Neutral Citation Number: [2013] EWHC 1435 (QB)

Case No: HQ12X002414

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/06/2013

Before :

MR JUSTICE BEAN

- -

Between :

LIAM FOX	**Claimant**
- and -	
HARVEY BOULTER	**Defendant**

- -
- -

William McCormick QC and Jonathan Barnes (instructed by **PSB Law**) for the **Claimant**
Matthew Nicklin QC (instructed by **DLA Piper**) for the **Defendant**

Hearing date: 15 May 2013

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Approved Judgment

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

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MR JUSTICE BEAN

Mr Justice Bean :

1. The Claimant is the Member of Parliament for North Somerset. From 12th May 2010 until 14th October 2011 he was Secretary of State for Defence.

2. The Defendant is a British businessman principally resident in Dubai (but who, according to the Particulars of Claim, also maintains a residence in the UK) and is Chief Executive Officer of Porton Capital Inc, a Cayman Islands based legal entity which conducts business in the UK, Dubai and other jurisdictions.

3. In June 2011 the Defendant was the subject of widely reported allegations which he has characterised as being to the effect that he was guilty, or there were strong grounds to suspect that he was guilty, of an unlawful campaign of blackmail against the US corporation 3M Co. in an effort to extort millions of dollars in settlement of a hopeless piece of litigation. The Allegations arose following the Defendant's sending of two emails to 3M's lawyers on 18th and 19th June 2011. The allegations were the basis of a civil claim for blackmail brought against the Defendant by 3M. The Defendant counter-sued 3M for libel in England.

4. Some months later the Defendant was interviewed by Sky News or Sky Television. Short extracts from that interview were broadcast on Sky News on 7th November 2011. A longer version was posted on Sky News' website, in a posting which remained there until it was removed in October 2012.

5. The relevant section of the broadcast consisted of the Defendant being interviewed in a television studio with a large picture of the Claimant in the background. The headline on screen is "Breaking News – Fox Resignation"; below this is at first the caption "Ex-Defence Secretary Liam Fox And His Friend Adam Werritty Could Be Forced To Appear In Court", then "Businessman Harvey Boulter Calls For Liam Fox And Adam Werritty To Answer Questions In Court Over The Nature Of Their Working Relationship." (Like editorial comment or sub-editors' headlines in a newspaper, these captions are not the responsibility of the Defendant.)

6. What Mr Boulter actually said, in the edited extracts which were broadcast, was this:

> "We plan on calling Dr. Liam Fox and his pal Adam Werritty to give evidence in some of these ongoing legal disputes so they can tell the truth and so we can debunk these baseless allegations against me…[at this point there is an obvious "join", but with almost no pause]….It does warrant some pretty hard questions being asked and at some point they have to come forward and answer some of those tough questions. [another join without a pause]…..Now I am concerned myself that I shared a considerable amount of information with somebody who purported to be an advisor to the Minister, part of the Ministry of Defence. And clearly he wasn't. So I have no clue where that sensitive information has gone."

7. The website publication consisted of the following, under the heading "Fox And Werritty 'To Be Court Witnesses'" (the numbering is added):

"(1) The Dubai businessman at the heart of Liam Fox's departure from government wants to force the former defence secretary and his friend and self-styled adviser Adam Werritty to answer questions in open court as to the exact nature of their much-criticised working relationship.

(2) Harvey Boulter, who had a meeting with Dr Fox brokered by Mr Werritty, intends to subpoena both men to appear as he counter-sues US technology giant 3M in the British courts.

(3) The Prime Minister had said that all questions about Mr Werritty, his numerous visits to the Ministry of Defence, his trips overseas, and business cards which claimed he was an adviser to Dr Fox, would be answered- but a Cabinet Office-led investigation left many dissatisfied.

(4) Dr Fox resigned as Defence Secretary on October 14, following weeks of questions and speculation.

(5) Speaking exclusively to Sky News, Mr Boulter said: "We plan on calling Dr Liam Fox and his pal Adam Werritty to give evidence in some of these ongoing legal disputes so they can tell the truth and so we can debunk these baseless allegations against me.

(6) "This will also shine a spotlight on some of the murkier side of politics and lobbying group, and some of its connections into the US.

(7) "For instance, Atlantic Bridge, Fox's so-called charity which looks like a political lobbying group, and some of its connections into the US.

(8) "I don't know what we will find at the moment but there are a lot of unanswered questions and until some of those questions get answered we will have to keep looking" he added.

(9) If Mr Boulter is successful it would be the first time Mr Werritty would be required to answer questions in public as to why he was given unprecedented access to the then Defence Secretary, and whether or not, as some have alleged, he was pushing a right wing Atlanticist foreign policy at Dr Fox's request.

(10) Mr Boulter said he felt "defrauded" by Mr Werritty's claim to be an advisor to Dr Fox.

(11) "It does warrant some pretty hard questions being asked, and at some point they have to come forward and answer some of those tough questions," he said.

(12) "I am concerned myself that I shared a considerable amount of information with somebody who purported to be an adviser to the minister, part of the Ministry of Defence and clearly he wasn't – and so I have no clue where that sensitive information has gone and I personally feel that I've been defrauded.

(13) Dr Fox has previously said he would be happy to travel to the US to speak in any legal action there.

(14) "They have stated they will be willing to come forth and give evidence in the US," Mr Boulter said.

(15) "I hope when they get there they can put their hand on the bible and tell the truth – and I suspect they will be forced to come if they do not do it willingly.

(16) Mr Boulter's company the Porton Group is currently in a legal battle with 3M bought MoD technology it was claimed could detect the MRSA superbug.

(16) Following the meeting between Dr Fox and Mr Boulter, it was reported that the businessman wrote two emails in which he threatened that the British Government could reconsider the knighthood granted to 3M's British chief executive if the case was not settled.

(17) On Monday, Mr Boulter claimed a victory in his fight with 3M when the High

Court in London found 3M was "in material breach of its obligation" under an agreement to actively market the MRSA test, Baclite

(18) "I am delighted that we have been vindicated in our attempt to force 3M to face up to their responsibilities," he said.

(19) "But the victims here are those infected with MRSA. A weapon in that fight was wrongfully abandoned by 3M.

(20) "This is a question of trust and honour which in my opinion seems to have been sadly lacking in 3M's behaviour.

(21) "The judge has made it quite clear that 3M did not live up to its promises," he added.

(22) Kevin Jones MP, Labour's shadow defence minister, responding to the news that Mr Boulter intends to subpoena both Liam Fox and Adam Werritty, said: "There are big, unanswered questions remaining over Liam Fox and Adam Werritty's activities.

> (23) "It is regrettable that US courts rather than the UK Government may reveal the full facts. The Prime Minister's investigation was inadequate and there is much evidence which merits real scrutiny.
>
> (24) "It is important that we understand what happened at one of the Government's most sensitive departments for the 18 months Dr Fox was in office, in order to be confident that similar activities will never take place again. The Government should have a full and thorough investigation".

8. On the morning of the hearing Mr Nicklin QC for the Defendant handed in a letter served on the Claimant's solicitors the previous day, stating that the number of individual hits on the relevant website page during the entire period for which it had been posted on the Sky News website had been 3,451. There had been no opportunity for the Claimant's legal team to investigate or challenge it. Mr McCormick QC for the Claimant did not seek an adjournment and it would have been disproportionate to have done so. He suggested that I should treat the figure with caution. I accept it for the purposes of the present hearing, but it would be open to challenge at a trial of quantum or any other remaining issue.

9. The following are the passages complained of in the Amended Particulars of Claim. All of them were in the website version, but only the two sections in italics were in the broadcast extracts:

> '*We plan on calling Dr Liam Fox and his pal Adam Werritty to give evidence in some of these ongoing legal disputes so they can tell the truth and so we can debunk these baseless allegations against me*.
>
> This will also shine a spotlight on some of the murkier side of politics and lobbying and we need to get into some of those aspects in a little more detail.
>
> For instance, Atlantic Bridge, Fox's so-called charity which looks like a political lobbying group, and some of its connections into the US.
>
> I don't know what we will find at the moment but there are a lot of unanswered questions and until some of those questions are answered we will have to keep looking.…
>
> *It does warrant some pretty hard questions being asked, and at some point they have to come forward and answer some of those tough questions.…*
>
> They have stated they will be willing to come forth and give evidence in the US.

> I hope when they get there they can put their hand on the Bible and tell the truth – and I suspect they will be forced to come if they do not do it willingly".

10. The Amended Particulars of Claim did not draw the distinction between the two italicised paragraphs and the rest, but alleged that all seven paragraphs were in the broadcast. A viewing of a DVD of the broadcast demonstrates, as Mr McCormick accepts, that this was incorrect. Much was made of this error in correspondence by the Defendant's solicitors, and it was suggested that the pleading would require re-amendment before I could even consider the meaning of the broadcast. Even in the highly technical world of defamation pleadings, which can at times appear to the uninitiated to be like the Eleusinian Mysteries, I do not consider that such re-amendment is required at this stage. The Claimant is not seeking to add to the allegations in the original pleading but to subtract from them. Mr Nicklin sensibly did not press the point.

11. The Amended Particulars of Claim argue that either in their natural and ordinary meaning or by way of innuendo or both:

> "The said words meant and were understood to mean that reprehensibly and dishonourably, although he was uniquely in a position to do so, the Claimant had failed to speak out with the truth in order to debunk the supposedly baseless Allegations made publicly against the Defendant, the gravity and discredit of which omission was reflected by the fact that, if the Claimant did not attend court voluntarily in the United States to exonerate the Defendant, then the Claimant would be compelled by legal process to attend."

12. The Particulars of Innuendo pleaded are as follows:

> "5.1 Paragraph 3 above is repeated. [It was the same as paragraph 3 of this judgment, with the addition at the end of the words "These matters were well publicised in the national press."]
>
> 5.2 On 20 June 2011 the Guardian newspaper reported that the Defendant had been accused of blackmail by 3M. In particular, it was reported that the Defendant had sent two emails to 3M as part of settlement negotiations in respect of a legal dispute between Porton Capital, a company of which the Defendant was CEO, and 3M, and that 3M had alleged that those emails constituted blackmail.
>
> 5.3 In the emails the Defendant had put pressure on 3M to pay Porton Capital $30 million to satisfy Porton Capital's claim against 3M. In the first email, dated 18 June 2011, he had claimed that he had discussed the legal dispute with the Claimant, then Secretary of State for the Defence, at a meeting ("the Dubai meeting"), and implied that, as a result of that meeting, his demands were made with the Claimant's, and the

> government's, authority or approval. In particular, he alleged or implied that the Claimant had told him that the issue of George Buckley's knighthood, the CEO of 3M, would be imminently discussed by the Cabinet and that the outcome of that discussion would be affected by 3M's response to the Defendant's demand for money. It was also reported that the Defendant had sent a second email pressing 3M for a response in which he claimed that the Claimant expected a response from 3M by the following Sunday night.
>
> 5.4 3M had sued the Defendant for blackmail immediately following receipt of the emails. The US attorneys for 3M sent a copy of the proceedings to the Guardian newspaper, and as a result the Guardian publicised the allegations in an article of 20 June 2011. The Defendant sued 3M for libel.
>
> 5.5 The dispute between the Defendant and 3M received further publicity in the Guardian and other national media, including in articles published in the Guardian on 27 June 2011, 7 August 2011, 19 October 2011, 26 October 2011 and 7 November 2011. The Defendant actively sought publicity for his claims, including giving an interview to the BBC on 11 October 2011 in which he characterised the Claimant's version of the Dubai meeting as a "half-truth".
>
> 5.7 As a result of this publicity, the story was fresh in the public mind and it was well known to a large but unquantifiable number of viewers of the interview containing the words complained of and to readers of the report of that interview that the Claimant was the unique position of being able to "debunk" the Allegations, if they were false, because he could confirm the truth of the Defendant's story and specifically confirm that he (the Defendant) was, in writing the emails, merely acting as a conduit for a message for 3M from the government.
>
> 5.6 Such viewers and/or readers would have understood the words complained of to mean that the Claimant had acted dishonourably or reprehensively in not coming forward publicly to debunk the false, and extremely serious, allegations against the Defendant."

The law on meaning applications

13. Sir Anthony Clarke MR in *Jeynes v News Magazines Limited* [2008] EWCA Civ 130 at paragraph 14 gave guidance as to the determination of meaning for the purposes of defamation claims:

> "The legal principles relevant to meaning … may be summarised in this way: (1) The governing principle is reasonableness. (2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the

> lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. (3) Over-elaborate analysis is best avoided. (4) The intention of the publisher is irrelevant. (5) The article must be read as a whole, and any "bane and antidote" taken together. (6) The hypothetical reader is taken to be representative of those who would read the publication in question……"

14. An ordinary reasonable viewer will (even when watching Sky News, which tends to repeat its news items in the course of a day) only see the material once; and an ordinary reasonable reader is highly unlikely to read the material more than once, or stop and consider the meaning of particular phrases or passages, or compare different passages (per Gray J in *Charman v Orion* [2005] EWHC 2187 (QB)), though Mr Nicklin accepts that the reader may "flick back" through the article in the course of reading it. Meanings which only emerge as the product of some strained or forced or unreasonable interpretation are not natural and ordinary meanings (per Eady J, and approved by the Court of Appeal, in *Gillick v Brook Advisory Centres* [2001] EWCA Civ 1263).

15. The meanings of words for the purposes of defamation are of two kinds: the natural and ordinary meaning, and an innuendo meaning. The distinction was explained by Lord Morris of Borth-y-Gest, delivering the advice of the Board in *Jones v Skelton* [1963] 1 WLR 1362 at 1370-1, as follows:

> "The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words. See *Lewis v. Daily Telegraph Ltd.* [1964] AC 234. The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction would draw from the words. The test of reasonableness guides and directs the court in its function of deciding whether it is open to a jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense".

16. There is, surprisingly, a dispute as to what is comprised under the heading of "general knowledge" in the passage just quoted. Mr McCormick suggested that at least the broad outline of the Defendant's dispute with 3M would be a matter of general knowledge, since it had been the subject of articles in the months leading up to the broadcast in several national newspapers, or at least in their online versions. I cannot accept this submission. I regard "general knowledge" as referring to what Lord Mansfield CJ in *R v Horne* [1775 – 1802] All ER Rep 390 at 393E called "matters of universal notoriety" – that is to say, matters which any intelligent viewer or reader

may be expected to know. Anything which requires assiduous reading and a good memory so as to recall the facts of a story dating back several weeks or months cannot fall within that definition. To give the term "general knowledge" such a wide interpretation would erode the distinction between ordinary and natural meaning on the one hand and innuendo meaning on the other, and would breach the well established rule that evidence is inadmissible on the issue of the natural and ordinary meaning of the words complained of.

17. With this exception, the law on natural and ordinary meanings was not in dispute. The defendant can only be blamed for any "bane" which comes from his own words but he can take advantage of any "antidote" in the publication as a whole. The court has to decide on a single meaning of the words complained of. It may not be the same as the Claimant's pleaded meaning, but in terms of defamatory sting the pleaded meaning is a maximum. The judge cannot find a meaning worse than the one suggested by the Claimant.

18. An innuendo meaning is now defined by Practice Direction 53 paragraph 2.3 (1) as "a meaning alleged to be conveyed to some person by reason of knowing facts extraneous to the words complained of". Mr Nicklin points out that there is no evidence before me that anyone (or at least anyone among the relatively small number of people who read the website article) knew all the facts set out in the Particulars of Innuendo or even most of them, or could remember them even if they had read them in the past. All that Dr Fox's legal team have produced at this stage, exhibited to a short form witness statement from the Claimant's solicitor, is a selection of cuttings or printouts referring to the Defendant's dispute with 3M. (Although some of them are from small circulation publications or subscription services, others are from the free-access online versions of the Guardian, Daily Telegraph or Financial Times.)

19. The lack of witness evidence, Mr Nicklin says, is not fatal at this stage; but it should leave me to be sceptical as to whether anyone exists who would have read a website with actual knowledge of the extrinsic facts which are pleaded. I agree that this point cannot be fatal. It would be undesirable for evidence of specific publishees with special knowledge to be essential at the stage of a ruling on meaning. In the present case Master Leslie ordered meaning to be tried as a preliminary issue with a time estimate of half a day to one day and provision for service of witness statements relevant to the preliminary issue. Nothing was specified in the order about cross-examination; but plainly if oral evidence with cross-examination had been envisaged the time estimate would have been wholly inadequate, and the hearing of the preliminary issue would have turned into a mini-trial, no doubt at considerable expense.

20. In my view the proper approach to the preliminary issue, insofar as it relates to a suggested innuendo meaning, is to infer that among the many viewers of the broadcast and the smaller number of readers of the website there is likely to have been at least one who had knowledge and recollection of the gist of the extrinsic facts pleaded by way of Particulars of Innuendo, at least in so far as they were the subject of reports in national newspapers (see per Scarman LJ in *Fullam v Newcastle Chronicle* [1977] 1 WLR 651 at 659B) or on their websites. I will only observe at this stage that there appears to be force in Mr McCormick's submission that readers of the website article, even if small in number, were likely to be people with a particular interest in political or business news, and far more likely than a typical visitor to Sky News' website to

have read and remembered the articles about Mr Boulter's dispute with 3M. Whether that is correct could properly be explored at any trial.

21. Mr Nicklin submits that the words selected by Dr Fox for complaint from the broadcast, and even the more extended comments in the website version, do not bear any defamatory meaning. He argues that there are many good reasons why a person who has evidence to give in a case may be unwilling to give it unless compelled to do so. Examples include people under obligations, for example of confidentiality, which may make it difficult for them to give evidence unless compelled to do so. So he submits that it cannot be defamatory of a person to say of him that he is unwilling to give evidence unless compelled to do so by an order of the court.

22. Mr McCormick submits that that the words complained of, in their context, are capable of bearing the defamatory meaning pleaded, to the effect that Dr Fox has been behaving in a reprehensible way. He submits that the words "They have stated they will be willing to come forth and give evidence in the US" may reasonably be understood, not as confirmation that Dr Fox is willing to do his alleged duty, but rather as suggesting that, having said he would do his alleged duty, Dr Fox was not in fact willing to do it, and that he could not be relied upon to tell the truth even if he were compelled to give evidence.

23. I accept the submission that merely to say of a person that he is unwilling to give evidence unless compelled to do so by an order of the court is not in itself defamatory. But not all types of court case are alike for this purpose. At one end of the scale, the ordinary reasonable reader, informed that someone was reluctant to get involved in esoteric commercial litigation with no allegations of misconduct, might well think "no sensible person would". At the other end of the scale, to say of someone that he had important evidence to give which could exonerate someone accused of serious misconduct, but refused to come forward and give that evidence, is in my view defamatory. (There may be special cases such as witnesses under a duty of confidence, but it is unnecessary to consider them here.)

The words complained of in the broadcast: ordinary and natural meaning

24. The broadcast extracts are very short. I do not consider that to the ordinary reasonable viewer they convey any defamatory meaning. The phrase "so they can tell the truth", is followed immediately "so we can debunk these baseless allegations against me", without saying that they may have to be forced to testify. Then there is the reference to hard questions and tough questions which "at some point they have to come forward and answer", after which the emphasis immediately shifts to the Defendant's alleged sharing of information with Mr Werritty, so that it is that topic which seems to be the one about which, according to Mr Boulter, Dr Fox and Mr Werritty had to come forward and answer the tough questions. On viewing the footage for the first time (and indeed for the second time, which the hypothetical reasonable viewer would not do) I found that the impression left on my mind was of Mr Boulter saying "they have some tough questions to answer about sharing sensitive information". That is, quite rightly, not complained of as defamatory.

The words complained of in the broadcast: innuendo meaning

25. I do not consider that the answer is any different when the ordinary reasonable viewer of the broadcast is replaced by a hypothetical viewer with knowledge of the facts, or the gist of the facts, pleaded in the Particulars of Innuendo.

The words complained of in the website article: ordinary and natural meaning

26. The website article is far longer and more detailed than the broadcast. The critical difference for present purposes is the inclusion of paragraph (15), in particular the phrase "I suspect they will be forced to come if they do not do it willingly". Coming immediately after two references to a stated willingness to attend and one to witnesses putting their hand on the Bible and telling the truth, it conveys to the reader the clear impression that Dr Fox (and also Mr Werritty, though that is irrelevant to the Claimant's cause of action) would have to be compelled to attend.

27. I find that the words complained of in the website article, read in context, convey the following meaning (so far as relevant): that the Claimant was in a position to give evidence to debunk the baseless allegations made publicly against the Defendant but had not done so; that although Dr Fox had previously said that he was willing to do so, Mr Boulter doubted it; and that if the Claimant did not attend court voluntarily in the United States to exonerate the Defendant, then he would be forced to do so by legal process. [Emphasis added: see footnote to this judgment]

28. I consider that this would be regarded by the ordinary reasonable reader as an allegation of reprehensible conduct: or, in the time-honoured words of Lord Atkin in *Sim v Stretch* [1936] 2 All ER 1237 at 1240, that the words tend to "lower the [claimant] in the estimation of right-thinking members of society generally." An honourable man or woman who has important evidence to give which could exonerate someone accused of serious misconduct should come forward with that evidence. Although readers of the article without any special knowledge would not know exactly what allegations were being made against Mr Boulter leading to his "counter-suing" 3M, the whole tone of the article is that Mr Boulter was involved in a major dispute in which serious and baseless allegations were being made against him.

29. This is not the only, nor even the most serious, disobliging comment made by the Defendant in the article: it will be noted that at the end of paragraph (12) he uses the word "defrauded". Mr Nicklin accepts that it does not have to be very serious in order to be actionable. He submits, however, that it is too trivial to form the basis of a claim.

30. In *Thornton v Telegraph Media Group Ltd* [2011] 1 WLR 1985 Tugendhat J held that whatever definition of a defamatory statement is adopted, "it must include a qualification or threshold of seriousness, so as to exclude trivial claims." Mr Nicklin argues that any defamatory meaning in this case fails to pass the test. I disagree. Of course this is not the gravest of libels by comparison with some which have come to court, but in my judgment it is not at all trivial.

The words complained of in the website article: innuendo meaning

31. To any reader with knowledge and recollection of the gist of the facts set out in the Particulars of Innuendo the above conclusion about the website article is reinforced. Such a reader would know that the allegations against Mr Boulter were of blackmail;

and that on his case the Claimant was in a unique position to refute them. This was because Mr Boulter had alleged in an email of 18 June 2011 that the Cabinet (of which the Claimant was then a member) would be imminently discussing the knighthood awarded to the CEO of 3M, and that "the outcome of that discussion would be affected by 3M's response to the Defendant's demand for money". In those circumstances the innuendo meaning is that the Claimant was in a unique position to give evidence to debunk the baseless allegations of blackmail made publicly against the Defendant but had not done so; that although Dr Fox had previously said that he was willing to do so, Mr Boulter doubted it; and that if the Claimant did not attend court voluntarily in the United States to exonerate the Defendant, then he would be forced to do so by legal process. That is plainly defamatory, and far from trivial. [Emphasis added: see footnote to this judgment]

32. I should note that the bundle includes some printouts of articles published after the Defendant's interview and the first publication of the article on the website. I accept Mr Nicklin's submission that these should be disregarded for the purpose of ascertaining the innuendo meaning of the article: see *Grappelli v Derek Block Holdings Ltd* [1977] 1 WLR 822. But they do not add anything of significance to the articles published before 7th November 2011.

Conclusion

33. I find for the Claimant on the preliminary issue as to meaning in so far as it relates to the website article, but for the Defendant in so far as it relates to the broadcast.

Footnote

34. The text of the draft judgment as sent out to counsel on 21 May did not include the words underlined in paragraphs 27 and 31. The next day Mr McCormick emailed my clerk with a suggestion that each of the two paragraphs should be amended by deleting the words "Mr Boulter doubted it" and substituting "there were reasonable grounds to doubt it".

35. Mr Nicklin's response was that it is impermissible to use the receipt of a draft judgment "to attempt to get the Court materially to change the meaning found". He referred to the judgment of the Court of Appeal in *Egan v Motor Services (Bath) Ltd* [2008] 1 WLR 1589. He reminded me in a subsequent Note of the principle that in ruling on meaning a judge is conducting an impressionistic exercise. The hypothetical reasonable reader derives his broad impression from a single reading of the article. Once the judge has recorded his first impression he should not change it, least of all following what Mr Nicklin described as "lobbying" by one of the parties.

36. The general rule is no longer as it was stated by the Court of Appeal in *Egan.* In *Re L & B (Children)* [2013] 2 All ER 294 the Supreme Court had to consider a appeal in care proceedings where a county court judge had given a reasoned oral judgment concluding that a father had been responsible for serious injuries sustained by his child. Two months later, before any order giving effect to the judgment had been perfected, the judge distributed a "perfected judgment" in which she stated that she had reconsidered the matter and changed her mind, saying that to identify a perpetrator of the injuries would be "to strain beyond the constraints of the evidence". The Court of Appeal allowed an appeal by the mother and ordered that the judge's

original findings should stand. The Supreme Court allowed a further appeal by the father and reinstated the "perfected judgment". They hold that a judge is entitled to reverse his or her decision at any time before the order giving effect to it was drawn up and perfected. In exercising that jurisdiction the judge is not bound to look for exceptional circumstances. A carefully considered change of mind could be sufficient. Every case will depend upon its particular circumstances. The starting point is the overriding objective in the rules to deal with cases justly.

37. I do not consider that a ruling on meaning in defamation litigation is excepted from the principles set out in *Re L and B.* I bear very much in mind the impressionistic nature of the process. But it is inevitably artificial. Perhaps the procedure in meaning cases ought to be changed so that the judge is shown the publication, asked to read it once, and (without hearing any submissions or reserving judgment), asked to say or write down what it means. In this case, under the present procedure, I reserved judgment after reading a bundle of documents and receiving detailed oral and written submissions from counsel on each side. I note also that, even before *Re L and B*, Tugendhat J in *Miller v Associated Newspapers Ltd* [2011] EWHC 2677 (QB) entertained an application of a similar nature made after receipt of a draft judgment on meaning.

38. Accordingly I consider that Mr McCormick's application was properly made. But I am not persuaded that I should make the amendment for which he argues. The meaning which I derived from the words complained of in the article both on first impression and on reconsideration, was that Mr Boulter doubted the willingness of Dr Fox (and Mr Werritty) to give evidence voluntarily. In my judgment it requires what Sir Thomas Bingham in *Skuse v Granada* [1996] EMLR 278 described as "an over elaborate analysis of the material in issue" to reach the meaning that there were reasonable grounds to suspect that the Claimant and Mr Werritty would not testify voluntarily.

39. The exchange of emails and submissions from Mr McCormick and Mr Nicklin on receipt of the draft judgment did, however, prompt me to re-examine the text of paragraphs 27 and 31. I noticed that the text of the draft judgment suggested a possible ambiguity as to whether the Claimant and Mr Werritty had in fact given evidence. This ambiguity was not present in the words spoken by the Defendant in the television interview and written by him in the website article. On the contrary, the reasonable reader of the article would have understood from it that the Claimant and Mr Werritty had not thus far given evidence, as made abundantly clear by the words "we plan on calling Dr Liam Fox and his pal Adam Werritty to give evidence" and the words "at some point they have to come forward and answer some of those tough questions". A reasonable reader of the text contained in paragraphs 27 and 31 of my draft judgment might have thought that the words "but had not done so" were implicit in any event. But I consider that it is better for them to be made explicit in order to deal with the case justly and give as accurate a statement as I can of the meaning conveyed to me by the words complained of. Hence the wording of those paragraphs as set out in the final text of this judgment.