Neutral Citation No. [2010] NIQB 135 | *Ref:* **GIL7996**

Judgment: approved by the Court for handing down | *Delivered:* **07/12/10**
(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

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Between:

BRIDGET O'RAWE

Plaintiff;

And

WILLIAM TRIMBLE LIMITED

Defendant.

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GILLEN J

INDEX TO JUDGMENT

The Claim

[1] In this matter the plaintiff, who had been employed by the Sperrin and Lakeland Trust (the Trust) as a director of Corporate Services between 1997 and May 2006, has brought proceedings for libel against the Defendant which is the owner and publisher of the Impartial Reporter ("IP"), a weekly newspaper circulating largely in Fermanagh and Tyrone with a circulation of 14000 copies per week. The plaintiff is now Mrs Rippey but I shall refer to her under the name in the proceedings namely Ms O'Rawe.

[2] The claims arise out of

- 2 articles published firstly on the front page and secondly inside the newspaper in an editorial ("the editorial article") in the IP published on the 25 January 2007 ("the newspaper articles ")
- 5 articles appearing on the IP's website ("the website articles") between the 5 April 2006 and 5 April 5007. I observe that the website articles had appeared in the IP between September 2005 and February 2006. However the plaintiff had not taken proceedings against the IP within one year of their publication. The writ in these proceedings was issued on 5 April 2007. She now sought to claim against the defendant on the basis that the articles had been archived on the website of the IP and thus could still be found within the limitation period by linking in with the website and searching thereon to find them.

[3] The plaintiff alleged the newspaper articles in their ordinary and natural meaning were understood to mean as follows concerning the plaintiff:-

(i) She was part of a cover up by the Trust of the reasons for the death of Lucy Crawford.

(ii) She misled the child's family as to the true causes of her death.

(iii) She was in some way wholly or partly responsible for a cover up over the death of the child and the true facts behind it.

(iv) She was in some way wholly or partly responsible for inducing a senior paediatrician to produce a report on the death which covered up why the child had died by "sweet talking" him to producing it that way.

(v) She was the subject of a police investigation and interview regarding the child's treatment and the alleged subsequent cover up concerning it.

(vi) A file of the plaintiff's involvement into the cover up of this death and on the evidence implicating her in that cover up was compiled by the police and was sent to the Public Prosecution Service with a view to prosecution of her.

[4] The plaintiff alleges "the series" of website articles in their ordinary and natural meaning refer to the plaintiff and meant and were understood to mean as follows concerning the plaintiff :-

(i) She was responsible for things going "wrong" with hospital services in the hospitals and had not been accountable for same.

(ii) She was part of a flawed management system within the Trust which caused hospital services at the Hospitals to be "run into the ground" and "run down to the point where patients were at risk".

(iii) She was involved in a conflict of interest in her role which meant she did not discharge her duties fairly.

(iv) She escaped being "rooted out" by the Minister responsible for the Trust as being part of the "former controversial regime" whose management had run the Trust service so badly that "various reports" considered them "a danger to patients".

(v) She went on sick leave rather than be "forced" to resign with the other directors of the Trust as she should have been.

(vi) She herself was "discredited" as a "close ally of the discredited former Chief Executive."

(vii) Her return to work after sick leave was "ridiculous" and a change in her role had been effected "quite rightly".

(viii) Her post was then "axed" as a result of a number of incidents in the Trust Hospitals being "not properly investigated" and of her "having a conflict of interest".

(ix) Her employers, the Trust, and the Area Health Authority the Western Health and Social Services Council ("WHSSC") had been "concerned for a number of years" that her "functions were not compatible".

The defence

[5] The defendant denies the defamatory meanings alleged by the plaintiff. In so far as the words in the newspaper articles meant or were understood to mean in their natural and ordinary meanings "that there were grounds for investigating whether or not the plaintiff had been involved in a cover up following the death of Lucy Crawford", the defendant asserts the words were true in substance and in fact the particulars of which were pleaded as follows:-

(i) In April 2000 Lucy Crawford was a patient in the Erne Hospital, Enniskillen when fluids were administered in a wrongful manner, causing her death – the cause of death being hyponatraemia.

(ii) The plaintiff was a director of Corporate Affairs with the Sperrin Lakeland Trust, the body responsible for the management of the Erne Hospital, Enniskillen.

(iii) In that role she was involved in procedures, investigations and events which followed the death of Lucy Crawford and was involved in communications with, and explanations given to, the family of Lucy Crawford.

(iv) On 18 November 2004 the Minister of Health, Social Services and Public Safety announced the setting up of a public inquiry into the deaths of three children, one of whom was Lucy Crawford. In the course of a Ministerial statement on the matter the Minister said "I believe it is of the highest importance that the general public has confidence in the quality and standards of care provided by our health and social services. This is why I recently announced that I had appointed John O'Hara QC to conduct an independent inquiry into the events surrounding the deaths of Adam Strain, Lucy Crawford and Raychel Ferguson. The death of any child is tragic and it is essential that the investigation into these deaths is independent, comprehensive and rigorous. The Terms of Reference I have set out for the inquiry and the powers available to it are wide ranging and should ensure that the inquiry deals with all the issues of concern".

(v) The terms of reference of the inquiry included:-

(1) the actions of the statutory authorities, other organisations and responsible individuals concerned in the procedures, investigations and events which followed the deaths of inter alia Lucy Crawford;

(2) the communications with, and explanations given to, the respective family and others by the relevant authorities.

(vi) In November 2004 the Police Service of Northern Ireland commenced an investigation into the death of Lucy Crawford. The investigations included an inquiry into the actions of the hospital and the Trust. The investigation concluded in November 2006 with a decision by the Public Prosecution Service that there be no prosecution.

[6] The plaintiff further relied upon the defence of qualified privilege on the grounds that the publication of the newspaper articles was in the public interest

[7] Further in the alternative the defendant claimed that the editorial article, in so far as it contained comment or expression of opinion, constituted fair comment on a matter of public interest namely the accountability to the

general public of persons in authority for their actions taken in the course of their office.

[8] In relation to the website articles the defendant asserted that this series of articles did not bear the meanings alleged by the plaintiff and/or alternatively the articles are protected by qualified privilege on the grounds that the publication of the articles was in the public interest.

[9] Whilst the defendant denied that the plaintiff was entitled to damages, it relied in mitigation or extinction of any compensation payable to the plaintiff on a number of matters set out at paragraph 18 of the amended amended defence.

Background facts

[10] A number of unchallenged background and primary facts emerged in the course of the evidence given by the two witnesses in this case namely the plaintiff and Mr Denzil McDaniel the managing editor of the Impartial Reporter on behalf of the defendant. These together with other findings of fact made by me in the course of their evidence permit me to set out the following material facts relevant to this case

[11] The impugned articles in this case touched on the investigations into the death on 14 April 2000 of a child named Lucy Crawford, then 17 months of age, who was one of three children in Northern Ireland who died of hyponatraemia. One of the other children had died in the Royal Victoria Hospital in 1996 and other child had died in 2001 at the Altnagelvin Hospital in Londonderry. Lucy had been a patient in the Erne Hospital, Enniskillen. The Trust is the body responsible for the management of the Erne Hospital. The child had been admitted complaining of vomiting and diarrhoea. Fluids had been administered to her in a wrongful manner causing her death. Dr O'Donohue had been the consultant paediatrician responsible for introducing the fluids. It was common case that thereafter there had been considerable criticism of the medical staff at the Erne Hospital.

[12]A review of Lucy's case was carried out by the Trust in April 2000. This included an external opinion on specific clinical matters from Dr M Quinn, consultant paediatrician from the Altnagelvin Trust. He had concluded that whilst there had been communication difficulties and poor record keeping, there was no basis for suggesting clinical negligence.

[13] In October 2000 the Crawford family lodged a complaint about Lucy's treatment. On 2 October 2000, a letter from the plaintiff as Director of Corporate Affairs was sent to Mr Neville Crawford. Because that letter has assumed an importance in this case, I shall quote it in full where relevant:

"Dear Mr Crawford

Thank you for your letter of 22 September 2000, received 29 September 2000.

I have shared your correspondence with Mr Eugene Fee, the Trust's Director of acute hospital services and a full investigation will take place. I note your authorisation for Mr Stanley Millar, Chief Officer of the Western Health and Social Service Council, to act on your behalf and we will correspond with him directly in due course.

May I take this opportunity to offer you and your wife my condolences on the loss of your daughter Lucy."

[14] It was the unchallenged evidence of the plaintiff that thereafter Mr Millar, as an advocate for the family, met with Mrs O'Rawe on two occasions to address the concerns. The family were invited to meet with the Trust but declined to take up this invitation.

[15] The plaintiff was the Director of Corporate Affairs with the Trust between 1997 and May 2006. Her evidence was that she was a non-voting member of 17 members of the Trust Board. Of the 12 who had voting rights, 6 were non-executives appointed by the relevant health department and 6 were appointed by the Trust. Five others, including the plaintiff, did not have voting rights.

[16] Her duties involved

- a number of managers reporting to her.
- the processing and "actioning" of complaints. She did not carry out any investigations arising out of complaints .This task was performed by a service manager.
- once an investigation was complete , processing the matter through to the Director of Acute Hospital Services Mr Fee.
- developing strategy, engaging with the press and with community groups and policy development. However she did have hands on role in more difficult situations.
- putting forward the image of the Trust and to that end she had a communications manager Janet Hall who reported to her.
- where litigation was commencing, she would process the matter to the relevant lawyers.

[17] In the instant case, after the death of Lucy, a process called the Clinical Incident Review was implemented as was usual with an unexplained death. This process was overseen by Mr Fee with the relevant medical consultant. It was during this review that the report of Mr Quinn was obtained.

[18] The parents of Lucy Crawford instituted litigation against the Trust in October 2001. The defendant Trust employed the services of the Directorate of Legal Services, Central Services Agency who in turn obtained a report from Dr Jenkins, senior lecturer in child health and consultant paediatrician on 7 March 2002. This report made clear that there would be great difficulty in achieving a successful defence of the action brought by the Crawford family and in his opinion "management fell below the standard which would be accepted by a responsible body of medical opinion as reasonable practice at the relevant time." That action against the Trust was subsequently settled in favour of the plaintiff in December 2003.

[19] In February 2004, pursuant to the direction of the Attorney General, an inquest was held into the death of this child. Such were the concerns of the Coroner that he referred aspects of Lucy's clinical care to the General Medical Council.

[20] After the inquest had been completed, in March 2004 a statement was issued on behalf of the Crawford family critical of the Trust's care of the child.

[21] Over a period of two years from February 2004 the Impartial Reporter began to publish a number of articles touching generally on the death of Lucy Crawford, the two other children and the actions of the Trust including allegations of a cover up by the management of that Trust. I am satisfied therefore that the impugned articles constituted several of a larger number of articles dealing with such matters.

[22] In March 2004 Ulster Television broadcast a programme "The Issue" in which the mother of Lucy Crawford spoke, amongst other things, about the loss of the child and her concern that the Trust had not been held accountable.

[23] On 30 March 2004 the Crawford family were provided with copies of the report from Dr Quinn by Mr Mills the Chief Executive of the Trust.

[24] On 1 April 2004 the newspaper published an account of an interview between the editor Denzil McDaniel and the Chief Executive of the Trust Hugh Mills The plaintiff and Janet Hall, the Director of Communications, were present. This interview had taken place upon request by Janet Hall. The article not only drew attention to the fundamental errors in the treatment of the child and criticised the internal review of the case as being "discredited" but asserted that no one in management was being held accountable. In the

same publication, an editorial viewpoint was published asking for a public inquiry. A separate part of the newspaper published the full statement issued by the Trust after the conclusion of the litigation process and the Coroner's inquest.

[25] On 7 April 2004 the Trust responded to the article with a statement indicating that it was co-operating with the referral of the inquest findings by the Coroner to the General Medical Council and Chief Medical Officer but that the Trust did not consider it appropriate to comment further at that time.

[26] In May 2004 Mr McDaniel sought and received an interview with the Health Minister Angela Smith about the death of the Lucy Crawford. The newspaper published this indicating that the Minister would have to consider the whole issue of accountability in the Health Service.

[27] In June 2004 the Chairman of the Trust Mr Harry McMullan confirmed plans to undertake an analysis of aspects of the Trust's handling of the Lucy Crawford case in light of the inquest setting out draft terms of reference of a "root cause analysis" through a steering group to oversee the process.

[28] In September 2004 Dr McGleenan, described in the newspaper as a leading human rights lawyer in Northern Ireland, published a report criticising the system of investigating deaths in hospitals. The newspaper carried a report on 23 September 2004 declaring, inter alia "His report has particular significance in this area. Campaigners here have accused the Sperrin Lakeland Trust of a whitewash in their investigation into the death in April 2000 of baby Lucy Crawford who died as a result of mistakes in her fluid management at the Erne Hospital."

[29] In October 2004, Ulster Television broadcast a documentary entitled "When Hospitals Kill". The opening titles of the programme recorded "How a Hospital Trust Covered Up. How it caused the Death of a Child and Lied to the Child's Grieving Parents." The reporter in the programme declared close to the outset "In the past eight years, three children have needlessly died in hospitals here. The reason they died is not complicated. It was the fatal administration of this fluid that caused the deaths of (two other children named) and Lucy Crawford. This is a story of medical incompetence, tragedy and cover up." I had before me a complete transcript of the programme which alleged, inter alia, that the Chief Executive Mr Mills was ultimately responsible for the cover up and contained a statement by Dr Quinn that he had been "sweet talked into writing a summary which is not the complete amount of discussion that he had at the time".

[30] With reference to the plaintiff the programme broadcast the following statement by a reporter:

> "The Crawfords weren't even aware that this review had been carried out until they lodged a formal complaint against the Trust six months after Lucy's death. It was handled by this woman Bridget O'Rawe. (*There was a photograph displayed of the plaintiff*). Her job at the Trust is twofold. She deals with complaints but she also protects the Trust's corporate identity – a clear conflict of interests. The Crawford's complaint produced more lies. Bridget O'Rawe promised the family a full investigation which the Trust never carried out. Both the review and complaints process ought to have given the Crawford family the truth however unpalatable."

[31] In the course of the programme a doctor at the Erne Hospital claimed that he was forced out of his position for attempting to expose the truth about the death of Lucy Crawford. The newspaper on 21 October 2004 published an article "Doctor: I was Forced Out for Telling Truth" in which they reviewed the forthcoming UTV broadcast.

[32] Shortly after the UTV Insight programme had been broadcast, the Trust published a press statement confirming that the practice today at the Erne Hospital was different from the time of Lucy Crawford's death and that new procedures had been adopted. It indicated that "the Trust did not participate in the programme given the ongoing investigation by the General Medical Council and the establishment of the steering group which is taking forward a Root Cause Analysis examination of the circumstances surrounding Lucy Crawford's death and our handling of the investigative process".

[33] On 26 October 2004 Mr McDaniel caused an e-mail to be sent to Janet Hall, the Director of Communications in which he asked if the Sperrin Lakeland Trust would be publishing their response to the issues raised. That e-mail continued:

> "Specifically, I would ask:
>
> 1. When did the Trust become aware that the cause of Lucy Crawford's death was the management of fluid?
>
> 2. Did Dr O'Donohoe lie to the Crawford family?
>
> 3. Dr Murray Quinn alleges he was 'sweet talked' into writing his report for the Trust's internal review. Did the Trust 'sweet talk' him into doing so?

4. Dr Quinn having failed to find any reasons for Lucy Crawford's death, why did the Trust not seek further reports?

5. Did Mr Mills cover the case up?

6. Did Bridget O'Rawe lie to the family when she promised, in October 2000, a full investigation?

7. Is Mr Mills considering his position?

8. Is Ms O'Rawe considering her position?"

Several other specific questions were asked about the Trust's position.

[34] Following the UTV broadcast, the PSNI instituted an investigation of the case. In an article of 28 October 2004 the newspaper published this news displaying a photograph of the plaintiff and Hugh Mills. It recorded calls for an independent inquiry from local Assembly members and the Western Health and Social Services Council. The article again referred to "another Trust Director Bridget O'Rawe had promised the Crawford family a full investigation which never took place."

[35] In November 2004 the Department of Health and Social Services and Public Safety set up a public inquiry into the death of the three children with particular reference to three matters namely:

- The care and treatment of the three children especially in relation to the management of fluid balance and the choice and administration of intravenous fluids in each case.

- The action of the statutory authorities, other organisations and responsible individuals concerned in the procedures, investigations and events which followed the death of the three children.

- The communications with and explanations given to the respective families and others by relevant authorities.

The Impugned Articles

[36] The first of the impugned website articles "Man's Death in Hospital could Result in Manslaughter Charge" was published on 22 September 2005. As I have already indicated all of the website articles were published in the newspaper outside the limitation period for the purposes of these proceedings and the plaintiff relies upon the fact that they were placed and

remained on the IP website within the limitation period. This proposition was not challenged by the defendant. I accept the evidence of Mr McDaniel that a selection of stories in each publication of the IP is placed on the website – probably 8 or 9 per publication – and after about one week is placed in a website archive which contains many such articles. The evidence of the plaintiff, given in the course of her re-examination by Mr Ringland QC who appeared on her behalf with Mr Ferrity, was that she had entered her name in the Google search engine, had found a list of references one of which was the Impartial Reporter and this in turn this gave access to the website itself. She believed that once she clicked on to this site it displayed only the impugned website articles

[37] The statement of claim had pleaded the five website articles as "a series of articles" appearing in earlier editions of the Impartial Reporter newspaper between September 2005 and February 2006 i.e. earlier than the newspaper articles. No evidence was given as to how many people would have come across such articles on the website and I was not clear how long they remain in the archive save that they were clearly available within the limitation period. It was Mr McDaniel's evidence that there were literally dozens of articles in which her name would have appeared in that archive. Having observed both witnesses carefully I did not form the impression that the plaintiff was very sure in her recollection about this matter whereas the editor of the IP gave his evidence with a degree of conviction that satisfied me he was correct on this issue. In any event common sense suggests that in so far as this archive is a receptacle for articles from many editions of the newspaper concerning the Trust role in the Lucy Crawford death with other references to the plaintiff, it is unlikely that only the impugned website articles would have appeared as described by the plaintiff

[38] The article headed "Man's Death in Hospital could Result in Manslaughter Charge" was published as a result of a warning emanating from a consultant following the death of a man in the Erne Hospital in 2004. The article was in the wake of reports published that same week about the safety of patients in both the Erne and Tyrone Hospital by the Royal College of Surgeons which had allegedly described the death of this man in 2004 as "a disaster". It was alleged in the article that a letter had been addressed to Hugh Mills and copied to Mr Fee, Dr Kelly and the plaintiff from Dr Anand outlining his concerns. The plaintiff indicated that although her name had been inserted in handwriting on the letter i.e. as being copied to her, she had never received it and I accept her evidence in that regard. The article included the following reference "This week further reports were released by Health Minister Shaun Woodward. These show that the situation is even more shocking than we thought. Put simply, the Minister has been told that the two hospitals are still trying to provide services in A&E and surgery that they are sometimes neither qualified nor able to do. … The Royal College

report clearly points a finger of blame for the mess at the system and management rather than staff."

[39] The second impugned website article was headed "Trust Chairman and Directors Forced To Go". As in all of these impugned website articles, Mr McDaniel asserted that there was no connection between them and I shall deal with this later in this judgment. This article dealt with "a spate of resignations from the Sperrin Lakeland Trust". It stated, inter alia, "Eight Trust Directors have now gone this year and a ninth, Bridget O'Rawe is on long term sick leave. … The vast majority of the regime which allowed hospital services in Enniskillen and Omagh to be virtually run into the ground has now gone." The article later recorded "The Impartial Reporter has received minutes of a meeting the Minister held with senior Department of Health officials on 18 May the night before Mr Mills resigned. A damming report has been received which said the lack of risk management in Sperrin Trust hospitals 'poses a significant risk to patients and staff'."

[40] The article "Trust Staff Morale at All Time Low" was originally published on 9 February 2006. Again Mr McDaniel denied that it was intended to connect this with any of the previous articles although it dealt with the same subject manner. This article specifically referred to the plaintiff having returned to the Trust after a period of sick leave and in the context of other management staff having been stood down. The article included the following words:

> "The return of Ms O'Rawe though is possibly the biggest surprise of all given that the Minister rooted out the former regime whose management had run the services so badly that various reports considered them a danger to patients. Amid accusations that a number of incidents in hospitals were not properly investigated, one of the criticisms of the Trust was that Ms O'Rawe's role involved a potential conflict of interests. In addition to being responsible for the public image of the Trust she was also the person to whom complaints would go. Despite her absence of several months and other extensive changes this aspect of Ms O'Rawe's position appears to be the same."

[41] The fourth impugned website article "They Won't Tell us Why" published on 16 February 2006 again had no connection with the other three articles according to Mr McDaniel. A large part of this article concerned the failure of the Public Prosecution Service to explain why charges had been brought against a local solicitor in a wholly unconnected matter. In the context of accountability the article compared the situation involving the

solicitor to the position with the Sperrin Lakeland Trust. References to the plaintiff included:

> "The Sperrin Lakeland Trust, as an organisation, is on death row. It's temporary part-time Chief Executive John Compton recently uttered some fine words about openness and accountability. A small example of how ridiculous this sounds came last week. Ms Bridget O'Rawe, a close ally of the discredited former Chief Executive, Hugh Mills, has returned to work after a lengthy period of leave. Whilst he was on leave, a number of Trust directors, including the former Chairman were stood down by the Health Minister. Ms O'Rawe was closely allied to this regime and the Trust (quite rightly) has changed her role. No longer will the same person who has responsibility for the image of the Trust be involved in dealing with complaints. Good move. And, says the Trust, the role of Director of Corporate Affairs no longer exists. Yet Ms O'Rawe still appears this week on the Trust website as a Director of Corporate Affairs. So, we ask, is she still a director?"

[42] In the same publication on 16 February 2006 and on the same page according to Mr McDaniel, an article was published by Sabrina Sweeney accompanied by a prominent photograph of Ms O'Rawe. The photograph also appeared in the website. That article dealt with the fact that the post held by the plaintiff, namely the Director of Corporate Affairs, had now been abolished. It went on to say "The Trust would not comment on whether Ms O'Rawe has taken up another position within the organisation. Nor would it comment on whether she still holds a director's position. A statement from the Trust read 'Circumstances of any employee are not a matter for public debate. This is the Trust's position for all members of staff'." The article went on to record the view of the Western Health and Social Services Council that the roles of Ms O'Rawe in managing complaints from patients and clients as well as relaying a positive image of the Trust were incompatible.

[43] On 25 January 2007 the newspaper articles were published. On the front page in a very prominent manner the headline was "No Charges Over Death of Baby". The article was written by a reporter Trevor Birney after discussions between him and the editor and appeared with Mr McDaniel's approval. The article referred to the history of the Lucy Crawford case with the express reference to the television documentary of October 2004, the police investigation commencing 2004, and principally the decision of the

Public Prosecution Service that no prosecution would be taken in relation to the death of Lucy Crawford. The article included the following references:

> "From the moment of her death, the Erne hospital management sought to absolve itself of all responsibility. A senior paediatrician from Derry's Altnagelvin Hospital, Murray Quinn, was paid to produce a medical report which covered up how Lucy had died. He later claimed he had been 'sweet talked' into producing his findings by Erne Hospital management with whom he had worked for many years. For over four years after her death Lucy's parents sought answers from the Sperrin Lakeland Trust without getting out any satisfactory responses. At an inquest in February 2004 the Coroner for Greater Belfast, John Leckey found that Lucy had died from hyponatreamia but failed to get the true causes behind her death. …. However ten months later on the night of the broadcast of "When Hospitals Kill" the then head of CID at the PSNI ordered that a fresh investigation be launched. Operating under the instructions and guidance of various superior officers, Sergeant Cross led the investigation into Lucy's treatment at the Erne Hospital and the subsequent cover up by the authorities at the Sperrin Lakeland Trust. Mr Cross quickly gained the respect of both the families of the children and experts for the tenacity and impeccable understanding of the medical evidence. On 23 May 2005 after an exhaustive investigation lasing several months, Sergeant Cross sent a file of evidence to the PPS. He sought their directions from the prosecutors on the evidence he set out against a number of staff at the Erne Hospital, including former Chief Executive of the Trust Hugh Mills and a number of other senior staff including former Director of Corporate Affairs Bridget O'Rawe and the consultant in charge of Lucy's treatment Dr Jarlath O'Donohue. Normally the PSNI would advise the PPS of its recommendations on whether a suspect should be prosecuted. … The police file included reports and evidence from a number of medical and public authority experts who criticised both the medical treatment of Lucy received at the Erne Hospital and the cover up by the authorities at the Trust."

[44] The article later indicated that "Hugh Mills and Jarlath O'Donohue were both questioned under caution along with a number of others." Subsequently the article recorded "the PPS refused to elaborate on its decision not to prosecute any of the staff involved in Lucy's care or the subsequent cover up."

[45] In an editorial inside the newspaper headed "Who is Accountable in a Democracy" the editor dealt with three cases involving collusion between members of the RUC and Loyalists murders, the Bain report and the case of Lucy Crawford. In particular it stated:

> "Finally there is a case of Lucy Crawford, the little girl who died as a result of blunders at the Erne Hospital nearly seven years ago. Now we learn that after an intense investigation and high profile coverage, no charges will follow. There may well be valid reasons for that: but the Public Prosecution Service refuses to explain their reasoning. Do the deaths of little children not matter? Considering these three separate issues, we ask: does anybody in authority have to answer for their actions any more? Is anybody held to account for anything? Is that not supposed to happen in a democracy?"

The trial process

[46] On the fourth day of this trial the parties agreed to the action being tried without a jury and the jury was thus discharged. I consider that this was a responsible attitude by counsel. It was recognition of the advantages of trying a libel action without a jury where the *Reynolds* defence arises as to whether the publication in question was protected by privilege involving as it will the evaluation of the defendant's conduct as against the standard of responsible journalism. Ultimately in a *Reynolds* defence it is a matter for the judge to determine if the publications in question were in the public interest and, if so, thereafter to evaluate the defendant's conduct against the standard of responsible journalism. This is not a task that has proved easy to operate with trial by jury. In Jameel (Mohammed) v Wall Street Journal Europe SPRL [2005] QB 904 Lord Phillips of Worth Matrivers MR said:

> "The division between the role of the judge and that of the jury when *Reynolds* privileges and issues arise is not an easy one; indeed it is open to question whether a jury trial is desirable at all in such a case."

[47] Doubtless there will be cases when disputed facts may be at the very heart of the existence of the privilege claimed. Gatley on Libel and Slander 11th Edition at paragraph 15.9 states:

> "A possible scenario nowadays, therefore, is that at the end of trial the jury will be presented with a series of questions going first to meaning and reference (if those are in dispute), then to the *Reynolds* factors and then to damages, the *Reynolds* issue then being reserved for ultimate determination by the judge who has to evaluate the effect of the jury's answers to determine whether there was the requisite basis for privilege. However a problem arises where responsible journalism is relied on by the defence in circumstances where there may be very few contentious issues of fact for the jury to resolve and that such factual questions as do arise may appear to the jury to be trivial and unimportant."

[48] In Charman v Orion Publish Group (2007) 1 All ER 622 at para. 4 said:

> "Try as the judge may to explain to the jury why their role in the trial is so limited, it is entirely understandable if jurors are puzzled, if not affronted, at the role they have been called upon to play."

[49] It may well be therefore that some libel actions should be tried in stages without a jury. Thus in Charman's case the first stage was for the judge to decide what meaning the words complained of would have been understood to bear. Thereafter, again without a jury, qualified privilege was determined by the judge alone. In that case, as in the present instance, there might then be a stage when the issue of justification will be decided. Depending on the outcome of the third stage, there might have to be a further trial of the issue of the plaintiff's entitlement to damages and other consequential relief. Wisely in my view in the present case, counsel were of the view that the overall complexities of the case were such that all stages in this trial should be determined by a judge without a jury.

Witnesses

[50] The only two witnesses in this case were the plaintiff and, on behalf of the defendant, the managing editor of the IP Denzil McDaniel. I have punctuated this judgment with references to their evidence without the need to outline their contents as a whole. I observe that both gave their evidence unflinchingly in a dignified and genuine manner attempting to combine honesty with the strength of their belief in their conflicting assertions. Both

spoke in measured tones, the more effective for being entirely without histrionics or rancour. That I have found in favour of one is to impugn neither the integrity nor sincerity of the other.

The Newspaper Articles

Meanings

[51] It falls to the plaintiff to prove on the balance of probabilities that the words have the meanings that she alleges, that the words were defamatory and that they were published about her. The first stage of this trial therefore is for me to decide the issue as to what meanings the words complained of in the newspaper articles would have been understood to bear. I have to determine whether they bear the meanings for which the plaintiff contends in paragraph 3 of the statement of claim or the meanings contended by the defendant in paragraph 6 of the defence or some other meaning which the words are capable of bearing.

[52] A number of definitions have been given of what amounts to defamatory meanings. I consider that it is sufficient to say that a statement is defamatory if it tends to harm the reputation of another so as to lower her in the estimation of the community or to deter third parties from associating or dealing with her. The onus lies on the plaintiff to prove that the words are defamatory to her. The standard is again that of right thinking persons generally. Words are not defamatory however much they may damage a person in the eyes of a section of the community unless they also amount to disparagement of her reputation in the eyes of right thinking people generally. Words which merely injure the feelings or cause annoyance but which in no way reflect on character or reputation or tend to cause one to be shunned or avoided or expose one to ridicule are not actionable as defamation. It is defamatory to impute to a person in any office any corrupt motive or insufficiency or unfitness or want of ability to discharge her duties and this is so whether the office be public or private.

[53] If I come to the conclusion that the meanings of the words were defamatory, then the law presumes that these words are untrue and in those circumstances the task of proving the defence passes to the defendant.

[54] Words are normally construed in their natural and ordinary meaning i.e. in the meaning which reasonable people of ordinary intelligence with the ordinary person's general knowledge and experience of worldly affairs would be likely to understand them. The meaning which the editor or the journalist in the newspaper intended the words to mean and the sense in which the words were in fact understood by the plaintiff are all irrelevant. The natural and ordinary meaning may also include implications or inferences that do not require the support of extrinsic facts passing beyond

general knowledge. The tendency and effect of the language, not its form, is the criterion. In this case, the plaintiff abandoned any meanings by way of innuendo at the outset of the case and relied entirely on the natural and ordinary meanings.

[55] Where there is a dispute, as in this instance, as to meaning, it is for the judge to settle on a single meaning (see Slim v Daily Telegraph (1968) 2 QB 157 per Diplock LJ at 173D/E.

[56] The approach to my task has been governed by the summary of principles given by Sir Thomas Bingham in Skuse v Granada (1996) EMLR 278 at 285-287:

> "(1) The courts have give to the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary reasonable (reader).
>
> (2) The hypothetical reasonable reader … is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer, and may indulge in a certain amount of loose thinking, but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available …
>
> (3) While limiting its attention to what the defendant has actually written, the court must be cautious of an over elaborate analysis of the material in issue …
>
> (4) The court should not be too literal in its approach …"

[57] I must not fall into the trap of over elaborate analysis of the various passages in the articles relied on by the parties. The parties are entitled to a reasoned judgment but that does not mean that the court should overlook the fact that ultimately it is question of meaning which should be put on the words of the articles by an ordinary reader. That hypothetical reader does not deploy the rigorous analysis of a lawyer. The exercise is essentially one of ascertaining the broad impression made on the hypothetical reader by the articles taken as a whole. As Gray J said in Charman v Orion Publishing Group Limited and Others [2005] EWHC 2187 at paragraph 12:

> "It is well established that the tribunal of fact, whether judge or jury, must take the bane and antidote of the publication together."

[58] Chase v News Group Newspapers Limited (2003) EMLR 218 was one of a series of cases in which the principle emerged that there may be three levels of imputation of alleged discreditable behaviour in cases such as the present. If a statement means that the plaintiff is guilty of discreditable conduct that can only be justified by proving that he was so guilty. This a level 1 meaning and it was that level which the plaintiff relied on in this case. If the words however are reasonably capable of bearing the meaning that there are reasonable grounds to suspect that the plaintiff is involved in the discreditable conduct that is regarded as a level 2 meaning. If the words are capable of meaning that there are grounds to investigate that the plaintiff has been involved in the alleged discreditable conduct that is a level 3 meaning. The defendant can choose to justify any of these levels. In this instance Mr Simpson QC who appeared on behalf of the defendant with Mr Spence relied on a level 3 meaning as set out in paragraph 6 of the statement of claim and insofar as this was defamatory sought to justify it.

[59] Mr Simpson contended that Mr Ringland , having nailed his colours to the level 1 meaning set out in paragraph 3 of the statement of claim, could not in the alternative rely on the defendant's level 3 meanings as set out in paragraph 6 of the defence or indeed some other meaning that the judge considered the words capable of bearing.

[60] There is no doubt that a plaintiff must plead in the particulars of his statement of claim the defamatory meanings which it is claimed were borne by the words of which complaint is made. (See Lucas Box v Newsgroup Newspapers Limited [1986] 1 WLR 146 per Ackner LJ at 151-152).

[61] Mr Simpson further relied on the views of Sedley LJ in Jameel v Times Newspapers [2004] E.M.L.R. 31 where he said:

> "For my part I would think it high time that claimants were required to plead their levels of meaning in the alternative especially since the decision in Bennett v News Group Newspapers Limited [2002] E.M.L.R. 39."

[62] For my own part I respectfully remain unconvinced that the views of Sedley LJ are correct. There has long been a standard practice for a plaintiff to identify the single highest or gravest defamatory meaning for which he contends a particular allegation bears. The good reason for this has been that it is unlikely to be in the plaintiff's interest to be equivocal about the level of meaning at trial.

[63] I venture to suggest that the preferable view is that expressed at the 11th Edition of Gatley on Libel and Slander at page 976 note 79 where the author states:

> "It is suggested that the new Jameel requirement of pleading alternative meanings in particulars of claim should be confined to cases where the claimant is uncertain about the level of meaning attributable to the allegation in question. … In cases where the claimant has a clear cut case on what has been alleged against him it is contended that there is no reason to depart from the standard practice of pleading the single highest meaning."

In such a case I do not consider the plaintiff should be precluded from contending for some lesser meaning at trial.

[64] Thus I consider that a judge or jury is not confined to ruling whether the words are capable of bearing the particulars of the defamatory meanings contended before the judge. A judge's ruling on the issue may thus cover any lesser defamatory meaning that might possibly be conveyed by the words. In saying this I pause to observe that such a ruling is only likely where the lesser meaning is in the same class or range of meanings as that set out in the particulars of the statement of claim and not some wholly different meaning. (See Diplock LJ is Slim v Daily Telegraph (1968) 2 QB 157 at 175).

[65] However the difficulty does not surface in this case because I consider that Mr Ringland has established on the balance on probabilities that the substance of the meanings for which he contends is correct. Avoiding an over elaborate analysis of the article and taking a broad impression of the article as a whole I consider the ordinary fair minded reader would conclude that this article is not merely to the effect that there were grounds for investigating whether or not the plaintiff was involved in the cover up. The article unequivocally states that "the authorities" and the "management" of the Sperrin Lakeland Trust had been guilty of a cover up, that parents had been misled and that the senior paediatrician from Altnagelvin Hospital had been "sweet talked" into producing his findings by the Erne Hospital management. Where the only people in management or authority in the Trust named in the context of the investigation are the Chief Executive and the plaintiff (in addition to the surgeon) I have determined that the ordinary reader inevitably will infer from the tendency and effect of the language used that the article means that it is being alleged that she was part of and was responsible for the cover up by the Trust, the "sweet talking" of the senior paediatrician and the misleading of the child's family as to the true causes of her death.

[66] The article boldly asserts that the plaintiff, as part of an exhaustive inquiry by a respected police officer, *was* investigated by the police and that that officer has set out evidence against her and two other very prominent people namely the Chief Executive of the Trust and the consultant paediatrician involved in the treatment of Lucy Crawford. She is being cast in the role of a suspect in a criminal investigation into the cover up . No attempt has ever been made to justify these assertions and indeed Mr McDaniel the editor of the newspaper accepted that they were not true.

[67] I consider these meanings to be beyond the level 3 suggestions by the defendant that the articles were understood to mean that there were grounds for investigating whether or not the plaintiff had been involved in a cover up following the death of Lucy Crawford. These are bald assertions, not merely grounds for investigation. The fact that the article does not expressly suggest that she was interviewed by the police and makes clear that no charges were in the event brought does not deflect from the meanings that I have set out.

[68] As I indicated to counsel during the course of the hearing, once I have found the meanings in the newspaper article to be largely those contended for by the plaintiff, I did not consider that the editorial relied upon by the plaintiff added anything of substance to these meanings. The thrust of the editorial is the failure of the Public Prosecution Service to provide reasons for its decision and the lack of general accountability. It adds nothing to the material meanings that I have already outlined. For that reason I have therefore not taken that article into account and have found it unnecessary to deal with the defence of fair comment upon a matter of public interest which was confined to that editorial.

Are the meanings defamatory?

[69] I am satisfied that the meanings that I have determined in this case are defamatory of the plaintiff. It would lower the plaintiff in the estimation of right thinking people if she was the subject of a police criminal investigation regarding the child's treatment and the subsequent cover up concerning it particularly where a file of her involvement and the evidence implicating her in that cover up was compiled by a respected police officer and sent to the DPP to consider prosecution. The fact that the article makes clear that the prosecution in fact was not instituted merely dilutes the effect but does not deflect from the defamatory meaning. I also consider it defamatory to suggest that someone such as the plaintiff was part of a management cover up by the Trust which included misleading the child's family as to the true causes of death and being involved in the "sweet talking" of a senior paediatrician to produce a report on the death which covered up why the child had died.

[70] Once I have concluded that the meanings of these words were defamatory then the law presumes that these words were untrue and in those circumstances the task of proving the defence passes to the defendant. The defendant in this case has not sought to justify these defamatory meanings.

Qualified Privilege /the Reynolds Defence

[71] Where a defendant newspaper or other publisher claims that its dissemination of defamatory material to the public is covered by the defence of qualified privilege it must demonstrate why the nature of the subject matter of the publication was such that it was in the public interest for it to be published. This is very different from saying that it is information which is merely newsworthy or interests the public .It is the publication as a whole that has to be assessed when considering the public interest, not merely the particular defamatory allegations of which the plaintiff complains.

[72] If the article as a whole was in the public interest it would still have to be shown by the defendant that the untrue allegations were part of the story. The more serious the allegation the more important it is that the untrue allegation should make a real contribution to the public interest element in the article.

[73] But whereas the question of whether the story as a whole was a matter of public interest must be decided by the judge without regard to what the editor's view may have been, the question of whether the defamatory statement should have been included is often a matter of how the story should have been presented. In Jameel v Wall Street Journal [2006] 4 All ER 1279 at 1296 paragraph 51 Lord Hoffmann said:

> "And on that question, allowance must be made for editorial judgment. If the article as a whole is in the public interest, opinions may reasonably differ over which details are needed to convey the general message. The fact that the judge, with the advantage of leisure and hindsight might have made a different editorial decision should not destroy the defence. That would make the publication of articles which are ex hypothesi in the public interest, too risky and would discourage investigative reporting."

[74] It was never disputed by Mr Ringland on behalf of the plaintiff that publication of the material concerning the investigation into the alleged cover up of the details surrounding the death of Lucy Crawford was not in the public interest.

[75] Counsel did however dispute that the references contained therein about the plaintiff were matters of public interest. I disagree. I am satisfied that it was a proper exercise of editorial judgment to decide that the plaintiff's participation in the Trust management as Director of Corporate Services having direct contact with all the major participants in the unfolding story was also a matter of public interest. The UTV broadcast about the investigation into the Trust and the numerous non impugned articles by the IP about the investigation which referred to the plaintiff all bear witness to the positive link between her and the issue under investigation. In my view it was appropriate investigative reporting to look into her role provided that was done responsibly. I am therefore satisfied that the defendant passes the public interest test.

[76] If the publication, including the defamatory statements, passes the public interest test, the inquiry then shifts to whether the steps taken to gather and publish the information were responsible and fair. Hereinafter I shall borrow the description of Lord Hoffmann accorded to this test in Jameel's case as that of "responsible journalism".

[77] In Reynolds v Times Newspapers Ltd [2001] 2 AC 127 at 205 Lord Nicholls of Birkenhead gave his now widely cited and approved non-exhaustive list of ten matters which should in suitable cases be taken into account in this sphere . It is convenient to set these out:

> "1. The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed if the allegation is not true.
>
> 2. The nature of the information and the extent to which the subject matter is a matter of public concern.
>
> 3. The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories.
>
> 4. The steps taken to verify the information.
>
> 5. The status of the information. The allegation may have already been the subject of an investigation which commands respect.
>
> 6. The urgency of the matter. News is often a perishable commodity.

> 7. Whether comment was sought from the plaintiff. He may have information others do not possess or have not disclosed. An approach to the plaintiff will not always be necessary.
>
> 8. Whether the article contained the gist of the plaintiff's side of the story.
>
> 9. The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact.
>
> 10. The circumstances of the publication including the timing."

[78] I have been acutely aware of the caution that must be deployed in dealing with these non-exhaustive matters. Lord Hoffman in Jameel at paragraph 56 said:

> "In *Reynolds,* Lord Nicholls gave his well known non-exhaustive list of ten matters which should in suitable cases be taken into account. They are not tests which the publication has to pass. In the hands of a judge hostile to the spirit of *Reynolds*, they can become ten hurdles at any of which the defence may fail. … The standard of conduct required of the newspaper must be applied in a practical and flexible manner. It must have regard to practical realities."

[79] I have found instructive in this matter the views of Baroness Hale of Richmond in Jameel's where at paragraph 149 she said:

> "The publisher must have taken care that a responsible publisher would take to verify the information published. The actual steps taken will vary with the nature and sources of the information. What one would normally expect is that the source or sources were ones which the publisher had good reason to think reliable, that the publisher himself believed the information to be true and that he had done what he could to check it. We are frequently told that 'fact checking' has gone out of fashion with the media. But a publisher who is to avoid the risk of liability if the information cannot later be proved to be true would be well advised to do it. Part of this is, of course, taking reasonable steps to contact the

> people named for their comments. The requirements in 'reportage' cases, where the publisher is simply reporting what others have said, may be rather different, but if the publisher does not himself believe the information to be true, he would be well advised to make this clear. In any case, the tone in which the information is conveyed will be relevant to whether or not the publisher has behaved reasonably in passing it on."

[80] I pause to make two observations. First, I am satisfied that the failure to obtain and report a comment is not always fatal to the *Reynolds* defence as Lord Nicholls said in that case at p. 203:

> "Failure to report the plaintiff's explanation is a factor to be taken into account. Depending upon the circumstances, it may be a weighty factor. But it should not be elevated into a rigid rule of law."

[81] Thus in Jameel's case where the newspaper had been unable to obtain any comment, Lord Bingham recorded that this was not sufficient to deprive the newspaper of the *Reynolds* defence particularly where it is unlikely that even if comment had been obtained it would have been very revealing. The *Reynolds* defence therefore must not be turned into a tool which would impede responsible investigative journalism.

[82] It is also important to observe that the fact that the defamatory statement is not established at a trial to have been true is not relevant to the *Reynolds* defence. Thus the concession by Mr McDaniel's in the instant case that he accepted that the allegations about the police investigation of the plaintiff and the sending of evidence about her to the DPP were not true is not relevant to the defence which is now raised. It is a neutral circumstance. The elements of the defence are the public interest of the material and the conduct of the journalist at the time. As Lord Hoffmann said in Jameel at paragraph 62:

> "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") in 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."

[83] In the instant case no attempt was made to either contact the plaintiff or invite her to comment before the newspaper articles were published. The gist of her side of the story was not sought. Mr McDaniel gave two reasons for this. First because it was his practice not to contact personally members of public bodies such as the Trust. Instead it was the public body itself that was usually contacted and individual comment could be obtained through that medium if it considered it appropriate. The Trust in this case had been regularly adopting "a party line" on matters arising out of the newspaper enquiries and had not been issuing statements on behalf of any individual. He relied on the examples of Trust statements to which I have referred in paragraphs 24,25,32 and 42 of this judgment . In evidence the plaintiff had accepted that this indeed was what had been happening. She had been the author of a document headed "Preparing communications strategy/plan for the use of the Trust" which had advocated, inter alia, the use of press conferences where only the chairman accompanied by the Trust Public Affairs Manager Mrs Hall or the plaintiff would comment. It was Mr McDaniel's evidence that the history of contact with the Trust had led him not to expect any answer to the matters contained in the impugned newspaper articles. In any event he felt that the Trust could not have commented on whether or not a police file had been sent to the Public Prosecution Service. The other material in the article was already in the public domain.

[84] Secondly, Mr McDaniel felt that there was really nothing that the plaintiff could have contributed to the article on the police investigation because she would have no way of knowing what steps Sergeant Cross had taken by way of sending evidence against her to the Public Prosecution Service etc. Contact had never been made personally with her in the course of the press articles about this affair and in any event she was being dealt with in the impugned articles as Director of Corporate Services and not as an individual.

[85] The editor's evidence was also that the article had been prepared by a reporter Trevor Birney, a highly experienced and distinguished reporter, who had discussed his sources of information on the police investigation with Mr McDaniel who in turn had checked the story with three sources of his own from the Police Service, one of which had apparently overlapped with the sources of Mr Birney. Mr McDaniel was not prepared to reveal anything about his police sources lest it should lead to their identities being revealed but he claimed they were sources which he had found reliable in the past. The defendant did not call the author of the article Mr Birney to give evidence and so I heard nothing from him about his sources.

[86] I commence my assessment of the element of responsible journalism invested in the newspaper articles by noting the 23 sources relied on by the

defendant in paragraph 7(xiii) of the amended defence upon which Mr McDaniel dilated in the course of his evidence. It was his evidence that over a two year period the newspaper had carried a number of articles on the investigation into the death of Lucy Crawford and the performance of the Trust in the affair. His sources of information variously included doctors, Government departments, hospitals, the Public Prosecution Service, "the Police Service of Northern Ireland", sources in the Trust and Board, the family of Lucy Crawford, the Coroner's Office, the General Medical Council, Government Ministers etc. I was satisfied that in general terms the newspaper had gone to great lengths to verify many aspects of its coverage.

[87] Moreover I do not accept the allegation put to Mr McDaniel by counsel on behalf of the plaintiff that the newspaper articles had been couched in sensational terms. The fact of the police investigation into the Trust had already been published some considerable time prior to these articles. The headline of the article confirmed that in the event no charges were being brought over the death. Mr McDaniel said that the article was worked on for some time before publication and I believe that the contents of the article bear testament to this. It was not a hurriedly prepared article relying on sensationalism rather than content. I readily accepted Mr McDaniel's assertion that Mr Birney had spoken to him over a period of weeks before the article was published. During the period that Mr Birney worked on the article he and Mr McDaniel discussed the matter so that eventually the finished article appeared with the editor's approval. The tone of the article, whilst not subdued, lacked the sensational bent that other journalists might well have employed when dealing with such topics as a cover up and police investigation. Having listened to Mr McDaniel in the witness box giving his evidence in a measured and careful manner, I would have been surprised to find the situation otherwise.

[88] Notwithstanding this finding however, I have come to the conclusion that in failing to invite a comment from the plaintiff or obtain at least the gist of her side of the story by contacting her personally or, less satisfactorily, attempting to contact her through the Trust, the defendant newspaper has failed to conform to the standards of responsible journalism in this instance and thus cannot avail of the *Reynolds* defence. I am of this view for the following reasons.

[89] First, the references to the plaintiff being involved in a police investigation into a trust cover up etc and evidence against her being sent to the Public Prosecution Service amount to grave allegations. Mr McDaniel recognised that the allegations that the police were investigating the plaintiff lifted the general allegations of cover up by the Trust to a more serious level than had hitherto had been the case in the instance of the plaintiff. In his evidence he told me that he had spent considerable time thinking about the article and that this article gave him "more difficulty than the rest" of the

articles which he had written about the matter. He accepted that the allegations were of a "highly serious nature". He and Mr Birney had chosen to name the plaintiff along with the two other persons because they were the people "in the public eye" and had been most closely associated with the coverage of the investigation. By virtue of the fact that they were the three people named in the context of the police investigation I am satisfied that the inference of the article would have led the reasonable reader to conclude that it was they that the newspaper considered had been involved in the cover up, the misleading of Lucy Crawford's parents, and the "sweet talking" of Murray Quinn referred to earlier in the same newspaper article. That escalation of allegations culminating in the assertion of police investigation in my view demanded that a responsible journalist seek to obtain comments from the plaintiff and at least the gist of her side of the story before publication.

[90] Secondly, despite Mr McDaniel asserting that he believed his sources were reliable, he knew that the plaintiff had not been interviewed by the police although he did know that the two other persons named in the article had been so interviewed. Whilst I suppose it was not inconceivable that a police officer would assemble evidence against an alleged suspect and send those papers for directions to the Public Prosecution Service without having interviewed that person, on the face of it that omission ought to have given him pause for thought to say the least. It came as no surprise to me that in cross-examination he conceded that it did seem "odd" that if the investigation had been made as alleged, she had not been interviewed. That in itself should have added fuel to the need to obtain the plaintiff's comment before publication of her name.

[91] Similarly, Mr McDaniel asserted that the letter of 2 October 2000 from the plaintiff to the father of Lucy Crawford (see paragraph 13 above) had played a very important part in triggering the investigation by Sergeant Cross according to Mr McDaniel. However even a cursory reading of that letter should have led experienced journalists such as Mr Birney and Mr McDaniel to question whether it was likely that such a letter would have played a major part in assembling evidence against the plaintiff and reference to the Public Prosecution Service. Why would such a promise by the Director of Corporate Affairs that a full investigation would take place—even if broken subsequently -- have led to a criminal investigation against her personally? Of course it was not beyond the bounds of possibility that this could be so, but it was yet another instance where I believe a responsible journalist would have felt it necessary to invite comment from the plaintiff as to her side of the story despite what his sources had been telling him.

[92] Thirdly, there was no urgency about publication which would have precluded steps being taken to contact the plaintiff. This was not a perishable commodity The whereabouts of the Trust was known and I have no doubt

that it would have been easy for the newspaper to have contacted the plaintiff at home had they wished to do so. In short there was nothing about the urgency of the news that precluded the plaintiff delaying in order to obtain her comment. There was no evidence that she had "run to ground" or was avoiding comment.

[93] Moreover the newspaper in this instance did not contact the Trust to ask for a comment either about the allegations involving the plaintiff specifically or a comment from her through the Trust. I do not believe it was appropriate in light of the seriousness of the allegations for the newspaper to assume that no comment would be forthcoming from the Trust or the plaintiff merely because of what had happened in the past. There was precedent for the newspaper contacting the Trust and asking specific questions about individuals including the plaintiff. The newspaper had performed that very task in the course of an e-mail dated 26 October 2004 from Denzil McDaniel to Janet Hall the Communications/Public Affairs Manager and had asked them to provide specific answers on questions directly involving the plaintiff as set out n paragraph 33 of this judgment . Why did they not adopt the same policy in this instance?

[94] Whilst the plaintiff may not have known what steps the police had taken or investigations they had made, she could have strongly asserted her both her innocence and her belief that not only had she not been interviewed by the police in connection with the investigation but she had not even been contacted by the police regarding any of the matters alluded to in the articles. She could have outlined the gist of her side of the story. This of course is precisely what happened when, *after* the publication of the article, she sought advice from her solicitor who in turn wrote to the reporter Mr Birney and editor Mr McDaniel in February 2007. The account contained in the solicitor's letter, if expressed by the plaintiff prior to the publication, might have given a wholly new perspective to the story from her point of view and might have greatly altered the reasonable readers perspective of her involvement in the allegations set out in that article. It strikes me as deeply improbable that a request for comment from the plaintiff would not have elicited precisely this response. The fact of the matter is that in the wake of the solicitor's letter, the newspaper belatedly did record that they were prepared to give her an opportunity to provide her side of the story. Why did they not do this prior to the publication?

[95] In coming to the conclusion that the defendant cannot therefore rely on the *Reynolds* defence of responsible journalism in this instance because of the failure to seek comment from the plaintiff, I am conscious of the rights accorded to the press under Article 10 of the European Convention on Human Rights and Fundamental Freedoms. Exceptions to freedom of expression must be justified as being necessary. On the other hand protection of reputation is afforded under Article 8 of the Convention and is a major

value which, once besmirched by a newspaper, can be irreparably damaged in certain instances. Article 10 carries with it duties and responsibilities and in this instance I consider that such a responsibility should have included affording the plaintiff a right to comment before the article was published.

[96] In passing I observe that the question of malice is irrelevant in the context of the *Reynolds* defence. I am satisfied that there was no malice on the part of this editor or journalist but that does not avail the defendant. The question is whether or not they acted in accordance with the tenets of reasonable journalism.

[97] I have also borne in mind that the court must invest editors of newspapers with the discretion to make editorial judgments particularly where, as Lord Bingham said in Jameel's case at paragraph 33 such a judgment is made:

> "In the absence of some indication that it was made in a casual, cavalier, slipshod or careless manner."

[98] It is not for the court to substitute its own views for those of the press as to what techniques of reporting should be adopted by a journalist. Hence the authors of 11th Edition of Gatley record that the court "should allow a wide margin of professional appreciation to (the) journalist, a sort of journalistic Bolam approach". Accordingly I did not allow myself to place any weight on the concessions by Mr McDaniel in cross-examination that "with the benefit of hindsight", "he probably should have done it" ie. contacted the plaintiff. His evidence was that he was unaware that she had been trying to get her views across with the Trust and had been unsuccessful in so doing. Despite making due allowance for that discretion, I am satisfied that a responsible journalist would have been sufficiently careful to conclude that in light of the inevitable impact that the article would have on the local community where the plaintiff lived , the sensitivities of the plaintiff living in such an area and the serious nature of allegations arising from the articles especially the suggestion of police investigation of her , his decision not to invite her to provide a comment before printing the articles was too casual an approach and fell outside the ambit of discretion given to editors. It did not conform with the tenets of responsible journalism in this instance.

[99] I have come to the conclusion therefore that the *Reynolds* defence does not avail the defendant in this instance.

The website articles

[100] The website articles were pleaded in the statement of claim as "a series of articles which appeared in earlier editions of Impartial Report which are

concerned with and are seriously defamatory of the plaintiff". The five website articles were then identified. The natural and ordinary meaning of the articles relied on were pleaded cumulatively without attempting to ascribe any particular meaning to an individual article.

[101] During the course of the trial Mr Simpson drew attention to the manner in which these articles had been pleaded in the amended Statement of Claim. He submitted that the plaintiff's case amounted to an assertion that the publisher of the articles was inviting the public to read or view all of the material as interlinked and thus to be read together. Mr Simpson contended that by failing to ascribe individual meanings to individual articles, the plaintiff prevented the defendant raising potentially separate defences to each article. He contended that for the plaintiff to succeed she had to establish that all the articles had to be read as inextricably interlinked. The plaintiff had not relied on innuendo as a means of introducing extrinsic facts from one article to another.

[102] Statements of claim in an action for defamation are extremely important. Parties must set out their respective cases with as much clarity and openness as possible. There must be sufficient information to inform the other party of the case he has to meet. This must include all the facts necessary to formulate a complete cause of action.

[103] Despite Mr Ringland's contentions to the contrary, I have concluded that this matter has been pleaded in such a manner that it is not possible to know which allegations are made in relation to any particular article unless they can all be read together as a series. Some may be more obviously connected to one article than another. However it is in my view unacceptable pleading or presentation of a case to expect the court or the defendant to attempt to work out which allegation is connected to which article when no attempt has been made to perform this task by the plaintiff.

[104] There are circumstances where it is an acceptable practice to plead all of the material in one paragraph of the particulars of the statement of claim and to identify the imputations said to have been conveyed by the material as a whole. This is appropriate where the matter of which the plaintiff complains consists of related material published by the defendant on different occasions, and where there is apparent, on the face of the matter complained of itself, either an intention on the part of the defendant that it be read together or direct references internally one to the other so that the reader may reasonably be expected to read it together, (see Burrows v Knightley(1987) 10 N.S.W.L.R. 651).

[105] Even when this is the case wherever possible the plaintiff should give the page references of the newspapers where the allegedly defamatory material is to be found. In cases in which the offending material is so long

that it cannot be conveniently pleaded in the particulars of the claim, the material should be included in a schedule. I am satisfied that the recommended course in those circumstances is that set out in Supreme Court Practice 1999 18/6/3 where the author states:

> "In those libel case in which offending material is so long that it cannot reasonably be pleaded in the statement of claim, leave should be sought to plead the libel by schedule. Even then the precise words should be clearly identified and distinguished from any surrounding material. Material to which the other party may need to plead must not be contained in the schedule as it is not a pleading."

[106] I am satisfied that this matter has not been properly pleaded if it was intended to rely on each one of these articles individually and not as a series interlinked inextricably together. A court may at any time order a party to clarify any manner which is in dispute in the proceedings or give additional information in relation to any such matter. I afforded Mr Ringland that opportunity during the hearing by inviting him to amend the pleadings to plead each of these articles individually with their attendant alleged defamatory meanings. At this stage in the trial that course of action would have carried attendant cost implications for the plaintiff because the defendant would have required time to consider any amendments to his defence to deal with the individual articles. Mr Ringland chose not to avail of that opportunity and opted to proceed with the pleadings as they stood

[107] Having heard the evidence in this matter, I have come to the conclusion that the five website articles were not capable of being read together and were not interlinked so that the ordinary reader would have connected them as a series of articles.

[108] My reasons for so concluding are as follows. These articles were published over the period September 2005-February 2006. The plaintiff was obviously statute barred with reference to these publications in the newspaper and thus had elected to rely upon them appearing on the website of the IP. As I have indicated in paragraph 37 of this judgment, I do not consider that the website produced these articles in one composite collection. On the contrary, I believe that the insertion of the plaintiff's name in the website archive is much more likely to have produced all of the publications in the IP where she was named and certainly was not confined to the five impugned articles. I therefore agree with Mr Simpson's submission that it is wholly artificial to see them as a series.

[109] Next, I find no reference to the remaining articles in any of the individual instances. Nothing emerges to suggest in any of the articles that

there are other articles to follow or that past articles should be read together. There is in short no invitation by the publisher to read this material together.

[110] The period of time over which the five articles were published is sufficiently long to negate any suggestion that they are interlinked in any way. That there may have been a common theme of criticism of the investigations of the trust coursing through several of these articles is not enough to invoke the principle of them being interlinked articles. I find nothing that suggests that this is a series of articles that need to be read together for the purpose of determining the meaning of any particular part.

[111] In all the circumstances therefore I have concluded that the medieval maxim iudex secundum allegata et probata decidere debet should prevail and that the plaintiff has failed to satisfy me on the probabilities that these articles are a series. Accordingly I make no finding in the plaintiff's favour in relation to these pleaded articles. It is therefore unnecessary for me to consider the defence of qualified privilege in this instance.

[112] I add one footnote to this conclusion. Even had I found that the website articles had been defamatory and that the defendant had no defence to them, I do not believe that their presence materially added to the damages that I intend to award in this case. In the first place I have no idea how many people are likely to have gone through the steps involved of ascertaining access to these articles. I would also have excluded from consideration those who had already read them in the newspaper publication because those publications are statute barred. Is it likely that many who had not read the earlier articles would have bothered to seek out these materials on the website? If someone had read the impugned newspaper articles of 2007, would they have thought any less of the plaintiff if they had decided to research the matter and found these articles? Had I been asked to consider these issues, I am of the belief that they would not have added materially to the damages that I intend to award in any event.

Damages

[113] I commence this aspect of the case by reviewing what the plaintiff said in evidence about the newspaper articles. She said she was angry and distressed and found the articles devastating. Having read the earlier articles, the impugned newspaper articles were "the last straw "adding an incorrect allegation that she had been involved with the police investigation. She felt that such was the damage to her reputation and to her life that she had to take a stand. She had not been responsible for the clinical investigation or the actual investigation itself and therefore she was unable to understand why she had been identified. Her anger emanated from an inability to understand why she had been selected. Even after she had taken advice from her solicitor Mr Ferguson who wrote a letter to the paper on her behalf, the plaintiff was

shocked that having been told her version, it was so easy for the newspaper to dismiss her case. All she wanted was an apology from them at that stage. If an apology and retraction had been given at the time she said she would have been able to have held her head high and felt her reputation vindicated. Being involved in social matters in her community and having a child at school she felt vulnerable because of the content of the newspaper articles. Even now any mention of the case leaves her feeling distressed and uncomfortable

[114] In cases of libel there are three regular headings of damage. Firstly injury to reputation which is the principal element in damages. Secondly injury to the plaintiff's feelings. In Ley v Hamilton (1935) 135 L.T. 384 at 386 Lord Atkin said that this heading of damages was an award for "the insult offered or the pain of a false accusation". Thirdly there is damage by way of vindication. This aspect has come to the fore in defamation cases in modern times and serves to show that the plaintiff's reputation is unsullied.

[115] I must award a sum proportionate to the damage suffered and what is reasonably required to compensate the plaintiff and re-establish her reputation. An award of damages is a restriction upon freedom of expression which must be justified under Article 10(2) of the European Convention on Human Rights and Fundamental Freedoms. A disproportionate award of damages will constitute a violation of Article 10(1).

[116] In arriving at the appropriate figure for compensation in this case I have also borne in mind the following factors. First, I have reminded myself of what money can buy (see Sutcliffe v Pressdam Ltd (1991) 1 QB 153 and John v MGN Ltd (1997) QB 586 at 608.)

[117] Secondly following the decision of the Court of Appeal in John, it is permissible to remind myself of conventional levels of award for personal injuries not by way of precise correlation but as a check upon the reasonableness of a proposed award of damages for defamation

[118] I have had the benefit of reading the charge to the jury of Coghlin LJ at first instance in Convery v The Irish News Limited (unreported). I consider that his address to the jury on the issue of damages was an appropriate guidance to the jury and, making allowance for the necessary updating of the figures which I have included in brackets, he drew their attention to the following injuries.

- Fractured forearm which is painful and incapacitating but heals up without any permanent damage (£12,000)

- Fractured tibia and fibula healing without permanent damage (£12,000)

- Fractured femur (£9,500-£18,000)

- Blindness in one eye (£60,000-£95,000)

- Loss of a single hand (£60,000-£95,000)

[119] Other comparables I have considered are total loss of hearing in one ear £30000-£50000 , total loss of taste and smell £30000-£5000 and loss of a leg below the knee which is now between £100,000-£180,000 general damages

[120] I have also considered some of the few English Court of Appeal decisions in defamation awards. I have ignored previous defamation awards by juries in such jurisdictions.

[121] Mr Ringland objected to me taking these into account because he contended they were fuelled by references to personal injury awards in England and Wales which are much lower than in our courts. I consider that so long as I bear this in mind, it is appropriate that I should refer to them. Those that Coghlin LJ referred to where –

- Gorman v Mudd (15 October 1992 unreported) where an MP sued a constituent for a libel contained in a mock press release published to 91 people who were prominent, influential, local and knowledgeable members of their constituency party. The Court of Appeal reduced her award to £50,000.

- In John's case where the Sunday Mirror published an article about Elton John falsely stating that he was following a "don't swallow diet" whereas in fact he had an eating disorder the jury awarded exemplary damages of £275,000 making a total of £350,00. It was reduced to £50,000 exemplary damages and £25,000 compensatory damages by the Court of Appeal .

- In Rantzen's v Mirror Group Newspapers [1994] QB 670 where Ester Rantzen had been seriously libelled on the basis that she had falsely suppressed knowledge about a paedophile the Court of Appeal reduced her award from £250,000 to £110,00 on the basis it was not proportionate to the damage suffered by her.

[122] I have considered these personal injuries and defamation awards purely by way of guidance and I do not consider them binding on me.

[123] In the present case I invited counsel to make submissions as to the value of this case. Mr Simpson declined my invitation. Mr Ringland suggested that the award should be "in six figures".

[124] I have recognised that damages are at large in the sense that they cannot be assessed by reference to any mechanical, arithmetical or objective formula. I have taken into account the conduct of the plaintiff (see below on the issue of mitigation), the position and standing of the plaintiff as a person with an unblemished character who held a responsible position in the Trust and lived in the community where this newspaper circulated, the nature of the libel, the mode and extent of the publication (in this context the weekly circulation was not that of a national newspaper but amounted to 14000 copies per week), the absence of a retraction or apology and the conduct of the defendant from the time when the libel was published down to the verdict.

Aggravated damages

[125] The plaintiff contended that certain features of the case aggravated the damages on the grounds set out in paragraph (10) of the amended statement of claim namely that the defendant:

> "(i) has refused to apologise;
>
> (ii) has published the said articles and allowed them to remain on its website knowing the contents and inferences of same to be false;
>
> (iii) published the said article in the knowledge that it would damage the person standing of plaintiff in her calling;
>
> (iv) asserted the truth of the defamation contained therein;
>
> (v) prepared and produced the articles without making any attempt to verify the facts with the plaintiff or afford her any opportunity to comment on the proposed publication."

[126] The court in assessing damages is entitled to look at the whole conduct of the defendant from the time the libel was published down to the time it gives its verdict. In Sutcliffe v Pressdram Ltd (1991) 1 Q.B. 153 at 184 Nourse LJ said:

> "The conduct of a defendant which may often be regarded as aggravating the injury to the plaintiff's feelings, so as to support a claim for aggravated damages, includes a failure to make any or any

> sufficient apology and withdrawal; a repetition of the libel; conduct calculated to deter the claimant from proceeding; persistence, by way of a prolonged or hostile cross-examination of the claimant, or in turgid speeches to the jury; in a plea of justification which is bound to fail; the general conduct either or the preliminaries or of the trial itself in a manner calculated to attract wide publicity; and persecution of the plaintiff by other means."

[127] I do not consider that the defendant in this case comes into any of these categories which are not catered for in the compensatory award in any event save for the issue of failure to make a sufficient apology and withdrawal which I shall consider shortly.

[128] The persistence of the plea of justification by the defendant was confined to the newspaper articles and even then relied on purely as a Chase 3 content by suggesting that there were grounds for investigation of the allegations. Indeed had the articles merely printed a Chase 3 meaning, the outcome on justification might have been more uncertain from the plaintiff's point of view. The defendant did not seek to justify the meanings that I have held the articles bore and no attempt has been made to justify them. In my view an unsuccessful plea of justification is only evidence for increased damages where it is completely unsupportable in the circumstances (see McGregor on Damages 18th Ed. Para. 39-046).

[129] I do not consider that allowing these articles to be contained in the archive on the website was anything other than the normal procedures adopted by the newspaper. The attempts to verify the story through the sources mentioned in paragraph 86 of this judgment were sufficient in my view to take it outside any question of aggravated damages. The failure to afford an opportunity to comment can in my view be dealt with adequately within the compensationary damages particularly since an opportunity was afforded to the plaintiff to be interviewed after the article was published (the offer being contained in the letter of response to her solicitor's opening correspondence of February 2007) albeit that did not erase the damage done by failing to allow this opportunity to comment before the article was published.

[130] The issue of failure to apologise has caused me greater difficulty. Rantzen v Mirror Group Newspapers (1986) Ltd (1994) QB 670 is authority for the proposition that a refusal or failure to apologise is likely to increase the affront to the plaintiff although this will depend upon the facts of the particular case. At page 683 Neill LJ said:

> "In our judgment the relevance of an apology depends on the facts of the case. In Morgan's case (1971) 1 W.L.R. 1239 the defence was that the words did not refer to the plaintiff and could not be understood to refer to him. The absence of an apology was therefore explicable. In other cases, though the absence of an apology may be no proof of malice, it can increase the injury to the plaintiff's feelings."

[131] Thus the failure to apologise may aggravate damages even though the defendant honestly believed that what he said was true. In the present case, whilst I consider there was no malice on the part of this defendant and the editor genuinely felt he could rely upon his sources, I do consider that from the plaintiff's perspective the failure to apologise has increased the injury to her feelings and therefore should be taken into account by me as a feature in the case which should aggravate the damages to some degree .The concession by the editor before me in evidence that having heard the plaintiff he now recognised that she had been telling the truth and had attempted unsuccessfully through the Trust to have the allegations rebutted does not deflect from the strength of this point.

Mitigation

[132] A number of matters may be taken into account as mitigating factors to reduce the damages which would otherwise be appropriate. The main factors are in my view well set out in Duncan and Neill on Defamation 3rd Ed. at para. 23.17:

> "(a) Any apology tendered by the defendant.
>
> (b) The general bad reputation of the claimant.
>
> (c) Any directly relevant background facts.
>
> (d) Evidence relevant to some other issue in the case which is before the court.
>
> (e) The behaviour of the claimant towards the defendant and in the action.
>
> (f) Other facts negativing malice on the part of the defendant.
>
> (g) Sums received by the claimant in respect of similar publications."

[133] In this case the defendant properly gave notice of the matters relied on in mitigation of damages in an amended defence at paragraph 18 as follows:

> "18.1 In April 2000 Lucy Crawford was a patient in the Erne Hospital, Enniskillen when fluids were administered in a wrongful manner, causing her death – the cause of death being hyponatreamia.
>
> 18.2 On 12 December 2003 the Attorney General pursuant to the provisions of Section 14 of the Coroner's Act (Northern Ireland) 1959, directed HM Coroner for Greater Belfast to hold an inquest into the death of Lucy Crawford. In February 2004 an inquest was held.
>
> 18.3 In November 2004 the Department of Health, Social Services and Public Safety set up a public inquiry into the deaths of three children – Adam Strain, Lucy Crawford and Raychel Ferguson – all of whom died of hyponatreamia. The inquiry was to have particular reference to three matters.
>
> 18.1.1 The care and treatment of Adam Strain, Lucy Crawford and Raychel Ferguson, especially in relation to the management of fluid balance and the choice and administration of intravenous fluids in each case.
>
> 18.1.2 The actions of the statutory authorities of other organisations and responsible individuals concerned in the procedures, investigations and events which followed the deaths of Adam Strain, Lucy Crawford and Raychel Ferguson.
>
> 18.1.3 The communications with and explanations given to the respective families and others by the relevant authorities.
>
> 18.4 The plaintiff was the Director of Corporate Affairs with the Sperrin Lakeland Trust, the body responsible for the management of the Erne Hospital, Enniskillen.
>
> 18.5 In that role she was involved in procedures, investigations and events which followed the death of

> Lucy Crawford and in communications with and explanations given to the family of Lucy Crawford.
>
> 18.6 In November 2004 the Police Service of Northern Ireland commenced an investigation into the death of Lucy Crawford which concluded in November 2006 with a decision by the Public Prosecution Service that there be no prosecution.
>
> 18.7 In 2005 there were published reports criticising, inter alia, the provision of services at the Erne Hospital.
>
> 18.8 In the same year a number of directors at the Sperrin Lakeland Trust resigned or retired from their post."

[134] The leading authority touching on the matters relied on by the defendant is Burstein v Times Newspapers Ltd (2001) 1 WLR 579. I dealt with this matter in some detail in an unreported judgment O'Rawe v William Trimble Ltd GIL7896 which I handed down following an opposed application by the defendant to amend the defence to include these matters of mitigation. In that judgment I indicated that Burstein had introduced a new category of admissible evidence in mitigation of damages where there was evidence of particular facts which were directly relevant to the contextual background in which a defamatory publication came to be made.

[135] During the course of my judgment I cited not only Burstein's case but also the comments of Keene LJ in Turner v News Group Newspapers Limited (2006) EWCA Civ. 540 at paragraph 56 where he said:

> "The Court of Appeal in Burstein was concerned to avoid jurors having to assess damages while wearing blinkers. If evidence is to qualify under the principles spelt out in Burstein, it has to be evidence which is so clearly relevant to the subject matter of the libel or to the claimant's reputation or sensitivity in that part of his life that there would be a real risk of the jury assessing damages on a false basis if they were kept in ignorance of the facts to which the evidence relates."

In Turner's case an award for defamatory allegations that the plaintiffs were sexual "swingers" was discounted by 40% for an apology and correction as well as for events connected with them.

[136] In my view Mr Simpson is entitled to call in aid the particulars pleaded by him by way of mitigation as constituting particular facts directly relevant to the contextual background in which the defamatory publication came to be made and in particular to the plaintiff's reputation in the sector of life to which it relates and the injury to her feelings (see Warren v Random House Group td [2008] EWCA Civ 834at [78]-[79]) . As my outline of the background to this case revealed, all of these matters pleaded by way of mitigation do set an important background context to the case including the involvement of the plaintiff as a member of management / Director of Corporate Services with the Trust and the police investigation into a cover up by management. The allegations of a trust cover up and the need for accountability of a public body were properly investigated by this newspaper over a period of time .The Crawford family plight deserved to be highlighted in the course of investigative journalism. I am satisfied that there was no express malice in the allegations that were made .To fail to take this into account in the context of the newspaper articles would invite me to operate "in blinkers" in assessing the damages. This background material is highly relevant to how the defamatory publication came to be made and sets a relevant context in which the plaintiff became caught up in the matter and the effect on her reputation . I add that the behaviour of the defendant editor during the action and in particular his acceptance in the course of his evidence that the plaintiff had been affected by the article, was not involved in the cover up or police investigation and that she had given her evidence in a dignified manner are all matters relevant to mitigation .

The award

[137] There are various ways that a judge can arrive at an eventual figure in cases such as this. I consider that as good an approach as any was that adopted by Eady J at first instance in Turner's case. There he assessed first what the award would have been in the absence of correction and apology and then applied a discount to take account of those and other factors. The advantage of this approach is that it assists to make explicit the factors which I have taken into account.

[138] In assessing the starting point, I have taken into account the damage to the plaintiff's reputation, the injury to her feelings and the need for vindication in being accused of being involved in a cover up and the suggestion that she had been the subject of a police investigation and reference to the Public Prosecution Service. Obviously those allegations are of a less serious nature than if it had been alleged that she had been guilty of a criminal offence and indeed I must take into account the fact that the headline of the newspaper article concerned made it clear that no charges were forthcoming. She did have a senior and prominent managerial position in a Trust that was subjected to much publicised allegations of a cover up and police investigation surrounding the role of the Trust in the death of

Lucy Crawford for some time before the offending newspaper article appeared although of course it is impermissible for me to find that other publications to the same effect as the words complained of had already tarnished the plaintiff's reputation(see Dingle v Associated Newspapers 1964 AC 371 subject to s12 of the Defamation Act). I do accept the injury to her feelings as outlined by her and I have no doubt that these were hurtful and distressing allegations for her to bear. In that context the award must make clear that she is appropriately vindicated. Whilst this newspaper does not have the circulation of a national newspaper and I have found only one article to be defamatory, nonetheless it circulates widely in the very area where she and her family live and socialise and where most of those she meets and spends time with live. Taking into account those and the other factors that I have mentioned in paragraph 113 et seq of this judgment whist at the same time ensuring that the award is proportionate , I consider that the appropriate bracket would have been in the range of £45,000/£55,000.

[139] Turning to the failure to provide an apology, I am conscious that this was not through any malice on the part of the defendant newspaper but nonetheless I am sure that it did serve to aggravate her feelings of distress and concern. That in itself would have pushed me towards the top end of the bracket that I have outlined.

[140] I consider that there is mitigation in the circumstances of the contextual background to this matter as set out by the defendant. The plaintiff was a member of the senior management in the Trust as Director of Corporate Services and there had been a police investigation into management in the Trust. I consider that mitigation serves to reduce the award but less than the 40% found appropriate in Turner's case given the different circumstances of the mitigation .In my view a deduction of around 20% is appropriate in this case to reflect the mitigation .

[141] In all the circumstances I have decided to award the plaintiff £44,000 together with her costs.