Neutral Citation Number: [2019] EWHC 1413 (QB)

Case No: HQ17M02602

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/06/2019

**Before** :

**ANTHONY METZER QC**
**SITTING AS A DEPUTY JUDGE OF THE HIGH COURT**

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**Between :**

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| **TARIQ ALSAIFI** | **Claimant** |
| **- and -** | |
| **SECRETARY OF STATE FOR EDUCATION** | **Defendant** |

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The Claimant appearing in person
**MS CHRISTINA MICHALOS QC**
(instructed by **GOVERNMENT LEGAL SERVICES**) for the **Defendant**

Hearing dates: 1st and 2nd May 2019

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# Approved Judgment

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

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**ANTHONY METZER QC:**

## Background

1. This is the Judgment of the Court in respect of a defamation claim brought by the Claimant against the Defendant in respect of a short four-sentence quote attributed to a spokesperson of the National College for Teaching and Leadership ("NCTL") which was then an executive agency of the Department for Education which related to a decision of Mrs Justice Andrews who allowed an appeal by the Claimant against a Prohibition Order preventing him from teaching which was published by *The Chronicle* in an article entitled "Ex-Newcastle College Lecturer who made 'Sexual' Advances on Student Allowed Back in the Classroom" on the newspaper's website on 6 July 2017. The three issues which the parties agreed required resolution concerning meaning, serious harm and qualified privilege. There have been three relevant decisions concerning the Claimant which will be referred to in various parts of the Judgment below, namely the decision of Mrs Justice Andrews in ***Alsaifi v SSE*** **[2016] EWHC 1591**; the decision in respect of an earlier interlocutory application which affected another Defendant, namely *Trinity Mirror* (The Chronicle and the website are published by NCJ Media Limited which is a subsidiary of Trinity Mirror) of Mr Justice Nicklin in ***Alsaifi v Trinity Mirror PLC and Board of Directors and Secretary of State for the Education*** **[2017] EWHC 2873** and a decision of Mr Justice Warby in ***Alsaifi v Trinity Mirror and Newcastle College Group*** **[2017] EWHC 1444.**

2. The origin of the dispute relates to a professional conduct proceedings brought against the Claimant by the NCTL in respect of allegations of inappropriate behaviour by the Claimant towards a seventeen-year old student in which adverse findings were made against the Claimant which led to a Prohibition Order being imposed. The Claimant appealed against the imposition of that Order and Mrs Justice Andrews set aside the Order on the basis that there was no jurisdiction over the Claimant because at the relevant time he was not a teacher to whom the relevant sections of the Education Act 2002 applied. Sitting in an Administrative Court, she found that there was no substance to the majority of the Claimant's Grounds of Appeal but concluded that the Secretary of State had no power to investigate the matter because at the time the student ("Ms A") was excluded from the definition of pupil for the purposes of the relevant Teachers' Disciplinary (England) Regulations 2012 and the Claimant was not a teacher to whom the relevant sections of the Education Act applied. The Court therefore concluded that the proceedings were nullity and allowed the appeal although noted (at Paragraph 100) that if the NCTL had been empowered to refer the matter to the panel "its findings would have been unimpeachable". She also observed at Paragraph 66 that:

> "What makes this case particularly troublesome is that the Appellant's behaviour and his failure to observe the appropriate boundaries between himself and a learner in his class (even if, as he says, he believed the learner to be an adult) is undoubtedly conduct of a type that would trigger alarms in the minds of those who are concerned to protect sixth-formers or teenagers that he might be teaching in future".

3. There had been some previous concern of the Defendant that the Claimant who acts in person may be seeking to challenge other aspects of the findings in that decision but the Claimant helpfully confirmed initially before Master Thornett at the CCMC which was recorded by the Court in an Order dated 25 July 2018 that the Claimant "does not seek directly to challenge the judgment of Mrs Justice Andrews itself".

4. The Claimant confirmed at the outset of the hearing that he was not seeking to make any representation in relation to those findings and after some discussion as to whether other issues needed to be raised, including in relation to the Defendant the issue of public interest, at the Court's invitation, the parties agreed that the three issues set out above were the only ones requiring rulings. The Defendant confirmed that even if he was successful in relation to the first and/or second issues, he would still request a further ruling in relation to the third issue, namely qualified privilege in the event that the matter were to be appealed by either party.

## The Claims

5. The Claimant sues in respect of the article which appeared online on 6 July 2017. The claim relates solely to the last four sentences but it is helpful to set out the full article particularly bearing in mind the representations made by Ms Michalos QC on behalf of the Defendant in her submissions. As indicated above, it is headed "Ex-Newcastle College Lecturer who made 'Sexual' Advances on Student Allowed Back in the Classroom". The sub-heading reads:-

> "The 'cavalier' actions of the Secretary of State for Education have allowed the former Newcastle College tutor to successfully appeal his ban."

6. The article states as follows and is set out below. It includes a photograph of Newcastle College confirms on a board amongst other things that it is a "Newcastle Sixth-Form College". The article reads:

> "A lecturer who made 'sexual' advances on a pupil has had a lifetime teaching ban overturned – on a legal technicality.
>
> Tariq Alsaifi was suspended from Newcastle College in 2013 when a number of accusations emerged around his behaviour towards a particular pupil.
>
> Alsaifi, 41, was observed holding and rubbing the hand of a teenaged student – who he also invited to lunch and sent several emails to from his personal account.
>
> The actions left the teen "upset" and feeling uncomfortable at being in the same room as Alsaifi, who was 38 at the time.
>
> A disciplinary panel concluded earlier this year that, while there was no evidence of "serious sexual misconduct", the teacher's actions were wholly inappropriate and banned him from the classroom.

> However, the decision has now been quashed on appeal.
>
> A High Court judge ruled that under current legislation the victim could not be classed as a pupil, as she only studied part-time. Therefore, the panel had no jurisdiction to review the case or make any decision in the first place."
>
> The Honourable Mrs Justice Andrews DBE accepted the panel's findings in relation to Alsaifi's conduct, but ruled his ban should be nullified.
>
> Justice Andrews said:
>
> "I am satisfied that there is no substance in any of the Grounds of Appeal raised by the Appellant apart from the legal point he has taken objecting to the power of the National College for Teaching and Leadership (NCTL) to carry out the investigation and to the power of the Secretary of State to make the order.
>
> He only needs to succeed on one ground in order to succeed in his appeal. As the Secretary of State had no power to investigate the matter, the fact the process adopted was conspicuously fair and the fact that if the NCTL had been empowered to refer the matter to the panel, its findings would have been unimpeachable, are of no consequence.
>
> The proceedings were a nullity; the panel had no power to make any findings about the Appellant's conduct, or to recommend a Prohibition Order in this case, and the Secretary of State had no power to make one."
>
> Justice Andrews reserved particular criticism for the Secretary of State who she said had behaved in a "cavalier" way.
>
> Justice Andrews said:
>
> "The court's disapprobation of the Secretary of State's cavalier attitude to the rules of civil procedure, particularly in a case where the opposing party is representing himself, needs to be marked in a way that will discourage repetition. I will therefore direct that the Secretary of State shall bear her own costs of the appeal to this court in any event, irrespective of the outcome of any further appeal.""

7. The article then concluded with the quote upon which the Claimant has pursued the defamation claim:

> "An NCTL spokesperson said: "We are disappointed with the High Court's judgment. Nothing is more important than the safety and welfare of children and that is why we insist on the

> highest possible standards of personal and professional conduct from all teachers and school staff.
>
> We are confident that the policy and procedures in place to regulate the teaching professional are robust and ensure the just and efficient handling of all cases of teaching misconduct. Each case referred to a Professional Conduct Panel is considered in line with the legislation and supporting advice and the circumstances surrounding each individual case."

## The Proceedings

8. In the trial before me, I was provided with evidence from various witnesses for the Claimant, namely Jayne Millions; Michael Murphy-Pyle; Deaglán Lloyd; Alan Meyrick and Layla Ferguson. I also read a statement of Dawn Dandy whose evidence was admitted by a hearsay notice without objection from the Claimant. In respect of the Claimant, I heard evidence from the Claimant himself. Three witness statements were provided from Anya Duckitt, Karen Quilley and Jordan Harrison, none of whom attended Court. Objection was taken in respect of the relevance of these witness statements and after hearing submissions, I ruled that none of those witness statements were relevant to any of the issues between the parties. I was asked by the Claimant to make clear, which I am happy to do so without objection from the Defendant that no part of the Defendant's case suggests the Claimant acted inappropriately with a child, i.e. a student under sixteen years of age. The alleged inappropriate behaviour related to Ms A who was seventeen years old at the time. Equally, as I have indicated above, the parties agreed that no part of the present litigation related to what actually may have taken place and was found to have occurred between the Claimant and Ms A nor indeed was there going to be any attempt by the Claimant to seek to challenge any previous juridical findings.

9. I am grateful to the parties for their helpful Skeleton Arguments both at the outset of the case and in respect of submissions at the conclusion of the evidence and for the agreement between them to narrow the issues therefore not requiring rulings in respect of, for instance, public interest and honest opinion.

10. In respect of the three issues, I propose to make reference to relevant parts of the evidence in the course of the summary of the respective parties' positions on all three issues taking into account the relevant legal principles and where applicable relevant passages from the findings of the previous High Court Judges whose decisions were reported as set out above.

## Meaning

11. The Claimant relied upon two possible meanings set out at conveniently at Paragraphs 8 and 50(i) of Judgment of Mr Justice Nicklin. In respect of the former, meaning as set out in the Particulars of Claim contended for by the Claimant that the words bear, in their natural and ordinary meaning is:

> "…that in the Claimant's capacity as a teacher of a teenage girl/pupil he behaved inappropriate towards her by making sexual advances; that these involved holding and rubbing her

> hand, inviting her to lunch, and sending her several emails from his personal account; his conduct and actions made the teenage girl upset within the classroom and feeling uncomfortable at being in the same room; he thereby conducted himself in a way that merited his indefinite prohibition from teaching; the Claimant's inappropriate actions towards the teenage girl/pupil made her a victim; the Claimant's success in his appeal is a disappointing one because he might not meet the required standards by NCTL toward the safety and welfare of children."

12. In respect of the second meaning, the Claimant relies upon Mr Justice Nicklin's finding that the article was capable of bearing the meaning defamatory of him, namely:

> "…That in the Claimant's capacity as a teacher of a teenage girl, a pupil, he behaved inappropriately towards her by making sexual advances; that these involved holding and rubbing her hand, inviting her to lunch, and sending her several emails from his personal account; his conduct and actions made the teenage girl upset within the classroom and feeling uncomfortable at being in the same room; his conduct was so serious that it merited his indefinite prohibition from teaching; the Claimant's success in his appeal was disappointing because the original decision to ban the Claimant from teaching was the right one; by his conduct the Claimant had demonstrated he posed a risk to the safety and welfare of the [school] children he taught."

13. It is worth noting that Mr Justice Nicklin also made reference at Paragraph 50(iii) that the Paragraphs upon which the Claimant sued were capable of bearing the following meaning defamatory of the Claimant:

> "The Claimant's success in his appeal was disappointing because the original decision to ban the Claimant from teaching was the right one; by his conduct the Claimant had demonstrated he posed a risk to the safety and welfare of the [school] children he taught."

14. It is also worth noting that Mr Justice Nicklin did find that the Defendant was entitled summary judgment on the claim brought by the Claimant over the print version of the article. It is also worth noting that at Paragraph 51 that Mr Justice Nicklin made clear that Paragraphs 50(i) to ruling (iii) are rulings as to the *capacity* at the words complained of to bear meanings that are defamatory [of the Claimant]. Determination of the *actual* meanings the words complained of bore would fall to be resolved, if the claim continues, at a later point together with consideration of serious harm under Section one of the Defamation Act 2013.

15. The Defendant challenged the meanings as being defamatory to the Claimant and also maintains there is insufficient reference to the Claimant. In determining the issue of meaning, it is necessary to set out the context of the report in The Chronicle by referring to a little more about the background.

16. On 5 August 2013, the Claimant was employed as a lecturer in accountancy and finance at Newcastle College in its School of Health and Enterprise. On 4 November 2013 then aged thirty-eight years old, there were allegations of inappropriate behaviour towards Ms A made against the Claimant which related essentially to failure to maintain professional boundaries towards her including commenting on how she looked, sending her emails containing kisses; inviting her to lunch; making inappropriate physical contact by touching her hand and putting his arm around the back of her chair. It was alleged that this was sexually motivated conduct.

17. The complaint was initially dealt with internally and then referred to the NCTL which was then an executive agency of the Department of Education although on 1 April 2018 it was replaced by the Teaching Regulation Agency "the TRA" which has the responsibility of regulating the teaching professional including misconduct hearings and the maintaining of the database of qualified teachers. The NCTL in a Determination in late February 2016 found that the Claimant had behaved inappropriately towards Ms A and that the behaviour was sexually motivated and he was found guilty of unacceptable professional conduct for which the panel recommended an indefinite Prohibition Order. The recommendation was accepted by the Defendant on 29 February 2016 the authorised decision-maker being Ms Millions.

18. As indicated above, the Claimant appealed to the Administrative Court and Mrs Justice Andrews ruled in his favour although the observations in relation to the underlying proceedings were also relevant findings, as set out above. It is noteworthy that although Mrs Justice Andrews was highly critical of the Defendant in her findings on costs, she did not order the Claimant to meet the Defendant's costs, equally she did not find in favour in relation to the Claimant on costs essentially each party was required to bear its own costs. The Prohibition Order was set aside due to a lack of jurisdiction.

19. As a result of the proceedings in the High Court, there was media attention which related to an earlier article dated 15 March 2016 in The Chronicle, upon which the Claimant had previously unsuccessfully sued in defamation and the subsequent article dated 6 July 2016 upon which the Claimant also sued and which the online version remains for determination for reasons set out above. The hard copy version which was similar but not identical was published on 7 July 2016 upon which the Defendant obtained summary judgment.

20. The Claimant had initially brought defamation proceedings against Trinity Mirror but as set out above, Mr Justice Warby ruled against the Claimant in respect of the Trinity Mirror's (the first Defendant in those proceedings) application for summary judgment.

21. In determining whether the Defendant has established the words complained of are defamatory of the Claimant, the following evidential points are of relevance and emerge from the witnesses called on behalf of the Defendant:

    a) Press office comments such as that set out in the words complained are reactive and issued in response to a specific journalistic enquiry and are not proactively volunteered;

b) Press statement of this type arrives following a process involving up to four stages dependent upon whether the Defendant has won or lost and are then amended after judgment in light of advice received and if necessary a response is drafted to a specific enquiry before being approved by special advisors if necessary;

c) The statement sets out the official position of the Department for Education and is not, nor is it intended to reflect, the individual opinions of any particular press officer (even if they held that belief);

d) The comment was stated to be a general one aimed conveying the disappointment at the outcome of the case with the purpose to reassure the public of the NCTL and the Department for Education's commitment to protecting those in education and did not intend to be a comment on the specific facts of this case;

e) Media responses of this nature seek to meet the duty of transparency to the public and help with accountability.

22. Meaning guidelines were set out in the leading case of ***Jeynes v News Magazines Limited*** **[2008] EWCA Civ 130** at Paragraphs 14 and 15 and have been summarised in ***Koutsogiannis v Random House Group Limited*** **[2019] EWHC 48 (QB)** at Paragraphs 11 and 12 of which I have selected only the most relevant ones:

> (3) Over-elaborate analysis is best avoided.
>
> (7) In delimiting the range of permissible defamatory meanings, the Court should rule out any meaning which "can only emerge as the produce of some strange, or false, or utterly unreasonable interpretation".
>
> (8) It follows that "it is not enough to say that by some person or another the words might be understood in the defamatory state".
>
> (9) It is necessary to take into account the context in which it appeared.

23. I agree with Ms Michalos' submissions namely that the Defendant is only responsible for the wording of the quote. It is not responsible for any errors or misleading aspect of the context in which it appears. Where a person ("a source") issues a press release or gives a quote to a journalist for publication (the "source material") and that source material is included in an article. I therefore find that the principles that should apply in determining meaning and the source liability for the republication are as follows:

a) The starting point is that the source material should not be looked at in blinkers as if the rest of the article did not exist: ***Alsaifi v Trinity Mirror*** **[2017] EWHC 1444** per Warby J at Paragraph 65;

b) However, if the article read as a whole does not bear a defamatory meaning, the Claimant may not artificially select only the source material in order to assert a defamatory meaning which in context the words do not bear: ***Monks v Warwick District Council*** **[2009] EWHC 959 (QB)** at Paragraph 12 to 14;

c) The source cannot be held responsible for inaccuracy, spin or additional material added by the media publisher which alters the meaning of the source material to make it defamatory (or more seriously defamatory) than it was in isolation: ***Alsaifi v Trinity Mirror*** **[2017] EWHC 1444** supra per Mr Justice Warby at Paragraph 65 and ***Economou v de Freitas*** **[2017] EM.L.R.4** for Warby J at Paragraph 17;

d) The source is entitled to assume that the source material will appear in the context of an account that is fair and accurate; ***Alsaifi v Trinity Mirror*** supra per Warby J at Paragraph 65;

e) If the account is not "fair and accurate" then the effect is to give source material a defamatory meaning that it would not otherwise bear, the source should not be held liable first because he is not liable for the media publishers inaccuracy which is beyond his control; secondly because a person cannot be held liable for republication he did not intend, authorise or foresee and thirdly as it would be contrary to Article 10 of the European Convention on Human Rights for a party who makes a non-defamatory press statement on a matter of public interest, for example a court decision to be held liable as a result of legal failings by the media in the reporting of that statement.

24. It did not appear that the Claimant made any submissions about inaccuracies save for observing, as I think is the position, that one of the Defendant's witnesses, Michael Murphy-Pyle appeared to make an error in an internal email exchange by assuming the Claimant had admitted inappropriate behaviour, which he denied and which does not appear to have been the case but made clear in evidence that whether or not he had admitted the behaviour would have made no difference as to the wording or the words contained within the press statement but in any event did not find its way into the four sentences contained within the article upon which the Claimant has sued.

25. Having considered the matter with considerable care and taken into account all the evidence including not just the witness statements, but also all the documents contained within the trial and supplementary bundles including the internal emails, I find the words are not defamatory of the Claimant and the first sentence which clearly relates to the case does not import sufficient reference to the Claimant to affect the remainder of the four sentences.

26. In reaching that decision, I note that the first sentence complained of as against the Defendant makes reference to its disappointment with the High Court's judgment. It is obviously clearly referable to the decision in the Claimant's case but I do not find that it refers directly to the Claimant in the sense that for a cause of action in defamation the words must be "of the Claimant" and is in fact merely an expression of disappointment about the resolution of the case itself. I do not read into the Defendant's expression of disappointment in losing as being the same as a statement that the Court was in any way wrong in its conclusion. The remainder of the quotation from the spokesperson is merely general observations in defence of NCTL policy in procedures and not directed to the Claimant at all either in substance or in form.

27. The quote in the first sentence is a response to the Court's criticism and the adverse (to some extent) costs order and not actually about the Claimant himself. I find that any suggestion that the Claimant's contended meaning that his successful in his appeal is disappointing *because* he might not meet the required standards by NCTL towards the safety and welfare of children is a highly strained meaning thereby contravening the ***Jeynes*** guidelines as explained by Mr Justice Nicklin in ***Koutsogiannis*** which the words do not bear.

28. I find that the words meaning summary that the NCTL were disappointed with the High Court's judgment; it insists on the highest standards of conduct from all teachers and school staff as nothing is more important than the safety of children; the NCTL is confident that its policy and procedures are robust and ensure just handling of cases of teacher misconduct and in each case referred to Professional Conduct Panel is considered in line with the legislation and supporting advice in the circumstances surrounding each individual case.

29. In respect of the contention by the Claimant that the words complained of within the article bear a defamatory meaning relating to minors, namely those under sixteen, schoolchildren, that conclusion I find would be strained and incorrect to attribute this to the Defendant as not only was Ms A in fact seventeen years old as Mrs Justice Andrews made clear but that the Defendant is entitled to assume that the statement will appear in a fair and accurate report including the accurate age of the Complainant and that there was a lack of jurisdiction because it was adult education. I do not find that the article was misleading as to Ms A's age or to the nature of the education, so it is not even necessary to consider whether that would be the fault of The Chronicle and in reliance upon the fact that I do not find the article to be misleading, I note the headline which makes reference to an ex-college lecturer making 'sexual' advances on a student noting that college, lecturer and student are not words applied to education of those under sixteen and that classroom in this context is typical newspaper language of headline shortening without altering the meaning and that within the article reference to college tutor, lecturer, teenage student as well as the repeated use of the word college and the photograph showing that the Newcastle College is as so described, they are words associated with higher education beyond compulsory school leaving age. It is also worth noting that words making reference to the pupil A studying part-time must relate to a student over the age of sixteen years of age as the school leaving age for full time education is sixteen years, which the Claimant accepted in submissions.

30. I find that the words do not suggest the High Court was wrong or that the Claimant was in fact guilty of the in appropriate conduct and does not make any suggestions in that regard one way or the other and is merely an expression of disappointment about the outcome of the case with general observations about policy and procedure.

## Serious Harm

31. By reason of my finding in relation to meaning, it is strictly unnecessary to make any findings in relation to serious harm but I was asked by the parties to do so in any event which I set out below.

32. Section 1(1) of the Defamation Act 2013 provides that the statement is not defamatory unless its publication has caused or is likely to cause serious harm to the

reputation of the Claimant. In addition, there is the requirement that the words are defamatory of the Claimant in the sense that there is reference to the Claimant as set out above. In ***Lachaux v Independent Print Limited*** **[2017] EWCA Civ 1334** at Paragraph 50, the Court of Appeal held that "it is likely to cause serious harm" means a tendency to cause serious harm. Section 1(1) of the 2013 Act had the effect of raising the bar from the former test of "substantially affecting" a person's reputation to one of seriousness per Lachaux at Paragraphs 36 and 82.

33. Given my findings above, I find that the words complained of do not affect the Claimant's reputation at all. At most, it could be said that the words acknowledged in the first sentence that he won the case. I therefore find under the Section 1(1) of the 2013 Act, the serious harm threshold test is not met. It is important to distinguish between the seriousness of the imputation itself and whether there is a sufficient case established on serious reputation or harm, in other words between serious harm caused by a publication and the consequences of the publication: see Lachaux at Paragraphs 27 and 42. As I have indicated above, I am not satisfied that the words provide a required reference to the Claimant; bear a defamatory meaning and that the threshold test for serious harm is met but in any event I do not find that there has been or could be any serious harm "caused" by the publication of the Defendant's words in this article. I find that any harm that derives from it as a whole comes from the publicity given to his behaviour and the judgment of Mrs Justice Andrews making reference to the underlying procedures and findings. In cross-examination, the Claimant accepted that the earlier Chronicle article of 16 March 2016 accurately summarised the allegations made by Ms A and that that article remained online because his defamation claim against Trinity Mirror had been defeated. In respect of this article, he accepted he wanted the entirety removed from the internet, strongly suggesting the reputational issues related to the description of his behaviour and not the alleged two paragraphs complained of. He accepted he was still annoyed with the other parts and that even on his version of events that the majority of his complaint related to the parts that he did not sue upon. I find that it is the wider publicity the Claimant complains of from in respect of a recent job which he did not complete two months at because his line-manager came across what was online and maintained that that employer (N Power) unfairly dismissed him because of what was online and nothing else. If that was right and I find that it was correct, the dismissal could not be attributed to the quote from the NCTL spokesperson and was certainly as a result of the online publicity given to the underlying allegations. I make that finding adverse to the Claimant's oral evidence in which he sought to maintain that it did relate to the two paragraphs noting that he failed to provide five years of references and did not choose to tell his potential future employer about the allegations and noted the Claimant's evidence that he had no evidence of a link between the two paragraphs and his dismissal.

34. I also note from the NCTL procedures that Ms Barbara King, the director of health and enterprise at the college indicated she believed the Claimant's actions towards Ms A did amount to gross misconduct and was going to recommend termination of his employment before which the Claimant chose to resign although he refused in oral evidence to accept any suggestion that if he was being full and frank with a new employer he would need to disclose this information.

35. I also note Mrs Justice Andrews found that the NCTL procedure was conspicuously fair and if it had power to refer the matter to the panel "its finding would have been unimpeachable" and concluded that the two young women complainants were truthful and that the Claimant's behaviour was "undoubtedly conduct of a time that would trigger alarms in the minds of those who were concerned to protect sixth-formers or teenagers that he might be teaching in future". The Claimant maintained that Mrs Justice Andrews findings related only to emails which I find is not correct, see for example Paragraphs 15, 23 and 32 to 33 of her Judgment.

36. It is also worth noting Mr Justice Warby describing the Claimant's success in the appeal before Mrs Justice Andrews as success on a "technicality" as Paragraph 83 finding for him only for him on the jurisdiction issue and "did not acquit him of the conduct which the panel had found proved". Mr Justice Warby concluded that "in substance therefore, so far from vindicating Mr Alsaifi, the Judgment of Andrews J tended rather to make the matter worse from his perspective".

37. The overall conclusions of Mrs Justice Andrews and Mr Justice Warby are to the effect that the Claimant was not acquitted of the conduct complained of and that even if the words had borne the Claimant's meaning, which I do not find, he should only be compensated for injury to the reputation he actually possessed and that in the circumstances he would not be able to establish any "harm" had been caused to his reputation by the publication of the four sentences complained of as against the Defendant. I find that the Claimant's reputational problems stem wholly from the allegations made against him by Ms A and the fact that Mrs Justice Andrews concluded there was no basis to impeach the findings in respect of those allegations and the reporting of these facts and that Mr Justice Warby noted the technical nature of his successful appeal. I therefore do not find that anything within the four sentences meets the serious harm threshold to cause the Claimant to suffer serious harm within the definition of Section 1(1) of the Defamation Act 2013.

## Qualified Privilege

38. By reason of my findings in relation to the issues of meaning and serious harm, it is unnecessary to make any findings in relation to the issue of qualified privilege but as I have been invited by the parties to do so, I shall also rule in respect of that issue. The Claimant's position on qualified privilege which I asked him to clarify on a number of occasions, mindful that he was acting in person and that English was not his first language (although he managed extremely well throughout the hearing) was that he accepted in general the Defendant was entitled to respond to criticism made against it in the course of High Court judgment and to respond to an "attack" on its decisions in the form of judicial criticism and anticipated media criticism but maintained that in the particular circumstances of the present case, the Defendant should not have done so. The Claimant accepted that he had not pleaded malice, which he did not pursue at the trial and recklessness which he sought to pursue but as he had not raised recklessness in the pleading and was only making an application to amend the pleadings to plead recklessness once all the evidence had been completed, it was too late to grant the application to adjourn the case for fourteen days and that it would be contrary to the overriding objective bearing in mind fairness between the parties for the Claimant to be permitted to make that amendment so late in the day, particularly as the Claimant accepted he was fully aware of the decision of Mr Justice Warby in which he had already set out to the Claimant that not only had he not pleaded

recklessness hitherto but that it was a high threshold test (see Paragraph 84). The issue on qualified privilege was therefore a very narrow one.

39. In ***Alexander v Arts Council of Wales*** **[2001] 1 1WLR 1840** at Page 1845, a defence of qualified privilege succeeded at first instance (and was not challenged on appeal) on both a general duty/interest basis and a reply to attack basis holding that there is a duty on a body to explain actions in relation to matters of public funding and/or communicate a response to a published "attack" on its decisions here in the form of judicial criticism. It was not suggested that this a case where there is any basis to assert publication was not in compliance with public law duties or was disproportionate and there was clearly a corresponding interest in both the media and the public receiving the communication. I find that the Defendant would succeed in its defence of qualified privilege for the following reasons:

    a) The NCTL was the regulator for the teaching profession and was responsible for the quality teaching profession by ensuring that in cases of serious professional misconduct, teachers are prohibited from teaching;

    b) Allegations of professional misconduct by teachers and the processes for investigating, dealing with and disciplining teachers accused of misconduct particularly as against pupils are a matter of public interest;

    c) The NCTL had been criticised by Mrs Justice Andrews directly and the effect of her judgment was that the Prohibition Order had been made when there was no jurisdiction to make it; had to be set aside and that the Claimant's behaviour was undoubtedly conduct of a time triggering alarms in the minds of those who were concerned to protect sixth-formers or teenagers that he might be teaching in future.

40. The Claimant accepted generally that the NCTL was entitled to respond and reassure the public although claimed that in his case the entitlement should not have happened without giving any reasons why. The Defendant and the NCTL had been criticised by the Court and had a somewhat adverse costs order made against them, to be paid out of the public purse and the teacher whose conduct had been criticised and was subject to adverse findings by the panel was no longer the subject of a Prohibition Order which had been set aside which I find raised a legitimate question as to whether the policy in procedures enforced to regulate the teaching profession were fit for purpose which was a matter of public interest. I rely principally upon the evidence of Mr Murphy-Pyle that the Defendant needed to make clear the issue concerning the High Court was procedural rather than issues with the evidence of inappropriate behaviour from the Claimant's evidence as to how and why it chose to specifically comment in response to a specific enquiry from a journalist reactively.

41. I find that there was nothing about this particular case which distinguished it from the general duty upon the Defendant and the NCTL to respond to legitimate press enquiry about the judgment of the High Court both in response to judicial and potential media criticism in order to account for and explain its policy in procedures and to defend the decision to contest an appeal at public cost which it lost. The media specifically The Chronicle and the public generally had an interest in receiving that response to note

the Defendants lost the case on the jurisdiction issue but wished to reassure the public of its general procedures and policy needed to respond to the published attack in the form of a judicial criticism and in reasonable anticipation of an attack by the media upon the Defendants and the NCTL conduct and that the media recipients and the public generally had an interest in receiving a response to that attack.

42. In all the circumstances, I find that the Defendant succeeds in its defence in respect of the issues of meaning (in reference to the Claimant); serious harm and qualified privilege and I thereby dismiss the Claimant's claim on all three grounds.

43. I shall now hear the parties in respect of any consequential Orders.

44. The result in respect of the claim is that the Claimant's claim against the Defendant is dismissed because the words are incapable of bearing a meaning that is defamatory of him; that he has failed to meet the test of serious harm and that the defence of qualified privilege is made out.