



Neutral Citation Number: [2010] EWHC 3057 (QB)

Case No: HQ10X1955, HQ10D02373, HQ10D02376

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 24/11/2010

**Before :**

**The Hon Mrs Justice Sharp DBE**

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**Between :**

**Dr Christopher Sydney Daniels** **Claimant**  
**- and -**  
**British Broadcasting Corporation** **Defendant**

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**Dr Daniels appeared in person**

**Adam Wolanski** (instructed by the **BBC Litigation Department**) for the **Defendant**

Hearing dates: 4-5 October 2010  
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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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**THE HONOURABLE MRS JUSTICE SHARP**

**Mrs Justice Sharp:**

*Introduction*

1. On 2 November 2009 the Claimant was employed by the BBC on a five month fixed term contract as an intake assistant on the TV Intake team (the Team). The grade was junior and the job administrative. The Team is responsible for entering details of programmes and footage into various databases so they can be identified and accessed in the future. Ms Rita Eagle is the manager of the Team.
2. The Claimant has now brought three actions for libel, all of which arise from comments made about his performance as an intake assistant, by fellow members of the Team. They were made in a document compiled by Ms Eagle, which I shall call the feedback schedule. Ms Eagle produced the feedback schedule at a meeting with the Claimant on 22 January 2010 – that is, after he had been working at the BBC for two months. Apart from the Claimant, and Ms Eagle, the only persons present at the meeting at which the feedback schedule was produced, were two members of the BBC's Human Resources (HR) department. The Claimant's complaint in the three actions is confined to the production of the feedback schedule at that meeting.
3. The BBC applies in each action for (a) rulings pursuant to CPR Part 53 PD 4.1 that the words complained of are incapable of bearing any meaning defamatory of the Claimant; (b) for an order for summary judgment pursuant to CPR 24.2. and (c) for an extended civil restraint order against the Claimant pursuant to CPR 3.11.
4. Summary judgment is asked for on the ground that all the publications complained of were made on an occasion of qualified privilege (indeed the Claimant does not contend otherwise); and that the claims have no realistic prospect of succeeding, because there is no evidence to support the Claimant's allegations of malice.

*The feedback schedule*

5. The feedback schedule is reproduced below.

<b>Objective</b>	<b>Date</b>	<b>Incident</b>	<b>Colleague/Contact</b>
Training- INFAX	11/01/2010	BRD's on system before HDC- Dancing on Ice, rang production before checking with team.	Trevor
Training- INFAX	11/01/2010	Core and series titles wrong, One Show PasBs	Juha
Team working/ INFAX	11/01/2010	Asking customer for feedback on work undertaken- Total Wipe Out awards. Also punctuation incorrect on core title	Customer
Training- INFAX	12/01/2010	Tape logged under wrong programme number "only Connect" instead of "Cranford".	Juha
INFAX/Team Working	13/01/2010	VTRR-Wales Post Production. Trust the Red Bee communications. Also non communications with team.	Tania
Team working	12/01/2010	DTS problem on CBBC- 8 minute gap spoke with colleague who advised to	Trevor

		speak to team leader and you allegedly said no. Trevor overheard CD ringing Red Bee-Winnie Foo 4x's was advised to look up pics and told Winnie no access.	
Team working	14/01/2010	Customer query on team email, CD took on issue waited a number of hours before Ash arrived in office to ask her advice, instead of speaking to another colleague.	Ashraf
Team working	18/01/2010	PIC access required by CD, Lauren offered to assist but CD approached Manjit who was not logged in. When Lauren offered again CD replied in a curt manner.	Lauren
Team working	13/01/2010	News Night Review tape- CD spoke to Joe Bennett from News instead of speaking to team for advice. Manjeet, Lauren and Scott were available and CD awaited to speak to me only MFA team.	Trevor
Training	18/01/2010	Inappropriate use of DTS check list used between intake and Cat.	Kathryn Stickley
INFAX	21/01/2010	Incorrect title logged again programme Dancing Wheels.	Lauren
INFAX	15/01/2010	Breakfast- use of ??? Instead of correct recording, when Manjeet advised CD to speak to team leader CD replied "told not to ask too many questions".	Manjeet
Team working	19/01/2010	Responding to Lucy Chipman email incorrectly not following query.	Lucy

6. In his first libel action brought against the BBC (“the BBC action”) the Claimant complains in respect of publication of all 13 items on the feedback schedule.
7. His two other libel actions are brought against former fellow members of the Team. In his second action brought against Ms Lauren Bird (“the Bird action”) he complains only of the publication of the words in the 8<sup>th</sup> item on the schedule (“*PIC access required by CD, Lauren offered to assist but CD approached Manjit who was not logged in. When Lauren offered again CD replied in a curt manner*”). In his third action brought against Ms Ashraf Heidari (“the Heidari action”) he complains only of the publication of the words in the 7<sup>th</sup> item in the feedback schedule (“*Customer query on team email, CD took on issue waited a number of hours before Ash arrived in office to ask her advice, instead of speaking to another colleague*”).
8. Two other potential libel actions are “in the wings”. In June 2010 the Claimant wrote to the BBC stating his intention to bring two further claims arising out of the publication of the feedback schedule; against Ms Eagle personally and in respect of another former colleague Ms Chipman.

9. A Defence and Reply have been served in the BBC action. No defence has yet been served in the other two actions: though both parties have proceeded on the assumption that if they were, they, and the Replies, would raise essentially the same issues as arise in the BBC action.

*Factual Background*

10. The background to the production of the feedback schedule and matters pertaining to the Claimant's case on malice are dealt with in two witness statements of Ms Eagle, a witness statement from Margaret (Maggie) Lydon and a witness statement of David Attfield. Ms Lydon occupies a senior management position within the BBC as its head of Metadata services and her overall responsibilities include the provision of Archive services within the BBC. Mr Attfield is a solicitor in the BBC's Litigation department and has day to day conduct of the three actions on its behalf. Some of the factual background is also referred to by the Claimant in his Reply to the BBC's Defence and in his skeleton arguments prepared for the purpose of this hearing.
11. Ms Eagle is responsible for the management of three teams within the BBC's Information & Archives Division which is responsible for maintaining the BBC's archive of its recording output and for providing library and other information services. One of the teams she manages is the Team which is based at Television Centre, and with which she spent about half her time during the material period. Its particular function is to ensure accurate details of programmes and footage are entered correctly in the database so they can be identified and accessed in the future. The Team has eight full time posts, and during the period when the Claimant was employed there, Ms Tania Gomes was its Team Leader.
12. The Claimant was appointed as an intake assistant (his job title was senior media assistant) in November 2009 to fill a temporary vacancy which had arisen in the Team, on a five month fixed contract. His job was a junior administrative one, which involved the performance of routine functions. Ms Eagle says she quickly began to have concerns about the Claimant and his lack of interaction with the Team during his standard on the job training. Her concerns were based on her own observations and feedback provided by other team members. The training involved shadowing more experienced colleagues. She says the Claimant seemed to have problems following set procedures and taking on board certain information. He seemed to prefer trying to work things out for himself and Ms Eagle was aware this was causing confusion and wasting time. There were also only a few people within the Team he would talk to, and did not speak to others, including the two people who sat on either side of him, one of whom was Ms Bird, who was an experienced member of the Team. These matters were raised with the Claimant by Tania Gomes, on an informal basis on 25 November 2009.
13. However, Ms Eagle says it was apparent from her own observation and discussions with team members that the Claimant's interaction with the Team had not improved; and that he would raise queries with customers (i.e. others within the BBC who were supplying the Team with information to catalogue) instead of following the correct procedure, which was for him to ask for advice before doing so. Ms Eagle says she was concerned because this could make the Team look unprofessional and lead to mistakes or cause confusion (because the customers would not necessarily be aware of the remit or responsibilities of the Team).

14. After advice was taken from the BBC's Human Resources (HR) department, a formal meeting was arranged with the Claimant for 7 January 2010 attended by the Claimant, Ms Eagle and Ms Gomes. At that meeting, the Claimant was told that there were three specific areas of concern which the Claimant needed to address if his employment was not to be terminated on capability grounds. These were (1) training, since the Claimant had not reached the required level of competency despite receiving training; (2) his use of a database called INFAX – the Claimant was told he should use standard procedures and not devise his own; and (3) team working – he needed to work on improving relationships with team members.
15. Ms Eagle told the Claimant that there would be a further meeting in two weeks time and that in the meantime she would seek feedback from colleagues regarding these three areas. Ms Eagle summarised her concerns in an email sent to the Claimant on 7 January and warned the Claimant that his employment was at risk if he did not improve in the meantime. She also summarised the objectives she had set the Claimant in a memo on the same date.
16. On 8 January 2010, the Claimant sent an email to Sarah Hayes, a senior executive at the BBC and its overall head of Information & Archive services, copied to Ms Lydon, the Metadata Services Manager, Sally Weston (Ms Eagle's line manager) and Ms Eagle expressing his unhappiness about what had been said at the meeting. Amongst other matters, he took issue with the accuracy of two operational errors he said had been mentioned, and complained the other allegations were too vague; he also said he had been told at the review with Ms Gomes, not to ask so many questions, and not to be so analytical, and said these "criticisms" were "astonishing". He said: "*as a matter of principle and job-satisfaction, I work hard all day long (one needs only to inspect the DTS spreadsheet records on the CORE for positive confirmation of this, which has ended lucrative DTS ["daily transmission schedules"] overtime for the TV Intake team).*"
17. Maggie Lydon responded the same day. She said: "*Many thanks for your email. I have previously been made aware of the concerns being discussed with you. The process that Rita [Eagle] is following is in full consultation with our HR department. It is their role to ensure that we treat our employees in a fair and consistent way. My understanding is that Rita has set you some clear objective of what you need to do to improve the situation. The meeting in two weeks is to look at whether the situation has improved- we cannot pre-judge the outcome of this meeting. It would be wholly inappropriate for either myself or Sarah to intervene at this stage.*" The Claimant responded: "*I would be most grateful if you could continue to keep an eye on the matter.*"
18. The Claimant subsequently prepared a document entitled 'Response to Objectives' in which he set out his response to the three areas of concern. He said nothing in that document of corruption or conspiracy on the part of colleagues.
19. Ms Eagle gathered feedback for the purpose of assessing the Claimant's progress in meeting these objectives before the next meeting, which was scheduled for 22 January 2010. She reviewed the feedback and summarised representative examples on the feedback schedule, which is now the subject of these libel proceedings.

20. The capability meeting of 22 January 2010 was attended by four people: the Claimant, Ms Eagle, and two members of the BBC HR department, Vivienne Chesters and Yvonne Habib. Two people from HR were there because Ms Chesters was handing over her role to Ms Habib. The Claimant was shown the feedback schedule. A discussion took place about the Claimant's performance and the feedback that had been received. It is apparent from the note of the meeting (with the Claimant's subsequent annotations on it, incorporated by agreement) that though the Claimant took strong objection to many of the comments made about his performance he made no allegation of corruption or conspiracy on the part of his colleagues.
21. By letter of 29 January 2010, the Claimant was informed that his contract was terminated with one month's notice on the ground that there had not been sufficient improvement in attaining the objectives focussed on at the meeting on the 7 January 2010. The Claimant appealed against the decision. His statement of appeal, dated 11 February 2010 criticised the competence of his former colleagues on the Team in very strong terms. In it the Claimant claimed to have been singlehandedly responsible for carrying out the work to clear a backlog of DTSs. This document contained the first explicit hint of an allegation of conspiracy and corruption amongst his team members. The Claimant referred elliptically to "*something rotten in the state of Denmark*" and said: "*if 'team working' within the BBC means having to collude with one's colleagues to artificially maintain a plentiful supply of overtime for such colleagues, then this is a concept of 'team working' that I reject completely*". He had earlier said that "*the TV Intake team at TVC believed their situation had been perfectly satisfactory before my arrival in that team members who wished to cruise slowly through the day could do so, resulting in plenty of overtime for those who wanted it.*"
22. On 22 February 2010 the Claimant emailed Jennifer Fellows, HR Manager at the BBC, complaining that his appeal was not going to be heard by the appropriate person. In that email he made for the first time, his explicit allegation of "*corruption concerning many thousands of pounds of artificially generated overtime consumed by the BBC Intake Team*". He then accused the HR department of "*duplicity*" in respect of the choice of individual to hear his appeal.
23. On 2 March 2010 the appeal meeting took place. A note of that meeting, as annotated by the Claimant, is in evidence. The Claimant was asked what evidence he had in support of his allegation that overtime was being artificially generated. His response was that, based on his own experience of how many DTSs could be processed in a day, members of the team had been underperforming throughout 2009. He was given the opportunity to give a further explanation of whether there was any evidence to substantiate his allegation that the issues raised in the capability process were "*false and deceitful*" but said he stood by what he had said in the written appeal.
24. On 24 March 2010 the Claimant wrote to the BBC stating that defamation proceedings were "*inevitable*".
25. On 31 March 2010 the BBC wrote to the Claimant informing him that his appeal was dismissed. The Claimant's basis for inferring that overtime had been artificially generated was rejected: the letter said that there are peaks and troughs in DTS work, so the fact that the Claimant had done more DTSs than other colleagues in any given period meant nothing. The letter also stated that the overtime in relation to DTS work was no greater than expected given the seasonal peak in demand.

26. On 6 April 2010, the Claimant sent a letter before action to the BBC. In it he referred to “*well established corruption within the TV Intake team*”. He did not allege that Ms Eagle was aware of such corrupt practices. The letter complained of “*all the specific allegations of lack of capability made against me at the Capability Hearing of 22 January 2010*”. The Claimant said he sought compensation in the sum of £9000, an apology and a renewal of his contract for 24 months.
27. On 23 April 2010, the BBC legal department responded rejecting the complaint and pointing out the failure of the letter before action to comply with the relevant protocol (which was supplied with the response). It said the comments and statements in the feedback schedule were provided for the sole purpose of undertaking a capability review, which was entirely proper in the light of concerns that had been raised and were protected by qualified privilege.
28. On 26 April 2010, the Claimant wrote back describing the BBC’s letter of 23 April as “*disingenuous*”. The Claimant said he was relying on the publication of the feedback schedule and the subsequent letter of dismissal on capability grounds. He did not state who the publisher and publishees of the words complained of were. In relation to both publications he said “*All words in both publications have their face value*”. In relation to the feedback schedule, he said “*the allegations...are defamatory because they all allege lack of capability on my part.*” He said “*further actions (possibly as many as eight) may follow against individual BBC employees who have either made or repeated false and unsupported allegations against me in this matter.*” He said the claim to qualified privilege would fail because the BBC had failed to take reasonable care to check the truth of the allegations before making them at the capability hearing; it had failed to gather credible evidence for the allegations; it had failed to seek his comments before the allegations were made at the capability hearing and they were made with malice as set out in his statement of appeal and pre-action letter.
29. On 4 May 2010, in response to a letter from the BBC on 30 April, the Claimant said he would not pursue the complaint in respect of the letter of dismissal. He referred to one of the items in the feedback schedule, namely item 12, which he said Ms Eagle knew was false. He also referred to “*well established corruption within the TV Intake Team*”. He said that he had made Ms Eagle aware of this corruption by his letter of 8 January 2010.
30. The Claimant wrote a further letter before action to Ms Eagle personally on 11 June 2010. He threatened defamation proceedings in respect of publication of the feedback schedule. He made no allegation of malice against Ms Eagle personally, instead asserting that there was a “*campaign*” to bring about his dismissal within the Team.
31. On 14 June 2010 the Claimant wrote a letter before action to the BBC Litigation Department threatening a further claim in respect of the statement said to have been made by Lauren Bird, a member of the Team, in the feedback schedule. On 16 June 2010 the Claimant sent a letter before action to the BBC Litigation Department threatening proceedings in respect of the statement said to have been made by Ms Heidari, another member of the Team, in the feedback schedule. The BBC responded the same day, suggesting that the Claimant take no further steps until the BBC’s application for summary judgment/strike out was heard. On 17 June 2010 the Claimant wrote to Ms Heidari personally threatening libel proceedings in respect of

statement 7 in the feedback schedule (see paragraph 36 below). On 23 June 2010 the Claimant issued two separate sets of proceedings, against Ms Bird and Ms Heidari.

32. On 13 July 2010 the BBC issued its application to strike out the Bird action and the Heidari action on the ground amongst others, that the words were not capable of bearing any meaning defamatory of the Claimant, and that the actions were an abuse of the process. On 16 July 2010 the BBC issued the other applications I am concerned with, in the BBC action. The Claimant refused to agree to the extension of time for filing a defence in the Bird and Heidari actions pending the outcome of the strike out applications.
33. On 19 July 2010 the Claimant issued applications to have the BBC's applications to strike out the Bird and Heidari actions dismissed on the ground that the BBC's application was entirely frivolous and vexatious and therefore without merit. The Claimant's applications were dismissed by Eady J on paper on 20 July 2010.
34. In addition to the threat to sue Ms Eagle personally, the Claimant has also threatened to issue libel proceedings in respect of the comment said to have been made in the feedback schedule by another member of the team, Ms Lucy Chipman, though to date these proceedings have not been issued.

*Words not capable of bearing any meaning defamatory of the Claimant*

35. The relevant principles to be applied when the court is asked to exercise its jurisdiction to make rulings pursuant to CPR Part 53 PD 3.1 are summarised in *Gillick v Brook Advisory Centres* [2002] EWHC 829. The judge's role is to pre-empt perversity, and the test is therefore a high one. See also *Berkoff v Burchill* [1997] EMLR 139 at 143, *Jameel v The Wall Street Journal Europe Sprl* [2003] EWCA Civ 1694 [2004] EMLR 6 at paragraph [14], cited in *Thornton v Telegraph Media* [2010] EWHC 1414, (2010) EMLR 25 at [16], *Berezovsky v Forbes Inc* [2001] EMLR 1030, at 1040, cited in *Thornton* at [17] and *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130 cited in *Thornton* at [18].
36. In paragraph 2 of the Claim Form, the Claimant says he relies on the natural and ordinary meaning of the words. Though he does not specify what those meanings are, he attaches to the Claim Form a Schedule which contains his annotations on the feedback schedule which I should set out below.

SCHEDULE ONE

**Statement 1**

BRD's on system before HDC- Dancing on Ice, rang production before checking with team.

This statement was represented to the Capability Hearing of 22 Jan 2010 by Ms R Eagle as a statement of incapability against me. I do not know what the first line of Statement 1 means. When I requested clarification at the Capability Hearing, Ms R Eagle was unable to provide any clarification. She stated that whatever the first line meant, I should not have rung anyone about it before referring the matter to the TV Intake team. It finally

transpired that I was supposed to have attempted unsuccessfully to telephone some unknown person about this unknown matter. I still do not know what the first line of this statement means. Certainly no such incident occurred. I did not make or attempt to make any telephone call as stated.

**Statement 2**

Core and series title wrong, One Show PasBs

This statement was represented to the Capability Hearing of 22 Jan 2010 by Ms R Eagle as a statement of incapability against me. This is a statement that I made errors entering data into the INFAX database. This statement is false. I did not make any such errors. There is no evidence to prove that I made any such errors.

**Statement 3**

Asking customer for feedback on work undertaken-  
Total Wipe Out awards. Also punctuation incorrect on  
core title

This statement was represented to the Capability Hearing of 22 Jan 2010 by Ms R Eagle as a statement of incapability against me. This statement is false. I followed my training to the letter in dealing with this matter. The BBC member that I did the work for was lavish in her praise for the quality of the work I performed in this matter. The statement concerning punctuation is a straight-forward technical error by the BBC. The punctuation referred to was not in error in any way.

**Statement 4**

Tape logged under wrong programme number  
“only  
Connect” instead of “Cranford”.

This statement was represented to the Capability Hearing of 22 Jan 2010 by Ms R Eagle as a statement of incapability against me. This is a statement that I made an error entering data into the INFAX database. This statement is false. I did not make any such error. There is no evidence to prove that I made any such error.

**Statement 5**

VTRR-Wales Post Production. Trust the Red Bee communications. Also non communications with team.

This statement was represented to the Capability Hearing of 22 Jan 2010 by Ms R Eagle as a statement of incapability against me. This statement is false. I followed my training to the letter in dealing with this matter. Cardiff Post Product thanked me for the work that I had done in this matter. My work in this matter in fact showed a high degree of capability in dealing with a difficult and complex matter that could not have been handled in any other way. Ms R Eagle stated at the Capability Hearing that I am supposed to have said to a fellow TV Intake team member that I did not trust Red Bee communications. This statement is false. I did not ever make any such statement.

### **Statement 6**

DTS problem on CBBC- 8 minute gap spoke with colleague who advised to speak to team leader and you allegedly said no. Trevor overheard CD ringing Red Bee-Winnie Foo 4x's was advised to look up pics and told Winnie no access.

This statement was represented to the Capability Hearing of 22 Jan 2010 by Ms R Eagle as a statement of incapability against me. This statement is false. I did not at any time refuse to speak to the team leader about the matter. I rang Winnie Foo once. She rang me back twice. On the second occasion, she asked me to check with PICS as she spoke to me on the phone. I told her that I couldn't look up PICS while I was on the phone with her because I had no access to PICS at my workstation, a perfectly true statement. Whoever was eavesdropping on my telephone calls either got the matter completely wrong or else made a deliberately false statement against me.

### **Statement 7**

Customer query on team email, CD took on issue waited a number of hours before Ash arrived in office to ask her advice, instead of speaking to another colleague.

This statement was represented to the Capability Hearing of 22 Jan 2010 by Ms R Eagle as a statement of incapability against me. This statement is false. There is no truth to it at all and no reason to believe that it might be true.

**Statement 8**

PIC access required by CD, Lauren offered to assist but CD approached Manjit who was not logged in. When Lauren offered again CD replied in a curt manner.

This statement was represented to the Capability Hearing of 22 Jan 2010 by Ms R Eagle as a statement of incapability against me. This statement is false. The team member Lauren did not make any attempt to provide me with access to PICS until she had been prompted to do so twice by the team leader, by which time several minutes had passed and I had obtained the information I required elsewhere. I most certainly did not speak to this team member in a curt manner. Had I done so, I would have been immediately censured by the team leader, which did not happen, either then or at any other time. Several other witnesses very close by heard nothing out of the ordinary, including a senior BBC manager.

**Statement 9**

News Night Review tape- CD spoke to Joe Bennett from News instead of speaking to team for advice. Manjeet, Lauren and Scott were available and CD awaited to speak to me only MFA team.

This statement was represented to the Capability Hearing of 22 Jan 2010 by Ms R Eagle as a statement of incapability against me. This statement is false. I followed my training to the letter in dealing with this matter. Following a serious error by another member of my team in failing to log a programme on INFAX, I determined the correct person to contact by consulting the appropriate contact list, exactly as I had been trained to do. I then corrected this serious error. I did nothing more than mention to team member Trevor Ellis that I had spoken to Joe Bennett about the matter. I did not attempt to identify the person in my team responsible for the error in failing to log a programme on INFAX.

**Statement 10**

Inappropriate use of DTS check list used between intake and Cat.

This statement was represented to the Capability Hearing of 22 Jan 2010 by Ms R Eagle as a statement of incapability against me. As a statement of incapability, this statement is false. I had never been given the slightest indication in my training that the DTS check list was anything but an internal TV Intake team document.

**Statement 11**

Incorrect title logged again programme Dancing Wheels.

This statement was represented to the Capability Hearing of 22 Jan 2010 by Ms R Eagle as a statement of incapability against me. This is a statement that I made an error entering data into the INFAX database. This statement is false. I did not make any such error, there is no evidence to prove that I made any such error.

**Statement 12**

Breakfast- use of ??? Instead of correct recording, when Manjeet advised CD to speak to team leader CD replied "told not to ask too many questions".

This statement was represented to the Capability Hearing of 22 Jan 2010 by Ms R Eagle as a statement of incapability against me. This statement is false. I had consulted extensively with the team leader on how to log this entry on the INFAX database. I received exact instructions concerning the matter, which I followed to the letter. I also requested and received further authorisation by email concerning this matter on 6 Jan 2010. I informed Ms Singh of all of this when she asked me about it in a private conversation. When she suggested that I should refer this matter to the team leader again, I told her again that I had already received extensive instructions and full authorisation for the matter by the team leader and suggested that she should refer the matter to the team leader if she wanted. The comment "*told not to ask too many questions*" is false, since I actually said that I had followed the team leader's instructions in the matter "*without questioning these instructions in any way*".

**Statement 13**

Responding to Lucy Chipman email incorrectly not following query.

This statement was represented to the Capability Hearing of 22 Jan 2010 by Ms R Eagle as a statement of incapability against me. This statement is false. A member of my team, Ms M Singh, had made a serious error and created an anomalous entry on the INFAX database, which had caused Lucy's enquiry. Following thorough consultation with the TV Intake team, I responded to Lucy's email in a manner designed [to] give her the information requested, while at the same time attempting to protect the reputation of the

team and the team member who had made the error. I acted with the full approval of the members of the TV Intake team in this matter.

37. Mr Adam Wolanski who appears for the BBC submits that the words in the feedback schedule comprise 13 comments upon the Claimant's performance of his duties. They point to trivial errors the Claimant has made (statements 2, 3, 4, 10, 11, 12, 13), refer to his failure to communicate with colleagues adequately (statements 5, 8, 12), and allege that he spoke to 'customers' (i.e. people in other BBC departments for whom the team was undertaking the cataloguing work) rather than consulting his colleagues first or at all (statements 1, 3, 6, 7, 9). The words relate solely to the performance of the Claimant's responsibilities at work and do not impute any kind of moral shortcoming: so they fall into the category of a business defamation, if anything.
38. But, he submits, the words do not imply the Claimant is incapable of carrying out, or lacks the skills adequately to perform, any given profession or trade or business. The words relate instead to the performance by the Claimant of routine administrative cataloguing tasks in a junior administrative position during a temporary five month contract.
39. In that context, he refers to what is said in *Gatley on Libel and Slander*, 11<sup>th</sup> ed. at paragraph 2.26:
- “To be actionable [in defamation] words must impute to the claimant some quality which would be detrimental, or the absence of some quality which is essential, to the successful carrying on of his office, profession or trade. **The mere fact that words tend to injure the claimant in the way of his office, profession or trade is insufficient. If they do not involve any reflection upon the personal character, or the official, professional or trading reputation of the claimant, they are not defamatory.**” (emphasis added)
40. He also refers to what I said in *Dee v Telegraph Media* [2010] EWHC 924; [2010] EMLR 20 at [48] to [49] and what was said by Lord Keith at [16] to [17] in *Derbyshire County Council v Times Newspapers Ltd* [1993] AC 534 at 547:
- “The authorities cited above clearly establish that a trading corporation is entitled to sue in respect of defamatory matters which can be seen as having a tendency to damage it in the way of its business.”
41. Properly understood, he submits the principles applicable to business defamation claims simply do not apply here.
42. Moreover, he submits, on any view, the allegations are extremely trivial and do not pass the necessary threshold of seriousness. In *Thornton Tugendhat J* held that a qualification or threshold of seriousness is necessary in personal and business defamation cases so as to exclude trivial libel claims. He gave two reasons for this: first, that it is in accordance with what I said in *Ecclestone v Telegraph Media Group* [2009] EWHC 2779 (QB) and, particularly, with Lord Atkin's speech in *Sim v Stretch* [1936] 2 All ER 1237 at 1242, where he said:

“That juries should be free to award damages for injuries to reputation is one of the safeguards of liberty. But the protection is undermined when exhibitions of bad manners or discourtesy are placed on the same level as attacks on character and are treated as actionable wrongs” (cited in *Thornton* at [19]).

43. Second, a threshold of seriousness is required in accordance with the development of the law by the Court of Appeal in *Jameel v Dow Jones & Co Inc* [2005] EWCA 75; [2005] QB 946
44. The Claimant submits the words complained of are plainly defamatory. He says each of the 13 statements about him published at the meeting on the 22 January 2010 is “*false and therefore unsupportable.*” In reliance on section 2 of the Defamation Act 1952, he says the words are defamatory if they “*disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of publication.*” He says moreover that the allegations cannot be said to be trivial, since they were raised at a formal capability hearing where they were treated seriously by Ms Eagle, and the HR representatives. He also relies on the fact that the claims were allocated to the multitrack by the Masters who dealt with them, as “*compelling evidence*” that the Masters concerned have authorised the claims and concluded that the words are capable of bearing a defamatory meaning.
45. As the authorities cited above make clear, the court must exercise great caution before determining the words in any given action are incapable of being defamatory of the claimant and the standard that must be satisfied before the court makes such a ruling is a high one. Nonetheless, I have come to the clear conclusion that such a determination should be made in this case. Contrary to the submissions made by the Claimant, this is a matter for me to decide and none of the Masters who have dealt with the matters so far have made any determination on the issues I have to consider, whether expressly, or by implication.
46. The Claimant’s complaints seem to centre on the alleged falsity of what is said. The fact that words are false however is not germane to the question whether they are defamatory of the Claimant. In that regard, the first problem with the Claimant’s case is that some of the items complained of on their face are difficult to comprehend (if not incomprehensible) without knowledge of some of the terms used (for example, “DTS” and “PIC”). But even assuming for present purposes, that those who read the words at the meeting of the 22 January 2010 understood what was being said, in my view, the words in the feedback schedule are not capable of being defamatory of the Claimant.
47. In *Thornton*, at paragraphs 33 and following Tugendhat J considered what he described as a possible ordering of defamation cases, that is, personal defamations on the one hand and business or professional defamations on the other. It is common ground that the words complained of relate solely to the Claimant’s performance at work. But the mere fact that words are said about someone’s performance at work, does not mean they are defamatory of him or her, or that they overcome the threshold of seriousness which in my view must be surmounted bearing in mind that excessive latitude to a claimant results in a defendant being “*wrongly burdened with defending libel proceedings*” which “*can be a very onerous burden and one which interferes with the right to freedom of expression*” as Tugendhat J said in *John v Guardian News*

& *Media Ltd* [2008] EWHC 3066 (QB) at [16]; and see also his analysis in *Thornton* at [50] -[88] with which I respectfully agree.

48. Criticisms of someone's performance at work might be defamatory of him or her depending on the circumstances. But whether words are capable of being defamatory is not an abstract question. It always depends on what was said and about whom. The words complained of in this case are feedback by colleagues which Mr Wolanski, rightly in my view, submits consist of statements about trivial errors, failure to communicate with colleagues and speaking to 'customers' rather than fellow members of the team. They were said about a junior employee with routine administrative tasks to perform, who had been in that employment for a very short period of time. On the face of it, even in the context of a capability meeting the feedback schedule merely points (implicitly) to areas in which improvement could be made. It is common place however that people starting employment in a job they haven't done before need to learn what to do, and there might be room for improvement. In my view, Mr Wolanski is right when he submits it is difficult to regard this as a case where the words impute to the Claimant some quality which would be detrimental, or the absence of some quality which is essential to the successful carrying on of his office, profession or trade.
49. But whether this case fits neatly into the category of a business defamation or not, I do not think the ordinary, reasonable and sensible person could possibly think less of the Claimant personally as a result of what was said, nor do I consider in the circumstances, that the words are capable of adversely reflecting on the business or professional or trading reputation of the Claimant in the eyes of reasonable people, even if, a person in the position of the Claimant has a relevant reputation for this purpose.
50. Minor criticisms of this nature are not tortious, simply because the ordinary reasonable sensible person would not consider they reflected badly on the reputation of the person concerned, whether one is considering their personal or business or professional or trading reputation; nor would they have a tendency to damage the reputation of the Claimant. To that extent, it might be considered the threshold of seriousness is implicit in the approach of the ordinary reasonable and sensible man. Alternatively, if the statements in the feedback schedule are defamatory of the Claimant, it is to such a minor degree that the threshold of seriousness which I agree with Tugendhat J it is necessary to surmount in accordance with the approach of the Court of Appeal in *Jameel v Dow Jones*, is not surmounted in this case.
51. The Defendants in all three actions therefore succeed on the first issue. I should however go on to consider the issues of qualified privilege and malice (and the latter issue, in particular in case the Claimant were to consider bringing proceedings for malicious falsehood).

#### *Qualified Privilege and Malice*

52. Mr Wolanski submits, and the Claimant does not appear to dispute that the publications complained of in all three actions are obviously privileged, subject to malice, in accordance with the classic statement of principle of Lord Atkinson in *Adam v Ward* [1917] A.C. 209 at 334 (cited in *Gatley* at paragraph 14.6) where he said:

“A privileged occasion is...an occasion where the person who makes a communication has an interest, or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential.”

53. Mr Wolanski submits Ms Eagle plainly had a duty to put before the capability panel the contents of the feedback she had obtained: see what is said in *Gatley* at paragraphs 14.31 to 14.32. Similarly, Ms Bird and Ms Heidari had a duty to provide feedback about their colleague, that is the Claimant to Ms Eagle.
54. He further submits, just as the plea of qualified privilege is bound to succeed, so the case of malice is doomed to fail. He reminds me that on applications under CPR Part 24, the court should not “conduct a ‘mini trial’ or attempt to decide the factual dispute [of first appearances] when there is the possibility that cross-examination might undermine the case that the defendant is putting forward” per Eady J in *Bataille v Newman* [2002] EWHC 1692 (QB) at [6] to [7].
55. However, he submits, in accordance with the principles cited at paragraph 47 above, that the court must reject any unreasonable conclusion contended for by the respondent, otherwise the defendant will be wrongly burdened with defending libel proceedings; see also *Dee* at [64]; and *Lonzim v Sprague* [2009] EWHC 2838 (QB) at [33] where Tugendhat J said:

“It is not right 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...”

56. In *Henderson v London Borough of Hackney* [2010] EWHC 1651 (QB) at [33] to [36] Eady J summarised the correct approach to be taken when assessing pleas of malice:

“33. It has been confirmed by the Court of Appeal in *Telnikoff v Matusевич* [1991] 1 QB 102 and in *Alexander v Arts Council of Wales* [2001] 1 WLR 1840 that, in order for a claimant to succeed in proving malice, it is necessary both to plead and prove facts which are more consistent with the presence of malice than with its absence. This is one of the reasons why, in practice, findings of malice are extremely rare.

34. It is thus reasonably clear, as a matter of pleading practice, that 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. 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 *Duncan and Neill on Defamation* at para 18.21.

35. It is not appropriate merely to plead (say) absence of honest belief, recklessness or a dominant motive on the defendant's part to injure the claimant. Unsupported by relevant factual averments, those are merely formulaic assertions. It is certainly not right that a judge should presume such assertions to be provable at trial. Otherwise, every plea of malice, however vague or optimistic, would survive to trial. It would be plainly inappropriate to move towards such an unbalanced regime, since it would tend to undermine the rights of defendants protected under Article 10 of the European Convention on Human Rights.

36. It is necessary also to remember, in a case where malice is alleged against a corporate entity, that in order to fix it with the necessary state of mind, the individual person or persons acting on its behalf, and who are said to have been malicious as individuals, must be clearly identified."

57. Against that background it is necessary to consider how the Claimant puts his case on malice. Central to it are serious allegations of conspiracy and corruption made by him against his former colleagues on the Team, all junior data inputting clerks or clerical workers; as well as tangentially, against Ms Eagle.
58. The Claimant says in his Reply in the BBC action at paragraph 3.6 that "*the BBC's financial records and records of work completed prove conclusively that there existed well-established corruption within the BBC TV Intake team involving many thousands of pounds of public money in the form of artificially generated overtime consumed by the TV intake team during the year 2009, commencing shortly after Ms Eagle was appointed to her present position.*" It is said, that as a result, Ms Eagle "*knew that the members of the TV Intake team had strong motives for making false allegations against [the Claimant] in order to bring about [his] dismissal.*"
59. The Claimant does not say Ms Eagle herself was involved in the corruption, but that she was aware of "*the corruption involved in this pattern of working and...was fully aware that [the Claimant] would not support this corruption and was also fully aware that [the Claimant's] presence in the TV Intake team had disrupted this corruption to the point of ending the team's backlog of work and with it the lucrative public money overtime consumed by the TV Intake team.*"
60. Ms Eagle in her statement describes this allegation as '*total nonsense*' and '*preposterous*'.
61. Mr Wolanski submits that the proposition that a senior media manager at the BBC would knowingly tolerate corrupt practices by one of her teams, for no personal benefit, is (at the very least) implausible, particularly when those practices could readily be exposed by perusal of the relevant records or by one of any number of team members, as is the suggestion that she would have taken from routine comments made by colleagues, that there was some sort of vendetta being pursued against the Claimant.

62. Quite apart from that matter, in my view, there are two fundamental problems with this aspect of the Claimant's case. First, the only basis upon which the Claimant relies for asserting Ms Eagle knew of this systematic corruption, is that she was one of the recipients of his email of 8 January 2010. The Claimant does not dispute that he did not raise any allegations of corruption at any other point whilst working on the Team, whether at the meetings of 25 November 2009, 7 January 2010 or 22 January 2010.
63. Ms Eagle says in her witness statement that she did not understand the 8 January email to contain such an allegation, and I do not regard this as surprising given the wording used. The 8 January email merely said that the Claimant's hard work had "*ended lucrative DTS overtime for the TV Intake team*", and that were he to leave the BBC the lucrative DTS overtime "*will quietly resume, following a discreet interval*" (see paragraph 16 above). In my view, Mr Wolanski is right when he says if this was an allegation of corruption, it was at best an oblique one, buried within a long email containing a variety of detailed observations about other matters, and merely copied to Ms Eagle amongst others.
64. Second, as Ms Eagle and Ms Lydon say in their statements, correctly so it seems to me, there is no evidence whatever that excessive overtime was worked by the Team in 2009. The Claimant has pursued the BBC for disclosure on this issue on the basis as he told me in submissions that he "*has little doubt disclosure would prove conclusively there was financial corruption within the BBC*". But it is simply not open to the Claimant to make the assertion that there was, in the hope that something will turn up on disclosure.
65. As it is, the BBC's witnesses have examined the overtime records which are summarised in the exhibits to the Defendants' evidence. It is clear from those, and the BBC's evidence, and from the absence of any factual evidence to the contrary from the Claimant, that the Claimant's case on corruption is fanciful. The allegation appears to have gradually emerged and inflated after the Claimant's employment was terminated and has now become the central focus of his complaint. But in essence (as the notes of the appeal meeting of 2 March 2010 show) it is based on nothing more than the fact that the Claimant noticed other team workers were less efficient than he was.
66. The evidence produced by the BBC shows very little overtime was worked by the team. Indeed in the period when the Claimant was there, a handful of days only were authorised, not by Ms Eagle, since she does not authorise the overtime herself, but by her line manager, Ms Sally Weston, to clear a small backlog of DTSs that had built up. Ms Lydon says that though the Team was challenged about this build up by her at a meeting in November 2009, she regarded the overtime generated in 2009 as modest. She exhibits copies of information obtained from the BBC's payroll records for the Team, which the Claimant accepted during the hearing he had no evidence to contradict, and which show that in 2009 overtime to a value of £2,011.20 was worked by the whole Team, a figure markedly less than that incurred in 2007 and 2008, when Ms Eagle was not managing the Team (when the overtime amounted to £4,698.25 and £8,270.77 respectively).
67. In support of his case on malice, the Claimant also pleads that Ms Eagle knew that (at least) two of the thirteen statements in the feedback schedule, that is, statements 12 and 13 were false. He raised a further point in relation to statement 3 during the

course of the hearing, and said he will be able to prove Ms Eagle knew other allegations were false once disclosure has been given.

68. I am not satisfied on the material put before me that a jury could rationally conclude that Ms Eagle made statements 12 or 13 or 3, knowing what was said was false; and as I have already said, the Claimant is not entitled to obtain disclosure except to support a properly pleaded case on malice according to the criteria referred to in paragraph 56 above.
69. In relation to statement 12 the Claimant alleges Ms Eagle made the statement knowing it was false because she knew that Ms Gomes had approved the use of “??”; and Ms Eagle had too at the meeting of the 7 January 2010. However statement 12 raises another matter relating to the Claimant’s communications with colleagues (“*when Manjeet advised CD to speak to team leader CD replied "told not to ask too many questions"*”) which the Claimant does not suggest Ms Eagle had any reason to doubt, which Ms Eagle says was the real focus of her concern, and which (contrary to what the Claimant suggested to me during the hearing) he was indeed asked about at the meeting on the 22 January 2010 as the notes of the meeting show. I do not think any jury could rationally conclude Ms Eagle was malicious from the foregoing, and in my view this part of the Claimant’s case is not sustainable.
70. As for statement 13, suffice to say that the emails which the Claimant has drawn my attention to do not demonstrate that what was said was untrue (they show Ms Chapman asked about one tape, and the Claimant responded by referring to a different one) still less is there any evidence whatever that Ms Eagle knew that what was said was untrue. The Claimant suggests that his use of punctuation in this case was correct; Mr Wolanski responds that the Claimant bases this proposition on an observation of a Ms Hind who is not a member of the Team. Mr Wolanski’s instructions from Ms Eagle (who was present in court) are that the Claimant’s use of punctuation was not correct. Whether any of the points made by the Claimant were right or not seem to me to be utterly inconsequential in the context of the case as a whole, and certainly there is nothing said from which a proper case on malice could reasonably be inferred.
71. The Claimant also claims in his Reply that Ms Eagle was “*recklessly indifferent*” to the truth of the matters raised in the feedback schedule. He further asserts that Ms Eagle was malicious because she failed to confirm or check what was in the feedback schedule or acquire “*credible evidence*” for the statements it contained. Ms Eagle says she had discussions with members of the team in the run up to the 22 January meeting and that the feedback schedule contained examples which accorded with her own observations. The Claimant’s allegations in this regard are in my view completely misconceived and I do not consider the case advanced by him provides a proper basis for a case of malice based on recklessness. The purpose of the feedback schedule was to compile feedback from the Claimant’s colleagues, to provide to him at the 22 January 2010 meeting for his comments: they were instances for the most part, based on the personal observations of the colleagues concerned. I do not consider in those circumstances that Ms Eagle was under some form of obligation to check or conduct some form of investigation into what was said, before giving that information to the Claimant in the feedback schedule or that her failure to do so could form a proper basis for a case on malice.

72. In the result, in my view, the Claimant's case on malice is at best weak and equivocal, and at worst is simply speculative nonsense. There is nothing in it from which a jury, ultimately, could rationally infer malice; and it follows that even if, contrary to the view I have reached, the words complained of in this action are capable of bearing any meaning defamatory of the Claimant, the defence of qualified privilege in the BBC action is one which is bound to succeed.

*Further objections to the Claimant's claims in the Bird and Heidari actions*

73. In the Bird and Heidari actions, no Defence has yet been served. Although I have already concluded the publications complained of are not capable of bearing any defamatory meaning, Mr Wolanski also submits, there was no reason for the Claimant to issue three sets of proceedings in respect of the same publication, and the claims offend against the principle that there should not be a multiplicity of proceeding: see CPR 1.4.15.
74. Second, he submits those actions are wholly unmeritorious because the claim forms and Particulars of Claim are contradictory as to the basis on which the case on publication is put. The claim forms suggest the complaint is in respect of publication to Ms Eagle. The Particulars of Claim suggest the complaint is about publication by Ms Eagle by way of the feedback schedule. If the claim is on the former basis, the words allegedly used are not specified: they would presumably be a slander, so the claims would need to satisfy the requirements for bringing a slander claim without special damage (which they obviously cannot). If the claim is on the latter basis, the Particulars of Claim do not identify why Ms Bird and Ms Heidari were responsible for the publication by Ms Eagle of the feedback schedule: the Particulars of Claim merely repeat what is said about Ms Bird and Ms Heidari without pointing to any defamatory publication on the part of these two individuals.
75. The Claimant says he is entitled as a matter of law to bring separate claims for libel against every person who could be made liable for the publication of the feedback schedule. He says out of the vast number available to him, he has so far only issued three claims, and by doing so has shown very considerable restraint. He says he sees nothing wrong in suing Ms Bird and Ms Heidari for what they caused to be published in the feedback schedule, and, at the same time, suing the BBC in a separate action, for what they both said in the feedback schedule. He said however, he will amend the claims against them, if necessary to ones of slander (speaking the words to Ms Eagle), rather than libel.
76. It seems to me Mr Wolanski's submissions are well founded. Were the actions otherwise to proceed, it would be necessary in my view for the court to take steps to deal with the multiplicity of proceedings. It could do so by invoking its jurisdiction to stay these further actions as an abuse of the process. The Claimant might (by way of amendment) be able to meet some of the technical defects in his pleaded case to which Mr Wolanski draws attention, but these are not matters which arise in view of the conclusions I have reached on the first issue I have determined.

*Extended Civil Restraint Order*

77. Even making due allowance for the fact that the Claimant is in person, there are aspects of the way in which the Claimant has dealt with this litigation which in my

view give some cause for concern: in particular the threats of further proceedings against his former colleagues at the BBC in addition to the three actions he has already brought, and the way in which he has dealt with some of the matters which have arisen in this litigation (for example, his application to strike out the applications which I have been dealing with, before the Court had the opportunity to deal with them).

78. Mr Wolanski submits an extended civil restraint order is necessary to prevent the Claimant from issuing further proceedings in respect of his employment at the BBC. He has referred me in this context to a different claim brought by the Claimant against a former employer (*Daniels v E Ivor Hughes Educational Foundation* [2009] EWCA Civ 884); and to the findings of Wilson LJ in *Daniels* when rejecting the Claimant's (fourth) application in that case to appeal the rejection of his employment tribunal claim. Mr Wolanski submits that the judgment of Wilson LJ illustrates the tenacity of the Claimant in litigating claims relating to his employment. In that earlier case the Claimant was dismissed from a special needs school after being found to have (amongst other things) lost his temper with pupils and having had an uncooperative and confrontational attitude towards colleagues (judgment paragraph [17]). The judgment also reveals other threats of litigation which the Claimant made against other colleagues while at the school.
79. I am of the view that the Claimant's claims against the Defendants in these actions are totally without merit, and the court's order should record that fact. But I am not persuaded that the Claimant's conduct presently has the necessary hallmark of persistent vexatiousness, which would trigger the court's power to make an extended civil restraint order (see what was said by Lord Phillips MR giving the judgment of Court of Appeal in *Bhamjee v Forsdick* [Practice Note] [2003] EWCA Civ 1113; [2004] 1 WLR 88 at [42]; and the guidance as to the type of behaviour which could be described as persistent for these purposes in *AG v Barker* [2000] 1 FLR, 759).
80. As it is, for the reasons given above, the Claimant's actions against the BBC, Ms Bird and Ms Heidari will be struck out.