Case No: HQ09X02688

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/03/2010

Before :

MASTER FONTAINE

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Between :

(1) JOHN BRIDLE	**Respondent**
(2) J + S BRIDLE ASSOCIATES Ltd	
- and -	
(1) WAYNE WILLIAMS	**Defendants**
(2) HEALTH & SAFETY EXECUTIVE	

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Mr Mark Scoggins (instructed by **Fisher Scoggins Walters LLP**) for the **Respondent/Claimant**
Mr Iain Christie (instructed by The **Treasury Solicitors Department**) for the **Applicant/Defendant**

Hearing date: 23 November 2009

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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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Master Fontaine:

1. This is the application of the First and Second Defendant dated 20 August 2009 for summary judgment pursuant to CPR 24.2 and/or for a strike out of the Claimant's claim pursuant to CPR 3.4(a) and(b). The application is supported by the first and second witness statements of Wayne Stephen Williams, the First Defendant ('Mr Williams'), dated 18 August 2009 and 18 November 2009 and the witness statements of Kevin Walkin ('Dr Walkin') dated 29 July 2009 and of Andrea Louise O'Neill ('Ms O'Neill') dated 19 August 2009. The application is opposed by the witness statements of the First Claimant, John Christopher Bridle ('Professor Bridle') dated 13 November 2009, and of Nicholas Randell ('Mr Randell') dated 12 June 2009.

THE CLAIM

2. Professor Bridle, who is the managing director of the Second Claimant company, brings this defamation claim against Mr Williams, a Health and Safety inspector employed by the Second Defendant, the Health and Safety Executive, ('the HSE') at the HSE's offices in Cardiff. The claim is made in slander in respect of words allegedly spoken by Mr Williams, when acting in his capacity as an HSE inspector, on or about 24 July 2008, to representatives of the University of Wales Lampeter, Mr Cennydd Powell, the University's Head of Estates, and his assistant Mr John Fowden.

3. The words complained of were that Professor Bridle "*is not a real professor as he claims*" and that Mr Powell and Mr Fowden (and by implication also the university and all other third parties generally) "*should not believe a word that he says*". It is further said that in telephone conversations between Mr Williams and Mr Powell between 24 July and 31 July 2008, Mr Williams repeated to Mr Powell the alleged defamatory statements.

Underlying Background to the Claim

4. Professor Bridle is an asbestos surveyor, of many years experience, and the Second Claimant is a company of which he is Managing Director and through which he carries out his work. The HSE is a non-departmental public body created by statute under s.10(1) Health and Safety at Work Act 1974. Pursuant to s.10(2) its functions and those of its officers and servants are performed on behalf of the Crown. The general functions and powers of the HSE are set out in ss.11 and 13 of the 1974 Act. In summary, the purpose of the HSE is to prevent death, injury and ill-health to those at work, and those affected by work activities. This is done through enforcement of obligations imposed on local authorities, employers and others in statutes and statutory instruments. The relevant statutory legislation in this case is the Control of Asbestos Regulations 2006 ('the Asbestos Regulations'), which implement an EU Directive on asbestos.

5. I refer to the first witness statement of Mr Williams, and the witness statements of Dr Walkin and Professor Bridle, which explain that, underlying the dispute with regard to the alleged defamatory words is a long running difference of opinion between Professor Bridle and the HSE with regard to the risks associated with chrysotile or 'white' asbestos, and its removal.

6. Mr Williams explains that the work of asbestos removal is licensed by the HSE under the Asbestos Regulations. He says that asbestos is classified as a category 1 carcinogen and as such work with asbestos is subject to a high degree of regulatory control. He gives details of the asbestos licensing regime at paragraphs 3 – 5 of his first witness statement, which I summarise. Most asbestos removal work must be carried out by a licensed contractor, but lower risk work is exempt from licensing. Any decision as to whether any particular work is licensable is based on risk. Most of the duties imposed by the Asbestos Regulations are upon employers who are engaged in work with asbestos. However, Regulation 4 also imposes a duty to manage asbestos on, inter alia, persons who own or have control of non-domestic premises and who have maintenance or repair responsibilities of those premises.

7. An HSE Inspector in this field has to undergo specific training. Mr William's work involves carrying out site inspections of jobs notified to the HSE under the licensing regime to assess the health and safety performance of the licence holder. He also carries out assessments of contractors who apply for new licences to undertake licenced asbestos renewal or contractors whose licences come up for renewal. The work of an inspector also involves investigation of accidents and dangerous occurrences and complaints and inspecting places of work to advise on health and safety matters to ensure that relevant statutory legislation is complied with.

8. Dr Walkin's evidence states that he is an analytical chemist by training, and was at the relevant time employed by the HSE dealing with policy matters in the Cancer and Asbestos Policy team. He has been HSE's main point of contact with Professor Bridle on asbestos policy, and has corresponded with him on this subject since he joined the Cancer and Asbestos Policy team in March 2004. He sets out at paragraphs 4-7 of his witness statement HSE's advice on asbestos. At paragraph 8 he states:

> "From the very first time I met John until the present day, John has expressed his view that white asbestos (chrysotile) products are safe to use and do not cause death from cancer."

9. Dr Walkin goes on to explain why HSE disagree with Professor Bridle's view at paragraphs 9-11. He also explains the legislation governing the marketing and use of asbestos. He explains that neither HSE nor the Department of the Environment, Food and Regional Affairs (DEFRA) can unilaterally change the classification of asbestos contained in the Asbestos Regulations, even if it were considered appropriate.

10. Professor Bridle, at paragraphs 27 – 46 of his statement, sets out in detail the history of his disagreements with the HSE on this subject, which he says extend over many years. He takes issue with part of the description of his views in paragraph 8 of Dr Walkin's statement. Professor Bridle's view is that white asbestos contained in <u>bonded</u> manufactured asbestos products pose no <u>measurable</u> risk to human health or safety (his underlining). He refers to the body of scientific opinion on the subject. He says (at paragraphs 34-35):

> "The HSE no doubt consider me to be an inconvenience at best, and a downright obstacle to the acceptance of their own currently held views at worst….

> My heresy, so it seems, is to challenge the position they now take on certain issues; and to question them as to the evidence which supports their views…."

11. Professor Bridle refers, at paragraphs 36-38 of his statement, to a complaint that he made recently to the Advertising Standards Authority (ASA) about a series of radio advertisements sponsored by and aired in the name of the HSE in relation to the dangers posed by asbestos. He took issue with the figures cited in the advert, and also that the figures were presented as though they were established facts rather than estimates based on selected data. The ASA ruled in his favour on 23 September 2009.

Factual Background to the Claim

12. The first witness statement of Mr Williams, the witness statements of Professor Bridle and of Mr Randell set out the factual background against which this claim was brought, which I summarise as follows.

13. In July 2008 the University of Wales at Lampeter ('the University') awarded a contract to Mr Randell's company, Welsh Heritage Construction Limited, to remove from various university buildings a number of asbestos ceiling tile products which had been identified by the university as a result of a survey it had carried out. The relevant removal work was planned to take place over the weekend of 19 - 20 July, weekend working having been chosen so that it would involve no or minimal disruption to staff.

14. The removal work was undertaken and completed on Saturday 19 July. In the course of that day a member of the university's staff came in and observed the work, and made a complaint on the following Monday, 21 July, to her trade union about the way in which Welsh Heritage Construction Limited had gone about the asbestos removal. As a result of that complaint the HSE were telephoned and asked to visit the site to inspect the ceiling tile material and the method of working and to assess whether what had been done was safe and compliant with all relevant rules, regulations and good practice. As a consequence arrangements were made by officers of the HSE to intercept the load of material removed by Welsh Heritage Construction on its way to the disposal site in Swindon. A number of samples were taken for analysis in the HSE laboratory.

15. On 22 July Mr Williams spoke by telephone to Mr Randell, who confirmed that his company Welsh Heritage Construction had undertaken the removal work and that Welsh Heritage Construction did not have a license to undertake licensable asbestos removal work. Mr Randell said that he had engaged a consultant, Professor Bridle, who had informed him that the ceiling tiles were of 'beaverboard' construction, namely a white asbestos coating layer on a fibre board, and hence non licensable and of low risk. Mr Williams told Mr Randell that HSE would be carrying out a full investigation, including analysing samples of the material removed. Mr Williams says that he informed Mr Randell that significant differences existed between the HSE and Professor Bridle regarding the risks associated with white asbestos. Mr Randell said that he was already aware of that.

16. Mr Williams gives evidence that, having taken samples of the ceiling tiles and friable boards that had been removed from the University by Mr Randell's firm, analysis of

those samples has confirmed the material to be AIB, a licensable, rather than non-licensable, material.

17. Mr Williams visited the University on Thursday 24 July 2008 with Ms Alison Clark, a scientist from HSE's Laboratory. They inspected the rooms where the tiles had been removed and Ms Clark took samples of dust and debris and photographs. Mr Williams gives evidence that he spoke to Mr Fowden on arrival and departure in the presence of Ms Clark, and Professor Bridle was not discussed on either occasion. He says that Mr Powell was not present at any time on that day.

18. Mr Williams states that the following week, on 29 July, he spoke by telephone with Mr Powell to get an update on the situation. He states, at paragraph 28:

> "I cannot remember the exact words spoken, but Mr Powell mentioned that John Bridle had become involved (in what capacity I'm not sure, but I assumed it to be in the capacity of consultant to Mr Randell) and was of the opinion that the work was non-licensable because of the composition of the tiles and the nature of the asbestos i.e. they were of 'beaverboard' construction contained white asbestos and therefore were of a low risk. Again, I cannot remember the exact words spoken, but the gist of the conversation was that I advised caution regarding John Bridle's advice, explaining that there were significant differences between John Bridle's opinions and HSE's position on risks associated with exposure to white asbestos. Mr Powell said he was already aware of these issues but he didn't explain how he was aware."

19. Mr Randell gives evidence (at paragraph 8 of his statement) that he was contacted by Mr Powell by telephone, in the week commencing 28 July, who informed him of the words allegedly said to him by Mr Williams. Mr Randell states that Mr Powell was very concerned by what had been said to him by Mr Williams because the University had relied on Professor Bridle's advice in respect of removal of the asbestos, a highly dangerous substance.

20. Professor Bridle gives evidence that Mr Powell telephoned him and informed him what Mr Williams had said. Professor Bridle says that he did his best to reassure Mr Powell that the allegations made against him were unfounded. Nevertheless, Mr Powell told Professor Bridle that he could not award to Professor Bridle's company (the Second Defendant), the surveying contract on behalf of the University that Professor Bridle had hoped would be awarded. Thus the Second Claimant brings a claim for loss of that contract and loss of income and net profit in the region of £3,000.

Summary of Defendants' Submissions

21. The following preliminary points were made

    i) Mr Williams stands by the remarks he made to Mr Powell, and so far as they bear any defamatory meaning he is prepared to justify them.

ii) The Defendants do not accept that the words complained of are capable of bearing all or any of the meanings attributed to them in respect of Professor Bridle. It is further denied that the words complained of are capable of bearing any defamatory meaning in respect of the Second Claimant and specifically that they are capable of bearing the meanings pleaded.

iii) If the matter were to go to trial and the court to find that some other words had been spoken, the Defendants would need to consider their position as to whether to justify any defamatory meanings that those words convey, or in so far as such words contained opinion as opposed to statements of fact, defend the claim on the grounds of fair comment.

iv) As Professor Bridle's own evidence is that Mr Powell did not believe or rely on what Mr Williams is alleged to have said there must be some doubt as to whether the causal connection can be made to prove the special damage to complete the cause of action required for the Second Claimant.

22. Mr William denies (at paragraphs 30 and 36 of his first witness statement) the allegations that he spoke the words alleged. He sets out (at paragraphs 28 and 36) his recollection of the conversation. For the purposes of this application it is accepted that this is an issue that I cannot resolve and the court must assume that the words alleged were in fact spoken. The application proceeds on two distinct bases:

i) There is a clear and obvious defence to the action, namely qualified privilege, and the Claimants have no real prospect of defeating that defence by proving malice.

ii) The history of the claim shows that the Claimants have an ulterior purpose in issuing these proceedings, namely to seek to provide a forum for a public debate on the risks associated with asbestos, and not for the genuine purpose of protecting their reputation. It is alleged that this, together with other factors such as delay and the disproportionate resources that would have to be devoted to the claim, amount to an abuse of the court's process.

23. The approach of the court in applying the test for summary judgment in a defamation case is set out in a number of cases summarised in Gatley (11th edition) at paragraphs 32.27 – 32.33 from which the following propositions emerge:

i) The burden is on the applicant

ii) Part 24 is most effective when the issue is one of law.

iii) The right to trial by jury raises the standard from one of "no real prospect of success" to one where the court must be satisfied that there is no evidence of fact fit to be left to the jury (unless the parties agree that the matter is not appropriate for a jury trial, which apparently is agreed in this case).

iv) The court must not engage in a mini trial.

v) The claimant is entitled to a presumption that all facts as pleaded and in the evidence are true save where any factual allegation is indisputably false.

vi) An application for summary judgment may be made at any stage and (where the test is met) the court is under a duty to bring the proceedings to an end at the earliest opportunity, consistent with its case management powers and the over riding objective under CPR 1.1.

(i) The defence of qualified privilege – malice

24. The Claimants accept, for the purposes of this application, that the words spoken were said on an occasion of qualified privilege. I do not therefore need to consider the matters supporting that defence set out in paragraphs 9 – 12 of the Defendants' Counsel's skeleton argument. The Defendants submit that the Claimants raise no allegation of malice fit to be left to a tribunal of fact. The matters on which the Claimants rely to support a plea of malice are set out at paragraphs 15 – 23 of Professor Bridle's witness statement, which I summarise below.

25. Professor Bridle alleges that he met Mr Williams during the summer of 2006, when he was called in by the management of Llandaff cathedral to examine and assess the nature of materials they had discovered during survey work, which they suspected contained asbestos and to advise on how, if the materials needed to be removed or otherwise made safe, that should be done. His advice was that although the materials found contained some white asbestos, they could safely be removed without the need to hire licensed contractors under the Asbestos Regulations. This advice was subsequently contradicted by the HSE, following a visit to the site, who had informed the cathedral that the removal of the materials posed a significant risk to health and that it would be unlawful for the cathedral to carry out any work on them or remove them unless the work or removal were performed by a licensed contractor under the Asbestos Regulations. At a meeting in late September 2006 between members of the cathedral management and Professor Bridle and an HSE Inspector, whom Professor Bridle identifies as Mr Williams, there was a debate which resolved in favour of Professor Bridle's conclusions and advice. Ultimately the HSE accepted Professor Bridle's view, confirmed in an open telephone call to the HSE's own licensing team in Edinburgh, to which the inspector was a party. It is alleged that during the course of the debate, which was witnessed by members of the cathedral staff, Professor Bridle says that he ridiculed the inspector openly for his basic lack of understanding and experience of asbestos containing materials. He alleges that he humiliated the inspector during that meeting and that would cause him, and more widely the HSE Cardiff office, to resent him.

26. In his second witness statement Mr Williams gives evidence that

i) He has never met Professor Bridle.

ii) He was not the inspector involved at the meeting at Llandaff cathedral.

iii) He has never been to Llandaff cathedral.

iv) The inspector to whom Professor Bridle refers was Mr Timothy Davies who was HM Inspector of Occupational Health at the time.

v) Mr Williams' line manager, Dr Chantal Nicholls, recalled the incident to which Professor Bridle refers and has assured him that the issue was resolved amicably and not in the adversarial terms inferred by Professor Bridle.

vi) No one at the Cardiff office of the HSE "resents" Professor Bridle.

27. Further it is submitted that Professor Bridle's presumption as to how another person would feel after his public humiliation would not suffice to provide the basis for a plea of malice. There is nothing in any of the evidence that suggests that Mr Williams did not believe the words he is alleged to have spoken to be true, was recklessly indifferent to the truth, or that spite, or desire to injure, was his dominant motive in publication nor that any other servant or agent of the HSE was actuated by malice.

28. It is submitted that Mr Williams was acting in the course of his professional duties throughout and it is fanciful to suggest that he would have misused the occasion in order to deliberately injure Professor Bridle in pursuit of some personal vendetta against him. Nor is it realistic to suggest that officers within the HSE are engaged in a conspiracy in order to publish information they know to be false or with a dominant motive to injure Professor Bridle. It is submitted that the dominant motive for the HSE is to protect the health and safety of the public and fulfil their statutory duties. Neither Mr Williams nor HSE has any vested interest in requiring businesses or public bodies to incur unnecessary expense on removing asbestos which Professor Bridle might regard as harmless or encouraging unfounded claims by personal injury lawyers. The court is invited to note that the HSE are not responsible for producing the Asbestos Regulations, which are enacted to implement an EU directive (Walkin, paragraph12).

29. The allegations are that the words spoken were to the effect that:

i) Professor Bridle was not a real professor.

ii) Mr Powell and Mr Fowden should not believe a word he said.

30. It is submitted that these words, even if spoken, could only be malicious if Mr Williams did not believe them, and there is evidence to suggest that these words could in fact reflect Mr William's belief of view.

31. With regard to phrase (i) above, in paragraphs 24 – 26 of his witness statement Professor Bridle gives evidence that he was awarded an honorary professorship by the Institute of Occupational Health of the Russian Academy of Medical Sciences ('RAMS') in November 2005 in recognition of his work in relation to asbestos science. A copy of the certificate is exhibited which in fact states that Professor Bridle has been nominated "Honourable Professor" on 21 November 2005. Professor Bridle states:

> "RAMS is a long established and highly respected scientific institution, founded in 1923, its key membership limited to distinguished scientists, and conducts specialist research in a wide range of medical fields and publishes learned scientific papers…..

> Whilst the professorship conferred on me is honorary in that I do not hold any formal chair or tenure in RAMS and present neither formal lectures nor publish research in the name of RAMS, I am entitled to use the style and title Professor and my professorship is no less "real" because it is an honorary appointment: no less "real" in that sense, I am advised, than the title of honorary Queens Counsel."

32. This issue was the subject of some controversy following a complaint made by Professor Bridle to Ofcom following a broadcast by BBC Radio 4 on the 'You and Yours' programme, on 18 October 2006. This is dealt with in Ms O'Neill's first witness statement and a copy of the report is exhibited as AO4. Ms O'Neill says that the programme claimed that Professor Bridle's views on the safety of white asbestos were contrary to those held by the British government, the HSE and the World Health Organisation, among others. She says that the programme also questioned Professor Bridle's credentials and expertise in testing for the presence of asbestos. The Ofcom Report states that Professor Bridle complained that he was treated unfairly in the programme in that he was portrayed as a liar and a charlatan; his expertise and qualifications were questioned along with his business qualifications, and various other complaints. The report from Ofcom rejected all the complaints made.

33. In relation to the complaint regarding the BBC having alleged that Professor Bridle had claimed untruthfully that he held an honorary professorship awarded by the Russian Academy of Science ('RAS'), the complaint was not upheld because Professor Bridle had himself referred to his honorary professorship as being from 'the Russian Academy of Science', or 'a Russian Academy of Sciences' and had later accepted that this was an error and that his honorary professorship was from the Russian Academy of Medical Science ('RAMS'), not from RAS, and that there was no affiliation between RAS and RAMS as had been previously asserted by Professor Bridle. [219].

34. With regard to the complaint that the programme portrayed his honorary professorship as 'a worthless sham', this was also not upheld, Ofcom concluding that the programme gave a straightforward explanation of the award, and stated that it was not awarded by RAS but by RAMS, and that there was no unfairness to Professor Bridle in the commentary. [220]

35. In addition, in relation to this issue, Miss O'Neill exhibits to her first witness statement a certified copy of the record of a conviction of Professor Bridle for falsely claiming the qualification which he did not possess contrary to the Trade Descriptions Act 1968. That conviction states "in the course of a trade or business as an asbestos consultant in Vale of Glamorgan made a statement which he knew to be false by means of a statement on a business letter namely that he was a British Institute of Occupational Hygienist (BIOH) (P402) surveyor when he was not contrary to Section 14 (1)(a) Trade Descriptions Act 1968".

36. Professor Bridle's evidence in response, at Paragraph 46, corrects this evidence to state that he was convicted of making a representation about his qualification that turned out to be false, and not convicted of dishonesty. He was given a conditional discharge, no fine was imposed and the judge made it clear in his sentencing remarks that he had not set out to deceive and that there was no dishonesty on his part.

37. With regard to phrase (ii) in paragraph 29 above, the Defendants submit that this has to be taken in context, namely the discussion as to whether material containing white asbestos should be removed only by licensed contractors or whether it could be removed by unlicensed contractors. It is submitted that given the long running dispute amongst members of the scientific community in general, and Professor Bridle and his supporters on the one hand and the HSE and scientists who support its view on the other in particular, the words could not be construed, on their own, as malicious, but reflected the clear difference in views on this subject between Professor Bridle and the HSE. It is therefore submitted that the evidence of the long standing difference of opinion between the HSE and Professor Bridle in respect of the risks posed by products containing white asbestos was such that it is likely that Mr Williams did not believe what Professor Bridle said in relation to that subject.

38. It is submitted that the hurdle of succeeding in a plea of malice is a high one as it is a serious allegation and tantamount to one of dishonesty. It is especially serious where the defendant is a professional person acting in the course of their employment. A claimant must produce more than a scintilla of evidence of malice; he must establish a probability of malice, and bare assertion will not do. In order to survive allegations of malice must go beyond being equivocal or neutral. I am referred to Mr. Justice Eady's judgment in *Donnelly v Young* (unrep. 5 November 2001) at page 35

> "There has to be something from which a jury could rationally infer malice; that is to say, in the context of qualified privilege either dishonesty or a dominant motive to injure the claimant.
>
> Assuming that the allegations pleaded by the claimant against the defendants are true, there must be something contained within them which would enable a jury to conclude that the defendant had abused the occasion of qualified privilege. That means that he or she has used it for a purpose other than that for which public policy accords the defence. Bare assertion will not do. The burden is always on the claimant to prove malice and he cannot, therefore, proceed in the hope that something will turn up if the defendant chooses to go into the witness box or that he will make an admission in cross-examination".

39. It is thus submitted that the Claimant cannot rely on whether Mr Williams will be disbelieved at trial in respect of what he said, but must put forward a case which will support malice. It is submitted also that it cannot be taken as a basis for a plea of malice, as the Claimant submits, that because Mr Williams denies speaking the words alleged, despite the evidence of Mr Powell, Mr Fowden and Mr Randell that he did so, the court should conclude that he must therefore have been malicious. Mr Williams must take the honest position, namely that he believes that he did not say the words spoken, and he should not be penalised by adopting that approach by being refused summary judgment.

40. It is submitted that there is no reason why a defence denying publication cannot also be combined with a plea of justification. I am referred to the case of *Hussein v Hill* [2006] EWHC 25 before Mr Justice Tugendhat on 20 January 2006 where a denial of the publication was combined with a plea of justification.

41. I am referred to the judgment of Mr Justice Eady in *Seray-Wurie v The Charity Commission* [2008] EWHC 870 (QB) at paragraphs 30 – 35 as follows

> "30. Malice is always a serious allegation to make and is generally regarded as tantamount to dishonesty. I was reminded of the words of Lord Diplock in *Horrocks v Lowe* [1995] AC 135, 149-150, where a contrast was drawn between malice, in its true sense, and behaviour falling short of it – such as failing to analyse evidence correctly and arriving at a misguided conclusion. It is important to remember that the burden is difficult to discharge and that findings of malice are very rare.
>
> 31. It is accepted that the court should be wary of taking away an issue such as malice without its coming before a jury for deliberation. This step should only be taken where the court is satisfied that such a finding would be, in the light of the pleaded case and the evidence available, perverse. On the other hand, where this is clear, it is plainly a judge's duty to prevent further time and money being expended upon a hopeless allegation: see e.g. *S v London Borough of Newham* [1998] EMLR 583, 593, *per* Lord Woolf MR (as he then was) and *Alexander v The Arts Council of Wales* , cited above.
>
> 32. It seems to be clear, in the light of these authorities, that the court should apply a test similar to that used in criminal cases in the light of *Galbraith* [1981] 1 WLR 1039.
>
> 33. It is necessary also to have regard to the principle explained in the older case of *Somerville v Hawkins* (1851) 10 KB 583; that is to say, the facts relied upon by a claimant, whether in a pleading or in a witness statement, must be capable of giving rise to the probability of malice, as opposed to a mere possibility. That principle has been approved in modern times both in the House of Lords, in *Turner v MGM* [1950] 1 All ER 449, 455, and in the Court of Appeal in *Telnikoff v Matusevitch* [1991] 1 QB 102, 120.
>
> 34. In order to survive, allegations of malice must go beyond that which is equivocal or merely neutral. There must be something from which a jury, ultimately, could rationally infer malice; in the sense that the relevant person was either dishonest in making the defamatory communication or had a dominant motive to injure the claimant.
>
> 35. It is necessary, in effect, for a claimant to demonstrate that the person alleged to have been malicious abused the occasion of privilege, for some purpose other than that for which public policy accords the defence. Mere assertion will not do. A claimant may not proceed simply in the hope that something will turn up if the defendant chooses to go into the witness box, or that he will make an admission in cross-examination: see e.g. Gatley on Libel & Slander (10 th edn.) at 34.18, and also the remarks made by Lord Hobhouse in *Three Rivers DC v Bank of England* [2001] 2 All ER 513, 569 at [160]:
>
> > "Where an allegation of dishonesty is being made as part of the cause of action of the plaintiff, there is no reason why the rule should not apply that the plaintiff must have a proper basis for making an allegation of

> dishonesty in his pleading. The hope that something may turn up during the cross-examination of a witness at the trial does not suffice. It is of course different if the admissible material available discloses a reasonable prima facie case which the other party will have to answer at the trial."

This is clearly applicable also where malice is pleaded."

Abuse of Process

42. The Defendant's case on abuse of process is put on three combined grounds: (i) Impermissible Collateral Purpose; (ii) Disproportionate time and cost and (iii) Delay (see Gatley paragraphs 32.34 -32.46).

(i) Impermissible Collateral Purpose

43. The purpose of a defamation action is to protect and vindicate reputations. It is submitted that it is clear from all the evidence that the Claimants' motive in instituting these proceedings is not to protect and vindicate Professor Bridle's reputation but rather to prevent the HSE from pursuing its current policy and to provide a platform for a public debate about the risks posed by white asbestos. The Defendants rely on evidence exhibited to Ms O'Neill's witness statement as AO5, as follows:

i) An e-mail from Professor Bridle to Kevin Walkin, then of the Cancer and Asbestos Policy Team at the HSE, dated 13 February 2008, which states:

> "I wont elaborate over the coming events but I will be attempting to make sure that the position you have chosen to represent will be given a very public airing during the coming court hearing."

ii) An e-mail from Professor Bridle to Judith Hackitt, the chair of HSE dated 23 April 2009, (also exhibited to Dr Walkin's witness statement as KW1 (97-98)), where Professor Bridle states:

> "…..Last time I was moved to write to you after such an interview you were then advised to reply dismissing my concerns about the HSE's current policy of running a smear campaign to discredit me and my opinions on the risks from white asbestos products……
>
> You also stated that no one lied about me on the BBC programme. As you will see later below Kevin Walkin will shortly be subpoenaed to appear in court to answer that question in more detail.
>
> I'm sure had Mr Quinton Letts run the story of HSE's incompetence on your asbestos group it would have made an even more horrific condemnation.
>
> I am told that my Asbestos Watchdog organisation now represents more businesses than any other stakeholder to the HSE yet I am still subjected to HSE official silence. Kevin Walkin confirms that you have no instructions to change this

> policy and in spite of every attempt I have made to find a way of getting the HSE to co-operate with common sense I am ignored but then have my credibility over asbestos attacked and slandered as the only response. This is a situation that I cannot allow to go unchallenged. I have therefore been given no choice but to take legal action against one of your inspectors who whilst carrying out HSE policy of smearing myself will shortly be receiving the court papers to answer this charge. I have been forced to take this action and its main objective is to encourage the HSE to stop this policy and get all those in your department responsible into court and the public arena so that the concerns can at last have a proper hearing……."

44. The Defendants rely in particular on the words "its main objective" in the final paragraph above. The Defendants also rely on various extracts from Professor Bridle's witness statement as follows:

> "31. The difference between white asbestos in non-bonded products and white asbestos in bonded products is absolutely fundamental to the views I have expressed on health risk….
>
> 32. If the present proceedings go to trail, the Court may conclude that whether my views on the scale of health risk posed by bonded asbestos products is not something on which the Court can come to any confident conclusion….
>
> 50. My complaint, and these proceedings, are intended to produce a ruling which finds (a) that the statements which I allege to have been made about me were in fact made, (b) that those statements are defamatory, (c) that they are untrue, and (d) that they have caused me compensable loss: a ruling which will be of value to me not only in redressing the particular loss which the Claimants have suffered in relation to the hoped-for contract with the University of Wales at Lampeter, but more widely in the event that the same or similar allegations are made against me in the future whether by representatives of the HSE or by third parties.
>
> 51. Such findings will very likely involve the taking of evidence, in public, much of which would touch upon my experience, the basis on which I hold my views, the nature and quality of the views expressed by the Defendants, and other issues which bear directly or indirectly (but none the less relevantly) on my reputation and standing. That [*sic*] efforts to vindicate my reputation would involve the Defendants having to engage in a courtroom debate about the science of asbestos is an intractable consequence of their defending the proceedings which I now bring, all the more so if the Defendants (contrary to their primary case) seek to justify the statements which I attribute to their Inspector. The Courts are not all unaccustomed, as I understand it, to entertaining proceedings

> which have a far wider implication and extent than the narrow issues immediately apparent within them."

45. It is submitted that Professor Bridle seeks a courtroom debate about the science of the risks of asbestos containing materials, which he would have if the Defendants entered a plea of justification or fair comment. If the Defendants are successful on their primary defence of qualified privilege then he would be deprived of such a debate.

46. The Defendants refer to the long running campaign by Professor Bridle to have his views on the risks associated with white asbestos accepted by the HSE. Ms O'Neill sets out the history of this campaign in her 1st witness statement. She states that the campaign has been pursued through the organisation Asbestos Watchdog, of which Professor Bridle is a director, and of which the Second Claimant is the commercial arm, by making complaints to the Advertising Standards Authority (ASA), Ofcom and through numerous freedom of information requests (Exhibited as AO6). The Defendants also rely on the evidence of Dr Walkin and the e-mails referred to above.

47. Ms O'Neill exhibits a Google search revealing items posted on the internet concerning Professor Bridle's views and qualifications, many of which are defamatory. Ms O'Neill describes the debate in the media, the two camps being represented by the Sunday Telegraph and Christopher Booker, a journalist and author, taking Professor Bridle's view, and Richard Wilson, an author, George Monbiot, a journalist from the Guardian, and journalist and author Julie Burchill, attacking both Professor Bridle and Mr Booker. Relevant extracts from these publications are exhibited at AO2.

48. The Defendants submit that publications by the journalists referred to and by the author Richard Wilson in his book 'Don't Get Fooled Again' contain far more serious allegations than those complained of in these proceedings. They are in permanent form, have received and continue to receive far wider publication and would inevitably have caused much greater damage to reputation than the alleged slander by an HSE inspector to the University's estate manager and his assistant.

49. Richard Wilson's book contains a Chapter entitled 'Fake Experts and Non-Denial Denials' which is almost entirely devoted to attacking Professor Bridle. It disparages his academic qualifications, and brands him as a 'charlatan' and a 'liar'. An article in 'The Guardian' dated 30 June 2008 by Peter Wilby refers to Professor Bridle and Asbestos Watchdog in disparaging terms and suggests that his scientific credentials should be subject to careful scrutiny. A critical article suggesting that Professor Bridle was not a neutral expert and was linked to the Asbestos Cement Product Producers Association was published in CMAJ [a scientific journal] by Kathleen Ruff on 22 December 2008. Critical comments have been published on a blog run by Richard Wilson in September 2008. Julie Burchill wrote an article critical of Professor Bridle and Christopher Booker in The Guardian on 2 November 2002.

50. It is therefore submitted that the incident giving rise to this claim is a peg on which Professor Bridle hopes to hang the next round of his campaign. It is submitted that he has been waiting for the opportunity to "get HSE in the dock" and this action is a contrived way of seeking that. It is submitted that were this action allowed to proceed it would also cause harassment and prejudice beyond that usually encountered in litigation.

51. The Defendants rely on *Wallis v Valentine* [2002] EWCA Civil 1034, where the Court of Appeal upheld the decision of the judge below that the claimant was pursuing a vendetta, rather than pursuing a vindication of his reputation. It is submitted that the bringing of these proceedings is disproportionate and a prejudicial attempt to harass the Defendants. It will cause the Defendants expense, harassment and prejudice beyond what is ordinarily expected in litigation and will divert Mr Williams from his job and divert the public funds of the HSE in dealing with the proceedings.

ii) Disproportionate time and costs

52. It is submitted that the court must not allow its limited resources and those of the parties, especially publicly funded defendants such as these Defendants, to be devoted to actions which do not stand to benefit the parties. It is submitted that even if the Claimants were successful at trial any damages that would be awarded given the limited publication of the alleged slander (even if the words complained of are held to be defamatory) would be likely to be derisory or at best nominal, and in any event grossly disproportionate to the costs and time that would be involved in the action and in the trial.

53. I am referred to a number of cases where the court would not allow actions to proceed that were not "worth the candle" namely *Dow Jones v Jameel* [2005] EWCA Civ. 75; *Lonzim plc v Sprague* [2009] EWHC 2838 (QB); *Bezant v Rausing* [2007] HWHC 1118. It is submitted that these proceedings fall into that category. The case of *Jameel* is well known to defamation practitioners.

54. In *Lonzim* Mr Justice Tugendhat, in paragraph 27 of his judgment states:

> "While it is not an essential constituent of the tort of slander that any publishee should have thought the worst of the claimant, it is notable that no evidence is adduced by the Claimants that any publishee has thought any the worse of the Claimants as a result of hearing what Mr Sprague said."

It is submitted that this also the case in these proceedings.

55. At paragraphs 31-34 Mr Justice Tugendhat stated:

> "31. I am at a loss to understand what vindication the claimants might obtain from the verdict of a court, or why, or on what grounds, this claim in slander is being brought at all…….
>
> 32. The prospect of any of the Claimants obtaining an injunction is unreal. Any damages could only be very small. They would be totally disproportionate to the very high costs that any libel action involves.
>
> 33. It is not enough for a claimant to say that a defendant to a slander action should raise his defence and the matter go to trial. The fact of being sued at all is a serious interference with freedom of expression*: Jameel* paras. [40] and [55]……..

> 34. If the expression of such views is to give rise to a slander action, there must be reasonable grounds for bringing that action. It is the duty of the court to bring to an end proceedings that are not serving the legitimate purpose of defamation proceedings, which is to protect the claimant's reputation. I have no hesitation in categorising this part of the claim as an abuse of the process of the court. The claim is vexatious."

56. In *Bezant v Rausing* proceedings were brought in respect of a libel contained in an e-mail sent by a solicitor acting on behalf of Dr Rausing to an accountant acting for Mr Bezant, and in a letter sent by the same solicitor to Mr Bezant. The letter is said to have been opened and read by Mr Bezant's daughter. At paragraph 43 and 44 of his judgment Mr Justice Gray said;

> "43. … statement of case is not suitable for striking out if it raises a serious live issue of fact which can only be properly determined by hearing oral evidence….
>
> 44. …..On an application for summary judgment the Court cannot resolve disputed questions of fact, although if it is clear beyond question that the respondent to the application will not be able to establish the facts on which he relies (which may be because there is some inherent improbability in what is being asserted or some extraneous evidence which contradicts it), the court may enter summary judgment….."

In that case where there was very limited publication Mr Justice Gray struck out the claim and granted summary judgment on the basis that the defence of qualified privilege was upheld and it was held that there was no arguable defence of malice and also held that the claim was an abuse of process.

57. It is submitted that even if the Second Claimant's actual loss of £3,000 is made out, this is a modest sum and the likely damages would not justify the expense of a full blown libel action. Here the publication has been made to only two people and there is an "inherent improbability" on the evidence that the Defendants were motivated by malice.

iii) Delay

58. The proceedings were issued on 25 June 2009 almost one year after the incident at the university in July 2008. It is submitted that the unexplained delay in issuing the proceedings is consistent with the purpose being other than the vindication of reputation.

Claimants Submissions

59. On behalf of the Claimants, their Solicitor Advocate made some preliminary observations.

i) Professor Bridle accepts that he is a serious irritation to the HSE because he questions their stance in public forums. It is submitted the HSE want to 'shut

him up'. This is not an appropriate position for the HSE to take as a public body, publicly accountable.

ii) Professor Bridle gives evidence that both Mr Powell and Mr Fowden have confirmed to him that what he alleges was said by Mr Williams, was in fact said, but they are unwilling to give statements for the purposes of the application because of their concern about possible disciplinary action from the University. If they were served with witness summonses to attend trial they have confirmed that they would comply with those because they would then have no concerns about disciplinary action. The Defendants have not denied that they have contacted Mr Powell and Mr Fowden to ask them to make statements that what is alleged to have been said was not said and they have refused to give such statements to the Defendants. Thus it is submitted that the preponderance of the evidence confirms that what is alleged was in fact stated. It is submitted that the words alleged must be capable of being defamatory because they strike at the credibility and honesty of Professor Bridle. It is noted that Mr Powell was so concerned after what was said to him that he telephoned first Mr Randell and then Professor Bridle because he considered that Professor Bridle's reputation was being damaged.

iii) In respect of causation, it is obvious that the loss of the University contract arose directly from the conversation complained of because the University estate managers knew that Professor Bridle was a figure of controversy and if they had awarded the contract to his company they might anticipate trouble from the HSE. They did not want to court controversy so the words spoken put them off, and whether or not Mr Powell and Mr Fowden personally believed the words spoken is not material.

iv) Professor Bridle's evidence is that he has an honorary Professorship from an institution with 85 years standing, namely RAMS, and many hundred of satisfied clients including Llandaff cathedral. The publications referred to in his witness statement and exhibited show that he has many supporters for his views.

Qualified Privilege - Malice

60. For the purposes of this application the Claimants: (1) do not allege conspiracy by members of the HSE and (2), accept that the words alleged were spoken on occasion of qualified privilege. It is submitted that the words were spoken maliciously namely:

i) there was an improper motive, and

ii) there was a lack of honest belief, and

iii) there was a recklessness as to the truth or falsity of the words;

and that there is evidence to support this, and therefore there was a misuse of the privileged occasion when the words were spoken.

61. The Claimants rely on the following as evidence of malice:

i) Mr Williams' complete denial of what was said, as set out in paragraphs 26, 30 and 36 of his first witness statement. The denial is in complete conflict with the evidence of two witnesses with no axe to grind.

ii) Mr Williams cannot have had any honest belief in what was said because:

a) With regard to the first phrase alleged, he confirms in his evidence (at paragraph 43) that "as far as I am aware, everyone in HSE, including me always refers to John Bridle by his preferred title Professor." which suggests that he did regard him as 'a real professor'; and

b) With regard to the second phrase alleged, any experienced HSE inspector properly doing his job would know that, even if he disagreed with Professor Bridle's views on the risks of white asbestos, Professor Bridle would not always get it wrong and that there would be many matters where the HSE would agree with his views. Thus the words spoken "do not believe a word he says" are words which themselves can establish malice when set against what the Defendants know about Professor Bridle and his background.

iii) The reason why it would be likely that Mr Williams would use such words was because of the context, namely, because the HSE had taken the view, after analysing samples of the tiles removed at the University, that the work was licensable, and having learned of Professor Bridle's involvement and his advice which was directly contrary to their view, at that point Professor Bridle became an obstacle to the HSE. They knew that he was not a man who does not take 'no' for an answer and knew that he was difficult to deal with.

Taken against that background it is submitted that there is enough evidence of malice.

62. Further it is submitted that the court should be wary of taking the issue of malice away from a jury or a single trial judge unless such a finding would be "perverse" in the light of the pleaded case.

Abuse of Process

(i) Impermissible Collateral Purpose

63. It is submitted that the cause of action is genuine and free standing and the primary aim is vindication of reputation. It is correct that modest damages are sought, but the reputation of the First and Second Claimants are crucial to Professor Bridle's ongoing work. There is no evidence that this case is a vendetta or a crusade as referred to in *Wallis v Valentine*. It is not a claim brought to harass or repress and is not brought by an impecunious or impoverished claimant. It is not an action of someone with no reputation worth vindicating. Even though the damage is likely to be nominal this claim is not about money but about protecting reputation. Although much disparaging material is spread about Professor Bridle on the internet he has supporters as well as detractors (see paragraph 39 of his witness statement and Exhibits JB8, JB9, JB10).

64. With regard to the Defendant's submissions that Professor Bridle has not brought proceedings against others who had made libellous comments the position was as follows:

    i) Professor Bridle has sent a letter before action to Richard Wilson and his publishers, but in view of the limited circulation of the book and the rebuffs that have been published by noted journalists such as Christopher Booker he decided that the publication did him little if any damage and decided that no proceedings were warranted (Bridle paragraph 42, Exhibit JB4).

    ii) The Guardian has not responded to complaints made about the article by George Monbiot in The Guardian. The article has been the subject of a complaint to the Press Complaints Commission (PCC). Although Professor Bridle 's efforts to get The Guardian to agree a retraction failed there has been a rebuttal of the article published by Richard North on his web blog on 25 September 2008, the day after the article appeared. He is awaiting a formal adjudication from the PCC (Bridle paragraphs 43,44, Exhibits JB5, JB6).

    iii) The allegations in respect of which he complained to Ofcom in respect of the Radio 4 broadcast were not the same as the issues in these proceedings, and that adjudication is irrelevant to these proceedings.

    It should be noted also that these publications were not made by persons in the same public position as that of an HSE inspector.

65. It is submitted that a collateral advantage can be the only basis for a claim as long as it is not an improper collateral advantage. There are examples where money is not the motive of the claimant and where an ulterior motive is the primary motive. For example, the parents of a baby who died in hospital or the relatives of a serviceman killed in Iraq may bring proceedings because they want to know what happened, not necessarily because they would obtain damages. In this claim the question is the accountability of public bodies for actions they take and statements made by their inspectors. The case is therefore about misconduct of public officials. There is no requirement for the Claimant to bring a claim for misfeasance in public office and he is entitled to bring a claim in defamation.

66. It is pointed out that the case of *Lonzim v Sprague* concerned a petty quarrel between shareholders, which is very different from the circumstances of this case.

67. It is submitted that this case would not inhibit any expression of views and would not inhibit the HSE in the proper discharge of their function. HSE have public duties and hold considerable powers and should not attempt to stifle or disparage those with whom they disagree.

68. The Claimants refer me to the reference in *Wallis v Valentine* at paragraph 31 of the judgment of Simon Brown LJ in *Broxton v McClelland and another* [1995] EMLR 485 at 407 – 498:

> "(2) Accordingly the institution of proceedings with an ulterior motive is not of itself enough to constitute an abuse: an abuse is only that if the Court's processes are being misused to achieve

> something not properly available to the plaintiff in the course of properly conducted proceedings. The cases appear to suggest two distinct categories of such misuse of process:
>
> (i) The achievement of a collateral advantage beyond the proper scope of the action…..
>
> (ii) The conduct of the proceedings themselves…..
>
> (3) Only in the most clear and obvious case will it be appropriate upon preliminary application to strike out proceedings as an abuse of process so as to prevent a plaintiff from bringing an apparently proper cause of action to trial."

(ii) Costs and Proportionality

69. The Claimants submit it would be proportionate for the Defendants to agree to the trial of all issues by a judge alone and for there to be an order for the trial of preliminary issue in respect of discrete/preliminary issues of fact by judge alone, such as publication, meaning, privilege, causation, loss and quantum. A preliminary issue as to whether the words were said or not would involve only five witnesses: Mr Williams, Mr Powell, Mr Fowden, Mr Randell and Professor Bridle. There would be no disclosure exercise and the hearing would last only one to one and a half days at the most. If that issue was determined in the Claimants' favour then the matter could proceed to the other issues. There could be further split trials in respect of such issues which would save costs and promote possible compromise.

(iii) Delay

70. The Defamation Act allows for a one year time limit for defamation claims in contrast to other types of claim, to protect defendants against stale allegations. The Claimant is within the one year limitation period. There is no allegation that the proceedings were sprung on the Defendants, rather Professor Bridle waited to see if he could explore other avenues to resolve his differences with the Defendants. Professor Bridle raised his complaint with HSE Cardiff at the end of July 2008 within days of the alleged incident, and Chantal Nicholls of the HSE gave an oral apology. Thereafter Professor Bridle regarded the matter as closed but when he became aware at the end of 2008 that Mr Williams was denying saying the words, he brought back the complaint and attempted to have the apology re-instated. He believes he is being cold shouldered by the HSE and has thought long and hard before issuing proceedings. He has tried to resolve the matter but in the face of complete denial by the HSE he sees no other way forward.

CONCLUSIONS

71. Both parties correctly submit that the issue of meaning is a matter for a jury or for the trial judge in a trial without a jury and I do not have power to rule on that issue.

Qualified Privilege- Malice

72. Dealing first with the Claimant's submissions that one can infer malice from:

    i) Mr William's denial of having spoken the words, in the face of Mr Randell's evidence of what was said to him by Mr Fowden and Mr Powell, and Mr Fowden and Mr Powell's refusal to give evidence to support the Defendants' case; and

    ii) The words themselves, because Mr Williams cannot honestly have believed those words to be true.

73. With regard to the first issue, I do not consider that the evidence is as straightforward as submitted. The Particulars of Claim at Paragraph 4 refer to the words complained of being spoken by Mr Williams to Mr Powell and to Mr Fowden at a meeting at the University on 24 July 2008. Mr Williams' evidence is that he did not meet Mr Powell at all during that meeting, and that he did not at any time discuss Professor Bridle with Mr Fowden at his two meetings with him on that visit. That suggests that either Mr Williams' or Mr Powell's or Mr Fowden's or Mr Randell's recollection is incorrect or that Professor Bridle has misunderstood what either Mr Powell or Mr Randell told him as to when the words spoken were said. Ms Clark, who was present on 24 July, may be able to give evidence on this issue. Mr Williams admits having a telephone conversation with Mr Powell on 29 July at which Professor Bridle was discussed. At paragraph 36 he states:

> "I confirm that I did have a conversation on the telephone with Mr Powell on 29 July in which he informed me that John Bridle was involved in the incident I was investigating, but I deny stating that he was not a real Professor or that others should not believe a word he says. What I did say in response to Mr Powell's summary of the advice that had been received from John Bridle is set out above to the best of my recollection. This was and remains my honest opinion based on my understanding of John Bridle's views."

74. I do not consider, in the light of the conflicting evidence as to what was said, in whose presence, and on what day, that the evidence of Mr Randell, without more, is sufficient that Mr Williams' denial should in itself be taken as evidence of malice, even if it were appropriate to take that view. I must assume for the purposes of this application that the Claimant's evidence is correct on this issue, but I consider in any event that the authorities, as referred to above, require a case of malice to be pleaded on more substantial evidence than simply a defendant's denial of having spoken the words, in the face of other evidence that he did speak them.

75. With regard to the second issue above, I accept the Defendants' submissions, as set out above, that there is sufficient evidence to support the submission that the Defendant could have honestly believed the words to be true.

76. I do not consider that it is, on its own, an argument with a real prospect of success that either of these arguments provides sufficient evidence of malice for the purposes of defeating a claim for qualified privilege.

77. The evidence about the meeting at Llandaff cathedral does not, in my view, provide evidence of malice in circumstances where Mr Williams has given evidence that he was not at such a meeting and that the personal animosity alleged therefore could not exist. Further, I accept the Defendants' submissions that it is far fetched to suggest that because of the allegedly "public humiliation" of another inspector at that meeting, Mr Williams was activated by malice in stating the words alleged.

78. The fact that there has been a long standing difference of scientific opinion between the HSE and Professor Bridle, amongst others, in relation to the risk posed by the presence of white asbestos is not, on its own, in my view, sufficient evidence of malice to defeat a defence of qualified privilege. To find otherwise would risk the participants in any long standing scientific disagreement being found to have made comments maliciously, without any further evidence of malice. The responses of Dr Walkin to Professor Bridle's e-mails in the evidence are measured and non confrontational, providing no indication of malice. To reach a conclusion of malice in such circumstances would in effect be to reach a conclusion that there has been a conspiracy against Professor Bridle by members of the HSE. Such an allegation would require strong evidence to support it and there is simply no evidence of such a conspiracy. I rely on the judgment of Eady J. in *Seray-Wurie v Charity Commissioners* at [41] and [42]:

> "41. In this case, as so often occurs, the Claimant is effectively inviting an inference of malice because the conclusions in the report do not accord with his own account and/or because he claims that those involved have been participants in a conspiracy to do him down.
>
> 42. If the claimant were to have a realistic prospect of defeating the defence of privilege by reason of malice, he would need to set out the factual allegations going to support bad faith on the part of one or more of the individuals concerned, and/or to support his conspiracy theory… Allegations of dishonesty are taken seriously and require to be pleaded with specificity."

79. I further rely on Mr Justice Eady's judgment in *Donnelly v Young* at page 36, quoted at Paragraph [38] above. There are comments to the same effect in *Seray-Wurie v Charity Commissioners* at [34] to [35].

80. In this case, although the statements of case have not reached the stage of a Reply, the evidence does not provide any suggestion that the matters relied upon by the Claimants would be in any way sufficient to meet the high hurdle of a plea of malice. It is the case that malice is normally a question for determination by a jury or trial judge, such that it is very infrequently that a defendant would be granted summary judgment on an issue of malice (see the judgment of Eady J in *Seray-Wurie v Charity Commissioners* at [30] to [31]). In this case I consider that it is appropriate to grant the application, for the reasons given.

Abuse of Process

(i) Improper Collateral Purpose

81. I do consider that the circumstances suggest that the claim has been brought for an impermissible collateral purpose, namely Professor Bridle's wish to have ventilated before a court in a public hearing the dispute between himself and the HSE and others as to the risk posed by material containing white asbestos. The evidence which suggests this to be the case is as follows:

    i) the e-mail from the Claimant to the chair of the HSE dated 23 April 2009 referred to at paragraph above stating that the "main objective" of the legal action against Mr Williams is "to encourage the HSE to stop this policy and get all your department responsible into court and the public arena so that the concerns can at last have a proper hearing".

    ii) The fact that no other defamation proceedings have been brought against publishers of the more serious allegations recorded in permanent form and available to a much wider audience.

82. It is, I consider, apparent from the correspondence exhibited to the witness statements that the dominant motive in bringing the proceedings is to cause embarrassment and prejudice to the HSE because of the Claimant's anger at the HSE's refusal to accept his views on the subject in question. It is apparent from the evidence that Professor Bridle believes that a claim against the HSE will be likely to bring the debate about the difference in scientific views to a public forum more readily than a claim against an individual journalist would do. Thus I have concluded that, whilst I would not go so far as to characterise the claim as 'vindictive' in the same league as the claim in *Wallis v Valentine,* it does, in my view, fall into the category of a 'vendetta' as outlined in that case and in *Bezant v Rausing*.

83. I note particularly the fact that no defamation proceedings have been brought by Professor Bridle against any of the authors of some of the attacks made against him in the press, in the book by Richard Wilson and on the internet. The content of those publications are mostly in terms far more pejorative than the words alleged to have been spoken by Mr Williams, and will have had a much larger audience. The fact that such publications are widely available will inevitably put into issue the extent to which Professor Bridle's reputation has been damaged by the alleged publication in this claim. I do not consider that Professor Bridle's explanation as to why no such proceedings have been brought is credible when compared to the issue of these proceedings for words spoken in either a private meeting or a telephone conversation to either one or two persons (depending upon the evidence).

84. In the light of the lack of any convincing evidence as to why the HSE have been singled out for a claim, and the publishers of the publications referred to have not had proceedings brought against them, and on the basis of the evidence relied on by the Defendants, I have concluded that there is an improper collateral purpose to the claim against Mr Williams and the HSE, rather than simply vindication of reputation.

(ii) <u>Disproportionate time and expense</u>

85. The fact that a defamation claim is a relatively modest one, that a disproportionate amount of time and costs will be spent in dealing with it by the parties and by the court, is not necessarily, on its own, always a ground for striking out. In *Jameel* there were other contributory factors, such as the limited publication, and the fact that the

publishees were 'members of the Claimants' camp'. In many defamation cases in particular a disproportionate amount of time and costs is incurred because it is sometimes difficult to measure the value of reputation in the same way that value can be place on a money or damages claim. However, as *Jameel* and the other cases referred to makes clear, it is a significant factor to be taken into account in relation to the other matters referred to above.

86. It is, in my view, inevitable that, however the claim is dealt with, the costs will far outweigh the likely damages. The large amount of costs and employee time that this action will incur is a particular concern where the defendant is a public authority using public funds. It is also important that a public authority should not make defamatory remarks, bearing in mind the position of public trust that they hold. Nevertheless, the extensive time and costs of this action when balanced against:

    i) the very limited publication;

    ii) the minimal amount of damages that will be likely to be awarded;

    iii) the fact that it is doubtful that vindication of reputation would be achieved because there are other more serious defamatory publications widely available about Professor Bridle in respect of which he has not brought proceedings;

    iv) the fact that this claim is made in slander and thus does not involve a permanent record of a defamatory comment;

    v) the fact this is a claim with poor prospects on the merits, as I have concluded in my determination on the summary judgment application;

    are all factors, in my judgment, that bring the claim into the realm of the cases of *Jameel*, *Bezant v Rausing* and *Lonzim v Sprague*.

    (iii) Delay

87. I do not consider that the delay in instituting proceedings is a factor in my decision. The claim was brought within the period specified as a limitation period for defamation claims. Claimants are entitled to, and indeed should, explore whether the dispute can be resolved without the issue of proceedings, and I accept that for the ordinary individual the institution of defamation proceedings is a significant step which requires much consideration before it is ventured upon.

88. I consider that the claim does fall to be struck out as an abuse of process, because I have concluded that an improper collateral purpose is the true reason for the claim, and that a disproportionate amount of time and costs to the issues at stake will be incurred in bringing the claim to trial.

89. I accept that to strike out a claim as an abuse of process is not a step that should be readily taken and that the burden on a defendant of succeeding with such an application is high. I do consider, for the reasons given, that this is a burden that the Defendants have met.

90. In those circumstances the court has a duty to ensure that no further costs and resources are expended upon matters which can be determined at an early stage.

Accordingly the Defendant's application for summary judgment and for strike out succeeds in its entirety. The Claimants are to pay the Defendants cost of the action, which I may be able to deal with by summary assessment. Otherwise the costs are to be subject to a detailed assessment if not agreed. If a payment on account of costs is sought and the amount cannot be agreed I will determine that matter on handing down judgment.