Neutral Citation Number: [2016] EWHC 2858 (QB)

Case No: A90TR403

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
TRURO DISTRICT REGISTRY

Sitting at Exeter Combined Court Centre
Southernhay Gardens, Exeter, Devon EX1 1 UH
Date: 10/11/2016

Before :

MR JUSTICE WARBY

- -

Between :

Anton Barkhuysen	**Claimant**
- and –	
Sharon Patricia Hamilton	**Defendant**

- -
- -

Alexandra Marzec (instructed by **Stephens Scown**) for the **Claimant**
John Samson (instructed by **Public Access**) assisted by **Phoebe Bragg** for the **Defendant**

Hearing dates: 17-21 October 2016

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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.

....

MR JUSTICE WARBY

Mr Justice Warby **:**

I. INTRODUCTION

1. Between 17 and 21 October 2016 I heard evidence and argument at the trial of claims and counterclaims in this dispute between two neighbours, Anton Barkhuysen and Sharon Hamilton. At the end of the trial I took time to consider the matter. This judgment identifies the issues, the parties' claims, the relevant law, and the evidence, and states my conclusions.

II. BACKGROUND

2. The case concerns events in the hamlet of Tregolls, in the Parish of Stithians in West Cornwall, between 2010 and 2013. Mr Barkhuysen, the claimant, is aged 72. He has lived in Stithians with his wife Rita for 44 years. The Barkhuysens currently live at Alquerias, Tregolls, which has been their home for 25 years. They have three children, among them a daughter called Rosemary. Rosemary is married to Iain Andrews, a Squadron Leader in the RAF.

3. The defendant, Mrs Hamilton, is in her 50s. She lives at Tregolls Farm, which lies a little way to the north of Alquerias. She went to live at Tregolls Farm some 22 years ago, in 1994, when she was first married to her husband Simon. The Hamiltons' marriage ended in 2005. Mr Hamilton left the farm, and Mrs Hamilton became sole owner in 2007. She has since lived at Tregolls Farm as a single parent with her daughter Katie, now aged 18, and her son Miles, now aged 20.

4. On the eastern side of the road that runs past Tregolls Farm lies Tregolls Common ("the Common"). This is common land over which the owner of the farm, like some other local landowners, has grazing rights. At the relevant times Tregolls Farm had an enclosure on part of the Common, surrounded with fencing. A little to the south of the farm, there is a gate leading off the road onto the Common ("the Common Gate"). It belongs to Mrs Hamilton, and provides access to the fenced off, enclosed area of the Common.

5. The Barkhuysens and Mrs Hamilton have a near neighbour, Mr Robert Dowling. In 2006 Mr Dowling moved in with his wife at Moonin Barton ("the Barton"). The Barton is close to the Barkhuysens', who are the Dowlings' nearest neighbours. The Barton also has a boundary with a field belonging to the defendant, her "top field". A roadway leads south off the main road, down to the Barton and the defendant's top field. At that point there is an intersection ("the Junction") with another route ("the Lane") which leads away from the gate, in a westerly direction, taking a dog leg turn back to the main road.

6. The claimant and the defendant have been in dispute for over 8 years. During that period of time there have been many incidents or alleged incidents between them, and a good deal of litigation. As with so many neighbour disputes, the origins of the falling-out lie in arguments about land. As so often, the history is quite a long one, the disputes multi-faceted, and the arguments detailed. In this case, the rights of third parties have also come into play. In recent times, Mr and Mrs Dowling and Mrs Hamilton have been at odds about rights over land at the Junction.

7. As I will explain, however, none of the claims and counterclaims that I have to resolve involves any claim to title to any land, or to rights over land. They are all claims for damages for interference with personal rights: the rights to freedom of the person, to the protection of reputation, and to protection from harassment. For that reason, and in pursuit of the overriding objective, I and other judges who have managed this case have been at pains to set boundaries on the allegations and evidence that can be put forward at this trial, cutting them down to what is clearly relevant and proportionate to the issues in dispute.

8. I have nonetheless heard a good deal of evidence about land rights, and about alleged wrongful interference with such rights. This has been by way of background, and by way of attack on the credibility of Mr Barkhuysen. It is also argued for Mrs Hamilton that evidence about these matters will help me reach conclusions on the inherent probabilities, when it comes to the disputed factual issues that I have to decide. In the circumstances I will need to sketch in the general background to the dispute, and to deal with some of the allegations and counter-allegations about the parties' behaviour with regard to land. To start with, however, I shall identify the central issues.

III. THE FACTUAL ISSUES

9. The parties' claims arise from the following events, and give rise to the following main issues of fact.

(1) *11-12 September 2010: The Van Incident*

10. On the weekend of 11-12 September 2010 the claimant drove his campervan up to the Common. He had an altercation with the defendant and a friend of hers, Mr Mark Broomhead. He later reversed the van through the Common Gate onto the Common, where he remained in the van for some time, into the night.

11. The defendant alleges that on this weekend the claimant broke the latches off the Common Gate, exposing her farm animals to danger; that in the course of the altercation involving Mr Broomhead the claimant told the defendant not to go on the Common, and threatened to use force to throw her off; and that he deliberately drove his van at her, putting her in fear of her life ("the First Driving Allegation"). She alleges that while he stayed in his van he was watching her at her bedroom window ("the Watching Allegation"). The claimant denies doing any of these things.

12. The claimant's case is that the defendant wrongfully attempted to stop him from reversing onto the Common; that Mr Broomhead threatened the claimant with violence; and that the defendant threatened to damage his van. He says that when he stayed in the van he was with Mrs Barkhuysen, playing Scrabble.

(2) *20 September 2010: The Injunction Application*

13. On 20 September 2010 the defendant, acting in person, made an application to the Court seeking an injunction against the claimant ("the Injunction Application"). She sought injunctions ("the Gate Injunctions") requiring the claimant to restore the latches to the Common Gate, and to restrain the claimant from leaving that gate open. She also sought injunctions to restrain the claimant from harassment.

14. The application was supported by an affidavit sworn by the defendant at court. This contained a number of allegations against the claimant, including to the effect set out at [113333] above. The Injunction Application was made without notice to the claimant. It was heard by DJ Mitchell. He granted the Gate Injunctions, which remain in force. He did not grant any injunction in harassment.

15. The claimant makes a complaint ("the Affidavit Complaint") that the defendant's affidavit contained five false and defamatory allegations about him. The defendant maintains that all five allegations were true.

(3) *August 2011: The First Common Encounter*

16. On a date in August 2011 there was an encounter on the Common between the claimant and the defendant. The claimant alleges that what happened is that he was out for a walk when the defendant approached from her farmhouse and started to abuse him verbally, and to photograph him. The defendant denies these claims.

(4) *February 2012: The Bicycle Incident*

17. On a date in February 2012 the claimant was cycling in the hamlet. He stopped at the Common, left his bike and entered the Common on foot, passing through the Common Gate. The claimant alleges that the defendant, who was with her ex-husband, approached him, threatened damage to his bicycle and abused him verbally as he left. The defendant denies all of this.

(5) *15 April 2012: The Wood Allegations*

18. On the morning of Sunday 15 April 2012, the claimant and Mrs Barkhuysen drove to Stithians Methodist Church, which they attend regularly. On the way they passed the defendant. At around 10:40 that day the defendant later reported to the police that as they passed her the claimant had tried to run her over, and as he drove past hit her on the head with a piece of wood. The claimant was interviewed under caution about the matter. No further action was taken. The claimant alleges that this was a false allegation, invented by the defendant. The defendant says it was true: the claimant deliberately tried to run her over and, in the course of doing so threw a bit of wood at her.

(6) *June 2012: The Second Common Encounter*

19. A further encounter took place on the Common on a date in June 2012, involving the claimant, the defendant, and Squadron Leader Andrews. The claimant alleges that when he and his son-in-law were walking on the Common the defendant again approached them from her property across the road, and shouted verbal abuse at them. The defendant denies this.

(7) *1 January 2013: The Police Complaint*

20. On New Year's Day 2013 the defendant made a report to the police, alleging that in the early hours of that morning she had seen the claimant having sexual intercourse with one of her pigs. The claimant complains that the Police Complaint led to him being arrested, detained, questioned, having property seized, being subjected to

intimate sampling, and being kept on police bail for many weeks before being told that there would be no charges. The claimant says the allegation ("the Pig Allegation") was false and unfounded, a malicious invention by the defendant, which caused damage to his reputation, and to his feelings, and other harm.

21. The defendant admits making the Police Complaint. She denies the Pig Allegation was false or malicious. She maintains that she honestly reported what she believed she had seen. She also denies that it was the Police Complaint that led to the claimant's arrest. Her case is that he was arrested on suspicion of firearms offences, suspicions which had arisen as a result of the police search of his premises after her report. Her case is that in any event the decision to arrest was made by the police, and not by her.

(8) *February 2013: The Sick Pervert Note*

22. On a date on or before 13 February 2013 the claimant wrote a note to himself, containing the words "YOU SICK PERVERT". He gave it to his solicitors. Later, they passed it to the police, requesting a forensic investigation into its provenance. The police carried out such an investigation and established by DNA and ESDA testing that the note had been written by the claimant himself. As he accepted in his oral evidence, he had forged it. On 1 June 2013 the police visited the claimant, who confessed his authorship, and apologised. He said that he had acted to highlight and escalate his case. A DC Milburn, believing that the defendant had not been spoken to about the matter, decided that it was fit for resolution informally, by "Restorative Justice" in the form of a signed admission and apology, and that is what took place.

(9) *The Admonishment Complaint*

23. The defendant makes a complaint ("the Admonishment Complaint"), that in consequence of false reporting by the claimant to the police, and his forgery of the Sick Pervert Note, she was interviewed by the police and "admonished" for writing a malicious letter to him. She pleads that this took place on 3 October 2013. The claimant denies this. His case is that the whole matter had been resolved months earlier by the restorative justice decision of DC Milburn. He also denies making a false report; he says he had not intended his solicitors to pass the Sick Pervert Note to the police.

(10) *26 March 2013: The Dowling Conversation*

24. On the afternoon of 26 March 2013 the defendant had a prolonged conversation with Mr Dowling at the Junction. The claimant alleges that in the course of this conversation the defendant said to Mr Dowling that he needed to keep an eye on his children when the claimant was around, and repeated the Pig Allegation. The defendant denies saying such things. Her case is that the conversation was concerned solely with the land dispute she had with Mr Dowling.

(11) *9 July 2013: The Junction Encounter*

25. On the evening of 9 July 2013 the defendant drove up to the Junction, where she took photographs of a sign the claimant had put up, headed "BE WARNED!", that asserted that driving or parking there was an offence. She and the claimant met, and had an angry altercation.

26. The claimant alleges that the defendant shouted a stream of abuse at him, accusing him among other things of stalking her, and of liking little girls. The defendant denies this. She says that on the contrary it was the claimant who abused her, calling her a “fucking bitch” and a “cunt”.

27. She later returned in her car with a police car following, and in the claimant’s presence made a string of what he calls “false and defamatory accusations” to the police officer. The defendant admits informing the officer that the lock on the Common Gate had been stolen, and that a piece of metal had been stuck in the ground by the entrance to her land. She does not admit that she accused the claimant of being responsible.

(12) *11 July 2013: The Lane Confrontation*

28. Two days after the Junction Encounter the claimant and defendant met again, this time on the Lane. The Lane adjoins the claimant’s property, and is a public footpath. The defendant had driven up to the Junction in the company of a friend, Mr Benjamin Waugh. They set off to drive down the Lane. As they did so they were confronted by the claimant. He threw down a wooden gate, blocking the way, and stood in the way himself, preventing further progress. He put it to the defendant that by driving down the Lane she was trespassing and committing a public nuisance. She denied this, maintaining that she had a right of way by vehicle. A further verbal altercation took place. The defendant reversed away from the scene. Later, she reported to the police that he had blocked her way down the Lane and caused her alarm and distress.

29. The claimant alleges that the Lane has never in his time been used by anyone as a vehicular right of way, and that the defendant drove down the Lane as a way of causing him concern and distress; that in the verbal altercation she falsely accused him of stealing oil from a neighbour, and taunted him over the prospect that she would build housing on her top field; and that she collided with his fence as she reversed.

30. The defendant denies any wrongdoing. She maintains that she has a vehicular right of way over the Lane which the claimant wrongfully impeded; that the claimant intimidated her; and that Mr Dowling, acting in concert with the claimant, tried to block her in by placing a boulder behind her car. She makes a complaint of her own about this confrontation: that the claimant made threats relating to her children (“the Threats Complaint”). She asserts that he volunteered and boasted about having hacked into the Facebook account of her son, Miles, and claimed to be working on getting into her daughter’s Facebook account. She says she feared for their safety as a result.

31. Later the defendant reported to the police that by blocking her right of way down the Lane on this occasion the claimant had caused her alarm and distress. The claimant was asked to attend Falmouth Police station, where he was interviewed under caution. He was issued with a Police Information Notice (“PIN”) warning him to desist from harassment. No further action has been taken. But the claimant complains of the defendant’s conduct in reporting him to the police on this occasion.

(13)*1 September 2013: The Rowse Conversation*

32. On the morning of Sunday 1 September 2013 Mr and Mrs Barkhuysen drove to Church. On the way they passed the defendant. Shortly afterwards, the defendant reported to the Falmouth police that as they passed the claimant had swerved towards her, trying to run her down. She then went to the Methodist Church, where she had a conversation with Mr Thomas Rowse ("the Rowse Conversation"). She said to Mr Rowse some words to the effect that the police would or might be coming to arrest someone at the Church.

33. The claimant's case is that the defendant named him as the person who would or might be arrested. The defendant denies that. There is a dispute as to what wording was used, with reference to the possible arrest. The claimant complains that in the course of the Rowse Conversation the defendant made three further allegations against him: that he had tried to run her down; that on a previous occasion he had thrown a stone or stones at her; and that he should not be around children. The defendant denies saying any of these things.

IV. THE LEGAL ISSUES

34. The wrongs alleged and the remedies sought by the claimant on the basis of his factual allegations are these (I set them out in the order they are set out in his Particulars of Claim):-

    (1) Damages for malicious prosecution and, or alternatively, false imprisonment. Both claims are based on the Police Complaint of 1 January 2013, and its alleged consequences.

    (2) Damages for slander. The claimant alleges that the defendant slandered him on 26 March 2013 in the Dowling Conversation, and on 1 September 2013 in the Rowse Conversation.

    (3) Damages for the tort of harassment. The claimant alleges that between September 2010 and September 2013 the defendant engaged in a course of conduct which amounts to harassment of him. He relies on his versions of the Van Incident, the First Common Encounter, the Bicycle Incident, the Wood Allegations, the Second Common Encounter, the Dowling Conversation, the Junction Encounter, the Lane Confrontation, and the Rowse Conversation. He does not rely on the Police Complaint, accepting that this is immune from suit in harassment.

35. The Affidavit Complaint is not put forward as an independent ground of claim. Nor is it relied upon as part of the alleged harassment. It is put forward in aggravation of damages, on the grounds that such conduct increased the hurt to feelings caused by the alleged harassment. The Police Complaint is also relied on in aggravation of damages for harassment. These matters are put forward as "background" to the incidents which are said to amount to harassment.

36. The claimant also seeks injunctions ordering the defendant not to repeat the behaviour complained of.

37. The defendant counterclaims for damages for harassment, and an injunction to prevent the claimant from repeating such behaviour. She relies on three matters: her

account of the Van Incident (that is, the First Driving Allegation and the Watching Allegation), the Admonishment Complaint and the Threats Complaint.

38. Much of the relevant law is clear, and undisputed. But there are some disputes about the boundaries of the four torts that are relied on, and about their application to the facts of this case.

(1) Malicious prosecution

39. The four ingredients of the tort are identified in a passage from Clerk & Lindsell on Torts cited with approval by the House of Lords in *Martin v Watson* [1996] AC 74, 80 (Lord Keith):

> "… the [claimant] must show *first* that he was prosecuted by the defendant, that is to say, that the law was set in motion against him by the defendant on a criminal charge; *secondly*, that the prosecution was determined in his favour; *thirdly*, that it was without reasonable and probable case; *fourthly*, that it was malicious. The onus of proving every one of these is on the [claimant]."

40. In *Qema v News Group Newspapers* [2012] EWHC 1146 (QB) Sharp J (as she then was) reviewed the authorities on the third and fourth elements, helpfully encapsulating the subjective and objective strands as "an honest belief in the guilt of the accused and reasonable grounds for that belief". The reference to guilt is a reference to what the defendant has done: "the focus is and always has been on the sufficiency of *evidence* to support the prosecution of the offence in question, and the defendant's knowledge of and honest belief in that": ibid. [71] (emphasis added).

41. According to the defendant, she personally observed the conduct which she reported to the police. The reality of the matter is that the claimant can only succeed in proving malice and want of reasonable and probable cause if he persuades me that I should reject the defendant's evidence, and find that she has lied about the matter. Mr Samson submits that the claimant must fail even if he succeeds in doing that for two reasons: (1) although the claimant was arrested he was not "prosecuted" within the meaning of this tort; and (2) even if he was, the defendant is not liable as she was not the prosecutor. I shall return to these issues.

(2) False imprisonment

42. The tort involves an "unlawful imposition of constraint on another's freedom of movement …": *Collins v Wilcock* [1984] WLR 1172, 1179. Detention by arrest involves a constraint on freedom of movement. It is therefore common ground that there was an "imprisonment" of the claimant by the police. The issues raised by the defendant are (1) whether she is responsible in law for causing or procuring the arrest, or did no more than provide information to the police for them to act on as they saw fit; and (2) whether the arrest was "false", that is to say without lawful excuse or lawful authority. These too are issues to which I shall return after deciding the facts.

*(3) S*lander

43. The law that applies is the "old" law, unaffected by the Defamation Act 2013. Under the old law, the tort of slander is committed by a person who (1) speaks to at least one person other than the claimant, words that (2) refer to the claimant, (3) bear a meaning or meanings defamatory of the claimant, and (4) cause the claimant special damage, or fall within one of the exceptions to the general rule that slander is not actionable without proof of special damage. The onus of proving all these matters lies on the claimant.

44. The common law principles by which the court is to determine the natural and ordinary meaning of words and whether they are defamatory are familiar and clear. They are set out in *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130 [14] (Sir Anthony Clarke MR) and *Thornton v Telegraph Media Group Ltd* [2010] EWHC 1414 (QB), [2011] 1 WLR 1985 [96] (Tugendhat J).

45. The main areas of dispute so far as this tort is concerned are factual issues, relating to elements (1) to (3) above. But if the claimant succeeds in proving that the defendant spoke defamatory words about him to Mr Dowling, or Mr Rowse, or both, there is an issue as to whether the words are actionable as slander. The claimant does not allege that he suffered special damage. He relies on the common law rule that words which impute the commission of crimes for which a person could be imprisoned are actionable without proof of special damage. Mr Samson submits that the claims fall outside the scope of that rule.

(4) Harassment

46. This is a statutory tort. The relevant provisions of the Protection from Harassment Act 1997 ("PHA") are as follows:-

> "**1.— Prohibition of harassment**.
>
> (1) A person must not pursue a course of conduct—
> (a) which amounts to harassment of another, and
> (b) which he knows or ought to know amounts to harassment of the other.
> …
> (2) For the purposes of this section … the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to or involved harassment of the other.
> (3) Subsection (1) … does not apply to a course of conduct if the person who pursued it shows—
> …
> (a) that it was pursued for the purpose of preventing or detecting crime,
> … or
> (c) that in the particular circumstances the pursuit of the course of conduct was reasonable.
> …
> **3.— Civil remedy.**

> (1) An actual or apprehended breach of section 1(1) may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question.
> (2) On such a claim, damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment.
> …
> **7.— Interpretation of this group of sections.**
> ...
> (2) References to harassing a person include alarming the person or causing the person distress.
> …
> (3) A *"course of conduct"* must involve—
> (a) in the case of conduct in relation to a single person (see section 1(1)), conduct on at least two occasions in relation to that person, or
> …
> (4) *"Conduct"* includes speech."

47. Section 7 does not define "harassment". It merely provides guidance as to the interpretation of the operative provisions. Further guidance has been provided by the Supreme Court in *Hayes v Willoughby* [2013] UKSC 17 [2013] 1 WLR 935, where Lord Sumption SC said at [1] that harassment is "… an ordinary English word with a well understood meaning. Harassment is a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress."

48. Behaviour must reach a certain level of seriousness before it amounts to harassment within the scope of PHA s 1, as Lord Nicholls explained in *Majrowski v Guy's and St Thomas's NHS Trust* [2006] UKHL 34 [2007] 1 AC 224 [30]:

> "[Where] the quality of the conduct said to constitute harassment is being examined, courts will have in mind that irritations, annoyances, even a measure of upset, arise at times in everybody's day-to-day dealings with other people. Courts are well able to recognise the boundary between conduct which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the boundary from the regrettable to the unacceptable the gravity of the misconduct must be of an order which would sustain criminal liability under section 2."

There must, therefore, be conduct on at least two occasions which is, from an objective standpoint, calculated to cause alarm or distress and oppressive, and unacceptable to such a degree that it would sustain criminal liability: see *Dowson v Chief Constable of Northumbria Police* [2010] EWHC 2612 (QB) [142] (Simon J).

49. It is common ground that in drawing the line the court must have regard to the context in which the conduct occurs. In this case, however, given the nature of the incidents complained of, that is rather less important than it might be in other cases. If, for instance, the claimant drove at the defendant in such a way as to make her fear for her life there is little room for dispute that he engaged in conduct of a harassing nature on

at least that occasion. The "defence" of reasonableness under s 1(3)(a) and/or (c) of the PHA is relied on by the claimant in relation to the Sick Pervert Note and by the defendant in relation to her reports to the police on 9 and 11 July 2013. But each of them also claims immunity from suit in respect of those reports.

(5) Immunity from suit

50. It is common ground that some of the conduct complained of is protected by the immunity from suit that shields witnesses from liability for what they say to the police. Malicious prosecution is an exception to the general rule of witness immunity: *Taylor v Serious Fraud Office* [1999] 2 AC 177, 215. But as the claimant has accepted throughout, he cannot claim for defamation or harassment in respect of the Police Complaint. The parties' claims and counterclaims gave rise to the following further issues as to immunity: (1) whether all or any of the following are immune from liability in harassment: (a) the defendant's reports to the police of April 2012, 9 July 2013 and 11 July 2013; (b) the communication to the police of the Sick Pervert Note; and (2) whether the claimant's reliance on the Affidavit Complaint in aggravation of damages infringes the immunity that shields litigants from liability for what they say in court. I shall address these issues at the appropriate points in this judgment.

V. THE EVIDENCE

51. I have read witness statements and heard oral evidence from the following. For the claimant: Mr Barkhuysen himself, Mrs Rita Barkhuysen, Mr Rowse, Mr Dowling, and Squadron Leader Andrews. For the defendant: Mrs Hamilton, her son Miles, Mr Broomhead, and Mr Benjamin Waugh. I refused to allow evidence to be led for the defendant from a fifth witness, Mrs Sheila Todd, on the grounds that it had no relevance to the issues in dispute or, if it did, that relevance was so limited and tangential that the evidence should be excluded on proportionality grounds. As it was, the witness evidence did not conclude until after 4.15pm on the fifth of the 5 days allotted to the trial. Closing submissions were made in writing.

52. There is voluminous documentary evidence in trial Bundle B, some but by no means all of which was referred to in the course of the evidence and submissions. This material has helped in resolving conflicts of evidence between the witnesses. More helpful still have been the relevant audio and video recordings that have been disclosed and relied on by the parties. I shall refer to these as I review the various episodes in dispute.

53. My assessment of the parties' supporting witnesses will appear from what follows. As far as the parties themselves are concerned, however, it is as well to indicate some of my conclusions at this point. Neither made an entirely satisfactory witness. As for the claimant, in 2013 he forged the Sick Pervert Note and lied about it, as he admitted in cross-examination. As I shall explain, it also emerged in the course of the evidence that in 2010 he forged his daughter's signature on a letter of authority addressed to himself. He was somewhat evasive about how this came about, and was reluctant to accept that there was anything significantly wrong about doing so. Several of his answers were overly curt and some appeared evasive. I was not persuaded that he was at all times keen to help the court arrive at the truth. Some of his behaviour towards the defendant was aggressive and intimidating, but he appeared to have little or no

insight into the impact his conduct might have. For all these reasons I have approached his evidence with a degree of caution. But that does not mean that I found the claimant to be an untrustworthy witness on all matters.

54. There are in my judgment several general reasons to be wary about the defendant's evidence. It is plain from her statements of case and the evidence that she has become and remained for some years extremely agitated over the dispute between her and the claimant. She has shown a marked tendency to overstate her case. This is exemplified by a passage in her witness statement in which she asserted that the claimant had brought claims against her "as an instrument of torture – to subjugate his victim; to bully and grind [her] into the ground." Cross-examined, she confirmed that she believed these assertions to be justified. In my judgment, however, they are manifestly extravagant on any reasonable view. The defendant has proved unable to focus properly on the issues in the case, remaining keen to broaden the scope of enquiry, despite the Court's best efforts. For all these reasons, I do not consider that I can trust her objectivity. My doubts about her commitment to a fair trial of the issues between her and the claimant are reinforced by her behaviour towards Mr Dowling: as I shall explain, she threatened him with civil and criminal litigation in an attempt to intimidate him into withdrawing as a witness for the claimant. In a number of respects, which I shall recount, I have felt compelled to reject her accounts of events as inconsistent with other, objective evidence.

55. The defendant seeks to present the claimant as having engaged in a "land grab", and Mr Samson argues that an understanding of the background to the events of 2010 to 2013 that are in dispute is crucial to a proper appreciation of the claimant's credibility, and of the probabilities when it comes to the disputed incidents. That has led to a detailed exploration of aspects of the parties' claims and counterclaims about pieces of land in Tregolls, and rights pertaining to them. I agree that some understanding of the background is helpful, and that some of the claimant's behaviour sheds light on his credibility. The same is true of some of the defendant's behaviour relating to the land disputes. But the nature and scope of the disputes over land that have some real relevance to the issues before me can in the end be quite shortly stated.

VI. FINDINGS OF FACT

The land disputes

56. There are four main areas of dispute. First, and most prominently, there has been a long-running dispute between the claimant and the defendant over the fencing off of part of the Common opposite the defendant's farm. The claimant objects to the fencing, claiming it was put in by the defendant, recently, and represents a wrongful incursion into common land. The defendant's version of things is that the area has been fenced off since the 1970s. She says there is nothing unlawful about her continuing to maintain fencing, in order to exercise her grazing rights and protect her livestock.

57. Mr Samson's case on "land grab" seeks to take me back to some land acquisitions by the claimant in 1993 which he claims "lay the ground for a siege of Mrs Hamilton's property and activities". That is far too remote in history, and too remote from the real issues in the case, to merit investigation. Nothing is or ever has been pleaded about

this, and it would be unfair to the claimant as well as unnecessary to investigate events that took place 23 years ago, before the defendant even arrived in Tregolls, and 14 years before she became sole owner of the farm.

58. The dispute over fencing between these parties has generated four pieces of litigation, other than the present action. The first two were as follows:-

(1) In November 2009 the claimant sued the defendant, seeking removal of the fencing. In July 2010 the claim was stayed for mediation, which was successful: the defendant agreed to put in a gate, which she did, and the claim was discontinued in August 2010.

(2) There was then the defendant's action of September 2010, in which she objected to the claimant's alleged removal of her latches and obtained injunctions against him to restore them and to ensure the Common Gate was not left open. This was initiated on the basis of the affidavit which gives rise to the Affidavit Complaint.

59. The defendant's action was provoked in part by an aggressive letter from the claimant dated 10 September 2010. This stated that the claimant had "agreed to act as agent for Miss R Andrews, the owner of Tregolls Common". This was a reference to the claimant's married daughter, then living with her husband, Squadron Leader Andrews, in the USA. But that was not apparent on the face of the letter. The letter enclosed Land Registry plans showing the area in question. The land shown on the plans comprised the entire Common, and some land abutting the defendant's farm buildings. The boundary enclosed the public road running past the defendant's farm. The claimant's letter demanded that the defendant should "remove all fencing, gates and other chattels" on the land within 30 days, else they would be removed without further notice. He further demanded that the defendant should "not park or drive any vehicle on or over the land" in question, stating that to do so would "constitute either unlawful trespass or a criminal offence under the Road Traffic Acts". These demands were made on the basis of a title registered on 20 August 2010, based on a purchase made using the claimant's money but in the name of Rosemary Andrews. The claimant's letter enclosed what purported to be a letter of authority to him from "Miss Andrews" ("the Authority Letter").

60. The response to the defendant's action was a transfer of title from the daughter to the father, who defended the claim and brought a counterclaim relying on the registered title, for orders requiring the defendant to remove the fencing and to confine her use to grazing. But by November of the following year it had become apparent that the title that had been claimed and registered was invalid. There was no good root of title. On 16 November 2011 the solicitors acting for the claimant wrote to the court and the solicitors for the defendant to inform them that the registered title had been closed. The position was summarised in this way by HHJ Cotter QC in a costs decision dated 5 February 2015 at [31]:

> "So the proceedings effectively ground to a halt. The reason that they ground to a halt can be simply put. The [claimant] was not in a position to make the assertions and… the threats, that he had…"

61. The defendant was in no way to blame for that, and Judge Cotter ruled on costs in her favour. He found that the apparent acquisition of title had given the claimant "what he clearly considered to be the upper hand" in his dispute with the defendant; that the claimant had sought "to drive a coach and horses through [the defendant's] farming"; that the defendant had "seen off the threat" and that only she could be viewed as the "winner" of the litigation. That decision created what is said to have been a six figure costs liability for the claimant and his daughter. But the Land Registry indemnified them, on the basis that it had been their error to register the title in the first place. The flaw in the title was that the Registry had registered Miss Andrews with title absolute; but a conveyance of 1961 on which the application to register relied had only transferred a one-fourth interest in the relevant land; on that basis the Land Registry would have rejected the application for registration: see the judgment of HHJ Cotter QC at [27]-[28].

62. The third piece of litigation was a claim brought by Mrs Barkhuysen in 2012 seeking removal of the fencing. That claim, which I find was probably controlled by the claimant, was discontinued by notice of 3 April 2013. The notice stated that discontinuance followed confirmation by Cornwall Council that it would pursue independent enforcement proceedings against the defendant on condition that Mrs Barkhuysen's claim was dropped. There was a fourth claim concerning the fencing, begun by the claimant in June 2015. This too was discontinued, shortly after the Particulars of Claim were served.

63. The second main area of dispute over land concerns the Lane. The rival positions of the parties are outlined at [28]-[30] above. The defendant's claim to rights of way over the Lane is recorded at the Land Registry. The register does not record them as rights, only as claims. Whether those claims are valid is not an issue for my decision. It is enough to know that there is a dispute between the parties about it, and that each feels strongly about the matter.

64. The third land dispute concerns the Junction, and is between the defendant and Mr Dowling. Briefly, the defendant asserts that Mr Dowling has wrongfully blocked or impeded access to her top field by placing boulders in the lane outside, and in the way of her access gate. She accepts that smaller vehicles such as tractors can gain access despite the boulders, but maintains that large vehicles cannot do so. Mr Dowling's position is that he has simply marked off a portion of land that belongs to him. Again, this is clearly a heated dispute but it cannot be any part of my task to resolve who is in the right.

65. The fourth area of dispute concerns planning permission which the defendant has secured, to build housing on her top field. Permission was applied for in 2012 and obtained in 2013, according to the defendant. It is her case that the claimant and Mr Dowling are attempting by illegitimate means to prevent or hinder the development of the land in accordance with the planning permission obtained. They both deny such an intention.

66. The background matters I have outlined are relevant to the issues before me in a number of ways. The defendant attacks the claimant's credibility on the basis of his conduct in and around the land purchase and threatening letter of 2010, and in particular the Authority Letter. The claimant attacks the defendant's conduct of her action, making the Affidavit Complaint. The defendant's account of events, as set out

in that affidavit, is of interest as a near-contemporaneous version of the Van Incident. And Ms Marzec attacks the defendant's credibility on the grounds that her description of and reaction to the claimant's behaviour has been wildly exaggerated and unreasonable.

67. As already indicated, I find that the claimant forged his daughter's signature on the Authority Letter. Other than the label "forgery", this was not in the end a matter in dispute. He admitted in cross-examination that what appeared to be her signature at the foot of the document was in fact his handwriting. His explanation was that his daughter was in America and he was the agent. This is not a satisfactory explanation, and I do not accept it. As the claimant admitted, he could and should have signed "pp" his daughter, if he was to sign a document of hers at all. I do not accept that there was any need for him to do that. The document could have been emailed, signed, scanned and returned. Nor do I accept the claimant's evidence that the reason for buying the land in his daughter's name was inheritance tax planning. The purchase price was only £1,000. I find that the daughter did not authorise the creation of the document or participate in its creation. The reality, in my judgment, is that the claimant used his daughter as a nominee or "front" in the transaction and in his threatening letter, because it suited him to do so in his dealings with the defendant. It enabled him to conceal his own true role as principal. The Authority Letter was created by him to lend weight to the letter of 10 September 2010 which was, as he accepted, a threatening one.

68. Other allegations of dishonesty have been made against the claimant in relation to this part of the history, which I do not accept. Mr Samson put it to him that he had forged the map attached to the title. I see no sound basis for reaching that conclusion. It was put to him that a statement in the land registration application, that the applicant "knows of no rights" over the land, was untrue to his knowledge as he was aware of the defendant's grazing rights. But the document is a technical one; the reference is to rights "disclosed in the title documents"; and it is necessary to recall that this was a land registration application submitted by a firm of solicitors, over the firm's signature. It was not the claimant's own creation, whatever role he may have played in organising the purchase and registration.

69. I reject, also, the further point put to the claimant: that he was engaging in a "land grab" that sought to prevent the defendant getting access to her top field. The letter was aggressive, true. It was threatening. It was an unreasonable approach by the claimant. But this is an extravagant and unreasonable interpretation of what was written. I accept the claimant's evidence that he did not intend to block or prevent the defendant's access to her land, as opposed to preventing her from fencing off of part of the Common, and from parking or driving on the land which was the subject of the registered title. He told me that he had written to her making clear he did not intend to interrupt her access. The letter did not state or, on a reasonable interpretation, imply that the defendant would be prohibited from using the public road, or gaining access to her top field.

70. I see real force in Ms Marzec's point, that the defendant has over-reacted to the claimant's behaviour. I can understand that it must have been upsetting for the defendant to be sued, repeatedly, over the same or similar matters. I can accept, also, that on a first reading the claimant's 10 September letter must have been alarming. There are other steps taken by the claimant, to which I will come, that have the

characteristics of bullying. I am sure that the defendant accurately describes some of her feelings, in response to measures taken by the claimant. But to describe his conduct and its impact in the ways that she does involves considerable exaggeration. These examples, going beyond those already given, are taken from her first witness statement, and are characteristic of her account of things: "he has tried relentlessly to force me to relinquish my rights" (para 6), "buried in litigation, a persistent onslaught of harassment", "a systematic destruction campaign" and a "cruel, relentless, inhumane, and unceasing campaign of terror against us" (para 113). Most of the litigation pursued against the defendant was relatively short-lived. The counterclaim to her own action was, contrary to her portrayal, in substance dormant from the moment the claimant's solicitors acknowledged the fault in the title he had relied on. All that remained after that was the issue of costs.

The Van Incident

71. The weekend of 11 and 12 September 2010 followed immediately after the claimant's threatening letter to the defendant. The claimant decided to drive his campervan up to the Common on the Saturday and to park it there, on "what was then my daughter's land". By common agreement, he carried out that plan, remaining on site into the hours of darkness. This was plainly provocative, and I am quite sure he knew and intended it to be so. It is behaviour that I find to be bullying. Against the background of the threatening letter, the claimant must have been aware that his continued presence on site in his campervan during the night time was likely to make the defendant feel at best uncomfortable, and at worst threatened or intimidated. I accept that the claimant was with his wife, and that they played Scrabble. But that is not why they were there. They had a home very close by. The campervan, parked where it was, blocked access to the fenced off part of the Common. The claimant said in cross-examination, "It was a way of pointing out that it was my right" to be on the Common. The claimant's purpose was to show the defendant what he could now do on the basis of the rights then being asserted in the name of Rosemary Andrews.

72. But where there is a dispute I cannot accept the defendant's account of events that weekend, and I am not persuaded by the evidence of Mr Broomhead. I reject the First Driving Allegation and the Watching Allegation. In my judgment, events unfolded broadly as described by the claimant. The claimant says, and I accept, that upon his arrival at the Common the defendant and Mr Broomhead came out of the farmhouse and tried to stop him reversing onto the Common. The claimant complained that the defendant was trespassing and interfering with his right to enjoy the Common, and he said he had a legal right to move her. This too was aggressive and bullying behaviour. The claimant says he made clear that he would not move the defendant, but I am not sure that is accurate. His evidence, which I accept, is that Mr Broomhead responded with words to the effect "You touch her and see what happens to you". I find that Mr Broomhead said that because the claimant had indicated that he would touch the defendant, to move her. Things had become heated, on any view. I accept that the defendant said words to the effect that the claimant should not leave his campervan there, or it might get damaged. The defendant and Mr Broomhead retreated to the farmhouse, and the claimant parked his van.

73. The defendant's account to me (in her Supplemental Witness statement) is that what she said in her affidavit of 20 September 2010 was true. What she said then was that on 11 September the claimant had broken off her latches and chains from the

Common Gate; that he told her and Mr Broomhead that she must not go on the land "or he would use force to throw her off"; and he then "pushed the gate open and drove at me with his large campervan. I was in fear of my life." She said he parked the van "from that moment until the middle of the night and stayed in it watching me at my bedroom window".

74. In my judgment it is plausible, and was probably true that the claimant had damaged the fixings to the Common Gate. His pleaded case is that this was untrue, but his witness statement does not take issue with the point. Mr Broomhead gave evidence that he witnessed this, and I am inclined to believe that part of Mr Broomhead's evidence. It is consistent with the claimant's attitude to closing off the Common. The second allegation is a somewhat exaggerated account of the true events: the claimant did indicate that he might use force, and I would accept that what he said was viewed as a threat, and reasonably so. But I reject the allegation that the claimant drove at the defendant.

75. This is a serious allegation, and one which the claimant firmly denies. I found his evidence persuasive. Allegations that the claimant drove at the defendant, threatening her personal safety, are something of a theme of her case. This is one of three separate allegations of that kind. I have not been persuaded that any of them are true. Though the claimant acted in a bullying manner towards the defendant, I do not find it likely that he threatened her personal safety as alleged.

76. The defendant has sought to bolster this allegation by reliance on photographs which are said to have been taken at the time. None of them are timed; they were taken on film, not digitally. One is said to show the claimant driving directly at the defendant. It is a close-up shot. The suggestion is that she was photographing him as he drove towards her, at speed, in a way that put her life in danger. She says she threw herself to one side as he did this, just after taking the picture. This is a remarkable thing to have happened, if it did. Yet she said nothing about any photographs in her affidavit made 9 days later. Nor did Mr Broomhead say anything about photographs in his witness statement for this action, though in his oral evidence he said that he saw them being taken.

77. I do not accept that this photograph depicts the claimant driving at the defendant as if to run her down. I do not consider the defendant gains much from Mr Broomhead's evidence on this point. This was a witness who was clearly close to the defendant at the time and now. He has had a long association with her. Although the unchallenged evidence of both was that this is not an intimate relationship, he was with her for much of that Saturday and Sunday, on his account. He appeared to me to be firmly in the defendant's "camp". And his evidence on these issues was in some ways inconsistent with that of the defendant herself. His account was that on Saturday 11th he and the claimant had a confrontation, in the defendant's absence, which he then reported to the defendant who reacted by collapsing in tears. In his account, the driving incident was quite separate, and took place the following day, on Sunday 12th. These inconsistencies undermine the defendant's case on this issue.

78. The Watching Allegation is hard to credit for several reasons, one of them being that the angle of viewing would in my judgment have made such a task all but impossible. It is not credible that the defendant was at her bedroom window all that time. As I

have said, I accept the evidence of the claimant that his wife was present with him in the campervan.

The Affidavit Complaint

79. The conclusions I have just recorded amount to findings that the defendant's affidavit was true in two of the five respects complained of by the claimant, but false in two other, more important, respects. There is a fifth allegation in the affidavit which is alleged in the Amended Particulars of Claim to be "false and defamatory": an allegation that the claimant stole a fence belonging to the defendant. The affidavit does state that the claimant "took the fence", and could perhaps be interpreted as suggesting he stole it. But I reject this part of the claim.

80. The claimant bears the burden of proof on the issue, and has failed to discharge it. He led no evidence on the point. His witness statement complains (at para 17) that the affidavit was "littered with falsehoods" but this is not one to which he refers. He alleges instead that the defendant falsely asserted that her fence had been in place since the 1970s. She did make that assertion. But it is not the one complained of (and is not defamatory). There is a documentary record, in the Parish Council minutes of 2009, that the claimant had admitted "removing" the fence. When that was put to him he denied having done so, asserting that the Parish Clerk and Mr Barter, the source of the allegation, were telling untruths. But I am not persuaded that the allegation in the affidavit was untrue.

The First Common Encounter

81. There is no evidence about this incident that is independent of the parties. However, I accept the claimant's account, which I have summarised at [16] above. I do so because I found him the more credible of the parties; because, despite the flaws in his credibility that I have already identified, his evidence of these events was coherent and inherently convincing; and because his account is the more consistent with the character and conduct of the parties, as I find these to be on the basis of the evidence before me.

The Bicycle Incident

82. For similar reasons, I also accept the claimant's account of this incident – with one reservation. He had been out cycling, and evidently squeezed through the Common Gate, although it was padlocked. He did so by pushing the gatepost to one side, leaving his bicycle outside. This was another provocative act by him, as he must surely have known. It took place after he had brought one claim against the defendant over her fencing and a few months after he had been driven to concede defeat in the defendant's action, which was then dormant. It is entirely credible that the defendant took objection to the claimant's decision to force his way onto the Common through her gate. For her to warn him, in words to the effect "I wouldn't leave your bicycle there if I were you" is consistent with my findings about the Van Incident. I accept the claimant's evidence that she swore at him as he left, calling him a "fucking fat slob" and telling him he was supposed to "ride the fucking thing, not push it". I accept, however, that her ex-husband was not present, as the claimant says. The claimant is mistaken on that score, but this does not undermine his evidence generally.

The Wood Allegations

83. I find that the Wood Allegations were untrue. This was the second time the defendant had accused the claimant of attempting to run her down. It represented an escalation, as this time she made the allegation to the police. It is inherently incredible. The context was one of bitter dispute over land, but not in my judgment one that had come close to any form of physical violence by this stage. The worst that had happened thus far was an implied threat to use physical force to remove the defendant from the Common as a trespasser. The allegation of attempted running down is all the more incredible when one considers the context. It was a public road, albeit a quiet one; Mrs Barkhuysen was in the car at the time; it was a Sunday morning; the couple were on their way to church; and there is no allegation of any behaviour close in time to the alleged incident that might have provoked the claimant.

84. The added detail that the claimant threw a piece of wood at the defendant and hit her on the head with it is itself inherently implausible, and crumbled even further when examined.

(1) The police file records an allegation that the claimant used a piece of wood that he had in his hand. I am sure that is an accurate record of the defendant's initial complaint. But the claimant's evidence is that when interviewed by PC Dave Cooke (which took place in early May) he was asked about throwing a stone. The claimant stood by that in cross-examination. Mrs Barkhuysen's evidence is on the same lines. She told me of PC Cooke visiting their home. She too stood by her account that the allegation was of throwing a stone. Challenged about this by reference to the formal record she said, convincingly, "That is what [PC Cooke] said in my kitchen". Some months later, as I shall recount, the defendant told Mr Rowse that the claimant had thrown a stone or stones at her. The claimant wrote to the police on 17 May 2012 referring to allegations about an "unidentified" object. My conclusion from all of this is that the defendant probably told the police not only that she had been hit by a piece of wood but also that a stone or stones had been thrown, and there was some resulting uncertainty around the precise nature of the allegation itself when PC Cooke came to question the claimant.

(2) Of more significance is the point made in the claimant's letter of 17 May 2012: that throwing anything and hitting a person with it whilst driving at any speed is "a physical impossibility". Cross-examined, the defendant maintained that the two events – the running down and the throwing of the wood – happened at around the same time, with the claimant swerving into her and throwing something at the same time. That underlines the implausibility of the allegation. She said – for the first time – it was a convertible car. That apparently significant detail was not put to Mr Barkhuysen.

85. The clearly fanciful elaboration, involving a simultaneous attempt to injure the defendant by throwing wood or a stone at her undermines the already improbable principal allegation of trying to run her down. It is of some significance, in my view, that the claimant responded to these allegations not only by denying them when interviewed under caution, but also by writing to the police denouncing them as perjured and suggesting, correctly, that the defendant was likely to make further allegations against him.

The Second Common Encounter

86. The claimant's evidence about this is short, but corroborated by evidence from his son-in-law, Squadron Leader Andrews. I found Mr Andrews to be an impressive witness, and he gave an account of this encounter that was detailed and in my view compelling. He said that he and the claimant took his dog out for a walk, across some land to the east of Tregolls Farm. As they walked, the claimant identified the Common as the subject of a dispute between him and the defendant. As Mr Andrews was interested, they went on to the Common to have a look around. They entered via the Common Gate and stood with their backs to the gateway. The defendant approached, shouting unidentifiable words. Mr Andrews turned to see her standing in the gateway, some 50 metres away from them. The gate had been open on their arrival, and they had left it so. The claimant identified the woman as the defendant and suggested they leave the Common. To do so they walked towards the gate where Mrs Hamilton stood. She then became more animated and aggressive in her language, and swore and shouted at the claimant words along these lines: "You dirty old man, I am going to tell everyone about you" and "You dirty old fool, I know what you are up to." She took out a camera and said: "Keep away from me, I have a camera", "My lawyer has told me to record everything you do" and "I am going to show everyone what you are really like."

87. The defendant then appeared to take a number of photographs of the claimant and Mr Andrews. This episode took some minutes. The claimant remained calm. He responded to Mrs Hamilton saying: "I have nothing to say to you Mrs", "Please leave us alone Mrs" and "Oh go home Mrs". The defendant eventually moved away from the gate, and the pair of them passed through it and away towards the claimant's property. The defendant continued shouting. A lengthy cross-examination by Mr Samson made no significant inroads into this account, which I accept as essentially accurate. I reject the defendant's evidence about this incident. I am confident she did use the offensive and abusive language alleged, or words to similar effect. I do not accept her claim that this is not the kind of language she uses. In my judgment she is well capable of doing so, and has done so on several occasions. I do not agree with her contention, via Mr Samson, that the photographs she took at the time of these events support her account and undermine that of the claimant and Mr Andrews. The photographs do not lend any great support to either account, nor do they undermine either. That is unsurprising when the central issue is what if any abusive language was used by the defendant.

88. Mr Samson was more successful in his cross-examination of Squadron Leader Andrews about the role of his wife, Rosemary Andrews, in relation to the land purchase of 2010, the Authority Letter, the defendant's action and related matters. Mr Andrews was not forthcoming, but guarded and defensive about these issues. Asked about the signature on the Authority Letter, for instance, he paused and said cautiously that it looked like that of his wife. He appeared ignorant of the large costs bill that resulted from the decision of Judge Cotter. My conclusion is, however, that Mr Andrews was wary of committing himself in areas he knew little about. He knew there had been a land purchase involving his wife, but neither he nor she had been much involved in anything to do with it, or with the resulting threats or the defendant's action. They had remained in ignorance of the costs bill because the Land Registry paid most of it, and the claimant would have met it himself if necessary. Mr

Andrews was therefore taken a bit by surprise, and keen to avoid saying anything unhelpful about any of these matters. Those conclusions support my adverse findings about claimant's role in the land purchase and the creation of the Authority Letter; but they do not undermine Mr Andrews' credibility.

The Police Complaint

89. The Pig Allegation is not just improbable. Having heard all the evidence and argument I am convinced that it is false. It was an invention by the defendant. It led directly to the claimant's arrest and detention by the police, and to a number of other measures taken by the police against the claimant. I shall recount, firstly, the sequence of events as they appear from the documentary records.

(1) The allegation was first made by the defendant on the morning of 1 January 2013, when she reported it to the police orally. The police file times the report at 10:40am. The allegation was accompanied by an allegation that the claimant had harassed the defendant. By 10:57 DC Milburn had "volunteered to deal with this crime", but he had to hand over to others. By 11:40 the decision had been taken: "The suspect is to be arrested and swabs taken in the first instance". There is no indication here of any investigation or evidence independent of the defendant. A briefing on the proposed arrest and a "s 32 search" took place at 16:15. The decision was: "Male to be conveyed to custody and swabbed". Consideration was to be given to "donut wrappers … and receipts".

(2) As a result, five officers, led by a DC Panther, visited the claimant's home. They arrived at 17:50, when they arrested him. A search of the house and outbuildings was undertaken from 17:50 to 19:20. In the course of the search the police seized a jacket and trousers, firearms, ammunition, computers, and a quantity of cash kept in a safe. The claimant was taken to Camborne Police Station, arriving at 19:43.

(3) On his arrival, details of the claimant's arrest and detention were entered in the Custody Record by PS Hood, who appears to have been the custody sergeant. The arrest details were based on an "arrest account by" DC Panther. The offence is given as "Other (intercourse with an animal and harassment of female)". The reasons to arrest are stated as: "To allow the prompt and effective investigation of the offence or of the conduct of the detained person. To prevent the detained person committing an offence against public decency. To protect a child or other vulnerable person." The stated "circumstances" were: "Report from victim… dp seen to be having intercourse with a pig. One of a number of incidents involving victim and neighbour regarding a land dispute." The "victim" here is evidently the defendant. The Custody Record shows that the claimant's detention was authorised, the reasons for detention being "to charge".

(4) The claimant was cautioned just before 8pm and placed in the cells at 20:30. At 21:03 and 21:12 authority was given by Inspector Beckerleg to obtain intimate samples by swabbing his genitals and taking pubic hair. The grounds for giving such authority were recorded as "reasonable grounds to suspect the involvement of [the claimant] in … s 69 Sexual Offences Act 2003 – intercourse with an animal." At 21:17 the inspector authorised the taking of non-intimate samples, from the claimant's hands, on the same grounds. At or between 21:44 and 22:11

the claimant consented to the taking of samples. At around 22:50 he was photographed and fingerprinted.

(5) The claimant was then interviewed by DC Panther, in the presence of his solicitor, from about 22:50 to 23:24. A transcript prepared by the claimant's solicitors is before me. It shows that the substantive questioning began: "This afternoon I knocked on your door it was 10 to 6 in the evening and *I arrested you for intercourse with an animal and harassment of your neighbour Sharon Hamilton*" (my emphasis). The questioning dealt with the alleged harassment by way of background. It focussed on the Pig Allegation but it also dealt with other matters, including firearms and ammunition. The claimant was returned to the custody officer at 23:36. The record shows that he was then "bailed to police station" at 23:37, on suspicion of "sexual penetration by vagina/anus by a person with a living animal". By this time he had been under arrest and in detention for some 5 hours and 47 minutes. Later records show that he was bailed to return at 2pm on 28 February 2013.

90. The claimant was further interviewed under caution at home on 3 January 2013.

91. The records show the following further relevant events:

(1) On 4 January 2013 the claimant emailed DC Rick Milburn, the officer in the case, attaching a copy of his letter to the Chief of Police dated 17 May 2012. He wrote, "my prediction in the last paragraph has now come true". He complained that the police should have investigated the defendant sooner, that their action had been disproportionate, and that he should not have been arrested without even asking first where he was at 03:05 on the morning in question. He asked for the return of items seized at the time of the search. Some time later that morning the force's Weapon Examiner and Armourer, Mike Barker, reported by email to DC Milburn that the ammunition that had been sized was lawfully held, pursuant to a valid firearms certificate and "he commits no offences".

(2) On 5 January 2013 DC Milburn replied to the claimant by letter, referring to emails "regarding the Police action and seizure of items at your home address *in response to the allegations of harassment and sex with an animal, made by Mrs Hamilton*" (emphasis added). DC Milburn asserted that the real and imitation firearms and ammunition that had been seized were "held lawfully" and would be returned in due course. He recorded that the claimant's arrest had been carried out "to allow for a prompt and effective investigation into the alleged offence". This was plainly a reference to the Pig Allegation.

(3) On the same day the claimant made a lengthy written statement to the police. This was a statement "with regards to continuing and ongoing harassment", and contained a great deal of detail about a number of alleged incidents. But it included the Pig Allegation, which was dealt with over some 2 ½ pages.

(4) The claimant's computer equipment was returned to him on 19 January 2013. His cash was returned to him by DS Dale on 13 February, when they had a conversation about malicious post, to which I shall return. On 14 February the claimant sent DC Milburn an email under the heading "malicious allegations". In it he referred to various options being looked into by his solicitor, Mr Dolan;

asserted that the defendant was guilty of perverting the course of justice; and wished the police well in their investigations. On 21 February 2013 the claimant's police bail was extended to 17:00 on 11 April 2013. On 10 April 2013 the claimant and defendant were notified of the decision to take no further action against the claimant "due to lack of forensic evidence supporting *the allegation*" (my emphasis). The prospect of a criminal charge had by this time been hanging over the claimant for 3 months and 9 days.

92. On any sensible view, it was plainly the Police Report that caused the claimant's arrest and detention. In the light of the records I have just reviewed it is easy to see why Ms Marzec describes as "astonishing" the defendant's contention that the arrest was "nothing to do with" her. Her suggestion that the arrest was due to suspicion of firearms offences is at variance with all the records to which I have referred. It is based on some manuscript notes apparently created by DC Panther, contained in the "scene notes" section of the "Premises Searched Record" of 1 January 2013. The notes state "1823 - arrested for firearms offences 1946 - re-arrested". These notes support the view that the claimant, having been arrested at 17:50 for sex with a pig and harassment, was also arrested later on suspicion of other offences. The notes cannot displace the conclusion that his initial arrest was caused by the defendant's allegations against him.

93. Nor is there anything to support the view that the claimant's continued detention thereafter was caused, or even contributed to, by suspicion of other offences rather than the defendant's allegations. The records, including the records of bail decisions, show the contrary. The Pig Allegation remained under investigation for several months. Any suspicion of other offences appears to have been quite swiftly dispelled. It is probably the case that the seizure of the claimant's cash and guns, and their retention, was due to such other suspicions. But the other events I have recorded manifestly flowed from the tale told by the defendant to the police on the morning of 1 January 2013.

94. The reasons I have concluded that this tale was and is a lie are many, and I shall not detail every single one. But in summary, the tale is wholly implausible in itself; it is entirely lacking in corroboration; there was ill-explained delay in making the allegation; the defendant has been inconsistent and unconvincing in her telling of it; her claims are at odds with evidence given by the claimant and his wife, which I find persuasive; for her to tell a damaging lie about the claimant is, however, of a piece with her other conduct.

95. The story the defendant told the police, in her statement of 5 January 2013, can be fairly summarised as follows. On the fenced off part of the Common she kept two Cornish Black pigs, a sow and a boar. On New Year's Eve she visited a friend, where she had a small amount of wine, returning home at around 10:45pm. She found the Common Gate open, and closed it "getting lagged in mud in the process as… the land that the pigs are on is very muddy and boggy". She watched the New Year celebrations on TV, spoke to her friend on the phone, and went to bed at around half past midnight. At about 3am she woke "to hear the sound of a pig squealing". She got straight up and decided "to go and see what was wrong". She was concerned about the gate situation and worried about her pigs getting hurt on the road. Putting on wellies and a coat over her pyjamas she stepped out and across the road. Half way across the road she "stopped dead in my tracks". She could see both her pigs next to a tree near

the Common Gate. Behind one of them was the claimant, kneeling down, his hands were placed on each side of the pig, trousers down and thrusting in and out. “It was obvious that he was having sex with the pig”. She said that the claimant saw or heard her, suddenly stopped, pulled his trousers back up, ran out of the field and hurried up the hill towards his house. She ran back to the house, then came out again later. Looking at the floor “I could see jam donuts on the floor scattered about. The pigs were still eating them.” Visibility was good; it was a clear quiet night and she had a good view of the claimant. The incident lasted 15-20 minutes, but the act was observed for about a minute. She reported the matter at 9am that day, having spent hours considering the issue.

96. Her explanation for reporting it is that she remembered being told by the police that she “had to keep reporting things to them”. She stated that she was “completely distressed about what happened” and if she thought about it too long got “upset and tearful”. She was “constantly fearful of what he will try next” and felt he would “keep on attaching me until I cannot take any more. I fear for myself and my family,” The statement concluded: “I did not give Mr Barkhuysen permission to enter the land, feed my pigs or interfere with them in any way whatsoever. I fully support the Police in this matter and am willing to go to court if necessary.”

97. No doubt it is longer and more detailed, but in my judgment it is right to infer that this statement fairly reflects the substance of what the defendant told the police when reporting on the morning of 1 January 2013.

98. Mr Samson has sought to fit this alleged incident within the “land grab” case theory. He submits that the claimant targeted the defendant, “trying to obtain her land by trespass on her land and on her pigs”. But having sex with pigs is not a land-grabbing activity. The defendant’s account is one of furtive and surreptitious nocturnal behaviour. The claimant is not said to have shown off, or boasted, or to have been confrontational when he found he had been observed. He is said to have run away in shame or embarrassment. The story is aptly described by Counsel as “bizarre and outlandish”. Its inherent implausibilities include the following: (a) a man in his 70s is said to have gone out in the early hours of New Year’s Day, roaming the countryside in search of sex with one of the defendant’s pigs, armed with donuts as bait; (b) since the defendant’s account is that the pigs roamed freely on the Common, he risked being unsuccessful in his search; (c) having located the pigs, and lured them towards him with donuts he chose one – presumably the female, though the evidence does not tell me which – and decided to engage in his encounter at a location close to the defendant’s farmhouse and, according to the defendant, within hearing distance of her bedroom, on a moonlit night; (d) donuts were used to lure the pigs, yet they squealed so as to wake the defendant.

99. Against the background of the feud between these parties, and the defendant’s previous prompt reporting of alleged misconduct by the claimant, one would have expected an immediate report of this offending. But it was another 6 or 7 hours before she first reported it. The defendant gave various explanations for this: that she delayed because she was concerned about the consequences for her, and her children; thought the police would or might do nothing; and was afraid that public knowledge could tarnish the reputation of the farm. I found all of these unconvincing. If the story was true, she had every reason and motive to report it promptly, and to ensure that corroborative evidence was obtained. The police had investigated previously. The

evidence persuades me that they were frequent visitors to her farmhouse. It is remarkable that she did not collect any of the donuts she says were strewn around, or take any other step to secure corroboration, such as calling a vet. She told me it did not occur to her to take such a step. In my judgment, if she had seen what she claims, it would have been done. On other occasions she has been avid to record events, in search of corroboration.

100. The police investigation evidently found no corroboration, either, despite taking intimate and non-intimate samples and seizing the claimant's clothing.

101. The defendant's evidence under cross-examination further undermined the credibility of the story. She said the pig that was penetrated stood immobile, "going along" with it, eating, as it was being violated; yet one or both had earlier been squealing so as to wake her, so she said. She said the other pig was "still, as if eating" during the violation, but then she said that it had been "scurrying around eating; foraging". She described the claimant as running away. She gave no explanation for not picking up any of the donuts, a piece of plainly incriminating evidence if they existed. She also said in cross-examination that it was a "crisp" night. In re-examination she re-affirmed this, saying the weather conditions were "clear, crisp, moonlit, the ground crisp and hard". This is contrary to the account in her statement to the police.

102. The claimant's alibi is that he was at home asleep. He and Mrs Barkhuysen have separate bedrooms, but his is immediately above hers and the floor and stairs are creaky, yet she was not woken. That is her evidence, which I accept. I found her a careful witness, who readily conceded points that were fairly made against her, but stood by her evidence on the key points. She told me that she could not recall them ever buying donuts. Mrs Barkhuysen's evidence is that the field would have been very muddy. That is consistent with the defendant's own account to the police on 5 January 2013. I do not know what forensic tests were carried out, but if the claimant knew he had been observed by the defendant having intercourse with one of her pigs it is improbable he would have left his clothing in a muddy condition for over 12 hours. Mrs Barkhuysen's uncontradicted evidence is that there were no muddy clothes, and no washing had been done by the time the police arrived and seized clothing, just before 6pm. If her husband had attempted it in the night the pressure booster pump would have fired up and woken her, and it did not.

103. The defendant's initial witness statement for this action said not a word about the Pig Allegation. This is remarkable, when that is self-evidently the single most important issue in the case. Her explanation in cross-examination was that she did not realise she had to say anything about it, believing that she only needed to deal with her counterclaim. That too is remarkable, but nonetheless I believe it to be true. It is consistent with the defendant's general inability (a) to understand and engage rationally with the litigation process and its requirements; (b) to identify what is and is not important in this case. I therefore do not rely on this omission as a reason for disbelieving the defendant's Pig Allegation. I reject the allegation for all the other reasons I have given.

The Sick Pervert Note

104. The forgery of the Sick Pervert Note was a dishonest act by the claimant, and he told the police lies about it. That affects his credibility, as I have explained. But I reject

the defendant's case that he tried falsely to attribute authorship of the Note to the defendant. I do not accept that the forgery of the Note was conduct targeted by him at her as an act of harassment (or as part of a course of conduct amounting to harassment). I find that, as the claimant told me, the Sick Pervert Note was created by him with a view to finding out how far the Pig Allegation, first made by the defendant, had been spread in his community. He feared it had been put about locally. It had indeed found its way into the Parish Council minutes of 8 January 2013, albeit without naming him. He says (para 34 of his statement) "I thought that if I could get the police to believe that I was being harassed by an anonymous person about this incident that they might make inquiries as to how many people the defendant had told her lies to and that this information might then filter back to me." This is why he wrote the Note, and it was to that end that the claimant gave the note to his solicitors, which he did on or around 13 February 2013. The claimant's intention at the time was for the document to be taken as a third party document resulting from the defendant's allegations, not one written by her. His intention then was for the document to be passed to the police. But in my judgment that did not remain the claimant's intention.

105. In my judgment by the time when, about a month later, the solicitors provided the Note to the police, and asked them to investigate and carry out forensic testing, that was not something that the claimant wished his solicitors to do. I reach that conclusion for these main reasons: it fits with the contemporary documents; and it is consistent with the claimant showing some common sense. It is also consistent with Mr Dolan's continuing representation of the claimant to date.

106. The documents show that upon receiving his cash from DS Dale on 13 February 2013 the claimant asked how the investigation was progressing, and told DS Dale that he had "received malicious post in respect of this", which was a lie, and that he had spoken to his solicitor. DS Dale reported by email to DC Milburn saying "he may well contact you in respect of that." The claimant did contact DC Milburn the following day, but his 14 February email said nothing about any malicious post. Whether or not DC Milburn's suggestion correctly reflected something the claimant had said to him, it is clear that the claimant did not take the opportunity on 14 February to raise the "malicious post" issue with DC Milburn. It was not until 12 March 2013 that it was brought to DC Milburn's attention, and when that happened it was done by means of a letter from Stephens Scown, dated 11 March. That letter enclosed the original Note. It did not state, as is often the case, that the solicitors had "been instructed" to write. It said "*We consider* … it would be appropriate for your officers to be aware…" and that "*We further suggest …*" that forensic tests, raising the possibility that forensic examination might reveal the defendant's fingerprints. (The emphasis is mine).

107. Clearly, the solicitors were unaware that the claimant was the author of the Note. The claimant must have deceived them, too, at least by implication. But the claimant knew the truth. He had not, in my judgment, sought to implicate the defendant as author of the Note. Further, it would have been obvious to him that forensic examination of the Note could not implicate the defendant, but would be liable to exonerate her and reveal his authorship, exposing him to criminal liability. It would have been extraordinary for him to suggest, or to give his express authority to, the sending of such a letter. I find that he did neither. His evidence under cross-examination was that he had no recollection of giving the solicitors permission to send such a letter, and did

not mean the letter to be sent to the police, and I accept that is so. I do not doubt that when they wrote on 11 March 2013 Stephens Scown acted on what they believed were the instructions and wishes of the claimant, but they were mistaken in that belief. They misunderstood what the claimant wanted people to believe about the origins of the note. It is not necessary to make any further findings about the solicitors' authority or instructions.

The Admonishment Complaint

108. This is the third event relied on as harassment in the defendant's counterclaim. She pleads as follows:

> "03.10.2013 Forced by Claimant – The Police interviewed Defendant under Caution regarding false accusations against her by the Claimant, which were ultimately found by the Police to have no basis. The Defendant was admonished by the Police for purportedly writing a 'Malicious letter' to the Claimant. …
>
> A Police Forensic Analysis and investigation was carried to ascertain the originator of the letter. It was found that the letter was in fact written by the Claimant Anton Barkhuysen, and sent to himself. This crime by the Claimant to Pervert the Course of Justice during a Police investigation, and during a County Court Claim; and to procure a Police conviction of the Defendant for the serious crime he had in fact committed against the Defendant – yet often accused the Defendant of, was foiled by the outstanding work of the Police."

109. Clearly, the report about the Sick Pervert Note was false. But for the reasons I have given I do not accept this was an attempt by the claimant to procure a conviction of the defendant. Moreover, I reject the claim that the defendant was interviewed under caution on suspicion of being the author of the Sick Pervert Note and "admonished". It is at odds with the records. On 1 June 2013 DC Milburn recorded on the file his reasons for dealing with the matter by restorative justice. He evidently believed that the Note had been created to implicate the defendant. In that he was, understandably, mistaken. But he wrote: "Mrs Hamilton was not spoken to or interviewed regarding this letter therefore it has not impacted on her at this time…". It is improbable in the extreme that DC Milburn was wrong about that. He was in a very good position to know the truth, and I find that he was right about it.

110. The notion that the defendant was accused on 3 October 2013 is not credible. That could only have been done by an officer who knew about the Sick Pervert Note, thought it had been attributed to the defendant, and yet was wholly ignorant of the investigation, its outcome, and the true position as admitted by the claimant and recorded by DC Milburn. There is nothing in the documents or the circumstances to suggest that this is a plausible scenario.

111. The defendant's evidence on the matter was highly unsatisfactory. She first said that the allegation was put to her as part of two incidents. Shown DC Milburn's record she said she was interviewed twice, once before 1 June 2013 and once afterwards. She

suggested that DC Milburn may not have known of the first interview. Then she suggested that the interview in which she was "admonished" may have been before or after 1 June. Re-examined, she suggested the first interview could have been in "about spring time" - March or April. That would have been consistent with the timing of Stephens Scown's letter, had she been talking of spring 2013. But Mr Samson then showed her a letter from her then solicitors dated 6 March 2014, referring to her being questioned on suspicion of perjury three days earlier, on 3 March 2014. She explained that this was about the affidavit in the injunction case and said "I believe it happened then, that they accused me of not being beyond writing malicious letters." To say this was to shift the date of her alleged "admonishment" by some 5 months. She had no idea of how it could be that she was being asked such questions in March 2014. I do not accept that the police were so incompetent. If this had happened there would be some record, but there is none. There is plenty of contemporaneous correspondence from March 2014, none of which supports what the defendant says. That includes the letter of 6 March 2014.

The Dowling Conversation

112. It was in early March 2013 that Mr Dowling first put granite stones at the Junction, outside his home and near the gate to the defendant's top field. She took exception to this, and on 18 March 2013 returned with her son and attempted to remove some of the stones. This is recorded on video which I have seen. The video recording, with audio, shows a heated discussion between the defendant and Mr Dowling about his boundaries. The defendant, highly agitated, repeatedly interrupts Mr Dowling, not allowing him to complete sentences. He reacts, "You're slightly mad, aren't you?" In the course of the discussion the defendant is heard to say, with reference to the claimant: "Do you know what he was arrested for on New Year's Eve?" She presses to tell Mr Dowling, but so far as the recording reveals, she does not do so. In cross-examination the defendant refused to accept that she was about to tell Mr Dowling that the claimant had been arrested for having sex with one of her pigs. She said "No. I was asking him a question". That was not a truthful answer. She accepted that she had said that the police "knew all about" the claimant. She was keen to tell Mr Dowling about the Pig Allegation.

113. Mr Dowling's evidence is that she did so a week later, on 26 March 2013. CCTV shows a long conversation between the two on the afternoon of that day. The sequence of events was examined in some detail in cross-examination of both participants. My conclusion is that the defendant had, as Mr Dowling suggested, parked her large 4x4 vehicle provocatively, in a way designed to generate a dispute. Mr Dowling, annoyed, took photographs. The two did later engage in discussion about the driveway, and boundaries. They did so with Mr Dowling holding plans of some kind, which they consulted. But that is not all that happened, as the defendant sought to persuade me. I accept Mr Dowling's account, which was that on this occasion the defendant "made several comments about" the claimant, including the following:-

(1) Stating "…you have no idea what sort of man you are living next to, you need to keep an eye on your children when he is around";

(2) Asking, again, if he knew what had happened on New Years Day and then telling him the claimant had been arrested and bailed by the police.

(3) When asked why, replying that it was for " … doing something unspeakable to her animals".

114. Mr Dowling was a straight talking witness, with a no-nonsense approach. It was clear that he and the defendant had fallen out. But I found Mr Dowling's evidence convincing, and it was considerably bolstered by the contemporary recording of 18 March to which I have referred. It is inherently likely that the claimant would repeat to him the lie she had told the police. Her wish to do so is clearly apparent from the 18 March recording. Mr Dowling's account of what the defendant said to him about children is supported by the similarities between his account and Mr Rowse's evidence about what she said to him in September 2013. There is no risk of these two having put their heads together. The attempt to undermine Mr Dowling's evidence failed, in my judgment. It is true that he did not come forward with his account of the 26 March conversation until some two years later. But the suggestion that the claimant put the notion in his head was wholly unconvincing.

115. Further, Mr Dowling had come to court despite the attempt, to which I have referred, to intimidate him. The attempt was blatant. It emerged as follows. Ms Marzec put it to the defendant that she had done everything she could to stop Mr Dowling coming to court. She denied it. She was shown a document she had sent to Mr Dowling's solicitors, Lyons Davison. It proved the point. Mr Dowling had made a witness statement in support of the claimant's application to amend his case. The defendant wrote an email to Lyons Davison on 4 January 2016. She alleged that Mr Dowling had committed the "very serious and imprisonable offence of Perjury and Perverting the Course of Justice." She put him on notice that he would have to "contend with the full effect of the law" facing the "very real prospect of a custodial sentence, an extensive fine, and potentially ruinous High Court Cost …" She further threatened injunctive proceedings claiming damages and costs. But she offered "the opportunity" to retract and to provide a written retraction and apology.

116. It was apparent before I saw the document, and before Ms Marzec cross-examined on it, that all of this was written under the heading "Without Prejudice" and that the "opportunity" was described as a "Without Prejudice Offer". Ms Marzec submitted that there could be no privilege as there was no offer of any compromise; the document related to a separate dispute; and in any event it disclosed unambiguous impropriety. But I gave Mr Samson an overnight opportunity to take instructions and consider the position. Having done so, he maintained that the email was protected. Ms Marzec demurred, but the defendant waived any privilege so I did not find it necessary to resolve the issues. I heard the defendant cross-examined and re-examined, and reached the clear conclusion that she had deliberately and improperly attempted to use threats to influence in her favour the course of justice in this action by dissuading Mr Dowling from telling the truth.

117. The defendant accepted that she had not been in litigation with Mr Dowling, but she did refer to a land dispute between them. She said that she thought they were negotiating. But the email made no reference to any land dispute, or to anything other than the matters I have identified. Remarkably, the defendant denied making any threats to Mr Dowling. She maintained that denial after taking advice, following a warning against self-incrimination. She told me that she felt that what she said was "a way of putting a stop to everything reasonably". It clearly was not. It was nothing more or less than an attempt to harass Mr Dowling into standing down as a witness by

threats of criminal and civil litigation. Such behaviour, and the defendant's refusal to acknowledge what she did, seriously undermine her credibility. The fact that Mr Dowling gave his evidence despite these threats tends to bolster his.

The Junction Encounter

118. Well after he complained about this incident the claimant obtained from Mr Dowling a CCTV recording covering much of it, which helps a good deal in resolving what took place. There are also helpful contemporaneous police records of what the defendant told the police that evening, and when. It is convenient to start with the police log. This records that the defendant called on her mobile phone a few seconds after 9pm, alleging that the claimant was causing problems at her top field. She was in tears, so that it was hard to understand what she was saying. But in the course of a 6-minute conversation she said that the claimant had called her a "fucking bitch" and told her to get off some land; that he was standing there, watching her, taking photos of her; and (at 21:05) that she was terrified, stuck in her car. The log records the attendance at 21:28 of what was, from video evidence, a police vehicle, and that at 22:00 the unit was "with lady … gone to local field re access".

119. The defendant's account as recorded here is not only at odds with the evidence of the claimant but also very hard, if not impossible, to reconcile with the CCTV evidence. The CCTV shows the defendant arriving at the Junction, taking numerous photographs of the scene, and then having a conversation with the claimant. She is wearing shorts. There is nothing to support the view that the claimant was obstructing access to the defendant's field. The CCTV shows that the defendant then left the scene in her car. The time at which she drove away, as recorded by the CCTV system, was 20:46. The claimant can be seen walking homewards at 20:47. Ten minutes after leaving, the defendant is seen returning to the scene in her car, now wearing trousers. In cross-examination she agreed with the obvious: she had gone home and changed. She is then seen spending time taking more photographs of the sign, then gets back in her car and stays there for 10 minutes or more. The claimant is not visible at the scene. There is no sign of any confrontation between the defendant and anyone. At 21:14 the defendant is seen to drive away from the scene again. The claimant emerges a minute later. The police are seen to arrive in shot at 21:51:55. They leave with the defendant at 21:59.

120. Of course, the timer on the CCTV may not have been entirely accurate. It may have been set to a different time from the police log. The issue was not explored in evidence. But the visible departure of the police unit at one minute to 10pm corresponds closely with the record at 10pm in the police log. In any event, making all due allowance for any timing inaccuracies, the strong probability is in my judgment that the defendant's distress call to the police was made from her car, on her second visit to the Junction, shortly after 9pm, at a time when there was no confrontation going on; indeed, the claimant was not even present. My conclusion in all the circumstances is that the defendant invented the story she gave to the police. I reject her evidence that the claimant abused her. I accept the claimant's evidence about this incident: that the defendant abused him, using words such as "cunt", "bastard" and "pervert". I accept, also, that the defendant made a string of allegations to the police about the claimant, in his presence. It is unnecessary to determine what these were, to the extent they are disputed.

The Lane Confrontation

121. There are two video recordings of this, or parts of it. One was made by the defendant, and the version we have is intermittent, showing parts of the sequence of events. A suggestion was made that the defendant had originally made a longer recording, and had edited or censored it to remove parts that were inconvenient for her case, in which she abused the claimant. I am not prepared to make that finding, on the fairly slender evidence that is directly relevant to the issue. But the other recording is undoubtedly more helpful in resolving the disputes. It is another piece of CCTV from the cameras installed by Mr Dowling. As with the CCTV of 9 July, it lends support to the claimant's case and casts serious doubt on that of the defendant. A combination of this material, the evidence of the claimant, the evidence of Mrs Barkhuysen, and the inconsistencies and frailties in the evidence of the claimant and Mr Benjamin Waugh leads me to prefer the substance of the claimant's account of events, wherever there is dispute.

122. That account, in short, is that he was at home with his wife, doing some house-painting when he heard raised voices and car doors slamming from the direction of Mr Dowling's house. This continued and escalated, which led him to leave his house and walk across his garden to the Lane. There he found the defendant, who drove her car at him. She was accompanied by a young man, whom we know to be Mr Waugh. It was at this point that the claimant threw down a farm gate. His purpose, he says, was to protect some drains that had been damaged by someone driving down the same lane many years earlier. The defendant got out with a camera in her hand, and started to photograph him, uttering abuse, including an allegation that he had drilled holes in an oil tank belonging to a neighbour. She said (with reference to her successful planning application), "How will it feel to have little council house children playing around you?" and "see you in church". There was then a conversation about her children's Facebook accounts, in the course of which she accused him of having hacked into them.

123. Mr Dowling's CCTV supports this account in several respects. The CCTV shows that the defendant and Mr Waugh arrived at the top field in her car at some time before 17:15. It was at about 17:58 that they came back to the Junction where they spent some 10 minutes milling around the car, opening and closing the car doors several times. Then Mr Waugh moved down the Lane, apparently checking it. At about 18:08, the defendant drove the car to the top of the Lane, moving it back and forth. This has all the appearance of the deliberate creation of a commotion which was likely to attract the attention of the claimant. The CCTV lends strong support to the claimant's case that the defendant deliberately set out to create a confrontation on this occasion. That is what I have concluded she did. I do not believe the defendant drove at the claimant at any speed, or with intent to cause him physical harm. But I accept that she drove at him, assertively.

124. There is nothing in the defendant's recording that contradicts or significantly undermines the claimant's account. The recording supports aspects of the claimant's case. The defendant recorded herself accusing him of putting holes in the neighbour's oil tank. That is an accusation with no evidential support other than the claimant's response at the time. I find that response to have been ironic, and not an admission as she claims. The defendant recorded her own accusation that the claimant had hacked into her children's Facebook pages. Her pleaded case about this is this:-

> "He then went on to admonish Sharon Hamiltons' under aged son; and happily boasted and volunteered that he was 'Absolutely' hacking into her under-aged sons private, online Facebook account. He further divulged that he hadn't been able to access her daughters account yet, but was working on it. Both Sharon Hamilton was shaken to the ground. Until then she had been the sole victim of his Harassment – it terrified her to know that he was now gravitating toward her children. The Claimants' demeanour, on the other hand remained jovial, cool, controlled, steely, and as such was all the more terrifying and intimidating to the Defendant – especially in the light that the subject was of violating her innocent childrens' privacy."

125. This is substantially false. There was a conversation about Facebook accounts but the recording shows that the defendant was not "shaken to the ground" by it, or "terrified". The claimant refered to the children's Facebook accounts, but did not say or admit that he had hacked into anything. It was the defendant who made that accusation. He responded ironically. I accept his evidence that the facts were that he had checked, on advice, to see if there was anything on the children's public Facebook pages reflecting the defendant's allegations against him. He had found nothing. He would not know how to hack into a Facebook account. The Threats Complaint is irrational, false and unfounded. There were no threats to the defendant's children, and she was not intimidated by what was said.

126. The claimant's case also derives some support from other parts of the defendant's evidence. She herself told me that the reason she wanted to drive down the Lane was to exercise her rights. She said this was because she was headed to a barbeque in that direction, but it is obvious that cannot have been the primary reason as the Lane was overgrown and difficult to pass through. On any view it was largely disused. Mr Waugh was more forthcoming when he said they went down the Lane because the defendant wanted "to make a statement".

127. The accounts given by the defendant and Mr Waugh had so many obvious flaws that it would unduly lengthen this already long judgment to detail them all. I shall select some of the more remarkable ones. First, there is the fact that neither witness conceded in their statement the incriminating detail that the pair of them had arrived at the Junction as early as 5:15pm, some 45 minutes before any confrontation occurred. Mr Waugh's statement said falsely that they arrived at 6pm. The defendant's later statement to the police said the same. Mr Waugh's statement spoke of what happened "when confronted by …. Mr Dowling", when there never was any confrontation involving him on this occasion. The statement contained a false assertion that the claimant and Mr Dowling had reported the defendant to the police that evening for being verbally abusive. There had been no such report. Mr Waugh was unable to explain how that came about. He did concede that he and the defendant had discussed the content of his statement before it was finalised.

128. Perhaps the most remarkable feature of the evidence on this topic is the fact that both witnesses stated that upon the defendant entering her field to check the hay they saw the claimant: "precariously hiding behind some roughage of bushes watching" and photographing them. This peculiar, distinctive phrase first appeared in Mr Waugh's statement, dated 27 July 2013. It reappeared, word for word, in the defendant's

statement to police, made on 20 November 2013. The defendant then served Mr Waugh's statement on exchange in this action. Neither witness could offer any credible explanation for the use of this language in both statements. Both offered incredible explanations, which were inconsistent with one another. Mr Waugh said it was probably his wording, as he is a writer. But he accepted that his eyesight was poor, and the statement itself said that the claimant had been identified to him by the defendant. The defendant said that her own statement was in her wording, and the similarity was just coincidence. I have observed the defendant's use of language, in writing and in the witness box. My conclusion is that the wording in Mr Waugh's statement came from the defendant, and was re-used by her in November. I also conclude that this account, whatever exactly it was intended to convey, is a false and invented one.

129. I reject the defendant's allegation that a boulder was placed behind her car on this occasion, by anyone. It is inherently incredible. The claimant was at all times in front of the car. Mr Dowling, who was indeed near the scene at some points, was not close enough to do it at the relevant time.

130. There is no doubt, and no dispute, that the defendant's report to the police about this confrontation led to the issue of the PIN warning the claimant to desist from harassment. The issues regarding the PIN are of no significance to the outcome, and I shall say only that the police later acknowledged that there was no proper basis for a PIN. They did not revoke it, as it had already expired. On my findings, there was no basis for it. The defendant's allegations were untrue.

131. There has also been evidence about an incident in August 2013. A recording of the incident reveals that on this occasion the defendant was in full possession of her senses, and once again confronted the claimant when he was doing nothing to which she could reasonably object. The recording lends support to my overall conclusion that in their personal as opposed to legal confrontations it was predominantly – though not exclusively - the defendant who was taking the initiative and making a nuisance of herself, not the claimant.

The Rowse Conversation

132. Mr Rowse is a retired solicitor, former senior partner of Hancock Caffin, and contact steward at Stithians Methodist Church since 2009. I found him an impressive witness who made a note of events shortly after they took place. I accept his evidence as accurate in all important respects. He told me that on 1 September 2013 at about 10:30am he was in the schoolroom of Stithians Methodist Church. Informal worship was due to commence at 10:45. The defendant, whom he did not know, came into the schoolroom. She came over to him and asked for a word in private. They stepped out onto the pathway outside the door. Outside, the defendant introduced herself and explained that one of the members of the congregation, whom she named as Anton Barkhuysen, had been involved in a 'hit and run' with her and that she had called the Police. The claimant was at the Church that day (as is common ground). She said that out of courtesy she wished to alert Mr Rowse to the fact that the Police might be coming to the Church to arrest the claimant and that she did not wish us to be taken by surprise. Asked what exactly she meant by a 'hit and run' and whether she meant that the claimant had tried to run her down the defendant replied "yes". She added that on a previous occasion Mr Barkhuysen had thrown a stone or stones at her, and went

on to say that Mr Barkhuysen had previously been arrested by the Police. Mr Rowse thanked her for the warning about the Police and started back into the schoolroom. As he did, she said that the claimant should not be around children and that she thought he was involved in the Sunday School at the Church. She was told there was no Sunday School at the Church. She left.

133. The defendant accepts that she warned that the police were coming after someone, whom she referred to as "him", but she denies naming or identifying the claimant. That is simply incredible. It makes no sense. She clearly meant to refer to the claimant, and I am sure she indicated as much to Mr Rowse. I also reject the claimant's evidence that she did not say the things attributed to her by Mr Rowse. Not only was this evidence given by a witness of standing and apparent honesty, with no axe to grind, it is also consistent with the contemporaneous note, and it fits with the overall evidential picture. Despite Mr Samson's best efforts, I am not persuaded that there is any reason to doubt the reliability of the Note. The note quotes the defendant using the words ""that man should not be around children".

134. Mr Rowse's account gains further weight from a number of circumstantial factors including (a) the similarity of his account to what, on my findings, the police put to the claimant when they interviewed him following the Wood Allegations; (b) the apparent attempt by the defendant to introduce the reasons for the claimant's arrest in January 2013, and the similarity of this with the recorded evidence of her conversation with Mr Dowling on 18 March 2013; (c) the similarity between the statements which Mr Rowse attributes to the defendant, and Mr Dowling's account of what he said to her. There is, as I have said, no question of collusion between the two. It is doubtless factors such as these that led the defendant, regrettably, to accuse both Mr Dowling and Mr Rowse of having been told what to say by the claimant. It should be clear already, but I should say that I reject that attack. I also reject as unconvincing other lines of attack which Mr Samson pursued, regarding details of this evidence.

The DBL Email

135. There is one other matter which is far from determinative, but which I should mention in this context as it has generated some heat. The defendant was asked by Ms Marzec whether she had ever before made allegations of paedophilia against someone with whom she was in dispute. She said no. That was untrue, as confirmed by an email she wrote on 16 July 2015 to someone I shall call DBL, accusing them of having sex with a 12 year old girl. This ("the DBL Email") was produced to the defendant, and authenticated by her. She confirmed that DBL was someone with whom she was then in dispute. This plainly was not something she had forgotten. Far from it. The dispute continues, and from her own account is a bitter one. Her false denial counts against the defendant on credibility.

136. A number of other issues were raised about this email, and the exchange of which it was a part. Its relevance and admissibility were contested. I ruled against the defendant on those issues. In my judgment the document was relevant to credibility and potentially relevant to the issue of publication in the slander claims. I accepted that the document and its contents were private and confidential from several perspectives, but concluded that their potential relevance overrode such considerations provided an order was made, as it was, that secured the anonymity of

DBL and the third parties involved and protected the documents themselves from public disclosure. In my judgment those conclusions are valid whether or not the defendant was right to claim, as she did, that the accused person had not authorised the use of the emails. As it is, I find that authority was given. That issue took up unnecessary time both during and after the hearing. Ms Marzec had told the court that authority had been obtained; she was understandably concerned that the defendant's evidence called into question the conduct of her instructing solicitor, Mr Dolan. Mr Samson, on instructions, stated that his client did not assert any impropriety, but suggested that Mr Dolan may have been misled. That was equivocal so I allowed Mr Dolan to submit a witness statement after the hearing to address the matter. To my surprise, the defendant responded with evidence of her own, and Mr Samson put in written submissions asserting that this was proper, and urging me to rule. That was misconceived. The central issues were not dependent on whether or not authority was given, and I had not offered the defendant another opportunity to go into the issue after the hearing. Mr Dolan was given that opportunity because, and only because, his professional conduct was impliedly impugned.

137. I have relied on the DBL Email as one matter among many which adversely affect her credibility. I also take into account on that issue the way that she dealt with the matter in her evidence and afterwards. This involved bluster, attempts at what was (objectively at least) distraction, unreasonable and over-emotional reactions. It provided another illustration of the defendant's self-centred approach; her tendency to focus on her own emotions and the impact of events on those, at the expense of other considerations; and a tendency to exaggerate in her response to events. I have not otherwise relied on the email. I have not relied on it when arriving at conclusions on the issue of whether the defendant spoke the alleged slanders. I cannot begin to resolve whether the allegations against DBL are true, and hence I do not consider that the making of those allegations makes the claimant's case more likely to be true.

VII. DISCUSSION AND CONCLUSIONS

False imprisonment

138. The claimant has made out his case for damages for false imprisonment. He has proved that the Pig Allegation lacked any reasonable objective basis and that the making of that allegation to the police on the morning of 1 January 2013 caused his arrest and detention by the police that evening. That arrest and detention were of course carried out by the police, but as is common ground an informant can be responsible in law. In all the circumstances the arrest and detention were, in practice, inevitable consequences of the defendant's report. They are consequences which were brought about by a demand or request that was implicit in her report. That report concerned a serious sexual crime. The claimant and defendant were the only possible witnesses and the police were in practice given no discretion in the matter.

139. On that factual basis, in the circumstances of this case, there is in my judgment no room for reliance on the doctrine that a mere witness is not liable for false imprisonment. Nor can the defendant rely on the fact that, the arresting officers themselves acted lawfully, as they had reasonable grounds to suspect the commission of an offence. I accept that the officers acted lawfully. Ms Marzec's fall-back argument, that there were insufficient grounds to arrest under the Police and Criminal Evidence Act 1984, does not impress me. But as she points out, a private individual

who personally arrests another when no crime has in fact been committed will commit a false imprisonment. The powers of arrest given to those who are not constables arise only "Where an indictable offence has been committed": s 24A(2) Police and Criminal Evidence Act 1984. An informant who procures a person's arrest by the police when no crime has been committed may be unable to rely on the police intervention to escape liability if the police are no more than an unwitting instrument of the informant's own desires.

140. The test for informant liability in this tort has been put in a variety of ways in the authorities. All require an assessment of the causal impact of the informant's conduct. In *Pike and Waldrun & Peninsular & Oriental Steam Navigation Company* [1952] 1 Lloyd's Rep 431 Barry J put it this way: "… the person who *requests* a police officer to take some other person into custody may be liable to an action for false imprisonment; not so if he *merely* gives information upon which the constable decides to make an arrest" (emphasis added). In *Davidson v Chief Constable of North Wales* [1994] 2 ALL ER 597 the Court of Appeal proposed a somewhat broader test. It held that liability depends on whether the complainant had merely "given information to a properly constituted authority on which that authority could act or not as it saw fit" or "whether what [the informant] did went beyond laying information before police officers for them to take such action as they saw fit and *amounted to some direction or procuring, or direct request, or direct encouragement that they should act* by way of arresting these defendants. ..." (emphasis added). That is the test applied by Sharp J in *Ahmed v Shafique* [2009] EWHD 618 (QB), where she distinguished the test of causation in this tort from that which applies in the malicious process torts: see [69]-[87].

141. The passages I have cited above might be taken to suggest that there must be some act or some words amounting to a demand, a request, or an urging of the police to take action. As I understand his submission, Mr Samson argues that this is the law. But that is not how I read these decisions. The law is put in this way in *Clerk & Lindsell* on Torts 21st ed. at 15-43 "It is not necessary that he should in terms have made a request or demand; it is enough if he makes a charge on which it becomes the duty of the constable to act." That addresses the issue as one of substance not just form, and in my judgment it is the better view. And on that view the defendant is clearly responsible; she placed the police in a position where it was their duty to act as they did.

142. But even on the narrower view the defendant would in my judgment be liable. It cannot be necessary for this purpose that the defendant should use words such as "please arrest him, officer". That would be too formalistic. But in substance, that is in my judgment the request made by the defendant on the morning of 1 January 2013. Her report went well beyond merely laying information before the police, for them to do as they saw fit. Looked at realistically, in its context and against the background of previous complaints by the defendant, the report must be viewed as urging the police to arrest the claimant; it amounted to an emotionally charged and, on its face, compelling plea for action to be taken. It was in substance a direct act of encouragement and procurement of the arrest and of what followed. The defendant is responsible for the arrest, and had no lawful basis for doing so. She puts forward no other answer to this claim.

Malicious prosecution

143. The claimant has amply made out the third and fourth elements of this tort: the defendant made a false, entirely unfounded, and malicious accusation. That accusation set in train the actions of the police that followed: the claimant's arrest and detention, the seizure of his property, the intimate sampling and other steps I have identified above. The defendant procured a criminal investigation of the claimant lasting several months. The test for personal responsibility in this tort was considered by the House of Lords in *Martin v Watson* [1996] AC 74 and has since been examined and applied by the Court of Appeal in *Mahon v Rahn (No 2)* [2000] 1WLR 2150, *AH v AB* [2009] EWCA Civ 1092, and *Ministry of Justice v Scott* [2009] EWCA Civ 1215. It may be different from the test that applies in false imprisonment, as Sharp J concluded in *Ahmed.* It is not necessary to consider the issue, because in my judgment the facts of this case comfortably satisfy the most stringent tests or criteria that can be extracted from any of these authorities.

144. Mr Samson submits that there must be "active steps" to ensure that action is taken; the informant must be "actively instrumental" in setting things in motion. In my judgment there were, and she was. For the reasons already given I reject the submission that the defendant "did nothing more than give information to the police". She directly procured the arrest. She desired it and intended it. The (alleged) facts were solely within the defendant's knowledge. There is no evidence to support the submission that there was "an independent investigation by police" after the claimant's phone call and before the arrest of the claimant. The documentary records show the contrary. The police spent time deciding how and when to arrest and question the claimant, and searches him and his property. The search took place at the same time as the arrest. It did not provide any basis for it. There was in reality no room for the police to exercise any independent judgment before they arrested the claimant, searched his premises, detained and questioned him, and carried out intimate sampling. It is true that there was an investigation thereafter. But there is no evidence that the claimant's continued detention resulted from what was found on the search. He was detained for questioning about the alleged harassment and, in particular, the Pig Allegation; and for the taking of samples relating to the latter. The investigation, and its continuation, resulted directly from the original allegation.

145. All of that shows that there was a false arrest and false imprisonment thereafter, which were maliciously procured by the defendant. But in my judgment that is not enough to bring home the claim for damages for malicious prosecution. I accept Mr Samson's argument that there was no "prosecution" for the purposes of this tort. Ms Marzec submits that the underlying principle of the law of malicious prosecution is that an abuse of the process of the law that causes another injury is actionable; the key feature in considering whether there has been a "prosecution" is whether the actions taken against the claimant were such as to cause him injury. She refers me to *Churchill v Siggers* (1854) 3 E & B 929, *Mohamed Amin v Banerjee* [1947] AC 322 at 331 (PC), *Roy* ***v*** *Prior* [1971] AC 470, 477-8 (HL) and the recent decision of the Supreme Court in *Willers v Joyce* [2016] UKSC 43. But in none of those cases was a mere arrest held to be actionable in the tort of malicious prosecution. Nor, in my judgment, does any of them stand as authority for any principle that would make a mere arrest so actionable. It is important not to treat passages in judgments, however high their authority, as tantamount to statutory wording.

146. The pleaded case for the defendant is that a prosecution begins when a person is charged. Mr Samson submits that this is too generous an approach. He argues that he authorities point to the conclusion that the malicious institution of proceedings before a judicial body is actionable in this tort, but not anything short of that. I agree, and add that the established rationale of the tort appears to be that compensation should be available for injury caused by a malicious abuse of the judicial power of the state. All of the cases cited above can be explained on this basis. See also the analysis of Sir Timothy Lloyd in *Crawford v Jenkins* [2014] EWCA Civ 1035 [2014] EMLR 25 [48]-[50].

Slander

147. The claimant has proved that in the Dowling Conversation and in the Rowse Conversation the defendant made the statements about him which he has alleged, or statements which are substantially the same as alleged, and that she defamed him in the process. In large part I uphold his claims in slander. But not entirely. The reason is a shortage of evidence: in some respects he has – as is quite common in slander - fallen short of proving to the court's satisfaction the publication of particular words defamatory of him. Proof of the exact words spoken is crucial: see *Bode v Mundell* [2016] EWHC 2533 (QB) [12]-[16]. When witnesses are asked to recall spoken words some time after the event, memories can fail.

The Dowling Conversation

148. The words set out at 113 above are clear enough. They need to be considered together, as part of a single conversation. The words that conveyed the suggestion that the claimant had been arrested are not specified, but it is perfectly plain that the words "claimant … arrested" or something very close were used. The assertion that the claimant had been arrested for "unspeakable behaviour" towards the defendant's pigs can only sensibly convey one meaning: that he had engaged in sexual intercourse with them. That is a criminal offence under s 69 of the Sexual Offences Act 2003. The imputation is therefore actionable without proof of special damage. In modern times the ordinary reasonable person, hearing the words set out at 113(1) in that context, would take them to suggest that the children were at risk of being the victims of sexual misconduct by the claimant. They would understand the defendant to be suggesting that the claimant was a risk to children because he was man who not only had paedophile tendencies but also a history of indecent behaviour towards children. Only someone of an unusually naïve cast of mind would think otherwise. In my judgment the words at 113(1) bear that meaning even if they are divorced from their context.

149. For words to be actionable without proof of special damage on the grounds that they impute the commission of an offence punishable by imprisonment, it is not necessary for the offence(s) to be specified in the words themselves. No authority to that effect has been cited, and such a rule is not in my judgment consistent with the policy of the rule of law in question. This is a threshold of gravity, designed to rule out relatively trivial claims in slander. It is enough in my view if the Court is satisfied that the words suggest behaviour which, if it had been engaged in, would amount to an offence for which a prison sentence can be imposed. It is not necessary for the pleader or Counsel at trial to specify the offence or offences, though this will always be helpful. It is hard to think of indecent conduct towards a child, which would make a

warning appropriate, but is not punishable by imprisonment. In this case, I am satisfied that the words suggested offending involving sexual assault by touching of a kind that could be charged under ss 3 or 7 of the Sexual Offences Act 2003 (depending on the age of the child).

The Rowse Conversation

150. The defendant had already indicated who she was talking about when she spoke the words "that man should not be around children". The natural and ordinary inferential meaning of those words is that the claimant poses a risk to children from the commission of offences of sexual indecency, because he has committed such offences in the past. Again, the ordinary reasonable listener in today's society would not take the risk to be of any other kind. Nor would they suppose that the suggestion was based merely on a tendency, without a history of indecent behaviour. Unfortunately, the prevalence of sexual offending by adults against children has become a well-known phenomenon in our society. It has featured prominently in public discourse for many years. That is the kind of behaviour a listener would naturally take the speaker to be suggesting. There is nothing in the words or context here to indicate to the listener that the claimant was suggesting any other kind of risk. The offending suggested is of the same kind as was implied by the words used to Mr Dowling, and is actionable without proof of special damage.

151. I am satisfied that the defendant spoke some words to Mr Rowse which suggested some kind of motoring offence involving a threat to her physical well-being, which justified and was going to be followed up by, an arrest. But that is not enough to justify a finding on liability. The evidence on this front is too imprecise to allow me to find in the claimant's favour on this part of his case in slander. But I can and do take this into account when it comes to the case in harassment. The same applies to the allegations which I find the defendant did make, that the claimant threw a stone or stones at her; I have no or no adequate evidence of what the actual words were so I cannot, consistently with principle, find in the claimant's favour in slander; but I can take the accusation into account when considering harassment.

Harassment of the claimant

152. Ms Marzec concedes that a false report to the police cannot form part of a course of conduct for the purposes of harassment. It follows that not only is the Police Complaint "out of bounds" for this purpose, the claimant cannot not rely either on the pleaded complaint about the Wood Allegations, or on the defendant's reports to the police about the events of 9 and 11 July 2013. Ms Marzec has invited me instead to have regard to such matters when assessing the defendant's credibility, which I have done.

153. What is left? The answer is: the defendant's conduct in the course of the Van Incident, the two Common Encounters, the Bicycle Incident, the encounters at the Junction and the Lane, the slanders, and the words spoken to Mr Rowse and Mr Dowling suggesting assaults or attempted assaults on the defendant. The defendant's role in these events, as described above, is beyond doubt a "course of conduct". In my judgment it is enough to carry the claimant's case comfortably across the threshold. This is conduct that, taken together, clearly enters the realms of the oppressive and

unacceptable. There is no question of any of this behaviour being defensible as reasonable. The claimant is entitled to damages for harassment.

Damages

154. It is important, of course, to avoid double counting. I shall deal with the claims in the order in which they were put in the claimant's case. Guidelines for the assessment of damages for false imprisonment, as well as for malicious prosecution, were given by the Court of Appeal in February 1997 in *Thompson & Hsu v Commissioner of Police of the Metropolis* [1998] QB 498. Damages should compensate for the loss of liberty and the injury to feelings. For malicious prosecution the court suggested a starting point, before considering any aggravating features, of £2,000. For false imprisonment, detention for 24 hours would start at £3,000. Aggravating features could include humiliating circumstances at the time, or conduct showing malice on the part of those responsible for the prosecution. Where appropriate, aggravated damages were unlikely to be less than £1,000. These figures need to be uplifted for inflation in the 19 years since *Thompson*, which has been some 69%. A further 10% uplift is required on the basis of *Simmons v Castle* [2012] EWCA Civ 1288 [2013] 1WLR 1239.

155. As Mr Samson points out, a claimant's bad character may be relevant in assessing damages for this tort: see *Clark v Chief Constable of Cleveland Police* [1999] EWCA Civ 1357. But I am not persuaded by the submission that this claimant should receive less in damages for this tort because of his forgery of the Sick Pervert Note. It was not, as Mr Samson submits, a malicious act towards the defendant. It has no causal connection with his arrest or detention, and no logical connection with the compensation he should receive.

156. Taking account of all these points, I have arrived at a figure of £11,000 for general damages for false imprisonment. This reflects the basic facts as recounted above, the humiliation of being arrested on such a charge, the embarrassment of the police questioning about it, including questions about the claimant's sex life with his wife, and the distress caused by the claimant's (correct) perception that he was being maliciously targeted. This figure also reflects the distress caused by the defendant's persistence up to the end of trial in which she knew to be a false charge. The figure would have been greater if the trial had attracted the publicity that at one stage seemed likely. Happily for the claimant it did not. I also award £80 in special damages, being the cost of replacement computer equipment reasonably acquired by the claimant whilst his was in police custody.

157. Damages for defamation must compensate for (1) injury to reputation; (2) injury to feelings, including aggravation of distress by the defendant's post-publication conduct; and they must also (3) serve the purpose of vindicating the claimant in the eyes of those who have come to know of the allegation. The principles are discussed in greater detail in *Sloutsker v Romanova* [2015] EWHC 2053 (QB) [74]-[82] of which I remind myself. The principles allow a somewhat reduced award where, as here, the court has delivered a reasoned judgment vindicating the claimant. Sometimes, misconduct revealed in the course of the evidence can reduce what would otherwise be the right award.

158. The slanders uttered to Mr Dowling were particularly grave in nature. Allegations of sexual offending against animals (plural) and against children are at the upper end of the scale of gravity. The term "toxic", relied on by Ms Marzec, is apt. Such allegations are liable to be very distressing indeed. Here, there was some genuine injury to reputation. Mr Dowling was left in doubt, wondering "for a little while" if there was anything in the allegations. But the injury to reputation was slight and temporary, and the publication was to a single individual. There is no evidence that Mr Dowling spread it to others. The claimant was undoubtedly distressed, but he only came to learn of it some time after the event, not when his feelings were at their most raw. The defendant has done nothing to mitigate the injury, and has falsely denied making the allegations in the first place, which tends to increase the hurt. She has not pleaded justification as a defence, but she has maintained the truth of the Pig Allegation in answer to the other claims. She has also seen fit to accuse the claimant of a variety of wrongdoing, including suborning false evidence from Mr Dowling. The claimant has exhibited a streak of dishonesty, in relation to the Sick Pervert Note and the Authority Letter. But that is conduct in a different sector of his reputation. Taking into account the award I am making for false imprisonment, the appropriate sum in damages is in my view £7,000.

159. The overall picture is similar when it comes to the slander uttered later on, to Mr Rowse. The imputation of sexual offending against children is a grave one. There was harm to reputation; Mr Rowse spoke of "niggling doubts". But again, the injury appears to me to have been relatively mild, considering the nature of the allegation and, more importantly, temporary. Someone might have passed by when the defendant and Mr Rowse were in conversation, and overheard what was said. But there is no evidence that anyone did. The allegation might have been spread in the community, but there is no evidence that it was. The report in the Council minutes was just that. It is possible that the police were asked for specifics but I cannot find that they were or that, if they were, they disclosed the claimant's identity. The reason the claimant came to fabricate the Sick Pervert Note is that nobody spoke to him about the matter. The appropriate award in all the circumstances, and taking into account the other awards already made, is £6,000.

160. Guidelines for damages in harassment were given by the Court of Appeal in *Chief Constable of West Yorkshire Police v Vento (No2)* [2003] ICR 318. The court identified three broad bands for compensation for injured feelings: a top band for very serious cases, a middle band for moderately serious cases and a third band for less serious cases, such as isolated or one-off occurrences. Only in the most exceptional cases, it was said, would it be appropriate to award more than the top band and awards of less than £500 were to be avoided as they risked appearing derisory. Again, adjustment for inflation is required. The former adjustment was made by the Employment Appeal tribunal in 2009 in *Da'Bell v National Society for the Prevention of Cruelty to Children* [2010] IRLR 19. Inflation since then has been some 20%, leading to a range in band 3 of up to £7,200, a middle band from £7,200 to £21,600 and a top band from £21,600 to £36,000, A *Simmons v Castle* adjustment is also required.

161. In assessing damages for harassment I focus only on the matters identified above. I leave out of account altogether any injury to reputation, and any injury to feelings caused by the slanders and the way the slander claims have been defended. I regard

the harassment in this case as falling within the moderately serious category. There has been a long series of incidents over a prolonged period of time. I am satisfied that the claimant has suffered prolonged distress at what he justifiably perceives as a campaign against him. The appropriate additional award for harassment is in my judgment £8,000. It would have been higher but for the other awards I have made.

162. In assessing damages for these torts I have left out of consideration all the conduct which Ms Marzec has conceded is immune from suit. I do not think it can be legitimate to award aggravated damages for a tort on account of conduct which does not form part of the cause of action, and is immune from suit. To do so would be to contrary to principle, as it would permit the immunity to be circumvented or at the very least undermined. Damages therefore cannot be recovered in respect of the Affidavit Complaint, and I have not awarded any aggravated damages on that account.

Injunctions

163. It may be difficult to frame injunctions that are precise enough both to comply with principle and to guard against further wrongs of the same or similar kinds, but in principle the claimant is entitled to injunctions for that purpose. There is a sufficient risk that the same or similar conduct will be repeated, sufficient to justify the court's protection. I will hear Counsel on the appropriate form of order.

Harassment of the defendant?

164. The First Driving Allegation, the Watching Allegation, the Admonishment Complaint, and the Threats Complaint are all untrue and unfounded. Although I have found that the claimant's conduct was in some ways provocative and bullying, there is nothing left of the defendant's pleaded case that could amount to a course of conduct involving harassment. The defendant has not relied, and could not rely, on litigation as harassment. The counterclaim must be dismissed.

165. I add this. The defendant's case as to the alleged "land grab", as set out in her first witness statement (para 113) is that the reasons why the claimant has "buried my family in a mire of destruction" are either to obtain her farm and to strip her family of their rights "or that he just enjoys victimizing innocent people" or both. I do not accept either proposition. In my judgment the claimant's primary motivation has been a desire to protect the Common. He has been over-zealous in this. It has verged on an obsession. It has led him into some behaviour that I have described as bullying. But this is at its core a public interest purpose. And the contention that it has involved harassment of this defendant has failed. The claimant's secondary aim has been personal, but protective rather than acquisitive: he has wanted to ensure the protection of his own property and its immediate environment. It is no part of my task in this case to resolve who is right about the various land disputes that form the backdrop to this case. But the protection of property is in principle a legitimate aim. The contention that the claimant has harassed the defendant in the pursuit of that aim has failed.

Disposal

166. For the reasons I have given there will be judgment for the claimant for damages for false imprisonment, slander, and harassment, in the total sum of £32,080. I will grant injunctions to restrain repetition of the same or similar conduct, the precise terms of those injunctions to be subject to argument. The claim in malicious prosecution fails, and is dismissed. The same applies to the counterclaim. I will hear argument on costs and other consequential matters.