Neutral Citation Number: [2026] EWHC 1331 (KB)

Case No: KB-2023-003201

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/06/2026

Before :

THE HON. MRS JUSTICE STEYN DBE

- -

Between :

VANESSA PICKER	**Claimant**
- and -	
TEW	**Defendant**

- -
- -

Dr Liam Wells (instructed by **Direct Access**) for the **Claimant**
Kirsten Sjøvoll (instructed by **Freeths LLP**) for the **Defendant**

Hearing dates: 20 May 2026

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Approved Judgment

This judgment was handed down remotely at 2:00pm on 3 June 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HON. MRS JUSTICE STEYN DBE

Mrs Justice Steyn :

Introduction

1. This is a claim for libel. It concerns an allegation of sexual assault made by the defendant against the claimant, which allegation is vehemently denied. The allegation was made in two emails sent to university staff when the defendant was seeking their assistance to put in place a Non-Contact Agreement (that is a non-disciplinary, consensual agreement between parties to have no contact with each other). The defendant has pleaded defences of qualified privilege and truth and put in issue whether the statements caused serious harm to the claimant's reputation.

2. The application determined in this judgment is the claimant's application to strike out the defence of truth pursuant to CPR 3.4(2)(a) or (b) and/or grant summary judgment on that defence in her favour pursuant to CPR 24.3. In addition, it falls to me to determine whether the "Provisional Order" that Master Dagnall made on 27 February 2026, but which was accidentally sealed in circumstances where he had directed it should not be, should stand.

The procedural history

3. The claim form was issued on 8 August 2023. The statements complained of are emails sent on 8 August 2022 and 11 August 2022. The claim form was served on the defendant together with Particulars of Claim on 11 December 2023. The defendant served an acknowledgment of service on 21 December 2023. Extensions of time were agreed, resulting in the Defence being served on 2 February 2024.

4. By consent, Master Dagnall made a temporary anonymity order on 8 August 2024, and an extended temporary anonymity order on 5 November 2024, protecting the defendant's identity.

5. On 5 November 2024, by consent, Master Dagnall made directions for the filing and service of amended statements of case, a stay until 3 March 2025 for Alternative Dispute Resolution, and the listing of a further costs and case management hearing.

6. The claimant's Amended Particulars of Claim were served on 14 November 2024. The defendant's Amended Defence was served on 3 December 2024. The claimant's Reply to the Defence was served on 14 January 2025 (an extension of time having been agreed in part and granted in part).

7. On 24 April 2025, following a case and costs management conference, Master Dagnall gave directions to trial, to be listed in a window of 12 January 2026 to 1 April 2026 ('the CCMC Order'). Agreed costs budgets were filed on 15 May 2025.

8. On 29 May 2025, the claimant filed a notice of change, indicating that she had instructed a new firm of solicitors. Following several agreed extensions, at the claimant's request, Lists of Documents were exchanged on 7 July 2025, the defendant granted inspection on 10 July 2025, and the claimant granted inspection on 14 July 2025.

9. On 26 August 2025, the claimant filed a further notice of change, indicating that she would be acting in person.

10. On 5 September 2025, the 5-day trial was fixed for 2 February 2026. In accordance with the CCMC Order, the parties were to exchange witness statements no later than 10 September 2025. The parties agreed a 28-day extension to 8 October 2025.

11. On 17 September 2025, the claimant issued a Part 18 Request. The defendant served a Part 18 Response on 23 September 2025.

12. On 23 September 2025, the claimant filed an application for specific disclosure, permission to re-amend the Particulars of Claim (without providing the proposed amendments), appointment of a forensic expert to review the defendant's devices, a hearing to set aside the anonymity order, listing of the claimant's intended strike out application and variation of various directions.

13. On 25 September 2025, the claimant filed an application for further information under CPR Part 18.

14. On 8 October 2025, the parties made a joint application for a one-month stay for exchange of witness statements.

15. On 30 October 2025, the claimant filed an application to re-amend the Particulars of Claim (without providing the proposed amendments) and to add Bee Jones as a proposed new defendant.

16. On 18 November 2025, the claimant filed an application for orders that unless the defendant supplied within 7 days "proper and complete" disclosure and full responses to the Part 18 Request, the Amended Defence would be struck out. The same day, the claimant filed an application to strike out the defendant's qualified privilege defence.

17. On 20 November 2025, the claimant filed the application to strike out the defendant's truth defence which is the subject of this judgment. The same day, the claimant filed an application to set aside the anonymity order. On 22 December 2025 and 9 January 2026, the claimant filed supplementary witness statements in support of her applications.

18. The defendant served a further Part 18 Response, including the "Publications Table", on 30 December 2025.

19. The claimant's applications were listed for hearing on 9 January 2026 before a Deputy Master who specialises in Media and Communications List work. The hearing was vacated in circumstances where the Deputy Master was from the same chambers as the defendant's newly instructed Counsel, the claimant was unrepresented, and no other master was available. The hearing was re-listed before Master Dagnall on 23 February 2026.

20. By an order dated 12 January 2026, Master Dagnall (with the authorisation of a Judge in Charge of the Media and Communications List) vacated the trial, giving a new trial window.

21. On 12 January 2026, the claimant filed an application to rely on an inadvertently disclosed document.

22. On 21 January and 9 February 2026, the claimant filed supplemental witness statements requesting joinder of two further proposed new defendants, Annie Welden and Gwen Morgan, respectively.

23. In her skeleton argument for the hearing on 23 February 2026, served on the morning of the hearing, the claimant informally applied for summary judgment. At a further hearing on 27 February 2026, Master Dagnall gave judgment on the claimant's Part 18 Application, and made what is described as a "Provisional Order". The order was provisional because Master Dagnall considered that part of it may need to be reconsidered in light of developments, having adjourned the claimant's other applications (and an anticipated application by the defendant for a reporting restriction order ('RRO') which was filed on 5 March 2026) to 16 March 2026. Specifically, as Master Dagnall stated in the reasons for his subsequent order of 17 April 2026:

> "In the Judgment, I held that my Orders as to the Defendant having to provide some, but only some, Further Information by way of amendment might require reconsideration in the light of whatever eventually transpired by way of amendment and therefore that my consequent order would only be Provisional."

24. Paragraph 1 of the Provisional Order stated:

> "This Order (being provisional in accordance with the Judgment) shall not be sealed until further direction of the Court."

However, the Provisional Order was sealed on 27 February 2026. That occurred, as Master Dagnall observed in his 17 April 2026 order, by accident, no direction for it to be sealed having been given.

25. Paragraphs 3 and 4 of the Provisional Order imposed an unless order on the claimant, requiring her to serve on the defendant and proposed defendants, among other documents, by 10am on 9 March 2026 draft proposed Re-Amended Particulars of Claim containing a concise statement of the facts relied on and complying with paragraph 4.2 of Practice Direction 53B. The claimant served draft Re-Amended Particulars of Claim running to 77 pages just before 10am on 9 March 2026. The following day, the claimant served Schedules A and B to her draft re-amended particulars of claim, and a further document entitled Additional Publications to be incorporated into Schedule B (amounting in total to a further 127 pages).

26. On 11 and 13 March 2026, the claimant wrote to the court requesting Master Dagnall's recusal, reasonable adjustments (in light of her vulnerabilities and in circumstances where she was attending hearings remotely from Australia) and seeking an adjournment of the hearing listed for 16 March 2026. The defendant requested the hearing be re-listed before a High Court Judge. Master Dagnall vacated the hearing on 16 March 2026.

27. On 18 March 2026, the defendant filed an application to vary the approved costs budget. On 22 March, 23 March and 1 April 2026, the claimant filed applications for a costs capping order, for security for costs against the defendant, for alternative service and service out of the jurisdiction on one of the proposed new defendants. On 7 April 2026, the claimant filed a without notice application, seeking a stay of substantive

proceedings pending an investigation of the defendant's funding, preservation orders, forensic imaging of devices, and various orders against third parties.

28. On 16 April 2026 I made three orders. By the first order, I dismissed the claimant's without notice application dated 7 April 2026 without a hearing. By the second order, I dismissed the claimant's application for security for costs without a hearing. By the third order, following consultation with Master Dagnall, and in light of the claimant's request for reasonable adjustments, I listed the claimant's remaining applications and the defendant's application for an RRO, for hearing by a Judge of the Media and Communications List across three days on 30 April, 14 May and 20 May 2026 (with the defendant's application for variation of the costs budget remaining for determination by a master or deputy master).

29. On 17 April 2026, without a hearing, Master Dagnall dismissed the claimant's recusal application. Without determining whether the claimant had breached the unless directions contained in his Provisional Order (by serving the Schedules to the draft proposed re-amended particulars of claim after the deadline), Master Dagnall granted the claimant relief from sanctions. By the same order, Master Dagnall directed that:

> "the question whether the Provisional Order as sealed should stand (but subject to the other provisions of this Order including as to relief from sanctions) [is] adjourned to the hearings to be listed on 14 May 2026 and 20 May 2026 … to be dealt with by the Judge(s) conducting those hearings".[1]

30. Following a hearing on 30 April 2026, which the claimant attended in person, I dismissed the claimant's application to set aside the anonymity order and granted an RRO. The anonymity order and RRO remains a temporary measure and will be revisited at trial. I also dismissed the claimant's applications for permission to rely on inadvertent disclosure and for a costs capping order, certifying those two applications as totally without merit. Due to lack of time, I reserved costs to a later hearing.

31. The claimant instructed direct access counsel, Dr Liam Wells, prior to the hearing on 14 May 2026. By an order dated 8 May 2026, I extended the time for the claimant to file bundles and a skeleton argument for the 14 May hearing. At the hearing on 14 May 2026, the claimant withdrew the 23 September application (including, in particular, the application for specific disclosure and appointment of a forensic expert: para 12 above); the application for an unless order in respect of disclosure (para 16 above); the application to strike out the qualified privilege defence (para 16 above); the application to join three new defendants (paras 15 and 22 above); and the service application (para 27 above). I dismissed the claimant's oral application for an adjournment of her amendment application to permit her a further opportunity to provide draft re-amended particulars of claim (and consequently of the application to strike out the truth defence). I dismissed the amendment application (para 15 above) and certified it as totally without merit. I made a costs order on an unless basis against the claimant in respect of the

[1] The 17 April 2026 order also adjourned to the same hearings the "Appeal Matters", that is, any application for extension of time for appealing and permission to appeal Master Dagnall's judgment of 27 February 2026. However, no such applications have been pursued.

defendant's costs of the 30 April hearing, and costs orders against her in favour of the first and second proposed defendants.

32. At the hearing on 20 May 2026, I heard the claimant's application to strike out the truth defence, reserving judgment. I also gave directions to trial, which is listed to commence on 19 October 2026, and made an order for the defendant's costs of the 14 May hearing to be paid by the claimant on an indemnity basis, subject to detailed assessment. I ordered the claimant to make an interim payment on account and gave directions for the defendant's application for the interim payment to be made on an 'unless' basis to be determined following receipt of a statement giving full and frank disclosure of the claimant's financial position.

33. It is against this background that the claimant's application to strike out and/or for summary judgment in respect of the truth defence falls to be determined at a relatively late stage of proceedings.

The applicable principles

34. CPR 3.4(2) provides, so far as relevant, that the court may strike out a statement of case:

> "… if it appears to the court –
>
> (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
>
> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings".

35. CPR 24.3 allows the court to give summary judgment against a defendant on the whole of a claim, or on a particular issue, if it considers:

> "(a)… that the party has no real prospect of succeeding on the claim, defence or issue; and
>
> (b) there is no other compelling reason why the case or issue should be disposed of at a trial."

36. In *Duchess of Sussex v Associated Newspapers Limited* [2020] EWHC 1058 (Ch), [2020] EMLR 21, at [33], Warby J addressed the core principles to be applied when considering an application to strike out under CPR r.3.4(2). As in this case, the application relied on sub-rules (a) and (b), although unlike in that case here it is the *claimant* who seeks to strike out part of the *defence*. The relevant principles are:

> "(2) An application under CPR 3.4(2)(a) calls for analysis of the statement of case, without reference to evidence. The primary facts alleged are assumed to be true. The Court should not be deterred from deciding a point of law; if it has all the necessary materials it should 'grasp the nettle': *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725, but it should not strike out under this sub-rule unless it is 'certain' that the

> statement of case, or the part under attack discloses no reasonable grounds of claim: *Richards (t/a Colin Richards & Co) v Hughes* [2004] EWCA Civ 266 [2004] PNLR 35 [22]. Even then, the Court has a discretion; it should consider whether the defect might be cured by amendment; if so, it may refrain from striking out and give an opportunity to make such an amendment.
>
> (3) Rule 3.4(2)(b) is broad in scope, and evidence is in principle admissible. The wording of the rule makes clear that the governing principle is that a statement of case must not be 'likely to obstruct the just disposal of the proceedings'. Like all parts of the rules, that phrase must be interpreted and applied in the light of the overriding objective of dealing with a case 'justly and at proportionate cost'. The previous rules, the Rules of the Supreme Court, allowed the court to strike out all or part of a statement of case if it was 'scandalous', a term which covered allegations of dishonesty or other wrongdoing that were irrelevant to the claim. The language is outmoded, but I agree with [Counsel for the defendant] that the power to exclude such material remains. Allegations of that kind can easily be regarded as 'likely to obstruct the just disposal' of proceedings.
>
> (4) 'Abuse of process' is a sub-set of category (b). An abuse of process is a significant or substantial misuse of the process. It may take a variety of forms. Typical examples are proceedings which are vexatious, or attempts to re-litigate issues decided before, or claims which are 'not worth the candle' (*Jameel v Dow Jones & Co Inc* [2005] EWCA Civ 75 [2005] QB 946). But the categories are not closed."

37. In the context of an application for summary judgment, there is no assumption that what is asserted in the Defence is true; evidence to the contrary is admissible, and is commonly adduced by the applicant and by the respondent: *HRH The Duchess of Sussex v Associated Newspapers Ltd* [2021] EWHC 273 (Ch), [2021] 4 WLR 35, Warby J, [12].

38. The classic exposition of the right approach to summary judgment was given by Lewison J in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15] (approved by the Court of Appeal in *AC Ward & Son Ltd v Catlin (Five) Ltd* [2009] EWCA Civ 1098; [2010] Lloyd's Rep IR 301). The approach, adapted to a case in which summary judgment is sought by the claimant, is as follows:

> "i) The court must consider whether the [defendant] has a 'realistic' as opposed to a 'fanciful' prospect of success …
>
> ii) A 'realistic' [defence] is one that carries some degree of conviction. This means a [defence] that is more than merely arguable …

> iii) In reaching its conclusion the court must not conduct a 'mini-trial'…
>
> iv) This does not mean that the court must take at face value and without analysis everything that a [defendant] says in [her] statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents …
>
> v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial …
>
> vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case …
>
> vii) On the other hand, it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim … Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction …"

39. In *King v Stiefel* [2021] EWHC 1045 (Comm) Cockerill J observed:

> "21. The authorities therefore make clear that in the context of summary judgment the court is by no means barred from evaluating the evidence, and concluding that on the evidence there is no real (as opposed to fanciful) prospect of success. It

> will of course be cautious in doing so. It will bear in mind the clarity of the evidence available and the potential for other evidence to be available at trial which is likely to bear on the issues. It will avoid conducting a mini-trial. But there will be cases where the Court will be entitled to draw a line and say that - even bearing well in mind all of those points - it would be contrary to principle for a case to proceed to trial.
>
> …
>
> 27. When considering an application to strike out however the facts pleaded must be assumed to be true and evidence regarding the claims advanced in the statement of case is inadmissible. This is noted in *Terry Allsop v Banner Jones Limited* [2021] EWCA Civ 7 by Marcus Smith J (giving the judgment of the Court of Appeal) at [7], citing the judgment of Arnold LJ in *Libyan Investment Authority v King* [2020] EWCA Civ 1690, at [96]:
>
> > "In contrast with the applications under CPR 3.4(2)(b), the applications under CPR 3.4(2)(a) and CPR 24.2 are concerned with the merits of the claim, specifically whether the claim meets the (low) threshold of what I shall call 'reasonable arguability'. Although it can be said that there is no material difference between the test applied by these two provisions, there is an important distinction between CPR 3.4(2)(a) and CPR 24.2, in that an application under CPR 24.2 can be supported by evidence, whereas an application under CPR 3.4(2)(a) should not involve evidence regarding the claims advanced in the statement of case."

Defence of truth

40. Section 2 of the Defamation Act 2013 provides, so far as material:

> "(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."

41. To rely on s.2 as a defence to the claim, the defendant has to show that the meaning of each of the Emails is substantially true. The phrase "substantially true" retains its

common law meaning. The defendant has to establish the essential or substantial truth of the sting of the libel: *Simpson v MGN Ltd* [2016] EWCA Civ 772, [2016] EMLR 26, Laws LJ, [19] and [21].

Meaning

42. The parties are not in agreement as to the meaning of the statements complained of and there has been no judicial determination of meaning. On an application to strike out pursuant to CPR 3.4(2)(a) or (b) the court's focus is necessarily on the respondent's statement of case.

43. It follows, in my judgement, that unless the defendant's pleaded meaning is one that the statement complained of is not capable of bearing, the court should address the strike out application on the assumption that the meaning is as pleaded by the defendant. Similarly, unless the defendant has "*no real prospect of succeeding*" in establishing their pleaded meaning, which would be the case only if it is a meaning the statement complained of is not capable of bearing, an application by the claimant for summary judgment pursuant to CPR 24.3 should be determined by reference to the defendant's pleaded meaning.

44. Counsel for the claimant, Dr Wells, proceeded on the assumption (without formally conceding the issue) that the court should consider the application by reference to the defendant's pleaded meaning. He based his submissions in support of the application on the defendant's pleaded meaning. In my judgement, the statements complained of are not incapable of bearing the meanings pleaded by the defendant and so for that reason, as well as in light of the approach taken by the claimant, I will determine the application by reference to the defendant's meaning.

45. The defendant's pleaded meaning in respect of the 8 August 2022 email is:

> "The Claimant had non-consensual sexual relations with the Defendant while she was intoxicated and unable to consent, having repeatedly lost consciousness earlier in the evening.
>
> The following morning, the Claimant informed the Defendant that the Claimant had instigated sexual relations with her while the Defendant was intoxicated, to the point that she again lost consciousness.
>
> Then, while the Defendant was lying frozen and traumatised by the news that the Claimant had sexually assaulted her, the Claimant again attempted to instigate sexual relations with the Defendant.
>
> The Claimant engaged in such conduct despite the Defendant having recently and repeatedly made it clear to her that she did not want any form of sexual contact with the Claimant.
>
> The seriousness of the Claimant's criminal conduct was such as to leave the Defendant traumatised, subjected to suicidal thoughts in the immediate aftermath of the assault, and unable to

> attend her college alone through fear of encountering the Claimant.

46. The defendant's pleaded meaning in respect of the 11 August 2022 email is:

> "The Claimant sexually assaulted the Defendant, causing her to feel unsafe having any interaction with the Claimant. The seriousness of the Claimant's criminal conduct was such as to leave the Defendant traumatised and subjected to suicidal thoughts in the immediate aftermath of the assault."

47. The degree of certainty with which an imputation is conveyed can vary. In *Chase v News Group Newspapers Ltd* [2002] EWCA Civ 1722, [2013] EMLR 11, the Court of Appeal described three distinct levels of defamatory meaning, the first of which is that the claimant is guilty of some impugned behaviour and the second that there are reasonable grounds to suspect that the claimant is guilty of the impugned behaviour. It is common ground that the defendant's pleaded meaning is Chase level 1.

Burden and standard of proof

48. The claimant submits that the burden is on the defendant to show that the imputation is substantially true. That would undoubtedly be the case at trial. However, as Dr Wells accepted, on an application to strike out pursuant to CPR 3.4(2)(a) or (b), the facts alleged in the respondent's statement of case are presumed to be true: *King v Stiefel,* [27] (cited above).

49. In *Suresh v Samad (No.2)* [2017] EWHC 76 (QB) at [10(4)] Warby J explained the burden of proof on an application for summary judgment under CPR 24.3 in the following terms:

> "On a summary judgment application the burden of proof rests on the applicant to establish that the respondent has no real prospect of success and that there was no other reason for a trial of the claim or issue. If an applicant adduces credible evidence in support of its application, then the respondent becomes subject to an evidential burden of proving some real prospect of success or some other reason for a trial. The standard of proof upon the respondent is not high."

50. The standard of proof is the balance of probabilities. It is common ground that the more serious the allegation the stronger the evidence required to prove its truth. In *Depp v News Group Newspapers* [2020] EWHC 2911 (QB), Nicol J observed at [42]:

> "Although there is a single and unvarying standard of proof in civil proceedings, the evidence which is required to satisfy it may vary according to the circumstances. *In re D* [2008] 1 WLR 1499 at [27] Lord Carswell approved what had been said by Richards LJ in *R (N) v Mental Health Review Tribunal (Northern Region)* [2006] QB 468 at [62] who had said,

> 'Although there is a single civil *standard* of proof on the balance probabilities, it is flexible in its *application*. In particular, the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities.' [Emphasis in the original]"

51. Clear evidence is required where the allegation is one of serious criminality: *Depp*, [43]. This flows from the essential point that some things are inherently more likely than others. Lord Hoffmann illustrated the point in *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, [2003] 1 AC 153 at [55]:

> "It would need more cogent evidence to satisfy one that the creature seen walking in Regent's Park was more likely than not to have been a lioness than to be satisfied to the same standard of probability that it was an Alsatian."

The parties' submissions

52. Dr Wells has focused primarily on the application to strike out the defence of truth. He submits the truth defence is deficiently pleaded and inadequately particularised (CPR 3.4(2)(a)), and that inadequate pleading of a truth defence obstructs the just disposal of proceedings (CPR 3.4(2)(b)). Alternatively, if the truth defence is sufficiently pleaded then he submits it has no real prospect of success.

53. The claimant's submissions are based on two key contentions regarding the defendant's pleaded meaning. First, the claimant relies on the fact that sexual assault is alleged, combined with the reference to "criminal conduct", as implicitly conveying the meaning that she committed a sexual assault contrary to s.3 of the Sexual Offences Act 2003, in which the offence of sexual assault is defined as follows:

> "(1) A person (A) commits an offence if –
>
> (a) he intentionally touches another person (B),
>
> (b) the touching is sexual,
>
> (c) B does not consent to the touching, and
>
> (d) A does not reasonably believe that B consents.
>
> (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents."

54. Secondly, the claimant contends that the defendant's pleaded meaning in relation to the email of 8 August 2022, in particular the reference to the claimant having "non-consensual sexual relations" with the defendant, has the effect that the defendant must prove sexual contact going beyond kissing.

55. Based on these premises, the claimant contends that the defence of truth necessarily had to plead that the claimant *intentionally* touched the defendant, that the touching was *sexual*, that the intentional and sexual touching involved more than kissing, that the defendant did not consent to the touching, and that the claimant did not reasonably believe that the defendant consented.

56. The claimant contends that the Defence fails to plead that:

    i) the defendant *was* sexually assaulted by the claimant (as opposed to her *belief* to that effect);

    ii) the claimant *intentionally* and *sexually* touched the defendant on the night of 2nd October;

    iii) that any intentional, sexual touching went beyond kissing;

    iv) that the defendant asserted on the morning of 3rd October that she was not consenting; or

    v) that the claimant did not or could not have reasonably believed that the defendant was consenting on the night of 2nd or morning of 3rd October.

57. Accordingly, the claimant contends that the defence of truth is deficiently pleaded.

58. The claimant submits that the defendant should not be given an opportunity to amend to remedy any deficiency. In his Provisional Order of 27 February 2026, Master Dagnall directed:

> "(2) The Defendant shall provide Further Information by way of amending (for which permission is granted) the Defence by:
>
> a. Inserting a Paragraph 30.3A reading:
>
> > "30.3A There was substantial sexual contact with the Claimant as initiator between the Claimant and the Defendant (conscious or unconscious) late in the evening/night of 2 October 2021/very early in the morning of 3 October 2021 with that contact not being consensual (for the reasons set out in Paragraphs 30.3 and 30.6 NS 30.6a)."
>
> b. Inserting a Paragraph 30.6A reading:
>
> > "30.6A At no point in the evening/night of 2 October 2021 or the morning of 3 October 2021 did the Defendant make any sexual advances to the Claimant."

> c. Either removing the final sentence of Paragraph 30.3 or stating what was the 'friendly joke' or that the Defendant cannot recall what it was.
>
> …
>
> (5) Save as provided above, the Part 18 Application is dismissed."

(Paragraph 2(a), (b) and (c) addressed the claimant's requests 1, 3 and 5, respectively.)

59. The defendant has not made the amendments permitted by the Provisional Order three months ago and so, the claimant says, should not now be given a further opportunity. The claimant submits that it would be unfair to allow the defendant to re-amend in circumstances where the claimant's application to re-amend was recently dismissed.

60. If the court rejects the above submissions, the claimant in any event contends that the defence of truth has no real prospect of succeeding. In short, this is because the defendant herself avers that she has no memory (due to being heavily intoxicated) of the events on the night of 2 October 2021 from before she journeyed to and arrived at the claimant's address until she awoke the following morning. At trial, in the context of the qualified privilege defence and the claimant's allegation of malice, the claimant will challenge the defendant's claimed lack of memory. But her current application proceeds on the assumption that it is true that the defendant has no memory of that part of the night of 2 October 2021.

61. The defence of truth is, the claimant contends, built entirely on the defendant's claimed memory of what she claims the claimant told her on the morning of 3 October 2021. The claimant denies she sexually assaulted the defendant and denies saying the words attributed to her by the defendant. Dr Wells submits that in light of the fact that the defendant has no memory of the alleged assault on the night of 2 October 2021, at best she may establish that she believes she was sexually assaulted, but she has no real prospect of proving that a sexual assault in fact occurred. Nor does she have any real prospect of proving that sexual contact beyond kissing occurred. Further, the claimant denies that the words attributed to her amount to any admission of sexual assault on the night of 2 October 2021.

62. In relation to any sexual contact on the morning of 3 October 2021, Dr Wells contends there is no real prospect of the defendant proving the claimant did not have a reasonable belief in the defendant's consent in circumstances where, on the defendant's own case, she was awake and alert, and sexual contact stopped as soon as the defendant communicated she was not aroused (a communication which is denied by the claimant). If the words attributed to the claimant do not amount to an admission of sexual assault, or the court accepts there is no real prospect of the defendant proving she was assaulted on the night of 2 October, then the claimant would have had no reason to believe the defendant had frozen or was not consenting to sexual contact on the morning of 3 October. The claimant also contends that the defendant's (alleged) communication that she was not aroused is inconsistent with her allegation that she froze on hearing she had been sexually assaulted the night before. Further, the claimant contends that in circumstances where it is one person's word against another, and she alleges that the

defendant initiated the sexual contact on the morning of 3 October, the defendant has no real prospect of proving that she was sexually assaulted.

63. Counsel for the defendant, Ms Sjøvoll, contends the defence of truth is sufficiently pleaded and particularised, and the defence has a real prospect of success. Ms Sjøvoll submits that the application has been made at a relatively late stage of the proceedings, in circumstances where the claimant did not take issue with the adequacy of the Amended Defence in her Reply, which is a lengthy and explicit document pleading to every aspect of the truth defence.

64. The defendant disputes the two premises on which the application is based. The defendant's meaning is, in summary, that the claimant engaged in non-consensual sexual relations with the defendant while the defendant was heavily intoxicated and therefore unable to consent, having lost consciousness on more than one occasion that evening, that the claimant sexually assaulted the defendant, and this had a very grave impact on the defendant. The essential sting of the libel that the defendant seeks to prove as substantially true is that the claimant sexually assaulted the defendant. In the alternative, the defendant has pleaded reliance on s.2(3) of the Defamation Act 2013.

65. The defendant's meaning does not refer to any provision of the Sexual Offences Act 2003, and such reference is not implicit in the defendant's pleaded meaning. Ms Sjøvoll submits that an ordinary reasonable reader would understand an allegation of sexual assault to comprise non-consensual sexual touching but would not otherwise be cognisant of every element of the offence. The defendant's skeleton argument referred to the statutory provisions regarding consent in ss.74-75 of the Sexual Offences Act 2003, in support of the proposition that it is "obvious that if a person is incapacitated by reason of drugs or alcohol, or they are asleep or unconscious that they are unable to have the freedom and capacity to consent". Nonetheless, Ms Sjøvoll submits the defendant's pleaded meaning does not implicitly import those provisions or each of the elements of the s.3 offence.

66. The defendant acknowledges that to prove the substantial truth of her pleaded meaning she necessarily must prove some sexual contact by the claimant to which she did not consent. But Ms Sjøvoll disputes the contention that to succeed she must prove any particular level or type of sexual contact, in particular that it was "substantial" or went beyond kissing.

67. The defendant contends that her statement of case discloses reasonable grounds for defending the claim pursuant to s.2 of the Defamation Act 2013, and her defence of truth has a real prospect of success. She relies principally on the following pleaded matters:

    i) The context is that the claimant and defendant had had a brief sexual relationship. The defendant had made clear to the claimant in early August 2021 that she did not wish to continue the relationship. In mid-August they had one further sexual encounter, following which they met for dinner to explore whether a relationship might be possible, but this did not lead to any such relationship.

    ii) The claimant and defendant met on 2 October 2021 as part of a group gathered to celebrate a mutual friend's graduation.

iii) The defendant drank very heavily throughout the day and the evening. At dinner on the evening of 2 October the defendant was so drunk that she passed out at the table and has very little recollection of the dinner. The group went to a bar. The doorman was reluctant to let the defendant in because she was so drunk, although she was eventually let in. In the bar, the defendant was given vouchers for free drinks. She continued to drink, was very unsteady and had difficulty staying conscious. "Other than a memory of the Claimant accosting her in an emotional state while the Defendant was on her way to the lavatory, about a friendly joke between the Defendant and another member of the group, the Defendant remembers nothing more: she has no memory of any further events that night".

iv) When the defendant woke on the morning of 3 October 2021, she was "disorientated and confused". She was in the claimant's bed, with the claimant, who was "cuddling her".

v) The defendant asked the claimant what had happened. The claimant responded, "Don't you remember?" The defendant said no. The claimant told her they had left the bar together, bought chips and gone back to the claimant's house to eat them. The claimant told the defendant that they had "started kissing and things had started heating up", and that "you kept falling asleep, so we stopped". The defendant gained the impression from the claimant's account that the claimant had an expectation that a sexual relationship would continue.

vi) The defendant understood the claimant to mean that there had been "sexual activity beyond kissing" and that the defendant "had kept passing out from the effects of the alcohol she had drunk".

vii) The defendant "was so drunk that she could not have consented to any sexual activity and was therefore sexually assaulted by the Claimant".

viii) On the morning of 3 October 2021, the "Claimant's cuddling of the Defendant then progressed to kissing before the Claimant began initiating sex". The defendant was "extremely distressed", "shocked", "bewildered" and "disconcerted". She "remained passive" as she "did not feel able immediately to tell the Claimant to stop the sexual activity. She did then tell the Claimant that she was not aroused. The Claimant stopped."

ix) On returning home, the defendant told a housemate and a friend about the night before and what the claimant had told her.

x) The defendant began experiencing panic attacks that day. She blocked the claimant from her social media.

xi) The defendant first contacted the university's student support service on 8 October 2021. She was referred for counselling in April 2022. In May 2022, the defendant met a caseworker again and discussed putting in place measures that would reassure her the claimant would not communicate or interact with her. That led to the NCA process during which the defendant sent the two emails complained of. The parties entered into an NCA – a non-disciplinary, consensual process – in November 2022.

68. Ms Sjøvoll submits that the court cannot be satisfied that no reasonable fact finder could conclude that proof of the particulars of truth would prove the substantial truth of the sting of the libel i.e. that the claimant engaged in non-consensual sexual touching of the defendant.

69. Ms Sjøvoll takes issue with the contention that the defendant has failed to plead that she was sexually assaulted and that she has not pleaded that sexual touching went beyond kissing (albeit she submits that is not necessary). She points to paragraph 30.4, 30.5 and 30.6 of the Amended Defence where the defendant states that the claimant told her they had "started kissing and things had started heating up" which the defendant "reasonably understood… to mean that there had been sexual activity beyond kissing", and that "She was so drunk that she could not have consented to any sexual activity and was therefore sexually assaulted by the Claimant".

70. Ms Sjøvoll does not object to the insertion of a new paragraph 30.3A, as per the Provisional Order, save to the extent that she objects to the word "substantial" (and cross-reference to paragraph 30.6A), but contends that there is no deficiency in the Amended Defence that renders this amendment necessary. She objects to the introduction of the word "substantial" on the grounds that it is vague and unnecessary to meet the defendant's pleaded meaning.

71. She objects to paragraph 30.6A on the basis that the defendant cannot properly be required to introduce a positive plea that she made no sexual advances to the claimant in relation to a period when she has asserted she has no memory. She has no objection to clarifying that she cannot recall the content of the "friendly joke" referred to in paragraph 30.3.

72. Ms Sjøvoll submits that if, contrary to her primary case, any of these amendments are necessary to ensure the Amended Defence is sufficiently particularised, they should be permitted. The Provisional Order set no deadline for compliance with paragraph 2, in circumstances where that paragraph was intended to be considered further in light of the court's determination of the claimant's other applications, including the one currently before the court. Its status was, in any event, unclear. The defendant reasonably refrained from re-amending the Amended Defence prior to determination of the claimant's very substantial Amendment and Joinder Application which, if granted, would have required much more significant re-amendment by the defendant.

Analysis

73. In principle, it is possible for the words complained of to convey a meaning that the claimant has committed a particular criminal offence, as legally defined, as was the case in *Bukovsky v Crown Prosecution Service* [2017] EWCA Civ 1529, [2018] 4 WLR 13. But when determining meaning, as the authors of *Gatley on Libel and Slander* (13th ed., 2022) observe at 3-017:

> "The question is what would the words convey to the mind of the ordinary, reasonable, fair-minded reader? The natural and ordinary meaning of words is not determined by any meaning that the law may attach to the same words. Words may acquire a specific meaning in law that an ordinary person would not understand the words to bear and consequently the same words

> could be found to have a meaning in a libel claim that is different from their technical legal meaning. Whether they do so is a question of fact that turns on the application of the principles of interpretation."

74. The determination of meaning will be a matter for the trial judge. On this application, the question is whether the defendant's pleaded meaning incorporates the technical legal meaning of sexual assault in s.3 of the Sexual Offences Act 2003. The defendant's meaning makes no reference to that statutory provision or Act. Nor are the words of the statutory provision contained or encapsulated in the defendant's meaning. Bearing in mind that any determination of meaning must be clear and unequivocal, identifying and spelling out with precision one or more meanings or imputations about the claimant that meet the common law tests for what is defamatory (*Hemming v Poulton* [2025] EWCA Civ 1494; [2026] E.M.L.R. 4, Warby LJ, [10]), in my view, it is plain that the defendant has not pleaded the technical legal definition of sexual assault.

75. In my judgement, on the defendant's pleaded meaning, the essential sting of the libel is that the claimant sexually assaulted the defendant. The defendant's pleaded meaning is not precise as to the type or level of sexual contact, and so proof of non-consensual sexual kissing may be sufficient for the defendant to establish the substantial truth of her pleaded meaning (if that were to be adopted by the court). I agree with Ms Sjøvoll that to prove the substantial truth of the defendant's pleaded meaning she must prove some sexual contact by the claimant to which the defendant did not consent, not every element of the statutory definition.

76. It follows that the omission of any pleading that the claimant did not or could not have reasonably believed the defendant was consenting does not render the Amended Defence deficient.

77. It also follows that the defendant was not required to plead that the sexual contact was "substantial", a term which is itself imprecise, or that the sexual touching went beyond kissing. But if the defendant's pleading should be taken to mean more than kissing, she has expressly pleaded "sexual activity beyond kissing" and it is plain from the Amended Defence that the defendant cannot (on her case) be more precise or detailed given her lack of memory. The pleading makes express that the activity was sexual, and it is obviously implicit that it was intentional. Moreover, the claimant has herself pleaded sexual activity beyond kissing ("sexual touching and rubbing"), albeit her case is that it was initiated by the defendant, the claimant was not aroused or comfortable with it and so left the room.

78. I reject the contention that, with respect to the night of 2 October, the defendant has only pleaded a belief that she was sexually assaulted, not that she was in fact sexually assaulted. The allegation that she was sexually assaulted while too intoxicated to consent is based on her belief, founded on what she states the claimant told her, and other circumstantial facts, rather than direct knowledge based on a memory of that night. Nonetheless, she has pleaded that the imputation pleaded in paragraph 29 of the Amended Defence – which is in essence that the claimant sexually assaulted her – "is at least substantially true". Secondly, paragraph 30.6 of the Amended Defence states, in relation to the events of the night of 2 October 2021, "She was so drunk that she could not have consented to any sexual activity and was therefore sexually assaulted by

the Claimant." In my judgement, she has adequately pleaded that she was sexually assaulted.

79. It is not necessary for the purposes of the defence of truth, in circumstances where the defendant alleges she was incapable of consenting and has no memory of the night of 2 October, for the defendant to amend to plead paragraph 30.6A and accept that the defendant cannot properly be required to make such a positive plea (whether by way of re-amendment or further information).

80. While paragraph 30.7 of the Amended Defence makes clear that the sexual touching on the morning of 3 October was unwanted, an interpretation of that paragraph is that she reluctantly acquiesced (which would amount to consent) until the point when she said she was not aroused and the sexual touching stopped. Contrary to the claimant's submission, the fact that the defendant has not asserted that she *told* the claimant she did not consent is not a deficiency, as that would not be necessary to prove lack of consent. But if it is alleged that she did not consent, and was sexually assaulted on the morning of 3 October, the defendant would have to clearly plead that case, and she has not done so. But this is not a reason to strike out the truth defence as it is not necessary, for the purposes of proving the substantial truth of the defendant's pleaded meaning to prove non-consensual sexual activity on both the night of 2 October and morning of 3 October 2021. Once is sufficient and that has been pleaded.

81. If, contrary to my judgement, I had concluded that the defendant had not pleaded that she *was* sexually assaulted but only a belief to that effect, I would have permitted the defendant to re-amend to add paragraph 30.3A (omitting the word "substantial" and cross-reference to paragraph 30.6A). Such permission was intended to be granted by Master Dagnall, and the defendant has not breached any time limit in the Provisional Order. It is readily understandable that the defendant did not proceed to re-amend in accordance with that order in circumstances where its status was unclear, the defendant took issue with the proposed amendments, and there was a possibility the defendant would have to re-amend much more significantly if the claimant's application to re-amend and join three new defendants had succeeded. The claimant would not be prejudiced by this small proposed amendment given that she had clearly understood the defendant's case, as is plain from the terms of the Reply. It cannot sensibly be said to be unfair to allow such an amendment in these circumstances because the claimant was recently refused permission to re-amend. The claimant's proposed draft re-amended particulars of claim were not such that she even sought to support the extant application at the hearing: the application based on that draft was totally without merit. There was no other draft before the court for its consideration.

82. The defendant's lack of memory (on her case) of the night of 2 October presents a challenge to her ability to establish the truth defence. But it cannot be said that no reasonable fact finder could conclude that the sting of the libel is substantially true based on proof of the defendant's particulars of truth. Those matters include the defendant's pleading of (i) the defendant's expressed wish prior to 2 October 2021 not to continue a sexual relationship with the claimant; (ii) the defendant being heavily intoxicated on the night of 2 October (a matter which is particularised in detail); (iii) the way in which the defendant awoke in the claimant's bed; and (iv) what the claimant is alleged to have said, the way in which she said it, and how she acted on the morning of 3 October; and (iv) the defendant's reaction (e.g. blocking the claimant, telling friends, seeking support and counselling etc).

83. Factual disputes as to the background to the events of 2-3 October 2021, the extent to which the defendant had been drinking, her degree of intoxication, her lack of ability (or otherwise) to consent, the content of the parties' conversation on the morning of 3 October, and as to who instigated sexual activity that night or in the morning are classic examples of matters that can only be determined at trial. So, too, matters going to the credibility of the parties are for trial.

84. In my judgement, the Amended Defence discloses reasonable grounds for defending the claim pursuant to s.2 of the Defamation Act 2013, and the pleading of a defence of truth is not likely to obstruct the just disposal of the proceedings (nor is it otherwise an abuse of process). The claimant has failed to establish that the defendant has no real prospect of succeeding on the truth defence. It follows that the claimant's application to strike out the defence of truth or for summary judgment on that defence must be dismissed. However, I reject the defendant's contention that the application is so weak that it should be certified as totally without merit.

Provisional Order

85. As explained above, it falls to me to determine whether and to what extent the "Provisional Order" should stand or be varied or set aside, in circumstances where it was accidentally sealed contrary to paragraph 1, and where all the claimant's applications have now been considered or withdrawn.

86. In my judgment, paragraphs 3-4 and 6-12 were not provisional and should stand, albeit the directions in 3-4 have already been complied with (subject to the relief from sanctions granted) and the directions in 6-12 were overtaken by subsequent orders.

87. The paragraphs which were truly provisional were paragraphs 2 and 5. I consider that the appropriate course, in light of the submissions and my conclusions above, is to vary paragraph 2 to provide:

> "(2) The Defendant shall provide Further Information by way of amending the Amended Defence as follows:
>
> …
>
> (c) Either removing the final sentence of paragraph 30.3 or stating what was the "friendly joke" or that the Defendant cannot recall what it was.
>
> The Defendant has permission to make the aforesaid amendment. The Re-Amended Defence must be filed and served by no later than 4.30pm on 9 June 2026."

88. As the Provisional Order has been sealed, and its status of the Provisional Order will be clarified in the order I make following hand-down of this judgment, it is also appropriate to set aside paragraph 1 (which provided for it not to be sealed).

Conclusion

89. The claimant's application to strike out and for summary judgment in respect of the truth defence is dismissed.