Case No. A2/2015/2839

IN THE COURT OF APPEAL

CIVIL DIVISION

BETWEEN

(1) STEPHANE PARIS

(2) ANGEL GARDEN

Applicants/Claimants

-and-

(1) ANDREW LEWIS

(2) MELANIE BYNG

Respondents/Defendants

FRESH EVIDENCE

Transcription of fresh video evidence after the break at an "Open" Meeting of Skeptics in the Pub in Bath - 14/5/2013 (21:00:16 - 21:10:16)

AG - Angel Garden

AL - Andrew Lewis

SP - Stéphane Paris

M1 - Man 1

W1 - Woman 1

AG - [inaudible]

AL - ah, you are. Yes.

AG - I'll just leave it there

[inaudible]

AG - we can talk about it, but I just want to make sure...

AL - I have no intention of talking about it as you know, ok?

AG- that's fine...

[inaudible]

AL - I have no intention of picking that envelope up either

[inaudible]

AL - I have no intention of touching it. OK?

AG - Fine.

SP - It's not ebola.

AL - seriously no intention of touching it, ok? I've explained very clearly to you I want nothing to do with you, ok?

AG - that's not what you said last time…

AL - You've got a cheek coming along to be honest.

SP - Why?

AG - I don't think so. Why?

AL - And, that's it, that's all I've got to say

AG - OK, that's fine.

SP - Why do we have a cheek to come along here?

AL - That's all I've got to say

SP - That's not very scientific, is it.

AG - that's not very welcoming, is it?

SP - No, not at all.

Organiser - well let's have some questions then... who wants to start?

AL - In fact i'm going to... I'm very sorry. these people here have given me a little bit of a tough time over the past year and I've no intention of engaging with them, and so I'm going to call it quits for this evening actually. I'm really sorry about that. I really don't want anything to do with these people. Thanks very much for coming along this evening, but er, I hope that's been enjoyable, but maybe next time, so er

? - Thanks for coming Andy

[applause]

SP - that's not very [inaudible] is it.

AG - Aren't you going to tell people why?

SP - or provide some evidence?

AG - We haven't said anything

SP - you know that's the skeptical thing to do, isn't it? to ask for evidence?

AL - you're quite free to say what you like, I will not say anything more to you.

SP - Well you haven't really said anything to us at all really. ... We've emailed that to you as well, so it's on your computer by the way. We just wanted to make sure you had it.

? - what's up next for Bath?

Organiser - ok, we don't have any talks planned if you keep an eye on the website well hopefully... we don't have anything next month: we have a social one ...

SP - I didn't realise he was so afraid

AG - so what?

SP - afraid.

AG - yeah I don't understand it

Organiser - but feel free to stick around now and have a chat and stuff for half an hour, you know, no-one's kicking us out.

AL - thanks very much everyone, bye-bye. If I ever see you again, if I ever see you near any of my family or anything like that, I will call the police, ok?

SP - your family?

AL - I will call the police

SP - When have I been near your family? [or We've never been near your family]

SP - so he's got the email

AG - that's right. he's definitely got the email.

SP - Oh well.

AG - [inaudible]

SP - Is that sufficient?

AG - Isn't it interesting there's nobody...

SP - No, nobody wants to know

AG - Nobody wants to know about... he's dying to...

SP - or him

AG - [inaudible]

SP - I don't know.

AG - He was unable to continue

SP - no, well he was already on his way. What did he say when he saw you?

AG - he said er no actually I'm not going to do that

AG - Did you get all of that?

SP - I think so. Hope so.

SP - my god he must be really ... he must be terrified

AG - terrified. Really really scared. But why not just deal with it, you know?

SP - it cost me £2.40 to copy, to photocopy that. Him saying what he said about his family, means he got the email because it had the address

AG - well his address was on that. His address was on the letter, on that…

SP - was it?

AG - yeah. There is the letter he wrote to [Tucker months (?)] and on that letter,... it doesn't matter that he picked that letter up, he's already got it

SP - you're tweeting, are you?

AG _ I don't know. He probably will. SP - we got no network

[inaudible]

AG - that's incredible. skepticism is…hmm...

SP - well, we're coming home early then.

AG - it's just amazing that um you can try to have an ordinary bit of communication about something that's really important...

M1 - so hmm, I'm sort of interested in what the story

SP - ah, somebody is.

M1 - what the story is.

AG - we're people who have successfully taken a Steiner school to human rights tribunal over bullying and who Andy has, over this period of time, he said he's given us a hard time, we've given...

SP - we've given him a hard time...

AG - has been deliberately just suppressing all knowledge of and in fact spreading defamatory stuff about us

SP - lies about us

AG - that we've got evidence of, but he doesn't want to know about. So in answer to his, we've sent him this invitation to address it, you know, rather than having to go down any legal things about it because it's very destructive to our reputation, and he just will not engage with us. So we actually thing, when he's sitting up there talking about Steiner schools being misleading, he's misleading people. He's misleading people by telling everybody that it's very difficult to get out information about problems with Steiner schools. It isn't... it is, it is, through him, because he doesn't want to do that.It's just nothing to do with skepticism, it's to do with his friends and his social grouping, and really it's not, it's not, what it's pretending to be, unfortunately.

M1 - ok

AG - you saw, you saw what we did. It's just we had to give him that letter personally because when we try and send it to him by email he refuses to acknowledge it. and it's a pre-defamation action protocol, that you have to do that. And I'm not going to go to his house because even us coming here, he's making comments to try and infer to everyone else that somehow we're dangerous, or something.

SP - or that we have something to do with his family.

AG - it was our children that were damaged by a Steiner school, not his, you know, and that's...

M1 - so you're from a position of... your children were bullied at a Steiner school

SP - one of them was.

AG - and the Steiner school's action when we tried to advocate, what he said is you've got to ask difficult questions,

M1 - yeah

AG - was expel them all.

M1 - ok. and so originally then, you were contacting Andy

AG - no, we were in contact with a friend of Andy's who decided, who had a personal thing about it, and decided to hate us, and therefore told Andy to hate us, and Andy did. he didn't even question

it, he didn't ever speak to us, and his reaction, what you've just seen, is the reaction of a man who has no position.

W1 - were you on the comments? were you on andy's blog, on the comments, I saw the comments

SP - no, no. he deletes our comments

AG - he deletes our comments, he deletes anybody... any mention of us by anybody

SP - Even somebody else who mentioned our website, he deleted that.

W1 - but you also had a problem with Steiner schools, is that what you're saying?

SP - yes, that's right, yes

W1 - so why, why is he... I don't understand

SP - friendship

AG - because his friends told him that we're horrible people and to stay away from us, so he does.

SP - one of the people critical of Steiner that he talks to a lot who's in Sweden, said that what the Steiner school did to us was an elegant solution, that she admired the principal of the school

AG - to expel the children

SP - and yet she's supposedly critical of Steiner

AG - I don't believe... I mean I do believe Andy you know, I can see that he is concerned about these schools and everything, but this gap in actually, here's some people who you're actually slagging off to people, you know, who've been through this experience,

SP - it's a horrible [inaudible]

AG _ three and a half years it took us to get this action, and I don't think it's right that he should go around Britain saying it's very difficult to get into the media that Steiner schools aren't all fluffy, when he's got us sitting there who other people, we've been there,

SP - we're in the media…

AG - and he won't let us speak.

M1 - yeah

AG - not that he won't let us speak. He responded last time when we sent him a letter by publishing something about it on one of his little dungeon blogs which he's now moved up to his Quackometer blog, which said that basically that we seem to want to

SP - that we want to be the centre of the debate

AG about Steiner. well we're not people running up and down the country doing talks on Steiner with a little logo on

M1 - yeah.

AG - it's just not true, you know. so it's just rubbish,

W1 - so basically, what you're saying is he's saying that it's difficult to get information out there, you're saying you've done that.

SP - yeah, and he's hiding the information.

AG - he's hiding it

SP - he's saying that the newspapers are all fluffy about Steiner, we've been in the media, we've been on prime-time tv talking about it ,

AG - it wasn't in this country

SP- in New Zealand, so it's easy to hide.

AG - it does't matter because he's talking about France, he's talking about other schools, so the whole point...

Memorandum submitted by Dr Andrew Lewis (EV 39)

The Impact of Libel Laws on Bloggers

Introduction

1. The following case studies are examples of how current libel laws have personally affected me and my blogging activities.

2. My name is Andy Lewis and since 2006 I have been writing a regular blog at quackometer.net. The subject matter of my blog is an examination of superstitious and pseudoscientific health beliefs (often known as Complementary and Alternative Medicine), the potential harms that such beliefs can hold and the role of authorities and regulators in mitigating such potential harms.

Case 1: The Society of Homeopaths

3. In August 2007, I wrote a blog post entitled *The Gentle Art of Homeopathic Killing*.[80] The subject of the post was to examine the role of the Society of Homeopaths in regulating its members. A year before, the BBC Newsnight programme[81] had investigated homeopaths in the UK who appeared to be offering dangerous advice to travellers to malarial areas. In particular, there was concern that it was routine for homeopaths to suggest homeopathic sugar pills could protect against serious travellers' conditions. Despite finding many examples, the Society of Homeopaths did not take any action against its members who were exposed by the programme.

4. I had concluded that despite the Society having a Code of Ethics that prevented its members from acting in certain ways, this code was never upheld and that homeopaths were free to practice as they saw fit. As such, such as code might give false assurance to the public that homeopaths were under appropriate scrutiny when they were not. In order to test this, I examined a particular member's claims and how they might be breaching the Society's Code of Ethics. The homeopath concerned was advertising that they could treat childhood asthma in the UK, and had been to Kenya to work at a clinic specializing in the homeopathic treatment of malaria, TB and HIV – activity that I suggested were likely to put lives at risk.

5. The first I knew that there was a problem with this post was on the 4th of October when I was contacted by my web hosts, Netcetera, alerting me that they had received a letter from the solicitors of the Society of Homeopaths (Howes Percival) requesting that they considered my post defamatory and that Netcetera should remove it. Netcetera say they have a policy of first asking the author to 'come to an agreement'.

6. I immediately wrote an email to Paula Ross, the then Chief Executive of the Society of Homeopaths, asking her to clarify the nature of their complaint and to explain why they viewed the article as defamatory. I wrote "If you could tell me urgently what the wording is that you feel is incorrect, defamatory or not fair comment

[80] http://qako.me/tergentle
[81] http://qako.me/kl01zD "Malaria advice 'risks lives'", By Meirion Jones, BBC Newsnight

I will examine it immediately and will ensure a friendly and swift resolution of this matter."[82]

7. The Society did not reply to me. Instead, Howes Percival wrote to Netcetera again saying that the letter to ask for clarification was "inappropriate" and that all correspondence should go through "the firm". I was included in the email and this was my first communication from the solicitors. At no point here or subsequently did the Society clarify the nature of its concerns or allow me any possibility to address them. The letter repeated the demand that the 'material be removed' and pointed out to Netcetera that *Godfrey vs Demon* showed that Netcetera would be liable for the material hosted on its sites. The threat was made that if the post was not removed by the 11th then 'our client will have no option but to tale immediate legal action against Netcetera and the Website'.

8. As neither I nor Netcetera were given any chance to address the concerns and, as the alternative was the suspension of my account by Netcetera, I had no option but to remove the material.

9. I was paying Netcetera £10 per month to host the Quackometer and various other sites I had constructed for friends and an elderly persons' charity.

10. A number of people had heard about my predicament and as soon as they saw my post had been removed, found copies in the Google cache and reposted my article on their own web sites. Within a few days, over 64 copies had been reposted over the web after support from such people as Ben Goldacre from the Guardian[83] and the blog of Professor David Colquhoun FRS.[84]

11. This support, whilst welcome, was also disconcerting as it was very unclear how such multiplication of any alleged libel would be viewed by the courts should the Society wish to pursue me.

12. As of today, the phrase "The Gentle Art of Homeopathic Killing" returns 20,900 hits on Google.

13. The Society of Homeopaths wrote to the Guardian after Goldacre's article was printed. It is worth quoting the relevant parts as it is the only place where the thinking of the Society is explained:

> The Society of Homeopaths took the content of the 2006 BBC Newsnight programme on malaria very seriously and responded via press statements and media interviews promising action if it were required. We contacted the programme makers directly to ask for their evidence that any Society members had given dangerous or misleading advice to members of the public. They were unable to provide a single example. The Society's professional conduct procedures cannot be invoked without a specific complaint, an alleged offender or any evidence. In these circumstances, The Society was unable to investigate a specific case.

[82] http://qako.me/kcAlFb Ben Goldacre's Blog: Appendix: Andy's incredibly polite email to the Society of Homeopaths
[83] http://www.guardian.co.uk/science/2007/oct/20/homeopathy Threats - the homeopathic panacea
[84] http://www.dcscience.net/?p=171 Society of Homeopaths: cowards and bullies

> Nevertheless, as a further precaution, we reissued our Guidelines on advice for the prevention of malaria and sent a copy to every member within a day of the programme being aired.
>
> The Society instructed lawyers to write to the Internet Service Provider of Dr. L ewis' website because the content of his site was not merely critical but defamatory of The Society, with the effect that its reputation could have been lowered. Dr Lewis, in his article, stated as fact highly offensive comments about The Society and it is for that reason that The Society decided it had no option but to take action. The very crude abuse posted on various websites and e-mailed to The Society since our action suggests that these bloggers/authors are not people who are interested in a real debate on the basis of either science or the public good but who simply want to attack homeopathy, for the very sake of it.

14. This episode came to an end when I obtained emails from the BBC Newsnight team that came from the Society of Homeopaths showing that the above statements were very misleading[85]. The Society had acknowledged receipts of transcripts of the undercover conversations with their members, including a Fellow of the Society of Homeopaths. It was simply not true that the Society was unable to investigate any cases, and indeed in the Society of Homeopaths Newsletter (Winter 2007) they told their members that 'the researchers identified three of our members".

Case 2: Professor Joseph Chikelue Obi FRCAM

15. Joseph Obi, or as he prefers to style himself, Distinguished Provost of RCAM (Royal College of Alternative Medicine) Professor Joseph Chikelue Obi FRCAM(Dublin) FRIPH(UK) FACAM(USA) MICR(UK), used to be a doctor in the UK until he was struck off by the GMC after serious professional misconduct at South Tyneside District Hospital in 2003. He was alleged to have had inappropriate relationships with psychiatric patients, failed to care for patients, and was being investigated by the police for "taking thousands of pounds of a 58 year old woman".[86]

16. I wrote two blog posts in 2006 about how this was one of the most extreme examples of how people in Alternative Medicine use questionable titles and qualifications to enhance their credibility. Obi is a Professor of an organization that he invented – the Royal College of Alternative Medicine – which in reality is a post box in Dublin. Obi was selling 'Fellowships' of the College for many thousands to other people so they too could designate themselves with the letters FRCAM.

17. Once again, the first I knew there was a problem was when Obi sent an email to Netcetera. It contained the threat,

> Further to our Previous Warnings , we wish to (once again) remind you that Quackometer.net (which you Host and Register) has still been flagrantly violating our Statutorily Registered Trademarks (and Copyright) - despite Multiple Warnings. Please therefore note that (unless you urgently remedy the

[85] http://qako.me/tertruthmatters The Society of Homeopaths: Truth Matters
[86] http://qako.me/terDrObi Shamed Doctor Probe – The Chronicle

situation) you will soon be liable to the Tune of US$10,000,000 (Ten Million Dollars) per day ; effective the 21st of December 2009.

18. It was difficult to see this as anything other than a joke. Merely writing about a trademarked name does not constitute a violation of trademark or copyright. But a few weeks later, Netcetera received much more official looking letter from someone called Tanja Suessenbach,

Dear Sirs,

Re Defamation

We advise Professor Dr Obi and the Royal College of Alternative Medicine. We are informed that you host the Quackometer`s website (copy evidence enclosed). Our clients hereby give you formal notice that they are determined to sue you directly for the highly defamatory contents contained on the website should you fail to immediately shut down the website and delete all of the defamatory material relating to the Royal College of Alternative Medicine, Professor Dr Obi and our clients` lawfully registered Trademarks.

In case the defamation continues beyond 12 noon on Monday the 21st of January 2008, we are instructed to hold you fully liable to the tune of £1 Million (One Million Pounds) per day , together with additional punitive damages relating to the many months during which the defamatory material had and has been globally accessible via your server.

Kindly note that Google has already blocked the highly defamatory material from appearing on its search engines in the Republic of Ireland, and is currently in the process of extending the ban to other countries.

Please find enclosed photocopies of the two RCAM Trademarks and a copy letter of Good Standing from the Company Registration Office in Ireland, as well as copies of these highly defamatory articles. Please provide an undertaking that no further reference concerning Professor Dr Obi and/or the Royal College of Alternative Medicine is going to appear anywhere within the Quackometer`s website.

Looking forward to hearing from you.

Yours faithfully,

Tanja Suessenbach LLB, LLM

19. It was apparent that Obi had indeed managed to get Google Ireland to remove links to my site.

20. It was also clear that Suessenbach was not a solicitor, but a 'legal letter writer'.

21. I wrote to Suessenback asking her to clarify the nature of the complaint. I received no response.

22. Netcetera, meanwhile, had been receiving threatening phone calls telling them that legal proceedings were about to begin and asking me to seek urgent resolution with Obi (which was impossible as no correspondence was being returned) or Netcetera would have no choice but to suspend my account.

23. It is worth noting Netcetera's view on their predicament:

> We do not judge one way or the other as a company as to the veracity of content, although as individuals we have our own thoughts of course.
>
> Unfortunately as far as the law is understandable, a request to take down a site for defamation requires us to do so unless we want to risk ending up in court defending something in which we as a company have no interest. Our policy at present is to pass on such requests to the site owner, and ask them to reconcile any differences with the complainant, perhaps taking off content in the meantime.

24. I took down the articles, but stated I would re-instate them if Obi and Suessenbach continued to refuse to engage with me.

25. Having received no response from Obi or Suessenbach, I reinstated my pages. On the 18th of January 2008, Netcetera suspended the Quackometer website stating I had breached their terms and conditions and citing my account had been "inappropriately used". The nature of this inappropriateness was not explained to me.

26. Within days, the Quackometer was back online, this time being hosted by Positive Internet. They wrote to me in an email entitled "Your lilly-livered Hosting Company" and offered to host my site for free.

27. One year later, in December 2009, Obi again threatened Positive Internet along similar lines stating that I was violating trademarks. Positive responded to me that "his legal theories sound about as rigorous as his medical ones." And that was the end of it.

Case 3: The Osteomyologist

28. In April 2008, I wrote about how the ASA had adjudicated[87] against an alternative health practitioner by the name of Robert Delgado at the Optimum Health Centres in North Finchley. My post was substantially about how statutory regulation of practitioners could be sidestepped by changing the name of what you do. Despite it being illegal to call yourself a chiropractor without being registered by the GCC, a

[87] http://qako.me/ltxZDE ASA Adjudication on Optimum Health Centres

number of practitioners sidestep this by calling themselves ‘spinal therapists’ or Osteomyologists.[88]

29. Calling himself Dr Delgado, the Osteomyologist had been found by the ASA to be producing advertisements that lacked substantiation and truthfulness. They also found that in calling himself ‘Dr’ that this was likely to mislead the public into thinking he was a registered medical doctor.

30. Osteomyology is not a genuine medical speciality. It was a term coined in 1992 for chiropractors and osteopaths who refused to be regulated by the then new statutory regulatory framework. Changing the name of what they did removed them from the scope of legislation.[89] My post, entitled *Registered Osteomyologist, Robert Delgado, found Guilty by the ASA. So What?* highlighted that this left such practitioners with no regulatory framework to protect the public from them in the event of a problem. The ASA may have seen a problem, but they hold no sanction other than telling advertisers not to repeat their claims.

31. I received a letter from a solicitor acting for Delgado stating that they viewed my post as defamatory and that I should remove it immediately. In particular, they stated that as I had used the word ‘guilty’ in my title post that this could imply that Mr Delgado was criminally prosecuted.

32. I replied that I made it quite clear in my article that it was the ASA that had ruled on the complaint and that at no point do I suggest that criminal activity was involved. I asked for details of any other wording that Delgado thought were misleading untrue or inaccurate and that I would be happy to address them. And as a token of good faith that I would immediately change the title of my article to *Registered Osteomyologist, Robert Delgado, Gets Knuckles Rapped by the ASA. So What?*

33. The solicitor wrote back and failed to answer any of my questions asking for details of the words being complained of. Instead, the threat was repeated that unless the whole post was taken down, legal action would start for substantial damages.

34. After consideration, I felt I had no option but to comply. I felt satisfied to myself that my article was factual and honest opinion, but I had no confidence in how courts would interpret words like ‘guilty’. As the amount of money involved could soon get very high, I felt I had no option but to remove the post.

Conclusions

35. In reforming libel law, I will be looking for changes that allow me to feel confident that an honest, public discussion of controversial areas where there are potential vested interests involved need not expose me to arbitrary legal threats that could financially ruin me. The health of democracy requires ordinary citizens to be able to participate in public debate without fear of capricious and crippling harms.

[88] http://qako.me/jK2HsO The Times: Back off: Handle with care
[89] http://en.wikipedia.org/wiki/Osteomyology

ISPs and their role in Libel

36. Current interpretation of libel law makes ISPs an easy target and weak link that can easily be attacked should someone wish to remove critical material from the web.

37. ISPs are typically paid a few pounds per month by bloggers and have no incentive to defend their users against claims that might mount to hundreds of thousands of pounds. Even trivial claims might start amounting significant costs should a complainant start legal action.

38. ISPs are treated as if they are publishers of materials rather than being the infrastructure on which the web works. There is no clear hierarchy of responsibility in the digital publishing world. It should not be possible to threaten an ISP unless all reasonable effort has been made in resolving the matter with authors and editors of materials.

39. Requests to ISPs to remove material should be a last resort and the management of an ISP needs to be confident that the request is genuine and has complied with reasonable steps with the author or site owner. Doubt in an ISPs liability will ensure that an ISP will always act to minimise its exposure to risk at the expense of the publisher of the material.

Nature of Libel

40. At present, libel laws are being used simply to remove unfavourable material from the web. The costs involved with defending a claim mean that it is irrational to maintain resistance in the face of such a threat for most people.

41. Those who seek to use libel law should be required to show that significant and serious damage has occurred. However, given that a individual is usually unable to start to defend against a threat given even a small chance of chance of significant losses, the law should be clear that a solicitor cannot act unless they are confident that the claim is not trivial and that comprehensive details of the exact nature of the offending words and the nature of the harm is clearly offered.

42. A blogger should be able to feel confident that a trial cannot proceed unless the complainant has undertaken appropriate pre-trial protocols in attempt to resolve the dispute before a trial can start. This would help to remove the Damoclesian threat that is at the centre of the chilling effect of current libel law. Such a protocol would ensure that there is a duty to contact the authors of the material in preference to any other party that may be involved in the chain of publication, that the nature of the complaint is made clear and that simple and fast remedies are offered that do not involve attempts to silence beyond the scope of the complaint.

43. Authors should be able to feel confident that they have a right to fair comment regarding matters such as public safety, public health, science, policy and politics. The free expression of debate regarding public interest should weigh substantially against any particular reputation, especially if that is a commercial reputation.

44. Authors should also be able to feel confident that arbitrary definitions or usages of words cannot detract from comment that is substantially true.

June 2011

Neutral Citation Number: [2017] EWHC 433 (QB)

Case No: HQ15D05286

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/03/2017

Before:

MR JUSTICE WARBY

- -

Between:

JACK MONROE	**Claimant**
- and –	
KATIE HOPKINS	**Defendant**

- -
- -

William Bennett and Greg Callus (instructed by **Seddons**) for the **Claimant**
Jonathan Price (instructed by **Kingsley Napley**) for the **Defendant**

Hearing dates: 27, 28 February, 1 March 2017

- -

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.

.....

MR JUSTICE WARBY

Mr Justice Warby:

Introduction

1. This is the trial of a libel claim arising from two tweets sent by the defendant, Katie Hopkins, about the claimant, Jack Monroe, on 18 May 2015. The defendant is a journalist who writes for the *Daily Mail*. The claimant is a food blogger and writer. The claimant, assigned female gender at birth, now identifies as "non-binary transgender". But by agreement, I shall call her Ms Monroe and use feminine pronouns.

2. Ms Monroe's complaint is that the tweets accused her of vandalising a war memorial and desecrating the memory of those who fought for her freedom, or of approving or condoning such behaviour. Ms Hopkins does not suggest that Ms Monroe did behave in either of these ways. Her answer to the claim is that her tweets do not bear the meanings complained of; are not defamatory of Ms Monroe according to common law principles; and, or in any event, are not defamatory because it has not been shown that they caused serious harm to Ms Monroe's reputation, as required by s 1 of the Defamation Act 2013.

3. The issues as to liability are, therefore, (1) what meanings were borne by the tweets, (2) whether those meanings had a defamatory tendency, and if so (3) whether it has been proved that the serious harm requirement is met.

4. The trial has been short. The only oral evidence has been that of Ms Monroe, who has been cross-examined for the best part of a day. Mrs Hopkins has not given evidence. She relies on two witness statements made by her solicitor, Ms Harris, analysing a body of twitter records. Those statements have been admitted into evidence by agreement, without cross-examination, though without accepting the accuracy of the analysis. Ms Hopkins also relies on facts and documents that have been put before the Court by agreement.

The facts

Twitter

5. Twitter is an online news and social networking service, which is widely used and very well known. It allows people using the Twitter website or a mobile device app to post and interact with messages of not more than 140 characters, called "tweets". This much is common knowledge. But Twitter is still a relatively new medium, and not everyone knows all the details of how it works. Where something is not a matter of common knowledge a Judge is not entitled to bring his or her own knowledge to bear. The facts normally have to be proved. In this case, however, many of the relevant facts about Twitter have been agreed, and set out in a Schedule called "How Twitter Works", which is attached to this judgment as an Appendix. I shall employ the abbreviations used in the Appendix.

6. Estimates for the number of followers of the claimant and defendant at the relevant times are agreed. Figures for the number of impressions, or the number of times various tweets first posted in 2015 were re-tweeted, liked, or replied to, are available from more recent data sources. These are unlikely to represent the exact position at

the relevant times. But I accept that the fast-moving nature of Twitter means that these figures can be relied on as giving a broadly accurate picture of how things stood at the times of publication.

The claimant

7. Ms Monroe is 28 years old. She comes from a family with military connections. Her father was in the British Army for 7 years, being decorated for active service in the Falklands. He spent the next 30 years in the Fire Service. One of her three brothers is a Flying Officer in the RAF. She herself applied to join the RAF at the same time as her brother but was not accepted. She joined the Fire Service, serving for some 4 years between 2007 and 2011. She left the service due to the difficulties of combining it with motherhood, and spent 18 months on benefits. In 2012 she began blogging, on political topics. She is on the left. In due course she became a food blogger and cooking journalist, gaining a cookbook deal in around May 2013 and joining The Guardian in October 2013 writing recipe and cookery columns as well as more general political commentary. She has played a role in mainstream politics, speaking at Parliament on the debate about food banks, contributing to a report by Frank Field MP and speaking at Party Conferences.

8. Ms Monroe joined Twitter when in the Fire Service. From early 2012 her Twitter handle was @MsJackMonroe. Although she has changed it since, that was her handle at the times relevant to this case, when she had around 70 - 75,000 followers. At that time, she was on Twitter "every spare waking moment" as she puts it. She accepts the defendant's estimate that she had tweeted around 20,000 times. She also accepts the defendant's pleaded characterisation of her as "an outspoken political activist" who "has been highly critical of the Conservative Party and its policies – particularly its pursuit of austerity measures – whilst in Government". She is, I find, often forthright in the way she expresses herself, and has quite often used profanities and other strong language, on Twitter. This is a description that those who know her from Twitter would recognise – though they might use different words.

The defendant

9. Ms Hopkins' Twitter handle is @KTHopkins. Her current Twitter profile describes her as a "Columnist @MailOnline, LBC Radio Host, CBB Runner Up…" In May 2015 her profile identified her as a columnist for The Sun. For the purposes of this case she describes herself as "confrontational, outspoken, forthright, often outrageous and frequently flippant in her journalism and social media activity, and very well known as such." With the exception of the words "frequently flippant" this description was accepted by Ms Monroe under cross-examination. On the basis of the evidence in this case I would agree with it. I would agree that Ms Hopkins is sometimes flippant. Ms Hopkins has sometimes been described in the print media as "rentagob", but this is not a term that Ms Monroe had heard used about her. She said "I tend to move in circles of cookery and politics rather than outrage and vitriol". The evidence shows that Ms Hopkins is often acerbic, and known to be so. Mr Price has not pressed the point he put to the claimant, that "rentagob" is how everyone sees Ms Hopkins. The general picture is not, however, significantly controversial. Nor is it controversial that her politics are of the right.

10. When Ms Hopkins joined Twitter is not disclosed in the evidence, but the evidence is that her homepage is very popular, with over 5.7 million visits in each of April and May 2015. It is an agreed fact at the relevant times she had about 570,000 followers, and had tweeted about 44,000 times. The evidence makes clear that she was tweeting frequently. By way of example, the Twitter Analytics for her account show that on 18 May 2015 she sent her first tweet at 7:07am, and the second tweet complained of, sent at 21:47, was her 30th of the day.

Ms Penny

11. Another character who features quite prominently in this case, though not as a witness, is another journalist Laurie Penny, a columnist for the New Statesman magazine. Her Twitter handle at the relevant time was @PennyRed. As this summary suggests, she is of the political left. In March 2016 she had about 128,000 followers. A reasonable estimate of her followers in May 2015 is 100,000.

The history in short

12. On Thursday 7 May 2015 there was a General Election. On 8 May the Conservative Party formed a Government. On Saturday 9 May, there was an "anti-austerity" demonstration in London. It turned violent, and the Memorial to the Women of WWII in Whitehall was vandalised. The words "Fuck Tory Scum" were spray painted on it. This act was widely reported in the news and elsewhere, with photographs of those words sprayed on the plinth. The act caused public outrage and widespread public condemnation.

13. It is Ms Monroe's unchallenged evidence, which I accept, that she was aware of the graffiti via the news media and, despite her general support for anti-austerity groups, "as a proud member of a military family and a feminist" she flatly opposed and was "sickened" by it. She agrees with an official statement issued from Downing Street at the time that this was a "despicable display of disrespect for those who fought and died for their country".

14. On the evening of 9 May 2015 there was Twitter activity relevant to this claim:-

    (1) At 8pm, a Twitter user with the handle @Little_G2 tweeted @PennyRed, sending a photograph of the vandalised memorial and asking @PennyRed to comment on it.

    (2) At 8.01pm @PennyRed commented: "@Little_G2 @CCriadoPerez actually, I think that's fine, and many of those women would have agreed. Sadly they were not able to vote." This comment was RT'd 25 times.

    (3) At 8.04pm @PennyRed tweeted a photograph of the vandalised war memorial with the accompanying words: "I don't have a problem with this. The bravery of past generations does not oblige us to be cowed today." This tweet generated a deal of comment, much of it adverse. This tweet was RT'd 356 times, liked 226 times and replied to in 618 tweets.

    (4) At 9.40pm Ms Hopkins tweeted a photograph of the vandalised war memorial, and a link to @PennyRed's tweet of 8.04pm with these observations:

"@PennyRed thinks this is OK. Burn her passport, bulk buy her lube & make her a woman of ISIS". This was RT'd 135 times.

(5) At 10.33pm Ms Hopkins tweeted again, with a photograph of the war memorial and a hyperlink to @PennyRed's homepage: "if @PennyRed was my daughter, she would be out tonight scrubbing this clean with her tongue for what she has said." This was RT'd 529 times.

15. On Sunday 10 May 2015 the mainstream news media reported on Ms Penny's tweets, and Ms Hopkins' denunciation of Ms Penny:

(1) Metro reported under the headline **"**Katie Hopkins: Woman who agreed with memorial graffiti 'should be bought lube and made woman of Isis'"

(2) The Daily Star published a piece headed, "'Send her to be raped by ISIS': Gobby Hopkins' horror tweet to left-wing writer"

(3) The Independent published an article headed "Katie Hopkins trounces Laurie Penny in battle of offensiveness over anti-Tory graffiti, suggests she should be 'made a woman of Isis'"

16. On Monday 11 May 2015 the MailOnline published a piece about Ms Penny's "I don't have a problem …" tweet. The article was headed "Sneers and bile of hate-filled left: Protesters desecrate memorial to those willing to die in the fight to protect democracy." It gave a slightly different version of the tweet, which included not only the sentence beginning "I don't have a problem…" but also the words, "What's disgusting is that some people are more worried about a war memorial than the destruction of the welfare state." This was a compression of two separate tweets by Ms Penny. The article cited the composite tweet as evidence that Ms Penny was a member of the "Leftist commentariat" who had been "lining up to spout hatred and ally themselves to the rioters" at the anti-austerity march.

17. On 18 May 2015:-

(1) At 7.20pm Ms Hopkins posted the first tweet of which Ms Monroe complains ("The First Tweet"). It was in these words:

> "@MsJackMonroe scrawled on any memorials recently? Vandalised the memory of those who fought for your freedom. Grandma got any more medals?"

(2) At 7.33pm Ms Monroe tweeted in these terms: "I have NEVER 'scrawled on a memorial'. Brother in the RAF. Dad was a Para in the Falklands. You're a piece of shit." (With a screenshot to the First Tweet)

(3) Ms Monroe tweeted again at 7.36pm: "I'm asking you nicely to please delete this lie Katie, and if I have to ask again it will be through my lawyer." (With a link to the First Tweet)

(4) At 8.14pm Ms Monroe tweeted again, this time using Ms Hopkins' Twitter handle: "Dear @KTHopkins, public apology +£5k to migrant rescue & I won't sue. It'll be cheaper for you and v. satisfying for me."

(5) At some point between the posting of that tweet and 9.47pm, the First Tweet was deleted by Ms Hopkins.

(6) At 9.47pm Ms Hopkins posted the second tweet of which Ms Monroe complains ("the Second Tweet"). It was in these terms:

> "Can someone explain to me - in 10 words or less - the difference between irritant @PennyRed and social anthrax @Jack Monroe."

(7) At some point that evening, I infer about this time, Ms Hopkins blocked Ms Monroe. That prevented Ms Monroe from communicating with her via Twitter.

(8) Later on 18 May 2015 the Claimant published the following on Twitter: "BA_DA_BOOM! It lies! It smears! It's wrong! It panics! It blocks! It's @KTHopkins everyone!" (With six pictures of a chicken)

(9) At 22:30 on 18 May 2015 the Claimant published the following on Twitter: "Gin o clock. Cheers. God isn't it good sweet justice when a poisonous bully gets shown up for what it is and runs runs runs away."

18. On 19 May 2015 there was extensive press coverage of the Twitter exchanges between Ms Monroe and Ms Hopkins the previous evening. Articles were published in the Huffington Post, The Mirror, The Independent, Belfast Telegraph, The Metro, Kitsch Mix, Zelo Street, Gay Star News and Diva Mag. The overall theme of these articles is encapsulated in the Mirror's headline: "Jack Monroe and Katie Hopkins in huge spat".

19. A letter of complaint was sent promptly by Ms Monroe's solicitors, Seddons. On 21 May 2015 they wrote to Ms Hopkins c/o STH Management. They said, among other things:

> "… the words were highly defamatory of Ms Monroe and have caused a huge amount of stress and trouble.
>
> Despite those tweets being made by Ms Penny, it is clear that you thought they had been made by Ms Monroe. Quite clearly your followers, who number over half a million, shared the confusion that you promoted and consequently Ms Monroe was subjected to a torrent of abusive and vile comment.
>
> When it was pointed out by you to Ms Monroe that you had made a mistake you decided not to take action but instead aggravated the position by tweeting (at 9:47pm)…"

20. The letter requested a correction and apology, an undertaking not to repeat this or similar tweets about Ms Monroe, payment of a "substantial donation" to a charity of Ms Monroe's choice, and payment of legal costs. The form of correction and apology Ms Monroe wanted was spelled out: "A tweet to be sent at a date and time to be agreed, 'I was confused about identity. I got it wrong. @MsJackMonroe I'm sorry. I have made a substantial donation to charity at her request.'"

21. There was no reply to that letter. But 12 days later, on Tuesday 2 June 2015, at 6.58am Ms Hopkins tweeted "@MsJackMonroe I was confused about identity. I got it wrong." She did nothing else, until after Seddons wrote again on 4 August 2015. Seddons' letter noted that there had been no reply to theirs of 21 May. It said that all previous offers were withdrawn and that proceedings were being prepared and would be served on Ms Hopkins personally unless she nominated solicitors. This evidently prompted Ms Hopkins to instruct Kingsley Napley, who wrote on 14 August 2015:

> "…We are taking urgent instructions from our client and will be in a position to respond substantively to your correspondence in the early part of next week. In the meantime, it would be premature to issue proceedings, particularly in circumstances where the tweet has been removed months ago, and a retraction made. If it assists, we can also reassure your client that there is no possibility that our client will repeat the words complained of or similar in the future.
>
> In such circumstances, it would seem sensible to pause before issuing a claim, particularly where we have not explored with you the quantification of any serious harm or losses that your client claims to have settled."

22. Following further correspondence largely devoted to exploring the issue of serious harm, these proceedings were issued in December 2015. The Defence raised the three issues identified at the outset of this judgment. It also averred that Ms Monroe had` "herself extensively publicised the tweets containing the statements complained of, the circumstances of the tweets, her denials in relation to the tweets, that the Defendant had been mistaken in mentioning her in the First Tweet, and her contempt for the Defendant's conduct and the Defendant generally." The Defence denied Ms Monroe's claim to have suffered "substantial upset and distress", pointing to "the obvious pleasure taken by her in threatening these proceedings", and to her activity on Twitter in relation to the matters complained of.

Legal principles

23. The core principles of defamation law according to which this claim must be decided are not in dispute. For the purposes of this case they can be summarised in this way.

    (1) Libel consists of the publication by the defendant to one or more third parties of a statement about the claimant which has a tendency to defame the claimant, and causes or is likely to cause serious harm to the claimant's reputation.

    (2) Whether a statement about the claimant has a defamatory tendency is determined according to common law principles identified in *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130, *Thornton v Telegraph Media Group Ltd* [2010] EWHC 1414 (QB) [2011] 1 WLR 1985, and *Modi v Clarke* [2011] EWCA Civ 937. In short, the answer depends on (a) the single meaning that would be conveyed by the statement to a hypothetical ordinary reasonable reader and (b) whether that meaning is one that would tend to have a substantially adverse effect on the way that right-thinking members of society generally would treat the claimant. As this summary suggests, the answer is arrived at objectively, and not by reference to

evidence of what people actually thought the statement meant, or how they reacted in fact.

(3) Most cases turn on the "natural and ordinary meaning" that the ordinary reasonable reader would take from a statement. But there are cases in which the answer to the question, "what does statement X mean?" will be altered by facts outside the statement itself, which are not matters of common knowledge. If readers of the statement complained of were aware of such extraneous facts, and that knowledge would affect the way that an ordinary reasonable person would understand the statement, there will be an "innuendo" meaning. By these means an otherwise innocent statement may be defamatory, or an otherwise defamatory statement innocent, in the eyes of readers aware of the "innuendo facts". The principles are stated in *Fullam v Newcastle Chronicle & Journal* [1977] 1 WLR 651 and *McAlpine v Bercow* [2013] EWHC 1342 (QB) [49]-[55].

(4) But "A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the claimant's reputation": s 1 Defamation Act 2013. This provision ("the Serious Harm requirement") means that it is not enough to prove that a statement had a defamatory tendency. A claimant must prove as a matter of fact that their reputation suffered, or is likely to suffer, serious harm as a result of the publication complained of.

24. It is common ground that the right starting point in this case is to decide the meaning(s) of the tweets. After that, it is necessary to determine whether the meaning(s) arrived at have a defamatory tendency, according to the common law tests. If they do, the next step is to make findings about the extent of publication. Finally, I must consider whether the Serious Harm requirement is satisfied.

What did the tweets mean?

The rival cases

25. Ms Monroe's case is that the First Tweet bore one or other of two natural and ordinary meanings: either (1) that she had vandalised a war memorial and had thereby desecrated the memory of those who fought for her freedom and had committed a criminal act; or alternatively (2) that she condoned or approved of the criminal vandalisation of a war memorial and the consequent desecration of the memory of those who fought for her freedom.

26. The argument for Ms Hopkins is that the First Tweet did not suggest or imply that Ms Monroe had herself vandalised any memorial. Read in their full and proper context they mean no more than that Ms Monroe "was supportive – politically – of those who had painted the slogan onto the monument."

27. Ms Monroe complains that the Second Tweet bore an innuendo meaning that she "approved or condoned the criminal vandalisation and desecration of the women's war memorial in Whitehall during an anti-government protest." The innuendo facts relied on are: the vandalisation of the war memorial; the outrage it caused; PennyRed's "I don't have a problem" tweet; the wide reporting and comment on that tweet; the two tweets published by Ms Hopkins, condemning @PennyRed's view; and the fact that the Second Tweet referred to @PennyRed's view. Those facts are

all agreed, though it remains to consider whether everybody who read the Second Tweet was aware of them.

28. The argument for Ms Hopkins is that the Second Tweet did not bear the meaning complained of. It "would have been understood [by] the ordinary reader as no more than a petulant acknowledgment by [her] that she had mistakenly identified [Ms Monroe] instead of Ms Penny". Alternatively, it is argued that the Second Tweet bore the same meaning as the First Tweet: that Ms Monroe "was supportive – politically – of those who had painted the slogan onto the monument.".

The law

29. In *Jeynes* at [14] Sir Anthony Clarke MR gave this frequently cited summary of the principles to be applied when deciding meaning:

> "(1) The governing principle is reasonableness. (2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. (3) Over-elaborate analysis is best avoided. (4) The intention of the publisher is irrelevant. (5) The article must be read as a whole, and any "bane and antidote" taken together. (6) The hypothetical reader is taken to be representative of those who would read the publication in question. (7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, "can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation … (8) It follows that "it is not enough to say that by some person or another the words might be understood in a defamatory sense."..."

30. Principle (2) sets out a neutral approach. It would obviously be wrong for the court, in the position of the reasonable reader, to select the most defamatory meaning available: *Simpson v MGN Ltd* [2016] EWCA Civ 772 [2016] EMLR 26 [15] (Laws LJ). Equally, the final words of this principle do not indicate that the reasonable reader would, or that the court should, lean in the opposite direction. As Tugendhat J pointed out in *McAlpine* [66] the words about not "selecting one bad meaning" are:

> "… part of the description of the hypothetical reasonable reader, rather than as a prescription of how such a reader should attribute meanings to words complained of as defamatory. If there are two possible meanings, one less derogatory than the other, whether it is the more or the less derogatory meaning that the court should adopt is to be determined by reference to what the hypothetical reasonable reader would understand in all the circumstances."

31. Some of the *Jeynes* principles can have special resonance in particular contexts. The warning at (3) against over-elaborate analysis is especially relevant when it comes to political speech: *Waterson v Lloyd* [2013] EWCA Civ 136 [2013] EMLR 17 [66] (Laws LJ). But the fact that speech is political does not of itself require any special approach to deciding its meaning: *Thompson v James* [2014] EWCA Civ 600 [26]-[27] (Longmore LJ). The Court is able to give appropriate protection to political speech without distorting well-established principles about the meaning of words: see, for instance, *Barron v Vines* [2015] EWHC 1161 (QB) [46] and [2016] EWHC 1226 (QB) [86] (summary judgment, evaluation of defences, and assessment of damages).

32. The references to "the article" and to "bane and antidote" in principle (5) are probably best seen as particular expressions of the rather wider rule, that a determination of meaning must always take into account the whole of the statement that contains the particular words complained of, and of the context in which that statement appears, and of the mode of publication: *Charleston v News Group Newspapers Ltd* [1995] 2 AC 65, esp at 70 (Lord Bridge). The context will always include facts which were general knowledge at the time the statement was made; the meaning of words includes implications or inferences that a reader would draw from the words, in the light of those facts: *Jones v Skelton* 1370. Context will also include any surrounding material in the same "publication" as the words complained of, that has some bearing on how the statement complained of would be read and understood. The mode of publication can affect the way in which the ordinary reader absorbs information, including the amount of time they devote to reading or viewing it.

33. *Jeynes* principle (6) means that the nature of the publication or medium can also affect the characteristics which the court attributes to the ordinary reader. But it is necessary to be a little cautious about this aspect of the matter, because it can involve an invitation to act on preconceptions that are unsupported by evidence. Special characteristics should only be taken into account if they are matters of common knowledge, agreed, or proved: *McAlpine* [58], *Simpson v MGN Ltd* [2015] EWHC 77 (QB) [10].

Principles applied to Twitter

34. These well-established rules are perhaps easier to apply in the case of print publications of long standing such as books, newspapers, or magazines, or static online publications, than in the more dynamic and interactive world of Twitter, where short bursts of pithily expressed information are the norm, and a single tweet rarely exists in isolation from others. A tweet that is said to be libellous may include a hyperlink. It may well need to be read as part of a series of tweets which the ordinary reader will have seen at the same time as the tweet that is complained of, or beforehand, and which form part of what Mr Price has called a "multi-dimensional conversation".

35. The most significant lessons to be drawn from the authorities as applied to a case of this kind seem to be the rather obvious ones, that this is a conversational medium; so it would be wrong to engage in elaborate analysis of a 140 character tweet; that an impressionistic approach is much more fitting and appropriate to the medium; but that this impressionistic approach must take account of the whole tweet and the context in which the ordinary reasonable reader would read that tweet. That context includes (a)

matters of ordinary general knowledge; and (b) matters that were put before that reader via Twitter.

36. As to the characteristics of the readership, it has been said that in a Twitter case, "The hypothetical reader must be taken to be a reasonable representative of users of Twitter who follow the Defendant": *McAlpine* [58] (Tugendhat J). The mechanics of the medium mean however that the readership of a tweet may go beyond followers of the defendant, and extend to followers of other Twitter users: see How Twitter Works at [14]. This case is an illustration. But nobody has attempted to establish by evidence any particular characteristics of the groups of Twitter readers this case is concerned with that could have a bearing on meaning. It is not in dispute that the followers of the parties (and, I would add, visitors to their homepages) are likely to be people who are at least broadly sympathetic to the contrasting political stances of Ms Monroe and Ms Hopkins. This means, on the facts, that there were groups of readers who read what was said from different political standpoints. But that is not relevant to the meaning of words.

37. There has been some debate about another issue: what are the limits of categories (a) and (b) at [35] above? How much should be regarded as known to a reader via Twitter, or as general knowledge held by such a reader? I am not sure that the answers matter a great deal for the resolution of the question that I am now addressing, or for the outcome of this case overall. But in principle the main dividing lines seem reasonably clear. A matter can be treated as known to the reader if the court accepts that it was so well-known that, for practical purposes, everybody knew it. An example would be the fact that the Conservatives formed a government after the 2015 General Election. A matter can be treated as known to the ordinary reader of a tweet if it is clearly part of the statement made by the offending tweet itself, such as an item to which a hyperlink is provided. The external material forms part of the tweet as a whole, which the hypothetical reader is assumed to read. This much seems to be common ground in this case. Ordinary readers of the tweets complained of had information that a war memorial had been sprayed with offensive graffiti.

38. The third point concerns material on Twitter that is external to the tweet itself. This is perhaps less straightforward. I would conclude that a matter can be treated as part of the context in which an offending tweet if it is on Twitter and sufficiently closely connected in time, content, or otherwise that it is likely to have been in the hypothetical reader's view, or in their mind, at the time they read the words complained of. This test is not the same as but is influenced by the test for whether two publications are to be treated as one for the purposes of defamation: *Dee v Telegraph Media Group Ltd* [2010] EWHC 924 (QB) [2010] EMLR 20 [29] (Sharp J).

39. I would include as context parts of a wider Twitter conversation in which the offending tweet appeared, and which the representative hypothetical ordinary reader is likely to have read. This would clearly include an earlier tweet or reply which was available to view on the same page as the offending material. It could include earlier material, if sufficiently closely connected. But it is not necessarily the case that it would include tweets from days beforehand. The nature of the medium is such that these disappear from view quite swiftly, for regular users. It may also be necessary, in some cases, to take account of the fact that the way Twitter works means that a given tweet can appear in differing contexts to different groups, or even to different

individuals. As a matter of principle, context for which a defendant is not responsible cannot be held against them on meaning. But it could work to a defendant's advantage.

40. Mr Price invites me to "extend" the principle, that context includes information in the wider publication that incorporates the statement complained of, by taking into account "facts and matters in the wider realm of Twitter generally as it was being experienced by the hypothetical ordinary reader at the relevant time". I have indicated how I do see the context in a Twitter case. But Mr Price has put forward a rather broad formula, which is also rather vague, and looks as if it might be somewhat over-ambitious. To the extent that it might draw in as "context" things that might or might not have been known to the ordinary reader, it would tend to erode the rather important and principled distinction between natural and ordinary meanings and innuendos. When it comes down to its practical application, however, it turns out that in essence Mr Price only wishes to rely on the known characteristics of the claimant and defendant ([8] and [9] above), and matters of background that Ms Monroe's legal team have relied on as innuendo facts in support of the meaning attributed to the Second Tweet ([27] above).

41. There has been no objection to this approach. And if a claimant has put forward an innuendo case, there is nothing inherently unfair or wrong about the defendant adopting and relying on the same matters. But Ms Hopkins has never pleaded any "defendant's innuendo" in respect of the First Tweet or the Second Tweet, nor any detailed case about "context". The exact nature of her case was not crystal clear until closing submissions. In principle it seems to me that it is incumbent on a defendant who takes such a position to make this clear at an early stage, in her Defence. It seems to me desirable in principle, and it is certainly both safer and fairer, especially in the "multi-dimensional" Twitter context, to treat earlier material of the kind I have referred to as requiring pleading and proof by way of innuendo. But a case should be stated, regardless of whether it is considered to be one of innuendo or context.

Discussion and conclusions

42. It is important to separate the question of what message a reader would take from the tweets from the separate question of what response the reader would have to that message.

43. Ms Monroe complains of the natural and ordinary meaning. That is not the same as a literal meaning. The literal meaning, that Ms Monroe had herself scrawled on and vandalised a memorial, would be rejected by the reasonable reader, having regard to the context. The reader would see the tweet as having an element of metaphor. But it is, to my mind, an inescapable conclusion that the ordinary reasonable reader of the First Tweet would understand it to mean that Ms Monroe "condoned and approved of scrawling on war memorials, vandalising monuments commemorating those who fought for her freedom." That is a meaning that emerges clearly enough, making full allowance for everything that seems to me relevant by way of context: the characteristics of Ms Hopkins and Ms Monroe, the nature of Twitter, and the immediately surrounding contextual material on Twitter. The reference to Grandma would not be understood, but that would not affect the reader's conclusion.

44. These conclusions about meaning are not substantially affected by the further matters relied on by the defence which I regard as, and shall refer to, as "the innuendo facts". The vast majority of those who read the First Tweet will have seen it on Ms Hopkins' homepage, where it was the first item for the 2 hours and more that it was up. I would not accept that all these readers will have been aware that 9 days earlier, on 9 May, the war memorial had been vandalised, @PennyRed had posted her controversial tweet, and Ms Hopkins had posted her condemnation of it. Ms Hopkins' homepage had 10 times as many views each month as she had followers. The extent of the overlap is not disclosed by the evidence. It is not likely to be 100%. The press coverage of 10 May was mainly in the liberal press. I can infer, on the basis of general knowledge, that there is not likely to be much of an overlap between readers of The Independent and Daily Star and those who follow Ms Hopkins or read her homepage.

45. I would accept however that many readers of Ms Hopkins' home page will have been aware of the innuendo facts. It is likely that there are many who are regular readers. But it does not follow, and I do not accept, that the hypothetical reasonable reader of Ms Hopkins' homepage, with that knowledge, would have taken away from the First Tweet a meaning very different from its natural and ordinary meaning. The innuendo meaning, to the reasonable reader, would be that Ms Monroe "condoned and approved of the fact that in the course of an anti-government protest there had been vandalisation by obscene graffiti of the women's war memorial in Whitehall, a monument to those who fought for her freedom." This is a more specific and targeted version of the natural and ordinary meaning. The same meaning will have been conveyed to any others who read the First Tweet, and knew the further things relied on by the defence.

46. The innuendo meaning is not one of which Ms Monroe complains, though it is not very different. I note that the natural and ordinary meaning I have found is not in the end very different from the meaning for which Ms Hopkins herself contends. The main difference is the word "politically" which does not seem to me to add much, but is a rhetorical flourish that is not part of the meaning in my view.

47. Read in isolation, the Second Tweet will have conveyed Ms Hopkins' contempt for Ms Monroe, and suggested to the reader that she was poisonous, worse than the irritating @PennyRed. But there is no complaint of any natural and ordinary meaning. The claim is based entirely on an innuendo. The argument is that "a proportion of" those who read the Second Tweet "will have read it in the context of" the innuendo facts. The Particulars of Claim also refer to and rely by way of innuendo on the fact that the First Tweet had been published only shortly beforehand. I accept these points. As to the First Tweet, it had been deleted before the Second Tweet was posted, but I find that happened only very shortly beforehand.

48. I find that the reasonable reader, knowing these innuendo facts, would have understood the Second Tweet to mean that Ms Monroe "condoned and approved of the fact that in the course of an anti-government protest there had been vandalisation by obscene graffiti of the women's war memorial in Whitehall, a monument to those who fought for her freedom." In other words, it bore the same innuendo meaning as the First Tweet.

49. The reader with knowledge of the facts relied on will have understood Ms Hopkins to be acknowledging that when she sent the First Tweet she had mixed up Ms Monroe

and Ms Penny. But the reader will have taken what Mr Bennett rightly calls the "defiant" Second Tweet to be asserting that this mistake made no difference. Ms Monroe was portrayed as even worse than Ms Penny. By implication, the suggestion was that Ms Monroe also approved of and condoned the vandalism, and shared the views which Ms Hopkins had so clearly deplored.

Did the tweets' meaning(s) have a defamatory tendency?

50. There is no doubt about how Ms Hopkins regards those who vandalise war memorials, and those who condone such behaviour. She has made that clear. But her case is that it is not actionable to suggest that someone condones such behaviour, because such a suggestion is not defamatory as a matter of law. She is entitled to say, and Mr Price is right to submit on her behalf, that a statement about a person's views is only defamatory if it attributes views that would lower a person in the estimation of "right-thinking people generally". This old phrase is of course about people who think correctly, and it refers to common standards. It also covers left-thinking people, and those in the middle. In a diverse society, there are many with views of which some people approve and some disapprove. The demands of pluralism in a democratic society make it important to allow room for differing views to be expressed, without fear of paying damages for defamation. Hence, a statement is not defamatory if it would only tend to have an adverse effect on the attitudes to the claimant of a certain section of society. The classic example, though far from this case, is a statement that someone is a "grass" who informs on criminals. That is not defamatory because informing on criminals is generally considered to be a good thing to do.

51. The Judge's task is not to impose his or her own views. It can be put this way: to determine whether the behaviour or views that the offending statement attributes to a claimant are contrary to common, shared values of our society. This again is a matter for judgment, not a matter for opinion polls or other evidence. It can be difficult. But one test is whether the conduct or view in question is illegal or, by the standards of society as a whole, immoral. In *Thornton,* Tugendhat J set out an ordering of the varieties of defamation. His summary of "personal defamation" included (at [33(ii)(a)]) "Imputations as to what … would perhaps now be expressed as what is illegal, or unethical or immoral, or socially harmful.." Mr Price relies on this principle, submitting that "No doubt those on the right of the political spectrum may be more or less appalled by such a sentiment, but that is not sufficient to make it defamatory to allege that someone is aligned with it." The submission is correct, as far as it goes, but rather misses the point.

52. The criminal law can generally be taken as an expression of society's shared values. As a rule "right-thinking" members of society generally deplore those who commit offences. They also disapprove of those who condone criminality. As Mr Bennett points out, spraying graffiti on public monuments is a criminal offence. It is also socially harmful. Generally, I accept Mr Bennett's submission that right-thinking members of society generally would regard this as obnoxious behaviour, and would strongly disapprove of anyone who approved or condoned it. There may be exceptions to these general points. But in this case, the suggestion was condonation of the vandalisation of a war memorial commemorating important roles played in World War II. Respect for those who gave their lives, or put themselves in danger, or played roles in the World Wars is a significant aspect of the shared values of our society. Here, the vandalism was carried out to express a political view. But it has not been

suggested that this would justify it in the eyes of "right-thinking people generally". Nor do I believe it would. There was no apparent link between the political cause and the monument that was attacked. The vandalism was carried out in peacetime, following a properly conducted General Election.

53. I have no doubt that the natural and ordinary meaning conveyed by the First Tweet and the innuendo meaning conveyed by the Second Tweet were defamatory by the standards of the common law.

The extent of publication

54. It is submitted for Ms Hopkins that the First Tweet was "only directly published to small number of individuals because it was an 'at reply' tweet". It is true that it only went to the timelines of those who followed both Ms Hopkins and Ms Monroe.[1] It is common ground that this is a small group, the defence estimate being 140. This is unsurprising, given Ms Monroe's contrasting politics. But the First Tweet was available to view on Ms Hopkins' home page for a period which I find was approximately 2 hours and 25 minutes. In addition, it will have been "retweeted" to the followers of other Twitter users.

55. It turns out that by deleting the First Tweet, at Ms Monroe's request, Ms Hopkins made the Twitter Analytics unavailable. There is no criticism of her for that. But it means that the number of publishees via her home page can only be estimated. The case for Ms Monroe is that this can be done as follows. First, by appropriate division of the 5.7m profile visits to Ms Hopkins' home page in May 2015, with a view to working out how many of those visits are likely to have been made during the period on 18 May when the First Tweet was up on the page. That approach has obvious limitations but, in principle, would seem to be sound. It helps that Ms Hopkins did not tweet again until the Second Tweet, so any visitor to the home page will have seen the First Tweet as the top item.

56. Secondly, Mr Bennett refers to the Twitter Analytics for other tweets sent by Ms Hopkins on 17-18 May, submitting that these provide a reliable guide. The figures relied on are for impressions, engagements and re-tweets of all tweets posted by Ms Hopkins between 20:48 on 17 May and 21:47 on 18 May 2015, other than the First Tweet. Again, this seems to be a source of evidence from which appropriate inferences can be drawn. Relying on these two approaches, Mr Bennett invites me to find that the First Tweet had something in the region of 20-25,000 readers via the @KTHopkins home page.

57. Mr Price submits that the claimant's estimates are no better than guesses, with no solid basis. He argues that any substantial traffic to his client's home page in the 2 ½ hours at issue is likely to have been from followers of Ms Monroe and followers of Ms Penny, drawn by the offending tweet. He submits, and I accept, that there were few who followed both Ms Penny and Ms Hopkins. Further, says Mr Price, it would be wrong to assume that every impression amounts to a viewing of a tweet. The claimant's case, he submits, is at the very top of the range of conjecture. He argues that it would not be safe to put any figure on the readership, and that Ms Monroe has not satisfied the burden of proof. Alternatively, he invites me to find there was some

[1] See How Twitter Works @ [21].

relatively small publication in the high hundreds or just into four figures, made up mostly of followers of Ms Monroe and Ms Penny.

58. Precision is of course impossible, but nor is it necessary. It is enough if I can make a sound assessment of the overall scale of publication. The submissions for Ms Hopkins that this cannot be done are not only unattractive but also unrealistic in my view. I am satisfied that the readership of the First Tweet was comfortably into five figures. An estimate of around 20,000 seems to me to be entirely reasonable, and much more likely to be an under-estimate than an over-estimate. The Twitter Analytics that are available show that individual tweets over the 25 hour period I have mentioned generated between 21,000 and 252,000 impressions, and between 198 and 14,196 engagements. The higher of these figures are those for the Second Tweet. Although it was not retweeted as often as some others, it was clearly "popular" and by a fair margin the tweet with the most impact of all those dealt with in these records.

59. An "impression" does not mean that the person on whose screen the tweet appeared actually read it. The figure must be discounted to arrive at an estimate of readers. Mr Bennett allows a discount of 60% to arrive at a figure of 100,000 readers for the Second Tweet. I accept that approach. The figures for the Second Tweet are significant so far as the First Tweet is concerned. They indicate the probability that the figures for the First Tweet were high. The analytics show that other tweets in the evenings generated six-figure numbers of impressions.

60. Mr Bennett's other method of estimation leads him to a figure of around 25,000 readers, by this route: (a) he divides the 5.74m profile views in May 2015 by the 31 days of the month to arrive at an average of 185,161 views per day; (b) he divides that by 18, on the footing that the audience was a domestic one, and would spent some hours asleep, arriving at an average of 10,286 views per hour; (c) he multiplies that by the number of hours the First Tweet was available to view. This is an approach that starts with a known and undisputed figure and applies a rational analysis to it. It may perhaps overstate the position a little. For instance, the scale of views on particular days may depart from the average, for all we know. But taking account of what the Twitter Analytics show, I consider that the 20,000 figure I have mentioned is a safe conclusion.

61. I accept that the First Tweet was probably re-tweeted extensively. It is impossible to estimate the extent, except to say that the evidence suggests it was probably in the hundreds. It is not necessary to go further than this in analysing the scale of the likely readership of the First Tweet. These conclusions are enough to enable me to decide the other issues that I have to address. But I add that, though it would be idle to engage too much in analysis of the Twitter Analytics, the document does show the text of individual tweets, so it is possible to compare the higher figures for impressions and engagements with the content. That comparison seems to me to support the conclusions I have reached on the other bases mentioned.

62. As for the Second Tweet, the Twitter Analytics tell the story clearly enough. I have set out the figures already. They are clearly substantial. It was re-tweeted 40 times.

Serious harm

63. The evidence has convinced me that Ms Monroe was very upset by the First and Second Tweets. This is apparent from her angry reaction to the First Tweet. Some of what she tweeted afterwards to her own followers could be read as making light of what had been said, and as mocking Ms Hopkins and revelling in the prospect of suing her. But the case for the defence, that this was the true overall picture, is not made out. People can react in a variety of ways when wounded. This individual, in this situation, wrote some things that turned out to be unhelpful to her case in this action. But they were written in the heat of the moment. Generally speaking, I accept Ms Monroe's evidence about how things were for her that evening.

64. Her initial reaction was to be "completely horrified, both that people would think that I had vandalised a war memorial, and at the incoming storm that would be heading my way from the many people I believed would accept that what the Defendant had said was true." Ms Monroe thought the accusation was being targeted at her personally. Believing Ms Hopkins had a massive following on Twitter she anticipated that she would start to receive abuse as a result. Ms Monroe's evidence is that she received abusive tweets from people who had read those complained of. I shall come back to the evidence about the "torrent of abuse", which is hotly disputed. But I accept her evidence that she felt anxious and upset, and had difficulty sleeping.

65. I also accept the claimant's evidence about her reaction to the Second Tweet, and her feelings at the way that Ms Hopkins has behaved since publication, and how she has conducted the defence of the proceedings. Ms Monroe found it very upsetting and frustrating that rather than say the First Tweet had been false and express some regret about posting it, she just "switched her line of attack" and made what Ms Monroe saw as a "deliberate call to arms". There has been no apology, and I accept that this has allowed the claimant's injured feelings to remain raw.

66. It is said that Ms Hopkins acted maliciously in sending the Second Tweet, knowing it was untrue to suggest that Ms Monroe had vandalised or condoned the vandalisation of a war memorial. I do not know what Ms Hopkins' actual state of mind was, as she has not given evidence, nor has she explained her position otherwise than through her lawyers. If she had done so, and persuasively rebutted what Ms Monroe says about these matters, I might have disregarded this part of the claimant's evidence. But in the absence of any rebuttal I conclude that Ms Monroe's response was and remains a reasonable one. I remain of the view I expressed in *Barron v Vines* [2016] EWHC 1226 (QB) [22], that when malice is alleged in aggravation of damages,

> "… the issue is not the actual state of mind of the defendant. It is whether the claimants have suffered additional injury to feelings as a result of the defendant's outward behaviour. If the defendant has behaved in a way which leads the claimants reasonably to believe he acted maliciously that is enough."

67. All of this, however, is about injury to feelings, and the issue I have to address at this stage is whether serious harm to reputation has been proved. As Dingemans J noted in *Sobrinho v Impresa Publishing SA* [2016] EWHC 66 (QB), [2016] EMLR 12 [46], unless serious harm to reputation can be established an injury to feelings alone, however grave, will not be sufficient.

68. In *Sobrinho* at [46]-[50] Dingemans J identified a number of other uncontroversial propositions about the Serious Harm requirement:

> "46. …. *Serious*" is an ordinary word in common usage. Section 1 requires the claimant to prove as a fact, on the balance of probabilities, that the statement complained of has caused or will probably cause serious harm to the claimant's reputation. …
>
> 47. Secondly it is open to the claimant to call evidence in support of his case on serious harm and it is open to the defendant to call evidence to demonstrate that no serious harm has occurred or is likely to do so. However a Court determining the issue of serious harm is, as in all cases, entitled to draw inferences based on the admitted evidence. Mass media publications of very serious defamatory allegations are likely to render the need for evidence of serious harm unnecessary. This does not mean that the issue of serious harm is a "*numbers game*". Reported cases have shown that very serious harm to a reputation can be caused by the publication of a defamatory statement to one person.
>
> 48. Thirdly there are obvious difficulties in getting witnesses to say that they read the words and thought badly of the claimant, compare *Ames v The Spamhouse Project* [2015] EWHC 127 (QB) at paragraph 55. This is because the claimant will have an understandable desire not to spread the contents of the article complained of by asking persons if they have read it and what they think of the claimant, and because persons who think badly of the claimant are not likely to co-operate in providing evidence.
>
> 49. Fourthly, where there are publications about the same subject matter which are not the subject of complaint … there can be difficult points of causation which arise…
>
> 50. Fifthly, as Bingham LJ stated in *Slipper v BBC* [1991] QB 283 at 300, the law would part company with the realities of life if it held that the damage caused by publication of a libel began and ended with publication to the original publishee. Defamatory statements are objectionable not least because of their propensity "*to percolate through underground channels and contaminate hidden springs*" through what has sometimes been called "*the grapevine effect"*. However it must also be noted that Bingham LJ continued and said "*Usually, in fairness to a defendant, such effects must be discounted or ignored for lack of proof*" before going on to deal with further publications which had been proved to be natural, provable and perhaps even intentional results of the publication sued upon."

69. Where an allegation has a seriously defamatory tendency and is widely published a claimant may choose to rely on those facts alone, perhaps in conjunction with evidence as to the identity of the publishees, as the basis for an inference that serious harm was actually caused. That, at one stage at least, was the primary position adopted on behalf of Ms Monroe. In some cases it may be enough. It is certainly not necessary in every case to engage in a detailed forensic examination of the precise factual picture, in order to determine whether the Serious Harm requirement is satisfied. Often, the factors relevant whether serious harm has been caused will be "the same as those which come into play when assessing whether a tort is real and substantial for *Jameel* purposes*"* or an abuse of process: *Ames v Spamhaus Project Ltd* [2015] EWHC 127 (QB), [2015] 1 WLR 3409 [52].[2] As pointed out by HHJ Moloney QC (sitting as a Judge of the High Court) in *Theedom v Nourish Training Ltd* [2015] EWHC 3769 (QB) [2016] EMLR 10 [15](h).

> "it is important to bear in mind that s 1 is essentially a threshold requirement, intended by Parliament to weed out those undeserving libel claims otherwise technically viable, but which do not involve actual serious harm to reputation or likely serious harm to reputation in the future."

70. In this case, however, the issues on serious harm have developed, and the evidence and argument has spawned a reasonably complex set of interlocking or overlapping sub-issues. This is mainly due to the way that the case for Ms Hopkins has been pleaded and pursued. There are no less than 11 main issues. I have reached the clear conclusion that the Serious Harm requirement is satisfied, on the straightforward basis that the tweets complained of have a tendency to cause harm to this claimant's reputation in the eyes of third parties, of a kind that would be serious for her. In the light of that conclusion I do not believe it is necessary for present purposes to examine in exhaustive detail all the sub-issues. Nor do I think it necessary for the purposes of arriving at a fair and reasonable conclusion on the extent of harm, and the appropriate sum in damages. I therefore do not think that I do an injustice to the considerable skill and effort that has been devoted to these issues if I identify and address them in turn, in fairly summary form.

71. The main points, and my conclusions on them, are these:-

(1) The extent of publication. Reliance is placed on the allegedly limited extent of publication of the First Tweet, and its deletion "around two hours" after first publication. I have dealt with and rejected Ms Hopkins' case on these points.

(2) Transience. It is true that the First Tweet was transient. The Second Tweet less so, although any tweet disappears from the reader's view as time goes on. But this is a weak point. What matters, when considering transience, is not the period of time for which a person is exposed to the message but the impact the message has. It is a commonplace of experience that live broadcasts can have a powerful impact, even if the viewer sees them once only. Print copies of newspapers are not often read more than once.

[2] *Jameel v Dow Jones & Co. Inc.* [2005] EWCA Civ 75, [2005] QB 946

(3) The credibility of the publisher in the eyes of publishees. This is clearly a relevant question. Skilfully treading a somewhat delicate line, Mr Price submits that Twitter is the "Wild West" of social media, and not as authoritative as (for instance) The Sun or the Daily Mail, which are established institutions, subject to regulation, that employ lawyers to check copy. On the facts of this case, I do not find this submission persuasive. I shall come to the question of whether Ms Hopkins' mistake was or would have been obvious to all. But there is no good reason to conclude that a reader would discount the allegation because of who Ms Hopkins is, or the fact that she published on Twitter. She is a well-known figure. She made clear at the time she was a Sun columnist.

(4) The absence of evidence that the allegation was believed. There is a dearth of such evidence, but this is a commonplace of litigation in this field and understandable for reasons identified by Dingemans J in *Sobrinho*. It is said to be remarkable, bearing in mind how uninhibited people are on Twitter, that there is nothing indicating that a person changed their position in respect of Ms Monroe as a result of the tweets. I think this submission lacks a sound evidential basis. I am not persuaded that the absence of evidence of this kind is evidence of a lack of harm.

(5) Evidence that "no harm was done" to Ms Monroe's reputation. This is said to be "obvious" from contemporaneous social media activity. I reject this. There is some evidence of social media activity suggesting that some people paid little attention to what had been said. But this represents only a fraction of the readership, and there is no sound basis on which to infer that it is representative of the whole. Certainly, some people realised that Ms Hopkins had mistaken Ms Monroe for Ms Penny, and did so before the half-hearted early morning tweet of 2 June. But the evidence does not persuade me that this was a universal realisation. I deal with media coverage of 19 May separately, below.

(6) The question of whether Ms Monroe suffered or did not suffer a torrent of abuse as a consequence of the tweets (the "torrent" point). This is also an issue to which I shall devote a little more attention below. My conclusion is that "torrent" is probably something of an overstatement, and much of what is relied on cannot be shown to be causally linked to the tweets complained of. But I accept that there was some abuse resulting from the tweets complained of, and reflecting harm to reputation.

(7) The state of Ms Monroe's existing standing or reputation in the eyes of the publishees. As Mr Price accepts, a defendant who wishes to prove that a claimant had an existing bad reputation must plead and prove it. That has not been done. Instead, Mr Price relies on documentary evidence that the (as he would say) few who abused Ms Monroe in the aftermath of the tweets complained of were people who were "already making the same or similar comments about her before the tweets". That is what the analysis of Ms Harris tends to show. This is a tricky area. In principle, evidence of bad reputation, however it may come into a case, is relevant only if it goes to the same sector of the claimant's reputation. This evidence is not clearly of that nature. But even assuming this is a legitimate line to take (which may be debatable) I do not think this is a matter to which any great weight should be attached. It is not safe to infer that a claimant's reputation has not been harmed by a specific defamatory allegation just because a person who

makes rude remarks about the claimant after publication also made rude remarks about her before.

(8) Another variant of this point is put forward: that those who engaged with the tweets were users who were already strongly supportive of Ms Monroe, or strongly opposed to her; in summary, people "whose opinions of the parties can't be shifted." This comes dangerously close to evidence of bad reputation by the back door. Besides, I am not convinced that this is how people actually think, at least not in the mass. A person can have a low opinion of another, and yet the other's reputation can be harmed by a fresh defamatory allegation. An example is provided by serious allegations made against a politician of a rival party. I have recently held that it does not follow from the fact that a publishee is a political opponent of the claimant, that they will think no worse of the claimant if told that he or she has covered up sexual abuse: *Barron v Collins* [2017] EWHC 162 (QB) [56]. The same line of reasoning is applicable to the different facts of this case. As Mr Bennett puts it, if someone is hated for their sexuality or their left-wing views, that does not mean they cannot be libelled by being accused of condoning the vandalisation of a war memorial. It can add to the list of reasons to revile her.

(9) Ms Monroe's own responses on Twitter. These are said to have mitigated harm by making her position clear. There are several difficulties with this contention. One is that denials are not at all the same thing as corrections, retractions or apologies. The response of the accused is inherently unlikely to undo the damage caused initially. A second, and probably more significant point, is that Ms Monroe had no access to the followers of Ms Hopkins. The fact that the overlap in their followers was so small tends to undermine this submission.

(10) National and international media coverage of the tweets complained of, Ms Monroe's reaction to them, "and the matter generally" on 19 May 2015. Nine articles are relied on. Three are in mainstream English newspapers (Metro, The Mirror and The Independent). The others are in the Belfast Telegraph, the Huffington Post, and a range of lesser known outlets. All are said to have been published "within hours". I am invited to infer that their publication meant that anyone with an interest in either party will have become aware that Ms Hopkins had made a mistake, Ms Monroe denied having vandalised anything, and intended to sue, that there was no attempt to justify what had been said. It is also suggested, in mitigation, that readers of these media would have realised that "the claimant considered that she could make £5,000 in damages because of the tweets" (sic). This last contention seems to me offensive in its formulation, implying that compensation would be some kind of gain for the claimant. Otherwise, I would not attach any great weight to this point. The majority of the media coverage was in publications of the left, and it is not likely there was a substantial overlap with the defendant's own readership. The coverage did not amount to an authoritative or comprehensive refutation of the original allegation. As Mr Bennett points out, there was a potentially harmful impact of this publication, as it brought the whole matter to the attention of a fresh audience.

(11) The defendant's tweet of 2 June 2015. This was several weeks later, early in the morning. It was not self-explanatory. It was inconspicuous and carried no apology. It was sent as a reply, and hence to the common followers only.

72. As to the "torrent" point, there is a factual dispute as to whether the claimant in fact suffered "vile and abusive comments" as a result of the tweets complained of. The assertion was made in her solicitors' correspondence that she had, that this had included death threats, and that this was apparent if one looked online. The defendant's case is that these claims were false, and that there is "no other evidence of serious harm". In response, some details have been given in further information. There are some unsatisfactory aspects to Ms Monroe's evidence on this point. The tweets themselves have for the most part been deleted, by means of an automatic deletion app which she installed one night but then seems to have forgotten about for a while. We have ended up with a selection of abusive tweets. Some of these clearly do not arise from the matter complained of. Others seem unlikely to do so. Generally, causation is problematic.

73. I do not think it safe to rely on much of this evidence. But there are a few tweets set out in the Further Information that are consistent with the overall case advanced. And I do accept what Ms Monroe said in her oral evidence, that there was further abuse that appeared to her to result from what had been said. I accept that there was in fact such an impact, and that it was substantial. "Torrent" is a noun, used metaphorically here. It may be colourful, and may tend to overstate what happened. But it is not an invention and nor is it in my judgment a serious distortion.

74. In all the circumstances and for the reasons I have given, whilst the claimant may not have proved that her reputation suffered gravely, I am satisfied that she has established that the publications complained of caused serious harm to her reputation, and met the threshold set by s 1 of the 2013 Act.

Remedies

Damages

75. A person who proves they have been libelled is entitled to recover a sum in damages that is enough to compensate for the wrong suffered. The heads of compensation, and the key factors, were identified by Sir Thomas Bingham MR in *John v MGN Ltd* [1997] QB 586, 607-608 (the numbers and letters are added by me):

> "That sum must **[1]** compensate him for the damage to his reputation; **[2]** vindicate his good name; and **[3]** take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is **[a]** the gravity of the libel; …. **[b]** The extent of publication … **[c]** A successful plaintiff may properly look to an award of damages to vindicate his reputation … [and] **[d]** compensatory damages may and should compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way. Although the plaintiff has been referred to as "he" all this of course applies to women just as much as men."

76. Heads [1] and [2] can be seen as complementary or overlapping, because the overall aim of compensation is, as usual in the case of civil wrongs, to restore the claimant to the position they would have been in if the wrong had not been committed. Head [3] is parasitic on proof of harm to reputation, and needs to bear some relationship to that harm. It is important to keep all awards for libel in due proportion. To protect the fundamental right of free speech they must be no more than necessary to protect the right that has been interfered with: *Rantzen v Mirror Group Newspapers (1986) Ltd* [1994] QB 670.

77. Other factors that can affect the appropriate amount include: (1) whether or not the defendant has persisted in maintaining the truth of what was said (*John,* ibid.); (2) the fact that a reasoned award may help to vindicate a reputation: *Purnell v Business F1 Magazine Ltd* [2007] EWCA Civ 1382 [2008] 1 WLR 1, *Cairns v Modi* [2012] EWCA Civ 1382 [2013] 1 WLR 1015 [31]; and (3) the status of the claimant: public figures such as politicians are expected to be more robust than others, whatever the actual position may be: *Barron v Vines* [86].

78. There is an overall ceiling on awards in this field, currently about £300,000: *Raj v Bholowasia* [2015] EWHC 382 (QB) [179] (HHJ Parkes QC). That sort of award is only suitable for the gravest of libels such as widespread publication of allegations of genocide, terrorism, or murder. There is no tariff of libel awards. The Court must seek to reflect the particular features of an individual case by placing it in its proper position on the scale that leads up to this maximum. Regard can be had to awards for personal injury, and there are decisions on particular facts to which the court can have regard, but there is nothing that really assists in this case.

79. In this case, the allegations were serious but certainly not towards the top end of the scale. The extent of publication was significant but not massive in its scale. The harm to reputation, though serious, will not have been grave. The need for vindication is not a weighty factor, as there has been no attempt to prove the truth of what was alleged. This judgment will make the position clear to those who were unaware of it already. Ms Monroe is a public figure, in the sense that she chooses to engage in public life and to engage in political discourse in public forums. The injury to feelings was real and substantial, and has continued. It has been significantly exacerbated by the way the defence has been conducted. Nonetheless, compensation for hurt feelings should be in scale with the award that seeks to compensate for harm to reputation.

80. Taking account of all these matters, my award is £24,000. That is divided into £16,000 for the First Tweet and £8,000 for the Second Tweet. The reason for this division is that the majority of the harm to reputation will have been caused by the First Tweet, and it was that tweet that caused the greatest injury to feelings at the time. These awards are higher than they would have been, if damages had been assessed at or shortly after the time of publication, because they take account of the fact that harm to reputation has continued, and injury to feelings has been increased by the defendant's behaviour.

An injunction?

81. The First Tweet was a mistake. It was not fully retracted but there has been no attempt to prove the truth of what was suggested. Ms Hopkins will realise, and no doubt be advised, that to repeat the same message would be likely to result in a substantial damages award. I do not consider that there is any evidence of a threat or risk of repetition. There is no need for an injunction.

Summary of Conclusions

82. My main conclusions are these. The First Tweet meant that Ms Monroe condoned and approved of scrawling on war memorials, vandalising monuments commemorating those who fought for her freedom. The Second Tweet meant that Ms Monroe condoned and approved of the fact that in the course of an anti-government protest there had been vandalisation by obscene graffiti of the women's war memorial in Whitehall, a monument to those who fought for her freedom. These are meanings with a defamatory tendency, which were published to thousands. Their publication not only caused Ms Monroe real and substantial distress, but also harm to her reputation which was serious, albeit not "very serious" or "grave". Ms Monroe is entitled to fair and reasonable compensation, which I assess at £24,000. There is no need for any injunction.

Observations

83. This case has been about the particular tweets complained of by this claimant against this defendant. It may have little wider significance. But I cannot leave it without making two observations. The first is that the case could easily have been resolved at an early stage. There was an open offer to settle for £5,000. It was a reasonable offer. There could have been an offer of amends under the Defamation Act 1996. Such an offer attracts a substantial discount: up to half if the offer is prompt and unqualified. Such an offer would have meant the compensation would have been modest. The costs would have been a fraction of those which I am sure these parties have incurred in the event. Those costs have largely been incurred in contesting the issue of whether a statement which on its face had a defamatory tendency had actually caused serious harm.

84. The second point is that there have been difficulties over disclosure especially on the claimant's side, of which others should take note. The deletion of the First Tweet, at Ms Monroe's request, meant the Twitter Analytics were unavailable. And Ms Monroe's Twitter records were extensively deleted. I am not able to attribute responsibility for that on the basis of the evidence, and I do not. What I can say is that this highlights in the Twitter context the responsibility of a litigant to retain and preserve material that may become disclosable, and the responsibility of a solicitor to take reasonable steps to ensure that the client appreciates this responsibility and performs it.

MONROE v HOPKINS

APPENDIX TO JUDGMENT

HOW TWITTER WORKS

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1. Launched in July 2006, Twitter was the first major 'micro-blogging' service, allowing people to use the internet to post very short blogposts.

2. A person who sets up a Twitter account begins by creating a **username** (sometimes called Twitter 'handle') which begins with an @ symbol: e.g. @Person.

3. Twitter automatically creates a **Profile** page (sometimes called a homepage) for @Person, which will appear online as a webpage at URL in the format: http://www.twitter.com/Person

4. @Person can send **'tweets'**: messages of up to 140 characters which can (but need not) include hyperlinks, photos, videos, emojis, or **'hashtags'** (words beginning with #, which allow people to join a common conversation). Each tweet gets a unique URL called a **'permalink'** in the format: http://www.twitter.com/Person/status/123456789123456 .

5. All @Person's own tweets (of any character whatsoever) appear in reverse chronological order on their Profile page.

6. @Person will also have a **Timeline**: a reverse chronological stream of tweets from all the users that @Person chooses to follow. This can be found on the **Home** tab when @Person logs-in to their account. It also displays (top-left corner): @Person's photo, number of tweets by @Person, number of users @Person follows, and @Person's number of followers.

7. @Person will have also have other tabs called:
   - **Notifications** (a private tab which sends @Person 'alerts' or 'notifications' of activity relating to tweets by, or mentioning, @Person); &
   - **Direct Messages** or "DMs" (private messages between Twitter users, formerly only between users who followed each other).

8. Different users of Twitter (e.g. @A, @B and @C) can also choose to **'follow'** @Person's tweets, meaning that @Persons regular tweets will appear in the Timelines of each of @Person's followers: i.e. @Person's tweet appear in @A's Timeline, @B's Timeline and @C's Timeline.

9. Each of those Timelines of @A, @B and @C will be an aggregated feed of all the people that @A follows, that @B follows, and that @C follows respectively.

10. @Person can make their tweets **'private'**, whereby no-one can read them except approved followers: if private, only approved followers get @Person's tweets in their Timelines and only approved followers can view @Person's Profile page. However, if @Person does not set their account to private, then anyone can can view their tweets

online, and anyone can view their Profile page online, even if they do not have a Twitter account.

11. Because not all people are on Twitter all of the time, Twitter has an internal metric of how many times it has actually had to display a particular tweet in any of the above guises: **"Impressions".**

    For example, if @A is on Twitter only between 0900 until 1000 and 1800 until 1900, they may not see a tweet by @Person at 1200, because by the time they log back on to Twitter at 1800, so many tweets by the people that @A follows have been tweeted that @Person's tweet is a long way down the Timeline. So Impressions records the number of times that a tweet is actually generated on a screen (of a phone/laptop) by a viewer of the tweet who is active at that time.

12. Any person who has a Twitter account (@3rdParty), and who sees a tweet they like (whether or not they follow that person) can **ReTweet** ("RT") it: that is to say re-publish it by pressing a 're-tweet' button. So if @Person tweets, and @3rdParty RTs, the tweet will be republished in its original format (with a small added tagline at the top) saying '@3rdParty Retweeted'.

13. RTs appear in on @3rdParty's profile page, and are published to the followers of @3rdParty (whether or not those people follower @Person).

14. A regular tweet by @Person therefore appears on:
    - @Person's Profile page;
    - in the Timelines of those who follow @Person
    - on the Profile pages of RTers
    - in the Timelines of those who follow the RTers

15. As well or instead of RTing a tweet by @Person, a @3rdParty can:
    - **'Like'** the tweet (by clicking on a 'heart' or 'star' logo);
    - **Reply** to the tweet (which starts the Reply with the usernames contained within the tweet, including that of the tweeter or any RTer);
    - **Expand** the tweet (to see all Replies to it);
    - Click on any **hyperlink** in the tweet
    - Click on any **hashtag**, which launches a Twitter search for all tweets containing that particular hashtag
    - Click on the **permalink** (a small link to the tweet's unique URL)
    - Click on @Person's **username** (a link to @Person's **Profile** page)
    - **Follow** the tweeter (@Person) if they don't do so already

16. All of these actions, including RTing, are called **'Engagements'**.
    - The numbers of some Engagements (RTs, Replies, Likes) are recorded on the public face of the tweet, at the bottom.
    - Other Engagements (Impressions, Expands, Hashtag clicks, Hyperlink clicks, Username clicks) are not on the public face of the tweet, and are only available through the **Twitter Analytics** service to @Person.

17. When people RT, Reply, or Like a tweet by @Person, then @Person gets a small message (and 'alert') in their Notifications tab telling them so. There are no notifications when a person whom you follow deletes a tweet.

18. Some tweets are different, because they also contain another user's username (@Other) or more than one other user's usernames (@Other and @Stranger). These usernames can occur anywhere in the tweet. This type of tweet is called an **'at-mention'**, because it 'mentions' other users.

19. If @Person tweets and uses @Other somewhere in the tweet *("I watched the football and saw @Other score!"*), then even if @Other doesn't follow @Person, @Other will also receive a Notification of the tweet by @Person (unless they have first Blocked or Muted tweets from @Person). However, subject to the point below, at-mentions are sent to all of @Person's followers.

20. If, however, @Person **begins** their tweet with a username (@Stranger), this particular type of at-mention is called an **'at-reply'** (because it is in the same format as a Reply to a tweet, in that it starts with a username).

21. An at-reply (such as *"@Stranger good to meet you today")* will not appear in the timelines of all of @Person's followers. It will only be published to the timelines of those who follow **both** @Person and @Stranger (the timelines of **"common followers"**).

22. However, beyond the timelines of common followers, an at-reply will also be published on @Person's profile page (like any tweet), and is still capable of being RTed by anyone who sees it (such as @3rdParty). If RTed, an at-reply will still appear on the profile page of anyone who RTs it (i.e. @3rdParty's profile page), and will be sent to the timelines of all of the followers of anyone who RTs it (i.e. all of @3rdParty's followers' timelines).

23. Where @Person decides that they do not like the tweets by @Stranger, they can **'Mute'** @Stranger (so @Stranger's tweets don't appear in @Person's Timeline, even though @Person still 'follows' Stranger and can see tweets on @Stranger's Profile).

24. If @Person really doesn't like tweets by @Stranger, they can **'Block'** @Stranger, and neither @Person nor @Stranger will be able to receive each other's tweets into their respective Timelines or view each other's tweets on each other's Profiles. However, no tweets are deleted by Blocking, and all tweets of a Blocked person are still available for everyone else to see as before, including in any search results.

25. For more serious abuse, @Person can **Report** an account (e.g. @Troll) to Twitter. If Twitter decides the abuse is serious enough, it can **Suspend** or **Ban** the @Troll account, which has the effect of making all of @Troll's tweets and @Troll's Profile unavailable for anyone to see. Any at-mentions (including at-replies) which cite '@Troll' will remain the same text, but the link on the @Troll username will no longer be a live hyperlink to the @Troll Profile page.

26. **Twitter Analytics** allows a @Person to know all the Impressions and Engagements of each of their un-deleted tweets (including at-mentions and at-replies). It also

records total Profile views per month (whether because people clicked on the username in tweets, or searched for the Profile page on Twitter or on some other service, such as Google).

Ten Things You Should Know About Waldorf/Steiner Schools

WALDORF/STEINER SCHOOLS WOULD RATHER YOU DID NOT KNOW ABOUT THE OCCULT RELIGION THAT UNDERPINS ITS METHODS.

November 9, 2016 Andy Lewis Rudolf Steiner 89

Waldorf Schools (or Steiner Schools as they are sometimes called) are portrayed as progressive, humanistic and child-centred. Parents are attracted to this form of education as such schools suggest they are an alternative to the 'robotic exam factories' of mainstream schools that do not take into account the unique needs of each child. However, before you plunge into putting your child into such a school it is worth understanding things that are rarely disclosed to prospective parents.

The Independent today discusses how parents have come to discover the occult nature of the schools with their disturbing beliefs about race, child care and education. Here are ten facts that you ought to be aware of.

1. Claim: Rudolf Steiner was a philosopher, child psychologist and scientist.

Rudolf Steiner was a follower of the occult belief system of Theosophy. He split with other Theosophists in around 1912 after most accepted an Indian child named Krishnamurti as the new "World Teacher" and reincarnation of Christ. He ridiculed the notion that a 'Hindu lad' could be the new cosmic leader. He took with him the German speaking Theosophists to found his own occult religion which he called Anthroposophy. A core belief of Steiner's was that human souls evolve through a series of incarnations and as a soul develops it will take on different racial forms with black people being the most 'immature' souls and Aryans being the highest spiritual form. Steiner called his beliefs 'Occult Science' or 'Spiritual Science' and that his 'science' was the necessary way to ensure the white races did not degenerate. He believed through clairvoyance you could determine the true spiritual nature of the cosmos. This is is the foundation of all his beliefs in education.

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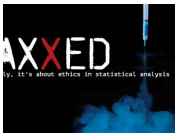

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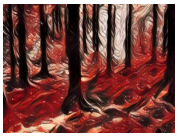

Ten Things You Should Know About Waldorf/Steiner Schools

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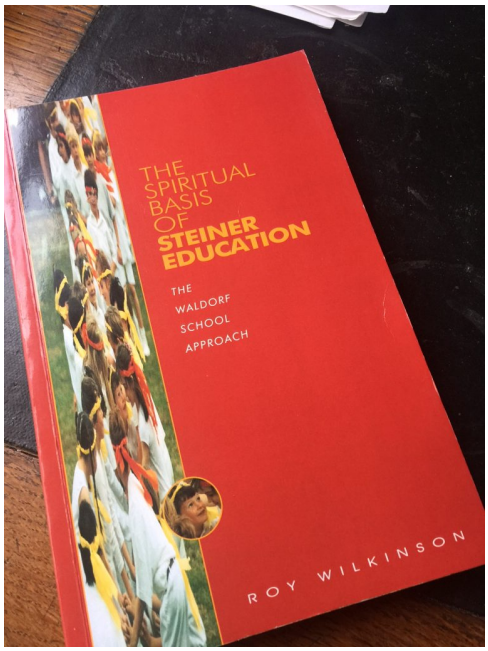
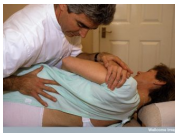
2. Claim: Curriculum and methods are based around theories of child development.

Anthroposophical child development is different from what you might think of as child development. In line with with Steiner's mystical religious beliefs, his theories of child development are based around the process of reincarnation. The curriculum of Steiner Schools is designed to help children progress through the stages of reincarnation as they grow. Reincarnation does not happen all at once at birth, but develops over seven year cycles. At birth a child is given their 'physical' body, at Age 7 (or when teeth develop) the child takes on their 'etheric' body, at 14 their 'astral' body. At each stage of reincarnation, the child becomes more ready to engage in different forms of education. For example, reading is suppressed until the adult teeth appear indicating the etheric body has taken hold.

3. Claim: Waldorf Schools are not religious and are non-denominational.



Schools routinely tell parents and authorities that they are not religious. Indeed, in the UK this was a condition for the form of funding that new Steiner Schools got from the state. But this is not true. But Waldorf Schools mislead parents and have done since the first one opened. Steiner told his teachers to use the words 'verses' instead of 'prayers'. Anthroposophical chants and 'hymns' are routine. Parents are told that the Festivals that are celebrated in school, such as Michaelmas, Martinmas and Midsummer, are part of the 'Northern European Tradition' but actually are Anthroposophical festivals with occult meanings. Sometimes names are changed, such as 'Advent' where an advent spiral of light is walked by the children to represent reincarnation. Children and parents are not told the true meaning of their 'celebrations'.



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4. Claim: Waldorf Schools are merely 'inspired' by Steiner and have moved on from his time.

It is common for schools to deny their Anthroposophical religious nature. Indeed, Steiner told his teachers to do so, otherwise 'people would break the Waldorf School's neck'. A Waldorf or Steiner School is defined by its adherence to the Waldorf Curriculum which is monitored by Anthroposophical Societies. Any school that was merely 'inspired' would not be allowed to call itself a Waldorf or Steiner School. If you are told that the school has developed on from Steiner's curriculum you should ask specifically which elements of the curriculum have been abandoned and what new inspiration or ideas have been brought in. If this 'inspired' claim is true then you should receive detailed answers. Parents do not though.

5. Claim: Delayed reading benefits children.

One of the main signatures of a Waldorf Education is that children do not start to learn to read until much later than other schools. Parents are often told there is good research to delay reading. But the reason for delaying reading is not based on educational evidence but for occult reasons. Steiner believed reading was bad for a child's soul development and should be delayed as much as possible. Books are taken from children and parents are discouraged from reading at home. Now, there is variation around the world when mainstream schools start reading. Sometimes this is to do with the nature of the local language – English, for example, can be quite hard to master. However, Steiner Schools cherry pick their evidence to support their occult belief and mask their spiritual mission.

6. Claim: Steiner's unpleasant views have 'fallen by the wayside'.

Waldorf Schools are quick to distance themselves from the racist views of Rudolf Steiner. They will always claim they accept all children "regardless of nationality, race, gender or religion". But this is again to mask the racist cosmology that Steiner developed. Steiner claimed he loved all humans. But he saw humans as evolving through a racial hierarchy. It was the aim of Anthroposophy to help souls develop spiritually and evolve through the races. As such, Steiner's racism was paternalistic, but nonetheless deeply offensive. Steiner's methods would

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encourage teachers to treat children differently depending on their soul's 'development' which might be measured by skin colour – amongst other physical characteristics. Some Schools claim that these racist views have been denounced. But as such views form the foundation of Anthroposophy, you might expect a root and branch change in the religion with soul searching reviews of practice and beliefs, and huge efforts to ensure such beliefs do not linger in schools. There has been no such review and there are no such documents to discuss the impact of the founder's overt white supremacist views and racism in Steiner education. As the Independent article demonstrates, racists school texts and practices persist to this day.

7. Claim: Waldorf/Steiner Schools do not teach the children Anthroposophy.

On virtually all School websites you will find statements suggesting that the School does not 'promote or teach Anthroposophy'. This is thoroughly misleading. It is like a doctor telling her patients that she does not teach them medicine. Of course not – she *practices* medicine on them. Waldorf schools *practice* Anthroposophy on the children. Everything in the school is Anthroposophical, from the class and school structure, the curriculum and lesson plans, the festivals, the occult dancing known as eurythmy, the style of art work, the crafts, the myths and cryptohistory and the pseudoscience. The aim of Steiner School is to steep the children in the ideas, myths, practices and rhythms of Anthroposophy – and without them knowing. The archangels and earth spirits, such as gnomes, become routine parts of daily education. The prayers and spiritual cosmology become normalised without explicit religious instruction. The schools live Anthroposophy. The attitudes and worldview are designed to inculcate a predisposition to Anthroposophy so that young adults will go on to take part in Steiner communities, such as Camphill, biodynamics or the many businesses with Anthroposophical roots. The ex-teacher and whistleblower, Grégoire Perra, calls such education an "Insidious Indoctrination".

8. Claim: Children have excellent results from such schools and go on to excel in life.

Children in Waldorf Schools are exposed to a very narrow and

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constrained curriculum that has been described as 'fossilised'. It's emphasis is on the 'creative' subjects but even then, creativity is carefully defined and controlled. Subjects such as History are tightly defined to reflect Anthroposophical ideas of their myths of human history, such as a literal belief in the Atlantis catastrophe. Academic subjects have a low emphasis and science is undermined by a pseudoscientific and anti-intellectual stance. Schools define themselves on their objection to being an 'exam factory' and children, if they stay in the school, rarely leave with what might be called a full range of qualifications. Proponents often point to lists of famous and successful alumni. Such 'successes' are almost exclusively in arts, acting and a few sports. The reason there are no scientists, for example, has been argued because children are just not equipped to take on post-school academic disciplines. And indeed, it has been argued that this is exactly what Steiner education wants to achieve so that instead they may stay within the Anthroposophical fold. If children do take exams, they take very few carefully selected ones. These successes are paraded as children achieving very high marks. The problem is that children are starved of the opportunity to excel in their own personal ways.

9. Claim: Waldorf/Steiner Schools are safe places for children.
Various aspects of Waldorf education pose direct risks to children. Steiner's belief in alternative medicine persists in Anthroposophy where homeopathy is seen as legitimate and anti-vaccination views are routine. In the UK, the NHS a has reported that the Health Protection Agency views Steiner Schools as "High Risk" as they are "unvaccinated communities". Measles, and other preventable dangerous diseases can quickly run rife through Steiner communities and schools. The closed nature of Steiner Schools also makes it possible for undesirable adults to come into contact with children. Problem teachers are moved from school to school. In the UK, several of the small number of Steiner schools have been issued with improvement notices over child protection or even have been forced to close. Bullying is often reported as a problem by parents as teachers may see this a 'karma' being played out by the children from former lives.

10. Claim: Children love Steiner Education.
No doubt many children do love the style of school offered by

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Waldorf. That it is not as academically demanding might be enjoyable for some children. One has to ask if enjoyment of school so the best measure of an education. And many do not enjoy their experience at all. Attrition/drop-out rates are often reported as high. Many parents realise their children are falling behind their peers and pull them out. Other children, if they are academically minded or need specialist help or skills, or need careful pushing or encouraging to overcome academic blockages, will not flourish. An important feature of the Waldorf style is having a single class teacher that children stay with for many years. A child's experience of school will depend almost entirely on the nature of that teacher, their skills, empathy and relationships. If that goes sour then a child has no escape.

For a longer read on the nature of Steiner Eduction see:

What Every Parent Should Know About Steiner-Waldorf Schools

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