



[2026] EWHC 1219 (KB)

Case No: KB-2023-002437

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 22/05/2026

Before :

**MR JUSTICE GRIFFITHS**

Between :

**SASHA RODOY**

**Claimant**

- and -

**OPTICAL EXPRESS LIMITED**

**Defendant**

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**William Bennett KC and Felicity McMahon (instructed by Seddons GSC LLP) for the  
Claimant**

**Adam Wolanski KC and Victoria Simon-Shore (instructed by Keoghs LLP) for the  
Defendant**

Hearing dates: 20 to 29 April 2026

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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 22 May 2026 by circulation to the parties' representatives by e-mail and by release to the National Archives.

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**MR JUSTICE GRIFFITHS:**

1. This is the trial of a defamation action.
2. The Claimant, Ms Sasha Rodoy (“Ms Rodoy”), has for many years campaigned to highlight what she sees as the risks of refractive laser eye surgery, which is typically carried out to correct vision so that spectacles or contact lenses are no longer needed.
3. The Defendant (“Optical Express”) is part of the Optical Express Group which is headquartered in Glasgow and operates as a leading provider of refractive eye surgery, from a network of clinics and eye hospitals in towns throughout the UK (and also in Germany and Croatia).
4. Ms Rodoy’s interest in refractive eye surgery derives from her own experience as a refractive eye surgery patient, not with Optical Express, but with a rival company called Optimax, from which she received eye surgery in February 2011. She suffers from pain, visual impairment and other symptoms which she attributes to her surgery. After her surgery, she set up a website called Optimax Ruined My Life and threatened to sue Optimax. In September 2012, she settled her dispute with Optimax before issuing any proceedings against them. Under the Optimax settlement, she received a cash payment and payment for treatment. She agreed to take down the Optimax Ruined My Life website and not to campaign about Optimax.
5. She set up, in 2012, a similar website called “Optical Express Ruined My Life” (although she had not been treated by Optical Express), referred to in the litigation as “OERML”. She has associated Facebook, Twitter, Instagram, TikTok and LinkedIn accounts and a YouTube channel through which she campaigns and disseminates her views and provides information. Anyone can view OERML on the internet or through Facebook but it is run entirely by her and she puts up the posts herself and moderates the comments on it from others.
6. Also in 2012, she set up “My Beautiful Eyes Foundation” which she described as a private Facebook group for damaged patients in which they can exchange stories and information. Unlike OERML, this is not open to everyone but is operated by Ms Rodoy as a private support group into which she invites people who contact her from her public pages as patients who have already received eye surgery and have complaints about it. She requires them to provide identifying details and some information about themselves before admitting them into the group.
7. She described her work as a campaigner against refractive eye surgery as “my full-time work”. However, she told me she operates as a not-for-profit organisation and that she does not get paid for her work.
8. In 2020 and 2021, Optical Express was in correspondence with four former customers who were dissatisfied with their treatment, and who referred in their communications to Ms Rodoy and her “Optical Express Ruined My Life” website. These customers were James Marshall, Colin Hind, Robert Beaton and Phoebe Arthur. In letters to each of them, dated 27 July 2020, 25 May 2021, 21 July 2021 and 17 November 2021 respectively, Optical Express included the following passage:

“The individual concerned is a vexatious individual, who is a self-confessed and known fraudster, currently using the name Sasha Rodoy, however she has previously been known as Sasha (Susan) Hutchinson. The individual was not treated by, and has never been a patient of, Optical Express. [The/This] person unfortunately does troll Optical Express and many of our team online. In the past, this trolling has been to such an extent that we have had to involve the police in the interest of employee safety.”

9. Following a previous hearing, His Honour Judge (Jaron) Lewis determined (by order dated 27 February 2024) that the ordinary and natural meaning of these statements is:
  - i) Ms Rodoy is a fraudster. Her dishonesty extends to using different names or aliases.
  - ii) Ms Rodoy trolls Optical Express and many of its staff online.
  - iii) At times, the trolling has been to such an extent that there were reasonable grounds to suspect that she was placing the safety of staff members at risk.
10. A fourth meaning (that Ms Rodoy criticises Optical Express but does not know as much as she claims because she has never been one of their customers and so has no direct knowledge of them) is not relied upon in Ms Rodoy’s amended pleadings and does not form part of this action. That was confirmed in closing submissions.
11. Judge Lewis also ruled that each of these is a statement of fact which is defamatory at common law.
12. The issues which remain for this trial are:
  - i) Did these defamatory statements cause serious harm to Ms Rodoy’s reputation? (see section 1 of the Defamation Act 2013, “the Act”).
  - ii) Were the defamatory allegations substantially true? (see section 2 of the Act).
  - iii) Were the defamatory allegations protected by qualified privilege?
  - iv) Did Optical Express act with malice such that no qualified privilege can be claimed?
  - v) If liability is established, what relief should be granted to Ms Rodoy?

### **The witnesses**

13. The witnesses on behalf of Ms Rodoy were:

- i) Ms Rodoy herself.

The recipients of three of the four letters in question, namely,

- ii) Colin Hind

- iii) Robert Beaton
- iv) Phoebe Arthur

The recipient of the other letter, James Marshall, declined to speak to the Claimant's solicitors and was not called as a witness.

- v) Michael Wilson, who received a similar letter, dated 3 July 2020. He did not believe the defamatory allegations in the letter and for that reason the letter sent to him is not sued upon.
- vi) Daniel Weaver
- vii) Becci Weaver

Daniel Weaver received an email dated 3 April 2020 and Becci Weaver is his wife. The email was from Mary Frances Kelly of Optical Express. It attached a newspaper article and the transcript of an American television broadcast which, the email said, "will provide you with some interesting background [on Ms Rodoy]". No action is taken on this email and its attachments because, although they related to the matters upon which Optical Express bases its claim that Ms Rodoy is "a fraudster", Mr and Mrs Weaver saw them as "nothing to do" with OERML or Mr Weaver's complaints against Optical Express.

14. The witnesses on behalf of Optical Express were:

- i) David Mouldale, who is Chairman, Chief Executive, co-founder and sole owner of Optical Express.
- ii) Dr Stephen Hannan, Clinical Services Director of Optical Express.
- iii) Noelle Hannan, Clinical Director at Optical Express.
- iv) Hugh Kerr, Group Commercial Director at Optical Express.
- v) Professor Steven Schallhorn, Chairman of the Optical Express Medical Advisor Board.
- vi) Judith Murdoch, Clinical Services Manager at Optical Express.
- vii) Paul Morrison, Clinical Services Optometrist at Optical Express.
- viii) Colin Berry, formerly Clinical Services Manager at Optical Express (and now a Clinical Director)
- ix) Mary Frances Kelly, Marketing Director at Optical Express (formerly Marketing Manager).
- x) Niamh Hall, at the material time a Legal Assistant with Optical Express.
- xi) Andrew Vint, Group Head of IT at Optical Express.

- xii) Simon Whale, Executive Chairman of Luther Pendragon, a communications consultancy which acted for Optical Express.

**Issue 1: Did the Statements cause serious harm to Ms Rodoy's reputation?**

*Serious harm: the law*

15. Section 1 of the Act 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."

16. Section 1 introduces a new threshold test of serious harm which did not previously exist (*Lachaux v Independent Print Ltd* [2019] UKSC 27 [2020]AC 612 at para 13). It requires proof of some historic harm, which is shown to have actually occurred (*Lachaux* at para 14). Proof of this will depend on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated (*Lachaux* at para 14). It will not be enough to rely only on the inherent tendency of the words because, otherwise, section 1 would not have effected the change in the law which it intended (*Lachaux* at para 16). The application of section 1 has to be determined by reference to the actual facts about its impact and not just to the meaning of the words (*Lachaux* at para 12).

17. Per Nicklin J in *Riley v Murray* [2021] EWHC 3437 (AB), [2022] EMLR 8 at para 43:

"As section 1 is a threshold issue, once it has been surmounted by a claimant, it is not necessary to consider by what margin. This is a matter, if it is reached, that would be relevant to damages."

18. For this reason, a decision on whether or not serious harm has been caused does not have to be a complex exercise (*Blake v Fox* [2025] EWCA Civ 1321 per Warby J at para 78).

19. In cases, such as this one, where the publication is on a small scale (in this case, four letters, sent to four individuals, none of whom republished them or passed them on in any way), as Nicklin J said in *Dhir v Saddler* [2017] EWHC 3155 (QB), [2018] 4 WLR 1 at para 55:

"...the authorities demonstrate it is the *quality* of the publishees not their *quantity* that is likely to determine the issue of serious harm in cases involving relatively small-scale publication. What matters is not the extent of publication, but to whom the words are published. A significant factor is likely to be whether the claimant is identified in the minds of the publishee(s) so that the allegation "sticks". (emphasis in the original)

20. The number of publishees and the extent of publication are relevant. But this is not a numbers game (*Mardas v New York Times Co* [2008] EWHC 3135 (QB); [2009] EMLR

8 per Eady J at para 15, coining a phrase frequently picked up and endorsed in later cases). Per Steyn J in *Munim v Rahman* [2025] EWHC 3051 (KB) at para 45:

“The onus is on the claimant to establish that the statement complained of has in fact caused or is likely to cause serious harm to his reputation. The court is entitled to draw inferences based on the admitted evidence. Mass media publications of very serious defamatory allegations are likely to render the need for evidence of serious harm unnecessary. But the issue of serious harm is not a “numbers game”: very serious harm to a reputation can be caused by the publication of a defamatory statement to one person.”

21. The quality and nature of the publishee’s relationship with the person defamed (if any) are relevant to the assessment of serious harm, not least because of the effect this has on the tendency of the defamatory allegation to stick, but there is no rule that there will be no serious harm even in the complete absence of such a relationship. It depends on the facts. As was said in *Lachaux v Independent Print Ltd* [2019] UKSC 27 [2020]AC 612 at para 25:

“Turning, finally, to the complaint about the impact of the publications on those who did not know Mr Lachaux but might get to know him in future, there is no principled reason why an assessment of the harm to the claimant’s reputation should not take account of the impact of the publications on those who had never heard of him at the time. The claimant’s reputation is harmed at the time of publication notwithstanding that the reader or hearer knows nothing about him other than what the publication tells him.”

22. The higher the standing and the greater the credibility of the publisher, the more likely it is that serious harm to reputation will have been caused by the defamatory statement. But this will, again, be fact-sensitive and depend on the effect of standing and credibility in combination with the other relevant factors (see, for example, the approach of Warby J at first instance in *Lachaux v Independent Print Ltd* [2015] EWHC 2242 (QB), [2016] QB 402 at para 144).

*Serious harm: the facts*

23. In this case, there was not a single publication read by four people. There were four separate publications, albeit using essentially identical words, read by four people who did not know each other and who did not confer with each other. Therefore, I will assess serious harm in relation to each of the publishees separately. If serious harm is established (because of the different reactions of publishees) in one case but not another, I must not and will not aggregate the serious harm so as to find it proved in respect of the latter as well as the former.

*Letter to Colin Hind dated 25 May 2021*

24. The first publication in time was the letter sent to James Marshall on 27 July 2020. However, since he gave no evidence, I will consider his case last. The next publication

in time was the letter sent to Colin Hind on 25 May 2021 and I will therefore start with him.

25. Mr Hind had his eyes operated on by Optical Express on 29 February 2020. Before that, his distance vision was functional without correction but he needed separate glasses for reading and computer work. He chose to go to Optical Express in order to reduce his dependence on glasses. He paid £7,000 in advance, from a recent inheritance.
26. Within weeks of his operation, after an initial improvement, he began to experience significant and worsening problems, including severe halos, inconsistent and blurred vision, reduced distance vision (to the point that he could not drive safely at night) and increasing difficulty in reading without strong lighting. Five months after his operation, he was told, at a follow up appointment with Optical Express, that he had developed Posterior Capsular Opacification (PCO) as a result of his lens replacement surgery. He was entitled to a free aftercare period of one year but Optical Express told him for the first time after the expiry of that period that his PCO might be corrected by YAG laser capsulotomy for which he would now have to pay, if he chose to have it.
27. On 23 March 2021 he complained to Optical Express by email, setting out the reasons for his dissatisfaction and seeking the surgery at no cost. On the same day, he had a holding response by email from Optical Express which mentioned staffing difficulties caused by the Covid-19 epidemic. On 15 April 2021, not having heard further, Mr Hind made a complaint to the Optical Consumer Complaints Service. Optical Express were made aware of this and emailed Mr Hind on 10 April 2021 responding to his complaints in detail and offering one free further consultation but they insisted that other consultations, and any surgery they performed, would be charged at usual rates. They said that he was “not found to be a suitable candidate for YAG Laser Capsulotomy procedure as the PCO was not found to be visually significant”. (However, Mr Hind subsequently had a corrective procedure with a different provider and on the NHS.)
28. Mr Hind was not satisfied with this and sent another letter to Optical Express by email on 26 April 2021 with a detailed refutation of the excuses they had offered him. He ended this letter as follows:

“...I will not be recommending you to anybody else and am now in contact with a Facebook group called ‘Optical express ruined my life’ who seem to reflect my experience!”
29. Mr Hind included this because his wife had found Ms Rodoy’s website and suggested that he look at it, which he did. He found the information on it useful, including examples of poor treatment, and said in evidence that it “showed that it was not just me that had been treated badly by Optical Express”. His contact with Ms Rodoy was limited to his access to her website; he was not in direct communication with her.
30. In line with a policy to which I will return, this reference to OERML triggered the inclusion, in Optical Express’s response, of the defamatory statements upon which Ms Rodoy now sues. The Optical Express response in question was dated 25 May 2021. On the question of corrective surgery, the response said:

“As you did not meet our conservative guidelines within your inclusive aftercare period, a YAG Capsulotomy procedure will

only be provided with a charge in line with our standard pricing policy. The potential for a YAG procedure is outlined in the Terms associated with your primary Refractive Lens Exchange Surgery.”

31. On other issues he had raised, they also, essentially, repeated their previous explanations. They then said:

“I am sorry to learn that you will not be recommending Optical Express. I note that you have copied the OCCS to your most recent correspondence. I would like to confirm that we will fully cooperate with them should they contact Optical Express to discuss any aspect of your complaint.

I note in your correspondence you have referenced an external website. The individual concerned is a vexatious individual, who is a self-confessed and known fraudster, currently using the name Sasha Rodoy, however she has previously been known as Sasha (Susan) Hutchinson. The individual was not treated by, and has never been a patient of, Optical Express. This person unfortunately does troll Optical Express and many of our team online. In the past, this trolling has been to such an extent that we have had to involve the Police in the interest of employee safety.

I am disappointed to learn of your dissatisfaction with the level of service you perceive we have delivered. We are committed to assisting you with your current visual symptoms and have proposed solutions to this for you. Should you wish to schedule a future consultation please contact our Customer Contact Centre on 0800 023 2020 or our Clinical Services department by telephone on 0141 222 3933 or by email to [clinicalservices@opticalexpress.com](mailto:clinicalservices@opticalexpress.com) and a member of staff will be able to assist you.

I trust this response clarifies our position on your complaint, which we believe is now concluded.”

32. The letter was signed, as the previous letter had been, by Judith Murdoch, Clinical Services Manager. Ms Murdoch gave evidence that as part of her job she had for many years responded to patient complaints. In doing so, she drew on a working document with “a collection of complaint response examples”. This, I find, allowed her to draft letters in part as a boilerplate exercise, using the examples, although her letters were also tailored and responsive to the specific communication being responded to.
33. Among the boilerplate passages was the passage in the second paragraph of my quotation which contains the defamatory statements. Ms Murdoch’s evidence was that she was instructed to include it in response to patient complaints “if the patient mentioned Sasha Rodoy or Optical Express Ruined My Life in their complaint” on the authority of David Mouldsdale, the Chairman and Chief Executive. She did not question this or ask why; she simply included the defamatory passage because that was her

instruction. The wording was given to her; it was not her own. It contained no information except what I have quoted. It did not provide any factual details or context. It did not refer to newspaper articles. It contained no relevant attachments.

34. Mr Hind gave the following evidence in chief (which I accept) about his reaction:

“I was shocked to read these allegations. I thought there is no smoke without fire. I just did not know what to think about Sasha, especially as a big company like Optical Express had told me what she was really like. After reading it, I was not inclined to contact Sasha or to rely on the information of Sasha’s OERML website. The allegations against Sasha put me off seeking help from her, which was a shame as it was difficult dealing with Optical Express.

My reaction to the trolling allegation (including that it had been to such an extent that Police had to be involved in the interest of employee safety) was similar. I was surprised and shocked to read this; it put me off from seeking help from Sasha.”

35. He also gave evidence that, if he had not had that letter, he possibly would have made continued contact with the OERML Facebook group “if Optical Express hadn’t tried to discredit it, or discredit Ms Rodoy, in particular”.

36. In cross examination he said, and I accept, that the statements by Optical Express “had totally discredited Sasha at that point”. He said

“I wasn’t obviously going to contact Sasha at that point because they’d basically discredited her, said that she was a fraud, she was vexatious, she was trolling Optical Express and that she wasn’t to be trusted, so I never sort of went back looking at her website or anything, and at that point I sort of was of the opinion that Optical Express were certainly not going to be helping me after that.”

37. I find that the effect of the defamatory statements was both to persuade Mr Hind to give up on seeking help from Sasha Rodoy and her OERML website and (after some more consultations which did not resolve his issues), to give up on any further correspondence with Optical Express. He pursued other avenues, and got the surgery he needed on the NHS. In fact, it seems that an Optical Express optometrist assisted with that referral by providing a referral form, although he obtained the treatment, primarily, through his NHS GP.

38. I now turn to my conclusions on serious harm, based on these facts.

39. Mr Hind had looked at Ms Rodoy’s OERML website or Facebook page and saw it as a potential source of information and advice. He found it credible to that extent and he rightly identified its credibility with Ms Rodoy’s personal credibility. He had not met her or communicated with her but she had, through OERML, acquired so far as he was concerned, a credible reputation with him.

40. The defamatory statements were directly targeted at that credibility. They made very serious allegations of dishonesty, trolling and police involvement, which hit their mark with Mr Hind: he immediately stopped consulting the Facebook page and wanted nothing to do with Ms Rodoy.
41. The allegations were from an apparently credible source, which was the substantial business Optical Express. They were relevant and important to Mr Hind and the effect was that he shunned Ms Rodoy and everything that might be connected with her.
42. The allegations went to the heart of her reputation, by saying in effect (picking up on the meanings found by Judge Lewis) that she was a fraudster, dishonest, a troll, and a risk to employee safety. There was reference to police having to be involved. The allegations were not only by their nature important to reputation, they were particularly important to the reputation of Ms Rodoy because by their nature they would put a correspondent off having any dealings with her or relying on her in connection with what she told me she now sees as “my full-time work” as a campaigner.
43. The allegations certainly stuck. Because Ms Rodoy was not aware that the letter had been sent to Mr Hind, or of what had been said about her to him, she had no opportunity of defending herself or her reputation, until the letter came to light as part of a Subject Access Request (at which point Mr Hind’s name and contact details were, however, redacted) and, subsequently, as a result of a specific disclosure order made in these proceedings by Nicklin J. At that point, Mr Hind was contacted, and he agreed to give evidence, in about July 2023. This was over two years after the defamatory statements had been made to him.
44. In relation to the letter to Mr Hind, I find that it caused serious harm to Ms Rodoy’s reputation.

*Letter to Robert Beaton dated 21 July 2021*

45. The next publication in time was the letter to Robert Beaton dated 21 July 2021.
46. Mr Beaton had refractive lens exchange surgery with Optical Express in 2019, at a cost of about £7,000. His last treatment was on 27 August 2020. Before the surgery, his eyesight was stable and typical for his age (then 65 years old), but he wanted not to have to wear glasses. After the surgery he immediately had problems. His right eye vision became blurred, unfocused and uncomfortable and also painful and sensitive to light. His left eye vision was not clear. He suffered glare, halos and chronic dry eye in both eyes. In his final treatment from Optical Express it felt as if his eye was being sucked out with no anaesthetic and the pain was so severe the treatment was stopped. There was no improvement.
47. In 2019 and 2020 Mr Beaton persistently complained and attended numerous Optical Express appointments but he was told that further surgery (although his problems had arisen within the initial 12 month period) would be charged for. Eventually, in 2025, Optical Express reached a clinical negligence settlement with Mr Beaton.
48. A couple of years after his original operation in 2019, and after he had been complaining and lobbying Optical Express without what he considered to be a satisfactory outcome for a considerable time, Mr Beaton in or about May 2021 came across the OERML

website. On 24 May 2021 he emailed Ms Rodoy with a detailed history of his dealings with Optical Express, beginning his email by saying: “Good afternoon Sasha, I was contacted by Michael Tomlinson and he suggested contacting you for any advice that may help me.” She responded by email asking for his phone number. But he responded by saying “It’s ok, I’ve sorted.” This was because he had, in the meantime, had the latest response from Optical Express, which was dated the same day, 24 May 2021, and signed by Judith Murdoch.

49. The response was not, however, satisfactory to Mr Beaton and on 27 May 2021 he emailed Optical Express saying:

“I seem to be getting nowhere with Optical Express luckily I’ve found a group headed by Sasha Rodoy who offered to help, surprising how many of Optical Express surgeons have had successfully won litigation against them and how many people have complained about your aftercare.”

50. At this point he had still not had direct dealings with Sasha Rodoy but, I find on the evidence, he found her OERML website helpful and credible and he saw her as a person who might be trusted to give him help and support in his dispute with Optical Express if he chose to ask for it. She had indicated as much by offering him a telephone call when asking for his telephone number, although he had not provided it to her at that point and he had not had that conversation with her.

51. Despite Mr Beaton’s reference to “a group headed by Sasha Rodoy”, Optical Express did not in its reply, on 22 June 2021, pick up that reference or include the boilerplate paragraph which Ms Murdoch had been instructed to include containing the defamatory statements about her. This appears to have been an oversight. The response did however attempt to refute Mr Beaton’s complaints and it did not offer him full satisfaction.

52. Mr Beaton then replied by email on 23 June 2021 in which he mentioned Ms Rodoy again. He said:

“As I’m in contact with Sasha Rodoy I’ve been advised to get a second opinion. My Doctor has referred me to the NHS Eye Clinic and legal representation is awaiting the result”

53. He also (apparently, and I find, because of what he had seen on OERML) said “it’s not very surprising that successful litigations against OE surgeons have taken place over previous years including my own.”

54. This generated a further response from Judith Murdoch: the letter dated 21 July 2021 which contained the defamatory statements. Although personalised to some extent, and quoting and responding to passages from Mr Beaton’s earlier letters, it too has the appearance of an essentially boilerplate response. On the final page, it responded to Mr Beaton’s threat of legal action by giving contact details of Optical Express’s in-house legal department, and then it said this:

“I note in your correspondence you have referenced an individual by the name of Sasha Rodoy. The individual concerned is a vexatious individual, who is a self-confessed and

known fraudster, currently using the name Sasha Rodoy, however she has previously been known as Sasha (Susan) Hutchinson. The individual was not treated by, and has never been a patient of, Optical Express. This person unfortunately does troll Optical Express and many of our team online. In the past, this trolling has been to such an extent that we have had to involve the Police in the interest of employee safety.

I trust this response clarifies our position on your complaint, which we believe is now concluded.”

55. Mr Beaton’s evidence in chief about the effect of the defamatory statements on him, which I accept, was:

“I felt total shock at what I read, I felt a little sick. I had pinned some of my hopes on Sasha Rodoy helping me. I had assumed that she was an honest person. I was now told that she might be committing some sort of sting against me. I thought “Jesus, what is going on.” When I read the allegations, they made me think that Sasha was a nasty piece of stuff and a fraudster. I wasn’t sure that I could trust her or not. This was why I did not initially contact her about this letter. I thought that maybe she was doing some sort of sting on me.

The same goes for the trolling allegation and putting employees’ safety at risk such that the Police had been involved. I felt completely disheartened to read this. This added to my fear that this was a “stitch up”, causing me to be unsure if I could trust her.”

56. Eventually, eight months later, on 29 March 2022, Mr Beaton emailed Ms Rodoy a photograph of the defamatory passages with a covering text which said “it seems that OE doesn’t like you much, judging by the above email, many thanks for all your advice x”. She then told him the allegations were not true and I accept his evidence that:

“This did alter my attitude to her but my confidence in her was still a bit shaken. There was a question mark over her. But I still needed her help anyway.”

57. There was dispute at the trial about whether he had contact with her between receipt of the Optical Express allegations on 21 July 2021 and his email on 29 March 2022 or whether (as he recalled) he had not.

58. In making a finding on this I am satisfied that Mr Beaton gave evidence which he honestly believed to be true. As a result of that, he gave the evidence assertively and confidently. However, I also find (as he accepted) that his dealings with Ms Rodoy, if any, were very slight in the context of what was already a vigorous and time consuming dispute between him and Optical Express, which generated (as he said) perhaps 700 pages of documents and correspondence, and that, consequently, his memory cannot necessarily be entirely relied upon, and must be examined in the light of the

contemporaneous documentary record in the trial bundles, which is, itself, not necessarily complete.

59. There is no doubt that, on 8 January 2022, Mr Beaton emailed his Member of Parliament with a brief account of his personal experiences at the hands of Optical Express which concluded by urging her to “please support John McDonnell on my behalf.” This was because John McDonnell MP was sponsoring an Early Day Motion about refractive eye surgery. The email, although addressed to the MP personally at her correct personal parliamentary email address, began “Dear MP” and, after a signature block containing Mr Beaton’s name and contact details, the copy in the trial bundle has a line reading “Begin forwarded message”, with nothing after it.
60. Mr Beaton was firm in his evidence that Ms Rodoy had no hand in this draft and she was firm in her evidence that to the best of her knowledge and recollection she had no contact with him until he sent her the photograph of the defamatory passage.
61. It was put to Mr Beaton that, at a later date (22 February 2023, so well after he had sent Ms Rodoy the photograph of the defamatory statements) he again emailed his MP but on this occasion he copied in “Sasha MBEF” (i.e. Sasha Rodoy of the My Beautiful Eyes Foundation). He appended to his own email an email of the same day from Ms Rodoy, addressed to him, which urged him to email his MP. It included the text of the letter, which named her and included her correct email address and was signed “Robert Beaton” with his address. It was suggested to him (but he did not accept) that this supported the view that the earlier email to the MP, on 8 January 2022, might also have been prompted by Ms Rodoy and that she might have had a hand in its drafting.
62. My finding on the evidence, applying the balance of probabilities, is that the 8 January 2022 email was prompted by something Mr Beaton came across about John McDonnell’s Early Day Motion but that it did not reflect any direct contact between him and Ms Rodoy. Even if he took some text, which he could read, assess, and modify for himself, from a draft which reached him in some shape or form from Ms Rodoy, this was not the result of a personal contact. The very personal nature of the history he related to his MP means that its essential content came from him and not from Ms Rodoy, and he knew it was reliable for that reason. I accept his evidence that, before he sent Ms Rodoy the photograph of the defamatory statements, he was highly distrustful of Ms Rodoy and treated her and the resources she published on OERML with heightened caution amounting to fear.
63. This was his state of mind until he sent her the photograph on 29 March 2022. After that, he was persuaded that Ms Rodoy’s reputation might have been blackened unfairly by Optical Express. His trust was then restored, but not entirely. Even then his confidence in her “was still a bit shaken”; and there was “a question mark over her”.
64. Any damage to her reputation so far as he was concerned subsisted mainly, therefore, in the roughly eight months after the defamatory statements were made on 21 July 2021.
65. The allegations against Ms Rodoy were serious in their nature and from a source which Mr Beaton found credible on these points, although he was in dispute with Optical Express about other matters. He was very interested in Ms Rodoy and her website and in the help she might be able to give him. As a result of the allegations, her credibility and her reputation was seriously damaged so far as he was concerned. He concluded

that she was “a nasty piece of stuff and a fraudster”. He thought she might still be useful, but he was not sure he could trust her. He thought that maybe she was doing some sort of sting on him.

66. The allegations stuck, to the extent that it was not until the following year that he decided to put them to her and see what her reaction was.
67. He limited his interactions with Ms Rodoy, effectively to zero or almost zero, as a result of harm the allegations did to her reputation in her his eyes.
68. He had not met or spoken to Ms Rodoy directly, but he knew about her and she had a good reputation so far as he was concerned, based on the work she published on OERML.
69. My conclusion is that the harm caused to that reputation as a result of the defamatory statements to Mr Beaton was serious.

*Letter to Phoebe Arthur dated 17 November 2021*

70. Phoebe Arthur, before she went to Optical Express, had short sight and astigmatism which meant that she relied on glasses for distance vision. She was a young woman about to be married. Using savings on the wedding expenditure forced on her by the limits on guest numbers imposed by Covid restrictions, she chose elective eye surgery with Optical Express to give her 20/20 vision.
71. The day of her Optical Express surgery (2 April 2021) was chaotic and began with unexplained delays. When the operation did get under way, the machine failed twice and turned itself off during the procedure on her left eye. The surgery on her right eye was successful but immediately after the operation and in the weeks afterwards she found that her left eye was significantly worse than before the procedure. Her eyeballs were left after surgery with deep red bruising marks which were still visible at her wedding a month later and caused her particular distress. She had to have every wedding photograph edited so that the redness in both her eyes visible on the day was removed from the photographs. She suffered from persistent haze and blurriness. The left-eye vision was examined in numerous post-operative appointments but it never improved. She was finally told on 14 October 2021 that her cornea showed inferior steepening and there was a risk of instability which made her unsuitable for further surgery.
72. Ms Arthur did some research and spent a few hours on the OERML website. She then emailed Sasha Rodoy on 15 October 2021 with a detailed explanation of her case. She concluded:

“I just wanted to contact you today before I go ahead with lodging a complaint with Optical Express. Do you think I would be eligible for a refund? If you have had a similar case before, what would be the best route for a complaint like this?

Thank you in advance for your help, any advice would be greatly appreciated.”

73. After this, Ms Rodoy briefly spoke to Ms Arthur on the telephone. She was supportive and helpful. She reassured Ms Arthur that she was not the only person to have had difficulties with Optical Express and she gave her tips about sorting out her complaint.
74. On 20 October 2021, Ms Arthur sent Optical Express a long, detailed and formal complaint by email. At the end, she suggested a settlement of £2,000, which was a little less than her total itemised losses, consisting of loss of earnings, travel expenses and the charge made by her wedding photographer. She also included the following passage:
- “As a result of my disgruntlement, I have been speaking to Sasha from Optical Express Has Ruined My Life/Beautiful Eyes Foundation; whom I discovered after researching other’s experiences with Optical Express. If this issue is not resolved quickly, she is willing to take my case forward. From what she says, this is not an isolated incident. I require a response back from this complaint within 20 working days. If not, I will have to escalate this complaint further.”
75. Optical Express replied in a letter dated 17 November 2021. The letter was signed by Paul Morrison, who gave evidence that (like Ms Murdoch) he was under instruction, when Ms Rodoy was mentioned in a patient complaint, to include “a pre-determined paragraph that had been approved by the business and had to be used in response”. He was not told who had drafted it but it was common ground that it was David Mouldsdale. As it happened, Mr Morrison had been aware of Ms Rodoy for a number of years, since 2016, when a colleague drew his attention to the OERML website. Patients sometimes mentioned it during appointments. He had looked at the OERML website himself “so that I knew what patients were talking about”.
76. Mr Morrison’s reply of 17 November 2021 was lengthy. It rejected every single one of Ms Arthur’s complaints. For example, in relation to the effect of her damaged eyes on her wedding photographs, he said:
- “I must respectfully remind you that you chose to proceed with the elective surgery and the decision was yours alone to make.”
77. All her complaints were considered and rejected one by one, the letter asserting that her eyesight had improved and was satisfactory. On the question of whether her eyesight had been damaged, or whether Optical Express had anything to apologise for or compensate her for, it was uncompromising. It offered her nothing except the suggestion that she might have further post operative appointments (none of which, however, when she had them, included substantive treatments or corrective surgery) or take her complaint to “a telephone based mediation service for patients” called the Optical Consumer Complaints Service.
78. A mediation service could not provide Ms Arthur with any outcome unless Optical Express chose to agree with it. Mr Morrison’s letter gave no indication that this was to be expected. The possibility (for example) of bringing a legal action was not mentioned; nor was the possibility of complaining to any independent regulator.

79. The letter also included the following passage containing the defamatory statements now sued upon:

“Within your correspondence you have referenced an individual by the name of Sasha Rodoy. The individual concerned is a vexatious individual, who is a self-confessed and known fraudster, currently using the name Sasha Rodoy, however she has previously been known as Sasha (Susan) Hutchinson. The individual was not treated by, and has never been a patient of, Optical Express. This person unfortunately does troll Optical Express and many of our team online. In the past, this trolling has been to such an extent that we have had to involve the Police in the interest of employee safety.”

80. Having seen Ms Arthur give evidence, and having read her correspondence, I would not have expected her to drop her complaints against Optical Express without taking them elsewhere. But that is what she eventually did. She continued to complain, and she continued to attend appointments, but nothing was done to improve her vision and nothing was done to provide her with money compensation.
81. I find that, had she retained the support and advice of Ms Rodoy she would have been better equipped to find the avenues open to her which did not depend on concessions from Optical Express which, Optical Express had made clear, would not be forthcoming unless some external pressure could be applied to them or some external decision imposed upon them. I find that it was the defamatory remarks which caused her to forego that support and advice.
82. I accept the evidence which Ms Arthur gave about the effect of the defamatory remarks on her.

“The letter made me doubt Sasha and because of it I did not want to be involved with her. I did not want to take advice from a fraudster. The letter caused me to question whether the case studies set out on Sasha’s website were true. The letter made me believe that the website might contain fake comments and fabricated stories about Optical Express. The fact that the allegations were made by such a large established company caused me to take them seriously. I doubted the advice Sasha had given me and the advice offered on the website. I thought that if a massive company was saying stay away from Sasha, then maybe I should. Because of what was said in the letter, I did not contact Sasha again. After this my case against Optical Express went nowhere. It was difficult to take them on without any help and my confidence had been shaken by what I had been told about Sasha. The letter making the allegations against Sasha contributed to my decision to drop my case against Optical Express.

I was very worried to hear that Optical Express had had to get the Police involved; I was concerned that if Sasha was a fraudster, I might end up getting scammed myself, having to get

the police involved in the future. The notion that Sasha purportedly continued ‘trolling’ Optical Express staff online also made me feel very uneasy and directly contributed to my ceasing contact with Sasha. I did not want myself or my family to be harassed online, nor be associated with being a ‘troll’ myself, if involved with Sasha in any way.”

83. Ms Arthur dropped Ms Rodoy and had nothing more to do with her. As she said in evidence to me at the end of her cross-examination:

“After reading the letter I did believe Optical Express, what they said, because such a large company trusted for many people, I thought they must be like telling the truth, so I didn’t want to get involved with it. I lost confidence with Sasha unfortunately and I had to just cut contact. Me and my husband run a social media company so we have to make sure our public image is preserved at all times, so I didn’t want to get involved with Sasha if what Optical Express said was true.”

84. Much later, and as a result of these proceedings, Ms Rodoy’s solicitors eventually obtained an unredacted copy of the letter sent to Ms Arthur which enabled them to contact her. Ms Arthur was persuaded that the allegations were false and she agreed to give evidence.
85. I am satisfied that the defamatory statements about Ms Rodoy in the letter to Ms Arthur dated 17 November 2021 caused harm to her reputation which was serious. They were grave allegations from a credible source in respect of a person whom Ms Arthur had only briefly spoken to, on the telephone, but whose reputation (derived from her examination of the OERML website over several hours) she had previously respected and valued. The effect of the statements was to ruin that reputation with the result that Ms Arthur felt bound, on the grounds of her diminished reputation alone, to cut her off entirely.

*Letter to James Marshall dated 27 July 2020*

86. In the case of James Marshall, I do not have the benefit of any evidence from him. This is because he declined to speak to Ms Rodoy’s solicitors.
87. I do, however, have a documentary record which allows me to piece together some evidence apart from the exchange of correspondence including the letter of 27 July 2020 which contained the defamatory allegations.
88. Mr Marshall appears to have had eye surgery with Optical Express on 14 June 2019. He gave negative feedback. This prompted a call to him from Optical Express on 17 July 2019 during which he said (as indicated by a call record) that he was very unhappy with the visual outcome. His vision was not improving. He felt he needed help because it was having a detrimental effect on his life.
89. He was still unhappy on 8 September 2019 when he emailed Optical Express asking “what you intend to do to give me my eyesight back which I was told I would have!”. He said his eyesight had not improved and was “still terrible and worse than pre op”. It

had been the worst three months he had faced with “big restrictions on many activities” including his working hours. He said he was seeking a second opinion “due to the lack of interest from OE”.

90. Records made by Optical Express painted a relatively rosy picture of Mr Marshall’s satisfaction with them but this was clearly refuted by direct messages from him. This is similar to the position with Phoebe Arthur, in respect of whom a note was made suggesting she was “generally very happy with her vision” whereas, as she told me in evidence and I accept, she was not happy at all. All Optical Express’s records have to be treated with caution when referring to levels of patient satisfaction. They are not reliable on that point.
91. On 12 September 2019, Judith Murdoch sent Mr Marshall a letter rejecting all his complaints.
92. On 18 September 2019, he responded, saying:

“Thank you for the condescending letter; however, I don’t think you can appreciate my frustration regarding your continued poor aftercare treatment. It has been disgraceful and continues to be so!”
93. Mr Marshall gave details. He said the impact of Optical Express’s “terrible” service and level of care continued to have an impact on his every day life which he described as “at times unbearable both mentally and physically, let alone the impact it has had on family and work colleagues due to my reduced hours.”
94. Further email correspondence followed from which it is evident that Optical Express offered reassurance (such as “Your continued feedback is important to us, and we will now fully investigate the additional points that you have brought to our attention”) and Mr Marshall continued to be frustrated, dissatisfied and, indeed, outraged by a lack of substantive action or redress and some further failures (such as giving him eye drops which were past their expiry date). He said he was paying privately for the opinion of a specialist at Moorfields eye hospital, because of contradictory information received from Optical Express.
95. On 21 November 2019, Mr Marshall sent a long email to Optical Express stating that he had had eye surgery (which, according to Colin Berry, he received from Optical Express free of charge) and was now “looking to pursue a claim for compensation for various reasons as detailed below.” After giving those detailed reasons, he asked for a response within a week, or else “I will take this further.”
96. On 14 December 2019 he received a reply from Colin Berry rejecting all his complaints and claims (except that he was incited to submit “copies of any travel and accommodation receipts... for our consideration.”) His request for compensation was declined. The fact that he was given out of date eye drops was admitted but he was told it did not matter.
97. The basis of some of the rejection was on its face flimsy; for example, when Mr Marshall said what he had been told, his account was rejected because “I am unable to find any notes which suggests that a member of staff advised you in this way”.

98. Mr Marshall responded on 15 December 2019 saying this was an “expected generic reply”. He complained that he might have very limited night vision and his driving might be affected for the rest of his life, with an impact he described as “huge”. His vision was blurred and he could not see clearly.

99. He then introduced the name of Sasha Rodoy, and threatened to use her on his widely followed social media, in the following passage:

“Sacha Rodoy whom I know you are aware of but just in case you don’t, is the owner of the Optical Express ruined my life website and is desperate to publish my factual story with OE and the awful aftercare provided, the reduced vision and problems related to the surgery but mainly the terrible service and lack of care provided, I know that you work hard to preserve this terrible service via the NDAs you get your dissatisfied customers to sign but as I said feel it is my duty to inform potential customers of the issues they could face and to consider whether OE surgery is right for them, Sacha has already agreed to come on as a guest or to provide information we can use for my successful podcast to talk about the bigger than realised issue with many OE customers.

My podcast just for your information has been going for around 12 months and goes out at least once per month and already has a listener base of just under 10,000 listeners with downloads so far of over 100,000 and this is increasing month by month.

The listeners are all between 30-60 and so many are within the age range for laser eye surgery and/or NLR surgery and this would be a very interesting subject for our listeners which are global not just UK based, with so much to say on the subject we would dedicate at least 2 episodes to this subject, I would expect those listeners to spread the word as well which is usually instinctive!

We also have all the usual social media feeds and a YouTube channel coming in the next few months so we have a reach of thousands of people...”

100. The evidence of Mr Berry is that Mr Marshall had a post-operative appointment on 9 March 2020. It seems from an email Mr Marshall sent on 20 March 2020 that he was still dissatisfied. The disclosed papers do not include a substantive reply to the email of 15 December 2019 in which he had threatened to use Ms Rodoy to publicise complaints against Optical Express. This may be because an internal record of 20 December 2019 said that Mr Marshall was “happy with outcome” and “therefore will not be responded to.” I am satisfied that this was not true. He was not all happy with the outcome, as his own continuing communications powerfully demonstrated.

101. Eventually, on 27 July 2020, he did receive the sort of detailed point by point reply which had been sent to the other patients I have mentioned. Mr Mouldsdale described it in his evidence as “a standard response”. It was again signed by Mr Berry. Mr Berry

said that the delay in response was due to Covid. The response rejected all Mr Marshall's complaints and claims, including his claims for refunds and compensation. It expressed the view, notwithstanding everything that Mr Marshall had said, "that your procedure has been successful" although "I acknowledge your dissatisfaction with the visual outcome". But it also included the standard form defamatory allegations against Sasha Rodoy, as follows:

"I note in your correspondence you have referenced an individual who has offered you assistance in receiving a refund of your treatment fee. The individual concerned is a vexatious individual, who is a self-confessed and known fraudster, currently using the name Sasha Rodoy, however she has previously been known as Sasha (Susan) Hutchinson. The individual was not treated by, and has never been a patient of, Optical Express. The person unfortunately does troll Optical Express and many of our team online. In the past, this trolling has been to such an extent that we have had to involve the Police in the interest of employee safety. I attach some background information that is in the public domain to give you a clearer picture of the type of character we are dealing with."

102. Contrary to the reference to "some background information" being attached, Optical Express accepted at trial that no such information was attached, because of what was said to be a mistake by Mr Berry.
103. Mr Berry gave evidence. He said that he had been told before July 2020 that Mr Mouldsdale had drafted a paragraph to be used when responding to patients who mentioned Ms Rodoy and he therefore included the words in question in his letter to Mr Marshall, which he understood to be "a direct dictation of the words Mr Mouldsdale wanted to be used". Mr Berry recalled that Mr Mouldsdale also instructed that press articles should be enclosed to support the allegations but he in fact failed to enclose them, for reasons he cannot now remember.
104. No response from Mr Marshall is included in the disclosure from Optical Express. The next and, indeed, only document in the disclosure which is dated after the defamatory letter of 27 July 2020 is an email from his partner dated 13 August 2020 saying he had obtained a second opinion confirming that he did have a residual prescription in his eyes and also blepharitis (inflammation of the eyelids). She said "no one has contacted him in his latest requests."
105. As I have mentioned, Mr Marshall gave no evidence because he declined to speak to Ms Rodoy's solicitors. I think this is probably because her reputation has been so damaged in his eyes by what Optical Express told him about her that he is reluctant, even now, to have anything to do with her, even through solicitors.
106. I conclude, on the basis of this evidence as a whole, that Mr Marshall went from seeing Ms Rodoy as a credible person with a good reputation in the field of patient experiences of refractive eye surgery, who would make a suitable guest for his popular podcast, to wanting to have nothing to do with her, as the sole and direct result of what Optical Express had said about her in their letter to him of 27 July 2020. I am satisfied that the

damage to her reputation was serious. It was never repaired, because he declined to engage with her or her representatives.

107. I have not based this conclusion on the evidence of the other patients who did give evidence. However, the known reactions of those patients to receiving identically worded letters gives further support to it.

*Conclusion on serious harm*

108. I therefore find that serious harm was caused to Ms Rodoy's reputation by each of the letters, even taken in isolation from each other.

**Issue 2: Were the defamatory allegations substantially true? (see section 2 of the Act).**

109. Section 2(1) of the Act provides:

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

110. The burden of proving it is “substantially true” is on the defendant.

111. By section 2(4) of the Act the statutory defence of substantial truth replaces the common law defence of justification. However, the common law principles applied to the former defence of justification before the coming into force of the Act provide guidance which may be applied to the section 2 defence of truth: *Dhir v Saddler* [2018] 4 WLR 1; [2017] EWHC 3155 (QB), at paras 67-68 per Nicklin J.

112. An imputation may be substantially true without being literally or entirely true.

113. Per Lord Shaw of Dunfermline in *Sutherland v Stopes* [1925] AC 47 at 81:

“a view meticulously taken... of the words of a libel is not sought for [so long as justification] applies truly to the substantial matter, criminal, nefarious, or contemptible, which the libel as a whole did affirm.”

114. In the same case, Viscount Cave LC (at p 59) and Lord Carson (at p 95) endorsed the proposition that:

“So much must be justified as meets the sting of the charge; but if anything be contained in a charge which does not add to the sting of it, that need not be justified.”

115. All that is required is that “the sting of the libel or, if there were more than one, the stings of the libel should be made out” and Lord Shaw (at p 79) gives an example of an allegation which is littered with factual mistakes but nevertheless remains substantially true:

“If I write that the defendant on March 6 took a saddle from my stable and sold it the next day and pocketed the money all without notice to me, and that in my opinion he stole the saddle,

and if the facts truly are found to be that the defendant did not take the saddle from the stable but from the harness room, and that he did not sell it the next day but a week afterwards, but nevertheless he did, without my knowledge or consent, sell my saddle so taken and pocketed the proceeds, then the whole sting of the libel may be justifiably affirmed by a jury notwithstanding these errors in detail.”

116. This has been the law for 100 years and more. It was reaffirmed (for example) in *Chase v News Group Newspapers Ltd* [2002] EWCA Civ 1772; [2003] EMLR 11 at para 34:

“The defendant does not have to prove that every word he/she published was true. He/she has to establish the “essential” or “substantial” truth of the sting of the libel.”

117. When the statement complained of conveys more than one defamatory imputation or meaning (as, in this case, where the meanings include both “The claimant is a fraudster” and “Her dishonesty extends to using different names or aliases”), section 2(3) provides:

“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.”

118. In this sub-section, the word “imputations” has the same meaning as “charges” in section 5 of the Defamation Act 1952 which it rewords and replaces without creating any change of substance (see para 17 of the Explanatory Notes to the Defamation Act 2013, “These provisions are intended to have the same effect as those in section 5 of the 1952 Act, but are expressed in more modern terminology.”).

119. It follows from what I have said that if one defamatory allegation (A) is proved to be substantially true, and another defamatory allegation (B) is not proved to be substantially true but does not increase or add to the serious harm caused by allegation A, the defence of substantial truth will succeed. This is the effect of section 2(3).

**Meaning 1: Ms Rodoy is a fraudster. Her dishonesty extends to using different names or aliases.**

120. Optical Express's case is (based on section 2(1) of the Act) that “the imputation conveyed by the statement complained of is substantially true”, the burden of proof being on them. The evidence relied upon is a documentary record (including press cuttings of interviews with Ms Rodoy) supplemented by evidence from Ms Rodoy herself, particularly in cross-examination. Ms Rodoy herself relied to some extent on the press cuttings in order to supplement her own limited memory of events which took place some years ago.

121. I find the following facts proved.

122. Ms Rodoy was born in 1953. As a child, her name was Susan Hutchinson. From about the age of 17 (that is, in about 1970), she was known as Sasha Hutchinson. She worked as an actor for a time, and her stage name was Sasha Hutchinson. She formalised the name change from Susan to Sasha by deed poll when she was in her late thirties (that is, before or after 1990). In 2000 she married and her married surname became Rodoy. Her name has been Sasha Rodoy since then. It is the name on her passport.
123. When she was about 40, she became a mature student at a university. While she was studying, she agreed to help a woman who was estranged from her husband and wanted grounds for a divorce from him which he was not agreeing to.
124. The husband was interested in cross-dressing (he described himself, in the language of the time, as a transvestite). He put an advertisement in *Time Out* magazine referring to this and said he was looking for a “female partner with own pad”. Ms Rodoy was a friend of the wife’s solicitor and she agreed to respond to the advertisement. She was given a list of questions to ask the man so that his answers could be used by his wife in evidence in her divorce case, probably (Ms Rodoy told me) about his interest in cross-dressing, although she no longer remembers them. They met at a public house in Hampstead. Ms Rodoy was playing a role, drawing on her acting experience, which (she told an *Evening Standard* journalist in January 1994) meant she “did not find it very difficult”. The journalist said that Ms Rodoy had been “hired” by the wife’s solicitor, but in evidence Ms Rodoy to me said she was not paid. However, speaking to the *Mail On Sunday* in July 1994, she said she was paid £200 and in her witness statement for this trial she also said she was “hired to give evidence”. I am satisfied she was paid.
125. She told me “It wasn’t my place to consider his feelings. I had done a job as a favour for a solicitor” and “I probably enjoyed it”. She denied seeing him as a sad character but *Women’s Realm* in May 1994 reported her as saying that afterwards she felt sorry for “deceiving” the husband and that he seemed “a sad character”. The *Evening Standard* reported her as saying “it was great fun”. In evidence, she doubted she had found it fun but did not deny it because she could not remember.
126. She told *Women’s Realm* that the husband did not know “my real name” but in evidence to me she said she thinks she used her real name and not a false name. It seems more likely she used a false name.
127. She gave evidence at the divorce trial. She told me that the husband was not there but, in an interview published in *Women’s Realm* in May 1994, she said “He looked surprised when he saw me in court” and it seems more likely that he was present throughout his own divorce trial.
128. I find that Ms Rodoy was paid to deceive a man into thinking she was genuinely interested in him and that she used a false name as part of the deception. In return for her money, and in the course of her deception, she obtained information about him which was used in a divorce case during which Ms Rodoy gave evidence.
129. A few days after the hearing, Ms Rodoy gave an interview about the episode to the *Evening Standard*, which was published on 27 January 1994. After reporting the facts of Ms Rodoy’s role in the divorce case, and her own account of what she did, it ended with this paragraph:

“Currently combining her work with studies as a third-year psychology student, Sasha plans to set up an agency specialising in the work. The name has already been established – Decoy Dolls. Only bright and beautiful women need apply, she said. Adulterers beware, your doom may be elegantly packaged.”

130. This had been prefigured in the opening paragraph which described Ms Rodoy as: “a new breed of private investigator specialising in tracking and trapping philandering husbands.” “She acts as a ‘decoy’, a woman hired by a wife to gather the most intimate details about a wayward partner.”
131. In fact there never was an agency called Decoy Dolls and Ms Rodoy never intended to establish one. However, she found a ready market in the press for stories and interviews about this mythical agency for which she was paid substantial sums of money.
132. In her evidence, she said that the idea came from the press and not from her. She said that it was the *Evening Standard* journalist who was keen to improve the divorce story and “repeatedly suggested that I say that I was going to set up a detective agency to do work of this sort” although she herself came up with the name “Decoy Dolls” for him. She also said that “What followed was entirely driven by the media” and that perhaps 8 out of 10 of the journalists who reported and paid for “Decoy Dolls” stories knew they were untrue. It is her case that she was never proactive in pushing the “Decoy Dolls”; only reactive. She pleads (in para 5 of the Amended Reply) that she was contacted by journalists, offered money to provide the relevant false information, which she accepted; but she “did not approach journalists with stories”.
133. I will not draw my own conclusions about that until I have gone further into the evidence, including inconsistencies and contradictions between Ms Rodoy’s evidence at trial and the documentary record purportedly based on statements she made to a string of journalists who reported them.
134. The *Evening Standard* article was a big splash, covering the full width of an inside page and featuring a photograph of Ms Rodoy taken by the *Evening Standard* photographer which was more than half the width of the page.
135. In cross examination, she denied doing the interviews (including this one) as a way to make money. She said in evidence “I did it primarily because I was being chased and it was fun” although “The fact that I got money for it was an added bonus”.
136. However, when she was quoted in the *Mail on Sunday* in an article published a few years later on 6 July 1997 as admitting that it was “hype, hoax, a complete and utter scam” the *Mail on Sunday* report (headlined “Mistress of Deceit”) also said:

“She did it for the money. She's reluctant to reveal precise figures, but each time she has shared her story with the media, she has insisted on receiving payment. In the early days a typical fee might have been £50; by the end, it was nearer £1,000. With more than 50 appearances in the British media, and many more overseas, this represented a sizeable income. Her overheads, meanwhile, have been nil. Hutchinson owns a light, airy flat on a London council estate next to the North Circular road, the

closest Decoy Dolls has ever come to an office. Here, there are no files, no records, no camera equipment. But who needs props when Decoy Dolls' best-selling point has always been its founder?"

137. Although not reported as direct speech, the first sentence of this extract reads, by reason of the second sentence, as something she had told the journalist and I find that she did tell the journalist this. I find that she said it because it was true. She did it for the money. I reject her evidence to the contrary at the trial. She did not directly allege that "She did it for the money" had been made up, but she said this in cross examination:

"Q. Next paragraph: "She did it for the money. She's reluctant to reveal precise figures, but each time she has shared her story with the media, she has insisted on receiving payment." So do you accept that you insisted on receiving payment for every article you did and every interview?

A. I don't, I don't.

Q. So did the Mail on Sunday make up that?

A. I don't know if it was misconstrued or if it was said for the interview. I do not recall. But, as I've already said to you in relation to other articles, I didn't always get paid, therefore I can't possibly have insisted on being paid."

138. Her evidence therefore was that "She did it for the money" was derived from her, either because by the journalist's mistake ("I don't know if it was misconstrued") or because she said it but did not mean it ("or if it was said for the interview"). I find that the journalist was not likely to make a mistake on such a simple and intelligible point and that the journalist reported it because that is what Ms Rodoy told her. I also reject Ms Rodoy's alternative explanation that, if she did say it, it was "said for the interview" but not true. She had no reason to say it if it was not true. Any motive would have suited the story just as well. Ms Rodoy said "She did it for the money", I find, because that was true.

139. As to the evidence quoted above that "I didn't always get paid", I reject that also. I think it is more likely that the *Mail on Sunday* article reported that "each time she has shared her story with the media she has insisted on receiving payment" because this is what she told the reporter, and that the reason she said this to the reporter is that it was true. This was at times admitted even in cross examination:

"Q. But you were paid each time you gave an interview?

A. As I recall, yes.

Q. And those fees ranged from £50 in the early days to near £1000 at the end, yes?

A. Probably."

140. Not all the interviews she gave have been disclosed and, at this distance of time, it has not been possible to trace all of them. I accept her evidence that she gave more interviews than are in the bundles and that she did not keep more than “a couple, literally” of the publications in question, which was a good reason for not disclosing more. Although I do not have anything like this number in the trial bundles, I accept from the *Mail on Sunday* article that by the date of that article in July 1997 she had racked up “more than 50 appearances in the British media, and many more overseas” and that she derived “a sizeable income” from this. I reject her efforts in cross examination to play down both the number and the income.
141. What I do have is, I find, consistent and therefore able to give a flavour of the reports I do not have.
142. I have a full page article, with a different photograph of Ms Rodoy, published in *Women’s Realm* on 7 May 1994. After explaining her role in the cross-dresser’s divorce case, the article reported (I find, from what Ms Rodoy said directly to the journalist, in exchange for money) the following elaborate untruths:

“Sasha was so inspired, she set up a business called Decoy Dolls. She and her four recruits specialise in catching philandering husbands. They charge a basic rate of £500. For that, the decoys compile reports and photographs, and are prepared to give evidence in court.

‘My girls are intelligent and discreet,’ says Sasha. ‘One woman told me she wanted to be a decoy because she hated men. Needless to say, she didn’t get the job.’”

143. Next, I have a three-page article (including a full-page posed photograph of Ms Rodoy) from the June 1994 edition of *Woman’s Journal* which also featured on the front page. I find that everything in this article was based on what Ms Rodoy had told the journalist, although, on her own admission, nothing in the following extract was true. It goes well beyond the initial lie that Decoy Dolls was a real agency. The additional lies on top of that added colour and verisimilitude to the story in a way which will have enabled its prominent positioning and justified (on the mistaken assumption the details were true) the money Ms Rodoy earned for it.

“It seemed to Sasha there could be a career opportunity in acting as a decoy - not just in divorce cases, but where a woman simply wanted to know if her husband was playing around.

Sasha Hutchinson no longer works ‘in the field’ herself, but employs at least three women at any one time who are ‘active’. Prospective detectives have to come up to scratch. ‘I had one job applicant who phoned on her mobile phone to say she was scared to walk in the dark. She couldn’t find my flat and was going back to the station to get a cab. And she wanted to be a detective? Pleez! It’s not a glamorous job. The decoy has to be attractive, but bimbos are definitely out. She has to have brains, discretion and a good memory. Some women have the wrong attitude too.

It's not a matter of "getting one over on the bastards [men]". It's just a job."

(...)

A detective agency may charge about £22 an hour. Sasha asks for a flat fee of £250 after discussing the case with the client. 'I find that many women back out at this early stage because really they don't want to know the truth about their husbands or boyfriends.'

One of the Decoy Dolls is then dispatched to follow the man. If he meets a woman, she operates as any private detective would - makes notes, takes photographs and reports back. But if he is alone, she tries to make contact, draw him out, get the 'my wife doesn't understand me' story, and set up another date. If it goes to this stage, a second fee of £250 becomes payable as a final settlement.

'That's as far as it goes,' says Sarah firmly. 'A handshake and an arrangement to meet again. After that the wife might go on the date, instead of the decoy, and confront her husband.'

Problems can arise. On one assignment, a decoy who had struck up a conversation with the client's husband was seen by one of her own husband's friends. Fortunately her husband knew she was a decoy."

144. All of this was invented, including but not limited to the claim that she employed "at least" three women who were active in the agency at any one time. But Ms Rodoy went further. In order to provide yet more substance to the story, she recruited one of her friends, not to be a decoy for Decoy Dolls (which did not exist, and employed no decoys) but to pose as a former client to the journalist and to support the story. This was reflected in a passage in the article sub-headlined "The Client's Story" in which the experience of a wife whose husband had been caught by Decoy Dolls in an affair was reported in her own words, the wife being named as "Philippa Gilbert". Ms Rodoy admitted in evidence that this was "a very close, old friend of mine" whose real name was not "Philippa Gilbert". When getting her involved, I find that Ms Rodoy suggested the use of the false name (although her evidence was "I probably said you should do, but, again, I don't remember"). This was very much Ms Rodoy's creation and she will have wanted to make sure that the false identity was disguised with a false name.

145. At the end of the *Women's Realm* article, Ms Rodoy's contact details were prominently published, in italics, as follows:

"Decoy Dolls can be contacted on 081-365 3628"

146. In cross examination, she accepted that this was her own telephone number at that time, but she said she did not remember whether she asked the journalist to put it in. I am sure she did. The journalist could not have published the number without being given it, and the journalist would not have taken it on herself to publish the number (which is

an unusual thing to do, at the end of an interview) without being asked to do it. I find (although Ms Rodoy was reluctant to accept this) that she wanted her phone number published because she wanted other journalists to be able to contact her for other stories for which she would receive further payments, although she knew these stories would be untrue. Ms Rodoy admitted that, after publication of her phone number, she received calls, “usually press” and that having her telephone number there was a way of getting more interviews, for which she was paid.

147. The next report of “Decoy Dolls” I have is an article in *TV Quick* magazine for the week 16-22 July 1994. Again, the article was featured on the front cover. It was along the same lines as the articles I have already examined in detail. It reported Ms Rodoy as having formed “a unique detective agency called Decoy Dolls”, and that “she employs at least three women at any one time.” A lot of circumstantial detail was provided and the wording came directly from Ms Rodoy, who was quoted directly as well as indirectly. The words were not the same as in previous articles. This was not a cut and paste job. It was another interview, for which she will have received another fee. Once again, “Philippa Gilbert” was involved to provide “The client’s story”. One again, the article ended (I find, at Ms Rodoy’s request) with a phone number for Decoy Dolls which was, in fact, Ms Rodoy’s personal phone number on which she could be contacted.
148. Next in the bundle is an article from the *Glasgow Herald* dated 26 July 1994, headlined “No kissing, just telling” which refers to Ms Rodoy, but does not quote her directly.
149. A more prominent article was published in the *Sunday Telegraph* on 21 August 1994. It covered most of the page in what was then a broadsheet newspaper and included a new photograph of Ms Rodoy, straplined “Sasha Hutchinson of Decoy Dolls: ‘It is entrapment, but it’s perfectly legal’” It included the previous details, but added some new ones, such as “Decoy Dolls cannot keep up with the demand for its services.” It said that there were “three full-time decoys” but “There’s a list as long as my arm of girls wanting to work”. It said:

“Even so, the agency gets through only four cases a week, and it receives at least five telephone calls a day from women willing to pay £500 to put temptation in their husband’s way.”
150. Three brand new (and untrue) case histories were included. Ms Rodoy claimed “a 100 per cent success rate at proving infidelity in its first six months of business.” At the end of the article was a line with the “Decoy Dolls” phone number which was , in fact, Ms Rodoy’s own number, as before.
151. Ms Rodoy’s ingenuity in constantly embellishing and expanding what was already a fundamentally untrue tale kept the interviews, and the fees, coming. With each re-telling, new quotations and new details were added. In *Eva* magazine’s article published on 14 December 1994 (straddling two pages, with lurid typography and a photograph, but not of Ms Rodoy) under the headline “CHEAT IF YOU DARE!”, she provided the new quote “The world’s just bursting at the seams with two-timing men.” She now claimed that her clients included, not only wives, but “even the mistresses of married men” who “engage us to find out if their married lover has any other women on the side”. At the end, after a red bullet point, the article said “Decoy dolls can be reached on 081-365 3628”.

152. The trial bundle also included what I find (based on what Ms Rodoy later told the *Mail on Sunday*) to have been one of numerous articles published overseas (more than 50, according to the *Mail on Sunday*) although it is the only example I have (leaving aside US TV broadcasts, which I will come to). This was a two-page spread in the Norwegian language publication *VG* dated 14 May 1995.
153. Ms Rodoy in evidence said she could not remember giving an interview to *VG* and, as the cross examination progressed, hardened her evidence to the point of saying that she did not accept, even on the evidence of the article, that the journalist had come to meet her in the flat and had interviewed her there. She said “I think I would at least have remembered her accent.” She said she was not paid for the article. She said: “I didn’t meet this journalist, so I don’t know how she could have believed anything I said.” She hinted that the details in the article, and the photographs which accompanied it, might have been copied from other publications.
154. The article does not look to me as if it has been copied from other sources. It includes two photographs of Ms Rodoy which are not in any of the other publications in the bundle. They are both clearly posed for the purposes of publication in support of the “Decoy Dolls” story; they are not straightforward portrait shots. One of them has Ms Rodoy at the steering wheel of a car holding a camera with a telephoto lens as if in the act of photographing a delinquent husband (but kept a little away from her face so that the picture shows her full profile without obstruction) and the caption is “SJEFEN SELV”, “THE BOSS HERSELF” with some additional description of her. The other is a photograph of her looking through an exotic, stylised, theatrical face-mask with the caption “BAK MASKEN”, “BEHIND THE MASK” and then text saying “The colourful theatre masks in Sasha’s apartment are a memory from her acting career, but also a symbol of her current job” (and so on). This image, also, has no parallel in any of the other publications I have been shown. It is echoed in the text of the main article, which includes the following passage:

**“The Masked Truth**

We meet Sasha Hutchinson in her apartment in Muswell Hill, London. The walls are decorated with colourful theatre masks — a nod to her acting career and a symbol of her current job.

The inviting face that men meet at a restaurant is just a mask.  
Behind it hides a suspicious wife, full of doubts.”

155. This text is unambiguously claiming that the article is based on a personal interview given by Ms Rodoy to the Norwegian publication in her own home in Muswell Hill. I reject Ms Rodoy’s evidence that this is not what happened.
156. Her evidence, while not conceding the fact, gave support to it by admitting there were masks on her wall, when suggesting that the photograph was taken from another publication (no details of which were given by her in her evidence):

“...there were photographs of the masks on my wall in other publications as I recall. Again, I cannot remember that long ago for something that is now so inconsequential to me.”

157. That suggestion is not credible. I am satisfied that the article is what it says: an exclusive interview conducted at Ms Rodoy's own flat by the Norwegian journalist who wrote the article published in *VG*. It included quite elaborately posed photographs. Ms Rodoy will, I find, have insisted on payment. I find it hard to believe that this was something so inconsequential to her that she now has no memory of it at all, not even with the prompting provided by the article itself and by the photographs. This was an unusual interview, even by the standards of the other interviews I have been shown. I think it is most likely she does remember it.
158. Her evidence on this point adds to conclusions I have already mentioned on other points in which the evidence Ms Rodoy gave at trial was at odds with other evidence and with the inherent probabilities, such that her evidence did not seem to me to be correct. Taken together, they lead me to conclude that Ms Rodoy was an unreliable witness, in the sense both that her evidence was at times factually wrong, and in the sense that the error was not based on simple misrecollection or misconstruction, but on her tending to give the evidence she thought would be most helpful to her case, without particular regard to whether it was true.
159. As before, the *VG* article provided new details which were not in earlier reports. Ms Rodoy increased the numbers of staff she attributed to her fictional Decoy Dolls agency from what had been only three women, reportedly saying "she regularly hires four to five women aged 20 to 40, and has a long list of freelancers eager to work".
160. The "Mistress of Deceit" article published in the *Mail on Sunday* on 6 July 1997, which I have already mentioned, is the next print publication in the bundle. Notwithstanding Ms Rodoy's evidence at trial to the contrary, I am satisfied that everything in the article was a faithful report of what she had told the well-known journalist under whose byline it appeared. However, I do accept Ms Rodoy's explanation for giving the interview, although it exposed Decoy Dolls as a fiction. Her explanation, both at the trial in her evidence, and when interviewed by the *Mail on Sunday* for "Mistress of Deceit", was that she did this because she had been offered a television slot as an agony aunt "and I wanted to clean up my reputation". She did not say that she gave the exposé to the *Mail on Sunday* because the story was no longer being picked up or because it had ceased to be an occasional source of income. That was not the case.
161. I find proved from the evidence of the "Mistress of Deceit" article in the *Mail on Sunday* the following facts, because they are what Ms Rodoy admitted or confirmed to the journalist at the time, and they are facts stated closer to the time in question, so her memory was clearer and more reliable than it is now, and they are each inherently probable in the light of the evidence as a whole including but not limited to the articles I have already examined.
- i) Decoy Dolls had been covered "more than 50 times in the past four years" in British media alone and "many more overseas". This included publications that are not in the bundle, such as an article in *The Sun* in February 1994 headlined "She's a Rat Catcher" and an article in the *Daily Express* in October 1996. Every foreign language publication had the advantage of a market in which the British media appearances were unlikely to have penetrated. Therefore, it is plausible that there were more appearances in overseas media than in the British market which, after more than 50 appearances, was likely to be closer than the overseas markets to saturation.

- ii) In the intervening period, Ms Rodoy, often with a “client” (variously described as ‘Carol’, ‘Carole’ and ‘Christine Oliver’ but actually a fake, procured by Ms Rodoy for the purpose), had appeared on numerous radio interviews and on more than two dozen television chat shows - among them *This Morning*, *Kilroy* (twice), *Vanessa* (Feltz) and *Esther* (Rantzen) - as well as several documentaries.
- iii) Decoy Dolls did not really exist. The only true part of the reported stories was when they reported on the original sting she had organised at the expense of the cross-dresser. Everything else had been “hype, hoax, a complete and utter scam”, which are the words used by Ms Rodoy herself when talking to the *Mail on Sunday* journalist.
- iv) No-one ever checked the story (“Not once did anyone check me out”).
- v) Ms Rodoy recruited “two friends to play the part of her ‘clients’” who were, likewise, taken at face value. One of them was also interviewed for the *Mail on Sunday* story.
- vi) Ms Rodoy did it for the money and by doing it obtained “a sizeable income” with practically no offsetting costs or expenses.
- vii) Every time she gave the story to the media, she “insisted on receiving payment.”
- viii) The first fee was in the region of £50 but this went up to a rate which was, in the end, near to £1,000.

162. On the other hand, I reject some of the facts alleged in the “Mistress of Deceit” article:

- i) Decoy Dolls coverage was not “the media feeding off the media”. It was actively promoted by Ms Rodoy herself, not only by providing the original story, but by canvassing for further interviews after the first one, taking active steps to publicise her contact details and providing new content in terms of both new facts (or alleged facts), fresh quotes and bespoke photographs, so that every story had value even to someone aware of the gist of stories which had gone before.
- ii) Ms Rodoy lied when she told the *Mail on Sunday* “I never said I want to make the world a better place, nor that all men were bastards, nor that I had three decoys working for me.” She in fact said all those things and that is why she was reported as saying them. Ms Rodoy was able and willing to make up plenty of material for the journalists; there was no need for them to make anything up.
- iii) Ms Rodoy was wrong when she suggested “I’m sure a number of journalists and TV researchers knew I wasn’t who I seemed”.
- iv) It was also not true when she claimed that the original *Evening Standard* journalist had encouraged her to suggest that she was setting up an agency in order to make his story more colourful. Ms Rodoy was a colourful and articulate character with an acting background, a lively imagination, and an instinct for and interest in publicity. She needed no prompting and acted without any

prompting when she came up, not only with the name Decoy Dolls (which she said in evidence she did on the spot, and was proud of), but with the whole idea.

163. The “Mistress of Deceit” article was published on 6 July 1997 but it was not the end of Decoy Dolls. Ms Rodoy gave an interview to *NorthWest* magazine (covering North West London, where she lived) which was published in its May 1999 issue. She said: “I wish I was still doing it. I had so much fun.” She admitted that everyone had been deceived and that no-one (with one unnamed exception in the form of a TV show producer) knew the truth, although she was reported as

“...dying to tell people it wasn’t true. She was amazed when it wasn’t checked out. “They wanted to believe it,” she says.”

164. *NorthWest* reported that the “Mistress of Deceit” confessions were not picked up by any other paper. It went on to say:

“Even now she gets calls from the media about the agency. Just last week the *Barbara Walter Show* invited her to appear.”

I find that this is what she told *NorthWest* at the time and that it was true. In evidence, she said “There was one documentary and that was for Barbara Walters’ *20/20* (...) they sent over a film crew.”

165. Ms Rodoy disputed the authenticity of a purported transcript of a different US television show, which was dated October 1999 from the ABC channel. She said she did not remember it and could say she did not give the interview because it included information that was wrong, namely, that she gave more than 20 television appearances whereas, she said in evidence, she “only gave a few, perhaps less than six”. I have examined the transcript although the defendant has not been able to find a corresponding recording, and so I heard no recording. The transcript has every appearance of being authentic and I accept it as authentic. I am not persuaded by Ms Rodoy’s reasoning that it exaggerated the number of her television appearances and so cannot be genuine. Her evidence to me was that she was “very in demand for interviews” and that lawyers for morning television shows were “fighting over who had rights to my interview. That’s how in demand I was for interviews, because this was a great sexy story.” In any case, even if there was some exaggeration, it is more likely that this came from Ms Rodoy in the course of a genuine ABC interview as reflected in the transcript than that the transcript is a fabrication, or inaccurate, or that (as she also suggested) there might have been an ABC broadcast but she had nothing to do with it and it was plagiarised from other sources without her involvement. Plagiarism is more difficult in a broadcast segment than in print media and Ms Rodoy was more than willing to appear on television if asked. She never turned an invitation down, so far as I can see from the evidence, and there were many of them, on her own evidence. The ABC transcript records Ms Rodoy being broadcast as saying “Hello. This is Decoy, darling, your confidential investigation service.” This would have been staged, just as the *VG* photograph of her with a long-range camera was staged, and suggests personal participation by Ms Rodoy in the broadcast. The transcript ascribed the questioning of Ms Rodoy to the same ABC journalist (“Roberts”, originally “Deborah Roberts”) who had voiced earlier parts of the ABC show, before it reached the Decoy Dolls story. Ms Rodoy suggested this was a mistake, but I do not think so.

166. The ABC transcript is dated Wednesday 20 October 1999, and covers a show (“20/20”) said to have been broadcast at 10 pm Eastern Time on that day. This was after the “Mistress of Deceit” article in 1997, but that does not mean that the date must be wrong. Ms Rodoy had herself told *NorthWest* that the article had not been picked up by any other paper and the USA would still have been fertile ground for another Decoy Dolls story. However, the ABC broadcast was, like the *Mail on Sunday* story, on the basis that Decoy Dolls was fake. Roberts said that journalists in Great Britain “were repeatedly scammed by an unemployed actress who was so adept at pulling off hoaxes that she managed to deceive even seasoned reporters”. That was a reference to Ms Rodoy and the information came, I find, directly from her. She also made other admissions about things she now disputes. She said “I got paid for every interview I did”; “I wouldn’t do anything for nothing. It was such fun.” She said “I used to just go and fib” and that nobody every tried to do their homework “Nobody, nobody ever did”.
167. Looking at the evidence of the Decoy Dolls interviews as a whole, I reject on the evidence Ms Rodoy’s case that this was “entirely goaded and encouraged by the media”; and that it was no more than a “prank” and no more than “amusing entertainment”. On the contrary, this was a systematic money-making exercise on her part. The motive was to make money. That was the whole point, although she did enjoy it too. Just as she had deceived the man with the advertisement in *Time Out* for money, she would not have come up with the Decoy Dolls idea, and run with it for years, if it had not been for the money. She always asked for money. She insisted on it. If she was not paid, she was not interested. She was not goaded and encouraged by the media. She needed no encouragement. This was her idea and she promoted it, for example by having her telephone number added to the end of articles, not so that “clients” would call (because, if they did, she did not accept them) but so that other journalists could contact her.
168. Her evidence at trial on whether the journalists knew she was making this up (so they were not deceived) was inconsistent. Sometimes she was happy to try and implicate the journalists in the lies. That was certainly her opening and primary case. In her witness statement (her evidence in chief) she said “Journalists encouraged and embellished the story, and although I made clear to them it was a prank, they continued to present it as real business”. At one point in her cross examination there was this passage:
- “Q. Going back to the print journalists, and we’re talking about newspapers and 30 magazines, what proportion of them do you say knew that the story was false: half, three-quarters, most, 90 per cent?
- A. I would say most. It was like they just wanted a good story.
- Q. Most of them knew it was false?
- A. Yes.
- Q. Would you say seven out of 10, eight out of 10?
- A. It’s really hard to put a stat on it, but let’s say eight out of 10.”
169. But she then pulled back from asserting journalists knew, and began to equivocate:

“Q. (...) And what about television journalists? How many of them knew it was false because there was no Decoy Dolls?”

A. I couldn't answer that.

Q. Have a go.

A. I can't. I can't speak for them.

Q. Would you say most?

A. I don't think I can speak for them.

Q. And the print journalists, your case is they were happy to lie to their readers? Yes.

A. Yes.

Q. And they were happy to lie to their editors?

A. I've no idea. Again, I don't know what was said to their editors.

Q. And the television journalists, they were happy to lie to their viewers, were they?

A. They just wanted stories and they just saw what was in print. Again, I can't speak for what their motivation was.

Q. Have a go. So you think they were happy to lie to their viewers?

A. As I said, I can't speak for their motivation or their morals.

Q. But if they knew the story was false, they must have been happy to lie to their viewers.

A. That's your opinion.

Q. But what about your opinion?

Q. I can't speak for them.

Q. What about to their editors? Do you think the television presenters were happy to lie to their editors?

A. Same answer. I can't speak for them.

Q. Have a go.

A. No, because I can't speak for them.”

170. She ended by moving closer to what I find on the balance of probabilities to be the true position, which was that, whether or not she imagined that journalists might guess that the story was too good to be true, she did not tell them that it was not true or that she had made it up. She admitted in cross examination that she could not say that she had told them.

“Q. When those journalists called you up, did you tell them it was a hoax, that there was no Decoy Dolls?

A. No. I may have told someone as it came to a close. I certainly told the Daily – The Mail on Sunday [i.e. in *The Mistress of Deceit* article].

Q. But before the Mail on Sunday, did you tell any other journalists it was a hoax?

A. I don't recall.

Q. Try your best.

A. I really don't recall.

Q. Did you get calls from potential, if you like, clients for Decoy Dolls?

A. I did get a few.

Q. And what did you say to those clients?

A. I counselled them and told them not to waste their money, their husband was obviously having an affair, “leave him”.

Q. Did you say Decoy Dolls did not exist?

A. No.

Q. So, you did not explain to them that in fact it was untrue?

A. No.

Q. Did it concern you that readers would have understood then that this was true when you were speaking to them and not telling them that it was untrue?

A. It didn't concern me but I don't see that I was at fault in any way because I wasn't hurting anybody and in fact on the odd occasion someone did call me asking for help, well hopefully I helped them with my advice.”

171. I find as a fact that the journalists did not know her story was not true. If she had wanted, she could have told them, but it was not in her interests to tell them and she did not tell

them. She would not have wanted to risk the money that was coming in by admitting her story was a fraud.

172. Whether or not the journalists cared whether it was true (as opposed to knowing it was not true) is a different matter. Perhaps some journalists did not care much. But that did not mean they knew it was not true. There is nothing in the evidence to suggest that they would or did know that. The story was plausible. Ms Rodoy was plausible. She brought friends in to corroborate it. They had no reason to suspect that it was completely untrue. The journalists were often named. More than one of them has a national reputation for serious and honest reporting. I am satisfied that most if not all of the people reporting on Decoy Dolls had enough integrity and enough concern for their own professional reputation not knowingly to print a story, or to pay for a story, except on the basis that it appeared to be true and they did not know it was not true. This increases the dishonesty on Ms Rodoy's part. The whole responsibility for that dishonesty, I find, rests on her.
173. Ms Rodoy regularly described her Decoy Dolls years as "a prank while I was studying at university". However, she was in her early forties at the time and so this was not a youthful indiscretion. It was the work of the mature person. It does therefore say something about her adult character. Selling false stories for profit is a fraud even if it is done while studying at university. It is also not what I think could be correctly described as a prank. It was an out-and-out fraud, perpetrated for money. A prank might be throwing someone in a river, or making an apple-pie bed, or posing as someone else as a joke but not for money. Selling false stories to the national press for four figure sums, and not just on a single occasion, but over a period of years, is not like that at all. It amply justifies the characterisation of the perpetrator as a fraudster.
174. In her evidence Ms Rodoy said "I feel that the fraudster allegation is far more serious because of the suggestion that I dishonestly try to trick people out of money". However, I find it proved that she did in fact use the Decoy Dolls fraud to trick journalists out of money, that she did so dishonestly and knowing that it was dishonest, and that she was successful. The truth only came to light when she herself achieved more publicity by giving the *Mail on Sunday* the "Mistress of Deceit" article. She did not do that because she had any interest in telling the truth. She did that in order to get ahead of a story which might damage her in a potential future career – and she did that for money too.
175. Do the facts I have found justify the description of Ms Rodoy as "a fraudster", in the present tense?
176. Ms Rodoy's conduct was, I find, dishonest as well as reprehensible. It was cynical and amoral. The dishonesty was sustained over a long period. She fraudulently procured very large sums of money by an elaborate deception. Notwithstanding the thrill and pleasure she gained from tricking journalists into paying her money for the lies, and her delight in her own cleverness in pulling it off, her principal and constant motive at this point was making money. She could, at that time, certainly be described truthfully as "a fraudster". She was a fraudster committing fraud; dishonestly fabricating a scam for money, and going to great lengths (including the involvement of others) to do it. This was no high spirited prank. Nor was it a youthful indiscretion.
177. The claimant, however, argues that, however bad it was, this was an incident that ended over 20 years before she was defamed (in 2020 and 2021) as "a self-confessed and

known fraudster”, with the result (it is argued) that the meaning “Ms Rodoy is a fraudster” (using the present tense) cannot be justified and was not substantially true. It is said that she could not properly and truthfully be described as “a fraudster” in 2020 and 2021, because the Decoy Dolls fraud was far in the past, and nothing like it had been repeated since.

178. To my mind, the answer to this point turns on whether she remained in 2020 and 2021 the person she had shown herself to be in the late 1990s when she perpetrated the Decoy Dolls fraud (immediately after her deception of the cross-dressing man). There have been many examples of wrongdoers and even criminals who, whether or not they were caught and punished for what they did, went on to reform themselves. It is not uncommon for people to recognise and regret past misdeeds, and to become honest and worthy people afterwards. Whole philosophies and religions have been founded on the principle that no-one is necessarily bad for ever, whatever they have done in the past. Anyone can change for the better.
179. Ms Rodoy, however, made it quite clear in her evidence that she did not regret what she did and saw absolutely nothing wrong with it. She did not repudiate her actions.
180. Her evidence was that, if someone had described her as a fraudster in the 1990s for what she was doing at that time:

“I don’t think it would have mattered to me whether it was – somebody did or didn’t call me a fraudster. It was so irrelevant to me. Sorry, not irrelevant but just not important.”

181. Then she gave this evidence:

“Q. Do you regret what you did in those false interviews about Decoy Dolls?

A. Only to the extent that I have to sit here and answer your questions. Other than that, it was such a small, a small thing in my mind.

Q. So you do not regret it.

A. Only because I have to answer your questions. That’s my only regret. It was so unimportant to me.

Q. Would you do it again now?

A. I think I’m a little bit too busy to do anything else other than the work I do now.

Q. Let us imagine that you were not too busy.

A. I can’t imagine it. My life is what I do.”

182. I find that Ms Rodoy is, in this respect, the same person today as she was 20 or 30 years ago. She was described in the letters as a “fraudster”, which was a description of her as a person; it was a description of her character as much as of her actions, although her

character as a fraudster was proved by her fraudulent actions. That character has not changed. She was a mature adult then and she sees Decoy Dolls in the same way now as she saw it then. She says there was nothing wrong with it then and she says there is nothing wrong with it now. She thought and thinks that there was nothing wrong with her perpetrating an elaborate fraud for money and getting away with it. Therefore, the description of her as a “fraudster” is in my judgment an apt description of her now. What she did was dishonest and I find as a fact that she knew that at the time, although she would not admit it in her evidence now, and did not herself think it mattered that she was being dishonest. She knew it was wrong to lie and to cheat, and she knew it was wrong to make money from lies and cheating. She knew it was dishonest but she did not care because she lacks the probity to care about it. She has not changed at all. She has not reformed at all. She showed who she was when conducting the Decoy Dolls exercise - she was a fraudster. She is still, I am sorry to say, the same. Therefore, the description of her as a “fraudster”, albeit in the present tense, was substantially true.

183. Both parties relied on the words in the defamatory letters describing Ms Rodoy not only as a “fraudster” but as a “self-confessed and known fraudster”, although those words do not form part of the defamatory meaning found by Judge Lewis (that she is, simply, “a fraudster”).
184. The defendant’s counsel said that the fact she had not covered it up was to her credit and therefore reduced the sting of the libel. I reject that. The point being made in the letters was that she was shameless and also that there could be no doubt about her being a fraudster because she admitted it herself. Neither of these reduced the sting of the libel (nor were they intended to). If it was substantially true, however, that does not matter.
185. The claimant’s counsel, on the other hand, relied on Ms Rodoy’s witness statement (forming her evidence in chief), as evidence of a frank acknowledgement and admission of what she had done. She said in that evidence:

“I understand that Optical Express say that the allegation made in the letters that I am a fraudster is true because of things that I did from 1994 to 1997. During this time I sold a number of stories to newspapers about a detective agency called Decoy Dolls. As I made clear in a national newspaper article in 1997: this detective agency did not exist; the stories I sold included untrue information; and I knew that the information was untrue at the time I sold the stories. It was a prank while I was studying at university.

(...) I find it very upsetting that Optical Express have dredged up this old story about me as a basis for alleging that I was acting as a “fraudster” some 20 plus years later in 2020 and 2021. I find this injurious because, whilst I admit what took place with Decoy Dolls, this was a prank that I played in my early forties, which was entirely goaded and encouraged by the media, and was in effect amusing entertainment; that had no bearing on what I did some 20 plus years later.”

186. Admission is not, however, the same as contrition. Ms Rodoy was and is not contrite at all. She would do it all again, if she had time, as she had then, and needed the money, as she did then, and could pull it off, as she did then.

187. For these reasons, I find that the allegation that “Ms Rodoy is a fraudster” is substantially true.

**“Her dishonesty extends to using different names or aliases.”**

188. I now turn to the second limb of Meaning 1 which is that “Her dishonesty extends to using different names or aliases.” This derives from the passage in the defamatory letters describing Ms Rodoy as:

“...a vexatious individual, who is a self-confessed and known fraudster, currently using the name Sasha Rodoy, however she has previously been known as Sasha (Susan) Hutchinson.”

Has the defendant proved that was substantially true?

189. Whether or not Ms Rodoy’s dishonesty extends to using different names or aliases, no basis has been put forward to linking it to the names mentioned in the letters. Sasha Rodoy was not just the name she was “currently using”, it was her real name. It was the name on her passport, consisting of the first name she had legitimately and consistently used since the age of 17 and the surname she had acquired on marriage. The earlier names Susan Hutchinson (her birth name) and Sasha Hutchinson (her names from the age of 17 until marriage) were also real names, no less authentic than anyone else’s names. None of these names were used as aliases to perpetrate fraud.

190. However, the trial on meaning rightly established that the actual name or names were not the point. The point, in this defamation action, was the imputation that Ms Rodoy is a fraudster whose dishonesty extends to using different names or aliases.

191. I have already found that Ms Rodoy used fake names in contexts which could fairly be described as dishonest.

i) She used a false name when, in exchange for money, posing as a genuine respondent to the cross-dressing man’s advertisement in *Time Out* in order to get evidence against him for his wife’s contested divorce case. (See para 128 above.)

ii) She suggested the use of a false name to at least one of the friends who posed as agents of Decoy Dolls in support of the fraud she practised against newspapers, magazines and television shows for money in that respect. (See para 144 above.)

192. These incidents were not relied on in the Particulars of Truth in the Amended Defence in relation to dishonesty extending to the use of different names or aliases. However, no objection was taken to the exploration of the false names aspect of them when Ms Rodoy was giving evidence and no objection has been taken to the defendant’s reliance on both of them on the question of using different names or aliases in paragraphs 222-224 of its written closing submissions. This is not surprising; Ms Rodoy hardly disputed the second example (suggesting that her friend use a false name, as she did, when posing

as a Decoy Dolls agent to the press). Both points were highlighted in the cross-examination of Ms Rodoy and there was an opportunity to deal with them in re-examination if so advised.

193. More emphasis was placed on two points which are pleaded in the Particulars of Truth:
- i) On 4 November 2014, Ms Rodoy called Optical Express Customer Care and asked the call handler to speak to Lynsey Shaw, the head of Customer Care. Ms Shaw had sent an email earlier that day to an Optical Express patient, Heather Morley. Ms Rodoy gave her name as “Mrs More” and “Heather” and was put through to Ms Shaw. The defendant’s case is that the claimant chose these names deliberately and dishonestly as a means of getting past the switchboard because they were names similar to the patient name of Heather Morley.
  - ii) On 19 May 2014, 28 May 2014, 29 May 2018, 3 June 2014, 3 July 2014, 15 July 2014, 20 August 2014, 23 August 2014, 25 August 2014, 2 September 2014, 12 September 2014, 14 September 2014, 19 September 2014, 25 September 2014 and 27 September 2014, Ms Rodoy logged into Optical Express’s online live chat service under the name, “Suriya”. The defendant’s case is that this was done dishonestly, because Ms Rodoy knew, if she gave her own name, the Optical Express customer services team would not engage with her.
194. The primary facts of both incidents are substantially undisputed although the allegation of dishonesty is strongly disputed.
195. The context of the call on 4 November 2014 was that, shortly before midday on 4 November 2014, Lynsey Shaw of Optical Express emailed a customer or potential customer of Optical Express called Heather Morley as follows:

“Dear Ms Morley

Thank you for your recent email of 4th November.

I understand that you have decided not to proceed with surgery. The matter of your cancelled surgery will be determined in accordance with the Terms and Conditions which were agreed to by you.

We do not regard your link or reference to the [opticalexpressruinedmylife](#) website as being in any way relevant. Ms Sasha Rodoy, the owner of this website is not, and has never been a patient of Optical Express. She was treated by Optimax and is unhappy with her outcome. Ms Rodoy has confirmed to us, both verbally and by email, that the development of this website was funded by Russell Ambrose, the owner of Optimax and Ultralase, direct competitors of Optical Express, Optical Express is in no way affiliated with this website and we do not monitor or respond to it.

I am available to discuss and resolve this matter with you directly and can be contacted on the e-mail address given below.

Yours sincerely,

Lynsey Shaw

Head of Customer Care”

196. This email was forwarded by Mr Morley to Ms Rodoy, shortly before 4 pm that afternoon. Ms Rodoy took exception to it because, as she told me in evidence, it was not correct that OERML was “funded by Russell Ambrose”, although he had paid for a web designer to give what she described as “a facelift” to the website. The amount he paid was £1,200.
197. Ms Rodoy therefore wanted to speak to Ms Shaw about what she had said. She used the false name Heather More because it was similar to the name of the Optical Express patient Heather Morley and (she accepted in cross examination) she did that to ensure that Ms Shaw would take the call. She wanted (as she also accepted) to give the impression she was actually Heather Morley, but “only to get through to her”. She denied that it was dishonest. She described it as “just a ploy to get connected, because otherwise I wouldn’t. If I’d said ‘Oh, this is Sasha Rodoy’, yes they would have hung up on me.” She knew that because it was her understanding that “staff had all been told not to interact with me.”
198. The call on 4 November 2014 was recorded and has also been transcribed. It was a short conversation because, very soon after Ms Rodoy was put through to Ms Shaw, the call was terminated. The people on the call were Ms Rodoy (“SR”), the Operator (“O”) and Ms Shaw (“LS”).

O Camilla Good afternoon Optical Express, Camilla speaking how can I help you?

SR Can I speak to Lynsey Shaw please?

O Can I ask who is calling?

SR Yes, Mrs More.

O Okay, sorry did you say Mrs More.

SR Mrs More, yes.

O Okay, hold for me one moment

[a short time on hold]

O Hi, I am just going to check Lynsey’s line for you I do apologise could you just spell your surname for me?

SR M-O-R-E.

O Okay and what is your first name?

SR Heather.

O Okay, thank you. I will just check the line for you.

SR Okay.

O Thanks so much

[a short time on hold]

LS Hi, you have reached Lynsey Shaw.

SR Oh Ms Shaw, I used a little bit of subterfuge there, this is actually Sasha Rodoy. I am calling you regarding the email that Heather has just forwarded to me and I would like you to explain the sentence you say that “the development of the OERML website was funded by Russell Ambrose which I confirm to you both verbally and by email”. I would like you to actually explain that because this libel.

LS Yes, I am not in a position to comment on that...

SR ...well you should comment on it...

LS ...only speak to her...

SR ...Ms Shaw this concerns me, we are not talking about your patient we are talking about me and what you have put in an email which is libel. Now I do expect you to explain that because you have got no right to say that, you have a libelled and you have lied and I would like to know where you got the information.

LS I am not in a position to comment on that with you directly, if you wish to seek...

SR ...you are in a position! I will indeed, I will be taking...

LS ...to a patient who I am happy to....

SR I am not talking about the patient Lynsey.

LS ...unfortunately I am not in a position to comment to you any further.

SR Lynsey...”

199. Ms Rodoy admits, as she admitted in the call transcript, that the use of the patient’s name was “a little bit of subterfuge” practised in order to get through when she knew she would not be put through if she gave her real name.

200. However, I do not think this amounted to dishonesty by a fraudster, or, therefore, that it justifies the meaning “Ms Rodoy is a fraudster. Her dishonesty extends to using different names or aliases”. A subterfuge is not necessarily a fraud and fraud is much too strong a word to apply to this incident. Indeed, as soon as Ms Rodoy was put through, she immediately announced her true name and identity.
201. The second point relied upon is Ms Rodoy’s use of the name “Suriya” when logging in to Optical Express’s online live chat service on numerous occasions between May and September 2014.
202. There is no dispute that she did log in to that chat on these occasions and that her log in name was “Suriya”. It is not her case that “Suriya” was her real name in any context. She did, however, give evidence that, once she had provided the name “Suriya” on an initial occasion, it came up automatically as her name when she accessed the service on subsequent dates. That may or may not have been the case (it would depend on how population of the name field was set up at Optical Express or on Ms Rodoy’s own computer) but the only evidence I have is Ms Rodoy’s and she was not challenged on this point when she made it. I will, therefore, accept it.
203. The first occasion when Ms Rodoy accessed the Optical Express live chat as “Suriya” (for which auto-population would not be an explanation) was on 9 May 2014 (not 19 May). As I have mentioned, Ms Rodoy accepted the proposition that she originally chose that name, rather than her real name, because she knew that there was a good chance that if she used her real name she would not be allowed in or not allowed to engage with the person who conducted the live chat.
204. However, as soon as Ms Rodoy got through to the chat on this first occasion, 9 May 2014, she immediately became hostile, to the extent that she was instantly cut off without any interaction. She said, without any preamble:
- “Message for Sam, who told me that your "clinical specialists are trained to manage ANY complication that occurs". I advise he reads OERML to find that's a lie! Pls tell Sam he’s now famous:  
<https://www.facebook.com/OpticalExpressRuinedMyLife>”
205. On the second occasion, 28 May 2014, the chat went like this before Ms Rodoy herself closed it after 6 seconds:
- “Paul: Hello. Do you need help finding something in particular?”
- “Suriya: Lol!!! I'm Sasha Rodoy
- Suriya closed the chat*”
206. There was no deception about her real name or identity once she was put through, therefore.

207. In many of the subsequent chats, Ms Rodoy left the chat without saying anything, or anything of substance, as soon as she had got through, and before anything had been said to her.

208. On other occasions, she did not disclose her identity, but simply used the chat to ventilate negative opinions about refractive eye surgery or Optical Express. Here, for example, is the full transcript of an 8 minute chat on 3 June 2014:

“James: Hello

Suriya: Hello

James: Is there anything I can help you with today?

Suriya: Have you had eye surgery

James: No I’ve never required surgery

Suriya: How long have you been selling it

James: Selling what sorry?

Suriya: Eye surgery

James: I’m not sure of the dates exactly but Optical Express have been supplying surgery for over 20 years

Suriya: No - how long have you been selling for Optical Express?

James: Can I ask why that is relevant just now?

Suriya: Do you know how many problems there have been?

James: No

Suriya: Well perhaps you should find out!

<https://www.facebook.com/OpticalExpressRuinedMyLife>

<http://www.opticaexpressruinedmylife.co.uk/index.php/forum/index.html>

*suriya was banned for 1000 days*

*James closed the chat.”*

209. I accept the defendant’s case that Ms Rodoy deliberately logged on as “Suriya” in order to disguise her real identity and have a better chance of being connected to an operator, at least on the first occasion, and that she was happy to continue to be logged on under that name, even if as a result of auto-population, for the same reason, in later chats.

210. However, I do not think this can be described as the action of a fraudster whose dishonesty extends to using different names or aliases. There was no fraud involved. As soon as Ms Rodoy was put through, she showed her true colours and, on at least one occasion, gave her real name. She gained no financial advantage and the advantage of being put through to a chat operator was so slight, and so fleeting, as to fall far below the level of a practising fraudster.
211. It follows that the meaning “Ms Rodoy is a fraudster. Her dishonesty extends to using different names or aliases” can only be justified in relation to the deception of the cross-dresser and in relation to the false names used by Ms Rodoy’s associates when posing as agents of Decoy Dolls. To that extent, however, it is justified.
212. Even if the rider “Her dishonesty extends to using different names or aliases” had not been justified by the evidence at all, the principles I have examined in paras 112 to 119 above come into play. The reference to the dishonest use of different names or aliases adds nothing to the sting of the basic libel that Ms Rodoy is a fraudster. It is no more than ancillary. If she was not a fraudster, using different names would not amount to much and the allegation would not cause serious harm. Given that I have found that Ms Rodoy can truly be described as a fraudster, the imputation that “Her dishonesty extends to using different names or aliases” does not make it worse or cause any serious harm. I say this in relation to each of the recipients of the letters containing the allegation (none of whom mentioned this aspect) and on the basis of my assessment of the evidence of and about each of those recipients.

**Meaning 2: Ms Rodoy trolls Optical Express and many of its staff online.**

213. The second and third meanings which were established at the trial of meaning in this case are:
- i) Ms Rodoy trolls Optical Express and many of its staff online.
  - ii) At times, the trolling has been to such an extent that there were reasonable grounds to suspect that she was placing the safety of staff members at risk.
214. They derive from the following passage in the defamatory letters:
- “[The/This] person unfortunately does troll Optical Express and many of our team online. In the past, this trolling has been to such an extent that we have had to involve the Police in the interest of employee safety.”
215. The judgment determining the meanings said (*Rodoy v Optical Express Ltd* [2024] EWHC 1499 (KB) at para 34):
- “In terms of the trolling, I agree that the natural and ordinary reader would understand in broad terms what this means. It does not need to be clarified.”
216. A trial of meaning is conclusive. It is undesirable and usually wrong in principle for there to be any subsequent argument about the meaning of the meaning: *Clarke v Guardian News and Media Ltd* [2025] EWHC 2193 (KB) per Steyn J at paras 20-21.

However, “trolls” and “trolling”, in a context which includes the word “online”, are relatively new words. In different contexts they might bear a variety of meanings. They derive from identical or similar words in older contexts which are themselves quite complicated and diffuse, and even their etymology is ambiguous. So whereas one can readily say, as judges often say, that words like “serious” and “substantial” and “reasonable” are ordinary English words and everyone knows what they mean, I will say something about my understanding of what the natural and ordinary reader would understand “trolls” and “trolling” to mean in the context of the letters in this case before making findings of fact about the scores of examples put forward to support the substantial truth of this part of the defamatory letters in paragraphs 14.5 to 14.48 of the Amended Defence.

217. *Stocker v Stocker* [2019] UKSC 17 is often cited as a warning against looking at dictionaries in the course of defamation cases. In *Clarke v Guardian News and Media Ltd* [2025] EWHC 2193 (KB) Steyn J went so far as to say (at para 18):

“In *Stocker v Stocker* [2020] AC 593 the Supreme Court held that it was not appropriate to have regard to dictionary definitions of words when deciding the meaning of a statement. That is consistent with the well-established principle that no evidence, beyond the statement complained of, is admissible in determining the meaning.”

218. Despite this, judges have often referred to dictionaries, not as evidence, but as a guide, or as a point of reference, in defamation cases: *Leyman v Latimer* (1878) 3 Ex D 352 per Barmwell LJ at 354; *Kerr v Kennedy* [1942] 1 KB 409 per Asquith J at 413 (“In the absence of any judicial guidance or authority as to the meaning of “unchaste” or “chaste” in this connection, dictionaries can be consulted and their definitions have been cited in this case.”); *Cleghorn v Sadler* [1945] KB 325 per Croom-Johnson J at 328; *Kinch v Associated Newspapers Ltd* [2002] EWHC 1020 (QB) per Eady J at 6 (“I was helpfully referred to certain dictionary definitions which bear out my initial impression...”); *King v Lewis* [2004] EWHC 168 (QB); [2004] I.L.Pr. 31 per Eady J at para 36 and in the Court of Appeal [2004] EWCA Civ 1329; [2005] EMLR 4 at paras 14 and 18; *Sharma v Singh* [2007] EWHC 2988 (QB) per Tugendhat J at paras 17-18; *Trimingham v Associated Newspapers Ltd* [2012] EWHC 1296 (QB) per Tugendhat J at paras 59-60 and 62; *Euromoney Institutional Investor Plc v Aviation News Ltd* [2013] EWHC 1505 (QB) per Tugendhat J at para 49;
219. The issue in *Stocker v Stocker* was the ordinary natural meaning of “He tried to strangle me” in a Facebook post. The first instance judge referred the parties to the Oxford English Dictionary definition of “strangle” in the course of the trial and also referred to them in his judgment. He then confined the possible meaning of the statement “He tried to strangle me” to what the Supreme Court (at para 15) described as two stark alternatives: either Mr Stocker had tried to kill his wife, or he had tried to constrict her neck or throat painfully. This produced what the Supreme Court criticised as an “anomalous result” and they said that “this anomalous result was the product of confining the meaning of the words exclusively to two dictionary definitions” (para 17). The Court of Appeal said that the judge had “merely used the dictionary definitions as a check, and no more” and that “the judge’s ultimate reasoning, not dependent on dictionaries, was sound.” The Supreme Court disagreed both on whether the judge had

limited himself to a cross-check and on whether his ultimate reasoning was sound. The Supreme Court (in the judgment delivered by Lord Kerr) said (at paras 24-26):

“...it seems to me plain that, far from using the definitions as a check, what the judge did was to regard the two definitions as the only possible meanings which he could consider or, at the very least, the starting point for his analysis, rather than a cross-check or confirmation of the correct approach.

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

Moreover, once the verb, “strangle” is removed from its context and given only two possible meanings before it is reconnected to the word, “tried” the chances of a strained meaning are increased. The words must be taken together so as to determine what the ordinary reasonable reader would understand them to mean.”

220. The danger of using dictionary definitions is well-described there, and well-illustrated by the example of the case. But it is a danger of over-reliance and, moreover, of not finding the ordinary and natural meaning in the words themselves, in the context in which they have been used. Usually, a judge is perfectly well-equipped to do that without any reference to a dictionary. However, that does not mean that in no case might it be useful to cross-check the judge’s understanding of a meaning by reference to dictionaries. After all, the judge is just one person (whereas juries in defamation cases, when they decided these issues, were more than one). It would be a pity if a judge was not able to check that his or her understanding of the ordinary and natural meaning of a word was not idiosyncratic or incomplete by reference to a reputable dictionary. The danger identified in *Stocker v Stocker* makes it essential, however, that any reference to a dictionary is no more than a sense check and not a starting point or an end point. A dictionary cannot be literally or slavishly depended upon. The task, moreover, is not to apply the meaning of a single word, but of a whole passage. This passage will sit in its own particular context which may affect the ordinary and natural meaning too. Dictionaries never provide answers, but they can sometimes provide support.
221. The defendant tried to avoid the use of a dictionary by referring to evidence from Mr Mouldale in paragraph 164 of his witness statement:

“My understanding of the word trolling is that it is a slang expression which is used when a person makes “a deliberately offensive or provocative online post with the aim of upsetting someone or eliciting an angry response from them”. Again, this comes from a Google search of the word “trolling” but that was certainly my understanding of the expression when I drafted the paragraph.”

This was plainly inadmissible because no evidence, beyond the statement complained of, is admissible in determining meaning. That the evidence came from a Google search made it more objectionable than reference to a reputable dictionary in argument, quite apart from its inadmissibility in evidence. Also, meaning is objective, and the draftsman's understanding of the expression is irrelevant.

222. In closing argument, Mr Wolanski KC for the defendant submitted that the essence of trolling in this case is online activity which is deliberately offensive or provocative and is carried out with the aim either of upsetting someone or of eliciting an angry response from them. Describing the claimant as a troll, Mr Wolanski said she was malevolent and she was malevolent towards the defendant's staff and she wanted to hurt them by her online activity. In response, Mr Bennett KC for the claimant accepted what he called the claimant's definitions but added that trolling must be targeted at a person or group of people and trolling cannot be for a legitimate purpose. Essentially, he submitted, it has to be gratuitous.
223. To my mind, trolling online would in the context of this case have both an *actus reus* (which might include, for example, the claimants' posts online, whether text-based, image-based, or on a video platform such as YouTube) and *mens rea* (which in this case would be the intention of offending, provoking, or upsetting someone as a pleasure in itself, and not just for campaigning purposes).
224. The *Oxford English Dictionary* has, as the meaning of "troll" as a person (noun 2, "originally computing slang"):-
- "A person who posts antagonistic or disingenuous messages online in an attempt to provoke a hostile or annoyed response. In later use: a person posting online to manipulate public opinion as part of a coordinated effort or campaign."
225. It gives, as the meaning of the verb "troll" (verb 2, also "originally computing slang"):
- "To post an antagonistic or disingenuous message to (a person online, an online forum, a social media platform, etc.) in an attempt to provoke a hostile or annoyed response. Now also more generally: to behave in a provocative or disingenuous manner in an attempt to provoke or deceive (someone)."
226. I do not rely on these definitions although I have looked at them. The context of the defamatory statements about Ms Rodoy being a person who "unfortunately does troll Optical Express and many of our team online", and raising issues of staff safety and police involvement, means that this is not just posting as part of a legitimate although coordinated campaign but something which is actually malicious and motivated by a desire to cause upset or worse as an end in itself, whether or not combined with a campaigning motive. That is also captured by the submissions of both parties which I have summarised above.

#### *Trolling – the facts*

227. The Amended Defence pleads about 50 incidents which are said to justify the allegation that "Ms Rodoy trolls Optical Express and many of its staff online" in general, before

dealing with those aspects which are said to justify the further meaning that, “At times, the trolling has been to such an extent that there were reasonable grounds to suspect that she was placing the safety of staff members at risk.” Both sides urged me to make findings about every one of those incidents before deciding whether the allegation has been proved to be substantially true. That is not necessary, not least because I accept the claimant’s submissions that the focus (when considering the substantial truth or otherwise of the allegation about trolling) has to be on activity online and the Amended Defence ranges more widely than that. I will concentrate on what seems to be most relevant.

*(1) The website*

228. Ms Rodoy launched the OERML website ([opticalexpressruinedmylife.co.uk](http://opticalexpressruinedmylife.co.uk)) in 2013, immediately after being obliged by her settlement with Optimax (who had performed her own eye surgery) to take down an [optimaxruinedmylife](http://optimaxruinedmylife) website. There was an associated OERML Twitter account and Facebook page. She was, as she said in evidence, very upset that she had to give up the Optimax website because her personal complaint was against Optimax and what she considered to be their responsibility for problems she had with her eyes. The settlement discussions introduced her to the founder and chief executive officer of Optimax, Russell Ambrose, from whom she obtained information which she considered potentially damaging to Optical Express, who had never treated her, and some money to spruce up the OERML website.
229. She was hostile to the whole refractive surgery industry and said, in an email to Mr Ambrose on 4 July 2013:
- “I despise this industry Russell and will do everything I can to stop thousands more being hurt and lied to (...)
- As I told you the first time we met on Friday 13 May 2011, I will f\*\*k you and I will f\*\*k this industry.
- It’s been fun!”
230. She agreed in evidence that some of the people who visited were angry and talked about physically attacking people. An example in the bundle was a response to a post on OERML Facebook by Ms Rodoy on 29 January 2014 which said (of the person at Optical Express she had posted about, Hugh Kerr): “If I ever meet this guy he will have a job talking to me with no teeth”. This received two upvotes on the site. I will return to the context of it, below.
231. Optical Express Ruined My Life was a provocative name, and a surprising one given that Ms Rodoy had never been treated by Optical Express. It was, however, well-calculated to grab attention.
232. I find that Ms Rodoy had mixed motives when running OERML and its associated social media. She genuinely believed that Optical Express had ruined lives and would ruin more lives as it carried on with its refractive eye surgery services, although she does not seem to have thought Optical Express worse than any other provider. Her battle was against the whole industry. But she also enjoyed the opportunity that running OERML and her other social media campaigns against refractive eye surgery in general

(through My Beautiful Eyes) and Optical Express in particular gave her to gain publicity, which she enjoyed, and to justify personal and targeted attacks which were not limited to factual allegations but regularly descended to personal abuse. She had a cruel streak which caused her to enjoy upsetting other people. This was clear to me from the evidence she gave and the way she gave it. It was already evidenced when she told the *Evening Standard* journalist reporting on her role in the cross-dresser's divorce case "...if I am honest I have to say that it was great fun" while at the same time, as she told *Woman's Realm* "I felt sorry for him. He seemed such a sad character". Further evidence is furnished by examples I consider later in this judgment.

233. When posting on OERML Facebook on 18 August 2013 about hounding an Optical Express employee at a publicity event she said "All good fun and I hope he enjoyed it as much as we all did!". In an email on 29 July 2015 to Mr Mousldale of Optical Express and various lawyers at Schillings, which had taken over from Harper Macleod as Optical Express's solicitors, she wrote "Btw [By the way], so good to have new playmates, you're far more fun than Harper Macleod", followed by a winking emoji. When posting on OERML Twitter on 23 February 2019 about a protest outside Optical Express's offices, she said "A fun day out in Glasgow today @Optical Express 200 St Vincent St" with a face wearing sunglasses emoji.

*(2) Call to "Alice" of Optical Express in May 2012*

234. In May 2012 Ms Rodoy telephoned Optical Express and spoke to an employee called Alice. On 30 May 2012 the Claimant posted on an external website ("whocallsme") an abbreviated transcript of that call. After some questions about treatment from Ms Rodoy and answers from Alice, Ms Rodoy's edited transcript of the call ended like this:

"Me: OK Alice, please tell David Mouldale that you just spoke with Sasha Rodoy that I recorded our conversation.

A: Oh OK (I truly felt sorry for her)

Me: And I hope you don't get the sack!

Call OE try it yourself quick, before DM issues new orders to his call centre staff"

235. In evidence she explained this:

"Q. Why did you truly feel sorry for her?

A. Because I know the way David Mouldale treats his staff and they're all terrified of him and the fact that she's been caught out by me is not going to go down very well with her boss.

Q. You felt sorry for her because you realised that she would have been upset that you had got through and said those things?

A. Not that she would be upset by me but upset by what might happen when Mr Mouldale discovered it.

Q. And then you say, "And I hope you don't get the sack".

A. Yes, which falls into exactly what I was saying.

Q. Did you feel sorry for her after you said that to her?

A. Not that sorry for her. I don't feel sorry for anybody who works for Optical Express because they're all condoning. They all know what's going on.

Q. You did not feel sorry for her?

A. Only that she might lose her job, that's it.

Q. Did it occur to you that that might upset her saying that to her?

A. I felt sorrier for the people whose eyes had been damaged and ruined.

Q. Did it occur to you that it might upset Alice that you said to her, "I hope you don't get sacked"?

A. It didn't really – it was in a post but it was flippant. It was – yes, I really didn't care.

Q. You did not care?

A. No.”

236. My finding is that she did not feel sorry for Alice but was, on the contrary, deliberately trying to frighten a telephone operator by giving her name when she thought this would be well known within the company, and by saying she had recorded the call, and by naming the Chief Executive and suggesting the operator might get the sack as a result of the call. It was a gratuitously nasty thing to say and she said it, not for any campaigning or legitimate purpose, because it is hard to imagine how such a purpose could have been served by it, but because it pleased her to try and upset Alice like this.
237. That was not trolling in itself because it was not online. But posting the transcript with the invitation to all readers to “Call OE [Optical Express] try it yourself quick, before DM [David Mouldale] issues new orders to his call centre staff” was trolling in itself and an invitation to others to troll.

*(3) Post about Rod McKenzie on 29 January 2013*

238. On 29 January 2013, Ms Rodoy posted on the OERML Facebook page a link to the website of Harper Macleod LLP, solicitors to Optical Express, and, in particular, to the page for one of its partners, Rod McKenzie, who managed the firm’s relationship with Optical Express. She then added this note for the readers, with a link to a newspaper quote:

“OE's legal representative at the Manchester Employment Tribunal is Harper Macleod LLP partner Lesley Murphy, who:

has a particular interest in discrimination law...” Is that for or against me wonders? [Harper Macleod website link for Murphy]

(To be fair Lesley is better looking than her Harper Macleod “Our People” photo Just wish she'd remove the price sticker from the sole of one of her new shoes!)

Personally I believe in the interests of justice Lesley should have disclosed to the court that Rod Mckenzie, partner at Harper Macleod, is also an Optical Express director. At the risk of repeating myself, surely this is a conflict of interests? [Harper Macleod website link for McKenzie]

By the way, Rod recently had a car accident, which is why Jamie Watt now deals with OG's Nominet complaint against OFRM. (yes, they lost, but have appealed Nominet's SECOND Expert decision):

*“The SPL's main lawyer Rod Mckenzie, of Harper Macleod, is recovering from injuries sustained in a serious car crash and the case can't be closed until he is back on his feet.”*

<http://www.dailyrecord.co.uk/sport/football/football-news/the-500k-question-why-did-hearts-ko-rangers-1431486>

I'm sure all of OE's damaged patients will want to send their wishes for his recovery to Rod [smiley face emoji]”

239. She was asked about this last comment.

“Q. Why did you say that?

A. It was sarcasm. Rod McKenzie was a non-exec director. I think he was a non-exec director of Optical Express and therefore party no doubt to all the complaints from their damaged patients, etc., so he is part of their system, for want of a better word.

Q. In your latest statement you address what you said here, and you say you would not do it again now.

A. That came after discussion when I was told that perhaps his injuries were more serious. I was just talking of a broken leg. If it was worse than that, then no, and I probably wouldn't do it now because, quite honestly, I've grown up in my work. I was in my infancy at that stage.

Q. So you would not do it now, but obviously you did it then.

A. We know that.

Q. Do you regret doing it then?

A. There's not really much that I regret about my work. There may be things that I could later say: Yes, okay, I do regret that. But I don't see much to regret about that."

240. I reject the evidence that she thought it was "a broken leg". The news report did not suggest that. It referred to "injuries sustained in a serious car accident." She had no basis for downplaying the injury to a broken leg, and she now accepts it was worse than a broken leg. She did not in her Facebook post say it was a broken leg and the linked news article said no more than the passage she quoted. Her evidence about that was given to make herself look better now, but it was not true.

241. Although this was posted on the OERML Facebook page, I am satisfied that Ms Rodoy expected (and hoped) that all the nasty things she said about people connected with Optical Express, including Mr McKenzie, would come to their attention as well as stirring up her readers to levels approaching personal hatred. That was part of the pleasure she gained from saying them.

i) She gave evidence that it is her belief that Optical Express "have been pre-occupied with me, including monitoring me, since at least 2012" and "Optical Express monitor everything I do. They've been paying a company for years to monitor everything I post and publish."

ii) I find that this belief on her part did not date, only, from the disclosure of documents to her about monitoring. She knew from her experience with Optimax and her optimaxruinedmylife website that the sort of activity she was engaging in was likely to be noticed by the company and its officers, and (in her word) monitored by them, and that it would get some sort of reaction from them, whether or not they ever communicated that reaction to her.

iii) As early as 2012, "when I'd only just started my work", she had been told by Russell Ambrose of Optimax about a meeting that David Mouldsdale had had with Mr Ambrose at which Mr Mouldsdale said "We've got a problem with that Sasha Rodoy".

iv) She deduced from that (I find) that she and OERML were on the radar of Optical Express and she was very conscious, when posting personal abuse, that it would very likely come to the attention of the person concerned, and she hoped that it would, and would be delighted if it did.

242. David Mouldsdale confirmed that:

"As the Claimant was running a website and social media channels containing our business name, and many of our patients were posting on these channels and she was offering her advice and opinion on their care provided by Optical Express, we began monitoring her website."

243. In cross examination he said:

"A. (...) When someone challenges our brand where we've invested over £400 million creating a brand and over £60 million

in opening new clinics, over a billion pounds, of course we may have someone who's threatening our brand, threatening our people, threatening me personally and my directors. Of course we're going to monitor that person's activity. But we did not have weekly meetings and we did not regularly, weekly, circulate messages to our people ----

Q. Just to remind you of your evidence, the claimant's posts were circulated regularly to the executive membership team.

A. Yes, yes."

244. The first part of this post could be seen as part of Ms Rodoy's campaign against Optical Express. But the final comment about Mr McKenzie injuries in the car crash was not part of that campaign. It went beyond the bounds even of passionate campaigning. It was not directed at any campaign aim and provided no campaign information. It was trolling pure and simple.

*(4) Hugh Kerr*

245. Hugh Kerr joined Optical Express in 2002 on the commercial side and is now the Group Commercial Director. He was not, at the time of the events in 2013 which I am now going to address, involved in the refractive surgery activities of Optical Express. He dealt, in the main, with the optical practices.
246. On 18 August 2013 he was at the Braeside Shopping Centre in Glasgow as part of an Optical Express promotional event which Ms Rodoy attended and disrupted. She noticed Mr Kerr trying to deal with this and followed and berated him about his connection with Optical Express, saying "How can you work with such butchers?". He did not engage with her.
247. Ms Rodoy posted pictures she took of Mr Kerr on this occasion online on the OERML page on the same day and they came to his attention. She was not able to identify him at this point but she described him in her post as "an angry looking little man" and said she had taken him by surprise at one point and asked for his name,

"...but he turned his head away beckoned for a police officer to intervene before scuttling inside OE's store. When he reappeared, oddly reluctant to have his photo taken, he desperately ran away, found himself cornered at the end of the balcony hid in one of the shops.

All good fun I hope he enjoyed it as much as we all did.

If you can identify this man please email [info@mybeautifuleyes.co.uk](mailto:info@mybeautifuleyes.co.uk)"

248. She followed up the same day with another photograph asking OERML readers: "Who is this camera shy man?".
249. The next day, 19 August 2013, she posted:

“Now confirmed, the angry little man hiding from me was in fact Hugh Kerr! Why so shy Hugh?”

250. She referred to the incident again in a post on OERML on 22 September 2013, in which she referred to Mr Kerr and herself taking photographs of each other. She said:

“Desperate to avoid being caught on camera it was by far the most amusing part of my day when he literally ran away from me, accompanied by a tall scruffy younger man, and hid in a clothing store at the end of the balcony.

A text message from an OE insider advised me that Hugh Kerr had arrived, but not reading it until much later I was unaware this man was "Wee Shugster", as he's affectionately known to his colleagues.”

251. She confirmed in evidence that she presumed her posts would be brought to Mr Kerr’s attention because “everything that I do, I publish, is seen by Mr Mouldsdale and presumably brought to the attention of those involved.”
252. Ms Rodoy claimed that “Wee Shugster” was not belittling but “just a term for anybody who is called Hugh” but it sounds belittling to me and Mr Kerr confirmed that “Shugster” has a negative connotation in Scotland and is not simply a common nickname for people called Hugh. He accepted that he had heard one or two people in the business who were from Glasgow refer to him as “the wee Shugster” (the business is based in Scotland) and, because he thought that was not appropriate, he cut off those interactions. I have no doubt that Ms Rodoy’s fake-Scottish “Wee Shugster” sobriquet was intended to belittle and demean Mr Kerr.
253. I accept Mr Kerr’s evidence that he felt embarrassed and humiliated by these posts, which were discussed within the company, and that he also felt that they showed Ms Rodoy had “hunted me down and exposed me.” He was convincing on this point. I find that this is the sort of reaction Ms Rodoy was aiming at when she focussed her online attention on him with these posts.
254. A few months later, in January 2014, Mr Kerr was a witness for Optical Express at a public Employment Tribunal hearing which Ms Rodoy attended as an observer. Part of Mr Kerr’s evidence (in the context of a case which included disability discrimination claims) was that he had childhood polio at the age of 3 which affected him daily, and caused him to walk with a limp which he tried to disguise.
255. On 29 January 2014, Ms Rodoy posted a link to a report of the proceedings on her OERML Facebook. Under it, she posted:

“Trust me Hugh Kerr showed no sign of a limp when he ran away and hid from me at the 20/20 demo in Glasgow last summer (see previous posts below). Nor did he limp when he walked into the Manchester Tribunal on Monday! Btw for those who haven't read the post, he hid from me to avoid having his photo taken [smiley face emoji]”.

256. Under this were posts from OERML readers about the content of the news report, including the one saying:

“What an arrogant piece of shit Hugh Kerr is (...) If I ever met the guy he will have a job talking to me with no teeth.”

257. Ms Rodoy returned to the subject with a further post on the OERML Facebook page on 31 January 2014 in which she said:

“Giving evidence to the Manchester Employment Tribunal on Tuesday, Hugh Kerr said he had been “a polio sufferer in childhood” and was therefore unlikely to discriminate against anyone else with a disability. However, Gillian Rutledge - who walks with the aid of crutches - claimed that when he first saw her at her Glasgow induction course, the Wee Shugster looked at her like she was “something he’d stepped in”. Hugh told the court that his polio had left him with walking difficulties. I’m surprised, because Hugh Kerr was in my sight for at least 6 hours at the Glasgow demo last year showing no apparent limp or difficulty walking. In fact, he strutted around talking on his phone for much of that time, and when he tried to hide from me (to avoid having his photo taken) there was certainly no indication of any disability as he raced along the balcony [smiley face emoji]”

258. The previous day, 30 January 2014, Ms Rodoy posted on OERML Facebook a link to Mr Kerr’s personal Facebook page which she had discovered not to be locked down to strangers, although it was not in any other sense a public page. With the link, and photograph of him, she commented: “Diddums. [Sad face emoji] Expect bad press when you sell your soul to the devil (David Mouldsdales)” She accepted that she was directing readers of her website to Mr Kerr’s personal Facebook page.

259. I find that this was an invitation to her readers (who included the man who had already posted about taking Mr Kerr’s teeth out) to go onto the page and cause trouble for him. I reject her evidence that there might have been something on it of legitimate interest to opponents of Optical Express or of refractive eye surgery. It was a personal Facebook page and not part of his work identity.

260. Ms Rodoy added to her original post of 30 January 2014 a comment: “Walking into court on Monday morning, after metaphorically picking himself up off the floor, I did say to Hugh: “Isn’t this going to be fun!?” He grunted!”. This post contributed in my mind to the cumulative and, taken as a whole, overwhelming evidence of the pleasure Ms Rodoy gained from taunting Mr Kerr and others. I say overwhelming because it more than counteracted, in my mind, Ms Rodoy’s assertions in evidence that she was indifferent to how people reacted to what she said to them or about them.

261. Mr Kerr was not able to shrug any of this off. Although I recognise that whether he did or not is not relevant, because he did not give Ms Rodoy the pleasure of confirming his reaction, the reaction he had was, I find, reasonable and to be expected. Mr Kerr was very distressed by the implication that he was lying about his lifelong disability, and he

was also very concerned that she had posted the link to his personal Facebook page on OERML.

262. I conclude that Ms Rodoy trolled Mr Kerr.

*(5) Dr Stephen Hannan and Mrs Noelle Hannan*

263. Dr Stephen Hannan is a qualified and registered optometrist who joined Optical Express as an optometrist in 2002. By 2010, he had been promoted to Clinical Services Director. Mr Mouldsdale described him in evidence as “my right hand”.

264. Between 2012 and 2014, Dr Hannan was aware that Ms Rodoy was sometimes attending patient consultations at Optical Express. These consultations were often although not always attended by Dr Hannan himself, as well as by the Medical Director of Optical Express Dr Jan Venter, usually at Harley Street in London. Although Ms Rodoy was never the patient, I accept Dr Hannan’s evidence that she had a tendency to dominate the consultations, making interventions which disrupted the patient-clinician consultation and relationship.

265. Ms Rodoy had no medical, optometrical or other relevant qualification, but she was a committed and partisan activist with a low view not only of Optical Express but of the various independent regulators to whom Optical Express was subject, all of whom (more or less) she considered to be (as she confirmed in evidence) “corrupt”. In particular, she gave evidence of her opinion that the General Medical Council is corrupt, the Royal College of Surgeons is “probably corrupt”, the Royal College of Ophthalmologists is “definitely corrupt”, the Medicine and Healthcare Products Regulatory Agency is she thinks corrupt, the Care Quality Commission (a regulator in England) she does “not have much time for”, Healthcare Improvements Scotland (the Scottish regulator of NHS and private healthcare providers) is “not to be trusted” and, quite apart from Optical Express, “the whole industry is corrupt”.

266. She brought these views into the consultations. I accept, from Dr Hannan’s evidence, that she tended to intimidate the patient (who had allowed her to attend) and to dominate the consultation, even interjecting when a clinical recommendation was made. She was in the habit of secretly recording the consultations on her mobile phone, which she knew was not allowed by Optical Express, and she would selectively post recordings on OERML.

267. Eventually, Optical Express banned her from attending consultations. It also became aware of occasions when Ms Rodoy would book a consultation ostensibly for herself, as a prospective patient. Dr Hannan took legal advice about this. He instructed clinics to notify him if she should attend the clinic and, in support of that instruction, he circulated a picture of her.

268. In August 2013, Ms Rodoy was focussing attention on Dr Hannan, whom she described, in a Trustpilot review (despite not having herself ever having been treated by Optical Express) as “a horrible little man doing a dirty little job for his nasty big boss David Mouldsdale!!”. She added “Trustpilotscreenshots will be posted on OERML Facebook once this is removed - which will be as soon as OE spot it!” This was one of the communications which was brought to Dr Hannan’s attention as part of the regular monitoring of Ms Rodoy’s internet campaign against Optical Express. He did not

respond, although he (in my view, rightly) interpreted it as an attempt to goad him into a negative or inflammatory response which she could then use against him.

269. I accept Dr Hannan's evidence that being in Ms Rodoy's line of fire immediately made him anxious. He was much more affected by the personal abuse than, for example, David Mouldsdale was. Mr Mouldsdale saw Ms Rodoy's activities as a business and public relations challenge but Dr Hannan was less thick-skinned and more vulnerable to personal attacks. When he received prank or silent calls, which he did at this time, he wondered whether Ms Rodoy was in some way connected to them, because of the ill-feeling she was stirring up against him personally. He was aware that she encouraged her followers to record interactions they had to OERML so they could be posted online, and he was careful not to betray any reaction that he felt.
270. Although Ms Rodoy had no direct knowledge of the effect she was having on Dr Hannan, I am satisfied that she hoped to have an effect of this nature. Her subsequent actions support that conclusion, although she denied the intention in evidence.
271. On 6 November 2013, Ms Rodoy posted on her OERML Facebook page Dr Hannan's mobile and office landline telephone numbers for her readers. She had taken them from an email signature of his that she had.
272. She followed this up with a post on 11 November 2013 in which she said:

“Be sure to tell Santa Mouldsdale's little helper Hannan the Elf what you want for xmas [smiley emoji]”

The post was accompanied by a picture of an elf with Dr Hannan's face superimposed on it.

273. This was, I find, an invitation to her readers to contact Dr Hannan on the numbers she had provided. It was not an invitation directed at any specific campaigning purpose or complaint. It was an invitation to annoy him because she had made him on her websites a figure of fun as well as an object of hatred, “Santa Mouldsdale's little helper Hannan the Elf”. I reject her explanation that it was “just an amusing post” or that she did not want people to telephone rather than email, or that she expected only serious communications about refunds or fixing eyes. It was trolling; baiting Dr Hannan herself and doing her best to get an army of readers, or as many of them as possible, to bother him on the telephone.
274. Ms Rodoy liked to refer to people connected with Optical Express by degrading names, and one she adopted for Dr Hannan was “wee McOptom”. This referred to his size, his Scottishness and his post nominal letters as a Member of the College of Optometrists (MCOptom). In a post on the OERML Facebook page on 25 March 2014, as well as using this nickname for him, Ms Rodoy shared with her readers clues about how they might find his home address. She said he had:

“...registered two practices with The College of Optometrists, although I doubt very much that he has any spare time to ‘moonlight’ given that his time is entirely taken up beating off the endless stream of OE's problem patients.

I therefore believe that “Practice 2” must be his home address, as an online search shows this property to be a 4 bedroom, 4 bath (no wonder he puts up with Mouldsdale's verbal abuse), residential house purchased in October 2011 for £285k.”

275. The College of Optometrists’ website of registered practice addresses was publicly available on the internet, as Ms Rodoy knew, because this is how she had found it. But this did not mean that Dr Hannan’s home address was public. It had taken Ms Rodoy some research (finding his practice addresses, and then linking the second address to house sale records to show it was a residential address) and some logical thinking to deduce that it was the address given as Dr Hannan’s second practice address. She was by this post pointing her readers towards his home address although not herself directly posting what it was (perhaps mindful of the Data Protection Act, to which she referred in her own correspondence seeking access to personal information about herself). Even Dr Hannan did not know that the College of Optometrists published practice addresses on its website.
276. Either Ms Rodoy herself, or one of her readers who had taken her bait, then posted (under the username “McOptom”) the address itself.
277. The whole episode was, I find, a deliberate invitation by Ms Rodoy to her OERML readers, who were (as shown by their comments) fired up with indignation against Dr Hannan and Optical Express by Ms Rodoy’s relentlessly inflammatory postings about them, to use the address to contact Dr Hannan though that address, potentially even in person, to cause him and his family trouble and stress.
278. She was quite happy for that to happen. Dr Hannan’s wife, Noelle Hannan, gave evidence that Mrs Hannan immediately became aware that her home address, and details of her house, including how many bedrooms and bathrooms it had, had been posted by Ms Rodoy on OERML. Mrs Hannan was terrified. She knew from the OERML comments that “people hated us”. She had very young children at home. She was so afraid about what might now happen to them all that she felt obliged to take the children away with her to stay at a relative’s house elsewhere. Dr Hannan recalls her suggesting they should move home altogether. She was afraid someone might turn up and kidnap the children or harm them in some way. That was not likely. But it was foreseeable that posting a home address on a website filled with hate towards the householder would cause distress and anxiety to those living there with him, as well as to himself.
279. I find that Ms Rodoy did foresee it. Had she not foreseen it, I would have expected her evidence to be shock at this outcome, and regret for it. That was not her reaction. She said

“I doubt if they did feel threatened. Their witness statements? Well, I leave it to the court to decide when these people give their evidence...”

In the event, however, she did not challenge Mrs Hannan’s evidence and Mrs Hannan (who is herself an Optical Express employee) was not required to attend for cross examination.

280. The fact was, and I find, that Ms Rodoy had no compunction either about what she had done or the effect it had had. This was exactly the sort of distress she was aiming to cause by posting the home address in the first place, albeit possibly at a higher level than she had anticipated. When her post was shown at trial to have succeeded beyond her expectations, she was still happy with what she had done.

281. A few weeks later, on 18 April 2014, Ms Rodoy took from Dr Hannan's family Facebook page a photograph of him on holiday behind two lion cubs and posted it on the OERML Facebook page. She captioned it:

“McOptom on his hols! I know what you're thinking – where the f\*ck were the parents when they were needed [smiley face emoji]”

The implication was that she wished the lion cub's parents had been there to kill or maim him.

282. This attracted a couple of abusive posts from OERML readers (“bite the little prick's head off please”; “Is that Shrek?”).

283. This came to the attention of both Dr Hannan and Mrs Hannan and upset them, as Ms Rodoy (I find) intended it to. They were particularly disturbed that she was now foraging among their family photographs on a personal Facebook page.

284. Ms Rodoy continued to target personal abuse against Dr Hannan (and others, but I am here focussing on the evidence in relation to him). In an OERML Facebook post on 25 June 2014 she described him as a “pink cheeked little sh\*t”. She liked to call David Mungall (Customer Care Manager) “Tweedledee” and Dr Hannan “Tweedledum” or “Tweedledum” or “Tweedles” and she called Mrs Hannan “Mrs Tweedles”. For example, in a post on the OERML Facebook page on 11 July 2014, she said:

“I frequently met both Stephen Hannan and David Mungall (aka Tweedledum(b) & Tweedledee) at OE's Complex Cases clinic in Harley Street. I had to chastise them on a number of occasions for being bad boys: like two naughty schoolboys caught stealing, Tweedledum(b) turns puce from his neck up and Tweedledee's cheeks flush an unflattering shade of pink.”

285. I have (from para 193 above) referred to Ms Rodoy's interactions with Lynsey Shaw in a recorded phone call in which she accused her of libel. Ms Shaw felt threatened by the aggressive tone of the call and did not want to deal further with Ms Rodoy. She had a mild-mannered personality herself but she told Dr Hannan she thought Ms Rodoy was “nasty and vindictive”. Therefore, at her request, Dr Hannan took over Optical Express's responses to Ms Rodoy's follow up correspondence on the subject.

286. During that correspondence, Ms Rodoy sent Dr Hannan an insolent email on 5 November 2014 which began “Dear McOptom” and concluded:

“You've proven that your grasp of the English language is as questionable as your fitness to practise as an optometrist, and, as I believe both are quite knowledgeable on the subject. perhaps

Hugh Kerr and Fiona Morton might be happy to explain this to you over a drink at a local hotel one night after work.

Now I've humoured us both Tweedledum, I look forward to hearing from Ms Shaw in due course."

287. Later in the correspondence, in an email dated 7 November 2014 to Dr Hannan, copied to Mr Mouldsdale, she wrote this:

"Dear Tweedledum

You do try my patience.

As you know, I've had a very busy day at Harley St and Westfield so will keep this brief.

I have no intention of answering any question you ask me, and while I do not have to explain the reason, I will.

You did not write about me to Ms Morley, Lynsey Shaw did. My dispute therefore is with Ms Shaw.

As you say she will not be responding to my emails I will seek legal advice to pursue this matter.

For the record Stephen, I think you're a jumped up, overpaid, nodding McOptom, with an inflated self image because David lets you do his dirty work.

Quite honestly, I think you would look more at home nodding on the back ledge of his porsche with an apple in your mouth!"

288. Under this, and obviously linked to her last paragraph, she posted a large, lurid image of a severed pig's head with an apple in its mouth and blood around its severed neck. It was a real pig's head; not a cartoon or anything of that sort. Below this gruesome image, she signed off her email:

"Photo in memory of David Orton - you need to have known his nickname for you to appreciate the joke.

Rgds

Sasha Rodoy"

289. Ms Rodoy said in evidence that David Orton was an Optical Express patient who Dr Hannan knew had died of cancer and she claimed that Mr Orton "used to call Mr Hannan Piggy Hannan". This was not put to Dr Hannan and there is no evidence that he was aware of it, assuming it was true. The email itself implies that Ms Rodoy did not think he was aware of it ("you need to have known his nickname for you to appreciate the joke."). Therefore, the effect of the email would be that Dr Hannan would see himself visualised by Ms Rodoy as a dead pig with his head cut off, the image being associated with a nickname for Dr Hannan from a person who had died of cancer.

290. As Ms Rodoy must have foreseen and intended, Dr Hannan was very distressed and felt threatened. Ms Rodoy's evidence denied that he was upset or threatened but she cannot have expected or intended anything else. She did not claim in evidence that it was a joke (although after she had received a visit from the police she did say it was a joke on her My Beautiful Eyes Foundation Facebook). I am satisfied it was not a joke. Her defence of it in evidence was that, in her view, it would be "water off a duck's back" to Dr Hannan. I do not believe she really thought that. If she had thought that, she would not have bothered. The whole point of expressing herself in this way in the email, and with this image, was to upset Dr Hannan. At this point, it was an email sent directly to Dr Hannan.
291. I accept Dr Hannan's evidence, which was tested but not shaken in cross examination; and I also find that his reaction was objectively reasonable, foreseeable and intended by Ms Rodoy. He said:

"For me, she had now crossed a line. This email was not an isolated event. This followed her posting about my appearance, questioning my professional credentials and capability, posting my personal contact details, posting my home address, trolling my personal Facebook, causing distress and alarm to me and to my family and lifting pictures from my Facebook page which she then posted and used to incite abusive comments towards me.

The picture of a severed pig's head in an email sent and addressed directly to me beginning with the message that I try her patience, took her abuse to the next level. She was personally abusing me. It had moved from an Optical Express and industry matter to a Stephen Hannan matter as far as I was concerned. She had tried to character assassinate me in many ways prior to this but this felt like a whole new level from her. I took this email as a physical threat. I was thinking that she was saying she would slit my throat. The message I took from this was that there was now the potential of physical harm coming in my direction. I took this as a personal threat to me, my wife and my children. On her OERML website and social channels, she had posted my home address, she had been critical of me, she had allowed someone on her website to express a wish for lions to maul me and now she had sent me a picture of a severed pig's head. I took this categorically as a serious threat."

292. As a result, he reported the email to the police. They registered the matter and gave him a police reference number. They took a statement from him. They took the complaint seriously and urged him to contact them if he became more concerned or if anything else happened. They then spoke to Ms Rodoy and issued her with a warning her about her conduct and told her that, if she persisted, she might be reported to the Procurator Fiscal. They advised Dr Hannan of this, in writing, and told him to block all email addresses to Optical Express that Ms Rodoy was using and to consider blocking her contact telephone number as well. They told him not to reply to any contact from her but to seek legal advice. They advised him to remove all his personal information from

online such as his house address, phone number etc and put relevant blocks on his social media sites such as Facebook.

293. Ms Rodoy admitted that the police had spoken to her but played it down to an extent I did not find, in view of the written communication from the police about it afterwards, credible. She suggested they were effectively only going through the motions and they ended up talking about Optical Express and eye surgery. That may have been what she was trying to change the subject into, but it is fanciful to suggest that the police took a relaxed attitude when talking to her about her conduct, given the very different attitude adopted when reporting back to Dr Hannan in writing. I find that the account they gave to Dr Hannan was accurate and Ms Rodoy's evidence (which was punctuated by assertions that, in any event, she did not remember it well or had forgotten) was false. It was a serious complaint and the police took it seriously.
294. It might be said that the email with the pig's head could not be described as trolling online to start with because it was in a personal email and not posted online. But, after the police visit, it was posted online, by Ms Rodoy. She used the police visit as grist to her mill and made a number of posts about it, mocking Dr Hannan and the police complaint. These posts were numerous and lengthy and covered 14 pages of the trial bundle, albeit with some repetition. It is particularly remarkable that she chose to publish to the world on her website the very email with the image of the severed pig's head which the police had warned her about. She referred to it as having sent "McOptom [i.e. Dr Hannan] running to the police station" but she said "He shouldn't have worried, because I'm a vegetarian and don't eat little piggies."
295. This was trolling, seizing on the reaction she had got and using it to double down with more abuse and ramp up with more publicity, which was in turned intended to rile up Dr Hannan even more and show him that she did not care if he reported her to the police (she said in her posts that she laughed when the police came). There was no campaigning motive behind this. It was vindictive.
296. The police visit did appear to have some effect, whatever Ms Rodoy said about it at the time. She limited herself to personal abuse of Dr Hannan and his wife after that and Dr Hannan no longer felt threatened. But that did not mean that the trolling stopped.
297. Ms Rodoy continued to call Dr Hannan "Tweedledum" or "Tweedles", and Mrs Noelle Hannan "Mrs Tweedles", when confronting Dr Hanan in public in person and in her posts online referring to him and his wife (who, as I have said, was also a senior Optical Express executive. She had joined the company before some time before her marriage to Dr Hannan). Ms Rodoy did this both before and after the defamatory letters were sent in 2020 and 2021.
298. I find that Ms Rodoy was trolling Dr Hannan and his family.
- (6) The Hannans' baby*
299. Ms Rodoy did not limit herself to calling Dr Hannan and Mrs Hannan names online, even after the police visit.
300. In about May 2018, Mrs Hannan noticed that Ms Rodoy had posted a comment underneath a photograph of her 18 month old son which was on a Facebook page

personal to Mrs Noelle Hannan (although it had not been locked down, which is how Ms Rodoy was able to access it and post on it). A friend and colleague of Dr Hannan, Professor Steven Schallhorn, had commented on the picture, saying the Hannans' son looked like his father, Dr Hannan. Ms Rodoy added her own comment to this, saying something like "better hope he doesn't turn out like his father". This was common ground, although the post and the comment have since been deleted and are now irretrievable.

301. Mrs Hannan was particularly distraught by Ms Rodoy commenting on a picture of her baby. Dr Hannan thought that the disparaging comment on a family photograph of a baby was disgusting, and it suggested to him there was nothing that Ms Rodoy would not do or say. Coupled with the rest of Ms Rodoy's personal attacks on him, the post about his baby son rattled Dr Hannan to such an extent that he wondered if his children were in danger.
302. Mrs Hannan removed the picture and the comments immediately. She gave evidence that she could not deal with Ms Rodoy (as she put it) "coming after my kids". She took everything offline so that no one at all could see her Facebook. She then got help from the Optical Express IT department so that all her social media was locked down and made private.
303. Ms Rodoy posted about finding a picture of the Hannans' son on her own OERML social media, and this was seen by Mrs Hannan, who gave evidence about it. Ms Rodoy did not publish the comment she had made on the photograph.
304. I find that the comment about the baby was another act of trolling by Ms Rodoy.

*(7) The "Suriya" chats*

305. I have explained how Ms Rodoy was in the habit of going on to the Optical Express website live chat with the log in name "Suriya". So far, I have looked at that only on the question of whether her dishonesty extended to using aliases, but I now return to it on the question of whether these interactions constituted trolling of Optical Express staff online.
306. Part of Ms Rodoy's motive (as shown by the content of some, but not all, of the chats) was to see if she could catch the chat operator out in something which might be posted on her website, with or without context.
307. But there are multiple examples of her using the opportunity simply to troll the operator.
308. The first two occasions when she logged on to the chat as "Suriya" are both examples of this trolling. I have already quoted them, but I will now look at them again for the purpose of the trolling issue.
309. When she logged on as "Suriya" for the very first time, on 9 May 2014, the complete chat transcript went as follows:

"Name: suriya

What can we help you with?

[Suriya] Hello?

[Blair] Hello

[Suriya] Message for Sam, who told me that your "clinical specialists are trained to manage ANY complication that occurs". I advise he reads OERML to find that's a lie! Pls tell Sam he's now famous:

<https://www.facebook.com/OpticalExpressRuinedMyLife>

Blair closed the chat.

Duration: 11 seconds”

310. Blair obviously thought he was being trolled, because he closed the chat instantly. He was right. Ms Rodoy was not asking for information. She was not campaigning. She was not even addressing herself to the chat operator. She was simply trying to unsettle another chat operator, “Sam”, by telling him “he’s now famous” and linking to an attack on him by name on the OERML Facebook page.

<https://www.facebook.com/OpticalExpressRuinedMyLife>”

311. On the second occasion, on 28 May 2014, the chat transcript goes like this:

“[Paul] Hello. Do you need help finding something in particular?”

[Suriya] Lol!!! I'm Sasha Rodoy

Suriya closed the chat

Duration: 6 seconds”

312. Ms Rodoy was asked about this:

“Q. Was it to give this man, Paul, a little jolt, a little shock?”

A. I just did it. It was amusing because they'd all been told they shouldn't talk to me.”

313. That was trolling.

314. On 29 May 2014, “Suriya” logged in to a live chat with “Paul”. He asked “What would you like to know about laser eye surgery?” and she responded “where does it say that 99% of your patients would recommend it to their friends and family? on your website...” That was a pointless and time wasting enquiry but Paul responded in good faith, “Bear with me while I try and locate that for you” and then provided the link. Ms Rodoy snapped back with a link to OERML Facebook. Paul politely said he could not access Facebook from where he was. Ms Rodoy said “Check it when you get home [wink emoji]”. Paul thanked her and wished her a good day, Ms Rodoy responded with two kisses and closed the chat.

315. In evidence she said, of this and other chats, that the chat box popped up uninvited when she went on to the Optical Express website. But that is not an excuse for what she did when she chose to accept the invitation and start chats of this nature. In relation to this chat with Paul on 29 May 2014, her evidence was “Sometimes I will just give answers just for the hell of it.”
316. That was trolling.
317. On 3 June 2014, Ms Rodoy had multiple chats with “James” which were either blank or in which she said nothing of substance, for example she simply typed in a question mark or a full stop before closing the chat. In other chats she waited until James had come on and said “Hello” to her and then closed the chat without responding to him. After 8 chat logins without saying anything of substance, in her ninth chat with James on this day Ms Rodoy responded to his “Hello” by saying “No Neil?” before closing the chat. Her next chat was the one I have quoted at para 208 above, in which she attacked James for working for Optical Express and linked him to OERML before he banned her for 1,000 days and closed the chat. (The ban seems not have worked, because the “Suriya” logins continued). Her evidence was that this exchange was because she “wanted to bring this to their attention” and hoped that “if anyone had a conscience they would go and find a job somewhere else”. However, that is not what it looks like to me. Taken with the multiple silent log-ins or question mark or full stop chats which preceded it, I think this was no more than a needling of James whose main motive was to upset or annoy him. He seems to have seen it as a nuisance call because he banned her. I accept that she targeted James because he worked for Optical Express but I do not accept that she seriously thought that a chat operator would look at her website and then decide to work for someone else.
318. The most she could expect would be that he would treat it as a nuisance interaction from a troll, which is what it was.
319. Not all the chats were of this nature, or clearly of this nature. The chat on 3 July 2014 seems to me to have been less obviously trolling as opposed to information gathering. It started by challenging the use of the NHS logo on the Optical Express website, then (when the operator explained that Optical Express took NHS referrals) said (falsely) she was looking for treatment on the NHS and asked how she could do that before, finally, when she was told to contact the NHS about it, she closed the chat.
320. The next chat, on 15 July 2014, does however seem to me to be trolling. The operator (“Graeme”) opened by saying “Hello” and asked what she would like to know about eye surgery. She asked “Have you had it?” He said he had not because he did not need glasses but asked how long she had been considering the procedure. She responded “Until I found [OERML]”. He said “That’s a website we have been made aware of. Is there anything in particular that I can help you with Suriya?” She asked if he had read it. He said he had not and closed the chat.
321. This looks like trolling.
322. On 20 August 2014 she had a chat with an operator called Matthew. She posed as a prospective patient concerned about the safety of the procedure and, after Matthew had responded factually to these concerns, she said:

“Enjoyed the chat, get a decent job where you can sleep @ night knowing you're not responsible for helping ruin someone's life!”

He closed the chat.

323. She was trolling him. There was no point in putting these questions to him. She was wasting his time before finishing with a personal attack. He was not an ophthalmic surgeon or an executive. He was a chat operator, similar to a call centre operator, with no executive responsibility and no influence, a person at the bottom of any hierarchy one might care to construct. Ms Rodoy was simply being nasty to him because he was associated with Optical Express. She said in evidence: “I loathe and despise the entire industry and all who sail in it.” Ms Rodoy’s loathing motivated this and other chats of this nature. They were designed to be a nuisance and to cause upset. That was the point of them and that was why Ms Rodoy engaged in them; in her words, “just for the hell of it”.
324. Of this chat, she was asked “Did you care if he was upset?” and answered “It didn’t – it wasn’t a consideration”. It is revealing that she says she did not care if “Matthew” was upset but I think the indications are that she did know and intend that he should be upset by what was clearly an upsetting remark, and she wanted to upset him.
325. This was trolling.
326. Ms Rodoy’s live chat with “Iain” on 12 September 2014 consisted of the following, and nothing else:
- “[Iain] Hello. Do you need help finding something in particular?”
- [Suriya] No, but you might want to find a new job soon ;)
- [Iain] Is there anything I can help you with today?
- Suriya closed the chat.”
327. That was trolling.
328. On 19 September 2014 she had a live chat with “Graeme”. After she had sent him links to various articles and websites (including OERML) critical of Optical Express (although Graeme, like every previous operator who she had sent links to, said he could not access external websites), and suggesting he might look for another job, she was asked: “Is there anything I can help you with today Suriya?” to which she responded:
- “May your eyes develop cataracts & be operated on by David Teenan [smiley emoji]”
329. That was trolling. Even Ms Rodoy accepted in evidence “it was probably unfair to that particular person”.

(8) *Lynsey Shaw*

330. I have already looked at Ms Rodoy's call with Lynsey Shaw of Optical Express on 4 November 2014, because that call is part of the case against her on the use of aliases (see para 198 above). It also forms part of Optical Express's case on trolling.
331. As soon as Ms Rodoy was put through to Lynsey Shaw (as a result of using a false name), she gave her true identity and attacked Ms Shaw for what she had said about Ms Rodoy in an email, which she said was a libel (not the libel sued upon in this action). She was aggressive and hectoring.
332. I accept the evidence of Optical Express, which is consistent with the documents, that Ms Shaw was upset by the call and did not want to have anything further to do with Ms Rodoy on the subject. It was for this reason that, at her request, Dr Hannan took over the correspondence with Ms Rodoy. I also accept Ms Rodoy's evidence that she was not told that Ms Shaw was upset and so she could only have guessed it.
333. The line Ms Rodoy took in her call with Ms Shaw, and the tone of voice she adopted, was obviously and foreseeably upsetting, but Ms Rodoy might have thought it was justified by her complaint about what Ms Shaw had written about OERML being funded by Russell Ambrose of Optimax (although she admitted in evidence that OERML had some one-off funding from him).
334. Ms Rodoy was secretly recording the call. She knew this was not allowed; indeed, she knew that she would not even have been able to have the conversation with Ms Shaw if she had not given a fake name. The reason she recorded the call was that she wanted to be able to post it on the internet.
335. This is what she in fact did, posting it on her "Sasha Rodoy" YouTube channel the same day, 4 November 2014.
336. There was no good reason for doing this. In fact, since her complaint was about what she said was a defamatory passage about her in a personal email from Ms Shaw to a patient, it was against Ms Rodoy's own interests to publicise the libel, albeit in conjunction with her saying that it was a libel. Ms Rodoy did not in the call give a factual basis for denying that the libel was true. What the recording did do was to accuse Ms Shaw of having libelled and having lied and to record Ms Shaw being berated by Ms Rodoy.
337. Ms Rodoy was evasive when asked if she was pleased with the call or whether she wanted to make Ms Shaw aware she had recorded the call. I am sure she was pleased with the call (otherwise she would not have posted it online) and I am sure she wanted to make Ms Shaw aware she had recorded the call (there was no other reason for putting it up on YouTube). She knew (as she said in this context as well as others) that "Optical Express monitor everything I do" and added "of course Lynsey Shaw would have been told about it".
338. I am sure that she posted it in the hope and expectation that Ms Shaw would become aware of the call having been recorded and of the recording having being posted on the internet and in the hope and expectation that this would unnerve and distress Ms Shaw. I reject Ms Rodoy's denials in that respect.

339. Since this was an online posting with the primary motive of upsetting Ms Shaw, I think it can properly be described as trolling.

(9) *“The Three Bears” post about the lift encounter*

340. On 12 March 2015, Ms Rodoy posted on the OERML YouTube page a video she called “Sasha Rodoy & The Three Bears”.

341. She opened the video by saying to camera, with what looks like a gleeful smile (her evidence was “I was laughing. It was very amusing.”):

“Hi. This is my meeting with the three bears - David Mouldsdale, Steve Schallhorn and Steven Hannan, a.k.a, Tweedledum”

342. She then addressed herself directly to Mr Mouldsdale, saying:

“Now, just for the record, David, I didn’t know I was recording this, so – it’s a surprise, as much for me, as for you.”

343. Then she said: “I hope you’ll all enjoy it” before playing an audio recording of an occasion when Mr Mouldsdale, Dr Hannan and Professor Schallhorn had been surprised to walk into a lift going up to a meeting at the Royal College of Surgeons on 10 March 2015 (which Ms Rodoy was not entitled to attend and was not expected to attend) and to find Ms Rodoy in the lift with them. They did not know that she was wired for audio recording and that this was running when the lift doors opened and they got in, with her already in it.

344. I heard evidence about this from Ms Rodoy and from the three Optical Express officers involved: Messrs Mouldsdale, Hannan and Schallhorn. I make the following findings of fact on the evidence.

345. Ms Rodoy did know that she was recording. She had gone to the lengths of putting audio equipment on her person, concealed, and on setting it running so that she would not be seen to start it when she wanted something recorded. It was not a coincidence or a surprise to her that the three men walked into the lift when she was in it. She had got into the lift when she knew they were approaching the meeting (her evidence was “I had rushed in to avoid the OE seeing me and I rushed in, got in the lift”). Contrary to her evidence, she stayed in the lift knowing and expecting that they would be bound sooner or later to get into it with her when going up to the meeting, which was on the first or second floor.

346. She was delighted (and this was her evidence) when they did get into the lift with her, and she was delighted that they were discomfited (this was both their evidence and hers). She described the incident in evidence as “a highlight” and “very amusing”. She particularly pleased that the three Optical Express people were surprised and shocked and embarrassed by the encounter, during which she called Dr Hannan “Tweedledum”, which he not unreasonably found humiliating. He thought she was trying to goad him into a reaction, and I agree that is what she was doing. He thought she had orchestrated the encounter, and I agree that she had. They did not know they were being recorded, but they did not interact with her.

347. The flavour of the encounter, and its purpose, were particularly well captured by Professor Schallhorn in his evidence. Because he was physically present, his evidence was an important addition to the limited information conveyed by the clipped and poor quality audio recording and transcript which was posted by Ms Rodoy on YouTube and presented in evidence.
348. Professor Schallhorn is a former US naval aviator and Marine Corps instructor who went on to qualify an ophthalmologist. He is Professor of Ophthalmology at the University of California, San Diego and has presented over 200 clinical papers in his field. Although based in the US, at this point he was Chairman of the Optical Express Medical Advisor Board and had the title of Global Medical Director. He is a robust and resilient man and he was an entirely credible witness. But what he aptly described as Ms Rodoy's ambush in the lift predictably made him feel exposed and unsafe, even though he did not know that there was recording going on. When he later did discover that, it felt to him invasive and unsettling. No-one likes being secretly recorded even if they are acting properly. The insult to Dr Hannan by Ms Rodoy calling him "Tweedledum" was, he thought, deeply upsetting even before he realised it had been put on the internet.
349. I assess what happened objectively, on the balance of probabilities. I find that Ms Rodoy was there to wind them up, and she thoroughly succeeded. She intended to post it on the internet, which is why she had wired herself for sound, and she did that on the same day, on YouTube.
350. All three men became aware of the YouTube video, as Ms Rodoy intended they should. That is confirmed by her addressing opening remarks, personally, to David Mouldsdale. Dr Hannan and Professor Schallhorn were upset by it (but there is no evidence that Mr Mouldsdale was affected as much as they were).
351. It was put to all three men that the title Ms Rodoy gave her video, "Sasha Rodoy & The Three Bears", was a reference to Goldilocks. None of them had picked up that reference and nor had I until it was suggested. They and I did, however, understand it, as I find it was intended to be understood, as a jibe against them. Even if the Goldilocks reference had been more obvious, it was still (as Professor Schallhorn said in evidence) "mocking, demeaning or degrading". There was no physical threat from Ms Rodoy at this point, but I accept Professor Schallhorn's evidence that he took the incident, both when it happened and when it was posted online:
- "...as degrading and demeaning from someone who was seeking to do something not physically harmful but using material maybe in other harmful ways, interaction being posted on a website in a degrading, demeaning or threatening way, not physically but otherwise threatening."
352. There was no substance to this encounter. Ms Rodoy did not mention any of her talking points about refractive eye surgery. She did not raise the case of any patient. She said nothing at all except what was calculated to offend and annoy, and she succeeded in that. She staged the incident in order to be able to post it online, and, the same day, she did post it online. She made it clear, both in the preamble to the video online, and in her evidence to me, that she could not have enjoyed it more. What she enjoyed was getting under the skin of the three men from Optical Express. That was all there was to it.

353. I find that this was an example of Ms Rodoy trolling Optical Express staff online.

*(10) The “Wall of Shame” post*

354. On 18 January 2020, Ms Rodoy put a post up on her OERML Facebook with a photograph, a screenshot and the following text:

“Newcomers to OERML's Wall of Shame: used car salesman Campbell Provan\* and hairdresser Amy Wyatt, both senior sales people at Optical Express need I say more [sunglasses emoji]

\*I met Campbell Provan on 23 February 2019, when we held a demo outside Optical Express at 200 St Vincent Street (scroll back for photos), and was very surprised when he recently started following me on @OERMLuk Twitter!

I therefore thought that perhaps he'd left OE, but his LinkedIn page suggests he's still there....”

355. The photograph was of a man outside an office building, presumably Campbell Provan. The screenshot was of his Twitter account. It showed his Twitter handle and a link to [stephen-hannahcars.co.uk/used-cars/skod...](http://stephen-hannahcars.co.uk/used-cars/skod...) which Ms Rodoy had highlighted with an arrow and the words: “Hannah or Hannan!”. Below that, she had put another arrow with the caption “Hairdresser” and, although the point of the arrow is cut off, it was presumably meant to point to some reference to a hairdresser in connection with a person called Amy Wyatt.

356. There is no campaigning content to this post. It is personal ridicule of the man (characterised as a “used car salesman”) and of the woman (characterised as “hairdresser Amy Wyatt”). It looks like stalking, with the results posted on the OERML Facebook for its angry and excitable readers and commenters, including a pointer to Mr Provan’s LinkedIn and Twitter accounts.

357. Ms Rodoy’s explanation for this post was as follows:

“I did this to how unqualified people were selling refractive eye surgery given that they had come from completely unrelated industries. I frequently compare Optical Express’s sales tactic to that of a used car salesman and the fact that a used car generally gets a three-year warranty whereas refractive eye surgery only gets twelve months. In respect of hairdressing, I frequently point out that refractive eye surgery should not be so casually sold like it is a new haircut or hair colour.”

358. That is, to my mind, an implausible attempt to put a serious gloss on a post which contained no reference to either of these points, either expressly or by implication.

359. I find that this post was what it appeared to be on its face. It was trolling two members of Optical Express staff.

*Conclusion on trolling*

360. Ms Rodoy could not dispute the essential facts of the online activity which I have highlighted, but she denied that her motive was trolling, as opposed to campaigning. She said:

“I need to explain the nature of my campaigning in order to give a context to what I am alleged to have done. I have taken on a very powerful global industry. It is hugely profitable and will do whatever it can to protect its income. Optical Express itself carries out more refractive surgery than any other provider UK provider. It is incredibly powerful and highly profitable. I have a lot of determination but not many resources. I need to make a lot of noise to bring attention to my campaign and I need to expose organisations like Optical Express. I believe that this is justified because I am helping people (...)”

361. Having seen Ms Rodoy give evidence, however, and upon examination of the particular online activities I have singled out, I am satisfied that, in the cases I have identified, she was trolling Optical Express and many of its staff online. On other occasions she was campaigning, but not on these occasions. In making this judgment, I am not applying any legitimacy test to what counts as campaigning. Campaigning may be high-minded or go low; it may use conventional tactics or hit below the belt; it may sometimes (although not usually) involve breaking the law. None of that concerns me for the purposes of this defamation action. We live in a free country and a person can be an aggressive, even wrong-headed, campaigner, without being a troll. But I am satisfied that these incidents were not campaigning at all. They were deliberate trolling.
362. I will go further. Ms Rodoy was running a genuine campaign to publicise information and provide support and assistance to patients, and prospective patients. But this campaign was also motivated by her pleasure in the trolling, in the rise she got, and the attention she got. Her campaign against providers of refractive eye surgery in general, and Optical Express in particular, was, for Ms Rodoy, a vehicle for indiscriminate and disingenuous attention-seeking, mockery, cruelty and abuse. In short, it was an opportunity for trolling which Ms Rodoy embraced wholeheartedly.
363. It is clear to me from the evidence that Ms Rodoy relished winding up, insulting, and upsetting all sorts of people, whether senior executives like Russell Ambrose (of Optimax), David Mouldsdales and Stephen Hannan (of Optical Express), or more junior people, including call centre and online chat operatives. For Ms Rodoy, this was a pleasure in itself. She thought it was fun and she could not get enough of it. This malicious joy in hurting other people by any means possible meant that she did not confine herself to the work of Optical Express employees but peered into their personal lives and scattered jibes and insults everywhere, even when the subject was a child. Hurting people was, for Ms Rodoy, not a means to an end. Hurting people was something she liked doing.
364. Ms Rodoy may well have thought it was effective campaigning to rally the troops by demonising and belittling the adversary, and to demoralise the opposition by needling, disrupting and insulting them. But I am satisfied that her principal motivation was the pleasure she derived from doing it. I reject the evidence she from time to time gave,

somewhat half heartedly, that she was indifferent to the effect of what she was doing on others. She enjoyed the cruelty. She enjoyed getting under the skin of the people she was taunting and mocking. She used her campaign, partly as a vehicle for what she really enjoyed, which was trolling, and partly as a springboard for trolling which was so far removed from informing, influencing, or pressurising anyone that campaigning was not even a part of it.

365. Ms Rodoy's trolling was not as bad after the police visited her about the severed pig's head in December 2014, but it did continue. It was still going on when the letters were sent in 2020 and 2021.
366. My conclusion is that the imputation in the defamatory letters that "Ms Rodoy trolls Optical Express and many of its staff online" was substantially true at the time the letters were sent.

**Meaning 3: At times, the trolling has been to such an extent that there were reasonable grounds to suspect that she was placing the safety of staff members at risk.**

367. The next question is whether Optical Express has proved that it was substantially true that:

"At times, the trolling has been to such an extent that there were reasonable grounds to suspect that she was placing the safety of staff members at risk."

368. The "reasonable grounds to suspect" qualification is a level of meaning below an unqualified statement of fact: it is one of what are now called the *Chase* levels of meaning, derived from the judgment of Brooke LJ in *Chase v News Group Newspapers Ltd* [2002] EWCA Civ 1772; [2003] EMLR 11. The case law which has grown up on what is required in order to establish the substantial truth of a "reasonable grounds to suspect" or *Chase* level 2 allegation is comprehensively and conveniently gathered and summarised by Nicklin J in *Turley v Unite the Union* [2019] EWHC 3547 (QB) at paras 115-125.
369. The principles include the following:
- i) It is necessary to prove the primary facts and matters giving rise to reasonable grounds of suspicion objectively judged.
  - ii) The question for the court when considering a defence of justification is whether, viewed at the date of publication, the claimant had behaved in a way that would give a reasonable person grounds for suspecting him or her of the wrongdoing in question.
  - iii) The reasonable person is to be taken to be aware of all the primary facts and matters subsisting at the date of publication.
  - iv) It is necessary to remember that a Chase Level 2 imputation involves an allegation that the claimant has by his conduct brought suspicion upon himself or herself. That is a matter to be judged objectively by reference to the facts,

taken as a whole, as they were at the time of publication and as they would be viewed by an ordinary reasonable person.

- v) Hence, both parties are entitled to rely on facts as they were at the date of publication, whether they knew them or not. Because the Court is required to make an objective assessment, it is to be determined by reference to all relevant facts at the date of publication and not just those facts which were known to the publisher or included in the publication.
  - vi) Events that occur after publication – including attempts by a claimant after the event to explain away his or her actions – are to be excluded from consideration, but statements, whenever made, which tend to prove or disprove the existence of facts subsisting at the date of publication are admissible.
370. Some reliance was placed by Optical Express on the conduct which caused Ms Rodoy to be banned from Optical Express clients and premises but it did not seem to me that the objective facts of that conduct went so far as to provide reasonable grounds to suspect that she was placing the safety of staff members at risk.
371. Therefore, the focus of this part of the case moves to Ms Rodoy's communications with and about members of the Hannan family, which I examined in paras 263 to 304 above. In particular, Optical Express bases its case on:
- i) Ms Rodoy posting Dr Hannan's mobile and office telephone numbers on the OERML Facebook page on 6 November 2013 (para 271 above).
  - ii) Ms Rodoy alerting readers of her OERML Facebook page to Dr Hannan's home address in March 2014 (paras 274 to 277 above).
  - iii) Ms Rodoy trawling the personal Facebook accounts of the Hannan family and posting a disparaging comment on a photograph of their 18 month old son (paras 300 to 303 above).
  - iv) Ms Rodoy sending Dr Hannan (copied to Mr Mouldsdale) the photograph of the severed pig's head on 7 November 2014, leading to the referral to the police, and Ms Rodoy subsequently posting it on the My Beautiful Eyes Facebook page on 1 December 2014 (paras 287 to 293 above).
372. I do consider the objective facts I have found proven in these respects to provide reasonable grounds to suspect that Ms Rodoy was placing the safety of Dr Hannan and his wife (who were both Optical Express staff members) at risk. Posting telephone numbers was not much of a threat, but it was the start of an escalating pattern of behaviour which was followed by the posting of his home address, with details about the house. This did immediately begin to suggest a threat because it objectively appeared to invite readers who were very ill-disposed towards Dr and Mrs Hannan to contact him at that address and (if they wished) to attend at that address.
373. It was an objective fact that the readers of Ms Rodoy's Facebook pages were, not least as a result of the inflammatory content of her posting on them, very angry and (based on their language) potentially violent people. Most, no doubt, were not potentially violent; but it would only take one to pose a threat once he knew a home address.

374. Ms Rodoy accepted the first point:

“Q. And I am sure you would agree there are some angry people who visit your website.

A. I am surprised some of these people who own these companies still have not been physically attacked, quite honestly.

Q. You are surprised they have not been physically attacked?

A. Yes. When men especially, who are very good at saying, "I am going to get them," actually they are all wussies at the end of the day.

Q. Because it is right, is it not, that some people who use your website, they talk about physically attacking people?

A. Yes, yes.”

375. She said that the people she talked to “are very angry, you know” and she referred back to her own evidence, earlier, about an email she had sent referring to her own ophthalmologist who she blamed for botching the operation on her eyes by Optimax, which said:

“That man is the nightmare I hope I never see in my dreams. Not normally a physically violent person, I don’t know how I would react should I ever meet him in person.”

376. Giving evidence about what she said there, Ms Rodoy said:

“A. I have Doctor [NAME]’s address. I wouldn’t dare go anywhere near him because I do not know - the only time I’ve ever been physically violent is to slap a boyfriend for two timing me, but if I were put in front of the surgeon who ruined my eyes, I - seeing red, I understand that expression.

Q. What would happen if you saw him?

A. I have no idea because I would probably just lose it.

Q. Perhaps you would lose it. What would happen next?

A. I’ve no idea, let’s not try it.

Q. Would you be violent?

A. I have no idea what I would do.

Q. You may be violent?

A. I have no idea what I would do unless I were in that situation.  
That's why I don't ever want to meet him."

377. The threat objectively posed by putting Dr and Mrs Hannan's home address before the angry and in some cases violent readers of Ms Rodoy's websites (including the man who said that if he ever met Mr Kerr "he will have a job talking to me with no teeth", in reaction to Ms Rodoy's posts about him) was made greater by the fact that Ms Rodoy herself thought that physical violence was a natural response to what she saw as the iniquities of her own surgeon and (by extension, and based on her extensive writings) the likes of Dr Hannan as a top executive of Optical Express. She posted the picture of Dr Hannan with lion cubs regretting that the cubs' parents were not there to kill or maim him. She had made it clear from her posts that she hated Dr Hannan. Although she did not accept the word "hate" to represent her feelings towards him in her evidence, she suggested "despise and loathe and detest" instead. She felt the same about Mrs Hannan.
378. It was clear from her posts (and from her evidence) that she did not see Dr Hannan or other Optical Express staff as human beings worthy of empathy or respect but as monsters with no feelings who deserved every extreme of vilification and, potentially, violence.
379. That was a very threatening attitude from a person who was focussing her attention, and the attention of her online audience, specifically on Dr Hannan, and Mrs Noelle Hannan, who were repeatedly brought up in her posts, often with the dehumanising names of "Tweedledum" or "Tweedles" and "Mrs Tweedles".
380. It became more threatening when she made it clear that she was not just arguing objective disputes about policy or misconduct but trawling their personal lives and Facebook photographs like a stalker, and signalling to them (with her disobliging comment about their baby as a Facebook comment) that she was doing it, and posting their home address.
381. The severed pig's head email was another objective fact giving reasonable grounds to suggest that she was placing the safety of Dr and Mrs Hannan at risk. The opening line of the email in which it featured said: "Dear Tweedledum, You do try my patience." Trying the patience of a malicious person who thought violence was a possible outcome if she encountered someone she was angry with was a dangerous thing. And the pay-off "Quite honestly, I think you would look more at home nodding on the back ledge of his Porsche with an apple in your mouth!" gave reasonable grounds to suspect a direct threat as well, even if she did not intend it as such.
382. Both Dr Hannan and Mrs Noelle Hannan genuinely believed as a result of Ms Rodoy's online activity that she was a risk to their safety. That is why Mrs Hannan moved out of her house and Dr Hannan briefly questioned whether he should leave his post. Those subjective reactions are not relevant in themselves, but I find that they were reasonable responses even to the objective facts known to them. But the objective facts were not limited to those the Hannans knew. The objective facts included the wider evidence of Ms Rodoy's white hot hatred of them, her lack of empathy, her lack of compassion, her inability to see them as human beings as opposed to fair targets who deserved anything that might come to them, and her admitted capacity for violence.

383. The reasonable grounds for seeing the posting of the Hannans' home address as a threat included the incendiary context in which it was posted, which was the whole content of the OERML Facebook and associated channels, and also the vast numbers of people who, according to Ms Rodoy, looked at them. She said in her evidence: "I have had over a million viewers on my website alone, never mind my other social media. So there are the posts from countless people." There was also her evidence that many of the readers were actively engaged by her content:

"Q. According to you many thousands of people have contacted you through your website. The home page has been viewed 1.3 million times and one of the groups on the forum has had over half a million views. Correct?"

A. Apparently, yes.

Q. So a lot of people have relied on information that you have provided on your website, Facebook page, etc, about Optical Express.

A. That is only the website. People now, more people are looking at Facebook, etc, social media, and I do not have stats for that."

384. It was suggested in the cross examination of Optical Express witnesses that Ms Rodoy was a woman of a certain age and of medium height and build who objectively posed no threat to them. Dr Hannan did not accept that and nor do I. She did not have to be a prize fighter or a teenager to pose a physical threat to him or his wife. She was able-bodied and fit enough to pose a threat, age and build notwithstanding, particularly since she would not be limited to her bare hands, any more than the butcher of the severed pig's head was. Dr Hannan thought she was threatening to slit his throat when she sent him that image and I can see why.

385. I find that there was an objective basis for saying there were reasonable grounds to suspect Ms Rodoy posed a threat to Dr Hannan's safety and that of his wife.

*Conclusion on safety*

386. I have already found that the imputation: "Ms Rodoy trolls Optical Express and many of its staff online" was substantially true.

387. In relation to the further meaning "At times, the trolling has been to such an extent that there were reasonable grounds to suspect that she was placing the safety of staff members at risk", I am satisfied that this was substantially true as well.

388. The meaning established at the trial of meaning did not specifically mention police involvement. However, the letters themselves did. They said:

"In the past, this trolling has been to such an extent that we have had to involve the police in the interest of employee safety"

389. That was true, because of the involvement of the police by Dr Hannan when he felt Ms Rodoy had "crossed the line", as he put it in his evidence. The involvement of police

was justified by the objective facts at that point. The police also thought so, and took the complaint seriously, and acted upon it.

*Final conclusion on truth*

390. I therefore find that the defamatory allegations were substantially true.

**Issue 3: Were the defamatory allegations protected by qualified privilege?**

391. The issues of qualified privilege and malice do not require determination in view of my conclusions on truth.

392. However, since I heard evidence and argument on them, I will state my conclusions on those points, starting with qualified privilege.

393. The circumstances in which there will or may be qualified privilege were examined by Lord Nicholls in *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127 at 193-195. He said (at p 194):

“...there are circumstances, in the famous words of Parke B in *Toogood v Spyring* (1834) 1 CM & R 181, 193, when the “common convenience and welfare of society” call for frank communication on questions of fact. In *Davies v Snead* (1870) LR 5 QB 608, 611, Blackburn J spoke of circumstances where a person is so situated that it, “becomes right in the interests of society” that he should tell certain facts to another. There are occasions when the person to whom a statement is made has a special interest in learning the honestly held views of another person, even if those views are defamatory of someone else and cannot be proved to be true. When the interest is of sufficient importance to outweigh the need to protect reputation, the occasion is regarded as privileged.

(...)

Over the years the courts have held that many common form situations are privileged. Classic instances are employment references, and complaints made or information given to the police or appropriate authorities regarding suspected crimes. The courts have always emphasised that the categories established by the authorities are not exhaustive. The list is not closed. The established categories are no more than applications, in particular circumstances, of the underlying principle of public policy. The underlying principle is conventionally stated in words to the effect that there must exist between the maker of the statement and the recipient some duty or interest in the making of the communication. Lord Atkinson's dictum, in *Adam v Ward* [1917] AC 309, 334, is much quoted:

“a privileged occasion is ... an occasion where the person who makes a communication has an interest or a duty, legal, social,

or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential.”

The requirement that both the maker of the statement and the recipient must have an interest or duty draws attention to the need to have regard to the position of both parties when deciding whether an occasion is privileged. But this should not be allowed to obscure the rationale of the underlying public interest on which privilege is founded. The essence of this defence lies in the law’s recognition of the need, in the public interest, for a particular recipient to receive frank and uninhibited communication of particular information from a particular source. That is the end the law is concerned to attain. The protection afforded to the maker of the statement is the means by which the law seeks to achieve that end. Thus the court has to assess whether, in the public interest, the publication should be protected in the absence of malice.

In determining whether an occasion is regarded as privileged the court has regard to all the circumstances: see, for example, the explicit statement of Lord Buckmaster LC in *London Association for Protection of Trade v Greenlands Ltd* [1916] 2 AC 15, 23 (“every circumstance associated with the origin and publication of the defamatory matter”). And circumstances must be viewed with today's eyes. The circumstances in which the public interest requires a communication to be protected in the absence of malice depend upon current social conditions. The requirements at the close of the twentieth century may not be the same as those of earlier centuries or earlier decades of this century.”

394. Further analysis was provided by Simon Brown LJ in *Kearns v General Council of the Bar* [2003] 1 WLR 1357 at para 30:

“The argument, as it seems to me, has been much bedevilled by the use of the terms “common interest” and “duty-interest”, for all the world as if these are clear-cut categories and any particular case is instantly recognisable as falling within one or other of them. It also seems to me surprising and unsatisfactory that privilege should be thought to attach more readily to communications made in the service of one's own interests than in the discharge of a duty - as at first blush this distinction would suggest. To my mind an altogether more helpful categorisation is to be found by distinguishing between, on the one hand, cases where the communicator and the communicatee are in an existing and established relationship (irrespective of whether within that relationship the communications between them relate to reciprocal interests or reciprocal duties or a mixture of both) and, on the other hand, cases where no such relationship has been established and the communication is between strangers (or at

any rate is volunteered otherwise than by reference to their relationship). This distinction I can readily understand and it seems to me no less supportable on the authorities than that for which Mr Caldecott contended. Once the distinction is made in this way, moreover, it becomes to my mind understandable that the law should attach privilege more readily to communications within an existing relationship than to those between strangers.”

395. Optical Express was in an existing and established relationship with each of the people to whom it sent a letter containing the defamatory statements and, contrary to the submissions made on behalf of Ms Rodoy, that relationship had not ended although they were in dispute. It was both a clinical relationship (between a provider of eye surgery and follow-up consultations and treatment to a patient) and a commercial relationship (because the treatment and advice was provided privately for a fee and not as part of the National Health Service).
- i) Mr Hind was seeking further surgery from Optical Express. They were not agreeing to provide that, in accordance with his request, at no cost, but in their letter of 25 May 2021, which contained the defamatory statements, they offered follow up appointments.
  - ii) Mr Beaton was also seeking further surgery at no cost. Optical Express’s letter of 22 June 2021 in response to that envisaged further advice and treatment by Optical Express, if appropriate, saying (for example): “...please be assured that if a YAG Capsulotomy procedure and / or a Laser Eye Surgery enhancement procedure is recommended in the future and you are found to be clinically suitable, this will be performed without any undue delay.” Mr Beaton’s email of the following day, 23 June 2021, mentioned Ms Rodoy and said he was getting a second opinion through the NHS. The Optical Express response to this, dated 21 July 2021, contained the defamatory statements. It also said, in reference to Mr Beaton’s proposed second opinion, “Should you wish to send any reports or prescriptions from this consultation, I would kindly ask you to send these for my attention and further consideration.”
  - iii) Ms Arthur was seeking a refund from Optical Express rather than treatment, but she was doing so in the context of their commercial relationship, and she was also claiming compensation. The letter Optical Express sent her on 17 November 2021, in response to her mention of Ms Rodoy, which contained the defamatory statements, offered further post operative appointments and she went on to attend a number of these after that letter.
  - iv) Mr Marshall received a letter from Optical Express containing the defamatory allegations on 27 July 2020. That letter contained detailed clinical advice about the effect of the surgery he had already received and why it should be regarded as satisfactory. It also, however, referred to further steps by Optical Express in relation to his clinical care. It also said “...we will continue to monitor your vision and eye health, and (...) provide you with access to aftercare.”
396. When the exchange of correspondence between Optical Express and each of these patients and clients took place, including the patients’ mention of Ms Rodoy and Optical Express’s response with the defamatory statements, the patients were proposing

to rely on advice or assistance from Ms Rodoy. Optical Express, on the other hand, (in the person of David Mouldale, who had drafted the statements and ordered their inclusion in such correspondence), genuinely and reasonably believed that Ms Rodoy was a disruptive or potentially disruptive influence on the relationship and that it was not in the best interests of the patient, or of Optical Express, that she should be involved either in the discussion of future care, or in the resolution of disputes. Mr Mouldale also genuinely and reasonably believed that Ms Rodoy was what he said she was: a fraudster and a troll. He did not think she was a respectable or a reliable person for the patients to involve in their dealings with Optical Express. There was an objective basis for all these judgments on his part.

397. I reject the submission that the defamatory statements were irrelevant to the subject matter of the privilege or strayed outside it. If Ms Rodoy was a fraudster, and if she was not a disinterested advisor but had the malicious motivation of a troll, this was relevant to whether the patients should reconsider relying on her and involving her. The patients also thought it was relevant, which is why they responded to the allegations by dropping Ms Rodoy.
398. In those circumstances, I am satisfied that Optical Express is entitled to claim qualified privilege. There was between the maker and recipients of the defamatory statements a common and reciprocal interest in the giving and receiving of them such that qualified privilege should apply.

**Issue 4: Did Optical Express act with malice such that no qualified privilege can be claimed?**

399. Qualified privilege is lost if malice is proved. What is meant by malice in this context was explained by Lord Diplock in *Horrocks v Lowe* [1975] AC 135 at 149:

“...he is entitled to be protected by the privilege unless some other dominant and improper motive on his part is proved. (...) to destroy the privilege the desire to injure must be the dominant motive for the defamatory publication; knowledge that it will have that effect is not enough if the defendant is nevertheless acting in accordance with a sense of duty or in bona fide protection of his own legitimate interests.

(...) If it be proved that he did not believe that what he published was true this is generally conclusive evidence of express malice (...)

(...) If he publishes untrue defamatory matter recklessly, without considering or caring whether it be true or not, he is in this, as in other branches of the law, treated as if he knew it to be false. (...)

Even a positive belief in the truth of what is published on a privileged occasion - which is presumed unless the contrary is proved - may not be sufficient to negative express malice if it can be proved that the defendant misused the occasion for some purpose other than that for which the privilege is accorded by the law. The commonest case is where the dominant motive which

actuates the defendant is not a desire to perform the relevant duty or to protect the relevant interest, but to give vent to his personal spite or ill will towards the person he defames. If this be proved, then even positive belief in the truth of what is published will not enable the defamer to avail himself of the protection of the privilege to which he would otherwise have been entitled. There may be instances of improper motives which destroy the privilege apart from personal spite. A defendant's dominant motive may have been to obtain some private advantage unconnected with the duty or the interest which constitutes the reason for the privilege. If so, he loses the benefit of the privilege despite his positive belief that what he said or wrote was true.

Judges and juries should, however, be very slow to draw the inference that a defendant was so far actuated by improper motives as to deprive him of the protection of the privilege unless they are satisfied that he did not believe that what he said or wrote was true or that he was indifferent to its truth or falsity. (...) It is only where his desire to comply with the relevant duty or to protect the relevant interest plays no significant part in his motives for publishing what he believes to be true that 'express malice' can properly be found."

400. Mr Mouldsdale was responsible for each of the defamatory statements because he had drafted them and he had directed that they should always be included in response to communications which mentioned Ms Rodoy, even though others implemented that instruction by including in them in communications sent out in their own names. Even Dr Hannan did not change the wording or the class of people to whom the form of words should be sent, or was sent. His role (when he had any role) was to make sure Mr Mouldsdale's wishes were complied with by others.
401. I accept the submission that Mr Mouldsdale is to be regarded as the publisher in every case because there was abundant evidence that the others in the chain which led to the inclusion of the statements in the letters did not apply their minds to the wording, or to the inclusion of the wording, but were doing no more than faithfully execute his standing instructions to the best of their ability. That is supported by the fact that the wording of the statements did not vary although the signatories to the letters in question were different.
402. I am satisfied that Mr Mouldsdale honestly believed the defamatory statements to be true and that his belief was based on the knowledge he had acquired from press reports of the Decoy Dolls fraud and on his more immediate knowledge of Ms Rodoy's conduct, which he characterised as trolling, towards Optical Express staff.
403. I do not think, having heard him give evidence, and having considered all the other evidence, that Mr Mouldsdale was motivated by personal animus or spite towards Ms Rodoy. He genuinely thought she was a nuisance and a menace, not only to his business, but also to the patients. Unlike her, he was a qualified dispensing optician, who was and remains registered and in good standing with the General Optical Council. He knew her views on refractive eye surgery and he honestly and reasonably considered them to be contrary to mainstream professional and regulatory opinion. He believed, based on

his professional expertise and experience, not only as a dispensing optician, but as the founder and owner of a large refractive eye surgery business, that she grossly exaggerated the risks (basing himself on statistics), and that she wrongly attributed many eye problems, including her own, to refractive eye surgery when they were either not attributable to that surgery at all (as opposed, for example, to being age related) or represented known complications arising in a relatively small number of cases which constituted an acceptable risk for patients to take if they chose, after appropriate disclosure, in exchange for the benefits of eye surgery, even though it is elective rather than necessary surgery in most cases.

404. Mr Mouldsdale disliked and disapproved of Ms Rodoy, both because of her campaigning (which he thought was misguided as well as potentially damaging to his business) and because of what he described as her trolling of the business. However, I saw no evidence which would justify a finding of any spite or dominant improper motive on his part.
405. In fact, Mr Mouldsdale had been quite patient with Ms Rodoy. Despite her numerous and targeted attacks on the services being provided by Optical Express to its patients, and her personal attacks on its staff, not limited to senior executives, he had never sued her for defamation, brought civil proceedings for an injunction, or sought to have her prosecuted for harassment or anything else. He had been slow to reach the point even of directing the inclusion of the defamatory statements in letters and, when he did reach that point, he directed that they should be included only in correspondence with an actual person who had invoked her name. No evidence was called that he had ever conducted a more general counter attack or publicity campaign against her.
406. The defamatory statements were a carefully targeted and calibrated, relatively low level response to the threat Ms Rodoy posed to Mr Mouldsdale's business and, in his opinion, to the patients. They were not actuated by a dominant improper motive. Qualified privilege is not lost in this case on account of any malice on his part.
407. Before reaching this conclusion I have taken account of some specific arguments advanced to me on the question of malice, which deserve explanation.
408. First, great emphasis is placed on the evolution of the wording used about Ms Rodoy. At first, in communications which have not been sued upon, copies of the press articles were attached so that the recipients could judge the allegations for themselves based upon some factual context. But none of the letters sued upon included these attachments. It was submitted that I should conclude that Mr Mouldsdale or others in Optical Express decided to deprive the recipients of context because (it is submitted) the main motive was not to inform but to defame, and the allegations were more damaging when the context was not given. However, my conclusion from the evidence is that attachments were at first omitted in error (although the communications wrongly said they were attached). Indeed, Mr Marshall's letter did say, after the statements complained of: "I attach some background information that is in the public domain to give you a clearer picture of the type of character we are dealing with", referring to the press articles, but did not in fact attach them. Later letters, including those to Mr Hind, Mr Beaton and Ms Arthur, did not refer to attachments of this sort, and did not include them. I am satisfied on the evidence that this represented a low-level administrative evolution which neither reflected nor interposed any dominant improper motive. No deliberate decision was made by Mr Mouldsdale or anyone else that the press articles

should not be attached as they originally were. The basic wording did not require that they be attached. The attachments simply ceased to be part of the routine process, without any thought of the consequences.

409. Second, it was submitted that Ms Rodoy failed to receive all the documents she was entitled to both in response to a subject access request (under the UK GDPR and the Data Protection Act 2018) and in the context of disclosure in the current litigation. It was submitted that I should attribute this to deliberate breaches or to bad faith and that I should draw from what happened an inference of malice against Ms Rodoy in the making of the defamatory statements. It is true that Ms Rodoy did not get all the documents she was entitled to under the subject access request and the defendant was not at all forthcoming or co-operative in response to her pre-action correspondence and omitted some relevant documents from the initial disclosure. The reason given at the trial was that the patient database was not searched (because Ms Rodoy was not a patient) and some of the relevant documents did not include her name, and were therefore not responsive to searches against her name. Those explanations were consistent with the evidence. I do not think there was any deliberate policy of not naming Ms Rodoy so that name searches would not turn up documents which did, in fact, refer to her. The expression used which did not name her (“The individual” or “This individual”) was included in the letters sued upon but her actual name, Sasha Rodoy, was also included in the letters. It makes sense that the letters were only on the patient database, since they were letters to patients, and it also makes sense that it was thought that, since Ms Rodoy was not a patient, there was no need to search that database. I heard evidence that to search and filter out results from the patient database was enormously resource intensive and time consuming; that it took several days, in fact. This makes it more likely that the decision not to do that straight away was taken in good faith. I saw no evidence that any failings were attributable to actions or decisions by Mr Mouldale. I do not infer malice from what happened.

**Issue 5: If liability is established, what relief should be granted to Ms Rodoy?**

410. In view of my conclusions on the other issues, this issue does not arise.

**Summary and conclusions**

411. I therefore conclude that:
- i) The defamatory statements caused substantial harm to Ms Rodoy’s reputation.
  - ii) They were substantially true.
  - iii) They were protected by qualified privilege.
  - iv) The qualified privilege was not lost on account of malice.