



Neutral Citation Number: [2024] EWHC 2704 (KB)

Case No: KB-2023-002761

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/10/2024

Before :

MR JUSTICE JULIAN KNOWLES

Between :

CHARLES NORTHCOTT

Claimant

- and -

DAVID HUNDEYIN

Defendant

Kate Wilson (instructed by **Patron Law**) for the **Claimant**
The Defendant did not appear and was not represented

Hearing date: **8 October 2024**

Approved Judgment

This judgment was handed down remotely at 10:30 on 25 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Julian Knowles:

Introduction

1. This is a claim for libel. By an order sealed on 24 June 2024 Master Stevens entered judgment in default for the Claimant (C) under CPR Part 12 in default of an Acknowledgement of Service or Defence from the Defendant (D). She gave directions in relation to remedies, including that there should be a trial to assess damages, and also directions in relation to the remedies under ss 12 and 13 of the Defamation Act 2013 (DA 2013).
2. The remedies trial took place before me on 8 October 2024. The Claimant (C) was represented by Ms Wilson. D did not appear and was not represented. I decided to proceed in D's absence for reasons I will give later. I heard submissions from Ms Wilson, and C gave evidence. He adopted his witness statement and gave some brief supplementary evidence. I reserved my judgment.

Summary of this judgment

3. C is a highly respected and award-winning journalist and filmmaker with the BBC. D is a well-known investigative journalist with a high public profile. Starting in 2022, and continuing, C has been the victim of a serious libel at D's hands. D wrote an article online containing a number of wholly untrue allegations that C had used his position as the director of documentary film to obtain sexual favours from a woman involved in the production. After publication of the article, D then embarked on a public campaign intended to maximise the harm and distress it caused C. Both of these have been very considerable, and C's career has been seriously impacted. Despite saying he would defend this case, D failed to do so and so failed to attempt to defend or justify what he had written about C.
4. The court awards C £95,000 damages, including aggravated damages. This is an appropriate sum to compensate C for the damage to his reputation caused by D and to vindicate his good name; and it takes appropriate account of the distress, hurt and humiliation which D's false and defamatory publication has caused him, as well as D's aggravating conduct.
5. The court also makes an order under s 12 of the Defamation Act 2013 requiring D to publish a summary of this judgment. It also makes an order under s 13, requiring the web-site operators concerned to remove the relevant part of the offending article.

Background

The Claimant

6. C is an investigative journalist and documentary filmmaker who is employed by the BBC. He is married. He works for BBC Africa Eye, an investigative unit within the BBC World Service, and is based in London. The unit is funded by the Foreign, Commonwealth and Development Office. He is a three-time Emmy nominee. In 2018, Forbes Magazine included him in its list of '30 Under30' in the Media in Europe. In 2019, C received a Peabody Award for news innovation.

The film 'Sex for Grades'

7. In 2018 there was a widely reported incident where a professor at a Nigerian university was recorded offering to give a female student improved grades in return for sex. It quickly became apparent that this was not an isolated incident, but that such behaviour in Nigerian universities and elsewhere is a widespread problem. It led to C directing and co-producing a documentary programme, 'Sex for Grades: Undercover in Nigerian and Ghanaian Universities' (Sex for Grades). The background to the making of the film is as follows.
8. In May 2018, BBC Africa Eye started investigations into the subject with a view to a possible programme. C and another BBC researcher contacted numerous journalists in Africa and BBC colleagues. One of those was Ogechi Obidiebube (who is generally known as Oge), a BBC Pidgin language service employee working in the Lagos Bureau, with whom C had previously worked in 2017 and who had assisted another BBC employee with research for a proposed article on the same subject. The initial material obtained by Ms Obidiebube was promising, and C considered that she could play a major role in the emerging investigation. C's first 'pitch' to the Africa Eye Editor for the proposed programme envisaged filming in Ghana, Kenya, and Nigeria and suggested three possible reporters for the final documentary, including Ms Obidiebube.
9. In October 2018, C secured funding for field work and engaged multiple journalists to carry out research in Nigeria and Ghana. This team comprised Ms Obidiebube and nine freelancers, including Ms Nkiru Mordi (known as Kiki). Ms Mordi had been introduced to C by Ms Obidiebube. Ms Mordi had previously worked as a radio presenter on WFM, the first and only women's radio station operating in Nigeria. She also had personal experience of the issues under investigation. Of the 10 reporters, only one (who was neither Ms Obidiebube nor Ms Mordi) had any previous experience of such in-depth investigations. The main leads generated by the field work came from two freelancers working in Ghana, two other freelancers, one of whom was Ms Mordi, working in Nigeria, and a contact who worked for an NGO in Nigeria.
10. C presented the evidence to his BBC managers. Approval was given for further investigations and the BBC assigned a co-producer, Chiara Francavilla. The Executive Producers, Andy Bell and Adejuwon Soyinka, C and Ms Francavilla made a request for approval of covert filming and use of undercover reporters.
11. Evidence had been gathered from a substantial number of students, but anyone who spoke on camera faced the real risk of shaming and other victimisation, as had happened previously in relation to female complainants.
12. Once covert filming was approved by the BBC, C submitted the documentary proposal for 'Sex for Grades' to the Editor of BBC Africa Eye in January 2019. This proposal outlined a one-hour documentary exposing academic staff at three prestigious universities in West Africa. The pitch envisaged exposing eight staff members about whom evidence of harassment had been gathered. It further suggested that Ms Mordi would be the onscreen reporter. C and his co-producer considered Ms Mordi to be the most suitable person for the role because of: her position and prior experience as a presenter at WFM; formal risk assessments that showed that, because of her personal circumstances, she faced fewer personal risks if there were a backlash; and her direct connection to the story, having suffered sexual harassment while she

was a student. The proposal was approved by Executive Producers, Mr Bell and Mr Soyinka, and the editor, BBC World Service Investigations Editor, Marc Perkins. Africa Eye commissioned the programme.

13. Between February and June 2019, eight women journalists worked and filmed undercover for the project posing as students. After encountering some resistance from BBC management in the Lagos Bureau to allow Ms Obidiebube, a BBC Pidgin language employee, to join the BBC Africa Eye investigative project, C's editor managed to secure permission for her to work on the project and undercover for a total of 10 days.
14. All eight undercover reporters obtained footage of academic staff at a total of three universities sexually harassing them. Ms Obidiebube obtained at least six hours of footage from the University of Lagos of one lecturer sexually harassing her. Ms Mordi obtained footage of harassment by two lecturers at the University of Lagos and by two academic staff at the University of Benin.
15. Throughout the project, C kept in contact with the team by WhatsApp and coordinated and supervised filming. The BBC provided security and personal and psychological support to the undercover reporters.
16. At stages throughout the investigation and the editing of the final programme, the BBC carried out risk assessments, advised the journalists, and considered whether there were any reasons to depart from its established convention of not disclosing the identities of undercover reporters. The results of these assessments were that of the eight undercover journalists, the decision was taken that only Ms Mordi's true identity would be revealed in the final programme (although in response to requests from Ms Obidiebube, she was later identified by her real name).
17. In the ordinary course of such a production and commensurate with his role as director and co-producer, C (and also Ms Francavilla) had some influence over who was involved in the programme. Although they had proposed that Ms Mordi be the onscreen presenter in the January 2019 proposal, decisions about who is engaged by the BBC on its programmes and what credits are given are taken by, and are the ultimate responsibility of, the executive producers, editor and commissioning editor.
18. 'Sex for Grades' was released in October 2019 and attracted 11.4 million views on BBC Africa's YouTube channel, making it (at the time) the third most-watched documentary on the channel. According to BBC metrics, the countries with the largest number of viewers and longest watch times were Nigeria, the United States and the UK. The programme was also available to view via the BBC iPlayer.
19. The programme had a substantial impact: more than twenty academic staff in various universities in Africa were dismissed or suspended and new legislation concerning sexual harassment was passed in Nigeria. The documentary was nominated for an Emmy in the International Current Affairs Category, a Grierson British Documentary Award in the International Current Affairs Category and won the AIB Impact Award, for most impactful programme in 2019/20.
20. As Ms Wilson observed orally, it is a piece of work which should have been career advancing for C. I agree. I watched some of it in preparation for the trial and is

plainly an excellent piece of work. Instead, for reasons I will come to, it led to D writing an article defamatory of C which has been extremely harmful to him.

The Defendant

21. D is a journalist. He has an established profile and following within the jurisdiction partly through his articles for international publishers, including Al Jazeera, CNN and the Washington Post. D has various links with this jurisdiction, including having studied at the University of Hull, and holding a fellowship in 2023 at the University of Cambridge, but it is not clear where exactly his principal place of domicile is. As far as C understands it, he is a Nigerian citizen.
22. D publishes a newsletter via Substack. This is an online platform based in the United States which allows journalists and writers and other content creators to post their work which can be accessed by followers and subscribers (from which they can make money). At the material time, he had more than 42,000 Substack subscribers. He was also active on Twitter (now X) where he had more than 560,000 followers.
23. D's Twitter followers include a material number of individuals within the jurisdiction, including many who work for the BBC, work for media organisations with operations in the jurisdiction, or have an interest in Africa, including Paul Arkwright, a diplomat. Mr Arkwright was previously the British High Commissioner to Nigeria and the UK's COP26 Regional Ambassador to Sub-Saharan Africa. I will come back to this point later.
24. At some time unknown in 2021, the D started a relationship with Ms Obidiebube and they subsequently married in August 2021. According to D, they have since separated.

D's defaming of C in 2022

25. On 12 September 2022, D emailed C, purportedly to put allegations to him prior to publishing an article about 'Sex for Grades' and inviting him to comment. D introduced himself as an 'independent investigative journalist'; said he was working on a story about 'managerial malfeasance at BBC Africa, and the circumstances surrounding the 'sidelining' of Oge Obi on the 2019 Sex for Grades' documentary; and that he had information that C had had "an inappropriate personal relationship with Kiki Mordi'.
26. There followed an exchange of emails between C and D on 12 September 2022 and 13 September 2022.
27. On or around 26 September 2022, D published to a substantial number of readers within the jurisdiction on Substack an article entitled 'Journalism Career Graveyard: The BBC And Its West Africa Problem' via his Substack newsletter, 'West Africa Weekly', which was defamatory of C (the Article). A copy of the Article (with paragraph numbering added) is attached to the Particulars of Claim (PoC) at Annex A. A number of videos were embedded within the Article. D also included a screenshot of part of his email exchange with D in the Article, giving a misleading impression of the full exchange by omission.

28. The paragraphs of the Article which were defamatory of C were [45]-[81], that section ending with a prominent photograph of C holding a camera. As well as publishing on Substack, D promoted it via Twitter to his followers, thereby bringing the Article to the attention of many more readers.
29. In its natural and ordinary meaning the Article meant and was understood to mean that:
 - a. C had had an inappropriate sexual relationship with a potential contributor (Ms Mordi, aka, Kiki) to ‘Sex for Grades’ concerning sexual harassment in universities;
 - b. Solely because of that relationship, he brought her onto the team making the documentary and gave her the role of on-screen reporter;
 - c. he did so despite her having made no meaningful contribution to the programme;
 - d. without any justification, he took the credit for the programme and ensured Ms Mordi was given credit when, without the undercover footage obtained by Ms Obidiebube, there would have been no meaningful documentary and the programme was, in fact, the product of her (Ms Obidiebube) work;
 - e. he deliberately deceived Ms Obidiebube, and promoted Ms Mordi because he was having sex with her; and
 - f. he thereby abused his position as director and producer of the programme.

The untrue nature of D’s allegations

30. It should be clearly understood by all reading this judgment that these very serious allegations were wholly untrue.
31. Despite being served with these proceedings, D has not sought to defend the truth of what he wrote about C. The burden of proving them lay on him. He said that he would do so (as described below), but in the end he did not, or even try to. An obvious inference that can be drawn is that he knew they were false, and could not be defended.

Events following publication

32. Following publication of the Article, D was active on Twitter. Ms Wilson characterised this as D effectively goading C (and Ms Mordi) into suing him.
33. On 29 September 2022, D posted on Twitter:

“As for the people who are constantly threatening ‘legal steps’ because my stories have exposed their true nature to their international donors, NGOs and state actors, here is @WestAfricaWeek’s address. If you don’t sue me, you are all bastards. I double dare you...”

34. On 1 October 2022, D tweeted twice, directed at Ms Mordi, that she should sue if he was lying and she wanted to contend that D’s allegation that she had ‘traded sexual favours in exchange for workplace advantage’ was a lie. Also, in a tweet directed at C and Ms Mordi (using their Twitter handles) D wrote:
- “Then why don’t you sue me for categorically stating that you had sex multiple times with @CNorthcott1 in the course of producing that documentary, and that this formed the sole basis of your fraudulent “career”?...”
35. On 2 October 2022, D tweeted a link to the Article and said:
- “You all know Oge Obi is not really who you’re after so I find this exaggerated rubbernecking amusing. I wrote this story and I stand by it. Whoever has a problem with it knows the right course of action to pursue. Good afternoon”:
36. On 31 January 2023 a letter of claim was sent on behalf of C. It complained of defamation in relation to the Article including republications on social media (and complained of other matters and advanced other causes of action).
37. D emailed his response on 1 February 2023. It was combative in tone, to say the least. Among other things, D wrote:
- “I completely stand by my story and I expect your ‘faithful husband’ client to sit down opposite me in court. If you have nothing further beyond more non-fact-checked claims, fatuous arguments and unreasonable demands, I encourage you to take the next legal steps forthwith. I have spent close to a decade practising high risk investigative journalism in one of the world’s most dangerous places to be a journalist. If you imagine that I can be bullied or intimidated by poorly done and obvious attempts at SLAPP litigation like this, then I enjoin you to see me in court where we can test that theory out.”
38. SLAPP stands for ‘strategic lawsuit against public participation’ and refers to a lawsuit that is brought primarily to chill the speech of individuals by subjecting them to costly litigation, without regard to prevailing on the merits.
39. The Claim Form was issued on 26 September 2023.
40. On 2 November 2023, C served proceedings on D. Service was effected by email in accordance with [5] of Master Stevens’ Order of 29 August 2023.
41. D failed to file an Acknowledgement of Service or a Defence, and C applied for judgment in default. As I have said, Master Stevens then entered judgment for C and gave directions for determination of remedies.
42. On 29 July 2024 Collins Rice J granted C a final injunction against D prohibiting him from repeating the defamatory allegations complained of and requiring him to cease

to publish the Article within the jurisdiction from the Substack platform and all and any internet platforms to which he had published it or caused it to be published.

43. Ms Wilson said this Order has not been complied with, and that the Article is still available on Substack.

Issues arising for determination

44. I need to address the following primary issues: (a) the reasons for proceeding in D's absence; (b) the *quantum* of damages; and (c) whether to make orders in C's favour under ss 12 and/or 13 of the DA 2013.

Submissions

45. On behalf of C, Ms Wilson submitted as follows.
46. Firstly, that I should proceed in D's absence pursuant to CPR r 39.3. He had been served with the proceedings and with notice of the hearing and it was clear that he had chosen not to engage. He had not engaged for some time, after the initial exchange of correspondence outlined above.
47. As I have said, I acceded to this application and will give my reasons in a moment.
48. On *quantum*, she noted that the claim form limits the damages sought to £100,000 and she did not invite me to award more than that. By reference to awards made in broadly comparable cases which I will discuss later, she said that in this case an award of between £80,000 - £100,000 would be appropriate, that figure including an amount by way of aggravated damages to reflect D's behaviour following publication of the libel.
49. She also invited me to make orders under ss 12 and 13 of the DA 2013. Where a court gives judgment for a claimant in an action for defamation, s 12 allows the court to order the defendant to publish a summary of the judgment. Ms Wilson accepted that given D's non-engagement and the uncertainty as to his whereabouts, there would be practical difficulties in enforcing it, but submitted I should make the order nonetheless.

Discussion

Reasons for proceeding in D's absence

50. I was satisfied that it was appropriate to proceed in D's absence for the following reasons.
51. CPR r 39.3 provides:

“(1) The court may proceed with a trial in the absence of a party
...”

52. The notes to this rule in the *White Book 2024* state:

“Whether a court should proceed in the absence of a party and to exercise its powers under r.39.3(1)(a)–(c) is a matter of discretion (see r.3.1 and r.23.1 and *Gupta v Shah* [2024] EWHC 1189 (Ch)). In exercising its discretion, the court will also have regard to the overriding objective (r.1.1(1)). In *Williams v Hinton* [2011] EWCA Civ 1123, the Court of Appeal explained the approach the court will take under r.39.3(1):

“It is of course of the first importance that a party is afforded a fair opportunity to present its case to the judge. It is also, however, of great importance that judges, as a matter of case management, act robustly to bring cases to a conclusion. In the present context CPR 39.3 furnishes a safeguard in the event of mishap.’

53. CPR r 39.3 provides that where a party does not attend trial and the court gives judgment or makes an order against him, that party may apply for the judgment or order to be set aside. CPR r 39.5 specifies the matters that such a party has to show in order to have a judgment set aside under CPR r 39.3.

54. Ms Wilson referred me to *Sloutsker v Romanova* [2015] EMLR 27, a judgment of Warby J (as he then was). At [25] he quoted his judgment given at an earlier stage of the proceedings:

“Where a litigant fails to appear without giving a reason it is necessary to consider first whether they have had proper notice of the hearing date and the matters, including the evidence, to be considered at the hearing. If satisfied that such notice has been given, the court must examine the available evidence as to the reasons why the litigant has not appeared, to see if this provides a ground for adjourning the hearing.”

55. When C commenced proceedings, he was given permission to serve the Claim Form and all documents by email on D at two email addresses which D had used in pre-action correspondence and/or lists as his contact on his website (davidhundeyin.com).

56. The relevant emails from C’s solicitors are in the bundle. I was therefore satisfied that D had notice of this hearing and had been served with the relevant documents via email. I was also satisfied that he had been given notice of previous hearings earlier this year, including the injunction hearing before Collins Rice J in July 2024, which he also did not attend.

57. There is no evidence as to why D did not attend these hearings, or the one before me. However, given his engagement at the outset in pre-action correspondence, his ‘see you in court’ response, and then his subsequent silence, the overwhelming inference, and the one that I draw, is that he has deliberately chosen not to try and defend the proceedings, and so intentionally chose not to attend the trial before me.

58. In those circumstances I was satisfied that it was proper to proceed in D’s absence.

Quantum of damages

59. Where default judgment has been granted to a claimant, damages are assessed by reference to the claim advanced in the PoC, which serve as a ‘proxy’ for the terms of a judgment: *New Century Media Limited v Makhlay* [2013] EWHC 3556 (QB), [30], cited in *Blackledge v Persons Unknown* [2021] EWHC 1994 (QB), [27].
60. In *Ware v French* [2022] EWHC 3030 (KB), [137], I agreed with counsel’s suggestion that awarding damages in a defamation claim is an ‘inexact science’. Every case is different on its facts and will have features justifying the particular award in that particular case.
61. That said, there are clear principles underpinning how damages should be assessed in libel cases. In *Barron v Vines* [2016] EWHC 1226 (QB), [20]-[21], Warby J set out those principles as follows:

“20. The general principles were reviewed and re-stated by the Court of Appeal in *John v MGN Ltd* [1997] QB 586. A jury had awarded Elton John compensatory damages of £75,000 and exemplary damages of £275,000 for libel in an article that suggested he had bulimia. The awards were held to be excessive and reduced to £25,000 and £50,000 respectively. Sir Thomas Bingham MR summarised the key principles at pages 607 - 608 in the following words:

‘The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must [1] compensate him for the damage to his reputation; [2] vindicate his good name; and [3] take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is [a] the gravity of the libel; the more closely it touches the plaintiff’s personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. [b] The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. [c] A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place. It is well established that [d] compensatory damages may and should compensate for additional injury caused to the plaintiff’s feelings by the defendant’s conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses

to apologise, or cross-examines the plaintiff in a wounding or insulting way. Although the plaintiff has been referred to as 'he' all this of course applies to women just as much as men.'

I have added the numbering in this passage, which identifies the three distinct functions performed by an award of damages for libel. I have added the lettering also to identify, for ease of reference, the factors listed by Sir Thomas Bingham. Some additional points may be made which are relevant in this case:

(1) The initial measure of damages is the amount that would restore the claimant to the position he would have enjoyed had he not been defamed: *Steel and Morris v United Kingdom* (2004) 41 EHRR [37], [45].

(2) The existence and scale of any harm to reputation may be established by evidence or inferred. Often, the process is one of inference, but evidence that tends to show that as a matter of fact a person was shunned, avoided, or taunted will be relevant. So may evidence that a person was treated as well or better by others after the libel than before it.

(3) The impact of a libel on a person's reputation can be affected by:

(a) Their role in society. The libel of Esther *Rantzen* was more damaging because she was a prominent child protection campaigner.

(b) The extent to which the publisher(s) of the defamatory imputation are authoritative and credible. The person making the allegations may be someone apparently well-placed to know the facts, or they may appear to be an unreliable source.

(c) The identities of the publishees. Publication of a libel to family, friends or work colleagues may be more harmful and hurtful than if it is circulated amongst strangers. On the other hand, those close to a claimant may have knowledge or viewpoints that make them less likely to believe what is alleged.

(d) The propensity of defamatory statements to percolate through underground channels and contaminate hidden springs, a problem made worse by the internet and social networking sites, particularly for claimants in the public eye: *C v MGN Ltd* (reported with *Cairns v Modi* at [2013] 1 WLR 1051) [27].

(4) It is often said that damages may be aggravated if the defendant acts maliciously. The harm for which compensation would be due in that event is injury to feelings.

(5) A person who has been libelled is compensated only for injury to the reputation they actually had at the time of publication. If it is shown that the person already had a bad reputation in the relevant sector of their life, that will reduce the harm, and therefore moderate any damages ...

(6) Factors other than bad reputation that may moderate or mitigate damages, on some of which I will also elaborate below, include the following:

(a) ‘Directly relevant background context’ within the meaning of *Burstein v Times Newspapers Ltd* [2001] 1 WLR 579 and subsequent authorities. This may qualify the rules at (5) above.

(b) Publications by others to the same effect as the libel complained of if (but only if) the claimants have sued over these in another defamation claim, or if it is necessary to consider them in order to isolate the damage caused by the publication complained of.

(c) An offer of amends pursuant to the Defamation Act 1996.

(d) A reasoned judgment, though the impact of this will vary according to the facts and nature of the case.

(7) In arriving at a figure it is proper to have regard to (a) Jury awards approved by the Court of Appeal: *Rantzen* 694, *John*, 612; (b) the scale of damages awarded in personal injury actions: *John*, 615; (c) previous awards by a judge sitting without a jury: see *John* 608.

(8) Any award needs to be no more than is justified by the legitimate aim of protecting reputation, necessary in a democratic society in pursuit of that aim, and proportionate to that need: *Rantzen v Mirror Group Newspapers (1986) Ltd* [1994] QB 670. This limit is nowadays statutory, via the Human Rights Act 1998.”

62. *Gatley on Libel & Slander* (13th Edn), [34-068] - [34-078], provides a useful outline of the relevant law. Nicklin J gave a comprehensive account of the principles of assessment of damages in libel in *Turley v Unite* [2019] EWHC 3547 (QB), [171] - [176] (including reference to some recent awards cited by each party). The principles identified by him are: (a) damages must compensate the Claimant for the damage to his reputation; (b) damages must vindicate the Claimant’s good name; (c) damages must take account of the distress, hurt and humiliation which the defamatory publication has caused to the Claimant; (d) in assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; (e) the extent of publication and the relationship of the publishers with the claimant is also relevant; (f) a successful Claimant may properly look to an award of damages to vindicate his reputation. The significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where

the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place; (g) it is well established that compensatory damages may and should compensate for additional injury caused to the claimant's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise; (h) the impact of a libel on a person's reputation can be affected by their role in society; (i) the impact of a libel on a person's reputation can be affected by the extent to which the publisher of the defamatory imputation is authoritative and credible; (j) the impact of a libel on a person's reputation by the 'hidden springs' point (which I referred to earlier); (k) a reasoned judgment may affect the level of damages awarded, though the impact of this will vary according to the facts and nature of the case; and (l) in arriving at a figure it is proper to have regard to previous awards by a judge sitting without a jury.

63. With regard to the second principle, that damages must vindicate the Claimant's good name, this will depend on the size of the award. Lord Hailsham discussed this in *Broome v Cassell & Co Ltd* [1972] AC 1027, 1071 (emphasis added):

‘Such actions involve a money award which may put the plaintiff in a purely financial sense in a much stronger position than he was before the wrong. Not merely can he recover the estimated sum of his past and future losses, but, in case the libel, driven underground, emerges from its lurking place at some future date, *he must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charge.*’

64. Of course, awards are now made by judges, but Lord Hailsham's point remains a valid one.
65. In relation to aggravated damages, *Gatley* says at [10-016] (footnotes omitted):

‘[I]t is very well established that in cases where the damages are at large the jury (or the judge if the award is left to him) can take into account the motives and conduct of the defendant where they aggravate the injury done to the plaintiff. There may be malevolence or spite or the manner of committing the wrong may be such as to injure the plaintiff's proper feelings of dignity and pride. These are matters which the jury can take into account in assessing the appropriate compensation.

The conduct of a defendant which may often be regarded as aggravating the injury to the plaintiff's feelings, so as to support a claim for 'aggravated' damages, includes a failure to make any or any sufficient apology and withdrawal; a repetition of the libel; conduct calculated to deter the claimant from proceeding; persistence, by way of a prolonged or hostile cross-examination of the claimant, or in turgid speeches to the jury, in a plea of justification which is bound to fail; the general conduct either of the preliminaries or of the trial itself in a manner calculated to

attract wide publicity; and persecution of the plaintiff by other means.

While there is some authority for the proposition that persistence in a bona fide plea of a truth or an opinion defence can of itself aggravate damages, it has been said repeatedly that it is wrong in principle to award aggravated damages solely because of the bona fide persistence with such a plea, provided it is conducted reasonably.

Aggravated damages have on occasion been awarded (or identified) as a sum separate from general compensatory damages. However, in *Lachaux v Independent Print Ltd* ([2021] EWHC 1797 (QB) [2022] EMLR 2, [227]) Nicklin J described the practice as ‘unnecessary ... generally unwise’, for the following reasons:

‘The Court’s task is to assess the proper level of compensation, taking into account all the relevant factors, which include any elements of aggravation. If, as the authorities recognise, the assessment of libel damages can never be mechanical or scientific, attributing a specific figure to something as nebulous as ‘aggravation’ has an unconvincing foundation. Worse, as it would represent the imposition of a clearly identified additional sum of money, it risks the appearance of being directly attributed to the conduct of the defendant. That comes perilously close to looking like a penalty. For these reasons, I consider the better course is to fix a single award which, faithful to the principles by which damages in defamation are assessed, is solely to compensate the Claimant. The award can properly reflect any additional hurt and distress caused to the Claimant by the conduct of the Defendants. To speak in terms of whether a claimant is ‘entitled’ to an award of aggravated damages is misleading. Every claimant who succeeds in a claim for defamation is ‘entitled’ to an award of damages which may reflect any proved elements of aggravation. The real question is whether the claimant can demonstrate, by admissible evidence which the court accepts, that the damage to his/her reputation and/or his/her distress or upset has been increased by conduct of the defendant.’”

66. The defendant’s conduct may properly be taken into account, as an aggravating feature, where it impacts on injury to feelings, *per McCarey v Associated Newspapers (No 2)* [1965] 2 QB 86, 104:

“...if there has been any kind of high-handed, oppressive, insulting or contumelious behaviour by the defendant which increases the mental pain and suffering caused by the defamation and may constitute injury to the plaintiff’s pride and self-

confidence, these are proper elements to be taken into account in a case where damages are at large.”

67. In this case I am going award aggravated damages for reasons I will explain later. I propose to adopt the approach of Nicklin J in *Lachaux* and award a global sum which reflects compensatory damages and D’s aggravating conduct.
68. I regard the libel in this case as being very serious. It was a direct attack on C’s professional integrity which, as a journalist, is of vital importance to him. He was falsely accused of doing the very thing he was investigating in the making of the programme, namely, abusing a position of power in return for sexual favours.
69. The subject matter of the Article concerned the national broadcaster the BBC. It is a subject of inherently substantial interest to those running, employed by, and working with the BBC and others working in television and journalism in this jurisdiction. It is to be inferred that it was also of interest to the funders of BBC Africa Eye. The Defendant’s allegations have, as was reasonably foreseeable, permeated throughout the BBC in London, as I shall explain in a moment.
70. I accept C’s evidence that D’s libel has had a very serious impact on him both professionally and personally and caused him serious harm and distress. His witness statement adopts and develops the particulars of harm pleaded in the PoC, and I accept both in their entirety. The following are some particular points.
71. At [13] of his witness statement he said:

“I cannot overstate how horrendous this ordeal has been for me and my family. Unfortunately, many people, if not most, have a ‘no smoke without fire’ attitude towards allegations of this nature. It does not help that some people think that legal proceedings are just a way to cover up wrongdoing. Even now that I have a judgment in my favour, I have no closure and no real vindication from the false and defamatory statements Mr Hundeyin has made against me.”

72. By their very nature D’s allegation were likely to (and unfortunately have) had a detrimental impact on C’s career. Media companies and television production companies were highly likely to avoid the risks inherent in engaging him because of the risk of adverse publicity (however unwarranted) if he is connected to a project. Further, they were likely to, and did, affect C’s perceived suitability to work on projects concerned with exposing sexual abuse and similar human rights issues. These are subjects which have been a focus of his work and on which he wants to continue to work. He said at [15]-[16] of his witness statement:

“15. Through my work as a journalist, I have covered many stories of women bravely speaking up against predatory men. I am dedicated to telling such stories and my reporting has contributed to important public discourse around the so-called ‘me too’ movement, –such as the Sex for Grades investigation in 2019, which led to changes in the law around sexual harassment in Nigeria, and my Like.Share.Kill investigation in 2018, which

exposed failings in Facebook's safeguarding policies. Mr Hundeyin's defamatory allegations completely subverted my position within this discourse. He falsely accused me of abusing my position in order to sexually exploit a female colleague and take advantage of her. Accusing a man of having an unprofessional sexual relationship with a female colleague is amongst the most damaging allegations that can be made in a modern professional environment. More damaging still, in my case, is that Mr Hundeyin claimed it was a junior colleague – Ms Kiki Mordi - who had first come to the BBC as a source speaking on the record about suffering sexual abuse.

16. The Defendant's story is a complete fabrication, designed – in my view - to cause me maximum damage. He took my public image as a conscientious journalist with a track record for helping vulnerable people and destroyed it. His false allegations in the Article, in which he accused me of lying, manipulating and exploiting a young woman, sought to turn me into one of the monsters I have fought so hard to expose through my work. He threw me into a bizarre dystopian nightmare, fuelled by his relentless retweeting and discussion forums about the Article ... In some posts, he was vitriolic, sexist towards my colleague and intentionally humiliating, referring to her genitals and posting a crude sexualised meme video ... His followers indulged in this content with relish, sharing, commenting, and piling in on the abuse. I have faced casual trolling online before. But nothing as targeted and explosive as Mr Hundeyin's onslaught. His profile, the reach of his attack, and the defamatory meaning of his Article made it impossible for me to ignore this or walk away."

73. In his witness statement C listed important and high-profile media figures who follow D on social media. They all work for organisations which are potential sources of work for C. Further, one prominent figure in journalism and former BBC executive, Marcus Ryder MBE, now the Head of External Consultancies at the Sir Lenny Henry Centre for Media Diversity, commented publicly on the Article in a tweet, saying:

"The BBC is either tacitly admitting that the allegations are right, and/or they don't think one of the most respected journalists in Africa deserves a response."

74. In another tweet he described D as 'one of the best investigative journalists in Africa'.
75. Another example of professional impact given by C is that in July 2024 when he met a BBC employee about a forthcoming documentary he had produced, she told him that she had read the Article. C commented that his belief and assumption is that many new individuals who meet him in the industry – and carry out moderately in depth research of his background and reputation – consume the false material in the Article. There is other evidence of C being directly questioned by BBC colleagues about whether the allegations were true.

76. At [26] of his witness statement C gave another specific example of the Article impacting on his work. In September 2023, he contacted a source in the UK for a story relating to a cult formed by a religious leader. The source went on TikTok and asked her audience if she should talk to C. One of her followers then posted a link to the Article in the comments, which was followed by other comments from members of the public advising her not to trust him. C says that he cannot know how many times something similar has happened.
77. Further evidence about the detrimental impact on C's career is at [28]-[29] of his statement where he describes how, after the publication of the Article, the BBC cancelled a podcast he had spent months working on about the investigation which led to the 'Sex for Grades' film. He described this as a 'devastating career setback'.
78. He went on at [30]-[32]:
- “30. At work in London, things grew steadily worse between 22 September and October 2022 – as Mr Hundeyin aggressively promoted his defamatory statements about me through his popular Twitter account ... which is followed by numerous BBC staff members. Two senior BBC managers, Marc Perkins and Tom Watson, pulled me aside separately and asked me if I had engaged in an unprofessional sexual manner with Ms Mordi. They told me they believed me, but I know rumours continued to circulate internally based on later encounters I had with colleagues.
31. During this period colleagues approached me – such as the BBC Populations reporter and the BBC News West Africa correspondent - and asked me to explain what had happened, prompting agonising conversations, trying to prove to those with no context that it was a complete fabrication. Those that did not know me began to ask questions about the Article as well, and appeared to believe it, despite its total lack of substance. Around December 2022, my editor Mr Watson told me a senior reporter approached him about the Article and said 'surely something funny' must have happened. I asked colleagues I trusted to help me fight these rumours, but it did little to alter my strong inclination that many people were forming new and negative opinions of me.
32. To this day, there are many colleagues I no longer feel comfortable working with or seeing in the office on account of hearing that they believe Mr Hundeyin's Article. I operate in a silo at work, among a small group of people I trust, but am alienated from a far wider group I once happily collaborated and worked with.”
79. He went on describe an internal investigation carried out by the BBC into whether the allegations in the Article were true or not. He was excluded from the investigation, and comments, 'this was an upsetting and confusing chain of events – that indicated the impact of Mr Hundeyin's allegations within my place of employment.' Despite being cleared by the investigation, he said, 'the rumours never died'. He went on:

“To those who do not know me or know there is nothing in the defamatory allegations, my innocence has never been established. I have faced two years of unpleasant and unfounded whispers – coupled with multiple excruciating conversations with colleagues, forcing me to explain the falsity of the allegations. I do not know if people have believed my protestations. I do not know the attitudes of those who have not spoken with me. Having once been a huge source of inspiration, work in the London office has become suffocating. I no longer enjoy it and feel utterly trapped by my circumstances.”

80. Later, he described how the Article has harmed his ability to utilise social media, which is vital to a journalist’s work, as he explains. The BBC told him to minimise his social media presence. This means that without an active and thriving social media presence, career avenues, such as becoming a BBC reporter (different from his current role as producer and director), which requires public engagement, a good outward reputation and a large social media following, are closed off for him (at [40]).
81. Later in his statement C described the impact which D’s Article has had on his wife. As I commented during the hearing, as well as harming C professionally, D’s false allegations of sexual misconduct plainly had the capacity to harm him personally in terms of his relationships with his wife and family. Fortunately, they do not appear to have done so – C’s wife was present in court and is plainly a great support to him – but they could easily have done.
82. At [49]-[50] C gave further details of the personal impact upon him which the Article has had. I do not need to set out the details of this, but I accept that it has been profound in a number of different ways.
83. I should also set out C’s evidence as what he thinks D’s motivation probably was in writing his false Article:

“55. On 19 September 2022, shortly before Mr Hundeyin published his article, his wife ‘Oge’ posted two tweets about the satisfaction of achieving, and I quote, ‘revenge.’ ... Mr Hundeyin’s motivations, in my opinion, were fuelled by a desire to help his wife settle scores with people she didn’t like at the BBC – by attacking their reputations with intentionally false allegations. It’s telling that Mr Hundeyin never disclosed his relationship with Oge in his Article, despite mentioning her many times, and that (to the best of my knowledge) he has never mentioned it publicly. He confirmed their relationship in his response to the letter of claim.”

84. Turning to other matters, as I explained earlier, the impact on C is affected by the extent to which D is regarded as authoritative and credible. There is no doubt that, on the evidence, D is regarded as a serious and authoritative journalist and that he has a high public profile. He has contributed to extremely well-known and prestigious publications. As well as the description of D given by Mr Ryder which I quoted earlier, in his oral evidence, C explained to me that D was described by Chimamanda Ngozi Adichie, a well-known Nigerian author, as being one of Africa’s ‘greatest

journalists'. As a consequence, there can be no doubt that there are many who will have taken at face value the truth of the false allegations made by D in his Article given his status and reputation.

85. In terms of the extent of publication of the Article, I conclude that it was very substantial indeed. D has many followers on Substack who would (and still do) have access to the Article, and it was further promoted by D on Twitter, where, as I have said, D had more than half a million followers. C only seeks to recover for publication within this jurisdiction, and it is not possible to arrive at precise figures, but Ms Wilson invited me to conclude on the evidence that the Article would have been read by at least 100,000 readers, and possibly several multiples of that. I would not disagree with that assessment. At [18] of his statement C said:

“I worked with a colleague to run an analysis of the defamatory Article, and its associated hashtags and tweets by Mr Hundeyin, to see how far it had spread between 27 September and 31 October 2022. This analysis suggested the content had received more than 40 million online impressions during this period (which are calculated by tracking the total number of times the content was displayed across Twitter on users’ feeds and on search results). A large percentage of these would have been abroad, but a very significant proportion of Mr Hundeyin’s followers are in England and Wales. He was educated here, has been invited to speak publicly here ... and he’s launched two books here – which are sold in British bookstores.”

86. I also consider that this is case where there will have been percolation of D’s allegations. In *Slipper v British Broadcasting Corporation* [1991] QB 283, 300, Bingham LJ as he then was said:

“Defamatory statements are objectionable not least because of their propensity to percolate through underground channels and contaminate hidden springs.”

87. As to this, [19.3.4]-[19.3.6] of the PoC aver as follows, which I accept:

“19.3.4. The Defendant hosted a Twitter space discussion on the Article on 26 September 2022 to which more than 24,000 people tuned in. It is to be inferred that this prompted further discussion of the allegations complained of and the Claimant relies upon the grapevine effect.

19.3.5. Further on 26 September 2022, the Defendant distributed a link to his Article on tryflok.com via Twitter with the words “Who watches the watchers?”. That tweet was retweeted at least 1,854 times and quote-tweeted at least 109 times.

19.3.6. On 27 September 2022, the Defendant held another session on Twitter space to which more than 43,000 people tuned in. The second sentence of paragraph 19.3.4 above is repeated.”

88. I turn to the question of aggravation. I have no doubt this is an appropriate case for an award of aggravated damages because of D's behaviour following publication of the Article. There is ample evidence about this to support an award of aggravated damages. I have referred to some of this already, such as D seeking to goad C and Ms Mordi into suing him. I can also quote [21.4]-[21.6] of the PoC:

“21.4 Despite the wholly unfounded nature of the Defendant's allegations, the Claimant has been compelled to respond to them in conversations with his commissioning editor, editor and other colleagues (as to which paragraph 19.5 above is repeated) – conversations which were inherently embarrassing. The Claimant was in a long-term relationship and was recently married and to have to address an allegation that he had had a sexual relationship with a reporter on the documentary and promoted her as a result was deeply uncomfortable.

21.5. The Defendant followed up the Article by sending the Claimant an aggressive and vile email on 30 September 2022 in which he said “You could have come clean by yourself. I warned you not to play with me. Congratulations. Hope the pussy was worth it.” The Claimant, understandably, found that offensive and concerning.

21.6. The Defendant also followed up the Article with a torrent of social media activity which directly or indirectly targeted and mocked the Claimant and in which he repeated his defamatory allegations. The Claimant was deeply concerned by the Defendant's actions. The Claimant understood, and reasonably so, from the content, tone, and frequency of the Defendant's social media activity that the Defendant was motivated to keep his allegations in the public eye and to damage the Claimant, regardless of the falsity of his allegations. Further, the Claimant understands that the Defendant achieved that aim because, to the best of the Claimant's knowledge and belief, between 26 September and 2 October 2022, the Defendant's tweets containing the Article and/or references to the Claimant and/or to Ms Mordi and/or to “Sex for Grades” and the BBC had more than 48 million impressions and, it is to be inferred that, of the vast number of Twitter users reached by the Defendant, many were in the jurisdiction.”

89. Further, at [21.11.2], [21.2.4]

“21.11.2. On 30 September 2022, the Defendant tweeted “Hi @kikimordi. I'm sure you never thought this video of you and @CNorthcott1 would ever surface, but that why real journalism will never die when people like me are around. Your 'career' is

over you glory hunting, honey trapping fraud!’ and included a video showing the Claimant and Ms Mordi climbing onto the base of a statue in Trafalgar Square. The video had been taken by the Claimant’s then girlfriend, who he has since married, one evening in 2019 when they had taken Ms Mordi out while she was visiting London. The Claimant had shared the video with the Sex for Grades team on WhatsApp. Ms Mordi had posted the same video on her Instagram account in late 2019 or early 2020. The video showed nothing to corroborate the Defendant’s allegations of an inappropriate sexual relationship. Despite that, he immediately followed the above tweet with another containing a video of sexualised dancing and the words “Later that night...”. In posting that content the Defendant knew (because it was obvious) that it did not support his defamatory allegation or he was reckless as to the falsity of his tweets.

...

21.11.4 On 30 September 2022, the Defendant tweeted in response to the International Center For Journalists statement in defence of Ms Mordi. The tweet contained the video taken in Trafalgar Square referred to in paragraph 21.11.2 above and said ‘...Congratulations on sacrificing all of your credibility on the altar of a fraud who used sex to buy her way into a career!’ The final sentence of paragraph 21.11.2 above is repeated.

21.11.5 On 30 September 2022, the Defendant tweeted (in a new thread in response to doubts being expressed by other Twitter users about the evidential value of the Trafalgar Square video) “If you’re expecting me to upload a sextape to Twitter or something, you can go jump in a well somewhere. The accusation was ‘inappropriate behaviour with a workplace superior.’ The existing video proves that. If that’s not enough for you, that is your personal problem.” The final sentence of paragraph 21.11.2 above is repeated.

21.11.6. On 1 October 2022, in a tweet with a link to Ms Mordi’s account, the Defendant referred again to the Trafalgar Square video and dragged the Claimant’s wife into his trolling of the Claimant and Ms Mordi, by tweeting “‘nO sHreD oF evidence’ says this pathetic liar who was even lying that the person who recorded the video I posted yesterday was Charlie’s wife – who wasn’t even in the UK at the time ...” The Claimant’s wife had taken the video, was in the UK at the time, and the Defendant had no grounds for stating otherwise. He demonstrated a total disregard for truth.”

90. All of D’s behaviour post-publication comfortably falls within the principles in relation to aggravated damages that I outlined earlier. D, having seriously libelled C, then embarked upon a campaign of trolling and persecution in a manner calculated to

cause C and Ms Mordi maximum distress and damage. Moreover, he has failed to take down the Article as ordered by this court in July.

91. With all of these aspects of the evidence in mind, I turn to the appropriate award in this case.
92. Ms Wilson took me to a series of cases involving online publications. She accepted that the assessment of damages for libel is highly fact-specific, but said these other awards might be of some assistance as they involved ‘professional libels’ which were directed at or directly impacted the claimant’s professional reputation. These cases were: *Gilham v MGN Ltd* [2020] EWHC 2217 (QB) (teacher wrongly said to have been guilty of professional misconduct in relation to a pupil in a print newspaper and online; notional starting point of £85,000); *Blackledge v Persons Unknown* [2021] EWHC 1994 (QB) (academic wrongly accused of sexual assault including rape by anonymous blogger in three online articles which had been disseminated to those in academia in emails and tweets; Saini J said the allegations were ‘extremely grave’; publication had been to ‘high hundreds to low thousands’; an award of £70,000 for libel and harassment); *Sahota v Middlesex Broadcasting Corp Ltd* [2021] EWHC 3363 (QB) (allegations of ‘hypocrisy, shamelessness and betrayal of [the claimant’s] heritage’; these were allegations of ‘some gravity’, published ‘at a noticeable national level’; risk of grapevine effect although no evidence to that effect; award of £60,000 general damages); *Packham v Wightman* [2023] EMLR 18 (TV presenter accused of various forms of dishonesty pertaining to his role as wildlife presenter and campaigner; eight articles, disseminated via Twitter with substantial reach; award of £90,000).
93. To this list I might add *Ware v French*, where I awarded the claimant, a well-known BBC journalist and ‘Panorama’ presenter, £90,000 damages (including aggravated damages) for an article published to about 15,000 people in the jurisdiction (and deliberately sent by the defendant to leading industry figures) falsely accusing him of being a ‘rogue journalist’ who had fronted an intentionally biased and knowingly false programme harmful to the Labour Party. In reaching this figure I set out a number of illustrative cases, but I do not think that I need to set out the details. They are at [138]-[141] of my judgment.
94. I regard the case before me as being more serious than both *Packham* and *Ware*. That is because of the combination of the extent of publication being likely much greater, the direct impact on C’s career, and also the serious aggravating features of D’s conduct post-publication. It impacted on his personal life as well as his professional life. On the other hand, it is probably not as serious *Sloutsker v Romanova*, where damages of £110 000 were awarded over online allegations by the defendant, a Russian journalist, accusing the claimant, a former Russian senator, of having taken out a contract for the murder of the defendant’s husband, fabricating evidence and bribing officials. Damages were awarded by reference only to publication in England and Wales. Of the extent of publication in this jurisdiction it was held it might have been to as many as 60 000 people.
95. Taking matters in the round, I award C £95,000 damages. I regard this as an appropriate figure to compensate him for the damage to his reputation and to vindicate his good name; and that it takes appropriate account of the distress, hurt and

humiliation which D's false and defamatory publication has caused him, as well as D's aggravating conduct.

Order pursuant to s 12 of the DA 2013

96. Section 12(1) of the Defamation Act 2013 provides:

“(1) Where a court gives judgment for the claimant in an action for defamation the court may order the defendant to publish a summary of the judgment.

(2) The wording of any summary and the time, manner, form and place of its publication are to be for the parties to agree.

(3) If the parties cannot agree on the wording, the wording is to be settled by the court.

(4) If the parties cannot agree on the time, manner, form or place of publication, the court may give such directions as to those matters as it considers reasonable and practicable in the circumstances.”

97. The principles applicable to the exercise of this discretion were summarised in *Monir v Wood* [2018] EWHC 3525 (QB) and were cited and applied in *Ware v French* at [145]-[147]:

“239. The purpose of this section is to provide a remedy that will assist the claimant in repairing the damage to his reputation and obtaining vindication. Orders under the section are not to be made as any sort of punishment of the defendant.

240. Orders under s 12 are discretionary both as to whether to order the publication of a summary and (if the parties do not agree) in what terms and where. Exercising the power to require a defendant to publish a summary of the Court's judgment is an interference with the defendant's Article 10 right. As such, the interference must be justified. The interference may be capable of being justified in pursuit of the legitimate aim of 'the protection of the reputation or rights of others'. Whether an order under this section can achieve this aim will be a matter of fact in each case. If the interference represented by a s 12 order is justified, then the Court would then consider whether (if the parties agree) the terms of the summary to be published is proportionate. The Court should only make an order that the defendant publish a summary of the Court's judgment if there is a realistic prospect that one or other of these objectives will be realised and that the publication of a summary is necessary and proportionate to these objectives.

241. There is an obvious purpose, in an appropriate case, for ordering a newspaper to publish a summary of the judgment because there is a realistic basis on which to conclude that the

published summary will come to the attention of at least some of those who read the original libel and others who may have learned about the allegation via the "grapevine" effect. In a smaller scale publication, where it is possible for the original publishers (or at least a substantial number of them) to be identified, again an order requiring the publication to them of a summary of the judgment may well help realise the objectives underpinning s 12. Each case will depend upon its own facts. If the defendant has already published a retraction and apology then, depending upon its terms, that may mean that an order under s 12 is not justifiable or required. The claimant will be able to point to that to assist in his vindication or repair to his reputation.

242. It is difficult to justify ordering a defendant to publish a summary of the court's judgment when there is no realistic prospect that by doing so it will come to the attention of any of those to whom the original libel was published (or republished). Put simply, the legitimate aim cannot be realised, and the order will either not be necessary at all or the requirements as to publication will be disproportionate.”

98. I accept the submission that requiring D to publish a summary of the Court's judgment on damages would be the appropriate exercise of the s 12 discretion on the facts of this case, save that D's refusal to engage at all with these proceedings gives rise to particular consideration.
99. As to that, I cannot say that there are never going to be any circumstances in which D might comply with such an order. D has connections with this jurisdiction and circumstances may arise in the future which he feels compels him to comply. It might also be the case that a mechanism could be found whereby Substack and X/Twitter might compel him to comply as a condition of him remaining on their platforms given that D used them to perpetrate his unlawful conduct. It would, thereby, reach many of the publishers of the original defamatory statement. It would also be something to which C could direct the attention of any third party whom he knows read, or otherwise became aware of, D's allegations and could do so in the future. Because D used social media to disseminate his allegations, it would not be a disproportionate interference with his Article 10 rights to require him to use the same platform to take steps to remedy the harm which he inflicted.
100. In short, such an order would serve to help vindicate the Claimant's reputation by making clear to publishers how seriously the Court views the Defendant's conduct.

Order pursuant to s 13 of the DA 2013

101. Section 13 provides:

“(1) Where a court gives judgment for the claimant in an action for defamation the court may order -

(a) the operator of a website on which the defamatory statement is posted to remove the statement, or

(b) any person who was not the author, editor or publisher of the defamatory statement to stop distributing, selling or exhibiting material containing the statement.

(2) In this section ‘author’, ‘editor’ and ‘publisher’ have the same meaning as in section 1 of the Defamation Act 1996.

(3) Subsection (1) does not affect the power of the court apart from that subsection.”

102. The power is discretionary. As is clear from *Blackledge* at [57]-[62] and the decision of Master Cook cited in that passage, a material consideration is whether the defendant is likely to comply with an injunction made against him personally. If he is, a s 13 order would not be necessary. Where the Court has given judgment for a claimant and ordered that the defamatory statement should be removed, but the publisher has not, or will not comply, then s 13 orders have an important role to play. That is the situation here, given D’s non-engagement and his failure to comply with the injunction, and I therefore consider that I should make an order. Ms Wilson suggested that the order should be simply to remove the part of the Article which defames C, leaving the rest intact, and I agree that is the right course.
103. In the present case, Master Stevens directed that C should inform any third party website operator of the order sought against it, so that it could, if it wished, make submissions at the Remedies Trial: [6] of the Order of 19 June 2024.
104. On 3 September 2024, C’s solicitors wrote to Google LLC, Substack and Twitter. The above Order and the Injunction against D were enclosed. To date no response has been received and none of the operators responded to C’s solicitors offer to provide further explanation. However, Ms Wilson drew my attention to the fact that those letters did not include information about the listing of the hearing before me. This information was only sent on 2 October 2024.
105. In these circumstances the appropriate course is to include a provision permitting the operators to apply to discharge or vary the order (as Saini J did in *Blackledge*, [57]-[62], and in *Dudley v Phillips* [2022] EWHC 930 (QB)).

Disposal

106. There will accordingly be judgment for C on the terms set out above. I invite Ms Wilson to draw up an appropriate order and make submissions in writing on costs.