IN THE HIGH COURT OF JUSTICE **Claim no: 3SA90091**
SWANSEA DISTRICT REGISTRY

BEFORE HIS HONOUR JUDGE SEYS LLEWELLYN QC
SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

BETWEEN:-

STEPHANE (STEVE) PARIS (1)

ANGEL GARDEN (2)

Claimants

and

ANDREW LEWIS (1)

MELANIE BYNG (2)

Defendants

Judgment
14 July 2015

1. This is a claim in defamation. The original Particulars of Claim were pleaded and drafted by the Claimants themselves and included claims under essentially five heads, of fraudulent misrepresentation as to reputation, harassment, breach of the Public Order Act, defamation, and/or fraud contrary to the Fraud Act. The Particulars of Claim, of January 2014, ran to some 55 pages with a further 64 pages of exhibits. However the Claimants were later represented by specialist counsel and solicitors, and Amended Particulars of Claim were served, with the permission of the court, making claim in defamation only.

2. The Claimants had ceased to be legally represented on 14 January 2015 and attempts at mediation up to that date were not successful. On 2 February 2015, at the Pre Trial Review, I heard an application by the Claimants to re-introduce a claim of harassment in preparation for trial listed to commence on 16 March 2015. For the reasons given in an oral judgment on that date, I refused permission to re-introduce any claim of harassment.

3. I heard evidence on 16, 17, 18, 19 and 20 March 2015. I directed that there be written submissions sequentially by the Defendants and the Claimants. In order to cater for the Claimants' commitment to their children I permitted a longer period for the Claimants' written submissions than would be ordinary, and accordingly the Claimant's written closing submissions were lodged with the Court and then received by me on 20 April 2015. I then received further written submissions from the Defendants in reply on 6 May 2015 and a further written response from the Claimants on 8 May 2015.

5. Dramatis Personae. The First and Second Claimants are married. The First Claimant is a freelance writer and film maker. The Second Claimant, in her own words, is an artist, film maker, freelance writer and publisher, and disabled mother of three young children. Each was familiar with posting material opinions and arguments online, whether via blog or website, or comment on another's blog, or by tweet on Twitter.

6. The First Defendant, Doctor Andrew Lewis, is a business consultant, who publishes a blog at www.quackometer.net ("Quackometer"). This is a blog published by him personally which he describes as publishing content primarily relating to pseudo scientific and superstitious health beliefs and in the past few years also about Steiner/Waldorf education, on the issue of it being publicly funded.

7. The Second Defendant, Mrs Melanie Byng, describes herself as a homemaker, who from 2009 until 2013 campaigned against the state funding of Steiner schools in England, campaigning and writing as a private individual and former Steiner parent, under the pseudonym *ThetisMercurio*.

8. The action was originally brought against a Third Defendant also, Dr Richard Byng the husband of the Second Claimant. Notice of Discontinuance against him was served and a sum was paid to him by the Claimants in settlement of the costs for which they were responsible against him. Dr Byng is a GP and researcher with a particular interest in primary care mental health and was at

material times a Professor researching and lecturing at Plymouth University Peninsular Schools of Medicine and Dentistry.

9. As of 2011 both the Claimants and the First and Second Defendants were vocal critics of Steiner/Waldorf schools and "Steinerism", namely the philosophy (if that be the right word) and system of beliefs and or practice handed down from the writings of Rudolph Steiner. The criticism was published electronically.

10. It is common ground that Quackometer is a much followed blog, which the First Defendant describes as typically having about 20,000 unique page views a month with a peak readership of 100,000 in one month. In addition he published a blog on the "Posterous" site, a site closed by its owners in April 2013. He published on Twitter under the handle "@lecanardnoir", which he described as having 8,579 followers as of January 2015.

11. The Second Defendant described her Twitter account as having 1,022 followers as of February 2015. It is common ground that until November 2011, all of her campaigning activities were anonymous and publicly she was only known by her Twitter handle, namely *ThetisMercurio.*

12. Background. The Claimants are a couple, with children aged 13, 9 and 7 at the date of institution of proceedings in January 2014. They were formerly resident in New Zealand where their children attended the Titirangi School, which was a Steiner School. They made strong representations to the school about bullying of one of their daughters which they considered was being left unchecked. The school did not respond in a way satisfactory to them and when the Claimants protested vigorously the school excluded all their children, including a younger child who was happy at the Kindergarten there, the school asserting that this was because of the Claimants' own actions. As of April 2011, the Claimants were in Europe, following the diagnosis of lung cancer in the mother of Angel Garden the Second Claimant. At that date the dispute between themselves and the school, and a complaint made by the Claimants to the Human Rights Commissioner in New Zealand, had not come to a conclusion.

13. The initial contact between the Second Defendant and, in particular, the Second Claimant was cordial. Initially the Second Defendant exchanged comments with the Claimants on a blog run by Alicia Hamberg (a twitterer/blogger on, amongst other matters, Steinerism). The Claimants communicated with her by Twitter direct message. The Second Defendant disclosed her identity to the Second Claimant, exchanged emails, and met her in June 2011. It is common ground that she was at that stage supportive of their wish to publish their views and experience of a Steiner school. She hosted the Claimants for a night so that they could visit a school which their son (Joe) had attended for 3 years; facilitated a meeting with one of the co-founders of that school; and in particular the Second Defendant offered to have the eldest daughter of the Claimants stay at the home of her and her husband if they wished in order to attend a trial week at the school and if they could not find alternative accommodation.

14. Equally the Claimants asked the Byngs if they would like to visit them in the house they had purchased in France and, perhaps fatefully, it was arranged for Joe to stay 2 or 3 weeks with the Claimants both to assist them at a time when Ms Garden planned to visit her mother, terminally ill, in England; and for him to improve his French.

15. In addition the Second Defendant had suggested an education website, the Local Schools Network ("LSN"), as a site which might be interested in publishing an article relating to the Claimants' campaign in relation to Steiner schools and their own experience at the school in New Zealand.

16. The son of Dr and Mrs Byng did go to France, but his stay was suddenly truncated.

17. It suffices to say that the Second Defendant and Dr Byng received and fully accepted complaints by email from their son, which I might call predominantly "teenage" complaints (at least at first), they sought the assistance of the First Claimant for his sudden return, and they took a critical and offended view of the First Claimant's response and the reaction of the Second Claimant to this development; and that either then, or later, the Claimants took a critical and offended view of the abrupt truncation of the stay and of the immediacy with which his return was demanded.

18. At trial each side probed the actions and responsibility of the other. At the outset of and during the hearing I made it plain that I would not be making any findings of fact as to which side, if any was at fault in their behaviour in respect of the truncation of stay itself or events immediately thereafter.

19. In answer to my own questions, the Second Defendant told me that, in that intense period of discussions, at one point she had been fearful of the safety of her son's return. Whether or not that was objectively justified, (which I very much doubt), I am satisfied that she did in fact develop genuine apprehension on this issue. There was also mutual recrimination in relation to when, and by whom, a top up to a return air fare should be paid on the part of the Byngs, the First Claimant in fact collecting it from the teenager himself, immediately before he boarded the flight home.

20. On the day of their son's return, the Second Defendant received an email from the Second Claimant referring to phone messages, "I remember being surprised and alarmed that Ms Garden made no reference to the difficulties relating to Joe's visit or that we might be upset by them. It did not seem like normal behaviour. I had in fact been worried for my son and dismayed by how angry the Claimants had been with him. I therefore made a decision not to respond to Ms Garden's subsequent emails. I did not want to engage with[sic] any further and set my email account so that her emails went directly into my spam folder. Moreover at this time Mr Paris telephoned our home on a number of occasions. We did not speak to him." (witness statement paragraph 14). Dr Byng says the same thing, "They tried emailing Melanie and texting us both and left answer phone messages which we decided not to respond to".

21. In contrast, the First Defendant had no direct contact with the Claimants at any point, save that they attended a talk which he gave at a "Skeptics in the Pub" meeting in Bath on 14 May 2013. The first contact of any kind was one attempted by the Second Claimant, Ms Garden, on 27/28 February 2012, when she tried to leave a comment on his blog post entitled "Frome Steiner Academy: Absurd educational quackery". To put matters neutrally at this stage, the Second Claimant became highly critical that her comment was not published on that blog, and, then and since, has regarded it as censorship of her and of her views on Steiner.

22. The publications complained of. As of 25 March 2014, the claim had resolved into an action in defamation against the First and Second Defendants in respect of the following online publications only:

    (i) On 9 November 2012, the First Defendant posted a blog (on the now defunct website www.posterous.com); and re-posted it in April 2013 on the Quackometer blog;

    (ii) The Second Defendant posted 3 tweets dated 9 November 2012 linking to the blog post of 9 November 2012 on Posterous;

    (iii) The Second Defendant posted a further tweet dated 10 November 2012;

    (iv) The First Defendant posted a tweet dated 15 May 2013;

    and

    (v) The First Defendant posted a tweet dated 20 May 2013.

23. An outline of the relevant law. I consider it helpful to set out certain basic principles in outline.

24. It is trite that in a claim for defamation the Claimants must assert and prove that (i) words were published in the jurisdiction of the Court; (ii) those words referred to and were understood to refer to the Claimants; and those words were defamatory of the Claimants, i.e. they would lower the reputation of the Claimants in the eyes of right thinking persons. In the present case, I do not consider it necessary to explore the nuances of slightly different expressions of this principle in the reported cases.

25. Publication requires that the words must have been read and understood by a third party within the jurisdiction. All of the publications concerned in this case were made online.

26. The authors of the current edition of Gatley state that, "Where material has been issued to the public within the jurisdiction in the form of a book or newspaper, the Claimant is not required to read or prove publication to particular persons. But the same is not true of publication on a website. There may be evidence as to how many times the material was accessed or it may be

legitimate to draw an inference about that from the circumstances, but there is no presumption of law that in such a case there has been a substantial publication within the jurisdiction". (In support of that the authors refer to the authorities of *Al Amoudi –v- Brisard* [2007] 1WLR 113 *Nationwide News Pty Ltd –v- University of Newlands* [2005] NZCA 317 *Crookes –v- Yahoo* [2008] BCCA 165 and *Kaschke –v- Osler* [2010] EWHC 1075 (QB)).

27. In the present case the Defendants accept that an inference of publication can be drawn in respect of the blog post on 9 November 2012; but in the case of each tweet they required, in their pleaded Defence, in correspondence before trial, and at trial, the Claimants to prove that words were published to any third party and the identity of any such third party. There is no pleading in respect of this issue by the Claimants, who assert in their evidence and submissions that it is inherently likely that others will in fact have read the publications.

28. The witness statement of the First Defendant, Dr Lewis, sets out in some detail what he said was the factual working of Twitter. The Defendants rely on this in support of argument that it is less likely, or in this case improbable, that a re-tweet (a re-posting of a tweet by another Twitter user) or an "@reply" (a tweet directed by one user at another user) will in fact have been read by a third party. I return to the detail below.

29. The matter is of potential importance, in the modern law of defamation, since originally publication to a single third party sufficed, but in *Jameel –v- Dow Jones* [2005] QB 946 the Court of Appeal explored the rationale or purpose of the tort of defamation, namely to vindicate a Claimant's reputation; and a claim may be struck out (or, logically, fail at trial) if the Claimant's reputation has suffered no, or only minimal, actual damage and damage is so slight because of the publication alleged and/or provable that the court considers it is an abuse of process to sue upon it. Lengthy citation from *Jameel* is not necessary: the question is whether the case is one where "the game will not merely not have been worth the candle, it will not have been worth the wick".

30. As to the requirement that the words referred to, and were understood to refer to, the Claimants, the Defendants accept that this is so in respect of the blog post, and the tweets of 9 November 2012 and 10 November 2012. The tweets of 15 May 2013 and 20 May 2013 do not directly refer to the Claimants. In such a case a Claimant is required to prove that the words would have been understood to refer to him or her because of circumstances which are extrinsic to that expressed in the words which are complained of as defamatory. Any detailed exploration of this principle may be deferred to later in this judgment.

31. As to the requirement that the words are defamatory of the Claimants, the single meaning of the words is a matter for the tribunal of fact, in this case the trial judge, and the principles applicable to a ruling on meaning are well settled. It is convenient to set them out here, summarised by Sir Anthony Clarke MR as follows,

> "The legal principles relevant to meaning have been summarised many times and are not in dispute…. They may be summarised in this way:
> (1) the governing principle is reasonableness.
>
> (2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning when other non defamatory meanings are available.
>
> (3) Over elaborate analysis is best avoided.
>
> (4) The intention of the publisher is irrelevant.
>
> (5) The article must be read as a whole, and any "bane and antidote" taken together.
>
> (6) The hypothetical reader is taken to be representative of those who would read the publication in question."

Perhaps self evidently, the principles are to be applied to each publication independently.

32. The Defendants also rely on the defence of justification, namely that it is a defence for a Defendant to establish that the imputation of the words in respect of which they are sued is substantially true. The burden is on the Defendant. The test is an objective one. It is the facts as they were, not the facts as they appear to be to the Defendant or some other observer, which must be proved. If the truth of the facts alleged can be proved, the motivation of the Defendant in publishing the words complained of is irrelevant. Consideration of the principles in greater detail may sensibly be deferred to later in this judgment.

33. The Defendants also assert a plea of qualified privilege, namely that the words complained of were published on an occasion attracting "reply to attack" privilege. Conceptually, this is an illustration only of the qualified privilege which has been traditionally recognised where the author has an interest in expressing a view or assertion of fact in respect of a matter. The essence of the privilege is that a person whose character or conduct has been attacked is entitled to answer that attack.

34. It is required that any defamatory statements the Defendant may make about the person who attacked him be published bona fide, and are fairly relevant to the accusations made. They must be proportionate in terms of subject matter and scale and the nature of publication; mere retaliation is not protected, the reply must be some kind of explanation or answer to the attack. However "the Defendant is not required to be diffident in protecting himself and is allowed a considerable degree of latitude in this respect" (Gatley current ed. at 14.51).

35. The reply should not be an attack upon a Claimant's integrity unless it is reasonably necessary for defending the Defendant's own reputation. If qualified privilege against attack is established by a Defendant, it may be defeated but only if the Claimant is able to prove malice on the part of the Defendant, namely lack of honesty or bad faith, and not simple inaccuracy, or even carelessness. Further reference to or application of the principles is deferred to later in this judgment.

36. The factual background in more detail.

37. As I have related above, once their son returned to this country, the Second Defendant and her husband declined all further contact, although contact was attempted by the Claimants. As the Second Claimant would put it, the Second Defendant "turned on a dime" notwithstanding that she had been supportive of the Second Claimant until then, and as late as the Saturday emailed discussions as to her son's proposed early return had by email still been maintaining the offer in respect of the Claimants' daughter ("I'm sorry you won't get your evening [an evening off with the First Claimant, babysat by Joe] which I'm sure you really ought to have after the last few days, but we're still here for Ruby and yourselves if you do look at Sands [the school Joe had attended]" (email 13 August 2011 5:02.34pm).

38. The return of Joe from France was on 16 August 2011. On 29 August 2011 the Second Claimant posted an article on LSN, a website which the Second Defendant had previously suggested to her.

39. There ensued a lengthy, and intense, discussion in particular between Alicia Hamberg and the Second Claimant, running from 2 September 2011 to 11 September 2011. Alicia Hamberg was a Steiner critic who had her own blog, whom the Second Claimant describes as

> "a Steiner critic friend of Mrs Byng's, who had also encouraged others to read our publications in the past and on whose blog [the Second Defendant] was a regular and prolific commentator. [Ms Garden continues:] Two victimising vituperative and openly sectarian threads then quickly appeared on this blog and it was the exact people Mrs Byng had warned who then immediately made these attacks" (Second Claimant witness statement, paragraphs 27-28).

This is a reference to emails revealed on disclosure, including one on 30 August 2011 from the Second Defendant to Alicia Hamberg and two others which I cite in more detail below, but which suggested that they treat [the Claimants'] advances with caution, and urged that the Claimants were "not entirely trustworthy"(e.g. C7-3495 at tab 28).

40. The firm conviction and belief of the Second Claimant is, and has been since September 2011, that the Claimants have been "mobbed threatened and flamed" by Alicia Hamberg and other Steiner critics. By this she means that she and her husband have been subjected to attack upon their character arguments and or opinions in a vituperative and victimising way, and by

persons mutually ganging up with each other in order to belittle and or dismiss the Claimants from debate on Steiner schools. She is further insistent that this was organised, prompted, and or supported by the Second Defendant.

41. As to the 'mobbing threats' on the blog of Alicia Hamberg, the Claimants accept that the Second Defendant did not make any post on that blog; but in the words of the original Particulars of Claim drafted by the Claimants,

> "During these mobbings, however, she failed in her duty to speak about the contracts she had initiated with the Claimant and failed to honour, although commenting on other threads on that blog while it was occurring and the mobbings, as well as tweets, show how the Claimants were targeted progressively more and more illogically for their approach to the shared interest, the very same qualities and actions that had been lauded by the same people so recently…. This silence [by the Second Defendant] concerning the true facts regarding contracts initiated by the Second and Third Defendants to the Claimants has had the effect of giving wide justification, for denying the Claimants ordinary democratic inclusion on the public platform of their shared interest, and led directly to a widespread sectarian campaign of harassment by many people over a long period of time" (Particulars of Claim paragraphs 8, and 11).

42. Thus in the Claimants' skeleton argument for trial, they say "Being new to social media, our reputation was doing very well, even with the Second Defendant, until personal initiatives of her own, which she claimed to others had nothing to do with Steiner education prompted her to try and destroy everything about us, including our work in that field and to incite many others to join her in doing so, including the First Defendant" (paragraph 7). They put the matter forcefully, "The creation by Melanie Byng of Ms Garden into a type of fetish, to be worried over, dissected and destroyed with her gang, makes this very unlikely [namely that people did not see the tweets of May 2013]" (skeleton argument paragraph 83).

43. I consider that a structured approach is the most helpful to deal with the issues, in sequence whether there has been publication, (including the *Jameel* point), whether in each case there is a defamatory meaning, whether the words complained of are true in substance and in fact, whether reply to attack qualified privilege is established, and the issue of malice.

44. That said, individual factual episodes can be revealing to the Court where each side accuses the other of being the source of attack, and says their own actions publications and/or responses are in self defence against those attacks.

45. I have been able to reflect on the large volume of material and, on stepping back, I consider that certain episodes in this case are revealing.

46. The first episode is the article by the Second Claimant posted on the LSN on 29 August 2011 and the exchanges which followed between her and in particular Alicia Hamberg. The Claimants considered it helpful, proper, and liberating for there to be filmed interviews giving the accounts of Steiner parents, but using actors to express their views; and had (strong) views on whether those who considered themselves injured by the actions of Steiner schools should or should not remain anonymous. Alicia Hamberg, albeit herself a Steiner critic, adopted the opposite view. The posted exchanges, over some 10 days, run to 30 pages or so.

47. It would be unmanageable to set these out in undue detail in a judgment of proportionate length. I have nonetheless considered them in full. The competing views on the use of actors in videos, and/or maintenance of anonymity or not, are ones on which competing views may rationally be held on either side. The early exchanges are nothing more than forthright in expression. The expression of views then becomes more and more heated on each side, in response to the immediately preceding comment of the opposing individual. It is not for the court to express an opinion on which of the views is to be preferred. Each is tenable. To the dispassionate observer, the manner of expression of the views becomes increasingly more angry and intemperate.

48. Illustratively, (in exchanges starting at B2/110-140), in answer to the views of Alicia Hamberg, the Second Claimant writes, "You haven't answered any of our questions which makes us think that something else must have happened to make you so hostile". At B2/118, Alicia Hamberg writes "For the umpteenth time I want to caution people to participate in your projects because I don't think it is a good idea and I think that they might regret it". The Second Claimant then expresses greater offence and anger that Alicia Hamberg does not share the Claimants' views. In turn, by 03 September Alicia Hamberg is writing, "I think you should be careful and shut the fuck up. I don't need to spend my time arguing with people who can't accept that I don't think highly of their project. You'll just have to live with me saying that people should be cautious about getting involved in this. Your behaviour proves that my warnings were right" (B2/121/1). The reply of the Second Claimant, at 121/1 includes this, "But if you don't wish to speak for yourself, *please don't complain about the actor we find to play you*" (emphasis supplied). This has, in my view, the clear blush of a threat.

49. At any rate, despite the fact that the respective opinions on each side are rationally tenable, it is evident that the Second Claimant was angry and offended that Alicia Hamberg did not share and support her own views.

50. In my judgment the fact that Alicia Hamberg, and others, did not share her views, and expressed this in robust fashion, was taken by the Second Defendant to be an impermissible "mobbing" of her, almost from the outset.

51. By 22 September 2011, less than 4 weeks after the initial post on LSN, (B/2/128) the Second Claimant is writing on her ANM website "A Garden…. As an anonymous Steiner critic ThetisMercurio *joined in the mobbing by remaining silent* about circumstances known to her which may have had an

effect on whether criticism was seen to be justified and whether it continued…. Thetis and Alicia are good friends. We would like ThetisMercurio to come forward and explain why she did not [deter] her friend from mobbing us by using accusations such as that we are just out for ourselves, when Thetis knew perfectly well the reason I wrote the article and she could have stepped in and told the mobbers that which would at least have got them off that angle!" (emphasis suppliedB/2/128). Thus, at this very early stage, the Second Claimant was expressing a strong view that the Second Defendant was acting in an aggressive way towards her, and this simply by reason of the fact that she had not intervened positively to support her.

52. The second episode which I consider revealing is that of 27/28 February 2012, that of first contact between the Second Claimant and the First Defendant. The First Defendant had made a blog post entitled "Frome Steiner Academy: Absurd educational quackery". Ms Garden had tried to leave a comment on that blog post. The comment was not immediately published. Dr Lewis explained, and it was not seriously challenged, that his blogging software flags as potentially problematic comment which contains an internet link, as did the post of the Second Claimant. Thus it is flagged as needing to be reviewed before it will be posted. "Like many bloggers and online media outlets, I use a filtering system to try to prevent abusive, commercial or totally irrelevant material being posted in the comments to articles".

53. He stated that at the time the comment was received, he was in a rural area with relatives and had little access to the internet or mobile phone signal. This was explored with the First Defendant in cross examination, who gave considerable detail as to the fact that there had had to be a removal from one property which had been damaged, with an aged father-in-law in the generation above him and a busy 4 year old in the generation below. Thus, says the First Defendant, he was unaware for many hours that this comment was awaiting his attention. At trial, there was some exploration of whether this was so, or to what extent, but in the end as I understood it his factual account was not seriously challenged; and/or was accepted, at least by the First Claimant. In any event, I accept it as factually correct in respect of his location and restrictions on electronic communication.

54. The attempt to post the comment on the blog was made around 20:00 on 27 February 2012.

    At 20:30, the Second Claimant tweeted (including directly to the First Defendant) "I've just personally commented on yr latest #Steiner post. How long does it take 2 get through moderation? #Waldorf#news".

    At 21:04 the Second Claimant emailed via the blog challenging the First Defendant as to why her comment has not appeared on the website, cited his own moderation policy to him and concluded "From your statement above it would appear that not to post it would contravene your own parameters, as not being "in the good spirit of debate"".

At 21:15 the Second Claimant posted a further tweet (including directly to the First Defendant and two others) “Andy, my comment fits within yr criteria, why’s it still in moderation? #Waldorf #news #Steiner #quackery”.

At 21:58 the Second Claimant posted a further tweet (to the like recipients) “Still waiting 2 hear why my polite, factual comment is not posted 1½ hrs L8r #freespeech #HumanRights”.

At 22:31 there is a further tweet, “A blog-compliant comment [the First Defendant] doesn’t want you to read. [A link to the Claimants blog post]”.

At 22:50 is a further email via the blog “As it’s now been over an hour since I posted comment and you still haven’t allowed it through, would you be kind enough to drop me an email explaining why? … Not to address [the substance of the comment]… does put you into a very different category from that of ‘critical thinking quack-buster’ on which you are building your reputation. I am sure you are aware of this, and that to treat such a compliant comment with contempt cannot be said to be critical thinking. It is not your fault that there are such problems within Steiner criticism, obviously, but you still will be colluding if you censor knowledge of them, that is unavoidable and merely the same point you constantly make regarding the quackery of others”.

At 1:05 the next morning 28 February 2012 the Second Claimant tweets, “Is [the First Defendant] quacking by censoring this informative blog-compliant comment on his latest post? #muckreads #news ”. [The # here may relate to an investigative reporting site].

At 01:11 she tweets, [at a time when the blog has recorded a comment from one @JohnStumbles], “Well [he] has published your comment, but not mine. Hardly a skeptical position. #SkepticFail”.

At 02:43, there is a tweet “Is [he] quacking my censoring this information blog-compliant comment on his latest post? #muckreads #news”.

At 06:57 there is a tweet including directly to the First Defendant “Hi Andy, plz say why such high numbers R having to read a compliant, informative comment on yr #Steiner post elsewhere? #news”.

55. At 8:57 there is an email from the First Defendant to the Second Claimant: “I am in a very rural area right now and not staying in my house in the evening as severe cold weather recently burst a lot of pipes. As such, I have no internet connectivity in the evening. Your eagerness to jump to conclusions suggests a bigger agenda. And indeed, I am concerned that you may use my blog to attack other individuals. Comments are there to discuss my post – no other reason. I trust you will respond appropriately”.

56. This was a private blog site, not a commercial one employing staff such as might be expected to monitor comment continuously, eg, on a newspaper website. To the dispassionate observer, it is therefore very surprising that there should be as many as 9 communications from the Second Claimant in the first half a dozen hours, from 8.30pm to 2.43 (with others also posted, up to 6.57am the next morning), in which the author of the comments appears to leap rapidly to the suggestion of censorship on the part of the blog author.

57. There is then something of a lull, the Second Claimant emailing the First Defendant at 10:31 as to her wish to publicise the Claimants' situation as quickly as possible and to have the comment published, and asking at 18:47 by email "Before I get the wrong end of the stick again due to any lack of communication, can I ask you to clearly state whether or not you are now going to honour your comment policy and publish my comment or not?" concluding "Bearing in mind my earlier explanation, what possible reason could there be for you to censor the comment?".

58. At 19:48, as she tweets the First Defendant to ask why the comment 'is STILL in moderation' and at 20:48 she tweets to three others "Well [he] got back to me, but still refuses to post my comment. So much for critical thinking".

59. At 22:12 the Second Claimant emails the First Defendant "…. I can't see that it's unreasonable to assume at this point that you have pulled the comment and are actively censoring me…. Let me leave you with a question. What is your real agenda in apparently publishing to debunk Steiner Education but refusing to allow further evidence, which you have not covered, in the comments?"

60. On 29 February 2012 there are tweets respectively at 04:21 "Why did [he] go 2 extent of blocking my IP address 2 prevent me from posting a comment on this post? #muckreads"; at 04:28 "Evidence of gang mentality among sceptics, prepared to block, ban & censor awkward evidence #skeptic #allmed #bullying"; and at 04:54 "Finally managed to circumvent [his] anti-evidence blocks 2 publish a comment on his 'EB' website #muckreads".

61. At 07:53, "It wasn't our IP address [he] blocked but our email address, which he didn't get from us! Who gave him our addresses? #skeptic"; and at 09:21 a tweet "Oh wow! [He] has deleted several comments from the post, including ours. Very #Skeptic. Not! You've been rumbled mate".

62. This last comment reflects a cat and mouse game, where the Claimants were trying to post their comment on the First Defendant's blog by using different sender addresses, and or using spaced letters or dash signs within a word, in order to evade any filter for that word; and the First Defendant was seeking to restrain publication on his private blog of comments posted by the Second Claimant (or Claimants).

63. It was open to the Claimants' to post comment on other sites available to them, if they considered that the failure to post their comment on this private blog was unreasonable and/or restrictive of their wish publicly to comment on an issue or their own experience.

64. A person with a private blog is entitled to choose not to allow a comment to be posted on it. I consider that a private blogger might readily find it troubling that there should be, as there were here, serial attempts to override that entitlement and to evade the filters put in place, and might naturally find it troubling that the author of the comments by post and tweet became, as here, so rapidly and repeatedly critical of him for not dealing with the moderation immediately.

65. I had ample opportunity during the trial to consider the evidence views and opinions of all of the parties. There was a divergence between that which they considered important to the debate on Steiner or Steiner schools. The Claimants considered their own experience of Titirangi to be an exemplar of the deficiencies of Steiner schools or their approach to bullying, and important evidence in the Steiner debate. The First Defendant, in particular, expressed wariness of whether the experience of the reported bullying at Titirangi was, without more evidence than he had, attributable to Steiner philosophy as opposed to an experience of bullying at a school which happened to be a Steiner school, reporting an instance of such a school dealing very well with an occurrence of bullying. I am satisfied that this was an honest expression of his philosophical (or logical) approach, not one concocted for trial.

66. The First Defendant responded by email at 09:40 on 29 February 2012 to the Second Claimant.

> "This is the last time I will communicate with you on this matter as it is a little boring. Your original post would have been published had it not been flagged by my automatic spam catcher. You have subsequently been attacking me on blog posts and tweets and left them there long after you knew the facts. This behaviour does not fit within my definition of being in the spirit of good debate. You clearly have issues with other people and these disputes are of no interest to me. Nor will my blog be used as a platform in anyway for others. It is my blog. This is not censorship. It is a private space and what is published there is at my sole discretion. You have your own spaces by the look of things. But to repeat, my issue with publishing your comments is primarily about your behaviour, not your views. I hope this is clear to you".

67. Over the next four hours or so there were no less than nine further emails or tweets from the Second Claimant to the First Defendant pressing him, including "What behaviour? What attacks? Got any evidence for yr censorship? #skeptic".

68. The account given by the First Defendant is that a short investigation by him revealed that the Claimants were carrying on an argument that had occurred on other sites including Alicia Hamberg's blog (First Defendant witness statement paragraph 12). In his witness statement, he says,

> "I had never seen a reaction like this to a delay caused by the need to moderate comments. Such delays are common: I cannot work on my blog full time. The vast majority of participants are highly tolerant and accepting of such delays. There are about 18,000 published comments on my site. This is the most extreme reaction by far I have ever seen to a delay in posting".

69. Whether delays in posting comments awaiting moderation are common is not a matter of which I can take judicial knowledge. However I was able both to observe the First Defendant closely in the course of his oral evidence and to analyse his evidence. I accept his evidence that such delays are common.

70. The subject of interest for both the Second Claimant and the First Defendant was in relation to Steiner schools, but the focus was very different. The First Defendant's blog post of February 2012 was about the prospect of imminent public funding for a Steiner school near the First Defendant in Somerset, and whether such a policy should be permitted. The focus of the Claimants' interest was in disseminating their personal experience at the school in New Zealand which was in their view significant as to the philosophy and practice of Steiner schools in relation to bullying.

71. I found his evidence honest, and persuasive, that *he* considered that his own blog on public funding for the Steiner school near him was "not a place for you to express your disagreement with other people, and your concern about other people". In my judgment, he was entitled to take the view that this was his own blog, and that his blog on the principle of state funding of Steiner schools was an inappropriate place for complaint by the Claimants about a matter of grievance as between themselves and other individuals, and he honestly did so.

72. It is thus inherently likely that he will have found it disturbing that his would-be correspondent was posting comment that his failure to post her own views was 'evidence of gang mentality among sceptics, prepared to block, ban & censor awkward evidence' (to take illustratively only one of the comments).

73. In addition, the comment which the Second Claimant wished to leave expressed criticism individually of the Second Defendant and a Professor David Colquhoun FRS, along with another blogger [in fact Alicia Hamberg] whom the Claimants' accused of "hate speech": "Your article does not mention this aspect of provable harm and in my opinion relies over heavily on the articles at DC's Improbable Science. Both Melanie Byng (*ThetisMercurio*) and David Colquhoun have blocked our initiative to bring these matters to light because I have had the temerity to flag up the hate speech published by a Steiner critic which is being colluded with by all and sundry".

74. The evidence of the First Defendant was that "a short investigation revealed that the Claimants were carrying on an argument that had occurred on other websites (on Alicia Hamberg's blog "The Ethereal Kiosk" among others). I was not happy for the Claimants to use my website as a vehicle to continue

this dispute" (witness statement paragraph 12). He also said that at the time he barely knew Melanie Byng and Alicia Hamberg (witness statement paragraph 15).

75. The Claimants advance a contrary view, based on the fact that attempted posts were successfully blocked by him. A little over a month after this, the Second Claimant was posting the following on her website Amazon News Media,

> "Why did Andy Lewis stop me from commenting on his site, and how did he do it?... in effect what Andy has done is to use my own distress about the hate speech attack on my children – published by the first commenter Alicia Hamberg, on her own blog – as a reason to project that I would attack someone myself simply because I had politely flagged it up. And he's telling me I'm eager to jump to conclusions! Whether or not he had already done so when I first tried to publish my comment, he then took active steps to prevent me from being able to comment at all. What this means is that far from his communication with me actually being the genuine exchange it appeared, and *he was actually not being honest about what he was up to*. After his initial contact, Andy didn't respond to my further questions, neither did he let my comment out of moderation. He gave me no clue as to what he would consider an "appropriate" response, neither did he ask me what I thought was appropriate. Yet when he finally emailed me a second, and last time, he told me "such behaviour does not fit within my definition of being within the good spirit of debate". Well precisely." (emphasis supplied)

There follows detail as to how he might have secured the Claimants' e-mail addresses, in order to stop their attempts to place their comment on his site. The relevance of this, as was again explored in cross examination of the First Defendant, is whether he must have had contact with other Steiner critics, it being suggested that they were the only persons who could have supplied him with the personal email addresses of the Claimants, for him to block them. They rely upon the fact that they asked a friend of theirs to post the exact same comment on the First Defendant's site, and it got through. "It got through, moreover, despite containing the name "Angel" within it". This is proof, say the Claimants, that the First Defendant cannot have excluded their own direct posts or emails by setting a spam filter to exclude their own names or any variant of them, but he must have had both their email addresses, and such could only have emanated from others, with whom he must have colluded.

76. The tone of cross examination was throughout that it must have been malevolent for the First Defendant to seek to exclude any comment by the Second Claimant upon his blog. The First Defendant told me that he did start to think how he could put anything they sent into moderation, ("As your attacks progressed, I tried putting different things"), and that he could not remember exactly what he had done; but that there was certainly a period when "I flipped a switch to put everything into moderation"; although afterwards he thought that that was a bad idea.

77. Both the First Claimant and the First Defendant displayed an advanced degree of knowledge and sophistication in the use of the internet and electronic communications. On the balance of probabilities, and taking into account that I accept below his evidence as to why there was delay in moderation I find the most likely explanation is that initially the First Defendant successfully excluded posts by putting in his spam filter the names of the Claimants and variants of those names, but that for a period thereafter when a post had been placed by or via a friend of the Claimants, there was a period when he placed everything into moderation. On this aspect, I find the suspicions of the Claimants unfounded.

78. I understand the case for the Claimants to be that from the outset the Second Defendant was collusive with the First Defendant and others to block their views. It is important to consider this when assessing the First Defendant's explanation of his reaction, to the undoubtedly intense representations from the Second Claimant of 27 and 28 February 2012.

79. On 31 January 2012 he had received a warning communication from the Second Defendant to himself, of which here it suffices to include the following,

> "If you're about to write about the Steiner Academy Frome, you'll need to know about *a couple of malevolent trolls*, Angel Garden and Steve Paris, who may try to use the comments. I say this partly because they have published scurrilous material, some of which involves my 17 year old son, Joe. I would really rather not give them the fun and excitement of legal action, which is why we don't give them any attention. I'm hoping eventually they'll get bored and go away, but it's not happening yet….
>
> They came to England last summer to visit a very sick relative, we met a couple of times largely because they wanted to look at Sands Democratic School for their children…. Angel and Steve had just bought a little house in France…. Joe knows he needs to improve his languages, so we made an informal arrangement for him to fly over and help with the children in return for a chance to learn some French. No contract was drawn up. With teenagers things often don't work out, so when he decided after a week he didn't want to stay we weren't too surprised, although his email was slightly alarming. He told me there was very little food, he was left with the children for hours and ignored by Steve, no-one spoke any French to him and 'Angel is a fucking astrologer!'….
>
> At this point things became a little strange. It culminated in Joe skyping me the morning of his flight home and saying 'they say they will take me to the airport if I clean their house'. We made some firm phone calls. At the airport, Steve fleeced Joe for all the money he had on him. We didn't stop worrying until we heard from the airline that he was safely on the flight….

> The experience was soon forgotten. But we decided we would rather not have anymore contact with Angel and Steve. While Joe was away my husband Richard had a long phone conversation with Angel about her mother's cancer treatment, from which he'd drawn a few conclusions. Richard is a GP and academic and an expert in primary care mental health, including personality disorder. After receiving a threatening text from Angel I wrote a polite but firm email telling her that I felt unable to engage with her anymore, and that I certainly was in no position to help in any way with their documentary….
>
> By this time Angel had been banned from Alicia Hamberg's blog (@zzzoey) for attempting to post attacks on me in the comments, and because she was making it very clear that she expects ex-Steiner parents to use their own identities to whistle blow re bad experiences at Steiner schools. If not she feels pressure should be brought to bear on these families to 'come clean'. It's of course very difficult to make a documentary if no-one will tell their stories in public. For us, and for the Waldorf critics in the States, this makes their project a potential danger to vulnerable individuals. None of us will promote their work.
>
> Of course their accusations (many, maniacally expressed), involve people preventing their documentary, hurting children in the process. *Angel even accuses me of 'grooming' her daughter (who I didn't even meet) presumably because I suggested Sands as a possibility and then withdrew my support. You can image [sic] how it feels to be accused of 'grooming' a little girl.* And then to have these accusations sent to journalists (one of whom forwarded an email asking me what I would like to do about it). Ignoring is the best thing. So if they do appear on the Quackometer, *please just check that they don't use the opportunity to attack Waldorf Critics, Alicia, LovelyHorse (Sam) or myself, because it has nothing to do with Steiner schools*. They would be far more relevant commenting after a post about yams, or astrologers, or people calling themselves ludicrous names like 'Rainbow Starchild' or 'Angel Garden', or how *psychopaths are initially charming*….." (emphasis supplied).

80. This was vehemently expressed, with its reference to 'malevolent trolls', and 'how psychopaths are initially charming'. On the other hand, what it was suggesting was that the Claimants had published accusations and attacks against her personally, including accusation of "grooming", which they had.

81. The First Defendant said "I received this email with some scepticism. I had no idea of what problem existed. I do receive letters like this. My thinking was, let's see what happens. If you turn up and cause problems, I'll deal with it in the same way I deal with people who cause problems as to the degree of personal acquaintance".

82. In cross-examination he further said,

> "A. I was aware of who she was, she had co-written a couple of blogs with David [Colqhoun] a friend of mine.
> Q. Did you have a friendship with her? A. No…. I knew her as a Steiner critic, and as an ex-Steiner parent who had written…. She had co-written a couple of blogs, a number of articles, which were very important, very well written. I did not know the person herself."

On an earlier exploration of what contact there may have been between himself and the Second Defendant prior to writing the blog post to which the Second Claimant sought to post comment in February 2012, his recollection was that the Second Defendant

> "had written to me saying there were two persons who might write to him, but she did not ask him to block them and "I thought, this might be another ex-Steiner parent, I didn't know her. I thought let's write this, if Angel and Steve come onto the discussion, and add to it, all very well. In fact you attacked other Steiner critics, and when you were in moderation you behaved amazingly".

The First Defendant willingly agreed that everyone is subject to "confirmation bias" (namely that if he believed the contents of the "malevolent trolls" email, he would be more ready to take an adverse view of contribution by them).

83. As to philosophical matters, the First Defendant was extremely precise in his language in answer to questions, and maybe somewhat ascetic in his approach or personality and insistence on a logical approach to analysis of evidence on an issue of debate. He was observably wary of opinions or views which are expressed in emotional terms or using emotional language.

84. The Second Defendant was aware of incipient interest on the part of the First Defendant in writing about Steinerism or Steiner education. Once the suspicions of the Claimants on supposed knowledge of e-mail addresses are rejected, there is no significant evidence of prior personal acquaintance with the Second Defendant and the tone and content of her e-mail to him on 31 January 2012 is supportive of that. I accept his evidence that he barely knew the Second Defendant (or Alicia Hamberg) in February 2012.

85. As to his actions in February 2012, I found his account compellingly persuasive as to the reasons for the initial delay in moderation; and for his subsequent exclusion of the Second Claimant's comment on his article because he found unsettling both the impatience and intensity of the Second Claimant's comments and the determined efforts of the Claimants to evade the controls on his site. I find that this was reinforced by her comment that Melanie Byng and David Colquhoun had "blocked" their initiatives to bring certain matters to light because "I have had the temerity to flag up the hate speech published by Steiner 'critic'…."; and that having looked at the relevant websites at the time, he was "amazed at the reference to 'hate speech'.

86. He did not agree that his response was one made 'trusting the judgment of the Second Defendant', and said that the Second Defendant's communication of 31 January 2012 "was a piece of corroborating evidence".

87. I find the suggestion clearly unfounded that the First Defendant declined the Second Claimant's comments in February 2012 on account either of personal bias against her, or on account of collusion with others.

88. I have dealt with this episode for three reasons. First, I consider it revealing as to the allegations and cross-allegations in the case in general.

89. Second, it is a factual issue which goes to the motivation of the First Defendant in the publication of his blog post of 9 November 2012, and whether there is evidence of malice which would rebut the qualified privilege which he asserts is based on attack.

90. Third, in an article on Amazon News Media of 2 March 2012, (commencing "Why did Andy Lewis stop me from commenting on his site, and how did he do it?"), the Second Claimant wrote, towards the end of the article,

> "You can bang on all you like about what Steiner said over 100 years ago, but sceptical folk need evidence don't they? And Andy Lewis has dishonestly censored that….. here's a heads up for Andy: *Getting your friends, who have mobbed flamed and banned those they've written hate speech about to supply email addresses so you can help them cover that up, is NOT sceptical. It is a pathetic, dishonest example of crude censorship and collusion in a Human Rights abuse*…. He's more about secretly getting peoples e-mail addresses off his Steiner 'critic' friends *who actually all think that expelling bullied children from Steiner schools is an 'elegant' thing to do*. But don't bother trying to hold Andy, or any of these pseuds to account because even though they spend their time sanctimoniously demanding accountability from others, such who request of them will immediately be labelled as an attack. Quack quack quack" (emphasis supplied).

91. On 7 March 2012 the Second Claimant posted an article, entitled "Andy Lewis's Absurd Educational Quackery" which included the following,

> "Here's a heads up for Andy: getting your friends who have mobbed, flamed, and banned those they've written hate-speech about, to supply e-mail addresses so you can help them cover that up is NOT skeptikal; It is a pathetic, dishonest example of crude censorship and collusion in a Human Rights abuse".

92. If this set of accusations were well founded, it would of course be difficult for the First Defendant to maintain a successful defence of qualified privilege against attack. In my judgment these accusations were wholly unfounded, and they were attacks upon him. Therefore the defence of qualified privilege is open to him, subject of course to exploration whether there is other material to show bad faith on his part, and I consider it below.

93. The stance of the Claimants was in truth intolerant of the idea that a private person's blog was one in which that person might rationally choose to exclude the Claimants' complaint of being blocked from other sites. At trial, they acknowledged that there were other websites than the First Defendant's and other means of expression of their own experience and opinions. However as developed at trial, in my judgment this paid lip service only to the availability of alternative sites for comment, as on their own website, and appeared dismissive of any notion that an individual might for whatever reason choose to wish to exclude their own comment save for malicious reasons.

94. This does not in itself exclude the possibility that his later blog post of 9 November 2012 was improperly motivated, or that he was participating in collusive attack against the Claimants, but it is highly relevant to the reaction which the First Defendant may have had to the extensive comment which the Claimants publicly made upon him; and to whether more generally the Claimants' suspicions of and allegations against the First Defendant of attack upon them collusively with the Second Defendant and others, were justified.

95. The third episode. This concerns Dr Byng, the husband of the Second Defendant.

96. Helpfully, at trial and in submissions thereafter, the Claimants have identified to me those emails on which they place reliance. These include numerous emails grouped under issues, such as the Second Defendant warning others in relation to the Claimants, or warning others as to the Claimants' expression of complaint of her views and concerns as to Steiner schools before and after the cessation of relations between her and the Claimants, and in particular those which they assert are mental health smears against them. I might add that the electronic articles posts and emails printed out in the Bundles prepared by the Claimants run to 24 arch lever files, and that it is evident that both sides have assiduously combed all of that material. None of the relevant e-mails relied upon or identified is a general communication (or e-mail) from Dr Byng to any other person. At no point had Dr Byng posted any public article or comment in respect of the Claimants.

97. On 10 October 2012 the Claimants jointly wrote a letter by email to Mr Sneyd Dean of Plymouth University. In it they write,

> "We are writing to you as the Dean of the new Plymouth University Peninsular Schools of Medicine and Dentistry. On World Mental Health Day we would like to ask you the question as to why are senior lecturers at your University allowed to, away from work, be involved in smearing the mental health of others on line?

> It is not only the attempt to use mental health as a stigmatising tool to victimise people on line, that is bad enough for someone with a respected position in mental health, or his family, but also, given that we only met the Byngs due to our whistle blowing activities, which as they knew had resulted in community mobbing, their behaviour, already comprehensively documented on line, could not be better designed to actually cause mental illness."
>
> [For brevity, I summarise that the letter asserts (i) "coming very close to us suddenly" (ii) "suddenly breaking off contact" (iii) "suddenly ostracising us completely both personally and also much more significantly from the public debate about our shared interest").]
>
> The letter continues "At the same time as ostracising us from public debate, Melanie Byng then began actively warning others not to have anything to do with us and smearing our mental health to hundreds of people on Twitter. She has even knowingly circulated material which attempts to cover up a 'paedophile' (sic) smear against a third party, who'd worked with us in the past. This behaviour towards someone who's only in the country to look after a dying relative is beyond the pale.
>
> The fact that one of the perpetrators of it is a senior employee in your university should be a matter of shame…
>
> On this, World Mental Health Day, we feel you should know about it, as you are the people who employ Richard Byng for his knowledge and understanding of mental health, and we will not stop trying to bring attention to the absolute hypocrisy of such a person knowingly allowing that understanding to be distorted and used as a weapon against others….
>
> We do not expect a reply to the question as to why such a senior professional is allowed to get away with this, and know that, as you can see in the news, people often tend to close in to protect the powerful against those who are seen as weaker, even feeling anger against the target, who must have asked for it somehow…." (Bundle B2/47/24, and 25).

98. A year later on World Mental Health Day the Second Claimant posted on her "An Archangels blog", by reference to her letter of 10 October 2012,

> "My letter to the Deans (sic) was both a protest, and a request for help, because it seemed clear to me that the discovery that someone with a senior post in mental health was prepared to actively victimise people he's just persuaded to accept his "help" should be concerning, and I hoped that the Dean's concern for the honest reputation of the University might put him in a position to bring the situation back into the realms of sanity …

> It may not matter to Plymouth University if someone takes a fat salary for knowing and caring about mental health, but allows themselves to knowingly behave in ways likely to damage the mental health of others "outside" work, but to me that seems wrong. Call me old fashioned but I think that what Richard Byng does in his private life should reflect his professional ethics. But you know what?....
>
> Richard Byng is to be congratulated on having recently been promoted…. Clearly being a mental health ruining personal shit is no barrier to success in the field, which must be such a comfort to all those with mental health problems. Happy days".

99. There was an email from the Second Claimant to the Human Resources Manager at Plymouth Medical School of 5 December 2012 which described his behaviour as "severely victimising"; and said that he was involved in the "victimisation of whistle blowers". I find that this was unmistakably intended to damage his reputation at work, and that the Claimants thereby intended to persuade the university if they could to reconsider his employment.

100. At trial, the stance, and clearly the utter belief, of the Claimants was that Dr Byng was personally responsible for, and should be excoriated for, permitting the Second Defendant to write what she did. In answer to my own question, at the conclusion of her oral evidence, the Second Claimant told me, "And then the idea that a mental health professional *would let his wife do that* – when we got disclosure, mental health smearing to whoever she wanted – 'you're basket crazy, you're demented'…." (emphasis supplied).

101. If it is a somewhat Victorian notion that a husband should control what his wife says, it is extraordinary that the Claimants should have approached the university, plainly asking them to reconsider his continuing employment at the university, not on the basis of anything he said but on the basis that "at the very least he has been *knowingly allowing his wife* to target and vilify others, using mental health stigma, and actively behaving in ways known to have adverse mental health consequences for the targets" (10.10.2012 at Bundle B/47/25; 4 10.10.2013 at Bundle B2/45/250. emphasis supplied).

102. It is undoubtedly the case that Dr Byng was uneasy about the Second Claimant. This seems initially to have stemmed from a conversation which he had with the Second Claimant, during the period when Joe was in France. She wished advice about her mother, who had terminal cancer, and was concerned that the relevant doctors were unwilling to prescribe an unlicensed treatment mainly used in the United States. Dr Byng apparently indicated that a GP could not be expected to prescribe in that way and that an NHS oncologist would normally follow evidence based guidelines, but it might be possible to find a private doctor who would prescribe and that it should be possible for them all to co-ordinate their care. However Ms Garden then said that her mother herself would not tell the doctor that she wanted treatment, but that the Second Claimant still thought it very wrong that it was not being provided. Dr Byng states, "I explained that if her mother did not want the treatment, it

should probably not be prescribed. Given the distress associated with her mother's illness, I remained at that time sympathetic, but wary about how sure she was that others were wrong".

103. Dr Byng was less emphatic than his wife in his reaction to the difficulties with Joe, but in cross examination he said that the cessation of contact with the Claimants was down to a combination of factors: "(i) Your slightly bizarre insistence on all of the solutions; (ii) the issues with Joe seemed to be problematic; (iii) the conversation with Angel about her mother's illness; (iv) my wife's reflections, and the email from [the Second Claimant] that did not indicate that anything had gone amiss, it was business as usual."

104. In summary he said, "I think we just decided that we would have no contact, which was our right".

105. It is not for the court to express a view on the moral merits either of cessation of contact, or the manner in which it was initiated. Many might think that the Second Defendant and her husband had the right not to pursue further a relationship with the Claimants which had become extremely embarrassing, but that courtesy might invite some simple letter explaining in neutral terms that in the light of embarrassment, whosever fault that might be, further contact would not be made. However Dr Byng as an individual was entitled to form a view as to the personality of the Second Claimant; and had not published any comment upon the Second Claimant. The criticisms of him made by the Claimants to his employer were extraordinary and unfounded.

106. A general observation. In answer to my direct question, the Second Claimant told me in evidence that she fully understood that others might not share her own views, and were free to express their own different views. I seek to understand that the pressures of a courtroom trial are unfamiliar and that parties may find the experience emotionally trying, particularly in a case of alleged defamation such as this. Also, individuals may by personality and experience be very different one from another; and it will have been upsetting for the Claimants to see strong personal comment on themselves in e-mails and other material revealed on disclosure. However there was little detachment in the mode of questioning and oral submissions on her part. Over time during the hearing before me the impression became irresistible that in truth the Second Claimant finds it extremely difficult to accept that others may rationally form any view different from her own; and naturally, repeatedly, and very rapidly leaps to the conclusion and settled belief that if they do, they can have done so only out of personal hostility to her.

107. Publication. The blog of 9 November and the tweets thereafter. The Defence accepts that there was publication of the blog post itself on the *Posterous* website on 9 November 2012.

108. The evidence of the First Defendant in his witness statement, that as of 1 February 2014 (the date when he was served with the original Particulars of Claim), the blog post had 301 page views, was not contested. Some of those views will have been related to this litigation, namely views by the Claimants and or the First Defendant and the respective lawyers, none of which would be actionable publications; but there will have been others which were.

109. In April 2013 the article was moved, and according to the First Defendant was moved to the *Quackometer* website, together with all other articles on the *Posterous* website, on closure of the *Posterous* site. It was not challenged that the article had been moved in common with all other articles on the *Posterous* website.

110. In closing submissions, after acceptance on behalf of the First Defendant that 'it is probably possible to infer that the blog post was published to third parties', argument is made as to how many of those would have been by solicitors and counsel for the Defendants and the former solicitors and counsel for the Claimants, and thus not actionable, and/or by the Claimants themselves (and/or Alicia Hamberg who apparently already thought nothing of the reputation of the Claimants) and thus not actionable. In his witness statement, the First Defendant said that he did not put this article on the *Quackometer* home page (which receives a lot of traffic), nor did he go to the usual promotion by himself of a new post in other channels: "Typically a new post on the *Quackometer* will quickly receive thousands of page views. This post has never received this amount and is indeed the least viewed blog post on my site by a large margin".

111. Publication. The tweets/re-tweets of 9/10November 2012 and 15 and 20 May 2013.

112. On 9 November 2012 the Second Defendant re-published the blog post by tweeting a link to it on three occasions. One was a direct tweet, and two of them were a re-tweet of the First Defendant's own tweet.

113. The Defendants contest that the Claimants have sufficiently proved publication of the material contained in each of the tweets or re-tweets of which they complain.

114. As to the tweets of 9 November 2012, in closing submissions the Defendants argue also that the Claimants do not point to any particular words used by the Second Defendant in her 9 November 2012 tweet/re-tweets which might make it more likely that the link would be followed. I am not persuaded that this materially assists the Defendants. The purpose of including a link is to invite use of the link. Common sense suggests that at any rate a substantial proportion of those receiving a tweet with a link will follow it.

115. On 10 November 2012, as is admitted, the Second Defendant published or caused to be published a tweet on Twitter which included the words. "*Lying, bullying, threatening*…. How do Angel Garden EKA @AmazonNewsMedia and @sjparis sleep at night?" (emphasis supplied).

116. It is further admitted by the Defendants that on 15 May 2013 the First Defendant published a tweet to another Twitter user (*@DoctorAndTheCat*) "Many thanks. Shame *some odd and disturbing people in the World cannot understand 'I want nothing to do with you*' " (emphasis supplied).

117. It is further admitted that on 20 May 2013 the First Defendant published a tweet directed at another Twitter user (*@zzzoeey*, namely Alicia Hamberg) which included the words "Thank you. Most Angels will be welcome. The *fallen Angels of harassment* will not" (emphasis supplied).

118. As to each of the tweets of 15 May 2013, and 20 May 2013, the Defence raised from the outset the issue of whether these tweets were read by third parties, and/or read by third parties in sufficient numbers to satisfy the *Jameel* test for actionability, in the following terms:

> "The Claimants are required to prove that the words complained of were published to any third party and the identity of any such third party. The Claimants are required to prove that such publication of the words complained, of having regard to the number and identities of any publishees, is an actionable publication and is not an abuse of process, which is not admitted/denied".

119. The issue of whether there was publication in law was the subject of factual assertion in the witness statement of the First Defendant, in particular as to the workings of Twitter, but although it had been raised in the Defence it was not commented on or dealt with in the witness statements of fact of the Claimants. By letter of 4 March 2015 solicitors for the Defendants invited the Claimants to agree the Defendants' explanation of the workings of Twitter. Prior to trial itself, the Claimants made no response, (of agreement, or) of disagreement.

120. There were two strands to evidence of the First Defendant on this issue.

121. The first is that tweets are an ephemeral form of publication in that they are designed to be of the moment, and

> "[they] have a publication lifetime that is ordinarily measured in minutes or hours. Users of Twitter see a stream of tweets from those users or issues they follow. Older tweets are pushed down a user's views in real time, so typically most users only see a small fraction of their potential stream during the time they are online and using Twitter. Older tweets rapidly become very unlikely to be viewed. The time frame will vary on how many users a person follows and how prolific these people are, but for most people this degradation will occur over tens of minutes. The only way to see older tweets is typically to make the unusual step of actively searching for them".

This statement has not ever been contested, and indeed is close to something of which one may take judicial notice.

122. The second asserted strand of evidence is that, in addition re-tweets, or "RTs", have a further restriction on their scope of publication.

> "A normal RT will only appear in another user's timeline if they are not followers of the original account who tweeted it. Twitter will only publish a RT to a user if it's unlikely they will have seen it on the original timeline or from another user who has also made the RT. In the case of Melanie's re-tweet of @skepticat, *@thetismercurio* shares a number of followers, and the original tweet was also RT'd by other users. The number of people who actually received the tweet from Melanie (the Second Defendant], and not from *@skepticat* or other users, is likely to be extremely limited. A still smaller number of those who received the tweet from Melanie would actually have been able to read it on their timeline. The others would only have seen it if they were actually looking for it".

123. This was not the subject of challenge initially, but on the second day of trial it was challenged.

124. The evidence of the First Defendant was always that in August 2009, (namely 3 years before the tweets with which I am concerned), 'Twitter began supporting re-tweets in a way which allowed users to very quickly re-tweet without all the cut and paste and manual typing which had been necessary before. A simple button press next to the tweet would produce an automatic re-tweet. Secondly the publication of re-tweets is subject to a Twitter algorithm which specifically limits publication 'to reduce noise and clutter'. If the First Defendant (*@lecanardnoir*) tweeted, and many of the people re-tweeted, then their own timeline (the visible and scrollable succession of tweets) would be full of duplicate tweets. Accordingly the scope of publication of a re-tweet is very restricted compared to the original tweet'. (In a second witness statement, a homely example was given by the First Defendant, namely: "if user @DaveCameron tweeted "I'm having sausages for breakfast", and if every Conservative MP natively re-tweeted what Mr Cameron had for breakfast, it is unlikely that this would result in substantial further publications, as there is likely to be a substantial overlap between the followers of all other Tory MPs of the followers of Mr Cameron").

125. At trial, the First Claimant was willing to accept that this was *now* the position as to re-tweets, but questioned whether this had been instituted as early as 2009; and questioned whether it was operative at the material times with which I am concerned. I reiterate that the First Claimant and the First Defendant are each conspicuously internet and computer literate. The First Claimant asserted, (on the second day of trial, and at times somewhat hesitantly), that the system which Twitter used to deal with re-tweets changed 'at some time during 2012' and that prior to that, every re-tweet was a new tweet and would appear separately in every follower's timeline.

126. I relate above the First Defendant's evidence that 'If [there was a tweet], and many of the people re-tweeted, then their own timeline (the visible and scrollable succession of tweets) would be full of duplicate tweets'. For ease of understanding of the point, I also relate here his evidence that "prior to around August 2009 users of Twitter could and did manually re-tweet other persons' tweets, and by convention would insert the handle of the original tweeter in front of the text to be re-tweeted (a "manual re-tweet"); around August 2009 Twitter began supporting this function automatically (a "native re-tweet") with a button to achieve this with one click. Thereafter the system by its algorithms tried to exclude the publishing of re-tweets to those users who were likely to have seen them before from other sources".

127. Subject to whether a tweet may be found upon specific search, I prefer the evidence of the First Defendant to that of the First Claimant on this issue.

(i) The First Defendant had set this out in his witness statement, served on 16 February 2015. It had been visible to the Claimants, of whom the First Claimant is conspicuously literate as I have set out above, and it had been specifically raised to the Claimants in pre-trial correspondence. It was not contested until trial.

(ii) Second, the explanation given by the First Defendant in particular (and also supported by the Second Defendant) is internally coherent, and the First Defendant has been specific throughout as to when and how the changes to Twitter occurred.

(iii) Although the Claimants do rely upon one document at C20/1/50 (out of the morass of documents in this case) as inconsistent with the propositions of the First Defendant, that document appears to be a screen shot from a New Zealand mobile phone, and there appears to me to be force in Mr Price's submission that the presentation of a tweet will depend to some extent upon the device/platform upon which it is being viewed.

128. In closing submissions, the Claimants set out (in particular) the following. upon the issue as to whether they have shown publication to sufficient number of third parties as to be actionable, which I will quote exactly as they are set out in those submissions, namely

> "27(c). To any extent that Cs can be implicated by Ds lack of attention to the issue, Cs have never expected Ds to both hide the identities of those they have warned and then used that exact same covert harassment of Cs as the reason not to infer publication.
>
> 27(d). Ds' "low figures for publishees" argument contravenes the point made in *Cairns –v- Modi 2* [2012] regarding insight into limitations of *Jameel*'s usefulness and the caution that publication should not be reduced simply to a numbers game or "used as an additional hurdle which the Claimants must overcome". Cs also again note the lack of any covert campaign of character assassination and avowed destruction in that case.

> 27 (e). Any claim by Ds of a lack of inference of publication should be struck out because of the fact that they do use their influence to operate exactly such a covert campaign of Cs. As D1 said "getting a full translation of a UK blog with some profile (coughs) would neutralise them. And make them hopping mad" (with Bundle reference)
>
> 27(f). Twitter's search facility and the public love of scandal lead Cs to submit that rare public statements from influential people, to large numbers of followers, in the context of wide warning and mental health smearing, some of which publishees are in the class of "top journalists who have been told lies about Cs, including mental health smearing but Cs don't know who they are" are likely to be widely seen and are meant to be extremely and painfully humiliating".

129. I have not found it easy to understand some of these submissions, in particular those at 27(c) (e) and (f). As to the submission at 27(d), it is common ground between counsel for the Defendants and the Claimants that the issue of publication 'should not be reduced simply to a numbers game'.

130. In part, the Claimants stress that at no time did the Defendants in fact issue, prior to trial itself, any application to strike out any claim on the issue of publication. I consider that this reveals more as to the motivation or willingness of the Defendants to so apply than as to the inherent legal merits or demerits of such an application. In any event, until January 2015 the parties were engaging in mediation which appeared to have some hope of success, and there was then slippage before service of witness statements, which on the Defendants' part did include factual assertion upon this issue.

131. The Claimants also seek to rely, in closing submissions on an "Appendix 6", entitled "Unique followers to *@ThetisMercurio* (D2) compared with *@skepticat*": "This Appendix is designed to see how many of D2's followers were exposed to the *skepticat_uk* tweet which D2 re-tweeted [ie the "lying bullying threatening…. How do Angel Garden AKA @AmazonNewsMedia and @sjparis sleep at night" tweet]".

Central to the analysis there put forward are certain propositions or assumptions, at paragraphs 2 and 3 and 4 of that Appendix, namely that

> "2. According to disclosure, we know that in May 2012, D2 had 744 followers on Twitter. We have extrapolated and assumed that by November 2012 she had 800 followers. 3. @skepticat_uk has gained followers much faster than D2, although for the sake of argument we have also assumed that in November 2012 she also had 800 followers. 4. Twitter lists followers by the most recent to the oldest. We are therefore collating the 800 oldest followers from each account (this is again an assumption, because people follow and un-follow accounts regularly, but this is the closest we will be able to manage this analysis).

These are assumptions which were not proposed at trial itself, and which have thus not been the subject of testing in evidence at trial. Also, if people do follow and un-follow accounts regularly, it seems to me at first blush unsafe for an analysis to be based on a collation of a given number of oldest followers from each account equal to the number of followers of the Second Defendant and Alicia Hamberg respectively.

I consider it impermissible to introduce argument based on assumptions which the Defendants have not had the opportunity to test, or respond to in evidence, at trial. This conclusion is reinforced by the fact that yet further and competing points on the issue are then raised by counsel for the Defendants in written response to the Claimants' written closing submissions, and by the Claimants in comment on that response.

132. I consider it true that arguments whether there has been actionable publication to third parties "cannot depend on a numbers game" (*Mardas –v- New York Times Co* [2009] EMLR 8, Eady J at 15); and that as to the initial question whether there has been a "real and substantial tort", the court should consider the matter in the round.

133. Of course there is a difficulty, even in the case of a publication of defamatory material, if the evidence as to extent of publication is so slim that assessment of award of damages is wholly uncertain. However if otherwise it is shown that there was some publication of defamatory material, and if a defence of justification or qualified privilege has not been established, in my judgment it should be a matter of last resort for the court to decline to make any award at all, as opposed to award appropriately moderated.

134. As I set out above, in the case of an internet publication, "There may be evidence as to how many times the material was accessed or it may be legitimate to draw an inference about that from the circumstances, but there is no presumption of law that in such a case there has been a substantial publication within the jurisdiction".

135. The First Defendant is a blog publisher who is very widely followed, with according to his own evidence typically about 20,000 unique page views per month on the *Quackometer* blog, with a peak readership of 100,000 in one month, and over 8.500 followers on his Twitter account. The Second Defendant clearly has a following, but on nothing like the same scale, with 1,022 Twitter followers as of January 2015.

136. Given the two separate strands, of the ephemeral nature of a tweet which will be pushed down the timeline by newer tweets, and the Twitter set-up by which a normal re-tweet will only appear in another user's timeline if they are not followers of the original account who tweeted it, I find the case for the Defendants compelling as to the unlikelihood of a re-tweet by either of them directly causing a significant number of others for the first time to read the original tweet, or thereby to read for the first time the material to which the original tweet links.

137. This leaves the possibility that others, not a recipient of the original tweet, will be led to it via the re-tweet upon making a search, for example by naming the First Defendant or the Second Defendant.

138. If one were considering a tweet by the First Defendant, I regard it as feasible, by reason of the widespread readership of and interest in his *Quackometer* blog and/or Twitter account, that search would find a re-tweet, which would lead others for the first time to read the blog of 9 November 2012, albeit I consider that publication is likely to have been only to a relatively small numbers of readers who had not read it directly on the original post. In the case of the Second Defendant, with a more limited readership and a smaller number of followers, I regard it as unlikely that search would lead to discovery of a tweet by her, or a re-tweet, which would lead others for the first time to read that blog.

139. Thus in the case of the Second Defendant, in respect of the two re-tweets linking to the blog post of 9 November 2012, I consider that the Claimants have not established the likelihood of substantial publication to others by those re-tweets. I consider below, if I were wrong as to this, whether other defences are made out.

140. In the case of the direct tweets of 9 and 10 November 2012, having considered the 'two strands' above, I consider that it is shown that there was actionable publication of it; but by reason of the ephemeral nature of tweets and lack of other evidence, what has been proved is publication of the contents of the blog only to a relatively small number of persons.

141. I turn to the tweet of 15 May 2013.

142. It is necessary to set out its context. On 14 May 2013, the First Defendant gave a talk at a Skeptics in the Pub meeting in Bath. After the talk, in a break which was to be followed by a question and answer session, the Claimants approached the First Defendant and attempted to give him a letter in an envelope. In his witness statement, the First Defendant says that the Claimants did not announce themselves to the general meeting and he did not mention them by name either, which is not challenged; and that ,"I was very upset by this meeting. I felt threatened by the Claimants. I had been tracked down in person by people I knew to be angry and obsessed with me. I had every reason to believe they lived in New Zealand at that time and had no idea why they had taken such effort to be at my talk. I have since realised that the Claimants had by then left New Zealand but they did not make any public reference to this. I was so uncomfortable that I left the meeting without taking part in a scheduled question and answer session after the meeting".

143. Thus it was on the day after this meeting that the First Defendant published the tweet of 15 May 2013, which included the words, "Shame some odd and disturbing people cannot understand [fully cited at paragraph 116 above]".

144. In his witness statement the First Defendant stated that the tweet was part of a Twitter conversation between himself and *@DoctorAndTheCat*, that *@DoctorAndTheCat* had been at the Bath meeting, cut short when the Claimants attended and attempted to serve him with what turned out to be another threat to sue him for defamation; that the tweet was an *@reply*, meaning it would only have been seen by himself, *@DoctorAndTheCat*, and any mutual followers; and that *@DoctorAndTheCat* only had eight followers, none of whom were shared by the First Defendant. This evidence was uncontradicted.

145. It follows that this tweet was published to *@DoctorAndTheCat* only as part of a conversation on Twitter between *@DoctorAndTheCat* and the First Defendant; and that *@DoctorAndTheCat* understood the context in which it had been said, namely the Bath meeting which had been cut short.

146. The First Defendant also stated that "…*@DoctorAndTheCat'*s tweets are currently protected, which means that only followers of @DoctorAndTheCat can view his tweets. I have seen no evidence that any person would realise that this referred to the Claimants" (witness statement First Defendant paragraph 57). He continues, "The Claimants would have seen the tweet only by 'stalking' my timeline. Stalking a timeline is the name given to Twitter activities where users make special efforts to view the tweets of an individual who may have blocked them or where tweets would not normally show up on their timeline. The tweets are available to view by scrolling down my timeline, or by specifically searching for the tweet, but with some difficulty. As I am a prolific Tweeter, the tweet would only have been on my home page for a few hours or days at most. It is not clear to me how anyone other than the recipient could have identified the subject of the tweet. They would need to have been at the event and be followers of both our Twitter accounts. In addition, the Claimants did not identify themselves as they came on stage and nor did I attempt to identify them" (paragraphs 58 and 59). I did not understand this evidence to be challenged, and in any event I accept it as inherently credible.

147. Counsel for the Defendants submits that in these circumstances the Claimants are not able to establish reference of the words to the Claimants save insofar as *@DoctorAndTheCat* would have been aware that two individuals (unknown) had approached the First Defendant the night before at a public meeting, attempted to serve him with an envelope, and caused him such anxiety that he cut short his appearance. Thus only one publishee, namely *@DoctorAndTheCat*, can have understood the tweet as referring to the Claimants. That publishee understood its context; and yet there is no evidence that *@DoctorAndTheCat* ever knew the Claimants by name or in any other way save that they were the couple that had upset the First Defendant on the previous evening.

148. I respectfully agree. In my judgment the Claimants have shown no actionable publication in respect of the tweet of 15 May 2013.

149. The tweet of 20 May 2013 was that which included the words, "Most Angels will be welcome. The fallen Angels of harassment will not". It was directed to Twitter user @zzzooey. The Twitter user @zzzooey is Alicia Hamberg.

150. It does not refer to the Claimants by name. Counsel for the Defendants submits that since the tweet does not refer to them by name, they must rely upon a reference innuendo, but they have not set out who or how many publishees the tweet can have understood it as referring to them. It is submitted that the Court can infer only that @zzzooey knew who the First Defendant was talking about, and cannot infer that anyone else did.

151. He also submits that the tweet is so obtuse that its meaning can only be understood by reference to the publisher and the publishee, (the First Defendant and @zzzooey) since the subject of the tweet was the recent attendance of the Second Claimant at an event at which the First Defendant was speaking in order to serve him with a legal letter. "…The meaning must be that the Claimants by their conduct towards the First Defendant including by attempting to attend a meeting at which he had been invited to speak and serve him with a legal letter, were annoying and vexing the First Defendant".

152. The full conversation can be found at Bundle B2/43/304. The context was that the First Defendant was to give a talk in Brighton. He had tweeted "Now the cat is out of the bag, if you are in Brighton on Weds, please come along. Steiner Schools and the Occult". Alicia Hamberg tweeted in reply to him "we will be there with you in spirit. As will the archangel Michael and plenty of elementals". It was to this that the First Defendant tweeted a reply in the terms quoted.

153. I do not accept this part of his submissions. If "Angel" <u>was</u> understood as referring to the Second Claimant, then in my judgment reference to her was not dependent on special knowledge of the recent attendance at the Bath meeting. It appears plausible to me that those interested in this field, and the views not least of @zzzooey (Alicia Hamberg) would understand that it referred to the Second Claimant, Angel Garden, with her highly distinctive name.

154. The second part of his submissions is that there was clearly actionable publication only to one publishee. It could have been published only to the very small overlapping group who followed both the First Defendant and @zzzooey.

155. This was an *@reply* tweet and I consider that its scope of publication, so far as is shown upon the evidence, is likely to have been restricted to joint followers where only, (and only possibly), a tiny number of joint followers would be likely to have seen the tweet on their timelines for the reasons explored above. The publishee Alicia Hamberg was a fierce critic of the Claimants and it is inconceivable that her opinion of them, or her attitude towards them, would have been altered in the slightest by that which the First Defendant wrote.

156. The burden of proof of the width and extent of publication, if any, is here on the Claimants. On balance, I consider that for the reasons set out above, no sufficient publication of the tweet of 20 May 2013 is shown to be actionable. "The game will not merely not have been worth the candle, it will not have been worth the wick", to sue upon this publication.

157. In the alternative I consider below the issues of defamation, justification, and qualified privilege.

158. Defamatory? The blog post of 9 November 2012. It is not in dispute, and is evident on the face of the article, that it refers to the Claimants.

159. For the avoidance of doubt, I have read the whole of the article and do not reproduce it in full here. For convenience, I set out here the words alleged to be defamatory which are in fact of two different strands:

> "They claim their children were expelled because they were being bullied. I understand the school says it was because of the parents' behaviour….
>
> Since February, I have ignored and filtered out their constant harassment by blog tweet and video both of myself and of others".

160. The Claimants plead and assert that in their natural and ordinary meaning, the words meant and were understood to mean the Claimants' children were expelled from their school because of the Claimants' own unreasonable behaviour; and that the Claimants have been harassing the First Defendant, and others, since February 2012.

161. Such is denied in the Defence.

162. For the purpose only of their plea of justification, the Defendants put forward alternative ("Lucas-Box") meanings. For convenience, I set them out here, as pleaded in response to each of the publications of which the Claimants complain.

> "17. If and to the extent that the words complained of, or any of them, meant or were understood to mean any of the following they are true in substance and in fact: Lucas-Box meanings
>
> 17.1 The school withdrew the place of the Claimants' daughter in response to the Claimants' actions.
>
> 17.2 The Claimants engaged in a course of conduct amounting to harassment of each of the Defendants.
>
> 17.3 The Claimants made threats to the First Defendant.

17.4 The Claimants lied to the First Defendant.

17.5 The Claimants' behaviour towards the First Defendant was odd and disturbing".

I defer setting out the particulars of asserted justification.

163. The first statement alleged to be defamatory in the blog of 9 November 2012 is, "They claim their children were expelled because they were being bullied. I understand the school says it was because of the parents' behaviour".

164. At the time that this article was posted, the Claimants had presented a complaint to the Human Rights Commissioner in New Zealand, but that dispute had not been resolved by adjudication or settlement.

165. In his skeleton argument for trial, counsel for the Defendants argued that the First Defendant pointedly does not describe the Claimants' behaviour as "unreasonable" and that the most that can be said is that the blog post records that there is a dispute between the school and the Claimants over the circumstances of their children's departure.

166. At trial and following, the Claimants' first and major complaint was that the First Defendant used the word "claim", which either itself implied that the claim was not substantiated, or did so by the opposition between "they *claim* their children were expelled because of being bullied", and "the school *says* it was because of the parents' behaviour". The Second Claimant in particular was adamant that the use of the word "claim" failed to recognise that it was factually established that their daughter was being bullied; and both Claimants relied upon terms of the settlement reached between the school and themselves. Thus, the settlement agreement signed by both parties records, "Mr Paris and Ms Garden and TRSS now wish to settle the issues arising from the complaint on the following terms: The Parties will sign the attached statement about the matter. The statement may be made publicly available", and in the signed statement,

> "Titirangi Rudolph Steiner School (TRSS) accepts the Paris/Garden eldest child's accounts were honest and that her actions in reporting bullying were fully commensurate with school policy which emphasises the importance of telling both teachers and parents…. TRSS acknowledges that some children in the class (of the Paris/Garden's daughter) displayed bullying behaviour".

167. It was put to the First Defendant in cross examination that the statement or assertion in his article, "they claim", was an instance of "false balance", (namely, to use the First Defendant's illustration of false balance in cross-examination, "If there is a settled scientific matter, giving a 50/50 basis gives a false balance e.g. whether the earth is round or flat"). However at the time when the blog post was published, the complaint to the Human Rights Commission and the dispute between the Claimants and the Titirangi School

had not been resolved. There was not a settled and publicly available definitive statement, or concession between the parties, and there was no published material on which the Claimants could have relied to establish issues as undisputed, (or upon which the Defendants could have relied to identify what issues were undisputed).

168. If, for instance, the First Defendant had italicised or underlined the word "claim", then I consider that such might have implied doubt as to the claim or in certain circumstances the honesty of the claim; but he did not.

169. The second and next major complaint of the meaning of the words is that the Claimants say that use of the word "behaviour", in the full context of this phrase and or the article, is to be understood as a reference to unreasonable behaviour on their part. I respectfully do not see why this should be implied on the face of the words used. The natural and ordinary meaning of the word is, in my judgment, that the Claimants had presented a claim that their children were expelled because they were being bullied, and the school was saying that the expulsion was because of the actions or behaviour of the Claimants. This was what each side was reported as saying at the time of the blog post of 9 November 2012 by the First Defendant.

170. It is of some interest that in the statement which accompanied the signed agreement of 14 December 2012, (albeit this was not known as at 9 November 2102), it is declared that "TRSS acknowledges that Steve and Angel's *words and actions (behaviour)* in continuing to try and address the issues of bullying with TRSS, as they were advised and encouraged to do in all conversations with all TRSS staff, arose out of their natural and dutiful concern as parents for the safety of their child and concern for the wellbeing of other children in the class" (emphasis supplied).

171. The contemporary material available at the time when the First Defendant wrote this article, and to which he told me he referred, amply demonstrates that the school were not taking action in relation to the bullying in any way which the Claimants found acceptable; the Claimants were pursuing complaint with this as to the school and complaint that the school's existing policy failed to deal with bullying; in the Claimants' view, the school's response to their daughter's complaint failed to deal either with the individual malefactor, or the culture of the school's response to bullying; and in turn the school chose, in response to the actions of the Claimants, to expel the children. Locally, support was expressed both for and against the Claimants at the material times.

172. The Claimants' stance was not that the school was acting reasonably in expelling their children, (and so might have done so because of unreasonable behaviour of the Claimants), but precisely the contrary.

173. A third strand of the Claimants' complaint, in their written opening submissions for trial, was that "While a dispute may still be said to exist even if parties have got to the stage of mediating, the fact of such a mediation may nevertheless serve, if accurately reported, to show that the dispute is at least

potentially moving in a direction; and that if it is being overseen by such a respectable body as the Human Rights Commission of New Zealand, that not to mention that, is to mislead as to the type of nature of the dispute".

174. A commentator may, or may not, choose to add reference to some fact or opinion sympathetic to or flattering to one side or the other, or the fact that there is in being a process of mediation, but I consider that the passage complained of as defamatory is no more than a neutral statement reporting the fact of the claim by the Claimants and the response of the school asserting that expulsion was because of the parents' actions.

175. The second statement alleged to be defamatory in the blog of 9 November 2012 is, "Since February I have ignored and filtered out their constant harassment by blog tweet and video both of myself and of others". The natural and ordinary meaning of the words is obvious, and is that pleaded by the Claimants, namely that "the Claimants have been harassing the First Defendant, and others, since February 2012". The first real issue is therefore not whether the words are capable of lowering the Claimants in the estimation of right minded people, but whether they are true.

176. The dictionary definition of "harass" is given in the Oxford English Dictionary as, '(i) to wear out, tire out, or exhaust with fatigue, care, trouble etc. (ii) to trouble or vex by repeated attacks; (iii) to trouble, worry, distress with annoying labour, care, perplexity, importunity, misfortune etc'. In ordinary speech it does not, and I am satisfied here did not, carry the meaning it does in the legal tort of harassment, namely that the action must be of such gravity as to count as criminal behaviour under Section 2 of the Protection from Harassment Act 1996.

177. The stance of the Claimants is, and has been throughout, that in their various online posts and e-mails. they were doing no more than respond to attacks upon them, which took the shape of (i) collusive censorship of their attempts to post material on the First Defendant's blog and elsewhere, (ii) denigration of themselves and their opinions, and (iii) offensive questioning of their mental health, in particular on the part of the Second Defendant.

178. As to the First Defendant, I need not repeat my findings as to the manner and reasons for his exercise of a choice not to post the Claimants' comment (or comments) on his private blog. In short, in my judgment, there is no question of that having been a collusive act of censorship together with others.

179. In a country where freedom of speech is a central and essential element of a democratic society, it is open to individuals to voice strong protest that their comment has not in fact been accepted. The Claimants returned repeatedly in publicly posted comment or complaint to this theme. However, the manner of expression and repetition of their protest needs to be considered.

180. On 28 February 2012, on their Amazon News Media website, the Claimants published a blog post ("I've just read [the First Defendant's] latest posting about Steiner Education and I was motivated to comment") as follows,

> "The [First Defendant] has not even given me the courtesy of a reply….. not publishing [my comment] must therefore raise questions of [his] true intention in publishing about Steiner Education in the first place…. If [he] has fallen into the trap not publishing a perfectly reasonable comment due to personal prejudice, then that would fit into the description I've outlined in an earlier article of cliques behaving like cults, operating in a 'faith in my own friends over evidence', non-secular fashion and indulging in social 'woo'. …
> If that is the case perhaps [he] will in the interests of accuracy, update his criteria of comments to be deleted to include the category of "if it disturbs by sense of clique by making awkward, if justified criticism of my comfortable social group i.e. if it challenges me to think critically of myself when I just don't want to". "

This is stinging, but no more than that.

181. The following day, on 29 February 2012 on the same website, the Claimants published a blog post which included,

> "[He] has decided *to censor me* which is shocking…. So he is using his 'concern', which is a feeling, about something which has not happened but which he is projecting as a future possibility, as a reason to censor a polite, on topic and informative comment…. Under what definition can that be said to be critical thinking?. … [He] is now a*ctively practising censorship*…. He is also *colluding with…. aggressive behaviour*. Sadly it appears that the duck is indeed quacking" (emphasis supplied).

182. On 2 March 2012 on the same website, the Claimants published another blog post which included,

> "Following my attempt to post a relevant comment on [his] blog post about Steiner Education a couple of days ago, we've now managed to get to the bottom of what went wrong and sadly the result is yet more evidence of a lack of sceptical self rigour from those who are most critical regarding the alleged dodgy practices of others…. What this means is that *far from his communication with me actually being the genuine exchange it appeared, [he] was actually not being quite honest about what he was up to*…. Blocking an IP address is an extremely bullying tactic, and certainly not the attitude of someone open to publishing anything?.... you can bang on all you like about what Steiner said over 100 years ago, but skeptical folk need evidence don't they?

> And *[he] has dishonestly censored that*…. [His] behaviour is not sceptical, far from it, in falling for the dogma in devotion of clique by siding with his friends without checking the evidence, to the detriment even of his own posting, [he] has become faith based and as such is behaving socially like the very thing he deplores so vigorously, a quack…. Here's a head up for [you]: *Getting your friends, who have mobbed flamed and banned those they've written hate speech about, to supply email addresses so you can help them cover that up, is NOT skeptical. It is a pathetic, dishonest example of crude censorship and collusion in a Human Rights abuse*….. instead of any robust or honest dealings, [he] simply whined that we had 'attacked' him in blog posts and tweets (emphasis supplied)".

183. Through a third party on 5 March 2012, the Claimants sent an email to the First Defendant which included

> "…. *You are practising censorship*…. You are therefore not practising what you are preaching, (you must clearly be aware of that), and you are making a mockery of any idea of a 'spirit of debate'….. why do you not behave ethically and refuse to give platform to people who publish hate speech about families including children?... *unless you can find a way to allow proper debate on your blog, which we contend is a media outlet, without unreasonably censoring factually provable comments, we will continue to pursue the matter of this censorship* through the means at our disposal" (emphasis supplied).

The Claimants published that email on their Amazon News Media website on 8 March 2012.

184. On 8 March 2012, like criticism was, it seems, in a video posted on YouTube. For completeness I note that neither side asked me to view the video, nor placed a full transcript before me of the video, to which the blog post of 9 November 2012 makes passing reference.

185. On 10 May 2012, on the same website, the Claimants published a blog post which included

> "[He] did not actually attack us, but *he did dishonestly practice censorship* and he was either 100% complicit or set up by Alicia or [the 2nd Defendant], or both…. His superior, judgmental, refusal to acknowledge how distressing it is to see a platform giving to someone who states that she admires the man who made your children suffer was used against us as parents as he said he found it 'boring'. That's right Andy, distress is the same as rage. Always, of course, or at least whenever you say so or if you're too bored to see the difference. Thanks for your humanity.".

186. I refer above to the YouTube video. To various third parties, the Claimants tweeted links to their published material about the First Defendant which included invitation to look at the video. The number of these tweets then increased in frequency from 4 – 7 November 2012.

187. In November 2012 the Claimants wrote to a Fran Unsworth at the BBC under the subject title. "*Alert – BBC about to promote "spokesperson" who is actively victimising whistleblowers. Urgent*" the following.

> "Andy Lewis has discredited himself by dishonestly censoring facts regarding initiatives by parents to challenge their schools through Human Rights. He has done this at the same time as running a covert defamation campaign. We have been documenting his and his friends' attacks on us as a whistle blowing family for over six months…. We urge you to remove this contributor from your programme".

In the same month they wrote to others at the BBC, under the subject line "*Discredited interviewee*" the following,

> "Andy Lewis is involved in *both overt censorship and covert defamation, smearing, and victimisation. In other words bullying* (emphasis supplied)".

In the same month, they wrote to the author of a legal blog, "Jack of Kent", under the subject line "*Defamation of those whistle blowing cult*" the following,

> "Andy knowingly making omissions in his 'reporting' on Steiner Education, that, given the realities, do amount to misleading the public/fraud".

188. On 8 November 2012 the Claimants wrote an email to the First Defendant which included the following

> "Following your recent actions *in defaming and blocking* anybody who mentions, people who are providing the "hard evidence" of problems in Steiner that you were simultaneously announcing internationally to others is very "hard to get", we are now putting you on notice that *this mendacity must stop*. We would like to offer you the opportunity to dialogue with us *about the smear campaign that has been mounted against us by you and other skeptics, before we move on to legal action*. So please respond swiftly if you would prefer to talk to us than to a lawyer. What you are doing *is beyond unethical and you will not get away with it*…. [evidence has been collected] of *a broad and active smear campaign in which you are playing a major part*, … the whole thing onto a different level of *clear and well evidenced public, personal and professional victimisation by a large gang, and provably fermented by you*. On this level legal

> remedies are available. … when the leader of any campaign has to privately smear whistle blowers to hide live evidence, that campaign has clearly failed. It's time for you to put up or shut up…. If you do not immediately begin to behave more reasonably, *we will do whatever we have to to safeguard our reputation from your vicious secret distortions*, and our advocacy work for children likewise. You are a parent. Get real and stop thinking that we, whose children are still affected by the actions of that school, are going to let you ponce about like this without making sure that people see what a load of hypocritical bologna it is…. *You have colluded in a campaign of covert victimisation against whistle blowers whilst overtly pretending to address Steiner issues*. It's up to you of course you know what you've said about us. So now please produce the evidence of these statements, publicly crack the lot, or prepare to talk to your lawyer…. *We will publish and otherwise disseminate this letter in 24 hours if we do not hear from you as frankly we will not know if you've received it, due to your previous dishonesty in refusing to speak to us, again on the basis of defamatory hearsay. Therefore we will publish it as widely as necessary to make sure it gets to you* (emphasis supplied)".

189. Even prior to this letter, there had thus been a series of published comments about the First Defendant which accused him of dishonesty, smearing of their reputation collusively with others, and victimisation of them. In fact, there had been no publication on his part which justified these allegations.

190. The comments are iterative, repeated and vigorous. They certainly seek to denigrate him and to force him to accept on his private blog comments by them which he had made clear he did not wish published on that blog. On their own face, they are vituperative attacks on the First Defendant.

191. The response of the Claimant is that their comments were made in response to attacks on themselves.

192. During, and by the end of trial, the Claimants helpfully produced lists of emails and posts on which they relied, grouped by topic such as the Second Defendant warning others in respect of them, 'Is it the parents' fault?', 'Kicking us off the platform', and as to the episode in France with Joe.

193. As to the First Defendant, in the whole of the period from 27 February 2012 to 8 November 2012, no e-mail or post on his part has been identified before me which could be characterised as dishonest, smearing of their reputation collusively with others, or victimisation of the Claimants. The email of 8 November 2012 to him from the Claimants themselves can only be interpreted as a letter threatening legal suit against him, and threatening to publish and otherwise disseminate that letter in 24 hours, if he did not accede to their demand that he reply to them.

194. The First Defendant in his blog of 9 November 2012 is plainly speaking primarily of himself. However he does say "harassment…. both of myself and of others". Some attention is therefore required to what the Claimants at that stage had or had not done, particularly in relation to the Second Defendant, and vice versa.

195. On 6 September 2011 the Second Defendant had replied to the Second Claimant "I do not intend to offer you any help with your documentary. I'm not prepared to publicise press releases. … As you are doubtless aware, my attempts to draw attention to Free Schools funding for the Waldorf movement in England are drawing to a close. ... I am writing this as a response to your attempts to contact me. I do not intend to continue any communication on this matter".

196. If the Claimants were offended, hurt, or outraged by the sudden and complete cessation of any relationship with them on the part of the Second Defendant (and her husband Dr Byng), freedom of speech dictates that they should be free to air their grievance, so far as is permissible within the confines of the law of defamation.

197. Most would regard it as unfortunate to publish widely to the world a dispute between private individuals as to personal relations where it concerns children. However one can see that in the immediate aftermath of such a cessation, feelings may - whether justifiably or not - have been very bruised. To continue to ventilate these events iteratively, widely, and over many months, is more surprising. More than this, within a short period the Second Claimant had already published very strong attacks on the Second Defendant.

198. Her post of 13 September 2011 includes the words "Don't trust these people", and "[She *ThetisMercurio*] is obviously representing the well known trickster side of Mercury at the moment who talks his way into situations, but when they turn even a bit difficult, is never there to clear up the mess".

199. On 29 September 2011 the Second Claimant posted,

> "As you know, this woman who is so friendly and supportive at the outset, turned on us on a dime and refused to ever tell us what we had done that was so wrong that *it deserved hurting my child all over again…* given that your husband works in mental health, it seems that you must both be quite aware of the potential negative effects of your actions, and inactions, yet you continue to protect your own secret identity and your own interests*, even when it hurts others, including children*…. No critical thinking*, just spreading lies as truths to convince others of just how wrong we were and how innocent they were"* (emphasis supplied).

200. On 12 October 2011, the Claimants placed online an Open Letter, and emailed links to it to a number of people, which is striking. Since it consists of a dozen pages of closely written text, I simply record that I have read it in full and I do not reproduce it in full, but it includes this of the Second Defendant,

> "[She] displayed the same *seductive grooming types of behaviour* that we have had to document at the school and the public mobbing was full of the same xenophobic projections that the school dished out…. Yet her syrupy welcoming of distressed newcomers all conducted through a pseudonym disguises the fact that *other things are going on in the background. So abusive is this combination mainly to adults but also children* that we sincerely believe that the only value in our recent experience is that we can now flag it up to others as another 'hole in the road' for them to avoid. [*She] has demonstrated what can really only be described as grooming behaviour towards our child. How can we call it otherwise when [she] made so many advances towards her*" (emphasis supplied).

201. References to abuse and grooming of children are, or are habitually taken to be, a reference to sexual grooming. In opening submissions for trial, and at trial, the Second Claimant disclaimed any intention to refer to sexual grooming. However the reference to grooming of a child and of making advances to her is redolent of improper seduction and sinister purpose.

202. In evidence, the Second Claimant explained the reference to "some seductive grooming types of behaviour" as being because the Second Defendant "sent my child presents. She sent her son over. I've no idea why she did so. It was incredibly similar to when an adult makes inappropriate advances to a child from a position of power, to make that child do something, that's grooming"….. "and people groom people for a cult". The supposed cult was never identified. In closing submissions, the Claimants likewise say "How can we call it otherwise when "*ThetisMercurio*" made so many advances towards her, *with healing offers of help to re-engage her with school, even sending out her son to us with the message that he came really only to talk to our daughter about his wonderful school, in the country"*.

203. There is not a scrap of evidence before me which would justify accusation, or even rational suspicion, that the Second Defendant was grooming the daughter of the Second Claimant, in any ordinary or natural sense of the word. This suspicion is, and was, irrational.

204. On 10 May 2012 the Claimants published a blog post which included,

> "[the Second Defendant] herself, like all Queen bees, is quite happy for others to fight her battles which she avoids taking responsibility for her extremely seductive overtures to my child while a member of our family was dying followed by her total rejection of us simply due to complications caused because her son wanted to go to a party?.... rank cowardice Melanie, and only possible because your aggressive foot soldiers in the gang. Perhaps the mark of the true leader – letting others do your dirty work – but how reminiscent of the obfuscating structures in Steiner Ed".

On 2 March 2012 the Claimants had published a blog post which included "there are only two possible sources [from whom the First Defendant could have known the email addresses of the Claimants] … Alicia Hamberg…. And [the Second Defendant] who's[sic] seductive approaches to our family ended abruptly when she took offence at something that she couldn't even be bothered to explain, in her own very haughty version of the 'bait and switch' techniques…"

205. These comments, intensely critical of the Second Defendant during this period, include assertion of her "highly aggressive behaviour". When pressed that the Second Defendant had not in fact publicly commented in any way about the Claimants in any post or tweet, the Claimant stated that her *silence* was "highly aggressive". This is quite remarkable.

206. The defence of justification in respect of the blog post of 9 November 2012. In a defence of justification the Defendant is not required to prove the truth of every detail of the words complained of. In my judgment it is demonstrated that from late February 2012 to the date of the First Defendant's blog post of 9 November 2012, the Claimants pursued a campaign disparaging, insulting, and besetting of him, and the gist of his statement that "since February I have ignored and filtered out their constant harassment by blog, tweet and video, both of myself and of others" is justified as true in relation to himself.

207. The primary thrust of his statement is self-evidently in relation to himself. In my judgment it is to be understood as referring to that which he has ignored and filtered out. Insofar as there is reference to harassment of others, it is preferable that I consider the asserted defence of qualified privilege, and whether it is defeated by malice.

208. Defamatory? The tweet of 10 November 2012. The words used by the Second Defendant were, "Lying, bullying, threatening…. How do Angel Garden AKA @AmazonNewsMedia and @SJParis sleep at night?".

209. The pleaded case of the Claimants is that in their natural and ordinary meaning these words also meant and were understood to mean that the Claimants "are liars and bullies and have been behaving in a threatening and unconscionable manner" (Amended Particulars of Claim paragraph 16).

210. The Defendant contends that the natural and ordinary meaning must be ascertained having regard to the context of publication. The publication of 10 November 2012 included a link to the blog post of 9 November 2012. "That link was integral to the words complained of. The question posed by the words complained of is clearly related to the link in the body of the tweet so that readers would understand that it is in fact a comment on the content at that link" (closing submissions paragraph 37). I agree with that limited contention on behalf of the Defendants.

211. The Defendants therefore invite the Court to adopt the following proposed meaning of the tweet, namely "The Claimants had behaved unconscionably towards the First Defendant in that they had lied to him, bullied and threatened him in the ways described by the First Defendant in the blog post". I agree with this contention also.

212. It is recognised that this is a defamatory meaning.

213. The asserted defence of justification. In the blog post, the First Defendant had set out the essence of the Claimants trying to post a comment on his blog initially. Immediately following this, he set out the quotation already given in part as to those words sued on, but which I will here set out more fully,

> "Since February, I have ignored and filtered out their constant harassment by blog, tweet and video, both of myself and of others. I am told that they tweet at anyone who is mentioned in my tweets or tries to communicate with me by Twitter. Their aim appears to be to discredit me by promulgating a partial account of events. They tweet under the names @AmazonNewsMedia, @Steinermentary and @SJParis (amongst others). This has been going on, for months". He then reproduced the letter dated 8 November 2012, in which the Claimants threatened to sue him for defamation, and threatened to publish the letter itself unless he responded to them within 24 hours.

214. The Defence then argues, as to the Second Defendant as well as the First (see above), that in any event the words complained of, in whatever meanings they are found to have, are true in substance and in fact.

215. I am satisfied that, in the context of reference to the blog post of 9 November 2012, the Second Defendant can justify as true the assertion that the Claimants had been threatening.

216. The tone of their publications was consistently aggressive. The letter of 8 November 2012, which provoked the blog post, needs to be read in full, and is too long to reproduce here, but it includes the following,

> "Melanie and Richard Byng dropped all their "friends" in it by not being prepared to take responsibility for the failure of personal initiatives they themselves introduced to people who were in a very difficult situation…. But allowing their own failure to then seep into the public sphere to try and destroy whistle blowers, including *the evidence we have collected of a broad and active smear campaign in which you are playing a major part*, takes the whole thing onto a different level of *clear and well evidenced public, personal and professional victimisation by a large gang, and provably fermented by you*. On this level legal remedies are available (emphasis supplied)".

217. In certain contexts (such as institutional treatment of children) the word bullying has a strong derogatory meaning. In other contexts, such as an observation made as to the tone of discussion or argument by a commentator pundit or politician, it has only a weak derogatory meaning. The present context is akin to the latter. I consider that the persistence tone and frequency of the accusations made by the Claimants against the First Defendant prior to this post, when read together with this threat of legal action, can justifiably be described as bullying. (If I am wrong in respect of this, I consider qualified privilege below).

218. The letter of 8 November 2012 is not simply an expression of personal opinion that the First Defendant had been playing a major part in a broad and active smear campaign and fermenting it, but an express statement that the Claimants had evidence that he played a major part in such campaign, and that he had fomented it. They did not have such evidence, and it may be observed that such evidence has not been produced or revealed during the 5 days of evidence at trial.

219. Thus in his opening submissions counsel for the Defendants argued that the Claimants must have published their open letter that "victimisation was provably fermented by [him]" [8 November 2012], without honest belief in this, and thus they had lied. In my view this submission goes too far. The Claimants, it has become clear, had no such objective "proof" as to this; but more generally I find on the balance of probabilities that they had an unshakeable belief (whether justified or not) in the accusation they made. On balance, I consider that the defence of justification is therefore not made out in full and thus below I consider the defence of qualified privilege.

220. Defamatory? The tweet of 20 May 2013. In part, the Defendants suggest that this is no more than a rather leaden joke, in the context of Alicia Hamberg's prior comment.

221. I consider that in its natural and ordinary meaning, this described the Second Claimant as a person who was prone to harass other people generally. If the reader happened to know of the Brighton meeting, it might be understood as relating only to what happened at it. If the reader did not, it was likely to be understood as a more general comment.

222. Not without some reflection, I consider that it is not shown to be true that the Second Claimant was prone to harass others generally. Her fierce preoccupation was with particular individuals.

223. The asserted defence of qualified privilege.

224. The First Defendant had been subject to repeated attacks on his integrity, thereby he had an interest in responding to them. On the face of it the defence of qualified privilege is plainly engaged for his blog of 9 November 2012.

225. In relation to the Second Defendant, already by 12 October 2011 the Second Claimant had posted accusations that she was a trickster, that she had spread lies, and that she had been guilty of improper grooming behaviour towards the Claimants' child. The Second Claimant continued to post denigratory comments online accusing her of highly aggressive behaviour, and by express or implied accusation, of sanctioning attacks on the Claimants which she could have stopped. I am satisfied that on 9 November 2012 the Second Defendant did consider that she was the subject of repeated public attack by the Claimants, On the face of it the defence of qualified privilege is plainly engaged for the tweets of 9 and 10 November 2012.

226. In their closing submissions the Claimants make a number of submissions against allowing a defence of qualified privilege. I have found the majority of these submissions extremely difficult to follow. I have done my best to understand and incorporate them in this judgment.

(i) The Claimants submit that qualified privilege should not apply "due to their substantial covert and proxy harassment, which cannot protect the privilege claimed" and assert that "the post is a self evidently and deliberately humiliating retort to the Claimants' sincere defamation notice which had been occasioned by several simultaneous realisations about the level and extent of his misleading the public on his blog and elsewhere".

For reasons which will become clear under discussion below of the malice which is asserted, I do not consider that the allegation of harassment by either Defendant, whether by proxy or otherwise, is supported by credible evidence.

(ii) In part, the Claimants are saying that they did not make any attack, but simply expressed their own self defence against attacks which the First and Second Defendants were making against them.

First, until the blog post of November 2012 the First Defendant had not published on any blog or website any article assertion or comment upon the Claimants and they could not thus be responding to an attack by him on them, (unless there was in fact proof of collusion in his victimising them; but not a shred of evidence has been produced). I consider below whether there was malice on the part of either Defendant but the First Defendant had not published on any blog or website any article assertion or comment upon the Claimants.

Second, the Claimants had extensively and repeatedly published vituperative comments online which accused the First Defendant of censorship, hypocrisy, disregard of their own human rights and lack of integrity. On some of these occasions they compared his actions to those of Jimmy Saville. In my judgment it would be unfair to read this as an implied accusation of sexual abuse of

children, but at the least this was thereby accusing him of 'manipulation of power' in order to prevent revelation of abuse by the whistle blowing of others.

I presume that this adopts what eg they e-mailed to him on 8 November 2012 that victimisation was "provably fomented by you". I am unable to find any credible evidence in support of the allegation that the First Defendant fomented or initiated any victimisation of the Claimants, or in support of the "manipulation of power" alleged.

(iii) The Claimants submit that qualified privilege can not attach to any of the publications of the First or the Second Defendant, by reason of malice, in that "the Defendants were attacking the Claimants in a very real sense, stalking the Claimants physically, for a long time and over a year before the Claimants ever contacted any other news outlet about them" (closing submissions paragraph 38r).

The First Defendant might privately have expressed denigratory comments about the Claimants, but there is no significant or credible evidence to support the assertion that he either fomented, or participated, in a campaign of covert harassment or incitement or encouragement of others to publish material defamatory or denigratory of the Claimants, and none of stalking physical or otherwise. The same applies to the Second Defendant

(It is in fact a curious accusation, when one considers the conduct of the Claimants. In his closing submissions counsel for the Defendants submits that the Claimants "obsessively followed the First Defendant's moves on Twitter, his blog and in the wider online sphere and sought to contact those with whom he interacted and questioned his integrity including by circulating a video which they made about him. I do not think this puts the matter too high.)

(iv) Running deep through the Claimants' evidence and submissions is their conviction that both Defendants should have taken steps positively to support their own publicly expressed opinions and/or to support explanation of their own experience.

Illustratively, in arguing that the defence of justification should not be allowed, the Claimants argue that "the Defendants both believed and publicly stated elsewhere Steiner Education is a deceitful cult, which belief is pointedly not mentioned anywhere in the post [closing submissions paragraph 32d]".

This is an argument asking the court to infer malice, not a reason to deny engagement of the defence of qualified privilege.

(v) The Claimants also submit that, "The defence of qualified privilege cannot be available because their own defamation notice said quite clearly that the Claimants had had enough of his mendacity, whereas he now claims to have published this post because *he* had had enough. So he is saying that he had had enough of the Claimants having enough i.e. like saying "*I've had enough of receiving defamation notices from people I publish lies about but won't talk to*".

I have struggled, but without success, to understand this. In any event I have been unable to identify the lies (unparticularised), here asserted or referred to, or more general evidence to support the assertion that the First Defendant had lied about the Claimants.

(vi) Another strand of the Claimants' submissions is that "Any pursuit by sincere plaintiffs could almost by definition be framed as a "threat", but the Claimants "didn't 'threaten' anything other than a law suit if the First Defendant did not stop lying about the Claimants".

I have not been able to identify a respect in which the First Defendant "lied" about the Claimants.

(vii) The Claimants' closing submissions also state, "The First Defendant's claim to be using the privilege properly for himself is self evidently not true as he deliberately uses covert authorities without giving any names of others the Claimants are supposed to have harassed". I have tried, but I regret I have failed, to understand this submission.

(viii) More generally the essence of the Claimants' submissions is that qualified privilege should not apply in respect of the Second Defendant, because she was guilty of substantial covert and proxy harassment of themselves.

This is in my view more properly a plea of malice. In any event, what can be demonstrated is that on a very considerable number of occasions she privately expressed opinions denigratory of the Claimants, and on occasions expressed doubt of their trustworthiness, (albeit some of the latter self-evidently refer to whether the Claimants can be trusted to preserve the anonymity or confidentiality of communications by aggrieved Steiner parents). However in my judgment the consistent thread of communications by the Second Defendant is to encourage people not to engage publicly with the Claimants in relation to allegations of what did or did not transpire in relation to the ill-fated holiday in France.

227. It is self evident that in the letter they wrote immediately before the First Defendant wrote and published his blog post of 9 November 2012, they threatened him with legal suit and further publication of the assertions that he was participating in a smear campaign against them and was guilty of fermenting a campaign of victimisation against them. Their vehement denunciations of the Second Defendant had likewise been frequent and persistent. I have no doubt that reply to attack qualified privilege was engaged in the case of each Defendant.

228. The Claimants assert and believe that the Second Defendant has, and has from the outset, been engaged in a campaign encouraging others to publish remarks critical or defamatory of the Claimants, but I find the material placed before me unpersuasive of this. The assertion by the Claimants that silence on the part of the Second Defendant amounts to aggression, or indeed "the height of aggression", is remarkable, and perhaps speaks for itself as to whether the Claimants have any reliable evidence of what is asserted against the Second Defendant as malice.

229. Malice. In the case of each Defendant the defence will be defeated if malice is shown. The burden of showing this is on the Claimants.

230. As I have recorded above in respect of the qualified privilege in reply to attack, a reply should not be an attack on the integrity of the Claimant unless it is reasonably necessary for defending his own reputation.

231. However counsel for the Defendants draws attention to Australian authority, approved by the Australian High Court in *Harbour Radio Pty –v- Trad* [2012] HCA 44 at [33], namely "It may be conceded that to impugn the truth of the charges contained in the attack, and even the general veracity of the attacker, may be a proper exercise of the privilege, if it be commensurate with the occasion". I accept this as persuasive. I am satisfied that the authorities to which Mr Price refers also support the following propositions.

(i) The burden of proving malice (which is on the Claimants in an action for defamation) is not easily satisfied.

(ii) To establish malice, the Claimant must show the desire to injure him or her was the dominant motive for the defamatory publication.

(iii) If a person publishes defamatory material without any belief in its truth, that is generally conclusive evidence of expressed malice, and a person who does so recklessly (without considering or caring whether the defamatory matter is true or not) is treated as publishing material they knew to be false.

(iv) However carelessness, impulsiveness or irrationality are not sufficient to establish indifference to the truth.

(v) Overall, the Court should be slow to infer that the Defendant acted maliciously unless satisfied that the Defendant did not believe that the publication was true, or was indifferent to its truth or falsity (*Horrocks –v Lowe* [1975] AC 135).

(vi) A Defendant who honestly believes in the truth of what was published is not to be held to have been malicious merely because their belief was unreasonable or was arrived at after inadequate research or investigation (Gatley at 16.17, *Telnikoff –v- Matusevitch* [1991] 1 QB 102; and *Horrocks –v- Lowe* at 152-153).]

232. In April 2013 the First Defendant placed the blog post on his *Quackometer* blog, where it continues to be published. It was suggested to the First Defendant in cross examination that even if it was not defamatory upon its first publication, it was defamatory on its re-publication in April 2013, because by then any dispute as to what had occurred had been resolved by the published agreement between the Titirangi School and the Claimants. The words of the agreed statement between the Claimants and the school include, "TRSS acknowledges that some children in the class displayed bullying behaviour". Thus, it is said, it was no longer true to say that the parents "claim" their children were expelled because they were being bullied and or (more faintly) it was suggested that it was no longer true to say that the school "says it was because of the parents' behaviour". Further or alternatively, it was suggested to the First Defendant that then to re-post the blog was evidence of malice.

233. I accept the evidence of the First Defendant that he did this when the *Posterous* site was closed, and that it was posted in common with other material which had been on the *Posterous* site. The article retains, and is plainly identifiable by, its date of publication namely 9 November 2012.

234. First, I consider that any reader, and in particular any likely reader of this blog, would note the date of the article and take it to be made available or published only as an article of that date, not some fresh composition.

235. Second, and illustratively, the agreed statement itself between the Claimants and the school in December 2012, and prior to April 2013, was maintaining the school's assertion that places were withdrawn in response to the Claimants' actions, e.g. "the Paris/Garden's middle child was very happy in the Kindergarten right up until her place was withdrawn in response to her parents' actions". The statement does go on to say "TRSS acknowledges that Steve and Angel's words and actions (behaviour) in continuing to try and address the issues of bullying with TRSS, as they were advised and encouraged to do in all conversations with all TRSS staff, arose out of their natural and dutiful concern as parents for the safety of their child and concern for the wellbeing of other children in the class"; but it does not withdraw the suggestion that places were withdrawn in response to the Claimants' actions.

236. Third, as before, I do not consider that there was any change in contextual circumstance in April 2013 such as to make the phrase used in the blog post either convey, or imply, that expulsion was because of the parents' unreasonable behaviour.

237. Accordingly I do not consider that posting this on *Quackometer*'s site in April 2013 was defamatory, and I do not consider that the movement of this blog, along with all other material from the *Posterous* site, is evidence of malice on the part of the First Defendant.

238. The assertions of malice on the part of the First Defendant are no more than assertions and there is no credible evidence to support it.

239. The assertion of malice on the part of the Second Defendant requires greater recital of the evidence and the facts. There is no doubt that the Second Defendant sent a number of emails to others warning them to be wary of the Claimants. The Claimants have helpfully produced a synopsis running to some five pages under the heading "2nd Def Warning Others".

240. Two of those pre-date the online discussion between the Second Claimant and in particular Alicia Hamberg, which so quickly became heated and intemperate, and to which I have referred above; they are sent to Alicia Hamberg and two others. The Claimants would say that this is the beginning of a campaign by the Second Defendant to ensure that in the eyes of others they were denigrated, vilified, and misrepresented in the eyes of others.

241. The first email, on 30 August 2011, includes the following,

> "They are dreadful people frankly. I don't want this discussed AT ALL publicly of course but I suggest that you treat their advances with caution. I'm forwarding this to Diana in case they try to contact WC. I would urge anyone (including Pete) to be aware that they are not entirely trustworthy."

A second communication on the same day stated, to the same recipients,

> "Angel, who was in England with her dying mother, changed her flight to a day earlier so that Joe could look after their kids while she was picked up from the airport (we had arranged his return flight at the same time as she went out to France, so they would only have one trip – this was not what she wanted. Steve then fleeced Joe (he is 17) for the price of her changed flight – taking his Euros away from him just before he got on the plane….
> We were mystified by Steve not leaving in time to take Joe the following day – R was on the phone asking him please to leave (Joe's flight was very expensive – if he'd missed it there was a 2 day wait for the next flight to England) I did not breathe until I knew my child was on that plane, I was so scared they'd do something else. It's hard to forget that sensation. Also, Angel was determined to get an evening with Steve (without the kids)

> so they left Joe AGAIN with the girls after she arrived – after having told him off for letting them down by leaving. There was no contract of course – they weren't paying him. I cannot get over what they expected from him, as if he were some kind of servant….
>
> Just before he left, he was on Skype (from his room on his computer), telling me they'd said Steve would take him to the airport if he cleaned their house – imagine – if he cleaned their house. Dear Dog. Anyway I don't know what will happen – they might out me I supposed if they get spiteful and want to hurt us. I was particularly kind to her because of her mother's illness. That is worth bearing in mind".

Neither of these communications is an incitement to others to take to online or public attack, and on the contrary each communication invites that there should not be discussion publicly. It is impossible to read either as an invitation or encouragement to others to publish anything in respect of the Second Claimant (or, if asserted, in respect of the First Claimant).

242. There are two further communications by the Second Defendant prior to the end of the online discussion between the Second Claimant and Alicia Hamberg, as it became mutually more and more intemperate.

That of 4 September 2011 says,

> "In fact we feel we have to talk to Sands. They're used to odd parents, but not litigious, *possibly dangerous ones*" (emphasis supplied).

On 11 September 2011 the Second Defendant communicated to a Mike Collins,

> "It's not a good idea in our view to encourage Steiner parents to view their sites or get involved with any possible (but frankly unlikely) documentary. They are potentially litigious *and certainly capable of dishonesty or misrepresentation*" (emphasis supplied).

243. These are strong expressions of opinion, but I cannot find that they are an invitation or encouragement to others to publish anything in respect of the Second Claimant and certainly no evidence of encouragement to "mobbing" or "flaming" of the Second Claimant.

244. There is a cluster of warnings by the Second Defendant in mid to late October 2011, and I will recite below other communications privately made by her after that. In my judgment these have to be considered in their context and with proper regard to the date. All of these postdate the public accusations against her of hurting the Claimants' child, spreading lies, and improper grooming of children.

245. Thus on 13 October 2011, "I will ask someone from the LSN [Local Schools Network website] to be on their guard"; on 14 October 2011, "We will have to continue warning journos (Guardian etc)]"; on 17 October 2011, "Just as long as she isn't gathering significant followers, if one of the major UK papers is following her account I might have to warn other journalists – the LSN already know"; on 23 October 2011, "I wrote to Roger [Rowlings] and said I felt confident he would exercise discretion"; and on 24 October 2011 again in respect of Roger Rowlings, "You see my last email. I felt he had to take some responsibility. R says he's just being bloody-minded – takes a bloke to know a bloke. Whatever he says now, Roger will be a bit shaken and it'll make him think twice".

In January 2012 two communications are highlighted. The first is on 26 January 2012 to Francis Gilbert, "My husband Richard and I met this woman and her partner Steve last Summer, they'd been in NZ but were in England visiting a sick relative… A couple of incidents (which had little to do with their project) convinced us that she is unstable and we withdrew from contact". The second is that to the First Defendant which I have cited above, and which concluded ,

> "For us, and for the Waldorf Critics in the States, this makes their project a potential danger to vulnerable individuals…. [and then the reference to the Second Claimant accusing her of 'grooming'…. So if they do appear on the Quackometer*, please just check that they don't use the opportunity to attack Waldorf critics, Alicia, Lovelyhorse (Sam) or myself, because it has nothing to do with Steiner schools*" (emphasis supplied).

246. A communication of 7 March 2012 is of some interest. The Second Defendant states "I think they were expelled because of their behaviour, that it had little to do with the children and even less to do with Steiner Ed. They've been hounding Andy and sending him long emails with various threats and comments about Alicia, me etc. He doesn't let them post because they wanted to attack us on his blog". This warning is couched in terms of the Second Defendant herself being, or perceiving herself to be, under attack by the Claimants.

247. In cross examination, in respect of certain individuals the Second Defendant agreed readily that she had been in contact with them and offered warning or caution in respect of the Claimants, in a number of cases with particular concern about allowing the Claimants to write about the Second Defendant or her family upon an online site. I note that these tended to be those whom she knew well. In respect of others the Second Defendant told me that it was not easy to remember whether she had had discussions, or the detail of them.

248. A repeated complaint of the Claimants has been that the Second Defendant promoted smears about their mental health. In a number, she expressed (and sometimes strongly) the opinion that the Second Claimant had a Borderline Personality Disorder in others, she describes the Second Claimant as "mad" or "nuts": of illustrative interest, a communication of 10 May 2012 (to Alicia Hamberg and two others) stated "Andy Lewis and I both think it's a borderline personality disorder. Richard tends to like to actually have a consultation with the person before making that kind of assessment, but he didn't disagree". Some others are comments of attempted humour in an obvious reference to Blackadder ("Angel is madder than the maddest mad woman in the kingdom of mad people, also persistent").

249. These (private) communications are undoubtedly strongly disparaging of the Second Claimant in particular, but also of the First Claimant ("and yes deffo borderline with a sprig or narcissism, a folie a deux under assumed names" 29 February 2012). What they are not are invitations to others to post vilifying comments about the Claimants, or to make any public attack upon them.

250. I have read with care both the material which the Claimants submit are particularly informative, and other material to which reference was made during trial. A communication by the Second Defendant to a Richy Thompson of 13 May 2012 states "Richy – just need to alert you to a couple in NZ who have been harassing me and my family since we had an encounter with them last summer. They have also attacked Alicia Hamberg (the Swedish blogger who writes about Steiner Ed) and Andy Lewis. Amongst others". I am satisfied that this captures, exactly, the mindset of the Second Defendant. I am satisfied that on 9 November 2012 the Second Defendant did consider that she was the subject of repeated public attack by the Claimants, including allegations of grooming a child.

251. I am satisfied that the Second Defendant was correct to consider that she was the subject of repeated public attack by them. I am satisfied that she was seeking to protect her position privately but without orchestrating or participating in the vigorous comments online of Alicia Hamberg (or others).

252. It is for the Claimants to discharge the burden of showing that there was on the balance of probabilities malice on her part. On any and all of the material up to and including 9 November 2012 I consider that they would fail to do so.

253. I therefore turn to consider her tweet of 10 November 2012. The tweet of 10 November 2012 included the words "lying, bullying, and threatening". I have expressed above, and here adopt, my judgment as to whether the words "bullying and threatening" were true. If I were wrong to hold the defence of justification as made out I have no shadow of doubt that they fall well short of what needs to be shown to establish malice. Moreover this was a woman who had been accused of grooming a child, an accusation which she was entitled to regard as so remote from the truth as to be either mendacious, or disordered.

254. I have carefully considered whether her many derogatory comments about the Second Claimant's personality disorder and the like (as viewed by her) are maliciously motivated. I am satisfied that the Second Defendant did believe that the Second Claimant had a personality disorder. The rapidity, scale, intensity and, (to use a neutral word) fervour of the Second Claimant's published comments about the Second Defendant were scarcely likely to reassure the Second Defendant to the contrary. The untrue accusation of grooming would strongly reinforce any such belief. I am not satisfied on the balance of probabilities (or at all) that there was a dominant motive to injure the Claimants and I am satisfied that the comments were made in exercise of a wish to defend herself against attack. In reaching this conclusion I have been mindful of the cautionary principles of law set out above. I find that the Claimants have failed to show on the balance of probabilities that the Second Defendant was actuated by malice.

255. The question logically remains whether the Claimants have shown malice on the pat of the First Defendant at the time of his further tweets, of May 2013.

256. I had ample opportunity to observe the First Defendant during his giving of oral evidence. His demeanour as to the incident at the Skeptics in the Pub meeting, and the communication the day after, were those of an honest witness. I would not reach a conclusion on demeanour alone, whether in this or in any other case. The court has to consider whether his evidence is shown to be unsatisfactory in other respects.

257. By way of introduction, in relation to Titirangi School in New Zealand, the First Defendant accepted the fact that there had been bullying, in particular of the Claimants' daughter. He was challenged that he could not honestly have adopted the stance which he did - namely that bullying was demonstrated, but it was not demonstrated that this bullying was the product of Steiner philosophy or practice.

258. As to the statement agreed between the Claimants and the school in December 2012, he stated that he was happy to accept that this was probably the most definitive account of what happened. Equally, he said that "absolutely I understand" that there were, well before this settlement, publications of material on the Claimants' website of accounts of bullying. He said, "I'd be very surprised if at any school in the world there was no bullying, and a policy to deal with it". He was happy to accept that there were bullying instances at that school, that the Claimants' child had been bullied and that her account was honest. "I'm happy to accept that bullying happened at the school; the nature of the bullying, I do not know". He said he was not in a position to know whether the bullying was in particular the product of anthroposophical doctrine or practices.

259. First, it is logically open to a commentator to accept that there has been bullying, but to reserve the question whether that bullying is attributable to Steinerism or in particular Steiner practice at an individual school. He said "The evidence presented on your blog did not present evidence which

distinguished it from ordinary bullying"; and "I'm not sure I've seen anything from the school discussing the anthroposophical [in relation to this bullying]". I do not find this strictly analytical approach to be one indicative of malice on his part.

260. Second, he spoke of personal experience of a like school which dealt very well with an occurrence of bullying; and I am satisfied that he was not making this up for the purposes of the present case. "The evidence presented on your blog did not present evidence which distinguished it from ordinary bullying".

261. In relation to the original acts and omissions of the First Defendant in February 2012, I have carefully considered above whether the account of events given by the First Defendant is (i) honest and (ii) reliable. I concluded that it was both; I do not repeat the analysis here.

262. For completeness, I consider also evidence relating to a translation of a text which Steiner critics which both the Claimants and Defendants regarded as important in relation to the Steiner debate, written in French. The First Claimant is French speaking. Email disclosure reveals that the First Defendant became aware of the Claimants' interest in making or securing a translation of that text or work. In a communication of September 2 2012 from the First Defendant it is plain that he wished to secure a translation, both in order to be able to post it or use it, "and [to] make them [the Claimants] hopping mad".

263. It was put to the First Defendant that he was doing this because he had a certain profile, and that if he were able to do so it would neutralise the efforts or publications of the Claimants, in other words exclude them from Steiner debate. His answer was "I was angry at the time, but my chief concern was to have a usable translation". If this were evidence of a wish to damage the Claimants, or to neutralise their publications in relation to Steiner Schools generally, one would expect vastly greater illustration of it in the array of email tweet and blog material, but there is none. In addition, given the description of the author's personal experience of teaching in Steiner schools, there seems to me obvious interest or advantage in having an independent translation, and I did not find the explanations of the First Defendant either inherently, or apparently, unlikely.

264. The First Defendant was challenged during cross examination about private communications in which he expressed or conveyed that the Second Claimant had a personality disorder. His answer to the Second Claimant was, "I was describing behaviour, as people do. I have read a number of books about this. I believe I had a good layman's understanding of personality disorder. We all have one to some extent. I was concerned that your obsessive behaviour was at one extreme end". In my judgment, one cannot divorce a conclusion of the honesty or dishonesty of this the First Defendant's opinion from the wealth of evidence showing the intensity, frequency and vituperative language employed by the Claimants, (whatever their subjective beliefs may have been as to the behaviour of the First Defendant). I do not find his opinion dishonest or his explanation of it implausible.

265. In oral evidence the First Defendant said that he was deeply alarmed by the behaviour of the Claimants towards him, and distressed, by a campaign "over several years now". I have no hesitation in accepting the honesty of this belief on his part, and the honesty of his belief that the Claimants were obsessive in their approach towards him and his publications, and besetting of him. I observe that the campaign of the Claimants was then un-abating, and remained un-abating. I instance a communication of 6 October 2013, to take an illustration almost at random:

> "Dear Shiv, ….. Andy Lewis, a rising star in UK Skeptic circles, is seeking a huge platform for himself on the basis of his scepticism. …. At the same time he has been travelling around the country delivering misinformation about Steiner Education in a talk he's created to bring to light issues related with that alternative education movement…. Andy Lewis is blatantly using his followers' assumption of, and confidence in, his own sceptical mindset *to manipulate, defame and trash* people who have done something he tells journalists can't be done in order to dominate a platform for his own benefit. It is the most cynical behaviour I can imagine (emphasis supplied)";

or to Zoe Williams, journalist at The Guardian newspaper copied to the editor:

> "It's very important that you know that in your free schools article you've just linked to the website of *a person who is involved in a campaign of harassment* against a family reporting problems within Steiner Education, and in so doing you've enabled thousands more people to potentially read *his defamation and mis-information .. Dr Andrew Lewis has, from his first post on Steiner, entered directly and enthusiastically into this harassment campaign*…. If having looked at this evidence, it is not then immediately obvious to you that you have just directed potentially thousands of people *to a site publishing harassment and defamation of others, including minors*, in order to mislead the public, as well as grossly misinforming the public about the actual facts concerning agency regarding unchecked bullying in Steiner, all for his own personal benefit, please let me make that point absolutely clear (emphasis supplied)".

266. I have no hesitation in concluding that the defence of qualified privilege is made out in relation to the publications of May 2013 and that the Claimants have not discharged the burden of showing, on the balance of probabilities, malice on the part of the First Defendant. Accordingly in my judgment, and for the reasons set out at length above, the claim fails in relation to each of the publications complained of. In these circumstances it would be artificial to embark on a theoretical exercise of assessing damages had I reached different conclusions.

267. I indicated that in order to minimise costs, I proposed to hand down judgment in writing in the absence of the parties, reserving judgment as to any consequential matters for oral hearing which shall be an adjourned hearing of the handing down of judgment, and I now do so.

268. This judgment was circulated to the parties in the usual way for them to correct any typographical or obvious error. That process is intended to give the parties the opportunity to correct an obvious error, not to renew submissions.

269. I received suggestions for typographical corrections from the representatives of the Defendants which I have used in final correction of the written judgment. I received also 32 pages of observations from the Claimants. They frequently adopt the heading "error" or "factual error", but they appeared on preliminary reading to be submissions why the judgment is wrong, as opposed to correction of obvious error. I considered them further, in case any part of them did fall within the proper ambit of seeking to assist the court by way of correcting obvious error. Their length and nature does not assist the court to find any "obvious error" within the properly understood meaning of those words and I have not been able to identify any.

270. Counsel for the Defendants is invited to draft and send to the Claimants a form of the Order. If agreement can be reached on consequential matters, such is desirable, but counsel for the Claimant shall in any event lodge a form of order for approval within 14 days of formal handing down of judgment, and shall if consequential matters are not agreed inform the court of the extent of disagreement so that directions may be given either for written submissions upon the matters outstanding or for restoration for oral argument.

14 July 2015 His Honour Judge Seys Llewellyn QC sitting as a deputy judge of the High Court.