Neutral Citation No. [2017] NICA 10 | *Ref:* **GIL10172**

*Judgment: approved by the Court for handing down (subject to editorial corrections)** | *Delivered:* **20/2/2017**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

BETWEEN:

ROBERT JAMES GORDON COULTER

Plaintiff/Respondent;

and

SUNDAY NEWSPAPERS LTD

Defendant/Appellant.

Before: GILLEN LJ, WEATHERUP LJ and WEIR LJ

GILLEN LJ (giving the judgment of the Court)

[1] This is an appeal from the judgment and Order of Stephens J of 9 August 2016. The learned trial judge ("the judge") entered judgment for the plaintiff/respondent in the sum of £50,000 in respect of the respondent's claim for defamation arising from a publication on Sunday 21 December 2014 in the "Sunday World" entitled "WAGE-ING WAR" ("the impugned article"). Mr Millar QC appeared on behalf of the defendant/appellant with Mr Coghlin. Mr Lavery QC appeared on behalf of the plaintiff/respondent with Mr Lavery. We are grateful to counsel for their well-structured skeleton arguments augmented by oral submissions delivered with brisk efficiency.

Background

[2] The impugned article concerned the alleged treatment of staff at the Kilmorey Arms Hotel in Kilkeel who had been laid off before Christmas 2014. The article related their anger at the manner in which they had been treated. The respondent was the chairman of the company which owned the Kilmorey Arms and which had been placed into administration. The appellant is a newspaper with a circulation, according to the evidence before the court, of 178,867 and a readership of 660,000.

[3] We have exhibited the entire article in an appendix to this judgment. The article included the following extracts:

> "Kilkeel hotel owner Gordon Coulter has been branded a Scrooge for putting his staff on the street a week before Christmas.
>
> His former workers at the Kilmorey Arms Hotel got a brief call from a receptionist last Tuesday to say the business had gone into administration.
>
> But no one could tell the 22 full and part time workers if they'd get wages for the previous 4 weeks which should have been paid on Wednesday and they are not the only people angry about the hotel's sudden closure.
>
> Many of the Christmas meal bookings made by the local community had to be paid in advance but those customers have been left high and dry too.
>
> One distraught staff member who had been there for nearly a decade said he and other colleagues had called to Mr Coulter's house looking for answers but no one there would speak to them. ….
>
> 'As I was arriving at the house one of the cleaners from the hotel was coming away' says the former employee 'everyone in Kilkeel is angry calling him a Scrooge and the name does fit perfectly'."

The article went on to cite Mr Coulter saying:

> "It is with the deepest of regret that we find ourselves having to appoint administrators and cease trading. It is particularly hard in the week before Christmas for our staff and their families, we are devastated it has come to this. On behalf of the Director/Shareholders I would like to thank all loyal customers for their support throughout the years".

[4] The Judge, sitting alone, made the award of £50,000 and costs in the course of a lengthy written judgment.

Grounds of Appeal

[5] The Notice of Appeal as amended contained the following contentions:

(1) The Judge had failed to observe the single meaning rule in so far as he had found as a fact that the plaintiff:

- was a mean scrooge like figure
- had also acted callously towards the staff without regard to their interests and
- had displayed a meanness of spirit.

(2) The Judge had erred in finding that any such distinct defamatory meanings were an assertion of fact rather than expressions of opinion about how the plaintiff had treated his staff a week before Christmas.

(3) The Judge had erred in determining the level of any defamatory factual meanings on the footing that they were assertions of the publisher rather than assertions of the staff subsequently reported in the article. This had led him, wrongly, to reject the lesser factual meanings contended for by the defendant and consequently the justification defence.

(4) The Judge wrongly failed to identify the public interest in the information published in the article.

(5) The Judge erred in failing to consider the extent to which it was in the public interest, given the public interest in the content of the article, to include in the article the words giving rise to the defamatory meanings.

(6) When dealing with theReynolds defence, the Judge erred:

- in asserting that the test as to meanings in the context of a Reynolds defence "may" be different from the single meaning rule to be applied in relation to the rest of the action.
- in concluding that he had to consider whether the words were susceptible of a meaning other than the single meanings he had identified and whether that meaning was one which a responsible journalist could perceive.
- in failing to identify the range of defamatory meanings, whether factual or by way of opinion, that the words complained of were capable of bearing.

(6) The Judge erred in his approach to verification in that he:

- failed to consider whether the article was reportage and the nature and extent of the journalist's duty to verify.
- equated the journalist's duty to verify to a duty to prove the substantial truth of the single meanings he had identified.

(7) The award of £50,000 was disproportionate and excessive.

Ground 1 – the Single Meaning Rule

[6] Essentially this ground of appeal arises out of paragraph [16] of the judgment which reads as follows:

> "[16] My overall impression on reading the article is that a hypothetical ordinary reasonable reader would have understood the article as a whole, read once in conjunction with its headline, photographs and the caption of the photographs, to mean that the plaintiff *was* a mean Scrooge like figure as a matter of fact rather than comment. I also consider that the article meant that the plaintiff acted callously towards his staff without regard to their interests. Whilst the single meaning of the article included the meaning that the plaintiff lacked Christmas spirit and displayed a meanness of spirit I do not consider that this meant that there were reasonable grounds for believing or grounds to investigate but rather that this *was* the case. My overall impression is that the plaintiff's pleaded meanings are correct."

[7] It is also relevant to cite paragraphs [19] and [20] of the judgment as follows:

> "[19] The first paragraph of the article is in bold type and it states that the plaintiff 'has been branded a "Scrooge"'. I consider that this is an unequivocal assertion that he *was* a Scrooge there being no expressed or any implied qualification that there are only reasonable grounds to believe or that there is reason to investigate. This is reinforced when the article goes on to state without any equivocation that the name Scrooge 'does fit perfectly'. ….
>
> [20] The assertion that the plaintiff was callous, as opposed to there being reasonable grounds to believe or investigate that he was callous, is supported by the assertion that a longstanding member of staff and other colleagues had called to the plaintiff's home looking for answers but no one there would speak to them. It is also supported by the passage that states that a cleaner from the hotel was coming away from his house in tears."

[8] The "single meaning" rule is now of some vintage. The natural and ordinary meaning of words for the purposes of a defamation claim is the single meaning that would be conveyed by those words to the ordinary reasonable reader. Its genesis is generally accepted to be crystallised in the judgment of Diplock LJ in Slim v Daily Telegraph [1968] 2 QB 157 at 17-172 where he said:

> "The notion that the same word should bear different meanings to different men and that more than one meaning should be 'right' conflicts with the whole training of a lawyer. Words are the tools of his trade. He uses them to define legal rights and duties. They did not achieve that purpose unless it can be attributed to them a single meaning as the 'right' meaning. And so the argument between lawyers as to the meaning of a word starts with the unexpressed major premise that any particular combination of words has one meaning which is not necessarily the same as that intended by him who published them or understood by any of those who read them but is capable of ascertainment as being the 'right' meaning by the adjudicator to whom the law confides the responsibility of determining it".

[9] Despite the controversy that it has excited amongst legal luminaries the rationale behind the rule was expressed by Lord Neuberger in the Hong Kong Court of Final Appeal in Oriental Daily Publisher v Ming Pao Holdings [2012] HKCFA 59 where he said:

> "If the single meaning rule did not apply in defamation it would..lead to greater uncertainty in outcome and increased legal expenses. Instead of a statement with two possible meanings giving rise to a problem requiring a binary resolution, it would give rise to a problem which had a multiplicity of potential answers, along what might be seen as a continuous spectrum. Abolition of the single meaning rule would also lead to the dispiriting, expensive and time consuming prospect of many witnesses being called by each party, to explain how they understood the statement in question."

[10] The most recent expositions of the rule are to be found in Lait v Evening Standard Ltd [2011] EWCA Civ 859 and Mir Shakil-Ur-Rahman v Ary Network Ltd, Fayaz Ghafoor [2015] EWHC 2917 (QB).

[11] Accordingly, as outlined at paragraph 12 of Mir's case, "the court's task in the artifice of arriving at a putative actual single meaning may involve an approximate centre point in the range of possible meanings or a dominant meaning for each broadcast". In the instant case, the learned trial Judge adopted the conventional approach of deciding first the issue of identifying the single meaning which the words would convey to an ordinary reader and then determining whether that meaning was defamatory.

[12] We find no substance in the appellant's assertion that the Judge failed to do this. In the first place he indicated that the article, read as a whole, meant that the plaintiff was "a mean Scrooge like figure". That is clearly the primary meaning that he took from the article.

[13] But whilst under the single meaning rule the Judge is obliged to determine one meaning of the words used – and cannot derive more than one meaning from the same words – that does not prevent him deriving a further meaning from the article. Otherwise it would be impossible to have more than one allegation arising out of the same article.

[14] We are satisfied that *in addition* to the article containing the allegation that the plaintiff was a Scrooge, the article also contained further allegations that he was callous and mean spirited albeit these may not be very different from the main charge of being a "scrooge". At paragraph [20] the Judge expressly extracted that part of the article which gave support to the additional allegations. In our view Mr Millar has erroneously conflated the single rule applying to words with the article itself which is not required to maintain a single meaning. Accordingly we do not believe that the Judge transgressed the single meaning rule in so far as he found in the article an allegation of the plaintiff acting in a Scrooge like manner and also, quite separately, an allegation that he had acted in a callous manner and was mean spirited.

[15] Before turning to the second aspect of ground 1 of this appeal we pause to observe that there is a risk in conflating the related but distinct tasks of the determination of meaning and the distinguishing of fact from comment.

[16] In Buckley v Herald and Weekly Times Pty Ltd [2008] VSC 459 at [28] Kay J cautioned as follows:

> "…there is an important distinction between inferences or implications by the hypothetical ordinary reasonable reader of the publication complained of, on the one hand, and, on the other hand, an understanding by the ordinary reasonable reader of the publication that imputations, pleaded by a plaintiff, were conveyed to that reader as the opinion or comment of the writer of the article."

[17] We harbour some concerns that paragraph [16] of the judgment may have served to conflate these two distinct steps and this may have contributed to the error which we identify below.

[18] Thus the second matter arising out of the first ground of appeal is the contention of the appellant that the references to Scrooge (and the other two descriptions found by the judge) were matters of comment rather than fact. This is an important distinction. If the imputation or inference is one of fact, the defence must be justification or privilege. Thus an inference from other facts may involve an inferred fact that is essentially verifiable or unverifiable. This has sometimes been treated as the dividing line between statements of fact and comment, with the defendant required to prove the truth of inferences of verifiable fact. If it is one of comment, it is a fundamental rule that the defence of honest comment may apply to the comment but not to imputations of fact.

[19] As Lord Phillips acknowledged in Yoseph v Spiller [2011] 1 AEC 852 at [5]:

> "Jurists have had difficulty in defining the difference between a statement of fact and a comment in the context of the defence of fair comment".

[20] This was not a simple task for the Judge to perform given the practical difficulty in distinguishing comment and fact (see also Convery v The Irish News Ltd [2008] NICA 14).

[21] Gatley 12th Edition at 12.8 distinguishes three general situations:

- A statement may be a "pure" statement of the evaluative opinion which cannot be meaningfully verified. Mr Millar contends that this applies in the instant case.
- A statement which is potentially one of fact or one of evaluative opinion according to the context: for example, "Jones is a disgrace".
- A statement which is only capable of being regarded as one of fact and is in no sense one of opinion, but which may be an inference drawn by the reader from other facts for example "Jones took a bribe".

[22] A statement that may be regarded as an assertion of fact may yet be comment for the purposes of the defence if it comprises an inference from other facts stated or referred to Gatley at 12.8 states:

> "Though 'comment' is often equated with 'opinion', this is an oversimplification. Comment is 'something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation etc.' (see Clarke v Norton [1910] V.LR 494 at 499)."

[23] We consider that the description of any person as "a Scrooge" amounts to a verbal remark which expresses an opinion on that person. Obviously the person is not literally Scrooge because that is a fictional character in a Dickens novella. Rather it is a comment on characteristics which that person has which amounts to the formulation of an opinion by the speaker on the person in question. Mr Millar asserted that this was a classic metonym or figure of speech which was not to be taken literally and we agree with that assertion. In terms it amounts to an applied conclusion or judgment on that person and as such amounts to comment rather than a statement of fact. Similar situations might arise where someone is termed a "Hitler" or a "Trotsky".

[24] In the instant case the three meanings found by the judge are comments deriving from the various reported facts set out in the article. These are the underlying facts that attract the concept of verification and not the comments. The second and third meanings - that the plaintiff was callous and lacked Christmas spirit - probably add little to the Scrooge comment and in any event are once more comments amounting to evaluative opinions based on the bald facts reported in the article.

[25] In these circumstances we consider that the learned trial Judge was in error in concluding that these descriptions amounted to statements of fact. The consequence of this was that he considered there was no need to entertain the defence of honest comment on a matter of public interest.

[26] Some troubling confusion arose from the fact that counsel on behalf of the appellant may not have addressed this defence in the course of the closing submissions. However it clearly was contained within the defence itself, was part of the skeleton argument and apparently had been raised in the course of exchanges with the learned trial Judge. We are inclined to accept the argument of Mr Millar that counsel at trial (who was not Mr Millar), in face of the clear view of the judge that this was a finding of fact, may have declined to press further against what was clearly a firmly closed door.

[27] We have therefore concluded that the learned trial judge misdirected himself in this present case. On that ground alone the appeal must be allowed and the order in favour of the respondent quashed. It may well be that a different judge will conclude that there is a sufficient factual substratum existing for the comment which constitutes the preponderance of the article but this is a matter that has to be determined by another judge. We therefore will follow the route adopted by the Court of Appeal in Convery's case and order a retrial before a different judge.

[28] This finding renders it unnecessary to deal with the other grounds of appeal which are before the court, but in deference to the arguments that have been made and for the benefit of providing guidance on a future hearing of this case we shall deal with them in brief.

Ground 2 – Assertions of the publisher rather than of the staff

[29] We are satisfied that the learned trial judge was well aware that the sting of the article was based on assertions made by the staff. Whilst the appellant relies on paragraphs [19] and [20] of the judgment where there is an absence of reference to the allegations emanating from the staff, the contents of paragraphs [4], [5] and [6] of the judgment make it crystal clear that the judge was aware of the source of the comments. Moreover he was entitled to come to the conclusions, which he did at paragraph [19], that since these were unequivocal assertions without qualification this was not a case where they may have amounted to "reasonable grounds to believe or that there was reason to investigate". Had the learned trial judge been correct on his finding of fact rather than comment, this would have been an unchallengeable conclusion.

[30] We pause to observe that the judge's consideration at paragraph [21] that the expression of regret recorded in the article on behalf of Mr Coulter was "what one would expect a mean callous individual to say" is less defensible. There is no doubt that the context and circumstances of a publication must be taken into account and a plaintiff cannot pick and choose those parts of the publication, standing alone, which would be defamatory. The whole article must be taken together.

[31] In short "the bane and the antidote must be taken together" (see Alderson B in Chalmers v Payne (1835) 2 CR. M. and R 156 at 159). This phrase has become almost conventional jargon among libel lawyers but nonetheless its strength still remains. There is merit in Mr Millar's point that there is nothing in the presentation of the plaintiff's public statement in the article to suggest that the newspaper invites the reader to discount it on the basis that it is false or insincere and it was a step too far for the judge to have asserted this.

[32] Whilst the approach adopted in paragraph [21] of the judgment may have been a step too far, nonetheless a judge would have been entitled to conclude that, taking the article as a whole, the limited retraction did not distract from the overall impression on reading the article that a hypothetical ordinary reasonable reader could have formed. Accordingly this objection posited by Mr Millar would not have been sufficient for us to have overturned this decision.

Ground 3 – The public interest

[33] It was the contention of Mr Millar that the judge had wrongly failed to identify the public interest insofar as in paragraph [81] of the judgment, the judge had decided that the public interest was that which "involved the running of a company which owned an hotel providing employment and a centre of community life in Kilkeel".

[34] Doubtless, particularly in the context of a Reynolds defence, Mr Miller is correct to say that a proper assessment of the public interest is important in order

that an appropriate balance may be made between that and the damage it occasions to the plaintiff's reputation.

[35] It may well be that paragraph [81] would have lent itself to further dilation on the full remit of the public interest concept to embrace the fact that it was not merely about the running of a company but also the making of allegations locally against the business relating to how the staff had been treated in the week before Christmas. The allegations that a well-known employer has mistreated its staff are a legitimate subject for public interest.

[36] However this was a comprehensively drafted judgment containing 100 paragraphs. It is always easy to restate how individual paragraphs should be couched with the benefit of hindsight. The fact of the matter is that the sentence used by the learned trial judge by implication included the manner in which it was alleged the running of the company had been carried out in this particular instance. No one can have been in any doubt in reading this judgment - particularly when paragraph [82] is addressed – that the material contained in the article was part of the public interest concept. We therefore find no fault with the manner in which the learned trial judge couched this description of the public interest.

Ground 4 – The extent to which it was in the public interest to include the words

[37] Of more moment is the contention by Mr Millar that the question of whether it was justifiable to include the defamatory statement about the plaintiff *is part of the public interest test* and is not part of *the assessment of responsible journalism test*. Judges must make allowance for the editorial judgment on this issue.

[38] The contention is that the learned trial judge misdirected himself at paragraph [82] of the judgment in that he suggested that "the answer to this issue (*that is, was it reasonable to include the impugned material*) may be informed by the question of whether the publisher has met the standards of responsible journalism".

[39] There are three key issues in the Reynolds privilege defence. First, whether the subject matter of the publication was of sufficient public interest. Secondly, whether it was reasonable to include the particular material complained of. Thirdly, whether the publisher had met the standards of reasonable journalism or publication.

[40] The test for the second of these concepts is that set out in Jameel's case at [51] per Lord Hoffmann where he said:

> "The fact that the material was of public interest does not allow the newspaper to drag in damaging allegations which serve no public purpose. They must be part of the story. And the more serious the allegation, the more important it is that it should

> make a real contribution to the public interest element in the article."

[41] It is not necessary to find a separate public interest justification for each item in the story. For this purpose the story must be looked at as a whole in order to determine whether it is published in the public interest, with due allowance for editorial judgment about how it should be presented.

[42] The concept of editorial discretion was a key feature in Flood v Times Newspapers Limited where Lord Dyson said at paragraph [182]:

> "Although the question of whether the story as a whole was a matter of public interest must be determined by the court, the question of whether defamatory details should have been included is often a matter of how the story should have been presented. On that issue, allowance must be made for editorial judgment."

[43] The judge properly raised this issue but at paragraph [82] said:

> "The answer to this issue may be informed by the question as to whether the publisher has met the standards of responsible journalism. I will address that issue before returning to the second issue."

[44] The judge then proceeded to consider the matter of responsible journalism – concluding that there had been a failure to meet such a standard – and, returning to the second issue, said at paragraph [94]:

> "The failure to meet the standard of responsible journalism also means that I consider that the defendants have not established that it was reasonable to include the particular matter complained of in the article."

[45] By itself we consider that that was a sufficient recognition of the fact that the question of inclusion of the material complained of is separate from the third test of responsible journalism.

[46] Somewhat enigmatically at paragraph [94] the judge concluded:

> "In addition I consider that given the degree of information that was then available it would have been reasonable to write the article taking one of many other approaches that could have been taken."

[47] We can only assume that this referred to the approaches which he dealt with in the arena of responsible journalism.

[48] In short we consider that the learned trial judge failed to fully address the issue as to whether it was reasonable to include the particular material complained of and to consider the important concept of editorial judgment. However given the forthright criticism that he visited upon the article as a whole in the course of his judgment, we consider that we could have implied from the judgment that had he given distinct and separate consideration to this second issue either before or after turning to responsible journalism, he would undoubtedly have concluded that it was unreasonable to contain the full extent of the particular material complained of. Hence we would not have found this as a ground for quashing the verdict.

Ground 5 – Different meanings under the Reynolds defence

[49] The general rule in defamation law is that words are treated as having a single meaning even though people might in fact read them differently. This rule does not however apply for the purposes of Reynolds privilege. In Jameel's case in the High Court per Eady J at [73] the judge said:

> "[in] determining whether it was reasonable or responsible not to have made further pre-publication checks, it might well be relevant to consider how the journalist understood the allegations he was making and, if he genuinely thought the words bore no defamatory imputation at all, it would be difficult to criticise him for not addressing such a meaning for the purpose of checks or (say) giving an opportunity to comment upon it."

[50] In Bonnick v Morris [2002] UKPC 31 at [25] the court made clear that this principle:

> "should not be pressed too far. Where questions of defamation may arise ambiguity is best avoided as much as possible. It should not be a screen behind which a journalist is 'willing to wound, and yet afraid to strike'. In a normal course a responsible journalist can be expected to perceive the meaning an ordinary, reasonable reader is likely to give to his article. Moreover, even if the words are highly susceptible of another meaning, a responsible journalist will not disregard a defamatory meaning which is obviously one possible meaning of the article in question. Questions of degree arise here. The more obvious the defamatory meaning, and the more serious the

> defamation, the less weight will a court attach to other possible meanings when considering the conduct to be expected of a responsible journalist in the circumstances."

[51] We are satisfied that the learned trial judge was cognisant of this principle. He specifically refers to it, albeit not in such imperative terms as Mr Millar wished, at paragraph [28] of his judgment. The real question however is whether he applied that principle.

[52] When dealing with the issue of responsible journalism between paragraphs [84] and [95] the judge does not directly address the question of alternative meanings in the Jameel or Bonnick terms. That in itself would have been a cause for concern had it been necessary for this aspect of the appeal to the determined.

Ground 6 – Verification

[53] In relying on this point, Mr Millar cited paragraph [34] of Flood v Times Newspapers [2012] 2 AC 273 where Lord Phillips said:

> "So far as verification is concerned, Lord Nicholls included in his list of relevant factors 'the steps taken to verify the information'. He was, however, dealing with a case where the relevant allegations were made, or at least adopted, by the publisher. The publication was not simply reporting allegations made by another. …. In such circumstances there was no need for the newspaper to concern itself with whether the allegations reported were true or false. The public interest that justified publication was in knowing that the allegations had been made, it did not turn on the content or the truth of those allegations. A publication that attracts Reynolds privilege in such circumstances has been described as 'reportage'."

[54] Similarly Lord Hoffmann in Jameel at [62] said:

> "…. The fact that the defamatory statement is not established at the trial to have been true is not relevant to the Reynolds defence. It is a neutral circumstance. The elements of that defence are the public interest of the material and the conduct of the journalist at the time. In most cases the Reynolds defence will not get off the ground unless the journalist honestly and reasonably believed that the statement was true but there are cases ('reportage')

> which the public interest lies simply in the fact that the statement was made, when it may be clear that the publisher does not subscribe to any belief in its truth. In either case, the defence is not affected by the newspaper's inability to prove the truth of the statement at the trial."

[55] The contention in this instance was that the newspaper was reporting allegations made by others and the public interest was in knowing that the allegations had been made. Consequently the article was not a piece of investigative journalism in which the journalist was reporting her conclusions after investigation. Accordingly the learned trial judge at [86] was applying far too high a test in requiring steps to prove the truth of the meanings he had found as a matter of fact at paragraph [16].

[56] This is certainly an issue that required to be addressed by the learned trial judge. Was this "reportage" and if so had the newspaper article crossed the line between reportage and the newspaper adopting the reports of what the various employees had said? At paragraph [86] of the judgment the learned trial judge criticised not only the failure to contact witnesses to confirm the information provided but also that the newspaper should have investigated the value of some Christmas bookings prior to the administration. Arguably this smacked of placing a burden on the journalist to establish the truth of the impugned article without addressing the question as to whether this was necessary if the article amounted to reportage. This might well therefore have amounted to a sustainable ground of appeal had it been necessary for us to so determine.

Ground 7 – The opportunity to comment

[57] It was Mr Millar's contention that there was nothing to suggest that the administrator of the company was not fully responding to the press enquiry and that the plaintiff therefore had had the opportunity, with the benefit of assistance from a PR agency, his solicitor and co-directors to formulate a statement saying anything he wished in response to the suggestion that he was treating his staff badly.

[58] It was the learned trial judge's view that "simple fairness required that the journalist who was going to criticise the plaintiff calling him a scrooge should put those specific allegations to him. An e-mail to Maria McCann did not state that the plaintiff was to be called a scrooge or was to be criticised".

[59] This was the line adopted by Mr Lavery in his helpful submissions to us in this regard. We agree with Mr Lavery's submission. The learned trial judge was perfectly entitled to come to the conclusion he did on this aspect. The real sting of the allegations had not been put to the administrator to enable him to have commented thereon. We would have dismissed that ground of appeal.

Ground 8 - Quantum

[60] Since we have allowed this appeal and thus there may be a retrial with different issues arising to be determined the quantum aspect of the instant case becomes superfluous.

[61] For future guidance however we add some brief observations. The judge carefully and correctly set out the guiding legal principles on the appropriate approach to quantum in defamation cases. One of those principles which he correctly identified was that in assessing damages a court should maintain a sense of proportion with personal injury awards in Northern Ireland.

[62] A consideration of the "Guidelines for the Assessment on General damages in Personal Injury Cases in Northern Ireland"published in March 2013 provides informed assistance. A court would have to conclude that an award of £50,000 in this case - where at least to some extent the plaintiff had been offered an opportunity to respond and explain his actions - would have put this case in a comparable or more serious bracket than, for example:

- total loss of taste and smell(£35,000-£60,000),
- total loss of hearing in one ear (£35,000-£60,000),
- amputation of all toes (£35,000-£70,000),
- total loss of a thumb (£35,000-£60,000)
- and total loss of both ring and little fingers (£28,500-£45,000).

Conclusion

[63] In the circumstances we therefore conclude that the Order cannot stand and should be set aside. The proper course is to direct a retrial of the action.