Neutral Citation Number: [2021] EWHC 2008 (QB)

Case No: QB-2019-001740

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22 July 2021

Before :

THE HONOURABLE MR JUSTICE NICKLIN

- -

Between :

Jamal Hijazi	**Claimant**
- and -	
Stephen Yaxley-Lennon	**Defendant**

- -
- -

Catrin Evans QC and Ian Helme (instructed by **Burlington Legal LLP**) for the **Claimant**
The Defendant appeared in person

Hearing dates: 21-23, 26 April 2021

- -

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives and BAILII by email. The date of hand-down is deemed to be as shown above.

- -

Approved Judgment

The Honourable Mr Justice Nicklin :

1. At lunchtime on 25 October 2018, there was a short altercation between two pupils on the playing field of Almondbury Community School in Huddersfield ("the School"). Neither boy was hurt, but it set off a chain of events that has led, ultimately, to a libel action in the High Court. This is the judgment following the trial of this libel action. It is divided into the following sections:

A: The Claimant

2. The Claimant is now 18 years old. He came to the UK, in October 2016, after his family had been granted refugee settlement status under the Syrian vulnerable person resettlement programme.

3. After arrival in the UK, the Claimant was enrolled as a pupil at the School from 31 October 2016. At that stage, understandably, his English was assessed as very poor. The Claimant's first term at the School ended on 16 December 2016. The new term started on 4 January 2017.

4. Since the trial, in May 2021, the Claimant turned 18. Prior to that point, in the litigation, he was represented by a litigation friend.

B: The incident on 25 October 2018 and subsequent media coverage

5. As I have already noted, the event that has led to this libel action was a fight between the Claimant and another boy at the school, Bailey McLaren. At the time, the Claimant was 15 years old, and Bailey was 16. They were both in the same year at the School. The incident was recorded, almost certainly on a mobile phone, by another pupil. The clip lasts for 38 seconds. The video starts with Bailey McLaren walking, smiling, towards the Claimant and calling out to him. The Claimant, who ignores Bailey, can be seen to have his arm in a cast. This injury was caused in an incident on 1 October 2018 (see [56]-[67] below). Bailey has a bottle of water with him. He catches up to the

Claimant, and says "*what you saying now, then?*", a phrase that he repeats several times to the Claimant. The Claimant initially does not respond, and only replies "*nothing*" when the question is repeated by the older boy. Bailey then grabs the Claimant by the throat and forces him to the ground. On the ground, the Claimant lies on his back being held down by the throat by Bailey. Bailey continues to shout at the Claimant and, holding him down, pours water over his face from the bottle he was carrying. Whilst doing so, he shouts at the Claimant, "*you bastard… you bastard, I'll drown you*". After that, he releases the Claimant who gets up, and simply walks away. At no point does the Claimant offer any violence to Bailey or do anything to provoke the incident. In this judgment, I shall refer to the 25 October 2018 attack on the Claimant as "the Playing Field Incident".

6. It is impossible, from the recording, to identify any motivation behind the Playing Field Incident. No racial abuse is directed at the Claimant during the incident. There does appear to be an element of pre-meditation in the attack. I draw that conclusion from the fact that the video recording starts before the incident begins, and the person recording the footage is already walking directly alongside Bailey. The person making the recording, I infer, has already been made aware that Bailey is about to attack the Claimant and so begins recording in advance in order to capture what happens.

7. As appears to be common these days, the video of the Playing Field Incident was then shared amongst pupils at the School, shortly after the event. For reasons that will become apparent, this has become known as the "Viral Video".

8. The Claimant reported the Playing Field Incident to staff at the School. When the Claimant's parents saw the recording, they decided that the incident should be reported to the police. A copy of the police record of the complaint records it as a suspected hate crime, reported at 17.29 on 26 October 2018. The details of the incident are recorded as:

> "Victim was walking across playing fields within [school] grounds when suspect approaches victim, grabbing victim and pushing him to the floor. Suspect sits on top of victim and holds him by neck and squirts water from a bottle into victim's face. Victim then walked away from the scene. Other pupils from the school video the event. Victim believes this is a racially motivated attack due to being a Syrian refugee and Muslim."

9. Bailey was interviewed by the police on 6 November 2018. In his statement for these proceedings, Bailey claimed that he initially denied the Playing Field Incident to the police, but after they had shown him the Viral Video, he admitted his involvement. Bailey subsequently accepted a police caution for common assault.

10. The immediate events before the Playing Field Incident were the subject of some evidence during the trial. Earlier that morning, the Claimant and Bailey had both been together in a science lesson. There had been an incident involving the Claimant's coat, which the Claimant had thought that Bailey McLaren had stepped on deliberately. The Claimant swore at Bailey. Bailey admitted grabbing the Claimant by the throat. Bailey was excluded from the class and put 'on call', which meant he had to report to another area of the School.

11. An incident report was completed by the teacher. That record is dated 25 October 2018 and timed 12.36:

> "Something happened between Bailey & [Jamal]. It resulted in Bailey shouting at [Jamal] angrily about him swearing at him. At one point, Bailey had his hand at [Jamal's] throat. I got in between them and sent Bailey outside to calm down. After this, Bailey said 'I'll kill him!' and 'I'll headbutt him'. [Jamal] swore at this point 'F off'. Bailey said I will stab you with a knife (whispered)."

As I explain further below, many of the documents presented in evidence at the trial were redacted before they were provided to the parties. When I quote from documents, and it has been possible from the context to work out the name that has been redacted, I have included that in square brackets.

12. The underlined words in the record are in different handwriting. Bailey denies having threatened to stab the Claimant. The Defendant obtained a report from a handwriting expert which tended to confirm what was reasonably apparent to the untrained eye. He did not have permission for this expert evidence, but there was no suggestion that document was written by only one person. As I noted during the trial, there are other similar incident reports that have been included in the trial bundles. For example, the incident report of the incident on the school field later in the day has an annotation at the top "*Where is this statement from the classroom?*" in handwriting that appears similar to the underlined words. I have not received any evidence on how these incident reports are compiled, but I could readily imagine that, once completed and submitted, they are subject to review by more senior staff members, which may include the recording of comments or additional information relevant to the event. I do not need to resolve the issue, as it is not contended that the addition of the underlined words in the incident report was done for any nefarious purpose. The document has been supplied by the local authority from the School's records. There would be absolutely no reason for anyone at the local authority to tamper with the documents and it has not been suggested that anyone has.

13. Bailey provided his account of this incident, and the later Playing Field Incident, in a statement which was included in an incident report:

> "It all started on Thursday in Science when [Jamal's] coat got thrown on the floor and it landed on my feet but didn't notice so it looked like I kick[ed] it but I didn't. I then said sorry to him, which he took… the wrong way and told me to 'fuck off'. I ask[ed] him to repeat it. [He said] 'fuck off you white bastard' so I then reacted to him and grab[bed] him by his throat, which I am not pleased about myself, but I wasn't having someone call me that. And we left it at that for the time being but then I got told that he was laughing and joking about my stutter which I have problems with people making fun of and also saying that he was gonna stab me when he sees me. So I went to go confront him about this which he was smiling about which doesn't show in the video. I didn't want to do what I did but I wasn't having people taking the mick … so when I poured water over him I was looking to wash his mouth out. I just wanted to teach him a lesson. Sorry for my actions…"

The incident report is not dated, but the reference to the recording suggests that it was completed after the Viral Video had emerged. In his evidence at trial, Bailey said that it had been written before the Viral Video had received media attention.

14. Several further incident reports – containing the accounts of other witnesses to the Playing Field Incident – were collected by the School, including:

    i) one, dated 5 November 2018, from a pupil in Year 11, whose name has been redacted, which recorded:

    > "[Jamal] was bumped into accidently outside science by BMc.
    >
    > [Jamal] told BMc to 'fuck off'.
    >
    > What happened on the field was BMc teaching [Jamal] that he isn't someone you can just tell to 'fuck off'"

    ii) another, also dated 5 November 2018, from another Year 11 pupil, name also redacted, which recorded:

    > "Bailey accidently stood on [Jamal's] bag. [Jamal] told Bailey to fuck off and pushed him. Then whatever happened on the field happened. [Jamal] started it."

15. The Playing Field Incident was not the first time that the Claimant had been the victim of bullying behaviour. In his witness statement, the Claimant stated that, from his arrival at the School, in October 2016, until he left some two years later, he was subjected to bullying by other pupils. He said this:

> "… I was at Almondbury Community School for just over two years, from October 2016 to December 2018. Throughout this time, I was picked on by a lot of the other kids who would make fun of me whenever they got the chance. As I did not speak much English at the time, I could not understand a lot of the words but these other kids were laughing at me and this got worse. This often happened in the corridors at school and I would say 'I don't understand' and then they would often repeat what they had said by coming up to me and shouting in my face, but I still did not understand. The bullying became more regular over time, even as my language got better. It made me very unhappy…
>
> Because there were so many incidents, I cannot remember all of them now. Sometimes, things were so serious that the Council or even the Police had to get involved. I believe that the first one happened in December 2016 and that it resulted in a meeting with my parents and the head of faith at the school. I know that this was something to do with a student saying something about my family's religious beliefs. I do not remember exactly what this student had done because it was the first of many incidents like this where a nasty comment was made or I was called a bad name.
>
> After the video of water being poured on me went viral, I felt that there was no point in reporting incidents where I was bullied anymore. I had had enough and didn't want to go to school anymore. Even before this, there were some incidents that I did not report. For example, some of the students who bullied me would throw things over the top of the cubicle if I was in the toilet, or hold the door so I couldn't get out. Sometimes, they would show me a bottle of water, then squirt water at me. I didn't think it was worth reporting these incidents.

> There was one particular group of boys I had a problem with. These were a group of boys that included Bailey McLaren, the boy involved in the viral video... These boys were a very close group and were usually together. They seemed to have a problem with me and I don't know why.
>
> Most of them were there whenever they approached me and bullied me. Most of the time, I reported these incidents to a teacher and these students would call me a 'snitch' for reporting. I had to do a statement for the school each time I reported an incident. These students would always deny bullying me if a teacher spoke to them about it, and they would defend each other and say that they hadn't done anything wrong, and sometimes they would say that I had started an argument with them."

16. In his witness statement, the Claimant set out a series of incidents of bullying through 2017 and 2018, many of which are corroborated in the records of the School, including reports from teachers, and other contemporaneous documents, including a complaint of racist bullying that the Claimant submitted to the School's Governors on 4 October 2018. Importantly, the teacher who was the Claimant's head of house, considered that the Claimant was a victim of bullying but was concerned that it was difficult to obtain evidence that substantiated the Claimant's complaints. In an email to another member of staff, dated 6 June 2018, the head of house wrote, in relation to a complaint of bullying by the Claimant:

> "… Have we got any ideas who might have witnessed any of these incidents? Do we know whereabouts this was? These boys will all stick together and deny everything."

17. The Defendant has not challenged the Claimant's account of the bullying he claimed to have suffered at the School. In response to a question in cross-examination, the Claimant stated that he thought that there was a problem with racism at the School.

18. I accept that the Claimant was a victim of persistent bullying at the School, and that this is likely to have had a racial element. It is difficult to make clear findings because the bullying the Claimant suffered was carried out by several pupils, not just Bailey McLaren, although the Claimant certainly regarded Bailey as the ringleader. The School did attempt to deal with the bullying, but its efforts were not successful, mainly because it was difficult to obtain corroborative evidence.

19. However, there was evidence of the Playing Field Incident on 25 October 2018 in the form of the Viral Video. The School took the decision, based on this incident, together with other previous incidents of misconduct, permanently to exclude Bailey from the School. Bailey's parents were notified of the decision, on 12 November 2018, in a letter from the headteacher.

20. Permanent exclusion of a pupil from school is a measure of last resort. On 16 November 2018, the headteacher prepared a report on Bailey's permanent exclusion for the School Governors. I have not set out details from the report in this public judgment because I consider that it would be unfair to Bailey to embed, in the public domain, matters that relate to incidents when he was a child. It suffices to record that the Playing Field Incident was the last in a series of serious disciplinary issues which the headteacher had concluded justified Bailey's permanent exclusion. In fairness to Bailey, I should record that his school record also showed that he also received praised for mature and positive

contributions. For example, he was commended early in the Autumn term of 2018 for having defused an argument between two other pupils and encouraging each to walk away from the situation. Bailey was also recognised as having leadership skills. It is also important, in the context of these proceedings, to record that the report of the headteacher on Bailey's exclusion, although it concluded that Bailey had been guilty of bullying of other pupils, did not suggest that his bullying – or the Playing Field Incident – was racially motivated. It has only been necessary for me to refer to Bailey's permanent exclusion at all, in this judgment, because the Defendant has suggested that the decision to exclude Bailey was politically motivated and taken because of pressure arising from media reporting of the Playing Field Incident. As I shall shortly demonstrate, that is not correct. Bailey was permanently excluded from the School at least two weeks *before* the Viral Video received any media attention. The reasons justifying his exclusion were recorded in the contemporaneous documents to which I have referred.

21. The Viral Video was posted on social media on or around 27 November 2018 and went viral. In a short period of time, many people commented on the Viral Video on social media channels, including some MPs. A fundraising page was set up for the Claimant's family. This led to newspaper reports of the Viral Video. The first article, apparently, appeared in the *MailOnline* on 27 November 2018 under the headline: "*'He escapes war and tyranny, only to be bullied by some low-life thug in the UK': massive outpouring of support for 'water-boarded' Syrian refugee, 15, as donations soar past £108,000 after attack that shocked the nation.*" The *MailOnline* article also made the Viral Video available to readers as part of its coverage. The article, which did not name Bailey, claimed that he had previously posted far-right material and had shared posts from the Defendant. Although there was no direct evidence that the Playing Field Incident had been racially motivated, the event quickly became perceived as an example of racist bullying. An article in *The Sun* on 28 November 2018 was published under the headline: "*'I'M NO BULLY' Shameless 'bully' who 'waterboarded' Syrian classmate blames the VICTIM and says he's not racist*". A further article, published later that day by *The Sun*, reported that Bailey's family had been "*driven out of [their] home in the middle of the night by vigilantes*".

C: The Defendant and posting of the First and Second Videos on Facebook

22. It was in the midst of this media controversy over the Playing Field Incident that the Defendant decided to add his contribution. In 2018, the Defendant used his Facebook account as a principal platform for communicating and publicising his views. He posted two separate videos of him speaking about the Playing Field Incident on 28 and 29 November 2018 (the "First Video" and "Second Video"). An agreed transcript of what the Defendant said in these two videos is set out in the Appendix to this judgment. What the Defendant said in those videos has led to these libel proceedings.

23. The Defendant is a well-known public figure on the political right, perhaps better known by the name Tommy Robinson. He became a member of the British National Party in 2003, at the age of 20, but did not renew his membership. He was co-founder of the English Defence League in 2009, but left the organisation in 2013. In November 2018, he was appointed as an advisor to Gerard Batten, then the leader of the UK Independence Party. More recently, the Defendant has described himself as a journalist. The Claimant has described the Defendant as a "*far-right provocateur who has used his public notoriety to spread extremist hate speech*". As the Defendant's views are not

on trial in these proceedings, it is sufficient for me to record that the Defendant is a controversial figure who tends to polarise opinion between those who support and those who oppose him and his views.

24. In the initial phases of the litigation, the Defendant was represented by solicitors and experienced Counsel, including Leading Counsel. Since early this year, the Defendant has been representing himself. He has done so because, on 2 March 2021, the Defendant was declared bankrupt.

25. The Defendant has therefore taken on the burden of representing himself at the trial of this action. I recognise that this has been a difficult job, as it can be for any litigant in person. The Defendant has had the assistance of a McKenzie Friend, Daniel Lockwood throughout the trial. It was clear to me that Mr Lockwood has provided significant support and assistance to the Defendant. At the end of the trial, I acknowledged that the Defendant, with the assistance of Mr Lockwood, had conducted himself properly throughout the trial. He complied with all the Court's directions and there were only a couple of instances when I had to intervene in respect of some of the questions asked of witnesses.

D: The Claim and the determination of the meaning the First and Second Videos.

26. The Claimant commenced his claim for libel on 15 May 2019.

27. As is now common in defamation proceedings, the Court resolved some of the issues in dispute at earlier stages in the claim. There are two previous judgments of the Court in this action, which set out more of the background to the claim [2020] EWHC 934 (QB) and [2021] EMLR 7. The Defendant's two Facebook videos were described in paragraph [1] in the first of those judgments.

28. In the first judgment, handed down on 21 April 2020, I determined the natural and ordinary meaning of the two videos published by the Defendant (see [18]-[19] of the first judgment). The meaning of the First Video was:

> "The Claimant had (1) as part of a gang, participated in a violent assault on a young girl which had caused her significant injuries; and (2) threatened to stab another child"

In this judgment, I shall refer to these as Imputations 1 and 2.

29. The meaning of the Second Video was held to be:

> "The Claimant had, as part of a gang, participated in a violent assault on a young girl which had caused her serious injuries."

30. It is perhaps important to note at this point that, in the decision on meaning, I rejected the Defendant's suggested meaning of "*as part of a gang, the Claimant has committed serious acts of violence against a schoolgirl*" on the basis that it "*fails to capture the gravity of the allegation being made against the Claimant… and ignores, completely, the allegation of a threat to stab the boy that is made clearly in the First Video*": [5], [17] and [22].

E: Extent of publication and serious harm to reputation

31. The Defendant has admitted substantial publication of the First and Second Videos. At the relevant time, the Defendant's Facebook account had over 1 million followers. Precise figures for the extent of publication of the First and Second Videos are unavailable, because his Facebook account was closed. However, the Defendant has admitted that there were around 850,000 direct views of the First Video with around 20,000 "shares". The relevant figures for the Second Video are admitted to be around 100,000 and 4,000, respectively. As the Claimant was only identified by his first name, in each Video, the Defendant contends that he would only have been defamed to those people who watched each Video and could identify the Claimant by his name and would know that the comments were directed at him: see ***KC -v- MGN Ltd*** **[2013] 1 WLR 1015** [48]-[49]. Nevertheless, the Defendant has admitted that, because of the seriousness of the Imputations 1 and 2, and the extent of publication, the requirements of s.1 Defamation Act 2013 (serious harm to reputation) are met.

F: The Defendant's Defence

32. In his original Defence, the Defendant advanced a defence of truth to the Claimant's claim. Subsequently, he applied to the Court for permission to amend his Defence to add a defence of public interest under s.4 Defamation Act 2013. In the second judgment, handed down on 16 November 2020, I refused that application, but I did permit some minor amendments to the Defendant's truth defence. I left open the possibility that the Defendant could reapply to rely upon a public interest defence (see [53]) but, ultimately, he did not do so.

33. In consequence, the only substantive defence relied upon by the Defendant is a defence of truth under s.2 Defamation Act 2013. I permitted some further amendments to the Defendant's defence of truth shortly before the trial. At trial, the Defendant sought to establish that Imputations 1 and 2 are substantially true.

34. Following amendment and striking out of some paragraphs of the Defence prior to trial, the Defendant's defence of truth relied upon the following incidents:

    i) An incident, between January-February 2017, when it is alleged that the Claimant "*made an unprovoked attack upon a fellow female pupil, Charly Matthews. He came behind her and struck her forcefully between the shoulder blades with a weapon in the form of a hockey stick with great force*" ("the Hockey Stick Incident").

    ii) On an unidentified occasion, the Claimant is alleged to have acted in concert with three young girls in attacking EYW. Whilst the three girls were beating EYW, the Claimant is alleged to have joined in and bitten EYW on the head ("the Group Attack Incident").

    iii) The Claimant is alleged persistently to have bullied a 12-year-old male child, BWI. The Claimant was 15 years old at the time. As part of this alleged bullying, the Claimant is alleged to have put BWI in an "*extreme headlock*". When another child intervened, to protect BWI, the Claimant fell to the floor and fractured his arm. He is alleged to have racially abused BWI's mother by calling her a "*white fat bitch*".

iv) The Claimant is alleged frequently to have been verbally aggressive towards female students and female teachers.

v) On the day of the Playing Field Incident, the Claimant is alleged to have threatened to stab Bailey McLaren.

vi) On a separate unidentified occasion, the Claimant is alleged to have stabbed a fellow pupil with a sharp-pointed object.

vii) The Claimant is alleged to have been caught in possession of a knife and screwdriver whilst he was in school.

35. The Hockey Stick Incident and the Group Attack Incident are relied upon by the Defendant to establish the substantial truth of Imputation 1, albeit without any pleaded case advanced as to the seriousness of any injuries caused to Charly Matthews or EYW. The Defendant relies upon the alleged threat to stab Bailey McLaren to prove the substantial truth of Imputation 2.

36. Most of the other incidents relied upon by the Defendant were included in his original Defence and the Claimant raised no objection to them. They have been expanded, slightly, by amendment, with the Court's permission. The Defendant was allowed to rely upon these further incidents because, if he were able to prove them, then, although they would not themselves prove the substantial truth of Imputations 1 and 2, he might be successful in demonstrating that the Claimant had a propensity towards bullying and violent behaviour. In turn, he could rely upon this propensity as lending evidential support to the main incidents upon which the Defendant was relying to prove the substantial truth of Imputations 1 and 2. I have only excluded from the Defendant's defence of truth matters that are either incapable of proving the truth of Imputations 1 and 2, for example allegations relating to the conduct of the Claimant's sister, or matters for which the Defendant has no evidence in support and therefore no prospect of success. The Defendant has been given the fullest opportunity to prove the truth of his allegations in these proceedings.

G: The defence of truth: s.2 Defamation Act 2013

37. The old common law defence of justification has been repealed and replaced with a statutory defence of truth. s.2 Defamation Act 2013 now provides:

> "(1) It is a defence to an action for defamation for the defendant to show that the imputation conveyed by the statement complained of is substantially true.
>
> (2) Subsection (3) applies in an action for defamation if the statement complained of conveys two or more distinct imputations.
>
> (3) If one or more of the imputations is not shown to be substantially true, the defence under this section does not fail if, having regard to the imputations which are shown to be substantially true, the imputations which are not shown to be substantially true do not seriously harm the claimant's reputation."

38. The imputations that the Defendant seeks to prove substantially true are set out in [28]-[29] above.

39. A defendant relying upon a defence of truth must establish the "*essential*" *or* "*substantial*" truth of the sting of the alleged libel. The court should not be too literal in its approach. Proof of every detail is not required where the relevant fact is not essential to the sting of the publication. The task is "*to isolate the essential core of the libel and not be distracted by inaccuracies around the edge - however extensive*": ***Bokova -v- Associated Newspapers Ltd*** **[2019] QB 861** [28(i)-(ii)]. The principles to be applied are conveniently set out in the judgment of Nicol J in ***Depp -v- News Group Newspapers Ltd*** **[2020] EWHC 2911 (QB)** [38]-[44].

H: The evidence at the trial

(1) Witnesses

40. At trial, the Claimant and his father, Jihad Hijazi, gave evidence and were cross-examined by the Defendant.

41. The Defendant did not give evidence. He called five witnesses at the trial in support of his truth defence: AYQ, Bailey McLaren, BWI, Charly Matthews and OTP. Each witness had been a pupil at the School at the relevant time. Some of the witnesses were still under the age of 18. I made reporting restrictions to protect the identities of several of them and have used three letter ciphers in this judgment to protect the identities of these witnesses.

(2) Documents

42. The other main source of evidence are the substantial school records that have been obtained in relation to several pupils at the School, including, in particular, the Claimant, Bailey McLaren, Charly Matthews and OTP. Both parties have obtained these records, usually following subject access requests made by, or on behalf of, the relevant pupil. Understandably, before being provided in response to the relevant subject access request, the records were redacted by the local authority to remove information relating to third parties. Before the trial, the Defendant expressed concern about some of the redactions. There are examples where more than one copy of a document has been provided, probably in response to different requests, in which the redactions are slightly differently. I am satisfied that this variance is not because of anything sinister or untoward. It is likely, simply, to reflect idiosyncrasies in the approach to redaction of the records carried out, probably, by different people on separate occasions. There has been no challenge to the authenticity or admissibility of disclosed documents that were included in the trial bundles. Pursuant to CPR 32.19 and Practice Direction 32 §27.2, they are to be treated as authentic and admissible.

43. In this case, the School records are, in my judgment, important for two main reasons. First, they are contemporaneous records of events at the School. That is not to say that they can be relied upon necessarily as demonstrating the truth of what happened in various incidents. Many of the documents simply record what was said by those who claimed to have witnessed or been involved in the events. In places, those accounts conflict. Nevertheless, they are valuable as contemporaneous records of the various accounts. Second, they are important in the assessment of the credibility of some of the witnesses: see discussion in ***Lachaux -v- Lachaux*** **[2017] 4 WLR 57** [35]-[37] *per* Mostyn J. As explained by Arden LJ in ***Wetton -v- Ahmed*** **[2011] EWCA Civ 610** [14], contemporaneous documentation is of "*the very greatest importance in assessing*

credibility". Sometimes, the importance comes from what is contained in the relevant documents, but equally what is absent from the documentation or records can also be evidentially significant. As Arden LJ observed:

> "… if the judge is satisfied that certain contemporaneous documentation is likely to have existed were the oral evidence correct… then the documentation may be conspicuous by its absence and the judge may be able to draw inferences from its absence."

(3) Hearsay Evidence

44. Before the pre-trial review, held on 22 March 2021, the Defendant provided the Court and the Claimant's solicitors with a series of links to video recorded interviews (or edited extracts of interviews) with various individuals. He gave a general indication that he intended to rely upon these video recordings as hearsay evidence. This was an unorthodox method of presenting evidence, not least because it was clearly apparent from the recordings that most of the interviews had been carried out without the subject of the interview being aware that s/he was being recorded. In one of the interviews, the Defendant indicated that he was gathering material to make a programme about the case after the trial.

45. I made directions for the proper service of these video recordings and the identification of the particular passages in the interviews upon which the Defendant wished to rely as hearsay evidence. The Defendant duly served hearsay notices – under the Civil Evidence Act 1995 – in respect of three individuals and provided extracts of the parts of their interviews upon which he wished to rely. The three interviewees were: EYW's mother; another pupil at the School, MVY, and a former teacher at the School ("the Former Teacher"). I will not name the Former Teacher in this judgment as he was clearly unaware, at the time he spoke to the Defendant, that he was being recorded. Indeed, the Former Teacher told the Defendant that he was not permitted to speak about events at the School, so I consider that it is highly unlikely that the Former Teacher would have given his consent for any interview to be recorded.

46. When assessing hearsay evidence, the Court's task is generally to determine the weight (if any) to be attached to the evidence. s.4 Civil Evidence Act 1995 provides:

> "(1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.
>
> (2) Regard may be had, in particular, to the following—
>
> (a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;
>
> (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;
>
> (c) whether the evidence involves multiple hearsay;

(d) whether any person involved had any motive to conceal or misrepresent matters;

(e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;

(f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight."

47. In ***Miller -v- Associated Newspapers Ltd*** **[2012] EWHC 3721 (QB)**, Sharp J noted:

> [36] … As the authors of *Phipson on Evidence*, 17th edition, say at paragraph 29-15 "the [Civil Evidence] Act is not intended to provide a substitute for oral evidence. The basic principle under which the courts operate is that evidence is given orally with cross-examination of witnesses, and the admission of hearsay evidence is, and should be the exception to the rule. Caution should be exercised before tendering important evidence through hearsay statements. Hearsay evidence is better used where the evidence is peripheral or relatively uncontroversial."
>
> [37] It seems to me that selective snippets of hearsay from individuals who have not been called, particularly where it has been "cherry picked" from material which casts it in a different light, provides an obviously unsatisfactory evidential basis upon which to invite a court to find facts and/or draw adverse inferences whether as to the conduct of those individuals or anyone else. In a sense, it is Hamlet without the Prince. There may be cases where hearsay evidence and/or the contemporaneous documents in combination provide persuasive evidence, but in my judgment, they did not do so here. It is no answer to the problematic nature of the hearsay evidence relied on in this case for the Defendant to suggest… that it was open to Mr Miller either to call the relevant individuals himself, or require their attendance for cross-examination. The burden is on the Defendant to prove its case; and the tendering of hearsay evidence which lacks weight for various reasons doesn't cast any burden on a claimant to require the witness concerned to be called for cross-examination let alone to call the person concerned as his or her own witness.

The Judge's approach was upheld on appeal: [2014] EWCA Civ 39 [31]-[40].

48. Relying on the same principle, in ***Hourani -v- Thomson*** **[2017] EWHC 432 (QB)** [25], Warby J stated, as a general proposition: "*that it is unsatisfactory to introduce important evidence by means of selective extracts from hearsay written statements*."

49. In respect of the hearsay evidence from the child, MVY, there is an additional consideration. s.5(1) Civil Evidence Act 1995 provides:

> "Hearsay evidence shall not be admitted in civil proceedings if or to the extent that it is shown to consist of, or to be proved by means of, a statement made by a person who at the time he made the statement was not competent as a witness. … [A] child shall be treated as competent as a witness if he satisfies the

requirements of section 96(2)(a) and (b) of the Children Act 1989 (conditions for reception of unsworn evidence of child)."

50. s.96(2) Children Act 1989 provides:

> "The child's evidence may be heard by the court if, in its opinion—
>
> (a) he understands that it is his duty to speak the truth; and
>
> (b) he has sufficient understanding to justify his evidence being heard."

51. I have watched, again, the extracts of the recordings of the interviews with EYW's mother, MVY and the Former Teacher. It is quite apparent from the recordings that none of the individuals was aware that s/he was being recorded.

52. I will deal with specific points that arise on this hearsay evidence when I come to deal with the various incidents but, as a general proposition, the Court must be cautious when assessing the weight that can be attached to evidence that has been obtained by covertly recording an individual. There may be circumstances in which the surreptitious recording leads to the witness giving a candid and truthful account that s/he might not have been prepared to give if s/he thought that his/her words were 'on the record'. On the other hand, covert recording may give rise to the risk of the witness not telling the truth, or embellishing his/her account. As I noted at the pre-trial review, individuals who were covertly recorded by the Defendant may be genuinely shocked to discover that what they had said to the Defendant has been presented as evidence to the Court during a High Court libel trial.

53. The transcript of the discussion with MVY, recorded on 7 March 2021 and relied upon by the Defendant, raises several issues as to the reliability of, and weight to be attached, to the evidence:

> Defendant: 'Cos he gets caught with a knife and I've got proof he got caught with a knife. And a screwdriver. He gets caught with a knife and a screwdriver in his bag. Now their whole thing is it's because he was scared. He was scared in school. Would he have been scared?
>
> MVY: [shakes his head] there's no reason for him to be scared to be honest.
>
> …
>
> Unidentified: Yeah but nobody liked him.
>
> MVY: He had friends. That's the thing, he had friends. He chilled with people. But it's not like he was the most hated in school.
>
> Defendant: What would the reasons be for people not liking him?
>
> MVY: Being an idiot to people. Trying to cause fights. That's it.
>
> Defendant: Yeah. He caused them?
>
> MVY: Mostly, mostly.

Defendant:	What about with younger pupils?
MVY:	The only one I can think of is [BWI].
Defendant:	[BWI], yeah. I've got that nailed to be honest.
MVY:	'Cos he's the one he had a fight with.
Defendant:	Was it a fight as well?
MVY:	It was just Jamal punching him really. [BWI] backing off and Jamal trying to throw punches at him.
Defendant:	OK. and on the Bailey thing. So, you went to school with Bailey?
MVY:	Yeah.
Defendant:	Racist?
MVY:	No
Defendant:	Nothing at all?
MVY:	[shakes his head]
Defendant:	No. Cos you said he was all right at first.
MVY:	Yeah he was alright. When he first came to the country he was not talkative at all but then when he got in was talkative. He was a nice boy at first and then he just changed randomly out of nowhere, like, somewhere at end of year 9 beginning of year 10 he started being an idiot towards people.
Defendant:	Which coincides with school records. What about, your mum said something about he put something between his hands?
MVY:	Ah yes, it was a compass. I remembered it yesterday just as you went. It was a compass. He got a compass and he was going around like 5 students going yes, yes, and when he got to me, he went [smacks his hand] proper hard into me. Made me bleed and everything. And I think it was [name of teacher] that proper gave him a telling off.

54. Quite apart from the fact that MVY is unaware that he is being recorded (giving rise to issues under s.5 Civil Evidence Act 1995 and s.95(2)(a) Children Act 1989), that short transcript extract also raises issues about the Defendant's use of leading questions, prompting from an unidentified third party, whether MVY directly witnessed events he recounted (or whether he was repeating simply what he had been told), and contains a clear indication that MVY had given further information, not recorded in the extract provided by the Defendant, thereby preventing an assessment of the totality of his account. These are all matters – in addition to the specific factors identified in s.4(2) Civil Evidence Act 1995 – which must be considered when I come on to assess the weight to be attached to this hearsay evidence.

I: Incidents relied upon by the Defendant in support of the truth defence

55. In this section of the judgment, I will deal with each of the incidents relied upon by the Defendant in support of his defence of truth. I will resolve any relevant disputes of fact and state my conclusions as to the credibility of the witnesses. I will deal first with what I have identified as the matters relied upon by the Defendant as going to alleged propensity on the part of the Claimant towards bullying and violent behaviour (Sections (1) to (4)) before turning to consider, in light of my findings on those matters, to the key incidents relied upon by the Defendant (Sections (5) and (6)).

(1) Alleged bullying of BWI by the Claimant

56. In the Playing Field Incident, the Claimant can be seen with his arm in a plaster cast. It is common ground that the Claimant fractured his wrist as a result of an incident at the School, on 1 October 2018, involving BWI (who was then in Year 8) and some other children. The injury required surgery and the Claimant's arm was in a cast for 6 weeks after the incident.

57. The incident with BWI has to be considered in the context of the Claimant's evidence that he was a victim of bullying at the School, and that this incident was part of this.

58. The Claimant's evidence about the incident with BWI was that he had been going to the library, with a friend, when they came across Bailey McLaren and other members of his group of friends. With them was BWI, who was a few years younger. He claimed that Bailey had given BWI a bottle of water and BWI had then thrown the water in the faces of the Claimant and his friend. The Claimant said that he gave his school bag to his friend and then chased after BWI to get the water and to ask why he had done it. He seized the water bottle and threw it to the ground. The Claimant was then grabbed by other boys who held his arms behind his back and encouraged BWI to fight him while he was restrained. The Claimant struggled but could not release his arms. He alleged that BWI had tried to grab his throat. The Claimant was released and then another boy pushed him to the ground. As a result of the fall, he fractured his arm. The Claimant denied having put BWI in a headlock. When cross-examined by the Defendant, the Claimant maintained his account. He added the BWI had been swearing and kicking him during the incident.

59. BWI's account of the incident, in his witness statement, was short:

> "[In the Viral Video], Jamal could be seen wearing a plaster cast on his arm and it was widely said that this was a result of bullying. I wish to point out that this was not the case. That happened after a confrontation between myself and Jamal, when he had been calling my mum a 'white fat bitch'… When he said that about my mum I went up to him even though he was three years older than me. I was angry at what he'd called her and threw a plastic bottle at him. Jamal grabbed me and put me in a headlock and was really hurting me. Lots of people saw it. One boy stopped Jamal by pushing him off. He fell awkwardly and hurt his arm on the ground. That was why he was wearing a plaster cast, not because he was bullied, but because he was bullying me."

BWI did not claim that this incident was part of any campaign of bullying by the Claimant.

60. When BWI gave evidence at trial, he confirmed his witness statement and then the Defendant asked him some further questions. He confirmed that he was aged 12, when the incident happened, and he was now 15. The incident, he said, had taken place when the Claimant had been making his way across a school field. BWI was with MVY and a couple of other boys. He stated that Bailey McLaren was not there and that he was in the cafeteria.

61. When cross-examined, BWI confirmed that he had not written his witness statement and that someone had done it for him. Bailey McLaren was, he said, someone he knew through his sister as she was a mate of his. Asked how well he knew Bailey, on a scale from 1 to 10, BWI stated "7". He denied that Bailey had provided him with the bottle of water, and claimed that the bottle had been in his pocket as he had been playing football. He denied that anyone held the Claimant's arms behind his back during the incident.

62. In his witness statement for trial, OTP stated that he had witnessed the incident with BWI:

> "On another occasion Jamal was grabbing a much younger kid, from about Year 7, and Jamal was in Year 11. He put this kid in a headlock and a friend of mine went over and threw Jamal off him, just as anyone would, breaking up a fight. Except this wasn't a fight, this was a one-sided brawl. This kid was not match against Jamal, he didn't come up to Jamal's shoulder. My friend pushed him off the boy and Jamal fell against the kerb and hurt his arm. Jamal had been picking on this kid for a week or so, pushing him, tripping him up. My friend had seen him doing it and he'd had enough. He said 'you're not doing this any more' and pushed him off him. That was all."

63. When cross-examined, OTP stated that he was at the top of the field when the incident started sitting on a bench on the other side of a road and was "*quite a way away*". He said that his recollection was "*a bit hazy*". He said that his attention had been drawn to what was going on when he heard BWI shouting, and he had gone over to see what was going on (a point he had not included in his statement). He claimed to have seen the Claimant's arms "*flailing*". Asked why that detail was not included in his witness statement, he said that he was not sure whether they had made contact so that was why it was not included.

64. The Claimant completed an incident report in relation to the incident on 8 October 2018. In it, he claimed that a boy in year 8 had come up to him and thrown water at the Claimant and his friend, then:

> "For no reason, when I was trying to take the water off him [redacted] came and he held me [back] and start saying to [redacted] to bang him. I was trying to [defend] myself and [redacted] came from my back and he bust me real hard with his shoulder and I fell and I went to the medical room and they gave me ice to put on my hand. I was using deep spray at home. I told my mum and dad and I was scared to go to hospital. After four days I went to hospital. I was still scared and my hand was broken and [BWI] is saying I [swore] at his mum and I think that is not correct."

65. A document has been provided – I understand in response to a subject access request by the Claimant – which sets out extracts from various incident reports completed by other unidentified pupils relating to the incident:

    i) In an incident report, dated 4 October 2018, one pupil (who, from the contents, appears to be BWI) recorded: "*Jamal was talking about mine and [redacted]'s mum… I squirted water in Jamal's face and then Jamal pushed me and punched me in the stomach.*"

    ii) In an incident report dated 10 October 2018, another pupil recorded, "*[redacted] held Jamal back… he was swinging at [redacted]*."

    iii) In an undated incident report, a third pupil reported, "*Jamal walked over to [redacted] and called his mum a slag and a prostitute… threw water in [Jamal's] face… Jamal started punching [redacted] in the face and missed so he went for his stomach… I pushed Jamal and he rolled over and held his head…*"

    These entries may not give the full picture. If they have been provided in response to a subject access request by the Claimant, other parts of the incident report (if there are any) which do not directly refer to him will not have been disclosed. It is clear, however, that there is no reference in any of these accounts to the Claimant having held BWI in a headlock or the incident having started when, as BWI claimed in his evidence at the trial, the Claimant had called his mother a "*white fat bitch*", although the third pupil's account does allege abuse of BWI's mother.

66. There are also two emails about the incident.

    i) The first is an email from a teacher to another member of staff responsible for the Claimant's work placement, sent at 12:53 on 5 October 2018:

> "Parents are frustrated and angry that the person who pushed Jamal had no consequence. However what I assume Jamal did not tell them was that the person who pushed him out of the way was defending [redacted] who Jamal had allegedly pushed/hit and was having an argument with…"

    ii) The second is an email, from one member of staff to another, sent at 19.16 on 11 October 2018:

> "I'll call you in the morning to discuss this but in brief all the statements, apart from [the Claimant's] state that [the Claimant] said something to [BWI]. [BWI] then tried to squirt water at [the Claimant]. [The Claimant] then started punching [BWI] and was bent over him. Pupil B saw what was happening and pushed [the Claimant] off [BWI]. As he was pushed… [the Claimant] rolled over and fell on the floor.
>
> [The Claimant] went to seek medical attention in school which was given. Parents were advised to take [the Claimant] to A&E to have it checked out. [The Claimant] was taken to A&E a few days later when it was discovered that he had broken his arm…

> The police have been into the school to interview the boys and I believe they have given the same stories."

67. I can state my conclusions on this incident shortly. The Defendant contends that this incident shows that the Claimant has a propensity to use violence and is a bully. In my judgment it does not establish either. BWI did not claim in his evidence that he was bullied by the Claimant. The Defendant has not demonstrated that, in the incident with the alleged headlock, the Claimant was the aggressor. I think it is more likely than not that the Claimant was the victim of the violence that was used and that this was another incident of bullying at the hands of boys older than BWI, but BWI was willing – perhaps to curry favour with the older boys – to involve himself in the incident. The Claimant may have fought back, but this is likely to have been in self-defence. I have set out my conclusions about other aspects of OTP's evidence below (see [76] and [114]-[116]). I cannot accept his evidence as truthful. He appeared to me to tailor his evidence in a way that he thought supported the account that he had heard BWI give in evidence. His evidence about this incident was unconvincing, embellished in the witness box, and I cannot accept it as reliable or credible.

(2) The Claimant's alleged verbal abuse of and towards girls and women

68. The Defendant's evidence in support of the Claimant allegedly having a propensity verbally to abuse girls and women came from AYQ, in relation to a specific incident, and generally from Bailey McLaren, Charly Matthews and OTP.

69. In her witness statement, AYQ gave the following evidence:

> "I think it was while I was in Year 10 that I became aware of a new student called Jamal Hijazi. He was in the school year above me. I would mostly see him around school or occasionally walking home from school, or at the shop which was across from my home and up the road from where his family lived.
>
> I never had reason to talk to him at school, but I was aware that he used to just start on girls, mostly younger than him, for no reason at all. Mostly he would call them names or given them dirty looks. This behaviour started as soon as he joined the school. I never thought he would start on me though.
>
> A few months before the incident with Bailey McLaren, I was walking home from school and up towards the shop. Jamal was there and just started calling me names, he called me 'a tramp, ner, ner, ner… you tramp'. I was alone but there were people around, a few younger pupils walking home, but they thought nothing of it because he did this all the time.
>
> I said to him 'what have I done, why are you starting on me?' I was more shocked than anything. The he started spitting at me, all over, I was covered, my school uniform was covered. I tried moving away from him, and then he went to hit me. He just caught my face.
>
> I shouted 'what's your fucking problem?' He just shouted back, 'fuck off you tramp' and stuff like that, then he turned around towards his home down a cul de sac.

> I went home and told my mum and she phoned school and reported what had happened. They said that because it had happened outside school there was nothing they could do about it."

70. When cross-examined, AYQ stated that the incident she described had happened at the back gate of the School. She said that she had not considered reporting the matter to the police.

71. Dealing with AYQ's allegations, in his witness statement, the Claimant denied that any such incident had happened. He stated that he had never had an argument with AYQ. As to the alleged details of the incident, the Claimant stated that he and AYQ did not leave the School by the same route to go home. He said that he left by the back door because it was a lot closer to his home whereas she left by the front.

72. I do not accept AYQ's evidence. It is not credible, and it is not supported or corroborated by any other evidence. AYQ was inconsistent about the place where the incident happened and whether she had actually been struck by the Claimant, a detail that she would not have forgotten. There are no corroborating documents. Given its seriousness, had AYQ's mother reported the incident to the School, as claimed, I am satisfied that there would have been a record of her complaint. Even were it true that the Claimant could not be disciplined about the incident because it had taken place "*outside school*" – and ignoring AYQ's evidence in the witness box that the incident had happened by the back gate of the School – at the very least, as a serious behavioural issue towards a fellow pupil, the Claimant would have been challenged about it and the incident recorded by the School. The main point of recording such incidents is to enable the School to identify patterns of behaviour. In any event, the suggestion that AYQ's mother was told that the School could do nothing because the incident took place "*outside school*", does not ring true. AYQ's mother did not herself give evidence, and this appears simply to be an effort to advance a reason for why there is no record of the incident, despite the mother's alleged complaint to the School. I also consider that, had she been told by staff at the School that nothing could be done about what amounted to a serious assault on her daughter, she would be likely to have taken the matter further, possibly by reporting it to the police. In summary, had the incident happened, and had it been reported to the School as alleged, there would be records. There are none.

73. There is also the lack of any motive or explanation for what is behaviour that was completely out of character for the Claimant, based on his school records. More generally, AYQ's credibility was damaged by her willingness in her witness statement gratuitously to add (or allow to be added) more general allegations of abuse of women and girls by the Claimant. I accept as truthful the Claimant's denial that any incident as alleged by AYQ happened.

74. Similar non-specific allegations that the Claimant has been abusive towards women and girls were included in the witness statements of Bailey McLaren, Charly Matthews and OTP. I am not going to set out this evidence. I can attach no weight to generalised allegations of this kind which contain no details of the incidents said to demonstrate this behaviour. As I suspect was intended, the absence of detail prevents the examination or investigation of any individual event to establish whether the evidence demonstrates any alleged misconduct by the Claimant.

75. Moreover, I am satisfied that if the Claimant had behaved so repeatedly in the abusive manner alleged, including to members of staff, then this would have been recorded in the Claimant's school records. There is no trace of any such behaviour by the Claimant in these records. On the contrary, his behavioural record is overwhelmingly positive.

    i) The few negative entries that there are demonstrate that he was prone, on occasions, to silly and disruptive behaviour in class and he was also warned about his punctuality and attendance record.

    ii) There are two entries – in the summer of 2018 – recording physical aggression towards another pupil. There are also isolated records of the Claimant not telling the truth, for example lying about whether he had permission to be out of class.

    iii) Generally, however, the records show that poor behaviour by the Claimant was very much regarded by staff as being out of character.

    iv) The Claimant's last Form Tutor's assessment, in July 2018, was as follows:

> "Jamal is a polite and well-mannered pupil. However, Jamal should try to use his initiative and work independently, more frequently, and in all lessons. He should aim to challenge himself in order to progress both within lessons and outside school. He should not be prepared to settle for completing the minimum amount of work, instead pushing himself to complete work to a high standard allowing him to access his full potential. The skill to work independently becomes increasingly important as we approach Y11, especially when revising for GCSE exams. Jamal must improve his attitude and work rate in all subjects especially Maths and English; stay on task; refrain from being disrupted and leave non-school issues outside the classroom…"

76. The Defendant has claimed, as part of his case, that the Claimant has not told the truth about whether he was punished for bad behaviour by being sent to "isolation" (a form of temporary but immediate exclusion from a lesson) whilst he was at the School. The Claimant's school records do not show that he was ever sent to isolation. I have noted that in the Claimant's records there are several entries recording "*Detention given – Pastoral*". No attention was paid to these entries during the trial, and I have no evidence or explanation as to what this means. But it is clearly a different response from "Detention", which appears in the records of other pupils. It also appears that there was a hierarchy of detentions, escalating to Senior Leadership detention and ultimately Head Teacher detention.

77. The Defendant relies upon the evidence of the Former Teacher, who on occasions used to supervise isolation and who told the Defendant that the Claimant "*was in isolation loads of times*"; and the evidence of OTP said in his witness statement claimed that the Claimant had been sent to isolation for attacking someone on an unidentified occasion. When he gave evidence at trial, the Defendant showed OTP what the Former Teacher had said and asked whether it was correct that the Claimant had never been in isolation. OTP replied that the Claimant had been there "*multiple times*" with him and the Former Teacher. In fact, although OTP's school records appear to confirm that OTP was sanctioned with detention on many occasions (sometimes on a daily basis), there is only one record of OTP being sent to isolation. Further, comparison of the records of the

Claimant and OTP shows that there was not a single occasion when the Claimant and OTP attended any form of "detention" on the same date. I deal below with OTP's credibility as a witness (see [67] and [114]-[116]). My conclusion is that this is another example of OTP's willingness, in the witness box, to manufacture evidence which he perceived to be of assistance to the Defendant. It merely served to confirm that he was generally an unreliable witness.

78. In fact, the issue of whether the Claimant had been sent to isolation is wholly peripheral to the issues to be determined in this case. I should be clear, however. I reject OTP's evidence, and I can place no reliance on the hearsay of the Former Teacher because of the circumstances in which his statement was made and, critically, because his evidence has not been tested by cross-examination by reference to the school records, which appear to contradict the evidence of OTP and the Former Teacher. These demonstrate that when a pupil is sent to isolation, the fact that this measure has been taken, and the reasons for it, are recorded in the pupil's records. This is for the obvious reason that need to remove a pupil immediately to isolation is a significant measure that needs to be recorded. Repeated exclusion of the same pupil will need to be addressed and the cause(s) investigated by the School. Based on the school records, I simply reject the contention that the Claimant had been sent to isolation "*loads of times*". In fact, the records suggest he was never sent to isolation.

79. In summary, the Defendant has failed to demonstrate that the Claimant had any propensity to behave in an aggressive or abusive manner towards girls and women. For the reasons I have given, I am unable to accept the evidence of AYQ and BWI, but even if I had accepted it, it would not have demonstrated a propensity on the part of the Claimant to act in this way. The more reliable contemporaneous evidence in the school records provides powerful support for the conclusion that the Claimant did not behave in the way alleged.

(3) The alleged incidents of the Claimant stabbing a pupil with a sharp-pointed object

80. The Defendant relies upon two incidents:

i) An occasion, recorded in an incident report dated 20 September 2017, when the Claimant was joking around with other pupils, slapping hands together with a sharp object placed between his fingers.

ii) The occasion alleged by MVY (see [53] above), in which MVY claims that the Claimant used a compass to stab the hands of some 5 pupils including MVY.

81. In respect of the first occasion, the incident report contains what the Claimant told the teacher, who completed the report, as follows:

> "Nothing has happened. I was just joking with [redacted]. We just tapped fists to say 'hi'. Jamal admitted to me that he had a board pin, from the library, in between his fingers pointing towards [redacted] when he 'tapped hands'. The pin has resulted in a stab mark on the back of [redacted's] hand."

There are also two further entries in other incident reports from the other pupils involved that corroborate what is recorded in the teacher's report.

82. There is no record of the first occasion in the Claimant's disciplinary record, from which I infer that the staff member did not consider that it was serious enough to warrant any sanction or even recording on the Claimant's record.

83. The Defendant cross-examined the Claimant about these incidents. In respect of the first, the Claimant confirmed that he had signed the incident report completed by the teacher, but he maintained that the item was not a pin, but a toothpick. He explained that he had got the toothpick from a box that had assorted items in it in the School library. He denied that the second incident had taken place at all. He said that MVY was in a separate form from him, that they only had English and PE lessons together, and MVY was one of the people who had physically attacked and bullied him.

84. On balance, I accept the evidence of the Claimant in respect of these incidents. Even if MVY's hearsay evidence is admissible, as to which I have real doubts, I can attach no real weight to his untested evidence, particularly in the circumstances in which it was obtained (see [53] above). The claim that the teacher "*proper gave [the Claimant] a telling off*" would suggest that, if it happened, the incident would have been recorded on the Claimant's disciplinary record. But without any idea of when this is alleged to have happened, it is impossible even to begin to investigate it. The Defendant has failed to prove MVY's allegations. The use of a toothpick (or even a pin) as part of a joke with friends is a school-boy prank, done in mischief not with malice, as the teacher appears to have accepted at the time. More importantly, the evidence of these incidents relied upon by the Defendant (even had I accepted MVY's evidence as truthful), is not remotely capable of demonstrating that the Claimant had a propensity towards using, or making threats of, violence towards other pupils.

(4) The Claimant's alleged possession of a screwdriver and/or a knife

85. The Defendant has advanced this allegation solely on the basis of an entry in the minutes of a meeting at the School, on 9 November 2018. During the meeting, the Claimant's father complained of several incidents of bullying against his son. The minutes recorded the following words attributed by the Claimant's father in the meeting:

> "Jamal was told to go to the House Office to check he had anything sharp in his bag. A knife and a screwdriver were found. Jamal said they were not his. School did not take any precautions."

86. In their evidence, both the Claimant and his father explained what had happened. The Claimant said that, at the end of a PE lesson, he found a small silver screwdriver in his bag. It was not his, and he believed that it had been put there by someone else. He reported what he had found to his head of house, who had told him not to worry and that it would be sorted out. The Claimant took the screwdriver home and showed it to his father, telling him what happened. Jamal said that his head of house later told him that he had identified the person involved and had punished him. He did not tell the Claimant who it was. The Claimant's father had raised the issue at the meeting because he was concerned that the screwdriver had not been confiscated by the School and that the Claimant had been allowed to keep it and bring it home. Cross-examined by the Defendant, the Claimant's father was adamant that there was only a screwdriver; there was no knife.

87. Neither the Claimant nor his father could explain why the minutes referred also to a knife as well as a screwdriver. Some confusion may have arisen because, in advance of the meeting, the Claimant's father had written notes expressing his concerns. Those notes were in Arabic, and Mr Hijazi had used an interpreter during the meeting. Neither the Claimant nor his father had confirmed the accuracy of the minutes, which had been prepared by someone else and not seen by either of them at the time.

88. I accept the evidence of the Claimant and his father. There is no reliable evidence to suggest that the Claimant ever had a knife in his possession at school. The minutes appear to have inaccurately recorded Mr Hijazi's expressed concerns. In any event, the discovery of the screwdriver was immediately reported by the Claimant to his head of house. It is likely that the matter was resolved as reported by the Claimant. Certainly, if any member of staff had considered that the screwdriver had been the Claimant's, potentially to be used by him offensively, then that would have been a very serious disciplinary matter, perhaps even requiring the involvement of the police. At the very least, I am confident that the discovery of the Claimant in possession of one or more (potentially) offensive weapons would have been recorded in the Claimant's school records.

89. Moreover, the likelihood of the Claimant reporting discovery of the screwdriver to his head of house if, in fact, the item was his, is so remote, it can be discounted. Equally, reporting the incident to his parents is not a step the Claimant would have taken if the screwdriver was his. Stepping back, the Defendant is seeking to demonstrate, as a matter of fact, the Claimant had gone to school equipped with a screwdriver and a knife, based solely on minutes of a meeting. I do not know who completed these minutes, when and based on what records. Against that, I have the sworn evidence of two individuals with direct knowledge of the events. I accept their evidence.

90. For the reasons stated, I have rejected the 'propensity evidence' relied upon by the Defendant. I will turn now to consider the evidence primarily relied upon by the Defendant to establish the substantial truth of Imputations 1 and 2.

(4) The Claimant's alleged attack(s) on young girl(s)

91. The Defendant has relied upon two alleged incidents in which the Claimant is said to have attacked separate young girls.

    i) the Hockey Stick Incident involving Charly Matthews; and

    ii) the Group Attack Incident against EYW.

(a) The Hockey Stick Incident

92. The Hockey Stick Incident is not the allegation that the Defendant made against the Claimant in the First and Second Videos. Nevertheless, the law of defamation permits a defendant to demonstrate the substantial truth of an allegation by proving incidents that show the same or similar behaviour by a claimant.

93. The Defendant relied upon the evidence of Charly Matthews and the evidence of OTP, who claimed to have witnessed the Hockey Stick Incident. The Claimant denied that anything like the incident described had happened.

94. In her witness statement, Charly stated that she remembered the Claimant starting at the School in around October 2016. She described the Hockey Stick Incident as follows:

> "PE lessons happened in the sports hall and my teacher was Mr Cattell. I think my PE lesson was around midday but I am not sure. This half term I had chosen hockey and so had Jamal.
>
> In the lesson time we would do different activities to learn the skills we needed such as dribbling. And at the end of the lesson, we would have a quick game.
>
> During the game Mr Cattell went into the storeroom and I had the ball as part of the game. I had just managed to get the ball from Jamal, who was on the other team, and I hit it to my team mates on the other side of the room. After I had hit the ball to my team I felt a blow to the middle of my back in between my shoulder blades. It caused me to go onto my knees.
>
> I turned around and saw that Jamal had come up behind me and hit me aggressively with a hockey stick. There is no way that this could've been part of the game or an attempt to get the ball.
>
> The way that the blow came down with force onto my spine in a downward motion meant that he must have swung the hockey stick over his shoulder.
>
> Jamal walked off and muttered something in his own language. [I] managed to get up and go to the changing room as I couldn't see the teacher.
>
> I began to have a panic attack in the changing room. There were other students in the class who had witnessed this behaviour.
>
> After the lesson was over I went back to the sports hall and told Mr Cattell what had happened and he said he would deal with it but I didn't hear anything else about the incident.
>
> I was in pain for the rest of the day. I remember telling my friends that my back was hurting. I still take medication for the pain now.
>
> When I got home, I told my mum what had happened and said that Mr Cattell was dealing with it. I feared Jamal by this point.
>
> I did not do PE for about three months following the attack and the school were aware of the injury. My mum would write notes in my planner so that I would be excused from physical activity.
>
> I still suffer pain and discomfort to my back. I have attended my GP and had different X-rays and MRI scans. I currently see a chiropractor for the pain and take medication from my doctor. I take 30mg of codeine up to four times a day and 25mg of pregabalin twice a day as well as paracetamol and ibuprofen…
>
> I continued at [the School] until around May 2017, however, during this time I began to become increasingly anxious and scared to go to school…
>
> I became the victim of bullies (not only Jamal) and this made my school life particularly awful.

> Jamal was a significant contributory factor in my decision to leave the school and transfer to [another school]. However, I could not settle and this school and did return to [the School] for a short while. This did not work out and subsequently I had to be home schooled…"

95. Supplementing her written evidence, in examination in chief, Charly added that on the day that the Viral Video was published on the Yorkshire Live website, she had posted a comment that the Claimant was not a victim and that he had hit her with a hockey stick. She said that she deleted the comment because she was getting harassment. I am not aware whether this post is still available, but I have not been shown any other evidence about it.

96. Charly was cross-examined by Ms Evans QC. She stated that she had not written all of her witness statement, parts had been written for her, including, she thought, the sentence about the Claimant muttering something "*in his own language*", but that she had checked the statement and it was accurate. Charly had been video interviewed by the Defendant. Her interview was a rare instance when it is clear that she knew that she was being recorded. In the interview, she had stated that the Hockey Stick incident had happened "*about two weeks*" after the Claimant had been at the School. Asked about the variance between this and the evidence in her witness statement that it had happened in January-February 2017, she said she had meant 2 weeks from when she had first been aware of him.

97. Questioned about the PE lesson, Charly said that the whole class was playing, some 20-30 children she estimated. She confirmed that the teacher, Mr Cattell was in the storeroom at the time. She could not recall whether anyone was refereeing the game in his absence. She stated that, after being struck, no-one in the class came to her assistance, they had run after the ball. Asked about her statement that the incident had been witnessed by other pupils in the class, she said that part of her statement had been added for her. No one assisted her and she said that she had "*hobbled*" to the changing rooms. She said she remained in the changing rooms for about 5 minutes and was having a panic attack. She was the only person in the changing room. She said that she had spoken to Mr Cattell whilst he was in the storeroom, at the side of the hall, and told him that the Claimant had hit her with a hockey stick. She had a few more lessons that day and did not get sent to the medical facility. Asked whether she had contacted her mother about the attack, Charly said that she could not recall, "*I may have rung her*". Challenged that there was no mention of this incident in any of the School records, she claimed that Mr Cattell must not have reported it.

98. Ms Evans QC then took Charly through her school records which showed that her recorded attendance in PE classes for the year 2016/2017 had been 60 out of 66 lessons, when she had claimed in her statement that she had not done PE for some 3 months after the incident. Charly answered that she attended the lessons, but she did not do any physical activity; she simply handed out equipment and then sat on the side-lines during the lesson. Ms Evans QC suggested that there were no notes in the records about this. Charly responded that it was "*up to the school to sort it out*" and that they were not her records.

99. Ms Evans QC questioned Charly about her evidence that she was taking medication for the pain. She was shown a letter from her GP, dated 18 January 2018, stating that "*Charly does not suffer with any current medical problems*". She confirmed that this

was from the doctor who she said was prescribing the painkillers to which she referred in her statement.

100. In her closing submissions, Ms Evans QC has also relied upon entries in the School records, made following a visit by the Defendant to Charly Matthews' home on 3 April 2019. The records, like many others from the School have been redacted. Where it has been possible, from the context, to work out what the redacted words are, I have put those in square brackets.

i) An entry for 4 April 2019, records:

> "Received a call from ETHOS (home education team) re concern that [redacted] has visited [Charly's mother's] home while a member of staff has been present. The visit has been reported as follows.
>
> - During the afternoon of Wednesday 3.4.19 Charly was being taught by her daily ETHOS tutor at home [address given]
>
> - During her lesson [redacted] arrived at the house unannounced and knocked on the door. [Mother] invited [Tommy] in and Charly appeared visibly upset.
>
> - [The teacher] left the home and reported the visit to the [redacted] who informed [redacted].
>
> - [Redacted] then contacted [Charly's mother] the following day (Thursday 4.4.19) to discuss the incident. [Charly's mother] stated that she didn't understand why such a fuss was being made about [redacted] visiting her home. [Charly's mother] went on to say that she fully understood who [redacted] is and said that he used to be seen as a racist but that was down to the media. She also asked [redacted] not to let everyone know and stated 'between you and me, [Jamal Hijazi] hit Charly with a hockey stick, that's why she doesn't come to school anymore'.
>
> - [Charly's mother] went [on] to explain that [redacted] had visited her to find out what had happened to Charly…"

Ms Evans QC submitted that the name of the visitor to Charly's home was the Defendant. The Defendant did not argue against this, and I accept that this is likely.

ii) There is then a record of an inquiry being received from the Kirklees Police, on 8 April 2019, asking the School whether "*anything was reported by Charly or her mother in regards to [Jamal Hijazi] assaulting her with a hockey stick*" prior to her leaving the School.

iii) The School's response to the police is recorded in a further entry, on 8 April 2019:

> "… there is no record of an incident between Charly and [Jamal]. She has asked other members of the House team and none have any record

> of such an incident… [On] no occasion did [Charly's mother] or Charly report this to [redacted] or anyone else in school when she still attended in Year 9…"

101. OTP stated in his witness statement for trial that he witnessed the Hockey Stick Incident. He said this:

> "In PE we had to choose between three sports, and I was in the same group as Jamal doing hockey. I was sat on the side-lines waiting for my turn when I saw him attack a girl. I could see the ball on the opposite side and I wondered 'why is his hockey stick up in the air?' The ball was at the opposite side. And then his hockey stick came straight down on Charly's back. There was no hesitation in that swing, it came straight down on her from behind. From behind his head. He just turned round and walked away.
>
> The teacher came over and just sent Charly to first aid. Jamal walked away and sat down and the teacher never spoke to him. I went up to him and asked 'why did you do that' and just told me to piss off. There was no explanation…"

102. That account was materially at odds with that given by Charly. OTP had been sitting in Court when he heard Charly being cross-examined by Ms Evans. His account shifted significantly when he came to be cross-examined.

i) He claimed not to have chosen hockey, but to have been sent there having been removed from his chosen lesson of dodgeball due to an incident with another child.

ii) Charly's evidence was that the whole class - some 20-30 pupils - were playing hockey, whereas OTP claimed only part of the class had been doing hockey. He stated that he had been watching from the side-lines for "*about 40 minutes*", although it was Charly's evidence that the hockey game took place in the last ten minutes of the PE lesson.

iii) The clear implication in his witness statement was that the teacher had been present when the incident had happened. However, in cross-examination he claimed that the teacher was actually in a storeroom "*getting more hockey sticks*" and only returned "*within the last 2 minutes*" of the lesson.

iv) Asked about the other pupils who could have witnessed the incident, he claimed that every one of them had been "*facing the other way*" from the Claimant and Charly when the incident happened; "*I guess they could not see it*".

v) In cross-examination, OTP also contradicted himself as to the order in which events had taken place. In his witness statement he stated that the teacher "*came over and just sent Charly to first aid*" following which he went over and spoke to the Claimant. The implication was that this all happened while the game was continuing. Initially in cross-examination he claimed that the teacher had only come back close to the end of the lesson, but then he went on to claim that the teacher had been in the store-room for the entire game and it was only after the lesson had ended that Charly had spoken to him.

vi) Asked about how he knew that Charly had been sent to first aid, he replied that this was his "*assumption*". OTP was then questioned about how, if she had spoken to him after the lesson was over, how he could have made that assumption. He could not give a satisfactory answer. Charly herself had said nothing about being sent to first aid, and stated that she did not seek any medical assistance.

103. OTP was also video interviewed by the Defendant. He was also one of the few who was clearly aware that he was being recorded. In the extract of the interview, relied upon by the Defendant when served as hearsay evidence, OTP said that the teacher "*came over sent … Charly to first aid place, and then they carried on playing*". At that point, the recording of the interview is edited, and so it is not clear whether OTP added any further details of the aftermath of the incident. This account is materially different from the account given by Charly and the account given by OTP in his witness statement and evidence in cross-examination.

104. Finally, I should note that in his witness statement, Bailey McLaren stated: "*we all knew about the time he hit Charly with the hockey stick because lots of people saw it*". When he was cross-examined, Bailey confirmed that had not witnessed the incident himself, but had heard about it by rumour a few days after it had allegedly happened. Little (if any) weight can be placed on this evidence, which appears to have been inserted into Bailey's witness statement in an effort simply to bolster the evidence by repetition.

105. For the reasons I will explain, I reject the evidence of Charly Matthews and OTP. I accept the evidence of the Claimant.

106. Charly Matthews' evidence is simply incredible. On her account, in the middle of a school PE lesson, she had been the victim of a serious unprovoked assault in which a hockey stick had been used effectively as a weapon. The incident, as described by Charly, was a serious criminal assault that could easily have led to the Claimant's prosecution. As a result of the assault, she claimed that she lived in fear of the Claimant, that the incident had been a significant contributor to her anxiety and ultimately to her being unable to continue at the School, and four years later she was still in pain for which she was taking prescription medication.

107. This is a good example of a series of events which, if true, would have generated a host of either supportive or corroborative documents.

108. First, according to Charly, she reported the incident to the teacher in charge of the PE lesson. It was an incident alleged to have been witnessed by OTP (although, he claimed, by none of the other pupils in the class). It is clear from Charly's own school records that, on 15 April 2016, when she had suffered a nosebleed, as a result of being struck by a cricket ball in a PE lesson, an accident report was completed by the School which was sent home to her parents. An entry was also made in a diary, kept by the School, recording the incident. This records that Charly's mother had been informed of the incident and she had said that Charly could come home.

109. This is the sort of documentation that is routinely kept by schools in relation to incidents of significance. The reasons why such records are kept are obvious and need no elaboration. If Charly Matthews' (and OTP's) allegations about the Hockey Stick Incident are true, then, putting matters at their lowest, a pupil at the School had suffered

injury as a result of being hit with a hockey stick during a PE lesson. The incident had been reported to the teacher in charge of the lesson, but, if true, he did nothing about it. Not only did he take no immediate action against the Claimant, but no investigation was initiated subsequently to find out whether there were grounds upon which to discipline the Claimant. Further, no record was made even of the injury or the circumstances in which it had been caused. Why would the teacher act in such gross dereliction of his duty? No remotely credible explanation has been provided by the Defendant (or Charly). The reason, I am satisfied, is that no such incident was reported by Charly (or OTP) to any member of staff (as apparently confirmed in the April 2019 entries in Charly's records – see [100(iii)] above). That is because no such incident happened.

110. Second, as a matter of chronology, it is clear from Charly's school records that her anxiety issues pre-dated the Hockey Stick Incident. Of perhaps evidential significance, the School's efforts to address these anxiety issues led to various meetings between Charly and those who were attempting to provide support to her. Contemporaneous records of some of these meetings were available at the trial. For example, in a form that had been completed in order to refer Charly for specialist learning support, dated 12 October 2017, the School recorded that Charly had not attended the School since 6 September 2017 as result of severe anxiety. The report was based on information provided by Charly. There is no mention of the Hockey Stick Incident which, had it happened, Charly could have been expected to mention this as a major contributor to her anxiety, as she claimed in her evidence.

111. There is also a letter from an Emotional Health Worker who had been providing one-to-one support to Charly between November 2017 and February 2018. This indicated that the author had spent considerable time observing Charly's behaviour and discussing her feelings in detail. Again, if, as she claimed, the Hockey Stick Incident was a major contributor to her anxiety at School, Charly would have had no reason not to disclose this to her Emotional Health Worker. The referral form also noted that she had received mentoring from her Head of House and additional support from the School Nurse for the last two years. That contact would have provided further opportunities for Charly to disclose the Hockey Stick Incident in the context of discussions with those who were trying to address her anxiety issues. Had Charly disclosed the Hockey Stick Incident to any of these people, then it is likely action would have been taken that would have led to some sort of investigation by or with the School. These actions would have generated documents recording Charly's disclosure and the actions taken in response. I have Charly's school records. Beyond those identified in [100] above, there are no such documents.

112. Third, I can test the veracity of Charly's claims by reference to her mother's reaction. According to Charly, she told her mother about what had happened. Most parents, if told by their child that s/he had been assaulted with a hockey stick at school and, as a result, s/he was in serious pain could be expected to react in several ways. First, I would expect a complaint to have been made to the School, and thereafter followed possibly with a complaint to the police. Second, I would expect the parent to ensure that the child sought medical assessment or treatment. Both would generate documentary records. According to Charly she had undergone both X-rays and MRI scans. There are no records. More bizarrely, on 4 April 2019, when Charly's mother did finally disclose the alleged Hockey Stick Incident, if the records are accurate, she appeared to want it to be

treated as confidential (see [100(i)] above). Charly Matthews' mother has not given evidence in these proceedings, so I should be cautious in my findings, but in the absence of some credible explanation, these actions do not appear to be consistent with a parent who genuinely believes that, whilst at school, her daughter has been seriously assaulted by another pupil with a hockey stick.

113. Fourth, Charly claimed, even now, four years later, to be in significant pain as a result of the incident and still to be taking prescription painkillers. Yet, no medical records have been produced to confirm this. On the contrary, the only information I have from Charly's GP is a letter, from 18 January 2018, stating that she has no medical problems. In her evidence, Charly stated this is the same GP who she claimed has been prescribing her pain relief medication. If Charly is currently taking prescription painkillers, over 4 years since the Hockey Stick Incident, then something else has caused the need for such pain relief. The Hockey Stick Incident, as described by Charly, did not happen.

114. What of OTP's evidence purporting to confirm the Hockey Stick Incident? It appeared to me that, during his cross-examination, OTP was tailoring his evidence in an effort to support the evidence of Charly, whom he had heard being cross-examined. He was astute enough to appreciate that the lack of any other witnesses, in a class of more than 20 pupils, might cast doubt on the credibility of the account, so (ridiculously) he claimed that every other child had been looking the other way when the assault happened. However, OTP was not adept enough to be able to navigate his account around his claim that Charly had been sent to seek medical assistance by the teacher, when she had made no such claim, and whether the teacher had even been in the room when the incident happened. I have already rejected OTP's evidence in relation to the incident involving BWI (see [67] above). I am also satisfied that OTP's evidence about the Hockey Stick Incident was dishonest fabrication that fell apart when he was cross-examined on the details.

115. Like other witnesses, I am also concerned that OTP's evidence has been influenced by others. In his witness statement there is a paragraph that starts with the words "*(CHECK THIS)*" before setting out an account of something the Claimant was alleged to have said in a French class about Bailey McLaren's sisters. Asked about this in cross-examination, he first said that these words indicated that it was something that needed to be checked. He then accepted that it was something that had been suggested to him should be included in the statement. He did not identify who had made the suggestion.

116. I have paused to consider why Charly Matthews and OTP would be willing to come to a High Court trial and lie for the Defendant. I cannot readily identify any explanation why they would be prepared to do so. Charly stated in evidence that she is in the first year of a law degree. Objectively, therefore, she has much to lose by giving false evidence in court proceedings. Ultimately, however, whilst identifying a motive or reason for giving false evidence can sometimes provide support for the conclusion that the evidence is untrue, it is not necessary to identify a reason. People can lie for reasons that make no sense; sometimes for no reason at all. I am quite satisfied that the evidence of both Charly Matthews and OTP about the Hockey Stick Incident is false.

117. For the reasons I have given, the Defendant has failed to prove that the Hockey Stick Incident happened. On the evidence, I am satisfied it did not happen, whether as alleged by Charly Matthews or at all.

(b) The Group Attack Incident

118. This was the incident to which the Defendant referred expressly in the First and Second Videos. It is an allegation that the Claimant, as part of a gang, participated in a violent assault of EYW causing her significant or serious injuries. No witness was called at the trial in support of this serious allegation. Instead, the Defendant has sought to rely upon hearsay evidence from EYW's mother.

119. The hearsay evidence from EYW's mother came from two sources:

i) first, some text messages sent by EYW's mother to the Defendant; and

ii) second, a partial transcript of covert recordings of EYW's mother on two unidentified occasions.

120. In a direct Facebook message, sent to the Defendant on 27 November 2018, EYW's mother stated:

> "My little girl got beated by 3 girls and [Jamal] jumped in and bit her on the head"

She then forwarded 6 photos, apparently showing EYW with a black eye.

> "Will find the [pic] from her bite mark in a min…"

EYW's mother sent a further text (about the Playing Field Incident) (with errors as they appeared in the original text):

> "Its pissed me off that he school had rang the police over the 'horrific attack'. He grabbed him by the neck and gave him a little water. Oh lets give him 100k. My girl was beaten badly and gets fuck all. The school never rang the police or anything and a fund page wasnt set up for her. Makes me sick to my fucking stomach. Im so angry right now. My girl has a all the time black eye comes up when she's cold. Its rediculas."

The Defendant responded:

> "Fucking Liberty. Be great to interview ya just to put out Syrian boys involvement.

121. The day after the First Video was published, in response to messages from other individuals, EYW's mother posted the following messages on her Facebook account:

> "It wasn't him…… it was the 3 girls. He didn't do anything. This should not of been posted until the full story was told. Delete it now. I don't want my girls face on anything…
>
> It was not him im the girls mother…….. it was the girls
>
> Look he didn't touch. I was talking to tommy bout it cos my girl didn't get the media when she was horrificly attached. Thats all end of"

122. I have watched again the recording from which the transcript has been produced. The Defendant made two visits, on separate unidentified occasions, to attempt to speak to EYW. Both appear to have been covertly filmed by the Defendant wearing a concealed camera and microphone.

123. The first recording appears to have been made in the hallway outside EYW's home. The Defendant is speaking to EYW's mother. The footage has been edited and the section that has been provided to the Court begins clearly in the middle of the conversation between the Defendant and EYW's mother:

> Defendant: I need confirmation, just to say "yup, that's what happened". That he was involved and that's it. If he wasn't, then he wasn't, but if he was, then that's it.
>
> Mother: He was there.
>
> Defendant: He was there.
>
> Mother: Yeah. Do you want me to see if [EYW] will speak to you?
>
> Defendant: Yes, sound.
>
> [a short interval whilst EYW's mother goes into the house]
>
> Mother: No she won't. She says it's all calmed down so she doesn't want to blow it up…
>
> Defendant: She doesn't want to blow it up.
>
> Mother: No
>
> Defendant: No one has to know that I've spoken to …
>
> Mother: No, I know, but she's scared.
>
> Defendant: I know, everyone's scared. But was he there?
>
> Mother: He was there.
>
> Defendant: How many of them were there?
>
> Mother: There was a video going around. He was there. I'll see if she has still got the video, if she has I'll send it to you.

124. The second visit appears to have been recorded at the same place, outside EYW's home. On this occasion, EYW had answered the door. EYW called her mother on a mobile phone and handed it to the Defendant. There followed a discussion between the Defendant and EYW's mother about her initial posting online, alleging that the Claimant had attacked her daughter, and her reasons for subsequently removing the post.

> Defendant: Is it all right … if I get your number off your daughter here, because what it is, I spoke to another little girl whose mum

went online to say Jamal beat her up, but she deleted the comment after two hours because she said 'I couldn't handle the threats we were receiving'

Mother: Yeah, I deleted mine as well.

Defendant: Yeah, ok, so that was the reason why?

Mother: Yeah.

Defendant: Ah well, okay… I just wanted to pick your brain… if I could just get your number off your daughter, because I'm up here all next week, and if I could catch 10 minutes with you. What it is, I'm trying to get is … with my court case, I want my court case not to go to court now. I've got so much dirt on the lawyer, I've got so much dirt on Jamal, I've got so many things said about them, which call into question everything they've done. With regards to Jamal, you know when I came here before, and I asked, so that I know. If it does go to trial, as I've said to you before, they want to take everything… not just (what) I have but what my wife has, and all I done was report what I was told. Was Jamal there? Was Jamal involved?

Mother: Yeah.

Defendant: Yeah, all right. That's all right. You know, we've had the conversation before, I know I've spoke to you multiple times, but I just keep reassuring myself so I know what I'm saying is right. All right, babe, I'll get your number off your daughter if that's all right?

Mother: Yeah, get my number, yeah, and be careful when you go out please.

Defendant: Yeah I will (laughs). I'm in a burka (laughs)…

Although the Defendant mentions in that conversation having spoken to EYW's mother "*multiple times*", only these two recordings have been provided by the Defendant. It appears, from EYW's mother's comments, that she may have posted publicly a comment, in response to the Viral Video receiving media attention, which she then deleted. I do not have a copy of what she stated in this posting.

125. The Claimant's evidence at trial was that the Group Attack Incident did not happen as alleged or at all. He said that he did not know who EYW was. The Defendant cross-examined the Claimant. He put to the Claimant the direct messages that EYW's mother had sent to the Defendant (see [120] above). The Claimant maintained his denial. As the Defendant did not have any details of the alleged event, he could not take the cross-examination any further.

126. The Defendant has failed to prove the Group Attack Incident. The case depends entirely upon hearsay. There is no direct evidence from EYW herself, even by hearsay. Despite her apparent reluctance even to speak to him, the Defendant could have secured the attendance of EYW at the trial by use of a witness summons. The evidence relied upon

by the Defendant amounts to second-hand hearsay from EYW's mother, in respect of allegations that she has publicly disavowed. I cannot attach any weight to this evidence. The hearsay is untested by cross-examination. The recordings of EYW's mother have been edited and I only have a partial transcript. There are clearly other occasions on which EYW's mother has given details of the allegations about the attack on EYW to the Defendant, but I do not have a record of what she said. The two recordings were obtained covertly. There is no indication when the alleged assault of EYW took place, but the hearsay accounts of it are not contemporaneous. One of EYW's mother's answers in the second interview is ambiguous. The Defendant asked two questions rolled into one: "*Was he there? Was he involved?*" When she answers, "*Yeah*", it is not clear whether she is answering the question "*was he there?*" or "*was he involved?*". Previously, EYW's mother had confirmed only that the Claimant was there. No details are provided in either recording about what the Claimant is alleged to have done or that EYW suffered serious or significant injuries in consequence.

127. Against that, the Claimant has given sworn evidence at the trial – and been cross-examined. I have no basis on which to reject his evidence; indeed, I find the Claimant to have been a credible and truthful witness throughout his evidence.

128. As a result of my conclusions, in relation to the Hockey Stick Incident and the Group Attack Incident, the Defendant has failed to prove the substantial truth of Imputation 1.

(6) The threat to stab Bailey McLaren

129. The Defendant's case that Imputation 2 is substantially true relies upon an allegation that the Claimant threatened to stab Bailey McLaren on 25 October 2018.

130. In his original Defence, settled by Leading Counsel, the Defendant stated, verified by a statement of truth:

> "7.9 … the Claimant had been in a lesson with Bailey McClaren (sic). He dragged Bailey's coat across the floor of the classroom. When Bailey told him to stop, he replied with words to the effect: 'wait until lunchtime, you are going to get stabbed'.
>
> 7.10 On the same day, whilst he was eating lunch, one of the Claimant's friends approached Bailey and told him that the Claimant was going to stab him. The incident shown in the [Viral Video]... occurred as a direct result of Bailey confronting the Claimant about the Claimant's threat to stab him, hence Bailey's opening words: 'What are you saying now?'"

131. No amendments were made to those paragraphs in the Defendant's Amended Defence. In response to a request for further information, dated 9 August 2019, the Defendant stated that the identity of the "*Claimant's friend*" referred to in paragraph 7.10 was "*presently unknown*". It was said that further details would be provided in the Defendant's witness evidence.

132. Witness statements were subsequently exchanged, but Bailey McLaren's statement did not identify the unknown friend. In his witness statement, Bailey said this about the alleged threat by the Claimant to stab him, and how it had, thereafter, led to the Playing Field Incident:

> "On the day of the [Playing Field Incident] we had Science class with [named teacher], and there was an altercation. Somehow Jamal's coat ended up on the floor by my feet. If I put my foot on it I didn't know, but I said sorry to him at which he told me to 'fuck off'.
>
> I challenged him to say that again and he said 'fuck off, you white bastard. I reacted and grabbed him which I wasn't proud of but I wasn't going to take being called that. He said something in his own language and after what I was told shortly afterwards, I wondered if he'd said the English word 'stab'. I couldn't be sure.
>
> I was sent out of class and put 'on call' as the School says. I was in the dining room when an Asian lad approached me, and he was fine. He said Jamal had been mocking my stutter which I have had problems with people making fun of, and he asked 'Do you know what Jamal said? Jamal's going to stab you'. And I was thinking it must be a lead on from what happened in the classroom.
>
> I wasn't having someone say that. I'm not the kind of person to sit back and let that be said. After that I kind of lost my head. I jumped up straight away, and I had a bottle of water with me from my lunch. I had my bag on already and went outside to confront him…"

133. Prior to the trial, on 15 April 2021, the Defendant applied for permission to re-amend his Defence. Paragraph 7.10 remained unchanged, but he was granted permission to amend paragraph 7.9 as follows (using the conventional striking out and underlining to indicate the changes):

> "… the Claimant had been in a lesson with Bailey McClaren (sic). ~~He dragged Bailey's coat across the floor of the classroom. When Bailey told him to stop, he replied with words to the effect: "wait until lunchtime, you are going to get stabbed".~~ <u>There was a disagreement between the two boys in which the Claimant's coat was on the floor and insults were exchanged. Bailey McLaren grabbed the Claimant but then left the classroom.</u>"

134. The amendments sought, at least in part, to bring the statement of case into line with Bailey McLaren's witness statement that had been served by the Defendant.

135. At trial, Bailey was asked some additional questions in examination in chief. The Defendant asked Bailey about his school record. Bailey said that he had had an "*appalling*" disciplinary record and that he "*wasn't an angel*". He said that the occasions on which he had been physically aggressive to other children had been instances in which he had been provoked and that there would have been a "*strong reason*" for his actions. Quite properly, in fairness to Bailey, the Defendant took him to several very positive entries in his disciplinary record, which I have already noted (see [20] above).

136. Bailey's school records disclosed that the School had had concerns about his support for the English Defence League. The Defendant asked him about this, and Bailey replied that, when he was at school, he just knew the EDL as a group that had tackled "*grooming gangs*" in his town. He denied being racist or being a bully. He said he had mixed-race sisters, lived in a mixed-race community, and had friends who were black

and Asian. He said, for him, colour did not matter and that it was more important what a person was like.

137. Without objection, the Defendant asked Bailey to read the incident report that he had completed about events on 25 October 2018 (see [11]). As to the claim, in the incident report, that the Claimant had threatened to stab him, he said that the Claimant had "*muttered*" something in the classroom but he "*didn't think much of it*". Subsequently he was approached by the person he had described as an "Asian lad" who he named as "Ahmed". He claimed that upon being told by Ahmed that the Claimant had said that he was going to stab him he thought that was what he must have said in the classroom to him.

138. Questioned by Ms Evans QC, Bailey said that he had written his witness statement himself but had received help from Mr Lockwood, the Defendant's McKenzie Friend. He accepted that he had a very poor disciplinary record at the School but he said that this was because he had a "*troubled time*" and that he was prone to being "*hot headed*". He said that by the end of Year 11 he was looking to do his GCSEs and he had changed his ways in school. He denied being a bully and he denied targeting the Claimant.

139. Ms Evans QC asked Bailey how he had been able to recall the name of "Ahmed" in the witness box. His answers were unconvincing. He said that he had "*pieced it together*" after he had written his witness statement. Ms Evans then showed Bailey an incident report from 18 January 2017 which recorded:

> "Bailey McLaren then came up to Ahmed and punched him in the face, got him in a headlock and headbutted him in the head 3 times. He also kneed him in the stomach. Then Bailey McLaren went inside, came face to face with [redacted] and told him to f**c off you curly haired bas**rd and threatened to punch him. He also told [redacted] to f**k off too."

Bailey replied that he could not recall this incident, but then added, "*why would Ahmed then come up to me about Jamal?*" Bailey clearly thought that this was a point that undermined the veracity of the incident report. In my view, it served to undermine the credibility of his claim to have recalled – or "*pieced together*" – that it had been "Ahmed" that had allegedly approached him to inform Bailey of Claimant's alleged threat to stab him.

140. As part of her cross-examination, Ms Evans QC asked Bailey to look at the incident report completed by the teacher in relation to the incident in the science lesson on 25 October 2018 (see [11] above). Before Ms Evans could actually ask Bailey any questions about the document, he immediately made the point about the different handwriting in the document. That answer clearly demonstrated that, at the very least, someone had discussed the incident report with him, and in sufficient detail for him to appreciate the point about the different handwriting. That was unfortunate. The effect was to undermine Bailey's credibility by giving the impression that his evidence had been influenced by some other person(s). I am not suggesting that there has been any effort deliberately to influence his evidence, but if it appears that a witness has discussed aspects of his/her evidence with someone else, it risks damaging the credibility of the witness because it calls into question the extent to which the Court can rely upon the evidence as being the witness's own evidence rather than something that s/he has picked up from discussions with other people.

141. There was another unsatisfactory part of Bailey's witness statement. In one paragraph about the Playing Field Incident, Bailey claimed:

> "I understand Jamal claimed that I punched him five times to the head, but I never hit him. You can see that on the film. He suffered no physical damage."

142. It was no part of the Claimant's case, or his evidence, that he had been punched in the head five times by Bailey during the Playing Field Incident. However, included in the trial documents there is an undated, incident report which includes the following:

> "At lunchtime, Bailey started chasing me around. He then threw a full water bottle at my head and then tripped [me] up and punched me in my face about 5 times and about 10 mins later he was punching me in my broken nuculs (sic) and he was neeing (sic) me."

143. The Defendant cross-examined the Claimant on this document, suggesting to him that he had completed this incident report and that it was an account that he had given about the Playing Field Incident. The Claimant answered by stating that the document was not in his handwriting, and he had not written it. I accept the Claimant's evidence, not least because there are examples of the Claimant's handwriting in other documents, and they are clearly not the same. This reflects poorly, again, on the circumstances in which Bailey's witness statement was prepared. It looks like someone on the Defendant's side had concluded that the undated unattributed incident report was completed by the Claimant and referred to the Playing Field Incident. That conclusion was mistaken, but it appears to have been fed into Bailey's witness statement.

144. Bailey's credibility was also damaged by his answers to questions he gave in response to a document completed by the School, on 28 November 2018, making a referral under the "Prevent" programme because of references he had made to the EDL. The document, which was redacted, recorded:

> "… He has referred to the EDL and [redacted] in conversations with staff (Bailey referred to [redacted] on 18 October 2018, asking staff if they'd heard of him)."

Ms Evans QC put it to Bailey that the name that had been redacted from the document was the Defendant's. Bailey gave evasive answers, including "*I wouldn't like to say*". Whether the redacted name in the document was the Defendant's is not really the point. The point is that Bailey would have known the name. His evasive answer rather tends to confirm that it was the Defendant's name, but his answer is more important in terms of Bailey's credibility. Upon further questioning, he confirmed that, after the media fallout from the Viral Video, a member of his family had contacted the Defendant and he had been interviewed by him. Bailey added that he had "*lived with him for about 4 months*". He clarified later that the Defendant had put him up in a "*safe house*", that he owned, and that he had also spent time with him.

145. Overall, Bailey's evidence about this supposed threat by the Claimant to stab him is not credible. In the original Defence, the Defendant claimed that the threat was made by the Claimant clearly and directly to Bailey as part of the incident in the Science class. That was not correct, it has never been Bailey's evidence and there is no support for it in the incident report completed by the teacher contemporaneously with the events (see [11] above). Bailey's account, in his original incident report, was that it was only later

that he "*got told*" that the Claimant had said he was going to stab him when he saw him. In his witness statement, Bailey adopted the same evidence, albeit with an attempt to weave in a suggestion of something said by the Claimant, "*in his own language*" (a striking phrase that also appeared in Charly Matthews' statement), that might have been a threat to stab him. That last part of Bailey's evidence has simply been manufactured as an effort to connect the alleged threat more directly to Claimant. It was denied by the Claimant when he was cross-examined, and I reject it.

146. That leaves the Defendant with the hearsay evidence of – the belatedly identified – "Ahmed" as the only evidence capable of demonstrating that the Claimant had made a threat to stab Bailey. As a piece of hearsay, I can attach little or no weight to it. Ahmed has not been called to give evidence; the Court does not even have his full name. His evidence has not been tested. As Bailey accepted when he was giving evidence, even if his evidence of what "Ahmed" is alleged to have said to him is accepted, he does not know whether "Ahmed" was telling the truth about this supposed threat by the Claimant. I have no idea who he is, or whether he would have any motive to lie.

147. On balance, I consider that the claim to have been told that the Claimant had threatened to stab him – by "Ahmed" or anyone else – was manufactured by Bailey. He first gave this lie, in the account he gave in the incident report, as an effort to try and excuse his attack on the Claimant. If Bailey needed a reason to attack the Claimant in the Playing Field Incident, beyond providing another opportunity to bully him, it was because the Claimant had told him to "*fuck off*" in the incident over the coat in the science lesson: as the other incident reports tended to confirm (see [14] above). By the stage of giving his account in the incident report, Bailey was already aware that the School had the Viral Video as evidence of the Playing Field Incident. He could not deny it. So, he set about trying to explain and mitigate it. I conclude that he has given evidence in this trial – and persisted in the lie about the Claimant threatening to stab him – at least partly because he feels indebted to the Defendant for the help he has given him and because he wants to try and assist him in return. Unlike Charly Matthews and OTP, I can identify a reason why Bailey has been willing to lie in the evidence he has given.

148. For these reasons, the Defendant has failed to prove the substantial truth of Imputation 2. In consequence, the Defendant's truth defence must be rejected and judgment on the claim will be granted to the Claimant.

J: Remedies

149. The Claimant seeks three remedies: (a) damages; (b) an injunction; and (c) an order under s.12 Defamation Act 2013 requiring the Defendant to publish a summary of the judgment.

(1) Damages

(a) the Law

150. A successful libel claimant is entitled to recover, as general compensatory damages, such sum as will compensate him or her for the wrong he has suffered. In defamation proceedings (as with all torts), damages are awarded by the Court as compensation; not punishment: ***Lachaux -v- Independent Print Limited*** **[2021] EWHC 1797 (QB)** [226].

The relevant principles were gathered by Warby J in ***Barron -v- Vines*** **[2016] EWHC 1226 (QB)**:

> [20] The general principles were reviewed and re-stated by the Court of Appeal in ***John -v- MGN Ltd*** **[1997] QB 586** … Sir Thomas Bingham MR summarised the key principles at pages 607—608 in the following words:
>
> > "The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. 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; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. **[b]** The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. **[c]** A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place. It is well established that **[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."

> [21] I have added the numbering in this passage, which identifies the three distinct functions performed by an award of damages for libel. I have added the lettering also to identify, for ease of reference, the factors listed by Sir Thomas Bingham. Some additional points may be made which are relevant in this case:
>
> (1) The initial measure of damages is the amount that would restore the claimant to the position he would have enjoyed had he not been defamed: ***Steel and Morris -v- United Kingdom*** **(2004) 41 EHRR** [37], [45].
>
> (2) The existence and scale of any harm to reputation may be established by evidence or inferred. Often, the process is one of inference, but evidence that tends to show that as a matter of fact a person was shunned, avoided, or taunted will be relevant. So may evidence that a person was treated as well or better by others after the libel than before it.
>
> (3) The impact of a libel on a person's reputation can be affected by:

a) Their role in society. The libel of Esther Rantzen [***Rantzen -v- Mirror Group Newspapers (1986) Ltd*** **[1994] QB 670**] was more damaging because she was a prominent child protection campaigner.

b) The extent to which the publisher(s) of the defamatory imputation are authoritative and credible. The person making the allegations may be someone apparently well-placed to know the facts, or they may appear to be an unreliable source.

c) The identities of the publishees. Publication of a libel to family, friends or work colleagues may be more harmful and hurtful than if it is circulated amongst strangers. On the other hand, those close to a claimant may have knowledge or viewpoints that make them less likely to believe what is alleged.

d) The propensity of defamatory statements to percolate through underground channels and contaminate hidden springs, a problem made worse by the internet and social networking sites, particularly for claimants in the public eye: ***KC -v- MGN Ltd*** (reported with ***Cairns -v- Modi*** at **[2013] 1 WLR 1051**) [27].

(4) It is often said that damages may be aggravated if the defendant acts maliciously. The harm for which compensation would be due in that event is injury to feelings.

(5) A person who has been libelled is compensated only for injury to the reputation they actually had at the time of publication. If it is shown that the person already had a bad reputation in the relevant sector of their life, that will reduce the harm, and therefore moderate any damages. But it is not permissible to seek, in mitigation of damages, to prove specific acts of misconduct by the claimant, or rumours or reports to the effect that he has done the things alleged in the libel complained of: ***Scott -v- Sampson*** **(1882) QBD 491**, on which I will expand a little. Attempts to achieve this may aggravate damages, in line with factor (d) in Sir Thomas Bingham's list.

(6) Factors other than bad reputation that may moderate or mitigate damages, on some of which I will also elaborate below, include the following:

a) "*Directly relevant background context*" within the meaning of ***Burstein -v- Times Newspapers Ltd*** **[2001] 1 WLR 579** and subsequent authorities. This may qualify the rules at (5) above.

b) Publications by others to the same effect as the libel complained of if (but only if) the claimants have sued over these in another defamation claim, or if it is necessary to consider them in order to isolate the damage caused by the publication complained of.

c) An offer of amends pursuant to the Defamation Act 1996.

d) A reasoned judgment, though the impact of this will vary according to the facts and nature of the case.

(7) In arriving at a figure it is proper to have regard to (a) Jury awards approved by the Court of Appeal: ***Rantzen***, 694, ***John***, 612; (b) the scale of damages awarded in personal injury actions: ***John***, 615; (c) previous awards by a judge sitting without a jury: ***John***, 608.

(8) Any award needs to be no more than is justified by the legitimate aim of protecting reputation, necessary in a democratic society in pursuit of that aim, and proportionate to that need: ***Rantzen*** ... This limit is nowadays statutory, via the Human Rights Act 1998."

(b) The evidence

151. In terms of the damage done to the Claimant's reputation, the meanings of the First and Second Videos are set out in [28]-[29] above. They are clearly allegations of some seriousness, amounting (if true) to criminal behaviour. The Defendant has admitted that the publication of the two videos has caused serious harm to the Claimant's reputation. The extent of direct publication of the two videos is set out in [31]. In determining the extent of the reputational harm caused by the publication, I will take into account that the Claimant would not have been identifiable to every person who watched either or both of the videos. Set against that, however, is the reality that defamatory allegations will have inevitably spread more widely than the original publishees.

152. As to the impact it has had on the Claimant, the evidence is contained in the Claimant's witness statement for the trial. Save in one respect that I will identify, there was no challenge to any of this evidence. The Claimant explained what happened following publication of the First and Second Videos:

> "I started to receive lots of friend requests on Facebook and messages from people asking me about what happened. I didn't feel comfortable that so many people were contacting me and didn't accept anyone's requests. I was ashamed that the Defendant's videos and the whole incident had become so big. I no longer felt comfortable going outside as I didn't want people to recognise me. I started to have trouble sleeping in my house and never felt comfortable or safe, the police told my family that when I was left alone in the house that all the doors and windows should be locked.
>
> I left my phone alone for 2 weeks after everyone started messaging me and my family told me that the best thing to do would be to delete my social media accounts. I looked at some of the messages that were really nice but some of the messages were really nasty, so I deleted my profiles such that people couldn't contact me anymore. I no longer feel comfortable using my name on social media or, when asked by strangers, I have a fake name so that people cannot track me down on social media. I don't like giving people my real name or talking about my past as I feel depressed when I think about what has happened.
>
> Following the Defendant's publications, my family and I have been the subject of a significant number of threats and intimidating behaviour both online and in person, especially outside of our old home. On 13 November 2018, my family told the support worker that we wanted to move to a new house and that we didn't

> want to stay in Huddersfield. By this point, it was unsafe to even walk to the local shops without receiving verbal abuse with a very real risk of that escalating to physical abuse. … My family and I were forced to relocate from Huddersfield and move to a different part of the country to avoid risks to mine and my family's safety. This caused me and my family a lot of distress and sadness as we had not long been settled within the UK…"

153. The Claimant and his family were fortunate that someone set up a GoFundMe page to fund raise for them. The appeal raised over £100,000. This money enabled the Claimant and his family to relocate to another part of the UK. Nevertheless, the disruption caused to the Claimant and his family, particularly the Claimant's education, has been significant. Earlier in 2018, the School had arranged for the Claimant to take up a work placement at a pharmacist each week. The Claimant enjoyed that, and was actively considering whether he might pursue a career in this sector. In a report about his placement, the supervising pharmacist wrote:

> "All interactions I had with Jamal were superb… I always felt that the council and the school were pushing for more [work] experience and less time in school for Jamal, which given his aspirations, I didn't particularly think was a good idea. I felt like they wanted him here more and less in school, perhaps that was their way of attempting to deal with the bullying. He often did 3-4 days a week here, and I felt this was to keep him out of the school environment. Jamal worked 9am – 3/3.30 – the hours he would usually do at school. I was responsible for supervising him whilst he was at the shop… He would always greet customers who came into the shop… and was very proactive and conscientious. I did notice him becoming maybe quite quiet when the bullying was bad, but he still had a positive attitude and got on very well with all our staff."

154. This placement ended when the Clamant left the School and the Huddersfield area. The Claimant explained the disruption to his education:

> "I left the school at the start of Year 11 when I was meant to be taking my GCSEs. My English still was not good enough for me to get the grade I needed in order to be a pharmacist. After I left the School, I was not able to join a new school and had to apply to join a college where I could then take my GCSEs. I was not ready to take my GCSEs when I had moved from Huddersfield as there was too much disruption. My family have now moved again to a different part of the country.
>
> I am much happier where we are now. I am still on a waiting list to join a college and want to be able to take my GCSEs so that I can train to be a pharmacist. I am still worried about what happened and don't talk about my past or mention my name if I don't have to.
>
> I currently work in [a new job] and am happy here. However, I did get a strange call from a man who wanted to buy a car. He asked to meet with me alone, so when he drove down to collect the car it would just be the two of us. He sounded strange and kept changing where he had come from, firstly saying he was from Huddersfield, Bradford, Leeds then later from Liverpool, so I was worried and went to the police station but they told me that there was no evidence of anything wrong, but if anything else happened, I should call 999. It makes me sad that I still have to be worried about people coming after me for what happened 3 years

> ago. I worry that this incident is connected to the Defendant's publications and this case."

155. In conclusion, the Claimant stated:

> "I had a tough time at school because of the bullying, and I want to forget about it and move on. But I do not think it is fair for someone to be able to publish lies about me, as if I am a violent trouble-maker, when I am not. I have been extremely hurt by the Defendant's actions in wanting to portray me as a bad person. I want to set the record straight."

156. The Defendant did not, in cross-examination, suggest to the Claimant that it was not true that he and his family had been forced to leave Huddersfield. There was a suggestion, by one witness, during the evidence presented by the Defendant that this was not true. I reject that. I am quite satisfied that the Claimant and his family were forced to relocate. In fairness, it was not a point upon which the Defendant sought to rely in his closing speech.

157. In terms of the need for vindication, the Defendant has not accepted that Imputations 1 and 2 conveyed by his two videos were false. Indeed, he has maintained throughout these proceedings, and at the trial, that they were true. He has not publicly withdrawn the allegations or apologised for them. This also means that there is an absence of any mitigation.

(c) Submissions

158. The Defendant did not include any submissions on remedies in his closing submissions.

159. Ms Evans QC submitted that the defamatory allegations made against the Claimant in Imputations 1 and 2, whilst not being at the very top end of seriousness, were towards the upper end of the scale. She accepted that care would need to be taken to distinguish between (a) the harm caused by the bullying that the Claimant experienced at the School; (b) harm caused once the Viral Video became the focus of media attention; and (c) harm caused by the First and Second Videos. She submits that, nevertheless, the Court can be satisfied, based on the unchallenged evidence, that the Defendants' videos had a devastating effect on the Claimant. The Claimant's family was forced to flee their home and the Claimant's education was seriously affected. The Claimant, she submits, will bear these consequences for the rest of his life.

160. Ms Evans QC has submitted that, in fixing the sum in damages, the Court should reflect the fact that the Defendant has persisted in a defence of truth. Not only has this prevented the Claimant from obtaining swift vindication, but the Defendant has also put the Claimant through a High Court trial at which he has, publicly and steadfastly, maintained that the allegations were true. In this respect, Ms Evans QC relied upon the Court of Appeal's observations from ***Cairns -v- Modi*** **[2013] 1 WLR 1015** [32]:

> "… [I]t cannot be right in principle for a defendant to embark on a wholesale attack on the character of a claimant in a libel action heard by a judge without having to face the consequences of the actual and potential damage done to the victim both in the forensic process and as a result of further publicity. There will be occasions when the judgment will provide sufficient vindication, but whether it does so is always a fact-specific question. The judge will be well placed to

> assess whether the terms of the judgment do indeed provide sufficient vindication in the overall context of the case. In the present case, we think it unlikely that cricket fans will have downloaded the judgment of Bean J and read it with close attention. It is more likely, as in so many cases, that the general public (or rather, interested 'bystanders' who need to be convinced) will be concerned to discover what might be called the 'headline' result. What most people want to know, and that includes those who read the judgment closely, … is simply 'how much did he get?'"

161. Ms Evans QC referred, by way of comparators, to the awards (made or upheld on appeal) in ***Berezovsky -v- Terluk*** **[2011] EWCA Civ 1534**; ***Cairns -v- Modi***; ***Monir -v- Wood*** **[2018] EWHC 3525 (QB)**; and ***Glenn -v- Kline*** **[2021] EWHC 468**.

(d) Decision

162. The Defendant's allegations against the Claimant were very serious and were published widely. The Defendant has admitted that their publication has caused serious harm to the Claimant's reputation. The consequences to the Claimant have been particularly severe. Although it was media attention on the Viral Video that first propelled the Claimant (and Bailey McLaren) into the glare of publicity, overwhelmingly that coverage (rightly) portrayed the Claimant as the victim in the Playing Field Incident. The Defendant's contribution to this media frenzy was a deliberate effort to portray the Claimant as being, far from an innocent victim, but in fact a violent aggressor. Worse, the language used in the First and Second Videos was calculated to inflame the situation. As was entirely predictable, the Claimant then became the target of abuse which ultimately led to him and his family having to leave their home, and the Claimant to have to abandon his education. The Defendant is responsible for this harm, some of the scars of which, particularly the impact on the Claimant's education, are likely last for many years, if not a lifetime.

163. The most significant element of the damages award that I fix will be the need for vindication. This judgment – but more importantly – the award of damages will mark clearly that the Defendant has failed to demonstrate the truth of his allegations. The Defendant took on the burden of proving his allegations to be true. He has failed. In reality, and for the reasons I have explained, his evidence fell woefully short. He has, however, persisted with the serious allegations he originally made, and has even added to them during the proceedings. The Claimant has had to face them in the full glare and publicity of a High Court trial. It is my responsibility to make clear that the Defendant has failed in his defence of truth, to vindicate the Claimant and to award him a sum in damages that represents fair compensation. The sum I award is £100,000.

(2) Injunction

164. The First and Second Videos are no longer available. After his Facebook account was closed, the Defendant has not republished the videos on another platform and no evidence has been presented to the Court at the trial that the Defendant has repeated the same or similar allegations outside his defence of this claim. I was provided with a video recording of the Defendant addressing a rally, at which Gerard Batten, also spoke. The Defendant did not, in that speech, repeat the allegations he had made in the First and Second Videos. On that occasion, the Defendant spoke about his concern about Bailey McLaren, telling the assembled audience:

> "Bailey McLaren… a child, a schoolchild, whose life [was] turned upside down over a disagreement in a school playing field."

165. A date for the hand-down of this judgment was originally fixed for 19 July 2021. Unfortunately, that had to be postponed until today. A draft of this judgment was circulated to the parties earlier today. Based on the evidence at trial, I was not satisfied that the Claimant had demonstrated that the Defendant threatened to re-publish the allegations he made against the Claimant. In response, the Claimant's solicitors and Counsel have forwarded to me a recording posted on social media by the Defendant, apparently over the weekend of 16-18 July 2021, in which he refers to his intention to publish "*the total evidence and proof*" showing what the Claimant "*was like*" and the "*reality of what he had done*".

166. In light of that recent evidence, I shall hear further submissions about the issue of whether an injunction should be granted and, if so, in what terms.

(3) Publication of a summary of the Court's judgment: s.12 Defamation Act 2013

167. s.12 Defamation Act 2013 provides:

> "(1) Where a court gives judgment for the claimant in an action for defamation the court may order the defendant to publish a summary of the judgment.
>
> (2) The wording of any summary and the time, manner, form and place of its publication are to be for the parties to agree.
>
> (3) If the parties cannot agree on the wording, the wording is to be settled by the court.
>
> (4) If the parties cannot agree on the time, manner, form or place of publication, the court may give such directions as to those matters as it considers reasonable and practicable in the circumstances.
>
> (5) This section does not apply where the court gives judgment for the claimant under section 8(3) of the Defamation Act 1996 (summary disposal of claims).

168. An order under s.12 is discretionary. The principles are set out in ***Monir -v- Wood*** [239]-[242] and ***Turley -v- Unite the Union*** **[2019] EWHC 3547 (QB)** [188]. Ms Evans QC submits that, applying these principles, the Court should order publication of a summary of the judgment. She acknowledged that, as the Defendant's Facebook account has been deactivated, the Defendant cannot now communicate using the same medium as he used for the original publication. Nevertheless, she argues that the Defendant has access to other platforms through which he could be ordered to publish a summary.

169. I have no evidence of whether the Defendant has access to other platform(s) of communication or, if he does, what audience would be reached by their use. Of more importance, however, is the reality of the situation. Given the Defendant's public prominence, there can be little doubt that the result of this libel action will receive publicity across many media channels. In future, a search of the Claimant's name on internet search engines is likely to return media reports of this judgment. Ultimately the

availability, in the public domain, of that reporting, together with this judgment, is likely to be a more effective method of communicating the result in this case than an order that the Defendant publish a summary of the decision.

K: Final words

170. I cannot leave this case without noting that the Claimant is not the only victim in this affair. After the Claimant, and although there are now other casualties, Bailey McLaren is probably the person who has been harmed the most as a result of the Playing Field Incident. Bailey McLaren has not sought to defend his attack on the Claimant on 25 October 2018. He was rightly punished for it. Whilst I am satisfied that the Playing Field Incident was an incident of bullying, I cannot, on the evidence presented at the trial, conclude that it was racially motivated. That was apparently also the conclusion of the police on the evidence available to them when they decided to administer a caution for common assault not a racially aggravated assault. Bailey has always denied, including in the evidence he gave during this trial, that the attack on the Claimant was racially motivated.

171. Had the incident had not been recorded on a mobile phone, and later shared on social media, it would have remained a disciplinary issue, dealt with appropriately by the School and with Bailey receiving a police caution for common assault. There the matter would have ended. However, once the Viral Video became the subject of national media coverage, Bailey was portrayed and regarded as a racist bully who had carried out a nasty assault on the Claimant. I have set out in the judgment the consequences for the Claimant, but the impact on Bailey was also immediate and stark. On grounds of physical safety, he and his family were also forced to move from their homes. In that respect, he suffered in the same way that the Claimant did, following the Defendant's First and Second Videos. Both were schoolboys when they were catapulted into the maelstrom of a media storm. Neither was remotely equipped to deal with what then happened.

172. In such circumstances, it is hardly surprising if Bailey regarded the Defendant as something of a saviour; someone who was prepared to help him in what must have been a low and very frightening point of his life. With the benefit of hindsight and maturity, Bailey may yet come to reflect on whether he has actually been helped by the Defendant.

Appendix: Agreed transcripts of the Facebook Videos

First Video

[1] … This is about the Syrian refugee Jamal. And yes, if you're watching this, if you're one of the people … This is about the Syrian refugee Jamal who had his throat grabbed in the school up in Huddersfield.

[2] I now have it as absolute fact, I've seen images of the young girl that he was involved in beating up. This is Jamal, the innocent refugee that you people or people out there have raised a hundred thousand pounds for. A young girl was beaten badly by Muslim girls. While those Muslim girls were beating her up, Jamal was involved, in kicking, in biting her, she was bitten, she was black and blue. She had to be taken out of school and home-schooled. She had to leave that school, the same school.

[3] Her family have been to the *Huddersfield Examiner* with all of this, but guess what? They've refused to report it. They've refused to report it. So this young boy, this young English boy, that this young Jamal, now that we know he's not innocent and he violently attacks young English girls in his school, now we know that, and the family are terrified, because after the young Muslim girls who jumped [her], they were arrested for that, taken to court, after that they jumped her and battered her again. They battered her again. So, Jamal isn't that innocent. Jamal is the same age as the young English boy that grabbed him by the throat.

[4] Now after beating up a girl in the school, after being part of a gang that attacked a girl in the school, you'd ask why he wasn't expelled, but he wasn't expelled. You'd ask why the whole world, this has made news and world attention, because he's Syrian and he's a refugee and an English kid hit him, right. But then you'd ask what you would do, what I would have done as a 16-year-old English kid with this boy terrorising girls in my school. Now this boy, Jamal, and according cause I've heard from the child in question, he threatened to stab him. He was giving it to him, so at lunch time, he's gone and grabbed him by his throat. This Jamal isn't innocent. He beat a girl black and blue.

[5] How come no one's telling this? How come the media, cause I know now from the little girl's family, have been telling the media this. So why have the media not reported that? Why have none of them, why have none of them reported that? Why has this kid been portrayed as the ultimate victim in this whole entire country, yeah, when with a little bit of investigating, with a little bit of asking witnesses at the school, cause I've had lots of the kids from the school message me yesterday and I didn't, and d'you know what, even for who I am I was a bit worried about commenting. Ain't that sad? I was a bit worried about commenting until I just spoke to the kid's mum and dad! The little girl's mum and dad! Who showed me images of her black and bloody blue! That Jamal was involved in beating her!

[6] So to the little kids, and I've just read reports, I've just read the screenshots and messages of people saying how they're going to stab and murder this little English boy that gripped him by the throat, now you know the real story, or there was more to the story, or the fact that Jamal had been giving it to him and this kid has stood up for himself on his lunch break. Even when you watch the video, I watched the video and I thought exactly the same with that little snippet of video but that was before I spoke to other kids at the school and before I saw images of a young girl who had to leave that school. She was taken out and home-schooled for months because of Jamal and the groups of Muslim girls. Unbelievable. Unbelievable that no, none of the media would have found this out in 10 minutes.

[7] I've been busy, yeah, even today, I've literally just got onto this story, gone through my messages and I'm inundated with messages saying this isn't the true story, you're not, no one's reporting the truth on this issue…

[8] So if you've seen that story, that young boy has been driven from his home, he's been targeted by the whole, the entire left wing fascist left of this country, tracked down, found his address, posted online, threats to murder him, his mother's threats to rape her, home under constant attack, because he stood up to a Syrian refugee that beat the shit out of an English kid, and out of an English girl. That's what needs reporting.

[9] That young kid, how bad, I know people felt sorry for that Syrian kid, but bearing in mind this Syrian kid jumps and beats up girls in groups, and then a young English boy stands up to him, and the whole of England attacks him. The whole of England attacks the young English boy, without finding out the facts of what happened, without finding out what Jamal could possibly be like, without finding out any of that. Everyone comes out in full attack against the kid, and that kid's now in hiding, and there's messages, I just read one of the messages of Muslims saying we're gonna be outside your school till we find you if it takes a week, we're gonna stab you, we're gonna kill you, I've got all the messages.

[10] I'm hoping I can get an interview out of these other people, I've got all those screenshots, I've got all the images of the young girl who's been beaten up, I've got all those screenshots of the Muslims threatening to kill this child, where's all the condemnation of them threating to murder and beat him up? He grabbed someone by the throat and poured a little bit of water on him. Waterboarding. The police, the media in this country are calling that water boarding. Waterboarding. This much water poured on his head, waterboarding, cause he's Syrian, cause he's a refugee and cause the young kid was white and English. That's why this has been blown the f*** up. 10 minutes would have found this mother, 10 minutes cause she I found her, of a young girl that was beaten by the same boy.

Second Video

[1] ... Just more on this Syrian child situation at the school in Huddersfield. So we've seen the world's media portrayal of one incident at the school. An incident where a young boy (and it didn't look good) received no visible injuries to himself. Um. I've since that moment been sent pictures of young white English children, girls and boys, who haven't been attacked or had an altercation or had a physical confrontation one on one, but we have one girl, who was violently beaten by a gang of Muslim girls including this Syrian boy. That's according to all of the conversations I've had with the family of that child.

[2] Now of course, just like this young boy who grabbed the kid by the throat, everyone threatens to rape, murder, kill and destroy this family. Of course, the young girl's mum, is of course she is scared. There's been threats to blow this kid's house up. There's gangs of Muslims now outside the school. They've been outside the boy's house for two days.

[3] But the reality and the truth and the facts, from what I can understand from the pictures I am receiving, is that one girl with very visible injuries in which the police were involved. The girl, the Muslim girls jumped her, Jamal was involved, then they got taken to court, and then straight after court they jumped her again. They're still in the school, they haven't been expelled from the school. Then I've been sent another mother at the same school, has sent me an image of her 13-year-old son who was beaten by a gang of five, not one man grabbing his neck, not one boy the same age grabbing his neck, five young Muslims, who

kicked the living shit out of her 13-year-old white English son. Did that make the news? Were they arrested? Was there a go fund me page set up? Was the whole nation made to feel guilty?

[4] So, at the one school this one school. Then I've had another father who is messaging me now with proof of his contact with the school, his daughter went to the school that young Muslim children in there were putting ISIS insignia on their school bags. He reported it to the school. He was told by the headteacher: "Do not fight the system." So, it seems there are a lot of problems in that school.

[5] Now you have to look at it from the young 16-year-old boy's version yeah. This happened 6 weeks ago – why has it now been elevated, right now? It happened 6 weeks ago. This was done and dusted. This Syrian boy, this happened 6 weeks ago. Now according to the young boy and according to a young girl, who had to be taken out of that school and home-schooled because their family were too scared of the Muslims in the school, who were beating them up. This is all… no one is hearing any of this, why not? Why not, when I've actually got copies, I've got copies of emails to the *Huddersfield Examiner* asking from the parents of the girl that was beaten up, I've got copies of the emails back and forth saying why won't you report this racist gang attack against our daughter. Why won't you report it? Their reply says: "Because your daughter's 13 it will make the situation worse for her".

[6] Ok but your quick to fucking run off and report to the world about a young boy getting gripped by his throat. All I said, which I've said yesterday, cause *The Sun* were running a big headline about it, according to this young girl's family Jamal isn't a victim. He was involved in the violent attack against their daughter and then according to the young boy who grabbed him by his throat, who obviously went up and said, "what are you saying now," I believe. So, something's been said before that point. Both boys are in the same year at school, both boys are the same age. There was no booting, kicking, punching. He gripped him by his throat. He's now living in complete fear and the whole country has turned on him without understanding any of what's gone on prior. Imagine being in that school. You have lots of Muslim gangs beating up loads of young English kids not one on one, but gangs booting the hell out of them and then you decide to make a stand against this kid, and you go up and grab him and then what happens? The whole world turns against you. The whole world turns against you without even knowing the fair, in fact it was one kid versus one kid. It wasn't nice to watch, no one should resort to violence on anybody but we do have a young girl that's been beaten black and blue, we have another boy at the same school which I've just put this picture up of him on my Facebook you can see it – share it. He's been beaten black and blue. His mum is scared. All of these parents are scared. The first thing they're all saying is "we're scared." Why are they scared? Look at the response to this young 16-year-old kid that grabbed another kid by the throat. The whole country, the whole of Pakistan is threatening to rape and murder his family. Of course they're scared. They're found they they're getting attacked left right and centre.

[7] Ahh anyway so Bailey, when the truth has come out, there's a one little young Syrian kid who's involved in the gang attack apparently, according to the family of which I have all the evidence. They might be saying no now because you're all threatening to rape them and murder them. They might be scared now, in fact they weren't scared now, they were scared before, they were scared even when they were talking to me. Every one of these parents who was talking to me is terrified of the response of violence by the Muslim gangs in that school and in that area. Right now we have loads of bearded Muslim men outside the school. It's a school. They're children, why are you outside the school with your big beard? What are you doing outside the school? It's kids.

[8] Well anyone who went to school. I tell you when I went to school one altercation and the Muslim men were outside the school. The men, not children, men. In fact my school had to be shut down for three days. They closed the school for three days, because the men were coming to the school to attack.

[9] So, I'm sorry but anyone who doesn't understand what goes on in these schools or doesn't understand the level of violence or doesn't understand the fact that there isn't a one-one fight. Bailey went up and it looked like he tried to have a one on one altercation with a kid – that's unheard of. When you reverse the roles – unheard of. That's why there's pictures of two young kids black and blue, beaten not by one, not by two but by three, four and five young Muslims in the same school. Report on that.

[10] Why don't the mainstream media go and interview those mums. Why don't you go -- any mainstream media watching this contact me I've got the mum talking to me right now. Showing me details of her son's injuries telling me the school's done nothing, the headteacher's done nothing, no one done nothing. No one expelled these young Muslim gangs for battering him. Yes of course Bailey was expelled, of course he was. Of course he was. The victim is Syrian. Of course he was. Anyway enough of that.