



Neutral Citation Number: [2022] EWHC 1699 (QB)

Case No: QB-2020-002776

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/07/2022

Before :

THE HONOURABLE MRS JUSTICE COLLINS RICE

Between :

MR ROBERT LEE

Claimant

- and -

MS VANESSA BROWN

Defendant

The **Claimant** appeared in person
Mr David Burrows appeared for the **Defendant** on 20th June; she appeared in person on 22nd
June

Hearing dates: 20th & 22nd June 2022

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.

This judgment will be handed down by the Judge remotely by circulation to the parties'
representatives by email and release to The National Archives.

The date and time for hand-down is deemed to be 3pm on 1 July 2022

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THE HONOURABLE MRS JUSTICE COLLINS RICE

Mrs Justice Collins Rice :

Introduction

1. The Claimant, Mr Robert Lee, is a businessman with an accountancy background. The Defendant, Ms Vanessa Brown, is a teacher. Between 2013 and 2019 they were in an intimate relationship. This began while Mr Lee was living with his wife Mrs Janet Lee. Mr Lee and his wife separated in 2016. The parties then cohabited from September 2017, together with Ms Brown's children from a previous marriage. They separated at the end of 2019 or the beginning of 2020. Their relations, then and since, have been highly acrimonious. Each accuses the other of abusive conduct. Mr Lee was later reconciled with his wife.
2. Mr Lee issued defamation proceedings against Ms Brown in August 2020, complaining of a total of 22 statements Ms Brown published about him between November 2019 and July 2020. Ms Brown does not dispute that she did so, nor that the allegations she made are essentially of a factual nature. They have to do with her accusations that Mr Lee is an abuser, and with other matters relating to his personal and business probity. She says they are true. Mr Lee says they are not: they are part of her abusive smear campaign against him. Who is the perpetrator, and who the victim, of relationship abuse lies at the heart of their acrimony.
3. But before defamation proceedings get to the stage of considering whether allegations are true or not, there are preliminary questions about whether and how they are defamatory in the first place. This judgment follows a preliminary issues trial, held to determine: (a) the single natural and ordinary meaning of the statements complained of; (b) whether, in that meaning, each is of defamatory tendency at common law; and (c) whether the publication of each has caused, or is likely to cause, serious harm to Mr Lee's reputation.

Legal Framework

(i) Natural and ordinary meaning

4. I adopted the standard preparatory approach to determination of meaning. I first read the statements complained of quickly once through, without knowing what either party wanted to say they meant. I formed and noted some provisional views of my own. I then read the case papers and what the parties said in writing about meaning. I gave an opportunity for, and listened to, oral submissions. I reserved judgment so I could reflect on and adjust my provisional views.
5. The modern guidance on determining meaning, developed in the accumulated caselaw of the last few years, is relatively detailed. But it is meant to simplify and clarify the exercise, not complicate it. The exercise is both 'impressionistic' and fact specific. I direct myself to the caselaw in that spirit.
6. I start with the encapsulation of the principles of 'ordinary and natural meaning' distilled from the authorities and set out in *Koutsogiannis v Random House Group* [2020] 4 WLR 25, at paragraphs 11 and 12. My task is to '*determine the single*

natural and ordinary meaning of the words complained of, which is the meaning that the hypothetical reasonable reader would understand the words bear'. The governing principle is reasonableness. The intention of the publisher (that is, the speaker or writer – here, Ms Brown) is irrelevant; the test focuses on how words are read or heard, not how they came to be written or said. It is objective, not subjective.

7. I have to keep in mind the perspective of an ordinary, reasonable reader of emails or social media of the sort featuring in this case: reading each message once through in such context as appears, and forming an impression of what is conveyed on its face. An ordinary reader is neither naïve nor suspicious; is able to read between the lines and pick up an implication; and is allowed a certain amount of loose thinking without being avid for scandal. Context matters, and 'common knowledge' can be factored in, but no evidence beyond the material complained of is admissible as to what it means.
8. I am firmly guided away from over-elaborate analysis of text. That is especially not how social online communications are read (*Vardy v Rooney* [2020] EWC 3156 (QB) at paragraph 18; *Stocker v Stocker* [2019] 2 WLR 1033 at paragraphs 41 to 47). I need to avoid both literalism, and any strained or forced interpretation. I can and must determine the single meaning I myself consider correct, and am not bound by the meanings advanced by the parties, so long as I do not alight on something more injurious than the claimant's pleaded meaning.
9. I have further directed myself to *Koutsogiannis* at paragraphs 16 and 17 for guidance on considering whether the words complained of contain allegations of fact or opinion. On this, again, the question is how the words would strike the ordinary, reasonable reader. Subject matter and context can be especially important here. "*Opinion is something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation, etc.*" but sometimes care is needed: there is a difference between comment which is pure opinion and comment which is an imputation of underlying fact.
10. I am reminded by the authorities that the test for the difference between fact and opinion is an objective one. That comes back to how the words would strike the ordinary reasonable hearer or reader. I have to look at the substance, not the intention of the publisher or any label she may have attached herself.

(ii) Defamatory tendency at common law

11. The test at common law for whether a (natural and ordinary) meaning is defamatory is well-established: whether it substantially affects in an adverse manner the attitude of other people towards a claimant, or has a tendency to do so. That is not about actual impact at this stage, it is about the meaning of the words and their inherent tendency to damage someone's reputation. 'Substantially' imports a threshold of gravity or seriousness.
12. Some of the modern cases on defamatory tendency think about it in terms of suggestions that a claimant has contravened important shared social norms.

(iii) Serious harm

13. By section 1(1) of the Defamation Act 2013:

A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant.

This is a distinct factor for defamation claimants to establish, additional to the common law requirement to demonstrate the inherently defamatory tendency of a publication. It focuses on the actual *impact* of that publication, not just the meaning of the words. And it has to be satisfied in respect of each and every statement complained of.

14. The leading authority on section 1(1) is the decision of the Supreme Court in *Lachaux v Independent Print Ltd* [2019] 3 WLR 253. The ‘harm’ of defamation is the reputational damage caused in the mind of publishees, rather than any action they may take as a result. Nevertheless the existence, and seriousness, of the reputational harm are factual questions, and facts must be established.
15. The relevant facts *may* be established by evidencing specific instances of serious consequences inflicted on a claimant as a result of the reputational harm. But they do not always have to be.
16. Particularly where a general readership rather than identified publishees are involved, the test may also be satisfied by general inferences of fact, drawn from a combination of the meaning of the words, the situation of the claimant, the circumstances of publication and the inherent probabilities. Relevant factors may then include: the scale of publication of the statement complained of; whether the statement has come to the attention of at least one identifiable person who knew the claimant; whether it was likely to have come to the attention of others who either knew him or would come to know him in the future; and the gravity of the allegations themselves.
17. Aspects of the inferential process have been explored in more detail in other leading cases. The well-established ‘grapevine’ or ‘percolation’ tendencies (*Slipper v BBC* [1991] 1 QB 283; *Cairns v Modi* [2013] 1 WLR 1015) of defamatory publications, particularly online and through social media, may in an appropriate case be factored into inference about scale of publication. Allowance may be made for the inherent difficulties of identifying otherwise unknown publishees who thought less well of a claimant, since they are unlikely to identify themselves and share that with him. And the likely identity, as well as the numbers, of at least some of a class of publishees may be relevant to the assessment of harm, for example where some individuals may be particularly positioned to lose confidence in a claimant and take adverse action as a result.
18. Section 1(1) uses the language of causation prominently (*caused or is likely to cause*). The ‘serious harm’ component of libel therefore contains an important causation element. The starting point, as with any other tort or civil wrong, is that a defendant is responsible only for harm to the claimant’s reputation caused by the effect of each specific *statement* complained of in the minds of the readership of *that* statement. A claimant therefore has to establish a causal link between each item he sues on and serious harm to his reputation, actual or likely.

Analysis

(i) Meaning and defamatory tendency

19. By the time the case came to the preliminary issues trial, there was relatively little dispute between the parties on this first set of preliminary issues. I had reached similar provisional views myself on my first quick reading.
20. The 22 statements complained of comprised one item of speech said to have been addressed to a single individual hearer; one Facebook post to Ms Brown's 'friends'; and 20 messages (email or text) to named individuals.
21. They are set out in an annex to this judgment, together with what each party said they meant. The parties supplied some context in each case, which I have borne in mind as I considered relevant. The annex sets out my finding on 'single natural and ordinary meaning' in each case in so far as it relates to Mr Lee (which is therefore sometimes narrower than the parties' observations). I have added explanatory notes where they appeared helpful to understanding my decisions. The following further points arise on this exercise.
22. The item of speech (**statement A**) was pleaded as a 'slander actionable per se'. Slander – spoken defamation – is as a general rule no longer actionable in defamation proceedings (without proof of special damage) unless it alleges someone has committed a criminal offence punishable by imprisonment. Although there remains some dispute about the exact words Ms Brown spoke to Ms Bonny on 10th November 2019, she accepts they were to the effect that Mr Lee had physically assaulted his former wife, Mrs Janet Lee, and been imprisoned for it. I am satisfied this was 'slander actionable per se'.
23. The Facebook posts (**statement B**) do not identify Mr Lee by name. No 'innuendo' meaning is pleaded in this case – that is, a meaning depending on some special knowledge of publishees. The test for meaning in such cases is therefore whether the hypothetical ordinary reasonable reader would understand that these posts were about Mr Lee. The clue given in the posts to the identity of the perpetrator is that it was a man with whom Ms Brown had been in an intimate relationship, including cohabitation, over the past seven years. The parties did not dispute identification before me; it appears to have been formally admitted in Ms Brown's pleadings. It was not suggested, for example, that there was anyone else who could fit the description in the posts. My conclusion in all the circumstances is that Mr Lee's identity is *sufficiently* established in these posts to attach a defamatory meaning to him. But I return to this point in the context of the issue of serious harm below.
24. The email complained of at **statement G** is said to have been addressed to three named publishees. Ms Brown suggests that she may have sent it directly to Mr Lee. It is written in the second person ('you'). A statement is not defamatory unless it is published to a third party – someone other than a claimant. Ms Brown's defence does not dispute that she published this email to the three persons named, presumably by copying them in. Again, this was not a point taken in front of me. I infer that, despite the second person drafting, this was indeed published to the named third parties.
25. The allegations made in these publications are to a degree repetitive. They are broadly of three kinds:

- a) *Allegations relating to domestic abuse.* Ms Brown repeatedly and consistently claims she was subjected by Mr Lee to serious abuse of a controlling and coercive nature throughout their cohabitation, and that since then, Mr Lee has harassed, stalked or otherwise abused her and her children. She also alleges Mr Lee subjected his wife Janet to relationship abuse and domestic violence (including serious assault occasioning broken ribs) and faced criminal justice as a result, including imprisonment. She suggests he may treat his wife similarly in future.
- b) *Allegations relating to business malpractice.* Ms Brown alleges there are grounds to investigate Mr Lee's business practices for reasons which might be described as including false accounting, corruption of one kind or another, and tax evasion. She alleges he was in fact being so investigated by a range of authorities responsible for doing so.
- c) *Allegations of discreditable personal behaviour.* Ms Brown alleges Mr Lee is a liar, a gambling addict and a problem drinker, and that he has an uncontrolled temper.

26. I have little difficulty in recognising all of the statements complained of as being of defamatory tendency at common law. Each item, in the meaning I have found, would objectively and inherently tend make an ordinary, reasonable reader think significantly worse of Mr Lee. The allegations of abuse in an intimate relationship, even those falling short of a clear imputation of criminal conduct, are undoubtedly allegations of behaviour seriously contravening shared and important social norms of family life, itself a cornerstone of society. The allegations relating to improper business and financial conduct are of grounds for investigating behaviour also clearly seriously contravening important social norms of business and personal probity. Calling someone a liar, or saying they have gambling, drinking or anger issues which are out of control, is plainly something tending to lower them substantially in others' opinions
27. So Mr Lee has satisfied me that all of the statements he complains of are defamatory at common law. Ms Brown does not materially dispute that. Indeed she says it is precisely because her allegations are of conduct which is gravely wrong that she made them at all.

(ii) Serious harm

(a) General

28. The parties do join issue, however, on the test imposed by s.1(1) of the 2013 Act. This was the key question for the preliminary issues trial. Mr Lee agreed he had to persuade me that, on balance, *each* statement complained of *caused or was likely to cause* serious harm to his reputation, if it was to continue to form part of his defamation claim.
29. Although the parties were legally represented at the beginning of this action when pleadings were drawn up, Mr Lee conducted his case himself, as a litigant in person, at the preliminary issues hearing, and had been doing so for some time before the

trial. Ms Brown had also been unrepresented for some time; she secured legal representation for the first of the two days of the trial hearing, and represented herself on the second.

30. Mr Lee had clearly devoted a lot of time and attention to this litigation, including researching the potentially relevant caselaw. He made detailed written and oral submissions on the law and its application to the facts of his case. He provided a witness statement addressed to the issue of serious harm, and gave further oral evidence on it.
31. It is notoriously difficult for a litigant in person, however informed and articulate, to bring a successful defamation action. That is because the law is detailed and complex, highly fact-sensitive, sometimes counter-intuitive, and contains traps for the inexperienced. It is an area of *expert* legal practice, daunting even for other legal professionals. That is one reason why defamation cases can be brought only in High Court proceedings, and in a specialist Queen's Bench list. Another is that defamation actions engage fundamental issues of freedom of expression.
32. Mr Lee's case on serious harm, while articulately and on occasion forcefully put, appeared to me to contain some significant problems from the outset.
33. First, I was doubtful whether Mr Lee had focused sufficiently on the extent to which s.1(1) imposed additional demands on defamation claimants over and above the need to demonstrate the inherently defamatory tendency of words. In introducing the *serious* harm test, Parliament pursued a deliberate policy of limiting the prospects for defamation proceedings unless a claimant can persuade a court that a libel or slander is not only defamatory, hurtful and troublesome but *seriously* impactful on his reputational life.
34. Second, Mr Lee did not in his written and oral advocacy present his case on harm on a clear publication-by-publication basis (although Ms Brown did in her response). That made it difficult to follow what the effects of each individual publication was claimed to be.
35. Third, serious harm is a factual matter and facts must be evidenced. Although 21 of the 22 statements complained of were published to eleven identified and named individuals, Mr Lee produced evidence from only one of them. That was Ms Bonny, who gave a witness statement about Ms Brown speaking **statement A** to her. She gives no indication in that statement that she thought any worse of Mr Lee as a result or that it had any impact at all on her dealings with him; on the contrary, her evidence is preoccupied with explaining her concerns about Ms Brown's conduct, then and subsequently.
36. Mr Lee's evidential case for serious harm therefore relies entirely on his own evidence of harm, along with the inferential or inductive case he seeks to raise in reliance on *Lachaux* and the subsequent authorities, taking account of the basic facts of the allegations and their immediate context. It relies in particular on percolation or grapevine effects. But a number of further questions arise for this approach on the particular facts of the case.

37. First, while the percolation effect has some potential general relevance to the Facebook posts at **statement B**, where the readership is not fully identified, in the case of publications to named individuals the question of onward publication has to be considered on a case by case basis. So the absence of evidence from all but one of the named publishees leaves a substantial gap. Second, Mr Lee appeared to be relying to some degree on the *cumulative* effect on his reputation of the publications complained of, or at least not to be fully focused on making the required case for serious harm having been caused by each individual item complained of on its own (albeit in context). That is inconsistent with the authorities (see for example *Sube v News Group Newspapers* [2018] EWHC 1961 (QB), [2018] 1 WLR 5767 at [55]). And third, and perhaps most troubling of all, he was clearly relying on the effects of *Ms Brown herself* spreading or republishing the same or similar allegations.
 38. The grapevine or percolation effect described in the caselaw is not to do with further acts of publication or dissemination *by a defendant*. It is about the tendency of defamatory content to be shared *by publishees* with yet further publishees, by onward gossip and rumour. Where an allegation is made in another form *by a defendant*, that amounts (unless it is simply by way of a direct quotation from, or cut and paste of, an earlier publication – which is not suggested here) to a fresh publication which must be sued on separately in order to make out a defamation claim. There was no authority before me to suggest that a libel can be taken to have *caused or be likely to cause* any serious harm to a claimant by inference from the publication by a defendant of *other* libels to the same or similar effect. Mr Lee chose 22 individual (albeit repetitious) statements to complain of. He cannot rely on other statements by Ms Brown he has not chosen to complain of, to establish the causation of serious harm by those he has.
 39. Mr Lee made the point that Ms Brown has repeated her allegations so frequently and ubiquitously that he had no hope of finding and collecting them all. He did not need to try. To succeed in a defamation claim, he was free to identify the publication or publications he considered he could make the strongest factual case for as being causative of reputational damage. The serious harm test is concerned not with the number or totality of allegations made but with the effect of any publication. A successful defamation claim based on a single publication will usually result in an injunction restraining publication of the same or similar content in future. But the process does not work causatively backwards from the general to the particular.
 40. That point is connected to the final preliminary concern I had about the shape of Mr Lee's case. It was, and he confirmed this expressly at the hearing before me, essentially a complaint about Ms Brown's *course of conduct* – what he called a smear campaign. There are torts which are addressed to a defendant's course of conduct (harassment being the most obvious). But defamation is not one of them. Defamation, and the serious harm test, focus exclusively on the effects produced by *publication* – albeit, again, in context.
 41. I have attended with especial care to Mr Lee's case – his evidence and his submissions – in these circumstances, and sought to explore how he dealt with these aspects, and the extent to which he was able to overcome the problems they posed.
- (b) *Mr Lee's evidence*

42. Mr Lee's written and oral evidence about the facts of serious harm to his reputation is of two kinds. There is evidence put forward as establishing specific harmful consequences as indicating underlying reputational harm. And there is evidence going to the establishing some of the factors relevant to a more general inferential case that serious harm has been caused. Both routes to establishing the facts of harm are recognised in defamation cases. The former – allegations of specific consequences – are particularly reliant on the clear demonstration of cause and effect. I consider them first.

Loss of his son's teaching job

43. Mr Lee gives an account of his teacher son losing his post at a local school. He clearly feels strongly that this was grossly unjust, and that Ms Brown is to blame. He believes she told the school things about himself, including that she was fleeing domestic violence at his hands, and influenced other parents and teachers at the school to support that account, as part of an application to the school for financial assistance. He also alleges that Ms Brown made, and caused others to make, false complaints about his son "*resulting in him losing his job*", and that she pursued a campaign of harassment against his son. He explains he invested a lot of effort in trying to investigate this matter, including making a data subject access request to the school, with the handling of which he was dissatisfied.
44. I have no evidence at all from anyone directly involved as to why Mr Lee's son left his job. To the extent that it was, as Mr Lee himself alleges, the result of complaints being made to the school about his son, then that, and the 'HR issues' Mr Lee also reports his son as experiencing at work, leaves little room for any causative or harmful effects to be attributed to any of the publications he sues on.
45. Put at its highest, Mr Lee's case appears to be that the Facebook posts at **statement B** were read by or percolated to parents and teachers at the school who would thereby have been rendered hostile to him and his son. But if and insofar as Ms Brown's allegations of domestic abuse played any part at all in this episode, he himself suggests that that was because Ms Brown put them directly to the school, and perhaps to colleagues and other parents, not because anyone came across them on or via social media.
46. I am entirely unpersuaded on the evidence provided that this episode is capable of supporting a case that Mr Lee has suffered serious reputational harm on account of any publication he complains of. It is an inherently implausible proposition that a teacher might lose his job because of something someone read on social media, or heard a rumour about, relating to *his father*. Mr Lee's own evidence is that he cannot advance his theory beyond strong suspicion and connecting coincidences. Ms Brown labels the theory ludicrous conjecture. On any basis, the connection between any of the publications complained of, and serious reputational harm to Mr Lee, that could be read into his account of this episode, is far too tenuous and speculative to carry any real weight in these legal proceedings.

Impact on business associates

47. Mr Lee does not allege any financial or economic harm to his business interests as a result of any of the publications complained of. But he sues on statements made to business associates. These include the following:
- a) **statement V** to Mr Knott, a former employee. Mr Lee's evidence was that Mr Knott resigned from the firm in May 2020. He does not say why, but he connects it with Ms Brown bothering his firm with "*numerous abusive emails*" into which Mr Knott was copied;
 - b) **statement I** to Mr Tilis. Mr Lee's evidence does not attribute any particular consequence to this.
 - c) **statements N and U** to Mr Kenny, solicitor to Mr Shnaider, a business associate of Mr Lee. Mr Lee's evidence was that Ms Brown has been waging a 'relentless campaign' towards and about Mr Shnaider. He also says Mr Shnaider has not given him new project work since 2020.
48. Leaving aside the fact that I have no evidence from any of these individuals, Mr Lee does not himself give any evidence about the impact or likely impact of these *particular* statements – as opposed to other factors such as 'numerous abusive emails' or a 'relentless campaign'. He puts them forward as examples of a wider phenomenon of Ms Brown's alleged behaviour in each case. They therefore have limited evidential power in establishing reputational harm caused or likely to be caused by these particular publications themselves.
49. Mr Lee also accepts that the effects of the pandemic on the business climate at the relevant time are hard to separate from any other causative feature in the loss of Mr Shnaider's business. He gave evidence that Mr Shnaider did not believe any of Ms Brown's allegations. He accepted in the witness box that "*I cannot say my reputation was lowered in his eyes.*".

Cobham Rugby Club

50. Both parties say they were active members of the local rugby club. Mr Lee's evidence is that Ms Brown contacted the club formally to ask for his membership to be revoked. Mr Lee then wrote giving his side of the matter (a 'troublesome ex-girlfriend' engaged on a smear campaign). The club's formal reply was that it regarded private matters between members as just that, private, and that the club would be taking a neutral stance. I have no evidence therefore of any specific harm to Mr Lee at formal club level. This exchange in any event does not involve any of the publications complained of.
51. Mr Lee says that some of these publications would have been read by, or percolated to, other club members. But he also says Ms Brown further contacted 'numerous' club members directly and made allegations against him. So again it is hard to attribute any effects on his reputation to any publications sued on as such.
52. He says his welcome at, and engagement with, the club became distinctly cooler around the time of the publications. He names one member in particular as being 'not inclined to socialise' with him for around six months. But he fairly accepts, as he obviously must, that pandemic lockdown had a huge impact on social interaction of

this sort at exactly this time, and that it is common experience for the process of picking up social contacts afterwards could be variable and sometimes slow. He accepts all is now well at the rugby club.

Regulatory bodies

53. Mr Lee seeks to evidence serious reputational harm by reference to allegations he says were made by Ms Brown to the Institute of Chartered Accountants in England and Wales, HM Revenue and Customs and the Serious Fraud Office.
54. In each case, he is not alleging an effect of any of the publications complained of as such. He is alleging that Ms Brown made separate complaints about him to these bodies. In the first two cases, it appears that investigations of some sort were triggered, but quickly resolved without further consequence.
55. Before me Mr Lee accepted that he had suffered no serious harm to his reputation in HMRC as a result of Ms Brown's publications.

General evidence

56. Mr Lee gives some further evidence of potential relevance to a general inferential case on serious harm. These included a strained relationship with a next-door-neighbour. He attributes that to Ms Brown directly contacting friends and neighbours to repeat her allegations to them, rather than to anyone reading any of the publications complained of.
57. He refers in his evidence to some 2,500 examples of social media posts by Ms Brown on Twitter which he says are relevant to the case. He exhibited a selection of them, including some very recent and referring to the litigation between them and the preliminary issues trial. Some of these repeated or referred to allegations of a similar sort to those on which Mr Lee sues. Some of them garnered supportive responses, some of which indicated a belief in the truth or probability of her allegations, and expressed views about Mr Lee accordingly.

(c) *Mr Lee's submissions*

58. This therefore is the evidential basis for the facts Mr Lee sets out to persuade me of in support of his case that each of Ms Brown's itemised publications caused or was likely to cause him serious harm.
59. I do not find any of the examples of specific consequences he says demonstrate underlying serious reputational harm to be persuasive of that. That is for a number of reasons.
60. I cannot, in the first place, overlook the complete absence of evidence from anyone else involved in any of these matters. Mr Lee draws my attention to the caselaw requiring courts to be understanding of the problems claimants naturally face in securing evidence from people willing to say they thought less well of them (see *Sobrinho v Impresa Publishing SA* [2016] EWHC 66 (QB)). That is certainly a generic problem with unidentified or unidentifiable publishees. It is less of a generic problem with identified publishees in a claimant's immediate circle of family, friends

and acquaintances, who might be able and willing to provide supportive perspectives of their own. None has done so.

61. Second, none of the examples given, in and of themselves, persuasively demonstrates serious harm to Mr Lee's reputation at all. I have explained why the episode relating to his son's teaching job does not do so. The height of the case made by the other examples is that he experienced temporary coolness at the rugby club, friction in his business life, and brief regulatory interest.
62. Mr Lee accepts that none of his specific examples is of serious, in the sense of lasting, harm, but makes two points about that. The first is that harm must be considered at the time of publication. And the second is that serious reputation harm *was* caused then, but he mitigated it through successful efforts of his own. The first is a good general proposition. But I have little or no evidence of the second. Mr Lee is putting forward these specific cases as *evidence* of underlying serious reputational harm. But they appear on their face to be relatively slight examples, with limited evidential power: temporary adversities fully overcome. The 'serious harm' he objects to most strongly and evidences most convincingly is Ms Brown's sustained courses of conduct – both about him and towards him and his family, friends and colleagues. But those are harms of which the publications are examples rather than the other way around.
63. In the third place, none of these examples is convincingly shown to be an instance of reputational harm *caused or likely to be caused by* any of the publications complained of. Some of them appear far more likely to be attributable to the effects of the covid pandemic on business and social life. And all of them are attributed, on Mr Lee's own evidence, not to the publications he sues on but to entirely distinct activities of Ms Brown.
64. Mr Lee seeks to characterise this as 'reinforcement' activity: he says Ms Brown caused reputational harm with her publications and then exacerbated that harm – rubbed it in – by follow-up activities and repetitions of the allegations they contain. That will not do to establish causation of serious harm by the publication in the first place. I test that proposition in relation to each of the specific examples given by asking myself what difference it would have made if none of the statements specifically complained of had been made at all. In each case, Mr Lee's evidence does not persuade me that any significant causative effect can be attributed to any individual publication rather than to supervening courses of conduct by Ms Brown or to other evidenced or supposed publications entirely.
65. I turn therefore, finally, to the general inferential or impressionistic case Mr Lee seeks to raise on the causation of serious harm by reference to the basic factual matrix of his claim and to inherent likelihood.
66. I remind myself that precision and specificity is not necessary or expected in this connection. The barrier of the serious harm test is real, but must be considered realistically, and in context.
67. I direct myself in that spirit to the sort of issues the authorities recommend taking into account: the gravity of the allegations, the scale and circumstances of publication, whether the statement was likely to have come to the attention of identifiable others

who knew or would come to know Mr Lee and if so how they might be expected to react, and the inherent probabilities suggested by all the relevant circumstances.

68. I remind myself also that this test must be passed in relation to *each* publication complained of.
69. I start with the gravity of the allegations. I am entirely satisfied that each publication contains an allegation of considerable gravity, up to and including allegations of criminal conduct. This is a significant factor supporting the likelihood from first principles that a statement has caused or is likely to cause serious reputational harm.
70. On that basis, I turn first to the 21 statements published to named individuals. In 15 of these cases, the publication is to a single individual or a very small number of individuals, drawn in nearly every case from Mr Lee's immediate circle of family members and immediate colleagues. Mr Lee asked me to look at the case of *Hodges v Naish* [2021] EWHC 1805 at [144] to [166] for an example of a case where publication of serious allegations to a very small number of publishees who knew the claimant was found causative of serious harm. I have done so.
71. The serious harm test is highly fact-sensitive and individual cases turn on their own facts. *Hodges v Naish* was a case where there was rich evidence, including from the publishees, as to the impact of the publications on them – the shock, the difficult conversations that were had, the lingering discomfort, the way the allegations struck at their trust and confidence in the claimant, and 'stuck' long term. I have no such evidence in the present case.
72. Mr Lee nowhere suggests that any of his family and acquaintances among these publishees thought any the worse of him. On the contrary, such evidence as I have from Mr Lee and Ms Bonny is that that they thought considerably the worse of Ms Brown and regarded him as her victim. That is no surprise at all. The overwhelming context of these publications was an extremely bitter and acrimonious relationship breakdown. That breakdown itself clearly had a polarising effect on some of their mutual acquaintance, and was most likely to have done so in his immediate circle. Some of Ms Brown's publications to Mr Lee's family and close associates were angrily denunciatory not only of Mr Lee but of their own complicity or failure to do anything about his behaviour or to help her. Their reception was far more likely to have made an adverse impression on these publishees about Ms Brown than it was to cause them to consider Mr Lee in anything other than a sympathetic light. I certainly cannot assume that they would have had any motivation to disseminate these publications any further – unless perhaps to support Mr Lee's reputation and discredit Ms Brown.
73. It may be that some of these named publishees were neutral rather than positively supportive of Mr Lee (perhaps Mr Neethling was among that number, for example). It is Mr Lee's task to persuade me of the balance of probability coming down in favour of *serious reputational harm* being caused in the mind of any neutral recipients by these publications. In the absence of any other evidence, I consider that less than probable given the tone and content of the publications. **Statement C** to Mr Neethling was limited to reminding him of a telephone call (it was not disputed before me that a call broadly of the disputatious nature alleged took place on the day in the

question). Otherwise, the very vehemence and accusatory nature of the posts gave them limited persuasive potential to a neutral reader.

74. Of the remaining six publications to named publishees outside Mr Lee's immediate circle, four were to legal firms – two to Mr Shnaider's and two to Mrs Janet Lee's lawyers. It is not suggested, and is inherently improbable, that these had any reputational impact at all on the publishees themselves; they were received by lawyers with professional responsibilities to their clients, professional obligations not to disseminate communications with them any wider than necessary for the discharge of those obligations, and no other interest in Ms Brown, Mr Lee or what was said by or about them. I have already noted that Mr Lee conceded no adverse reputational impact in Mr Shnaider's case. What Mrs Janet Lee might have thought - about Mr Lee and *as a result of* Ms Brown's communications to her lawyers – was not even speculated about before me.
75. The final two publications to named individuals were, respectively, to Ms Jdanova, Mr Lee's former girlfriend, and to Ms Janet Lee's sister. They appeared to be part of an effort by Ms Brown to 'reach out' to those she considered potentially involved in experience of domestic violence at Mr Lee's hands. The likely impact of these communications on the recipients is difficult even to guess at – and none was suggested by Mr Lee – but it is improbable that either changed her mind about Mr Lee as a result of reading what Ms Brown wrote, when each had her own independent perspective on being in a relationship with Mr Lee.
76. That takes me finally to the Facebook post at **statement B**. I have no clear evidence about the numerical membership of the group Ms Brown posted to. Mr Lee suggested it was in the thousands; Ms Brown that it was a closed group of her friends and supporters not much above a hundred. Even that is not an insignificant number.
77. I agree with Mr Lee that it is right in these circumstances to factor in some natural percolation or grapevine effect – onward transmission by group members – and that that may well have extended to people who knew Mr Lee. I am, however, cautious about the serious reputational harm that can properly be attributed to this publication for a number of reasons.
78. First, I remind myself that the Facebook post does not name Mr Lee. While I have explained why I accept that it may none the less be regarded as inherently defamatory of him, I am also inclined to consider it a limiting factor in the causative power of this particular item – that is, the likelihood that it would be republished in bare form to a wider audience, that the identification of Mr Lee would necessarily be made by or be of interest to a wider audience, or that it was likely to be impactful among those not already acquainted with Ms Brown's allegations by other means.
79. Then there are few signs of actual percolation attributable to this item. Mr Lee reminds me of the quantity of social media activity he is aware of on Twitter. But that diminishes rather than enhances the probability that it is this Facebook post, rather than any other step Ms Brown may have taken on social media (including indeed on Twitter), which may have brought her allegations to a wider audience and risked them thinking less well of him.

80. Next, I bear in mind again the inherently polarising effect of acrimonious relationship breakdown in its own right. If the publications to named individuals were to already partisan recipients in Mr Lee's camp, then the Facebook post appears to have been directed to already partisan recipients in Ms Brown's. Whether it changed, or was likely to change, anyone's mind is another matter. Perhaps Ms Brown was seeking and obtained sympathy online, but that does not equate directly to impact on the personal reputation of the alleged abuser. And the likely impact of recriminatory allegations between former cohabitants on any publishee not otherwise committed to either side is more likely than not to be one of general embarrassment and unwillingness to get involved in private or intimate matters of any sort (the rugby club's response). The fact of a relationship breakdown perhaps tends to overwhelm the impact of anything either side might *say* about the other's part in it. In any event, the impact of the latter has to be separated from the impact of the former in considering the potential causative impact of a publication.
81. Lastly, and most importantly, what Mr Lee relies on most of all for his percolation effect is that it is Ms Brown herself who has "systematically created a grapevine". He says she has done all she can to bring her allegations to the widest possible audience by any and all means she can think of. The publications of which he complains are, he says, the merest tip of the iceberg. But there lies his difficulty in these proceedings. A defamation case cannot be expected to succeed on the basis of some sample publications and a general complaint about the effects of an extensive, multifactorial and protracted course of conduct by the publisher. Because of section 1(1), defamation requires the demonstration of the causal power of individual publications in and of themselves to create serious reputational impact, regardless of the intentions, purposes and other conduct of the publisher. Where it is those very things that a claimant complains of most, then defamation is unlikely to be a good fit for his complaints.

Conclusions

82. The burden was entirely on Mr Lee to persuade me that, on the balance of probabilities, each of the publications of which he complains had caused or was likely to cause serious harm to his reputation. For the reasons I have given, I am not satisfied that he has discharged that burden in respect of any of these publications concerned. That does not mean I have found that he suffered no serious reputational harm. It means he has not sufficiently established, by the legal procedures and tests to which he must conform, that he has.
83. Mr Lee explained his decision to bring defamation proceedings in this way:

"It is evident from the content of the 31 March 2020 letter before action, and the facts of Vanessa's conduct as the case has developed, that there are elements in this case of harassment and misuse of private information and other causes of action which I or my family and associates may have against Vanessa. While all rights are reserved in those respects, and this is a matter of legal argument, I will contend at trial that Vanessa's smear campaign lies at the heart of this matter; and that smear campaigns revolve around reputation destruction;

and the area of civil law which deals with reputational matters is defamation.”

Defamation does not focus on campaigns. It focuses on serious harm to reputation – *if but only if* that is caused or likely to be caused by a publication.

84. I had no-one’s evidence of any harm to, let alone ‘destruction’ of, Mr Lee’s reputation other than his own. The evidence he gave of actual and specific examples of harm was not, as I have explained, enough to persuade me that it demonstrated harm to his reputation that was both sufficiently serious *and* caused by any of the publications he complains of.
85. I have also considered the general inferences he invites me to make from the content, circumstances and probabilities of the publications in question. But for the reasons I have given, I am not satisfied that Mr Lee has provided a sufficient factual basis on which to base those inferences. An inferential case has to be more than a speculative one. And it has to get to grips with the important causation component of section 1(1). While I agree that the allegations in question are grave, and that there are some inherent probabilities of percolation, I am not persuaded that any of these publications has been causative of serious harm. Mr Lee himself puts Ms Brown’s *course of conduct* at the heart of the matter; he has not demonstrated that the publications in question are anything other than incidental to that.
86. I have no doubt of the strength of Mr Lee’s objections to Ms Brown’s course of conduct. About the merits of those objections, and whether or not he may have other routes of redress open to him in law to explore them, I express no view. As he explained his reasons for bringing defamation proceedings, and given what I have said about the defamatory tendency and gravity of the allegations, he may well find it counter-intuitive and disappointing that this is a cause of action a key component of which he has not established. But it may be that on reflection he concludes that after all it is not so much the actual or imagined impact of these particular examples of Ms Brown’s allegations on his reputation among other people that troubles him, but the fact that she is making them at all, and (on his account) as part of a protracted and unwarranted campaign.
87. As will be apparent, this judgment has nothing to say about the truth or falsity of any of Ms Brown’s allegations, and expresses no view about either party’s conduct. It is not the function of a preliminary issues defamation trial to do so. I must decide only the points which are necessary to resolve the claim itself.

Decision

88. These High Court proceedings are at an end. Mr Lee has not discharged his burden of persuading me that any of the publications of which he complains has caused or is likely to cause serious harm to his reputation. He has not therefore succeeded on his defamation claim, and it goes no further.
89. Ms Brown has an unresolved counterclaim in assault, battery and harassment (otherwise than by publication), seeking damages to a maximum of £75,000. This is not suitable for resolution in the High Court Media and Communications List. I am therefore minded to transfer her counterclaim to the County Court for resolution.