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Case No: QB-2021-004541

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/02/2025

Before :

DEPUTY HIGH COURT JUDGE AIDAN EARDLEY KC

- -

Between :

DAVID PAISLEY — **Claimant**

- and –

GRAHAM LINEHAN — **Defendant**

- -
- -

Lorna Skinner KC and Mark Henderson (instructed by **Cohen Davis Solicitors**) for the **Claimant**
William McCormick KC and Beth Grossman (instructed by **Hemingways Solicitors Limited**) for the **Defendant**

Hearing date: 25 January 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 5 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Aidan Eardley :

1. This is my second judgment on certain preliminary issues in this case, namely - for the purposes of the libel aspect of the claim - the meaning of the statements complained of, whether they are statements of fact or expressions of opinion, and whether they are defamatory at common law. The background is set out in my judgment of 1 August 2024, [2024] EWHC 1976 (KB) (my **First Judgment**) and I adopt the defined terms I used there. I also direct myself by reference to the legal principles set out in my First Judgment and do not need to repeat them here.

2. The claim concerns articles published on the Defendant's Substack and comments posted in response to those articles. The statements complained of are referred to in the Amended Particulars of Claim as "Publication 1" through to "Publication 7". Under the heading "Publication 4" the Amended Particulars of Claim complain about an article (**the Article**) and a number of comments. In my First Judgment I was able to determine the meaning of the Article, read in isolation, but I considered that the parties' cases were too unclear to allow me to make any determinations about the comments: see [60]-[72].

3. I made an order, in terms agreed between the parties, providing that, if the Claimant wished to pursue his case on the comments, he should serve a further statement of case clarifying his position. The Claimant decided to pursue his claim in relation to some of the comments and filed his Further Statement of Case on 4 September 2024. The order required the Defendant to serve a responsive statement of case, which the Defendant did on 25 September 2024.

4. In accordance with the mechanism provided for in the order, the Defendant wrote to the Court asking for the outstanding preliminary issues in relation to the comments to be determined at a hearing. Having reviewed the further statements of case and the Claimant's objections to this proposed course, I determined that a hearing was indeed necessary and it was fixed for 24 January 2024.

5. On Saturday 18 January 2025 (so, less than a week before the hearing) the Claimant produced an Amended Further Statement of Case. Taking a pragmatic approach, the

Defendant has agreed that the Claimant should be permitted to rely on this amended document. The Defendant has responded to it in his skeleton argument rather than amending his own Further Statement of Case, which I regard as acceptable given the time constraints.

6. The parties have also collaborated to produce an agreed document called *"How comment posts work on Substack"* in order to resolve some of the factual uncertainties that plagued the last hearing. The final agreed version of this document reached me about 30 minutes before the hearing.

7. In light of these developments the issues have been helpfully narrowed and clarified. There is almost complete agreement on the approach I should take, in particular on the previously vexed question of what should count as "context" for any particular comment.

The Claimant's revised case

8. The Claimant now complains of only 3 comments, referred to as Publications 4(1), 4(2) and 4(3). He accepts that the Article itself is admissible context for the interpretation of each of these comments.

9. Publications 4(1) and 4(2) both occurred as part of the same short thread. That thread developed as follows (I have added the agreed timing of the posts):

> **William A. Ferguson** Writes William's Newsletter [24.10.21, 17:51]
> I just lost my appetite for the next two years.
> I'll just go ahead and say the quiet part out loud and Paisley can fucking try sue me: he's a nonce, straight up.
>
> > **Graham Linehan** [24.10.21, 19:15]
> > Not helpful
> >
> > > **William A. Ferguson** Writes William's Newsletter [24.10.21, 19:47]
> > > Oh, I see.
> > > Dude basically wants the right to whip his cock out in front of kids and a) you don't think the shoe fits and b) I'm not being helpful?
> > > Right...

> **Graham Linehan** [25.10.21, 11:30]
> mate, you're throwing about actionable statements on my site. And it's not the first time I've had to step in. If you don't like it, happy to refund you. This isn't Kiwi Farms.

10. The parties agree that any reader who read any particular comment in this thread would also have read all the other comments in the thread that were available to view at that time.

11. Publication 4(1) is the first of these comments (**the *"nonce"* comment**). It was deleted by the poster at some point. No one is able to say precisely when this occurred. Deletion meant that, in the same position as previously (i.e. at the head of the thread) there was an entry that said "deleted" (in place of the poster's name) and "comment *deleted*" instead of the text of the comment.

12. Miss Skinner KC, for the Claimant, accepts that, in principle, the meaning of Publication 4(1) falls to be re-assessed at the point in time that each new comment in the thread was added. She submits however that the addition of this extra contextual material did not in fact change the meaning. The Claimant does not rely on any other comments on the Article as context, only those forming the thread set out above.

13. The Claimant's case is that Publication 4(1) means that he is a paedophile; that it is a statement of fact; and that it is defamatory at common law.

14. Publication 4(2) is the third comment in the thread set out above (**the *"Oh I See"* comment**). Again, Miss Skinner accepted that, in principle, the meaning of Publication 4(2) had to be assessed at different points in time because of the changing contextual material within the thread, but her submission was that the same meaning was conveyed regardless of these changes. Again, no other comments are relied upon as context, only those that appeared in this thread.

15. The Claimant's case is that Publication 4(2) means that he is a paedophile; that it is a statement of fact; and that it is defamatory at common law.

16. Publication 4(3) did not appear in the thread set out above. It was a free-standing comment published on 24 October 2021 at 15:24. It said:

> **Jeremy Wickins** Oct 24, 2021
> The child-molesters thought they were on the verge of winning by hitching onto LGB causes via the trans interests. Now they can see their high-risk strategy starting to unravel, and they are going to use all the tricks they know from grooming children to get back at their opponents. Manipulation, threats and coercion are their stock-in-trade, and it leaves us at a bit of a disadvantage. We need to be very vigilant, but Parsley is so thick he's given the game away early.

17. The Claimant accepts that the only relevant contextual material for Publication 4(3) is the Article itself.

18. The Claimant's case is that Publication 4(3) means that he is a paedophile; that it is a statement of fact; and that it is defamatory at common law.

The Defendant's case

19. As I have said, the Defendant and the Claimant agree in substance about the contextual material that should be taken into account. However, Mr McCormick KC invites me to take a different analytical approach from that proposed by Miss Skinner. He says that, rather than treating Publications 4(1) and 4(2) as just two statements, whose meaning may change over time due to the changing contextual material, I should analyse them as 5 different statements: 4(1)(a) being the *"nonce"* comment, as published in isolation for 84 minutes; 4(1)(b) being the *"nonce"* comment plus the next comment (**the *"not helpful"* comment)**, which were published together for 32 minutes; 4(2)(a) being the *"nonce"* comment, the "*not helpful"* comment and the *"Oh I see"* comment, which were published together for just under 16 hours; 4(2)(b) being the previous comments plus the final comment (**the *"mate"* comment**), which were published together until the time that the *"nonce"* comment was removed; and 4(2)(c) being the final 4 comments, which were published together but without the *"nonce"* comment after the *"nonce"* comment was removed. Mr McCormick reminds me that it is for the Claimant to prove whether the comments were actually published to anyone during any of the relevant timeframes.

20. The Defendant says that, for the time that the *"nonce"* comment was published in isolation it would have been understood as mere abuse, or at best an expression of opinion that no-one would take seriously. He says that the addition of the *"not helpful"* comment will have robbed the *"nonce"* comment of any defamatory meaning it might have conveyed when read in isolation. He says that the *"Oh I see"* comment would either be dismissed by the reasonable reader as more "ranting" by "William A Ferguson" or at most as containing a non-defamatory expression of opinion that the Claimant sought to normalise adult male nudity in the presence of children. He says that the addition of the *"mate"* comment had the effect that no reasonable reader who had seen it would derive any defamatory meaning from either the *"nonce"* comment or the *"Oh I see"* comment. He says that once the *"nonce"* comment was removed, the remainder of the thread ceased to say anything meaningful about the Claimant at all, except perhaps that it would continue to bear (if it ever did) the non-defamatory expression of opinion that he sought to normalise adult male nudity in the presence of children.

21. The Defendant's case on Publication 4(3) is that it meant that *"The Claimant's bullying of Ms Black into removing an allegation that he was normalising adult nudity in the presence of children had drawn attention to the issue of child protection involved in that issue"*. The Defendant contends that this was an expression of opinion and accepts that the underlined parts are defamatory at common law.

Discussion

22. As to the two different analytical approaches adopted by the parties, I prefer Miss Skinner's submissions. As she rightly says, it is the claimant in a libel action who chooses what statement(s) to sue on. That is their prerogative, so long as they properly identify the statement and provide particulars of publication in accordance with CPR PD 53B, para 4.1. Of the various comments that appeared in the thread, the Claimant has (now) chosen to sue on the *"nonce"* comment and the *"Oh I see"* comment. The Defendant cannot interfere with that choice and it is not the Court's job to reformulate a CPR-compliant case that the Claimant wishes to put before it. If the Defendant wants the Court to take into account other words when determining the meaning of the words the Claimant has chosen to sue on, he must introduce them as admissible

contextual material through one of the routes identified by Nicklin J in *Riley v Murray* [2020] EMLR 20 at [16].

23. Happily, there is no longer any dispute about what contextual material I need to look at. Neither is it disputed that, in respect of Publications 4(1) and 4(2), I must take a granular approach, assessing meaning at a number of different points in time as the contextual material changed. However, as to this second point, although there are many cases that grapple with what should be regarded as context for publications on Twitter/X and similar platforms, I am not aware of any case that tackles head on the question of how the Court should deal with material that meets one of the tests for admissibility as relevant context but only for certain periods during the period of publication that a claimant complains of. I think I should therefore explain briefly why I accept that the agreed approach in this case is the correct one. It strikes me as important to address this because it might be argued – at least where this approach is invoked by a claimant – that it is yet another attempt to erode the solid distinction in common law between natural and ordinary meaning (the meaning conveyed to the ordinary reasonable reader) and innuendo meaning (the meaning conveyed to certain readers who have knowledge of particular facts going beyond what can be attributed to the notional ordinary reasonable reader): see *Monroe v Hopkins* [2017] EWHC 433 (QB) at [40] and *Riley v Murray* at [17]. It might also be argued that an approach which potentially requires the Court to give multiple rulings on meaning for the same statement assessed at different points in time is highly undesirable and should not be adopted unless strictly necessary.

24. I start by considering another possible approach, which is to say that contextual material admissible via the routes identified in *Riley v Murray* can only be taken into account if it was available to all publishees throughout the time that the statement complained of was published. That approach has the attraction of simplicity, and avoids the charge that it involves (without pleading an innuendo) sub-dividing the readership of a statement into groups of readers who had read different things, in breach of the principles identified in *Charleston v News Group Newspapers Ltd* [1995] 2 AC 65 and *Riley v Murray* at [16]-[17]. A claimant who wishes to have a particular piece of contextual material included for consideration (or excluded from consideration) could achieve that by limiting their claim to publications occurring

during a specified timeframe during which the piece of extraneous material was (or as the case may be, was not) part of the admissible context.

25. Despite the attraction of its simplicity, this approach would be wrong in my view, for two reasons:

(1) First, it would be unjust to defendants, possibly to the point that it could amount to an unjustifiable interference with their ECHR article 10 rights. Consider the following scenario. An online newspaper publishes an article on a matter of ongoing public interest which includes a paragraph that (read in the context of the article as a whole) is highly defamatory of an individual. The next day, without changing the wording of the offending paragraph, the newspaper amends the online article by adding another paragraph which completely neutralises the sting of the offending paragraph. The individual brings a claim for libel identifying, as the statement complained of, only the offending paragraph, and complaining of publication of that statement from the first date the article was published and continuing. If the "all or nothing" approach I have canvassed above is correct, then any court determining the meaning of the offending paragraph would have to do so without reference to the fact that the article had subsequently been modified in such a way that no reasonable reader looking at the article thereafter would understand the offending paragraph to be saying anything defamatory about the individual. That would be obviously unjust. It is no answer, in my view, to say that a defendant in this dilemma could nevertheless rely on their exculpatory additional text as negativing a case on serious harm under section 1 of the Defamation Act 2013. Serious harm can usually only be determined at a full trial, by which time a defendant will have spent considerable time and money defending the claim. In this scenario, a defendant ought to be entitled to an early ruling that the statement complained of only bore a meaning defamatory of the claimant at common law while published as part of the article in its original form.

(2) Second, it would be contrary to established common law principles, even without consideration of potential ECHR Art 10 infringements. Although it is conventional to plead a case on publication by asserting that "*the defendant published [the statement complained of] from [date] and continues to do so*" (or similar), the

correct analysis at common law is that a new publication occurs every time that the statement is read by a third party. It follows that, in principle, the test for meaning falls to be applied afresh in respect of each such publication, taking into account the relevant contextual material available to the reasonable reader as it stood at the time. It is firmly established that, if the legal analysis applicable to a statement may change at different times during the course of the period it was being published, the Court will have to give separate consideration to the different phases of publication: see e.g. *Banks v Cadwalladr* [2023] KB 524 at [47] (Warby LJ).

26. It follows therefore, in my judgement, that meaning falls to be determined afresh when the admissible contextual material has changed in a way that might yield a different determination on meaning in respect of publications of the statement complained of that occur after that change.

27. As to objections which might be raised to this approach based on considerations of practicality (which are, in any event, irrelevant if the approach is necessary as a matter of law), I suspect that the practical implications are less appalling than they might seem at first blush. The prospect of the Court having to give multiple rulings on meaning in respect of the same statement considered at different times is dispiriting, but it is not something that should occur very often:

(1) First, this is not an exercise that the Court will embark upon of its own motion. Like any other case on context, the contextual material must be pleaded by one or other of the parties before the Court needs to determine its significance: *Hijazi v Yaxley-Lennon* [2020] EWHC 934 (QB) at [14] (Nicklin J).

(2) Second, the general approach to contextual material, set out in *Riley v Murray*, will continue to apply, subject only to the requirement to assess the position at various different points in time where that need arises. It will still be necessary for the party making the case to show that, at the relevant point in time, the material fell to be considered via one of the 3 routes identified in *Riley* (i.e. that it was a matter of common knowledge, that it fell to be treated as part of the "publication" in the *Charleston* sense, or that it was otherwise material that all readers – from

that point on – would have taken into account). If the party cannot establish that the material would have been seen by all readers who read the statement during the specified timeframe, it must be ignored.

(3) Third, a party who invites the court to consider meaning at different points in time on the basis of changes in the contextual material that could only have a trivial impact on meaning, or that could only apply in respect of a very small number of later-occurring publications, will be at risk of having their case struck out, having their case dismissed summarily, or facing adverse costs consequences. A party is likely to be at risk in these regards unless they have a properly arguable case that the additional contextual material was seen by all readers during the period in question, that the article was still being widely read during that period, and that the new contextual material could make a real difference to the issue of meaning (for example by requiring the statement to be placed into a different *Chase* category or neutralising the sting of the statement altogether).

28. In the present claim, although it has taken a long time to get here, the parties have finally set out cases which do, in my judgement, give rise to properly triable issues as to whether the meanings of Publication 4(1) and 4(2) changed over time. I must determine those issues.

29. In this meaning determination, I am revisiting matters that were addressed at length in submissions at the hearing last July, but which I was ultimately unable to determine at that point. I cannot "unhear" the submissions that I heard in July but I have done my best to recall the impression that the comments now complained of made on me when I read them for the first time in preparation for the July hearing. I noted this in my First Judgment at [25]-[26].

Publication 4(1)

30. Miss Skinner submits that "nonce" is ordinarily understood as a synonym for paedophile. She refers me to *Vine v Barton* [2024] EWHC 1268 (KB) (Steyn J) where the same term was considered while accepting that every case turns on its own facts. She says that, considered in the context of the Article, which includes a discussion of paedophilia, the reasonable reader would not dismiss this comment as mere vulgar abuse, but an allegation that the Claimant is indeed a paedophile. She submits that the

words *"I'll just go ahead and say the quiet part out loud"* tell the reader that "William A. Ferguson" is revealing a truth known to others who are too scared to say it. Miss Skinner says that neither the *"not helpful"* comment nor the *"mate"* comment draw the sting of the *"nonce"* comment: they do not state that the *"nonce"* comment is untrue. On the contrary, she argues, these two comments by the Defendant actually emphasise and intensify the sting. She says that all readers would be aware that, as owner of the Substack account, the Defendant could have deleted the *"nonce"* post and would infer from the fact that he did not do so that he was tacitly endorsing the views of "William A. Ferguson".

31. Mr McCormick accepts that the ordinary meaning of "nonce" is "paedophile" but says that the reasonable reader would not take it at face value. He says the whole tone of the comment is abusive, simply exhibiting extreme dislike for the Claimant ("*Paisley can fucking try to sue me*") and that the use of "nonce" is just more abuse. Mr McCormick makes the point that the Article itself does not allege that the Claimant is a paedophile (see my First Judgment at [80]-[81]) and asks why a reader who recognises that to be the case would then understand "William A. Ferguson" to be making that very allegation. Mr McCormick further submits that the comment is clearly an expression of opinion on the contents of the Article, as it offers no other basis for what is said. As to the impact of the *"not helpful"* comment and the *"mate"* comment, Mr McCormick says that these show the Defendant disagreeing forcefully with "William A. Ferguson" and that this would deprive the *"nonce"* comment of any defamatory meaning it might originally have conveyed.

32. In my judgement, once the Article itself is taken into account as context (as the parties agree it should be) it is not possible to dismiss the *"nonce"* comment as mere meaningless abuse. The reasonable reader would recognise that much of the Article was devoted to explaining how paedophiles operate and, in that context, would understand "William A. Ferguson" to be making a seriously intended point that this label should also be applied to the Claimant. The fact that the reasonable reader would not understand the Article itself to be making this allegation would not prevent them recognising that "William A. Ferguson" *was* doing so.

33. I do not accept Ms Skinner's submission that the Defendant's interventions in the thread somehow intensify the sting of the *"nonce"* comment or that readers would infer, from the fact that it was not immediately deleted, that the Defendant endorsed it. However, I also do not accept that the *"not helpful"* comment or the *"mate"* comment (alone or in combination) serve to neutralise or dilute the sting of the *"nonce"* comment. This is not a classic bane and antidote case where one part of an article reports an allegation and another part contains a rebuttal by or on behalf of the claimant, causing the reasonable reader to disregard the original allegation. The Defendant is not speaking on behalf of the Claimant in these ripostes or coming to his defence. Indeed, readers would know very well from the Article itself that the Defendant is no ally of the Claimant. The ripostes do not state that the *"nonce"* comment is false. Neither do they imply this (the reasonable reader - who is not a lawyer – would not pause and try to work out whether that was the implication of "actionable"). Rather, they show that the Defendant considers "William A. Ferguson's" comments to be a distraction (his point in the Article being that the Claimant is a bully, not a paedophile) and does not want allegations of paedophilia being thrown around on his Substack, with all the possible legal consequences that that may entail. The reasonable reader would appreciate all this, but none of it would change their understanding of what the *"nonce"* comment was alleging. It may well be right that the Defendant's interventions served to undermine the credibility of "William A. Ferguson" in the eyes of readers, such that they would not attach much importance to what he said. But that, it seems to me, is an argument on serious harm, not a point about meaning.

34. I agree with Mr McCormick however that the *"nonce"* comment is an expression of opinion. It would strike the reasonable reader as "William A. Ferguson's" immediate and subjective reaction to what he has read about the Claimant in the Article ("*I <u>just</u> lost my appetite"*). I do not accept that *"I'll just go ahead and say the quiet part out loud"* would be interpreted as indicating that he has privileged access to some additional information that allows him to "reveal" the Claimant's paedophilia as a matter of fact. More likely, the reasonable reader would understand these words as an acknowledgment that the Article itself did not go so far as "Willam A. Ferguson" thinks it should have done.

35. Accordingly, Publication 4(1) means that the Claimant is a paedophile. It is an expression of opinion. It is (as both parties would accept) defamatory at common law.

Publication 4(2)

36. Miss Skinner submits that the statement that the Claimant *"basically wants the right to whip his cock out in front of kids"* is an elaboration of the *"nonce"* comment, telling the reader what kind of "nonce" the Claimant is, namely one who would like the right to brandish his own penis in front of children specifically because he derives paedophilic satisfaction from doing it. She submits that by writing *"and you don't think the shoe fits"* "William A. Ferguson" is challenging the Defendant to agree with him that the Claimant is indeed a paedophile (and therefore reiterating that allegation himself).

37. Mr McCormick's primary position is that the *"Oh I see"* comment is just more meaningless abuse from "William A. Ferguson" but, if it does say anything meaningful, it is that "the Claimant seeks to normalise male nudity in the presence of children", which, he submits is a non-defamatory expression of opinion. As to *"the shoe doesn't fit"*, he submits that reasonable readers would recognise this as part of a dispute between the Defendant and "William A. Ferguson" about what is acceptable to post on the Defendant's Substack, not as a confirmation that the Claimant is a paedophile. Mr McCormick again relies on the *"mate"* comment as neutralising any sting that the *"Oh I see"* comment might initially have conveyed. He further submits that, once the *"nonce"* comment was deleted from the thread, the *"Oh I see"* comment becomes essentially meaningless because the reader cannot tell what the original allegation was that "William A. Ferguson" is then trying to defend as an acceptable contribution to the Substack.

38. In my judgement, for so long as the *"nonce"* comment remained visible to readers, the *"Oh I see"* comment meant that the Claimant seeks to normalise adult male nudity in the presence of children and is therefore rightly to be described as a paedophile. To a reader who had the Article in mind, the words *"basically wants the right to whip his cock out in front of kids"* would be seen as summarising, in colourful terms, what the

Article says about the Claimant, and bears the same meaning as the Article. "William A. Ferguson" then goes on to assert, in effect, that the "shoe" does "fit", i.e. that "nonce" is an appropriate term for such a person. To assert, as the Claimant does, that the *"Oh I see"* post makes a more specific allegation of paedophilia against him, is to ignore its place in the thread. The reader would recognise that this was "William A. Ferguson" explaining why he considered the *"nonce"* comment to be a relevant and valid contribution to the Substack in the face of the Defendant's criticism that it was "not helpful". He is explaining his reasoning, not adding detail to his allegation. The reasonable reader would not dismiss the *"Oh I see"* comment as meaningless ranting because, like the *"nonce"* comment, its context is the Article, which involves serious discussion of paedophile behaviour.

39. For the same reasons already given in respect of publication 4(1), I do not accept that the addition of the *"mate"* comment did anything to alter the sting of the *"Oh I see"* comment. However, I do consider that it bore a different meaning once the *"nonce"* comment was removed from the thread. Readers would still understand the *"whips his cock out"* part of the comment as a summary of what the Article says about the Claimant, but the words *"you don't think the shoe fits"* are meaningless because the reader can no longer see what allegation "William A. Ferguson" made in the first place and which he is now seeking to defend as appropriate. After deletion of the *"nonce"* comment therefore, only the first limb of the meaning endures.

40. The allegation that the Claimant normalises adult male nudity in the presence of children is a repetition of the factual allegation in the Article itself and, in those circumstances, can only be seen as a statement of fact. By contrast, the allegation that the Claimant is rightly to be described as a paedophile is a repetition of the opinion that the Claimant has already voiced in the *"nonce"* comment and would once again be viewed by the reader as an expression of opinion on what is said about the Claimant in the Article.

41. Both aspects of the meaning are defamatory at common law in my view. That is plain and obvious so far as the paedophilia limb of the meaning is concerned. As to the other limb, I consider that it meets both the "consensus" requirement and the threshold of seriousness. Outside certain specific circumstances, right thinking

members of society generally would regard adults parading around naked in front of children as something that is at least highly inappropriate and potentially even harmful. To accuse someone of seeking to normalise such behaviour would, in my judgement, tend to have a substantially adverse effect on how people would treat that person.

Publication 4(3)

42. Miss Skinner submits that the comment names the Claimant as one of the child-molesters and that he is involved in their "*game*", namely the "*high-risk strategy*" of hitching trans rights to LGB rights as a cloak for child grooming, utilising *"manipulation, threats and coercion"*, and *"tricks"* learnt from grooming. She submits that to "give the game away" one has to be a player in the game (i.e. a person who is privy to the strategy that is being pursued). She submits that force is added to her interpretation by the content of the Article, which alleges (in the meaning I have found) that the Claimant has engaged in bullying behaviour (and hence falling within the description of *"manipulation, threats and coercion"*) and that the Claimant has sought to normalise adult nudity in the presence of children, which the reader would recognise as an instance of the child molesters' high-risk strategy.

43. Mr McCormick submits that the comment does not name the Claimant as a child-molester and that, insofar as it says anything about him, it identifies him as a person who is taking a position on trans/LGB issues which child-molesters have hitched on to in order to advance their own interests. He submits that the comment characterises the Claimant's statements that are reported in the Article as so stupid as to make it obvious that the child-molesters have hitched on to this trans/LGB debate for their own nefarious reasons, but that the comment does not allege that the Claimant himself is a child-molester.

44. The comment refers to "Parsley", not "Paisley" but it is common ground that readers would have understood this as a reference to the Claimant.

45. In my judgement, the comment means that the Claimant is party to a co-ordinated attempt by child-molesters to manipulate, threaten or coerce those who are trying to expose and defeat their strategy of adopting LGBT causes in order to enhance their

ability to groom and abuse children. The comment does not mean, in my view, that the Claimant is himself a child-molester or a groomer.

46. Since the meaning I have found is significantly different from that advanced by either party, I need to explain my thinking. The starting point is the meaning of the Article itself, which will have been in the reasonable reader's mind when they read this comment. In my First Judgment at [80] I determined that the Article meant:

"The Claimant bullied Ceri Black into removing an allegation from a Twitter thread that he was spreading an anti-safeguarding line even though that was an apt description of what he does because he seeks to normalise adult nudity in the presence of children. This bullying behaviour is evidence that the Claimant is a dangerous narcissist and misogynist and a vexatious troll who deserves to be charged with wasting police time".

47. Notably, therefore, the Article itself did not allege that the Claimant was himself a child-molester, only someone who bullied an opponent of child abuse (Ms Black). For a comment posted in response to the Article to bear the meaning that the Claimant *is* a child-molester, the allegation would have to be made very explicitly (as it is, in the case of the *"nonce"* comment). There is no such explicit allegation made in Publication 4(3). The Claimant is not "named" as a child-molester.

48. The comment is quite dense but I have to contemplate a reader who is interested enough to read the whole of the Article *and* to go on to read one or more of the comments about it. I do not think that such a reader would lazily conclude that the Claimant must be one of the child-molesters referred to.

49. There are four strands to the comment which any reader interested enough to read it at all would have identified. First, there is an allegation that child-molesters had adopted the strategy of supporting LGB positions in the trans-rights debate (presumably on such issues as whether there should be spaces such as toilets and changing rooms exclusively reserved for biological females) in order to increase their opportunities to groom or abuse children. Second, there is an allegation that this approach has been called out by the child-molesters' opponents, such that their strategy is starting to

unravel. Third, there is an allegation that the child-molesters have responded to this threat of exposure by resorting to manipulation, threats or coercion. Fourth, there is an allegation that the Claimant has, through his own stupidity, "given the game away".

50. In light of this, I cannot accept the Defendant's submission that the comment merely portrays the Claimant as an innocent participant in the trans-rights debate whose position has been latched on to by child-molesters for their own purposes: there is a clear implication that he is aware of the child-molesters' agenda and that his bullying behaviour (which readers will recall from the Article) formed part of the "game" they were playing. However, neither can I accept the Claimant's submission that the comment accuses the Claimant himself of being a child-molester or groomer. That would only be the reaction of an unduly suspicious reader. Read in the context of the Article (which notably does not make these allegations against him) he is only being accused of advancing the child-molesters' cause. Nevertheless, the reasonable reader would not put this down to naivety on the Claimant's part. He is accused of "giving the game away" and one can only give the game away if one knows what the "game" is. It is an allegation of knowing assistance.

51. In my judgement, the reasonable reader would understand Publication 4(3) to be a statement of fact. It is in categorical terms and the writer presents himself as someone with knowledge or experience of what is going on in the child-molesters' camp (they have, as a matter of fact, pursued a particular strategy and have now switched to attacking those who were calling them out). The allegation that the Claimant is part of their "game" would be taken in the same way: a claim purporting to be based on prior knowledge of the Claimant's relations with the paedophile community. It would not strike the reader as merely a subjective evaluation of the conduct ascribed to the Claimant in the Article. Only the allegation that the Claimant is "thick" would come across in that way, and that is not an allegation that needs to be included in the formulation of the meaning.

52. The meaning I have found is defamatory at common law, as I think both parties would accept.

Conclusion

53. Each of Publications 4(1)-4(3) are defamatory at common law. They bore the following meanings, which are statements of fact save for underlined text, which was an expression of opinion.

Publication 4(1)

The Claimant is a paedophile

Publication 4(2) prior to the deletion of Publication 4(1)

The Claimant seeks to normalise adult male nudity in the presence of children and is therefore rightly to be described as a paedophile.

Publication 4(2) after the deletion of Publication 4(1)

The Claimant seeks to normalise adult male nudity in the presence of children.

Publication 4(3)

The Claimant is party to a co-ordinated attempt by child-molesters to manipulate, threaten or coerce those who are trying to expose and defeat their strategy of adopting LGBT causes in order to enhance their ability to groom and abuse children.

54. I have asked the parties to draw up a draft order that reflects this judgment. Paragraph 5 of my order of 1 August 2024 provides that "the costs incurred in any steps taken pursuant to paragraph 2 above [i.e. the mechanism for determining the meaning etc of the comments] be reserved to the hearing/determination of the Preliminary Issues in relation to the Comments". These costs issues are quite complex and, though I hope they can be resolved without another hearing, they are likely to require a further written judgment. For the time being, I simply invite the parties to agree, in their draft order, a timetable for written submissions on the costs issues.