portrayed as scroungers and lowlife by Channel 4 are owned by the Midland Heart housing association. Its chief Ruth Cooke, 45, earns £179,000 a year and lives in a large house in Stroud, Glos."

5. The claimants in this defamation action are Ms Cooke and Midland Heart. The paragraph about them cited above is the only mention of them in the article. There is no dispute that Midland Heart does own three homes in James Turner Street; that Ruth Cooke is its Chief Executive; that she earns £179,000 per year; or that she lives

in a large house in Gloucestershire. Their case is that the paragraph referring to them, read in context, is defamatory.

6. The meaning put forward by Hugh Tomlinson QC for the claimants in the amended Particulars of Claim at paragraph 9 is that in their natural and ordinary meaning, the relevant words meant that:-

> "(a) the Second Claimant, which is owned or run by the First Claimant, is one of the disreputable, well-off private landlords of rented properties on James Turner Street who make large amounts of profit, or "rake it in", by letting out squalid and sub-standard houses to people in receipt of housing benefit and overcharging in rent, thereby making money from the misery of James Turner Street residents and getting rich from taxpayers' money; and that
>
> (b) the First Claimant is personally responsible for this seriously improper conduct of the Second Claimant, and has herself personally profited and become rich from that misconduct."

7. On 4th June 2014, by consent, Deputy Master Bard made an order for the trial of two preliminary issues, and directed that time for service of a Defence was to be extended until after they were decided. With a minor amendment agreed between the parties, the issues now read as follows:-

> "(1) Whether the words pleaded in paragraph 8 of the Amended Particulars of Claim (in the context of the entire article) bear the meanings pleaded in paragraph 9 or any other meaning that (subject to serious harm) is defamatory to either or both of the Claimants and, if so what defamatory meaning the words bear in relation to each Claimant.
>
> (2) Whether either or both of the publications referred to in paragraphs 5 and 6 of the statement pleaded at paragraph 8 (in the context of the entire article) has caused or is likely to cause serious harm to the reputations of either or both of the Claimants within the meaning of section 1 of the Defamation Act 2013."

8. The second publication referred to in issue 2 was an online version of the Article published on the BirminghamMail.co.uk website on 27th January 2014 and subsequently deleted from it. No separate issue arises as to that version.

The meaning issue

9. The general principles to be applied in the determination of the natural and ordinary meaning of words complained of are well known and well established. They are, for example, set out in a frequently quoted passage from the judgment of Sir Anthony Clarke MR in *Jeynes v News Magazines Limited* ([2008] EWCA Civ 130 at [14]) as follows:

> "The legal principles relevant to meaning … 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. (7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, "can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation…"…. (8) It follows that "it is not enough to say that by some person or another the words might be understood in a defamatory sense".

10. In *Slim v Daily Telegraph Ltd* [1968] 2 QB 157 at 171G-172C Diplock LJ said:-

> "Libel is concerned with the meaning of words. Everyone outside a court of law recognises that words are imprecise instruments for communicating the thoughts of one man to another. The same words may be understood by one man in a different meaning from that in which they are understood by another and both meanings may be different from that which the author of the words intended to convey. But the notion that the same words should bear different meanings to different men and that more than one meaning should be "right" conflicts with the whole training of a lawyer. Words are the tools of his trade. He uses them to define legal rights and duties. They do not achieve that purpose unless there can be attributed to them a single meaning as the "right" meaning. And so the argument between lawyers as to the meaning of words starts with the unexpressed major premise that any particular combination of words has one meaning which is not necessarily the same as that intended by him who published them or understood by any of those who read them but is capable of ascertainment as being the "right" meaning by the adjudicator to whom the law confides the responsibility of determining it.
>
> That is what makes the meaning ascribed to words for the purposes of the tort of libel so artificial."

11. Another way of putting the same point is that when determining the natural and ordinary meaning of words (as opposed to any innuendo meaning) for the purposes of a defamation claim, there is only one hypothetical reasonable reader.

12. Mr Tomlinson submits that the Article is about slum landlords who are raking it in from squalid properties in "Benefits Street" and that Midland Heart and Mrs Cooke

are part of what Mr Tomlinson describes as the "rogue's gallery" in the Article. A reasonable reader would think that the claimants are mentioned for a purpose, and that purpose can only be that they are the same kind of landlord as Mr Nischal. He emphasises the front page headline saying that Mr Nischal "cashes in on TV Benefits Street" and that he "rents out damp and mouldy dump for £215 a week". The double page spread including the paragraph referring to the claimants has the headline "riddled with damp, a broken boiler, leaking pipes, peeling walls … for £11,000 a year". Then, after two Members of Parliament are quoted condemning "private landlords" generally, there is the sentence emphasising that it is not just Mr Nischal being condemned:-

> "Our probe reveals a string of well-off property owners paid up to £650 a month through the housing benefits system."

At no stage is Midland Heart distinguished from the other landlords mentioned in the article. Mr Tomlinson describes the article as all bane and no antidote.

13. Mr Price, by contrast, submits that the notional ordinary reader can be taken to know the attributes of a housing association, the dictionary definition of which is "a non-profit organisation that rents houses and flats to people on low incomes or with particular needs". Alternatively, the notional ordinary reader can be taken to know enough to be aware that a housing association is different from the private landlord, and would understand the relevant paragraph of the Article merely to convey its literal meaning and to amount to an observation that Ms Cooke is earning much more than Midland Heart's tenants in James Turner Street and that she lives in a bigger property in a nicer area. Such a meaning, he says, is not defamatory.

14. Mr Price submits that it is important not to over-estimate the inclination or capacity of the ordinary reader to seek meaning in relation to a passing reference that has no particular interest to him. He submits that insofar as a reader who knows the attributes of a housing association asks himself why the claimants were included in the Article insofar as he does, his answers might include:-

> "(a) D1 has found out that C2 owns properties in the street; C1's earnings; and where she lives (which contrast with the residents of the street and provide colour to the article);
>
> (b) it is interesting that a CEO of a housing association is being paid that amount of money; or
>
> (c) D1 should not have included Cs because C2 is a housing association."

15. Mr Price's alternative submission, made on the assumption that the ordinary reader would *not* be aware that a housing association is non-profit, is that the article suggests that Midland Heart profits by renting property to socially deprived tenants in receipt of housing benefit and that Ms Cooke's financial position, which is derived from Midland Heart's income, is significantly better than that of its tenants.

16. There is an inevitable artificiality about meaning hearings. The judge's first impression when reading the article for the first time is important; but the judge then

goes on to look at other material and to hear detailed submissions. As Diplock LJ said in *Slim*:-

> "In the spring of 1964 two short letters appeared in the correspondence columns of the *Daily Telegraph*. … Neither letter can have taken a literate reader of that newspaper more than 60 seconds to read before passing on to some other, and perhaps more interesting, item. Any unfavourable inference about the plaintiffs' characters or conduct which he might have drawn from what he read would have been one of first impression. Yet in this court three lords justices and four counsel have spent the best part of three days upon a minute linguistic analysis of every phrase used in each of the letters. If this protracted exercise in logical positivism has resulted in our reaching a conclusion as to the meaning of either letter different from the first impression which we formed on reading it, the conclusion reached is unlikely to reflect the impression of the plaintiffs' character or conduct which was actually formed by those who read the letters in their morning newspaper in 1964.
>
> Nevertheless, the artificial and archaic character of the tort of libel makes the exercise necessary in this appeal, even though in the end we return to the first impression with which we began."

17. I reject Mr Tomlinson's submission that the reasonable reader would think that Midland Heart is being depicted in the article as a slum landlord. It is true that the headlines make that allegation very clearly against Mr Nischal. But by the time the reader going through the article reaches the paragraph about the claimants the story has moved on first to the dentist, who is not accused of being a slum landlord, and then to the claimants (and after them to Ms Mosquito). The references to squalid conditions are confined to one of Mr Nischal's properties. (It is only fair to Mr Nischal, who was not represented before me, to record that the allegations against him were removed from the mirror.co.uk. website some months later following a complaint by him to the Press Complaints Commission.)

18. However, I also reject Mr Price's submission that the reader would think that the references to Ms Cooke's large house and its location, and in particular the reference to her salary, are merely "interesting" or are only there to provide colour to the Article.

19. I find that the natural and ordinary meaning of the words complained of, read in context, is as follows:-

    (a) Midland Heart, whose chief executive is Ruth Cooke, is one of the well-off landlords of rented properties on James Turner Street who let houses to people in receipt of housing benefit at rents of up to £650 per month, thereby making money from the misery of James Turner Street residents; and that

(b) Ms Cooke is personally responsible for this conduct of Midland Heart, and has herself profited and become rich from it, in that she is paid £179,000 a year and lives in a large house in Gloucestershire.

The apology

20. As a result of correspondence between solicitors the defendants published an apology in the next edition of the *Sunday Mirror* after the original article, on 2nd February 2014. This read:

> "**Midland Heart and Ruth Cooke: An Apology**
>
> Last week the Sunday Mirror included Midland Heart Housing Association and its chief executive Ruth Cooke in our article "Millionaire Tory cashes in on TV Benefits Street".
>
> Midland Heart is a not for profit housing and care charity, and any surplus made by it is reinvested into its homes for the benefit of its customers.
>
> Midland Heart and Mrs Cooke take their responsibility to support customers and the communities they live in very seriously.
>
> We did not intend to include them in the article and wish to apologise to both Midland Heart and Mrs Cooke for our mistake."

21. The apology occupies the top right corner of page 2. It is nothing like as prominent as the original three page Article, but more prominent than the paragraph of it referring to the claimants. Mr Tomlinson is critical of the wording of the apology, which was not agreed with the claimants or their solicitors. But I regard it as sufficient, in the mind of the hypothetical reasonable reader of the 2nd February edition, to eradicate or at least minimise any unfavourable impression of Midland Heart or Ms Cooke created by the reference to them the previous week, although plainly not every reader of the original article will have read the apology,

22. The apology is not, of course, relevant to meaning, but Mr Price relies on it on the serious harm issue, to which I now turn.

Evidence on the issue of serious harm

23. The evidence before me, apart from copies of the Article and the apology, consists of witness statements of Ms Cooke and of Andrew Foster, the Governance and Contracts Director and Company Secretary of Midland Heart. There was no request for either of them to be cross-examined: such a procedure would have been inappropriate for a preliminary issue of this kind, particularly given the joint estimate of one day for the hearing.

24. Mrs Cooke's evidence is that following publication three professional contacts

referred to the article in communications with her: one of these indicated that it was "awful" that the Claimants were associated with disreputable landlords. Since the apology had not stated the allegations were false, it had raised his suspicions and made him wonder what the Claimants had done to warrant being linked in an adverse way to Benefits Street. However, Mr Tomlinson emphasises that the claim is based not on damage to their reputations in the minds of these particular individuals but "in the minds of many hundreds of thousands of readers of the Sunday Mirror".

25. Midland Heart's pleaded case on serious harm relies on the fact that they are dependent on grant and contract income for which they bid on competitive tender; and that maintaining a strong reputation for the delivery of high quality services is central to their success in competitive tenders. Mr Foster states that any suggestion that Midland Heart fails in the delivery of services is bound to cause those who award contracts and grants to question whether they should receive public money. But it is conceded that to date Midland Heart is not aware of any contract being lost, although Mr Foster explains that often they do not know the reasons for the loss of contracts.

26. The claimants are not in a position to adduce evidence about specific individuals who as a result of reading the Article think less of them. Mr Tomlinson submits that "in the nature of these things, such evidence is in practice almost always impossible to obtain. The actual and likely serious harm to the claimants' reputations will be in the estimation of those who do not know them but will now know them as 'dodgy landlords' associated with Benefits Street. The purpose of this action is to publicly vindicate the Claimants in the face of such an allegation."

The Defamation Act 2013

27. Section 1 of the Defamation Act 2013, under the heading "Requirement of serious harm", provides:-

> "(1) A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant."
>
> (2) For the purposes of this section harm to the reputation of a body that trades for profit is not "serious harm" unless it has caused or is likely to cause the body serious financial loss."

28. The Act only applies to defamation claims where the cause of action has arisen since the beginning of 2014. Mr Tomlinson and Mr Price tell me this is the first case in which the interpretation of the Act has come before the courts.

29. There was originally a suggestion in correspondence that Midland Heart are a "body that trades for profit" and that therefore by virtue of s 1(2) they could only succeed if they showed that the publication has caused or was likely to cause serious financial loss. However, by the time the issues to be tried by me were formulated the parties were agreed that s 1(2) does not apply in the present case, although its terms are arguably of some assistance in construing s 1(1).

30. It is common ground that s 1(1) requires a claimant to show that serious harm has been caused or is likely to be caused to his reputation. It is not enough to show that the publication has caused or is likely to cause serious distress or injury to feelings.

31. The words "has caused" involve looking backwards in time, the words "or is likely to cause" involve looking forwards. The Act does not make clear the moment which marks the dividing line between past and future. It cannot be the moment of publication, since at that moment no harm "has been caused". The two logical possibilities seem to be the date of issue of the claim and the date of the trial (or of the trial of the preliminary issue of serious harm). Either of these has the curious effect that whether a statement is held to have been defamatory on the day it was published might depend respectively on the timing of the issue of proceedings, or the timing of the trial.

32. I prefer Mr Tomlinson's submission that the date from which one looks backwards (to see whether substantial harm has been caused) or forwards (to see whether substantial harm is likely to be caused) is the date on which the claim is issued. This would also correspond, in so far as past harm is concerned, with the common law rule that, subject to certain exceptions, slander is not actionable unless by the date on which the writ was issued, special damage had already occurred. But it does not matter in the present case which of the two dates one uses.

33. The next point to consider is what is meant by "likely". Fortunately this was not an issue before me. Mr Price submits, and Mr Tomlinson is content to accept, that "likely" serious harm will, generally, only be established where the court is satisfied that it is more probable than not that it will occur in the future. It is not necessary to decide in this case whether Mr Price is right to concede that "in accordance with *Cream Holdings Ltd v. Banerjee* [2005] 1 AC 253, there may be circumstances involving the threat of a future publication by the defendant with potentially very serious consequences, where a lesser degree of likelihood could suffice."

34. The 2013 Act was the product of extensive parliamentary scrutiny. A draft Bill was produced in March 2011 for public consultation and pre-legislative scrutiny by a Joint Committee of both Houses. The Joint Committee reported on the draft Bill on 19th October 2011. The Defamation Bill itself was then presented to the House of Commons on 20th May 2012 and after detailed consideration in both Houses received Royal Assent on 25th April 2013.

35. Both Mr Tomlinson and Mr Price have sought to refer to *Hansard* to cite remarks made in the course of the Bill's passage through Parliament, relying on *Pepper v Hart* [1993] AC 593. I consider that it is proper to refer to the Ministerial foreword to the draft Bill, to the Joint Committee's report on the draft Bill, and to the Explanatory Notes to the Act, to identify the mischief at which it was aimed. I also consider that the parliamentary history, and in particular any respect in which the Act differs from the original draft Bill, may be highly illuminating. It is also proper to refer to statements made by the promoters of the Bill (that is to say the sponsoring minister in each House or the proposer of any successful amendment) in order to resolve a genuine ambiguity in the Act.

36. The Explanatory Notes to the Act, referring to s 1(1), state:-

> "The section builds on the consideration given by the courts in a series of cases to the question of what is sufficient to establish that a statement is defamatory. A recent example is *Thornton v Telegraph Media Group Ltd* in which a decision of the House of Lords in *Sim v Stretch* was identified as authority for the existence of a "threshold of seriousness" in what is defamatory. There is also currently potential for trivial cases to be struck out on the basis that they are an abuse of process because so little is at stake. In *Jameel v Dow Jones & Co* it was established that there needs to be a real and substantial tort. The section raises the bar for bringing a claim so that only cases involving serious harm to the claimant's reputation can be brought".

37. The original draft Bill had provided in Clause 1(1) that:-

> "A statement is not defamatory unless its publication has caused or is likely to cause substantial harm to the reputation of the claimant."

The Joint Committee on the draft Bill recommended replacing "substantial harm" with "serious and substantial harm". In the event the Bill introduced by the Government in 2012 used the phrase "serious harm". It is obvious, without the necessity of referring to *Hansard*, that "serious harm" involves a higher threshold than "substantial harm" would have done; and also that as the Explanatory Notes put it, it "raises the bar" over which a claimant must jump.

38. This much is not controversial. Mr Tomlinson, however, sought to rely on an observation made by Lord McNally, the Minister of State in charge of the Bill, in the House of Lords Grand Committee debate of 17th December 2012, when he said [emphasis added]:-

> "Our view is that the serious harm test would raise the bar *to a modest extent* above the requirement of the current law."

39. I do not consider that this statement is admissible as an aid to construction of the phrase "serious harm". To use it for that purpose would be to allow legislation by speech. If a Minister taking part in a debate on a Bill or on a particular clause of a Bill says that he intends it to make a modest change (or, conversely, a major change), it is difficult to see what other parliamentarians are supposed to do about it. This point is given added significance by the fact that the Minister of State's observations were made in the second House. When the Bill had been before the House of Commons, up to and including its third reading on 12th September 2012, there was no definition in it of "serious harm". Any Member of Parliament who thought about it was entitled to assume that by using the word "serious" and not defining it the draftsman was leaving it to judges in contested claims to say whether on the facts of the case the serious harm test was satisfied. "Serious" is an ordinary word in common usage and I do not consider that it creates an ambiguity so as to bring *Pepper v Hart* into play.

How can serious harm can be proved?

40. Mr Tomlinson submits that:

"(a) The establishment of "actual" or "likely" harm to reputation presents a number of evidential difficulties. There are a number of obvious reasons for this:

(i) "Reputation" is the sum of the estimations of a person by other people. It is not something that can be "measured" with any degree of accuracy. In contrast to say, financial damage or physical damage, there is no generally accepted way of ascertaining the extent of actual or likely reputational damage.

(ii) Even in the case of relatively small circulation defamatory statements, it is never possible to ascertain who, exactly, has read them and what effect they have had on the mind of such readers. When considering damage the Court always takes into account the propensity of defamatory statements "to percolate through underground channels and contaminate hidden springs", what the Australian courts have called the "grapevine effect" (see generally *Cairns v Modi* [2013] 1 WLR 1015 at [26]). The position is plain and obvious where the defamatory statement is published to millions in a national newspaper.

(iii) Witnesses who have read the defamatory statement and draw it to the claimant's attention will often be people known to the claimant who will not believe it (or will not say if they do). As a result, their evidence is of limited value.

(iv) Actual damage to reputation will be caused when individuals who do not know the claimant read the defamatory statement and then take it into account in forming their views of the claimant. There is often no way in which the claimant will know about this change in estimation. A reader may "demote" the claimant in a list of social contacts or potential business partners or employees, or leave the claimant off altogether. A reader may decide to avoid dealing or engagement with the claimant or to reduce such dealing or engagement. By their very nature decisions of this kind will often never come to the claimant's attention.

(b) It is for these kinds of reasons that the Courts have never, in defamation cases, sought to engage in any sophisticated evidential investigation of the extent of "damage to reputation" but have, rather considered the point in broad terms. The Courts will usually look at the seriousness of the allegations and the extent of their publication and then carry out a broad assessment of damage. A sophisticated "analytical" approach is not appropriate (see, most recently, *Cairns v Modi* [2013] 1 WLR 1015 [35] to [37]). In *Cairns*, the Court undertook agreed with the judge's "broad assessment", and clearly accepted that

substantial damage to reputation had been caused by the publication of a single "tweet" to 65 people.

(c) The Court should employ a similar "broad assessment approach" when considering the likelihood of serious harm under section 1(1). Two considerations are of paramount importance: the seriousness of the allegations and the extent of the circulation of the libel. Consistently with the policy of the 2013 Act and this general approach a serious libel circulated to a very large number of publishees will inevitably pass the "serious harm" test.

41. The claimants' pleaded case on harm relies on the following:

(a) "The fact that Midland Heart is dependent on grant and contract income for which it bids on competitive tender;

(b) The fact that maintaining a strong reputation for the delivery of high quality services is central to its success in competitive tenders. The suggestion that it fails in its delivery of services is bound to cause those who award contracts and grants to question whether it should receive public money. In particular, although Midland Heart is not aware of any contract being lost it often does not know the reasons for the loss of contracts……

(c) The claimants are not in a position to adduce evidence about specific individuals who, as a result of reading the Article "think less" of them. In the nature of these things, such evidence is in practice almost always impossible to obtain. The actual and likely serious harm to Claimants' reputations will be in the estimation of those who do not know them but will now know them as "dodgy landlords" associated with Benefits Street. The purpose of this action is to publicly vindicate the claimants in the face of such an allegation."

42. For the defendants Mr Price submits that:

(a) "Where there is no threat of future publication, if no actual serious harm has been proved at a determination a number of months after publication, it is hard to see how a claimant could establish that future serious harm was more probable than not.

(b) Where the claimant cannot rely on the risk of future harm, he must prove that serious harm has occurred by the date of the determination. The claimant's belief that it has or the existence of cause for concern that it has is insufficient. It is common (and understandable) that a claimant has a heightened sense of concern as to the consequences of a publication.

(c) The limited common law requirement of a tendency to cause harm is no longer sufficient. This simply involves ascertaining whether the publication complained of conveys the allegation and if so, considering its capacity for harm in isolation……

(d) If there are no tangible adverse consequences to the claimant by the time of a determination many months after publication it is difficult to see on what basis the claimant can establish that serious harm has been caused.

(e) We live in a world where people are quick to express their views, particularly if adverse. Customers and employees of large corporations are uninhibited in expressing complaints in a variety of evident ways such as social media accounts, online reviews, customer "helplines" and staff "feedback". Social media allows defamatory allegations quickly to "go viral" or at least for there to be some lesser form of visible republication and comment (if, of course, anyone is interested in them). Media publications generally invite reader comments. If a media publication has caused serious harm to reputation there will be evidence of it.

(f) In the absence of such evidence, the claimant may seek to infer that it has been caused, relying on the nature of the allegation and the extent of publication. The court should be wary of such attempts, which have the potential to lower or remove the hurdle set by s.1. Passing references in media publications are generally transient. Even when the entire article remains online once it has disappeared below the early search entries its potential for harm is significantly reduced. Where it has been quickly removed and an apology published, its capability for future harm can be "removed altogether". In any event, the reputations of large commercial organisations and their CEOs are comparatively resilient and business decisions are rarely affected by a passing adverse reference in a media publication.

(g) Of course, there will be cases where serious harm is caused to even the most resilient of reputations, but, if so, it will be evident. In the absence of such evidence, it would be wrong, in principle, to infer serious harm to reputation simply because the claimant can derive a meaning that has a tendency to cause harm from a widely published media article."

43. I do not accept that in every case evidence will be required to satisfy the serious harm test. Some statements are so obviously likely to cause serious harm to a person's reputation that this likelihood can be inferred. If a national newspaper with a large circulation wrongly accuses someone of being a terrorist or a paedophile, then in either case (putting to one side for the moment the question of a prompt and prominent apology) the likelihood of serious harm to reputation is plain, even if the

individual's family and friends knew the allegation to be untrue. In such a case the matter would be taken no further by requiring the claimant to incur the expense of commissioning an opinion poll survey, or to produce a selection of comments from the blogosphere which might in any event be unrepresentative of the population of "right thinking people" generally. But I do not consider that the Article in the present case, with the meaning relating to the claimants which I have held it to have, comes anywhere near that type of case.

44. In assessing the likelihood of serious harm being caused to the claimants' reputation in the present case I attach significance to the apology. I have already held that the apology was sufficient to eradicate or at least minimise any unfavourable impression created by the original article in the mind of the hypothetical reasonable reader who read both. That leaves a residual class of readers of the original article who did not read the apology. As for them, it is important to note that the apology is now far more accessible on internet searches than the original Article. Mr Price observes, and I agree, that "only somebody actively trying to find the unamended Article may come across it, if they try hard enough. But there is no reason for anyone to do so other than for the purposes of this claim".

Conclusion

45. Both Ms Cooke and Midland Heart accept that there is no specific evidence that the Article has caused serious harm to their reputations so far; and I consider that such serious harm cannot be inferred. In my judgment they have also failed to show that it is more likely than not to cause serious harm to their reputations in the future. In the result I answer the first question which Deputy Master Bard ordered to be tried in the terms set out in paragraph 19 above and the second question in the negative.