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Case No: KB-2023-002481

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/03/2024

Before :

THE HONOURABLE MRS JUSTICE COLLINS RICE

- -

Between :

Mr KEITH COURTNEY	**Claimant**
- and –	
Mr RICHARD RONKSLEY	**Defendant**

- -
- -

Dr Mike Wilkinson (instructed by **Weightmans LLP**) for the **Claimant**
Ms Claire Overman (instructed by **Stone King LLP**) for the **Defendant**

Hearing date: 19th February 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 13 March 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MRS JUSTICE COLLINS RICE

Mrs Justice Collins Rice :

Introduction

1. This is the Defendant's application for summary judgment on the Claimant's libel claim. In the alternative, he seeks strike-out of parts of the claim.

Background

2. The Claimant, Mr Keith Courtney, is a successful businessman from Rochdale. In 2012, he set up a small charitable trust, the Elaine Bain Family Trust ('EBFT'), to help local disadvantaged young people who had disengaged from education. EBFT offered schools the use of premises in Rochdale, providing facilities for students to develop practical learning and life skills in a supportive environment. Some local schools regularly used this for groups of pupils: Kingsway Park High School did so from the beginning, and Cardinal Langley RC High School from 2015. Mr Courtney is a funder, and one of three trustees, of EBFT. The other trustees are Mr Townsend and Mr Downham-Clarke.

3. The Defendant, Mr Richard Ronksley, is CEO of a multi-academy trust, Altus, established in 2017 by the governing body of Rochdale Sixth Form College. It operates four academies in Greater Manchester, including Kingsway Park which joined Altus in February 2022. Mr Ronksley answers to Altus's board of trustees. He was also, at the time, a qualified OFSTED inspector.

4. In 2022, Altus undertook a review of the various 'alternative provisions' made for Kingsway Park pupils, including EBFT. As part of that, Mr Ronksley, with the assistant head of Kingsway Park, visited the EBFT premises on 28th September 2022. He noted some areas of concern, particularly the lack of door security creating a risk of uncontrolled access by third parties and exit by students.

5. As a result, two other Altus officers – the director of operations and the director of business resources – visited the premises on 12th October 2022 to undertake a risk assessment. The director of operations notified the acting head of Kingsway Park at the same time, with a summary of the concerns that had been raised; some of these were said to have first been raised with EBFT some months previously. A risk assessment was prepared dated 13th October, which identified a number of safety issues and indicated the steps needed to address them. On 14th October, Altus's director of business resources notified EBFT trustee Mr Townsend that Kingsway Park's pupils would not in the meantime be attending the EBFT premises.

6. Over the next week, there was a meeting at the EBFT premises between the Altus director of operations and Mr Townsend, followed by correspondence and an updated risk assessment dated 19th October. The Altus officer reported to Mr Ronksley that she had been disappointed with EBFT's response. Correspondence continued.

7. On 14th November 2022, there was a further meeting: EBFT was represented by all three trustees (Mr Courtney attended remotely), and Altus by Mr Ronksley and one of the officers who had worked on the risk assessment. The Altus representatives present

were given a tour of the EBFT premises. Mr Ronksley was not satisfied with the progress made on the safety issues raised (including on door security) or with what he felt was an insufficiently constructive approach from EBFT.

8. On 23rd November 2022, Mr Ronksley wrote to the 'EBFT Trust' (the letter was emailed by his PA to EBFT trustee Mr Townsend) as follows:

> Dear Sirs,
>
> Firstly, I would like to thank you for the support that EBFT have provided Kingsway Park pupils over the years. I recognise that many pupils have benefitted from their time at your facility and that there have been many success stories.
>
> I also recognise that, following my visit of last month, you have begun to address some of the health and safety and safeguarding issues that have been identified by Altus. Such actions include putting up correct fire safety signage, and the removal from the premises of items such as knives, bleach and alcohol. Additionally, you have said that in future you will use staff to monitor certain areas of the building more rigorously.
>
> While it is positive that some progress has been made, there are still a number of significant issues that need to be addressed in order for EBFT to be a safe place for young people to study and learn. These issues have been identified in previous communications with you and are also in the new risk assessments that have been started as a result of the actions initiated by Altus. I have provided a summary below:
>
> - EBFT has still not updated the new risk assessment despite this being with your trust for over a month.
> - There are still no security locks on either the main door or the kitchen door – these doors lead separately onto the main road or into the carpark.
> - The car park is not secure. Members of the public can walk in and then through the front door of the facility.
> - There are no signing in/out procedures at the main entrance for staff, students and visitors.
> - We still do not have any confirmation that EBFT trustees have undertaken a [Disclosure and Barring Service] check. Nor what the procedures are for those trustees who do not have a DBS.
> - We have evidence that suggests visitors without DBS certification are allowed access to the premises without being escorted.

- There is no fire door on main corridor (leading upstairs). We were verbally, and incorrectly, informed that the door was a fire door. A visual inspection and the fire risk assessment do not support this statement.

- There are very limited procedures in place for fire preparedness (eg fire alarm and equipment testing, evacuation plans, fire drills).

- We have only limited documentation evidence that appropriate building management systems are in place (eg legionella, [portable appliance testing], gas appliance checks).

- Pupils have access to the full building, including to unauthorised areas.

- The loft is not locked (there is a notice stating that the loft is unsafe).

- There is still not enough signage in place to inform and enforce procedures.

In addition to the summary above, Altus have wider concerns about the attitude towards safeguarding and health and safety among trustees and employees at EBFT. Ever since the Trust first engaged with EBFT we have attempted to work positively with you. However, on too many occasions, the language used has suggested that EBFT sees Altus as the problem, rather than the problem lying in the health and safety and safeguarding issues uncovered.

Consequently, Altus does not have the confidence that [Kingsway Park High School] pupils will be safe during their time at the site. Therefore, I am sorry to say that Altus and KPHS will no longer be working with EBFT in any capacity.

Finally, I note that you are now considering offering your facility to other schools in the borough. Given that there are still significant issues to be rectified at the site we have therefore decided that it is only right to inform the local authority of our concerns. This will mean that they can take a view on whether or not EBFT provides a suitable environment for young people to study. I have also provided Andrew Bridson, headteacher at Cardinal Langley, with a copy of this letter so that his school can make an informed choice whether to continue their association with EBFT.

9. Mr Ronksley forwarded this letter by email, as promised, to Mr Bridson, head teacher at Cardinal Langley, and to Ms Jo Haworth-King, inclusion lead officer at Rochdale Borough Council. He also shared it with the governors of Kingsway Park School, and with Altus's senior leadership team.

10. Mr Bridson and Ms Haworth-King visited the EBFT premises on 30th November 2022, and met Mr Townsend and Mr Downham-Clarke of EBFT there. Cardinal Langley had taken the precaution of suspending use of the facility for a week, but Mr Bridson was content, as a result of the meeting, that his students were after all safe to continue using the facilities for the particular purposes the school had in mind. Ms Haworth-King was also reassured.

11. In the context of the present litigation, which had originally identified Altus as a potential co-defendant, Mr Ronksley in April 2023 copied the letter to the trustees of Altus, along with Mr Courtney's pre-action letter of claim.

Mr Courtney's pleaded libel claim

12. Mr Courtney issued High Court libel proceedings in May 2023, complaining of Mr Ronksley's letter of 23rd November, set out above. He complains in particular of the third paragraph (but not the bulleted list), and the fourth, fifth and sixth paragraphs.

13. The claim pleads the following 'natural and ordinary meaning' of (this part of) the publication complained of:

> … there are still a number of significant issues that need to be addressed in order for EBFT to be a safe place for young people to study and learn. These issues have been identified in previous communications with you, and also in the new risk assessments. …In addition … Altus have wider concerns about the attitude towards safeguarding and health and safety among trustees an employees at EBFT. Ever since the trust first engaged with EBFT we have attempted to work positively with you. However, on too many occasions we have been met with either denial or false reassurance. … Altus does not have the confidence that KPHS pupils will be safe during their time at the site.

14. The claim also pleads, under a heading of '*particulars as to imputation*' as follows:

> a. The Trustees … have done or failed to do things which have given rise to safeguarding issues either by causing harm to children of vulnerable persons in their care or by placing such persons at risk of harm.
>
> b. The Trustees have scant regard for and cannot be trusted with the health and safety and safeguarding of the students in their care.
>
> c. The Trustees have ignored existing dangers and risks that have been notified to them by Altus and which make the premises unsafe for the students in their care.

d. The Trustees have not been co-operative but evasive and have failed to work with Altus to address their legitimate safeguarding and health and safety concerns as raised with them.

e. The Trustees have failed to take action they knew was needed to safeguard their students and/or their health and safety and/or they cannot be trusted to take such action notwithstanding they know it is needed.

15. The claim further pleads an 'innuendo meaning' that '*the Charity was so badly managed as to warrant the immediate withdrawal of students because it was unsafe for students to be educated and trained there*', with some detail of 'extrinsic facts' relied on.

16. It also pleads that the letter would have been understood to refer to Mr Courtney '*whether individually (as one of several persons identified) or jointly (as one of the Trustees jointly running the Charity).*

17. The claim pleads conspicuously extensive re-publication in Rochdale: within Altus, Kingsway Park, Cardinal Langley, to the parents of the children who had attended the EBFT premises, and to other schools and community organisations.

18. Under the heading 'serious reputational harm', Mr Courtney's particulars of claim set out that '*by reason of the publication of the words complained of as particularised above, the Claimant's reputation has been or is likely to be seriously harmed and the Claimant relies upon the following from which they will invite serious harm to be inferred*'. There then follows this:

Particulars regarding serious reputational harm

a. The statements made have an inherent tendency to cause harm: for a charitable trustee working with vulnerable young children to be accused of disregarding their safeguarding is self-evidently extremely damaging.

b. The Defendant is and/or was an OFSTED inspector and as such his concerns about child safeguarding carried a lot of weight and were likely to be afforded greater significance.

c. The statements were published to Cardinal Langley which was the other main partner with which the Charity worked.

d. Whilst Cardinal Langley did not in fact subsequently withdraw their students, the Trustees had to go to extensive lengths at their own considerable embarrassment to alleviate the serious harm already caused and to preserve the faith and trust Cardinal Langley placed in them.

e. The statements were published to the safeguarding lead of Rochdale Metropolitan Borough Council and liable, as such, to being shared and/or republished within the local council.

f. By virtue of Ms Haworth-King's various other positions and responsibilities including her extensive involvement in local education in Rochdale, the defamatory statements were also shared or liable to being shared with or re-published to others in the Rochdale community with whom the Claimant might collaborate and work in the future.

g. The statements were shared with Andrew Bridson who through his directorship of the Rochdale Pioneers Trust is connected to 17 Schools and Colleges in the Rochdale region, making the comments liable to being shared and/or republished within many other schools.

h. The statements would thus have come to the attention of others within the Rochdale vicinity including other schools who knew the Claimant or might work with him in the future. Others with whom the Claimant might work in the future would have learnt or are still likely to learn of the defamatory statements.

i. The parents of the children who were withdrawn for example would have asked and still may ask for reasons why their children were abruptly withdrawn, and it is likely that the defamatory statements would have been shared with them or will still be shared with them.

Mr Ronksley's application for a terminating ruling

19. By the present application, Mr Ronksley applies for an order granting him summary judgment on the whole of Mr Courtney's claim, on the ground that Mr Courtney has no real prospect of proving that publication of the statement complained of has caused or is likely to cause him serious harm, and there is no other compelling reason why the claim should be disposed of at a full trial.

20. In the alternative, Mr Ronksley seeks strike-out a number of paragraphs of the particulars of claim. These include (a) the allegations of extensive onward and re-publication by others, on the ground that the 'inferences' invited to that effect are unsustainable and abusive of the court's process; and (b) particulars of further publication and re-publication by Mr Courtney himself, on the ground that a defamation claimant cannot complain of publications for which he alone is responsible, and to that extent the particulars disclose no reasonable grounds for bringing the claim.

Legal framework

(a) Defamation law

21. A defamation (libel) claim has to identify the text complained of, that it refers to the claimant, and that it has been published to at least one other person. The claim must plead the 'single natural and ordinary meaning' contended for, together with any innuendo meaning (a meaning conveyed to someone by reason of that person knowing facts extraneous to the statement complained of).

22. A court will determine, on an objective basis, the natural and ordinary meaning of the publication, whether it is fact or opinion, and whether it is 'defamatory of the claimant at common law' – that is, whether it substantially affects in an adverse manner the attitude of other people towards a claimant, or has a tendency to do so. 'Substantially' imports a threshold of gravity or seriousness. Some recent authorities put the test in terms of identifying that a claimant has breached the common, shared values of our society. This test is not about actual impact, it is about the meaning of the words themselves and their inherent tendency to damage someone's reputation.

23. As part of the law reforms introduced by the Defamation Act 2013, however, Parliament introduced a distinctive new test for libel claimants to satisfy, in addition to inherent defamatory tendency, which *is* about real-life actual impact. By section 1(1) of the Act, '*a statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant*'.

24. The leading authority on this provision is the decision of the Supreme Court in ***Lachaux v Independent Print Ltd*** *[2020] AC 612*. The caselaw since was recently helpfully summarised by Nicklin J in ***Amersi v Leslie*** *[2023] EWHC 1368 (KB)* at [143]-[163]. The authorities emphasise a number of important points about the s.1(1) 'serious harm' test.

25. First, the 'harm' of defamation is the effect of a publication in the mind of a third-party publishee (reader), and thereby on a claimant's *reputation*. It is not constituted by any specific action adverse to a claimant the publishee may take as a result. So the test does not *require* the demonstration of adverse actions by publishees, although such actions may be powerful evidence of the state of the publishee's mind. Instead, it concentrates on whether or how anyone's mind is changed about a claimant *as a result of* reading the publication complained of.

26. Then Lord Sumption's judgment in ***Lachaux*** makes clear ([12]-[14]) that s.1(1) imposed a threshold test for defamation claims, the application of which is to be determined by reference to the *actual facts* about the impact of a publication, and not just to the meaning of the words. The statutory term '*has caused*' points to some historic reputational harm, which is shown actually to have occurred; and '*is likely to cause*' points to probable, actual, future harm. The serious harm test is a question of fact, and facts must be established by evidence. Facts and evidence – and causation – are matters which are entirely case-specific.

27. ***Lachaux*** confirmed that there is no hard and fast rule as to *how* serious harm is to be evidenced. In a mass publication case, for example, the evidential process may be able to be discharged by establishing, and combining, the meaning of the words, the situation of the claimant, the circumstances of publication and the *inherent* probabilities. But where the original publication is to a limited class of identifiable publishees, then unless there is direct evidence of impact from the publishees themselves, a claimant may struggle to establish the factual basis from which to discharge the evidential burden

imposed by s.1(1). The same holds good for the question of the propensity of those publishees to share the publication onwards (*Amersi* at [150], [158]-[159] and [162]).

(b) Terminating rulings

28. Mr Ronksley's application for summary judgment relies on Civil Procedure Rule 24.3, which provides as follows:

> The court may give summary judgment against a claimant or defendant on the whole of a claim or on an issue if—
>
> (a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and
>
> (b) there is no other compelling reason why the case or issue should be disposed of at a trial.

29. The proper approach of a court on an application for summary judgment was summarised in *Easyair v Opal [2009] EWHC 339 (Ch)* at [15] as follows:

> i) The court must consider whether the claimant has a 'realistic' as opposed to a 'fanciful' prospect of success;
>
> ii) A 'realistic' claim is one that carries some degree of conviction. This means a claim that is more than merely arguable;
>
> iii) In reaching its conclusion the court must not conduct a 'mini-trial';
>
> iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents;
>
> v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial;
>
> vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case;

> vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction.

30. In considering the test of 'no real prospect of success' the criterion is not one of probability, it is absence of reality. The test will be passed if, for example, the factual basis for a claim is entirely without substance, or if it is clear that the statement of facts is contradicted by all the material on which it is based. On the other hand, if reasonable grounds exist for believing a fuller investigation into the facts would add to or alter the evidence available to a trial judge, or if a factual dispute is unlikely to be able to be resolved without reference to further (and especially oral) evidence, then a case should be permitted to proceed to trial (*Three Rivers DC v Bank of England [2003] AC 1*; *Doncaster Pharmaceuticals v Bolton [2007] FSR 63* at [18]).

31. Mr Ronksley's alternative application for partial strike-out of the claim relies on Civil Procedure Rule 3.4 which provides as follows:

> (1) In this rule … a reference to a statement of case includes reference to part of a statement of case.
>
> (2) The court may strike out a statement of case if it appears to the court –
>
> (a) that the statement of case discloses no reasonable grounds for bringing … the claim; [or]
>
> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings …

32. A court will strike out a claim or part of a claim under this provision if it is 'certain' that it is bound to fail, for example because pleadings set out no coherent statement of facts, or where the facts set out could not, even if true, amount to a claim recognisable as such in law. That calls for an analysis of the pleadings without reference to evidence;

the primary facts alleged are assumed to be true. It also requires a court to consider whether any defects in the pleadings are capable of being cured by amendment and if so whether an opportunity should be given to do so (*HRH the Duchess of Sussex v Associated Newspapers Ltd [2021] 4 WLR 35 at [11]*; *Collins Stewart v Financial Times [2005] EMLR 5 at [24]*; *Richards v Hughes [2004] PKLR 35*).

Analysis

(a) Preliminary

33. Within any libel claim is a series of components a claimant has to demonstrate: a publication's objective meaning, its reference to the claimant, its inherent defamatory tendency, its publication, and the passing of the serious harm test. Only if the claimant succeeds in establishing all of these components does the burden properly pass to a defendant to defend his publication, whether by reference to one of the statutory defences or otherwise.

34. In the present case, none of the preliminary issues going to the objective meaning of the letter, or the extent to which it does or does not refer to Mr Courtney, has been determined, and Mr Ronksley has not yet filed a defence. Instead, he asks for the claim to be disposed of at the very outset, without a trial, on the basis that Mr Courtney has no realistic prospect of succeeding on the threshold issue of serious harm, and there is no other *compelling* reason for a trial. That is the sole question before me on the summary judgment application.

35. Dr Wilkinson accepted before me – and he was correct to do so – that in approaching that question I am to work on the basis that this is not a 'mass publication' case. We are not dealing here with mainstream media publication. We are not even dealing with social media, and its associated issues of public access or onward transmission by responsive comment. We are dealing with a letter emailed to what was described in *Amersi* as a limited class of identified original publishees.

(b) Pleading

36. The importance of both specifically pleading, and evidencing, serious reputational harm *in the minds of those publishees* was firmly underlined in *Amersi*. Mr Courtney's case on serious harm is, however, pleaded in largely generalised and expressly inferential terms, with a heavy emphasis on the alleged inferred propensity of the original publishees to make (extensive) onward republication to others. The propensity of individuals within a limited class to make onward republication is a potentially relevant issue; but the primary task for a defamation claimant is to plead and evidence that the identified original publishees, or any of them, thought significantly the worse of him as a result of reading the letter complained of.

37. As I have said, the serious harm test does not *require* a claimant to establish that a publishee took adverse action as a result of thinking the worse of a claimant. On the other hand, adverse action may be *evidence* of what was going on in the publishee's mind. What is pleaded in Mr Courtney's particulars of claim relevantly to this issue seems to refer to the post-publication visit of Mr Bridson (Cardinal Langley) and Ms Haworth-King (Rochdale MBC) to EBFT's premises and the efforts the two EBFT trustees had to make to reassure them about the safety and suitability of the premises.

It is pleaded that the trustees '*had to go to extensive lengths at their own considerable embarrassment to alleviate the serious harm already caused*'. But neither the '*extensive lengths*' nor the '*serious harm already caused*' is identified or apparent. Inference may be being invited that the difficulty of the trustees' task indicates a substantial underlying problem, but its relationship to Mr Courney's reputation is unexplained. In circumstances in which it appears to be uncontroversial that each of these publishees was fully reassured on the basis of a single relatively brief visit to the EBFT premises at which they met Mr Townsend and Mr Downham-Clarke, it is not easy to recognise in this a pleaded proposition of *serious* reputational harm to Mr Courtney in the mind of either publishee.

(b) Evidence

38. As to the relevant evidence, I am not to conduct a mini-trial, but I am to look critically at the evidence before me at this interlocutory stage, and the evidence that can reasonably be expected to be available on the issue at a trial.

39. It is not suggested in this case that either of Mr Courtney's fellow trustees thought any the worse of him as a result of receiving Mr Ronksley's letter. They clearly did not. Mr Courtney puts forward no witness statement from any other publishee, original or otherwise. He provides no subject access or freedom of information request evidence that the Council or anyone else, other than the original publishees, has received, retained or actioned the letter within their organisations (as recommended in *Amersi*).

40. It is the evidence of Mr Ronksley, which, although otherwise strongly disputed, I did not understand to be materially challenged at least in *this* respect, that the total class of *original* publishees, apart from the EBFT itself, numbered 25 named individuals, with onward publication to another three identified individuals acknowledged. As well as Mr Bridson and Ms Haworth-King (and his own PA), the remainder were (a) the Kingsway Park governors and Altus's senior leadership team, in connection with the decision to withdraw pupils from the arrangement with EBFT and (b) the Altus trustees, in connection with the present legal proceedings. It is Mr Ronksley's evidence that the letter was sent to these individuals using software that does not permit onward transmission. Mr Ronksley says he has checked, and there is no IT evidence of any onward transmission of the letter from these publishees (some of them did not even appear to have downloaded it).

41. Mr Ronksley says he has had individual assurances from each of the Altus senior leadership team members (apart from one who is on sick leave) that the letter was not further shared.

42. I have before me a witness statement from the chair of the Altus trustees. It states she had had limited previous dealings with Mr Courtney. She confirms receipt of the letter in early 2023 in connection with the present legal proceedings, that she read the letter then, that she '*did not associate the content with Mr Courtney*', that the letter '*has had no impact on my opinion of Mr Courtney*', and that she had not forwarded it to anyone.

43. On his own case, Mr Bridson and Ms Haworth-King were the publishees with whom Mr Courtney considered his reputation to be most crucial and vulnerable.

44. I have before me a witness statement from Mr Bridson (Cardinal Langley). In it, he confirms: (a) '*I do not know Mr Courtney, have never met him or received any emails from him. I did not change my opinion of Mr Courtney having read the Letter*'; (b) his sole response to the letter was concern about the safety of his pupils, which was promptly and satisfactorily addressed by visiting the EBFT premises and a one-hour meeting with Mr Townsend and Mr Downham-Clarke; (c) he shared the letter only with his Deputy Head, and she has confirmed she did not share it with anyone else. It appears to be uncontroversial that Cardinal Langley quickly reinstated, and in due course increased, its use of the EBFT premises. That is the evidence of EBFT trustee Mr Townsend. He says, '*we have increased our intake from Cardinal Langley straight after the meeting and Jo Haworth-King was very keen on promoting us as an Alternative Provider in the area*'.

45. I do not have a witness statement from Ms Haworth-King, I am told because the Council is unwilling for her to become personally involved in this litigation on a voluntary basis. But I have seen a letter which she has signed, prepared in connection with these proceedings, to the effect that: (a) upon reading Mr Ronksley's letter, she could not recall thinking of Mr Courtney and '*had no opinion of him*'; (b) her response to the letter was the meeting and visit at the EBFT premises: '*Mr Courtney was not discussed as part of this meeting or on any other occasion*', '*the meeting and discussion was positive*', and the Council was satisfied the actions raised by Mr Ronksley were being addressed; (c) the information was shared internally only, with Ms Haworth-King's two line managers, in accordance with Council procedures; it '*was not shared more widely or acted upon any further*'.

(d) Consideration

46. The letter complained of does not by itself provide a strong basis for the inference of serious harm to Mr Courtney's reputation. It does not mention him. It is not even obviously about him. It is a letter of the sort that on the face of it is readily recognisable in tone and content as belonging unremarkably to the educational business context within which it was written. So this is a case in which the application of the serious harm test would require a significant focus on the real-life *impact* of such a letter.

47. The Kingsway Park publishees were copied into the letter complained of because of their interest in the preceding decision to withdraw the school's pupils from the EBFT facility, and in the discharge thereby of their own duties in relation to their pupils. The Altus senior leadership team were sent the letter in connection with the withdrawal decision, to inform them of the reasons for it. The remaining Altus publishees were, much later, copied it because of their interest (including as potential defendants) in the present litigation. None of these contexts establishes, by itself, any reasonable basis for inferring that the publishees took any particular interest in Mr Courtney, or for inferring any impact on his reputation in their minds – serious or otherwise – *as a result of reading the letter* (as opposed to reacting to the withdrawal decision or the litigation), or for inferring an incentive to pass the letter on to others. All the evidence I have from or about these publishees so far is that in fact none of these things happened.

48. Mr Bridson and Ms Haworth-King each had professional responsibilities to take seriously, and investigate as appropriate, concerns of the sort raised by Mr Ronksley in the letter complained of. The fact that they did so is not by itself reasonably capable of supporting an inference that they thought the worse of Mr Courtney on reading the

letter. On the contrary, their professional duty was to keep an open mind, make appropriate enquiries, and come to their own judgment on the matters raised. That is exactly what they appear from the evidence so far, including their own, to have done. Their conclusions, swiftly reached, were favourable to EBFT.

49. So there is, at any rate on the face of the material before me now, no direct evidence, and nothing to support any inference, that any direct publishee thought seriously the worse of Mr Courtney as a result of reading the letter, nor that they had any propensity for significant republication nor did so. I have before me, in other words, no evidence from anyone in the limited class of identified publishees of the letter complained of which is *capable* of supporting a claim that (a) Mr Courtney's reputation was seriously harmed in their own minds or (b) they were responsible for material onward publication. The evidence I do have from them is flatly to the contrary.

50. That is not the end of the matter. I have to think about whether I have reasonable grounds to conclude that evidence of serious reputational harm could reasonably be expected to be available at trial, even if not available now.

51. Dr Wilkinson points out that Ms Haworth-King's letter is not itself a witness statement. I have no *evidence* from her at present. That is true. However, again on the face of things, either Ms Haworth-King's letter could be expected to form the basis of the content of her evidence at trial, or alternatively her reluctance to give evidence now can be expected to be maintained. On neither basis are there reasonable grounds for expecting future *evidence* from her of material assistance to Mr Courtney's case on serious harm at trial.

52. Dr Wilkinson then makes a more fundamental challenge. He points out that Mr Courtney, and the other EBFT trustees, do not accept the evidence of the publishees I have been given so far. He says it is not believable that they did not think seriously the worse of him. Dr Wilkinson reminds me that mature reflection and the discipline of cross-examination may cause witnesses to revise or expand on their evidence so far. Other evidence may emerge. There are plans to pursue a number of lines of inquiry at the disclosure stage.

53. There are some clear answers I am bound to make to those submissions. The first is that the caselaw on terminating rulings, including ***Easyair*** itself, warns strongly against the propriety of proceeding to a costly trial on the mere hope of something turning up or someone saying something new. I have to be given an *evidenced basis* for (a) doubting the publishees' evidence I have so far and (b) expecting that the situation will materially alter in future.

54. As regards the direct publishees, I have not been given that basis. To reiterate, ***Amersi*** is emphatic that evidence *from the original publishees* must ordinarily be expected to be the heart of a libel claim based on publication to a limited class of identifiable publishees. (A good example is the case of ***Hodges v Naish*** *[2021] EWHC 1805* at [144] to [166]. That was a case where there was rich evidence from the publishees as to the impact of the publications on them – their shock at the publication, the difficult conversations they then had with the claimant, the lingering discomfort, the way the allegations struck at their trust and confidence in the claimant, and 'stuck' long term.) I have no such evidence in the present case. There is nothing from any publishee demonstrating serious reputational harm or capable of laying the factual groundwork

for an inference of serious reputational harm. Such evidence – and further information – as there is, is positively to the contrary. There is nothing in the materials I have looked at to make me doubt it or expect different evidence from the publishees at trial. It would be completely *un*expected if any of them said that after all they thought seriously the worse of Mr Courtney as a result of reading Mr Ronksley's letter.

55. The second answer is that generalities about human recollection and the disciplines of cross-examination will not do on a summary judgment application to give *reasonable grounds* for expecting new or different evidence at a trial. I am afraid Dr Wilkinson's reliance on the well-known observations in *Gestmin v Credit Suisse [2013] EWHC 3560 (Comm)* is misconceived in this respect, and takes the guidance from that case out of context. Unless I am given any *specific* and *evidenced* reason by reference to the *particular* witnesses, testimony and information I have before me, it is unrealistic to meet an application for summary judgment with a speculative hope that the publishees, or any of them, will on further interrogation provide the evidence of serious reputational harm that is either missing or expressly disavowed at this stage. That is especially the case where the publishees are individuals in positions of senior professional responsibility with relevant duties (a) to satisfy themselves of the safety and suitability of the premises for school pupils and (b) as to the treatment of letters raising related concerns. This evidence and information so far is entirely straightforward, unambiguous and unsurprising. I have no reason whatever to expect that any of these individual witnesses would provide evidence at trial, capable of discharging Mr Courtney's burden of establishing serious harm, which is the polar opposite of what they are saying now. That proposition is entirely speculative.

56. The following passages from *Amersi* are in my judgment apposite to the present case.

> [183] … The Claimant has provided no direct evidence from any of the identified publishees capable of demonstrating publication of the relevant Memo(s) to him/her has caused (or is likely to cause) serious harm to his reputation. On one level, that is a surprising (and potentially risky) approach for any claimant to adopt in defamation proceedings. It was seriously suggested, on the Claimant's behalf, that the parties (and the Court) might have to wait until trial to hear from the relevant publishees. If the relevant witness refused to assist the Claimant by providing a witness statement, it was envisaged that the individual would be compelled by the Claimant to attend trial by service of a witness summons (assuming the relevant witness could be compelled) and then asked questions as to whether the Claimant's reputation was seriously harmed in his eyes. Alternatively, if the relevant publishee was a witness called by the Defendants, the Claimant would attempt to cross-examine the relevant publishee to seek evidence of serious harm to the Claimant's reputation caused by the relevant publications.
>
> [184] That might be thought the paradigm example of waiting to see whether something turns up at trial. It is not how modern defamation litigation is conducted. Unless the Court can be satisfied, by evidence, that there is a real prospect that the Claimant will be able to produce evidence in support of his claim

> of serious harm to reputation – whether by documents or witness evidence – then the Court is likely to dismiss the claim summarily at an earlier interim stage. It will do so, applying the well established principles of summary judgment, and in furtherance of the overriding objective, to avoid the potentially massive waste of the resources of the Court and the parties by speculatively taking the matter to trial to find out whether the relevant publication has caused serious harm to the Claimant's reputation.

57. Not only are these passages apposite, the present case is *a fortiori* because already at the interlocutory stage such evidence as the court has, or has been given a basis for expecting, from the publishees is positively that Mr Courtney's reputation was *not* seriously harmed in their eyes.

58. There is no sign in the pleadings, in the evidence I have now, or in the evidence I have been given any sufficient basis for expecting at trial, that Mr Courtney has a case on serious reputational harm which meets the statutory threshold and which has a real prospect of succeeding. None of the direct evidence from or about the publishees supports a case that they thought seriously the worse of Mr Courtney as a result of reading Mr Ronksley's letter. No *evidential* groundwork has been laid for an inference of serious reputational harm, caused by the letter, in the minds of the direct, or any wider, readership. The inherent probabilities of serious reputational harm on the sort of facts we are dealing with here do not assist, or speak for themselves. Mr Courtney's case as before me on this application does not sufficiently advance beyond the speculative, or the optimistic hope that, as a result of further research, disclosure and cross-examination, 'something may turn up' to prove what he wants to be able to show. To that extent it is, as the authorities put it, entirely without real substance, or 'unreal'.

59. By saying that, I am simply addressing the test I must apply. I am not to be taken to doubt that Mr Courtney is genuinely aggrieved by the letter he complains of and feels personally affronted by it. I can readily understand that he has been dismayed by what he has subjectively experienced as a slight on his professionalism – perhaps even his integrity – and that he has been acutely worried about what other people might have thought or be thinking about him and EBFT. But the serious harm test is not about the impact of a publication on a claimant himself. It is about its impact, in real life, and as a matter of objective evidence, in the minds of the identified third party readers, or possibly others they can be established by objective evidence to have passed it on to. Without evidence of that – either directly on point, or capable of founding a basis for further inference – this claim is bound to fail. I do not have that evidence now. I have been given no sufficient basis for expecting it in the future.

60. There is no other good reason, proposed or apparent, for permitting this claim to continue. From the evidence of Mr Courtney and his fellow trustees, which I have read carefully, it is plain that they consider the letter of which they complain to be (at the least) tendentious, inaccurate and unfair (including as to the matters particularised in the bullet points which are not complained of in the claim itself). I make clear, should that be necessary, that the concerns expressed in the letter, and whether they were or were not justifiable, are not issues for me to resolve on this application. But the fact that Mr Courtney may have a lot to say about the content of the letter is not a reason for

a defamation claim to go to trial without a real prospect of success on serious reputational harm.

61. It is also clear from their evidence that Mr Courtney and his fellow trustees are of the view that Altus's decision to terminate its arrangement with EBFT and withdraw Kingsway Park students was also unjustifiable, reputationally damaging for the charity, and provocative. They take a dim view of Mr Ronksley and of other aspects of his conduct more generally. That is not a matter for me either. On no basis is it arguable that the decision to withdraw the students was *caused by the publication complained of* (which postdated it) – rather than the other way around – and it is the consequences of *publication and readership* of the letter with which a defamation action is solely concerned. The consequences of *the withdrawal decision* – including its impact on any among the subsequent publishees of the letter – are another matter altogether, and beyond the remit of these proceedings. There is no evidence, or apparent basis for inference, or inherent probability, that anyone experiencing or being concerned by *the withdrawal decision* and/or the reasons for it – such as the parents of the pupils concerned – thought any the worse of Mr Courtney *because Mr Ronksley subsequently wrote a letter to someone else about it*, even if they can be shown to have read that letter (which is unevidenced and not on the face of it probable).

62. I note, but mention for completeness only, that this claim has other problems of pleading and evidence. Chief among them, perhaps, is that the factual context very obviously raises an issue about whether the letter was sent to its publishees in each case in the context of a 'reciprocal relationship of duty and interest between publisher and publishee' and is therefore privileged. Privilege of this sort is a clear defence to a defamation action unless a claimant can establish 'malice'. Dr Wilkinson gave a hint that he might have had something of this nature in mind; Mr Courtney apparently believes that the letter is not all it seems and that Mr Ronksley all along had an ulterior and self-serving agenda and motive in withdrawing from the EBFT arrangement in the first place and in then sending a letter about it. I take no view about any of that; it is not appropriate on this application and I have been given no basis for doing so. I say no more about it than observing that 'malice' is a high bar indeed for any claimant to clear – it requires him to establish something like quasi-criminal dishonesty – and that it would have to be *evidenced* to an equivalently high standard. Suspicions are not enough.

Conclusions

63. For the reasons given, I am satisfied that Mr Courtney has no real prospect of proving that publication of the statement complained of has caused or is likely to cause serious harm to his reputation, and I have been given no other compelling reason why the claim should not be disposed of now but should proceed to a full trial.

64. Defamation is an abridgment of free speech. When it introduced the serious harm test, Parliament's intention was to allow a greater margin to free speech, and to prevent the scarce and precious public resources of the senior courts from being occupied with defamation challenges to others' freedom of expression, unless objectively demonstrable real-life reputational impact can be established, on ordinary causational grounds, and to a proper threshold of gravity. It is not in anyone's interests, including a claimant's, for all the stress and expense of a defamation trial to be incurred unless there is a realistic prospect of success in the end. The present claim is not, for the

reasons I have given, a proper vehicle for Mr Courtney's pursuit of his grievance against Mr Ronksley. It is not in the interests of justice for it to proceed.

65. Mr Ronksley's application for summary judgment succeeds.