Neutral Citation Number: [2017] EWHC 1689 (QB)

Case No: HQ15D05048

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 6/07/2017

Before :

MR JUSTICE DINGEMANS

- -

Between :

Andrew Guise	**Claimant**
- and -	
Rajeev Shah	**Defendant**

- -
- -

Richard Munden (instructed by **Brett Wilson LLP**) for the **Claimant**
David Hirst (instructed on Direct Access) for the **Defendant**

Hearing dates: 2nd, 3rd, 5th, 8th and 11th May 2017

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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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Mr Justice Dingemans:

1. This is the hearing of claims for libel, harassment and for infringement of the Data Protection Act 1998 ("the DPA") made by Dr Andrew Guise ("Dr Guise") against Mr Rajeev Shah ("Mr Shah"). It is also the hearing of claims for harassment and for infringement of the DPA made by Mr Shah against Dr Guise. A claim for malicious falsehood made by Mr Shah against Dr Guise was discontinued on the first day of trial.

2. Dr Guise had provided services to Dental CPD Services Limited trading as Dental CPD Pro ("DCPD"), a company controlled by Mr Shah and which provides Continuing Professional Development ("CPD") training for dentists, and Mr Shah. There was no written contract and a dispute arose between Mr Shah and Dr Guise about the terms of Dr Guise's engagement and in particular what, if anything, was owed by DCPD to Dr Guise, and the engagement was terminated.

3. As a result of the dispute about what, if anything, was owed by DCPD (or others) to Dr Guise, the relationship between Dr Guise and Mr Shah broke down. There is a dispute about whether Dr Guise started threatening to publish and did publish confidential information relating to DCPD and Mr Shah after the breakdown of the relationship. Mr Shah then created a website ("andrewguise.com") in which he made various statements about Dr Guise, which Dr Guise contends are inaccurate and defamatory. Mr Shah said that he created this website in an attempt to de-escalate the dispute between Dr Guise and Mr Shah, but if that was the intention it had the opposite effect. Dr Guise then published a website ("rajeevshahdental.com") in which he made various statements about Mr Shah, which Mr Shah contends are inaccurate. The claims under the DPA are made in respect of the inaccuracies alleged on both websites. Both Dr Guise and Mr Shah allege that they have been harassed by the other, giving rise to the claims for harassment.

Procedural issues

4. The parties were, at various times in the proceedings, acting in person. Timetables for disclosure and exchange of witness statements were extended by the parties and, by the time of the trial, witness statements had only been exchanged on 22nd April 2017, some 10 days before trial, and there were a number of procedural issues to be resolved. This was not a satisfactory or sensible way to prepare for trial. However I should record my thanks to the legal teams on both sides who, after their respective appointments, co-operated with each other and the Court to ensure that the trial was effective and completed within the original time estimate.

5. Mr Shah had applied for permission to reamend the Defence and Counterclaim to plead loss and damage for the claim for malicious falsehood. As noted above the claim for malicious falsehood was discontinued on the first day of the trial, and this application was not therefore pursued. In closing submissions Mr Shah made a second application to reamend the Defence and Counterclaim to plead justification for the meaning of the word "scam" used on the "andrewguise.com" website. I reserved that application to be determined with the judgment and will address it later in the judgment.

6. There was an application for a witness summons to be served on Erika Kilburn, a witness for Mr Shah, who had changed her mind about whether she would attend the trial. I granted permission for a summons to be issued because it appeared that Ms Kilburn had relevant evidence to give, and because Ms Kilburn had appeared to be willing to give evidence in the lead up to the trial. In the event Ms Kilburn attended and gave evidence.

7. There was an issue about whether Dr Guise should be entitled to rely on the witness evidence of Robert Dyas and Anthony Kilcoyne. It was said that the evidence was relevant to show that Mr Shah had a propensity to act in a certain way, but Mr Shah contended that part of their evidence was not relevant. I agreed to consider the evidence de bene esse, and then to assess it in the light of the other evidence and after hearing closing submissions. However Mr Dyas then issued an application to set aside a witness summons which had been served on him by Dr Guise, on the basis that he was concerned that giving evidence would put him in breach of a settlement agreement that he had reached with Mr Shah in relation to a separate and unrelated dispute between them. Mr Shah's legal team provided reassurance to Mr Dyas and Mr Dyas did give evidence. However I restricted his evidence to what he alleged were threats made against him by Mr Shah, and did not permit him to give evidence about his separate and unrelated dispute with Mr Shah. This was because evidence of his dispute with Mr Shah was not going to assist me to determine this case.

8. After Mr Dyas had given evidence there was an application for a disclosure order against Derbyshire police, which was said to be relevant to the issue of whether that police force had contacted Mr Shah in relation to a complaint made by Mr Dyas. It became clear that Mr Shah's evidence that he had not been contacted by that police force was not challenged, and therefore it did not become necessary to make an order.

9. There were disclosure applications about emails and copies of police documents. These were addressed and resolved during the course of the trial.

10. Mr Shah, who has considerable experience in IT matters but who does not write software and is not a "coder", disputed the authenticity of a number of emails which had been disclosed by Dr Guise and sought permission to instruct an expert to determine the authenticity of the emails. As the process of disclosure had been ongoing up to the trial and because these emails had been disclosed very late, I did grant permission to both parties to instruct an IT expert to give evidence on the genuineness of specified emails. It was apparent that the evidence at the trial would conclude on Monday 8th May 2017, that the experts would be available to give evidence on Thursday 11th May 2017, and that if closing submissions were adjourned after the evidence concluded on 8th May 2017, then 11th May 2017 could be used to hear expert evidence and closing submissions. In the final event the expert evidence did not support Mr Shah's case and in closing submissions the suggestion that Dr Guise had doctored emails was withdrawn, and Mr Shah apologised for making this allegation.

11. During the course of the trial a number of further statements were adduced on procedural matters. In one of them Mr Shah disclosed that he had located one of the disputed emails (dated 2nd December 2014) on one of the data backups to an email account, although for reasons which were not clear to him it had not been delivered into his email inbox. Mr Shah therefore withdrew the allegation of fabrication of this

email in his fourth witness statement, although it might be noted that he did not then apologise for making the allegation. It is fair to point out that when this had been identified Mr Hirst did, on behalf of Mr Shah, apologise for this false allegation of fabrication. Dr Guise has relied on Mr Shah's conduct of the defence in these proceedings as justifying an award of aggravated damages, should any award of damages found to be due to him.

Applicable legal principles

12. There was no material dispute between the parties about the applicable legal principles, which I have set out briefly below.

The meaning of the words published in libel actions

13. When deciding the meaning of words, a judge is providing written reasons for his conclusion as to the meaning to be attributed to the words sued upon. A Judge should not fall into the trap of conducting an over-elaborate analysis of the various passages relied on by the respective protagonists. The meaning is to be determined from the viewpoint of the layman, not by the techniques of a lawyer, see *Waterson v Lloyd* [2013] EWCA Civ 136; [2013] EMLR 17 at paragraph 53. The exercise has been described as one of ascertaining the broad impression made on the hypothetical reader by the words taken as a whole. The natural and ordinary meaning of words includes what the reasonable man will infer from the words. It was common ground that the Court is entitled to reach its own conclusions on meaning, and is not required to adopt meanings advanced by either party. The applicable principles were summarised by Sir Anthony Clarke MR in *Jeynes v News Magazines Limited* [2008] EWCA Civ 130 at paragraph 14.

Fact or comment/opinion

14. When a meaning is determined, the Court will have to consider whether the meaning is a statement of fact or comment, now referred to as opinion by the Defamation Act 2013. The parties have referred to comment and opinion interchangeably, and it is not suggested that anything turns on the difference of wording. Opinion must be recognisable as an opinion, as distinct from an imputation of fact. The opinion must explicitly or implicitly indicate, at least in general terms, what are the facts on which the opinion is formed, otherwise the opinion will be treated as a statement of fact. It has been said that the sense of opinion "*is something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation, etc.*", see *Branson v Bower* [2001] EWCA Civ 791; [2001] EMLR 32 at paragraph 12 and the authorities there considered. A statement may be fact or opinion, depending on context.

Serious harm

15. Section of the 2013 Act is headed "Requirement of Serious Harm" and provides:

> *"1 Serious harm*
> *(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."*

16. There are a number of previous decisions on section 1 which provide assistance including *Cooke v Mirror Group Newspapers* [2014] EWHC 2831 (QB); [2015] 1 WLR 895; *Theedom v Nourish Training* [2015] EWHC 3769 (QB); [2016] EMLR 10; *Sobrinho v Impresa Publishing SA* [2016] EWHC 66 (QB); [2016] EMLR 12; and *Monroe v Hopkins* [2017] EWHC 433 (QB); [2017] 4 WLR 68.

17. Section 1 requires the claimant to prove as a fact, on the balance of probabilities, that the statement complained of has caused or will probably cause serious harm to the claimant's reputation. It should be noted that unless serious harm to reputation can be established an injury to feelings alone, however grave, will not be sufficient.

Defences of justification and honest opinion

18. Truth is a defence to imputations in libel actions. Section 2(1) of the Defamation Act 2013 provides that it is a defence to an action for defamation to show that the statement complained of is substantially true. Section 2(3) of the Defamation Act 2013 provides that: "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". It was common ground that it is important to isolate the essential core of the libel and not to be distracted by inaccuracies around the edge if the imputations are substantially true.

19. Section 3 of the Defamation Act 2013 provides for the defence of honest opinion. So far as is material section 3 provides: "(1) It is a defence to an action for defamation for the defendant to show that the following conditions are met. (2) The first condition is that the statement complained of was a statement of opinion. (3) The second condition is that the statement complained of indicated, whether in general or specific terms, the basis of the opinion. (4) The third condition is that an honest person could have held the opinion on the basis of—(a) any fact which existed at the time the statement complained of was published; (b) anything asserted to be a fact in a privileged statement published before the statement complained of. (5) The defence is defeated if the claimant shows that the defendant did not hold the opinion."

20. It might be noted that in order to establish the defence of honest opinion, the comment or opinion must, subject to section 3 of the Defamation Act 2013, be based on facts which are either true or protected by privilege. In some cases, where there are facts on which the comment or opinion is based which need to be proved, the distinction between fact and comment or opinion may not be as important as in other cases, and compare Lord Phillips' statement at paragraph 109 in *Joseph v Spiller* [2010] UKSC 53; [2011] 1 AC 852.

Relevant legal principles for the assessment of damages and the award of aggravated damages for libel

21. It is established that libel damages have a threefold purpose namely: (1) to compensate for distress and hurt feelings; (2) to compensate for actual injury to

reputation which has been proved or might reasonably be inferred; and (3) to serve as an outward and visible sign of vindication. Damages are to be compensatory, and not punitive, see generally *Cairns v Modi* [2012] EWCA Civ 1382; [2013] 1 WLR 1015.

22. Damages are at large and a wide range of matters may be taken into account including the conduct of the Claimant, his position and standing, the subjective impact of the libel on him, the gravity, mode and extent of publication, the absence or refusal of retraction or apology, and the relevant conduct of the Defendant to verdict.

23. In coming to a figure the standard tariffs for pain and suffering in personal injury awards can properly be taken into account, see *John v MGN Limited* [1997] QB 586. Some authorities dealing with levels of damages in libel actions were provided to me and I have considered them, but I am conscious of the direction not to adopt an analytical approach involving conventional bands of damages, for the reasons given in *Cairns v Modi*.

24. My function "*is to try to relate the right range of compensation to the gravity of the particular libel and to any aggravating or mitigating features"*, paragraph 33 of *Cleese v Associated Newspapers* [2003] EWHC 137 (QB). It might be noted that when assessing the gravity of the libel "*the more closely it touches the Plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be".* I also note that a reasoned judgment rejecting a justification defence is capable of providing some vindication of a Claimant's reputation.

25. In my judgment the proper defence of an action is not to be taken into account in aggravation of damages in libel proceedings. There is however an important distinction between a fair right to defend an action, and unreasonable conduct in the pursuit of a defence. Such unreasonable conduct, which can include making false allegations, may aggravate an award of damages. Any award for aggravated damages should be proportionate.

26. It is also established that the Court may take account of matters proved by way of partial justification in the defence of an action to reduce damages, see *Pamplin v Express Newspapers (No.2)* [1988] I WLR 116 at 120. This is because damages are to compensate for that part of the publication which is not true or, as it was put in that case, "over the top".

Data Protection Act

27. Section 4(4) of the DPA requires data controllers to comply with the data protection principles. The first data protection principle requires that "personal data shall be processed fairly and lawfully …" and requires compliance with the schedule 2 conditions. Schedule 2 sets out conditions relevant for the purposes of the first data protection principle, and paragraph 6 requires that "the processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed". The fourth data protection principle requires that: "personal data shall be accurate and, where necessary, kept up to date". Schedule 1, Part II at paragraph 7 provides that there will not be a breach if having regard to the purposes for which data is obtained and processed reasonable steps have

been taken to ensure accuracy. Section 70(2) of the DPA provides that "… data are inaccurate if they are incorrect or misleading as to any matter of fact".

28. Section 13 provides that an individual who suffers damage by reason of any contravention by a data controller of any of the requirements of the DPA is entitled to compensation from the data controller for that damage. Damage includes non-pecuniary damage including distress, see *Vidal-Hall v Google* [2016] QB 1003 which set out the proper approach to section 13(2) of the DPA. In paragraphs 81 and 82 of *Vidal-Hall* it was noted that there would be some cases which did not justify an award of damages. Section 14 provides that the Court may order rectification, blocking, erasure or destruction of data and notification of such actions to third parties to whom the data has been disclosed.

29. Although in *Halliday v Creation Consumer Finance* [2013] EWCA Civ 333 the sum of £750 awarded by way of damages was described as a "relatively modest nature" more substantial sums have been awarded where there was a deliberate breach of the DPA (£9,000 in one case) or where control of personal and confidential information which should never have been processed had been lost (£39,5000 shared amongst 6 Claimants in *TLT v Secretary of State for the Home Department* [2016] EWHC 2217 (QB)).

30. It is permissible to bring claims under the DPA together with claims for libel because the DPA provides for a statutory cause of action, see *Hicham v Elaph Publishing* [2017] EWCA Civ 29; [2017] 4 WLR 28. However where it can be seen at the conclusion of the trial that the DPA claim adds nothing to the existing proceedings, it may be appropriate either to make no order on the claim or to dismiss it. It might be noted that the focus of libel proceedings under the Defamation Act 2013 is serious harm to reputation, whereas the DPA is concerned with, among other matters, accuracy and the fairness of the processing of data.

Harassment

31. Section 1 of the Protection from Harassment Act 1997 provides that "(1) a person must not pursue a course of conduct - (a) which amounts to harassment of another, and (b) which he knows or ought to know amounts to harassment of another." Subsection 2 provides that a person ought to know that it amounts to … harassment of another if a reasonable person in possession of the same information would think that the course of conduct amounted to … harassment of the other. Subsection 3(c) provides that subsection 1 does not apply to a course of conduct if the person who pursued it shows that in the particular circumstances the pursuit of the course of conduct was reasonable. Section 7 defines conduct as including speech.

32. What is required to be proved is: conduct occurring on at least two occasions; targeted at the Claimant; calculated in an objective sense to cause alarm or distress; and objectively judged to be oppressive and unacceptable, see *Crawford v Jenkins* [2014] EEWCA Civ 1035; [2016] QB 231 at paragraph 74. There is a distinction between conduct which is unattractive, even unreasonable and conduct which is oppressive and unacceptable, which has been described as a torment of the victim or of an order which would sustain criminal liability, see *Majrowski v Guy's and St Thomas' NHS Trust* [2006] UKHL 34; [2007] 1 AC 224 and *Dowson v Chief Constable of Northumbria* [2010] EWHC 2612 (QB). Harassment involves persistent conduct of a

seriously oppressive nature, either physically or mentally, targeted at an individual and resulting in fear or distress, *R v Smith* [2013] 1 WLR 1399.

33. It is possible, notwithstanding rights to free speech, for oppressive, persistent or unpleasant repeated publications to amount to harassment, see *Howlett v Holding* [2006] EWHC 41 (QB); (2006) 150 SJLB 161 where an aircraft flying with a banner over a period of 4 years was held to amount to harassment and where the Defendant had hoped to create a living hell for the Claimant, see *Howlett* at paragraph 7.

34. Awards of damages for harassment have applied guidelines from *Vento v Chief Constable of Yorkshire* [2002] EWCA Civ 1871; [2003] ICR 318, as updated, as appears generally from *Roberts v Bank of Scotland* [2013] EWCA Civ 882.

The websites

35. I will set out the wording of the respective website because that wording is relevant to issues in the trial.

36. Mr Shah published the following words on the "andrewguise.com" website about Dr Guise. There were:

"Andrew Guise My Terrible experience with this business consultant Andrew Guise in Oxford December 8, 2014 Andrew Guise, Investment Oxford, Scam, Unethical Leave a Comment I've set this site up to document the experience I have had with Andrew Guise who lives in Oxford and offers various consultancy services. If you are considering doing business with this individual, I would urge extreme caution. In summary: 02/08/2013: Andrew Guise offered to assist my company with an angel round of investment funding. 12/08/2013: Andrew Guise agreed a fixed fee of £5000 for these services plus a success fee of 10 per cent of the money raised. Andrew Guise did not provide any time reports nor any weekly reviews of work. 01/11/2013: Andrew Guise received the £5000 fixed fee as agreed. 01/08/2014: The investment round was abandoned in favour of funding the company from my persons resources. 28/112014: Andrew Guise subsequently attempted to bill me for 30 days at £1000/day. 28/11/2014: Andrew Guise subsequently attempted to claim 10 per cent of the final sale value of my company at whatever point in the future it is sold. 8. Information came to me that a major potential investor had withdrawn his interest because Andrew Guise had conflicts of interest related to the eventual sale of my company. 02/12/2014: I disputed the extra bills from Andrew Guise and relayed to Andrew Guise the information I had received regarding the conflicts of interest. 02/12.2014: I formally requested Andrew Guise to delete all of the documents he had received as a result of our business, refrain from representing himself as associated with me or my company and respect any confidences to which he had privileged access as a result of the time he worked with me. He has yet to respond positively to these formal requests. My experience is that Andrew Guise should not be trusted in matters of finance and that Andrew Guise should not be trusted with financial information."

37. On or after 9th December 2014 Mr Shah added:

"09/12/2014: In response, Andrew Guise has made the written threat that he is "in the process of publishing every email ever sent", thereby breaching the implied trust

and confidentiality that any client should be entitled to expect from an ethical professional. 09/12/2014: Andrew Guise has contacted various members of my company's advisory board whilst misrepresenting himself as connected to my company."

38. On or after 10th December 2014 Mr Shah added:

"10/12/2014: Andrew Guise has created http://rajeevshahdental.com with a number of outrageously false allegations mixed with a number of half-truths edited and spun to create a very negative impression of my business and ethics."

39. On 21st November 2015 Mr Shah added a click to an update which was:

"2015 Update 29/10/2015: Andrew Guise has instructed a solicitor (Michael Key of In-House Solicitors) to write me two letters which set out some extremely weak arguments as to why they might sue for £30,000, 10 per cent of my business and for defamation. The letters contain a large number of false allegations with absolutely no evidence to back them up. So far, I have made two requests for the evidence they intend to use should the matters proceed to court. I'm still waiting …".

40. On 10th December 2014 (until about October 2015) Dr Guise published the following words about Mr Shah on the "rajeevshahdental.com" website:

> *"'Rajeev Shah Untrustworthy Dental Entrepreneur Rajeev Shah CEO Dental CPD Pro Andrew Guise*
> *Mr Shah offered to pay half in early October, and the full invoice was submitted at the end of the month and paid. Mr Shah was very happy with the work performed. To summarise I then worked diligently for him up until a few months ago. He has consistently praised my work in writing. He asked me to be a Director of the Company as early as November 2013, and has asked repeatedly since. He has incorrectly told people that I am a Director and Chairman. Neither is true.*
> *At his request I had not billed him because he had no cash available at the time. The company was effectively bankrupt having signed up to more advertising costs than the company had in the bank to pay. Mr Shah assured me he would pay post a fund raising or after he injected more money post the sale of assets from Brazil. As the sale of the assets was close to being finalised I approached Mr Shah with a request for payment.*
> *He stated he thought I was working for free, that terms for a success fee based on a sale were never discussed, and that the success fee on future fundraising was time limited. These are lies, and can be refuted by written documentation.*
> *Despite all this rather than escalate to where we are now, I offered Mr Shah an opportunity to compromise. No bills were sent, no demands were made. However, all offers were rejected and I was forced to take legal action to recover my losses. These legal cases are being prepared.*
> *I also started to contact people to let them know that I was no longer working with Mr Shah and that I was not as he had stated either the Chair or even Director.*
> *Upon learning this Mr Shah threatened my wife and attempted to blackmail me by creating the following webpage: http://andrewguise.com. details will follow, there is just too much to put in this initial post. The main reason for this blog is to refute the lies, and implied misdeeds that Mr Shah published globally.*

During my employ by Mr Shah he has consistently asked me to lie about how successful his business is and to overstate his accomplishments.
At the time of ceasing working for Mr Shah, and according to the information that he gave me, Dental CPD Pro did not own the software that it purports to use. He has taken money from investors on the basis that it does. Furthermore having talked to these investors they are under the impression that the company will own the CPD software in its entirety. This was not Mr Shah's intention. He only intends to license the software for the dental industry. I constantly informed him that this needed to be finalised and that he could not mislead investors but he chose to ignore me.
His stated strategy with regard to consumers and partners is described by himself as a 'Trojan Horse'. By offering something for free consumers and partners will become reliant on his service. As consumers are reliant on the tech he will change the terms and conditions to include payment for basic services and allow himself to use your personal data as freely as he likes. He is already talking to Colgate about using his system. I'm not saying this is illegal people should be aware of the risks they take when giving their personal data to a corporate, particularly when its at the depth that will be seen in personal development plans. Do you really want the entire industry to know your personal objectives?
As for partners, he truly believes that if enough people take up his system that all publishers, FMC, Purple Media and corporates will be forced to put their media through his gateway on peoples phones (sic) as this will be the sole way to get to them. He honestly believes that he will become the sole media delivery method for the UK dental industry. By offering the log me button and QR codes to these partners for free he seeks to create this reliance and then change terms later. He has a complete lack of respect for his potential partners, who he sees as competition and his strategy is to eventually undermine and replace them.'

The issues

41. I am very grateful to Mr Hirst and Mr Munden for producing a list of issues. The issues are set out in full and addressed after I have set out relevant evidence and my findings on relevant evidence. However it is relevant to note that Mr Shah seeks to justify meaning of the words used on the "andrewguise.com" website. This means that I will need to address, among other matters, whether Dr Guise billed Mr Shah, if so whether the bills were warranted, whether Dr Guise acted in conflict of interest, and whether Dr Guise breached trust and confidentiality. There are also factual issues arising in respect of the claims under the DPA and for harassment.

The evidence

42. I heard evidence on behalf of Dr Guise from: Dr Guise; Dr Elizabeth Blom, a consultant in the emergency department of a hospital and wife of Dr Guise; David Laskow-Pooley, a pharmacist; Anthony Jacobs, a dentist; Robert Dyas, a specialist oral surgeon; Anthony Kilcoyne, a dentist; Geoffrey Dale, a sales director; Dr Barbara Alberts, a general practitioner, who introduced Dr Guise and Mr Shah at a social event; and Nicola Rowland, a dental business consultant. I also read witness statements from Maximilian Campbell, a solicitor, who dealt with various procedural matters.

43. I heard evidence on behalf of Mr Shah from: Mr Shah; Ms Kilburn, managing director of a public relations company; and David Bloom, a dentist. I also read witness statements from Divyash Patel, a chartered certified accountant and Nichola Boersma, finance director of the Association of Dental Administrators and Managers ("ADAM"). Mr Shah had intended that these witnesses should give evidence, but they did not attend. It became common ground that I should admit these as hearsay statements, and submissions were made about the weight to be attached to the statements.

44. I set out below relevant events. Much of the evidence about what occurred was common ground, but there were relevant disputes of fact, and I set out my findings of fact below.

Dr Guise and Mr Shah

45. Dr Guise has a PhD in biochemical engineering. He was an investment banker. Dr Guise was in 2001 part of a corporate finance team which executed the largest merger in the dental industry. He is now an entrepreneur who specialises in corporate finance in the healthcare sector which includes dentistry. In evidence he complained that he had been very damaged by the "andrewguise.com" website whereas Mr Shah had managed to continue with his business without apparent adverse effect.

46. Mr Shah has had considerable experience of IT, although he does not write code, and is a director and majority shareholder of DPCD which markets an app which allows dentists to report CPD training to the General Dental Council ("the GDC"). He has plans to develop and market software products in dentistry and gaming. Mr Shah contended that, whatever Dr Guise's past successes, he had not been busy at the time he met him and any current lack of work was not due to Mr Shah's actions.

47. For the detailed reasons set out below it is apparent that I have not found Dr Guise to be a truthful and reliable witness, in particular about Dr Guise's actions in threatening to and breaching confidentiality after the breakdown of the relationship between Dr Guise and Mr Shah, and I have not found Mr Shah to be a truthful and reliable witness, in particular about Mr Shah's actions in sending someone to Dr Guise's house on 22nd January 2015. In circumstances where I am satisfied that both Dr Guise and Mr Shah have given untruthful and unreliable evidence to me in relation to one matter I have had to approach all of their evidence with caution. I should, out of fairness to both Dr Guise and Mr Shah, record that at times both gave truthful and reliable evidence to me and it seems that it was the breakdown in their relationship and their respective actions since then which have caused them both to lose any reasonable insight into their own behaviour and actions.

The engagement of Dr Guise

48. Dr Guise and Mr Shah met socially. As they are both entrepreneurs in the healthcare industry they had much in common, and it was apparent that they got on well together. (It is also apparent that the original feelings of warmth to each other have now been replaced by a very strong dislike and contempt for each other's abilities and ethics). Mr Shah spoke about DPCD and his use of an app which allowed dentists to log onto the computer site for the GDC to upload details of the CPD work that they had completed. The app had been successfully launched in March 2013. Mr Shah

also spoke about his proposed gambling arbitrage business, which used a software programme commissioned by Mr Shah which worked by comparing odds from betting shops, working out differentials, and then placing bets in a manner which guaranteed that, whatever the result the better would succeed. The software for this was owned by Amarco International Limited ("Amarco"), another company effectively controlled by Mr Shah. Amarco had also developed the app which was used by DCPD, and there is an issue about when ownership of the software for the app was transferred from Amarco to DCPD. Dr Guise spoke about a project of his which involved marketing sweetened caffeine granules.

49. In relation to Mr Shah's projects, Dr Guise said that he was more interested in the betting programme. Dr Guise spoke about his experience in raising funds, and Mr Shah was attracted by the opportunity to use Dr Guise's experience. There were discussions about Mr Shah's plans for DCPD. Dr Guise told Mr Shah that there was no need to give away the amount of shareholding that he was proposing to hand over to the Scientific Advisory Board ("SAB") and others in DCPD.

50. They met a number of times, and there were discussions about whether Dr Guise could assist with, among other matters, raising finance. Mr Shah sent Dr Guise documents which he had been putting together for a pitch to raise funds and exit strategies. Dr Guise thought that these were rudimentary but thought Mr Shah had had a good idea to put together a SAB comprised of leading figures in the dental world. There were discussions between Dr Guise and Mr Shah about a previous offer made for DCPD and about assurances from HMRC that proposed share issues were likely to qualify either for Enterprise Investment Scheme ("EIS") or Seed Enterprise Investment Scheme ("SEIS") tax relief.

51. Dr Guise performed a form of valuation of DCPD. In his email of 8th August 2013 (at 1245 hours) he mentioned his remuneration saying "Generally, it's a day rate plus 10 per cent of capital raise and or sale value". Mr Shah responded with points about the valuation but did not deal with terms. Dr Guise sent an email timed at 1618 hours saying that he normally charged £1,000-£1,500 per day plus success fees "but want to focus on results & the arbitrage business – hows 500 per day – the number of days could be a week or so to get all the materials and the marketing is really hard to say … we'd agree work weekly so that bills don't ramp up". Mr Shah replied at 1805 hours noting that the bill would reach £10K quite easily because it could take a long time to get English investors on board, noting that "6 months of to-ing and fro-ing wouldn't be surprising, would it? The business can't afford that type of upfront expenditure at this stage …". Mr Shah said he had looked at Crowdcube which charged a success fee of 5 per cent plus £1,750.

52. Dr Guise responded at 1849 hours on 8th August 2013, recording that he knew a board member at Crowdcube, that there were many advantages in using him and not Crowdcube, that he was offering "mates rates", and suggested "perhaps there is a quid pro quo with the arb gambling business? But I need to see it working. If yes and its just the cash element bothering you I can limit that to £5K as long as you work too. If the success fee is there its motivation … Bottom line I really like what you are doing. I see ways I can make an order of magnitude difference to what you make but I'd like a slice of the pie. If I more than double your returns and your chances of making them, then 10 per cent is nothing …".

53. The next relevant event was the meeting at the Fox and Hounds public house, Christmas Common, Watlington, Oxfordshire on 12th August 2013. Dr Guise said in his witness statement at paragraph 27 that "upon leaving that meeting, it was my understanding that we had reached agreement in line with the suggestion in my email of 8 August 2013." Dr Guise set out his understanding about what that email meant in the witness statement which included "provided that (1) I saw the gambling arbitrage business in action and it actually worked, such that our agreement in principle could be actioned, and (2) it was only upfront expenditure that Mr Shah was concerned about (as opposed to my terms generally, including the potential success fee), I would limit my upfront bill to £5,000, provided that Mr Shah was prepared to do a lot of the actual (face to face) work …". Dr Guise did say that with the benefit of hindsight he could have set out matters more clearly in his later email, but said that he thought he was dealing with a reasonably experienced and sophisticated businessman and had no reason to think that Mr Shah did not understand. Dr Guise continued in paragraph 27 of his statement saying "for the avoidance of doubt, there was, and has never been any doubt in my mind, that Mr Shah understood that I ultimately wanted 10 per cent of the business for my involvement". Dr Guise then made various points to suggest that this was a very good deal. In his evidence Dr Guise made repeated references to the fact that he owned 10 per cent of the business, including (as he put it in paragraph 45 of his witness statement) "10 per cent of the asset/business regardless of the eventual structure used, and that this 10 per cent would be protected against dilution".

54. As I have recorded one (of the many) issues in this case is whether if Dr Guise did send a bill it was unwarranted. Dr Guise's understanding might be relevant to issues of his good faith in making demands for payment to the extent that was in issue because of the contents of the websites, but his subjective understanding was not relevant to the issue of what was agreed as a matter of established contract law. However Dr Guise did not in evidence give any clear evidence about what was said at the meeting in the public house on 12th August 2013 to lead him to his understanding about the agreement.

55. Mr Shah said in his witness statement (at paragraph 22) that at the meeting "we agreed, following on from the earlier email exchanges: 22.1 the Claimant would be retained to advise me on the process of raising £250,000 for DCPD in exchange for a fixed fee of £5,000 and an additional success fee equivalent to 10 per cent of the funds raised should be investment effort entirely succeed, or 5 per cent if another fee-earning investment network was used to make introductions". Other terms agreed related to setting up an email account for Dr Guise and the use of project management software. In evidence Mr Shah said that Mr Shah and Dr Guise shook hands on £5,000 and 10 per cent of money raised which was intended to be £500,000 but with success to kick in at £250,000. He also accepted that nobody was clear about what was agreed.

56. Mr Shah's evidence did at least cover what he said was agreed at the meeting at the public house as opposed to his understanding about what had been agreed, but Mr Shah did not give details of what had been said by whom and to whom in his witness statement or the evidence. In his oral evidence he suggested that the aim was to raise £500,000, but success required £250,000 to be raised.

57. On 13th August 2013, the day after the meeting at the public house, Mr Shah set up an account for Dr Guise on Basecamp Classic saying "… I use Basecamp to manage my development projects. Let's use it to manage the funding project too – that way we can share a todo list …". At 0900 hours on 13th August 2013 Dr Guise uploaded what was described as "the teaser" (an invitation to potential investors to invest). He turned to the agreement and wrote "I will also send an example of a shareholder agreement and our engagement letter. Just to confirm £5K plus 10 per cent of funds raised/sale price – unless funds raised with crowdcube where the funds raised fee is reduced to 5 per cent". At 0903 hours Mr Shah replied he set out the text "Just to confirm £5K plus 10 per cent of funds raised/sale price – unless funds raised with crowdcube where the funds raised fee is reduced to 5 per cent" and said "agreed" (underlining added).

58. Both Dr Guise and Mr Shah accepted that they should have made a comprehensive written agreement. Dr Guise said he had sent a draft agreement to Mr Shah, which Mr Shah did not recall receiving, and which the evidence shows was not executed even if it was sent. I should note that it is apparent that some emails which were exchanged or recorded on the Basecamp software were not retrieved, because Mr Shah terminated the Basecamp software arrangement at some stage after the relationship between Dr Guise and Mr Shah had terminated.

59. It became common ground in closing submissions, and I find, that Dr Guise and Mr Shah had made an oral agreement on 12th August 2013 at the public house, which was part evidenced in writing by the emails dated 13th August 2013. In closing submissions Dr Guise's case was that as a result of oral agreement he became entitled to 10 per cent of DCPD, effectively a beneficial owner of 10 per cent of the shareholding of DCPD, and of the software, whether it was held by Amarco or DCPD.

60. On the evidence before me I find that Dr Guise and Mr Shah agreed that Dr Guise would work to obtain investments in DCPD for the fixed fee of £5,000 plus a commission or success fee. The commission or success fee was 10 per cent of any funds raised, or the sale price of DCPD. If monies were raised through Crowdcube the commission or success fee would be 5 per cent of the funds raised or the sale price. I will refer to this as the oral retainer agreement. I make this finding: because of the wording of the emails; because it is apparent that Mr Shah wanted to restrict cash payments and Dr Guise was willing to accept that, so the £5,000 was a fixed sum.

61. I made the finding that Dr Guise would be restricted to a commission or success fee of 10 per cent of any funds raised or the sale price doing the best I could with the very limited evidence about was said or agreed at the public house and having regard to the terms of the email of 13th August 2013 where reference is made to "funds raised/sale price". There is not much assistance to be gained from Dr Guise's earlier email dated 8th August 2013 (at 1245 hours) which referred to "10 per cent of capital raise and or sale value". However the more usual reading of the mark "/" this would be "or" making it "funds raised or sale price", although I accept that it is sometimes used as an "and/or". Further the use of "or" makes commercial sense in circumstances where the primary focus of the discussions had been about attracting investment, but it was known that some investors might want to make an offer for the whole company. I also reject the suggestion made on behalf of Dr Guise that he got an interest in both

Amarco and DCPD because he was advising about corporate structures, and because some previous advisory deals had been structured in this way. In my judgment clear words would have been needed to bring about such an agreement, and there was a complete absence of evidence showing that this had been agreed. As noted above Dr Guise failed to give any evidence about what was said to make the oral agreement, and most of his evidence was devoted to what he thought ought to have been agreed, or ought to have been understood. The fact that, in retrospect, Dr Guise considered that the oral retainer agreement was a bad agreement and did not make much commercial sense from his point of view does not assist him.

62. It follows from these findings that I also reject Dr Guise's case that provided that his agreement was dependent on him seeing the gambling arbitrage business in action. It is right that Dr Guise had mentioned this in an earlier email but there is no evidence that it was mentioned at the 12th August 2013 meeting where the oral retainer agreement was made, and a brief earlier mention of it by email is insufficient to make it a contractual term. It is also appears that links to bookmakers had been provided to Dr Guise but he had not pursued this matter at that stage. I also find that Dr Guise did not become, on the making of the oral retainer agreement, the beneficial owner of 10 per cent of shareholding of DCPD or of the app software.

63. It also follows from the findings above that I reject Mr Shah's case that Dr Guise would only be entitled to the 10 per cent commission or success fee if he had raised at least £250,000. There was nothing in the contemporaneous emails to suggest that this had been agreed as a term, nor to suggest that Dr Guise would not receive any payment other than the fixed sum of £5,000 if he had succeeded in raising £249,950. I accept that there were later discussions between Mr Shah and Dr Guise in which, following the failure to attract investors, they had reduced their expectations and discussed a figure of £150,000 for investment, but again there is not sufficient evidence of anything being said in clear terms to justify a finding that unless £150,000 was raised Dr Guise would not get commission. I also do not accept that there was an agreed date for the funds to be raised.

64. It was common ground that there would have been terms implied into the oral retainer agreement, including a term that Mr Shah could not terminate the agreement without giving reasonable notice. It is not necessary to identify what, if other, terms as to co-operation might be implied because they do not form part of the claim.

Work done by Dr Guise

65. It is apparent that Dr Guise then carried out work in an attempt to raise funds. It is not necessary to set out all that was done but documents were prepared, and there were discussions about ensuring that DCPD had contracts with the members of the SAB, what (if any) share capital ought to be provided to others, and whether DCPD ought to hold the software as opposed to a licence.

66. It was apparent that Dr Guise used a title as non-executive Chairman at some of the meetings, and that both Dr Guise and Mr Shah agreed to this.

67. There is contained in an email dated 10th September 2014 a list of meetings and events attended by Dr Guise and by Mr Shah. Items in normal type in the email were matters accepted by Mr Shah to be investment related activity. There were some

items in bold which Mr Shah accepted in the email were not investment related activity by Dr Guise and by Mr Shah. In oral evidence Mr Shah contended that on reflection Dr Guise's activity could be seen as related to the investment because it was all about protecting or promoting DCPD when performed by Dr Guise. This included issues related to the British Association of Dental Nurses ("BADN") on 3rd and 6th February 2014, attending the Dentistry Show on 28th February and 1st March 2014, attending a General Dental Council meeting on 7th March 2014, attending a meeting with Mr Stewart in Oxfordshire on 20th March 2014 and Mr Shah said in evidence that this was about the next area for use for the software, attending the British Dental Association Conference on 10th April 2014, dealing with practice calls in Sonning on 7th and 8th May 2014 and attending a British Association of Cosmetic Dentists ("BACD") meeting in London on 31st July 2014. In the email Mr Shah identified that he had done work for Dr Guise which included a telephone call on 26th February 2014 about reputation issues, and making an introduction on 27th March 2014 at a meeting in relation to Dr Guise's e-cigarette company. He said this was agreed to be a quid pro quo in relation to Dr Guise's extra work.

68. Dr Guise said that "we both understood that I would ultimately require additional/separate remuneration for these non-investment related activities" and he said that, although he could not remember when - save that it was fairly early on - it was agreed between Mr Shah and him orally. Mr Shah thought that Dr Guise was speculating a great deal of his time, that it had been voluntary because Mr Shah had not compelled him to attend any events, and Mr Shah thought it was motivated by Dr Guise's interest and lack of other commitments. Mr Shah noted that both were working with an expectation of mutual input into each other's projects, and he referred to Mr Shah's own introduction of Dr Guise to Mr White.

69. In my judgment the evidence shows that Dr Guise did carry out some limited non-investment related activity. Doing the best I can it was the work set out in bold in Mr Shah's email dated 10th September 2014 which I accept equals about 10 days' work. I accept that this was work carried out at Mr Shah's request (either expressly or impliedly). I also accept that Dr Guise would be entitled to a reasonable sum for this work, and I note that when Mr Shah introduced Dr Guise to Mr White he expected a percentage reward if anything came of the introduction. I assess a reasonable rate for this work at £500 per day, as this was the day rate agreed by Mr Shah and Dr Guise for the investment related work. I have not allowed the rate of £1,000 per day, because Mr Shah had not agreed a daily rate at £1,000 per day for Dr Guise's daily rate, and it is fairest to use the rate which had been agreed between Mr Shah and Dr Guise. This equates to £5,000.

No conflict of interest on the part of Dr Guise in relation to Mr Anthony

70. An issue arose between Mr Shah and Dr Guise about whether Dr Guise had acted for Mr Shah despite a conflict of interest and so caused a major investor, Bill Anthony, interested in investing in DCPD to withdraw.

71. Mr Shah's case was that a potential investor called Bill Anthony had pursued an intention to invest after an initial meeting on 16th January 2014. This investor had been impressed with how far Mr Shah had come on limited resources, demonstrated a keen understanding of exit strategies, and represented other investors who might invest £125,000. Dr Guise had taken on discussions about this and there had been

discussions about valuations and board representation between Dr Guise and Mr Anthony. Mr Anthony had not then pursued the investment.

72. Mr Shah said that he was told on 21st February 2014 by another potential investor, Anthony Gilbert, that Mr Anthony had not pursued the investment because Dr Guise had told Mr Anthony that he would not have any involvement in the final exit (or sale) of DCPD because that would be controlled by Dr Guise as a director and the topic was not up for negotiation and Mr Anthony had wanted the opportunity to be involved in the final exit or sale. It was suggested by Mr Shah that a person controlling the exit might expect a sizeable fee. In evidence Mr Shah accepted that he did not have a very clear recollection about what had been said, and it was clear that his recollection about who had wanted a board seat at various times was not reliable when compared with the emails.

73. Dr Guise denied that he had acted in any conflict of interest or that he had said he would control the final exit or sale of DCPD. Dr Guise was asked about an email to the Thames Valley Investment Network ("TVIN") dated 3rd September 2015 where he had referred to getting 3 per cent to Thames Valley for funds raised and 2 per cent to Dr Guise. TVIN suggested in the email dated 14th October 2013 that the lowest that they would go for their fee would be 4 per cent. Dr Guise explained these emails by saying that he was being "technically dishonest" to TVIN to get a reduction from the 5 per cent to 4 per cent, but he was doing something which helped his client. The email did not assist me in determining the issue of conflict of interest.

74. I did not hear evidence from either Mr Anthony or Mr Gilbert. It is therefore difficult to assess what Dr Guise did say to Mr Anthony, and whether Mr Anthony acted because of what Dr Guise had said. This is because what Mr Gilbert reported about what Mr Anthony said Dr Guise said to Mr Anthony was hearsay and involved two reports. It is well known that information, even relayed in good faith from one person to another and to another, may become distorted in the retelling. Further there was no good reason given to me to explain the absence of either Mr Anthony or Mr Gilbert, and Mr Shah was not very clear about what had been told to him. In these circumstances I do not find that Dr Guise acted in conflict of interest.

75. However I should record that Dr Guise's own explanations about the email show that he was prepared to be dishonest in order to get an advantage for his client. Dr Guise's comment that he was being "technically dishonest" did not seem to me to mitigate the dishonesty. It rather suggested to me that Dr Guise thought that dishonesty might be justifiable if he was acting for a client.

76. I should, as a matter of fairness and balance, also record that emails show that Mr Shah was also prepared to "spin" matters which were "true on some level" and exaggerate them to persuade investors to consider DCPD, as part evidenced by Mr Shah's email dated 11th June 2014.

The failure to attract investment in 2013-14

77. Although there were investors who expressed interest in investing in DCPD, and detailed discussions with investors and groups of investors, in the final event no investors, apart from persons associated with the SAB, invested in DCPD in 2014. It appears that there was one investor who came very close to making a substantial

investment, but the evidence shows that there were issues about whether the investor made later demands for board representation.

78. Mr Shah then suggested to Dr Guise that he would raise funds for the investment himself by selling property which he had acquired in Brazil. It appears that one of these properties was a flat in Brazil in which there was a tenant. Mr Shah said that Dr Guise suggested that they keep trying to raise funds until the property in Brazil had sold and Mr Shah was content with that arrangement.

79. The evidence showed that members of the SAB invested £20,000 in 2014, and a person associated with a member of the SAB invested a further £50,000 on 16th December 2014.

Dr Guise's demands for payment

80. After the failure to raise funds Mr Shah and Dr Guise met in September 2014. Mr Shah says that Dr Guise asked about progress of the sale of the flat in Brazil. The evidence showed that this was delayed because the tenant claimed to have matrimonial rights to the flat. Mr Shah said, and I accept, that Dr Guise had claimed that he had been working for DCPD since August 2012 and not August 2013, and that Dr Guise said he had worked for 90 days and wanted to discuss payment at £1,000 per day. I accept this evidence because it is part supported by Dr Guise's own evidence about making a statement about 2 years' work, albeit as a throwaway remark, and because there is reference to 90 days in an email. Mr Shah disputed the amount of work done by Dr Guise and said that they should check their emails and calendars and then discuss it. It was after this meeting that Mr Shah sent the email dated 10th September 2014 recording various meetings attended by Dr Guise.

81. Dr Guise said that he wanted to reach agreement with Mr Shah about fees for his work outside the scope of the original agreement, and to be kept informed of developments which might affect his success fee. Dr Guise said that Mr Shah referred to the £5,000 fixed fee, and success being limited to raising investment within a limited time frame. Dr Guise said that Mr Shah said that Dr Guise's work had not been valuable and was smirking through the meeting, which caused Dr Guise to believe that Mr Shah lacked sincerity. The evidence shows that Dr Guise was very angry that his work had not been appreciated by Mr Shah. It was common ground that the meeting had ended on a reasonably courteous basis.

82. On 19th November 2014 in emails Mr Shah chased a reply to his email dated 10th September 2014 and Dr Guise replied he had been through the email dated 13th August 2013 and earlier emails. Dr Guise contended that: there was nothing to support the fact that £5,000 was a fixed price; that he found it hard to believe that he had agreed to work endlessly for £5,000 plus a success fee; and said "at this early stage we had not decided if the company would own all the software or a licence, and therefore I think it's clear that the success fee was based on the entire business opportunity". I should record that that statement seems to me to be consistent with Dr Guise restructuring agreements after the event to make commercial sense in the light of later developments, rather than forming any sort of accurate or reliable record of what was discussed and agreed. After making other points, including the point that the £500 rate was linked to being provided with the betting arbitrage opportunity, Dr Guise said that "I maintain that the £5,000 was only for 10 days' work, and therefore

anytime over and above this is chargeable at £500 per day, and that the success fee applies to the entire opportunity." It is apparent that Dr Guise was saying that the £500 would only apply if he was involved with the betting arbitrage, that £5,000 was not a fixed fee for his work, and that there would still be 10 per cent on top. It is right to note that Dr Guise asked Mr Shah to let him know how he would like to proceed with trying to resolve the differences in opinion between them.

83. On 25th November 2014 Dr Guise emailed at 1832 hours and asked for a response noting that he had set out his own views, that their views were very different, but an amicable solution would be best, and talking face to face would be best. Mr Shah responded by email at 2047 hours stating that he needed to go through the emails to show the facts to Dr Guise, stating that discussing options would be constructive but basing them on non-factual information was not. Mr Shah referred in that respect to Dr Guise's statement that we'd been working together for 2 years despite the fact that they had started in August 2013. Mr Shah noted he was in Brazil on business and that there could be a meeting on his return. Dr Guise replied by email at 1907 hours saying that the 2 year comment was a throw away comment over a beer. Mr Shah replied again at 2113 hours stating that it wasn't a throwaway comment, that Dr Guise had defended that line to justify 90 days of work, which had then been converted "into £45K of fees".

84. On 28th November 2014 at 1400 hours Mr Shah emailed Dr Guise setting out his analysis of Dr Guise's email dated 28th November 2014 and rebutting points made by Dr Guise. Mr Shah did finish stating that if they managed to succeed in addressing the facts in favour of the opinions Mr Shah wanted to offer Dr Guise a place on the SAB for a day rate and share options.

85. Dr Guise responded by email at 1511 hours referring to the emails and saying that the £5,000 fee clearly meant 10 days' work, also noting that there was no time limit on the success options. Dr Guise suggested that Mr Shah's record keeping figures were inaccurate and said "I don't think there is a way forward after this that I can work with you … I suggest you pay my time at my normal day rate and we terminate the working relationship. I will give up claim to the success fee … eg circa 30 days – 5K paid = £25K. If not please make a counter proposal, of similar magnitude that is a compromise between the two positions". Mr Munden suggested that this was a reasonable settlement option, but it was only so if Dr Guise's case about the oral retainer was correct, which it was not for the reasons given above.

86. Mr Shah responded by email dated 2nd December 2014 at 1453 hours. He responded to the points made by Dr Guise, contending that the £5,000 limit was not just for 10 days' work, and if it had been Dr Guise should have provided time reports and reviews each week. Mr Shah made reference to the claims of 90 days and then 30 days, and also challenged Dr Guise's work in "business development". Mr Shah referred to information that he had about a conflict of interest on the part of Dr Guise, and agreed that Dr Guise and Mr Shah could not work together. Mr Shah said that the email address for Dr Guise had been terminated, asked for documents to be deleted, and asked Dr Guise not to represent himself as associated with Mr Shah or DCPD going forward. Mr Shah said he considered Dr Guise to have been underhand and dishonest in trying to take 10 per cent of the company and fabricating numbers of days. Mr Shah concluded "I hope that you will act as the professional you hold

yourself out to be and respect any confidences you have had access to as a result of our previous business together".

87. It is apparent that Dr Guise responded to this email by an email timed as at "4.35 pm", to which reference is made below when considering the issue of breach of confidence. Dr Guise later threatened legal action if payment was not made.

88. On the evidence I am satisfied that Dr Guise did ask for payment of £45,000, representing 90 days' work at £500 per day. This was referred to by Mr Shah in one of his emails, and Dr Guise did not dispute the request at the time. I am satisfied that Dr Guise also asked for payment of £30,000 of fees, albeit part worked out by reference to the surrender of his success fee and giving credit for the £5,000 received making a net payment of £25,000. It might be noted that success, in the form of raising funds or sale of the company, had not been achieved save for 10 per cent of £20,000 invested by members of the SAB as appears below. It is true that Dr Guise did invite Mr Shah to make counter proposals. Mr Shah's failure to make counter proposals in his email dated 2nd December 2013 made Dr Guise very angry. The evidence shows that although there was no formal invoice or bill which was sent to Mr Shah, Dr Guise demanded payment, and threatened legal action when he was not paid, which in this context was not materially different from sending a formal invoice or bill.

89. On the evidence before me there was no doubt that Dr Guise had earned the £5,000 for the work making the company better able to pitch to investors. He had also done work to attract investors, but investors had not been attracted. The evidence shows that some £20,000 had been invested by members of the SAB. This was money invested at a time when Dr Guise was entitled to 10 per cent of the funds raised (and there is nothing to suggest that he was not an effective cause of the raising of this money) which gives £2,000. As far as the non-investment related work is concerned Dr Guise would have been entitled to £5,000 on a quantum meruit basis. This would have given a total of £7,000.

90. The evidence before me establishes that Mr Shah had purported to bring the fund raising to an end in the summer of 2013, and that Mr Shah and Dr Guise agreed that it should continue until the property was sold in Brazil. That seemed to me to represent a reasonable time for bringing the commission arrangement to an end. I was not given details of when the property was sold in Brazil. It appears that a further £50,000 was invested in DCPD on 16th December 2014 by a person connected with a member of the SAB. Dr Guise would have been entitled to payment of 10 per cent of that sum (a further £5,000) if the agreement had not then been terminated. However it appears that the effect of the emails on 2nd December 2014 was that the agreement had been terminated (in part because Dr Guise considered that he was already entitled to other payments and interests in DCPD and Amarco). In these circumstances Dr Guise would not have been entitled to this further sum. In submissions on the draft judgment Mr Munden stated that the payment of £50,000 had been made on 22nd August 2014, although I note that in paragraph 78 of the Claimant's Skeleton Argument for trial the date of 16th December 2014 for the payment was given. I can confirm that if the sum had been invested on 22nd August 2014 Dr Guise would have been entitled to 10 per cent of that sum, but this difference does not affect my conclusion in paragraph 167 set out below.

Dr Guise's breach of trust and confidence and actions to damage Mr Shah

91. As appears from my findings set out above Dr Guise was very angry with Mr Shah. As he said in evidence he considered that Mr Shah had thrown away a friendship, had not valued his work, had smirked at him, and Dr Guise had done 90 days' work for free. Dr Guise thought that Mr Shah was conceited for considering that Dr Guise might want to be associated with him or his company.

92. The evidence at the trial showed that Mr Shah had discussed with Dr Guise that the app captured information about users including their CPD choices, which might be valuable for CPD providers who could target advertisements about relevant courses to persons interested in that area. The GDC had planned to impose a requirement for dentists to devise their own Personal Development Plans, which when created would also give CPD providers insight into a dentist's likely professional interests for courses. Mr Shah had discussed with Dr Guise's ways of building up use of his app by dentists, then changing terms and conditions so that users would consent to information being provided to commercial CPD course providers, and then making money by providing that information to the course providers who could target advertisements to dentists likely to be interested in their courses. It was apparent that this information only came to Dr Guise's knowledge as a result of his work for Mr Shah and DCPD and it was information confidential to DCPD. It was suggested on behalf of Dr Guise that there was no equitable duty of confidence in this material, but there is nothing to suggest that Mr Shah or DCPD was acting unlawfully or in such a way as to forfeit the right to confidentiality.

93. Dr Guise also became privy to information about DCPD's liquidity, as it was not earning money from the app. Although there had been published accounts showing that DCPD had not received income, this was current information about the liquidity of DCPD and was information confidential to DCPD. There was evidence that Dr Guise had been provided with information and advised about the ownership of the software for the app, which Mr Shah contended was with DCPD but in respect of which there were issues about whether DCPD had paid Amarco. Whatever the true position in relation to ownership of the app (and I address this later in the judgment) this was information which was confidential to DCPD. There was also evidence that Mr Shah had been discussing matters with Colgate which came to Dr Guise's attention. It is right to note that this information was set out in the "teaser" or information sheet sent to potential investors but there was no evidence that potential investors had been asked to sign a confidentiality agreement in respect of this information. Dr Guise's references to Colgate post-dated Mr Shah's publication of the "andrewguise.com" website. All of these matters were sufficiently pleaded in the Amended Defence and Counterclaim.

94. Mr Shah alleged that Dr Guise had threatened to and had breached confidence in the information with which he had been provided when working with Mr Shah for DCPD. Mr Shah said that this was the explanation for his actions in setting up the "andrewguise.com" website. Dr Guise denied that he had, or threatened to, breach confidence in the information that had come to him when working with Mr Shah for DCPD. He maintained this position even when confronted in further evidence with an email which he had sent, but which the evidence shows that Mr Shah did not receive at the time. Dr Guise's evidence about his intention was not reliable or truthful. Mr Hirst asked Dr Guise in cross examination whether he would say something was black

when it was white. This was not a proper question because it was a comment on Dr Guise's evidence and I prevented the question, but Mr Hirst was able to make the point in closing submissions that Dr Guise's evidence on this point was not reliable or truthful.

95. Dr Guise emailed Tony Jacobs on 5th December 2014. Mr Jacobs operated a website for those involved in the dental profession known as GDPUK. In the email Dr Guise said that he wanted to "talk to your membership" and this was "to open a discussion about digital CPD providers particularly those that hold a log of your activity and what they can or cannot do with that data, now and or in the future". Dr Guise noted that this was important because of Personal Development Plans, noting that current promises of confidentiality were no indicator of future plans. Dr Guise suggested the GDC should be providing this service. It is apparent from this email to Mr Jacobs that Dr Guise was attempting to raise with Mr Jacobs the facts that apps which captured data about CPD courses, and which might capture information about Personal Development Plans in the future, might have terms and conditions of use changed to permit the app provider to "monetise" the app and provide information to commercial CPD providers. Dr Guise said in evidence that he had done this because there was a point of importance to the dental profession to discuss. This may be true, but it is perfectly apparent that the only company which could be the then current subject of the discussion was DCPD, and Dr Guise would be using information obtained from working with Mr Shah for DCPD to initiate the discussion. It was also apparent that Dr Guise had not considered the matter worth discussing with the profession until his relationship with Mr Shah had broken down, which gives a clear indication about Dr Guise's real interest in raising the subject. It is right to record that Mr Jacobs does not appear to have used this information and he did not appear to have spoken with Ms Kilburn about this approach. Dr Guise established an account with GDPUK calling himself a director of a dental company, which was not an accurate statement.

96. Dr Guise also started to contact members of the SAB. Although Mr Bloom could not recall receiving an email it is apparent that he was sent an email on 5th December 2014 by Dr Guise. Dr Guise said in the email that he was no longer acting as chair for Mr Shah and said "I am concerned that investors and partners may not have been given as clear a picture of the current status and capabilities of his company as they may expect". Mr Bloom said that he called Dr Guise and in the conversation Dr Guise said that: Mr Shah had reneged on a financial arrangement; that Mr Bloom should be wary of agreements that he had with Mr Shah or DCPD; that Mr Shah had misled investors about ownership of the software; that DCPD was bankrupt; that Mr Shah intended to collect personal data about customers; that Dr Guise intended to expose this information; and that Dr Guise intended to contact other members of the SAB to repeat this information. Dr Guise said that he had emailed Mr Bloom about matters and although he had spoken with Mr Bloom he had not had a conversation of this nature with Mr Bloom. Mr Bloom said that was not his recollection. I accept Mr Bloom's evidence about this conversation with Dr Guise because in an email dated 9th December 2014 Dr Guise said to Mr Bloom "I understood our conversation was going to remain private" which supports Dr Bloom's evidence that a conversation took place and that it contained statements harmful about Mr Shah. Dr Guise suggested in an email to Mr Bloom that he had not yet contacted anyone else about it, but that was not correct because there he had emailed Tony Jacobs. It is also apparent that Dr Guise

knew that he was damaging Mr Shah and DCPD. This was because it was self-evident from the contents of the conversation, and because Dr Guise asked that the conversation with Mr Bloom be kept private.

97. Some information about Dr Guise's actions appears to have come to the attention of Ms Kilburn, PR adviser to DCPD, because at 0656 hours on 8th December 2014 Ms Kilburn emailed Dr Guise and asked Dr Guise to call Ms Kilburn. Although it was Mr Shah's case that he had been told about matters by Ms Kilburn who had obtained the information from Mr Jacobs, it seems as if the information must have come to Ms Kilburn's attention by other means because Mr Jacobs said he had not communicated with Ms Kilburn. Ms Kilburn did not have any clear recollection of what had occurred in evidence and Dr Guise could not recall speaking with Ms Kilburn, while accepting that he might have done. I have therefore taken the chronology from the emails as the best evidence of the contact between Ms Kilburn and Mr Shah. At 0916 and 1119 hours Ms Kilburn and Mr Shah emailed each other and Mr Shah reassured Ms Kilburn that information in the marketing materials was accurate, suggesting by that time Mr Shah knew that Dr Guise was suggesting that the marketing materials for DCPD were not accurate.

98. Dr Guise asked Mr Kilburn what the contact was about by email time at 0940 hours. At 0948 Ms Kilburn replied saying "just touching base, to see how it is all going" and at 1027 hours Dr Guise replied saying "I'm a little tied up with solicitors today and tomorrow. As it regards a client of yours I'm not sure it's appropriate for us to talk. I have little interest in forewarning him of what's coming".

99. At 1733 hours Dr Guise emailed Ms Kilburn saying that he appreciated what she was saying and if she was willing to sign a non-disclosure agreement Dr Guise would share information with her so that she could distance herself. Dr Guise wondered whether Ms Kilburn was acting on behalf of Mr Shah and asked who had suggested that she get in touch. At 1855 hours Dr Guise emailed again and said "I don't want you tarnished by Shah and that which is about to flow over the next few months". Dr Guise said he could prove that Mr Shah was dishonest and he said "when this is made public with the supporting emails whether or not this is an entrepreneurial requirement for embellishment or crosses the line will I guess be for each person to decide". Dr Guise referred to Mr Shah's plans to sell data captured from the app. Dr Guise said he would be bringing two cases against Mr Shah "for nonpayment and breach of contract". Dr Guise said that "there are other items but I won't go into those as my partners have yet to decide how and when to utilise the information" (underlining added).

100. Dr Guise maintained in his oral evidence that in his emails to Ms Kilburn he was only referring to court cases, because he had made it clear to Mr Shah at their September meeting that he would sue him, and a reference to what would "flow over the next few months" was a reference to litigation. He said that a reference to going public with emails was a reference to the SAB, or persons interested in investing, and that he was not thinking about anything other than the dispute with Mr Shah. I did not accept this evidence. This is because Dr Guise was proposing to hand over information to Ms Kilburn which would require the signing of a non-disclosure agreement, which shows that Dr Guise recognised that he was dealing with confidential information. The only confidential information that Dr Guise had had was his intention to sue Mr Shah, which he had already disclosed, showing that this must be a reference to

confidential information relating to DCPD and Mr Shah. I also rely on the fact that Dr Guise referred to other "items" containing "information" which he and his partners had yet to decide how to use. I should record that there was no evidence of other "partners" and I consider it more likely than not, and find, that this was Dr Guise pretending that he had more influence than he did.

101. Ms Kilburn reported at some stage to Mr Shah who by email timed at 0840 hours (sent from Brazil) thanked Ms Kilburn for the heads up. By 0500 hours on 9th December 2014 Mr Shah had created the Andrew Guise website.

102. Mr Shah appears to have decided to contact members of the SAB to invite them to a dinner. At the end of the email he noted that he had Mr Shah, having been warned about what Dr Guise was doing reported to members of the SAB, including Ms Brooks and Mr Bloom, that the relationship with Dr Guise had ended bitterly and that he was playing the role of the disgruntled ex-employee to the full.

103. It was apparent (from what he said to Dr Bloom) that Dr Guise wanted to tell the members of the SAB that, among other matters, DCPD was "bankrupt". He contacted Janine Brooks at some time before 1538 hours on 9th December 2014 (the time of her email reporting this to Mr Shah following his request) and left a message for her to call him.

104. Dr Guise said that he only wanted to contact members of the SAB to say that EIS and SEIS (schemes recognised by HMRC which provided tax benefits for investors) had not been granted and that DCPD did not own the software for the app. Dr Guise said that he was not trying to damage Mr Shah or DCPD. I reject Dr Guise's evidence that he was not trying to damage Mr Shah or DCPD. It is apparent that this is what he was doing. He had ceased having any involvement with DCPD. His interest in alerting members of the dental profession to Mr Shah's attempts to "monetise" his app only started after his relationship with Mr Shah had broken down. Further Mr Shah and Dr Guise had worked together in producing the documents for investors. If Dr Guise considered that they were misleading he should have said so at the time.

105. Any doubt about what Dr Guise was attempting to do was dispelled by the email sent by Dr Guise on 2nd December 2014 timed at 4.35 pm. It was sent to Mr Shah but it was not in fact received by Mr Shah and it was only retrieved by him from his service provider in the course of making other inquiries into the authenticity of other emails. In the email Dr Guise said, among other matters, "I intend to distribute to the GDC, competitors and partners all the information that shows your intention to try to sucker the industry into giving you valuable personal information that you then intend to send to others".

106. Dr Guise said it was a very angry email, that it was right to send it to the GDC and that it would become public via the correct route once the legal proceedings were up and running and that he would not publish to competitors and partners. I do not believe that evidence. This is because in this email he specifically said that he would distribute information about Mr Shah's intentions for DCPD to "the GDC, competitors and partners", and there was nothing in the evidence to suggest that he was not trying to do that, and information published in Court proceedings would not normally be described as being distributed. In contacting Mr Jacobs and members of the SAB, Dr Guise was engaged in behaviour which he thought would bring the most

damage to Mr Shah and DCPD, simply because he was in a dispute with Mr Shah about his remuneration.

107. The closing submissions put in on behalf of Dr Guise after the late discovery of the email dated 2nd December 2014 accepted, in paragraph 1, that Dr Guise had made threats, although they were described as "empty" threats made "in anger". In my judgment the evidence showed that Dr Guise did threaten to breach confidences, and he did set about attempting to do this by contacting Mr Jacobs and members of the SAB, and I did not believe his denials about what he intended to do. Although in the submissions before me there was no detailed analysis of what duties of trust and confidence were owed by Dr Guise, and what effect termination of the relationship would have had on continuing duties, the evidence shows that Dr Guise set out damaging Mr Shah and DCPD because of the dispute about remuneration, and breached duties of confidence owed to Mr Shah and DCPD.

Dr Guise did not claim to be linked to DCPD after 2nd December 2013

108. When Dr Guise contacted Ms Brooks he did send a message via LinkedIn which still had "dental cpd pro" on it and "CEO" under "Andrew Guise". Mr Shah had asked Ms Brooks if he represented himself as still working with or connected to Dental CPD Pro, to which Ms Brooks replied "no he didn't just would I call him. But he also sent a LinkedIn request and that had CPD Pro on it".

109. It is true that Dr Guise did not say that he would not represent himself as being associated with DCPD in response to Mr Shah's request, but in circumstances where he was going around attempting to make damaging disclosures about DCPD it would be surprising if he did.

110. By email dated 15th December 2014 Mr Shah contacted LinkedIn and asked them to remove references to DCPD on Dr Guise's accounts. LinkedIn referred that to their Trust & Safety team and it does not appear from the evidence that any action was taken. Dr Guise said he was a company director of a dental company, but he did not identify which one on GDPUK. In another communication he described himself as an ex-chairman of DCPD, but both Mr Shah and Dr Guise had described him as a chairman at various times even though he had not held a formal appointment, and Dr Guise made it clear that he was an ex-chairman. In these circumstances Dr Guise did not claim to be linked to DCPD after 2nd December 2013.

111. It is apparent from what has been set out above that, in my judgment, Mr Shah was justified in rejecting the majority of the claim for payment made by Dr Guise. It is also apparent that Dr Guise's reaction to Mr Shah's rejection led Dr Guise to threaten that he would breach confidences owed to DCPD and that he did so, and led Dr Guise to attempt to damage Mr Shah and DCPD. I was not impressed with Dr Guise's suggestions that he owed some sort of duty to let the SAB know about all of this. If he had owed a duty he owed it a long time before, and the timing of his contacts show that it was motivated by his anger at Mr Shah and Mr Shah's (mostly justifiable) rejection of Dr Guise's claim. Further there was not material before me to show that Mr Shah was going to infringe data protection principles or act wrongfully in relation to dentists, or that DCPD was insolvent.

Mr Shah's publication of the "andrewguise.com" website

112. At some stage after Mr Shah became aware of Dr Guise's activities Mr Shah spoke to Ms Alberts on the telephone. The call to Ms Alberts appears to have been on 8th December 2014, following an email sent by Mr Shah asking when he could call. Ms Alberts was in a difficult position because she was friends with both Dr Guise and Mr Shah. Mr Shah suggested that Dr Guise was extremely stressed, and as I have found above, it is apparent that Dr Guise was at times very angry. After the conversation Mr Shah emailed saying that he thought the best way would be for him to email Dr Guise and Dr Blom, and try to de-escalate things. Mr Shah's actions, including emailing Dr Blom, had the opposite effect.

113. At some stage Mr Shah on 8th December or 9th December (and Mr Shah was at the time in Brazil meaning that there were time changes to UK time) Mr Shah activated the "andrewguise.com" website and published, and continued to publish, the material on it, as set out above. It was also accessible at .net, .info, .org,. .co.uk and .wordpress.com.

Mr Shah's email to Dr Blom

114. Mr Shah's email to Dr Blom was copied to Dr Guise and Ms Alberts. In the email, sent on 9th December 2014 at 1034 hours, Mr Shah said "I'm sorry to bring you into this but your hubby seems to be engaging in some very destructive behaviour and I'm hoping that together we can de-escalate the situation before it gets worse". Mr Shah noted that he had "summarised things" on the Andrew Guise website. Mr Shah continued saying "it seems that Andrew has made contact with people within dentistry with the promise of publicising email exchanges between us, with a view to damaging my company and betraying the confidences to which he had privileged access as a result of the time he worked with me". Mr Shah noted that if that happened Mr Shah would update the website, saying that he did not want to do this or leave the website up too long because after about 30 days it would appear on the top of any search for Dr Guise's name "and it may be hard to shake after that". Mr Shah said that "before I remove the website, though, I'd like Andrew to email the people he has contacted to apologise and explain that he made a mistake and that he not be revealing any information which he obtained as a result of our working together … I'd also like Andrew to sign and return to me the attached non-disclosure agreement …". The non-disclosure agreement was said to provide that Dr Guise would delete all documents and emails that he has received as a result of working together and would cease from actions which would damage Mr Shah or his company.

115. Dr Blom said that it sounded quite threatening to her because it would involve putting up stuff about matters which was damaging. Dr Blom said in evidence that business is business and she should not have been involved, and I accept the assessment that she should not have been involved.

116. By email at 1055 hours on 9th December 2014 Dr Guise said "this attempt at blackmail" supported what Dr Guise said everyone knew about Mr Shah, and said "two court cases will be filed on Wednesday. If you wish to add a third blackmail and defamation case so be it". At 1101 hours Dr Guise sent an email to Mr Shah saying "contact my wife again and I will contact the Brazilian police regarding the threats you made against your tenants life".

117. At 1105 hours Dr Guise sent an email to Ms Kilburn and said "A truly ethical client that resorts to blackmail and dragging in my wife. He has crossed the line. I intend to publish every email and let the public decide". At 1108 hours Dr Guise sent an email to Mr Shah and said "I am in the process of publishing every email ever sent, we will let the public decide". This was in fact an empty threat, because he did not do this.

118. In an email timed at 1320 hours Mr Shah responded saying that he welcomed legal action, that publishing emails would breach the implied trust and confidence between Dr Guise and a client, and denied knowing what Dr Guise was referring to in relation to threats against the tenant, and making points about Dr Guise's mental wellbeing.

119. In an email timed at 2031 hours to Mr Bloom Dr Guise wrote "do you really know Shah. A stand up guy threatening my wife. I understood our conversation was going to remain private".

120. In an email to Ms Kilburn Dr Guise suggested that she had let Mr Shah know about their correspondence, but Ms Kilburn said she had not mentioned the correspondence to Mr Shah nor would she. Mr Bloom replied to the email to him saying that he had not spoken with Mr Shah about their conversation and had made a conscious decision not to, and asked Dr Guise to explain his email. Dr Guise said that he had only spoken to Mr Bloom (which was not correct, as he had already blamed Ms Kilburn, and he had also had communications with Ms Brooks). Mr Bloom said "perhaps the other people you have given this information to?" and Dr Guise then accepted Mr Bloom had not said anything, said his wife was upset and scared, and that Dr Guise was "furious" and intent on exposing Mr Shah for the man he was. Dr Guise said he was trying to contact the whole of the SAB.

121. If Mr Shah had intended to de-escalate things, he failed spectacularly. In my judgment Mr Shah had decided to take revenge on Dr Guise, for Dr Guise's own actions in threatening to breach confidence and trying to damage Mr Shah and DCPD. I make these findings because there is no other reasonable explanation for Mr Shah's actions in publishing the website. In his actions in publishing the "andrewguise.com" website, Mr Shah showed himself to be no better than Dr Guise. Dr Guise was justifiably angry about Mr Shah's actions in publishing the "andrewguise.com" website, but Dr Guise failed to have any insight into his own actions in attempting to damage Mr Shah and DCPD.

The publication of the "rajeevshahdental.com" website

122. It is apparent that Dr Guise was very angry about the publication of the Andrew Guise website and Mr Shah's involvement of Dr Blom in this matter. It is apparent that some of the matters published on the Andrew Guise website were not justifiable. However Dr Guise then responded, and on 9th December 2014 published the "rajeevshahdental.com" website.

123. In my judgment the actions of both Dr Guise and Mr Shah attempting to damage each other and publishing websites about each other do not show either of Mr Shah or Dr Guise in a good light. In my judgment both Mr Shah and Dr Guise were behaving in a very immature manner, and their own actions say more about them than this judgment could. However my task is to attempt to determine fairly the legal issues.

Some outbreaks of sense

124. Mr Shah appears to have taken down the Andrew Guise website, and he sent an email to Dr Guise on 10th December 2014 in which he suggested that both parties should take down the websites, and resolve matters. Dr Guise did not respond to that email. He accepted in cross examination that he would have been sensible to do so, but said that he was very angry at the time.

125. I should also record as a matter of fairness to Dr Guise, that in March 2015 Dr Guise emailed Mr Shah suggesting that if he agreed not to publish the "andrewguise.com" website it would not be necessary to pursue proceedings. Mr Shah did not respond to this email, although he said in evidence that he had not received it.

Dr Guise's report to the police

126. At some stage Dr Guise reported the existence of the "andrewguise.com" website to the police. It seems from the police report to have been on 12th December 2014. It also appears that Dr Guise said that in the email dated 9th December 2014 to Dr Blom Mr Shah had said that the "andrewguise.com" website would not be removed unless the civil action was withdrawn. Mr Shah did not say that in the email dated 9th December 2014 although I accept that Dr Guise interpreted it in that way. It is not clear whether Dr Guise reported that the "andrewguise.com" website had been taken down, or that he had put up the "rajeevshahdental.com" website, or that Mr Shah had offered to resolve the matter by email. The police served a police information notice, which is sometimes referred to as a harassment notice, on Mr Shah on 19th January 2015. This was served by email because Mr Shah was still in Brazil and he arranged for it to be served by email, having become aware through his father that the police had been attempting to contact him.

The incident on 22nd January 2015

127. Dr Guise alleged that on 22nd January 2015 Mr Shah arranged to send round a man whose presence was designed to intimidate him. Mr Shah denied that he had sent anyone around to Mr Shah's house.

128. Dr Blom said that she was at home on 22nd January 2015 when an unknown male attended their house and asked to speak to her husband saying "is Andrew here". He was described as being about two metres tall, having a stocky build, and with dark skin. He was wearing a black leather jacket, but Dr Blom could not be 100 per cent sure about what he was wearing. Dr Blom thought she had heard something like "back off Mr Shah's business" and Dr Guise asking the name of the person, and the person answering evasively. Dr Blom said that she had her daughter, who was about 1 year old, with her, that she felt under threat, and that she was not sure about the length of time that the incident took, but thought that it was at least 5 minutes perhaps a bit longer.

129. Dr Blom said that her husband ushered her from the hall area, and said call the police. Dr Blom had the cordless kitchen phone in her hand, but did not try and call the police for reasons that she could not explain. After the visit Dr Blom asked Dr Guise not to take action against Mr Shah about the fees or website.

130. In his statement dated 22nd April 2017, which he adopted in oral evidence, Dr Guise said that the man had said to him "you know Shah. You have to stop taking action against him"; "you know" "you know what I'm talking about" "you know what I'm talking about. I'll be back. Think about your wife and baby" or words to that effect.

131. Immediately after the visit Dr Guise sent a text to Mr Dale saying "What u up 2 That bastard Indian just sent a big nigger to my door to intimidate us". It might be noted that Dr Guise used a most offensive word in the text, but the sending of the text supports the fact that a visit had been made to Dr Guise's house. Although at the start of the trial there was an issue about the authenticity of that text by the end of the trial that was no longer in issue. The evidence at trial also included evidence from Mr Dale who said that he had been sent the texts and who, after having difficulty in locating the texts, brought them to Court.

132. Dr Guise was asked about the fact that in his Reply to the Amended Defence it had been pleaded that he would rely on the content of the content of text messages sent by both him, and also his wife. This is because it is apparent from the evidence that Dr Blom had not sent a text. I accept that Dr Blom did not send a text, but this point might have been more relevant if there was still a dispute about authenticity of the text sent by Dr Guise.

133. Dr Guise's first report to the police was contained in notes which were very difficult to read. It seems that Dr Guise reported that a black male had come to his door, 6 foot 3 inches, 18-20 stone, wanting to discuss Dr Guise's ex business partner, refusing to say who he was, and saying he wanted to discuss the gaming business with Dr Guise. This report was made to a police office on 22nd January 2015, but it did not come to the attention of the police officer in charge of the file until 2nd March 2015. It was noted that it would be difficult to trace the man. In this report the visitor was not said to have given the name of Shah, but there had been a reference to Dr Guise's "ex business partner".

134. There was apparently contact between Dr Guise and the police on 23rd February 2015 about the website. There is also a report dated 24th February 2015 in which an email from Dr Guise recorded that he attached an original email which should be with the record of the thug being sent to their house as part of the police records. He reported that he had been willing to leave his action as the website was down, but that Mr Shah had now launched a new attack.

135. In an email dated 1st March 2015 Dr Guise said that "I cannot prove Mr Shah had anything to do with this and I do not allege it …". Mr Shah understandably relied on this email as showing that Dr Guise was not alleging that Mr Shah had anything to do with sending the man to Dr Guise's house. However it is apparent that Dr Guise was not changing his evidence about what he claimed to have occurred, and his true state of mind part appears from the police statement that he made on 4th March 2015 in which he related that the man had said to him "you know Shah – you have to stop taking action against him", which at least suggests that the man had been sent on behalf of Mr Shah.

136. In the statement to the police dated 4th March 2015 Dr Guise gave a description of the man who had come round. Mr Hirst submitted that this was a description of a hitman from central casting, and Mr Hirst also identified inconsistencies with descriptions

about what the person was wearing, and the fact that Dr Guise said that the man was in front of him for 20-30 minutes. Dr Guise said it was not a situation for which he had prepared and was in shock. Dr Guise said he had been told by police not to put various matters into his statement, but there was no clear identification of what relevant evidence Dr Guise could have put in but was not able to put into the statement. There was a suggested inconsistency between the statement to the police and Dr Guise's evidence at trial that he had gone outside at trial.

137. The police did not pursue this matter against Mr Shah, noting on 8th May 2015 that the details of the visit by the man was very vague and the evidence did not reach the threshold for disclosing a public order offence. Mr Shah gave evidence denying that if there had been a visitor to Dr Guise's house, he had anything to do with such a visitor.

138. It might be noted that in Dr Guise's pleaded case in December 2015 it was pleaded that the "Defendant sent an unknown male to attend the Claimant's home and threaten him, his wife and their child. The male stated that the family would be hurt if the Claimant did not stop all actions against the Defendant". This was a development of the evidence recorded in the police report and police statement. Dr Guise was asked in a request for further information dated 15th March 2016 to say as precisely as possible the words used to threaten him. The answer dated 4th April 2016 was that the Claimant "cannot recall precise words used, save referred to Defendant by name and implied violence "if you don't leave Shah alone you and your family will be hurt"", which is closer to, but still different from, his evidence in the police statement.

139. I find, on all the evidence, that there was a visit by an unnamed person on 22nd January 2015 to the house of Dr Guise and Dr Blom. I make this finding because I accept Dr Blom's evidence about the visit of the person, and because the visit is part evidenced in Dr Guise's very offensive text message recording the visit. It is now common ground that the text was authentic. In these circumstances there are only two reasonable possibilities in relation to the text, either that it records a visit which happened, or it has been sent by Dr Guise to record a non-existent visit in an attempt to frame Mr Shah. If Dr Guise was going to set up Mr Shah with a text it seems to me to be unlikely that Dr Guise would have used such very offensive terms in the text. The points about inconsistencies in descriptions of the appearance of the visitor, the length of time that he stayed and what he said, were the inconsistencies to be expected when persons are recalling an event at some remove with different powers of recall.

140. I also find that the visit was arranged by Mr Shah. It was suggested on behalf of Mr Shah in cross examination of Dr Guise that Dr Guise might have sent round the visitor in order to frame Mr Shah. However, on this point I did accept Dr Guise's evidence that he was not involved. This is because there is no doubt that the visit did concern Dr Blom and was likely to cause concern to Dr Blom. I do not consider that Dr Guise would have willingly caused that concern to Dr Blom given the fact that they had a young child which the evidence shows had been unwell. Dr Guise said he could not prove Mr Shah's involvement and he could give no direct evidence that Mr Shah was involved. However it is plain that the visitor was raising matters of interest to Mr Shah, and there was nothing to suggest that there was anyone else who might have such an interest in raising such matters. Mr Shah had shown himself willing to put material on the internet to damage Dr Guise (in the same way that Dr Guise had been willing to damage Mr Shah) and Mr Shah displayed an attitude of making very

serious allegations against others without proper evidence, which often says more about the character of the person making the allegation than the person against whom the allegation is made. Examples included Mr Shah's suggestions that emails were manufactured (before expert evidence showed that was not supportable) and Mr Shah's reporting of Mr Kilcoyne to the GDC, when the evidence showed that was not supportable.

141. I find that during the visit there were no express threats made by the man but he said words to the effect that Dr Guise should back off Mr Shah's business and he was there to discuss Dr Guise's ex-partner. In that respect I have accepted Dr Blom's evidence and the gist of the report to the police on 22nd January 2015. Although no express threats were made I accept Dr Blom's evidence that the visit was frightening to her, which concerned Dr Guise.

Material developments after 22nd January 2015

142. It was apparent that Mr Shah put back the website about Dr Guise at some stage in about February 2015. I make this finding because it is apparent from the police report that the police were able to access the website in February 2015. Dr Guise emailed Mr Shah asking him to remove the website but it was not removed, and Dr Guise also continued to publish his website.

143. It is also apparent that Mr Shah and Mr Dyas had a dispute. However it is not necessary for me to make findings about this. Dr Guise had adduced this evidence to show some sort of propensity for Mr Shah to make threats against other persons, and to arrange for them to be visited in their house, which was said to support the finding in relation to the visit on 22nd January 2015. I did not require the evidence in relation to Mr Dyas to make the finding that I have done on 22nd January 2015, and I have not made findings in relation to what occurred in relation to Mr Dyas. This is because it is not necessary to do so. As a result I have not had to resolve issues about the weight to be given to Ms Boersma's statement, when Mr Dyas had reported the visit, or who else might have had a motive to arrange a visit to Mr Dyas' property. This also avoids the need for me to make determinations about visits to certain threads on the GDPUK website.

144. I was also asked to find that Mr Shah created a website about Mr Dyas on Godaddy. It is not necessary to make findings about this and I do not do so.

145. On 12th October 2015 Dr Guise updated the "rajeevshahdental.com" website by removing previous material and identifying the proposed claims.

146. On 29th October 2015 letters of claim were sent on behalf of Dr Guise to Mr Shah making claims for defamation and non-payment of remuneration. On 6th November 2015 a letter was sent on behalf of Dr Guise by other solicitors threatening a private prosecution for blackmail, details of which are considered below. Mr Shah responded by letter dated 12th November 2015 denying liability.

147. On 14th November 2015 Dr Guise made a posting on GDPUK seeking persons who might be able to support his action against Mr Shah. There was some contested evidence about the number of persons who had seen the posting, but it is apparent that

it was seen by many dental professionals. Mr Shah updated the "andrewguise.com" website adding in the material identified above.

Proceedings

148. The claim form was issued on 7th December 2015 and Particulars of Claim were served on 17th December 2015 and a Defence was served denying liability. An Amended Defence and Counterclaim was served in April 2016 and a Reply and Defence to Counterclaim was served in December 2016 (following a stay for the purposes of resolving the claims).

The websites

149. The evidence shows that the andrewguise.com website remained up until 30th March 2017. The evidence shows that the rajeevshahdental.com website stayed up in its amended form.

Issues

150. The parties have agreed that the following issues arise for determination. I set them out for ease of reference below, and I will address them under separate headings and refer to the numbering of the issues agreed by the parties.

Libel claim

1. Has publication of the statements complained of caused serious harm to C's

reputation, or is it likely to in future? (s.1, Defamation Act 2013)

2. Has D established the substantial truth of any of the following imputations, that C:

a. [If D's proposed amendment allowed: "Perpetrated, or sought to perpetrate,

a scam on the D"];

b. "Acted for the Defendant despite a conflict of interest, and so caused a

potentially major investor in the Defendant's business to withdraw;"

i. Did C have a conflict of interest?

ii. Did it cause Bill Anthony to withdraw as a major investor in the

Company?

c. "Sent unwarranted bills to the Defendant in respect of work for which he had

already been paid, for sums to which he plainly had no entitlement;"

i. Did C send D bills?

ii. Were they unwarranted?

iii. Were they in respect of work for which he had already been paid?

iv. Were they for sums to which he plainly had no entitlement?

d. “Without any justification breached the trust and confidentiality to which the Defendant was entitled as his client;”

i. Had C breached the trust and confidentiality to which D was entitled as his client?

ii. If so, had he done so without justification?

e. “lied by deliberately misrepresenting himself as being associated with the Defendant’s company when he knew he was not, and when the Defendant had formally requested him not to.”

i. Had C misrepresented himself as associated with the Company, either on LinkedIn or GDPUK when he had been asked not to?

ii. If so had he lied by doing so deliberately?

f. “has published, on http://rajeevshahdental.com, a number of outrageously false allegations intended to create an unwarranted negative impression concerning the Defendant, his business and his ethics.”

i. Was it false to suggest D misrepresented the dispute over fees?

ii. Was it false to suggest D threatened C's wife when C tried to contact people about leaving?

iii. Was it false to suggest D created a website to blackmail C?

iv. Was it false for C to suggest the company did not own its own software?

v. Was it false to suggest D would misuse personal data of users?

vi. If yes to any of the above, was it outrageously false, with the intention to create an unwarranted negative impression of D?

g. “instructed solicitors to make a series of entirely false and wholly unsubstantiated claims against the Defendant in correspondence, claims

which he knows are untrue or as to which he is delusional, including that the Website is part of a blackmail plot against him."

h. "misrepresented his complaints against the Defendant to third parties in order to cause unwarranted damage to the Defendant's reputation, including falsely representing that he is bringing a private criminal prosecution against the Defendant."

3. Has D established the elements of the honest opinion defence (s.3, Defamation Act 2013) for the following imputations, that C:

a. "Behaved unethically towards the Defendant"

b. "Has proved himself to be someone who cannot be trusted with confidential information;

i. Is this fact or opinion?

c. "And for all of these reasons cannot be trusted in matters of finance, and extreme caution should be exercised before engaging in any work with him;"

i. Is D's defence of a similar, but different, opinion at 9.2 permissible?

4. If serious harm is established and any of the defences fail, what are the appropriate remedies?

a. Damages; b. Injunction; c. Others

DPA Claims

Accuracy

5. Are any of the statements complained of under this head incorrect or misleading as to any matter of fact?

6. If so, does this merit an award of damages?

a. Has the inaccuracy caused distress?

b. Does it cross the Art 8 ECHR threshold of seriousness?

c. Did the data controller take such care as was in all the circumstances required?

7. Is any non-pecuniary remedy justified?

Unfairness

8. Did C's processing comply with DPA Sch 2, para 6?

9. If so, was it otherwise unfair?

10. Are any damages or non-pecuniary remedies justified for either party for unfair processing?

Harassment claim

1. Did the disputed acts complained of take place?

a. Did D make repetitive use of C's name links to his LinkedIn profile on the

Website in order secure high search engine rankings in searches for C's

name?

b. Did the Police issue D with a Harassment Warning Notice?

c. Did D tell the Police that he would not remove the Website unless C agreed

not to pursue his civil claim?

d. Did D send an unknown male to C's home to threaten C and his family?

i. Did D behave similarly towards Mr Dyas?

e. Did C threaten that he would disclose confidential information about D?

2. Did the disputed acts that are established, along with the admitted acts (see PoC §15, AmDef §14; AmDef §34, Reply §72-77), amount to a course of conduct which D/C knew or ought to have known amounted to a course of conduct in harassment?

3. If so, was the conduct nonetheless reasonable?

4. If not, what are the appropriate remedies?

a. Damages; b. Injunction

The meaning of the words published on the "andrewguise.com" website

151. In this case there was not, in the final event, any dispute between the parties about the relevant meaning of the words on the "andrewguise.com" website.

152. The agreed meanings, and therefore the statements published on the website, were that: Dr Guise perpetrated or sought to perpetrate a confidence game or other fraudulent scheme, especially for making a quick profit, a swindle on Mr Shah; Dr Guise behaved unethically towards Mr Shah; Dr Guise acted for Mr Shah despite a conflict of interest, and so caused a potentially major investor in Mr Shah's business to withdraw; Dr Guise sent unwarranted bills to Mr Shah in respect of work for which he had already been paid, for sums to which he plainly had no entitlement; Dr Guise

without any justification breached the trust and confidentiality to which Mr Shah was entitled as a client; Dr Guise has proved himself to be someone who cannot be trusted with confidential information; And for all of these reasons cannot be trusted in matters of finance, and extreme caution should be exercised before engaging in any work with Dr Guise; Dr Guise had lied by deliberately misrepresenting himself as being associated with Mr Shah's company when he knew he was not, and when Mr Shah had formally requested him not to; Dr Guise has published, on rajeevshahdental.com, a number of outrageously false allegations intended to create an unwarranted negative impression concerning Mr Shah, his business and his ethics; Dr Guise has instructed solicitors to make a series of entirely false and wholly unsubstantiated claims against Mr Shah in correspondence, claims which he knows are untrue or as to which he is delusional, including that the website is part of a blackmail plot against him; Dr Guise has misrepresented his complaints against Mr Shah to third parties to cause unwarranted damage to Mr Shah's reputation, including falsely representing that Dr Guise is bringing a private criminal prosecution against Mr Shah.

153. It seems to me that those are reasonable, if slightly elaborate, meanings and I adopt them.

No permission to re-amend Defence and Counterclaim (Issue (A))

154. The principles to be applied to late amendments were not in dispute between the parties. The proposed amendment must have a real prospect of success. The amendment must be clearly drawn and with full particulars. In exercising its discretion the Court must apply the overriding objective. There is a heavy burden on a party seeking a late amendment to show why justice to that party, the other party, and other court users requires the party to be able to pursue the amendment. Other relevant factors were identified in *Ahmed v Ahmed* [2016] EWCA Civ 686 and *Quah Su-Ling v Goldman Sachs International* [2015] EWHC 759 (Comm).

155. The proposed Re-Amendment was to add in paragraph "8.1" as a paragraph of the Particulars of Claim which was sought to be justified. Paragraph 8.1 of the Particulars of Claim pleaded that the meaning of the website was that Dr Guise had "perpetrated, or sought to perpetrate a scam on the D", although, as noted above, the parties have now agreed the meaning in materially similar terms as "Dr Guise perpetrated or sought to perpetrate a confidence game or other fraudulent scheme, especially for making a quick profit, a swindle on Mr Shah" by giving a definition of the word scam.

156. In the Defence and Amended Defence there was no plea of justification for paragraph 8.1 of the Particulars of Claim. This was important because it meant that the parties prepared for this trial where the main cause of action was for libel, where the most serious meaning was not being justified. Allowing a party to seek to justify that meaning in a re-amendment formulated for closing submissions, would be a very serious step for both parties.

157. The proposed amendment did not particularise the way in which Dr Guise had perpetrated or sought to perpetrate a scam (or fraudulent scheme) on Mr Shah. This is important because it is established in pleadings for claims in libel, as with other claims, that there is a requirement for specificity about the way in which fraud or dishonesty is pleaded so that the party has fair notice about the case to be met. It is

clear from my findings of fact above that I have rejected Dr Guise's evidence that he was not attempting to damage DCPD and Mr Shah after the breakdown of the relationship with Mr Shah. In closing submissions there was discussion about whether Dr Guise's evidence was false, and whether that might amount to dishonesty. However, as Mr Munden fairly pointed out, that was never the case specified on scam, and it had not even been reduced to writing. It was also common ground that the finding of partial justification arising from Dr Guise's actions might be used when considering the issue of damages for libel.

158. In my judgment to deal with this case justly, I should refuse the late proposed re-amendment to justify paragraph 8.1 of the Particulars of Claim. This is because: the amendment was made very late in proceedings because it was made in closing submissions; there was no specificity about the way in which the meaning in paragraph 8.1 of the Particulars of Claim was to be justified which would be unfair to Dr Guise; and the prejudice to Dr Guise of allowing a defence to be raised for the first time at such a late stage outweighed the prejudice to Mr Shah of refusing the amendment who will be able to make use of relevant findings against Dr Guise when issues of remedies are addressed.

Serious harm to Dr Guise's reputation (1)

159. The statements on the website included a serious allegation of scam, amounting to fraud. The statements concerning Dr Guise were published in a website which, as Mr Shah, accurately predicted would be very high on a google search for Dr Guise's name. There was evidence about visits to the website showing 18 visitors making 33 different visits between them in 2014; 408 visitors making 748 different visits between them in 2015; and 438 visitors making 725 visits in 2016. The website remained accessible until March 2017. The evidence shows that even after the website had been taken down there were references which could be found to the material which had lived on in the digital world.

160. Mr Laskey-Pooley, a pharmacist by profession, had worked in a variety of different posts for different companies. He had worked with Dr Guise 10 years ago, considered him to be of the highest integrity and highest ethical standards. He had been impressed with Dr Guise, and had recommended to work with another company, which was going to work with Dr Guise but pulled out because of a website, which had made Dr Guise distraught. Mr Laskey-Pooley said that the existence of the website had been a drain on Dr Guise. Mr Laskey-Pooley noted that drug companies were risk averse and the existence of the website alone was damaging. Mr Laskey-Pooley's evidence was not challenged.

161. Dr Guise also gave evidence that he had been unable to attract work since the breakdown of the relationship with Mr Shah, and that he attributed this to the existence of the website. It was obvious that Dr Guise considered that it was very unfair that Mr Shah had been able to continue to work without apparent difficulty since the respective publications of the websites, but that Dr Guise had not had the same ability to work. I should note that no claim for special damages was made by Dr Guise, and so I did not have evidence of Dr Guise's work in the period before his meeting with Mr Shah, and it is apparent that Dr Guise did not appear to be busy on other projects in late 2013 and 2014. However the nature of Dr Guise's business

(providing consultancy services) was at least susceptible to periods of time without work.

162. In my judgment the evidence (including the serious nature of the imputations, the extent of publication and Mr Laskey-Pooley's evidence) proves that the publication of the website has caused serious harm to Dr Guise's reputation. As it is apparent that Mr Shah has proved the substantial truth of some of the imputations, I will need to consider whether the imputations which are not shown to be substantially true do not seriously harm Dr Guise's reputation for the purposes of section 2(3) of the Defamation Act 2013.

No scam (issue 2(a))

163. In circumstances where I have refused permission to re-amend to plead justification to the meaning of the word scam, there is no defence to the imputation that Dr Guise perpetrated or sought to perpetrate a scam, meaning perpetrated or sought to perpetrate a confidence game or other fraudulent scheme, especially for making a quick profit, a swindle, on Mr Shah. I should, as a matter of fairness to Dr Guise, also record that although I have found that he made unwarranted demands for payment for which he was not entitled, there was no evidence that he was pursuing other than what he believed to be his entitlement. Indeed Dr Guise believed so strongly in his entitlement to claim these sums, and was so angry with Mr Shah's dismissive attitude and refusal to enter into negotiations, that Dr Guise decided to damage Mr Shah and DCPD.

No conflict of interest (issues 2(b)(i) and (ii))

164. I have set out above my findings that Dr Guise did not act in a conflict of interest or cause Mr Anthony to withdraw as a major investor in DCPD.

Unwarranted bills (issues 2(c)(i), (ii), (iii), and (iv))

165. As appears from my findings set out above, Dr Guise did ask for payment of £45,000, representing 90 days' work at £500 per day, and then reduced the request to £30,000 of fees, albeit part worked out by reference to the surrender of his success fee, and giving credit for the payment of £5,000 making a net payment of £25,000. There was no formal bill but Dr Guise sought to enforce payment by threatening court action against Mr Shah.

166. A substantial part of the claim was unwarranted, because although there was no doubt that Dr Guise had earned the £5,000 for the work making the company better able to pitch to investors, he was only entitled to £2,000 or £7,000 (being 10 per cent of either £20,000 or £70,000, depending on the date of the investment of the £50,000 as appears from paragraph 90 above) and a quantum meruit for non-investment related work of £5,000. This would have given a total of £7,000 or £12,000 against a demand of £25,000.

167. In those circumstances I find that Dr Guise did make unwarranted demands for either £13,000 or £18,000 out of the £25,000 demanded, pursued by the threat of legal action. Dr Guise did not have an entitlement to the whole of the £25,000 demanded. Dr Guise did not send formal invoices, but he did make a demand and threatened legal

action. His conduct in suggesting that the £5,000 was not a fixed fee, that the £500 rate was conditional on involvement in the betting arbitrate business, and that he was entitled to 10 per cent of the whole company, show that he was making wholly unsupportable claims. I find that the substantial truth of the imputations that Dr Guise sent unwarranted bills to Mr Shah in respect of work for which he had already been paid, for sums to which he plainly had no entitlement, has been proved.

Breach of trust and confidentiality (issues 2(d)(i) and (ii))

168. As appears from my findings set out above after the breakdown of the relationship between Mr Shah and Dr Guise, and after Mr Shah had refused to pay the £25,000 requested and refused to enter into negotiations Dr Guise set out to damage Mr Shah and DCPD by using information known to him as a result of his work for Mr Shah and DCPD. Dr Guise declared his intentions in an email dated 2nd December 2014 (which was not received by Mr Shah) showing that he intended to distribute to the GDC, competitors and partners information about how Mr Shah intended to make money from the operation of his app. The evidence shows that Dr Guise had started down that path by emailing GDPUK and by contacting members of the SAB, and had told members of the SAB about what Dr Guise considered were difficulties for DCPD. The matters were sufficiently pleaded.

169. There was no justification for what Dr Guise was doing. Dr Guise was engaged in behaviour which he thought would bring the most damage to Mr Shah and DCPD, simply because he was in a dispute with Mr Shah about his remuneration. It was behaviour which, in my judgment, reflects very badly on Dr Guise. In these circumstances Mr Shah has proved the substantial truth of this imputation.

No lie about association with DCPD (issues 2(e)(i) and (ii))

170. For the detailed reasons given above Dr Guise did not deliberately lie by misrepresenting himself as being associated with DCPD. He did send a message via LinkedIn which still had "dental cpd pro" on it and "CEO" under "Andrew Guise". Ms Brooks did not take that as meaning Dr Guise was associating himself with DCPD, and it is plain that he was just using what was now an out of date LinkedIn template.

Some false allegations and some true allegations on "rajeevshahdental.com" (issues 2(f)(i), (ii), (iii), (iv), (v) and (vi)

171. As appears from my findings set out above some of the matters published by Dr Guise on the "rajeevshahdental.com" website were true, and some were not. In my judgment the publication by Dr Guise of the "rajeevshahdental.com" website was a very immature act by Dr Guise, in the same way that the publication of the "andrewguise.com" website by Mr Shah was a very immature act by Mr Shah. Mr Munden referred to the well-known right of a person to defend himself from attack, see *Turner v MGM Pictures* [1950] 1 All ER 449, and the latitude given by the law of libel to those attacked, but in circumstances where the relationship between Dr Guise and Mr Shah came to an end, and Dr Guise started attempting to damage Mr Shah and DCPD before publication of the "andrewguise.com" and "rajeevshahdental.com" website, both Mr Shah and Dr Guise can point to attacks on each of them, and there have always been limits to the right of self-defence.

172. Dr Guise's version of events about the terms of engagement as set out on the "rajeevshahdental.com" website was not true. Mr Shah never said that he thought Dr Guise was working for free. Dr Guise was paid the £5,000 he was due, and he was entitled to a success fee. He was also entitled to a quantum meruit for a limited sum, but not the sum claimed by Dr Guise. Dr Guise did make demands for payment, although he did not send a formal invoice, and when they were rejected without payment he threatened legal action.

173. It was false to say that Mr Shah threatened Dr Guise's wife after Dr Guise had started to contact others after the breakdown of the relationship between Dr Guise and Mr Shah. It is right to say that Mr Shah contacted Dr Blom, Dr Guise's wife, by email but Mr Shah did not threaten Dr Blom in that email. As appears above I have found that, after publication of the website, Mr Shah sent round someone to the house of Dr Guise and Dr Blom in a visit which was frightening even though no express threats were made.

174. As to the suggestion that Mr Shah created a website to blackmail Dr Guise it is first necessary to examine what is the proper meaning of the word blackmail. In the technical legal sense blackmail is defined by section 21(1) of the Theft Act 1968. A person is guilty of blackmail if, with a view to gain for himself or another or with intent to cause loss to another, he makes any unwarranted demand with menaces; and for this purpose a demand with menaces is unwarranted unless the person making it does so in the belief (a) that he has reasonable grounds for making the demand; and (b) that the use of menaces is a proper means of reinforcing the demand. The hypothetical reasonable reader would understand the meaning of the word not in its technical legal sense but in the sense of making unwarranted demands for money or advantages by threatening to reveal criminal or other discreditable behaviour unless the money is paid or other advantage given. The hypothetical reasonable reader would understand that unwarranted demands were unreasonable or improper demands. Mr Shah did make demands in his email to Dr Blom by threatening to continue publishing the "andrewguise.com" website unless Mr Shah was provided with a confidentiality agreement and undertakings and Dr Guise apologised to those who had been contacted by Dr Guise. Although Mr Shah might have had reasonable grounds for making his demand because of Dr Guise's actions in trying to damage Mr Shah and DCPD, the demands were unwarranted. This is because, even making allowances for the fact that Mr Shah had been attacked, the publication of the "andrewguise.com" website, with defamatory meanings which were not justifiable or fair comment, was not a proper means of reinforcing the demand. Mr Shah thought that it would be effective, but it was not even that.

175. Mr Shah was responding to an attack by Dr Guise, but as I indicated above when dealing with submissions on behalf of Dr Guise about responding to an attack, the law does not permit unlawful behaviour just because of an earlier attack. In my judgment the demands made by Mr Shah were unwarranted because he could not have believed that this was a proper way of reinforcing his demands. Indeed, as already noted, Mr Shah did take the website down for a short period before republishing it, and in my judgment that was because he realised it was not a proper way to act.

176. In these circumstances it was not false of Dr Guise to suggest that Mr Shah had created a website to blackmail Dr Guise, although it was not the complete explanation of why the website was created by Mr Shah. In submissions on the draft judgment Mr

Hirst submitted that I should revisit its finding on blackmail in relation to Mr Shah because I had not made such a finding against Dr Guise which raised an issue of "presentational fairness". I have set out in detail the findings that I have made which were necessary to determine the issues before me. As appears from paragraph 47 of the judgment these findings including adverse findings against both Dr Guise and Mr Shah. It was not necessary to determine whether Dr Guise's actions amounted to blackmail and I did not do so, it was not suggested by Mr Hirst at the trial that I should do so, and there is no reason for me now to make any such finding. I have found, for the reasons set out above that it was not false of Dr Guise to suggest that Mr Shah had created a website to blackmail Dr Guise, and I made that finding because it was an agreed issue between the parties which required to be determined, see paragraph 150 above.

177. Mr Shah's case was that ownership of the software for the app was transferred from Amarco to DCPD by an agreement dated 10th February 2013. Dr Guise suggested that it would be better to license the software from Amarco to DCPD, although it was apparent that no final decision had been made. The ownership of the app's software was addressed in evidence by Mr Shah and in the hearsay witness statement from Divyash Patel, the accountant. As Mr Patel's statement was hearsay I did not have an opportunity of seeing him give evidence, or of hearing his answers and explanations in cross examination, and I have to bear in mind these important limitations when assessing the evidence. Some of Mr Patel's evidence is helpful to Mr Shah, by confirming the agreement that ownership of the software would transfer to DCPD from Amarco for £25,000, but some of the evidence was helpful to Dr Guise's case, in that it showed that the arrangement was not yet reflected in the accounts because the transfer had not yet been completed.

178. Having taken into account Mr Shah's evidence, and having reflected on Mr Patel's evidence with its limitations, I find that there was an agreement between Amarco and DCPD, made by Mr Shah acting on behalf of both Amarco and DCPD providing for DCPD to have ownership of the software relating to the app. I make this finding because it had been reported to Mr Patel who appears to have been attempting to ensure that the two respective companies' accounts reflected realities. I also found that the agreement had not been performed, because this part appears from Mr Patel's evidence and because of the absence of any record of any consideration being recorded for the transfer. The evidence as a whole suggests that at the material time legal ownership of the software remained with Amarco but that beneficial ownership of the software was with DCPD. It was not therefore false for Dr Guise to say that on the information available to him, DCPD did not own the software for the app.

179. There was no evidence before me to suggest that Mr Shah would misuse the personal data of users. It is right to record that Mr Shah wanted to "monetise" the app by getting dentists to consent to the provision of their information to CPD providers, so that CPD providers could target advertising to those with a professional interest in their particular courses. However, as became common ground at the hearing, there was no evidence that Mr Shah would seek to do this without getting consent through terms and conditions on the app.

180. In my judgment the website was published by Dr Guise to provide those interested in "andrewguise.com" website with an answer from Dr Guise's point of view. It is apparent that some of the statements on the "rajeevshahdental.com" website were

false and some were true. In my judgment the website was also published by Dr Guise to create a negative impression of Mr Shah, part mirroring Mr Shah's motives for publishing the "andrewguise.com" website.

181. In all these circumstances in my judgment Mr Shah has proved the substantial truth of the imputation that there were a number of outrageously false statements on the "rajeevshahdental.com" website published by Dr Guise to create a negative impression of Mr Shah.

Not making false and unsubstantiated claims by solicitors (issue 2(g))

182. The main claims apparently pursued by the solicitors were for monies to be paid to Dr Guise, and a claim that Mr Shah had blackmailed Dr Guise. Claims for some of the monies were unwarranted, but not entirely false and unsubstantiated because £7,000 out of £25,000 was due. There was a proper basis for claiming that Mr Shah had attempted to blackmail Dr Guise. The solicitors did say that Mr Shah had told the police that the "andrewguise.com" website would not be withdrawn unless the civil action was withdrawn. This was not true, rather it was Dr Guise who had reported this to the police. This is because this is how he had interpreted Mr Shah's actions. There is no doubt that Dr Guise believed these claims to be valid and true.

183. In these circumstances Mr Shah has not proved the substantial truth of the imputation that Dr Guise had instructed solicitors to make a series of entirely false and wholly unsubstantiated claims against Mr Shah in correspondence, which he knew to be untrue or as to which he was delusional.

No misrepresentation of claims to third parties (issue 2(h))

184. Mr Shah contended that Dr Guise's claim on his post on GDPUK to the effect that he was being advised by named solicitors "in pursuing" a case of blackmail was false, because although he was being advised about pursuing such a claim, the claim had not been issued and "in pursuing" suggested that the claim had been issued. At the time Dr Guise was seeking advice about pursuing a case of blackmail against Mr Shah, although proceedings had not been initiated against him.

185. Dr Guise did misrepresent on the "rajeevshahdental.com" website some of his complaints against Mr Shah, although other complaints were accurately set out, as appears from the findings set out above. As appears from my findings set out above in my judgment Dr Guise's motivation was mixed, partly to provide a response to the attacks made on him, and partly to damage Mr Shah, and in the GDPUK posting he was also seeking witnesses. In my judgment Mr Shah has failed to prove the substantial truth of the imputation that Dr Guise misrepresented his complaints against Mr Shah to third parties in order to cause unwarranted damage to Mr Shah's reputation, including falsely representing that he was bringing a private criminal prosecution against Mr Shah. This is because Dr Guise was doing all that he could to bring a private prosecution against Mr Shah for blackmail and he was being advised about bringing such a claim, and Dr Guise's motives for publishing on GDPUK were to get witnesses.

Defence of truth fails

186. I now turn to consider section 2(3) of the Defamation Act 2013 which provides that: "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".

187. It is apparent that the most serious meaning, relating to the word "scam" has not been justified. It is true that Mr Shah has proved the substantial truth of important imputations against Dr Guise, and in particular in relation to his behaviour in seeking to damage Mr Shah and to breach confidence, but the imputation which has not been shown to be substantially true seriously harms Dr Guise's reputation. This is having regard to the matters set out above in relation to my finding of serious harm and the fact that this is a serious allegation, which was published in a way which ensured that it had prominence on searches for Dr Guise's name. In these circumstances the defence of truth fails, but the partial justification may be reflected in damages.

Fact or opinion (issues (3)(a), (b)(i) and (c)(i))

188. It is agreed that the meanings: Dr Guise behaved unethically towards Mr Shah; And for all of these reasons cannot be trusted in matters of finance, and extreme caution should be exercised before engaging in any work with Dr Guise; are opinion.

189. There is a dispute between the parties about whether the meanings: Dr Guise perpetrated or sought to perpetrate a confidence game or other fraudulent scheme, especially for making a quick profit, a swindle on Mr Shah; and Dr Guise has proved himself to be someone who cannot be trusted with confidential information; are fact or opinion.

190. In my judgment the meaning "Dr Guise perpetrated or sought to perpetrate a confidence game or other fraudulent scheme, especially for making a quick profit, a swindle on Mr Shah is, in the particular circumstances of this case", is a statement of fact which requires to be proved. The word scam is simply asserted at the beginning of the website, and there is nothing immediately before the word from which the reader could discern the facts giving rise to the statement.

191. In my judgment the meaning "Dr Guise has proved himself to be someone who cannot be trusted with confidential information" is an opinion. This is because the meaning is taken from words set out at the end of the website and is based on material set out before relating to requests to Dr Guise about confidential information. It is Mr Shah's opinion about whether Dr Guise has proved himself that he could not be trusted with confidential information. As I explain below nothing in fact turns on whether this is a statement of fact or a comment/opinion.

192. In my judgment, for the detailed reasons given above, Mr Shah has proved the relevant factual basis for the opinion that Dr Guise behaved unethically towards Mr Shah, and in my judgment Mr Shah did hold that opinion. Dr Guise was right to complain that some of the particulars relied on by Mr Shah post-dated the relevant event and cannot be relied on to support the opinion, see section 3(4)(a) of the Defamation Act 2013. However there were proper particulars given of facts on which the opinion was based, namely that Dr Guise acted in breach of trust and confidence and by attempting to damage Mr Shah in his anger. Mr Shah did hold that opinion.

193. I have already found that the statement "has proved himself to be someone who cannot be trusted with confidential information" is an opinion. Mr Shah has proved the relevant factual basis for the opinion by information which pre-dated this opinion, namely Dr Guise's actions in contacting GDPUK, members of the SAB and others, see paragraph 8.8 of the Amended Defence. Mr Shah held the opinion that Dr Guise cannot be trusted with confidential information. If it was necessary to determine this as an issue of fact (for which reference could also be made to Dr Guise's unseen (at the relevant time) email dated 2nd December 2014, I would have found that Mr Shah had proved the substantial truth of this imputation.

194. It is common ground that the meaning "And for all of these reasons cannot be trusted in matters of finance, and extreme caution should be exercised before engaging in any work with him" is opinion. Dr Guise raises a pleading point, noting that in paragraph 9.2 of the Amended Defence Mr Shah had pleaded "The Claimant proved himself to be someone who cannot be trusted with confidential information or as a business consultant, and caution should be exercised before engaging him in any work". Mr Shah submits that this is a "portfolio meaning of paragraphs 8.6 and 8.7 of the Particulars of Claim". In my judgment the meaning that Dr Guise "cannot be trusted in matters of finance" is effectively met by the pleading "proved himself to be someone who cannot be trusted with confidential information or as a business consultant" as the essential sting, namely that Dr Guise cannot be trusted in matters of finance is met. However there is a difference in degree between the meaning "extreme caution" as the agreed meaning, and "caution" as pleaded by Mr Shah. The evidence in fact shows that the particulars of fact on which the statements of opinion are based has been proved, and Mr Shah has proved that his opinion was honestly held. Mr Shah has proved most, but not a complete defence to this meaning and part of the defence must fail.

Remedies (issues 4(a), (b) and (c))

195. It is apparent that Mr Shah has published serious defamatory statements about Dr Guise by stating that Dr Guise perpetrated or sought to perpetrate a confidence game or other fraudulent scheme, especially for making a quick profit, a swindle on Mr Shah and Dr Guise acted for Mr Shah despite a conflict of interest, and so caused a potentially major investor in Mr Shah's business to withdraw and Dr Guide had lied by deliberately misrepresenting himself as being associated with Mr Shah's company when he was not.

196. Further Mr Shah made serious allegations of fabrication of emails against Dr Guise, made a serious allegation that Dr Guise effectively attempted to pervert the course of justice by setting up the visit on 22nd January 2015 to frame Mr Shah, were made, and suggested that a text was "suspicious" (see paragraph 87.5.5 of the Defendant's Opening Skeleton Argument). These were made on the instructions of Mr Shah (and properly made by counsel where Mr Shah was saying that the visit had nothing to do with him) but this was, in my judgment, not a proper defence of the claim because Mr Shah had lied about the visit and was a seriously aggravating behaviour that should be reflected in the award of damages. Any award for aggravated damages should be proportionate. Other matters relevant to the assessment of damages are that the case has been hard fought on both sides. There was searching cross examination of the witnesses, including Dr Guise. Dr Guise did not seem to be offended by the nature of the cross examination, and cross examination lasted some time because Dr Guise did

not answer some of the questions but spent time explaining why Mr Shah was in the wrong. However there was the obvious pressure of these legal proceedings on Dr Guise. Mr Munden suggested that damages should be some £75,000.

197. However it is right that I can also take account of matters proved to be true in partial justification to reduce damages, see *Pamplin v Express Newspapers (No.2)*. I find that Dr Guise's activities after the breakdown of the relationship with Mr Shah, and leading up to 9th December 2014 do, in my judgment, very seriously significantly reduce the damages which would otherwise be payable. This is because Dr Guise has, in a state of unreasonable anger against Mr Shah, decided that Dr Guise was in the right and that this licensed him to act in a way to damage Mr Shah and DCPD. This did not justify Mr Shah's publication of the "andrewguise.com" website or his subsequent actions. I also noted that Dr Guise's evidence about the email of 2nd December 2014 was particularly unimpressive.

198. Taking all these matters into account including the effect of this judgment rejecting part of the defences, the aggravation of the damages caused by the allegations made against Dr Guise, as well as Dr Guise's own actions as proved in the partial defence of truth, in my judgment an appropriate award of damages is £25,000 for libel. This award of damages would have been very substantially higher but for the part justification. It seems to me that a substantial reduction was required to reflect what had been proved to be true, but that the award needed to be of this size to reflect the fact that the most serious imputation had not been justified.

199. In submissions on the draft judgment Mr Hirst asked that the award of damages should be reduced because of the findings about Dr Guise's conduct leading up to the publication of the "andrewguise.com" website and because of my findings about Dr Guise's evidence. Mr Hirst submits that although possible findings of fact that Dr Guise might have lied about the confidentiality issues were discussed in closing submissions (which they were) it is only with the draft judgment that it can be seen that the findings have been made. I have not revised the award of damages. I came to my judgment about damages having full regard to the circumstances leading up to the publication, the publication, the aggravation of damages, the matters proved to be true by way of partial justification including my findings about Dr Guise's own evidence, as appears from paragraphs 195, 196, 197 and 198. Paragraph 197 specifically referred in the draft and still refers to Dr Guise's evidence about the email of 2nd December 2014. This also appeared from what was said in brackets in paragraph 206 of the draft judgment "albeit reduced to reflect relevant findings in relation to Dr Guise", which is now paragraph 208 in this judgment. Mr Hirst in his submissions referred to a number of well-known decisions where there have been reductions in damages, including *Campbell v News Group Newspapers* [2002] EWCA Civ 1143; [2002] EMLR 43 and *Joseph v Spiller* [2012] EWHC 2958 (QB). There are other cases of relevance including *FlyMeNow v Quick Air Jet Charter [2016] EWHC 3197 (QB)*. These cases do not establish new principles, and I confirm that my award of damages was very significantly reduced and that I was aware of findings of fact against Dr Guise that I had just made in the judgment.

200. I should record that Mr Hirst also referred in his most recent submissions to the fact that the claim form was limited to £50,000, which was not a point on which he placed emphasis at trial and did not prevent Mr Munden seeking damages of £75,000 in writing (and suggesting higher figures in oral submissions). This is not a point of

relevant because my award of damages, reflecting everything that has been found, was below that figure.

201. Mr Shah has published and republished the "andrewguise.com" website. He has lied to me about his involvement with events on 22nd January 2015. It seems to me to be appropriate to grant an injunction to restrain publication of the website.

DPA Claims (issues 5, 6, 7, 8, 9 and 10)

202. It is apparent from my findings set out above that both Mr Shah and Dr Guise have published incorrect and inaccurate, as well as correct and accurate, statements about each other. Neither Dr Guise nor Mr Shah had taken reasonable steps to ensure the accuracy of the data which was published, they were simply interested in making themselves appear the wronged party, and the other party look correspondingly worse. There was nothing fair about the processing of data by Mr Shah about Dr Guise and by Dr Guise about Mr Shah. Both Mr Shah and Dr Guise appeared to demonstrate very poor judgment in producing their respective websites. The specific inaccuracies did not seem to me to cause either Dr Guise or Mr Shah any relevant distress save for that for which Dr Guise has been compensated for by the award of damages in libel

203. This judgment provides a record of which statements are accurate and which are inaccurate. As set out above Dr Guise is entitled to an award of damages for libel. In all these circumstances in my judgment the breaches of the DPA do not merit an award of damages. This is because the judgment provides a sufficient record of what statements are inaccurate and in what particulars, and because there was no distress caused by the breaches of the DPA justifying an award of damages.

204. However it does seem to me that because both the "andrewguise.com" and the "rajeevshahdental.com" websites contained information which was inaccurate, and because both Dr Guise and Mr Shah have shown themselves capable of acting very unreasonably and both have lied to me, I consider that it is appropriate to grant an injunction restraining further publication of the websites in the form in which they appear in this judgment

Harassment (issues 1(a), (b), (c), (d)(i), (e), (2), (3), 4(a) and (b))

205. Dr Guise complains of the creation of the "andrewguise.com" website, with its hyperlinks, the updating of the website, the email of 9th December 2014, and the visit to his house of the unidentified person on 22nd January 2015. My findings of fact have been set out above. As appears from those findings Dr Guise contacted Mr Jacobs and members of the SAB to damage Mr Shah and DCPD. Mr Shah published the "andrewguise.com" website, and emailed Dr Blom. Dr Guise published the "rajeevshahdental.com" website and continued to publish it until October 2015. Mr Shah took down the "andrewguise.com" website on about 10th December 2014 but put it back up in about January or February 2015 and continued to publish it, with the additions, until about March 2017. Mr Shah arranged for a person to visit Dr Guise and Dr Blom's house in the evening of 22nd January 2015 but there were no threats issued by the man, although the experience was frightening for Dr Blom and caused concern for Dr Guise.

206. I find that Mr Shah was aware that the way in which he set up the "andrewguise.com" website would lead to it being ranked high on returns for searches against Dr Guise's name, because this is what Mr Shah told Dr Blom would happen. This ensured that the "andrewguise.com" website achieved some sort of prominence for those interested in searching about Dr Guise.

207. Mr Shah was issued with a harassment warning notice because of his publication of the "andrewguise.com" website, but it is only fair to note that at the time that Dr Guise was getting the police to issue that notice, he was mirroring Mr Shah's actions with the "rajeevshahdental.com" website.

208. In my judgment Mr Shah's actions in publishing and continuing to publish the "andrewguise.com" website together with the action of sending around a person to Dr Guise and Dr Blom's house amounted to a course of conduct which crossed the line to amount to harassment contrary to the provisions of the Act. This was oppressive and unacceptable conduct, and a torment of Dr Guise sufficient to justify the intervention of the criminal law. Mr Shah knew amounted to a course of conduct in harassment. This is because there was no other reason for sending around the person to the house of Dr Guise and Dr Blom other than to harass them. It was not reasonable conduct because it was out of all proportion to the attack on Mr Shah, either in early December or by the "rajeevshahdental.com" website. In my judgment it is conduct which ought to be marked by an award of damages. I have in mind that no lasting harm was caused by the harassment and that damages have been awarded for libel (albeit reduced to reflect relevant findings in relation to Dr Guise). In my judgment this was not a serious course of conduct and only crossed the line to amount to harassment because of the action of sending around a person to Dr Guise's house, and an award of £3,000 is appropriate.

209. In submissions on the draft judgment Mr Hirst asks that the finding of harassment ought to be revisited and set aside noting that the publication of the "andrewguise.com" website had been considered by the police who had taken no action, Dr Guise had published a website meaning that Mr Shah was entitled to consider his publication of the website reasonable, and Mr Shah had explained that he had not targeted Dr Guise's name in the website. I can confirm that neither Mr Shah's publication of the "andrewguise.com" website nor Dr Guise's publication of the "rajeevshahdental.com" website was reasonable for the reasons given in paragraph 171 of the judgment, they were very immature actions. I can also confirm that publication of the "andrewguise.com" website on its own would not have amounted to harassment, see paragraph 208 above. It was only the publications of the "andrewguise.com" website together with the sending around of a person to Dr Guise's house which crossed the line.

210. Mr Shah complains of Dr Guise's actions in threatening to and publishing confidential information, threatening to ask the Brazilian police to investigate threats said to have been made by Mr Shah against his tenant, the "rajeevshahdental.com" website and its updates, and the publication on the GDPUK website. This was conduct which in my judgment did not amount to harassment contrary to the provisions of the Act. It was not so oppressive and unacceptable so as to amount to a torment of Mr Shah. I therefore dismiss Mr Shah's claim for harassment.

Conclusion

211. For the detailed reasons given above I award Dr Guise damages of £25,000 for libel. I find that both Dr Guise and Mr Shah have infringed the provisions of the DPA, but I do not make an award of damages because this judgment provides a sufficient record of the inaccuracies and because there was no evidence of relevant distress. I grant an injunction restraining publication of the "andrewguise.com" and the "rajeevshahdental.com" websites. I award Dr Guise damages of £3,000 for harassment and I dismiss Mr Shah's claim for harassment against Dr Guise.