Neutral Citation Number: [2020] EWHC 3577 (QB)

Case No: QB-2018-002538

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23 December 2020

Before:

HIS HONOUR JUDGE RICHARD PARKES QC
(sitting as a Judge of the High Court)

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Between :

JOSEPH LOZE ONWUDE	**Claimant**
- and -	
(1) CLARE DYER	**Defendants**
(2) FIONA GODLEE	
(3) BMJ PUBLISHING GROUP LIMITED	

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The Claimant appeared in person, but was assisted by Mr Jeffrey Kershaw, a solicitor
Jacob Dean (instructed by **Farrer & Co**) for the **Defendants**

Hearing dates: 6-8 October, 2020

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Approved Judgment

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

RICHARD PARKES QC

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Court and Tribunals Judiciary website. The date for hand-down is deemed to be on 23rd December 2020.

HHJ Richard Parkes QC:

INTRODUCTION

1. The claimant, Mr Joseph Onwude, is a gynaecologist. He used to work as an NHS consultant, but for many years now has conducted a private practice. As a surgeon, he prefers the title 'Mr'.

2. The first defendant is a legal journalist, and the second defendant is the editor of the British Medical Journal (BMJ), a well known medical journal published both online and in hard copy by the third defendant.

3. The claimant sues the defendants in defamation over an article published on the BMJ website which reported the decision of a GMC disciplinary panel.

4. The main issues at the trial of this action have been whether the article was protected by statutory qualified privilege under s15, Defamation Act 1996, or alternatively whether there was a defence of publication on a matter of public interest under s4, Defamation Act 2013.

REPRESENTATION

5. Mr Onwude has conducted this litigation as a litigant in person. At the start of the trial, he applied to the court to allow him to be represented by Mr Jeffrey Kershaw, a solicitor with a current practising certificate but without a right of audience in the higher courts. By a witness statement dated 30 September 2020 Mr Onwude gave as the grounds of his application that he lacked the funds to employ counsel or solicitors, and that he was unable to persuade a firm of solicitors to act on a contingency basis. He exhibited a number of letters from friends saying that they had lent him substantial sums of money to help him out. In his oral application on the first morning of the trial, he informed me that he had suffered a pulmonary embolism in December 2019 (as a result of which the original trial, due to start on 16 December 2019, had to be taken out of the list), that he remained unwell, and that Mr Kershaw was more rational than he was and much better able to present his case. I hope that Mr Onwude will forgive me for saying that his physical frailty was obvious, while the fragility of his mental state was apparent to me from the tearfulness with which he made his application.

6. Mr Jacob Dean, who represented the defendants, took a pragmatic view. He told me that while Mr Onwude had invariably been courteous at previous hearings, he had plainly been very nervous and had frequently broken down. That being so, Mr Dean did not oppose the application.

7. I considered the guidance of the Court of Appeal in *Clarkson v Gilbert* [2000] EWCA Civ 3018 (where the relevant legislation was s27 of the Courts and Legal Services Act 1990) and the *Practice Note (McKenzie Friends: Civil and Family Courts)* [2010] 1 WLR 1881 (founded on ss12-19 and Schedule 3, Legal Services Act 2007). I determined that, having regard in particular to Mr Onwude's plainly fragile state of health and his very nervous state, and Mr Kershaw's standing as a practising solicitor, there was good reason to grant a right of audience to Mr Kershaw for the duration of the trial, and I did so. In the event, Mr Kershaw conducted Mr Onwude's case with

care, restraint and courtesy, and I was grateful to him for the help which he was able to give the court.

HISTORY

The Medical Practitioners' Tribunal

8. In September 2015, a number of charges alleging impairment of fitness to practise by reason of misconduct were brought against Mr Onwude by the Medical Practitioners' Tribunal Service, a statutory committee of the General Medical Council.

9. The charges arose out of Mr Onwude's erstwhile friendship with a couple for whom he had provided medical treatment without charging or intending to charge. They had entered into a prospective business relationship which later went wrong, and as part of the discussions as to what each had put into the relationship, Mr Onwude had submitted invoices for their medical treatment.

10. In the charges, the couple were called Patient A and Patient B. It was alleged, and not contested, that Mr Onwude had enjoyed a close personal relationship with them. It was alleged that he had prescribed medication to each of them (charges 1 and 5); that in doing so he had acted outside his field of professional competence (charges 2 and 6), in that he had provided primary medical care while lacking qualifications as a general practitioner; that he had failed to keep any or any contemporaneous record of the treatment or medication that he provided (charges 3 and 7); and that he had failed to inform their GP that he had prescribed the medications (charges 4 and 8). It was also alleged that he had sent substantial invoices and a statement of account to the patients, having failed to inform them of his fees and charges before asking for Patient A's consent to treatment or at any time before sending the invoices (charges 9, 10 and 11: these were admitted), that in doing so he had not acted honestly or openly in his financial arrangements (charge 12), and that his actions were intended to cause them distress (charge 13). Finally, charge 14 (which was also admitted) alleged that for a 7 month period between 1 January 2013 and 12 August 2013 he had practised privately as a consultant gynaecologist without professional indemnity cover.

11. After several hearings in 2015 and 2016, the Medical Practitioners Tribunal (MPT) found all the charges proved.

12. On 15 December 2016 the MPT imposed the sanction of erasure from the Medical Register, unless within 28 days Mr Onwude exercised his right of appeal. It also ordered his suspension from the Register with immediate effect, on the footing that it was necessary for the protection of the public and to maintain public confidence in the profession.

13. In consequence, a search against Mr Onwude's name on the GMC website on 19 December 2016 showed his status as 'Doctor erased. Not yet in force, pending an appeal period'.

Appeal to High Court

14. The claimant appealed to the High Court. His appeal was heard by Collins J on 8 March 2017.

15. Collins J quashed the most serious findings against the claimant, including the finding of dishonesty. He remitted the matter to the MPT to consider whether the findings which he had upheld amounted to professional misconduct and, if so, what (if any) sanction should be imposed. Those findings were that the claimant had failed to keep records of treatment or medication provided to friends, and that he had practised privately without professional indemnity cover.

16. The claimant's suspension came to an end when Collins J quashed the findings of the MPT.

17. At the end of the hearing before Collins J there was some discussion about notification of the BMJ that the MPT decision had been quashed. That did not happen, and I accept that the BMJ did not learn of the decision until 15 May 2017, when the claimant wrote to the defendants in terms which amounted to a pre-action letter before the issue of proceedings for libel. Its particular importance is that (as the first defendant's evidence showed) it brought the decision of Collins J to the attention of the BMJ for the first time.

BMJ Articles

18. The decisions made by the MPT and by Collins J were reported by the BMJ.

19. The article complained of ("the first article") was published on the website of the BMJ on 22 December 2016**,** under the headline 'Gynaecologist is struck off for dishonesty and intention to cause distress'. It is unclear from the Particulars of Claim whether the claimant complains of the headline alone or of part or all of the article (he does not set the article out), but it is trite that the article must be considered as a whole. In full, it read as follows:

> "**Gynaecologist is struck off for dishonesty and intention to cause distress**
>
> A consultant gynaecologist who treated a neighbouring couple out of apparent friendship, then tried to bill them when the relationship turned sour, has been struck off after a fractious hearing at a medical practitioners' tribunal in Manchester.
>
> Joseph Loze Onwude was also found to have worked for eight months without professional indemnity cover, acted as a GP in prescribing drugs for his neighbours despite lacking general practice qualifications, and failed to keep proper records of this treatment or to inform their actual GPs.
>
> Onwude, who qualified in Nigeria in 1981, trained at Dublin and Leeds before becoming a Fellow of the Royal College of Obstetricians and Gynaecologists. He was an NHS consultant until 2003, when he moved to private practice. He has published extensively, including in *The BMJ*.
>
> His neighbours told the hearing that for many years they had maintained a close personal relationship with Onwude and

developed a business relationship. But relations deteriorated dramatically in 2012.

In 2008 Onwude had treated one of his neighbours and in 2011 he provided further extensive treatment, with a good clinical outcome. He acknowledged in evidence that no payment was discussed because he then had no intention of charging.

But in February 2013, after the friends had fallen out, he sent the couple two invoices totalling £69,450 for the treatment. This was followed by a statement of account two weeks later.

The couple complained to the GMC, and during the investigation Onwude's lack of indemnity cover at a private hospital came to light, leading to the withdrawal of his practising privileges. He treated 77 patients during this period.

Onwude denied that the invoices were intended to cause distress, saying that he had merely wished to quantify his input into a personal and business relationship. But nothing in the bill suggested that it was not a real demand for payment, the tribunal found. It decided that attempting such billing years later for apparently free treatment was an act of dishonesty.

The tribunal also rejected Onwude's claim that his primary medical qualification allowed him to undertake GP work and that restrictions preventing doctors without a GP qualification from carrying out general practice applied only to NHS employees.

Onwude, who was not legally represented at the hearing, argued repeatedly that the tribunal was treating him unfairly, compressing his case to fill the allotted time and denying him the opportunity to cross examine a telephone conference witness in person. Counsel for the GMC accused him of seeking to "derail proceedings".

On the 25th day he absented himself but was warned that the hearing would continue without him. He later came back, but then left again before the final ruling, for which he was not present.

"Throughout the proceedings he has failed to acknowledge any wrongdoing," said tribunal chairman Robert Lloyd-Richards. "He has persistently sought to challenge every criticism made of him. Mr Onwude had shown no insight into any aspect of his misconduct.

"Acting outside of his competence, failure to keep any medical records, sending invoices intended to cause distress, failure to have professional indemnity insurance, and dishonesty amount

> to misconduct, which is fundamentally incompatible with continued registration.""

20. It is worth noting that the BMJ article did not report the fact that an order of immediate suspension had been imposed with immediate effect, pending the outcome of any appeal.

21. Publication figures have been disclosed for each of the articles. They show that the first article was viewed just under 600 times, and the abstract of the article around 3146 times. Only subscribers could see the full article, but the abstract was available without subscription.

22. The abstract read as follows:

> "**Gynaecologist is struck off for dishonesty and intention to cause distress**
>
> A consultant gynaecologist who treated a neighbouring couple out of apparent friendship, then tried to bill them when the relationship turned sour, has been struck off after a fractious hearing at a medical practitioners' tribunal in Manchester.
>
> Joseph Loze Onwude was also found to have worked for eight months without professional indemnity cover, acted as a GP in prescribing drugs for his neighbours despite lacking general practice qualifications, and failed to keep proper records of this treatment or to inform their actual GPs.
>
> Onwude, who qualified in Nigeria in 1981, trained at Dublin and Leeds before becoming a Fellow of the Royal College of Obstetricians and Gynaecologists. He was an NHS consultant until 2003, when he moved to private practice. He has published extensively, including in *The BMJ*.
>
> His neighbours told the hearing that for many years they had maintained a close personal relationship with Onwude and developed a business relationship. But relations deteriorated dramatically in 2012.

23. It has never been clear whether or not the claimant intended to complain about the abstract as well as the first article, because (contrary to correct practice) he did not plead all the words of which he complained, so as to identify precisely the object of his complaint. Even the letter before action did not distinguish between the first article and its abstract. The defence did not, I think, engage with that possibility. It may not matter.

24. As I have said, the claimant wrote what was in effect a letter before action on 15 May 2017. That was his first complaint about the first article. In it, he informed the defendants of the outcome of his appeal.

25. Following receipt of the claimant's letter, on 24 May 2017 a second article was published on the BMJ website, reporting the outcome of the appeal. The second article contained a reference to the first article and a hyperlink to it. It read as follows:

> "**High court judge quashes decision to strike off gynaecologist for dishonesty**
>
> A medical practitioners' tribunal which decided that a doctor was dishonest in treating a couple who were friends for free and later sending them an invoice, had reached a conclusion that "no reasonable tribunal could conceivably have reached," a High Court judge has ruled.
>
> Mr Justice Collins quashed the decision, made last December, to strike consultant gynaecologist Joseph Onwude from the medical register, subject to his right to appeal.[1]
>
> Collins held that the tribunal's decision that Onwude was not "honest and open" in giving the couple information about his charges in advance, even though he was not intending to charge, was also "a finding which no reasonable tribunal could conceivably have made". The judge said that there was evidence that the couple knew there was going to be no charge.
>
> Onwude and the couple collaborated in a business venture that later had to be wound up. Onwude told the tribunal that when the friends fell out the invoices were not a demand for payment but, as the judge put it, "part and parcel of the financial arrangements that were being entered into in order to wind up the business".
>
> Collins said the tribunal was "clearly wrong to regard (Onwude) as having acted dishonestly". The tribunal's findings, that he was dishonest and had intended to cause distress to the couple, "were not justified and should never have been made and if there is any further hearing should equally not be made".
>
> The tribunal had also found Onwude guilty of misconduct in treating the couple because he had a personal relationship with them. But a lack of clarity in the professional guidance on the subject meant that it was not possible to say absolutely that to treat even a close friend was wrongful conduct, the judge said. "To suggest that in this case it was serious misconduct is simply not made out".
>
> Collins sent the case back to the tribunal to determine what sanction, if any, to impose for the charges that remain outstanding. These are: failing to keep proper notes or to notify the patients' GP of their treatment; and practising without insurance for about eight months.

> The judge said it was difficult to see how a sanction stronger than conditions could be imposed, and he suspected that "the appropriate result would be no action".
>
> [1] Dyer C. Gynaecologist is struck off for dishonesty and intention to cause distress. [*Reference given*]

26. At the same time, a note was added to the first article and to the abstract, under the headline and citation details, which read "UPDATE: High Court Judge quashes decision to strike off gynaecologist for dishonesty," and provided a hyperlink to the second article.

27. The claimant was informed of this by letter dated 1 June 2017 from the third defendant's legal department, who explained that the BMJ had not known of the outcome of the appeal until informed by Mr Onwude, but that a second article had been published which reported Collins J's judgment, and a link to the second article placed at the head of the first article. It was also asserted that the first article was a fair and accurate report of the proceedings before the MPT, and that the defence of privilege (mistakenly said to be absolute) applied.

28. The claimant wrote to the BMJ on 23 June 2017 enclosing an article (essentially a further report of the decision of Collins J) which he required the BMJ to publish. He stressed the importance of the BMJ publishing that there had 'been a successful appeal by a consultant who was struck off', which suggests that he had been unaware of the second article. The proposed article, which identified the patients concerned, read as follows (with the names of the patients redacted):

> "**High Court Judge quashes decision to strike off gynaecologist for dishonesty to friends whom he treated and intention to cause distress**
>
> We refer to the article entitled "Gynaecologist is struck off for dishonesty and intention to cause distress" published on 22nd December 2016 with the citation BMJ 2016; 355: i6828.
>
> We are pleased to report the successful outcome of Dr Onwude's appeal to the High Court which resulted in his re-instatement to the Medical Register as a practising consultant gynaecologist on the basis that the findings of the Medical Practitioners' Tribunal (MPT) of the General Medical Council (GMC) in respect of the charges brought by the GMC, in its role as prosecutor, were findings which no reasonable tribunal could have found on the evidence before it, which contained no evidence of dishonesty or any evidence of an intention to cause distress to his patients.
>
> Dr Onwude represented himself at the hearing before Me Justice Collins in the High Court. He was assisted in a direct access basis by Leading Counsel, Nicholas Padfield QC. Costs were awarded by the Judge to Dr Onwude and Leading Counsel following his decision.

> His right of appeal to the High Court was initially denied by the GMC because his appeal was "out of time". The GMC's objection was subsequently withdrawn on the basis that Dr Onwude's appeal was in time in the light of a recent Court of Appeal decision.
>
> The MPT which decided that Dr Onwude was dishonest in treating a couple who were friends for free and later sending them an invoice, had reached a conclusion that "no reasonable tribunal could conceivably have reached', Collins J ruled.
>
> Dr Onwude and the couple (*names redacted*) collaborated in a business venture, that later had to be wound up. Dr Onwude told the MPT that when he and his former friends fell out, the invoices were not a demand for payment, but as the High Court put it 'part and parcel of the financial arrangements that were being entered into in order to wind up the business'.
>
> Mr Justice Collins said in his judgment that "On the evidence that was produced, the findings of dishonesty and intent to cause distress were not justified, and should never have been made, and if there is to be any further hearing, should equally never be made. This is not a case were there could be any question of the Appellant (Dr Onwude) having acted in any way that was dishonest."
>
> Mr Justice Collins held that the Tribunal's decision (the MPT) that Dr Onwude was not "honest and open" in giving the (*patients: names redacted*) the information about his charges in advance, even though he was not intending to charge, was also "a finding which no reasonable tribunal could conceivably have made". The Judge's final comment was that there was evidence that the couple (*names redacted*) knew that there was going to be no charge.
>
> Mr Justice Collins remitted to the MPT the determination of what sanction, if any, to impose for the charges that remained. These were: failing to keep sufficient notes or to notify the patients' private GP of the treatment, and practising without insurance for about 8 months. Both charges are vigorously contested by Dr Onwude on strong grounds.
>
> Mr Justice Collins said that it was difficult to see how a sanction stronger than conditions could be imposed, and he suspected that "the appropriate result would be no action".

29. Dr Godlee, the second defendant, replied on 29 June 2017, to inform Mr Onwude that letters to the editor for the print journal were first posted as rapid responses on bmj.com, asked him to click on the article to which he wished to respond, and explained what steps he needed to take to post a response. He replied to tell her that she had been supposed to pass his letter to the legal department.

30. On 11 July 2017 the BMJ declined to publish the claimant's proposed article, on the basis that it would be inappropriate to do so, given that it had already reported the successful appeal. The claimant was told that if he still had concerns, the BMJ would be willing to consider publishing his comments. That offer was repeated on 16 August 2017.

31. Meanwhile, the claimant had written again on 4 August, referring this time for the first time to the second article. While accepting that the second article had been an accurate report of the judgment of Collins J, he maintained that it had been inaccurate in one 'most important aspect', namely in suggesting (as he claimed) that the first article had stated that the MPT decisions had been subject to appeal. He took that meaning from the footnoted reference to the first article at the end of the second paragraph of the second article, following the words 'subject to his right of appeal'. The second article is not complained of, so I shall simply say that his reading is fanciful.

32. More importantly, the claimant contended that the first article had not been a fair and accurate report, because it had omitted any reference to the right of appeal, and he rejected the asserted defence of privilege, on the footing that the first article omitted any reference to the right of appeal.

33. On 2 November 2018, the MPT reconsidered the case as remitted by the High Court and gave the claimant a formal warning for his failings in record keeping and practising without indemnity insurance.

34. That decision was reported by the BMJ on its website on 8 November 2018 (the third article), as follows:

> "**Gynaecologist whose erasure was quashed in High Court is fit to practise**
>
> A consultant gynaecologist who in March 2017 won a High Court ruling quashing a decision to strike him off the UK medical register has scored a further victory against the General Medical Council.
>
> After a new hearing, a medical practitioners' tribunal has decided that Joseph Onwude's fitness to practise was not impaired and that his conduct merited only a written warning.
>
> An earlier tribunal had decided that he had been dishonest in treating two friends and business partners free of charge and then sending them an invoice after the relationship broke down. That tribunal determined in December 2016 that he should be struck off the register. Onwude subsequently exercised his right of appeal to the High Court.
>
> But Mr Justice Collins, who heard the appeal, ruled that no reasonable tribunal would have found that his actions amounted to dishonesty. He quashed the findings of dishonesty and the decision to strike him off the register.[1]

Collins ruled that the tribunal's finding that Onwude intended to cause the couple distress was unjustified, and he quashed the decision that the doctor was guilty of misconduct in treating friends.

The judge sent the case back to the tribunal to determine whether the findings that had not been quashed amounted to misconduct serious enough to warrant a finding that Onwude's fitness to practise was impaired, and, if so, what sanction to impose. He said he suspected that "the appropriate result would be no action".

At the new tribunal there were only two findings left to be considered. These were a failure to keep records of treatment or medications provided to the friends, and practising privately from 1 January to 13 August 2013 without professional indemnity cover.

The GMC's counsel urged the tribunal to find that Onwude's fitness to practise was impaired, but the tribunal concluded that a finding of impairment was not necessary in his case.

The tribunal's chair, Piers Doggart, said that the failure to keep records in the case of the two patients who were friends "was clearly inconsistent with the positive testimonials advanced by Mr Onwude in respect of his lengthy career both before and since the episode".

He added, "This reinforced the tribunal's belief that the exceptional circumstances which gave rise to his treatment of these patients was the reason for a contained set of failings, rather than a systemic or deep-seated issue". Having had regard to all the circumstances, "the tribunal has concluded that these failings were not sufficiently serious to be regarded as misconduct".

Practising without indemnity insurance did amount to misconduct, said Doggart, but the tribunal accepted that Onwude believed at the time that he was insured. The tribunal accepted his evidence that he had not seen letters about his insurance documentation alleged to have been sent by the hospital where he was practising and that he was unaware of his lack of insurance until August 2013.

"That does not excuse his responsibility to ensure that he held insurance – a responsibility he accepts – but enabled the tribunal to discount any suggestion that he knowingly practised while uninsured", Doggart said:

> "It is clear to the tribunal that Mr Onwude is a highly respected, experienced, and valued doctor with high standards of probity and integrity", he added. "Although this was a serious failure, it was a regrettable anomaly in an otherwise very distinguished career".
>
> The tribunal issued a formal warning that the failings in record keeping and practising without indemnity insurance must not be repeated.
>
> [1] Dyer C. High Court judge quashes decision to strike off gynaecologist for dishonesty. [*Reference given*]

THE PLEADINGS

35. The Claim Form was issued on 22 December 2017. The Particulars of Claim are unconventionally pleaded and prolix, and contain much that is not material. However, the central meaning complained of is clear enough. It is that the claimant had been removed from the Medical Register and could no longer practise as a gynaecologist because of dishonesty and an intention to cause his patients distress.

36. It is apparent from the Particulars of Claim that the claimant's real complaint is that he had not in fact (contrary to the wording of the headline) been struck off, and would only have been struck off had he not appealed within 28 days. The erasure was not in force, pending appeal. It is his case that the offending article should have made that clear.

37. There is a claim for exemplary damages, but no claim for special damages, although at one stage the claimant expressed an intention to make one.

38. There is also a plea of republication on four websites, which is relied on for aggravation of damages. That case was barely taken forward in evidence, except to the extent that Mr Dean cross-examined on one aspect of it (publication on a website called ProQuest).

39. There were a number of passages in the Particulars of Claim that amounted to a plea of malice. They were supplemented by the Reply, but the relevant passages in the Particulars of Claim and the whole of the Reply were struck out by Deputy Master Leslie by order of 11 July 2018. The claimant's attempts to appeal that order were unsuccessful.

40. By their Defence, the defendants

- accept that the words complained of meet the 'serious harm' test (s1, Defamation Act 2013);
- rely on the defence of qualified privilege, based on fair and accurate report of the decision of the MPT pursuant to s15 and schedule 1 part II, paragraphs 11(1)(e) and/or 14(b), Defamation Act 1996;
- rely on the defence of publication of a statement on a matter of public interest, pursuant to s4, Defamation Act 2013. This is founded on the proposition that the first article was a statement on a matter of public interest, namely the decision of the MPT to order his erasure from the Medical Register, and that the defendants

reasonably believed that its initial publication, as well as its continued publication after the decision of Collins J, was in the public interest.

ISSUES FOR TRIAL

41. Publication and reference are admitted. Publication figures have been disclosed, and are not disputed.

42. Meaning is in issue, although its significance is limited given that there is no plea of truth and that serious harm is not disputed.

43. The major issues relate to the defences of statutory qualified privilege under s15, Defamation Act 1996 and the Defamation Act 2013 s4 public interest defence. As to the former, the questions are whether the first article (plus abstract) was a fair and accurate report of the decision of the MPT, whether the defendants refused or neglected to publish a reasonable letter or statement by way of explanation or contradiction, and whether the first article (or abstract) published matter which was not of public interest, or the publication of which was not for the public benefit. The latter arises only if the s15 statutory qualified privilege defence fails.

EVIDENCE

Claimant

44. The claimant's witness statement was not in reality a witness statement at all. It was a skeleton argument. However, Mr Dean not objecting, I allowed him to give oral evidence in chief.

45. He said that he had come to court because his reputation and earning power had been damaged by the first article. He explained the background to the findings of the MPT, before which he frankly conceded that he had been a 'difficult customer', and he insisted that (as Collins J agreed) he had never behaved dishonestly in submitting bills to his erstwhile friends. He referred to discussions at the end of the hearing before Collins J (which had taken place on 8 March 2017) about notifying the BMJ of the outcome. The GMC's lawyer, he told the court, had said that the outcome would be passed to the BMJ. In fact, the transcript of the hearing shows only that counsel said that there were usual procedures: the register would be amended and published on the GMC's website. Mr Onwude eventually informed the BMJ himself, but not until 15 May 2017.

46. Mr Onwude explained that the essence of his complaint was that he had never been struck off: he had been suspended, but his name had not been erased. When asked by Mr Kershaw how the publication of the article had affected him, he burst into tears. He explained that patients would come to him and say they thought he had been struck off, and GPs no longer referred patients to him. He was on anti-depressants, and financially his life had been very hard.

47. It seemed that he had to a degree misunderstood the first article, for he had believed that the defendants had invented the words attributed to the chairman of the MPT in the final three paragraphs. When he was shown the actual words of the determinations by the MPT, which were reproduced verbatim in the article, his complaint was that the article used inverted commas, when the words had not been spoken. That was a

complaint of no substance. As Clare Dyer explained, it was a convention at the BMJ to attribute the words of determinations to the chairman.

48. Mr Onwude said that he had been alerted to the article by someone at a private hospital where he consulted. He accepted that he had not written to complain when he saw the article; nor did he write to tell the BMJ that he had appealed: he felt ashamed. He accepted also that there had been nothing to stop him informing the BMJ of the outcome of his appeal.

49. Asked about the update attached to the first article when the second article was published, he was not prepared to accept (although he had not tried it for himself) that the BMJ had inserted a hyperlink to the second article, and he did not agree with the proposition that a reader would not be left in any doubt that the decision to strike him off had been quashed. Asked if he accepted that he could not have been caused further damage, he replied that there had been republication, and that an internet search for 'gynaecologist' and 'dishonesty' would produce five secondary sites.

50. Mr Onwude was asked about the article which he had submitted for publication. Questioned about the way in which the article was presented, as if endorsed by the BMJ, he said that he had it in mind that the BMJ would alter it to suit their house style.

51. On the question of the BMJ's invitation to him to respond to the article using the 'rapid response' device, he said that he had not wanted to do that. He did not want to write a letter saying that he had not been dishonest and had not wanted to cause distress. The BMJ had an opportunity to retract the article, and that was what they should have done.

52. Mr Dean questioned Mr Onwude at some length about his loss of income, which Mr Onwude relied upon not as showing special damage but as demonstrating the damage to his reputation which he maintained the first article had caused him.

53. In his Particulars of Claim, Mr Onwude had compared his income as at September 2013 (put at £678,000, with 99 referring GPs) with his income as at March 2017 (put at £144,000, with 2 referring GPs) and at December 2017 (£87,000, with 2 referring GPs). In evidence, Mr Onwude maintained that the drop in income was caused in part by the actions of the GMC and in part by the first article.

54. Mr Onwude was questioned about his income by reference to his own disclosed documents. His tax calculation for 2010-11 showed a gross income of £131,168; for 2011-12, £165,947; for 2012-13, £8,011; for 2013-2014, £671,098; and for 2014-15, £22,505. He was asked about figures which he had disclosed which apparently showed receipts for 2015-16 (there was no formal tax calculation) and it was put to him that the total shown, which was £142,000, represented his gross income for that year. His answer was that he could not help as to what the figures showed, but that his current income was around £142,000, and had been for three to four years.

55. Mr Onwude was able to produce further tax computations which he had requested from his accountant. His tax computation report for 2016-17 showed gross income of £115,000; for 2017-18, £139,619; and for 2018-19, £133,670. In each case, net taxable income was very much less, taking into account very substantial general

administrative expenses (indeed, for 2016-17 there was a computed loss of nearly £21,000), but for the purposes of assessing the impact of the first article (published on 22 December 2016), gross receipts would seem to be more material than net income, which depends on the accountancy treatment of a variety of different factors.

56. It does not seem to me that the disclosed tax calculations show a very substantial downturn in gross income for the tax year 2016-17 or 2017-18. There is an apparent dip of around £27,000 (£142,000 to £115,000) in 2016-17, after which his income increased; but the irregularity of his income over the years before the first article makes it difficult to say with confidence that the 2016-17 dip was the product of the article, as opposed to simple fluctuation of income, or of his suspension, which had the effect that he was not authorised to practise between 15 December 2016 and 8 March 2017, when his appeal succeeded.

57. It was put to Mr Onwude that he had obtained remission of court fees by altering a form which recorded his income as £13,000 a month, which he had changed to £1,300 a month. He maintained that £13,000 had been the wrong figure, and that he had told the court office that he was earning £1,300 per month. Asked for an explanation of this, he was unable to say more than the figure given to the court office was not a lie. He said that he could not remember and was not well. I asked him if the Covid pandemic might be an explanation for a recent fall off in fees: he agreed. In re-examination, after he had (with my permission) contacted his accountant, he told me that he had earned roughly £13,000 since April 2020, and was £50,000 in debt.

58. I remain in grave doubt about how it came about that a man with such substantial gross earnings could have obtained remission of court fees. I am uncertain whether behind Mr Onwude's appearance of confusion and bafflement with the figures there is a more focused understanding, but I am not prepared, on the evidence before me, to conclude that he behaved improperly.

59. Mr Onwude was also asked about his pleaded case that there had been 'percolation' of the first article through other websites, and in particular a website called ProQuest, which appears to have reproduced all three BMJ articles. The defendants' solicitors obtained figures for the number of views of the first article. The only UK views (apart from views by the third defendant) were one by a user at Liverpool University, and fourteen by a user at Anglia Ruskin University, six of which were on 13 February 2018, the very day on which Mr Onwude disclosed the first article as obtained from ProQuest. Mr Onwude had done a Master's degree at Anglia Ruskin, which he said finished in 2017, although he had been there again in 2019. Nonetheless, Mr Onwude denied that he had been the person who had accessed the ProQuest website from Anglia Ruskin. He said that he knew three people who were there, suggesting that any of them might have accessed the website. It is not a matter of very much moment, but in my judgment the views on 13 February 2018, at least, must either have been by Mr Onwude or carried out at his request. It seems likely that the other views from Anglia Ruskin occurred in the same manner. That leaves one other UK view, apparently from Liverpool University. That is the extent of the evidence of republication.

Professor Manyonda

60. Mr Onwude called Professor Isaac Manyonda, professor of obstetrics and gynaecology at St George's Hospital. He had collaborated with Mr Onwude because

he was a statistician and helped with the Professor's research. His evidence was simply that he had been told by a patient in January 2000 that she had previously seen Mr Onwude but did not want to see him because he 'had been erased five times'. That evidence was of no assistance to me.

Clare Dyer, first defendant

61. Clare Dyer, the author of the articles, told the court that she was the legal correspondent of the BMJ. She monitored the Medical Practitioners' Tribunal Service (MPTS) website, and the website of BAILII (the British and Irish Legal Information website) for cases which might be of interest to BMJ readers, and generally concentrated on cases raising issues relating to professional practice, which might be instructive to the readership. She obtained the decision of the MPT in the case of Mr Onwude and decided that it was of sufficient interest to write up for the BMJ: there were lessons to be learned about the provision of free services to friends when friendship later broke down, and from the finding that Mr Onwude had practised without indemnity insurance, which might help doctors to avoid similar pitfalls. In her view, the reporting of such cases was an important part of the BMJ's news function, and it was therefore her belief that publication of the first article (and of the second and third) was in the public interest.

62. In writing the article, she had recorded the words of the MPT but attributed them to the chairman of the MPT, putting them in inverted commas. It was standard practice in MPT cases to attribute the words in MPT determinations to the chairman. She had not obtained comments from the chairman, as Mr Onwude had believed.

63. Her usual practice in recording a decision to erase a doctor from the register was to describe the doctor as having been 'struck off', which she regarded as accurately reflecting the substance of the decision. In Mr Onwude's case, he was also suspended from practice with immediate effect, although she did not report that element of the decision. It was true that erasure did not take effect for 28 days, and was then extended if the right of appeal was exercised, but she did not consider it necessary to refer to the right of appeal, which applied in every case (although rarely exercised) and was generally known and understood by the readership. It was not necessary to spell out something that everyone knew. Out of 87 articles about MPT decisions which she exhibited, she had referred to the right of appeal in only five.

64. Ms Dyer had not known, she said, that Mr Onwude had successfully appealed the determination of the MPT until she was given a copy of his letter of claim dated 15 May 2017. She had not seen a copy of the judgment on BAILII, and when she received the letter, she checked BAILII again and the judgment was not there. I accept that she had not known. Had she done so, she would undoubtedly have wanted to report the decision of Collins J, as she did once she had been informed of it.

65. She explained that the news editor, Zosia Kmietowicz, suggested to her in January 2018 that in future it would be wise to include in any reports of MPT cases a reference to the 28 day appeal period, and the BMJ decided to adopt that policy on 31 January 2018. She said that she was happy to take a pragmatic view to avoid any further complaints, although she could not recall any previous complaint arising from a failure to mention the right of appeal.

66. She kept in touch with the MPT Press Office to ensure that she was notified of the hearing to consider the case against Mr Onwude as remitted by Collins J, and decided that a third article was required to report the decision by the MPT that Mr Onwude was indeed fit to practise.

Fiona Godlee, second defendant

67. Dr Godlee is the editor in chief of the BMJ. It was her evidence that the BMJ regularly ran articles which reported on disciplinary hearings before the MPT. The BMJ is an international journal of record, but most of its news articles are directed to its UK membership, which is largely comprised of around 120,000 members of the British Medical Association. The readership is very interested in disciplinary hearings before the MPT because issues arise which may be instructive for doctors, particularly in fitness to practice cases. The lessons learned carry considerable public interest from a patient safety standpoint, and it is therefore important, in Dr Godlee's view, that the BMJ covers such matters.

68. That said, there are a large number of disciplinary cases heard before the MPT, and the BMJ has to be selective about which cases to report, and at which stage they should be reported. Most articles about MPT cases are published online, which enables them to be updated effectively. The hard copy BMJ goes to print weekly, and the news editor decides which reports should be included in the hard copy edition. None of the articles about Dr Onwude has been published in hard copy.

69. Dr Godlee did not have any involvement in the publication of the first article, which was dealt with by Clare Dyer and Zosia Kmietowicz, the news editor.

70. She understood that the substance of Mr Onwude's complaint about the article was that it referred to him as having been struck off, and that it did not refer to the existence of a right of appeal. She had always considered it to be normal practice not to refer to the right of appeal in MPT cases, since BMJ readers were usually well informed about the GMC's processes, and all courts and tribunals have rights of appeal, a fact that is well understood. To her knowledge, there had never previously been a complaint about omission of the right to appeal. However, an editorial decision was taken on 31 January 2018 to refer to the right of appeal in future reports, in order to avoid any further complaints.

71. Following the receipt of Mr Onwude's complaint, a report of the High Court decision was published, and a link to the second article was added to the head of the first article. According to Dr Godlee, the publication of the second article was consistent with the BMJ's approach to updating the record where there are material developments in stories which have already been reported on.

72. Dr Godlee explained her response to Mr Onwude's letter of 23 June 2017, in which he requested the publication of an article which he had written, about the High Court decision to quash the decision of the MPT. She responded on 29 June in a standard wording, requesting that Mr Onwude should make his comments by using the BMJ's 'rapid response' process. That enables users to debate or dispute issues raised in online articles by posting electronic comments. She realised later that she had not

been fully aware of Mr Onwude's complaint and the context of his 23 June letter, which is why she did not send what she called a more 'tailored' response.

73. However, it was her view that it would have been inappropriate to publish Mr Onwude's proposed article. That was partly because it was not in the form of a letter or statement from him or on his behalf, but in the form of an article written as if from the BMJ; and the article contained additional comment, such as that the charges had been contested on 'strong grounds'. Moreover, the proposed article had been submitted after publication of the second article, which had contained the same essential information. It covered the same ground.

74. Mr Onwude emailed her again on 6 July 2017, saying that she should have passed his letter to the legal department. Dr Godlee then discussed the matter internally, as a result of which Deborah Paxford of the BMJ legal department wrote to Dr Onwude on 11 July saying that since the BMJ had already published an article reporting on his successful appeal, it would be inappropriate to publish his proposed article, but stressing the BMJ's willingness to consider publishing his comments, which could be submitted via the rapid response procedure. The offer was repeated on 16 August 2017. No comments were received. Dr Godlee told the court that she would have been happy to have published a letter in his own voice expressing his concerns, had one been submitted.

75. Dr Godlee did not consider that the first article had been unfair or inaccurate, and she regarded the second article as a timely and appropriately prominent report of the successful appeal. It was her belief that publication of the first article had been in the public interest. Its publication continued to be in the public interest after Mr Onwude's successful appeal, because the BMJ was a journal of record and the decision still needed to be reported. She would only remove an article if it was found to be inaccurate, which the first article had not been.

76. Dr Godlee attended a meeting of the BMJ Ethics Committee on 26 July 2018. At that meeting, Ms Kmietowicz reported on Mr Onwude's claim and explained the BMJ's policy to update news stories as cases progressed. Dr Godlee asked if it was possible to make the link to the second article, placed at the head of the first article, more prominent. By that stage the BMJ had adopted a practice of including a large blue banner at the top of stories to make it even clearer that an update had been made. Dr Godlee therefore emailed Ms Kmietowicz with a link to the first article so that she could update it further. The link was then made larger, using the blue banner format. The minutes of the meeting showed that there had been discussion about the fact that the first article came up before the second if searched for on Google, and about the possibility of Google being able to 'suppress' the first article.

77. There was a curious sequel to the Ethics Committee meeting. Mr Onwude claimed in a witness statement of 5 October 2020 to have found a draft minute of the meeting online. He had not disclosed it earlier. This was surprising, because, according to Dr Godlee, the minutes were not published online, for reasons of confidentiality: instead, an annual report of the committee's activities was uploaded (the last having been in 2016). The curiosity about Mr Onwude's version of the minutes, apart from the fact that he claimed to have found it online, was that it consisted of a truncated version of the minutes, containing only the heading, the list of those attending and the item concerning Mr Onwude, at paragraph 4.1 of the minutes, part of it highlighted in bold.

The actual minutes, by contrast, contained other paragraphs under the usual headings such as Apologies and Matters arising. Yet Mr Onwude insisted that he had found his version of the minutes in that truncated form, containing only the paragraph that referred to him, and had not altered it save to embolden the passages that he wished to highlight. Nor, he said, had he added the bracketed words 'Fiona Godlee' after the initials FG.

78. I am afraid to say that I found Mr Onwude's account very difficult to believe. It was wholly unclear why a version of the minutes, no part of which (on Ms Godlee's unchallenged evidence) was published online, should have been available online to be located by Mr Onwude, and moreover in a truncated form which contained only the material relevant to him. That is profoundly implausible, and the more so because Mr Onwude was quite unable to explain where on the internet he had found it. However, there was no suggestion that he had altered the substance of the relevant part of the minute. Nonetheless, it did not enhance his credibility as a reliable witness.

Zosia Kmietowicz

79. The final witness was the BMJ news editor, Ms Kmietowicz. Her role involved authorising and commissioning news stories for the online and print versions of the BMJ, which publishes 25-30 news stories online each week, about 22 of which go into the print edition.

80. Ms Kmietowicz explained that the online news stories are behind a paywall, so that readers who do not have an online subscription can read only the 'abstract', which consists of the headline and the first three paragraphs of the article. Most of the BMJ's readers are doctors and medical academics who have a subscription. The BMJ regularly reported disciplinary cases before the MPT, partly for educational reasons, in the hope that doctors would learn from the mistakes of their fellow doctors, particularly in cases involving a finding that fitness to practise had been impaired.

81. She had asked Ms Dyer to write an article about the MPT decision in Mr Onwude's case because she believed that it was one that readers could learn from.

82. She was aware that it was Ms Dyer's usual practice when writing reports of the erasure of a medical practitioner to refer to them as having been struck off. Ms Dyer had only referred to a right of appeal in five out of 87 articles that she had reviewed, and she had herself been content with that approach from an editorial perspective, not considering, either then or now, that the lack of reference to a right of appeal could render a report unfair or inaccurate. Appeals were not common, but when they happened, they were followed up. However, the BMJ had adopted a policy from the end of January 2018 of including reference to the right of appeal in reports of decisions of the MPT to strike doctors off the register, in order to protect the journal from any further complaints like Mr Onwude's.

83. She said that the GMC had never in her experience notified the BMJ about the outcome of disciplinary cases, and that she was first alerted to Mr Onwude's successful appeal by his letter to the BMJ. The second article was then published, in line with the BMJ's usual policy of publishing articles about successful appeals. She regarded it as important to update the BMJ's online record to make clear to readers that the appeal had succeeded, and an editorial decision was made to include a link to

the second article, as soon as it was published, in a banner at the top of the first article, signalling to readers that it had been updated, and stating that the decision to strike Mr Onwude off the register had been quashed.

84. Asked by Mr Kershaw why the first article had not been taken down when she learned of Mr Onwude's successful appeal, her answer was that they only retracted an article if there had been an error, and they did not consider that there had been an error.

85. Similarly, when the third article was published, reporting the MPT's final decision in the Onwude case, a further update banner was included at the top of both the first and the second articles.

86. She shared the belief of Ms Dyer and Dr Godlee that the publication of the first article was in the public interest.

MEANING

87. The claimant's pleaded case on the meaning of the first article is that he had been removed from the Medical Register and could no longer practise as a gynaecologist because of dishonesty and intention to cause distress.

88. Unusually but helpfully, the defendants also pleaded the meaning of the words complained of. Their pleaded meaning was that the claimant was guilty of misconduct, namely dishonesty and intention to cause distress, which was fundamentally incompatible with continued inclusion on the medical register and was so serious that the MPT had determined that he should be erased from the medical register.

89. In support of that meaning, Mr Dean submitted that the defamatory sting of the first article lay in what it said about the claimant and the seriousness of the misconduct of which he had been found guilty, rather than in the formal consequences of that conduct: in other words, it did not matter whether the claimant had been removed from the register at the date of publication of the first article, in the light of the fact that the MPT had determined that his misconduct was so serious that he should be removed.

90. Mr Dean reminded me of the principles to be followed in determining meaning, which have been re-stated on countless occasions, including in the recent case of *Koutsogiannis v Random House Group Ltd* [2020] 2 WLR 25 at [12] to [15]. Those principles are very familiar. I see no merit in repeating them here in more than brief outline.

91. Mr Onwude formally complains only of the headline of the first article, although that cannot be viewed in isolation. I must consider the article as a whole in determining its single natural and ordinary meaning, which is the meaning that the hypothetical reasonable reader would understand them to bear. The reasonable reader is not naïve, nor unduly suspicious; he can read between the lines, can read in an implication more readily than a lawyer and may be guilty of some loose thinking, but must be treated as a person who is not avid for scandal and does not select one bad meaning when other non-defamatory meanings are available. The court should avoid over-elaborate analysis and not take too literal an approach to its task. Judges should take into

account the impression which the words complained of made on them, in considering the impact which they would have made on the hypothetical reasonable reader.

92. Doing my best by reference to those principles, in my judgment the meaning of the first article is that the claimant had been found guilty by a medical practitioners' tribunal of professional misconduct, including acting outside his competence, failing to keep medical records, failing to have professional indemnity insurance, and acting dishonestly towards former patients with intention to cause them distress, which was fundamentally incompatible with continued registration, and had in consequence been ordered by the tribunal to be struck off the medical register.

93. Mr Dean submitted that the meaning of the abstract was that the claimant was guilty of misconduct, namely dishonesty and intention to cause distress, which was so serious that the Medical Practitioners Tribunal had determined that he should be erased from the medical register.

94. The abstract contained only the headline and the first four paragraphs of the full first article. In my view its meaning is almost the same as that of the first article, namely that the claimant had been found guilty by a medical practitioners' tribunal of professional misconduct, including acting outside his competence, failing to keep medical records, failing to have professional indemnity insurance and acting dishonestly towards former patients with intention to cause them distress, which was so serious that he had in consequence been ordered by the tribunal to be struck off the medical register.

95. In short, although I would elaborate his pleaded meanings a little, I agree with Mr Dean that the gravamen of the first article and of the abstract lies not so much in the allegation that Mr Onwude was struck off but in the imputation that he had behaved in such a way as to justify his name being struck off or erased from the register. In my judgment it is the alleged behaviour of which he was found guilty, rather than the sentence passed for the behaviour, which carries the real sting.

DEFENCE OF QUALIFIED PRIVILEGE: S15 DEFAMATION ACT 1996

96. The statutory privilege defence is founded on s15, Defamation Act 1996, which reads as follows:

> "Reports, &c. protected by qualified privilege
>
> (1) The publication of any report or other statement mentioned in Schedule 1 to this Act is privileged unless the publication is shown to be made with malice, subject as follows.
>
> (2) In defamation proceedings in respect of the publication of a report or other statement mentioned in Part II of that Schedule, there is no defence under this section if the plaintiff shows that the defendant—
>
> (a) was requested by him to publish in a suitable manner a reasonable letter or statement by way of explanation or contradiction, and

(b) refused or neglected to do so.

For this purpose "in a suitable manner" means in the same manner as the publication complained of or in a manner that is adequate and reasonable in the circumstances.

(3) This section does not apply to the publication to the public, or a section of the public, of matter which is not of public interest and the publication of which is not for the public benefit.

(4) Nothing in this section shall be construed—

(a) as protecting the publication of matter the publication of which is prohibited by law, or

(b) as limiting or abridging any privilege subsisting apart from this section."

97. The defendants put the qualified privilege defence on two slightly different bases, relying on paragraphs 11(1)(e) and 14(b) of Schedule 1 Part II of the Defamation Act 1996.

98. Paragraph 11(1)(e) applies to

11(1) A fair and accurate report of proceedings at any public meeting or sitting in the United Kingdom of -

(e) any other tribunal, board, committee or body constituted by or under, and exercising functions under, any statutory provision.

99. The starting point is that the MPT is a tribunal constituted by and exercising functions under a statutory provision, namely the Medical Act 1983.

100. Section 1 of that Act provides as follows, so far as is relevant:

"1 The General Medical Council.

(1) There shall continue to be a body corporate known as the General Medical Council (in this Act referred to as "the General Council") having the functions assigned to them by this Act.

(1A) The over-arching objective of the General Council in exercising their functions is the protection of the public.

(1B) The pursuit by the General Council of their over-arching objective involves the pursuit of the following objectives—

(a) to protect, promote and maintain the health, safety and well-being of the public,

> (b) to promote and maintain public confidence in the medical profession, and
>
> (c) to promote and maintain proper professional standards and conduct for members of that profession.
>
> (2) The General Council shall be constituted as provided for by order of the Privy Council, subject to Part 1 of Schedule 1 to this Act.
>
> (3) The General Council shall have the following committees—
> …
> (d) one or more Registration Appeals Panels,
>
> (e) the Investigation Committee, ….
>
> (g) the Medical Practitioners Tribunal Service ("the MPTS"),
>
> (h) one or more Medical Practitioners Tribunals …
> constituted in accordance with Part III of Schedule 1 to this Act and having the functions assigned to them by or under this Act.
>
> (3A) The committees of the General Council specified in subsection (3) above are referred to in this Act as "the statutory committees".
>
> (4)Schedule 1 to this Act shall have effect with respect to the General Council, its branch councils and committees, its proceedings, its officers and its accounts.

101. Paragraphs 19F and 19G of Part III of Schedule 1 of the Act provide for the constitution of the MPTS and the Medical Practitioners Tribunals.

102. It is clear, therefore, that the MPT is a tribunal constituted by and exercising functions under a statutory provision, and therefore falls within paragraph 11(1)(e). Neither that proposition, nor the fact that the MPT was sitting in public when it handed down its determinations in the case of Mr Onwude, is in dispute.

103. Paragraph 14(b) applies to

> "A fair and accurate report of any finding or decision of any of the following descriptions of association, formed anywhere in the world, or of any committee or governing body of such an association—
>
> (b) an association formed for the purpose of promoting or safeguarding the interests of any trade, business, industry or profession, or of the persons carrying on or engaged in any trade, business, industry or profession, and empowered by its constitution to exercise control over or adjudicate upon matters connected with that trade, business, industry or profession, or the actions or conduct of those persons…"

104. Given the stated objectives of the Medical Act in setting up, or rather continuing, the GMC, I doubt that it could be said to have been formed to promote or safeguard the interests of the medical profession, or of the persons carrying on that profession. However, I heard no argument on the point, and it is not necessary to decide the question because the proceedings of the MPT, as a statutory committee of the GMC, fall squarely into paragraph 11(1)(e) of sched.1 of the 1996 Act.

Fairness and accuracy

105. A more vexed question is whether the first article was a fair and accurate report of those proceedings and/or of the finding and decision.

106. There was no separate argument in this respect about the abstract, which is a cut down version of the first article. Mr Onwude's case (see Particulars of Claim para.18.1) is that the first article was inaccurate because it suggested that he had been struck off, whereas in fact he had not been struck off, and would only have been struck off had he not exercised his statutory right of appeal within 28 days (and succeeded in that appeal). If there was also, as I have assumed, a complaint about the abstract, then there has never been suggestion that the claimant's concern about its fairness or accuracy was any different from his concern about the first article as a whole.

107. In the course of the hearing it appeared that Mr Onwude also might also be relying on the first article's (and perhaps also the abstract's) omission of any reference to his statutory right of appeal, as well as the time lapse before erasure took effect.

108. The defendants' pleaded case on fairness and accuracy is in essence that the omission of the fact that the sanction of erasure came into force 28 days after service on him of the MPT's determination, unless he lodged an appeal in the interim, did not affect the fairness and accuracy of the article. The burden is on the defendants to make that case.

109. It is not clear, and in this case it probably does not matter, how far fairness and accuracy involve separate issues. A report may be substantially accurate but unfair (the Parliamentary sketch in Cook v Alexander [1974] QB 279 was argued unsuccessfully on the basis of unfairness, and in Curistan, below, there was an issue whether the intermingling of non-privileged material made a report unfair), although the converse (fair but inaccurate) is not so easy to postulate, except to the extent that the inaccuracies are minor. Gatley (12th ed, para 16.4 n32) suggests that "they are clearly aspects of the same idea, bearing in mind that 'accurate' means 'substantially accurate'". That seems to me to be the approach which I should adopt in this case.

110. The way in which the law is summarised in *Gatley* at paragraph 16.4 is that 'If the report be as a whole a substantially fair and correct account of the proceedings, a few slight inaccuracies, or the addition of a few inaccurate, but non-defamatory comments, will not deprive it of protection, but where the inaccuracies are of a substantial kind, there is no immunity'.

111. Arden LJ considered the law on fair and accurate reports in *Curistan v Times Newspapers Ltd* [2008] EWCA Civ 432, [2009] QB 231 at [26]-[27]:

> "26. There are a number of authorities on what constitutes a fair and accurate report. It need not be a verbatim report. It can be selective and concentrate on one particular aspect as long as it reports fairly and accurately the impression that the reporter would have received as a reasonable spectator in the proceedings: see generally *Cook v Alexander* [1974] QB 279 and *Tsikata v Newspaper Publishing plc* [1997] 1 All ER 655.
>
> 27. However, these appeals are principally concerned with the quality of fairness. Fairness in section 15 has been held to mean fairness in terms of presentation rather than fairness between the speaker and the subject of the statement: see per Lord Denning MR in *Cook v Alexander* [1974] QB 279, 289. A report does not cease to be fair because there are some slight inaccuracies or omissions: *Andrews v Chapman* (1853) 3 C & K 286 , 290. It follows that if there is a substantial or material misstatement of fact that is prejudicial to the claimant's reputation, the report will not be privileged."

112. A more recent summary was provided by Warby J in *Alsaifi v Amunwa* [2017] EWHC 1443, [2017] 4 WLR 172 at [63]:

> "The principles are clearly stated in the following authorities, all of which I have considered in the course of preparing this judgment: *Cook v Alexander* [1974] QB 279, *Tsikata v Newspaper Publishing plc* [1997] 1 All ER 655, *Ismail v News Group Newspapers Ltd* [2012] EWHC 3056 (QB), and *Qadir*…. Key points for present purposes are that fairness and accuracy are matters of substance not form. A report does not need to be verbatim. It may to an extent be impressionistic. Fairness is to be tested by reference to the impact on the claimant's reputation. Minor inaccuracies will not deprive a defendant of the privilege."

113. The omission of significant facts may destroy the privilege: see for instance *Qadir v Associated Newspapers Ltd* [2013] EMLR 15 at [158], per Tugendhat J. In that case, the omission was very significant, and seriously unbalanced the report. The judge held that a report which included a claim improperly made by counsel for one of the defendants at trial that the claimant (who had not been before the court) was complicit in a fraud, but omitted the sentencing judge's clear statement that there was no evidence that the claimant was complicit, was not fair or accurate.

114. As Mr Dean suggests, it is relevant to refer to the provisions of the Medical Act 1983 (as amended), in order to understand the directions which the MPT made:

> "(1) The MPT's power to direct that a doctor be erased from the medical register is provided for by s35D(2)(a).
> (2) By s35E(1), where a direction for erasure has been made the MPTS will forthwith serve on the person concerned notice of the direction and his right to appeal pursuant to s40.
> (3) By s40(1)(a) a direction for erasure is an appealable decision.

> (4) By s40(4), the person concerned may appeal the decision within 28 days of the notice pursuant to section 35E(1) being served on him.
> (5) By paragraph 10 of Schedule 4, a direction for erasure pursuant to s35D(2)(a) shall take effect either on the expiration of the time for appealing provided for by s40(4) or, if an appeal is brought, upon the dismissal or withdrawal of that appeal.
> (6) By s38(1), the MPT may order that the registration of a person directed to be erased pursuant to 35D(2) shall be suspended forthwith, if the MPT is satisfied that to do so is necessary for the protection of members of the public, or is otherwise in the public interest.
> (7) Section 38(6) provides that, upon suspension pursuant to section 38(1), the person concerned "shall be treated as not being registered in the register notwithstanding that his name still appears in it".

115. In Mr Onwude's case, the MPT directed erasure, which was an appealable decision, the appeal to be made within 28 days of service of the decision on the respondent; and erasure did not take effect until the expiry of the 28 days, or on the dismissal or withdrawal of the appeal. The MPT also ordered that Mr Onwude's registration be suspended forthwith, which had the effect that he was treated as not being registered even though his name still appeared there.

116. The first article and the abstract reported that Mr Onwude had been struck off (ie erased from the register), even though erasure did not take place immediately, but did not mention his suspension (whereby he was treated as being erased), which did take place immediately.

117. Mr Dean submitted that the omission of reference to the right to appeal, or the effects of the right to appeal, did not render the first article either inaccurate or unfair. The relevant words used in the article were to the effect that the claimant had been 'struck off', which was not a legal term of art or a term found within the Medical Act. Its ordinary meaning was that a doctor had been barred from practice because of some serious wrongdoing, which was exactly what happened as soon as the MPT's determinations were announced. From that date, unless and until any appeal was successful, the claimant was barred from practising and was to be treated as if he was not on the medical register. What was important as far as the claimant's reputation was concerned was that he had been found guilty of misconduct so serious that his professional regulatory body had directed that he be erased from the register. The fact that his name would not actually be erased from the register until after the appeal process, if there was to be one, had run its course, was immaterial to the reputational impact of the article.

118. I accept those submissions, which apply with equal force to the abstract as they do to the full article.

119. Nothing turns on the use of the words 'struck off', as opposed to 'erased', for which they are simply a popular synonym. The first article and the abstract were technically inaccurate in stating that the claimant had been struck off, when in fact the direction for his erasure did not take effect immediately (and might not take effect at all, depending on the outcome of an appeal). However, the claimant was in fact suspended with immediate effect, and therefore fell to be treated as if his name had

been erased from the register. He was unable to practise as a doctor, not in 28 days' time, but immediately. In that context it seems to me that the technical inaccuracy is a minor matter, and one of form, not of substance. It is difficult to see how the claimant's position would have been improved had the article spelled out that the direction was subject to appeal, as such orders invariably are, and that erasure would take effect in 28 days, subject to exercise of the right to appeal.

120. The substance of the determination was therefore that in the light of a series of findings of professional misconduct the claimant's erasure had been directed, subject only to appeal, and that he was prohibited from practising with immediate effect. That was summarised with substantial accuracy in the first article (and in the abstract), and in my judgment the omission of reference to the right of appeal, and to the 28 day delay, was immaterial. It appears from *Curistan v Times Newspapers* and *Alsaifi v Amunwa* (and see also *Alsaifi v Trinity Mirror* [2017] EWHC 1444 (QB) at [78]) that fairness and accuracy must be judged by reference to the impact of the words complained of on the reputation of the claimant: here, there was (to repeat Arden LJ's words in *Curistan*) no "substantial or material misstatement of fact that (was) prejudicial to the claimant's reputation".

121. Given the claimant's claimed concern about the reputational damage which he suffered from the use of the expression 'struck off' without reference to the right of appeal, it may be significant (although it is plainly not determinative) that he himself on several occasions described the decision of the MPT in similarly unqualified terms: he did so both in his letter of 23 June 2017 to the defendants (where he described himself as having been 'struck off') and in the headline of his proposed article for publication; in a letter to the chairman of the GMC, published in the BMJ on 18 January 2018, he described himself as having been 'erased and reinstated', which he regarded as a fair description; in a press release issued on his behalf on 27 February 2018 about proceedings which he brought against the GMC in the Employment Tribunal, he caused himself to be described as having been 'wrongly struck off'; and in a letter published on 17 June 2019 in *Pulse Today*, he described himself as having been 'erased'. His own usage may perhaps support the proposition that a description of the claimant as having been struck off *simpliciter*, without any qualification, is not an unfair way to summarise what the MPT ordered.

Publication of a reasonable letter or statement by way of explanation or contradiction

122. By s15(2), there is no defence if the claimant shows that the defendants were requested by him to publish in a suitable manner a reasonable letter or statement by way of explanation or contradiction, and refused or neglected to do so.

123. There has been little judicial consideration of s15(2). Perhaps the most helpful overview comes from the High Court of Australia, where in Chakravarti v Advertiser Newspapers Ltd [1998] HCA 37; 93 CLR 519 at 161, a case of fair and accurate report of proceedings of a Royal Commission, Kirby J dealt with a similar provision of South Australian law (Wrongs Act 1936 (SA), s 7(1)). The reference to proviso (b) is to words of the South Australian statute which are in substantially similar terms to those of s15(2) (albeit without s15(2)'s qualification that the request must be to publish 'in a suitable manner'):

"2. …The emphasis upon the public character of the meetings and the criterion of public concern and public benefit help to explain the true purpose of proviso (b). It is to enhance the information given to the public on a particular matter. It is also to recognise that, in the nature of the particular meetings specified, inaccurate, unfair or defamatory statements may be made which can then be published under qualified privilege. Fairness requires the balancing of that right with a provision, to those complaining about its exercise, of the opportunity to place a contradictory statement or explanation before the public. The request would have to be reasonably contemporaneous with the publication. It would not ordinarily be reasonable to expect publication of a letter or statement years or perhaps even months later. The criterion of the public's interest must be kept in mind in giving meaning to the section, including proviso (b).

3. By the terms of the proviso, any such letter or statement must be "reasonable". It was urged that this meant reasonable from the point of view of the person complaining or tendering the statement. However, in my view, "reasonable", in this context, means objectively reasonable for the purpose for which the statutory facility has been provided. That is to allow already published facts to be contradicted or explained by those claiming to be hurt by the report of them. The reference to "reasonable" is intended to control such matters as the length of the letter or statement, the terms in which it is expressed and the avoidance of gratuitous defamation of third parties. I do not regard the word "reasonable" as affording an editorial veto to the publication of a letter which is strongly expressed or contains disputable propositions or arguable inaccuracies. After all, it is always open to the publisher to have the last word. It is not uncommon, where letters of complaint are published, for an editorial note to be added expressing the publisher's reply. The sting of defamation often causes emotion and anger. That is the context in which Parliament has made provision for a letter or statement in reply to be given its statutory status. Publishers of newspapers who have considerable power to harm reputations should not be overly tender about complaints and expressions of anger when appearing in a letter or statement to which proviso (b) applies.

4. The proviso makes no express mention of editorial amendment, abbreviation or alteration. But neither does it expressly state that the letter or statement must be "accurate". In the real world, if some aspect of a letter or statement were thought to take it outside the bounds of reasonableness, it would be sensible for there to be negotiation between the publisher and the person complaining. A failure or refusal to enter into such negotiation might, in a particular case, confirm

> an opinion that, on the whole, the letter or statement tendered was "reasonable". Otherwise, all of the cards are stacked in favour of the publisher and against the person complaining. The purpose of the proviso is to afford the complainant a statutory means to secure the publication of a relevant contradiction or explanation. The purpose of the publication envisaged by the proviso is not to afford the complainant, or anyone else, the opportunity to insult the publisher, to extract an apology or to defame others. The ultimate purpose is to contribute to equalising the power to communicate with the audience which has already heard or seen matter considered to be defamatory where it is desired by the person affected to offer to the public other material in contradiction or explanation."

124. Similarly, Gray J in *Henry v BBC* [2005] EWHC 2787 (QB) at [91(iii)] took the view that if unreasonable expressions were used in the claimant's proposed draft, the defendant should raise objections and try to reach agreement on the points in issue.

125. In the present case, the claimant presented the defendant with a statement which he asked the defendants to publish on 23 June 2017, a month after the second article had been published, reporting the decision of Collins J. There is no issue that he asked the defendants to publish his statement 'in a suitable manner'.

126. The defendants declined to publish the claimant's statement. As I have said, that was primarily on the basis that it would be inappropriate to do so, given that the BMJ had already reported the successful appeal.

127. Mr Dean submitted that the defendants' refusal was justified by the terms in which the proposed statement was couched, which imputed to the BMJ a state of mind (eg 'We are pleased to report'), ascribed to it an acceptance of the claimant's value judgments (eg 'Both charges are vigorously contested by Dr Onwude on strong grounds', a contention that the BMJ additionally regarded, not without reason, as misleading), and included matters which were beyond the BMJ's knowledge (eg that the claimant was assisted by leading counsel on a direct access basis). I do not agree. As both Kirby J (in *Chakravarti*) and Gray J (in *Henry*) have said, those flaws could (or at least might) have been met by discussion and negotiation.

128. A more cogent submission, in my judgment, is that the claimant's proposed statement, shorn of the frills, was no more than a further report of the hearing before Collins J, and therefore a repetition of the second article. S15(2) requires that the proposed statement must be reasonable. As Kirby J suggested in Chakravarti, 'reasonable', in this context, means objectively reasonable for the purpose for which the statutory facility has been provided, which is to allow already published facts to be contradicted or explained by those claiming to be hurt by the report of them. Plainly, that includes being objectively reasonable as to content; but in addition it must mean objectively reasonable as a statement for publication in the medium proposed. The claimant's statement would, suitably edited, have been a reasonable one for publication in a journal of record had the second article not been published,

but in my view it was far from reasonable given the publication one month before of an article to exactly the same substantial effect, and the defendants were entitled to refuse to publish it.

129. I would add that the statement must be a reasonable statement by way of explanation and contradiction, which recalls Kirby J's reminder that the purpose of the statutory provision is to balance the defendant's right to publish a report of defamatory material with an opportunity for the claimant to place a contradictory statement or explanation before the public. In this case, that statement or contradiction had already been published, a month earlier, and its substantial repetition would have been unnecessary and unreasonable.

130. I record that the defendants did, of course, offer more than once to consider publishing his comments, but he did not submit any further text.

131. In my judgment the defendants cannot be said to have refused or neglected to publish a reasonable statement, because the statement that they were requested to publish was not a reasonable one.

Public interest and public benefit

132. By s15(3), s15 does not apply to publication to the public or matter which is not of public interest and the publication of which is not for the public benefit.

133. The claimant did not suggest that the first article (or abstract) did not contain, or constitute, a matter of public interest. I agree with Mr Dean that the fact that the MPT had ordered a practising doctor to be erased from the medical register was of the highest public interest. As he submits, it is always important, not least for patient safety and confidence, that a decision such as that receives the widest publicity. It was plainly for the public benefit that it should be published.

134. Moreover, in my view the status of the first article and abstract did not change when the decision of the MPT was quashed by Collins J, because as soon as the defendants were notified of the judge's decision, a report of that decision was published, and an update was added to the first article, and to the abstract of the first article, which stated that the decision had been quashed and provided a link to the second article. Similarly, once the MPT had considered the remitted findings and determined the appropriate sanction, that decision also was published, and carried a report of the fact that the original decision had been quashed.

Conclusion on statutory qualified privilege

135. Given that there is no plea of malice, the defence under s15 must succeed.

PUBLIC INTEREST DEFENCE

136. In the circumstances, it is not strictly necessary for me to reach a view on the alternative defence under s4, Defamation Act 2013, but I shall do so nonetheless, albeit briefly.

137. So far as material, s4 provides as follows:

> "(1) It is a defence to an action for defamation for the defendant to show that-
> (a) the statement complained of was, or formed part of, a statement on a matter of public interest; and
> (b) the defendant reasonably believed that publishing the statement complained of was in the public interest.
>
> (2) Subject to subsections (3) and (4), in determining whether the defendant has shown the matters mentioned in subsection (1), the court must have regard to all the circumstances of the case.
>
> (4) In determining whether it was reasonable for the defendant to believe that publishing the statement complained of was in the public interest, the court must make such allowance for editorial judgement as it considers appropriate.
>
> (6) The common law defence known as the Reynolds defence is abolished."

138. The common law public interest defence stated by the House of Lords in *Reynolds v Times Newspapers* [2001] 2 AC 127, by which in matters of public interest there could be said to be a professional duty on the part of journalists to impart information and an interest in the public in receiving it, was abolished by s4(6).

139. The decision in *Reynolds* gave rise to the touchstone of responsible journalism, by which a fair balance was held between freedom of expression on matters of public concern and the reputations of individuals. Notwithstanding the abolition of the common law defence, *Reynolds* and the subsequent cases in which it was interpreted or applied (eg *Bonnick v Morris* [2002] UKPC 31, 1 AC 300, *Jameel v Wall Street Journal Europe SPRL* (2006] UKHL 44, [2007] 1 AC 359 and *Flood v Times Newspapers Ltd* [2012] UKSC 11, [2012] 2 AC 273), may be of relevance to the interpretation of the statutory defence. That is clear from the leading recent authority below Supreme Court level, *Economou v De Freitas* [2018] EWCA Civ 2591; [2019] EMLR 7, at [76].

140. It appears, therefore, that it may still be of some assistance to courts applying s4 to consider the well-known non-exhaustive list of potentially relevant factors stated by Lord Nicholls in *Reynolds*, bearing in mind that Lord Nicholls was stating them in the context of the question of whether the publisher had behaved responsibly, which is not a test which has survived the enactment of s4. The focus now must be on the reasonableness of the publisher's belief that publishing the words complained of was in the public interest, which (by s4(2)) requires the court to have regard to all the circumstances of the case. With that proviso, these were Lord Nicholls' factors:

> "The elasticity of the common law principle enables interference with freedom of speech to be confined to what is necessary in the circumstances of the case. The elasticity enables the court to give appropriate weight, in today's conditions, to the importance of freedom of expression by the media on all matters of public concern. 1. The seriousness of the allegation. The more serious the charge, the more the public

> is misinformed and the individual harmed, if the allegation is not true. 2. The nature of the information, and the extent to which the subject-matter is a matter of public concern. 3. The source of the information. Some informants have no direct knowledge of the events. Some have their own axe to grind, or are being paid for their stories. 4. The steps taken to verify the information. 5. The status of the information. The allegation may already have been the subject of an investigation which commands respect. 6. The urgency of the matter. News is often a perishable commodity. 7. Whether comment was sought from the plaintiff. He may have information which others do not possess or have not disclosed. 8. Whether the article contained the gist of the plaintiff's side of the story. 9. The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact. 10. The circumstances of the publication, including the timing."

141. Sharp LJ's judgment in *Economou* shows at [111] that although the statute did not make reference to the *Reynolds* factors in the context of the need for the court to have regard to all the circumstances of the case, those factors still have a role to play:

> "That is not to say however, that the matters identified in the non-exhaustive checklist may not be relevant to the outcome of a public interest defence, or that, on the facts of the individual case, the failure to comply with one or some of the factors, may not tell decisively against a defendant. However, even under the *Reynolds* regime, as Lord Nicholls made clear, the weight to be given to those factors, and any other relevant factors, would vary from case to case. As with *Reynolds* therefore, with its emphasis on practicality and flexibility, all will depend on the facts."

142. I note Lord Wilson's warning in *Serafin v Malkiewicz* [2020] UKSC 23; [2020] 1 WLR 2455 at [69] that Lord Nicholls' factors should not be seen as a checklist but as a list of factors to which reference ought to be made, in particular in order to check whether a preliminary conclusion should be confirmed.

143. Although s4(1) states the requirement that the publisher's belief that publishing the words complained of is in the public interest should be a reasonable one, while the common law defence was founded on the responsibility of the publisher's conduct, it is clear that the rationale for the *Reynolds* defence and that for the public interest defence are not materially different, and that the principles that underpinned the *Reynolds* defence, which sought to hold a fair balance between freedom of expression on matters of public interest and the reputation of individuals, are relevant when interpreting the public interest defence: see per Sharp LJ in *Economou* at [110].

144. On the question of the reasonableness of the publisher's belief, Sharp LJ at [110] approved Warby J's statement at first instance that a belief would be reasonable for the purposes of s4 only if it was one arrived at after conducting such enquiries and

checks as it was reasonable to expect of the particular defendant in all the circumstances of the case.

145. Against that backdrop, I have no doubt that the report of the MPT's decision was a statement on a matter of public interest. I have already decided for the purposes of the s15 defence that the first article and abstract contained, or constituted, a matter of public interest, and (notwithstanding the very slight difference of language between the two sections) I see no possible reason to depart from that conclusion in the context of s4.

146. Did the defendants reasonably believe that publishing the first article was in the public interest?

147. Clare Dyer's evidence was that she reported MPT decisions which related to professional practice because they raised issues from which other doctors could learn, and thus avoid getting themselves into situations where their fitness to practise might be brought into question. She considered, having read the MPT's determinations, that the case of Mr Onwude was of sufficient interest for her to propose an article for publication in the BMJ. She felt that it was unusual, and believed that there were lessons to be learned from the negative view that the MPT took of Mr Onwude's actions, especially in the context of providing free services to friends, if the relationship later breaks down. The issue of professional indemnity insurance was another factor which she felt worthy of report. She could see how reporting the case would enable doctors to develop an understanding of how they might fall foul of a similar situation. She also considered that the reporting of such cases was an important part of the BMJ's news function. In her second witness statement, she drew those points together to state in terms that it was and remained her firm belief that the publication of the words complained of was in the public interest.

148. Dr Godlee stated that the BMJ's readership was naturally very interested in disciplinary hearings before the MPT because they wanted to learn from issues that arose for fellow doctors, particularly where there was a determination of impaired fitness to practise. The lessons that could be learned, in her view, carried considerable public interest from a public safety standpoint, so it was important that the BMJ covered them. She shared Ms Dyer's belief that publication was in the public interest.

149. Ms Kmietowicz' evidence was to much the same effect, and she shared the belief of her colleagues that publication was in the public interest. She spoke of the importance of the BMJ's reports of MPT decisions in educating other medical practitioners, which in her view had an important role in protecting public safety.

150. I remind myself of Warby J's helpful suggestion that a belief would be reasonable only if it was one arrived at after conducting such enquiries and checks as it was reasonable to expect of the particular defendant in all the circumstances of the case. This was not a case, however, with much scope for further enquiries and checks.

151. The defendants had the text of the MPT determinations, which were available from the GMC, a source which they were entitled to regard as impeccable. They were verified and had high status. The findings and the sentence were plainly very serious. Although there was no particular urgency in publication, equally there was no reason to delay.

152. There was in my judgment no cause to seek comment from Mr Onwude about a formal judicial proceeding, conducted in accordance with the law, in which he had participated. There is a very great distinction between a report of such a proceeding and a damaging allegation made against a person which requires a response for fairness and balance. In any event, his responses to the charges were reported in the first article. It was plain from the article that he had disputed the facts which gave rise to the MPT's findings: his side was put. It was not put, however, in the abstract, from which it was not clear whether or not he had contested the charges. Nonetheless, I can find no basis on which, given my acceptance of the evidence of the three journalists, who were not questioned about the difference between the first article and the abstract, I can reach a different conclusion about the abstract on that account.

153. There was a misconceived suggestion by Mr Onwude that the use of inverted commas to report the remarks of the chairman of the MPT in stating its determinations and sentence showed that the chairman had been approached by Ms Dyer for his comments: in fact, the use of inverted commas was merely a standard conventional device to attribute the words of the MPT to its chairman. Ms Dyer's evidence was that she did not approach Mr Onwude or the chairman for a comment. She did not as a matter of practice, in reporting MPT decisions, seek comment from the GMC, the doctor charged or from the MPTS, because the report of the case set out the salient facts, and further comments were unlikely to add anything substantive to the findings reported on. On very rare occasions, she might seek comment from the doctor or the doctor's defence society, but that was an exception to her rule.

154. Mr Dean very properly mentioned against his client's own interests the possibility that it might be said that no defence of public interest could apply to the continued publication of the first article after the MPT's determination and sentence were quashed by the High Court, and cited in that context *Loutchansky v Times Newspapers Ltd* [2001] EWCA Civ 1805; [2002] QB 783 at [79], where the Times' failure to attach any qualification to online articles after it knew that the allegations made were hotly contested was held not to have been responsible journalism. But in the present case, the defendants corrected the first article as soon as they knew of the judgment of Collins J; and in any event, the question is not one of responsible journalism but of whether the defendants reasonably believed that publishing (and continuing to publish) the first article was in the public interest.

155. I do not regard it as a matter of significance in this context that the first article and abstract did not refer to the right of appeal, or that erasure would not take effect for 28 days. As I have already explained, Ms Dyer's usual practice was to describe doctors whose names had been ordered to be erased as having been 'struck off', because in her view that accurately reflected the substance of the decisions reached and the sanction imposed. The right of appeal applied in every case, although it was rarely exercised, and that was a matter of general knowledge among the readership. That was also Dr Godlee's evidence. It seems to me that to refer to erasure without reference to a generally understood right of appeal was a reasonable exercise of editorial judgment, to which – in accordance with s4(4) - I must have regard in considering the reasonableness of the defendants' belief. The courts' respect for that principle is underpinned by the highest authority (see *Jameel (Mohammed) v Wall Street Journal Europe Sprl* [2006] UK HL 44, [2007] AC 359 at [33] and [52], and *Flood v Times Newspapers Ltd* [2012] 2 AC 273 at [137]).

156. I remind myself that the question is not (as it was under the common law regime) whether the defendants' journalism was responsible, but whether the defendants reasonably believed that publishing the first article (and abstract) was in the public interest. I saw no reason to doubt the evidence of Ms Dyer, Dr Godlee and Ms Kmietowicz, which was given by each of them with care, fairness and thoughtfulness. They seemed to me to be journalists of high seriousness and principle, and I do not doubt that they held the belief that s4(1) demands.

157. I therefore find that the public interest defence succeeds also.

CONCLUSION

158. Accordingly, the claim must be dismissed, and judgment entered for the defendants. I say that with some sympathy for Mr Onwude, for he has had to endure the consequences of a tribunal decision which was later found to have been substantially flawed. But in my judgment it was that decision, and not the actions of the BMJ, which was responsible for the distress that he suffered.