

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION

[2019] EWHC 396 (QB)

Case No: HQ18M03611

Courtroom No. 13

The Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Friday, 18<sup>th</sup> January 2019

Before:  
THE HONOURABLE MR JUSTICE NICKLIN

B E T W E E N:

KIM SUTTLE

Claimant

and

SAMANTHA WALKER

Defendant

MISS C EVANS QC (instructed by BRETT WILSON LLP) appeared on behalf of the Claimant  
NO APPEARANCE by or on behalf of the Defendant

APPROVED JUDGMENT

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MR JUSTICE NICKLIN:

1. This is a claim for libel and harassment and breaches of the Data Protection Act 1998.
2. The Claimant is a care home manager from West Yorkshire. She owns and keeps pet dogs. In the past she has adopted 'rescue dogs' and has and continues to support animal welfare charities.
3. The Defendant is from Wearside. She was the creator and administrator of a Facebook profile page entitled 'Justice for animals brutally abused and attacked UK' ('the Facebook page').
4. The claim arises from what the Defendant is alleged to have posted on the Facebook page about the Claimant. The Claimant's claim is some nine postings on the Facebook page libelled and harassed her and were also breaches of the Data Protection Act. The Claimant complains that she has been made the target of an online hate campaign that has been orchestrated by the Defendant.
5. The source of this dispute is the chance meeting of the Claimant and the Defendant on 24 March 2018. The Claimant had taken one of her dogs for a walk near to her home. During the walk the Claimant encountered the Defendant. From the Claimant's witness statement's account of what took place, the Defendant accosted the Claimant, shouting and gesticulating towards her. The Defendant alleged that the Claimant had hit her dog. The Defendant was apparently recording the incident on her mobile telephone. I have watched both recordings of the incident that took place immediately, and then some time later on 24 March, in court today. The Claimant demanded that the Defendant desist from filming her but the Defendant refused and continued to carry on her filming. The Claimant set off to walk back to her home and the Defendant followed her. After a short distance the Defendant stopped filming but blocked the Claimant's path. She attempted to grab the lead of the Claimant's dog. A further confrontation, which is the subject of the second video recording, took place shortly thereafter.
6. The Claimant was so concerned about the incident that afternoon that, when she returned home, she reported the matter to the Police. An appointment was made for her to be visited by a Police officer the following morning.
7. In the meantime, however, the Claimant was alerted by a friend, during the evening of 24 March 2018, that two videos of her and allegations of animal abuse had been posted online on an animal cruelty page on Facebook. That was the Facebook page. With that information, the Claimant was able to locate the Facebook page. The Claimant noted that it was operated to provide an online place where allegations of animal cruelty could be made and, where the identity of the alleged wrongdoer was unknown, to solicit efforts to identify the person concerned. A posting on the Facebook page on 26 March 2018 perhaps encapsulates its objectives:

"Do you know anyone breaching the Animal Welfare Act?"

Deliberate or gratuitous attempt to cause suffering, prolonged or deliberate ill treatment or neglect, ill treatment in a commercial context, a leading role in illegal activity.

Send them into us at Justice for Animals Abused UK. All info will remain anonymous and we will do our best to see that justice is served.

IT IS NOT ACCEPTABLE TO HIT, KICK OR NEGLECT AN ANIMAL!

They WILL be named and shamed.

Tolerance to animal abuse here is zero.

Catch all the guilty culprits and be the voice for the animals.

Any persons can message the page privately, be assured your name will remain anonymous.”

8. In total, nine postings were uploaded onto the Facebook page between 24 March and 14 April 2018, most of which were accompanied either by an embedded video of one or other videos showing the Claimant, purportedly in the narrative claiming that she had been guilty of abusing her dog, or still images that had been captured from one of the videos. All the postings were followed by a large number of comments. Some of these were aggressive and threatening and directed clearly at the Claimant. Happily, others, who had clearly watched the video themselves, had noted that it did not actually show any abuse of the dog. All the video contains is shouted allegations made by the Defendant. Nevertheless, a large number of the postings contained very serious, aggressive and threatening comments directed towards the Claimant.
9. The same video was later uploaded some time before 6 April 2018, until it was removed on 27 April, on the YouTube website under the heading ‘Kim Suttle dog abuser’. As a result of that posting, Google searches on the Claimant’s name returned links to that YouTube video with the words ‘Kim Suttle dog abuser’.
10. The unpleasantness and deplorable nature of the comments that were posted that I have identified can be exemplified by the following responses. The first post was in the following terms:

‘We still have no name please, we need name and address to help locate. It was myself and workmen who seen it. I confronted her. We had just arrived as we are down from the North East visiting my partner who works nearby. I was watching her out of the window with one of the work lads. I said to him, “She’s just kicked that dog.” He said, “That’s what I thought.” She kicked it another twice, hit it and I said to him, “No way, not watching this,” ran out of the house and as I was walking over to confront her she was hanging onto its tail for no reason. It’s an old-ish dog, laid back, couldn’t even be bothered to run, she was then hitting its sides with a stick and I shouted “Oi, what are you doing to the animal,” and went to her. It was then I thought to turn on video as I couldn’t quite believe that was happening in

front of my eyes. The man next door cleaning his car seen her, my partner, myself and his work colleague. She is something clearly wrong and told me it was none of my business why she was abusing her dog. Please share we need her name and address. I have sent statement in and reported it to many animal welfare as I could find on Google and all four people are willing to give statements.'

As examples of some of the comments that were posted in relation to this message and similar to the other nine postings on the Facebook page, I would refer to the following:

'Should have slapped the bitch';  
'Go boot her up the arse see how she likes it';  
'Sorry shooting is too good for her';  
'I wouldn't of (sic) bothered filming I'd have given her a bloody kicking as well see how she likes it bitch';  
'Someone must know this bitch';  
'Find her and kick seven bales of shit out of the cunt';  
'SHARED ALL OVER WEST YORKSHIRE IT'S FIVE MILE FROM ME... SOMEONE WILL KNOW THIS CRUEL BITCH';  
'Get that poor dog well away from that BARBARIC BASTARD BITCH. Check out the home she is MANAGER at... LET MEEEE AT THAT CRUEL BITCH.'

Some Facebook users posted images in their responses to the various postings. One showed a noose with the caption: 'SPECIAL OFFER: Free necklace especially designed for – Animal Abusers. One size fits all.'

11. All of the postings provoked similar responses amongst those who chose to comment on the postings.
12. These responses are unpleasant and, in some respects, menacing and shocking in their threats of serious violence. It is a sad reflection of modern life that some people are prepared to behave in this way in postings on social media. These so-called 'keyboard warriors', as they are sometimes called, are willing to post abusive, violent, menacing and threatening messages online in circumstances where it is to be doubted that they would ever behave like this in person. Certainly, if any of them carried out these online threats of violence in person they would be liable to arrest and prosecution. The fact that people have a strongly felt conviction on the issue of animal cruelty cannot ever justify this sort of violent language or threats. In a society governed by the rule of law, those who abuse or cause cruelty to animals fall to be dealt with by the criminal law.
13. The Defendant was visited by the Police on 25 March 2018. In consequence the Defendant initially removed the two videos from the Facebook page.
14. A feature of this case is that from the third posting onwards, the Defendant referred to herself in the third person. It appears that this was a device either to attempt to distance herself from the publications and/or to give them an added air of credibility.

15. In the third posting, on 25 March 2018, the Defendant posted the following on the Facebook page:

‘All videos now taken down! As asked. We will update the page as the info comes in! Message from the lady who confronted the lunatic abusing her dog:

“Hello. I have given a statement to the police this morning regarding Kim Suttle as did another witness and contact numbers have been given for others who witnessed.

I have also reported to as many animal welfare organisations as I could find.

He has assured me faithfully action will be taken and animal welfare officers are now involved and they will take action against this lady who is abusing her dog; unfortunately it has been happening over 2 years that we know about.

He has asked that I now ask for the video to be removed from the page as it serves purpose identified her (sic) and others have come forward on abuse they have witnessed against these poor animals. I will keep you all updated.

Thank you to all of you have sent evidence into the page and named and shamed (sic). This is what the post was set to do.

If we find no action then the video will go back up so she is exposed throughout her life for beating her dogs, kicking them, pulling their tails for no reason.”’

16. Despite removing the videos, the Defendant continued to post stills from the videos in subsequent postings. On 28 March 2018, in the sixth posting, and adopting again the device of referring to herself in the third person, the Defendant posted, ‘Awaiting update from the brave lady who confronted [the Claimant].’ This is nothing but artifice. The post went on to question whether the Claimant should be allowed to continue in her employment in a care home given her cruelty to her animals.
17. On 4 April 2018, Facebook removed the third to fifth postings following a complaint of harassment lodged by the Claimant’s solicitors. Undeterred, on the same day the Defendant re-uploaded the two videos in the seventh and eighth postings. It appears that in doing so she was carrying out the threat in the third posting that if the Claimant did not face criminal charges as a result of the alleged abuse of her dog the Defendant would repost the videos.
18. The postings contained the following:

‘The RSPCA have had the animals seen by a vet at what stage after we don’t know possibly days after? No further action taken from them because the animals are fed. Police can’t do more as it’s not a Police matter. That is with four witness statements of what was seen- this ‘so-called dog owner’ bottling her dog in its side, yanking on its tail for no reason, hitting it with a

stick and her hands, along with others who've witnessed her bashing her dogs.

As promised with permission to use from the lady who confronted this abuser, if no justice came for these animals. Then the abusers will be exposed on this page and will remain on the page.'

19. The Defendant hid behind the anonymity of this website when she made these postings. Following an order of the court, documents provided by Facebook show that the Facebook page was operated by the Defendant.
20. On 6 April 2016, the two videos were uploaded to the YouTube platform. They were captioned 'Kim Suttle dog abuser'. They were removed by YouTube on 27 April following complaint by the Claimant.
21. The Claimant contends that the abuse against her extended not only to making what she says are false allegations of animal abuse, but to efforts to have her sacked from her position as a manager of the care home at which she worked.
22. One person, who posted a response to the ninth posting on the Facebook page, included an image of a response to a letter of complaint that she had sent to the Claimant's employers. That person was Trace Knight. I have seen a direct message, that Trace Knight sent to the Claimant late one night (obviously following the postings on Facebook):

'Your name is all over FB. I hope you like your job because I intend to get you fired. No one wants a dog beater looking after their Granny. You say this is none of our business, afraid it is now the world's business you are branded as a dog beater. What a vile creature you are, trust me if I saw you hitting your dog then you would have got my fist straight in your cunting mouth. You are a complete and utter cunt. Your face in the videos makes my blood boil. You don't deserve animals you evil cow. You are also a hypocrite posting stuff about animal abuse when you are one yourself. I hope the Police do prosecute you, you deserve all you get. Kiss your job bye-bye love because I am getting in touch with your bosses mouthy fucking cunt.'

23. That was obviously the precursor to Ms Knight sending an email to the Claimant's employers on 25 March 2018:

'Dear Sirs, It has been brought to my attention that the manager of [care home identified] has been videoed and photographed hitting, kicking and pulling her dog's tail whilst out in public.'

I pause to note that that was to mis-describe the video evidence in circumstances where the plain inference is that the author, Miss Knight, knew that that was not a true and fair representation of what the video shows. Continuing from the quotation:

'This is despicable behaviour from a person in charge of a care facility. If she hits her own animals then starts abusing people with foul language,

what is she capable of doing to an elderly resident if angered? This woman is called Kim Suttle. The videos are on social media and I believe the Police are now involved. You do not need me to tell you that your company's name has been linked to her and her disgraceful behaviour. She is representing you, I believe this woman has severe mental issues to treat her animals the way that she does. People have made statements on her and the cruelty is documented. The nature of the abuse is clearly disturbing and if you wish to see the videos they are currently viral on Facebook.'

24. That is a good description of what in fact happened as a result of the postings on the Facebook page. As was the inevitable consequence of the sending of a complaint like that, and as appeared from the direct Facebook message the intention of Miss Trace Knight, the Claimant's employers were required to begin an investigation. Humiliatingly, I am sure, the Claimant was required to self-report herself to the Care Quality Commission and indeed to her local authority in light of the allegations that had been made against her.
25. Ultimately, the complaint was rejected, but nevertheless it shows the extent to which, firstly, these postings on Facebook have had the effect that I have identified and also the very real consequences that it has had for the Claimant.
26. The Claim Form was issued on 10 October 2018 and served with Particulars of Claim that day.
27. The Defendant did not serve or file either an acknowledgement of service or a Defence. In consequence, on 31 October 2018, Warby J granted the Claimant judgment in default pursuant to CPR Part 12.1, 12.3(1) and 12.4(2). The Judge directed that a remedies hearing should be fixed for a date after 10 December 2018. He also directed the parties to file and serve any evidence upon which each party wished to rely by 29 November 2018. Pursuant to that direction the Claimant has filed and served evidence consisting of a witness statement from herself dated 28 November 2018 and one from her solicitor, Iain Wilson, dated 27 November 2018. The Defendant has not filed any evidence.
28. The order contained the usual direction, giving the Defendant liberty to apply to set aside or vary the order that Warby J had made within seven days of service of the order. The Defendant has made no application under that provision.
29. The Defendant has not attended the hearing today and she has not been represented. I have been provided with a copy of a letter apparently dated 19 December 2018 but date stamped as having been received by the Claimant's solicitors on 17 January 2019. I have also seen a copy of the envelope in which the letter was sent. The full postmark is obscured but it clearly shows that it was franked on some date in 2019. The letter itself is also marked 'URGENT' so the likelihood is the date on the letter is incorrect and that it was in fact sent shortly before 17 January 2019.
30. The letter is unsigned, but it relates to the claim. It purports to come from someone who describes him/herself as one of the Defendant's home helpers. I need not quote the letter; a summary of the contents will suffice. The author contends that the Defendant has been the subject of unwanted correspondence from the Claimant's solicitors, some of which, it is claimed, has been returned. It is alleged that the Defendant is disabled and is unable to

attend court hearings and does not have sufficient resources to instruct someone to represent her. The letter contains a denial that the Defendant is responsible for the acts complained of by the Claimant.

31. No application has been made for an adjournment. No application has been made to set aside the judgment granted in default and none of the assertions made in the letter are supported by any evidence. Indeed, beyond the description that it originates from one of the Defendant's home helpers, it is impossible to identify the source of the information.

### **Proceeding in the defendant's absence**

32. I am satisfied that I was justified in proceeding in the Defendant's absence: *Sloutsker v Romanova* [2015] EMLR 27 [25]-[26]; *Brett Wilson LLP v Persons Unknown* [2015] 4 WLR 69 [14]-[15].
33. Beyond the anonymous letters that have been sent to the Claimant's solicitors, the Defendant has not engaged with the proceedings despite being fully aware of them. I have seen a witness statement from a process server which shows that the Witness Statements relied upon by the Claimant at this hearing were served on the Defendant's home address on 29 November 2018. I am in no position to judge whether it is true that the Defendant is unable to attend this hearing because of her medical condition. No evidence has been provided to support that contention, but the medical condition, even if true, would not appear to be such that it prevents the Defendant from engaging with the proceedings, from serving an Acknowledgement of Service or a Defence, or from filing evidence giving her response to the Claimant's claim if she so wished. This behaviour is entirely consistent with the Defendant's hiding behind the anonymity of a website to make serious allegations, but an unwillingness to come forward and defend her position when called upon to do so.
34. For the reasons explained in Warby J's judgment in *Pirtek (UK) Limited v Jackson* [2017] EWHC 2834 (QB) [32]-[33], I am not prepared to accept or to attach any weight to assertions in an anonymous letter that the Defendant has nothing to do with the postings complained of. The evidence available to the Court strongly indicates to the contrary.

### **The proper approach of the court to the granting of relief following a default judgment**

35. CPR 12.11(1) provides that: 'Where a claimant makes an application for a default judgment, judgment shall be such judgment as it appears to the court that the claimant is entitled to on his statement of case.'
36. Accordingly, the general rule is that where judgment has been entered in default the court will proceed to determine the remedies that the claimant should be granted on the basis of the claimant's unchallenged pleaded case. Where the defendant has not disputed the claimant's case there is no need to adduce evidence, or for the court to make express findings of fact. Indeed, it would usually be disproportionate and contrary to the overriding objective to use court resources to do so. The claimant can legitimately be granted remedies, therefore, on the assumption that his or her case is correct. The court may depart from this general rule but only if it is clear that the claim is for some reason impossible or that any required legal threshold has not been met: *Sloutsker* [84]-[86].

37. It is not, therefore, necessary for the Court to make any findings of fact against the Defendant in relation to liability after an assessment of the evidence. Nevertheless, given the stance that has been adopted on her behalf in the letter to which I have referred, I am satisfied on the evidence that she was responsible for the nine postings being uploaded onto the Facebook page, for the content of those postings containing the defamatory allegations complained of and for using that content to encourage or procure other Facebook users to identify the Claimant. It is also overwhelmingly likely that she was also responsible for setting up the YouTube accounts accusing the Claimant of being a ‘dog abuser’.
38. The Facebook “Basic Subscriber Information” supplied under the order of Deputy Master Stevens on 17 May 2018 showed that the Defendant was the account holder responsible for administering and editing the Facebook page between 24 March 2018 and 17 March 2018 and also the original creator of it. The same information showed that the Defendant was responsible for uploading six of the seven postings complained of. Of the remaining three, information relating to one was said by Facebook no longer to be available and the first and second postings had been removed before the Claimant’s solicitors were instructed and so were unable to identify their URL so as to be able to obtain information relating to them.
39. This case perhaps serves as a valuable example to those who think that they can wage campaigns of harassment against a person online with impunity from behind the anonymity of a webpage or social media account. The Court’s experience is that it is usually very easy to unmask those who are behind such anonymous accounts or blogs. When they are identified, they are liable then to be held to account for what they have posted. If what they have done breaches the criminal or civil law, the consequences of that breach can then be visited on the relevant person. Those who believe that the law is impotent when it comes to their online behaviour are mistaken. In appropriate cases, and when required to do so, the Court will not hesitate, and it will never fail, to use its powers and procedures to maintain and uphold the rule of law. In a democratic society, the rule of law must always prevail.
40. I am satisfied that the Claimant’s claims for libel and harassment as pleaded do not disclose any reason why I should depart from the usual rule that the Court proceeds on the basis of the pleaded claims. The postings are obviously defamatory of the Claimant and, on their face, I am satisfied that they are capable of amounting to harassment. I need go no further than this in light of the default judgment.
41. I am not going to consider specifically the Data Protection Act claims as, on the facts of this case, they add nothing to the Claimant’s claims in relation to harassment and libel and the Claimant is not asking the Court to grant any additional remedies in relation to her data protection claim.

## **Remedies**

42. I turn, therefore, to the remedies. The first remedy sought is damages. There are two overarching principles:
  - a. First, damages in civil proceedings are awarded to compensate the Claimant. They are not punishment. Punishment is the realm of the criminal law. However much I

might deplore the actions of the Defendant, in assessing damages I put entirely out of account any element of punishment in that assessment.

- b. Second, as awards of damages in both the torts of harassment and defamation include awards for hurt, upset and distress, there is a substantial overlap. I must ensure that there is no double counting of this element.
43. Reflecting that principle, the Claimant has invited me to make a single award of damages that reflects the totality of the damage, harm and distress that she has suffered both as a result of the libel and as a result of the harassment. I agree that on the facts of this case that is the correct approach.

### ***The approach to the assessment of damages for libel***

44. In order to restore a claimant to the position she would have been in had the libels not been published, compensation is required for the injury done to her reputation, to send a message that her good name has been restored and to compensate her for the injury to her feelings and the distress that has been caused. The general principles are set out in *Barron v Vines* [2016] EWHC 1226 (QB) [20]-[21] in which Warby J drew upon the judgment of Sir Thomas Bingham MR in *John v MGN Ltd* [1997] QB 586.

[20] The general principles were reviewed and re-stated by the Court of Appeal in *John v MGN Ltd* [1997] QB 586. A jury had awarded Elton John compensatory damages of £75,000 and exemplary damages of £275,000 for libel in an article that suggested he had bulimia. The awards were held to be excessive and reduced to £25,000 and £50,000 respectively. 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 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: *C 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 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 (3) 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: see *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 v Mirror Group Newspapers* (1986) Ltd [1994] QB 670. This limit is nowadays statutory, via the Human Rights Act 1998.'

45. As to the seriousness of the allegations, the unchallenged pleaded meaning is that the Claimant had physically abused her dog by beating and/or caused it unnecessary suffering and that she was accordingly a cruel and appalling person. These are serious allegations. Animal cruelty is capable of being a criminal offence under the Animal Welfare Act 2006 and it is deplored by most right-thinking people. Although the reaction of some of those who posted is extreme, the comments do show the seriousness with which allegations of animal cruelty are taken.
46. As to the extent of publication, the unchallenged case is that the publication by the Defendant of the allegations complained of was substantial and that there was also substantial republication as a result of the original postings. The evidence obtained by the Claimant of the Facebook data on publication is not complete, as the first and second postings were removed before the Claimant's solicitors could review them. Nevertheless, the evidence shows the following:
- a. The first and second postings had been shared 4,500 times and commented upon around 1,000 times (sixty-nine of those messages advocated or threatened violence against the Claimant). All of those took place within 24 hours of the postings first being uploaded onto the Facebook page. The evidence in relation to the videos shows that the embedded videos were seen by well over 130,000 people as at the point of the third posting.
  - b. By 29 March 2018, the third posting had received 96 "reactions" and 41 comments on the Facebook page. This posting was ultimately removed by Facebook on 4 April 2019. Of course, those who are familiar with Facebook will know that specific engagements like reactions or sharings or likes of posts represent only a fraction of those who will have read the relevant post, in particular the number that have read and yet done nothing in response to what they have seen.

- c. The fourth and fifth postings consisted of a still image of the Claimant taken from the recording of the confrontation which the Defendant had adapted to use as the profile photograph for the Facebook page itself so that the Claimant's image featured prominently on the page, not only when the postings targeted at her were read. These were uploaded at 21:44 on 25 March 2018 and by 26 March had received 30 "reactions", 8 "shares" and 26 comments. The fourth and fifth postings were removed by Facebook on 4 April 2018.
  - d. The sixth posting consisted of text containing the allegations complained of as well as the still image taken from the recording. It was uploaded at 22:33 on 28 March and by 5 April it had had 108 "shares" and 67 comments, including illustrations of a hangman's noose. This was removed by Facebook on 6 April 2018.
  - e. The seventh and eighth postings were uploaded on 4 April 2018. They contained text with the allegations complained of and also embedded the two filmed recordings, which the Defendant had reuploaded, having removed them after the Police visited her to ask them to remove the first and second postings on 25 March 2018. By 5 April the embedded recordings had been viewed by some 2,400 individuals and the posting attracted 46 "shares" and a number of further comments, once again including some that were extremely abusive. These were removed by Facebook on 6 April 2018.
  - f. The ninth posting was uploaded on 14 April 2018 and removed after the Defendant took the whole Facebook page down upon receipt of a letter of claim from the Claimant's solicitors dated 26 June 2018. The ninth posting contained text which repeated the allegations complained of and was followed by a limited number of comments, including one by Trace Knight who had repeated the allegations complained of in correspondence she had sent to the Claimant's employer to try and have her sacked, which I have referred to earlier.
  - g. On 6 April 2018 the two recordings were uploaded to a YouTube account called 'Kim Suttle dog abuser' with the caption 'confronted for kicking her dog, hitting it and yanking it by the tail for no reason. Exposed for what she is!' The figures on the screenshot of the two YouTube pages show that one recording was viewed 108 times and the other 81 times.
47. The evidence demonstrates that the allegations of animal abuse also spread around the Claimant's local area. For example, and the most serious for the Claimant, the allegations were made, as I have said, in emails to her employer at the care home by Trace Knight. This led, in turn, to the allegations being investigated by her employer and, although no action was taken against the Claimant, she was, as I have said, made to self-report the matter to the Care Quality Commission and the local authority safeguarding department. The allegations, as a result, became generally known at the care home.
48. Another specific example of what can be called the 'grapevine' or percolation effect, is an incident on 30 April 2018 that the Claimant has reported in her witness statement where she was refused service by her hairdresser who had said she had read the Facebook page and would not cut the hair of a 'animal abuser'. Most disturbingly, the Claimant also received

an anonymous death threat when she answered the telephone at work on 29 March 2018, only five days after the allegations were first published on Facebook.

49. The Claimant's evidence as to harm to her reputation and the distress caused by the publications complained of is set out in her witness statement. She states that prior to the events the subject of these proceedings she enjoyed a good reputation in her local area and had the standing to be expected of someone with a responsible job at a care home for the elderly and vulnerable and with her long record of responsible public service.
50. The Defendant's dissemination of the allegations complained of has seriously damaged the Claimant's reputation, particularly in her local area. Ultimately it caused the Claimant to resign from her position at the care home because she considered that she had become a laughing-stock and had lost all authority with her subordinates (who knew of the allegations). The Claimant's evidence is that she was forced to take another job at a greater distance away from her home.
51. The Claimant was particularly upset by the rapid viral and then local community spread of the allegations, as well as the accompanying unpleasant and abusive comments targeted at the Claimant from users of the Facebook page. She felt compelled to keep monitoring the Facebook page because the 'trolling' took off so quickly, from the day after the Defendant uploaded the first and second postings. However, reading the comments, including the attempts to ascertain who she was and where she worked and the threats of violence, upset her even more and for a while lead her to fear leaving her own home and also to endure sleepless nights.
52. Although the Defendant deactivated the Facebook page after receiving the letter of claim, the Claimant's evidence is that, whilst she is no longer as affected by the campaign as she was during its height and in the aftermath, she nevertheless still feels alienated in her home community and, for example, haunted by what her hairdresser has said to her. She also does not derive the same pleasure any more from walking her dogs.
53. There are elements of aggravation here. The very unpleasant responses to the publication of the serious allegations were entirely to be expected. The Defendant refused to remove the videos until the police became involved and, subsequently, she reuploaded them in pursuit of her campaign to name and shame the Claimant. The Defendant's response to these proceedings has been effectively dismissive.

### **Harassment**

54. Damages for harassment under the Protection from Harassment Act 1997 are to compensate a claimant for distress and injury to feelings, see *ZAM v CFW & Anor* [2013] EMLR 27 [59]. As I have noted, an award under this head overlaps with that element of compensation that is a constituent part of an award for libel damages.
55. So far as assessment of harassment damages is concerned there are established guidelines taken from employment discrimination cases, see *Barkhuysen v Hamilton* [2018] QB 1015 [160]:

‘Guidelines for damages in harassment were given by the Court of Appeal in Chief Constable of *West Yorkshire Police v Vento* (No2) [2003] ICR 318. The court identified three broad bands for compensation for injured feelings: a top band for very serious cases, a middle band for moderately serious cases and a third band for less serious cases, such as isolated or one-off occurrences. Only in the most exceptional cases, it was said, would it be appropriate to award more than the top band and awards of less than £500 were to be avoided as they risked appearing derisory. Again, adjustment for inflation is required. The former adjustment was made by the Employment Appeal tribunal in 2009 in *Da’Bell v National Society for the Prevention of Cruelty to Children* [2010] IRLR 19. Inflation since then has been some 20%, leading to a range in band 3 of up to £7,200, a middle band from £7,200 to £21,600 and a top band from £21,600 to £36,000. A *Simmons v Castle* adjustment is also required.’

56. The *Vento* bands, as they are called, have since been increased again: see paragraph 10 of The Employment Tribunal’s Presidential Guidance of 5 September 2017:

‘A lower band of £800 to £8,400 (the less serious cases), a middle band of £8,400 to £25,200 (cases that do not merit an award in the upper band) and an upper band of £25,200 to £42,000 (the most serious cases), with the most exceptional cases capable of exceeding £42,000.’

57. I consider that the following particular elements of the harassment, separate from the harassing element in the defamatory nature of the publications themselves, have an impact on the seriousness of the harassment and to the assessment of damages:

- a. The campaign was clearly and deliberately targeted by the Defendant at the Claimant via Facebook. The foreseeable response to it was vicious and frightening; it was calculated to (and did) whip up hatred for the Claimant and to put her in fear for her safety.
- b. The campaign was relentless over a period of three to four weeks and I am satisfied, on the evidence, that has had a lasting adverse effect on the Claimant.
- c. The use of a Facebook group was deliberately to recruit others to ‘gang up’ on the Claimant, whilst the Defendant and some of the commentators who chose to post comments on the page hid behind online anonymity. This is a hallmark of ‘cyber bullying’. It is a particularly pernicious form of harassment because the victim may well feel constantly under siege and powerless to stop it.

58. Overall, my assessment is that this was a very serious and nasty case of online harassment that has frightened the Claimant and caused her very real upset, fear and distress. In my judgment the harassment claim alone would justify an award in the upper *Vento* band.

59. Taking all these factors together, I consider that the appropriate award of general damages is £40,000. This reflects my assessment of the seriousness of the harassment and the effect on the Claimant, together with a distinct element for the harm caused to the Claimant’s reputation by the seriously defamatory allegations made against her. The evidence discloses

the real impact of that reputational harm. Finally, I do not consider that there needs to be much, if any, uplift in this figure for the purposes of vindication. An award of £40,000 will stand as a sum sufficient to enable the Claimant clearly to point to it as her vindication.

60. In addition, I award the Claimant her claim for special damages of £10,405 as set out in her Particulars of Claim. This relates to the costs of submitting removal requests to Facebook and YouTube and the costs of the proceedings to obtain the evidence as to the owner and operator of the Facebook page.
61. I am asked to grant an injunction. I am satisfied that, in the exercise of my discretion, I should grant an order. The conduct of the Defendant, particularly initially removing the videos when asked to do so by the police, only subsequently to reupload them, satisfies me that there is a real risk or threat that without an injunction the Defendant may further libel or harass the Claimant. In light of the history it seems that the Claimant is entitled to the peace of mind, so far as it can be provided, by the Court's injunction.
62. Finally, I am asked to make an order under s.12 of the Defamation Act 2013 requiring the Defendant to publish a summary of the Court's decision. I am not going to make that order for the reasons explained in *Monir v Wood* [2018] EWHC 3525 (QB) [238]-[244]. On the evidence, I am not satisfied that the Defendant has an effective means of communicating a summary of the judgment to those who read the relevant postings on the Facebook page, with the account now having been removed. The Claimant has this judgment which she can publicise generally, or show to any people that she knows that have seen the postings or whom she encounters subsequently who have learned of the allegations of animal abuse made against her. In practical terms, the Claimant is much more likely to be able to target delivery of the judgment, or a summary of it, to where it is needed than any order the Court could make against the Defendant. Of course, orders for publication of a summary of the Court's decision are not to be made to punish any Defendant. Those are my reasons for the orders that I have made.

**End of Judgment**

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This transcript has been approved by the judge.