

Neutral Citation Number: 2016 EWHC 474 (QB)

Case No: HQ13D06031

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice,
Strand, London, WC2A 2LL

Date: 3 March 2016

Before :

Mr Justice Mitting

Between :

Ronald Terence Stocker
- and -
Nicola Stocker

Claimant

Defendant

Manuel Barca QC (instructed by **SA Law LLP**) for the **Claimant**
David Price QC (instructed by **David Price Solicitors & Advocates**) for the **Defendant**

Hearing dates: 29th February – 3rd March 2016

JUDGMENT
(Approved)

Mr Justice Mitting

Thursday, 3rd March 2016

Judgment by MR JUSTICE MITTING

1. The claimant and the defendant were married on 17 September 1999. They divorced in 2012.

They have one child -- a son, J -- now 15. Their divorce was acrimonious. On 23 December 2012, the defendant exchanged postings with Deborah Bligh, the claimant's then and current girlfriend, on her Facebook "wall". The postings included the following:

Nicola Stocker:

"I hear you have been together two years? If so u might like to ask him who he was in bed with last time he was arrested ..."

Nicola Stocker:

"...wouldn't bring it up. Last time I accused him of cheating, he spent a night in the cells, tried to strangle me. Police don't take too kindly to finding your wife with your handprints round her neck but don't worry, you'll get a nice watch Christmas!"

Deborah Bligh:

"Why did Terry get arrested?"

Nicola Stocker:

"... which time?"

Deborah Bligh:

"Why has he been arrested???"

Nicola Stocker:

"Well you know about him trying to strangle me. Then he was removed from the house following a number of threats he made and some gun issues I believe and then the police felt he had broken the terms of the non-molestation order."

Nicola Stocker:

"All quite traumatic really."

2. The claimant claims that they were defamatory of him and brings this claim for damages and injunctive relief for libel. The defendant advances a variety of defences with which I will deal in due course.

3. Both produced detailed witness statements and have been cross-examined on them. I am satisfied that both were in general truthful witnesses though each has spoken of the detail of some of the events which give rise to this claim in a vein which reflects what they have come to believe rather than the strict truth. This is not to their discredit, it is a common human failing.

Both have much to commend them as people. The claimant is a shrewd and successful businessman; the defendant is a self-reliant woman who has borne a serious illness with courage. Each are devoted parents to their son. Yet, under the stress of a failing marriage, each behaved towards the other in a manner which does no credit to either of them. Each has exchanged vituperative messages with the other. The claimant became interested in the defendant's relationships with other men and with her friends to the point of obsession and threatened to expose what he believed he had discovered. The defendant made complaints to the police about him which she hoped would result in his arrest and, in one instance, prosecution. Each, in other words, brought out the worst in the other.

4. Ms Bligh also produced a witness statement and was cross-examined upon it. I must approach her evidence with caution because I am satisfied that she did, by her French lawyers, attempt deliberately to mislead the Cour d'Appel in Aix-en-Provence about her domestic circumstances in England in proceedings concerning her children, then and now living with their father in France. I will express my conclusions about her evidence on the central issues in this case later on.

The Facebook postings.

5. At the end of November, or early December 2012, the defendant applied to become the Facebook "friend" of Ms Bligh. Ms Bligh says that when she received the request she was in France at

about the time of the birth of a grandson to her second daughter on 21 November 2012. She accepted.

6. I am satisfied that the defendant's purpose in applying was to find out more about Ms Bligh by monitoring her interaction on Facebook with her family and friends. Ms Bligh is unlikely to have had any specific purpose in accepting her beyond perhaps the belief that because she was in regular contact with J, it would do no harm to increase the opportunity for communication with his mother about him. I am satisfied that she had no sinister motive in accepting the defendant as a Facebook friend.
7. The defendant did not make contact with Ms Bligh on Facebook until 23 December 2012. Ms Bligh had been to visit her family in France on 19 December 2012, returning to the United Kingdom on either 21 or 22 December. She did not return to the claimant's house until 22 December.
8. On 21 December, the claimant and defendant exchanged text messages about arrangements for J in which he engaged in vulgar abuse of her. She made an apparently complimentary reference to Ms Bligh, though in view of what occurred on 23 December, it may have been intended to be sarcastic.
9. On 23 December, the claimant took J shopping for Christmas presents. After an anodyne exchange of text messages about arrangements for the defendant to pick J up that afternoon, the claimant raised the temperature by criticising her arrangements. She responded in kind at 10.49 and 10.33 with vulgar abuse about Ms Bligh which leaves no room for doubt about her real feelings about her. She despised her. The claimant did not respond to her last text message until 1.24 pm, by which time the events which give rise to this claim had in significant part already occurred.
10. At an unknown time on 23 December, Ms Bligh posted the following Facebook on her Facebook "wall":

"Can't wait to wake up Christmas Day with my man and his son xxx missing my children xxx."

11. The defendant says that she believes this occurred between 12.00 and 12.15. She took it as a deliberate provocation of her by Ms Bligh, advertised to her friends on Facebook. She responded immediately at 12.16:

"Which one of his sons would that be, maybe u should be with your own kids."

It was not a request for information but a continuation in modestly less offensive language of her earlier text messages to the claimant. Ms Bligh was taken aback and responded in language intended to convey that she did not understand and did not like the tone of the defendant's comment and would prefer to continue any exchange by telephone:

"Sorry, I do not understand your status. Would you like to phone me? I am at home."

The defendant responded:

"Not really, no."

Ms Bligh then posted a message repeating the invitation to the defendant to telephone her which elicited this response:

"Why would I want to do that?"

12. The defendant explained in evidence that she was at work and that it was not convenient to call.

I do not accept that explanation. For the next two hours and 18 minutes, she exchanged messages on Facebook with Ms Bligh, all on Ms Bligh's Facebook "wall".

13. Ms Bligh immediately telephoned the claimant on his mobile telephone and did not get through to him. She tried again two minutes later with the same result. She says that she wanted to speak to him about the exchange which had just occurred. I am satisfied that she did.

14. Between two and seven minutes later, the following exchange occurred:

Ms Bligh:

"Why ask me as a friend on FB???"

The defendant:

"Because it was very enlightening and confirmed a lot of my worst fears."

The defendant:

"But very useful."

Ms Bligh:

"Oh, and what are they?"

Ms Bligh:

"Useful for what?"

The defendant:

"Ask Terry. I learnt from the best."

15. Ms Bligh's enquiries were intended to be and were what they appeared to, questions by a woman anxious to establish what the defendant's purpose was and what she was intending to convey.

The defendant's responses were intended to convey that she had learned a good deal from the information which she had gleaned from Ms Bligh's Facebook account.

16. At 12.30, Ms Bligh telephoned the claimant's mobile telephone again for 15 seconds. She clearly left a voice message asking him to call her. The defendant then began to embark on a task which she fulfilled in the course of the next two hours or so: that of enlightening Ms Bligh about the character and antecedents of the claimant.

"I hear you have been together 2 years? If so u might like to ask him who he was in bed with the last time he was arrested, apparently he really liked her but she packed her bags and left.

Sensible girl!"

Ms Bligh:

"when was this???"

"Ask Terry if you are at home I presume you mean his house as you don't have one. Is it only one of his sons there for Christmas, probably as don't think he is too popular with the other mums."

Ms Bligh:

"Terry and J are out, does Terry ave more than one son then?"

The Defendant:

"Oh yes, he has an older one born when he broke his feet and also Charlie has come to light, he is 9."

"God knows if there are more!"

Ms Bligh:

"Oh I didn't no."

"Where did Charlie come from?//"

The Defendant

"Well lying cheating bastards who refuse to wear condoms tend to get caught out occasionally. Wouldn't bring it up last time I accused him of cheating he spent a night in the cells, tried to strangle me. Police don't take too kindly to finding your wife with your handprints round her neck. But don't worry you will get a nice watch for Christmas!"

Ms Bligh:

"A watch???"

"There are thing I do not no."

The Defendant

"Oh yes unless he has already bought you one seems to be his gift of choice. Think it's a bit like a badge of ownership, Cartier or even a tag."

Ms Bligh:

"???"

The Defendant:

"Don't accept any sort of vehicle it will be owned by Eros Finance, poor Lyn had hers snatched from the carpark at work god only knows how she got home."

"Cartier and Tag are makes of watches."

Ms Bligh:

"Who is Lyn?"

"And Eros Finance???"

The Defendant:

"His first wife he was married to her for 27 years."

"Eros one of his companies god u really haven't done your background research have you! Well ask away."

Ms Bligh:

"i do not seem to no a lot."

The Defendant:

"It's know and no you don't seem to unfortunately Lyn did not enlighten me she just chose to tell me it wouldn't work!"

Ms Bligh:

"Can you enlighten me because i really didnt know anything about all this?"

The Defendant:

"What would you like to know? Ask any questions you want."

Ms Bligh:

"About Terry, what he is like/why your marriage didnt work."

The Defendant:

"Our marriage didn't work because we didn't get on we have very different views what a marriage should be."

"And I did not want J growing up in an environment where all he saw was his parents yelling at each other and them being unhappy, I wanted him to grow up understanding that relationships are about love and mutual respect."

"And I am sure you want your kids to know that too x."

Ms Bligh:

"I can understand that."

The Defendant

"That's why I divorced him."

17. At 12.35, the Claimant telephoned Ms Bligh,. Both say that they cannot remember what was said. I am invited to draw the inference that they discussed the Facebook exchange and that he said something to her to encourage her to continue it. She denies it, saying that she did not want to upset the claimant's day out with his son. I do not know what each said to the other but I think it unlikely that they discussed the Facebook exchanges, and I am satisfied that the claimant did not give instructions to Ms Bligh as to the future conduct of exchanges with a view to trapping the defendant into posting comments upon which he could later sue for defamation, for reasons which I will explain.

18. The exchange then resumed:

Ms Bligh:

"And what is Terry like as a person?"

The Defendant:

"In what way?"

Ms Bligh:

"Why did Terry get arrested."

The Defendant:

"Clearly I don't like him very much that's why I divorced him! So my opinion on that is very bias! Which time?"

Ms Bligh:

"Why has he been arrested???"

The Defendant

"Well u know about him trying to strangle me, then he was removed from the house following a number of threats he made and some gun issues I believe and then the police felt he had broken the terms of the non-molestation order."

"All quite traumatic really."

Ms Bligh:

"Sorry to hear that, so what is it you have against me???"

The Defendant:

"Obviously concerned re the stability for J giving both Terry's and your history. He was very happy living there and I was hopeful he would have a stable home and build a relationship with his dad, who wanted him 50 per cent of the time, now that time seems to involve being looked after by his grandmother or you, that's not really what the court had in mind or me! Now it seems he is getting a big stepfamily, that in truth on paper aren't looking good, a little concerned that you abandon your children in France and only have limited access to them yet you have full access to my son and also I don't want him involved in another failed relationship. I am sure as a mum you understand that."

"So you see it's no you per say, it's being a concerned mother who loves her son and wants to protect him. Unlike Terry I am quite happy for him to have a relationship, just wish he would remember he is a dad first."

19. The purpose of the two participants in these exchanges is plain. The defendant wanted to blacken the claimant in the eyes of his current girlfriend and to belittle her. Ms Bligh wanted to find out from the defendant about the claimant's past history. I do not believe that either of them gave a moment's thought to the fact that their exchanges were being conducted in a semi-public

arena accessible to all Ms Bligh's Facebook friends. Ms Bligh said as much in her oral evidence and I believe her. The defendant says that she thought the exchanges were private because they had been initiated, not by Ms Bligh's original posting about Christmas Day, but by her second invitation to her to telephone her. She justifies this belief by reference to the assertion that the message beginning what she says is the second exchange appeared in a different way:

"in a box on my telephone."

20. I have no expert evidence and very limited lay evidence about the technical workings of Facebook and the mobile telephone which the defendant was using, despite provision having been made in pre-trial orders to allow for the possibility of expert evidence being adduced. I do not know if what the defendant says is technically possible or if it is, what the significance of the appearance of the message "in a box" might be. All I do know for certain is that whatever was done did not cause the subsequent exchanges to become confidential to the parties. It was seen by at least three of Ms Bligh's Facebook friends. Their evidence that they saw it is not disputed. Whatever she did cannot therefore have altered the Facebook settings. I accept her evidence when she says that she gave no thought to it. I believe that the defendant's explanation is an after the event rationalisation of something that she now regrets. The Facebook exchanges at and after 12.21 are all of a piece with what went before in the defendant's text messages to the claimant at 10.49 and 11.33 and with her posting on what she knew for certain to be a site accessible by Ms Bligh's Facebook friends at 12.16. I am satisfied that she too gave no thought to the accessibility to others of the medium on which she was conducting the exchange.

21. What of the claimant? At 1.24 pm, about halfway through the Facebook exchanges, he sent a text message to the defendant:

"Out shopping with J at the moment. Sarcasm is funny, cutting and based on the truth so u failed on all fronts. I won't comment on what you have said about Debs, only to say if it isn't true, watch this space."

To which she responded:

"Ok, have fun with J x".

He did not telephone Ms Bligh again that day, nor did she telephone him. The reference to "what you have said about Debs" in this text message is a reference to her texts at 10.49 and 11.43. He said, and I accept, that he did not find out about the comments about him until Ms Bligh told him when he had returned home with J. The telephone records establish that she had no opportunity to tell him before then. If there had been, it is unlikely that he would have refrained from warning the defendant about the consequences as he did about the description of Ms Bligh to him in the text messages.

22. At 7.23 pm he sent the following text message to the defendant:

"Pizza and ice cream! I have shown Deb all your text about her and her family. We will be dealing with it also with the latest Facebook crap. U you have created quite a response for all her friends so that along with the other crap that you have posted in the past will also be handled in the proper way. You are going to make some lawyers very rich! I think it now goes [mistype for gives] me the right 2 circulate my folder of photos, emails and texts from Mr Vaughan and others x."

By then, he clearly realised that what the defendant had posted had been seen by Ms Bligh's Facebook friends. Her response at 7.46 pm suggests that she did not care one way or the other:

"Conversations aren't eligible in court, so good luck, hope can you deal with it Terry and you will now start being honest with her."

She did not reply, as she might have done, if she had realised the consequence of her comments to Ms Bligh being published to her Facebook friends, that the "conversations" were private.

23. Two further pieces of evidence help satisfy me that the claimant and Ms Bligh did not set up the defendant. He says that he knew little or nothing about Facebook. He did not have an account himself and there is no evidence or suggestion that he used Ms Bligh's. It is apparent from a

reference by him in a text message to the defendant at 12.42 on 11 September 2012 that he was aware of statements made by her on her Facebook account for which he said he would sue if she did not apologise and that he did realise by 7.23 pm on 23 December 2012 that the comments made that day on Ms Bligh's Facebook account had been published to her friends, but he denies prior knowledge that the defendant had become a Facebook friend of Ms Bligh and denies that he knew anything of the technical details of Facebook settings. I accept his denial.

24. Further, if he was waiting for an opportunity to sue the defendant for defamation, the Facebook postings gave him the perfect opportunity to do so, yet he did not. It was not until the defendant's email to Eric Roche, Ms Bligh's French ex-partner, on 2 January 2013 that he set in train steps towards litigation. Even then it was only the email on which he relied in the pre-action protocol letter of 18 April 2013, not the Facebook postings.
25. For all of these reasons, I am satisfied that the claimant and Ms Bligh did not set up or entrap the defendant into making the comments. The first of her manifold grounds of defence therefore fails.
26. For the sake of completeness, I reject Mr Price QC's suggestion put to the claimant that he sought to suppress the fact that Ms Bligh had attempted to telephone him or that he had telephoned her during the exchange of postings. There was a small delay in producing his landline telephone billing records and a longer delay in producing his mobile telephone billing records, but as the correspondence formerly covered by legal professional privilege, which was disclosed in the course of the trial, demonstrates beyond question, he gave instructions to obtain the records and to disclose them when they were obtained. His instructions were fulfilled.

Publication.

27. The claimant's case is that the defendant published the comments and so is liable for defamation on each occasion on which they were read by Ms Bligh's Facebook friends.
28. Mr Price makes two submissions. One, the comments were republished each time they were accessed by Ms Bligh's Facebook friends so that the defendant can only be held liable if she

intended that they were to be read by them or perhaps were aware that they would be read by them. Secondly, even if they were published, and not republished, the same test should be applied to their publication as would be if they had merely been republished. He relies on the assertions made in paragraph 4.4 of the defence which are admitted in paragraph 4.3 of the reply:

"It is admitted that the comments complained of were accessible to Ms Bligh's Facebook friends ["the friends"] ... Ms Bligh could easily have hidden or deleted the exchange at any time so as to make them inaccessible. She could have commenced the exchange by private messaging which would have meant that it would not have been accessible at any time during the exchange including prior to the comments complained of she could have requested moving to private messaging. If the defendant had refused, she could have ended the exchange and hidden or deleted it. Ms Bligh could have blocked the defendant and/or "unfriended" her with the consequence that any further communications from the defendant would not be accessible to the friends."

29. He relies on the obiter dictum of Lord Justice Laws in Terluk v Berezovsky [2011] EWCA Civ 1534 at 28. Having observed that it was unnecessary to resolve a legal issue as to the test to be applied to republication on the facts of that case, he said the following:

"Nor I do think it is appropriate to do so since it seems to me with respect these may be deeper waters than counsel have acknowledged. If Mr Browe is right, the tort of defamation would be located, at least in the republication case, closer to the territory of claims in negligence where reasonable foreseeability of harm is a prime constituent for the duty of care. That might be apt for the protection of reputation seen as akin to a right of property but I am inclined to think that the modern law in this area should more visibly occupy the legal territory of privacy and free expression and the tensions between them and to that end the tort of defamation should excoriate not carelessness, but knowing or deliberate action."

30. I do not believe that Lord Justice Laws' dictum assists Mr Price's case. This case is not about freedom of expression. The defendant was free to publish to Ms Bligh defamatory statements about the claimant in which she genuinely believed, protected as she was by the law of qualified privilege. Her case is that she did not intend that her statement should be published to others. She does not assert any right to do so under Article 10. Even if she were to do so, it would be a qualified right, qualified by the restrictions imposed by the law of defamation for the protection of the reputation of others, in this case of the claimant.
31. Mr Price does not submit that in relation to this part of the case the English law of qualified privilege is inadequate to protect the defendant's right to freedom of expression. He is right not to do so. Whether or not the defendant's comments were published or republished to Ms Bligh's Facebook friends, and if so, whether she is liable for them, depends on settled principles of the common law of defamation. Mr Price accepts that the defendant has no defence under section 1 of the Defamation Act 1996. The Common law of defamation was established at a time when more limited means of communication than are now available existed, principally letters. The sender of a defamatory business letter addressed to a firm not marked "Private" was published when opened by clerks in the recipient firm. The author was held to be in principle liable to the person defamed. See Pullman v Hill [1891] 1QB 521. Lord Esher and Lord Justice Lopes explained the principle. Lord Esher at page 528:
- "The letter was not directed to the plaintiffs in their individual capacity, it was directed to a firm of which they were members. The senders of the letter no doubt believed that it would go to the plaintiffs but it was directed to a firm. When the letter arrived, it was opened by a clerk in the employment of the plaintiff's firm and was seen by three of the clerks in their office. If the letter had been directed to the plaintiffs in their private capacity, in all probability it would not have been opened by a clerk, but mercantile firms and large tradesmen generally depute some clerk to open business letters addressed to them. The sender of the letter had put it out of his own

control and he directed it in such a manner that it might possibly be opened by a clerk of the firm to which it was addressed. I agree that under such circumstances there was a publication of the letter by the sender of it ..."

And per Lord Justice Lopes at 529:

"Moreover, the letter was directed to the plaintiff's firm and was opened by one of their clerks. The sender might have written 'private' outside it in order to prevent its being opened by a clerk. The defendants placed the letter out of their own control and took no means to prevent it being opened by the plaintiff's clerks. In my opinion therefore there was a publication of the letter, not only to the typewriter, but also to the clerks of the plaintiff's firm."

32. An understanding of the common law in that sense is set out in paragraphs 6.17 and 6.18 of the 12th edition of *Gatley on Libel and Slander*.
33. The same principles must apply to electronic communications when the person making a defamatory statement communicates it by means accessible to others. The obligation is on her to take reasonable precautions to ensure that it is not published to others. It is common ground that on its usual setting Facebook permits a friend to read any comment posted on the Facebook account user's wall. Any person posting a comment on the wall is therefore publishing it to any friend who may access it electronically. This is publication, not republication. No intervention by any other person is required to permit the friend to read it. It is in principle the same as a comment placed on an office notice board which is undoubtedly published to anyone with access to the board who reads it.
34. The common law imposes an obligation on the person making a defamatory statement on an electronic notice board to take reasonable steps to ensure that it is not read by persons other than the intended recipient. The defendant's actions were the modern day equivalent of a businessperson sending a defamatory letter in an unsealed envelope not marked "private". The fact that Ms Bligh could have altered her Facebook settings to inhibit access to the exchange by

her friends did not absolve the defendant from the obligation to take reasonable steps to ensure privacy herself. She was given the opportunity of a private conversation by telephone which she rejected. Unless therefore she asked Ms Bligh to confirm that the exchange would be private she had no right to assume that it would be and is liable for the consequences if, as happened, it was not.

Meaning.

35. I can deal with meaning shortly. The approach to determining meaning is that set out by Sir Anthony Clarke MR in Jeynes v News Magazines Limited [2008] EWCA Civ 130 at paragraph 14 as qualified by. Lady Justice Sharp in Rufus v Elliott [2015] EWCA Civ 121:

"14. The legal principles relevant to meaning ... May be summarised in this way. 1. The governing principle is reasonableness. 2. The hypothetical reasonable reader is not naive but he is not unduly suspicious. He can read between the lines. He can read an implication more readily than a lawyer and may indulge in a certain amount of loose thinking. But he must be treated as being a man who is not avid for scandal and someone who does not and should not select one bad meaning where other non-defamatory meanings are available. 3. Over-elaborate analysis is best avoided. 4. The intention of the publisher is irrelevant. 5 the article must be read as a whole and any 'bane and antidote' taken together. 6. The hypothetical reader is taken to be representative of those who will read the publication in question. 7. In delimiting the range of permissible defamatory meanings, the court should rule out any mean which 'can only emerge as the product of some strained or forced or earth utterly unreasonable interpretation ...' 8. It follows that it is not enough to say that by some person or other the words might be understood in a defamatory way."

These are Lady Justice Sharp's words:

"11. To this I would only add that the words 'should not select one bad meaning where other non-defamatory meanings are available' are apt to be misleading without fuller explanation.

They obviously do not mean in a case such as this one where it is open to a defendant to contend either on a capability application or indeed a trial that the words complained of are not defamatory of the claimant that the tribunal adjudicating on the question must then select a non-defamatory meaning for which the defendant contends. Instead those words are 'part of the description of the hypothetical reasonable reader rather than (as) a prescription of how such a reader should attribute meanings to words complained of as defamatory'."

36. I do not understand that approach to prohibit reference to an authoritative English dictionary such as the Oxford English Dictionary to confirm the meaning in ordinary usage of a single English word. One of the statements made by the defendant was that the claimant had "tried" to strangle her. The Oxford English Dictionary defines "strangle" in two senses.

1(a):

"To kill by external compression of the throat."

1(b):

"To constrict painfully (of the neck or throat)."

If the defendant had said "he strangled me", the ordinary reader would have understood her to have used the word in the second sense for the obvious reason that she was still alive. But the two Facebook comments cannot have been understood to refer to "trying" to strangle her in that sense because, as she said, the police had found handprints on her neck. These could only have been caused by the painful constriction of her neck or throat. If understood in that sense, she could not have been taken to have said that the defendant had tried to strangle her because he had succeeded. The ordinary reader would have understood that the defendant had attempted to kill her by external compression of her throat or neck with his hands and/or fingers. That understanding would have informed the ordinary reader about the meaning of the remaining comments. They were that he had been arrested on at least two other occasions for "gun issues" and for breach of a non-molestation order and possibly on a third for "threats". In addition, he

would have understood her to assert that the police believed that he had broken the terms of the non-molestation order; in other words, that there was a basis beyond mere suspicion for doing so.

37. Mr Price submits that all that was stated was that the claimant had been arrested on more than one occasion, not itself a defamatory statement. I agree that in principle the statement that a person has been arrested is not necessarily defamatory. But these statements, taken together, go well beyond that. They justify the claimant's pleaded case that the reasonable inference to draw from the statement was that the defendant was dangerous, at least to any woman with whom he lived or had lived, that he was a man who tried to kill on one occasion, had been arrested for an offence involving firearms on another, and had given the police reason to believe that he had broken a non-molestation order made against him. To describe him thus was defamatory.

Justification.

38. The defendant's case is that her statements were substantially true. I deal with the incident on 23 March 2003 first. Both claimant and defendant agree that at about 9.00 pm while he was standing on a stool or chair to permit the defendant to adjust the length of some new trousers, she pricked his leg with a pin. This caused him to lose his temper and speak harshly to her. She responded in kind. She says that he then got down from the chair, pushed her against a small settee, put his hands around her throat or neck and squeezed, leading her to believe that he would kill her. The pressure of his fingers left red marks on her throat or neck. She ran into an office to telephone the police who arrived, according to a police log, at 9.30 pm as the claimant was packing to leave. He was arrested.
39. The claimant says that all that happened was that while he was standing on a stool or chair, and when his leg was pricked, he spoke harshly to the defendant and when she responded by shouting at him placed one hand over her mouth to silence her so as to prevent her waking their

son, then two, who was asleep upstairs. Before the police arrived, she apologised to him for calling them.

40. The police log shows that she made a statement to the police at the home at 10.37 to 10.50 pm.

In it she said that he had made a complaint of assault and threats to kill and had sustained reddening to her neck which was very sore. Nevertheless she did not support police proceedings against the claimant.

41. The claimant was interviewed at the police station between 11.56 pm and 00.07 am. His account of the incident was summarised towards the end of the interview:

PC: "Okay, okay, Nicola has alleged that she said you had some kind of argument concerning the trousers or whatever it was, okay? She has then gone on to say she's been pushed into a chair. Okay, is that true?"

Claimant: "No I think I followed her over to the chair. I don't remember pushing her, I just wanted her to not shout and say the things that she was saying. That was all. I mean, it was over in about three seconds".

PC. "Okay she is ... I have looked at her and she has complained that her neck is sore and she has reddening to her neck that she is stating you put your hand round her neck during this incident. Is that true?"

Claimant: " If it is, I'm not saying she is a liar, but I don't remember doing that. All I wanted her to do was, you know, stop shouting and saying the things she was saying.

PC: "Okay, but it is a possibility, that?"

Claimant: " It's possible."

PC: "But you can't remember doing it?"

Claimant: "Yes, it's like that."

The transcript then notes that he made a gesture.

PC: "So you haven't maliciously grabbed her around the throat or tried to assault her?"

Defendant: "No."

PC: "Is that what you are saying?"

Defendant: "No, yeah."

42. The only hint as to what the defendant was saying to the claimant which caused him to act as he did is given in the Facebook comments:

"Last time he accused me of cheating, he spent the night in the cell. Tried to strangle me."

Neither side referred to this in their evidence and neither were cross-examined about it. I can therefore make no finding about what provoked him to act as he did but I am satisfied that he was provoked by something that she said, hence the comment to the policeman:

"I just wanted her not to shout and say the things she was saying."

43. I do not accept his account that he merely put one hand over her mouth while he was standing on the stool or chair. His hand would have been at his thigh level. He could not have exerted more than momentary pressure on her mouth, from which she could instantly have escaped. Nor could he have left the reddening marks on her neck or throat which I am satisfied were seen by the police. I do not, however, believe that he threatened to kill her or did anything with his hands with that intention. I do not believe that he was capable even in temper of attempted murder. The most likely explanation about what happened is that he did in temper attempt to silence her forcibly by placing one hand on her mouth and the other on her upper neck under her chin to hold her head still. His intention was to silence, not to kill.

44. I now turn to the other aspects of the Facebook postings. On 24 November 2010, the defendant petitioned for divorce on the grounds of the claimant's unreasonable behaviour. The petition made no allegation of threats or violence. Both parties were then living at Chadwell Hill Farm. On 1 March 2011, the claimant signed an undertaking to the court the Family Division. It included undertakings not to copy or disclose electronic documents confidential to her, not to subject her to surveillance and not to harass or molest her.

45. On 5 March 2011, the defendant made a lengthy statement to the police about the claimant's conduct. Most of it concerned events before he gave that undertaking, including allegations of threats made by him. But it also included an allegation that he had that morning threatened to arrange for a violent attack by gypsies on the male partner of a friend of the defendant. She said he was a dangerous man and significantly, that he had a sawn-off pump action shotgun believed to be at his mother's home.
46. The claimant was arrested at Chadwell Hill Farm on the same day by armed policemen. Searches were undertaken at the house of a friend where the licensed shotgun, which he used for sporting purposes, was recovered. His mother's house was searched and a dismantled single-barrelled shotgun, which had not been shortened, for which the claimant immediately claimed responsibility, was recovered. He did not have a licence for it. He was released on bail but charged with possession of an unlicensed shotgun.
47. On 9 March 2011, the defendant applied for a non-molestation order and an occupation order to the Family Division. She cited in the first paragraph of her affidavit in support the claimant's arrest on 5 March for "firearms offences, blackmail and threatening to kill." The claimant was represented when the applications were made and did not oppose them. A non-molestation order and occupation order were made on the same day. The non-molestation order included a prohibition on the use or threat of violence to the defendant of harassment or intimidation of her and of communicating with her for any purpose. The order was to be in force until 9 March 2012. The occupation order required the claimant to vacate Chadwell Hill Farm immediately. By then he had, in fact, already left.
48. The non-molestation order was later varied to permit communication about J.
49. On 20 May 2011, the claimant was summoned to attend Hemel Hempstead Magistrates' Court at 10.00 to answer an information laid that he had committed an offence of possession of an unlicensed shotgun. He pleaded guilty. He was given an absolute discharge by the magistrates.

He has therefore not, as a matter of law, been convicted of a firearms offence and the magistrates must have accepted that the offence which he admitted was, as he maintained, the result of forgetfulness and was in no more than a purely technical sense a breach of the Firearms Acts.

50. On the previous day, the defendant provided a favourable "reference" for the claimant to use at the court which praised his conduct towards J and spoke of the "devastating effect" it would have on him if regular contact was interrupted.
51. After the hearing the claimant went to Tring Market where the defendant had a stall selling jewellery. He says, and I accept that his purpose in doing so, was to arrange with her to go to J's school open day that afternoon. I have no doubt that he also wanted to tell her about the outcome of his case. Unfortunately, a man with whom the defendant had had an intimate relationship after the breakdown of her marriage, of which the claimant strongly disapproved, was also there. I do not doubt that this angered him. I accept that he spoke to the defendant about matters other than J and so breached the non-molestation order. The breach was however not premeditated and was not the subject of immediate complaint or any action by her. In the context of the acrimonious dealings which had occurred between the two of them since 2010, it was comparatively trivial.
52. On 19 July 2011, the defendant complained to the police about breaches of the non-molestation order by harassment, by calls, texts and emails. The claimant was again arrested. Numerous text messages between the claimant and defendant were examined by the police who concluded in September 2011 that there was no evidence to support a charge of an offence of breaching the non-molestation order:
- "There are no texts of an abusive nature."
- No charge was laid against the claimant.

53. Finally, there was conflicting evidence about threats allegedly made by the claimant to the defendant. The claimant undoubtedly threatened to expose the defendant's fleeting intimate association with a man going under the name "Michael Vaughan" by circulating texts which he had obtained from him in obscure circumstances and did threaten and did pursue litigation against the defendant in their matrimonial proceedings and against the man he saw in Tring Market on 20 May 2011 and his sister for possession of the cottage in which she lived within the curtilage of Chadwell Hill Farm. He may well have boasted of threats, whether or not made, to others and of his capacity to obtain details of the defendant's private affairs by covert means. I accept that on one occasion before the breakdown of the marriage he took hold of the defendant's arm as she says but he caused her no injury. I am not satisfied that he made any threats of immediate violence against her then or subsequently. I also accept that the defendant felt belittled and intimidated by him, whatever his intentions towards her may have been.
54. The defendant has proved some justification for the words which she used in the Facebook postings. The claimant did commit an offence against her on 23 March 2003, at least common assault. He was arrested three times. There were "gun issues". He had made threats, though not of immediate violence against her. But she has not met the sting of the postings that the claimant was a dangerous man. The impression given by the postings to the ordinary reader was a significant and distorting overstatement of what had in fact occurred.

Collateral purpose and remedy.

55. The libel was not trivial. The painting of the false picture that the claimant was a dangerous man to the Facebook friends of Ms Bligh was intended to be, and was, damaging to his reputation and their relationship. Nevertheless, the circulation was limited and the damage done substantially remediable. Ms Bligh's family and friends cannot now believe and cannot have believed for long that the claimant was dangerous or posed a risk to her.

56. Mr Price submits that the damages should be reduced to a nominal amount because of the part justification of the libel, to which I have referred. Mr Barca QC submits that damages should be in a small five figure sum. I do not accept either submission. I assess the sum required to afford proper compensation to the claimant for the wrong done to him by these postings at £5,000. Because the claimant has, to his credit, indicated through Mr Barca that he does not seek an award of damages merely my estimate of what would be an appropriate award, I will make no award of damages. I will invite the parties to agree that which Mr Price has indicated the defendant will offer: an undertaking to the court not to repeat the defamatory words posted on Facebook, an undertaking which I understand will include an undertaking not to repeat any words conveying the same message to a reader.
57. In the light of that conclusion I am not satisfied that this claim was brought by the claimant for an illegitimate collateral purpose. He had a meritorious claim which would have resulted in an award of moderate damages but for his decision not to seek a judgment for them.
58. For those reasons and to that extent this claim succeeds.