Neutral Citation Number: [2023] EWHC 2399 (KB)

Case No: QB-2021-001538

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/10/2023

Before :

MR JUSTICE JULIAN KNOWLES

- -

Between :

JACK AARONSON AKA DOMINIC FORD	**Claimant**
- and –	
MARCUS STONES AKA MICKEY TAYLOR	**Defendant**

- -
- -

Gervase de Wilde and Luke Browne (instructed by **Cohen Davis Solicitors**) for the **Claimant**
Jonathan Price and Jennifer Robinson (instructed by **Whitechapel Law Centre**) for the **Defendant**

Hearing dates: **12-15 December 2022**

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Approved Judgment

This judgment was handed down remotely at 10.30am on 13 October 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Julian Knowles:

Introduction

1. In this case the Claimant sues the Defendant for libel. The claim concerns a number of serious accusations by the Defendant on Twitter and YouTube about the Claimant's alleged conduct. They were to the effect that the Claimant had raped a number of men and is therefore a serial rapist.

2. The Claimant's case is that the allegations are untrue and that the publications were primarily made as an act of revenge by the Defendant, following a disagreement between them on an unrelated issue.

3. I have full transcripts of the evidence and my own detailed notes. The Claimant was represented by Mr de Wilde and Mr Browne. The Defendant was represented by Mr Price and Ms Robinson. I am grateful to all of them and their teams.

4. There may be those who will find some of the sexually intimate details in this judgment to be distasteful. I therefore need to make clear at the outset that my sole task is to determine the case according to the law and the evidence.

The Claimant

The Claimant is a US citizen and lives there. He is an openly gay man. He was born in 1975 and was in his mid-40s when the events giving rise to this case allegedly took place. He has worked in the gay pornography industry for a number of years as a performer/model and, since about 2018, as an entrepreneur. He says that he is well known in the industry, both in the US and internationally, including in this country. He travels frequently to London and other European countries in connection with his work. He uses the industry name 'Dominic Ford' to perform and carry on business in the industry. He says the use of such industry names is commonplace.

5. In 2018, the Claimant created the adult website 'JustFor.Fans' which operates at the URL https://justfor.fans/login.php (the Website/JFF). He is the CEO of the company which owns it, which has about eight staff. It allows adult film performers to earn revenue by setting up a 'fan page', on which they can publish pornographic works (including photos and videos) and communicate with their fans, in return for the payment of a monthly subscription fee by the fans. Performers pay a commission to the Website. The Claimant's evidence is that it is a lucrative business, although there are other, similar, websites using the same business model. His case is that although he is well-known in the gay pornography industry, he is not as powerful or dominant as the Defendant alleges (see, eg, the Defendant's witness statement at [35]: 'Dominic is a person who wields a huge amount of power in the industry.')

The Defendant

6. The Defendant is currently a student of animation and illustration. He worked in the adult entertainment industry for a number of years, but says that he was forced to leave the industry in August 2021 because of the events giving rise to this case. He lives in the UK.

7. From April 2018 until June 2020 the Defendant operated a performer account and fan page on the Website. The Defendant maintains (or maintained) a Twitter account with the handle @ItsMickeyTaylor at the URL https://twitter.com/itsmickeytaylor (the Defendant's Twitter account).

Names

8. It is convenient at this point to deal with how some of those involved in this case are to be referred to. Like the Claimant, some of them have their birth name and also an industry name, and the question of names was canvassed at a pre-trial hearing before Johnson J.

9. The Claimant's suggested approach to naming (as set out in his post-trial closing submissions, which I am content to adopt) is as follows: (a) the Claimant is to be referred to as the Claimant or Jack Aaronson, with the acknowledgement that his industry name is Dominic Ford; (b) the Defendant is to be referred to as the Defendant or Marcus Stones, with the acknowledgement that his industry name is (or was) Mickey Taylor; (c) Howard Andrew, a witness, is to be referred to by that name (his industry name); (d) Maxence Angel, a witness, is to be referred to by that name, which is his industry name. (e) Tannor Reed, a witness and an alleged rape victim, is also to be referred by his birth name, Cooper Tennent, where possible. Tannor Reed is his industry name.

10. I was told Mr Reed wishes to be referred to as Cooper Tennent in order to distance himself from his industry name. I will do so where I can, although he was referred to throughout the case, and indeed in evidence by the Defendant in particular, as Tannor Reed. Because Mr Tennent is an alleged rape victim, I need to make clear that it is his express choice that he be named.

11. Unless the contrary appears, other names that are mentioned in this judgment are industry names.

The Claimant's case in outline

The publications complained of

12. According to the Particulars of Claim (PoC), on 14 June 2020: (a) the Defendant made a request to the Claimant via WhatsApp for the Claimant to remove the account of a model, 'Daniel', from the Website because of alleged racist behaviour by him; (b) the Claimant agreed to investigate the Defendant's complaint against Daniel but refused to remove the account from the Website in the interim; and (c) following that refusal, the Defendant requested that his own account be terminated, and that any money owed to him from the Website be paid to him.

13. The words complained of by the Claimant in the PoC are as follows (at [7]-[17]). (The PoC partially quotes some of the Tweets. Later I will need to set out the full text of some of them. For present purposes the edited versions will suffice). The Claimant says each was defamatory and seriously harmful to his reputation. It should be noted I have quoted the times as given in the PoC; the time stamps on the original publications are different in some cases (probably due to time zone differences, Twitter being based in California: see *Wright v McCormack* [2022] EMLR 10, [48]-[56]) however nothing, I think, turns on the exact times they were sent.

14. On 14 June 2020, at 12:54pm, in a post which received nine Retweets and 32 Likes, the Defendant Retweeted a Tweet from the account @TannorReed which publicly identified the Claimant as the perpetrator of rape and/or sexual assault and, as part of the Retweet, published the following words on the Defendant's Twitter Account at the URL https://twitter.com/ItsMickeyTaylor/status/1272256118232932354:

> "Rape will not be tolerated in this industry! Using your power as figure head in the industry to extort models & blackmail them into sex is UNNACEPTABLE! (sic) I stand with @tannorreed. @justforfans @DominicFord…" (the 14 June Tweet)

15. On 15 June 2020, at 2:22am, the Defendant Retweeted a post by @Justinstonexxx which said 'Dominic Ford is an abusive piece of shit' (the @Justinstonexxx Tweet). As part of the Retweet, in a post which received 16 Retweets and 54 Likes, the Defendant published the following words on the Defendant's Twitter Account at the URL https://twitter.com/ItsMickeyTaylor/status/1272459490366050304:

> "Stop raping models! Y'all think there's only two?! These boys are bravely speaking out and I will stand with them both till the end. Corruption ends now! Just For Fans does not deserve our trade" (the First 15 June Tweet)

16. On 15 June 2020, at 2:00pm, in a post which received 10 Retweets and 26 Likes, the Defendant published the following words on his Twitter account at the URL https://twitter.com/ItsMickeyTaylor/status/1272634999733395457:

> "You gonna try & blame me for you raping people too? Your actions are ruining you not me @DominicFord @JustForFansSite" (the Second 15 June Tweet)

17. These are the words of the Second 15 June Tweet as set out in the PoC. The full Tweet, as set out in the Re-Amended Defence (ReAmDef) at [7], was:

> "You gonna try & blame me for you raping people too? Your actions are are [sic] ruining you, not me @Dominicford @JustForFansSite. My 'vendetta' is

calling out ya privilege as a industry head. Don't talk smack I'll hear. This how you run a business? Trying to mud me & cover ya ass? Lol"

18. On 15 June 2020, at 2:18pm, in a post which received seven Retweets and 37 Likes, the Defendant posted a screenshot of messages sent by the Website to a user which referred to the Defendant carrying out a 'personal vendetta against Dominic' and published the following words on his Twitter account at the URL https://twitter.com/ItsMickeyTaylor/status/1272639594803212288:

> "Is he trying to accuse me of asking people to make up rape stories to try & ruin him or summin? I'm neither that clever or sadistic. Imagine redirecting the blame rather than dealing with it n slating me in DMs. Denying Victims stories! Are they all lying about being raped?? Smh" (the Third 15 June Tweet)

19. On 15 June 2020, at 2:22pm, in a post which received five Likes, the Defendant responded to a post by @MeBU1978 commenting on the Third 15 June Tweet, which said 'Drama Queens [crying with laughter emoji]', and published the following words on his Twitter account at the URL https://twitter.com/ItsMickeyTaylor/status/1272640751353069568:

> "He raped three people. That's not dramatic. That's a crime" (the Fourth 15 June Tweet)

20. On 18 June 2020, at 6:46am, in a post which received 23 Retweets and 88 Likes, the Defendant published the following words on his Twitter account at the URL https://twitter.com/ItsMickeyTaylor/status/1273613051376422914:

> "Someone else wants to come forward about JFF Dominic. This is the 6th victim I have evidence off… rape… We're now going to seek his arrest" (the 18 June Tweet)

21. On 20 June 2020, at 2:14 pm, in a post which received three Retweets and 19 Likes, the Defendant published the following words on his Twitter account at the URL https://twitter.com/ItsMickeyTaylor/status/123725849284628 which were defamatory and seriously harmful of the reputation of the Claimant:

> "Also. Dominics lawyer is also a ex porn director who doesn't deal in rape allegations but licensing law" (the 20 June Tweet)

22. On 21 June 2020, at 12:29pm, in a post which received three Retweets and nine Likes, the Defendant published the following words on his Twitter account at the URL https://twitter.com/ItsMickeyTaylor/status/1274786424798228481:

> "Dominic raped Tannor Reed" (the 21 June Tweet)

23. On 23 June 2020, at around 8:35am, in a post which received one Like, the Defendant published the following words on his Twitter account at the URL https://twitter.com/ItsMickeyTaylor/status/1274786424798228481:

> "Have you not seen the news? JFF is being boycotted by models because he raped two models…" (the 23 June Tweet)

24. On 28 June 2020, at around 8.36pm, in a post which received five Retweets and 25 Likes, the Defendant Retweeted a post referring to the Website by its Twitter handle @JustForFansSite and published the following words on his Twitter account at the URL https://twitter.com/ItsMickeyTaylor/status/1274786424798228481:

> "Also let's not support him like AT ALL. he… raped models… " (the 28 June Tweet", together with the Tweets set out above, 'the Tweets')

25. On 10 March 2021, the Defendant gave an interview to the YouTube Channel 'TTB Network' (TTB) as part of a video with the headline 'Mickey Taylor Talks Racism In The Adult Industry, New Music, Drugs, Love Life & More (Interview)' which is available at the URL https://www.youtube.com/watch?v=GChv2fD-jC0 (the Interview). During the interview, the Defendant spoke and published the following words which the Claimant says are actionable as a libel at common law, further or alternatively under s 166 of the Broadcasting Act 1990:

> "I've got the owner of JustForFans who has been trying to sue me for almost a year… he's a motherfucker that raped someone and needs to sort his shit out and be accountable for it …" (the YouTube Video)

The pleaded defamatory meanings

26. The pleaded defamatory meanings of these publications at [17] et seq of the PoC are as follows. The Claimant says that the natural and ordinary meaning of each was that:

    a. the 14 June Tweet meant and would be understood to mean that the Claimant had abused his position in the adult entertainment industry in order to rape models.

    b. the First 15 June Tweet meant and would be understood to mean that the Claimant was a serial rapist. The words in the First 15 June Tweet referred to and were understood to refer to the Claimant (particulars are then pleaded, and the assertion made that by virtue of these, the Claimant was identified by a large but unquantifiable number of the readers of the First 15 June Tweet as the individual referred to by it.)

c. the Second 15 June Tweet meant and would be understood to mean that the Claimant had carried out multiple rapes.

d. the Third 15 June Tweet meant and would be understood to mean that the Claimant was responsible for multiple rapes.

e. the Fourth 15 June Tweet meant and would be understood to mean that the Claimant was responsible for three rapes.

f. the 18 June Tweet meant and would be understood to mean that the Claimant had carried out multiple rapes and that evidence of his criminality was so compelling that he should be arrested.

g. the 20 June Tweet meant and would be understood to mean that there were reasonable grounds to suspect the Claimant of rape. (As I will explain later, this was the only publication not to directly accuse the Claimant of rape. It is said to bear a *Chase* Level 2 meaning).

h. the 21 June Tweet meant and would be understood to mean that the Claimant raped Tannor Reed.

i. the 23 June Tweet meant and would be understood to mean that the Claimant was responsible for the rape of two models. The words in the 23 June Tweet referred to and were understood to refer to the Claimant (and particulars are then given).

j. the 28 June Tweet meant and would be understood to mean that the Claimant had carried out multiple rapes. The words in the 28 June Tweet referred to and were understood to refer to the Claimant (particulars are then given).

k. the YouTube Video meant and was understood to mean that the Claimant was guilty of rape. The words complained of in the YouTube Video referred to and were understood (and particulars are then given) to refer to the Claimant.

27. In his oral submissions Mr de Wilde put the matter this way:

> "… the clear picture which emerges from the publications is that the Claimant is a monstrous and despicable sexual predator, and the defendant's essential contention, in the majority of the publications was that the claimant was responsible for a series of crimes, that the matters exposed by the defendant were only the tip of the iceberg in that regard, and that there would inevitably be further similar revelations to come."

Serious harm

28. Section 1(1) of the Defamation Act 2013 (DA 2013) provides:

> "1 Serious harm
>
> (1) A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant."

29. The Claimant's case on serious harm is set out in the PoC at [33]-[35]. In support of his case that each of the Tweets was substantially published within the jurisdiction of the Court, and that each of the Tweets has caused and/or is likely to cause serious harm to his reputation for the purposes of s 1(1), the Claimant relies on the following:

    a. The extremely serious defamatory meaning borne by each of the Tweets, as set out above.

    b. The Defendant's Twitter Account had in excess of 140,000 followers at the time of publication of the Tweets. This was not in dispute. The Defendant said in evidence:

    > "Q. So, if there is a sort of scale of people with popular successful Twitter accounts in the industry –
    >
    > A. I would say I'm 6.5.
    >
    > Q. Yes, you are well in the scale.
    >
    > A. Yes.
    >
    > Q. You are certainly running a well-known, well-followed Twitter account.
    >
    > A. Absolutely.
    >
    > MR JUSTICE JULIAN KNOWLES: How many followers did you have?
    >
    > A. I think at the time it was 144,000. I closed the account out at 177. And -- yes."

    c. The Defendant is a UK citizen and the location on the Defendant's Twitter account is given as 'Manchester, England'. I am therefore asked to infer that the majority, alternatively a significant proportion, of the followers of the Defendant's Twitter account and publishees of each of the Tweets are or were based within England and Wales.

    d. The engagement by individual users with each of the Tweets, in the form of Retweets and Likes.

e. The response of others to the Defendant's campaign of defamation as set out in the Tweets: (i) Twitter users republished and commented on the Defendant's allegations as set out in the Tweets. These republications included, on 14 June 2020, at around 8.46pm, a republication of the Defendant's allegations by the account @TannorReed which received 215 retweets and 737 Likes; (ii) users of the Website, including both performers and fans, referred publicly including on Twitter to the Defendant's campaign as set out in the Tweets as a reason to stop using the Website and delete their accounts; (iii) adult entertainment industry media republished the allegations as set out in the Tweets; (iv) the Claimant relies on these republications as reasonably foreseeable republications for which the Defendant is responsible within the principle articulated in *McManus v Beckham* ([2002] EWCA Civ 939).

f. The allegations circulated widely within the adult entertainment industry of which both parties are part. The Claimant relies on the grapevine effect.

30. In support of his case that the YouTube Video was substantially published within the jurisdiction of the Court, and that it has caused and/or is likely to cause serious harm to the reputation of the Claimant, he relies on the following:

a. The extremely serious defamatory meaning borne by the YouTube Video, as set out above.

b. TTB has 192,000 subscribers and the YouTube Video was broadcast 'live'.

c. The YouTube Video has received 532 views on TTB.

d. TTB operates a Twitter account with the handle @thirsttrapboy which has 7337 followers (the TTB Account). The TTB Account published multiple tweets on 11 March 2021 promoting and linking to the YouTube Video.

e. The Defendant promoted the YouTube Video on the Defendant's Twitter account on 11 March 2021.

31. Later I will discuss the relevant cases on serious harm.

The Defendant's case in outline

32. The Defendant's defence, (as set out in his ReAmDef, and its Schedule dated 25 November 2022) is, in summary, as follows.

Publication

33. Publication is admitted, although timings are in issue (but, as I have said, nothing turns on that).

Defamatory meaning

34. As to defamatory meaning, [17]-[32] of the PoC are admitted, save for the meaning set out in [25] in relation to the 20 June Tweet, which is denied.

Truth

35. The Defendant relies on the defence of truth in s 2 of the DA 2013:

> "2 Truth
>
> (1) It is a defence to an action for defamation for the defendant to show that the imputation conveyed by the statement complained of is substantially true.
>
> (2) Subsection (3) applies in an action for defamation if the statement complained of conveys two or more distinct imputations.
>
> (3) If one or more of the imputations is not shown to be substantially true, the defence under this section does not fail if, having regard to the imputations which are shown to be substantially true, the imputations which are not shown to be substantially true do not seriously harm the claimant's reputation.
>
> (4) The common law defence of justification is abolished and, accordingly, section 5 of the Defamation Act 1952 (justification) is repealed."

36. Paragraph 11 of the ReAmDef pleads that insofar as the statements complained of mean that the Claimant is 'a sexual predator who uses his position as the owner and head of an online platform to abuse and rape models', those statements are substantially true.

37. The Defendant relies on the particulars of truth in the ReAmDef at [11(1)-(4)], and in the Schedule at [5]-[6], in respect of the allegations that, at an industry event in Miami:

    a. the Claimant raped Tannor Reed during the course of an (initially consensual) sexual encounter (the Claimant says this encounter took place on 28 May 2019 (the 28 May allegation); and

    b. the Claimant raped Mr Reed whilst filming a consensual pornographic sex scene, during the course of which Mr Reed withdrew his consent (it is not disputed that this incident took place the following day, 29 May 2019) (the 29 May allegation).

38. The particulars of truth in [11(5)-(9)] are grouped together under the heading, 'The Claimant abuses his professional position to prey on young vulnerable men', and include averments that the Claimant is a powerful man in the sex industry, and that young models (adult gay male sex workers) fear that having a

negative relationship with the Claimant will risk their career in the industry and/or will adversely impact upon their careers. It is alleged that the Claimant offered to promote the career of one named individual if he had sex with the Claimant.

Public interest

39. The Defendant also relies on the public interest defence in s 4 of the DA 2013:

> "4 Publication on matter of public interest
>
> (1) It is a defence to an action for defamation for the defendant to show that -
>
> (a) the statement complained of was, or formed part of, a statement on a matter of public interest; and
>
> (b) the defendant reasonably believed that publishing the statement complained of was in the public interest.
>
> (2) Subject to subsections (3) and (4), in determining whether the defendant has shown the matters mentioned in subsection (1), the court must have regard to all the circumstances of the case.
>
> (3) If the statement complained of was, or formed part of, an accurate and impartial account of a dispute to which the claimant was a party, the court must in determining whether it was reasonable for the defendant to believe that publishing the statement was in the public interest disregard any omission of the defendant to take steps to verify the truth of the imputation conveyed by it.
>
> (4) In determining whether it was reasonable for the defendant to believe that publishing the statement complained of was in the public interest, the court must make such allowance for editorial judgement as it considers appropriate.
>
> (5) For the avoidance of doubt, the defence under this section may be relied upon irrespective of whether the statement complained of is a statement of fact or a statement of opinion.
>
> (6) The common law defence known as the *Reynolds* defence is abolished."

40. The flavour of the Defendant's public interest defence is given by [14] of the ReAmDef:

“14. The central subject of the Tweets and the YouTube interview was rape, sexual assault, exploitation and abuse in the adult entertainment industry. The following topics, which are encompassed by that central subject, are matters of very significant public interest:

(1) the manner in which the adult sex entertainment industry operates, through the operation of a small group of powerful studios and websites, owned and run by powerful individuals such as the Claimant, which operate as gatekeepers to work for adult models and performers;

(2) the structural issues within the industry, including that models are self-employed and have few if any workplace protections, the informal nature of business relationships and networking, the fact that industry bosses have access to sexually explicit content belonging to workers and access to their personal contact details and regularly blur professional boundaries, encouraging and engaging in personal sexual relationships with workers on the website;

(3) gate-keeping to the industry has historically been abused by those with power within the industry, including through sexual abuse and abuse of power to extract sexual favours as a condition of entry to the profession;

(4) the historic prejudice and discrimination against adult sex performers in the policing of sexual abuse, which contributed to historic under-reporting of sexual abuse and sexual harassment;

(5) the MeToo movement, which has since 2017 led to widespread accusations of sexual abuse and harassment against powerful figures and gate-keepers in the entertainment industries generally, and which has only, in more recent years, taken off within the adult entertainment industry;

(6) the importance of speaking out about sexual abuse and harassment in the adult entertainment industry given the historic prejudice and discrimination, the ongoing cultural challenges for performers to speak out, and the power of the gatekeepers to the industry;

(7) the importance of speaking out in support of survivors who go public with their allegations of sexual violence, in this industry and in any other industry, given the difficulties survivors face in coming forward and the consequences they face after having done so; and

> (8) the broader public interest in speaking out about racism, sexual violence and harassment in order to be able to end impunity and prevent future violence, abuse and harassment."

41. The Defendant also put the Claimant to proof of substantial publication, serious harm, and damage, in respect of the allegations of the Claimant being a multiple rapist.

The Claimant's Reply

42. In his Reply of 30 May 2022, and its Amended Schedule of the same date, the Claimant denies that any rape took place in respect of the first allegation of rape (the 28 May allegation). The second allegation of rape (the 29 May 2019 allegation) is addressed in the Claimant's trial witness statement and in the Amended Schedule.

The evidence

43. The first witness was the Claimant. He was examined in chief by Mr de Wilde.

44. He adopted his witness statement, with the correction that his first contact with Mr Tennent had not been over a problem Mr Tennent had had at college, when he had reached out to the Claimant for help, as the Claimant had said at [59], but had been earlier, in about January 2019, when Mr Tennent had messaged the Claimant over Twitter about getting into the pornography industry. They began to exchange messages. At the time Mr Tennent was aged around 20/21.

45. The Claimant said in his statement that his dispute with the Defendant arose in June 2020 when the Defendant complained to him about a model on the Website called Daniel, whom the Defendant accused of being racist, and whom the Defendant wanted removed from the Website forthwith.

46. The Claimant's case is that although the Defendant's concern about Daniel purported to be about racism and the 'Black Lives Matter' (BLM) movement (which came to prominence in 2020 following the murder of George Floyd by a police officer in the US in May 2020):

> "… it seemed to me that the Defendant had a personal vendetta against [Daniel] and cared more about causing harm to him rather than being genuinely concerned about sanctioning racism" (witness statement, [26])

47. The Claimant said that the Website had policies in place to deal with racism, and that he told the Defendant that a process would be followed and that there would be an investigation. The Claimant's case is that when he did not immediately remove Daniel as the Defendant wished, and after an exchange of messages over social media, the Defendant began publishing the Tweets involved in this case.

48. The Claimant said (witness statement, [30]):

> "At around 16:51pm on 14 June 2020, I was shocked to become aware that the Defendant had publicly claimed on Twitter that I had sexually abused and bribed models within the porn industry. The Defendant was, as I have explained above, upset that I had refused to remove [Daniel] from the Website, and it appears that, in retaliation, he decided to make public allegations of the most serious crimes against me. Our conversation via WhatsApp only ended just a little over half an hour prior to the unfounded allegations being made public by the Defendant. Not once during that conversation were these allegations mentioned, nor was I asked for my version of events. It was clear to me that, yet again, as with [Daniel], the Defendant was acting on the basis of a personal grievance to cause me as much harm as possible."

49. Returning to Mr Tennent, the Claimant said that he and Mr Tennent messaged each other during early 2019, and they ended up meeting in Palm Springs, California, around April 2019, where they had consensual sex.

50. After that, they continued to message each other and arranged to meet in Miami, Florida, for a pornography industry event (XBiz Miami) in May 2019. The Claimant said that they were excited at the prospect of seeing each other. By then, as a result of meeting in Palm Springs and their communications, 'there was a lot of sexual history' between him and Mr Tennent. They had also talked about emotional matters, and he said their relationship by then was 'close'.

51. On 28 May 2019 they met in Miami. Mr Tennent came to the Claimant's hotel room, which involved sex which Mr Tennent says was not consensual (but the Claimant says was). After coming to his room, the Claimant said that Mr Tennent told him that he had not properly prepared himself for anal sex as he had not done a rectal douche. (He explained that rectal douching is the act of rinsing the rectum with the intent to clean it. This is usually performed before anal sex by the individual to be penetrated.) For this reason, he informed the Claimant that he probably could not be penetrated.

52. The Claimant told Mr Tennent something to the effect of 'you probably don't need to even douche since I am not that huge' but that it was his, Mr Tennent's, decision and that he could go to the bathroom to check if he was 'clean' if he wished. He said that Mr Tennent subsequently went to the bathroom, and emerged several minutes later saying he was 'good to go'. They then had consensual anal intercourse during which he penetrated Mr Tennent with his consent.

53. In his evidence the Claimant said:

> “Q. And you understand that consent is the issue in these proceedings. What was your state of mind about that issue? Can you describe that for the court?
>
> A. Sure. The consent was 100 per cent there. Especially that he took the initiative to go and check to make sure that we could continue, so there was, there was lots of, lots of stop gaps there where things could have stopped had he not wanted to, to do, and at every, at every stop, at every interval where there could have been questions, I was given the affirmative that we continue.
>
> Q. So what was your state of mind then about consent and Mr Reed and what was happening between you?
>
> A. [It] was my understanding that he had fully consented to everything, for sure.”

54. The Claimant said at [66] of his witness statement:

> “At no point, did Tannor ever say no to anal sex, or give me any reason at all to believe that he did not want to engage in it. I understand that the key issue as far as rape or sexual assault is concerned is whether or not the person against whom the allegation is made reasonably believed that the complainant was consenting. I had no reason whatsoever to believe at any stage that Tannor did not consent. At no point did I ever penetrate Tannor by surprise. On the contrary, he physically made the effort to get out of bed and ensure he was prepared for it to happen, in the way I have explained above. There were no circumstances where he ‘finally relented’ and just let it happen. This is consistent with what he later told the Defendant, which was that he could not say that he did not consent.”

55. Later that night the Claimant and Mr Tennent had an argument when Mr Tennent went off with another, younger, man. I will return to this later.

56. The following day, 29 May 2019, they made up after their falling out, and Mr Tennent helped to do some promotional work for the Website, handing out merchandise from a stall and encouraging models to sign up for it. He had offered to help the Claimant do this.

57. The Claimant had a conversation with Mr Tennent about trying out a 3D video camera with a possible view to giving them to some of the models to use to film videos for the Website. He said Mr Tennent volunteered to do a film with him so he could test the camera. He said in evidence:

> "MR DE WILDE: And what then happened when you did fulfil that agreement?
>
> …
>
> A. So we went back to my room and we set up the camera and filmed.
>
> MR DE WILDE: Can you describe Mr Reed's attitude towards you, towards sex and filming generally at that----
>
> A Yeah, it was good. We had had a rough night of arguments and we'd made up, we'd made up that night and in the morning and we were back on good terms, which was fantastic. He was happy and excited and very (inaudible) and the shoot went very, very well. It was nice to spend more time with him."

58. Of this encounter, the Claimant said ([69]-[70]):

> "69. However, he does not mention the fact that the next day, on 29 May 2020, after the alleged rape, he volunteered to film pornographic content with me. I was testing out a new 3D camera and needed someone to test it with, Tannor offered to test it with me and told me that he was glad we got to spend more time together. As part of the disclosure exercise in these proceedings, I located some of the footage that we recorded together, and disclosed it to the Defendant.
>
> 70. What is clear from the material that I have retained is that Tannor was happy to engage in consensual sexual activity with me only a matter of hours after the alleged rape, and appears to have been completely relaxed and happy in my company. During the scene which we shot together, at 00:08 seconds, Tannor twirls around for the camera, showing that he is happy to be there, and has no issues with me or his situation. At 06:08, we tell each other that we have been wanting 'it', ie sexual activity with each other. I did not believe at the time that this was staged or fictitious dialogue, and amateur videos of this kind do not generally feature such dialogue between the participants, as their appeal is that they are as faithful to reality as possible. Throughout the footage, there is no sign at all of Tannor being uncomfortable and, on the contrary, he appears to be an enthusiastic participant."

59. It was Mr Tennent's evidence that during this sexual encounter, which was recorded on video and which I have with the file name HET_0002.mp4, having initially consented to anal sex, he withdrew his consent by saying words to the

effect of ‘no, no, no, no’ when it became painful, but that the Claimant nonetheless continued to penetrate him, and therefore raped him.

60. The Claimant said at [73]-[74]:

> “73. It is clear from the footage that, after Tannor expresses discomfort, I stop moving, and we start kissing. There are 12 seconds where I start moving again after stopping. It is not clear from the Video whether he slightly altered his position so he wasn’t uncomfortable, or if he backed into me to try again, even if he had loosened up from us kissing, indicating maybe it wouldn’t hurt this time. What is clear is that I stopped immediately when he said no, and, after kissing him, I appear to have received some physical indication that he wanted to try again. And then, as soon as I heard him say he wanted to take a break (and I confirmed that’s what he said) I immediately got off him.
>
> 74. It is also clear that what is seen in the footage does not amount to rape, because what Tannor says goes no further than an expression of discomfort about our respective positions during a wholly consensual sexual encounter, which I immediately respond to by stopping moving, and then ultimately respond to by withdrawing. I cannot recall, but I think it is overwhelmingly likely that there was a physical cue we can’t see in the video. Tannor does not say ‘get out of me’ or ‘get off me’. And once we took a break he complimented me. We then filmed for a further 30 minutes without any indication of discomfort or upset on his part.”

61. In his evidence the Claimant said of this video:

> “Q. … And then the specific incident that is relied on is seen at the end of the video at around 14 minutes into it. What is happening between you in that part of the video?
>
> A. So we had switched positions, which we had done a couple of times, and whatever this position that we found ourselves in I think was uncomfortable for him, because he said, ‘Hold on, this position, no’ and so I held, meaning stopped moving, which is what that means to be, and typically when a bottom says, ‘Hold on’ or, or doing something uncomfortable, you wait and you see if things are going to get better (inaudible) move a little bit, so that we can do the position or not, and so that’s what happened, so I held, did not move at all, and we started making out, at which point he relaxed a little bit, and so I tried again and he said that he needed a break, and I

heard(?) that and then - you know, sometimes you don't hear exactly what someone's saying while you're having sex, so I asked him to repeat and I think he's having a break, I said, 'Do you need a break?' and he said, 'What?' because he didn't hear me also. I said, 'Do you need a break?', he said, 'Yes' and then once I understood that, I immediately removed myself and got off of him and stopped the video.

…

A. … I think - my memory is that he said, 'I need a break'. I registered that and said, 'Do you need a break?' and he said, 'What?' and I repeated, 'Do you need a break?' and he said, 'Yes' and then it stopped."

62. A little later on there was this exchange:

"MR DE WILDE: And, again, the specific issue here is consent. What was your state of mind about consent at that point? When Mr Reed said, 'Hold on this position, no' ----

A. To me it meant that the position was uncomfortable and I should stop moving, which I did. To me there was never a sense of a larger idea of consent being withdrawn, because we were in the middle of filming. There was no sense of----

MR JUSTICE JULIAN KNOWLES: Sorry, a little slower, please.

A. I'm so sorry.

Q. No, no, do not worry. We always all of us speak faster than we think we are.

A. I appreciate----

Q. Not at all. 'So to me what he said was that he was uncomfortable, I didn't'----

A. The position was painful----

Q. Yes.

A. -- I can imagine.

Q. Okay, was that the position he was in was painful. Yes.

A. What it wasn't was, 'Stop, we're done filming, get off of me', nothing to me that would ever have implied consent was withdrawn. This position either needed a moment or was not going to work.

MR JUSTICE JULIAN KNOWLES: Yes, I understand.

MR DE WILDE: So it is always a little artificial to ask someone about someone else's state of mind, but what did you think then about Mr Reed's state of mind and his attitude to what was taking place?

A. Throughout the entire filming he was happy and, you know, either enjoying it or at least seemingly enjoying it. During sex there is always a possibility that a position is uncomfortable but nothing to alter your sense of, you know, the activity (inaudible) something else.

Q. So that answer that you have just given, that he seemed to be enjoying it throughout, that applies equally to the specific moment at which he said----

A. Oh, for sure. Yeah, this was not some huge inflexion point where the mood changes in the room. This was just, 'Hold on, this position's uncomfortable and now I need a break' like (inaudible); that's it."

63. The Claimant went on to describe what happened during the rest of the video – consensual sexual contact – and said that Mr Tennent had been happy to be there:

> "Q. And at the very end of the filming?
>
> A. Same. Nothing had changed. Oh, he, in fact he said, when we were done - well, when we were done with that first scene, he had said something like, 'Damn' in a, 'Wow, that was good' kind of way."

64. Later I will need to describe the first video in detail.

65. He said things had been 'really good' between him and Mr Tennent during the rest of their time in Miami. They stayed on friendly terms in the following months.

66. In his witness statement the Claimant went on to say that Mr Tennent was in contact with the Defendant (and stayed with him) during 2019 and 2020, and that the allegations that were made against him were 'hatched' between the Defendant and Mr Tennent and arose out of their discontent with the Website (witness statement, [77]).

67. The Claimant also referred to his unhappiness that Mr Tennent had been promoting a rival website (OnlyFans) despite the fact he had agreed to promote the Website over rivals in return for the Claimant helping him with legal fees for his university problem.

68. The Claimant said at [80]-[85]:

> "80. To me, it is clear that the Defendant wanted to bring me down in whatever way he could. It is also no coincidence that the allegations by Tannor emerged both during the 'Black Lives Matter' and the 'MeToo' movements, which are social movements that the Defendant has tried to make clear publicly that he feels very strongly about, at least in the context of his attacks on me.
>
> 81. I can see from the information provided by the Defendant that the Defendant and Tannor engage in a conversation via WhatsApp on 14 June 2020 (the same day the Defendant brought his grievance regarding Mr Hausser to me), where they discuss Tannor publicly coming out as one of my 'victims'. Specifically, after my refusal to remove [Daniel] from the Website, the Defendant apparently assists Tannor with drafting a long statement to post on Twitter detailing the story behind his allegation, because the Defendant has explained to him that he needs 'receipts' to use against me [JA1/041]. At around 20:47pm, Tannor confirms to the Defendant that he posted the statement on Twitter ('the Tannor statement') and then deleted the app.
>
> 82. Shockingly, given that one of the Defendant's defences is that he reasonably believed it was in the public interest to brand me a rapist, after reviewing the WhatsApp conversations between the Defendant and Tannor, it seems that even Tannor himself quite rightly stated expressly to the Defendant that the encounter between us wasn't rape [JA1/042]. I am not aware of any statement in these terms made to anyone before Tannor and the Defendant apparently drafting this story together. Even if Tannor had referred to the time we spent together in Miami, it was clear that until urged to do so by the Defendant, Tannor would not have used the term "rape" to describe what happened, as he pushed back on the Defendant using that term.
>
> 83. In a bizarre reversal of how allegations of this kind usually originate, it was the Defendant himself, who obviously has no legal or other knowledge relevant to such issues, who told Tannor that what happened was rape.

> Rape is a serious and highly damaging allegation to make about someone. Even someone who is not a lawyer knows that the central issue in any disputed allegation of rape is always consent. Tannor saying that he cannot say he did not consent at the time is a plain indication that he did not believe he was raped [JA1/037] .. and that he was not in fact raped. Tannor makes it clear in the WhatsApp conversations that he is uncomfortable with the word rape [JA1/042]. If the 'victim' himself does not believe he was raped and gives an account of events which does not support the allegation, then I cannot understand how someone else listening to or reporting on his account could reasonably believe he was. This is in direct contrast with the 'MeToo' movement where the focus is on listening to victims and their stories. The Defendant is not doing this, he is instead imposing his own narrative, and manipulating others to support his desire to harm me. This is cynical and deeply harmful behaviour, which has damaged me, Tannor, and the cause that the Defendant was purporting to support.
>
> 84. In one of the Publications by the Defendant, he includes the allegation that I bribed Tannor. However, the WhatsApp conversations reveal that Tannor immediately tells the Defendant that this is not true [JA1/043] and he should probably delete his tweet. Yet the Defendant does not respond to this, demonstrating that he has no interest at all in the truth, or the perspectives of those he describes as victims. In fact, a week later, on 21 June 2020, the Defendant tweets 'Dominic raped Tannor and used bribes and blackmail once again to silence him" [JA1/015]. The Defendant decided to publish this, with full knowledge that Tannor expressly told him a week earlier that this was not true. The Defendant does not care. In fact, between Tannor, me, and the Defendant, it seems that the only one who thinks I raped Tannor is the Defendant, the only person with no direct knowledge of the events in question.
>
> 85. It is evident that it was the Defendant who construed my encounters with Tannor in Miami to form the story he wished to create. The Defendant seems to create the impression that he is just a conduit for a big story which has a life of its own. The disclosure information provided suggests otherwise, it is more like a single person's campaign of defamation against me, with the Defendant at the centre of it all."

69. The statement in JA1/042 occurred during an exchange of messages between Mr Tennent and the Defendant and was as follows:

"[21/06/2020, 21:34:50] Tannor: I was willing to say absolutely anything to appease him because it was extremely irrational but I felt so scared and like he could ruin my career so much that I said everything I could to make him happy, so many lies

[21/06/2020, 21:34:58] Tannor: And reading it back I'm ashamed

[21/06/2020, 21:35:51] Tannor: I said all this stuff to appease this man because I wanted to hookup with someone else who I had been interested in and never promised Dominic anything, right after I let him have his way with me

[21/06/2020, 21:37:24] Tannor: I'm really uncomfortable with the word rape. I don't think I was raped. He didn't hold me down and force anything violently. But I didn't give consent either. I just stopped saying no"

70. At JA1/043 Mr Tennent said:

[14/6/2020, 16:53:48] Tannor: You should prob delete that, he didn't bribe me to stay silent

[14/6/2020, 16:53:55] Mickey: You said he did

[14/06/2020, 16:53:59] Tannor: The bribe was when I wasn't using JFF as much

[16:54:10] Tannor: I'm sorry I didn't mean that

[14/06/2020, 16:54:12] Mickey: Oh I see. But the rape?

[14/06/2020, 16:54:19] Mickey: Is real?!

[14/06/2020, 16:54:21] Tannor: I don't have receipts for that

[14/06/2020, 16:54:22] Tannor: Yes

[14/06/2020, 16:54:27] Mickey: Okay cool.

[14/06/2020, 16:54:38] Mickey: Just so I have proof ya see. Otherwise I'm slander.

[14/06/2020, 16:54:52] Tannor: No I get it haha"

71. The Claimant said at [88]) that the Defendant went on, *after* he had published his allegations, to try and assemble evidence to support them, eg, by trying to get Mr Tennent to file a police report [JA1/044]. At [89] he said:

> "89. As it stands, there is no evidence to substantiate the allegations and a victim who does not believe he was raped. Nevertheless, this did not stop the Defendant from attempting to further the harm caused to me. He continued to publicly tweet and privately message individuals telling them that I was a rapist, I had bribed and blackmailed individuals and there were apparently up to nine victims of sexual assault."

72. In cross-examination by Mr Price, the Claimant was asked whether he had always been careful about mixing work and personal relationships. He said that when he did, he was careful to make sure that he was not in a position of power or perceived power over somebody else. He said he would never make the first move on somebody over whom there was a perceived power issue. If they made the first move, or if they showed interest, then he would be more 'apt' to consider that, but in general he would not make the first move.

73. He said that, among gay archetypes, he would be classified as a 'daddy' based on his age, physicality and his 'paternal instinct'. He liked to steer people in the right direction.

74. He denied Mr Price's suggestion that he was rough during sex, and said that he was tender and emotional.

75. He also denied being a 'gateway' into the industry, save for his own Website, although he used to run a studio. He said that the Website had eight staff and he was the CEO. He had the power to remove an account from the site, and had done so on occasion.

76. He agreed that he had paid the Defendant for help with the Website and for carrying out promotional work in the UK. The Defendant charged an hourly rate and submitted invoices. The Claimant said he was sure he paid the Defendant because he remembered thinking that the Defendant's work was not worth the amount he was charging. The Defendant's case is that he was not paid.

77. The Claimant said that he knew the Defendant was known in their circle as'the mean girl of Manchester', although the Claimant denied using that term himself. He said they were friendly in business, but not the best of friends, although the Defendant had been a guest at his birthday party in Manchester.

78. He agreed that the Defendant had publicly aligned himself with the BLM movement, and also with the #MeToo movement in relation to the rape allegations. (#MeToo is a social movement against sexual abuse.) The Claimant said it seemed to him that he had 'jumped on the [BLM] bandwagon'. The

Defendant had said that he had a mixed race family, which was the first time the Claimant had heard that.

79. With regards to #MeToo, the Claimant said it seemed that the case against him was perceived as the 'take down' of a public figure, such as happened to Harvey Weinstein, who was prosecuted and convicted for sexual offences in connection with the film industry.

80. Turning to Mr Tennent, the Claimant said he knew soon after January 2019 when they were first in contact that Mr Tennent was not yet 21, and that he was trying to get into the adult industry. There were discussions about Mr Tennent attending a forthcoming industry party in Las Vegas hosted by the Claimant where alcohol would be served, and which after midnight would become a sex party.

81. The Claimant denied sleeping with many of the young models on the Website – 'Definitely not' - although he did admit to sleeping with a model called Justin Stone (who made allegations against the Claimant which he later retracted and acknowledged to have been untrue and who the Claimant had come to know was vulnerable). But he said that Mr Stone had pursued him several times, and he kept saying 'no', until he relented, and so he said he would not characterise that as being the same as Mr Tennent.

82. The Claimant accepted that he helped find Mr Tennent a lawyer to assist with his legal issue, and that he had helped financially with legal fees, but that the only thing he had wanted in return was for Mr Tennent to favour the Website over a rival site, OnlyFans. He denied this put him in a position of power over Mr Tennent.

83. Mr Price then turned to 28 May 2019. In the evening the Claimant met Mr Tennent and others at a bar, and he bought some rounds of drinks. He was hoping to have sex with Mr Tenn ent later. They had met earlier in his hotel room and had had consensual sex then.

84. Mr Tennent was interested in another man present in the bar, a model, and the Claimant was jealous. The evening ended with Mr Tennent going off with this other man. There was a car journey to or from the hotel which the Claimant could not really remember, but he vaguely remembered suggesting to Mr Tennent that he and the other man and the Claimant have a 'threesome'. He again admitted to feeling very jealous, and accepted he had sent abusive texts to Mr Tennent during the night after Mr Tennent had gone back to his room with the other man. He said, 'I was hurt, my ego was bruised and I acted like a child, yes.'

85. He accepted that Mr Tennent had sent a number of placatory messages and had tried to 'make things up' with the Claimant. The following day (29 May) the Claimant apologised to Mr Tennent for 'acting like an idiot'.

86. Mr Price then turned to the video shot on 29 May, and put to the Claimant that models act when on camera:

> "Q. And there would be some acting involved, on both sides, would there?
>
> A. Again, not in - in amateur work there's not acting in that way. I mean, no. Like studio work is a very producing area but amateur really is not. That's the reason why amateur work is generally more interesting these days than studio work (inaudible) it's very voyeuristic and that's the whole reason that fans(?) like mine are, are interesting."

87. He said that Mr Tennent had volunteered to be filmed doing a sex scene using the 3D camera, and that he had been 'very happy and we were talking and chatting and laughing and - so, yeah, it was all very friendly, amicable …'

88. He was asked about consent forms (for the filming) and said that he did not think that either he or Mr Tennent had signed one. He added that because the film was not to be used commercially, no consent forms were required. (In general terms, US Federal law requires producers of commercial pornographic work to obtain written consent from performers).

89. He said that there came a time when he started to have anal sex with Mr Tennent, but denied that he had been rough. He said:

> "MR PRICE: And at some point when you were on top of Mr Reed you told him to straighten his legs, and you started penetrating him at an angle which was even more painful for him.
>
> A. I do not recall it. Is this where he said that there was, this position that we were uncomfortable with, or was it something else?
>
> Q. He clearly communicated to you that he no longer consented to have the anal sex like it and he told you, 'Hold on, no, no, no; this position, no'.
>
> A. He just said, 'Hold on, this position, no'. I don't think he did all these - we had, we have it actually on the record, so instead of speaking from my memory …"

90. He was asked about the dialogue on the video and Mr Tennent's expression, 'Hold on, this position, no'. He said:

> "Q. And I am reading from Mr Reed's statement, because these are the allegations that I have to put to you.

A. Fair. So my understanding, if you watch the tape back, he said, 'Hold on, this position, no' at which point I stopped moving.

Q. You stopped moving but then you carried on.

A. So as I explained before, to me 'hold on' means hold on for this moment, stop moving. So, for example, if I'm the photographer and two guys are engaging in sex and I want to take a picture, I will say, 'Hold on' which does not mean separate, it means stop moving so I can take a picture, so in my world 'hold on' means stop moving, because if he was in pain, then maybe he will relax into it (inaudible) but obviously would prefer it if I continue.

Q. That is what you think 'hold on' means. What do you think, 'No, no, no, this position, no' means?

A. Again, I'm only aware of him saying, 'Hold on, the position, no' which meant to me, 'Hold on' wait(?) because this position uncomfortable.

…

Q. … And then, as you continued, he said, 'I need a break soon'.

A. Correct.

Q. And then you continued again.

A. So a few things that you'll see in the exchange were each of us saying something and the other a few seconds later asked me what they just said, because sometimes you can't always hear things, and you see that with him also not hearing what I said, so when I understood that he needed a break, I stopped. I don't know that I understood that at that moment that he said it, because I was, you know, busy, but I registered it, I (inaudible) with him, I immediately stopped."

91. On the issue of consent the Claimant said this:

"Q. You had a duty to ensure that he consented to what you were doing to him, did you not?

A. In no part of this did I perceive any removal of consent - at all. And so at 15.01 [timer on the video] he said he needed a break soon. I understand that. At 15.10, and I ask him if that's what he said. He doesn't understand

> what I said, and I repeat the question at 15.15. He says, yes, and by 15.18 I'm over (inaudible). So as soon as I understood that he needed a break, then I immediately stopped."

92. There were then questions about a second incident when Mr Tennent said he was pressured into sex without consent. Mr Price did not have a positive case to put on time, but it became clear this was the encounter in Miami on 28 May 2019 when Mr Tennent came to the Claimant's hotel room after they had first arrived. It was referred to in the evidence as the second incident, but it is clear that in fact it was the first in time:

> "MR PRICE: And we can move on. (To the witness) Mr Reed will say that he was anxious to please you, even though he could not have anal sex with you, and was hoping that he could just give you a hand job or something instead. Does that accord with your recollection of what happened?
>
> A. No. No, not at all. So he, we had talked about being excited to see each other in Miami and then the day came, to Miami, came to my room, which is this incident that we're talking about, and he said he wasn't clean, or hadn't checked, wasn't prepared for (inaudible). If there were underlying, you know, things that point, they were not discussed. He had mentioned before he got there that he was feeling(?) worn out, or something like that, but, no, that was (inaudible). So during(?) this engagement, my recollection is he just said he wasn't prepared, which is why he then went to check.
>
> Q. And you lay on the bed and you were grinding up against him. That is what happened. You were lying on the bed grinding up against him.
>
> A. At some point, I'm not sure.
>
> Q. And saying, 'Only the head, come on, it's not even that big'.
>
> A. Right, so that's where, that's what he says, and having written corny porn dialogue for 13 years, no. And I definitely do not say that. What maybe he's remembering is what I put in my witness statement that when he said he wasn't sure if he had checked, oftentimes a bottom will know like, okay, 'I'm not going to (inaudible) myself out but you're not so huge, that I don't really have to do a deep cleanse and it'll be fine', and so I did say to him, 'I'm not so big that maybe you have to douche' so perhaps

> that's what he was misremembering, but, no, I never said, 'Just the head, just the head', that's- -"

93. There was this exchange:

> "Q. So his evidence is that he eventually, he came back and has told you 'no' several times, but that you eventually inserted your penis into his anus in any event.
>
> A. Yeah, that is 100 per cent not my recollection of the incident, because, what I've just said, needed to check himself and said 'no', I would not (inaudible).
>
> Q. And you were not wearing a condom?
>
> A. Correct.
>
> Q. On this occasion either.
>
> A. No, (inaudible) this point people do not come, did not have sex with condoms. We're all on PrEP [an anti-HIV prophylactic medication]."

94. Later, the Claimant was again asked about 28 May:

> "Q. … He told you that he had not properly prepared himself?
>
> A. Correctly, he wasn't sure if he was (inaudible).
>
> Q. And he told you that he could probably not bottom for that reason?
>
> A. He said he hadn't prepared, so he probably could not bottom, which is why he went to check.
>
> Q. And you go on to say though in your statement that you had no reason whatsoever to believe at any stage that Tannor did not consent?
>
> A. That's correct.
>
> …
>
> Q. Did it occur to you at all that by telling you that he was not properly prepared for anal sex, that he was reluctant to have anal sex with you?

A. No, because people who are, who don't want to, say they don't want to, people who say they aren't clean and prepared say they aren't prepared.

…

Q. You admit to having been very excited.

A. Yes, any level of emotion and - yes, (inaudible).

Q. And you were too excited?

A. Again?

Q. You were too excited?

A. What is too excited?

Q. It means you were too excited to take 'no' for an answer.

A. No, and he also never said that, so I would say that premise isn't correct.

…

A. So, as I had mentioned, I think, before lunch, hygiene is a separate issue alone, if a bottom goes to the bathroom and checks himself and says 'no', that's, in my world anyway, in others but in mine certainly, that's the end of the conversation. I have zero interest in a bottom having an accident and he's getting on me or getting out of bed, so as a separate wholly independent issue of consent and that (inaudible) question, simply a bottom saying, 'I've checked myself and I am not; I can't do it', I am not interested in taking that chance, notwithstanding whether they - even if he'd got in the bathroom and said, 'I'm not clean but let's do it anyway' I would have said, no, because that's the, that's the stopgap."

95. Later he was asked:

"Q. You do not think you raped Mr Reed because you did not pin him down? That is right, is it not?

A. No, rape is nothing to do with force, so, no, I reject that. I didn't rape Tannor, because he consented to sex with me."

96. The Claimant was asked about Justin Stone. He said that he had sued Mr Stone in Florida over his allegations. This had been settled, and Mr Stone had accepted as part of the settlement that he had been 'put up' to making the allegations by the Defendant. The Claimant said that Mr Stone had volunteered that information as part of the settlement agreement. He referred to two messages in particular from Mr Stone to him that were in evidence before me:

> "It was Mickey Taylor, tanner reed and marlen that talked me into this I actually started to believe it. But now that I'm back on my medicine it's helping [me] clear my mind.
>
> …
>
> It always feels like [it's] going to pop. I'll do anything I can to help. Although it was Mickey and Tannor both that talked me into it. And marlen"

97. The Claimant's next witness was Howard Andrew. He owns a gay pornography management company which, among other things, finds models for studios to work with. He also said it:

> " … offers a listening ear to those who may be in need of advice. Our role is very wide and varies from management company to therapist."

98. He has known the Claimant for over 15 years and supplied him with a number of performers, including for the Website. He said that the Claimant is 'a big figure within the porn industry for all the right reasons'.

99. The Defendant signed a contract with Mr Andrew's agency in December 2019 and they had a good working relationship to begin with. He said in May/June 2020 with the emergence of the BLM movement, the Defendant had demanded that his company stop representing Daniel. Taking matters shortly, the Defendant made a number of public statements – including the rape allegations against the Claimant – and Mr Andrew warned him to desist, mainly because it was bringing Mr Andrew's company into disrepute. In the end, the company stopped representing the Defendant and Daniel.

100. The Claimant's last witness was Maxence Angel. He is a gay adult film performer. He is a model on the Claimant's Website and has a professional working relationship with him. That later developed into a more friendly relationship. He spoke positively of the Claimant as someone who is trying to make a positive difference in the industry 'to ensure that performers are treated with fairness and respect.'

101. Mr Angel said he also knew the Defendant, who was active on Twitter, and they had filmed pornographic content together. After the BLM movement emerged, whilst supportive of it, Mr Angel began to feel that it was being used as a witch hunt against some models in the porn industry. He tweeted about it and then fell out with the Defendant, who accused him of publicly supporting racists.

102. That was the case for the Claimant.

The Defendant's case

103. The Defendant then gave evidence. He adopted his witness statement and said by way of addition that in filming sex scenes, sometimes he would have to film with people he was not especially attracted to, but would do so for commercial reasons (eg, the film would bring him to the attention of a wider audience). He also said there is a lot of vulnerability in the sex industry, especially among younger models.

104. As I said earlier, the Defendant had worked in the adult industry for seven years before, he said, he was forced to leave. He said that throughout his time in the industry he was a vocal campaigner for greater safety and equality at work and that he fought against racism and homophobia. He is of mixed race.

105. At [7] of his witness statement he said:

> "7. I had been friends with the Claimant Jack Aaronson (AKA Dominic Ford) who I refer to throughout this statement as 'Dominic', since around 2018. Over that time I helped him with his Just for Fans business in the UK. Just for Fans is an adult content platform owned and managed by the Dominic. I have helped Dominic with advertising including helping him with sponsorship for UK events and clubs, and have helped introduced new models to the site. When Dominic was in the UK for business / work around three years ago, we met and spent time together. During his trip I helped him with network opportunities, such as involving him in Jock Party that was run by MJ Palmer and I invited him to a promo party that I had organised. In 2018 I set up a profile and began working as a model and content provider on Just for Fans."

106. Turning to events in Miami in May 2019, at [9]-[11] the Defendant said:

> "9. On 29 May 2020 at 19:00 a friend of mine who works under the name Tannor Reed, and who I refer to in this statement as Tannor, raised concerns over Dominic's business practices. Tannor told me over whatsapp that he felt that 'Dominic crossed/crosses professional boundaries and manipulates me' [MS1/254]. Tannor also shared with me a screenshot from another conversation in which he indicated that Dominic had carried out sexual assault and possibly attempted rape:
>
> > 'One night all the gays at xbiz went out and he clearly assumed that I'd be going home with him at

> the end of the nigh[t] and I brought someone else back to my hotel and when we were in the elevator at my floor he basically forced me to say that I was choosing this guy over him flipped me off in a storm as the elevator closed, then texted me and the guy about how bad of a person I am, made the guy leave, made me feel bad about it all night, and then the next morning apologized and buttered me up touching me calling me babe and all this shit'
>
> On the day before that he kept trying to fuck me and I told him over and over and over that I didn't want to and he kept trying to slide it in anyway.
>
> You remember when the Justin stone shit went down
> I kept my mouth shut because I knew it was true
> Fuck fuck fuck I don't know what to do" [MS1/353]'

10. I didn't make this public at this time because it was private and confidential and I believed it was for Tannor to decide if and when he would report this or make it public.

11. On 2 June 2020 Tannor Reed posted a tweet stating: '1 #whyididntreport because he had (has) power over me in my industry and I was too scared to sacrifice my career. He passively blackmailed me for over a year.' I believe that it wasn't until 14 June that Tannor confirmed that he had been raped: [MS1/258-259]."

107. The Defendant then dealt with the issue of racism in the adult industry and allegedly racist behaviour by Daniel. When the Claimant did not act on the Defendant's request that Daniel be removed from the Website, he asked that his own profile be removed.

108. At [17] he said:

> "Meanwhile on 14 June I was also corresponding with Tannor on Whatsapp and was messaging him about my conversation with Dominic. This conversation appears at [MS1/257-263]. (Note that I have in addition exhibited my full conversation log with Tannor to demonstrate that there was no conspiracy to make up a story against Dominic). Tannor was therefore aware of my concerns about racism and the lack of action from Dominic. At 16:27 Tannor sent me a Whatsapp message which read 'There's just so much I could say that if I say it all it'll come off as slander'.At 16:44 he wrote 'I mean if the truths I have to tell about him are bad enough that they come off as slander they should probably come out". At

> 16:46 he wrote 'But he literally sexually assaulted me and blackmailed me for months to keep it happening'".

109. On 14 June 2020 Mr Tennent published a statement accusing the Claimant of raping him.

110. The Defendant said that Mr Tennent told him that he had reported matters to the police in Florida, who had declined to investigate. He said that following the publication of Mr Tennent's account on 14 June 2020, he started receiving messages from other models who said that 'they too had experienced problematic, inappropriate and in some cases abusive behaviour from [the Claimant] in connection with work.'

111. He then gave examples of what he was told by these other informants in [23] of his statement. I am bound to say that none of these examples, as I read them, involved any allegation of rape by the Claimant of anyone, for example, [23.3]:

> "At around this time another model and performer Camilo Brown, contacted me over Twitter to report that Dominic had deleted their profile on JFF because a customer had paid with a fraudulent card, despite the fact it was not the model's fault but rather a security issue with the site;. a screenshot of part of that conversation is exhibited at [MS1/782]"

112. At [24] the Defendant said that Mr Tennent also messaged him with information about Justin Stone. As I have said, Mr Stone later retracted his allegations and acknowledged that they were untrue. In light of Mr Stone's assertion that he was encouraged by the Defendant and Mr Tennent to make his false allegations, it is only fair to quote the Defendant's response, at [29]:

> "The suggestion that I and Tannor somehow pressured Justin into speaking out is untrue and defamatory towards me, as is the suggestion that I was pursing some kind of personal vendetta against Dominic."

113. At [32] et seq of his witness statement the Defendant addressed each of the publications sued on by the Claimant. At [36] he said:

> "36. I believed, and still believe, that the allegation that Dominic raped Tannor is true. As detailed above, Tannor had already told me about this on 29 May 2020. He did not wish to publicise anything at that stage but instead just seemed to want emotional support. It was clear to me that he had been greatly impacted by what had happened to him. I believed that this was entirely consistent with someone who had genuinely suffered sexual assault."

114. In relation to his tweet of 15 June 2020 when he wrote 'Y'all think there's only two?! These boys are bravely speaking out and I will stand with them both till the end', he said at [40]:

> "I meant that there may well be more victims. I was wanting to encourage other potential victims to come forward and share their stories. By 'Corruption ends now', I was expressing my opinion that using a position of power and influence to have sex with models against their will is corrupt and that it should stop. When I said, "Just For Fans is does not deserve our trade" I was expressing my opinion that people should not support a company which is run by someone who has abused their position in relation to that company to carry out rape."

115. I will deal with the Defendant's evidence about some of his other publications later in this judgment.

116. The Defendant was then cross-examined by Mr de Wilde. He began by stressing that racism is important to him, especially as he is a person of colour. He also accepted that rape was a serious allegation which could have serious consequences for the person accused.

117. He was asked:

> "Q. MR DE WILDE: Just to bring these two topics together, the one I started with, racism in the industry, and the one we are on now, rape, you do accept, don't you, that whether or not someone is racist or allows racists on their platform, that does not give you a licence to make allegations to tens of thousands of people that they are a rapist, does it?
>
> A. So within our industry, we don't have a union facility, we don't have anyone to report to, we don't have higher-ups that we can address serious allegations and situations. In this circumstance Dominic is the higher-up and the person in the highest place of power. I cannot report above him. He is it. At the time he had no one else really -- (inaudible) if you spoke through Twitter, it was him. If you emailed, it was him. There was no HR section to report his behaviour to. So I had been in that industry for years, (inaudible) me, but, like everyone in that industry, if there is a problem, you tend to talk about it publicly, because you don't have any other way of truly communicating serious problems and this was one of those times where I felt it was necessary to support a friend after he had spoken up about these allegations of rape.
>
> …

MR DE WILDE: Does allowing somebody who you think is a racist on the platform give you a licence to call the person who allows that a rapist?

A. As I said before, they are separate allegations at the same time or in a similar timeline of events, so I called him a rapist -- I called -- Sorry, let me explain again. I came to him about the racist situation with him, like something that I felt he could address, and he had addressed other racists in the past, and chose not to and at the same time or several days in the background I was supporting a friend through a rape situation and that friend decided to be brave (inaudible). Excuse me, I will slow down. I remember the two instances together. They happened separately. There was never (inaudible) happened to be at a very similar time."

118. Later he was asked:

"Q. So you are only trying to prove there is one victim in these proceedings, that is right, Mr Reed?

A. Yes, after the court case that Dominic had with Justin and the public statement taking back his sexual assault claim of Dominic, I had no reason to continue to say that myself in person. If Justin does not want to pursue it, I'm not going to. I'm only there to help (inaudible).

Q. So there's just Mr Reed's case in truth and then you've got this other defence which is the section 4 defence or the public interest defence. Yes? And what that requires is that the person who made the allegations, that is you, must be able to show that they believed that making them was in the public interest. You understand that.

A. Yes.

Q. And what that means, the consequence of that for you, is that you have got to show the court that that belief was reasonable. You understand that as well, I think -- yes?

A. Yes.

Q. And you also accept, don't you, that that process of establishing reasonableness, that applies to each publication. There are 11 publications. You accept that it applies to each one?

A. Yes."

119. Mr de Wilde took the Defendant through each of the publications complained of, beginning with his re-tweet on 14 June 2020 of Mr Tennent's allegations, and the Defendant's own assertion that the Claimant had been 'Using your power as figure head in the industry to extort *models* & blackmail them into sex' (emphasis on the plural). The Defendant said his use of the plural was a 'typo', given that Mr Tennent had been the only complainant:

> "A. I am admitting that in my whole case I have definitely said 'models', but in this instance I promise you it (inaudible) it shouldn't be 'models', it should be 'model', because at this time I had no other information except what Tannor had given me and what my (inaudible) had given me. I believed (inaudible) timeline here, I do apologise, that Justin then came to speak to me as well (inaudible) as it happened."

120. There was then this:

> "MR JUSTICE JULIAN KNOWLES: … So, just on this first publication, which was the 14 June 2020, 'At the time I did not believe the claimant had raped multiple people', correct?
>
> A. But that changed.
>
> MR JUSTICE JULIAN KNOWLES: That changed, yes, sure. Thank you."

121. There was evidence about a private exchange between the Claimant and the Defendant on 14 June 2020, which appears initially to have been about the Daniel issue, and the Defendant's wish to leave the Website, and then segued into the Defendant's allegations about sexual assault and bribery following the publication of the first Tweet later on 14 June 2020:

> "[14/06/2020, 15:56:46] Dominic Ford: While rash, you do what you need to. You've asked me about Daniel and I have promised to take a look. And I've said if it just looks like a personal vendetta I'm not going near it. I think that's more than fair. And if someone asked me to cancel you, you should hope I'd apply the same rules to them. I'm doing everything I can every day to support my models of color and support BLM. But everything I do needs to be fully vetted and not just because a model threatens to leave my site. Because those threats come every day. Daniel certainly sounds like a serious case. Others are not. And I need to look at them all carefully and not just push the 'cancel' button ever morning when I get messages like yours. I hope if you're going to leave JFF you'll also leave OF, who haven't even talked to you. But how hypocritical

will it be if they do nothing and you stay with them, when likely we are going to remove Daniel. I just need to make sure the reasons are justifiable. I'm sorry if you don't understand that, but it's the process that needs to be followed to ensure things aren't done in a whim.

[14/06/2020, 16:03:29] Mickey: Trust me. Everyone I will leave or not work for. As I showed u with Fabscout. This is about standing up for myself and PoC n what's right. Nothing selfish about it. Ive notified my JFF page. And Ronnie will be doing the same after work. Let me know nextweek when it's closed and funds are emptied. Other than that, you and my selfish self have nothing to say further to you.

[14/06/2020, 16:04:44] Dominic Ford: I think you've really misrepresented or misunderstood our conversation.

[14/06/2020, 16:07:23] Dominic Ford: I should have been like OF and not engage in a dialogue explaining the process. But I thought talking through the issues was good. Clearly I was wrong. Next time I just won't respond until I have a definitive yes or no answer.

[14/06/2020, 16:51:18] Dominic Ford: What the hell are you talking about? Sexual assault?

[14/06/2020, 16:51:32] Dominic Ford: Are you making stuff up now?

[14/06/2020, 16:55:53] Mickey: Not at all. Soon as I tweeted my statement a model friend came forward. So don't act high and mighty with me. I'm appalled at you right now.

[14/06/2020, 16:56:13] Dominic Ford: I have no idea what you are talking about. Seriously. Bribe? Nope.

[14/06/2020, 16:56:38] Mickey: But not gonna deny the Assault no?

[14/06/2020, 16:56:55] Dominic Ford: Assault or bribe. I have no knowledge of either.

[14/06/2020, 16:59:27] Mickey: Sure jan.

[14/06/2020, 17:00:02] Dominic Ford: Look, you can have your issues with me right now, and that's fine. But I am telling you I have no clue what you are talking about.

> [14/06/2020, 17:02:09] Mickey: Leave me alone. Your trash. I stand with my sisters. Fucking vendetta. Looks like yours is power of twinks."

122. The exchange ended:

> "[14/06/2020, 18:04:18] Dominic Ford: You really need to figure out who your enemies are.
>
> [14/06/2020, 18:05:47] Mickey: Get fucked rapist"

123. He was asked about Justin Stone's allegations and his contact with him:

> "No, most of my witness statement does not deal with instances with Justi[n] Stone. As I said a minute, ago, he has retracted his statement. There is no reason to continue.
>
> …
>
> Q. … within a couple of months you had actually told the claimant's lawyers that Justin was unstable and had mental health issues.
>
> A. Yes.
>
> Q. Now, when you quickly added him to your list of victims for the purposes of your publications, you ignored all of these doubts about his credibility, that is right?
>
> A. Yes.
>
> …
>
> Q. But, again, I just want to give you a chance to comment on this, because this is going to be the claimant's submission at the conclusion of this case, that that message you sent him, given all of the circumstances we have just rehearsed together, was highly, highly manipulative of him.
>
> A. Of me or of him?
>
> Q. No, you are manipulating him. Do you agree with that?
>
> A. No.
>
> Q. And it's not actually consistent with supporting victims, it is much more like you are shaping the narrative here and driving the narrative forwards, do you accept that?

A. No, because in that message I clearly say, "I want you to know I believe you both. You two are not the only people with the same story focused (inaudible)". So I am sat there at the beginning, at the very beginning of that message, going "I believe you and I hope you're okay and, although you have not been arrested", the chatline in there, I do, like have more of it before and after this and in WhatsApp messages. A lot of that conversation was the care of him."

124. He was asked about public interest:

"Q. And, again, a final question, I have to ask this question. It was not reasonable in all of the circumstances that we have discussed to believe that this was in the public interest, was it?

A. Yes, this was the public interest. That is why I put all of this. The public needed to know and the industry needed to know."

125. The Defendant was asked about a third potential rape complainant (in connection with the complained-of tweets which referenced there having been more than two):

"Q. I will just give you a chance to respond to this because the conclusion that we will ask the court to draw is that you haven't given me any detail about this third person, because you know that there is no third person and it's not true and that, if you did give detail, there would be a good chance of the claimant disproving any detail that you gave.

A. No, I don't agree with that. There is a third person and I didn't take it up. I think that was me rather (inaudible) and also, like, highly wrong for me to do. It doesn't serve me any purpose. Like, this whole situation episode (inaudible). At the end of the day I lost my job, I lost 45 per cent of my income speaking out against Dominic. If I genuinely didn't believe what happened to these boys happened, I never would have sacrificed everything I had. I lost my home over this situation, trying to make sure that these boys' voices are heard. If I didn't believe what was happening, I never would have gone that far and I certainly wouldn't be here now, I would have given in ages ago and settled, but I believed Tannor and I believed Justin and I will carry on, hopefully, believing him.

Q. You accept that what you say here is a very serious allegation, he raped three people.

A. Yes.

Q. And you say in your witness statement that what you meant was that it is an expression of opinion, to the effect that you weren't being dramatic.

A. Yes.

Q. But you do accept that it is an obvious interpretation, the most obvious one, that it's simply an allegation that he did commit three rapes.

A. Yes, I'm making an allegation that he raped, yes.

Q. And this is another one where you haven't given any specific evidence and you considered publishing was in the public interest.

A. Sorry, say that again.

Q. You haven't given any evidence in your statement about the specific public interest in this tweet.

A. No, I don't believe so, no.

Q. And that's because you didn't consider that issue at the time.

A. No, I did consider public interest. As I said before, anything said about this rape is a public interest story. That is why in my witness statement I have not said in every other paragraph 'This is a public interest, this is a public interest'. The full consensus of my witness statement is a public interest."

126. The Defendant's witness Frederic Eustace (his birth name) was then interposed by video link. In his witness statement he said that he received a message via the dating app 'Grindr' from someone he believed to be the Claimant (because it referred to the sender being the founder of JustForFans) which read:

> "Hey remember me cutie. Just remember I can help promote your page if you are willing to return the favour."

127. He understood this message to mean that the sender would set him up with an account and promote it for free if Mr Eustace slept with him. He did not reply to the message. In [7] of his witness statement he said:

> "I know Marcus through my work in the industry. In the past he helped me set up an only fans account and we were also involved in doing promotion for Just for Fans. When

> Marcus started to talk publicly about Dominic's inappropriate behaviour this resonated with my experience and I therefore messaged Marcus on 14 June 2020 at 21:09 saying, 'Dominic has always given me the creeps. I've had grindr messages off him saying he'd set me up with an account and promote it for free if I slept with him.'

128. In cross-examination he admitted that he did not have the original message which had been deleted. He denied his account was dishonest or exaggerated.

129. The Defendant resumed giving evidence the following day. He confirmed that consent forms related to filming and were not required for films for purely private use (see Title 18 USC s 2257):

> "MR DE WILDE: It is a matter of law in the United States that, where adults are creating and sharing sexually explicit images between themselves for private purposes, 2257 does not apply. Do you accept that?
>
> A Yes, correct."

130. Mr de Wilde's final topic was the YouTube video. Before turning to that, there was this exchange:

> "Q. So we are going to pause with the publications before going back to the final one which is much later on YouTube. Now, at around this time, so if I could ask you to go to p.640 in the bundle -- Mr Reed was starting to express doubts about his allegations at this point. Do you accept that ?
>
> A. Yes, I can accept that.
>
> Q. Well, let's focus in and let me try and help you, Mr Stones. So left-hand punch hole, 21:37:24, the bottom punch hole, rather,
>
>> 'I'm really uncomfortable with the word rape. I don't think I was raped. He didn't hold me down and force anything violently. But I didn't give consent either. I just stopped saying no.'
>
> So at least he is now saying that he is uncomfortable with the word "rape". You accept that?
>
> A. So, just for context, Tanner was uncomfortable with the word "rape" because he felt like it had to be an extremely physical and brutish act. I mean, that is why he thought it was not considered rape. And we had a conversation about this and I had to kind of let him know

> that rape does not have to be physically aggressive. It just has to be if you said "no" and he continued. It is not so much that he is uncomfortable with the word "rape", that he thinks he was raped or not. It is that he feels he is trying to figure out, like, what kind of sexual assault this was at the time.
>
> Q. So I think we can agree then that he is expressing uncertainty about the kind of allegation that he is making? Is that a yes?
>
> A. It is more a feeling of, like, 'Can I use that word if it was not aggressive?' That is what he is saying here. It is not so much that he denied or think that it did not happen at all. It was, 'Do I call it rape or do I call it sexual assault ?'"

131. Turning to the YouTube video, the Defendant admitted that it was abusive, and accepted that he had linked to it via his Twitter account to his 144,000 followers.

132. At the end of cross-examination, there was this exchange:

> "Q. MR DE WILDE: And you didn't certainly at the time when you published on 14 June, you didn't have evidence then of multiple victims.
>
> A. Again, I'm not a rape victim.
>
> Q. You had plenty of reasons to doubt Mr Reed's story and Mr Stone's story.
>
> A. Not Mr Reed's, never."

133. There was then this:

> "Q. Your defence in these proceedings is now that Mr Reed was raped on two occasions, that is right, that is your defence?
>
> A. Yes.
>
> Q. And you've watched the video which relates to the second occasion, have you?
>
> A. Partly, not all, it's a very hard thing to watch. Of course, we will have to watch it, but, yes, I have seen it for a short time, yes.

Q. Do you accept that there is no reasonable interpretation of that video to the effect that it shows a rape taking place?

A. I see a young person saying 'no' repeatedly, whilst someone continues. I would deem that as rape, yes."

134. There was this important series of questions and answers:

> "Q. And then, finally, on the issue of multiple victims, there is no evidence today that there are multiple victims, is there?
>
> A. Not (inaudible) no.
>
> [As to this answer, my note suggests the inaudible part was the witness saying, 'I am not a forensic examiner']
>
> Q. You have not apologised, retracted or made any attempt to remedy the harm caused by that allegation, have you?
>
> A. That is not true. Throughout conversations in the last couple of years, when I tried to mediate with you and I offered to delete everything and sign a gag and apologise, I said the one thing I wouldn't take back though is my feelings on the truth of Tannor's statement. So I would refer to yourself in those conversations.
>
> Q. Have you made any public acknowledgement of the fact that there are not multiple victims?
>
> A. Say it again.
>
> Q. Have you publicly stated that there are not multiple victims?
>
> A. No, because I don't have a platform anymore. I am a teacher now. I'm not a voice for (inaudible)
>
> Q. Do you want to apologise for that now and make clear to the court that you accept that there are not multiple victims?
>
> A. To this day, I still believe Tannor. I will happily, as I have said numerous times in our conversations, retract my statement on Justin Stone. I have always been happy to do so. Ever since he tried to attack us publicly, there is no point in me to support someone that is going to take (inaudible) himself. I am more than happy to apologise for that one. However, the third person who I will keep

> anonymous, and will stay anonymous unless they choose to come forward in the future is one I will not apologise for, because I still do believe that person. But I will happily, as I have said, I will retract my statement for Justin, apologise for that and never speak on it again, as I have tried to mediate several times. (inaudible)"

135. The Defendant's last witness was Cooper Tennent who, as I have explained, was almost invariably referred to in the evidence as Tannor Reed, but who now wishes to disassociate himself from that name.

136. At the time of making his statement in or around November 2022 Mr Tennent was 24 years old. He was a college student. He started working in the adult entertainment industry around the beginning of 2019. He first came into contact with the Claimant, whom he knew as 'Dominic', around this time when they exchanged messages on Twitter account in friendly terms. (In his statement Mr Tennent said that the Claimant had messaged him first; in his oral evidence he accepted it was he who initiated contact). He accepted that in these exchanges he had been flirting and seeking to cultivate a relationship with the Claimant. Mr Tennent was already using the Website when contact began, posting pornographic content.

137. In the spring of 2019 Mr Tennent was preparing to go to an industry event in Palm Springs. Around the same time he ran into trouble with his college. The police became involved. The Claimant offered to help with legal fees. In return, he asked Mr Tennent to use the Website exclusively, and suggested that he would either pay upfront the attorney fees or deduct them from his future earnings.

138. In the lead up to the Palm Springs event Mr Tennent flirted with the Claimant online, whom he said he was not particularly attracted to nor revolted by. He knew the Claimant had a lot of influence in the industry.

139. Mr Tennent 'hooked up with', ie, had sex with, the Claimant in Palm Springs. He said he did not especially enjoy it, but that it was consensual and he did it to advance his career.

140. Turning to events in Miami in May 2019, Mr Tennent said this at [8] of his statement:

> "Dominic and I maintained contact over social media after [Palm Springs] and the next time I met him was in May 2019 at Xbiz in Miami … In the lead up to the event Dominic and I were flirting over text. On 28 May 2019 he sent me a message in which he wrote 'Get your hole ready for me' … I was feeling worn out because I had been performing the previous day. I therefore sent him a suggestive emogy while indicating that I was tired saying 'we'll see what we can do'."

141. In his statement Mr Tennent passed over events during the day of 28 May 2019, the day he arrived in Miami, and went straight into events of the evening and the row with the Claimant about Mr Tennent going off with the other man (who Mr Tennent said he did actually 'fancy'), and not the Claimant, after a group of them had gone out to a bar. In the end, the other model left Mr Tennent's room, and there was an angry exchange of texts between him and the Claimant. These were to the effect the Claimant felt that Mr Tennent had made a choice, and rejected him, and he was angry as a consequence.

142. Mr Tennent said he was terrified by the Claimant's reaction, and panicked. He regarded the Claimant as having been like a mentor to him who had helped him to start to find his way in the industry. He was scared what effect falling out with the Claimant might have on his career. There were numerous exchanges of texts that night, with Mr Tennent apologising to the Claimant and saying that he wanted to 'hook up' with him.

143. He said at [28] of his statement:

> "28. It was only many months later, partly with the help of therapy, that I realised how messed up Dominic's behaviour was – and that I hadn't done anything wrong by saying no. Dominic was around twice my age and was effectively my boss. I realise now that it was okay for me to say I didn't want to have sex with him. I shouldn't have been made to feel guilty and like I had to apologise or make excuses."

144. The following day, Mr Tennent said that he was keen to get back into the Claimant's good books, because he was worried about jeopardising his career. He said the Claimant apologised. Mr Tennent then helped the Claimant at his stall.

145. He then turned to filming with the 3D video camera later that day, and said this at [30]-[31]:

> "30. Later that day I agreed to film a scene with Dominic in his hotel room. I have viewed the video that Dominic recorded and refer it to this statement as CT3. I did my very best during this scene to create the impression, both for Dominic and the camera, of being really horny and into the scene. This is how porn works in my experience; you need to be good at acting, and at faking it. You need to make the other person feel desired enough to get hard and to make the audience really believe that your totally into it. That is why everyone involved needs to be extra careful to ensure that everyone is fully consenting to everything that happens.
>
> 31. I started the scene by kissing Dominic, and then sat on the bed and give him oral sex. We then both got into the

> bed and I gave him oral sex again. Even though I didn't particularly enjoy it, this was consensual. I had a bit of [nausea] and I think vomited a bit in my mouth. This happens to me sometimes and I think has more to do with my mental state than anything physical. Dominic's penis is not especially long and so even though he put his full length into my mouth, I wasn't really having to deep throat and I wasn't gagging. I went to the toilet to wipe away the mucus and came back a few moments later; I down played it for the Dominic and the camera and tried to make it seem sexy. I got back on the bed and gave Dominic a hand job for a few minutes, and then he indicated that he wanted to have anal sex. I rolled over onto my front and took off my jockstrap and he started having sex with me without a condom. I consented to this but it was quite painful as he was being fairly rough in the way he was penetrating me."

146. On the issue of consent from this point onwards, Mr Tennent said this (at [32]):

> "At some point while he was on top of me he told me to straighten my legs and he started penetrating me at an angle which was even more painful. I decided that I had had enough and wanted it to stop. I certainly did not want to continue having sex with Dominic in this position. I clearly communicated to Dominic that I no longer consented to having anal sex like this, and told him, 'hold on, no, no, no, this position no'. He paused for a few seconds, but instead of withdrawing, he carried on. He kept thrusting his penis into my anus, which was extremely painful. I just sort of froze up like a vegetable. Dominic is very heavy and had his full weight bearing on me so I so I felt trapped in the situation, and like I couldn't really move. I was in a lot of pain, and it felt really wrong inside. I tried again to make him stop telling him, 'I need a break soon', but again he just kept thrusting and grunting. He clearly heard me, because after carrying on for a while, he asked me if I needed a break. I said 'yes' and he finally stopped and got off me."

147. Mr Tennent then dealt with another occasion in Miami when he had sex with the Claimant. (He is unsure of the date, but it seems clear he is referring to events on 28 May 2019, the day they both arrived). He said at [33]:

> "On another occasion I remember being on the bed with Dominic. I am not entirely sure which day this was because we were in bed at the hotel on more than one occasion and this all happened several years ago. I previously posted a statement indicating that the incident I am now describing happened before by argument with

> Dominic regarding the other model. However I am far less sure about that now. What I remember is that Dominic wanted to have anal sex. I was feeling sore and I didn't want to, especially given that the way Dominic has sex is quite rough. I made an excuse to get out of the situation and said I needed to check myself. I went to the bathroom and then came back to the bed and indicated that anal sex wasn't possible. I was anxious because I wanted to please him and to be on good terms, but I thought maybe I could just give him a hand job or something instead. I remember laying on the bed and him grinding up against me. I remember him saying 'only the head, come on, its not even that big'. I remember telling him 'no'. I said no several times, but he eventually inserted his penis into my anus anyway. I don't think he was wearing a condom. I didn't resist and just zoned out like a vegetable, like the time I asked him to stop and he didn't. I don't remember very much about what happened after that. But at some point he stopped, either because he finished or because I wasn't responsive."

148. After the Miami event Mr Tennent said that 'despite what happened I made a strong effort to stay on good terms with Dominic'. He said he did his best to ignore what had happened. Later, he began to feel anxious and depressed and unmotivated, which he attributed to the alleged assault. He began therapy sessions.

149. Mr Tennent met the Defendant in 2019 and they struck up a friendship and spent time together. He concluded his statement at [40] as follows:

> "40. On 14 June 2020 I was having a text conversation with Marcus over WhatsApp. He told me that he was considering leaving JustForFans because Dominic was not taking his concerns about racism seriously, and he spoke out against Dominic. This gave me confidence to tell my story about being raped at Xbiz. I therefore sent a statement to Marcus and then published a similar statement on Twitter the same evening. Marcus never pressured me into making up anything. It was me that disclosed my story to him. Marcus gave me the courage to come forward and speak out about my own true experience."

150. In his examination in chief Mr Tennent expanded on some of that which he had described in his statement. He said the first time he met the Claimant in Miami in May 2019 they were in the Claimant's hotel room. He was tired because he had been filming the day before. He said he did not want to have sex:

> "A. … and in addition to not wanting to engage in anal, with Dominic in particular, I tried to tell him that I wasn't

prepared and by prepared I mean I had not anally douched, which I believe we have talked about.

… And for me when I say during sex that I am not prepared in that sense and I haven't douched, it means, like, I'm saying that as it is not going to happen. I'm not going to douche now. I'm not going to start preparing, this is not the time. And I believed that Dominic understood that, but he continued to ask me if we could do anal and I said -- I continued to reiterate that I had not prepared and he asked if I wanted to go to the bathroom to prepare or to check myself and I did go to the bathroom but it was not to check myself, I went and stood in the bathroom for about five minutes and composed myself. I didn't do any sort of checking and I came out of the bathroom and told him that I was not able to have anal sex because I was not prepared and something along the lines of 'my anus is dirty and I don't want to -- I can't do it'.

Q. Is that what you actually said, to your memory?

A. I can't remember.

Q. It's something to that effect?

A. Something to that effect, yes.

Q. And, once again, I thought he understood -- I believe he understood me. My memory is that he accepted that and was willing to do other things. And then we did some other things, hand jobs, I believe. I believe I gave him oral and then at one point we had moved to spooning or cuddling, I believe, and the head of his penis was pressed up against my anus and he said, 'It's not that big, it's okay, it's okay if you have not douched, because it probably won't cause an issue' because his member was that not large and then he penetrated me.

…

MR PRICE: Mr Tennent, and what happened at that point?

A I didn't know what to do. I had been telling him "no" and I thought he understood that I wasn't prepared for anal, both physically and mentally, because I feel we had discussed that I sometimes have trouble douching. It's just -- it's not the most fun experience to be certain and so anal, in particular, for me just overall is not always a super enjoyable experience and so I thought he understood that, but he penetrated me without me giving any sort of

> consent and at that point I just went rigid. I just became a vegetable and my memory goes really dark at that point."

151. He then went on to describe falling out with the Claimant over the other model. He then moved onto the filming episode on 29 May with the 3D camera. He said that had not wanted to have sex with the Claimant. His account was:

> "A. So he had asked me at several points to make content with him with this camera and I didn't want to but, especially, on the second day after the previous night, when he was asking again, I didn't feel like I could say "no", because I saw the previous night what happened when I said "no", and so at some point in that day we ended up filming content with the 3D camera and during that filming we began kissing and doing some things off of the bed I believe and I was giving him oral and, while I was giving him oral, I was throwing up in my mouth, because I was doing something that I did not want to do and I was gagging. And we were on camera, so I had to -- you know, act like that was not the case. I believe I said something like, "Oh, I've got go and wipe my mouth". And then I came back and we continued and at some point we moved to anal and I believe my memory is that at first I consented to the anal, but then after several moments of doing it or maybe even -- yes, after he started to penetrate me, it was very painful because I was very tense, because I didn't want to be doing it and it was really hard to relax for something that I didn't want to do. So after several moments, I -- (pause) After several moments of him penetrating me, I told him to stop and I said -- I didn't say the word 'stop'. I believe I said 'No, no, no, hold on, this position, no'.
>
> Q. Hold on. 'I said no, no, no, not this position, no'.
>
> A. And he continued. And it was probably only about ten seconds, maybe more, because I was very rigid and like completely stiff and at a certain point -- I went stiff and then I said the 'No, no, no'. And I'm sorry, it's very hard to remember clearly. Just give me a moment. (pause) So, once I said 'No, no, no', he continued. That was -- I was telling him to stop by saying -- I didn't say 'stop' but that was -- I meant stop, because I was in pain and I no longer wanted to continue and, since we were on camera, I didn't want to show that, so I just said, 'Oh, hold on, no; this position, no', and then he continued until about ten or maybe 15 seconds later when I believed he realised that I was catatonic and asked -- or maybe he -- At one point he asked me if I was okay to continue and I said 'No' and he

> continued for maybe five to ten seconds and then stopped when I was no longer moving."

152. He went to describe how, after he resumed filming following Covid, he would have panic attacks and began to have therapy.

153. He was then cross-examined by Mr de Wilde.

154. He said he had first viewed the video in October 2022. Up until that point, his allegation of rape against the Claimant had related to the other incident in Miami. He was asked:

> "Q. And before you rewatched the videos this year, you did not believe that you had been raped by the claimant in that video on that occasion, did you?
>
> A. No, sir, I was unsure. So with my original statement, the one I posted to Twitter, when I was coming to terms with everything and realising that I wanted to come forward about it, I felt that there were multiple instances in Miami, but I could only be sure of one at the time and so that is all I wanted to say publicly."

155. Mr Tennent was then shown an exchange of messages with the Defendant in May 2021 (after the Claimant had started to threaten litigation) in which Mr Tennent said to the Defendant:

> "I don't know what video proof he is talking about. I assume he means videos of us having sex consensually."

156. Of this, Mr Tennent said to Mr de Wilde:

> "… because my memory at the time was that there was no video of the instances that I remembered and there was just the one instance at that time that I was sure of and I wasn't sure of what had happened the rest of the time. So I wasn't sure what videos that was talking about."

157. There was then this exchange:

> "Q. Even in this very, very private -- we are all looking at this now in public, but at the time this was a private conversation between two people and, even in that very private context, you didn't feel able to raise the second allegation or any other allegation with the defendant?
>
> A. I didn't even feel able to think about it, to be honest. Yes.

> Q. So you didn't tell the defendant. You didn't tell anybody else about it either. We have looked at your therapist, your exchanges with your therapist, you didn't -- Again, that is a very private context but you didn't make any disclosure to her about the further allegations.
>
> A. I believe I discussed with her that my memories of the events were very hazy and I wasn't sure if there was more or not and, as I said before, I was only sure of the one at the time and so -- I've always been very hesitant to say that anything happened to me that didn't happen to me -- even to myself, so, yes, sir.
>
> Q. So, just to give you a chance to respond to this, because this is what we are going to say at the conclusion of this case----
>
> A. Okay.
>
> Q. -- there is no good explanation for you not having raised this before, this second allegation, because it's simply not true.
>
> A. No, sir, I disagree. I believe I had ample reason to not raise it because I wasn't ready to talk about it with people, because of my trauma surrounding the events.
>
> Q. So you were ready to talk publicly about one allegation but not about the other, that is your evidence, is it?
>
> A. Yes, sir, because I was certain of one of them and my mind was very hazy on the others.
>
> Q. Just so I am clear, the one that you are certain about was which one, the video incident?
>
> A. Not the video, the other one.
>
> Q. The other one.
>
> A. But now I'm certain of both, after much time and much reflection and further therapy."

158. Coming to events on what we now know to be the 28 May, Mr Tennent said:

> "… I had no intention of preparing for sex or checking if I was prepared for sex or even any knowledge of if I was, actually, prepared physically for sex, it was that I was not mentally prepared for sex."

159. Mr Tennent was asked:

> "Q. Before you made this witness statement, did you see the claimant's reply and its confidential schedule, so the document where the claimant sets out his case about what took place on 28 May?
>
> A. I believe so, yes.
>
> Q. Is it right that it was only after you read his accounts of you going to the bathroom and questioning whether or not you were clean, that you then introduced this element to your story?
>
> A. Yes, sir, because it was at that point that I remembered it. It was not that I saw the claimant's statement and then changed my story. I remembered because everything has been, as I said -
>
> … As I have said, everything has been very unclear and throughout the course of this trial I have remembered a lot, like the whole process, not just the trial."

160. Mr de Wilde then came back to 28/29 May:

> "Q. So turning now to the two incidents on 28 and 29 May, you're still flirting with the claimant at this point, aren't you?
>
> A. Yes, sir. As I've said before, I'm very flirtatious. It doesn't indicate anything. I flirt with everyone.
>
> Q. So you're saying before you meet up with him he sends you a message saying 'Get your hole ready' and you say 'Ooh' and send him the eyes emoji, is that right?
>
> A. Where is this -- but, yes, I believe so.
>
> Q. Yes.
>
> A. I would like to see it before I agree. But, yes, the 'ooh' and the eyes emoji I believe with the notice -- like with my----
>
> MR JUSTICE JULIAN KNOWLES: Well, let's just get the page, shall we?
>
> A. Yes, yes.
>
> MR DE WILDE: It's 1003, the middle of the page.

A. Yes.

Q. Do you accept that that is you showing an interest in sex?

A. No, I don't. I would say that this is me showing a lot less interest than I had before and I look at this and I see this is how I respond when I'm trying to not relate. But I never want to reject people or give them the impression that I'm not attracted to them or that I don't want to have sex with them. Like, I'm very flirtatious.

Q. So you are telling us about how you felt about this message, but you accept that it could have been understood otherwise by the claimant. It could have been understood that you were excited to see him and sexually excited?

A. Yes, I could accept that.

…

Q. Both before and -- well, before you told him that you weren't clean.

A. I would have indicated -- yes, I would have indicated that I was not clean and not prepared and that's not to say that - I, like, indicated that - not to say that I wanted to go prepared, but that meant I did not want to do anything else. Like, that's me saying "no sex".

Q. So it's a kind -- is it fair to say that it's a kind of an attempt on your part to send a signal to the claimant about whether you are wanting to have sex, is that right?

A. Yes, certainly. It's a negative signal and it was not received."

161. He was asked about the words which the Claimant had described as cliched:

"Q. And the claimant never said to you 'just the head', did he?

A. Yes, he did. I wouldn't make something like that up.

Q. Well, you heard his evidence that it sounds like corny porn dialogue and that's why he wouldn't say it.

> A. I agree that it sounds like corny porn dialogue which was why it was so horrible to hear it in -- [became upset] Could I have a break?
>
> …
>
> MR DE WILDE: So we are almost done with the 28th, just a couple more questions on that. I do need your answer to the point about the corny dialogue, because the claimant's case is that the reason it sounds like corny dialogue in your account is because you made it up.
>
> A. That's not true.
>
> Q. And you did not make clear to the claimant that you weren't consenting to sex.
>
> A. I was attempting to, to the best of my abilities.
>
> Q. And, in fact, there was no reason for the claimant to believe that you did not consent.
>
> A. I disagree. In almost all of the rest of my interactions with other people they have understood when I told them not, that it meant I did not want to have sex."

162. Regarding the video, Mr Tennent said that he had been 'acting up' for the camera, and that he had agreed to film in order to placate the Claimant in light of their row the night before:

> Q. And just now -- so the other allegation the following day, you offered to film with the claimant, that is right?
>
> A. I don't believe so, no. My memory is not making an offer, my memory is that he had asked about the 3D camera at several points on the first and the second day and after the argument the night before I was relenting and wanting to do what he wanted, so I didn't make an offer, I agreed to do it.
>
> …
>
> Q. The start of the first video, so, for example, you smile, you twirl around for the camera.
>
> A. Yes, that's me acting for the camera, because the cameras are on. I don't want to be there. All of the -- any joy that I express in the video is a show for the cameras.

Q. You didn't indicate in any way to the claimant that it was just a show to the cameras, did you?

A. No.

Q. So, quite the opposite, you are happy to be there, you kiss him passionately, that is right?

A. No, sir, in my experience in the industry we all know that you play it up for the camera and I believe he knew that as well -- or could have."

163. He was asked about the sexual activity shown on the video:

"Q. I will try to go through this quite quickly. You give him oral sex, that is right, at the start of the video?

A. Yes, sir.

Q. You both say to each other you've been wanting it, that is right?

A. Yes, but I was -- that was not something that I actually felt.

Q. But you didn't make that clear to the claimant.

A. No, because I was scared of what he was going to do if I didn't express interest in him constantly after the night before.

Q. And we've heard about the sequence that these films usually follow and that sequence ends with penetration and you can see penetration on the video.

A. You can, yes.

Q. And when that starts you are -- during that phase of the video initially, you are moaning and being enthusiastic, that is right?

A. Yes, sir, once again acting for the cameras.

Q. And you're saying things like 'Oh yes, damn'.

A. Yes, sir, once again acting for the cameras and, when I watched the video, I can hear in my voice, in my opinion -- when I say 'Oh damn', I hear my voice failing to continue acting. What's happening there is I'm really in pain, but because I'm on camera –

Q. There are two ‘damns’ so let's be clear.

A. Okay.

Q. You say ‘damn’ at the start of penetration and then you say it at the end of the video -- what can be seen in the first video. So which are we talking about now?

A. It would certainly apply to both. That was ‘Damn, this hurts’, but me trying to play it off for the cameras, like, ‘Damn, this is good’.”

164. On his use of the word ‘No’, and his alleged withdrawal of consent following penetration, Mr Tennent said this:

“Q. And just to deal with the disputed point in the video, penetration has taken place. Then you change position, that is right, just before this moment when you say consent is withdrawn.

A. Yes. That’s when I straighten out. I straighten my legs out, yes.

Q. And it's at that point that you say the words, ‘Hold on, this position, no’.

A. The words that I say in the video are ‘Hold on, no no no this position, no’. It's very clear.

Q. Well----

A. To me.

MR JUSTICE JULIAN KNOWLES: I say ‘Hold on, no no no’.

A. ‘This position no’.

Q. ‘This position no’.

A. That was me in a lot of pain asking to be stopped being fucked.

MR DE WILDE: So you don't -- it's very clear watching and listening to the video you don't repeatedly say “no”, do you?

A. I disagree. It's very clear that I say ‘no’ about four times.

Q. So is it your evidence that you say 'no', but it's not audible on the video?

A. No.

…

MR DE WILDE: And at the point at which you say the words which we don't agree on, what happens then is that the claimant stops moving immediately. That's right.

A. I can't recall.

Q. As soon as you say -- you raise the position, the question of the position, he stops moving and that's not the actions of someone who doesn't care about consent or even about your comfort, is it?

A. I don't recall the moment, so I couldn't say.

Q. He stops moving, you kiss; there's nothing non-consensual about the kissing, is there?

A. I would say 'no', because I do remember -- now that you have said the kissing, I remember the moment, he did pause to I believe give me a break and then kissed me and continued penetrating me

.

MR JUSTICE JULIAN KNOWLES: Sorry, the question was, was the kissing consensual and your answer is?

A. Yes.

Q. Yes, and then you added 'he broke for a time and then re-penetrated you'.

A. Yes. Well, he didn't -- he never took his penis out of me.

Q. Right.

A. And so he continued thrusting without asking if I was okay. And then after thrusting more, then he asked if I was good to continue because I was really solid, like a rock, and not responsive and so it took me being not responsive for him to actually ask if I was okay.

MR JUSTICE JULIAN KNOWLES: Yes.

…

Q And you say something else which is very hard to hear. It sounds a bit like, 'You're pounding it out' something like that.

A Yes, I agree it is hard to hear, but I agree it sounds like that. I agree that's my interpretation of the words and when I say that, when I say 'You're pounding it out', that's once again me acting it up for the camera. 'By pounding it out', I mean 'That hurts so fucking much, please stop'. But I said it in a way that, if we were going to end up posting this video, like it could be posted, you know, I wanted it to sound sexy.

…

MR DE WILDE: So you accept that you're saying something that could be understood as being an expression of enjoyment and pleasure even though you say now that's not what it was.

A. I don't say that now. I've always said that, but I suppose I could admit that it could have been interpreted as pleasure, but with me asking to stop, I don't think that the proper consideration was given to me.

Q. Well, what the claimant says after that is that he says the same thing, he says, "Do you need a break?"

A. Yes, after penetrating me, after thrusting into me again for several more moments, after I had already asked to stop, he only asked if I needed a break once I was no longer responsive.

Q. And it seems from the video that you don't hear that straightaway.

A. Yes, I agree.

Q. And he asks again whether you need a break and you say 'yes'.

A. Yes.

Q. And as soon as you say 'yes', he stops, that is right?

A. Yes, because this is after about ten seconds of non-consensual penetration.

> Q. And then you say 'Damn'. Again, is it your evidence that that is something that sounds like approval, that you didn't feel that at the time, is that right?
>
> A. I think it could sound like approval but "damn" is a really vague word and I think - "
>
> …
>
> Q. So, just before we leave this, I've got to do this before we leave this subject. You don't withdraw your consent at any time in this video.
>
> A. I disagree, I do withdraw my consent.
>
> Q. And you have to accept, in light of what you said about your acting, that there is no reason for the claimant to believe that you ceased to consent to penetration.
>
> A. I don't accept that. There was ample reason. And anyone with the proper consideration for the person they are with would have stopped."

165. Mr de Wilde then moved on to other videos in which Mr Tennent can be seen masturbating the Claimant whilst at times chatting 'happily' to him (a word he accepted). He said he was acting for the camera, but accepted this was consensual activity on his part.

166. After Miami, Mr Tennent agreed he had kept in friendly contact with the Claimant 'to keep up appearances'.

167. When Justin Stone made his allegations against the Claimant in 2019, Mr Tennent did not believe them and thought they were 'bullshit', but he agreed that he did not then come forward with his own allegations then because, he said, he was traumatised.

168. Similarly, at the beginning of January 2020 when Mr Tennent was in contact with the Defendant, and the Defendant brought up the topic of sexual abuse by industry figures, he agreed he had not brought up his allegations because he was not ready to talk about it.

169. Mr Tennent agreed that he had made his disclosure to a Mr Konnor in about May 2020, about a year after he said they had occurred. Mr Tennent went on to accept that he did not feel that he had been blackmailed by the Claimant.

170. Mr Tennent said that he had reported his alleged assault to the police in August 2020, but that after the most perfunctory consideration the police had declined to consider his case further on the grounds, they said (according to Mr Tennent), that no crime had been committed.

171. That was the end of the evidence.

Submissions

172. I had trial Skeleton Arguments and Closing Written Submissions from the parties. These were lengthy and detailed (Mr Price's Closing Submissions alone were 45 pages long). I have had to be selective in what I cover. Hence, the failure in this judgment to deal with a point does not mean that it has been overlooked.

173. On behalf of the Claimant, Mr de Wilde's principal submissions were as follows.

174. He invited me to accept the Claimant's evidence, which he said had been clear and consistent, both internally and with regard to the written evidence. He said the Claimant came across as a genuine, credible and honest witness, upon whose testimony I could rely with confidence. In contrast, he said that the Defendant had obviously been unreliable and had been unable to give a straight answer to a straight question, and therefore I could not rely on his evidence.

175. Mr de Wilde accepted that Mr Tennent had given emotive evidence which he had found difficult, but said that it had been unclear and lacking in consistency in relation to the central issue of consent. He said Mr Tennent may have been telling the truth as *he* believed it to be today, but that did not mean that his account of his allegations against the Claimant was one which was reliable or, objectively, true (Closing Submissions, [14]).

176. On meaning and the 20 June Tweet, Mr de Wilde said the hypothetical reasonable reader would have read between the lines and understood this to be grounds for suspecting the Claimant of rape (ie, *Chase* Level 2).

177. On serious harm, Mr de Wilde said the Claimant had obviously made out his case inferentially based on the seriousness of the accusations and the extent of publication.

178. On the truth defence, the Claimant submitted that the Defendant's case on multiple victims had collapsed because he had admitted that his case on truth only depended on Mr Tennent's accusations. As to those, the Claimant said I should find that the Defendant had failed to prove on a balance of probabilities that the Claimant raped Mr Tennent on either the 28 May or 29 May 2019. In particular, Mr Tennent had been unclear and inconsistent in relation to the key question of consent, and had had almost nothing to say about the Claimant's belief in consent. As a matter of principle, the nature of the evidence in this case is simply not such as could lead to liability for a serious allegation being established.

179. In relation to public interest, the Claimant submitted that the Defendant's s 4 defence failed in respect of each and every statement complained of because, in summary:

a. None of the statements were 'on' or 'formed part of' a statement on a matter of public interest such as to satisfy s 4(1)(a), and the Defendant had failed to establish that this was the case.

b. Even if they were, the Defendant did not believe that publishing the Second 15 June Tweet, the Fourth 15 June Tweet, the 18 June Tweet, the 20 June Tweet or the 28 June Tweet was in the public interest, such as to satisfy s 4(1)(b).

c. Even if the Defendant did believe that publishing these and/or the other statements complained of was in the public interest, that belief was not in all of the circumstances reasonable, such as to satisfy the third question arising under s 4.

180. On behalf of the Defendant Mr Price submitted as follows.

181. Regarding meaning, the Defendant accepted the Claimant's pleaded meanings except in relation to the 20 June Tweet, which Mr Price said meant no more than that the Claimant had engaged a lawyer who did not specialise in rape, but in licensing.

182. In relation to truth, the Defendant alleges truth in relation to the allegation that the Claimant abused his position to commit multiple rapes. Mr Price submitted that 'Mr Tennent's account of the two incidents is largely consistent with the Claimant's, except as to the matter [of] consent, suggesting his memory can be relied upon.'

183. It was submitted that Mr Tennent's accounts of the alleged rape on 28 May 2019 had been consistent from when he first started to report it in May 2020, first to Mr Konnor, and then to the Defendant.

184. Mr Price said there were a number of 'irreconcilable' differences between the Claimant's account and Mr Tennent's account of what occurred on 28 May, including whether or not Mr Tennent had said he was prepared for anal sex after returning from the bathroom or whether he had otherwise consented to anal sex. He submitted that I should prefer Mr Tennent's evidence and that, on the Claimant's own evidence, he could not have had a reasonable belief in consent.

185. Overall, Mr Price invited me to conclude that the Claimant penetrated Mr Tennent without his consent on 28 May 2018, and that he did not reasonably believe that he was consenting.

186. Regarding 29 May 2019, at [54] of the Closing Submissions, Mr Price set out his client's position:

> "Mr Tennent also performed a scene with C, which started out as consensual but became non-consensual. During the course of filming, while Mr Tennent was underneath C receiving penetrative anal sex, Mr Tennent made clear to C that he had withdrawn his consent and told C 'no no no

> this position no', but, after pausing for a few seconds, C continued to penetrate him."

187. At [85]-[86] (p27 of document) he argued:

> "84. C unreasonably claims that he understood Mr Tennent telling him 'no, no, no, hold on, this position no" meant that Mr Tennent was merely experiencing discomfort, not that he had withdrawn consent [witness statement, [73]-[74]). In court, C claimed that Mr Tennent's words should be interpreted as 'hold this position' and to give him time to 'relax' into the position (that is, that he should remain in position until Mr Tennent indicated he could continue). This is contradicted by C's own evidence in relation to the first incident on 28 May 2019: when questioned in court about that incident, C said, 'if he had said no, I wouldn't have done it, I did not.'
>
> 85. In this incident, Mr Tennent clearly did say 'no', a number of times, but here C claims it means something else. Mr Tennent does not say, 'Hold this position.' He says 'hold on, no no no, this position no'. It is not reasonable that 'no' means something different in the context of anal penetration taking place a day later … Mr Tennent's evidence and his words are clear."

188. It is clear that the Defendant's case therefore depends significantly on Mr Tennent having said 'no' several times.

189. Paragraphs 73-74 of the Claimant's witness statement said:

> "73. It is clear from the footage that, after Tannor expresses discomfort, I stop moving, and we start kissing. There are 12 seconds where I start moving again after stopping. It is not clear from the Video whether he slightly altered his position so he wasn't uncomfortable, or if he backed into me to try again, even if he had loosened up from us kissing, indicating maybe it wouldn't hurt this time. What is clear is that I stopped immediately when he said no, and, after kissing him, I appear to have received some physical indication that he wanted to try again. And then, as soon as I heard him say he wanted to take a break (and I confirmed that's what he said) I immediately got off him.
>
> 74. It is also clear that what is seen in the footage does not amount to rape, because what Tannor says goes no further than an expression of discomfort about our respective positions during a wholly consensual sexual encounter, which I immediately respond to by stopping moving, and

> then ultimately respond to by withdrawing. I cannot recall, but I think it is overwhelmingly likely that there was a physical cue we can't see in the video. Tannor does not say 'get out of me' or 'get off me'. And once we took a break he complimented me. We then filmed for a further 30 minutes without any indication of discomfort or upset on his part."

190. Mr Price made much of the absence of consent forms for the filming under USC Title 18 s 2257. There was no pleaded case or evidence about this (which I will return to), but Mr Price said (at [91]) that the Claimant was to be criticised for not obtaining Mr Tennent's consent to filming.

191. He also said that the Claimant's case misunderstood the nature of consent. At [98] under the heading 'General points about Mr Tennent's credibility' it is asserted that:

> "He has maintained a consistent story throughout (timing issues have nothing to do with consistency and both parties have consistent descriptions of the two incidents). That he was upfront when he had any uncertainty as to an issue of timing goes to his credibility and honesty, and does not detract from it."

192. In relation to public interest, Mr Price submitted at [101]:

> "D is not a professional journalist and was tweeting in a personal capacity. The publications complained, include a series of Tweets which were posted in quick succession as part of D's efforts to highlight allegations of rape and abuse by the Claimant, a powerful figure in the gay porn industry made by different performers. For the purposes of the public interest defence, it is submitted that – and it was D's evidence – he considered the public interest before he tweeted about this subject, and that all of the Tweets that followed were on the same subject of public interest."

The issues

193. It seems to me that the following issues fall for determination: (a) the meaning of the words complained of; (b) serious harm (s 1, DA 2003); (c) the defence of substantial truth (s 2); (d) the defence of publication on a matter of public interest (s 4); (e) (if I reach it) *quantum* of damages.

Discussion

194. Having earlier extensively set out the evidence, in this section I will discuss the relevant principles of law, set out my findings of fact and my conclusions on the issues arising.

Meaning

195. The common law test of what is defamatory is not controversial see eg, *Allen v Times Newspapers* [2019] EWHC 1235 (QB), [19]:

> "(1) At common law, a statement is defamatory of the claimant if, but only if, (a) it imputes conduct which would tend to lower the claimant in the estimation of right-thinking people generally, and (b) the imputation crosses the common law threshold of seriousness, which is that it "[substantially] affects in an adverse manner the attitude of other people towards him or has a tendency so to do": *Thornton v Telegraph Media Group Limited* [2010] EWHC 1414 (QB) [2011] 1 WLR 1985 [96] (Tugendhat J).
>
> (2) 'Although the word 'affects' in this formulation might suggest otherwise, it is not necessary to establish that the attitude of any individual person towards the claimant has in fact been adversely affected to a substantial extent, or at all. It is only necessary to prove that the meaning conveyed by the words has a tendency to cause such a consequence': *Lachaux v Independent Print Limited* [2015] EWHC 2242 (QB) [2016] QB 402 [15(5)]."

196. More recently, Warby LJ said in *Millett v Corbyn* [2021] EMLR 19**,** [9]:

> "At common law, a meaning is defamatory and therefore actionable if it satisfies two requirements. The first, known as 'the consensus requirement', is that the meaning must be one that 'tends to lower the claimant in the estimation of right-thinking people generally.' The Judge has to determine 'whether the behaviour or views that the offending statement attributes to a claimant are contrary to common, shared values of our society': *Monroe v Hopkins* [2017] 4 WLR 68 [51]. The second requirement is known as the 'threshold of seriousness'. To be defamatory, the imputation must be one that would tend to have a 'substantially adverse effect' on the way that people would treat the claimant: *Thornton v Telegraph Media Group Ltd* [2011] 1 WLR 1985 [98] ..."

197. In relation to meaning, the Court's function is to identify 'what is the natural and ordinary meaning of the [words], as it relates to the claimant': *Allen,* [39]. The principles to be applied are conveniently collected in the judgment of Nicklin J in *Koutsogiannis v The Random House Group Limited* [2020] 4 WLR 25, [11-13]:

> "11. The court's task is to determine the single natural and ordinary meaning of the words complained of, which is

the meaning that the hypothetical reasonable reader would understand the words bear. It is well recognised that there is an artificiality in this process because individual readers may understand words in different ways: *Slim v Daily Telegraph Ltd* [1968] 2 QB 157, 173d–e, per Lord Diplock.

12. The following key principles can be distilled from the authorities: see eg *Slim v Daily Telegraph Ltd*, at p 175f, *Charleston v News Group Newspapers Ltd* [1995] 2 AC 65, 70; *Gillick v Brook Advisory Centres* [2001] EWCA Civ 1263 at [7], *Charman v Orion Publishing Co Ltd* [2005] EWHC 2187 (QB) at [8]–[13], *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130 at [14], *Doyle v Smith* [2018] EWHC 2935 (QB) at [54]–[56], *Lord McAlpine of West Green v Bercow* [2013] EWHC 1342 (QB) at [66], *Simpson v MGN Ltd* [2016] EWCA Civ 772; [2016] EMLR 26, para 15, *Bukovsky v Crown Prosecution Service* [2017] EWCA 1529; [2018] 4 WLR 13, *Brown v Bower* [2017] EWHC 2637 (QB); [2017] 4 WLR 197, paras 10–16 and *Sube v News Group Newspapers Ltd* [2018] EWHC 1234 (QB) at [20]:

(i) The governing principle is reasonableness.

(ii) The intention of the publisher is irrelevant.

(iii) 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. A reader who always adopts a bad meaning where a less serious or non-defamatory meaning is available is not reasonable: s/he is avid for scandal. But always to adopt the less derogatory meaning would also be unreasonable: it would be naïve.

(iv) Over-elaborate analysis should be avoided and the court should certainly not take a too literal approach to the task.

(v) Consequently, a judge providing written reasons for conclusions on meaning should not fall into the trap of conducting too detailed an analysis of the various passages relied on by the respective parties.

(vi) Any meaning that emerges as the produce of some strained, or forced, or utterly unreasonable interpretation should be rejected.

(vii) It follows that it is not enough to say that by some person or another the words might be understood in a defamatory sense.

(viii) The publication must be read as a whole, and any 'bane and antidote' taken together. Sometimes, the context will clothe the words in a more serious defamatory meaning (for example the classic "rogues' gallery" case). In other cases, the context will weaken (even extinguish altogether) the defamatory meaning that the words would bear if they were read in isolation (eg bane and antidote cases).

(ix) In order to determine the natural and ordinary meaning of the statement of which the claimant complains, it is necessary to take into account the context in which it appeared and the mode of publication.

(x) No evidence, beyond publication complained of, is admissible in determining the natural and ordinary meaning.

(xi) The hypothetical reader is taken to be representative of those who would read the publication in question. The court can take judicial notice of facts which are common knowledge, but should beware of reliance on impressionistic assessments of the characteristics of a publication's readership.

(xii) Judges should have regard to the impression the article has made upon them themselves in considering what impact it would have made on the hypothetical reasonable reader.

(xiii) In determining the single meaning, the court is free to choose the correct meaning; it is not bound by the meanings advanced by the parties (save that it cannot find a meaning that is more injurious than the claimant's pleaded meaning).

13. As to the *Chase* levels of meaning, see *Brown v Bower* at para 17:

> 'They come from the decision of Brooke LJ in *Chase v News Group Newspapers Ltd* [2002] EWCA Civ 1772; [2003] EMLR 11, para 45 in

> which he identified three types of defamatory allegation: broadly, (1) the claimant is guilty of the act; (2) reasonable grounds to suspect that the claimant is guilty of the act; and (3) grounds to investigate whether the claimant has committed the act. In the lexicon of defamation, these have come to be known as the *Chase* levels. Reflecting the almost infinite capacity for subtle differences in meaning, they are not a straitjacket forcing the court to select one of these prescribed levels of meaning, but they are a helpful shorthand. In *Charman v Orion Publishing Group Ltd* [2005] EWHC 2187 (QB), for example, Gray J found a meaning of "cogent grounds to suspect" at para 58).'"

198. In this case, all of the meanings pleaded by the Claimant (save in respect of the 20 June Tweet), are agreed to be defamatory meanings, assessed by reference to these criteria (see ReAmDef, [9]).

199. I will deal in a moment with exactly what 'rape' means in this context, but for now it suffices to say that to call someone a rapist, let alone a serial rapist, is an allegation that they have committed a criminal offence, and so is obviously defamatory at common law.

200. The Claimant's case as to the meaning of the 20 June Tweet, which referred to him having a lawyer 'who doesn't deal in rape allegations but licensing law' is not admitted by the Defendant. To recap, the meaning pleaded by the Claimant is that this tweet meant that 'there were reasonable grounds to suspect the Claimant of rape', ie, a *Chase* level 2 meaning.

201. Mr Price submitted as follows in his Closing Submissions (at [8]) about the 20 June Tweet:

> "8. There is an issue in relation to the meaning of the tweet at PoC§13 (the 20 June Tweet). D submits that as a standalone statement, that tweet does not have the meaning pleaded. Throughout these proceedings C has insisted that each statement sued upon is to be taken isolation. In isolation, that tweet means no more than that C has engaged a lawyer who does not specialise in rape, but in licensing. Such a statement could link C to the issue of rape (and licensing) in any number of ways, including as a victim, an alleged perpetrator, or even as a concerned third party. C has not pleaded an innuendo, nor sought to rely on any of the other tweets as immediate context to the publication of the 20 June Tweet."

202. I reject this argument. The 20 June Tweet has to be read in context, and the reader would know or could easily discover that by 20 June the Claimant was being publicly accused by the Defendant of being a serial rapist. Thus, in my

judgment, the ordinary reasonable reader on Twitter would understand this to be an allegation of grounds to suspect the Claimant of rape because the Claimant was consulting a lawyer. The ordinary reasonable reader is able to read between the lines, and this is the obvious implication of referring to the Claimant's requirement for a lawyer who specialises in allegations of this kind.

203. At this point I need to come to the meaning of 'rape'. That is because the defamatory meanings pleaded by the Claimant involve the use of that word, and so the question arises how, applying the *Koutsogiannis* principles, the hypothetical reasonable reader would have understood this word in the context in which it was used by the Defendant?

204. For the purposes of English *criminal* law, the offence of rape in defined in s 1 of the Sexual Offences Act 2003:

> "1 Rape
>
> (1) A person (A) commits an offence if -
>
> (a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis,
>
> (b) B does not consent to the penetration, and
>
> (c) A does not reasonably believe that B consents.
>
> (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.
>
> (3) Sections 75 and 76 apply to an offence under this section.
>
> (4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life."

205. Neither side said I should slavishly follow this statutory definition. I think that is right because, per *Koutsogiannis*, [12(x)], no extrinsic evidence is admissible in order to determine meaning. Also, here, there are the complicating factors that what was said to constitute rape was committed by a US citizen in the US where, on the facts of this case, the Sexual Offences Act 2003 does not apply, and the law of rape there is no doubt different. I raised this issue during the hearing and received written submissions, however I have researched the matter for myself.

206. The key question, it seems to me, is whether the hypothetical reasonable reader would understand rape having as an element the absence of a reasonable belief by the alleged perpetrator that the complainant was not consenting, or whether it simply means that the perpetrator had intercourse with someone when they were

not consenting, irrespective of the perpetrator's state of mind and their belief about whether the complainant was consenting.

207. The reason this issue is important is because one possible conclusion on the evidence might be that Mr Tennent was not consenting to anal penetration on 28 and/or 29 May (on the second occasion, having initially consented to it, then withdrawn consent), but that the Claimant reasonably believed that he was consenting throughout.

208. To answer this question, it is necessary to go back to the Sexual Offences Act 1956, which was the predecessor legislation to the 2003 Act. In s 1 of the 1956 Act, the offence of rape was defined as follows:

> "1 Rape
>
> (1) It is felony for a man to rape a woman.
>
> (2) A man who induces a married woman to have sexual intercourse with him by impersonating her husband commits rape."

209. The word 'rape' itself was not defined in the 1956 Act, and neither was the mental element (*mens rea*) of that offence. (There were subsequent legislative amendments to the 1956 Act, including the substitution of a statutory definition of rape by s 1(1) of the Sexual Offences (Amendment) Act 1976, however I am not concerned with these.)

210. In *DPP v Morgan* [1976] AC 182 the defendant M invited the other three defendants, much younger men, to his house and suggested that they should have intercourse with his wife, telling them that she was 'kinky' and any apparent resistance on her part would be a mere pretence. Accordingly they did have intercourse with her despite her struggles and protests. They were subsequently charged with rape and also, together with M, with aiding and abetting rape.

211. The wife gave evidence that she resisted and did not consent. The three young defendants in their evidence said that they had believed what M had told them, that the wife had resisted at first but had later actively co-operated in the acts of intercourse.

212. The trial judge directed the jury that if they came to the conclusion that the wife did not consent but that the defendants believed, or might have believed, that she did, they should convict the three defendants if they were satisfied that they had no reasonable grounds for so believing. The defendants were convicted. The Court of Appeal dismissed their appeals, and they appealed to the House of Lords. The certified question of law of general public importance was as follows:

> "Whether in rape a defendant can properly be convicted notwithstanding that he in fact believed the woman

> consented if such belief was not based on reasonable grounds."

213. The majority of the House of Lords (Lord Simon of Glaisdale and Lord Edmund-Davies dissenting) held that when a defendant had had sexual intercourse with a woman without her consent, genuinely believing nevertheless that she did consent, he was not to be convicted of rape, even though the jury were satisfied that he had no reasonable grounds for so believing and, accordingly, the trial judge had misdirected the jury. However, the appeals were dismissed on the basis that the proviso to s 2(1) of the Criminal Appeal Act 1968 should be applied, since it was clear that the jury must have rejected the defendants' allegations of the wife's co-operation (in other words, they could not have believed, reasonably or not, that she was consenting) a version diametrically opposed to hers, and so would not have returned a different verdict even if they had been properly directed by the judge.

214. For present purposes, this passage from the speech of Lord Cross of Chelsea is the most helpful (at p203):

> "… section 1 of the Act of 1956 does not say that a man who has sexual intercourse with a woman who does not consent to it commits an offence; it says that a man who rapes a woman commits an offence. Rape is not a word in the use of which lawyers have a monopoly and the first question to be answered in this case, as I see it, is whether according to the ordinary use of the English language a man can be said to have committed rape if he believed that the woman was consenting to the intercourse and would not have attempted to have it but for this belief, whatever his grounds for so believing. I do not think that he can. Rape, to my mind, imports at least indifference as to the woman's consent. I think, moreover, that in this connection the ordinary man would distinguish between rape and bigamy. To the question whether a man who goes through a ceremony of marriage with a woman believing his wife to be dead, though she is not, commits bigamy, I think that he would reply "Yes, — but I suppose that the law contains an escape clause for bigamists who are not really to blame." On the other hand, to the question whether a man, who has intercourse with a woman believing that she is consenting to it, though she is not, commits rape, I think that he would reply "No. If he was grossly careless then he may deserve to be punished but not for rape." That being my view as to the meaning of the word "rape" in ordinary parlance, I next ask myself whether the law gives it a different meaning. There is very little English authority on the point but what there is — namely, the reported directions of several common law judges in the early and the middle years of the last century

> — accords with what I take to be the ordinary meaning of the word."

215. I do not consider there to be any meaningful distinction between Lord Cross's 'ordinary man' and the hypothetical reasonable reader referred to in *Koutsogiannis*. This passage therefore supports the contention that the word rape, in its ordinary meaning, imports a requirement of a lack of belief in consent on the part of the perpetrator, and not simply an absence of consent in fact on the part of the complainant.

216. *Morgan* was authority for the proposition that the perpetrator's genuine belief in consent, even if unreasonable, was sufficient to avoid conviction if the prosecution failed to negate it. Section 1(1)(c) of the 2003 Act therefore altered the law by inserting the requirement that the perpetrator's belief be reasonable; a genuinely held but unreasonable belief in consent will no longer suffice.

217. In light of this, applying the *Koutsogiannis* principles, in my judgment the hypothetical reasonable reader would understand the allegation of rape to mean (a) that the perpetrator had intercourse with someone who was not consenting and (b) whom they did not reasonably believe was consenting. I include the need for reasonableness because I consider that the modern hypothetical reasonable reader would not consider it unjust to find someone guilty of rape when they entertained an honest but wholly unreasonable belief in the complainant's consent when the complainant was not consenting.

218. Mr de Wilde contended for this approach: Closing Submissions, [24]:

> " … to defend the allegations as true, D must establish the substantial truth of both of the contentious elements of the offence: the Court must determine that there was an absence of consent, and, if there was, that C did not reasonably believe that Mr Reed consented."

219. Mr Price also said in his Closing Submissions at [20] that this should be the approach, and that the word rape includes an absence of reasonable belief in consent:

> "D proposes that for the purpose of his truth defence, C is to be taken to have committed rape if he is found to have engaged in penetrative sexual activity with Mr Tennent without Mr Tennent's consent, and without a reasonable belief in Mr Tennent's consent, to that activity."

220. It follows that, on the mental element of rape as it would be understood by the hypothetical reasonable reader, the Defendant must prove on a balance of probabilities: either (a) that the Claimant did not believe that Mr Tennent was consenting to penetrative sex throughout the act of penetration. If that is proved, then the offence of rape is made out; or (b) if an absence of belief by the Claimant is not proved, that any such belief was unreasonable. If that is proved then, again, the offence of rape is made out.

Standard of proof

221. The burden of proving the defence of truth lies on the Defendant. The standard of proof is the civil standard, ie, the balance of probabilities.

222. The proper approach to the standard of proof where the allegations are ones of criminal conduct was set out by Nicol J in *Depp II v News Group Newspapers Ltd* [2020] EWHC 2911 (QB), [40]-[44]:

> "40. As Defamation Act 2013 s.2(1) makes clear, it is for a defendant to prove that the libel was substantially true. The burden of proof therefore rests on the defendant. That was also the case when the common law defence of justification existed.
>
> 41. As for the standard of proof, the starting point is that these are civil proceedings and in civil proceedings the standard of proof is the balance of probabilities i.e. is it more probable than not that the article was substantially true in the meaning that it bore? In this case, is it more likely than not that the claimant did what the articles alleged? The common law knows only two standards of proof: beyond reasonable doubt (or, as it is now put, so that the decision maker is sure) which applies in criminal cases and certain other immaterial situations and the balance of probabilities (which applies in civil cases) – see *In re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563, 586. The 'balance of probabilities' simply means, as Lord Nichols said in *Re H,* that, 'a court is satisfied an event occurred if the court considers, on the evidence, the occurrence of the event was more likely than not.'
>
> 42. Although there is a single and unvarying standard of proof in civil proceedings, the evidence which is required to satisfy it may vary according to the circumstances. *In Re D* [2008] 1 WLR 1499 at [27] Lord Carswell approved what had been said by Richards LJ in *R (N) v Mental Health Review Tribunal (Northern Region)* [2006] QB 468 at [62] who had said,
>
> > 'Although there is a single civil *standard* of proof on the balance of probabilities, it is flexible in its *application*. In particular, the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment

> > to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities.' [emphasis in the original]
>
> 43. Simon J. also quoted the same comments by Richards LJ when considering the defence of justification in the course of his judgment on a libel claim – see *Hunt v Times Newspapers Ltd.* [2013] EWHC 1868 (QB). He said (at [76]),
>
> > 'Where the allegation is one of serious criminality (as here) clear evidence is required.'
>
> 44. Simon J's judgment concerned the common law, but neither party before me suggested that a different approach was required in this regard in consequence of the replacement of the common law defence of justification with the statutory defence of truth and see *Bokhova v Associated Newspapers Ltd* [2018] EWHC 2032 (QB), [2019] QB 861 at [28]."

223. Saini J pointed out in *Coker v Nwakanma* [2021] EWHC 1011 (QB), [14], that:

> "… the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities".

Serious harm

224. At common law, once the defamatory nature of a statement had been established in accordance with the principles I set out earlier, damage was presumed in the defamation claimant's favour. However, following the enactment of the DA 2013, a claimant must now also satisfy the serious harm requirements of s 1. The relevant principles have been set out in a number of cases, including recently in *Amersi v Leslie* [2023] EWHC 1368 (KB), [144]-[163], from which the following is gratefully adapted. The leading case is the Supreme Court's decision in *Lachaux v Independent Print Ltd* [2020] AC 612.

225. Whether the publication of the statement has caused or is likely to cause serious reputational harm is a matter of fact, 'which can be established only by reference to the impact which the statement is shown actually to have had. It depends on a combination of the inherent tendency of the words and their actual

impact on those to whom they were communicated': *Lachaux,* [14], per Lord Sumption.

226. In *Sivananthan v Vasikaran* [2023] EMLR 7 Collins Rice J set out some more principles in relation to serious harm:

> "[42] The 'harm' of defamation is the reputational damage caused in the minds of publishees, rather than any action they may take as a result. Nevertheless the existence, and seriousness, of reputational harm are factual questions, and facts must be established by evidence. The relevant facts *may* be established by evidencing specific instances of serious consequences inflicted on a claimant as a result of the reputational harm. But they do not always have to be.
>
> [43] Particularly where a general readership rather than identified publishees are involved, the test may also be satisfied by general inferences of fact, drawn from a combination of evidence about the meaning of the words, the situation of the claimant, the circumstances of publication and the inherent probabilities. Relevant factors may then include: the scale of publication of the statement complained of; whether the statement has come to the attention of at least one identifiable person who knew the claimant; whether it was likely to have come to the attention of others who either knew him or would come to know him in the future; and the gravity of the allegations themselves.
>
> [44] Aspects of the inferential evidential process have been explored in more detail in other leading cases. The well-established 'grapevine' or 'percolation' tendencies (*Slipper v BBC* [1991] 1 QB 283; *Cairns v Modi* [2013] 1 WLR 1015) of defamatory publications, particularly online and through social media, may in an appropriate case be factored into inference about scale of publication. Allowance may then be made for the inherent difficulties of identifying otherwise unknown publishees who thought less well of a claimant, since they are unlikely to identify themselves and share that with him. And the likely identity, as well as the numbers, of at least some of a class of publishees may be relevant to the assessment of harm, for example where some individuals may be particularly positioned to lose confidence in a claimant or take adverse action as a result. But these are highly fact-specific matters; the inferences which may properly be drawn in any individual case depend entirely on the circumstances of that case.

> [45] Section 1(1) uses the language of causation prominently ('*caused or is likely to cause*'). The 'serious harm' component of libel therefore contains an important causation element, as with any other tort or civil wrong. The starting point is that defendants are responsible only for harm to a claimant's reputation caused by the effect of each *statement* they publish in the minds of the readership of *that* statement. A claimant therefore has to establish a causal link between each item he sues on and serious harm to his reputation, actual or likely.
>
> [46] The causation element has a number of aspects of particular application to repeated statements. Since *each* publication must satisfy the serious harm test, it is not possible to aggregate or cumulate injury to reputation over a number of statements or publications in order to pass the serious harm threshold (*Sube v News Group Newspapers* [2018] 1 WLR 5767). If a statement has been repeated or republished *by a defendant*, and a claimant has elected to sue on a subset of those publications, he cannot rely on the effects of statements he has not sued on to establish harm caused by those he has (although they may be relevant to aggravation). Where multiple publishers have published the same statement, an individual defendant is responsible only where harm is caused by their own publication in the minds of their own readership. But at the same time, *if* such causation is established, it is not possible for a defendant to diminish the *seriousness* of the harm caused by pointing to the same publication by others, or else the claimant risks falling between the various stools (see the explanation of the so-called 'rule in *Dingle*' set out in *Wright v McCormack* [2021] EWHC 2671 (QB) from paragraph 149 onwards).

227. Even before the introduction of the new threshold requirement in s 1, assessment of harm to reputation was never just a 'numbers game': ‘one well-directed arrow [may] hit the bull's eye of reputation’ and cause more damage than indiscriminate firing: *King v Grundon* [2012] EWHC 2719 (QB), [40]. Publication to a relatively small number of publishees may yet cause very serious harm to reputation: *Sobrinho v Impresa Publishing SA* [2016] EMLR 12 [47]; *Dhir v Sadler* [2018] 4 WLR 1 [55(i)]; *Monir v Wood* [2018] EWHC 3525 (QB) [196].

228. It is well-recognised that a claimant may struggle to identify, or to produce evidence from, all those to whom an article was published and in whose eyes his reputation was damaged: *Doyle v Smith* [2019] EMLR 15, [122(iv)]; *Sobrinho*, [48]; *Ames v Spamhaus* [2015] 1 WLR 3409, [55]. In mass publication cases, it may also be invidious for a claimant to have to seek out those who substantially thought the less of him because of a defamatory publication and, often, it will

not be necessary to do so (because ultimately the evidence is likely to go to damages not liability). Whether a claimant can be expected to produce 'tangible evidence' of serious harm to reputation caused by a publication will depend on the circumstances of publication: *Ames*, [55].

229. In *Turley v Unite the Union* [2019] EWHC 3547 (QB), [107]-[109], Nicklin J summarised the relevant principles as follows:

> "107. This provision [ie, s 1, DA 2013] was considered by the Supreme Court in *Lachaux v Independent Print Ltd* [2019] 3 WLR 18. Although, the Supreme Court agreed with the ultimate decision of the Court of Appeal dismissing the defendant's appeal ([2018] QB 594), it disagreed with its reasoning and held that Warby J's analysis of the law, at first instance ([2016] QB 402), was 'coherent and correct, for substantially the reasons he gave' [20] per Lord Sumption. The Supreme Court held:
>
> i) s 1 raised the threshold of seriousness above the tendency of defamatory words to cause damage to reputation; the application of the test of serious harm must be determined "by reference to actual facts about its impact and not just to the meaning of the words" [12]-[13].
>
> ii) Reference to the situation where the statement 'has caused' serious harm is to the consequences of publication, and not the publication itself [14]:
>
>> "It points to some historic harm, which is shown to have actually occurred. This is a proposition of fact which can be established only by reference to the impact which the statement is shown actually to have had. It depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated."
>
> iii) Reference to the situation where the statement "is likely to cause" serious harm was not the synonym of "liable to cause" in the sense of the inherent tendency of defamatory words to cause damage to reputation: [14].
>
> iv) The conditions under s.1 must be established as facts [14] and 'necessarily calls for an investigation of the actual impact of the statement": [15]; a claimant must demonstrate as a fact that the harm caused by the publication complained of was serious [21].
>
> v) If serious harm could be demonstrated simply by the inherent tendency of statements to damage reputation,

little substantive change would have been effected by the Act [16]:

> "The main reason why harm which was less than 'serious' had given rise to liability before the Act was that damage to reputation was presumed from the words alone and might therefore be very different from any damage which could be established in fact. If, as Ms Page submits, the presumption still works in that way, then this anomaly has been carried through into the Act. Suppose that the words amount to a grave allegation against the claimant, but they are published to a small number of people, or to people none of whom believe it, or possibly to people among whom the claimant had no reputation to be harmed. The law's traditional answer is that these matters may mitigate damages but do not affect the defamatory character of the words. Yet it is plain that section 1 was intended to make them part of the test of the defamatory character of the statement."

vi) A claimant may produce evidence from publishees of the statement complained of about its impact on them, but his/her case does not necessarily fail for want of such evidence; inferences of fact as to the seriousness of harm done to reputation may be drawn from the evidence as a whole [21].

vii) In Mr Lachaux's case, the finding that serious harm had been proved was based on a combination of (a) the meaning of the words; (b) the situation of the claimant; (c) the circumstances of publication; and (d) the inherent probabilities.

viii) A judge's task is to evaluate the material before him/her and arrive at a conclusion, recognising that this is an issue on which precision will rarely be possible [21].

ix) The judge can consider the impact of the publication upon people who do not presently know the claimant but might get to know him/her in the future [25].

108. At first instance in *Lachaux*, Warby J expressed his conclusion on s1 as follows:

> '[65] In summary, my conclusion is that by section 1(1) of the 2013 Act Parliament intended to and did provide that a statement is not defamatory of a person unless it has caused or will probably cause

> serious harm to that person's reputation, these being matters that must be proved by the claimant on the balance of probabilities. The court is not confined, when deciding this question, to considering only the defamatory meaning of the words and the harmful tendency of that meaning. It may have regard to all the relevant circumstances, including evidence of what has actually happened after publication. Serious harm may be proved by inference, but the evidence may or may not justify such an inference.'

109. Finally, and consistently with Lord Sumption's analysis in *Lachaux*, there are three further relevant principles:

i) In an appropriate case, a Claimant can also rely upon the likely 'percolation' or 'grapevine effect' of defamatory publications, which has been 'immeasurably enhanced' by social media and modern methods of electronic communication: *Cairns v Modi* [2013] 1 WLR 1015 [26] per Lord Judge LCJ. In the memorable words of Bingham LJ in *Slipper v British Broadcasting Corporation* [1991] 1 QB 283, 300:

> '… the law would part company with the realities of life if it held that the damage caused by publication of a libel began and ended with publication to the original publishee. Defamatory statements are objectionable not least because of their propensity to percolate through underground channels and contaminate hidden springs.'

ii) It is well-recognised that a claimant may struggle to identify, or to produce evidence from, all those to whom an article was published and in whose eyes the claimant's reputation was damaged: *Doyle v Smith* [2019] EMLR 15 [122(iv)]; *Sobrinho v Impresa Publishing SA* [2016] EMLR 12 [48]; *Ames v Spamhaus* [2015] 1 WLR 3409 [55].

iii) Assessment of harm to reputation has never been just a 'numbers game':

> 'one well-directed arrow [may] hit the bull's eye of reputation" and cause more damage than indiscriminate firing': *King v Grundon* [2012] EWHC 2719 (QB) [40] per Sharp J. Very serious harm to reputation can be caused by publication to a relatively small number of publishees: *Sobrinho* [47]; *Dhir v Sadler* [2018] EWHC

2935 (QB) [55(i)]; *Monir v Wood* [2018] EWHC 3525 (QB) [196]."

230. The Claimant's case on serious harm was set out in his trial Skeleton Argument at [37]-[38]:

> "37. C's unchallenged case is that, as in *Lachaux* itself, there is a more than ample basis for the Court to find that serious harm to reputation has been proved based on (1) the meaning of the words; (2) the situation of the claimant; (3) the circumstances of publication; and (4) the inherent probabilities.
>
> (1) The meaning of the words is significantly more serious than the meaning in any of *Lachaux*, *Turley [v Unite the Union]* [2019] EWHC 3547 (QB), *Riley [v Murray* [2022] EMLR 8], or *Banks [v Cadwalladr* [2022] 1 WLR 5236]. Apart from alleging the commission of offences such as paedophilia or terrorism, there are few more serious offences to allege against a person than serial rape.
>
> (2) C is a prominent and well-known figure in both the UK and the USA in the industry in which the parties and witnesses work, who runs and is known to run the Website. Allegations of the kind made by D are particularly likely to harm someone in C's position.
>
> (3) The relevant circumstances of publication are:
>
> a. D published both the Tweets and the YouTube Video on his own Twitter feed. The majority of the Tweets were Tweets or Quote Tweets. D is based in the UK, the evidence is that the majority or a substantial proportion of his Twitter followers are here, and there was significant engagement with the Tweets, including within the jurisdiction.
>
> b. C's case is that even a very conservative estimate of the readership of each Tweet puts the relevant figure at over 10,000 readers (a number which is less than 10% of D's followers).
>
> c. To the extent that there is uncertainty about the extent of publication as a result of D's failure to preserve and/or disclose evidence, adverse inferences should be drawn against him.
>
> (4) The inherent probabilities surrounding the publication of an allegation of very serious wrongdoing to those who

> know or work in the same industry as the person who is its subject point very strongly to serious harm to reputation.
>
> 38. C further relies on the three additional principles identified in *Turley*, all of which are very well-established in the law of defamation. First, percolation of the allegations was all the more likely in this case because of their sensational quality and the nature of the medium on which they were published. Second, the reprehensible conduct alleged against C by D makes the ever-present difficulty in adducing evidence from those in whose eyes the claimant's reputation was damaged all the more acute. Those who believe C is a rapist are not likely to seek out any interaction with him, much less support his claim. Third, this is a case where numbers are not the crucial factor, given the extremely serious nature of the allegations, and the fact that many publishees can readily be inferred to have known the claimant."

231. The Claimant said that his case on serious harm had not been meaningfully challenged. A purely inferential case on this issue, where there was very substantial publication (including publication to those who knew the parties or worked in the industry and knew the Website) of the most serious allegations of criminal conduct, is one which is both perfectly permissible and logical. If anything, he said, the Defendant's evidence had only improved the Claimant's case, for example, by his acceptance of a large Twitter following.

232. I find for the Claimant on this issue. He has convincingly established his case that each of the Defendant's publications caused or was likely to cause him serious harm. That is because of (a) the extremely serious nature of: the allegation of serial rape of more than three people, the allegation of the rape of Mr Tennent, and the *Chase* Level 2 meaning that there were reasonable grounds to suspect the Claimant of rape. There can be few more serious allegations of criminal behaviour; (b) the related allegation that the context for the Claimant's rapes had been his position within the gay pornography industry, which he had abused, and which therefore exacerbated the seriousness of the Defendant's accusations; (c) the extensive nature of the publication to the Defendant's many thousands of Twitter followers; (d) the concrete evidence of the reaction of some of those who viewed the tweets; and (e) the Website's loss of revenue, as evidenced by the Claimant.

233. As to (d) and (e), in his witness statement the Claimant said this, which I accept:

> "57. As I explain above, the Defendant saw himself as a key figure in the Industry in the UK and this was reflected by his followers mainly being in this jurisdiction. He gave his location as 'Manchester, England' on his Twitter Account, which would inevitably be reflected in the location of Twitter users who follow him. My solicitors used a tool called FollowerWonk which analyses a Twitter

user's followers to separate each follower by location, gender, age and more, on the Defendant's Twitter Account. This site shows that, of the sample assessed, the majority of the Defendant's Twitter followers are based in England [JA1/031]. In addition to this significant basis for the inference that a large proportion, or the majority, of the Defendant's followers are in England and Wales, it is clear from individual responses to his publications that these came from this jurisdiction. In addition, there are many users which follow the Defendant who detail on their profile that they reside in different areas in England [JA1/032].

58. There are also many Twitter users who tweeted about the allegations circulated by the Defendant and, upon further investigation, it it is clear that a significant proportion of these users are based within different areas in England:

58.1. On 2 July 2020, a user named 'Stuart Bramford' responded to a third-party user informing him that the Website owner is a rapist. In his tweet he said 'Oh shit! Didn't know that. Won't be supporting anyone via that platform! Thanks for the heads up.' Upon searching this user, his Twitter profile clearly shows that he is based in Nottingham in England. [JA1/033]

58.2. On 15 June 2020, a user named 'BigDaveLondon' responded to the Defendant's tweet on 15 June 2020, detailing the rape allegation against me.
BigDaveLondon stated 'Thank you for sharing. Just goes to show why everyone should leave their platform'. This user's name suggests they are based in London. [JA1/034]
…

141. This damage to my professional profile through the Website is ongoing. There are currently still threads on Twitter detailing the Publications, warning individuals not to use the Website [JA1/069], [JA1/070] [JA1/071]. I would estimate on a conservative basis that the damage caused to my business by the Defendant has cost me over $15 million. I would not be surprised if the true nature of the damage was more in the region of $25-30 million, based on where we were projecting the Website to be, if we increased the number of female models closer to the number of male models.

142. Although all but one of the Publications have been deleted, without any recognition by the Defendant that they were false, and his insistence on repeating them

> during these proceedings, the harm I have suffered is still ongoing and impacts me up until the present day. As well as ruining my adult performing career, costing the Website millions of dollars, and affecting my personal life, my reputation is forever stained by the Defendant's need to bring me down at whatever cost, using others as pawns in his attack on me …"

234. The Claimant's statement also described the effect which he said the Defendant's publications had had on him emotionally and psychologically (at [128] et seq). I need to be cautious about how much weight I attach to this evidence, given the absence of any expert medical evidence to corroborate it, but I do accept as a general proposition that the Claimant would have found it very distressing to be publicly accused of serial rape.

235. It follows that, subject to the Defendant establishing one or more of the statutory defences he relies upon, the Claimant's case succeeds on each of the publications.

Defence: substantial truth (s 2, DA 2013)

236. As I have discussed, it is for the Defendant to prove by clear evidence on a balance of probabilities that the imputation carried by each of the publications complained of is substantially true. Minor inaccuracies in a publication will not deprive him of the benefit of the defence in relation to it: *Turcu v News Group Newspapers Ltd* [2005] EWHC 799 (QB), [105]; *Clarke v Taylor* (1836) 3 Scott 95.

237. There are eight publications alleging multiple or serial rape. This is the imputation carried by these publications for the purposes of s 2 of the DA 2013. They are: (a) the 14 June Tweet; (b) the First 15 June Tweet; (c) the Second 15 June Tweet; (d) the Third 15 June Tweet; (e) the Fourth 15 June Tweet; (f) the 18 June Tweet; (g) the 23 June Tweet; and (h) the 28 June Tweet.

238. The other three publications alleged rape (or reasonable grounds for suspecting, with regard to the 20 June Tweet) (as distinct from multiple rape). The imputation carried by these is therefore of a single incident of rape. These are: (a) the 20 June Tweet; (b) the 21 June Tweet; and (c) the YouTube video.

239. It follows from my discussion of the meaning of rape that the Defendant must prove to the requisite standard, where multiple rapes were alleged, that in respect of multiple victims, the Claimant penetrated them orally or anally whilst they did not consent and the Claimant did not have a reasonable belief that they were consenting.

240. In respect of the publications not alleging multiple rape, the Defendant must prove the same elements for a single complainant (that being Mr Tennent/Reed, where he is specifically named).

241. I begin with the imputations of multiple rape. It is clear from the evidence that I set out at length earlier that the Defendant was not able to advance a positive case of rape of any person other than Mr Tennent. He acknowledged his case rested on what Mr Tennent said had happened to him:

> "Q. So you are only trying to prove there is one victim in these proceedings, that is right, Mr Reed?
>
> A. Yes, after the court case that Dominic had with Justin and the public statement taking back his sexual assault claim of Dominic, I had no reason to continue to say that myself in person. If Justin does not want to pursue it, I'm not going to. I'm only there to help (inaudible)."

242. Hence, there was no evidence - let alone the necessary clear evidence – that the Claimant committed multiple rapes. Justin Stone retracted his allegations as untrue, the Defendant therefore did not pursue those allegations, and the reference by the Defendant to some unknown and unnamed third person is obviously not sufficient. It follows that the Defendant's defence of substantial truth fails in respect of the eight publications alleging multiple or serial rapes. Even if he succeeded in proving the rape of Mr Tennent, that would not prove the truth of the allegation in relation to multiple victims: see *Wakley v Cooke* (1849) 4 Ex 511, 516–517. General allegations of controlling or coercive behaviour by the Claimant of industry models will not suffice either (see ReAmDef at [11]).

243. I turn, then to the allegation that the Claimant raped Mr Tennent in Miami on 28 and 29 May 2019. In so doing, I need to bear some general principles in mind about how I should assess the evidence.

244. Firstly, I remind myself of the need to avoid stereotyping. In some jurisdictions (in particular in the US), evidence is admissible on the question of how victims of sex offences can react, and whether the complainant's reaction was consistent with them having been a victim of a sexual offence. This type of evidence is not admissible in England and Wales, but what judges do is give the jury appropriate warnings and guidance on the topic. In *D* [2008] EWCA Crim 2557 the Court of Appeal accepted that a judge may give appropriate directions to the jury in cases of alleged sexual offending to counter the risk of stereotypes and assumptions about sexual behaviour and reactions to non-consensual sexual conduct. In short, these were that (a) experience shows that people react differently to the trauma of a serious sexual assault, and that there is no one classic response; (b) some may complain immediately whilst others feel shame and shock and not complain for some time; and (c) a late complaint does not necessarily mean it is a false complaint.

245. This approach has been endorsed on numerous occasions by the Court of Appeal, as explained in *Miller* [2010] EWCA Crim 1528, [23]:

> "In recent years, the courts have increasingly been prepared to acknowledged the need for a direction that deals

> with what might be described as stereotypical assumptions about issues such as delay in reporting allegations of sexual crime and distress (see, for example, *R v MM* [2007] EWCA Crim 1558, *R v D* [2008] EWCA Crim 2557 and *R v Breeze* [2009] EWCA Crim 255."

246. I also bear in mind the points that Mr Price made by reference to the CPS's Guidance about discrepancies in the recollections of complainants in sex cases (Closing Submissions, [14]-[15]).

247. Second, I need to bear in mind the fallibility of human memory. The observations of Leggatt J (as he then was) in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm), [18]-[19], are relevant here:

> "18. Memory is especially unreliable when it comes to recalling past beliefs. Our memories of past beliefs are revised to make them more consistent with our present beliefs. Studies have also shown that memory is particularly vulnerable to interference and alteration when a person is presented with new information or suggestions about an event in circumstances where his or her memory of it is already weak due to the passage of time.
>
> 19. The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party or has a tie of loyalty (such as an employment relationship) to a party to the proceedings. Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at least not to prejudice, the party who has called the witness or that party's lawyers, as well as a natural desire to give a good impression in a public forum, can be significant motivating forces."

248. Leggatt J concluded at [22] that his scepticism as to the reliability of memory meant that the court should base 'factual findings on inferences drawn from the documentary evidence and known or probable facts'.

249. In *Prescott v The University of St Andrews* [2016] SCOH 3, Lord Petland referred to Leggatt J's observations, adding:

> "42. … The process of attempting to remember events in the distant past is an inherently fallible one; it is a process that is highly susceptible to error and inaccuracy. Our efforts to think back many years to recollect the details of past events are liable to be affected by numerous external influences; involvement in civil litigation can in itself

> operate as a significant influence … Having seen and heard the pursuer give evidence, I have come to the view that I must evaluate the reliability of his claimed recollections with caution. I have wherever possible, tested his evidence against the other evidence in the case and I have considered objectively where the probabilities lie."

250. I must also cite the often quoted words of Robert Goff LJ in *The Ocean Frost* [1985] 1 Lloyds Rep 1, 57:

> "Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, references to the witness' motives and to the overall probabilities can be of very great assistance to a Judge in ascertaining the truth."

251. This guidance is not limited to cases of fraud, but is of general application: see, eg, *Aspinall's Club Limited v Hui* [2023] EWHC 2036, [136].

252. Finally, and most recently, in *Spencer v Estate of John Mitchell Spencer (Deceased)* [2023] EWHC 2050 (Ch), Rajah J said at [35]:

> "35. A number of witnesses were called to give evidence of their recollection of events, conversations and beliefs in the past. Memory plays tricks on people. It is perfectly possible for an honest witness to have a firm memory of events which they believe to be true, but which in fact is not correct. There is now a considerable body of authority setting out the lessons of experience and science on this issue; see for example *The Ocean Frost* [1985] 1 Lloyd's Rep 1 at 57, *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3650, *Lachaux v Lachaux* [2017] EWHC 385, *Carmarthenshire County Council v Y* [2017] EWFC 36, *R(Dutta) v GMC* [2020] EWHC 1974. The approach I take to the assessment of the oral evidence is to weigh it in the context of the reliably established facts, including those to be distilled from contemporaneous documentation, the motives of the protagonists, the possible unreliability of human memory and ultimately, the inherent probabilities."

253. The third general point is that a witness's demeanour when giving evidence is not a reliable guide - and in fact is the least reliable guide - to whether their evidence is accurate. In short, there can be nervous truth-tellers, and confident liars. *R (Dutta) v General Medical Council* [2020] EWHC 1974 (Admin), [39]-[40] contains a useful synthesis of the principles which a judge should apply when making findings of fact.

254. It is important I mention this principle because both parties urged me to have regard to witnesses' demeanour in reaching my conclusions. For example, at several points Mr Price invited me to draw conclusions from, for example, the fact Mr Tennent became upset whilst giving evidence, which Mr Price suggested meant he was more likely to be telling the truth. Mr de Wilde made similar points about how the Claimant gave his evidence. I decline to draw any conclusions from how anyone gave their evidence. Demeanour is simply not a reliable guide to anything.

255. I begin with the alleged rape on 29 May 2019 when the Claimant and Mr Tennent were filming themselves As Mr de Wilde said, this case is unusual. In my experience rape is rarely caught on camera. I think it is a reasonable observation that the Claimant is less likely to have committed rape when he was recording himself, in footage which he then retained. This does not, of itself, mean he did not, but it points away from that fact.

256. I have carefully watched (and rewatched) the video in question and listened with care to the soundtrack. In doing so, I have borne in mind Mr Tennent's evidence that he was acting for the camera and to please the Claimant following their row the night before. The following is my assessment of what I can see and hear on the video.

257. The footage is shot in what looks to be a hotel room with the curtains drawn. It begins with Mr Tennent, dressed in a vest and shorts, doing a twirl. The Claimant is similarly dressed. The atmosphere appears relaxed.

258. The Claimant and Mr Tennent then begin kissing when they are both clothed. They remove their tops and continue kissing and fondling each other. They remove their shorts and both just have underwear on. Mr Tennent then sits on the bed and performs oral sex on the Claimant, during which he assists in undressing the Claimant so that he is naked. They move on to the bed, where there is further kissing, and at one point Mr Tennent is on top of the Claimant, moving his hips up and down the Claimant's genital area in order to stimulate him. So far as I can hear, at no point does the Claimant ask Mr Tennent to perform any particular activity.

259. At around 6:13 there is this exchange, whilst Mr Tennent is still on top of the Claimant:

> "Mr Tennent: I didn't think this was going to happen again.

> The Claimant: I've been wanting it.
>
> Mr Tennent (enthusiastically, throws his arms back): So have I !"

260. There is more kissing and then Mr Tennent initiates oral sex on the Claimant again. He then stops, coughs, and says, 'I'm licking all kinds of things from my face !' (at 7:52). He then goes to the bathroom, and appears to laugh out loud as he does so (although it is not wholly clear – he makes a noise of some sort). He says off-camera, 'I need to suck dick without doing that … Although people find it hot, don't they?' to which the Claimant replies, 'Yeah'. There is then a discussion about Mr Tennent having something in his mouth (I assume this is the 'vomit' incident which he referred to in his evidence). He is cheerful and does not appear to be revulsed or reluctant. He says something similar had happened when he was filming with another model - who he names - and says 'I choked myself to absolute death on his dick … I came up snotty, crying … It's gonna be a hot scene', to which the Claimant replies 'Yeah, he's very sexy'. Mr Tennent then says, 'With great dicks come great liquids', moves over to the bed, and begins to kiss the Claimant again (8:40). Mr Tennent still has his underwear on at this point. He begins to masturbate the Claimant.

261. At around 11:56 the Claimant kneels up and applies what I assume is lubricant to his penis. At this point Mr Tennent is lying on his front underneath the Claimant, still with his underwear on. He says, 'Shall I take this [possibly, 'these'] off ?', referring to his underwear. The Claimant replies, 'Yeah'. Mr Tennent does so, saying, 'All these straps …" (11:56). He then lies back down on his front.

262. The Claimant then anally penetrates Mr Tennent and says, 'There you go' (12:17). At around the same time there is a mild indistinct exclamation from Mr Tennent. The Claimant then has anal intercourse with Mr Tennent. There are noises and moaning – it is not possible to say exactly by whom or when, but these appear to be from both of them - during the act.

263. Mr Tennent then moves to more of a crouching position as the Claimant continues to have intercourse with him. Mr Tennent says, 'Oh yes !' (13:50). At 14:11 Mr Tennent says, 'That hurts'. The Claimant continues. At 14:18 Mr Tennent exclaims, 'Fuck!'. At 14:24 he says, 'Oh goddamn !' Mr Tennent lies back down on his front. The Claimant says (twice), 'Straighten your legs' (14:38). At 14:44 Mr Tennent says, on my hearing, 'This position, no.' (It was the Claimant's evidence that what Mr Tennent said was, 'Hold on, this position, no' – I myself cannot hear the 'Hold on', but I am prepared to accept it was said as it is, to some extent, against the Claimant's interests). Later I will deal with what Mr Tennent said he said at this point. I will call this 'the position comment'. The Claimant is motionless at that point, and there is then the sound of kissing (which Mr Tennent said in evidence was consensual).

264. The Claimant resumes thrusting (14:56). Mr Tennent says, 'I need a break soon' (15:02). The Claimant continues thrusting. Mr Tennent says, 'You're pounding it out' or 'You're really pounding it out' (15:07). After a couple of

seconds, the Claimant again stops moving. Something indistinct is said, but which sounds to me like the Claimant saying, 'You need a break?', and then he repeats it more clearly, to which Mr Tennent replies, 'Yes please'. The Claimant then immediately withdraws.

265. Mr Tennent then says, 'Could be worse …' (I understood from Mr Tennent's evidence this was a reference to the hygiene aspects of what they had just done: the Claimant's evidence was to the same effect (witness statement, [77]). The Claimant says something breathlessly which sounds like, 'No, you're good', and gets up from the bed as he does so (15:24).

266. Mr Tennent says, 'Damn!' in a way that suggests to me he means, 'Damn! That was good' (rather than, for example, 'Damn! That hurt'). The Claimant then comes towards the camera and turns it off; as he does so Mr Tennent (still on the bed) says 'Is it dirty ?' (15:29).

267. The following points strike me about this footage:

a. At no stage did the Claimant say or do anything which could be construed as force or coercion. For most of the recording Mr Tennent was – or seemed to be - a keen and enthusiastic participant who initiated kissing and oral sex without being asked.

b. Mr Tennent also volunteered, without being asked, to remove his underwear, despite the fact he must have known this was a precursor to anal intercourse, even though he said he was just seeking to placate the Claimant and acting up for the camera and that, '… I didn't want to be doing it [anal sex] and it was really hard to relax for something that I didn't want to do.'

c. At no point did Mr Tennent tell the Claimant in terms to stop anal intercourse. He accepted this in his evidence. He said, 'After several moments of him penetrating me, I told him to stop and I said -- I didn't say the word 'stop'. I believe I said, 'No, no, no, hold on, this position, no'". This was Mr Tennent's version of the position comment. Even after it, he followed it up 13 or so seconds later with, 'I need a break *soon*' (emphasis added). The use of the word 'soon' suggests to me that Mr Tennent was content *at that point* for the Claimant to continue having sex with him – and I think certainly could reasonably have been understood by the Claimant to mean that.

d. When Mr Tennent made the position comment, the Claimant immediately stopped moving (in fact, it appears he may already have stopped). This is not consistent with force or a knowledge of lack of consent.

e. When the Claimant asked Mr Tennent if he needed a break (twice), and he said he did, the Claimant immediately stopped having sex with him and withdrew, which again is inconsistent with the use of force.

f. Given it is Mr Tennent's evidence that he withdrew his consent no later than the point at which he made the position comment, I note that he did

not express any displeasure with the Claimant after that, eg, by asking him why he had carried on.

g. The tone of the interactions between them remained the same throughout. I would describe this as intimate and light-hearted, even slightly jokey (eg, Mr Tennent's initial twirl, and his comments, 'With great dicks come great liquids' and 'All these straps …', and his comment at the end, 'Could be worse …').

268. I have compared Mr Tennent's evidence about events in the hotel room with the video itself. In other words, I have compared his evidence against the contemporaneous documentation, as the authorities require me to. I have concluded that he was wrong in his recollection of some of what he said had occurred. The following are some examples.

269. In relation to the crucial position comment, Mr Tennent did not say (so far as I can hear), 'Hold on, no, no, no, this position no' or 'No, no, no, hold on, this position, no.' I cannot hear repeated 'nos'. As I hear it, with the Claimant's accepted addition, Mr Tennent said '[Hold on], this position, no'.

270. In view of the importance of the position comment as being the point at which Mr Tennent said he withdrew his consent – and intended to communicate that to the Claimant by his comment - and the emphasis placed on it by Mr Price, I have re-watched and listened with care a number of times to this portion of the recording. Whether or not 'Hold on' was said, all I am certain of is that Mr Tennent said, 'This position, no'. If this was preceded by 'no, no, no' then it is not clear to me from the recording, and I am unable to find on a balance of probabilities that it was said. The video is certainly not 'clear', as Mr Tennent claimed.

271. I am therefore unable to accept the assertion at [86] of the Defendant's Closing Submissions that, 'In this incident, Mr Tennent clearly did say 'no', a number of times …'. The Claimant's evidence at [72] of his witness statement, based upon his viewing of the video and his recollection, is that what Mr Tennent said was, 'Hold on, this position, no'. That is closer to what I can hear.

272. The Claimant did not use any words to the effect, 'Are you good to continue ?' It follows I cannot accept Mr Tennent's evidence that the Claimant asked that question because he realised Mr Tennent had become unresponsive, or was 'really solid, like a rock'.

273. At no point did Mr Tennent ask the Claimant to stop in unambiguous terms. As I have said, Mr Tennent accepted this.

274. Mr Tennent said 'no consideration' was given to him. That is Mr Tennent's subjective assessment, but it is clear that the Claimant asked him twice if he needed a break – Mr Tennent apparently not having heard him the first time - and when he said he did, the Claimant immediately discontinued sex and withdrew. I regard that as showing consideration for Mr Tennent.

275. Mr Tennent said he withdrew his consent at the point he made the position comment. In my judgment there are no clear or unambiguous external indicia to that effect shown on the video. Where it is clear, the audio track on the footage does not indicate that consent to penetration was withdrawn. ‘Hold on, this position, no’ is, to my mind, ambiguous.

276. Further videos show continued consensual sexual contact (kissing and masturbation) between the Claimant and Mr Tennent after the alleged rape. For example, HET_0006.mp4 shows Mr Tennent masturbating the Claimant to completion over about a 12 minute period, kissing him throughout. After the Claimant climaxes, Mr Tennent looks towards the camera and says, smiling, ‘Did you guys see that ? Fucking hot !’ This is flatly inconsistent with Mr Tennent’s evidence that at the conclusion of the first video, ‘I was not out to express my drama in that moment. I just wanted to get away from him.’ He did not try and get away from the Claimant, but instead stayed to continue their sexual encounter.

277. This second video is also hard to reconcile with Mr Tennent’s evidence that he had been rendered ‘catatonic’ (Cambridge Dictionary: ‘stiff and not moving or reacting, as if dead’) by being raped minutes before. I am unable to accept his explanation that his apparent happy enthusiasm was all just him play-acting in front of the camera.

278. From all of this, coupled with Mr Tennent’s evidence to Mr de Wilde that at least some of what he said could have been interpreted as approval or pleasure (and I conclude therefore could reasonably have been so interpreted by the Claimant), and Mr Tennent’s professed haziness of memory (which I will come back to), it follows that the Defendant has failed to prove on the balance of probabilities that the Claimant did not have a reasonable belief that Mr Tennent was a willing and consensual sexual partner throughout their encounter on 29 May, from first to last.

279. I come to the question whether Mr Tennent did, as a matter of fact, withdraw his consent, as he said he did. I find that the Defendant has not proved by clear evidence that consent was withdrawn by Mr Tennent at any stage. There is no evidence to support such a conclusion beyond Mr Tennent’s assertion, and as I have shown, his recollection of events is faulty in a number of respects.

280. There are other matters which have led me to reach this conclusion.

281. Firstly, the 29 May allegation did not emerge until late 2022, after Mr Tennent saw the video for the first time following its disclosure in these proceedings. The Claimant set out the sequence of events in his Trial Skeleton Argument at [42] (references are to the trial bundle):

> “42. The circumstances in which the 29 May allegation arose in the proceedings are that:
>
> (1) C referred to filming which took place with Mr Reed in his letter of claim dated 5 August 2020, [C/44/1217].

> (2) On 25 October 2022, D's solicitor sought inspection of the footage, which was provided to them the following day, 26 October 2022.
>
> (3) On 31 October 2022 D's solicitor emailed C's solicitor saying 'the footage quite clearly shows your client raping Mr Reed', [C/279/1495].
>
> (4) On 1 November 2022, D's solicitor emailed to say that 'Mr Reed's witness statement will most likely include an allegation that your client raped him… Mr Reed withdrew consent… and your client continued to penetrate Mr Reed without consent', [C/279/1496].
>
> (5) As a result of correspondence on C's behalf threatening to strike out the relevant parts of D's evidence, D amended the Schedule to his ReAmDef to include this allegation on 25 November 2022."

282. I again bear in mind what I said earlier about stereotypes. But Mr Tennent had been discussing 28 May with the Defendant for some time by late 2022, and I think it is reasonable to assume that he would at least have *mentioned* it to the Defendant, if it had happened. The evidence shows that over many months the Defendant and Mr Tennent had many full and frank intimate discussions about events in Miami.

283. Second, on 7 May 2021 when the Defendant and Mr Tennent were discussing the case, the Defendant having been served with the claim a few days before, Mr Tennent said (emphasis added):

> "[07/05/2021, 10:44:33] Tannor: I don't know what video proof he is talking about. *I assume he means videos of us having sex consensually*."

284. On its face, this statement is inconsistent with the suggestion that the Claimant raped Mr Tennent on 29 May 2019. It suggests the sex was consensual.

285. Next, Mr Tennent admitted in evidence that the comment, 'You're pounding it out' or 'You're really pounding it out' could have been interpreted as an expression of pleasure: '… I suppose I could admit that it could have been interpreted as pleasure'.

286. Overall, I agree with Mr de Wilde's submission that Mr Tennent's conduct before, during, and after the alleged rape on 29 May is inconsistent with either a withdrawal of consent by him, or a lack of reasonable belief by the Claimant that consent had been withdrawn.

287. In other words, given Mr Tennent's demonstrable inaccuracies of memory, I find that the Defendant has failed to discharge the burden of proving by clear

evidence either (a) that Mr Tennent did not consent; or (b) that the Claimant did not have a reasonable belief that Mr Tennent was consenting.

288. I turn to events on 28 May 2019. There is a fairly stark conflict of evidence here, in that the Claimant said that Mr Tennent did nothing to indicate he was not consenting, whereas Mr Tennent said that he did, both by pretending he was not properly prepared for anal sex, and by saying 'no'.

289. My view of 29 May impacts on my assessment of whether the Defendant has carried the burden of showing that the Claimant raped Mr Tennent on 28 May.

290. Firstly, there is the fact that Mr Tennent is wrong in key elements of his recollection of 29 May. That causes me to doubt his recollection overall.

291. Second, the video calls for careful scrutiny of the account which Mr Tennent gave of 28 May. It is less likely (although not impossible) that a person who had experienced a traumatic assault just hours earlier would have been able to conduct themselves in the way Mr Tennent does in the video.

292. In saying this, I have not overlooked the point made by the Defendant in [61] of his Closing Submissions, and the CPS's guidance that:

> "Just because someone has consented to sexual intercourse on one occasion it does not provide grounds for reasonably believing that they consented to sexual intercourse on other occasions …"

293. Of course, that is right. *Of itself*, consent on one occasion cannot prove consent on another occasion. Consent to sex is always person, time, location and circumstance specific. But Mr Tennent's behaviour and demeanour as caught on camera on 29 May is something which I should take into account and weigh in the balance, along with all the other evidence, when I am considering whether the Defendant has proved that the Claimant raped him the day before.

294. There are other matters which cause me to doubt Mr Tennent's account of 28 May.

295. Firstly, there is his apparent uncertainty about the date of the first alleged rape in Miami. At the time Mr Tennent started to tell Mr Konnor and the Defendant what he said had happened that day, in May/June 2020, he was apparently clear that it took place on 28 May (the same day in which he had an argument with the Claimant in the evening). That account did not include anything about 29 May. This certainty was seemingly maintained until a point after Mr Tennent saw the video relating to the 29 May allegation in late 2022 and then made his statement signed on 6 November 2022. Paragraph 33 of that said:

> "33. On another occasion I remember being on the bed with Dominic. I am not entirely sure which day this was because we were in bed at the hotel on more than one

> occasion and this all happened several years ago. I previously posted a statement indicating that the incident I am now describing happened before [my] argument with Dominic regarding the other model. However I am far less sure about that now."

296. Even guarding against stereotyping as I must, and even taking into account Mr Tennent's evidence that he was very alarmed by their row, I still find it implausible that Mr Tennent would have gone to the Claimant's hotel room and behaved as he did if he had been raped by the Claimant on 28 May as he alleges. His statement is not chronological and, on one reading, what we now know to be the 28 May incident was described *after* the 29 May incident and there is the possibility – I put it no higher – the statement was drafted as it was because of the implausibility to which I have referred and to cast uncertainty on the time of the first incident.

297. Second, Mr Tennent's account is now focused on the issue of his interactions with the Claimant over the question of being clean and prepared for sex. This important element was absent from his May/June 2020 accounts. Given its importance, that is a striking omission. There is no contemporaneous evidence at all that he informed anyone of this key feature until, it would appear, after he saw the Claimant's Reply in these proceedings, which set out in detail that element of their interaction on 28 May.

298. It also seems to me that Mr Tennent was unclear and inconsistent about the issue of consent, and what he had said to the Claimant to make it clear he did not want to have anal sex so that the Claimant understood that. Mr Tennent gave a number of different versions, which are not easily reconcilable.

299. In his witness statement at [33], he said that he 'said no several times'. In his examination in chief he said that he had said something to the effect of, 'my anus is dirty and I don't want to -- I can't do it' and that '… I thought he understood -- I believe he understood me. My memory is that he accepted that and was willing to do other things.'

300. Then, in cross-examination he said:

> "MR DE WILDE: So we are almost done with the 28th, just a couple more questions on that. I do need your answer to the point about the corny dialogue, because the claimant's case is that the reason it sounds like corny dialogue in your account is because you made it up.
>
> A. That's not true.
>
> Q. And you did not make clear to the claimant that you weren't consenting to sex.
>
> A. *I was attempting to, to the best of my abilities.*

Q. And, in fact, there was no reason for the claimant to believe that you did not consent.

A. I disagree. In *almost all of the rest of my interactions* with other people they have understood when I told them not, that it meant I did not want to have sex."

301. Mr Tennent saying he 'attempted' to make clear he did not want sex does not suffice, in my judgment, and nor does the statement that in 'almost' all other cases the other party understood the position.

302. A little later he said to Mr de Wilde:

"Q. Yes, can you just be clear about that?

A. I don't believe I gave a verbal 'no'.

Q. And in your witness statement in these proceedings, 241, para 33, six lines up?

A. Yes, I see.

Q. Your evidence then is that you did tell him 'no'.

A. Yes, I'm sorry, sir, I misspoke just now, because, as I have said many times, my memories of these entire events are incredibly hazy and it's really hard for me to remember them at any point. When I wrote this witness statement, I spent about two hours going over it and so, yes, I stand by this."

303. The witness statement was made nearly three and half years after the alleged rape. It was not a contemporaneous account.

304. Given Mr Tennent's uncertainty on this vital point, and his professed haziness and lack of certainty about what happened, I must, it seems to me, treat his evidence with caution and scrutinise it carefully given the seriousness of an allegation of rape.

305. Third, it is quite clear from the evidence that Mr Tennent had cultivated a sexual relationship with the Claimant prior to 28 May 2019, which included flirting; 'sexting' in the form of sending naked pictures; a consensual sexual relationship in which Mr Tennent took much of the lead in Palm Springs ('Yes sir, as I have said before, and I believe in my statement, all of the sex that we had in Palm Springs was consensual and I did initiate much of it'); and discussion of sex taking place just before his arrival in Miami. For example, on 28 May 2019 there was this exchange of messages between them:

"Claimant: Are you in Miami yet?

> Mr Tennent: Hey! Nope, I'm on my way to the airport right now
>
> Claimant: Same. Get your hole ready for me :)
>
> Mr Tennent: Ooh when do you land? (Eyes emoji)
>
> Claimant: 3pm in fll. Then I need to do laundry and pack my car. I won't be in Miami until 7-8 I imagine. You?
>
> Mr Tennent: My hole is tired from getting pounded three days in a row lol but we'll see what we can do [emojis]
>
> I land at 3:30
>
> Claimant: I'm small. Lol
>
> Mr Tennent: [Laughing emojis]"

306. Mr Tennent did not deny a consensual relationship with the Claimant ('It was genuine'), although he disagreed with Mr de Wilde's description that it was 'quite an intense courtship'. I think it fair to say that, at a minimum, Mr Tennent's behaviour would have conveyed to the Claimant his enthusiasm for a sexual relationship.

307. Next, there are aspects of Mr Tennent's account of the alleged rape on 28 May that strike me as inherently improbable or uncertain, and therefore cause me to doubt his recollection and so to conclude that the Defendant has failed to establish what he needs to establish by clear evidence:

    a. The words allegedly spoken by the Claimant ('Only the head, come on, it's not even that big') in an attempt to coerce Mr Tennent into sex are not consistent with reality. As the Claimant explained, he is very familiar with what he called 'corny porn dialogue' and I found his explanation convincing why it was not likely that he said those words in order to persuade a reluctant partner to have sex in what he believed was a loving relationship.

    b. I heard detailed evidence from the Claimant about the likely consequences of anal intercourse where the 'bottom' (ie, the receiver) was, as Mr Tennent said he told the Claimant, not clean and prepared for it to take place. The Claimant's evidence accords with what I consider to be the probable reaction of most people in that situation:

    > 'A. … So the bottom then goes to the bathroom to check whether it's that uncertain and then actually comes back from the bathroom and says, 'No' that's the end of the story, and forgive my language but, because it's, because if you press on after that, the bottom is telling you there's

> a high probability that there could be an accident and you may end up with -
>
> Q. All right.
>
> A. - you don't want to do that. But, no, if he'd come the bathroom and said 'no' that would be the end of the story, because he'd physically checked."

There was no real explanation I could divine from Mr Tennent as to *why* the Claimant would have disregarded this in circumstances where (as the Claimant indicated) doing so would have been unhygienic at best and disastrous at worst.

c. Finally, there is Mr Tennent's comment to the Defendant on 21 June 2020 about 28 May:

> "[21/06/2020, 21:37:24] Tannor: I'm really uncomfortable with the word rape. I don't think I was raped. He didn't hold me down and force anything violently. But I didn't give consent either. I just stopped saying no."

(In considering this, I have not overlooked Mr Tennent's evidence that he was uncomfortable with the word 'rape' because 'it's a horrible fucking word' and that 'it's only through my current therapist I've been able to acknowledge what happened to me as rape' because he now understands it need not involve physical force or violence.)

308. Coming to the issue of consent forms (something which Mr Price made much of), as I have said, there was no pleaded case or evidence about whether they were required under USC Title 18 s 2257 for the video which the Claimant and Mr Tennent made. This was an issue of foreign law, and so if it was to feature in the case, there should have been expert evidence. I have read the text of s 2257, and it is quite complicated. In the end, it seems to have been common ground that no forms were required because this was a purely private film not intended for publication or commercial use.

309. That is what common sense would suggest to me. I would be surprised if a couple in the US who want to film themselves having sex for their own later private viewing and enjoyment were required to sign forms signifying their consent. There is the further point that even if Mr Tennent had signed a consent form prior to filming, this would not have proved anything either way, given his evidence was that he initially consented to anal intercourse and then withdraw his consent part way through.

310. I finish by coming back to the overall probabilities. How likely is it that the Claimant would have raped Mr Tennent in the circumstances in which they found themselves in May 2019? I consider the probabilities point away from such a conclusion, for the following reasons.

311. Firstly, they were at an industry event, which I understand to be of some significance. The Claimant described it as follows:

> "… an industry event where business leaders have conferences and discussions State of the Union (*sic*) and my company was both sponsor of it and I believe I was speaking in - I think I was speaking on camera, but generally out there meeting with other executives."

312. Second, the Claimant and Mr Tennent had only been in contact for a few months, and had only met once before, in Palm Springs. Despite all the flirting, I do not think that they could not have known each other that well. I therefore do not think that the Claimant could have predicted how Mr Tennent would react if he were forced to have sex against his will. For all the Claimant knew, Mr Tennent might have run out of the room and immediately reported the matter to the first person he encountered, with disastrous consequences for the Claimant's reputation and business.

313. Now, I am not so naïve as to think that men do not take sexual risks, and that powerful men in particular can do so. History is littered with examples. However, when the question is considered in terms of where the probabilities lie, then I consider the answer points away from the Claimant having behaved in the way he was accused of by the Defendant and Mr Tennent. It is less likely that the Claimant would have raped a young model whom he did not really know at an industry event, where he could easily have been exposed and ruined, than the converse.

314. The Defendant's defence of substantial truth therefore fails *in toto*. I find that the Claimant was wrongly and falsely accused by the Defendant of being a rapist and a serial rapist.

315. I should make clear that I am not to be taken as saying that Mr Tennent knowingly did not tell the truth. I have little doubt he genuinely believes that what he said in evidence is true. I think this case is a classic demonstration of Lord Petland's observation in *Prescott*, [42], that, 'attempting to remember events in the distant past is an inherently fallible one; it is a process that is highly susceptible to error and inaccuracy.'

316. Finally, reliance was placed by Mr Price on Mr Tennent's therapy records. These date from 2021. Paragraph 44 of his Closing Submissions argues they:

> "… corroborate this account: he reported to his counsellors that he had been sexually assaulted in 2019. He confirmed in his evidence in court that he had not been sexually assaulted by anyone else other than C."

317. Whilst not doubting in any way the accuracy of what the records say Mr Tennent told his counsellors, or their diagnoses, because he is the source, I did not find these to be of assistance on the issues I have to determine. The records

are at least in part the product of conversations between Mr Tennent and his therapists, the content of which I do not and cannot know.

Defence: publication on a matter of public interest (s 4, DA 2013)

General principles

318. The origins of the s 4 defence and its legislative history were set out by Lord Wilson in *Serafin v Malkiewicz* [2020] 1 WLR 2455, [52], et seq.

319. As *Gatley on Libel and Slander* (13th Edn) explains at [16-001], legal recognition of the potential value of widespread communication on matters of public interest was slow to develop in the common law. The position changed with the decision of the House of Lords in *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127. In a unanimous decision, their Lordships established what was originally described as a new variant of qualified privilege, in which less emphasis was placed on the traditional, reciprocal duty and interest test, and more on the questions of whether the publication was on a matter of public interest and whether it was the product of responsible journalism. Thus, *Reynolds* privilege extended in principle to cover the situation where a media organisation sought to communicate information regarding matters of public concern to a general audience.

320. The legal policy underlying the development of the *Reynolds* privilege was, in the words of Lord Bingham CJ in the Court of Appeal in *Reynolds* itself, to recognise that (at p176):

> "… the common convenience and welfare of a modern plural democracy such as ours are best served by an ample flow of information to the public concerning, and by vigorous public discussion of, matters of public interest to the community. By that we mean matters relating to the public life of the community and those who take part in it, including within the expression 'public life' activities such as the conduct of government and political life, elections … and public administration, but we use the expression more widely than that, to embrace matters such as (for instance) the governance of public bodies, institutions and companies which give rise to a public interest in their disclosure, but excluding matters which are personal and private… As it is the task of the news media to inform the public and engage in public discussion of matters of public interest, so is that to be recognised as its duty… In modern conditions what we have called the duty test should, in our view, be rather more readily be held to be satisfied… We have no doubt that the public also have an interest to receive information on matters of public interest… published in a newspaper, so satisfying what we have called the interest test. In modern conditions the interest

> test should also, in our view, be rather more readily held to be satisfied."

321. In the House of Lords, Lord Nicholls - giving the leading speech - concurred (at pp204-5):

> "The elasticity of the common law principle enables interference with freedom of speech to be confined to what is necessary in the circumstances of the case. This elasticity enables the court to give appropriate weight, in today's conditions, to the importance of freedom of expression by the media on all matters of public concern".

322. In *Hunt v Times Newspapers Ltd* [2013] EWHC 1868 (QB) Simon J said at [182]-[183]:

> "182. There are two distinct parts of the defence, see Lord Phillips in *Flood* [*v Times Newspapers Ltd* [2012[2 AC 273] (above) at [2],
>
> > 'Put shortly *Reynolds* privilege protects publication of defamatory matter to the world at large where (i) it was in the public interest that the information should be published and (ii) the publisher has acted responsibly in publishing the information, a test usually referred to as 'responsible journalism' although *Reynolds* privilege is not limited to publications by the media.'
>
> 183. These two elements are reflected but not reproduced in the new statutory defence in s 4(l) of the Defamation Act 2013."

323. The *Reynolds* defence was abolished and replaced by the public interest defence in s 4 of the DA 2013.

324. The relevant principles in relation to s 4 were summarised in *Banks v Cadwalladr* [2022] EMLR 21, [100]-[135], as follows:

> "104. There are three questions to be addressed:
>
> (i) Was the statement complained of on a matter of public interest, or did it form part of such a statement?
>
> (ii) If so, did the defendant believe that publishing the statement complained of was in the public interest?
>
> (iii) If so, was that belief reasonable?

In order to establish the public interest defence, the onus is on the defendant to satisfy the court that all three questions should be answered affirmatively. *Serafin* [*v Malkiewicz* [2020] 1 WLR 2455], Lord Wilson, [74].

105. The first question is an objective one for the court, not a matter of the subjective judgment of a journalist or editor: *Lachaux* [*v Independent Print Ltd* [2022] EMLR 2, Nicklin J, [130]. The second concerns the defendant's actual state of mind at the time of publication. To establish this element of the defence, the defendant must prove that she *did* believe (not that a reasonable person *could* have believed) that publication was in the public interest: *Lachaux*, Nicklin J, [131]. The third question involves an objective assessment. In *Lachaux*, Nicklin J observed that it is 'the third issue that is likely to be the major point of contention whenever reliance is placed upon a s 4 defence '…

106. In assessing whether the public interest defence is established, the court is required to have regard to all the circumstances of the case: s 4(2) of the 2013 Act. The circumstances to be considered are those that go to whether the statement was on a matter of public interest, whether the belief was held, and whether it was reasonable.

107. In assessing whether s 4(1)(b) is met, the focus must be on things the defendant said or knew or did, or failed to do, up to the time of publication: *Economou* [*v de Freitas* [2019] EMLR 7], Warby J, [139]. The court should take a fact-sensitive and flexible approach, having regard to practical realities. One or more of the ten illustrative factors identified by Lord Nicholls in *Reynolds*, 205A-D ('the *Reynolds* factors') may well be relevant. 'But, in removing the listed matters from the Bill and in proceeding to substitute a reference to all the circumstances, Parliament made clear its intention that the Reynolds factors, upon which the list had been based, were not to be used as a checklist': *Serafin*, Lord Wilson, [69], [75] and [77].

108. The public interest defence in s 4 is self-contained and quite separate from the truth defence in s 2 of the 2013 Act. The truth or falsity of the defamatory statement is a 'neutral circumstance' (*Jameel v Wall Street Journal Europe Sprl* [2007] 1 AC 359, Lord Hoffmann, [62]); it is not one of the 'relevant circumstances' to which the court should have regard in assessing whether s.4(1) is met: *Economou*, Warby J, [139]. The public interest

defence reflects the appreciation that a journalist is not required to guarantee the accuracy of her facts.

109. Nonetheless, where a journalist publishes a statement of fact, whether at the time the journalist *believed* the statement complained of to be true is, leaving aside reportage cases to which s 4(3) of the 2013 Act applies, highly likely to be relevant to the determination: see *Jameel* [v *Wall Street Journal Europe sprl* [2007] 1 AC 359], Lord Hoffmann, [62], *Flood* [*v Times Newspapers Ltd* [2012] 2 AC 273], Lord Mance JSC, [122]. A journalist is unlikely to be able to show that she reasonably believed it was in the public interest to publish a statement of fact which she did not believe to be true: *Jameel*, Lord Hoffmann, [62].

110. Moreover, efforts to verify the statement complained of 'will usually be regarded as an important factor in the assessment of the reasonableness of a defendant's belief that publication was in the public interest. That is not to say that a failure to verify will necessarily lead to the s 4 defence being rejected; everything depends upon the particular circumstances of the case': *Lachaux*, Nicklin J, [137]. In *Economou*, in a statement approved by the Court of Appeal at [101] and by the Supreme Court in *Serafin*, [67], Warby J held at [241]:

> 'I would consider a belief to be reasonable for the purposes of section 4 only if it is one arrived at after conducting such inquiries and checks as it is reasonable to expect of the particular defendant in all the circumstances of the case.'

111. A failure to invite comment from the claimant prior to publication will 'no doubt always at least be the subject of consideration under subsection (1)(b) and may contribute to, perhaps even form the basis of, a conclusion that the defendant has not established that element of the defence'. But an invitation to comment cannot be described as a 'requirement' of the s 4 defence: *Serafin*, Lord Wilson, [76].

…

122. As the focus of s 4 is on the statement complained of rather than the single meaning, the defence may be founded on a reasonable belief that it is in the public interest to make statement A, even if the words used unintentionally conveyed imputation B. If a journalist genuinely did not appreciate that the words could carry

> imputation B, unless that ought to have been obvious to her, she could hardly be criticised for not seeking to verify or give an opportunity to comment on imputation B. See *Economou*, Warby J, [153]-[155] and [159], Sharp LJ, [85], and *Bonnick* [*v Morris* [2003] 1 AC 300], Lord Nicholls, [24]-[25].
>
> 123. In *Bonnick* the Privy Council made clear that, given language is inherently imprecise, a journalist should not be penalised for making a wrong decision on a question of meaning on which different people might reasonably take different views. A defamatory meaning should not be ignored by a journalist if it is 'obviously one possible meaning' ([25]) or 'glaringly obvious' ([27]); to do so would not be reasonable. But if that threshold is not reached, the reasonable belief of a journalist who did not perceive the more damaging meaning falls to be assessed by reference to the less damaging meaning.

Question 1: statement on a matter of public interest ?

325. As identified by Steyn J in *Banks*, [104(i)], the first question to be addressed in any s 4 defence is whether the statement complained of was on a matter of public interest or formed part of such a statement (s 4(1)(a)).

326. The editors of *Gatley* point out at [16-005] that:

> "It would be idle to attempt to state any 'test' by which the issue is invariably to be decided. It is not possible exhaustively to delimit in advance the range of subject matters that will be deemed to fall within the amorphous concept of the 'public interest'."

327. However, it is worth bearing in mind that 'what engages the interest of the public may not be material which engages the public interest' and that 'the public tends to be interested in many things which are not of the slightest public interest': *Jameel v Wall Street Journal Europe Sprl* [2007] 1 AC 359 at [31] per Lord Bingham and at [49] per Lord Hoffmann respectively. Baroness Hale added at [147]:

> "… the most vapid tittle-tattle about the activities of footballers' wives and girlfriends interests large sections of the public but no-one could claim any real public interest in our being told all about it".

328. In *Doyle v Smith* [2018] EWHC 2935 (QB), Warby J said at [64] (emphasis added):

> "*The requirement in s 4(1)(a) is not that the statement complained of has some relevance to, or some bearing on,*

> *a matter of public interest. The statement must be 'on' a matter of public interest, or form part of a statement that is 'on' such a matter. This is plainly an objective question*. It must therefore be possible to look at the statement, and identify and describe quite shortly something the words are about—one or more topics or subjects - which is or are of public interest. The wording of the statute indicates as much quite clearly, and this was ultimately common ground before me.'

329. The courts have offered some general guidance on the meaning of public interest. In its ruling in *Reynolds*, pp176-177, the Court of Appeal explained that by matters of public interest was meant:

> "... matters relating to the public life of the community and those who take part in it, including… activities such as the conduct of government and political life, elections … and public administration… [and] more widely… the governance of public bodies, institutions and companies which give rise to a public interest in disclosure, but excluding matters which are personal and private, such that there is no public interest in their disclosure."

330. The concept of 'the public interest' must not be overly confined. In *Riley v Murray* [2023] EMLR 3, [71], Warby LJ said:

> "It would in my opinion be wrong to take a narrow view of what can count as a matter of public interest. It is clear that the concept does not extend to matters which are purely 'personal and private such that there is no public interest in their disclosure' (*Reynolds v Times Newspapers Ltd* [2001] 2 AC 127, 176-177 (Lord Bingham CJ), approved in *Flood v Times Newspapers Ltd* [2012] UKSC 11; [2012] 2 AC 273 [33] (Lord Phillips)). But the overall criterion identified by Lord Bingham was a broad one: 'matters relating to the public life of the community and those who take part in it.'"

331. In this regard, the Defendant contends that:

> "[t]he central subject of the Tweets and the YouTube interview was rape, sexual assault, exploitation and abuse in the adult entertainment industry" (ReAm Def, [14])

and, as I set out earlier, he then listed a number of sub-topics as being encompassed within this general heading.

332. In his Trial Skeleton Argument at [68]-[69], adopted in his Closing Submissions, the Defendant put his case this way:

> "68. In this case, the Tweets were self-evidently on a matter of public interest. In *Economou v* [*de Freitas*], the court held that there was 'a strong public interest in ensuring that victims of rape came forward' ([2018] EWCA Civ 2591, [91]). Ensuring that people are able to discuss their experiences of sexual violence has been an issue of widespread public concern since the MeToo movement found a global audience in 2017 and is a concern shared by the justice system. Similarly, showing support for those who have the courage to speak out about their abuse is a matter of public interest, particularly where (a) the allegations were made about a person in a position of power within an industry; and (b) there were allegations of repeat offending.
>
> 69. Although in the context of an injunction restraining the publication of confidential material, the Court of Appeal in *ABC and others v Telegraph Media Group Ltd* discussed the boundaries of disclosure in the public interest ([2018] EWCA Civ 2329). The court held that 'the public interest must allow for informed debate on the standards of conduct that are required in public or commercial life, and for changing perceptions of the kind of behaviour by people in positions of power that may be regarded as acceptable' ([2018] EWCA Civ 2329 §23). In doing so, the court endorsed *obiter* comments made by Tugendhat J in *Goodwin v News Group Newspapers Ltd*, who found that it was 'in the public interest that there should be public discussion of the circumstances in which it is proper for a chief executive … should be able to carry on a sexual relationship with an employee in the same organisation … The public interest cannot be confined to exposing matters which are improper only by existing standards and laws, and not by standards as they ought to be, or which people can reasonably content that they ought to be" ([2011] EWHC 1437 (QB) §133, cited in ([2018] EWCA Civ 2329 §23). Further, in *Linklaters LLP and another v Mellish* [2019] EWHC 177 (QB), Warby J noted that 'acts of alleged or establish misconduct, combined with one another, create a compelling picture of persistent or habitual wrongdoing" would be sufficient to meet the public interest.'

333. I think that [69] misquotes what Warby J said in the *Linklaters* case. He said at [34] (emphasis added):

> "34. It is accepted by the claimants that there is, in general terms, a legitimate public interest in the due performance by large firms such as Linklaters of their social and moral duties towards their staff. *But the existence of such an*

> *interest cannot justify indiscriminate disclosure of otherwise sensitive confidential information which others have a legitimate interest in keeping confidential.* A general desire to talk publicly about the 'culture' of a large firm is not enough to justify the disclosure of such details. *There may be cases in which the details of individual acts of alleged or establish misconduct, combined with one another, create a compelling picture of persistent or habitual wrongdoing, serious enough to satisfy the tests to which I have referred. In some cases, the public interest in correcting misleading public statements could come into the picture. But nothing of that kind emerges from the evidence presented to me in this case at this stage."*

334. The Defendant's Closing Submissions accordingly missed out the words 'may' and 'could', and the overall context of Warby J's judgment, so as to give an unwittingly misleading picture of what he decided. That was to the effect that some general, high-level matter of public interest will not of itself justify the publication of sensitive and/or confidential information that others have a legitimate interest in keeping confidential.

335. It is clear from s 4 that each statement complained of must be considered separately, and a determination made in each case whether publication of that statement is covered by the s 4 defence. In other words, each of the three questions falling for determination must be distinctly answered in respect of each publication.

336. Dealing with the first question, I have reached the conclusion that, viewed objectively (per *Doyle*, [64]), none of the publications complained of was on a matter of public interest, and nor did it form part of such a statement. The s 4 defence therefore fails in respect of each publication. That is for the following reasons.

337. I begin with the principal subject matter of the Defendant's publications namely that the Claimant had committed rape. In England and Wales a person under investigation for a criminal offence by a state body has, as a starting point, a reasonable expectation of privacy in relation to that information: see *ZXC v Bloomberg LP* [2022] AC 1158, [146]. That case extensively analyses the reasons for the rule, for example, at [81];

> "… there is uniformity of judicial approach, at first instance in a series of cases and in the Court of Appeal in this case, based on judicial knowledge that publication of information that a person is under criminal investigation will cause damage to reputation together with other damage, irrespective of the presumption of innocence. This has led to a general rule or legitimate starting point that such information is generally characterised as private …"

338. Thus, had the Claimant been under investigation here by the police for rape then they would not have publicly identified him, unless there were clear and sound operational reasons to do so.

339. I obviously recognise the distinction between the cause of action in *ZXC* and defamation, and also that the Claimant was not under investigation here. But I think that case does illustrate, in a general way, the sensitivities involved in publicly accusing someone of a criminal offence, and the damage that can be caused, and it suggests that I need to scrutinise with care the suggested public interest in the Defendant's repeated public accusations that the Claimant was a serial rapist.

340. I next move to the fact that the Claimant is not a public figure involved in public life. The Defendant described him as a public figure several times in his Closing Submissions, but he plainly is not. He runs a commercial operation from the US focussed on a particular industry. I accept that he may be well-known in the gay pornography industry, but that does not make him the sort of public figure discussed in the cases on s 4.

341. Therefore, none of the publications 'related to the public life of the community and those who take part in it' (per Lord Bingham in *Reynolds*). It seems to me that they were closer to the other end of the spectrum adverted to by Lord Bingham, namely, the 'personal and private, such that there is no public interest in their disclosure'.

342. It follows that I do not accept the assertion in the Defendant's Closing Submissions at [121] in the blanket terms in which it was put:

> "The discussion of credible allegations of rape – particularly where there is the risk the person accused is a repeat offender and could do it again – is clearly in the public interest."

343. Nor do I accept this (Defendant's Closing Submissions, [159]):

> "Allegations of sexual assault are clearly in the public interest, as we need to know the scale of the issue in order to tackle it as a society. This is all the more so in this case given C's position in the industry in relation to potentially vulnerable models."

344. Discussion of rape and sexual abuse (or abuse in general) in any industry will likely be a matter of public interest. Making public accusations of rape against a named individual is not (or not necessarily) in the public interest.

345. So far as the Defendant's argument that the 'central subject of the Tweets and the YouTube interview was rape, sexual assault, exploitation and abuse in the adult entertainment industry' (and the eight sub-topics) are concerned, the Defendant's case fails on the facts. What I might call the 'industry connection' was notably missing from all but two of the publications, namely: the First 15

June Tweet; the Third 15 June Tweet; the Fourth 15 June Tweet; the 18 June Tweet; the 20 June Tweet; the 21 June Tweet; the 23 June Tweet; the 28 June Tweet; and the YouTube video. Each of these publications (save for the *Chase* Level 2 publication on 20 June: see above) were accusations of rape, with the complainants happening to be models and the Claimant the owner of JFF. Viewed objectively (per *Doyle*), they were little more than a public, specific and targeted attack on the Claimant; the allegations were not, for example, contextualised as illustrative examples of a generally recognised problem of rape and abuse in the adult entertainment industry (such as those alleged in the ReAmDef).

346. The 20 June Tweet is perhaps the best example of the lack of any public interest in these publications (and, in fact, this is now conceded for this Tweet: Defendant's Closing Submissions, [146]). The full text of this Tweet was:

> "Also. Dominics lawyer is also a ex porn director who doesn't deal in rape allegations but licensing law, the site also hasn't been active since September 2019. One of his cases lasted 11 months. Your doing great Dom… [waving hand emoji] girl bye. [Crying with laughter emoji] is this a lawyer or you?" (JA1/013, B/29/261)"

347. The Claimant's choice of lawyer, and that lawyer's experience, was of no interest to anyone save the Claimant.

348. The lack of public interest is also clearly demonstrated by at least two of the other publications, which combined personal abuse of the Claimant with accusations of rape, namely the First 15 June Tweet ('Dominic Ford is an abusive piece of shit … Stop raping models !') and the YouTube video ('… he's a motherfucker that raped someone and needs to sort his shit out and be accountable for it …')

349. Also on this point, I cannot readily see the Defendant's public interest case on the Third 15 June Tweet, as opposed to his own private interests (Closing Submissions, [131]-[132]):

> "131. In his evidence before court, D made clear that he had received three separate reports of rape against C. His intention in publishing this Tweet was to address C's denials and to make clear that he was not making up the allegations as part of any 'vendetta' and that the allegations against C were credible. In relation to this Tweet, D said, 'I am more trying to discredit his claims of calling me a liar for supporting TR and JS'. D was concerned that C was 'slandering me to certain colleagues in the industry' and that it was impacting his ability to get work.
>
> 132. D explained that the Tweet 'was in the public interest and protecting my reputation …'"

350. Moving on, whilst I recognise that ‘statement’ in s 4 means the words complained of rather than the (single) defamatory imputation (see *Economou*, [93]), when considering what the ‘central thrust’ of the Tweets was, it is to be remembered that, with the exception of the 20 June Tweet, the Defendant accepted the defamatory meanings pleaded by the Claimant. Of these, the only ones to make reference to abuse of position in the adult entertainment industry were the 14 June Tweet and the First and the (full) Second 15 June Tweet.

351. I am prepared to accept these came closer to being ‘on’ a matter of public interest than did the others, but in my judgment they do not cross the relevant threshold. To objectively characterise them as publications on the topic of abuse, etc, in the adult entertainment would be to mischaracterise them. At bottom, like the other publications, they were primarily accusations of rape, with the industry in question – and the suggestion of an abuse of position - simply forming the factual context and background for those accusations. The industry connection was peripheral or tangential. As I have said, the rape allegations did not, for example, form part of an informed discussion by the Defendant of a generally recognised problem within the adult industry of which the Claimant’s alleged conduct was just an example.

352. For similar reasons, I am also unable to accept the Defendant’s characterisation of the publications set out in [68] of his Trial Skeleton (see above). The publications had little to do with, and did not, encourage victims of sexual violence to come forward, and I cannot readily see how the Defendant’s personal support for those whom he said were speaking out was a matter of public interest, at least in the ways in which it was expressed, namely as part of an ongoing attack on the Claimant coupled in some cases with vulgar abuse.

353. The Defendant has therefore failed to show that the first question under s 4 should be answered in his favour in respect of each of the publications, and so his s 4 defence fails.

354. But in case I am wrong about that, I go on to the second question.

Question 2: did the Defendant believe that publishing the statements complained of was in the public interest?

355. This question focusses on the Defendant’s actual state of mind at the time of publication. Again, I have to consider each publication separately.

356. In *Turley*, [138(vii) and (viii)], Nicklin J said:

> “vii) A defendant wishing to rely upon the defence must have believed that what s/he published was in the public interest: *Economou* [139(2)] and [153] per Warby J (at first instance: [2017] EMLR 4). The defendant must have addressed his/her mind to the issue. This element of the defence is not established by showing that a notional reasonable person *could* have believed that the publication

> was in the public interest, but that the relevant defendant *did* believe that it was. In terms of evidence, if a defendant leaves this issue unaddressed in his/her witness evidence, the defence is likely to fail at this initial hurdle.
>
> viii) The belief is to be assessed at the time of publication: *Economou* [139(3)] per Warby J."

357. The editors of *Gatley* comment in light of this at [16-008]:

> "Defendants would be well-advised to heed the judge's warnings in *Lachaux v Independent Print Ltd* [2021] EWHC 1797 (QB), [22], [105-124], about the need to collate and preserve contemporaneous evidence of the decision to publish."

358. The Claimant submits that the Defendant cannot satisfy this second requirement in respect of five publications: the Second 15 June Tweet; the Fourth 15 June Tweet; the 18 June Tweet; the 20 June Tweet; or the 28 June Tweet. I agree.

359. I begin with the 20 June Tweet. Even on the Defendant's own evidence, he did not believe publication was in the public interest, and so the defence would fail in relation to it (had it not already done so: see above):

> "Q. … And it's not about the adult entertainment industry generally [ie, the 20 June Tweet].
>
> A. It is not, no.
>
> Q. No, it's about the claimant.
>
> A. Yes.
>
> Q. And, again, you've not given any evidence in your statement about public interest here.
>
> A. No.
>
> Q. But I take it you're going to say the same thing, you believe generally that this is all in the public interest, is that your evidence?
>
> A. Yes and no, this one. I do see on this one, admittedly, that this is me being a little bit of a - pardon my French - arsehole about his lawyers at the time, but it's mainly because I found it to be hilariously funny, in my opinion, about his lawyers that another news article threw out and, like, made little posts about it.

> Q. So you weren't thinking about the public interest at this time.
>
> A. No, not on this one."

360. In respect of the other four publications, Mr de Wilde was right to submit that the Defendant's evidence really only amounted to a general assertion that publication was in the public interest, and that:

> "… As I said before, anything said about this rape is a public interest story. That is why in my witness statement I have not said in every other paragraph; 'This is a public interest, this is a public interest'. The full consensus of my witness statement is a public interest."

361. The Defendant failed to give any specific evidence as to how and when he had addressed his mind to the issue of public interest in respect of each of these four publications, how the publication in question was on a matter of public interest, and he did not provide any proper explanation as to why the relevant evidence was missing from his witness statement.

362. As *Turley* shows, this will not suffice. A defendant wishing to rely on s 4 – which, let it be remembered, provides protection for publishers against publications that are *ex hypothesi* seriously damaging to the claimant's reputation - must set out his or her case specifically and in detail and explain what they believed was the public interest at the point of publication, if necessary by reference to contemporaneous attendance notes and decision logs and the like. All of that is missing here.

363. The s 4 defence therefore fails for these five publications on the second question.

364. I go on to consider the third question.

Question 3: was the Defendant's belief reasonable ?

365. The Claimant submits that, having regard to all the circumstances of the case, any belief in the public interest by the Defendant in respect of any of the statements complained of was not objectively reasonable.

366. The Defendant's Closing Submissions on this important question were brief in the extreme (Closing Submissions, [162]):

> "162. In all of the circumstances of the case, and having regard in particular to D's circumstances, D's belief was reasonable"

367. Paragraph 71 of his Trial Skeleton asserted:

> "D believed that publishing these Tweets was in the public interest and that belief was reasonable. In assessing the reasonableness of a defendant's belief, the court may have regard to his intended meaning ([2018] EWCA Civ 2591 §95)."

368. The citation is to this paragraph of *Economou*, which I think is more nuanced than the proposition put forward by Mr Price:

> "95. It follows the judge was right to approach the assessment of reasonableness, as he did, on the footing that a defendant's intended meaning may be relevant to his subjective belief (a point Mr Browne QC would concede) and to whether his belief was objectively reasonable. As the judge said, a reasonable belief that it is in the public interest to make statement 'A' could be the basis for the public interest defence, even if the words unintentionally conveyed meaning 'B'. But this approach cannot be pressed too far, as the judge recognised: thus, in assessing whether a defendant's belief *is* reasonable, there are limits to the latitude to be allowed for unintended or ambiguous meanings: see [159]."

369. In any event, this was not a case of unintended meanings. The Defendant intended to, and did, accuse the Claimant of being a serial rapist.

370. I agree with Claimant's position on the third question, for the following reasons.

371. In *Economou*, Warby J set out several 'broad points' regarding the operation of the reasonable belief dimension of the s 4 defence (at [139]), an analysis subsequently approved by the Court of Appeal (in *Economou* itself on the defendant's unsuccessful appeal) and the Supreme Court (in *Serafin*):

> "(1) It is not enough for the statement complained of to be, or to be part of, a publication *on* a matter *of* public interest. It must also be shown that the defendant reasonably believed that publication of the particular statement was *in* the public interest.
>
> (2) To satisfy… the 'reasonable belief requirement', the defendant must (a) prove as a fact that he believed that publishing the statement complained of was in the public interest, and (b) persuade the court that this was a reasonable belief.
>
> (3) The reasonable belief must be held at the time of publication.

(4) The 'circumstances' to be considered pursuant to s 4(2) are those that go to whether or not the belief was held, and whether or not it was reasonable.

(5) The focus must therefore be on things the defendant said or knew or did, or failed to do, up to the time of publication. Events that happened later, or which were unknown to the defendant at the time he played his role in the publication, are unlikely to have any or any significant bearing on the key questions.

(6) The truth or falsity of the allegation complained of is not one of the relevant circumstances.

(7) It is not only those who edit media publications who are entitled to the benefit of the allowance for 'editorial judgment' which s 4(4) requires (see paragraph 33 of the Explanatory Notes)."

372. The editors of *Gatley* say this at [16-007]:

"… the most notable divergence between the common law [*Reynolds*] and statutory variants of the public interest defence is that the non-exhaustive list of the 'standards of responsible journalism' that was first stated by Lord Nicholls in *Reynolds* - and which was included in the original version of the proposed statutory defence - has been seemingly downgraded in importance. The list was excised from the statutory version of the defence as the Bill progressed through Parliament.

However, as explained above, this was but an appearance, and it has now been made clear at Supreme Court level that this defence operates in a very similar way to the common law *Reynolds* defence, and results in similar factual and legal analyses. In particular, the *Reynolds* standards of responsible journalism have been widely endorsed as a useful guide in determining whether a defendant possessed the reasonable belief required by s 4(1)(b)."

373. Lord Nicholls' factors in *Reynolds* are as follows (pp204-5):

"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 axe 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 already have 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 which 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."

374. The overall position was summarised as follows in *Onwude v Dyer* [2020] EWHC 3577 (QB), [139]-[142]:

> "139. The decision in *Reynolds* gave rise to the touchstone of responsible journalism, by which a fair balance was held between freedom of expression on matters of public concern and the reputations of individuals. Notwithstanding the abolition of the common law defence, *Reynolds* and the subsequent cases in which it was interpreted or applied (eg *Bonnick v Morris* [2002] UKPC 31, 1 AC 300, *Jameel v Wall Street Journal Europe SPRL* [2006] UKHL 44, [2007] 1 AC 359 and *Flood v Times Newspapers Ltd* [2012] UKSC 11, [2012] 2 AC 273), may be of relevance to the interpretation of the statutory defence. That is clear from the leading recent authority below Supreme Court level, *Economou v De Freitas* [2018] EWCA Civ 2591; [2019] EMLR 7, at [76].
>
> 140. It appears, therefore, that it may still be of some assistance to courts applying s 4 to consider the well-known non-exhaustive list of potentially relevant factors stated by Lord Nicholls in *Reynolds* , bearing in mind that Lord Nicholls was stating them in the context of the question of whether the publisher had behaved responsibly, which is not a test which has survived the enactment of s 4. The focus now must be on the reasonableness of the publisher's belief that publishing the words complained of was in the public interest, which (by s 4(2)) requires the court to have regard to all the circumstances of the case. With that proviso, these were Lord Nicholls' factors (at pp204-5):
>
>> 'The elasticity of the common law principle enables interference with freedom of speech to be confined to what is necessary in the circumstances of the case. The elasticity enables the court to give appropriate

> weight, in today's conditions, to the importance of freedom of expression by the media on all matters of public concern.
>
> Depending on the circumstances, the matters to be taken into account include the following. The comments are illustrative only [see above for the factors]

141. Sharp LJ's judgment in *Economou* shows at [111] that although the statute did not make reference to the *Reynolds* factors in the context of the need for the court to have regard to all the circumstances of the case, those factors still have a role to play:

> 'That is not to say however, that the matters identified in the non-exhaustive checklist may not be relevant to the outcome of a public interest defence, or that, on the facts of the individual case, the failure to comply with one or some of the factors, may not tell decisively against a defendant. However, even under the *Reynolds* regime, as Lord Nicholls made clear, the weight to be given to those factors, and any other relevant factors, would vary from case to case. As with *Reynolds* therefore, with its emphasis on practicality and flexibility, all will depend on the facts.'

142. I note Lord [Wilson's] warning in *Serafin* at [69] that Lord Nicholls' factors should not be seen as a checklist but as a list of factors to which reference ought to be made, in particular in order to check whether a preliminary conclusion should be confirmed."

375. In *Hunt*, Simon J said:

"197. It is important to recognise that the 10 matters referred to by Lord Nicholls are pointers and not hurdles to be overcome by the publisher before the defence can succeed, see Lord Bingham in Jameel at [33]. Lord Hoffman expressed the point in the same case at [54]:

> 'The question in each case is whether the defendant behaved fairly and responsibly in gathering and publishing the information.'

198. Six further points may be noted.

199. First, where the complaint relates to one particular ingredient in a composite story, it may be open to a

claimant to contend that the article could have been published without the inclusion of the particular passage of which complaint is made. However, as Lord Bingham acknowledged in *Jameel* at [34]:

> '… consideration should be given to the thrust of the article … If the thrust is true, and the public condition is satisfied, the inclusion of an inaccurate fact may not have the same appearance of irresponsibility as it might if the whole thrust of the article is untrue.'

200. Secondly, the verification issue has to be considered on the basis of what was known at the time; and a journalist cannot rely on discoveries that he has made after the publication, see Brooke LJ in *Loutchansky v Times Newspapers Ltd* [2002] QB 321 at [41] and [80]. Thus the conduct and decisions of the publisher or journalist are to be considered objectively in the light of the matters known to them at the time and are not to be judged with the benefit of hindsight.

201. Thirdly, as when considering what is in the public interest, weight should ordinarily be given to the professional judgment of a journalist in the absence of some indication that the decision to publish was made in a 'casual, cavalier, slipshod or careless manner', see Lord Bingham in *Jameel* at [33]. The Courts will give weight to the judgement of journalists as to the nature and extent of the steps taken before material is published, and as to the content, see *Flood*, Lord Mance at [137].

> 'The courts must have the last word in setting the boundaries of what can properly be regarded as acceptable journalism, but within those boundaries the judgment of responsible journalists and editors merits respect.'

202. Fourthly, in considering point 4 in Lord Nicholls's list, the court should bear in mind the observations of Lady Hale in *Jameel* at [149]:

> 'The actual steps taken will vary with the nature and sources of the information. But one would normally expect 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.'

> 203. Some of the particular steps which may be appropriate were set out in the judgment of Lord Mance in *Flood* at [156] to [180]: for example, (a) obtaining as many reliable documents as possible [157], (b) being aware that informants may have no direct knowledge of the events [158/9], (c) being aware that a source may have 'an axe to grind' [169].
>
> 204. Fifthly, the verification involves both a subjective and an objective element, see Lord Phillips in *Flood* at [79].
>
>> 'The responsible journalist must satisfy himself that the allegation that he publishes is true. And his belief in its truth must be the result of a reasonable investigation and must be a reasonable belief to hold.'
>
> 205. As Eady J acknowledged in *Hunt (No.2)* at [12(v)] the duty of verification will be correspondingly more onerous the more serious the allegations.
>
> 206. Sixthly, when considering points 6 to 8 in Lord Nicholls's list, a failure to give the subject of an article an opportunity to comment is a matter to be taken into account. As Lord Scott of Foscote expressed it in *Jameel* at [138]:
>
>> 'Fairness to those whose names appear in newspapers may require, if it is practicable, an opportunity to have a response published by a newspaper.'
>
> 207. If the Claimant is to be given an opportunity to provide the gist of his side of the story, the thrust of the allegations will need to be put to him, see *Galloway v. Telegraph Group Ltd* [2006] EMLR 221 at [75] (CA); and he should be given a reasonable time in which to respond to the gist, see *Galloway v. Telegraph Group Ltd* [2005] EMLR 115 at [165] (Eady J). However, it is clear that it is not always necessary, see for example Lord Hoffman in *Jameel* at [85]."

376. The Defendant's evidence about his perception of his role as the publisher was as follows:

> "Q. So there's just Mr Reed's case in truth and then you've got this other defence which is the section 4 defence or the public interest defence. Yes? And what that requires is

that the person who made the allegations, that is you, must be able to show that they believed that making them was in the public interest. You understand that.

A. Yes.

Q. And what that means, the consequence of that for you, is that you have got to show the court that that belief was reasonable. You understand that as well, I think -- yes?

A. Yes.

Q. And you also accept, don't you, that that process of establishing reasonableness, that applies to each publication. There are 11 publications. You accept that it applies to each one?

A. Yes.

Q. Yes, because we are going to go through them individually. Now, you see yourself as performing a similar sort of role to a journalist, is that right?

A. Yes, I guess so. I have done several blogs in the past, I have done podcasts and interviews and I would constantly be reporting on situations within the industry as well as running social events within the industry, so, yes, I would consider myself someone that uses their Twitter accounts, you promote and advertise the market as well as tell news and updates within the industry of certain situations.

…

Q. And, in fact, you said later, we can look at it, but after what has happened and while the proceedings are going on, you said that you were reporting the story with references and testaments, that is right? That is how you see what you did, is that fair?

A. Yes. It is why I mentioned previously in conversations with Tannor, I would have certain information, otherwise it was like a -- because I knew that I was doing a reportery kind of job (*sic*) if I was to help him and that is why I had to double check with him (inaudible).

Q. So you are functioning as a kind of reporter or journalist and you understand, don't you, that where journalists publish information, which is not true, but which is in the public interest, they are held to certain standards?

> A. Yes, I can see that. At times (inaudible) it was very much, as I said before, the entire history reports on stuff to -- if there is a bad model or a bad (inaudible) going around, we all discuss it, it goes public and then we all kind of have a census and opinion on that story and what happened and then it is picked up by other people, like (inaudible), who confirms certain evidential points and plot timelines and then make it into a more concise report in which I end up sometimes being vulnerable.
>
> Q. I think from what you have just said, you have to accept that you didn't know about the standards that apply to journalists and, therefore, you didn't meet them.
>
> A. As I said, and as you said, I was acting as a journalist, I was not a journalist, so I'm not going to know the ins and outs of all the rules on journalism. I knew a little bit and that is why I had to check with Tannor that (inaudible) certain standards, but, other than that, no, I don't know all the ins and outs of the laws of reporting. As I said, it is a very bizarre industry in which the organisers publicly report on things daily and (inaudible) and exchange what we know of facts and information and it happens on Twitter, because of that nexus."

377. In his Reply at [24.2] the Claimant labelled the Defendant a 'citizen journalist'. Although that might be a convenient label, no reputable journalist would have resorted to the sort of personal abuse of the Claimant that the Defendant published, nor published generally in the terms in which he did. Also, some of the publications showed that the Defendant was personally invested in the outcome in a way which no responsible journalist would have been (see eg the 18 June Tweet: '*We're* now going to seek his arrest' (emphasis added)).

378. In his witness statement at [44] the Defendant said he meant by this that 'Tannor intended to go to the police and seek Dominic's arrest in relation to his rape allegation..' I reject that. The Defendant said, 'We're …' because he was personally involved in the matter and wanted the Claimant to be arrested. This is made clear by the full text of the Tweet which included the words, 'Anyone with any information itsmickeytaylor@gmail.com or DM [direct message] The industry supports you n will take care of you' (Closing Submissions, [139]).

379. There are numerous other examples of the Defendant's personal investment in Mr Tennent's story and the closeness of his relationship with him. For example, it is striking that when in June 2020 Mr Tennent expressed doubt that he had been actually raped on 28 May, it was the Defendant who sought to persuade him that he had been:

> "[21/06/2020, 22:18:03] Mickey: That's rape bbe. I know it's a horrible word."

380. As to the nature of their friendship, one example is this:

> "[17/07/2021, 18:41:12] Tannor: You're very pretty
>
> [17/07/2021, 18:41:15] Tannor: A king
>
> [17/07/2021, 18:41:57] Tannor: Just trying to be light hearted [] I'm sorry I love you so much in sorry you're suffering :(((
>
> [18/07/2021, 03:20:26] Tannor: I love you so much Mickey, I hope you're doing okay."

381. Another is this exchange:

> "[14/09/2021, 22:01:52] Mickey: It's super late here I'm in bed haha. Was just messaging before I nodded off. Student stuff in the morning 😳
>
> [14/09/2021, 22:02:01] Tannor: Hahaha no worries
>
> [14/09/2021, 22:02:09] Tannor: Woohoo student stuff!!!
>
> [14/09/2021, 22:02:18] Mickey: Love you boo!
>
> [14/09/2021, 22:02:23] Tannor: Love you too ❤️
>
> [14/09/2021, 22:02:43] Tannor: I was gonna say, someone told me about their experience with him 😭
>
> [14/09/2021, 22:02:49] Tannor: Which was validating but also horrible."

382. Also, in his evidence the Defendant described Mr Tennent as being like 'a little brother'. It is plain from all of this that they were extremely close.

383. I begin with the standards to which the Defendant should be held. In *Doyle* [81], [95], [96], Warby J said:

> "81. The Explanatory Notes to the 2013 Act (at para.29), identify the intention behind the enactment of s 4: to create 'a new defence … of publication on a matter of public interest … based on the existing common law defence established in *Reynolds v Times Newspapers Ltd* … and … intended to reflect the principles established in that case and in subsequent case law.' There is, as I said in *Economou* at [242], obvious force in the argument that a 'citizen journalist', composing and publishing what purports to be investigative journalism, should be expected to conform to

the requirements of *Reynolds* before he can claim the benefit of s 4.

…

95. I should add this, for completeness. The circumstances I listed in *Economou* at [241] include the 'role' of the defendant, but they do not include his qualifications, experience, or other personal qualities or attributes. And I do not accept one line of argument advanced on behalf of Mr Smith, namely that the circumstances relevant to the Reasonable Belief requirement include '(1) the status and characteristics of the publisher including (a) whether or not s/he/it is a professional media organisation/journalist, (b) the journalistic training and experience of the person concerned ….". It is a well-established principle of the law of negligence that when the circumstances are such as to impose a duty of care on a person, the standard of care remains the same, regardless of the individual's personal attributes. The point has come before the Court of Appeal twice in recent years. In *Dunnage v Randall* [2015] EWCA Civ 673; [2016] QB 639 the issue was whether serious mental health difficulties should result in a lower standard of care. The answer was no. The Chancellor said this:

> '124 It has been argued in many cases over many years that the standard of care should be adjusted to take account of the personal characteristics of the particular defendant. So, for example, in Salmon LJ's celebrated dissenting judgment in *Nettleship v Weston* [1971] 2 Q.B. 691, he would have held that a learner driver's acts should be judged by the standard of a reasonable learner driver rather than a reasonable person generally. But this view has never prevailed (see Lord Macmillan in *Glasgow Corp v Muir* [1943] AC 448, 457), except in one respect: the standard of care applicable to the liability of children for negligence is established to be that of the ordinary, prudent and reasonable child of the defendant's age, not that of the ordinary, prudent and reasonable person generally: see *McHale v Watson* (1966) 115 C.L.R. 199 in the High Court of Australia, followed in *Mullin v Richards* [1998] 1 W.L.R. 1304.
>
> …
>
> 130 … is there some principle that requires the law to excuse from liability in negligence a defendant

> who fails to meet the normal standard of care partly because of a medical problem. In my judgment, there is and should be no such principle. The courts have consistently and correctly rejected the notion that the standard of care should be adjusted to take account of personal characteristics of the defendant. The single exception in respect of the liability of children should not, I think, be extended. … "

Equally, the standard of skill and care required of a medical professional is not diminished by the fact (if it be so) that the individual clinician is young and relatively inexperienced: see *FB v Rana* [2017] EWCA Civ 334 [2017] P.I.Q.R. P17, and in particular the judgment of Peter Jackson LJ.'

96 Mr Vassall-Adams' argument [for the defendant Smith] is clearly at odds with this approach. Of course, I am not concerned with the law of negligence, but it is important for the law to be coherent: see *Khuja v Times Newspapers Ltd* [2017] UKSC 49 [2017] 3 WLR 351 [34(3)] (Lord Sumption). As Mr Spearman points out, the approach of applying to the facts (including the defendant's subjective state of knowledge) an objective standard, which does not vary from one person to another, is more generally recognised in other areas of the law, for instance on dishonesty: see *Ivey v Genting* [2018] AC 391 [74] (Lord Hughes). It seems to me, therefore, that whilst I can and should take account of the nature of the publication in question—its character as a local news website, in the nature of a community operation, it would be wrong in principle to give Mr Smith some credit or leeway to reflect his lack of professional skill, training, or expertise."

384. The Defendant must therefore be held to the standards of a professional journalist. The editors of *Gatley* say at [16-019]:

"Meanwhile, where a defendant has taken on the role of a journalist - as a blogger or someone that can accurately be described as a 'citizen journalist' - he or she can expect for s 4 purposes to be held to the same standards expected of a professional journalist. In *Doyle v Smith*, Warby J reiterated the view he had previously expressed in *Economou v de Freitas* that there was 'obvious force in the argument that a 'citizen journalist', composing and publishing what purports to be investigative journalism, should be expected to conform to the requirements of *Reynolds* before he can claim the benefit of s 4'. Indeed, the judge went further, stating by reference to the law of negligence that the standards of conduct to be expected of

> persons performing or purporting to perform a particular role remained the same regardless of an individual's personal attributes, and that "it would be wrong in principle to give [a defendant] some credit or leeway to reflect his lack of professional skill, training, or expertise".

385. The Defendant accepted acting in 'reportery' type role. However, I agree with the Claimant that even if Defendant is not to be held to those standards, but simply to the standards reasonably to be expected of anyone publishing highly damaging and defamatory allegations of criminality to some 144,000 people on Twitter, any belief by the Defendant that publishing any of the statements complained of was in the public interest was still not objectively reasonable, such that the Defendant's s 4 defence must fail.

386. As I set out in relation to the second question, in his witness statement the Defendant only addressed whether he turned his mind to the public interest in publication in respect of six of the statements complained of, these being the 14 June Tweet (see the Defendant's witness statement at [33]-[36]); the First 15 June Tweet ([38]-[40]); the Third 15 June Tweet ([42]); the 21 June Tweet ([46]), the 23 June Tweet ([47], and the YouTube Video ([50]). He did not do so in relation to the remaining five.

387. Taking [33]-[36] of his witness statement as an example, the Defendant said:

> "33. In relation to Paragraph 7 of the Particulars, on 14 June 2020, I retweeted a Tweet sent by the account @TannorReed which publicly identified the Claimant as someone who had had sex with Tannor Reed without his consent when he had clearly said no. As part of the retweet, I published the following words on my Twitter account at the URL https://twitter.com/ItsMickeyTaylor/status/1272256118232932354
>
> > "Rape will not be tolerated in this industry! Using your power as figure head in the industry to extort models & blackmail them into sex is UNNACEPTABLE! I stand with @tannorreed. @justforfans @DominicFord…"
>
> 34. I believe that the timing of the Tweet in the Particulars of Claim is incorrect, and that it was actually sent later in the evening as the original tweet was only sent at 20:46pm [MS1/781]. I ultimately deleted the tweet at the request of Dominic and his lawyers. I meant by these publications that Tannor Reed had accused the claimant of rape.
>
> 35. I published these statement because the actions described by Tannor indeed amount to rape. Dominic is a person who wields a huge amount of power in the

> industry. Just for Fans has thousands of performers. I believed that all of these performers, and indeed other workers coming into contact with Dominic in the industry, were therefore potentially vulnerable to exploitation and abuse. Publicising these issues was therefore necessary to help protect sex workers. I believe in standing up for victims of abuse and oppression and am known for activism within the adult entertainment industry and I believed that it was necessary to speak out on this occasion.
>
> 36. I believed, and still believe, that the allegation that Dominic raped Tannor is true. As detailed above, Tannor had already told me about this on 29 May 2020. He did not wish to publicise anything at that stage but instead just seemed to want emotional support. It was clear to me that he had been greatly impacted by what had happened to him. I believed that this was entirely consistent with someone who had genuinely suffered sexual assault.

388. It seems to me that neither this, nor any of the other evidence put forward by the Defendant in his witness statement as his 'motivation for making the publications' (witness statement, [32] et seq), establishes a proper basis for the Defendant to assert that any belief he had that publication was in the public interest was reasonable. That is for the following reasons, the framework for which are Lord Nicholls' factors (but not treating them as a checklist).

389. Firstly, their meanings amounted to very serious allegations of criminality against the Claimant. Hence, *per* Lord Nicholls' first factor, readers and viewers of the Defendant's publications were very seriously misled.

390. Second, the Defendant's allegations against the Claimant were of no, or very limited public concern. Any linkage to the adult industry was peripheral at most.

391. Third, there is room to argue that Mr Tennent had an axe to grind in respect of the Claimant. For example, he felt that the Claimant had used his contribution to his legal fees to manipulate and exert control over him. The Defendant himself had fallen out with the Claimant about Daniel and racism at exactly the same time he began publishing his allegations, and by June 2020 was plainly predisposed to be hostile towards the Claimant.

392. Mr de Wilde invited me to conclude that that hostility was the Defendant's sole motivation, and so by itself defeated the s 4 defence. He said this in his Closing Submissions, [38]:

> "C makes the further, general submission that D's s 4 defence cannot succeed in circumstances where D published the allegations for the reasons he did, which C invites the Court to find were related to D's desire for

revenge on C for his refusal to remove another user from the Website, and in circumstances where he was given several clear indications that they were not true."

393. The Defendant's evidence was:

> "Q. … My question is, does the fact that somebody allows racists on their platform give you a licence to call them a rapist, which is something quite different, on Twitter?
>
> A. It is a separate situation. So as you see, I put on events and the rape happened as a separate situation and at the same time Tannor was talking about a different situation. It just so happens that these two instances are poor practice from his company happened at exactly the same time.
>
> Q. We will come back to the timing question because there are documents that show the timing and there is not really any dispute about when things happened, but I will just give you one more chance to answer that question, that making allegations of racism or believing someone is a racist simply has nothing to do with criminal allegations of being a multiple rapist, does it?
>
> A. I answered your question before.
>
> MR DE WILDE: It is just another way of putting the same question, because you will not answer it, so I am trying to express it in a different way.
>
> …
>
> MR DE WILDE: Does allowing somebody who you think is a racist on the platform give you a licence to call the person who allows that a rapist?
>
> A. As I said before, they are separate allegations at the same time or in a similar timeline of events, so I called him a rapist -- I called -- Sorry, let me explain again. I came to him about the racist situation with him, like something that I felt he could address, and he had addressed other racists in the past, and chose not to and at the same time or several days in the background I was supporting a friend through a rape situation and that friend decided to be brave (inaudible). Excuse me, I will slow down. I remember the two instances together. They happened separately. There was never (inaudible) happened to be at a very similar time."

394. I do not make the finding the Claimant asks me to. I think that the Defendant had mixed motives for his publications: a general hostility towards the Claimant over the Daniel/racism issue, and a desire to damage him, but also a blind belief in what he was being told.

395. Fourth, despite the objectively obvious gravity of the allegations, the Defendant did not make any attempt to verify whether they were true. They had not been investigated in a way which commanded respect, and the Defendant more or less just took what he was told by Mr Tennent at face value.

396. On 29 May 2020 Mr Tennent messaged the Defendant:

> "One night all the gays [*sic*] at xbiz went out and he clearly assumed that I'd be going home with him at the end of the nigh and I brought someone else back to my hotel and when we were in the elevator at my floor he basically forced me to say that I was choosing this guy over him flipped me off in a storm as the elevator closed, then texted me and the guy about how bad of a person I am, made the guy leave, made me feel bad about it all night, and then the next morning apologized and buttered me up touching me calling me babeand all this shit"
>
> On the day before that he kept trying to fuck me and I told him over and over and over that I didn't want to and he kept trying to slide it in anyway"
>
> ...
>
> "You remember when the Justin stone shit went down I kept my mouth shut because I knew it was true
>
> Fuck fuck fuck I don't know what to do"

397. At 16:46:09 on 14 June 2020 Mr Tennent messaged the Defendant:

> "Tannor: But he literally sexually assaulted me and blackmailed me for months to keep it happening."

398. The Defendant was asked about this by Mr de Wilde:

> ""Q. And then Mr Reed tells you in terms (16:46:09) that he had been sexually assaulted and blackmailed for months by the claimant.
>
> A. Yes.
>
> Q. You don't question that statement by Mr Reed, do you?
>
> A. Absolutely not, no."

399. At 16:57:50 on the same day Mr Tennent messaged the Defendant:

> "This is the part I can't talk about and please don't share any details of, but I had to get a lawyer early last year, and he payed for half of it, and then used that for months and months and months to keep me obedient, assaulted me in Miami when I repeatedly told him I didn't want to fuck and asked him to stop and he kept putting the head in anyway, and when we went out and I brought someone else back to my hotel he lost his mind, made me say I was picking this guy over him, flipped me off, and then messaged the guy until he left my hotel, and the next morning was calling me babe and stuff when I helped him work his fucking JFF table for free."

400. Mr Tennent then published his long public account at 19:31:54 that day.

401. The Defendant said this about Mr Tennent's allegations:

> "MR DE WILDE: Did you at this time, for example, check the consistency of Mr Reed's story against the previous things that he told you about his relationship with the claimant?
>
> A. It is hard to prove rape, unless I was there. If I was sitting in the room watching someone being sexually assaulted, I could tell you I had proof, but until then you are, as I said before, going on the trust and belief that these people were abused and what they are going through is real and, going by the mental upset that Justin was going through and Tannor's long extensive therapy sessions and inability to work, I could see that he had definitely been assaulted. It wasn't something that he was just fabricating and making up for attention.
>
> Q. So just to try and simplify and short cut this, the answer to the question, did you challenge Mr Reed or Mr Stone about the truth of their accountant, is 'no'?
>
> A. Yes. I did challenge them.
>
> Q. You did challenge them?
>
> A. Yes, when I phoned Tannor, I asked him a couple of questions about it, we got a little bit in depth about it, but later on after the situation -- it would be, like -- it would be silly of me to just go on (inaudible), you have to hear the story out, you have to listen to what they are trying to say to you and then you decide if it is true or not.

> Q. So this is entirely new evidence that you are giving now that is not in your witness statement, so -
>
> A. I have said I believed Tannor.
>
> Q. Well, what was the nature, can you tell us what the nature of the challenge that you made to Mr Reed?
>
> A. I said it is not a kind of challenge. You cannot challenge victims with their stories. You can break them down, you can really damage them even further. You listen to the story and then you have to decide if you believe it or not. That is the right approach that we have right now when people come forward and talk about it. There is not a way to get evidence or DNA these days if it has been a couple of months. If it was the same day, we could have swabbed these poor boys and got the evidence to have it -- it would be factual----
>
> Q. Let's use----
>
> A. -- but until then I have to believe his word.
>
> Q. Let's use a more neutral word, 'check': apart from listening to them, did you do anything to check that their story was true?
>
> A. I do not think I'm understanding the question. You say 'check', but I'm saying I did check their stories, like, in my own opinion and I listened to them and, when I heard them, then I chose to believe them. That's the only thing you can do. I cannot fly out to Florida. (inaudible) It doesn't make any sense."

402. I do not accept that believing Mr Tennent was 'the only thing you can do'. One obvious thing which the Defendant could have done before beginning to publish would have been to closely question Mr Tennent about his allegations rather than simply ask a 'couple of questions'.

403. Mr Tennent's long public statement of 14 June 2020 in particular, it seems to me, was sufficiently ambiguous that – coupled with the seriousness of the allegations - it warranted detailed consideration by the Defendant, having asked Mr Tennent about it. A week or so later, on 21 June 2020, Mr Tennent wrote to the Defendant about 28 May that 'it was easier to lay there and just do what he wanted' and that he was uncomfortable with the word 'rape' and that 'I don't think I was raped'. Had Mr Tennent been properly questioned and said that on 14 June 2020, then it should have given the Defendant pause for consideration whether this really was an allegation of rape by Mr Tennent, and how it should accurately be reported (and if it should be reported at all).

404. In his evidence the Defendant said:

> "I could see that Tannor was a very, very damaged person and in a vulnerable situation and it is not something that is made up. It is not something that you just create out of (inaudible) and I think there has been a very long history of all of us denying, like, rape stories when they come out and I was not about to do that."

405. As far as I know, the Defendant is not a trained therapist or counsellor and was not qualified to assess whether Mr Tennent was 'damaged'. The other part of his answer shows he was prepared to accept anything he was told. If he wished to do that, that was down to him, but I do not think for the purposes of s 4 that it entitled him to go on to make public accusations of rape against the Claimant without carrying out some sort of assessment.

406. Fifth, there was no urgency to the matter. The accusations against the Claimant were not a 'perishable commodity'. By June 2020 over a year had already passed since the alleged rapes.

407. Sixth, at no stage did the Defendant ask the Claimant what his version of events was, or ask him for his reaction to Mr Tennent's accusations, and the publications did not therefore contain the Claimant's side of the story.

408. The primary relevant communication in this regard was instigated by the Claimant, not the Defendant, on 14 June 2020, after the Defendant had published a threatening Tweet concerning the Claimant (which the Defendant accepted during cross-examination was threatening), and before the Defendant had published the first of the 11 statements complained of.

> "If you continue to defend your actions and insulting actions and words to me, I have no issue calling out your sexual assault on a other model in which you bribed their silence. Your not innocent as a head of industry. Don't play me. I keep all receipts for the tax man."

409. This message bears out the point I made earlier about the Defendant's mixed motives. As I understand it, the 'actions' in question were the Claimant's failure to remove Daniel from the Website at the Defendant's request.

410. The Claimant immediately began asking the Defendant what he was talking about. I set out the exchange earlier and I will not repeat it. It began:

> "[14/6/2020, 16:51:18] Dominic Ford: What the hell are you talking about? Sexual assault?"

and ended with:

> "[14/06/2020, 18:04:18] Dominic Ford: You really need to figure out who your enemies are.
>
> [14/06/2020, 18:05:47] Mickey: Get fucked [] rapist."

411. It is clear that during this exchange the Defendant failed to give the Claimant any details of the defamatory allegations he was making so as to allow the Claimant any meaningful opportunity to respond. He did not say, for example, what the exact allegation was; where the incident was said to have taken place; when it was said to have taken place; or who the complainant was. Instead, the Defendant was sarcastic and dismissive of the Claimant's repeated protestations.

412. This was a basic failure of fairness by the Defendant, whose attitude towards the Claimant was encapsulated in his abusive final message, which speaks volumes. If the Defendant really did think he was performing some sort of journalistic role - or, in his words, a 'reportery kind of job' - then it was incumbent upon him to put the allegations to the Claimant fairly and to obtain his version of events. That is what any responsible, professional journalist or reporter would have done.

413. The Defendant's failure to give the Claimant a meaningful opportunity to respond seriously undermines his reliance on s 4. In *Serafin,* [76], Lord Wilson said:

> "76. In para 66 of its judgment the Court of Appeal said:
>
> > 'It is a basic requirement of fairness and responsible journalism that a person who is going to publish a story without being required to show that it is true should give the person who is the subject of the story the opportunity to put his side of the story. *Gatley* [*Gatley on Libel and Slander*, 12th ed (2013)] refers to this as the 'core' *Reynolds* factor …'
>
> A failure to invite comment from the claimant prior to publication will no doubt always at least be the subject of consideration under subsection (1)(b) and may contribute to, perhaps even form the basis of, a conclusion that the defendant has not established that element of the defence. But it is, with respect, too strong to describe the prior invitation to comment as a 'requirement'. It was never a 'requirement' of the common law defence: see the *Jameel* case [2007] 1 AC 359, cited at para 53 above; and so to describe it would be to put a gloss on subsections (1)(b) and (2) of the section."

414. Seventh, the overall tone of the publications was, as Mr de Wilde rightly observed in his Closing Submissions at [51(7)], 'abusive, aggressive and

sensational'. Where they did so at all, they only contained the most derisory references to the Claimant's denials.

415. Finally, as to the circumstances of publications, they were done publicly over Twitter, which increased the scope for further dissemination.

416. In his Closing Submissions, the Claimant identified the following further points specific to several of the statements complained of, which I broadly agree with:

a. Regarding the 14 June Tweet, which referred to 'models' and meant that the Claimant had raped models (plural), as noted above, the Defendant admitted during cross-examination that he had no other allegations beyond Mr Tennant at this point; that he did not actually believe at the time that Claimant had raped multiple people; and that he had no basis for accusing him of raping 'models'. He said this was just a 'typo' and that it should have read 'model'. As I said earlier, I do not accept this explanation. I find that the Defendant was making a public accusation of multiple rape against the Claimant for which he knew he had no evidence.

b. During the exchange of messages between the Claimant and the Defendant on 14 June 2020, prior to the 14 June Tweet, the Claimant on numerous occasions made clear to the Defendant that he had no idea what the Defendant's sexual assault allegations referred to (see above). The Defendant failed to reflect the Claimant's position in the 14 June Tweet, or indeed in any of the other 10 statements complained of in this action.

c. Regarding the First 15 June Tweet, the defamatory meaning of which was that the Claimant was a serial rapist, the Defendant said that he based this accusation on the allegations of Mr Tennent, Mr Stone and a third complainant whose identity was at the time unknown to him, as were the details of the alleged incident regarding that individual. When challenged on the propriety of basing a serious allegation of criminality on the allegation of a person the Defendant knew nothing about, the Defendant accepted that this was a 'mistake':

> "MR DE WILDE: So returning to the publication that we are looking at, which we agree alleges more than two victims, at the time you published that you were happy to do so without knowing the identity of the alleged third victim?
>
> A. Yes, which was a mistake on my part, of course, and it is one of the reasons why those messages were later taken down and I retracted them."

On the face of it, making a 'mistake' is not a proper or reasonable basis to publicly accuse someone of multiple rape for the purposes of s 4(1)(b).

d. Also regarding the First 15 June Tweet, the Defendant made no attempt to verify whether Mr Stone's allegation was true. Rather, the Defendant said

in his witness statement that 'believed that this allegation was true because of the similarities between [Mr Stone's] allegation and the allegations made by [Mr Reed]' [39]). This was not a proper or reasonable basis for making a public accusation of rape.

e. Regarding the Fourth 15 June Tweet, that the Claimant had raped three people, as with the First 15 June Tweet, the Defendant made no attempt to verify any of the allegations on which the Tweet was based, these being those of Mr Tennent and Mr Stone and the unidentified third person.

f. On the 18 June Tweet, which accused the Claimant of multiple rapes, in his witness statement at [44], the Defendant stated that his reference in that Tweet to there being a sixth rape victim of the Claimant related to the fact that 'by this time I was corresponding with six individuals who had alleged that [C] had in one way or another abused his position'. To the extent that the six alleged individuals included the five described in the Defendant's witness statement at [23.1]-[23.5], as I said earlier, none of their respective allegations have anything to do with the 18 June Tweet's imputation of multiple rapes by the Claimant.

417. For all of these reasons, the Defendant's s 4 defence fails.

418. There will, accordingly, be judgment for the Claimant.

419. Finally in this part, I need to mention that after the trial had concluded I received a second witness statement and an exhibit from the Claimant. This was intended to respond to evidence which the Defendant had given during cross-examination to the effect that individuals working in gay pornography do not have a union or anyone to whom they can report serious allegations (' … within our industry, we don't have a union facility, we don't have anyone to report to, we don't have higher-ups that we can address serious allegations and situations'.) The gist of the Claimant's statement was that this was incorrect, and that there are such outlets. The Defendant strenuously objected to my considering this statement, although in his Closing Submissions at [104] Mr Price accepted there were such unions.

420. For the avoidance of doubt, whilst I read the Claimant's statement and exhibit *de bene esse*, I have not taken them into account in reaching my conclusions.

Quantum

421. I now need to consider the question of *quantum.* Some of the Defendant's exchanges with Mr Tennent referred to his impecuniosity, and so it may be that he is not in a position to pay any significant award of damages. However, even if that be the case, it does not relieve me of the obligation to make an appropriate award taking account of all the circumstances.

422. General damages in a defamation action are compensatory in nature. Warby J summarised the relevant principles in *Barron v Vines* [2016] EWHC 1226, [20]-[21]:

"20. The general principles were reviewed and re-stated by the Court of Appeal in *John v MGN Ltd* [1997] QB 586 … Sir Thomas Bingham MR summarised the key principles at pages 607-608 in the following words:

> 'The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must **[1]** compensate him for the damage to his reputation; **[2]** vindicate his good name; and **[3]** take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is **[a]** the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. **[b]** The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. **[c]** A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place. It is well established that **[d]** compensatory damages may and should compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way. Although the plaintiff has been referred to as "he" all this of course applies to women just as much as men.'

21. I have added the numbering in this passage, which identifies the three distinct functions performed by an award of damages for libel. I have added the lettering also to identify, for ease of reference, the factors listed by Sir Thomas Bingham. Some additional points may be made which are relevant in this case:

(1) The initial measure of damages is the amount that would restore the claimant to the position he would have

enjoyed had he not been defamed: *Steel and Morris v United Kingdom* (2004) 41 EHRR [37], [45].

(2) The existence and scale of any harm to reputation may be established by evidence or inferred. Often, the process is one of inference, but evidence that tends to show that as a matter of fact a person was shunned, avoided, or taunted will be relevant. So may evidence that a person was treated as well or better by others after the libel than before it.

(3) The impact of a libel on a person's reputation can be affected by:

a) Their role in society. The libel of Esther Rantzen was more damaging because she was a prominent child protection campaigner.

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

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

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

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

(5) A person who has been libelled is compensated only for injury to the reputation they actually had at the time of publication. If it is shown that the person already had a bad reputation in the relevant sector of their life, that will reduce the harm, and therefore moderate any damages. But it is not permissible to seek, in mitigation of damages, to prove specific acts of misconduct by the claimant, or

rumours or reports to the effect that he has done the things alleged in the libel complained of: *Scott v Sampson* (1882) QBD 491, on which I will expand a little. Attempts to achieve this may aggravate damages, in line with factor (d) in Sir Thomas Bingham's list.

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

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

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

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

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

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

(8) Any award needs to be no more than is justified by the legitimate aim of protecting reputation, necessary in a democratic society in pursuit of that aim, and proportionate to that need: *Rantzen v Mirror Group Newspapers (1986) Ltd* [1994] QB 670 . This limit is nowadays statutory, via the Human Rights Act 1998."

423. Regarding aggravated damages, the editors of *Gatley* say at [10-16]:

"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 of the preliminaries or of the trial itself in a manner calculated to attract wide publicity; and persecution of the plaintiff by other means."

424. Mr de Wilde invited me to adopt the same approach as I did in *Ware v French* [2022] EWHC 3030 (KB), and award a global sum which reflects compensatory damages and the Defendant's aggravating conduct. Later I will set out what the Claimant says are the aggravating factors in this case.

425. Turning to comparator cases, the Claimant relied in particular on the judgment of Saini J in *Blackledge v Persons Unknown* [2021] EWHC 1994 (QB), although he said it involved a significantly lower scale of publication than did this case. Saini J said at [1]-[2]:

> "1. The Claimant, Paul Blackledge, is a senior and respected academic in the field of politics and ethics. He is the victim of a campaign of online abuse in the form a number of blog posts (in the form of articles) that have been posted on a Website by an unidentified Defendant. These articles make false and seriously defamatory allegations of sexual misconduct by the Claimant.
>
> 2. The Defendant has used the anonymity of the internet and social media to hide. The facts of this case are a striking example of how the internet and social media can be used to abuse and damage innocent individuals with apparent impunity. The particular allegations made in this case are of sexual misconduct by the Claimant of the most grave kind against a number of women (described by the author as "*survivors*"). The nameless blogger has cynically used the *#MeToo* debate as part of their strategy. The Claimant is said to be a sexual predator who is guilty of a series of serious sexual assaults, including rape, sustained bullying and intimidation. There has been widespread dissemination of this material. There can be little doubt that the allegations have caused the Claimant and his family substantial personal distress and have had an adverse impact upon his professional standing in the academic community.

426. The claimant brought proceedings for libel, harassment and breach of the General Data Protection Regulation.

427. The claimant obtained default judgment in February 2021, and it fell to Saini J in July 2021 to assess damages and ancillary relief. In addition to granting an injunction and an order under s 13 of the DA 2013, the judge awarded a combined sum for the libel and harassment claims of £70,000. (For reasons of overlap and proportionality, the claimant did not ultimately pursue compensation in data protection.)

428. The Court held that the libels had devastated the claimant's life in several ways. Saini J described 'allegations of rape and sexual assault… [as] extremely grave allegations' ([38]). The publications were*:*

> "all individually extremely serious, but… even more so when taken collectively. The incremental effect of reading those allegations over a period of time (as the followers of D's Twitter Account would have done…) would have been devastating to the C's reputation" ([38]).

429. Further, the allegations were 'allegations of guilt'; were 'not qualified in any respect'; they 'suggest[ed] direct knowledge of C's alleged conduct and crimes as well as of access to direct sources that had been in contact with C'; and had a 'form and style … similar to that of a case study from an investigative journalist, recounting supposed testimony from claimed 'survivors'' ([39]).

430. The extent of publication for each of the articles could safely be inferred to be in the high hundreds to the low thousands, based on various factors, including: the claimant's prominent reputation; the number of Twitters users following the defendant's account (135); and the defendant's Twitter profile being publicly viewable. The evidence of percolation was also highly material ([40]-[48]).

431. Finally, the claimant had given 'direct and compelling evidence as to his distress, despair and shock at the allegation, which was magnified by professional colleagues, acquaintances and friends becoming aware and concerned about the allegations' ([50]).

432. The Claimant submits that in the present case an appropriate award of general damages should exceed £100,000, due to the following factors:

a. The gravity of the Defendant's allegations against the Claimant, which went to the heart of the Claimant's personal and professional reputation. They were self-evidently extremely grave and damaging, falsely alleging serious criminality on multiple occasions.

b. The large scale of publication (to 144,000 Twitter followers), in particular in this jurisdiction. This was a greater extent of publication than in *Blackledge*.

c. The response of others to the Defendant's libellous publications against the Claimant and evidence of republication ('Likes', ReTweets, etc).

d. The Claimant's evidence about the distressing impact of the Defendant's publications on his personal and professional life.

e. The fact that the Defendant's publications were, apart from the 20 June Tweet, unequivocal allegations of guilt against the Claimant.

f. The fact that the 18 June Tweet presented the Defendant's allegations against the Claimant as being based on the 'evidence' of six 'victim[s]' reinforcing the impression that real testimony underpinned the false accusations against the Claimant.

433. Turning to aggravation, the Claimant said the following were aggravating factors:

a. The Defendant published his false allegations against the Claimant in a concerted campaign to ruin the Claimant's reputation. The Defendant's persistent repetition of his allegations, and his efforts to encourage others to disseminate them more widely, seriously exacerbated the Claimant's distress.

b. The fact that the Defendant conducted his campaign motivated by a desire to avenge himself upon the Claimant following the dispute about Daniel.

c. Even after the Claimant's solicitors sent the Defendant a letter of claim on 6 August 2020, the Defendant falsely accused the Claimant again of rape in the YouTube Video on 10 March 2021.

d. The Defendant has never made any online withdrawal or retraction of, or apology for, the statements complained of. At the end of trial the Defendant was adamant that he continued to believe Mr Tennent's defamatory allegations and those of the unidentified third alleged 'victim'.

e. The Defendant's failure to admit online, at the time or since, that he was wrong to believe the false allegations of Mr Stone against the Claimant, on which several of his statements were predicated.

f. The Defendant accompanied his false allegations of rape with false allegations of blackmail and bribery which he was totally unable to substantiate.

g. The Defendant's conduct during the trial in general, where he constantly repeated defamatory allegations against the Claimant and sought to present himself as part of a wider, noble effort to hold the adult industry accountable.

h. The facts and matters set out in PoC, [36.7], namely:

> "36.7 Notwithstanding his admitted inability to defend the Claimant's complaint on its merits, the Defendant, in response to correspondence from the Claimant's lawyers and by reference to the Claimant's threatened legal complaint, published further Tweets on the Defendant's Twitter Account in which he:
>
> 36.7.1 reiterated his refusal to apologise and said that he would not back down;

36.7.2 insisted that the stories of the Claimant's purported victims 'should be heard' and that the individuals he had spoken to were not 'the only victims', which the Claimant will say in the context amounted to a repetition of the defamatory and seriously harmful allegation that the Claimant is a multiple rapist;

36.7.3 characterised the Claimant's reasonable attempts to obtain vindication as 'insane demands'; and

36.7.4 referred to the fact that he "wont back down" (sic) and 'didn't back down'."

434. I accept the thrust of the Claimant's submissions. The Defendant subjected the Claimant to a campaign of defamation of an extremely serious type which directly impacted upon many aspects of the Claimant's life, including his reputation; his business; and his mental well-being. Many of the Defendants allegations were – as he knew - wholly unevidenced, so that by the time of trial he had to admit his case only relied on Mr Tennent, meaning that his case on multiple victims finally collapsed. There was a degree of cynicism about the Defendant's defence that his publications were in the public interest, given that: right from the off he wrongly labelled the Claimant as a rapist; he refused to consider any possibility that what he was being told was untrue; he did not give the Claimant a fair opportunity to defend himself; and some of his publications contained vitriolic personal abuse.

435. Taking all matters together, the total damages I award to the Claimant, including an amount for aggravated damages, is £110,000.

436. This is also a proper case for the grant of an injunction, as sought by the Claimant at [37] of his POC. The Claim Form will also need to be amended (for which I grant leave) to reflect the damages award I have made.