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Case No: HQ15D01507

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/7/2016

Before:

MR JUSTICE WARBY

- -

Between:

Alexander Economou	**Claimant**
- and –	
David de Freitas	**Defendant**

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- -

Jonathan Barnes & Gervase de Wilde (instructed by **Fieldfisher**) for the **Claimant**
Manuel Barca QC & Ian Helme (instructed by **Hanover Bond Law**) for the **Defendant**

Hearing dates: 13-17, 20, 22 June 2016

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE WARBY

INDEX	
Section	**Paragraphs**
INTRODUCTION	2-7
THE CAUSE OF ACTION ISSUES	8
Legal Principles	9-19
Relevant factual background	21- 39
The November publications	40- 56
Discussion	57 -97
The December publications	98- 109
Discussion	111- 130
Summary of Conclusions on the Cause of Action Issues	131- 135
THE PUBLIC INTEREST DEFENCE	136
The Law	137 - 142
Issues	143
Matters of Public Interest	144-152
Belief that Publication was in the Public Interest	152-161
Reasonable Belief: the facts	162- 238
Discussion and conclusions	239 - 261
OVERALL CONCLUSIONS	262

Mr Justice Warby:

INTRODUCTION

1. The factual background to this libel case has been aptly described as "striking and tragic".

2. The defendant is the father of the late Eleanor de Freitas. In December 2012 Ms de Freitas had a relationship with the claimant, Mr Economou. In January 2013 she accused him of rape. He was arrested, but never charged. In August 2013 he started a private prosecution against her alleging that she had accused him falsely, with intent to pervert the course of justice. The prosecution was taken over by the Crown Prosecution Service, who continued it. Ms de Freitas denied the charge. Four days before the trial date in April 2013 Ms de Freitas, who suffered from bipolar affective disorder, killed herself.

3. Mr de Freitas wanted the inquest into his daughter's death expanded to include an examination of the role of the CPS. The coroner initially ruled against this, but

indicated he was prepared to hear argument on the matter. Mr de Freitas was advised to raise the issues publicly. As a result, in November and December 2014 he issued or authorised the issue of press statements, gave radio and TV interviews, and wrote an article himself. Articles appeared in newspapers and the BBC broadcast two items containing interviews with Mr de Freitas.

4. Mr Economou complains of libel in the two BBC broadcasts, and in five newspaper articles: four in *The Guardian* and one in *The Daily Telegraph*. None of these publications named Mr Economou but he contends that he could be, and was, identified as the subject of the words complained of. The meanings which he attaches to the various publications complained of differ in their detail, but the essence of his complaint is that he was accused of having falsely prosecuted Ms de Freitas for perverting the course of justice by accusing him of rape, when the truth was that he had raped her.

5. The truth or falsity of such allegations is not one of the issues at this trial, and nothing in this judgment should be read as a finding, or as expressing a view, one way or the other on that issue. There are five main issues as to liability: (1) whether Mr Economou was referred to by the publications complained of ("Identification"); (2) in one instance, whether Mr de Freitas is responsible for the publication complained of ("Responsibility"); (3) what if any defamatory meaning about Mr Economou was conveyed by the words for which Mr de Freitas is responsible ("Meaning"); (4) whether the publication of the statements complained of caused serious harm to Mr Economou's reputation ("Serious Harm"); and (5) whether Mr de Freitas is entitled to rely on the statutory defence for publication on a matter of public interest ("the Public Interest defence").

6. The burden of proof on each of the first four issues ("the Cause of Action Issues") lies on Mr Economou. If he succeeds in showing a cause of action, the burden shifts to Mr de Freitas to establish the Public Interest defence. If Mr de Freitas fails in that, the issue of damages arises.

7. There is relatively little overlap between the evidence relevant to the Cause of Action Issues and the evidence that goes to the Public Interest defence. The latter is voluminous. It is convenient to deal with the Cause of Action Issues first.

THE CAUSE OF ACTION ISSUES

Legal principles

8. The relevant legal principles are matters of common law except for Serious Harm, which is an issue that arises from section 1 of the Defamation Act 2013 ("the 2013 Act"). The following key points are not in dispute.

(1) *Identification*

9. "It is an essential element of the cause of action for defamation that the words complained of should be published 'of the [claimant]'": *Knupffer v London Express Newspaper Ltd* [1944] AC 116, 118. This does not mean that defamatory words that do not name the person to whom they refer are immune from action for libel. A person may be libelled without being named. There may be some other way in which readers would identify the claimant as the person to whom the words complained of refer. The

question in all cases is whether reasonable people would understand the words to refer to the claimant: *Gatley on Libel & Slander,* 12th ed (2013) para 7.1.

10. This can be the case because of some feature or features of the words themselves. They may, for instance, contain a description sufficient to lead reasonable people who know the *claimant* to identify him or her as the person referred to. Or it may be that there are extrinsic facts and matters, known to some readers, which would lead a reasonable person to identify the claimant as the person referred to: see, eg, *Morgan v Odhams Press Ltd* [1979] 1 WLR 1239. This last situation is commonly referred to as involving a "reference innuendo". The comparison is with a "true innuendo" meaning of words: one that arises only in the mind of a person who knows "special facts", which are not matters of common knowledge. As a rule, the cause of action must be complete at the time of publication; a claimant cannot rely on facts that occur, or knowledge that is acquired by readers, after the time of publication to support a reference innuendo: *Grappelli v Derek Block (Holdings) Ltd* [1981] 1 WLR 822. A limited exception to this rule was recognised in *Hayward v Thompson* [1982] QB 47, CA: a publisher may be liable where it defames an unnamed person who is identifiable to a small number, but later identifies that person to its readers generally.

11. The test that I have described is an objective one, which does not depend in any way on what the defendant knows or intends will happen: see *Morgan v Odhams Press* (above) and *Baturina v Times Newspapers Ltd* [2011] EWCA Civ 308, [2011] 1 WLR 1526, where *Morgan* and other well-known earlier authorities are reviewed. Some suggest that there is a subjective element, in the sense that a claimant has to prove that there were people who did in fact understand the words to refer to him. I do not believe this is the law: see *Lachaux v Independent Print Ltd* [2015] EWHC 2242 (QB), [2016] QB 402 [15] and *Undre v Harrow LBC* [2016] EWHC 931 (QB) [24-26], [31]. In *Baturina* the majority expressed the view that such evidence was not even admissible: see [56] (Sedley LJ) and [57] (Hooper LJ). This was *obiter*, but consistent with the view I take as to the objective nature of the test. It would not matter in this action, as the claimant's case does rely on evidence or inference of actual identification, as will normally be the position now that claimants have to prove Serious Harm.

(2) *Responsibility*

12. A defendant will of course be held legally responsible for a communication which he personally made. He may also be responsible for the republication in the media of such a statement. Conventionally, those who write or speak to the media with a view to their words being re-published in the media are said to have "caused" or "authorised" such republication, and are responsible on that basis. A person will also be responsible for statements which he authorises others to make to the media on his behalf, with a view to re-publication. That is the way Mr Economou puts his case against Mr de Freitas in this action. He complains of words which he says Mr de Freitas spoke or wrote, or authorised others to write, to the media for publication in the media. He does not seek to hold Mr de Freitas responsible for any of the other matter which the media organisations concerned included in the articles and broadcasts that are complained of.

(3) *Meaning*

13. It is an essential ingredient of any defamation claim that the statement complained of is defamatory of the claimant. At common law a statement is defamatory of a person if 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 *Ltd* [2010] EWHC 1414 (QB), [2011] 1 WLR 1985 [96] (Tugendhat J). Whether that is so normally depends on the natural and ordinary meaning of the words.

14. In defamation law a given set of words can have only one natural and ordinary meaning. The principles by which the court identifies that single meaning are well-settled. Most are encapsulated in the summary given by Sir Anthony Clarke MR in *Jeynes v News Magazines Limited* [2008] EWCA Civ 130 at [14]:

> "(1) The governing principle is reasonableness. (2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. (3) 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 would read the publication in question. … (7) the court should rule out any meaning which "can only emerge as the product of some strained, or forced, or utterly unreasonable interpretation. (8) … "it is not enough to say that, by some person or other, the words might be understood in a defamatory sense."

15. Another well-established principle is known as "the repetition rule". The relevant aspect of the rule is that "… words must be interpreted… by reference to the underlying allegations of fact and not merely … some second-hand report … of them": *Shah v Standard Chartered Bank* [1999] QB 241, 263. Put another way, when deciding the meaning of a statement "for the purpose of the law of libel a hearsay statement is the same as a direct statement": *Lewis v Daily Telegraph* [1964] AC 234, 284 (Lord Devlin).

16. Jeynes principle (5) was well expressed in the 2nd edition of Duncan and Neill on Defamation (1983). In a passage cited with approval by Lord Bridge in *Charleston v News Group Newspapers Ltd* [1995] 2 AC 65 the editors said:

> "In order to determine the natural and ordinary meaning of the words of which the plaintiff complains it is necessary to take into account the context in which the words were used and the mode of publication. Thus a plaintiff cannot select an isolated passage in an article and complain of that alone if other parts of the article throw a different light on that passage."

17. The fact that the ordinary reasonable reader is assumed to read the whole of the article or other publication complained of can cause complexities if, as in this case, the claimant sues a defendant for being a source of and causing a media publication. A media publication will often include some material for which the source bears responsibility and some for which he bears none. That is true of the first six of the publications complained of in this action. Such additional material is likely to affect the

meaning of the publication. The additional material may make things worse, in which case the source cannot be blamed; or it may make the meaning less damaging, or even innocent, in which case the claimant must take the meaning as it emerges from the entire publication. A source or contributor cannot be sued for a defamatory meaning which only arises from part of the media publication to which he has contributed: see *Monks v Warwick District Council* [2009] EWHC 959 (QB) [12-14] (Sharp J).

(4) *Serious harm*

18. Section 1 of the 2013 Act means that it is no longer enough to prove that the defendant published a statement which conveys a defamatory meaning about the claimant. By s 1(1), "A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant." In *Sobrinho v Impresa Publishing SA* [2016] EWHC 66 (QB), [2016] EMLR 12 Dingemans J identified a number of uncontroversial propositions that can now be stated about s 1:

> "46. …. first, a claimant must now establish, in addition to the requirements of the common law relating to defamatory statements, that the statement complained of has in fact caused or is likely to cause serious harm to his reputation. "*Serious*" is an ordinary word in common usage. Section 1 requires the claimant to prove as a fact, on the balance of probabilities, that the statement complained of has caused or will probably cause serious harm to the claimant's reputation. It should be noted that unless serious harm to reputation can be established an injury to feelings alone, however grave, will not be sufficient.
>
> 47. Secondly it is open to the claimant to call evidence in support of his case on serious harm and it is open to the defendant to call evidence to demonstrate that no serious harm has occurred or is likely to do so. However, a Court determining the issue of serious harm is, as in all cases, entitled to draw inferences based on the admitted evidence. Mass media publications of very serious defamatory allegations are likely to render the need for evidence of serious harm unnecessary. This does not mean that the issue of serious harm is a "*numbers game*". Reported cases have shown that very serious harm to a reputation can be caused by the publication of a defamatory statement to one person.
>
> 48. Thirdly there are obvious difficulties in getting witnesses to say that they read the words and thought badly of the claimant, compare *Ames v The Spamhouse Project* [2015] EWHC 127 (QB) at paragraph 55. This is because the claimant will have an understandable desire not to spread the contents of the article complained of by asking persons if they have read it and what they think of the claimant, and because persons who think badly of the claimant are not likely to co-operate in providing evidence.
>
> 49. Fourthly, where there are publications about the same subject matter which are not the subject of complaint (because

> of limitation issues or because of jurisdictional issues) there can be difficult points of causation which arise: see *Tesla Motors v BBC* [2013] EWCA (Civ) 152 and *Karpov v Browder and others* [2013] EMLR 3071 (QB); [2014] EMLR 8. The decision of the House of Lords in *Associated Newspapers v Dingle* [1964] AC 371 does not prevent these difficulties. That decision was not a decision on causation. The decision in *Dingle* prevents a defendant from relying in mitigation of damages for libel on the fact that the same or similar defamatory material has been published in other newspapers about the same claimant. *Dingle* does not address the issue of whether a publication has caused serious harm.
>
> 50. Fifthly, as Bingham LJ stated in *Slipper v BBC* [1991] QB 283 at 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*" through what has sometimes been called "*the grapevine effect*". … "

19. The causation problems referred to in Dingemans J's fourth point are those that arise when the claimant points to some hostile remark or other adverse event in his life as evidence of harm to reputation caused by the publication complained of, and there are other possible causes of the remark or event, in the form of other publications to the same or similar effect. *Dingle* has no bearing on problems of this kind.

Relevant factual background

20. Mr Economou and Ms de Freitas first met at a party in 2008 or 2009. In the Autumn of 2012 they became friends. Over a period of weeks they carried on a flirtatious correspondence on social media and by text. On 23 December 2012 they met, and spent that evening and night together at Mr Economou's flat in the King's Road, London SW3, where they had sex. The following day, Christmas Eve, they went shopping together. After they parted company Mr Economou did some internet searches, and received some texts from Ms de Freitas and a friend of hers. As a result, in the course of a telephone conversation with Ms de Freitas he told her that he did not want to see her again, and hung up on her.

21. Ms de Freitas was upset by this, and made it known to others by social media, text, and otherwise, that she was upset. Later on 24 December 2012 she posted a status update on her Facebook, which referred to a customer at a Cambridge petrol station expressing strong disapproval of "whoever upset and hurt me". At around this time Sebastian Gosden-Hood, an acquaintance of both, learned from his sister that "something had happened" involving Ms de Freitas. Some of what Ms de Freitas said to others gave an explanation for her upset. On Christmas Day she sent a text to her friend Henriette Schroder saying that Mr Economou had "fucked and chucked" her. She evidently told her cousin Lizzie Noel that Mr Economou had done something bad to her, because on 26 December Ms Noel texted him making such an accusation.

22. Mr Economou learned at the time of the Facebook status update, and of the accusation referred to in the text from Lizzie Noel. He later heard from Henriette Schroder that Ms de Freitas had told people at Ms Schroder's New Year's Eve party that she had been raped by Mr Economou. On 3 January 2013 Tanya Macrae told him that Ms de Freitas had told several people that he had assaulted her, drugged her, and wouldn't let her escape from his flat. Ms Macrae said that Ms de Freitas had asked a mutual friend who was a known gossip to spread this information. Mr Economou became very upset. At 17:38 on 4 January 2013 he called Mr de Freitas and left a voicemail saying that Ms de Freitas had "been making a lot of false accusations and allegations about me, some of them are very serious". He said that "rumours are now going around my friends" and that he was on his way to Chelsea Police Station to file an official report complaining of her conduct.

23. Chelsea was the police station at which Ms de Freitas reported that same day that Mr Economou had raped her at his home address between 23 and 24 December 2012. As a result, when he arrived at the police station to report Ms de Freitas, Mr Economou was arrested on suspicion of rape. He was detained overnight at Notting Hill Police Station, and interviewed under caution on 5 January 2013, when he denied the allegations. He was then released on police bail.

24. Mr Economou instructed solicitors, and between 5 January and 20 February 2013 he and they gathered evidence as to the circumstances surrounding the alleged rape, including CCTV, communications Ms de Freitas had made, and other material. Evidence which they considered exonerated Mr Economou was presented to and considered by the police. On 20 February 2013 Mr Economou's solicitors were told, and they informed him, that the decision had been made to take no further action against him, and that he would not be charged. The decision was taken by Detective Inspector Julian King, the officer in charge of the investigation. The officers conducting the investigation were DCs Dial and Denton.

25. Mr Economou sought to persuade the police to investigate further with a view to prosecuting Ms de Freitas for the common law offence of perverting the course of justice ("PCJ"). The police declined to do so. Mr Economou took the view that they were unjustifiably refusing to investigate. He complained about the officers to the Independent Police Complaints Commission ("IPCC") and instructed a firm of solicitors called Edmonds Marshall McMahon ("EMM"), which specialises in private prosecutions. He told Ms de Freitas and her father of his intentions in messages he sent on 21 February 2013.

26. In a text to Ms de Freitas he accused her of PCJ and said "see you in the Crown Court". In a second text he told her that his family had "pooled our resources together and instructed the best lawyers money can buy to ensure you are sent to prison for your crimes". He conveyed the same information to Mr de Freitas by a message to his business website which also stated: "You have no idea how angry we are right now. This problem is not going to go away until she is brought to justice. I can not wait for that to happen. Your daughter has completely destroyed me and now the real justice is going to happen." On 22 February this message was reported to the police by Mrs de Freitas, alleging that it was an act of harassment. DC Dial issued Mr Economou with a harassment warning letter, which he copied to Mr Economou's solicitor.

27. Between March and August 2013 Mr Economou and EMM gathered more evidence and built up a case of PCJ against Ms de Freitas. EMM made contact with a number of people, and obtained some 8 witness statements. The police assisted when asked and, as Mr Economou puts it, "were generally helpful, with Detective Inspector King even providing a witness statement."

28. On 2 August 2013 Mr Economou laid an information before Westminster Magistrates' Court, alleging that Ms de Freitas was guilty of PCJ. The particulars were that she had between 24 December 2012 and 20 February 2013 with intent to pervert the course of justice done an act which had a tendency to pervert the course of public justice in that she made a false allegation of rape against Mr Economou to the Metropolitan Police Service. The court issued a summons.

29. On 13 August 2013, EMM sent Ms de Freitas by email and by post the summons, a schedule of offences setting out the single count of PCJ and a Case Summary. The following day Mr de Freitas reported the service of the summons to DC Dial as a further act of harassment. On 31 August 2013 Mr de Freitas and Ms de Freitas went to Notting Hill police station where she made an allegation to a Police Community Support Officer ("PCSO") named Tulsi of further harassment by Mr Economou.

30. On 1 September 2013 Mr Economou wrote Mr de Freitas a fax, which he ultimately signed and sent by post to Mr de Freitas' office address, complaining of "further false allegations" made at Notting Hill police station. He complained that these had caused him enormous alarm and distress. He referred to the prosecution of Ms de Freitas "for making a false allegation of rape" and said that making "further false allegations in an attempt to delay legal proceedings is only going to make the situation worse". He told Mr de Freitas that there would be a full investigation into the allegations "and if it is found that you have intentionally lied to the police then you could be prosecuted yourself."

31. By email of 2 September 2013 Mr de Freitas reported this letter to DI King as a yet further act of harassment. The response was a letter from EMM dated 3 September 2013 which apologised on Mr Economou's behalf for his 1 September communication and "any surprise or concern it may have caused". The letter was sent to Mr de Freitas' office. Although marked Strictly Private and Confidential it was not addressed to him by name. As a result, it was opened by a member of staff. The letter gave Mr Economou's name, mentioned Ms de Freitas by name, and referred to her forthcoming Court appearance.

32. Ms de Freitas was summoned to appear in the first instance before Westminster Magistrates' Court on 11 September 2013. Further hearings took place at Southwark Crown Court on 25 September, 15 November and 29 November 2013. On 5 December 2013 the CPS resolved to take over and to continue the prosecution. There was a further hearing on 13 December 2013.

33. During this period, Mr Economou discussed the allegations against him, and his private prosecution of Ms de Freitas, with a number of people. In his witness statement he names 148 people whom he says were aware by the end of 2013 of the rape allegations that had been made against him. In cross-examination he said that he had told many of his friends what was happening whilst he was under police investigation. He told "a lot of people", including someone by the name of Queree who ran a portfolio of shares for him, whom he met 8 to 10 times a year, his chiropractor, the chiropractor's secretary,

his hairdresser, and his caretaker. He suggested the list could be expanded to 300 if he put his mind to it. The discussions went into detail, he said.

34. On 24 January 2014 there was a Plea and Case Management Hearing ("PCMH") at Southwark Crown Court before HHJ Taylor. Ms de Freitas was arraigned and pleaded not guilty. A trial date was set, of 7 April 2014. On 4 April, three days before her trial date, Ms de Freitas died. She had taken her own life. Needless to say the case did not proceed. There was a short mention of the case at Southwark Crown Court on 7 April.

35. A Coroner's inquest into Ms de Freitas' death had to take place. The matter was within the jurisdiction of the Coroner for West London. Mr de Freitas was concerned that this should be a thorough inquest, addressing the conduct of the CPS in taking over the prosecution of his daughter. In and between August and November 2014 he enlisted support from Jonathan Clements at the charity Victim Support, Shona Crallan of the charity Inquest, and Harriet Wistrich of the solicitors, Birnberg Peirce. Ms Wistrich and Ms Crallan made contact with Sandra Laville of *The Guardian*, who wrote three of the articles complained of. Of those I have named here, Mr Clements, Ms Crallan and Ms Wistrich have given evidence at this trial and been cross-examined.

36. It was on 1 August 2014 that Mr de Freitas made contact with Mr Clements. He and Polly Rossetti of Victim Support helped Mr de Freitas write letters to the Coroner and to the DPP, both of which he sent on 19 September 2014. To the Coroner he alleged that "there were a series of failings of both public policy and practice which I believe warrant full investigation as part of the inquest." To the DPP he wrote seeking answers to a series of questions about the decision-making of the CPS.

37. On 25 September 2014, whilst awaiting responses to these letters, Mr de Freitas made contact with Inquest, by sending an email to its website. He wrote that he had been recommended to do so by the charity MIND, as the matter "involves 'multi-agency failure and questions of corporate and state failings and accountability'". As a result, he was contacted by Ms Crallan, a case worker at Inquest. She undertook to see if she could find a lawyer to assist him. On 17 October 2014 Ms Crallan emailed Harriet Wistrich of Birnberg Peirce, suggesting that there might be a case for an "article 2 inquest". This was a reference to an inquest giving effect to the duty of the state pursuant to Article 2 of the European Convention on Human Rights to conduct an effective investigation where it appears that a death may have resulted from state action. Ms Crallan acknowledged that this might be a difficult case in which to sustain that argument, but suggested that in any event the case warranted "a thorough inquest hearing". She identified the "main claim" as being against the CPS, and noted that "the father … hopes that evidence will come to light which will enable him to bring a civil claim against the CPS".

38. Ms Wistrich took on the case and wrote the Coroner a detailed letter containing submissions of fact and law in support of an application to adjourn the inquest, then fixed for a short hearing on 7 November 2014. This did not succeed. The Coroner wrote a letter to Ms Wistrich on 30 October 2014 which he stated "can be read as my ruling on your submissions". He declined to grant the application for an adjournment saying that he was "not persuaded … that this inquest engages Article 2" and that he considered that the witnesses and statements that had been provided for would be sufficient to enable him to answer the four questions he was required by statute to answer. He also anticipated that he would be able, on that evidence, to decide whether

his statutory duty to write a Prevention of Future Death report had been triggered. He concluded, "You are welcome to make further oral submissions on scope prior to the commencement of the hearing on 7 November 2014."

39. It was at this point that Mr de Freitas was advised by Ms Wistrich to "go public" on the issues which he wanted to have ventilated and examined at the inquest. With her help, and that of Ms Crallan, he did so. In the first instance, this was done via *The Guardian* and the BBC.

The November publications

40. The first four publications complained of appeared in *The Guardian* and on the BBC on and between 6 and 8 November 2014. They can usefully be considered together.

41. First in time was an article by Sandra Laville that went online on *The Guardian* website on the evening of 6 November ("the First Guardian Article"). I described the genesis of this article in some detail in the judgment I gave at the Pre-Trial Review ("PTR"): see [2016] EWHC 1218 (QB) [25]. For present purposes it is enough to say that on 5 November 2014 Ms Wistrich contacted Ms Laville, outlining the situation as it stood, and asking if she might be interested in "a story re state involvement that may have led to the suicide of a rape victim". Ms Laville showed interest in writing about the matter. On the afternoon of 6 November Mr de Freitas drafted three paragraphs of wording ("the Press Statement") which was then provided on his behalf to Ms Laville with a view to its publication as part of an article.

42. In the meantime, Ms Wistrich had made contact with the BBC. In the early evening of 6 November, the BBC made contact with Ms McMahon of Mr Economou's solicitors, notifying her that they were running a programme on Radio Four the following morning about the prosecution of Ms de Freitas, and asking for comment. She passed the news on to Mr Economou.

43. At 19:20 on 6 November 2014 the article which Ms Laville had prepared went online on the *Guardian* website www.theguardian.com/uk. The headline was "Call for prosecutors to answer for trial of alleged rape victim who killed herself". There was a sub-headline, "Eleanor de Freitas died days before she had to go on trial accused of lying about rape claim, despite lack of evidence." The First Guardian Article was 19 paragraphs long. It is not necessary to set it all out, but it contained the following words:

> "[1] A young woman who said she had been raped went on to kill herself after the Crown Prosecution Service put her on trial for making up the allegation in a case originally instigated by her alleged attacker.
>
> [2] The woman's father is calling on the CPS to explain why they pursued a charge of perverting the course of justice against Eleanor de Freitas, 23, despite being told by police there was no evidence that she had lied, and in the knowledge that she was suffering from a psychiatric illness.
>
> …

[5] David de Freitas, her father, said: **"Eleanor was a vulnerable young woman, diagnosed with bipolar, who made a complaint of rape as a result of which she herself became the subject of legal proceedings. This was despite the fact the police did not believe there to be a case against her.**

[6] **"There are very serious implications for the reporting of rape cases if victims fear that they may themselves end up the subject of a prosecution if their evidence is in any way inconsistent. It is therefore of the utmost importance that the CPS consider very carefully whether such cases are in the public interest."**

[7] He added: **"I feel that the system of fairness in this country has let me down terribly, and something needs to be done so that this can never happen again**."

[8] The CPS had pursued De Freitas for allegedly making up the rape allegation after the man at the centre of the claims spent £200,000 on a private prosecution, documents submitted to the inquest say.

[9] Lawyers for the CPS were told by the detective who investigated the rape allegation that there was no evidence that she had lied, they would not be investigating her for perverting the course of justice, and the crime had been recorded as rape…

….

[11] Victim support and Justice for women have both written to the director of public prosecutions Alison Saunders expressing their concerns at the wider implications of the De Freitas case for rape complainants coming forward in future if alleged rapists are able to use the law to intimidate them.

[12] In a statement, Saunders said she was concerned about the case and was investigating it personally. "I have asked the team which dealt with this case for a full explanation which addresses all of the De Freitas family's concerns. I appreciate the family's unease which is why I am looking at this personally in order to satisfy myself of the detail surrounding all the stages of the case"

[13] She added that she would welcome the opportunity then to meet her family and said the circumstances regarding the case were "rare", extremely difficult and always complex and sensitive. This case was one of the most difficult I have seen."

[14] De Freitas reported to police on 4th January 2013 that she had been allegedly drugged and raped by a male associate shortly before Christmas in 2012. The police investigated the case, interviewed De Freitas and arrested the alleged perpetrator. But the police eventually told De Freitas they

> could not proceed further as there was not a realistic chance of a successful conviction, partly due to the fact she had reported the alleged rape some time after the event and as such no forensic evidence had been collected to support her claims. The alleged perpetrator was told there would be no further action and the case was closed.
>
> [15] De Freitas's father said his daughter had accepted the police's decision and tried to get on with her life. But the man at the centre of the rape claim began a private prosecution against her saying she had lied about the rape. Some months later lawyers for the CPS announced they were taking over the case against De Freitas. Her trial for perverting the course of justice was due to open on 7 April. On 4 April she took her own life…
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> …
>
> [17] Deborah Coles, co-director of the charity Inquest said:" This case raises serious issues of concern regarding the prosecution of rape complainants. In addition Eleanor had severe mental health issues which do not appear to have been taken into account by the Crown Prosecution Service. There must be robust scrutiny at the inquest to explore how these issues of public interest impacted on her life."

44. The paragraph numbering has been added by me, and I have put in bold the words complained of by Mr Economou. I shall take this approach with all the publications complained of. The words complained of in paragraphs [5] – [7] are verbatim quotation of the Press Statement. Mr de Freitas accepts responsibility for the publication of those words in the online and hard copy versions of the First Guardian Article.

45. Mr Economou, alerted by the news that the BBC would be covering the matter, searched online and found the First Guardian Article soon after its first appearance. At 19:24 on 6 November 2014 he emailed Ms McMahon to alert her, but she was abroad and it was the evening. Under what he saw as pressure of time he decided to contact Mr de Freitas direct. He did so by email. But because a previous email to Mr de Freitas had "bounced" he also had a copy delivered by hand. The email went at 22:03, with attachments. The hard copy, without attachments, was delivered some 2 hours later. The email was headed "Subject: URGENT – CPS EVIDENCE RE ELEANOR DE FREITAS". It detailed "the CPS evidence"; claimed that Mr Economou was "the victim of a very serious crime"; and threatened that "any press or statements that show the opposite of the facts or that name me will be taken very seriously and legal action will be taken." It gave an account of what Mr Economou would say, if Mr de Freitas made "any further comment twisting the facts", and asked Mr de Freitas to pass the email to his lawyers. This email was in due course reported as a further act of harassment.

46. The First Guardian Article, containing all the words I have set out above, appeared in the hard copy edition of *The Guardian* dated 7 November 2014, under the headline "Woman who alleged rape killed herself on eve of trial". There were two sub-headlines: "CPS decision to pursue case called into question" and "Police said there

was no evidence woman had lied." There were no other relevant changes to the wording. The hard copy of the newspaper will have been available for purchase from the early morning of 7 November 2014, or possibly late on 6 November at some outlets.

47. Ms Wistrich also passed to Ms Laville a copy of a witness statement which Mr de Freitas had prepared for the inquest, which named Mr Economou. She did so by way of background only, with a warning against using it without consulting her. There has been a dispute over whether that was something authorised by him. I shall come to that when I deal with the Public Interest defence.

48. The second publication complained of is an item broadcast shortly after 8am on 7 November 2014 by the BBC on its *Today* programme ("the *Today* Item"). The Item included an interview given by Mr de Freitas to John Humphrys. The interview had been recorded earlier that morning, at around 6:15am. Mr Humphrys introduced the item in these words:

> "Eleanor de Freitas was a disturbed young woman. In her first year at University she had a mental breakdown and she was diagnosed with bipolar disorder. Four years later she told the police that a man had tried to rape her. The police decided to take no action but the man she had accused himself brought a private prosecution, claiming that she had perverted the course of justice by making a false allegation. The police decided not to proceed with the case, but the Crown Prosecution Service took it over. Shortly before she was due to appear in court, Eleanor killed herself. She was 23. Now the Director of Public Prosecutions has said she will personally investigate why that decision to go ahead with the case was taken by her staff. I have been talking to Eleanor's father, David."

49. The interview included the following exchanges. The words complained of by Mr Economou are those spoken by Mr de Freitas which I have placed in bold. The questions place the answers in context:

> "JH: And what state was she in when she first told you that she had been raped?
>
> **DdF: Well, Eleanor was diagnosed as being in what's called a mixed state, so she experienced highs and lows very frequently. And when I eventually found out about this and I went with her to the police station where she wanted to report the alleged incident, she was in a high state and a low state. She was wanting to get this off her chest, and then also at the same time she was very fearful, so if you like that's sort of two ends of the spectrum.**
>
> JH: It's a very difficult question for you to answer, but did you believe her?
>
> **DdF: Oh, very much so. I have absolutely no doubt about that.**

JH: And why do you think that the police did not believe her?

DdF: Oh, the police did believe her. The police had no issues with what they saw presented to them. The police decided not to prosecute because there was evidence which was, how can I put it, inconsistent with her evidence, and what the police didn't want to have happen is for Eleanor to face a trial where she would be put in the position of being on trial herself. Um, and for that reason they decided not to continue with the prosecution.

JH: And when the man who she alleged had raped her himself decided to take out a prosecution against her for a wrongful accusation, how did she react to that, and how did you react?

DdF: Well, her reaction was one of shock, dismay, it completely disorientated her. …

…

JH: How did she react when the police told her that they were not intending to prosecute her for perverting the course of justice?

DdF: Well, she accepted that that's the way it should be because she wasn't perverting the course of justice as far as she was concerned.

JH: But then the Crown Prosecution Service said that they would support the private prosecution. How did she take that?

DdF: With incredulity. I mean, it just didn't make any sense. We could not see that there were grounds on either the evidential stage, or the public interest stage. And there are meant to be two stages before a decision like this is made. We could not understand it, nor could her legal team. In fact we actually invited the CPS to look at this matter, because they also have the power to take over the prosecution and stop it, and that is what we felt they should do, so we were utterly amazed and flabbergasted that they actually decided to continue with the prosecution.

....

JH: And now the Director of Public Prosecutions has said that she will personally conduct an investigation into what happened. What's your reaction to that?

DdF: Well, I am grateful for it, obviously, but it very much falls into the category of too little, too late. …"

50. Mr Humphrys concluded the *Today* Item by quoting a statement that had been made by the DPP, as follows:

> "JH: Well, Mr de Freitas now wants a full inquest into Eleanor's death. In a statement, the Director of Public Prosecutions, Alison Saunders, we did ask her for an interview but she didn't want to do it, but she has told us "I am very saddened by the tragic death of Eleanor de Freitas. I have asked the team which dealt with his case for the full explanation which addresses all of the de Freitas family's concerns. I appreciate the family's unease, which is why I am looking into this case personally in order to satisfy myself of the detail surrounding all the stages of this case. I would welcome the opportunity then to meet with Eleanor's family to discuss the case and the law surrounding it. Prosecuting cases of perverting the course of justice in connection with an alleged false rape allegation is rare, extremely difficult and always complex and sensitive. This case was one of the most difficult I have seen. To say any more at this stage would be inappropriate until I can answer the de Freitas family's concerns fully and directly."

51. The third publication complained of is a BBC TV broadcast made later on 7 November 2014 including an interview with Mr de Freitas. This ("The BBC TV Interview") contained the following exchanges. Again, it is the answers of which Mr Economou complains:

> "Interviewer: In 2013, she made a complaint of rape to the police. What happened at that point?
>
> DdF: **It was relating to a matter that had happened just before Christmas, the previous year. And I think she had battled with herself as to whether she should report it or whether she shouldn't, and sadly that wastage of time worked against her. But she felt both high and low, I mean she suffers from bi-polar order, a mixed state, so she feels both high and low states very frequently and she felt I think relieved at reporting it but also very low and very concerned about having to do so in the first place**.
>
> Interviewer: What did the police say about the case, they were concerned about her vulnerability weren't they?
>
> DdF: **Completely, I can't praise the police highly enough, they handled Eleanor very well, and I think the decision that they made was a reasonable and a responsible decision**.
>
> Interviewer: The decision being that a prosecution would not be in her best interests?
>
> DdF: **Correct.**
>
> Interviewer: But then the individual who the rape allegation was brought against decided to make a private prosecution, and the CPS then got involved in that prosecution, didn't they?

> DdF: **They did. We actually asked the CPS to get involved because the CPS have the power to take over the prosecution and stop it. And that is what we wanted them to do. What in fact they did in the end was they took over the prosecution and bizarrely continued with it**.
>
> …
>
> Interviewer: The police you say had taken account of her vulnerability, do you think the CPS ignored that.
>
> DdF: **I can't see how they took account of that, in fact I have difficulty understanding how they took account of the evidential stage.**
>
> …
>
> Interviewer: How do you feel that the Director of Public Prosecutions now is saying she is going to personally investigate and look into your daughter's case?
>
> DdF: **It's an appropriate response, but it falls into the category of being too little, too late.** Um, I think that the proper way of dealing with this is to have a full article 2 inquest where all matters surrounding Eleanor' death are brought out in the open and examined so that there are lessons learned and that other vulnerable young ladies don't go through what Eleanor went through, and that other families don't have to suffer what we have had to go through.
>
> Interviewer: So you want the Inquest to really get to the heart of all the issue here, the question of vulnerable people involved in court cases and especially in cases like this which involve allegations of rape which are hugely sensitive?
>
> DdF: Correct, completely.
>
> Interviewer: Are you hopeful that the Inquest will get to that?
>
> DdF: I am hopeful but we'll have to wait and see."

52. There were numerous other media publications about the matter on 7 November 2014, of which Mr Economou does not complain in this action. There was an article by Tom Brooks-Pollock that appeared on the Telegraph website headed "Inquiry after vulnerable woman's suicide over 'false rape claim' trial". This was live from about 08:41 on 7 November. From 08:54 an article appeared on The Times website headed "Bi-polar woman kills herself after 'cry rape' prosecution". Neither of these articles named Mr Economou. Both quoted Mr de Freitas, using the same words that had appeared in The First Guardian Article. There was similar coverage of the matter in other newspapers and other media of which, again, no complaint is made by Mr Economou. *The Guardian* also had a comment piece by Hugh Muir, that appeared from 10.50am, asserting that the case showed "the CPS has a duty to make humane decisions."

53. The fourth publication complained of by Mr Economou is a further article by Sandra Laville ("the Second Guardian Article"). This appeared on the *Guardian* website at about 18:14 on the evening of 7 November 2014. The Second Guardian Article is headed "Daughter 'would still be alive' if CPS had stopped charge of false rape claim; As inquest opens, father of Eleanor de Freitas, who killed herself days before trial, says there was no reason to prosecute her". The article, 19 paragraphs long, contained the following wording:

> "[1] The father of a young woman who killed herself after being put on trial for making up a rape allegation said she would still be alive today if the Crown Prosecution Service had not pursued her.
>
> [2] Eleanor de Freitas, 23, took her own life in April, three days before she was to face trial for perverting the course of justice. ...
>
> [3] The case against her was initiated by her alleged attacker, who spent hundreds of thousands of pounds on a private prosecution. The CPS took over the case and prosecuted De Freitas despite being told by police that there was no evidence she had lied, and in the knowledge that she was suffering from a psychiatric illness.
>
> [4] David de Freitas, the woman's father, said on Friday: "**We can see no reason whatsoever why the CPS pursued Eleanor**. If the CPS had put a stop to it at the time I would still have a daughter. She would not be dead. It is as clear as that."
>
> [5] An inquest into the death of De Freitas, an A-Grade student who suffered from bipolar disorder, is due to open in west London on Friday afternoon. Lawyers for her family are calling on the coroner to postpone the hearing in order to carry out a wider inquiry in front of a jury to examine whether the CPS decision to prosecute was a contributing factor in her death.
>
> [6] Her father said: "Eleanor was a vulnerable young woman, diagnosed with bipolar, who made a complaint of rape as a result of which she herself became the subject of legal proceedings. This was despite the fact the police did not believe there to be a case against her.
>
> [7] "There are very serious implications for the reporting of rape cases if victims fear that they may themselves end up the subject of a prosecution if their evidence is in any way inconsistent. It is therefore of the utmost importance that the CPS consider very carefully whether such cases are in the public interest."
>
> [8] He added: "I feel that the system of fairness in this country has let me down terribly, and something needs to be done so that this can never happen again.

…

[10] Lawyers for the CPS were told by the detective who investigated the rape allegation that there was no evidence that she had lied, they would not be investigating her for perverting the course of justice and the crime had been recorded as rape.

[11] Victim Support and Justice for Women have both written to the director of public prosecutions, Alison Saunders, expressing their concerns at the wider implications of the De Freitas case for rape complainants coming forward in future if alleged rapists are able to use the law to intimidate them.

[12] In a statement, Saunders said she was concerned about the case and was investigating it personally. "I have asked the team which dealt with this case for a full explanation which addresses all of the De Freitas family's concerns. I appreciate the family's unease which is why I am looking at this personally in order to satisfy myself on the detail surrounding all the stages of the case."

[13] She added that she would welcome the opportunity then to meet her family and said the circumstances regarding the case were "rare, extremely difficult and always complex and sensitive. This case was one of the most difficult I have seen…

…

[14] … But the police eventually told De Freitas they could not proceed further as there was not a realistic chance of a successful conviction, partly due to the fact she had reported the alleged rape some time after the event and as such no forensic evidence had been collected to support her claims. The alleged perpetrator was told there would be no further action and the case was closed.

…

[15] … Lawyers for the CPS announced they were taking over the case against De Freitas. Her trial was due to open on 7 April. …

[16] On Friday, Hariet Wistrich, of Birnbeg Peirce and Partners, acting on behalf of the De Freitas family, will call for the West London coroner, Chinyere Inyama, to widen the inquest to consider whether the Crown Prosecution Service breached Article 2 of the Human Rights Act- the right to life- by failing to abide by its own code and consider whether there was a public interest in prosecuting De Freitas before going ahead with the prosecution.

[17] Deborah Coles, co-director of the charity Inquest, said: "This case raises serious issues of concern regarding the prosecution of rape complainants. In addition, Eleanor had severe mental health issues which do not appear to have been

> taken into account by the Crown Prosecution Service. There must be robust scrutiny at the inquest to explore how these issues of public interest impacted on her life."
>
> [18] Adam Pemberton, assistant chief executive of the charity Victim Support, said the "tragic and troubling case" raised broader concerns about the use of private prosecutions against rape complainants.
>
> [19] "We are concerned in principle about someone who has been accused of rape being able to bring a private prosecution against the complainant because this allows that individual to use the law to do something guaranteed to intimidate their accuser," he said."

54. Mr Economou complains of the sentence in bold in paragraph [4]. Paragraphs [5]-[7] are substantially identical to the passages complained of in the First Guardian Article. Mr Economou does not complain of their appearance in the Second Guardian Article, but they do represent part of the context for the words of which he does complain.

55. At 22:34 on the evening of 7 November 2014 an article appeared on the website of the *Daily Mail*, www.dailymail.co.uk. This article ("the First Mail Article") was headed "Wealthy financier who Eleanor de Freitas said was a rapist offers sympathy to family, saying her death was a 'very unfortunate event'". The article, which was a long one, contained some words attributed to Mr de Freitas speaking "after inquest into daughter's case". Mr Economou does not complain of the First Mail Article. It is relevant to Identification and Serious Harm because, unlike the two Guardian articles and the two BBC broadcasts, it identified Mr Economou by name as the person who "launched private prosecution against Eleanor de Freitas because she had accused him of rape". It is also relevant to note that the article said that "Despite being told he would not face charges Mr Economou paid for his own inquiry in an attempt to show he was innocent … The whole process is said to have cost him £200,000".

56. The Second Guardian Article was published in hard copy in *The Guardian* dated 8 November 2014, containing all the words I have set out above. The hard copy version will have been available for purchase from early on 8 November, or possibly late on 7 November 2014 at some outlets.

Discussion

57. As I have indicated, Responsibility is accepted by Mr de Freitas in respect of all the words complained of in the November publications. I have to consider Identification, Meaning, and Serious Harm in relation to each of those publications, which I shall take in turn.

The First Guardian Article

58. Mr Economou's case is that he was and was understood to be "the individual referred to by" the words attributed to Mr de Freitas in the First Guardian Article. He complains that the natural and ordinary meanings of those words was that he had (1) prosecuted Ms de Freitas for perverting the course of justice on a false basis; and (2) therefore is guilty of the rape of Ms de Freitas. It is helpful to start with what defamatory

meaning(s) the ordinary reasonable reader would take away from the words used by Mr de Freitas, as quoted in the article, and then to consider whether Mr Economou was identified as the subject of such meaning(s).

59. I do not consider that the reasonable reader would understand these words to bear the meanings complained of. At the risk of over-elaboration I shall explain why. The words have as their focus Eleanor de Freitas, the police, the CPS, and Mr de Freitas. They do not contain any assertion about the person Ms de Freitas accused of raping her. To that extent Mr Barca QC is right in my judgment to submit that the words complained of are "not about him" and that he "is not being criticised". That is not a complete answer, however. As defamation lawyers know, words that are "about" one person can impliedly defame another. An example, albeit an old-fashioned one, was given in *Morgan v Odhams Press* (above) at 1243: to say that X is illegitimate would impliedly defame X's mother. See also the well-known case of *Cassidy v Daily Mirror* [1929] 2 KB 331, 338-8 (Scrutton LJ). Mr Barnes' argument follows similar lines, and needs to be considered. He submits:

    (1) that the statement in paragraph [5] that the police "did not believe there to be a case against" Ms de Freitas is "the plainest allegation that [Mr Economou's] prosecution was false for want of evidence against [her]";

    (2) that the suggestion in paragraph [6] was that she was prosecuted because her evidence was *in some way* inconsistent, thereby implying "that there was no proper evidence against her"; and

    (3) that the overall implication is that Ms de Freitas' allegation of rape was sound, and was only not pursued for technical reasons.

60. It is reasonable to argue that Mr de Freitas' words implied something about the accused man, even though they were not "about" him in the sense outlined above. But there are problems with this line of argument. The first is that it is illogical to jump from the proposition that (applying the repetition rule) there was no case against Ms de Freitas for PCJ to the proposition that the man she accused was guilty of rape. A conviction for PCJ requires proof to the exacting criminal standard that the accuser lied. A person can make a false but honest allegation of rape. Ordinary readers do not always apply logic, but the fair-minded reader, not avid for scandal, would realise that the one does not follow from the other. Secondly, the context reinforces this point on the facts of the particular case, in two ways. One is the emphasis, prominent in the article, that Ms de Freitas was "suffering from a psychiatric illness" (paragraph [2]). The other important piece of context is in paragraph [14] where the reader is told that that, following the arrest and interview of the man accused the police took no further action, as they did not consider that there was a realistic prospect of conviction. Thirdly, the reader would apply some discount to the version of the grieving father. Fourth, Mr de Freitas said nothing about the conduct of the private prosecution. He was talking about the CPS. It was Ms Laville who told the reader about the private prosecution, in her paragraphs [1] and [15]. Mr Economou does not seek to hold Mr de Freitas responsible for those parts of the article. He cannot sue him for a natural and ordinary defamatory meaning that arises, if at all, only from (or as a result of) information contained in those parts of the article.

61. In my judgment the words complained of in the First Guardian Article did convey an implied natural and ordinary defamatory meaning about the man whom Ms de Freitas

accused, but it was a more limited meaning than those complained of. The ordinary reasonable reader would draw from this article the meaning that there were reasonable grounds to suspect that the man accused by Eleanor de Freitas was guilty of her rape. The reader is told that an accusation was made, and led to the man's arrest and questioning. The matter was not pursued, but not because the police were convinced the accuser had lied. They were not. The case was complex and difficult. The reasons why the man was not prosecuted appear to have included inconsistencies in the accuser's evidence, her psychiatric illness, her delay in reporting, and a lack of forensic evidence. The man was not exonerated.

62. In their skeleton argument Mr Barca and Mr Helme argued that Mr Economou's case on identification must fail on pleading grounds. They referred to the general rule set out *Fullam v Newcastle Chronicle and Journal Ltd* [1977] 1 WLR 651, 656 (Lord Denning MR) and *Grappelli* (above) at 826*:* that where an innuendo is relied on the claimant must generally specify the persons who are said to know the "special facts" that would lead them to the identification or meaning relied on. In *Baturina* the court applied that general rule: see [44]-[50]. The rule is reflected in CPR 53 PD 2.3(2), so far as meaning is concerned. It is an important rule: if a claimant sues on words that do not identify him, proof that there were people who knew enough to make the connection is fundamental to his claim. It is fair to say that adherence to this principle is all the more important in today's legal environment, in which claimants have to prove that publication caused serious harm to reputation. Nevertheless, I find myself unpersuaded by this argument on the facts of this case.

63. The extent to which particular individuals who identified the claimant must be specified in the Particulars of Claim depends on the circumstances: *Fullam* 655 (Lord Denning MR). It may be possible to plead and prove extrinsic circumstances from which it can be inferred that readers would have knowledge of the relevant facts: *Fullam* 659 (Scarman LJ); *Grappelli* 830A (Dunn LJ). Here, Mr Economou has pleaded by description categories of people who knew that he had been accused, and that he had brought the private prosecution, and he has led evidence about those matters. The evidence goes into detail and gives names. There is supporting documentary material. The evidence goes beyond what is pleaded, but sufficient notice has been given. It seems to me that I should assess the pleaded case and the evidence. There is no unfairness in doing so.

64. I am persuaded that there were readers of the First Guardian Article who knew enough to identify Mr Economou as the man accused by Ms de Freitas. There were people who read the article with "special knowledge" that would lead a reasonable person to understand it as impliedly referring to, and defaming, Mr Economou. There were people who did in fact understand the words to refer to and defame him. That is not the end of the matter, however. The Identification and Serious Harm issues are interlinked. It is necessary to assess how many such readers there were, and whether Mr Economou's reputation suffered serious harm as a result. That needs some care. One has to consider the probabilities as to who knew that Mr Economou was the man accused, which and how many of these are likely to have read the words complained of, and how those that did are likely to have reacted.

65. In his pleading and in his evidence Mr Economou identifies people who he says knew him to be the target of the rape allegation and/or the person who pursued the private prosecution. Some he identifies by name, others by description. They can for the most

part be put into these categories, which are not exhaustive or mutually exclusive: (1) people to whom Ms de Freitas made the allegation; (2) family, friends and acquaintances in whom he confided; (3) people approached for evidence in the private prosecution; (4) police and others professionally involved in the investigation of the rape allegation and/or the investigation and prosecution for PCJ; (5) members of the public present in court during the PCJ hearings; (6) members of charities and lobbying groups; (7) journalists.

66. I am not persuaded that there are large numbers in any of these categories, or that collectively they add up to a large number. The evidence as to how widely Ms de Freitas spread her allegations is hearsay of a rather unsatisfactory kind. Reliance on Ms de Freitas' Facebook status update seems to me misplaced: there is no evidence that she told the person concerned, a complete stranger, that she had been raped or otherwise mistreated by Mr Economou. I have no evidence from Henriette Schroder about what was said at her New Year's Eve party. I only have what Mr Economou says she told him, which is rather general. I am confident that Ms de Freitas made the allegation to some people but do not consider I can find the number was large. Turning to category (2), I accept Mr Economou's evidence that at least 148 family members, friends, or acquaintances, whom he names in his statement, came to know by the end of 2013. I accept that the numbers went beyond this. His mother and father speak of their friends and family and some colleagues at his work knowing the basic facts. However, I do not consider the evidence by which Mr Economou sought to enlarge category (2) is precise enough to rely on. All or most of those in category (3) appear to be included in categories (1) and/or (2). Category (4) is relatively small. There is no satisfactory evidence that there are any people in category (5); the evidence is that there was no media publicity for the hearings, and speculation that students may have attended is no more than that. There are certainly some in categories (6) and (7), but not very many.

67. Mr Economou has adduced evidence relevant to these issues in the form of witness statements from 15 individuals, and a bundle of messages, mostly texts, from friends and acquaintances, relating to media coverage in November and December 2014. Little of this touches on the First Guardian Article, however. To the extent it does, it does not suggest any serious harm to reputation in the eyes of the friends and acquaintances. There is evidence about the responses of three friends. Christian Schroder saw the First Guardian article and texted Mr Economou on the evening of 6 November. He clearly linked the two. But his text was supportive, not questioning. He has not made a witness statement. Marina Kim came across the First Guardian Article on 6 or 7 November 2014 and emailed a link to Mr Economou at 20:49 on 7 November. At 20:53 she texted him to draw attention to this and to say "your case – without your name – is in the papers." Her witness statement says however that she "knew the truth ..." and "trusted Alexander". Adrian Pascu-Tulbure read the article and rang Mr Economou. According to his statement he "knew the whole history of Eleanor's accusation" and the prosecution before he did so. He "thought the article was outrageous". He speaks of conversations with friends who "agreed that the press did not give the whole story". There is nothing else tied to the First Guardian Article. Ross Genower texted on 4 December saying he had seen "a number of the pieces around the time of her inquest." But *The Guardian* is not mentioned.

68. The fact that Mr Economou has been unable to adduce evidence from people in the other categories I have mentioned that they read the First Guardian Article, identified him as its subject, and therefore thought the less of him does not mean that his case on

Serious Harm must fail. The difficulties of obtaining such evidence are obvious and well-recognised, and serious harm may be proved by inference: see *Sobrinho* (above) [47-48]. In a reference innuendo case it may be an obvious or at least a proper inference that the claimant's reputation suffered serious harm because a substantial number of people who knew the identifying facts read the statement complained of. Serious harm can be caused by small-scale publication of a serious allegation. It may be enough that the publication contributed to serious harm; it does not have to be the exclusive cause. Here, there is certainly evidence that some suspected Mr Economou of being a rapist. There is evidence that in late 2014 and 2015 people treated him with reserve and suspicion, conduct which is probably connected with the allegation of rape and its aftermath. But caution is necessary when attributing causation. And on the evidence in this case, I do not see sufficient grounds for inferring that this was causally connected to the publication of the First Guardian Article.

(1) The numbers in category (1) above are not shown to be large. There is no, or no clear evidence that any of them read the First Guardian Article. Their views would in any event most likely depend on established loyalties, and existing assessments of the individuals concerned. They are not likely to have been influenced by an implied suggestion conveyed by the words of Mr de Freitas.

(2) Most of those in category (2) are people to whom Mr Economou protested his innocence. They are likely to have trusted him and accepted what he said, as did those from whom statements have been obtained. Other texts demonstrate support from Mr Economou's friends, and disdain or worse for Mr de Freitas' position. A statement from Alastair Lindup refers to "a sudden flurry" of press on 7 November. He cannot recall which he read first. He records that at the time of the press he "discussed Alexander with a few good friends" and "for them, there was a serious question mark over Alexander's character" when there had not been before. But the reasons he gives do not link their reactions to the First Guardian Article, or support Mr Economou's case on serious harm: "They thought that Alexander must have done something in order for the police to investigate the allegations." The friends, family and acquaintances of Mr Economou's parents who knew the basic facts did so because they had confided in them. The evidence is that they passed messages of support in November 2014.

(3) Category (3) overlaps with (2), and may be regarded as a group of "supporters".

(4) The same may be said of some in category (4), such as Mr Economou's own lawyers. Others in that category, such as DI King or Counsel for the prosecution of Ms de Freitas, will have formed their own views on the merits of the rape and PCJ allegations. Such views are unlikely to have been influenced by Mr de Freitas' words in the First Guardian Article, assuming they read that article.

(6) The same may be inferred when it comes to the small number of charity workers who knew Mr Economou's identity. That group includes Mr Clements and Ms Crallan. Evidently, the decision was taken not to question them about these issues when they came to give evidence. I can see no basis for inferring that the First Guardian Article caused serious harm to Mr Economou's reputation in their eyes.

69. That leaves category (7): journalists. It is likely that Sandra Laville knew Mr Economou's identity. He was named in the witness statement of Mr de Freitas, which was sent to her by Ms Wistrich. She probably read it. But it would be unreal to suggest

that Mr Economou's reputation was seriously harmed in her eyes by the publication in her own article of what Mr de Freitas had said in his press statement. Ms Laville did not identify Mr Economou in her article, and there is no evidence that she spread her knowledge of his identity in any other way.

70. Mr Economou has given evidence of being "doorstepped" by other journalists. But on analysis this evidence does not support the view that his identity was widely known amongst journalists before the publication of the First Mail Article. Three earlier contacts are specified. The first is the BBC's approach to his solicitor, in the early evening of 6 November. The second is at 11am on 7 November 2014, by a Mail journalist. The third is also from the Mail, at 10pm that day. Others post-date publication of the First Mail Article. Mr Economou does not know whether these three people had read the First Guardian Article. Even if it could be inferred that they had done so, it would remain unclear whether they read it and then discovered Mr Economou's identity, or the other way round. The former is more likely, and on ordinary principles would not justify a claim. The *Hayward v Thompson* exception is inapplicable. In any event, the private opinions of a small group of journalists holding information for professional purposes cannot in my judgment be considered to be of any real consequence for Mr Economou's reputation.

71. I said that the 7 categories listed above were not exhaustive. Mr Economou has two further points on identification. One relies on the member of staff at Mr de Freitas' office who opened the letter of 3 September 2014 that Mr Economou's solicitors had misaddressed. But the identity of this individual is unknown, and there is no evidence nor any basis for inferring that he or she read the words complained of. Nor would I be prepared without more to infer that he or she in fact thought the worse of Mr Economou as a result, or to conclude that this supposed publication caused "serious harm" to his reputation in the eyes of this individual.

72. The other point is about Twitter. Mr Economou has identified two Twitter users who tweeted his name on 7 November. One, Eleanor Hill, gave a neutral summary of the facts, tweeting: "Alexander Economou is the man who prosecuted Eleanor de Freitas when she accused him of rape. She committed suicide. Dailymail.co.uk/news/article-2…" The link was to the First Mail Article. This Twitter user appears to have found out Mr Economou's name from that article, having read an earlier version of the story. There is no evidence that the earlier version was the First Guardian Article. The other individual, with the username @RadicalFeminist, was not neutral. Her tweet was: "The Man who drove Eleanor de Freitas to her death was Alexander Economou. Dailymail.co.uk/news/article-2…" Other tweets make clear that @RadicalFeminist had read the First Guardian Article before tweeting this. This, I find, is someone who read that article without knowing Mr Economou's identity, then found it out from the First Mail Article. This sequence of events would not engage the *Hayward v Thompson* exception and thus would not support a claim. In any event, this is obviously thin material on which to rely as evidence that the First Guardian Article caused Serious Harm to reputation. The extent of publication of this tweet is not clear.

73. The publication mentioned in these tweets, and in many of the witness statements, and in many other texts, Tweets, and other messages, is the Daily Mail. There are numerous mentions of it. It is clear enough that the references are to the First Mail Article. That article named Mr Economou. It was clearly apt to cause serious harm to his reputation. A number of hostile comments about him were posted online in

response to the First Mail Article, as he has pointed out himself. Mr Economou makes the point that those who read the First Mail Article would, if they then read the First Guardian Article, know the name of the man accused by Ms de Freitas. That is true. But this could only apply from 22:34 on 7 November, when the First Mail Article went online. That was after publication of the hard copy Guardian newspaper of that date, and some 27 hours after the First Guardian Article went online.

74. Of course, online publication of the First Guardian Article continued. So from late on the evening of 7 November 2014 readers could have read the First Mail Article, and then the online version of the First Guardian Article. But the fact that this was possible would not be enough to justify an inference that it took place. There is no evidence as to the overlap between the readerships of the two newspapers, but it is a notorious fact that they have significantly different editorial stances. I would not be prepared to infer a substantial overlap. Nor is there evidence about the pattern of online access to these articles, or generally, over time. The normal inference, in the absence of a reason to think otherwise, would be that access to an online item will peak at or shortly after the time of first publication. That inference is bolstered in this case by the timing of the online comments on the article. These appear to have been predominantly in the hours after first publication, and before the First Mail Article appeared. There is some evidence that some people may have read both articles, probably due to searching online after reading one of them. But the evidence is limited, and suggests that if this happened it was the First Guardian Article that was read first: see what I have said about @RadicalFeminist above. In the reverse situation, to the extent that this did occur, I think the proper inference is that any real harm to reputation will in substance have been done by the First Mail Article.

75. In support of his case on Serious Harm Mr Economou pleads that the online publication of the First Guardian Article "generated an enormous number of comments from readers strongly detrimental to the claimant and his reputation". I do not accept this. One of the comments relied on relates to the Hugh Muir article, of which Mr Economou does not complain. The others express strong disapproval of the man whom Ms de Freitas accused. But many indicate assumptions or inferences about that man which cannot reasonably be said to flow from the imputation I have identified. And, of greatest importance, none of the comments indicates any knowledge of Mr Economou's identity. One positively shows otherwise: a posting by Billybagel at 18:06 on 7 November says "I hope whichever monied scumbag did this to her is content with himself." The comments lend no support to Mr Economou's case. If anything they tend to undermine it.

76. The same is true of further Twitter postings pleaded by Mr Economou in support of his case on Serious Harm. There was, as he says, "vigorous activity on various social media including Twitter" about his conduct. But for reasons similar to those given above I do not accept his case that this activity was "strongly detrimental to [him] and his reputation." The tweets of @RadicalFeminist indicate that she did not know his identity when she read and tweeted about the First Guardian Article. Another user's posting on 7 November 2014 expressed the hope that "the man who spent £200,000 hounding mentally ill Eleanor de Freitas to death considers it money well spent." This does not reflect the defamatory sting of what Mr de Freitas said, and in any event positively supports the view that this user was ignorant of the man's identity. So does a post by TwoFlames on the same day: "Who is the alleged rapist … Clearly a wealthy man – he spent 200k hounding her to suicide."

77. The impression conveyed by the online comments and the Twitter posts is consistent with the conclusion I have reached in the light of the other evidence. That conclusion is that the hostility and caution displayed towards Mr Economou, and the serious harm to his reputation which I would accept had been suffered by late 2014, was probably due to information about the facts surrounding the rape allegation and the PCJ prosecution which had spread by word of mouth amongst members of Mr Economou's social circle and/or the publication of the First Mail Article and/or later publications, to which I shall come. I do not consider it probable that the publication of the words complained of in the First Guardian Article caused serious harm to Mr Economou's reputation.

The Today *Item*

78. Mr Economou's case is that the words complained of meant that he (1) is guilty of the rape of Ms de Freitas; and (2) instituted the private prosecution against her on a false basis, in that there were no grounds for saying that she had lied about being raped. The passages particularly relied on are Mr de Freitas' emphatic assertion, when asked if he believed his daughter, that he had "no doubt about that"; his assertion that the police believed her and "had no issues" with what they saw presented; and his statement that "we could not see that there were grounds on … the evidential stage…"

79. I consider this to be a significant overstatement of the meaning conveyed by the Item. This being a broadcast, the focus should be on the impression conveyed by the spoken word rather than the transcript. That is not easy, as I do not have an audio recording, but I bear it in mind. Again, it is important to avoid being over-analytical. But my reasons are these. The words related to the conduct of the CPS and the inquest. They were not "about" the man whom Ms de Freitas accused. But they did contain implications about him. They did not, in my judgment, imply to the ordinary reasonable listener that Mr Economou raped Ms de Freitas and brought a baseless prosecution against her. I am not convinced that what Mr de Freitas said would, if taken in isolation, have conveyed such suggestions. The item did not explain the term "the evidential stage", which is a term of art in the context of prosecution. And these, as the listener would well appreciate, were the words of the grieving father. But in any event, my task is to consider the whole item, not just what Mr de Freitas said. Mr Humphrys' introduction and his concluding statement are particularly important.

80. These bookends to the interview with Mr de Freitas conveyed to the listener a number of important items of information that serve to counter-balance Mr de Freitas' version of events, including these: (1) that Ms de Freitas was mentally disturbed; (2) that the police "decided to take no action" against the man she accused; (3) that the CPS took over the private prosecution; (4) this is a rare step; and (5) the case was one of the most difficult the DPP had seen. The DPP was not dismissing Mr de Freitas' concerns. But she was certainly not conceding that the CPS had pursued a groundless prosecution. She was accepting only that there was sufficient reason for her to look into the case personally, in detail. The status and known responsibilities of the CPS and DPP have a bearing on what the listener would take away from this broadcast.

81. In my judgment Mr de Freitas' words, in the context of the broadcast as a whole, bore the implied natural and ordinary meaning that there were reasonable grounds to investigate whether the man Ms de Freitas accused of raping her had brought a private prosecution against her for PCJ which was based on inadequate evidence, and against

the public interest because of her disturbed mental state. In addition, the words implied that it was possible that the man was guilty of raping her.

82. As with the First Guardian Article, the evidence in support of Mr Economou's case on this broadcast satisfies the objective test of reference. It would also satisfy the subjective test, if there was one. There clearly were people who heard the *Today* Item, knew that Mr Economou was the man accused by Ms de Freitas, and realised that he was the subject of a defamatory imputation. The imputations themselves are serious, although less serious than Mr Economou suggests. But as with the First Guardian Article, I am not persuaded that this broadcast caused serious harm to Mr Economou's reputation.

83. The reasons are similar to those I have already given when dealing with the First Guardian Article. Indeed, much of what I have already said applies equally to the Today Item. There is some evidence tied to this broadcast. But as before, the numbers involved are small and the evidence does not in my judgment get Mr Economou's case across the threshold set by the 2013 Act. Quentin Smith heard the broadcast. His statement confirms that it was "obvious" to him that it was "about Alexander's case", but he "knew the facts of the case from Alexander" and knows "that Alexander is a good man and not vindictive". Lily Sokol texted Mr Economou at 8:26, having heard the broadcast. She said "I just heard David de Freitas on radio 4. Thought I should tell you incase you didn't know it was happening". There is no statement from her. Philip Gumuchdjian listened and knew "it was about Alexander". He says that "knowing the full story … I was angry when I heard this."

84. Mr Economou's statement identifies a further 17 people who contacted him on or before 7 November with reference to media coverage, but he candidly accepts that he cannot say how many of them heard the broadcast. And apart from those I have mentioned already, those among the 17 who have made statements do not say they did. Indeed, some of their evidence indicates that they did not. Mark Winter states, for instance, that the first press he saw was the ITV news on 7 November, after which he googled and found the BBC TV broadcast. Jenni Lazerovich, a friend whom Mr Economou made later, told him she had listened to the *Today* Item before she knew him. But that is not evidence that she identified him at the time, and hence not evidence that the broadcast caused serious harm to reputation.

85. I acknowledge, again, that the absence of positive evidence that serious harm to reputation was caused by this broadcast is not proof that it did not cause serious harm. But the *Today* Item did not name Mr Economou, and his name was not public at the time. His role in the events which were the subject of the broadcast was known to a relatively small number of people. Most of these were friends and confidants of Mr Economou and his parents, and supporters of his. Others are unlikely to have had their views affected by this broadcast, even assuming that they heard it. I conclude that there is not enough to justify the inference that what Mr de Freitas said on the Today programme caused serious harm to Mr Economou's reputation.

The BBC TV Interview

86. The meanings put forward by Mr Economou are similar to those he relies on in relation to the Today Item: that he is guilty of the rape of Ms de Freitas and that he prosecuted her for PCJ on a false basis. I think this overstates the true meanings of the broadcast to

a considerable degree. There is an implied defamatory meaning about the man accused by Ms de Freitas, but it is not that he was guilty of either of these things.

87. Again, this was a broadcast, and what matters is the impression conveyed on watching it rather than a close textual analysis. But I need to explain my conclusions. I do not think Mr Barnes is right when he submits that to say that the police had decided a prosecution would not be in Ms de Freitas' best interests implies that the man accused was guilty. Nor does the description of the CPS decision as "bizarre" imply guilt. With one main exception, the focus of the questions and answers was on Ms de Freitas' vulnerability and the question of whether, in the light of that, she should have been prosecuted over such a sensitive matter. The thrust of the interview is about the impact of prosecution on a vulnerable rape complainant who, the implication is, may have made her complaint due to her mental disturbance.

88. The main exception to this theme is Mr de Freitas' unlooked for response to the leading question "The police you say had taken account of her vulnerability, do you think the CPS ignored that?" Having replied that he couldn't see how they took account of that he added: "In fact I have difficulty understanding how they took account of the evidential stage". I do not think that this implies the man accused was guilty, either on its own or in combination with the other aspects I have already mentioned. The "evidential stage" is not explained in the interview. This is not a direct assertion. It comes from the grieving father. The decision being questioned is the CPS decision to prosecute for PCJ, not the decision not to prosecute for rape. And account must be taken of the context.

89. In my judgment Mr de Freitas' answers, in the context of this broadcast, conveyed to the ordinary reasonable viewer these defamatory meanings about the man accused by Ms de Freitas: that there were reasonable grounds to investigate whether the private prosecution he brought against her for lying was based on inadequate evidence and against the public interest because of her vulnerable mental state. In addition, the words implied that it was possible that the man was guilty of raping her.

90. Mr Economou's evidence shows that he will have been identified as the man in question by some viewers of the broadcast. It meets the requirements of the objective test of reference, and the subjective test, if there is one. The imputations are serious ones, even though they fall short of those complained of. But again I am not persuaded that this broadcast caused serious harm to Mr Economou's reputation.

91. I have reviewed the evidence as to identification generally when dealing with the First Guardian Article. The evidence specific to this broadcast is more limited still than the evidence about the *Today* programme. There is a single witness who speaks of having viewed the broadcast and identified Mr Economou: Mark Winter. His statement says nothing to suggest that he thought the worse of Mr Economou as a result. It implies the opposite, as he states that he "knew about the background to the case from Alexander". Of course, it is possible that there were others who knew about the case, viewed the BBC TV Interview, and did think substantially the worse of Mr Economou as a result. But for the reasons I have given I do not think it probable.

The Second Guardian Article

92. As I have mentioned, this article contained the same three paragraph quotation from Mr de Freitas as the First Guardian Article. But the only words complained of are the

additional ones, in paragraph [3] of [19], that "We can see no reason whatever why the CPS pursued Eleanor." Those words are said to refer to Mr Economou and to mean that he had begun the prosecution of Ms de Freitas on a false basis, because she had not lied but in fact told the truth about being raped by him. The argument is that the words are a straightforward contradiction of any suggestion that there was a proper evidential basis to prosecute Ms de Freitas. Mr Barnes submits that "Since she had been prosecuted by [Mr Economou], with the prosecution taken over by the CPS, over her allegation that [he] had raped her, the prosecution was founded on that false allegation. That the false allegation was a lie evidently depended upon [Mr Economou] giving his word against [hers], even before any consideration of any other matter that contradicted its truth." I do not agree.

93. In this instance Mr Economou has difficulties with reference. His pleaded case is that he "was identified by a large but unquantifiable number of readers" as "the individual referred to by the said words". But the 11 words complained of refer to and criticise the CPS. They say nothing about the private prosecution or the private prosecutor. Looked at in isolation, they imply nothing about those matters. It was Ms Laville and *The Guardian* who told the reader about the private prosecution, in paragraph [3] and elsewhere in the article. Mr Economou does not seek to hold Mr de Freitas responsible for those other parts of this article. No innuendo meaning is relied on. The words complained of do not refer to or bear a defamatory meaning about the private prosecutor.

94. The words complained of do not refer, either, to the man accused of rape. The reader knows that there was an allegation of rape, and that what Mr de Freitas is talking about is a CPS prosecution of the accuser, his daughter, for PCJ. But the reader knows these things because they are disclosed in other parts of the article. They are not made known by or referred to in the words complained of. Mr Economou cannot hold Mr de Freitas responsible for meanings about the man who was accused of rape, and who prosecuted his accuser, if those meanings are conveyed only by virtue of contextual material for which he does not hold Mr de Freitas responsible.

95. The words complained of did not refer to or convey any meaning defamatory of the unnamed man who was accused of rape and prosecuted his accuser. It follows that they cannot have defamed Mr Economou, no matter how many people may have read this article knowing that he was that man. I would not have upheld the meanings complained of in any event. They give no real weight to the context in which these words appeared, which includes an explanation of the police decision to drop the rape investigation and many other qualifying items of information. I would also have rejected the claimant's case on serious harm. The Second Guardian Article was published before the claimant's public identification in the First Mail Article. For substantially the same reasons as those I have given in relation to the earlier publications complained of, I do not consider it has been shown that the article, let alone the few words complained of, caused serious harm to Mr Economou's reputation.

Death threat

96. On 17 November 2014 Mr Economou's stepmother received by post a death threat, plainly related to the media coverage. Mr Economou emailed Ms Wistrich the following morning to say that his family "are now receiving death threats on the basis that what DDF has said is true. This is very serious now". This was indeed a very

serious matter, and it is plain and entirely understandable that it was taken very seriously by Mr Economou and his family. The threat is now relied on as evidence of serious harm to reputation caused by the publications complained. I do not intend in any way to query the gravity of the matter itself when I say that this is not sustainable.

97. Three of the first four publications complained of defamed Mr Economou, but less gravely than he suggests and, crucially, only to a relatively small group of people who already knew his role in the events dealt with by those publications. I decline to infer that any of this small group sent the death threat. It is far more likely that it was someone who read some other publication that named Mr Economou. It is not necessary to make a finding as to which, but the most obvious candidates are the Daily Mail or social media responses giving Mr Economou's name, based on publication in the Mail. I should add that the issue of a death threat to Mr Economou's stepmother is plainly not a rational or foreseeable consequence of any publication about this matter. I note that the letter containing the threat spoke of Mr Economou "hound[ing] someone to death", which is a far cry from anything suggested by any of the media publications I have seen.

The December publications

98. The fifth, sixth and seventh publications complained of first appeared on 9 and 10 December 2014. They did so against the backdrop of further publicity about the case, some of which named Mr Economou. On 12 November 2014 an article appeared in The *Tab* online naming Mr Economou. More significantly, there was a further article first published online at about 10pm on 29 November 2014 on the dailymail.co.uk website, and in the *Mail on Sunday* on 30 November 2014 ("the Second Mail Article") and a public statement about the prosecution of Ms de Freitas issued by the DPP on 9 December 2014 ("the DPP statement").

99. The Second Mail Article was the result of an interview given by Mr Economou to the MoS. It was a long piece of some 42 paragraphs, giving his side of the story, by name. Its gist is conveyed by the headlines:

> **"The double life of the tragic suicide girl who accused me of rape – tycoon's son says: 'Don't judge me before you know the whole story'**
>
> - Eleanor de Freitas killed herself after having made a rape complaint
> - She was days away from going on trial accused of making false allegation
> - The fear of giving evidence had left her a nervous wreck, her father said
> - It emerged she had lead a secret double life advertising 'tantric' services
> - The accused, Alexander Economou, has now opened up about the ordeal
> - He took out a private prosecution to prove he didn't commit heinous crime
> - Mr Economou, 35, has received death threats…"

100. The article referred to Mr de Freitas' interview on the *Today* programme and to what he had said about the impact on his daughter of the prospect of giving evidence. It went on:

> "[3] … Nothing, however, has been heard from the wealthy young man who she sensationally claimed had drugged and assaulted her in his Chelsea flat – until now.
>
> [4] And when you read what he has to say, you may well take a very different view about his role in this strange and disturbing tragedy.
>
> [5] What emerges is not just the terrible detail of a nightmare that so many men fear – of being falsely accused of rape, ostracised and fearful of jail. It also becomes clear in his compelling account of what truly happened between them that Eleanor, who had mental health issues, led a secret double life – one she would without a doubt have feared being opened up to the scrutiny of the courtroom…
>
> …
>
> [7] … Alexander has received numerous death threats. He feared – and still fears- he may never escape the attack on his character, and says this – and only this – is why he chose to pursue a private prosecution of his accuser.
>
> [8] 'All I ever wanted to do was protect my reputation and prove beyond reasonable doubt that I did not commit such a heinous crime' he says with exasperation. 'I wanted a single piece of paper from the court to show that she had lied. I was not being malicious or vindictive. I gave her every opportunity to recant before going ahead.'…
>
> …
>
> [14] … He is only talking now, after being judged by the court of the public opinion."

101. The DPP statement contained the following relevant words:

> "… Having considered the detail and the issues raised by the family, I am satisfied that the decision making in this case was correct and that it was made in accordance with our policies and guidance. I have separately met with Ms de Freitas' father, David de Freitas, to explain in more detail our decision and the evidence informing it …
>
> … the evidence in this case was strong and having considered it in light of all of our knowledge and guidance on prosecuting sexual offences and allegedly false rape claims, it is clear there was sufficient evidence for a realistic prospect of conviction for perverting the course of justice. This was evidence including text messages and CCTV footage that directly contradicted the

> account Ms de Freitas gave to the police. This was not assumption based on her behaviour or actions which fall into myths and stereotypes about how alleged rape victims should behave. It was on this basis that we concluded that there was a realistic prospect of proving that the rape allegation made by Ms de Freitas was false, and there was also a strong public interest in prosecuting due to the seriousness of the alleged offence which was maintained by the defendant for some time and which led to the arrest of an individual.
>
> …
>
> I am satisfied that prosecutors had taken the necessary steps in assuring themselves that Ms de Freitas' mental health had been properly considered. This was in the form of a very detailed report by a consultant forensic psychiatrist instructed by Ms de Freitas' legal team, who also took into account the views of Ms de Freitas' consultant psychiatrist. That medical assessment was clear. The doctor instructed by Ms de Freitas' legal representative recommended that she was aware of the implications of making a false allegation, as she was alleged to have done, and was fit to stand trial. We do not take on these kinds of prosecutions lightly, but the medical evidence provided to us could not justify dropping such a serious case. No further representations were made to us as to Ms de Freitas' health, which would of course have been carefully considered.
>
> There has been speculation that the police did not agree with the prosecution for various reasons. However, the police never undertook an investigation into the alleged perverting the course of justice nor did they consider all the material provided to us by the private prosecution. They were therefore not in a position to form a view on whether there was sufficient evidence to prosecute. …"

102. Later on 9 December 2014 Birnberg Peirce issued a press release, described as issued "on behalf of the de Freitas family in response to a press release issued by the Director of Public Prosecutions 9.12.14". I set it out in full:

> "[1] While we appreciate that the DPP has made clear that Eleanor was not found guilty of perverting the course of justice, and that the evidence in the case was never tested, we are disappointed that she seeks to justify the original decision, despite the subsequent tragedy.
>
> [2] We cannot comment on the detail of the DPP's analysis of the evidence as we still haven't seen it. However, whilst it seems clear from that analysis that Eleanor behaved in a way that was confusing and inconsistent with the behaviour of the classic victim, this is a far cry from evidence that she positively lied. Anyone who has worked with rape and domestic abuse victims knows that many victims behave in ways both before and after attacks that may, at first blush, suggest that they must

> have consented at the time. Thus they may positively seek and encourage the sexual encounter beforehand and they may maintain what appears to be positive contact afterwards. This does not prove they consented at the time and it is deeply disappointing that despite the extensive research and training now available in relation to this, the DPP precludes it as a possibility in Eleanor's case. Whilst such inconsistent behaviour may make the prosecution of a rape very difficult, this is a far cry from the need to prosecute the complainant – particularly where she suffers from a serious mental illness.
>
> [3] The CPS decision and subsequent review was based only on documentary material provided by the private prosecutor. It is notable that the police, who met the people involved, felt that while the rape allegation could not be pursued, neither should the allegation for perverting the course of justice. We feel this may be significant in the very different approaches taken by them.
>
> [4] The DPP says that they took into account the fact that Eleanor had bi-polar effective disorder. However it appears to us that they did not. Research has shown that people with this disorder are 17 times more likely to attempt/commit suicide than those without.
>
> [5] David decided to make his daughter's case public, despite the emotional difficulties. He was aware that his daughter's mental health issues and her sexual history would be subject to public scrutiny, but felt compelled to raise the issue for lessons to be learned so that other vulnerable women and their families do not have to suffer what his family has and lessons can be learned.
>
> [6] When Eleanor received the news from her lawyer that the CPS had taken over the prosecution, she emailed him in despair. "I am in utter disbelief about the decision of the CPS… I will regret reporting this to the Sapphire "team" for the rest of my life. I did that as my duty to this country, and to women…Can we get reporting restrictions? This is of extreme importance to me."
>
> [7] The DPP's justification of their decision in the light of the subsequent tragedy is deeply disappointing and will send a message out to anyone who is thinking of reporting rape that it would be better if they didn't unless they have behaved as a stereotypical victim."

103. The fifth publication complained of is the republication of parts of that press release in an article published on the Telegraph website from around 6pm on 9 December 2014 ("The Telegraph Article"). The headline was "Eleanor de Freitas rape case: victim wrote of her 'disbelief at prosecution' As a result of complaint by Mr Economou, the headline was later altered to refer to the "complainant" rather than victim. That has no

bearing on my decision on meaning, however, as there is no suggestion that Mr de Freitas was responsible for the headline.

104. The Telegraph Article was a long piece, running to 34 paragraphs and nearly 1,000 words. The words complained of form only four of these, but to set them in context it is necessary to set out much of the rest:

> "[1] Eleanor de Freitas, who killed herself after being charged with making a false rape claim, expressed her "utter disbelief" at prosecutors' decision to take her to court, her family has revealed.
>
> [2] In a heart-rending extract from an email to her father David, the 23-year-old said she regretted reporting the alleged crime to police and that she had done so "as my duty to this country and to women".
>
> [3] Miss De Freitas, who had bipolar disorder, was found dead in an apparent suicide shortly after the Crown Prosecution Service (CPS) decided to take over a private prosecution which had been launched by her alleged rapist.
>
> [4] The emotional email, which disclosed Miss De Freitas' deep torment at the CPS' decision, was released by her parents after the Director of Public Prosecution (DPP) defended a decision to take over the court case for perverting the course of justice.
>
> [5] "I am in utter disbelief about the decision of the CPS," Miss De Freitas, an A* student who was studying for a diploma in financial planning, wrote to her father…
>
> …
>
> [9] The De Freitas family piled further pressure on Alison Saunders, the DPP, by describing the conclusions of a CPS inquiry into the case as "deeply disappointing" …
>
> …
>
> [12] Miss Saunders looked into the circumstances of the case following criticism of the CPS' role in prosecuting the "vulnerable" young woman…
>
> [13] Miss Saunders said: "The evidence in this case was strong and having considered it in light of all of our knowledge and guidance on prosecuting sexual offences and alleged false rape claims, it is clear there was sufficient evidence for a realistic prospect of conviction for perverting the course of justice."
>
> [14] "This was evidence including text messages and CCTV footage that directly contradicted the account Ms De Freitas gave to the police.

> [15] The DPP added: "Having considered the detail and the issues raised by the family, I am satisfied that the decision making in this case was correct and that it was made in accordance with our policies and guidance."
>
> [16] Ms de Freitas made the original complaint in January 2013.
>
> [17] Her alleged attacker was arrested and questioned by police, but the case was later dropped because the police thought there were inconsistencies in her evidence.
>
> …
>
> [21] Given the test was met in this case, had the CPS not taken over proceedings, a private prosecution would have continued …
>
> **[28] The DPP's justification of their decision in the light of the subsequent tragedy is deeply disappointing and will send a message out to anyone who is thinking of reporting rape that it would be better if they didn't unless they have behaved as a stereotypical victim.**
>
> **[29] Whilst it seems clear from that analysis that Eleanor behaved in a way that was confusing and inconsistent with the behaviour of the classic victim, this is a far cry from evidence that she positively lied.**
>
> **[30] Anyone who has worked with rape and domestic abuse victims knows that many victims behave in ways both before and after attacks that may, at first blush, suggest that they must have consented at the time.**
>
> **[31] Thus they may positively seek and encourage the sexual encounter beforehand and they may maintain what appears to be positive contact afterwards.**
>
> **[32] This does not prove they consented at the time and it is deeply disappointing that despite the extensive research and training now available in relation to this, the DPP precludes it as a possibility in Eleanor's case.**
>
> [33] They also questioned the DPP's insistence that Miss de Freitas' mental condition was taken into account by prosecutors.
>
> [34] An inquest into the death of Miss de Freitas … was postponed last month following her family's request for it to be heard by a jury."

105. Mr de Freitas does not admit that this article was published in hard copy, and it has not been proved that it was. I am therefore concerned only with the online publication.

106. At about the same time as The Telegraph Article appeared on its website, a further article by Ms Laville ("The Third Guardian Article") appeared on the website of *The Guardian*. This is the sixth publication complained of. The headline was "Eleanor de Freitas should never have been charged, police say". This 21-paragraph article contained the following words, those complained of being, as before, in bold:

> "[1] Police who investigated a rape complaint from a woman who went on to kill herself after being accused of lying by prosecutors, maintain she should never have been charged with perverting the course of justice.
>
> [2] The specialist sex-crime officers who investigated the rape complaint made by Eleanor De Freitas, 23, consistently refused to support prosecutors in a case against her for allegedly making up the allegations.
>
> [3] They were supported by their senior officer, but overruled by Martin Hewitt, an assistant commissioner at the Metropolitan police after lawyers from the Crown Prosecution Service held a meeting with him…
>
> …
>
> [6] In a letter this month, DI Julian King of Sapphire, the sexual offences investigation unit, said "I stand by my decision in that I do not believe that Eleanor should ever have been prosecuted for PCJ [perverting the course of justice]."
>
> [7] On Tuesday, Alison Saunders, the director of public prosecutions, vigorously defended the decision to prosecute De Freitas, a woman who had bipolar disorder and had been sectioned in a mental health unit in the past, saying it was a unique and tragic case.
>
> [8] After personally looking into the prosecution, Saunders said the evidential and public interest tests were both met, and the evidence against the young woman was strong.
>
> [9] She said she had expressed her personal and heartfelt sympathies to the woman's family, but defended the actions of the CPS and said it was better for the authorities to take on a private prosecution that met the tests than to leave it to a private prosecutor.
>
> [10] Saunders said the case involved careful considerations because De Freitas had mental health problems, but also because it was the subject of a private prosecution without a full police investigation.
>
> [11] She dismissed the concerns of police officers about pursuing De Freitas for allegedly making up the complaint. She said the police were not in a position to give a view, as they "never undertook an investigation into the alleged

> perverting the course of justice nor did they consider all the material provided to us by the private prosecution".
>
> [12] But De Freitas's father, David, said CPS lawyers had never met or interviewed his daughter about her allegations- and that perhaps explained the discrepancy between their view and that of the rape investigators.
>
> [13] He said: "**We are disappointed that even in light of the subsequent tragedy, the DPP is digging her heels in and standing by this prosecution. We are disappointed that she does not acknowledge there are lessons to be learnt from what happened to Eleanor**."…
>
> …
>
> [15] The director of public prosecutions said that she was satisfied that her lawyers had taken the necessary steps to assure themselves De Freitas's mental health problems had been properly considered
>
> [16] … "… the medical evidence provided to us could not justify dropping such a serious case", she said.
>
> …
>
> [19] Victim Support, Justice for Women and the charity Inquest have raised concerns about the decision to prosecute De Freitas.
>
> [20] But Saunders said if a private prosecution in such cases was found to meet both evidential and public interest tests - as the De Freitas case did – it should only be left with a private prosecutor in exceptional cases."

107. The underlined words in paragraph [7] linked to the DPP's public statement. The same or substantially the same article, including all of the words set out above, appeared in the hard copy version of *The Guardian* dated 10 December 2014.

108. Later on 10 December 2014 the seventh publication complained of appeared on the Guardian website. This was an article written by Mr de Freitas himself ("the de Freitas Article") under the headline "My daughter killed herself after being charged over rape claims. We need answers"**.** There was a sub-headline: "Eleanor de Freitas died on the eve of a trial for perverting the course of justice – but why did the CPS pursue the case?". The de Freitas Article contained the following words:

> "[1] **My only daughter, Eleanor, killed herself earlier this year on the eve of a trial where she was to be prosecuted for perverting the course of justice. Eleanor had reported an allegation of rape to the police the previous year on advice from a community support officer. It resulted in the man she accused being arrested and spending a night in custody. Six weeks later, after investigating the allegation, the police decided not to charge him. Eleanor, who suffered from bipolar affective disorder, accepted this decision. She had**

behaved in a way that might be viewed as inconsistent by a jury and the police were concerned that with her mental illness she might be too vulnerable to withstand a trial, even as a complainant. She decided to try to put it behind her and get on with her life, and that summer she found some happiness in a new relationship and commenced studies for a new career.

[2] However, all that changed in August 2013, when she was served with a summons for a private prosecution by the man she had accused. She instructed defence solicitors who thought there was nothing to it and they invited the CPS to take over the prosecution and stop it. However, the CPS felt differently and in December 2013, they told the court they would take over the prosecution.

…

[5] When I embarked on the course of getting justice for Eleanor, I was advised that an Article 2 compliant inquest could examine the circumstances surrounding Eleanor's death and in particular the role of the CPS in pursuing the prosecution.

[6] I am still astonished that the CPS decided to prosecute a very vulnerable young woman in circumstances in which the police had thought it should not take place. To date I have not seen all the evidence gathered as I am not entitled to access it. It is partly for that reason that I feel the inquest needs to look into this: it is my only hope of knowing what really went on.

[7] Despite the CPS's press release, it is obvious that there is much more to be heard. We want to know what our daughter went through and why. I still wonder whether, had the CPS made a different decision, our beloved daughter would be alive.

[8] The coroner was resistant to looking at this and I decided with great trepidation that if I wanted a proper examination of what took place I had to go public.

[9] The CPS told me they did not take into account the details provided by the man my daughter had accused. They said they paid no attention to the rape myths on which much of the prosecutorial information was based. However at that meeting, and afterwards, despite providing further information that was not known to them at the time, and despite what happened to Eleanor, they stand by their decision and fail even to say that they might have made a mistake.

[10] When I decided to go public, my focus was on the CPS and it remains on them. Their press release continues to defend

> their position, with no concession to the idea that they might not have known everything and their decision might have been wrong. I cannot even comment on the reasoning of the CPS as I have not been provided with access to the evidence. So I continue to ask, what public interest is served by the DPP's decision to prosecute and maintain the correctness of their decision?"

109. The de Freitas Article only ever appeared online, it seems.

Discussion

The Telegraph Article

110. Mr de Freitas accepts Responsibility for publication of the quotations from the Birnberg Peirce Press Release. The order of the paragraphs was changed by the Telegraph, but nothing is said to turn on that.

111. Mr Economou's case is that the passages from the Birnberg Press Release which appeared in the Telegraph Article meant that "contrary to the statement of the DPP that the evidence that Ms de Freitas had made a false allegation of rape against him, the truth is that there was no evidence that she had positively lied or that she had consented when having sexual relations with Mr Economou, and accordingly he had prosecuted her for [PCJ] on a false basis namely that he is guilty of raping her and that he would have been prosecuted for that offence but for the fact of her non-stereotypical behaviour as a victim." Mr Barnes characterises this as a "contradiction meaning", submitting that the "whole thrust was to suggest that the DPP was wrong". Mr de Freitas was suggesting "that the prosecution of his daughter should not have been supported, and indeed there was nothing in the way that she had presented matters to suggest either that she had lied, or indeed consented at the time of her sexual encounter" with Mr Economou. Mr Barnes points out that this was a statement issued in reaction to that of the DPP, and submits that the DPP statement therefore formed part of the context.

112. This is another case where the words complained of were not "about" Mr Economou. Their subject-matter was the CPS decision-making and the DPP's assessment of it. The focus was on the merits of those matters. That said, the passages complained of did involve implied suggestions as to the merits of Ms de Freitas' allegation of rape. They therefore impliedly reflected on the conduct of the man whom she had accused. But I do not agree that they bore the meanings complained of, or any similar meanings.

113. First, the words complained of said nothing about the private prosecution. That was mentioned in other parts of the article, for which Mr de Freitas is not said to be responsible. There is no pleaded innuendo meaning. The words cannot and did not bear any meaning to the effect that the private prosecution was baseless. As to the first part of the meanings complained of I agree that, taken by themselves, the passages complained of did suggest that the CPS and DPP were both wrong. But even read in isolation they did not mean that Ms de Freitas' allegation of rape was true. The passages highlight the question of whether there is evidence that she "positively lied". They expressly acknowledge that she acted in ways that were "confusing and inconsistent with the behaviour of the classic victim", and that this may suggest, at first blush, that she had consented at the time. The criticism is that the DPP has relied on this conduct as "preclud[ing] … [the] possibility" that she did not consent. The ordinary

reasonable reader will have understood this passage to refer to the criminal standard of proof. The suggestion is that the DPP has wrongly concluded that Ms de Freitas must be guilty by treating her behaviour as evidence of guilt, when research shows it is consistent with innocence.

114. Moreover, when deciding what a reader would make of the four paragraphs complained of it is a mistake to concentrate solely on the "thrust" of those words. They have to be considered in their context. This is an article which followed, and quoted, a detailed and carefully considered statement by the DPP. The reader was told that the DPP had looked into the matter in detail and considered the evidence to be strong. At paragraph [13] the article quoted the test applied by the DPP (that is, the evidential test for prosecutors): "sufficient evidence for a realistic prospect of conviction". At [14] some explanation was quoted: there were "text messages and CCTV footage that directly contradicted the account Ms de Freitas gave to the police".

115. In my judgment the words complained of, in their context, bore this implied natural and ordinary meaning: that it was questionable whether the CPS and DPP were right to view the evidence of PCJ as strong; and it was a real possibility that Ms de Freitas had told the truth, and had indeed been raped by the man she accused.

116. Identification is not in issue, in the sense that it is accepted that after the publication of the Second Mail Article on 29 and 30 November 2014 a number of people would have been able to identify Mr Economou as the man accused by Ms de Freitas. That is a sensible concession, and I would add that there is evidence that clearly satisfies the objective test and any subjective test of reference. The evidence is that Lara Bartoli and Mark Winter both saw the article and sent Mr Economou links to it.

117. Mr Barca argues, nonetheless, that the Telegraph Article did not itself name Mr Economou, and points out that there is very limited evidence before the court as to any crossover of readership. That is true, but I am satisfied that a substantial number of those who read the Telegraph article did so knowing Mr Economou's identity and role, and that this number went well beyond the relatively small group who knew these facts at the time of the first four publications complained of. I can apply common sense, and I take account of what is common knowledge, and the evidence. By this point Mr Economou had been publicly named in the First Mail Article, in social media responses to that article, and in the Second Mail Article. This represents a very large number of readers. It is a notorious fact that the Mail and Telegraph have broadly similar political stances, and I can infer a substantial degree of overlap.

118. As with the earlier articles, it is unlikely that this publication caused Mr Economou's reputation to suffer serious harm in the eyes of those close to him. Lara Bartoli wrote to Mr Economou describing Mr de Freitas as "a nutter". Mr Winter's response was that "the family are still refusing to accept that she lied". I doubt that the opinions of those in the other groups who knew about the cases from the Economou family, or professionally, were altered by this article significantly, if at all. But I accept that in this instance there was publication to many people who knew who Mr Economou was, but were not friends, family or in any of the other categories discussed above. I accept that such publication took place on a large scale, and that I can and should infer that his reputation suffered serious harm as a result. The fact that his identification results in part from the Second Mail Article, for which he was in part responsible, does not affect this conclusion.

The Third Guardian Article

119. Mr de Freitas does not admit Responsibility for the publication of the words attributed to him in this Article. His evidence is that he cannot remember speaking those words. He had only limited contact with Ms Laville. The only evidence that he did say what is quoted in the article is the content of the article itself. That is hearsay, and Ms Laville has not given evidence. Nevertheless, my conclusion is that Mr de Freitas probably did speak or write those words or (as I think most likely) authorise someone else to speak or write them to Ms Laville with a view to publication. The context was a response on behalf of the family to the DPP statement, which he and Ms Wistrich knew in advance was to be published. Their strategy had been prepared, and this statement was probably part of it. In all likelihood it was prepared as a succinct summary of parts of the longer press release.

120. The meaning attributed by Mr Economou to the single paragraph complained of is that "contrary to the DPP's statement of the DPP that the evidence that Ms de Freitas had made a false allegation of rape against him was strong, the truth is that he had prosecuted her for perverting the course of justice on a false basis namely that he is guilty of raping her." This is put forward as another "contradiction meaning". Key features of the words complained of, submits Mr Barnes, are the complaint that the DPP was "digging her heels in" and failing to acknowledge there were lessons to be learnt. For Mr de Freitas to dispute the DPP's statement about the strength of the evidential case against Ms de Freitas is, it is argued, to imply the veracity of her allegations against Mr Economou, and falsity in his prosecution of her.

121. I do not agree. It is important to keep in mind that the claim is restricted to the two sentences I have put in bold text in paragraph [13] of the article. I do not consider that those words bear, or could be held to bear, these or any similar defamatory meanings about Mr Economou. Not only are the two sentences complained of in this instance not "about" Mr Economou, they do not refer to him even impliedly. The words criticise the DPP for digging in her heels and standing by "this prosecution". It is the rest of the article that explains what "this prosecution" means, so it is not possible to hold Mr de Freitas responsible for any meaning about that. Nor do the words complained of refer to the rape allegation. That too is referred to elsewhere in the article, but Mr de Freitas is not alleged to have caused or to be responsible for the publication of those other parts of the article. There is no pleaded innuendo.

122. Even if that had been the case for Mr Economou, and I had upheld it, I would have rejected his case on meaning. An expression of disappointment at the DPP's decision to stand by the prosecution of Ms de Freitas for PCJ does not imply that her allegation of rape was true. Nor does an expression of disappointment in her failure to acknowledge there are "lessons to be learnt". Neither expression implies that the prosecution was utterly baseless. This is not just the position in logic. A reasonable reader would not draw such conclusions. It is not necessary to reach a conclusion on serious harm.

The de Freitas Article

123. Responsibility for this is of course accepted, though not for the headlines. There can be no doubt that the article referred to Mr Economou, and made statements about him. Paragraph [1] referred to "the man she accused" and the "decision not to charge him". Paragraph [2] referred to "a private prosecution by the man she had accused". Paragraph [9] referred again to "the details provided by the man my daughter had

accused." It is quite clear that Mr Economou was identifiable as this man, and that he was identified as such, by friends, relatives, acquaintances and others in the groups discussed earlier who read this article. But the pool of readers who, it can be inferred, will have identified him as the subject of these references is much wider than that. By this time, Mr Economou's identity as the man concerned was firmly in the public domain, for reasons I have given already.

124. Mr Economou's case is that the de Freitas article meant, first, that he "is guilty alternatively there are strong grounds to conclude that he is guilty of the rape of Ms de Freitas, but has not been prosecuted for that crime only because the police were concerned that she might be too vulnerable to withstand a trial". The word "only" in this meaning is clearly important. Secondly, he contends that the article meant that "Contrary to the statement of the DPP that the evidence that Ms de Freitas had made a false allegation of rape against him was strong and that the police had never undertaken an investigation into the alleged perverting the course of justice the truth is that he had prosecuted her for perverting the course of justice on a false basis in circumstances in which the police had concluded following an investigation that to do so was wrong and there was in any event nothing in Mr Economou's complaint."

125. I do not see how the second meaning complained of can be sustained in its pleaded form, as a natural and ordinary meaning of this article. It depends on knowledge of aspects of the DPP's statement, which are not cited in the article. But that does not address the thrust of the meanings complained of.

126. Mr Barnes' argument focuses on four features in particular. First, the account in paragraph [1] of why the police decided not to charge the man accused, which is said to convey the impression that "it was only the police's concern over Ms de Freitas' vulnerability that led to their decision not to charge". I do not agree. The account of the police's reasoning also includes reference to her behaving "in a way that might be viewed as inconsistent by a jury". Secondly, Mr Barnes points to the account given in paragraph [2] of the view taken by Ms de Freitas's solicitors that "there was nothing to" the PCJ prosecution. This is said to involve "charging Mr Economou with having brought the prosecution on a false basis". Again, I disagree. This is a false dichotomy. Even applying the repetition rule the view described is not, in form or substance, that the allegation of rape was plainly true. It is that there was nothing in the allegation of PCJ. Thirdly, reliance is placed on the statement in paragraph [6] that the police had thought the PCJ prosecution "should not take place". Mr Barnes also highlights the expression of astonishment in paragraph [6], which is said further to undermine the validity of the prosecution begun by Mr Economou. But both these passages appear in a context which emphasises Ms de Freitas' vulnerability.

127. It is also important to take account of other passages in this article, including some that are not complained of, as these offer some balance. Paragraph [6] emphasises that Mr de Freitas has not seen all the evidence, which is one reason he wants the inquest to "look into all this". Paragraph [7] acknowledges that there is "much more to be heard". This does not necessarily imply that it is all exculpatory. Paragraph [10] concedes that Mr de Freitas cannot comment on the reasoning of the CPS as he has not had access to the evidence. This is not, taken overall, an article that purports to know it all. It is not one that condemns the CPS as guilty. It makes a case, but the headline accurately sums it up as seeking answers.

128. Whilst I agree, therefore, that the de Freitas Article conveyed defamatory meanings about the accused man, I do not agree that it meant that he was guilty of any wrongdoing. In my judgment it meant there were strong grounds to suspect that the decision of the CPS to prosecute Ms de Freitas may have been a mistake, as there were strong grounds to doubt there was an evidential case against her. The implication so far as Mr Economou is concerned was that there were strong grounds to suspect that he was guilty of rape, and had falsely prosecuted Ms de Freitas for PCJ.

129. In support of his case on Serious Harm Mr Economou relies on comments posted online by readers of the article, which are said to be "comments of their own strongly detrimental to Mr Economou and his reputation". Such comments can be evidence of reputational harm, to the extent they can be said to be a natural and probable consequence of the publication complained of. That cannot be said of many of these comments, in my view. They are truly comments "of their own". But Mr Economou has no need to rely on these comments. Although I have rejected his primary case on the meaning of the de Freitas Article, the meanings I have found are seriously defamatory. I readily infer that the publication of the de Freitas article probably caused serious harm to Mr Economou's reputation.

Summary of Conclusions on the Cause of Action Issues

130. The words complained of in the First Guardian Article bore meanings defamatory of Mr Economou, but not ones as serious as he suggests. Because his name was not public at the time he was not widely identified as the subject of those words. The publication did not cause serious harm to his reputation among those who did identify him. The same is true of the *Today* Item and the BBC TV Interview. The words complained of in the Second Guardian Article did not refer to or defame Mr Economou. For reasons similar to those that apply to the first three publications complained of, I would not have found that those words or the article as a whole caused serious harm to his reputation anyway. The words complained of in the Telegraph Article referred to and bore a meaning defamatory of Mr Economou, and their publication caused serious harm to his reputation. The same is true of the de Freitas Article. But the words complained of in the Third Guardian Article satisfied none of these requirements. My conclusion is therefore that of the seven publications complained of, two are actionable by Mr Economou.

Mr Economou's conduct

131. In reaching my conclusions on Serious Harm I have not given any weight to Mr de Freitas' argument that Mr Economou's own conduct indicates that his reputation did not suffer serious harm. Mr Barca submits that the claimant's behaviour at the time shows that he was not in reality concerned that Mr de Freitas' words were causing harm to his reputation. He invites me to infer that there was no such harm. Speaking generally, this is a line of argument that seems unlikely to offer much help in resolving an issue about Serious Harm. Points of this kind are sometimes made in support of an abuse of process argument (see, for instance, *Lachaux* at [23]), but abuse of process is not alleged in this case. Whether a publication causes Serious Harm depends on the reactions of others, not the perception of the claimant. In this case, I have not found Mr Barca's arguments persuasive.

132. Three points are made. First, Mr Barca points to a failure to complain of and sue in respect of the articles published by *The Times* and *Daily Telegraph* on the morning of 7

November 2014, which quoted Mr de Freitas in exactly the same terms as the First Guardian Article ([43] above). Mr Economou's response was to say that he could not sue on everything; his team had looked at the overall situation and chosen which articles to complain about. That is a credible explanation, which I accept. *The Guardian* is the paper which Mr de Freitas approached, and which ran the story first. A decision was evidently taken to target that publication and not to complain of what seems to have been the republication of its content in other papers.

133. Secondly, reliance is placed on the nature of the complaint made to the Telegraph about the Telegraph Article. A letter was sent by Mr Economou's solicitors in December 2014, complaining about the headline and the portrayal of Ms de Freitas as a "victim". The suggestion made to Mr Economou and repeated in submissions by Mr Barca is that there was no complaint that the article accused Mr Economou of rape. His answer was that everyone is responsible for different things: in effect, that the Telegraph was responsible for its headline and Mr de Freitas responsible for his words. Whatever the merits of that point, a complaint that Ms de Freitas should not be described as a "victim" seems to me consistent with the view that the article depicted Mr Economou as a rapist. The letter of complaint takes that approach, as I read it. This would be a poor point on Serious Harm, anyway.

134. The third contention is that this action has not been brought to vindicate or obtain compensation for harm to reputation but for vindictive, vengeful motives. It is said to be part of a pattern of harassment by Mr Economou of the de Freitas family. Allegations of harassment are pleaded in support of the Public Interest defence, which I will come to. It is pleaded that the defendant will rely in mitigation of damages on such evidence as he adduces in support of the public interest defence. But I have found it hard to see how such matters bear on the Serious Harm issue. I have however reached conclusions about these points. In summary, those findings are that Mr Economou's motives for bringing this action are mixed, and are in part vindictive; but they certainly include a sincere desire to vindicate reputation. He has genuinely believed throughout that Mr de Freitas has caused seriously harm to his reputation. I would not have taken account of these points on the Serious Harm issue anyway.

THE PUBLIC INTEREST DEFENCE

135. Given my findings on the Cause of Action Issues it is only necessary to address the Public Interest defence in respect of the Telegraph Article and the de Freitas Article. But the law that applies is the same, and most of the factual background is common to all the claims. For those reasons, and in case this matter goes further, I will state my conclusions on this issue in relation to the other five claims as well. Those conclusions are that the defence is made out in respect of all seven publications.

The law

136. The defence relied on is provided for by s 4 of the Defamation Act 2013. This reads as follows:

> "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 clamant 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."

137. The Explanatory Notes to the Act record, at paragraph 29, that the intention was 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 [2001] 2 AC 127 and … intended to reflect the principles established in that case and in subsequent case law." The *Reynolds* defence had emerged as a new form of qualified privilege.

138. The s 4 defence has been addressed in two previous decisions of mine: *Barron v Vines* [2015] EWHC 1161 (QB) and *Yeo v Times Newspapers Ltd* [2015] EWHC 3375 (QB). But the circumstances of *Barron v Vines* meant there was no detailed consideration of the defence. And in *Yeo* the statutory defence and the previous common law *Reynolds* defence were both in issue, and it was common ground that for the purposes of that case there was no material difference between them.

139. It is possible to identify a number of broad points concerning s 4 which I do not understand to be in dispute:

    (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 this second requirement, which I shall call "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).

140. Points (5) and (6) are logical, just, and convenient, and reflect the law as it was understood and applied before s 4 was passed. May LJ put it this way in one of the early post-*Reynolds* cases, *GKR Karate (UK) Ltd v Yorkshire Post Newspapers Ltd* [2001] 1 WLR 2571 at 2578-2579:

> "… the existence or otherwise of qualified privilege is to be judged in all the circumstances at the time of the publication. It is not necessary or relevant to determine whether the publication was true or not. None of Lord Nicholls's 10 considerations require such a determination and some of them (for example number 8) positively suggest otherwise. Nor is it necessary or relevant to speculate (for the purposes, for instance, of considerations 3, 4 or 7) what further information the publisher might have received if he had made more extensive inquiries. The question is rather whether, in all the circumstances, the public was entitled to know the particular information without the publisher making further such inquiries. …
>
> …the defendant's state of mind is to be determined at the time of publication. The subsequently determined truth or falsity of the publication is not material. Where, as in the present case, the contention is that [the journalist] was reckless and that she did not consider or care whether her publication was true or not, this is to be inferred (or not) "from what [she] did or said or knew." A failure to make further or proper inquiries is capable of being an ingredient from which recklessness may be inferred. What the response to those inquiries might have been is not capable of being such an ingredient."

141. The line of relevance does not necessarily have to be drawn at the moment of publication. As was pointed out in argument in *GKR*, evidence of a defendant's post–publication conduct can in principle be probative of a state of mind at the time of publication. This can include the defendant's conduct in the witness box: see 2575G-H. But as May LJ observed (2577D) such evidence will not always have enormous value for that purpose.

Issues

142. It is not in dispute and in any event I find, for reasons I shall outline, that each of the publications complained was, or was part of, a publication on a matter or matters of public interest. The central dispute relates to whether the Reasonable Belief requirement is satisfied.

Matters of public interest

143. At a general level the statements complained of related to a number of topics of undoubted public interest. First, and most directly, they related to the question of whether the CPS, a public authority, may have gone wrong in making a decision to prosecute. More specifically, they related to the question of whether the CPS may have been mistaken in its assessment of the strength of the evidential basis for the prosecution and/or the public interest in pursuing a prosecution. The particular context was one of especial sensitivity for three reasons: (1) the person whom the CPS had chosen to prosecute for perverting the course of justice was a rape complainant; (2) she was a mentally disordered person; (3) she had killed herself almost on the eve of her trial.

144. Each of these points raises its own public interest issues. Rape is a very serious crime, and deplored by society. Hence, as Mr Economou has emphasised, the making of a false allegation of rape can have very serious implications for the person accused. There is a public interest in deterring and punishing those who make accusations of crime against others which they know to be false. But to prosecute an accuser who has made a true report of crime would be a serious mistake. Especially so if the crime reported is as grave as rape, a crime usually carried out in private, without witnesses. There is a strong public interest in ensuring that the victims of rape come forward. There has, notoriously, been concern for many years that levels of reporting are low. There are no doubt many reasons for that. But there is a real and obvious risk that rape victims may be deterred from coming forward for fear that, by reporting, they will expose themselves to a risk of prosecution for perverting the course of justice.

145. It does not follow from the fact that an accused person is not prosecuted, or even charged, that the allegation is a false one, still less that it was made with knowledge that it was false. A person accused of a serious crime will only be prosecuted by a public authority if it considers that there is a realistic prospect of making a jury sure of guilt, and that a prosecution would be in the public interest. If the authority, considering an allegation of rape, concludes that these tests are not met it will not by any means follow that it will prosecute the accuser. To do that, it must first satisfy itself that there is a realistic prospect of convincing a jury, so that it is sure, that the accusation was a falsehood told with intent to pervert the course of justice, and that the prosecution would be in the public interest. How decisions are made in the sensitive area between these extremes is a matter of considerable public importance.

146. These issues have been the subject of close scrutiny and extensive analysis over recent decades. The law protects those who complain of rape and other sexual crimes by affording them lifetime anonymity (Sexual Offences Amendment Act 1992), by restricting cross-examination about previous sexual history, and by prohibiting any cross-examination conducted in person by the individual they have accused (Youth Justice and Criminal Evidence Act 1999). All these measures tend to facilitate and encourage reporting. The handling of rape complaints by the public authorities has been examined, for instance in a 2010 review by Baroness Vivien Stern CBE, leading to a commitment by the DPP to "reinforcing the 'merits-based' approach to rape prosecutions by dealing effectively with myths and stereotypes …" The "myths and stereotypes" referred to are now well-recognised in the criminal justice system. They include (but are not limited to) the assumption that you can tell whether a person was or was not raped by the way she acts; that prostitutes cannot be raped; and that because complaint was not made immediately the allegation is false. Measures are taken to combat the influence of such myths and stereotypes. Those measures include careful directions to juries where cases come to trial, with the aim of ensuring that cases are assessed properly and fairly. But self-evidently it is vital that there should be careful assessment at the point when a decision is made whether or not to prosecute.

147. It is also well-recognised that important public interest issues are at stake when considering whether to prosecute a rape complainant for perverting the course of justice. The known difficulty and sensitivity of such cases led the then DPP in January 2011 to require all CPS areas to refer to him any case in which such a prosecution was being considered. In July 2011 he published Guidance "Charging Perverting the Course of Justice and Wasting Police Time in Cases involving Allegedly False Allegations of Rape and / or Domestic Abuse". In March 2013 the CPS published a joint report to the DPP by Alison Levitt QC, Principal Legal Advisor, and the Crown Prosecution Service Equality and Diversity Unit, on "Charging perverting the course of justice and wasting police time in cases involving allegedly false rape and domestic violence allegations". In the Foreword to this report the DPP acknowledged the need for an informed national debate about the proper approach in such cases, and expressed the hope that the report would help to ensure sound decisions and "help inform the wider debate". The publications complained of took place, therefore, at a time when the topics to which they related were, and were authoritatively recognised to be, important matters deserving of informed public debate.

148. As for mental ill-health, this could complicate the process of evaluating the evidential case against an accuser: it might explain why a person has made an allegation which appears to be false, without intending to do so; or it might explain behaviour, before or after the event, which on its face appears inconsistent with the truth of the allegation. Mental ill-health might provide a public interest justification for not prosecuting an individual, even if the evidence appears strong. When a person suffering from mental ill-health kills herself at a time when she is facing public prosecution for making a false allegation of rape there is a clear public interest in considering whether there is a causal link and, if so, whether the decision-making was at fault and there are lessons to be learned.

149. The facts of this case touched on two additional matters of public interest. One is the role of an inquest as a vehicle for exploring, in public, the propriety of decision-making in this area, in this case; put another way, the extent to which the inquest process ought to accommodate an investigation of the public interest issues raised by the facts of the

prosecution. The other is the desirability of permitting private prosecutions for allegedly false complaints of rape, or for that matter, sexual crime more generally. The first of these topics is in my judgment not only an important matter of public interest, it is also one to which the publications complained of related. They were "on" that matter, within the meaning of s 4, as they were "on" the other matters identified above. The inquest was imminent at the time of the initial publication and pending at all material times. The matters aired in the articles were directly relevant to this public interest topic.

150. The propriety of permitting private prosecutions in this context is certainly something addressed in some of the evidence, and it is a matter of public interest. There are arguments against allowing those accused of rape to prosecute their accusers, without the prior intervention of a public authority. But this is not a topic which Mr de Freitas sought to address in statements he made or caused to be made in the media. It is not a topic to which those statements related, in my view. Mr de Freitas was not making points directed at Mr Economou's decision to prosecute, or about public policy as to private prosecutions in this arena or generally. His remarks were directed at the CPS, and the Coroner. Nor were his statements published as part of a publication on this topic of public interest.

Belief that Publication was in the Public Interest

151. Initially, it was Mr Economou's case that Mr de Freitas did not believe that what he published was in the public interest. The pleaded allegation is one of malice and dishonesty. It is pleaded that:-

> "9.13.13 … it is properly to be inferred that in publishing the words complained of the defendant lashed out publicly
>
> 9.13.13.1 in an attempt misleadingly to restore the reputation of his daughter, … with no regard to the truth …
>
> 9.13.13.2 out of revenge against the claimant who ... the defendant apparently regards as responsible for her death [and]
>
> 9.13.13.3 out of resentment at the claimant's objections and protests against the Defendant speaking out as he did.
>
> ...
>
> 9.13.15 … in all the premises the defendant's publication of the words complained of was malicious, since he can have had no honest belief in the truth of his allegations and/or spoke out to the claimant's huge detriment motivated by the improper purposes set out under paragraph 9.13.13"

152. Mr Economou confirmed in cross-examination that this is what he believed to be the position. By the close of the trial, however, his case had changed. It was that Mr de Freitas ignored everything that tended to contradict his view, did not think about how

what he said might harm Mr Economou's reputation, and did not care. These are serious allegations, but they are not allegations of dishonesty. They are allegations that go to the reasonableness of the belief held.

153. An important question is begged by either version of Mr Economou's case, and has to be confronted in any event given that the burden of proof on the factual issue of belief lies on Mr de Freitas: what exactly must a defendant believe, in order to benefit from the s 4 defence? What s 4(1)(b) requires is a belief that the publication of "the statement" is in the public interest. In my judgment this must refer to the words complained of, rather than the defamatory imputation which those words convey. That is consistent with the wording of the statute, which uses the term "imputation" to refer to the meaning of a statement. As I commented in *Barron v Vines* [2015] EWHC 1161 (QB) [63]: "On this view, a reasonable belief that it is in the public interest to make statement A could be the basis for a defence, even if the words used unintentionally conveyed meaning B. That would seem more consistent with the previous law." I was referring to the principle, first recognised in *Bonnick v Morris* [2002] UKPC 31 [2003] 1 AC 300, that the steps a person needs to take in order to gain the protection of the *Reynolds* defence for responsible publication can depend on what meaning(s) the publisher intended or believed his words would convey.

154. Mr Barca draws attention to observations made by Eady J when discussing the application of the *Bonnick* rule in *Jameel v Wall Street Journal Europe SPRL* [2004] EWHC 37 (QB) [2004] EMLR 11:

> "70. Where defamatory words are genuinely ambiguous, in the sense that they may readily convey different meanings to different ''ordinary reasonable readers" then the court may take into account such other meaning or meanings when considering privilege. … If a journalist genuinely did not appreciate that the words could carry a certain defamatory implication, he could hardly be criticised for not checking it out …
>
> 73. … In determining whether it was reasonable or responsible not to have made further pre-publication checks, it might well be relevant to consider how the journalist understood the allegations he was making and, if he genuinely thought the words bore no defamatory imputation at all, it would be difficult to criticise him for not addressing such a meaning for the purpose of checks or (say) giving an opportunity to comment upon it."

155. Without at this stage confronting the question of whether s 4 is a statutory enactment of the Reynolds defence or something different, it seems to me that the principles reflected in these remarks must apply equally to the new defence. This may possibly be viewed as an aspect of the allowance that must be made for editorial judgment, to the extent the Court considers appropriate, pursuant to s 4(4). It is of interest to note the comparable position arrived at by the common law in relation to honest comment, grounded on a sufficient factual basis, which conveys an additional but unintended defamatory imputation that is not so grounded: see *Lait v Evening Standard Ltd* [2011] EWCA Civ 859 [2011] 1 WLR 2973.

156. The substance of Mr de Freitas' evidence in relation to each of the publications complained of is this: that he does not agree that what he said or caused to be said defamed Mr Economou; that he was concerned with other matters; that the subjects he raised were in his view matters of public interest; and that he believed that what he said about those subjects was in the public interest. I can take what he said in his witness statement about the First Guardian Article as an illustration of his account. Dealing with the three paragraphs of wording he provided for publication, he said this:

> "I do not accept that my words in that statement were defamatory of the Claimant in the way that he suggests or at all. I was not making a statement about the Claimant at all in my view, but was talking about the CPS and the ramifications from the decision to continue the prosecution against Eleanor, instead of stopping it. ….
>
> … As I have outlined above, I was primarily concerned with the coroner's refusal to deal with the issues surrounding the role of the CPS. I was concerned that the potentially useful function of the inquest to conduct a full investigation into the contributing factors leading up to my daughter's death would be wasted if the coroner failed to address what, in my view was one of the key contributing factors, that is, the role of the CPS.
>
> … Given the sensitivity surrounding the issue of rape, and the fact that vulnerable women in particular can find it very difficult to find the courage to report that they have been raped, I believed that it was in the public interest to call for examination of the decision-making of the CPS in its decision to prosecute my daughter. I was conscious that such a prosecution could be a very real deterrent to rape victims from coming forward for fear they may face prosecution if there were any inconsistencies in their account. I believed that, if the inquest did fail to examine the CPS' role, then raising these issues in the national media could still put a spotlight on the CPS and lead to the important questions being asked and, ultimately, lessons might be learned."

157. Cross-examined by Mr Barnes, Mr de Freitas explained that his intention when contributing to the First Guardian Article was, "If I could not achieve anything via the coroner's court, to air these matters of public interest."

158. Mr de Freitas' account of his intentions at the time of the other six publications complained of is to similar effect. Having had the advantage of seeing Mr de Freitas give evidence over many hours, I accept his evidence that he believed that the publication of the words he spoke or wrote, or caused others to write, for publication in the media was in the public interest. The issue, therefore, is whether such belief was reasonable.

159. The parties are in disagreement over the right approach to whether a belief is "reasonable" for this purpose. One point is clear. In carrying out that assessment I must bear in mind that there are limits to the latitude to be allowed for ambiguity or unintended defamatory meanings. As the Privy Council made clear in *Bonnick* at [25]:

> "This should not be pressed too far. … In the normal course a responsible journalist can be expected to perceive the meaning an ordinary, reasonable reader is likely to give his article. Moreover, even if the words are highly susceptible of another meaning, a responsible journalist will not disregard a defamatory meaning which is obviously one possible meaning of the article in question. Questions of degree arise here."

160. There are however other issues to consider. Most notable is a dispute about the extent to which, either generally or on the particular facts of this case, the court should have regard to the ten-point responsible journalism "checklist" provided for in *Reynolds*. It is Mr Economou's case that Mr de Freitas' conduct falls far short of complying with that checklist. I shall come to these issues later, after setting out the relevant factual background as I find it to be.

Reasonable Belief: the facts

161. For reasons given above, this part of this judgment will concentrate on events that contributed or could have contributed to Mr de Freitas's state of mind at the times when he made or caused the publications complained of, and facts which have a bearing on the reasonableness of such state of mind. The review needs to start well before the key events, in order to assess the reasonableness of Mr de Freitas' state of mind in its proper context. I shall have to consider the reasonableness of his belief separately in relation to each of the publications complained of, as the situation was an evolving one. Mr de Freitas's evidence does not always make clear when he came to know a fact. My approach will be cautious. I will not take a fact into consideration unless I am satisfied he was aware of it at the relevant time. The review will stop at 10 December 2014.

Eleanor de Freitas: background and mental health

162. Mr de Freitas' account of his daughter's life and mental health is undisputed, as is much of his account of what he knew and thought. Born in 1990, Eleanor de Freitas was brought up by her parents in Fulham. Successful at Putney High School for Girls, gaining ten A* at GCSE and three A grades at A level, she went to Durham University to study Geography. It was at Durham that she experienced symptoms of mental ill-health, such that she came home early in the winter term of 2008. An attempted return in January 2009 was unsuccessful. Her behaviour became erratic, one feature being shopping sprees even though she had little money. In 2009 she was diagnosed with clinical depression and bipolar affective disorder. The latter diagnosis was later confirmed.

163. In February 2012 she again behaved extremely erratically. One manifestation of this was going shopping and spending money "like there was no tomorrow". Taken by her parents to the Claybrook Centre in Fulham, she was "sectioned" under the Mental Health Act 1983 and taken to Ealing Hospital. She successfully challenged her detention before a Tribunal and left. She sought to live on her own, with help from the family. She obtained part time work at the Body Shop in King's Road, London. Her father's perception of her in December 2012 was that she was "reasonably well and coping with life." He and Miranda, Mrs de Freitas, took a protective approach to Eleanor because of her mental health problems.

Events of 23 and 24 December 2012

164. Mr de Freitas first became aware of Mr Economou on 23 December 2012. Ms de Freitas mentioned him to her father and gave him Mr Economou's telephone number. He knew that she had arranged to see him. He tried but failed to get hold of her on her own phone, so texted Mr Economou's phone asking about her safety and whereabouts. She called him and said she was phoning from Mr Economou's phone. At 01:55 she texted from Mr Economou's phone to say she was ok. Six minutes later she texted to explain she had to use his phone as hers was charging. She stated that she was with Serena. She had a close friend, Serena Gosden-Hood.

165. Mr de Freitas next saw his daughter on the evening of Christmas Eve, when she arrived home between 8 and 10pm. She was due to spend Christmas day with her mother and aunt in Northamptonshire. She arrived by car, parked outside the house, and telephoned Mr de Freitas to bring all her stuff down. She did not get out of the car and seemed to be in a state of confusion. He found her manner odd and distant on the phone and in person. When she had got what she came for she just drove off. Later that day, and on Christmas day, Mr de Freitas learned from his wife that his daughter had taken a wrong turn on the way to Northampton, and continued driving until she ran out of fuel. Mrs de Freitas and her sister had to rescue her.

The rape allegation

166. On 27 December 2012 Ms de Freitas told her mother that he had had unprotected sex with Mr Economou. A doctor's appointment was made, which she attended on 2 January 2013. In the meantime, on 31 December 2012, she went to her psychiatrist and to the GUM clinic. Mr de Freitas did not learn of any of this at the time. He did, however, observe his daughter in a distressed condition when he went to pick her up and drive her back to London, and in the days that followed.

167. It was on 4 January 2013 that Mr de Freitas first heard his daughter's allegation that she had been raped. The sequence of events, as I find it, was this.

(1) In the early afternoon, at 13:18 and 13:22, Mr de Freitas received two texts from Mr Economou, referring to an earlier conversation with Miranda de Freitas, asking for her contact details and indicating Mr Economou wanted to pass on some more information to her.

(2) Later, Mrs de Freitas called to tell her husband that their daughter was going to Chelsea police station to make a statement. She asked him to go to the station to bring her home when she had finished.

(3) He met her at the station. It was decided that her statement should be taken at Fulham police station (this being the nearest Sapphire unit, specialising in rape and serious sexual assault). Whilst waiting in the reception area Mr de Freitas received a voicemail from Mr Economou. It was left at 17:38. It said as follows:

> "Hello my name is Alexander Economou, sorry to bother you but your daughter has been making a lot of false accusations and allegations about me, some of them are very serious. Right now I'm on my way to Chelsea police station to file an official report. Sorry if this comes as a bit of a shock but I know Ellie is a little fragile but actually I'm the victim of the whole thing. And now I have no mercy and I will do everything to prosecute

> Ellie for her allegations and I'm also speaking to civil lawyers as well to bring charges of defamation, not immediately but maybe in a few months time. Rumours are now going around my friends and unless she stops immediately there will be serious trouble. I'm going to start making allegations to police now so things get done officially on record. But if she continues and doesn't fix the situation she is going to get a lot worse and she is going to get in a lot more trouble. I need you to have a serious word with her and I'm on my way to Chelsea police station and will be there from 6:30 until 7:00 if you have anything to say."

(4) It was on the way to Fulham in a police car that Mr de Freitas first heard the rape allegation and the circumstances, as related by his daughter. She also told him that a Police Community Support Officer ("PCSO") called Judith Ryan, whom she knew from the Body Shop, had encouraged her to make a complaint. She showed him a piece of paper on which the words *'helpless gazelle hunted down by lion'* had been written. She contended that this had been put in her handbag by the Claimant after the alleged incident.

(5) Whilst waiting at Fulham police station Ms de Freitas told her father more. She said that she could not be sure exactly what had happened but said that it was obvious that they had had unprotected sex, which was something that she would never have consented to. She also told him she believed that Mr Economou had drugged her and 'waterboarded' her (a reference to the torture technique used in Guantanamo Bay).

(6) Ms de Freitas then gave a video-recorded Achieving Best Evidence ("ABE") interview, in the absence of her father. He waited for some two hours meanwhile, and took her home afterwards. She seemed less agitated.

(7) Later that day Mr de Freitas learned that after he and his daughter had left Chelsea Police Station, Mr Economou had arrived, to lodge his complaint that Ms de Freitas had falsely accused him of rape, and had been arrested on suspicion of rape.

168. Mr de Freitas' evidence, which I accept, is that he did not press his daughter about the progress of the police investigation, and he did not discuss it with her as he did not want to add to her stress and agitation. She did tell him, on or about 20 February 2013, that the police had decided to take no further action. She gave him an account of the explanation she had been given for this. His evidence, which was unchallenged, was that she told him the police had explained that they did not want to put her through a great deal of stress that would have amounted to her being effectively put on trial herself, particularly given her bipolar condition. They said they did not want her to go through the trauma of a trial unless they felt confident that she would get the result that she wanted. As her father saw it, Ms de Freitas was disappointed that the police had decided to take no further action, but accepted this and decided to get on with her life.

The private prosecution

169. On 21 February Ms de Freitas showed her father the texts that Mr Economou had sent her that evening of 21 February, threatening prosecution for PCJ ([25]-[26] above). It

was at about 20:34 the same day that Mr de Freitas himself received an email from Mr Economou on similar lines. This led to complaints of harassment being made to the police by Mr and Mrs de Freitas. For his part, Mr Economou had emailed the police demanding an investigation into Ms de Freitas. As a result, on 22 February 2013, DC Dial emailed Mr Economou about both topics. He enclosed the formal warning against harassment to which I have referred. In his covering email, which he copied to Mr de Freitas, he dealt with the allegation of PCJ, writing as follows:

> "Mr Economou,
>
> Thank you for your emails of 21st and 22nd February 2013. As I explained yesterday when you collected your mobile telephone from Fulham Police Station, the criminal matter is now closed, and the further material you have supplied to me today would not alter that decision. I explained the burden and standard of proof required in a criminal trial, and unfortunately there is insufficient evidence to meet that test in this case.
>
> The complainant has been told that this matter has now concluded, and maintains that her account is true. On that basis it would be very difficult for the police to further investigate your belief that this allegation is in fact false, without proof that the complainant lied to the police. …"

170. In about early May 2013 Mr de Freitas became aware that Ms de Freitas had been referred by the Sapphire Unit for counselling with Women and Girls Network. He drove her to some counselling appointments. She did not volunteer anything about their content and he did not come to know anything about this until he obtained probate in February 2015, long after the events with which I am concerned. At the time however he believed that she would not have gone if she did not need help to deal with some trauma. But in around June 2013 she struck up a relationship with an old friend from Durham and, to her father, seemed to be improving. She had work at the Body Shop in the King's Road, Chelsea, and appeared to him to be stable.

The prosecution of Ms de Freitas

171. Between 22 February and 13 August 2013 the de Freitas heard nothing further on the subject of the threatened PCJ prosecution. But on 13 August 2013 EMM emailed the summons and other documents to Ms de Freitas ([29] above). When she opened the email the following day Mr de Freitas heard her shout out "Daddy come, please help me, Alexander Economou is taking me to court!". She took but failed an exam she had been due to take that day. Later she emailed her father to say how alone, scared and afraid she felt.

172. Attached to the summons was the 9-page Case Summary that EMM had prepared. That case, in outline, was that:

> "following their date at AE's flat on 23rd and 24th December, AE told EDF that he did not wish to see her again. Following this rejection, EDF began spreading false and malicious rumours about AE's behaviour towards her on 23rd and 24th December 2010 to their mutual friends. When AE then

> contacted EDF by email on 4 January 2013 and threatened to report the matter to police in order to stop her spreading these rumours, EDF went to the police herself and made the entirely false allegation that she had been raped by AE."

173. The Case Summary set out the allegation, as noted by police: that AE had given Ms de Freitas a pill which he claimed was Vitamin C, had then tied her up, "waterboarded" her and had unprotected sex with her. She had said that she wasn't in control of her body and felt groggy. Asked whether the sex was consensual, she was recorded as saying: "I don't think so. I was just lying there frozen with fear, I didn't say yes or no…. I would never have unprotected sex consensually."

174. The Case Summary detailed what were said to be the true events of 23 and 24 December. After spending time shopping at Harrods the two went to Mr Economou's flat. Mr Economou took a Vitamin C tablet and offered one to Ms de Freitas who accepted. She told him that he could tie her up if he wanted and he did so. Whilst tied up she asked for some water. When she drank it some dribbled on her bra. At her request he untied her. Her bra was removed and they then had unprotected sex. She gave him an intimate massage after which they had sex again. At 01:55 she texted her father from Mr Economou's phone to say she was safe and happy and for him not to worry. It was at this point that she disclosed to him that she had had psychiatric treatment previously. They had consensual sex a third time. Ms de Freitas' behaviour the next morning and until 4 January was said to be entirely inconsistent with her allegation of rape. In particular, the document referred to:

    (1) Text messages sent by Ms De Freitas to friends on 24 and 25 December. Those of 24 December included one in which, referring to Mr Economou, she said "we've had huge fun together actually and we are still together doing last-minute shopping xx".

    (2) An errand to High Street, Kensington, in the course of which it was said that Ms De Freitas had insisted that they both visit Ann Summers sex shop. They were recorded on CCTV at the shop buying four carrier bags of sex products for which they paid jointly. The Case Summary asserted that the two were seen on the CCTV recording laughing and even kissing at one stage.

175. The document went on to recount the decision of the police to take no further action. It referred to a typed document containing DI King's rationale for that decision ("the Rationale"). It was said of the Rationale that it "notes the fact that following the commission of the alleged offence before making a complaint to police EDF (i) communicated with a manner inconsistent with a rape having taken place, (ii) went shopping to Ann Summers to buy sex toys with AE the day after the alleged rape, and (iii) sent a text message to a mutual friend stating that AE had "fucked and chucked" her, with no mention of the sex being non-consensual." The Case Summary concluded:-

> "There is prima facie evidence of the falsity of EDF's allegation in (i) the forensic phone reports showing EDF's text messages to mutual friends (ii) the CCTV of the shopping trip to Ann Summers with AE and (iii) the positive tone of the communication with AE prior to her reporting the allegation, displayed in both his phone report and emails which are exhibited."

176. Mr de Freitas saw and read the Case Summary shortly after it was sent and received, and he understood that it set out the evidential case in support of the prosecution. However, he also saw at about the same time some of the Facebook messages that had been exchanged between Mr Economou and his daughter in the period before 23 December 2012. Ms de Freitas showed her father a number of extracts. This evidence was not challenged. In his witness statement he said: "I remember that these included the Claimant writing "slip a little surprise in those cocktails. Ha Ha", "The best way to seduce a woman is to ply her with booze all night, accidentally distract her from the time so she misses her last train", "And I like the opposite. Someone I can tie up and torment" and another quote to do with "getting a woman's juices going by brushing her nipples but never to use your hands to do this, it must appear accidental"."

177. Father and daughter regarded the service of the summons as abusive. Not only did Mr de Freitas report it as such to DC Dial ([29] above), complaints of harassment and bullying on the part of Mr Economou were also made by Ms de Freitas, to her father's knowledge, to Rape Crisis, PCSO Judith Ryan, DI King, and the Sapphire Team. As Mr de Freitas put it in his witness statement, "the effect of the receipt of the summons on Eleanor represented a serious crisis for my family."

178. Mr de Freitas also went with his daughter to Notting Hill station when she made the further allegation of harassment to PCSO Tulsi on 31 August ([29] above). PCSO Tulsi told Mr Economou about this at the time. Later, PCSO Tulsi gave Mr Economou a further account of this visit. Mr Economou secretly recorded what PCSO Tulsi told him on that occasion. A transcript is in the trial papers. In it, the officer complains of having to "endure the hour and half of craziness" and states that "that woman really wrecks my brain… she actually like a woodworm". He was evidently upset that she was "acting like she knows … better than me …and how posh she tried to come over", which made the officer want to "smack her in the face." None of this was known to Mr de Freitas at the time. However, Mr Economou later posted the recording on Youtube, and sent a link to Ms Wistrich. I understand Mr Economou's case to be that the hearsay account given in this recording demonstrates that Ms de Freitas was acting at the time in a crazy and evidently untruthful way. I do not agree. The PCSO provides a good deal of interpretation and hostile comment, but almost no hard fact. Moreover, this was an officer whose reliability must be in doubt, given that (as is obvious, and not disputed) he was misbehaving in making these observations to Mr Economou. Some of the officer's reasons for hostility to Ms de Freitas appear unreasonable. I cannot regard this as evidence on which I could properly rely in assessing the reasonableness of Mr de Freitas' state of mind at or after this point in time.

179. It was the news conveyed to him by PCSO Tulsi on 31 August 2013 that prompted Mr Economou to send Mr de Freitas his fax of 1 September, complaining of "further false allegations", and threatening to prosecute Mr de Freitas if it was found he had "intentionally lied to police" ([30] above). I am satisfied that Mr de Freitas genuinely considered this fax was unwarranted, and amounted to further harassment. That which must have been reinforced by the apology letter he received from EMM dated 3 September ([31] above). Mr de Freitas was also in a position to observe the impact of events on his daughter. On 6 September 2013 she was brought home by police after behaving erratically at a West End supermarket, throwing food from the shelves. Mr de Freitas knew or believed that she was not taking her medication as she should. He wrote to her psychiatrist to tell him of his concerns.

180. On 6 September 2013 EMM served Advance Information on Ms de Freitas' then solicitors, Kaim Todner. A further tranche was served some two weeks later, after her first appearance in Westminster Magistrate's Court on 11 September. The further information contained some 17 witness statements together with their exhibits and other documentation such as images of Ann Summers products purchased at the shop. It appears to have been the understanding of the claimant's legal team that this material would all have been available to, and read by, Mr de Freitas at the time**.** In cross-examination it became clear that this was not the case. Ms de Freitas was an adult, represented by solicitors. These were her documents. Her father was not given copies, nor was he shown everything, either at this stage or at all. As he explained, there were documents belonging to his daughter to which he gained access only after probate was obtained many months after the death.

181. Thus, when asked whether he had seen, then or later, the witness statements of Mr Economou that were served as part of the advance information of September 2013 Mr de Freitas said: "I think I saw them at some stage, but I don't have them. I think Eleanor showed them to me briefly, shortly after she got them. I didn't want to press her about evidential matters as I know she felt worried and concerned about these witness statements. I have some recollection but it is far from perfect." I accept this evidence. I am satisfied that Ms de Freitas shared some of the documentation relating to the PCJ prosecution with her father but not all of it. He did not at his stage see DI King's witness statement or the Rationale, or the statement of Ms Schroder giving her account of what she saw, heard and read of Ms de Freitas behaviour in December 2012. He was not party to the detailed analysis of the material that must have been undertaken by her solicitors and Counsel in consultation with her.

182. Mr de Freitas was however aware of the lawyers' views on the merits of the prosecution. He attended the hearing at Westminster Magistrates' Court on 11 September 2013 at which the defence sought to argue that the prosecution should be dismissed as an abuse of process. The District Judge declined to grant time for such an application. Mr de Freitas' understanding had been that this was an opportunity for the prosecution to be stopped. On 17 September, Ms de Freitas instructed new solicitors, EBR Attridge. By 19 September 2013 Ms de Freitas had met her new solicitor. Mr de Freitas was not there, but she conveyed to him the gist of the advice she had been given. This was that the prosecution would not pass the tests set out in the Code for Crown Prosecutors, and that the defence should encourage the CPS to take over the case and bring it to an end. A point relied on was that Ms de Freitas had never been interviewed under caution as a suspect, and thus had been denied an opportunity to put her case in response before being charged.

183. By 19 September Mr de Freitas had also been shown a copy of a draft defence application prepared by Mary Poku of Counsel to stay the proceedings as an abuse. He wrote an email to his daughter on that day, recording his view that the draft was "superb". He wrote, "Clearly AE knows that the Police looked into the matter of a false allegation and concluded that this could not be supported and have informed AE of this." Mr de Freitas attended the further hearing on 25 September 2013. His impression was that his daughter's legal team were confident that if the CPS took over the prosecution they would stop it.

The CPS take over the case

184. By October 2013 Mr de Freitas knew that the CPS were considering their position. He learned that the Head of the Homicide and RASSO (Rape and Serious Sexual Offence) Unit at the CPS, Sarah McLaren, had asked the Police to reconsider their decision not to investigate the case against Eleanor. He saw Ms McLaren's letter of 8 October in which she stated that there was further material in the hands of the police, including the ABE interview of Ms de Freitas. She further stated that "the police declined to investigate" and that she had asked them to reconsider that decision.

185. As Mr de Freitas acknowledged in his evidence at trial, he had misunderstood what it was that Ms McLaren was saying. He had thought the reference was to a further investigation of whether his daughter had been raped. He took this up with DI King, by email, on 27 October 2013. DI King responded, putting him right: "the CPS have been asked to review the matter of the private prosecution being mounted by Mr Economou". In the process, DI King explained that "the decision not to prosecute Mr Economou for the rape was not solely based on the CCTV footage and at this time I am not looking to reinvestigate the matter."

186. Mr Barnes put it to Mr de Freitas that this made plain that the police had not even investigated the issue of PCJ. He disputed that, explaining that his understanding was that in the process of conducting a rape investigation the police will come across any evidence of lies or misdirections and, if they discover such evidence they will react to it. So in this instance the fact that they conducted the rape investigation meant they were in a position to see whether there was evidence of PCJ. They found none. I am satisfied that this was his state of mind on that issue at the time.

187. On 15 October 2013 there was a meeting at the CPS offices to discuss the private prosecution. The police passed on the remainder of their file. In that file was the ABE interview. They were invited to consider investigating the allegation of PCJ. On 13 November 2013 the CPS wrote to HHJ Taylor at Southwark Crown Court to record the outcome: "They have considered their position and confirm their original decision to take no action." Mr de Freitas became aware of the contents of that letter. His position, under cross-examination, was that this seemed perfectly logical to him.

188. In the letter of 15 October the CPS asked the Judge for more time to make a final decision. That took nearly two more months. On 15 November the Judge asked the CPS to attend and explain the position at the next hearing. On 27 November the CPS wrote to the Judge confirming the case was suitable to be taken over but more time was needed to decide whether to continue or discontinue. The Judge was told that a decision was expected by 6 December 2013. At the hearing on 29 November the Judge set a further hearing date of 18 December. Mr de Freitas was kept up to date with these events, and attended hearings. It was, I find, apparent to him that the CPS were finding this a difficult decision to reach. At the same time, he was aware of the impact on his daughter, which appeared to be severe. On 1 December 2013 he wrote to her GP, recording her continuing erratic behaviour, and the pressure and stress she was under. On 5 December the decision to take over and continue was announced. Mr de Freitas was personally informed by his daughter's lawyers that they were very surprised by this, and would make urgent representations to try to get the prosecution stopped. No explanation had been given at this stage. Mr de Freitas was aware of his daughter's stated view: that she would regret reporting her allegation for the rest of her life. Mr de Freitas accompanied his daughter to the next hearing on 24 January 2014 at which she pleaded not guilty on arraignment ([34] above). The CPS confirmed that they were

proceeding on the basis of the original Case Summary, with no new evidence. They were ordered to disclose Ms de Freitas' ABE interview record, which had not been disclosed in the private prosecution. Mr de Freitas had not been aware of that until this point. The ABE was not in the event disclosed until 2 or 3 April 2014. In the meantime, on 31 March 2014, Ms de Freitas had a conference with her Counsel from which her father brought her home. He observed that she was in sombre mood, finding it very 'scary'. She was particularly fearful of having to appear as a witness, which she said she felt was like going through the ordeal again.

189. On 1 April Ms de Freitas forwarded her father an exchange of emails with her solicitor, in which she was told the trial was fixed to start on 7 April. She responded asking if there was still a chance the trial might be dropped "because of the disclosure issues".

Ms de Freitas' death

190. On Friday 4 April 2014 Ms de Freitas was due to meet her solicitor in the afternoon. She was at home, alone. Her father spoke to her just before midday, to offer to wait outside the office and take her home. He later learned from Gideon Wagner of EBR Attridge that the lawyers had reviewed the ABE interview, and planned to tell their client at the meeting that they intended to use this as her evidence. Some hours before the meeting she killed herself. Mrs de Freitas returned at lunchtime to discover this. She called Mr de Freitas at around 2pm to deliver the news.

191. Ms de Freitas had left a number of notes. It is unnecessary to detail their contents. Mr de Freitas' interpretation, which was not challenged, was that she was afraid that she would not be believed, and feared bringing shame on her family and other loved ones. Mr de Freitas' statement gives his view: that if the CPS had complied with their disclosure duties in a timely fashion that advice could have been given sooner and "perhaps the tragic events that followed would have been avoided." That evidence was not challenged either. I am satisfied that this is a view that Mr de Freitas sincerely held in the immediate aftermath of his daughter's death and at all material times after that.

Mr de Freitas' concerns

192. Mr de Freitas' views gained some support from his daughter's solicitor, who wrote in his email of condolence of 6 April 2014 that he would support any complaint about the conduct of the CPS, who in his opinion had acted terribly. Mr de Freitas' reply demonstrates his own views at the time*:* "The whole case was so utterly unnecessary and should have been stopped by the CPS. I really do hope that we can take action with/towards the CPS so no other young woman has to suffer what Eleanor went through." It is noteworthy that this email made no reference to Mr Economou.

193. Between April and August 2014 Mr de Freitas had meetings with Gideon Wagner, formerly a clerk at EBR Attridge, who gave him further information. Among this was extracts from Ms de Freitas's psychiatric reports, prepared by a Dr Tim Rogers. Mr de Freitas interpreted these as indicating that the continuing prosecution involved a real risk of completed suicide. It has not been suggested that this interpretation was insincere or even unreasonable.

194. It was between August and November 2014 that Mr de Freitas had dealings with Victim Support (John Clements), Inquest (Shona Crallan), and Birnberg Peirce (Harriet Wistrich). The sequence of events over this period is set out in outline at [35]-[39]

above. Of significance for present purposes is the extent to which (a) what Mr de Freitas said to these others and/or (b) what they said to him during this period sheds light on the reasonableness of Mr de Freitas' state of mind at the time of publication. Mr Barca submits that Mr de Freitas' case gains powerful support from the endorsement and support of these independent experts. Mr Barnes submits that on the contrary, the experts were reliant on Mr de Freitas for what they knew about the facts, and Mr de Freitas was at best careless in his approach to the truth.

195. In my judgment, the truth lies between these two extreme positions. The charity workers did not conduct their own independent factual investigations; they were largely reliant on Mr de Freitas for their understanding of the facts. But he did not wilfully mislead them, nor did he seriously mispresent what he knew to be the position. Nor were the charity workers careless about the truth. They did not enquire into the detailed merits of the underlying cases. But they did not take everything at face value. They made assessments of the overall position. Their primary aim was to identify any issues of general public importance which appeared to deserve further enquiry. The fact that, without being seriously misled in any material way, these independent individuals were persuaded that the facts of the case gave rise to issues of public interest provides some support for Mr de Freitas' case. So do the views they formed of Mr de Freitas' approach and motivation, as a result of their dealings with him.

196. **Victim Support.** Mr de Freitas had dealings with Mr Clements between early August and early September 2014. Mr de Freitas provided a quantity of background material including a chronology of events he had prepared. Mr Clements asked for more. Having reviewed the material and discussed it with Mr de Freitas, Mr Clements identified a number of public interest issues including whether private prosecutions of rape complainants should be allowed, given the risk of deterring reporting and permitting unlawful harassment or intimidation. Mr Clements and a colleague at Victim Support, with support from senior management, drafted documents and gave guidance to Mr de Freitas, on how best to advance these concerns in correspondence. Victim Support itself wrote to the DPP on these topics, and drafted a letter for Mr de Freitas to send to the DPP on the same issues. As I have noted, however, these are not issues with which the publications complained of were in my judgment concerned.

197. Among the suggestions offered by Victim Support was a list of points which "the de Freitas family may wish to include … in their letter to the Coroner". A draft of such a letter was prepared and provided to Mr de Freitas. But this too, I find, was focused on the public interest issues identified above. It became clear in the course of cross-examination that the final version as sent by Mr de Freitas was considerably expanded beyond the draft, and that Mr de Freitas was principally responsible for the parts of it that are controversial for present purposes. I was provided with the sequence of draft documents passing between Mr de Freitas and Victim Support. But it is unnecessary to analyse this in detail. It is plain, I find, that statements in the letter as sent to the underlying facts such as (for instance) that "the police found no evidence to bring a charge" are Mr de Freitas' words, or words based entirely on information he provided.

198. One important aspect of Mr de Freitas' dealings with Mr Clements is in my judgment that it was at his early meeting with Mr Clements that Mr de Freitas "first learned that victims of rape behave in a way that is inconsistent with their allegations – a concept known as 'rape myths'". The principal significance of Mr Clements' own evidence is his account of how Mr de Freitas' concerns came over to him. Mr Clements said in his

statement: "It was very clear to me that DDF wasn't seeking out help to prove if Eleanor had been raped or not. That sticks out in my mind because it was very unusual… It wasn't an issue he really touched on, it was much more for him that he couldn't understand why the CPS had taken the decision they had…. And he didn't feel he was getting any answers and he didn't want other people to go through this."

199. **Inquest.** Shona Crallan explained that the main role of this charity is to support the families of those who die in state custody or detention. Its remit extends to cases where people die in circumstances of "multi-agency failures". The organisation engages in casework, which informs its policy and parliamentary work. It provides specialist advice to families about the inquest process, and seeks to assist in arranging legal representation where appropriate. To that end it has a group called the Inquest Lawyers Group ("ILG"): solicitors and barristers who specialise in inquest work. Birnberg Peirce is a member of the ILG. As a small organisation, Inquest lacks the resources to conduct investigation into individual cases and this, in any event, is not its function. Ms Crallan herself would have from 80 to 140 cases on her desk at any one time.

200. Inquest, via Ms Crallan, was involved with Ms de Freitas' case from late September until early November 2014. Mr de Freitas emailed the organisation on 25 September, having been referred by a representative of the charity MIND on the grounds (as Mr de Freitas explained it) that the matter "involved multi-agency failure and questions of corporate and state failings and accountability involving the police, the [NHS trust], courts and CPS." Again, it is to be noted that the focus was on state accountability. There was no mention of or reference to Mr Economou, express or implied. After speaking to Ms Crallan on 2 October 2014, at which point the inquest hearing was 2 weeks away, Mr de Freitas sent her documents about the case, including his chronology as it then stood. He followed up with copy correspondence between him and his daughter's solicitors

201. Ms Crallan's conclusion was that the case came within Inquest's remit because it involved multi-agency failures. In addition, she felt there was "a general public interest around how alleged victims of sexual abuse are treated in the criminal justice system." The public interest issues engaged included, to her thinking, whether private proceedings are appropriate following an official decision not to prosecute, and questions of whether Ms de Freitas received adequate care and support. Ms Crallan considered it appropriate for Inquest to provide advice and guidance to ensure there was a thorough inquest process to consider these issues. It was for those reasons that she came to refer the case to Harriet Wistrich for legal advice and, if appropriate, representation.

202. To a large extent, these conclusions of Ms Crallan's were based upon the facts as presented to her by Mr de Freitas. This was accepted by Ms Crallan in cross-examination. There is therefore some force in Mr Barnes' point that the involvement of Inquest is an echo of Mr de Freitas' own position, rather than an independent viewpoint. It is also true that the public interest issues that led to Inquest's involvement were not solely or, it seems, even mainly issues about CPS decision-making. However, Ms Crallan herself spoke to Gideon Wagner who told her that in his view nobody who viewed the ABE tape could question Ms de Freitas' innocence. Her views were to that extent independent of Mr de Freitas' account. Moreover, the state's conduct when dealing with Ms de Freitas as a vulnerable complainant with mental health problems was one of the issues raised. Ms Crallan is an independent expert who made an

informed assessment of what she was told, and to the extent that was accurate (see below), that lends some support to Mr de Freitas' case.

203. Also relevant, and supportive of Mr de Freitas' case, is Ms Crallan's account of how he presented the facts to her, and her impression of his motives and intentions, based on her dealings with him. Her unchallenged evidence is that up to 2nd October, and apart from the chronology, Mr de Freitas did not mention Mr Economou, apart from saying why there was a prosecution for PCJ, after the police decision not to pursue the matter. She was convinced that his aims were to obtain a full inquest to understand how this could have happened to his daughter; and to ensure that another family would not have to go through the same thing. He never came across as angry.

204. As for Mr de Freitas' own documents and conduct, key features in this period which were explored in evidence are (a) his chronology; and (b) his contacts with DI King.

205. **The chronology.** It is unclear when this was embarked on but it seems to have been in early August 2014, at the request of Mr Clements. A four-page version was sent to Mr Lee of EBR Attridge on 13 August. It had reached 10 pages by 25 August, when Mr de Freitas sent a copy to Shona Crallan. Mr de Freitas and other witnesses were cross-examined about it at some length by Mr Barnes. The case put to Mr Clements was that it showed "heavy scepticism" about Mr Economou's conduct towards Ms de Freitas on 24 December, and attacked the CPS decision to take over the prosecution as one which reversed the previous police decision, with no explanation at all. It was put to Ms Crallan that it presented Mr Economou as if he is not a very nice man who does some very unpleasant things with women; a man who tied up and raped Ms de Freitas, and prosecuted her for PCJ. Both witnesses agreed with these characterisations, and so do I. I agree also with the evidence of Ms Wistrich that the 10-page document, which was also sent to her in October 2014, did not paint a pretty picture of Mr Economou but rather "an account right from the outset of appalling criminality" on his part. That is largely because the document begins with a summary of the content of the messages between Mr Economou and Ms de Freitas, which implies that Mr Economou had planned in advance to drug, tie up and rape his victim. It is also because the document exhibits scepticism about various aspects of Mr Economou's account of events.

206. It is however important not to be distracted by this issue. This is a document created by Mr de Freitas in August 2014. It is not a document which he ever published, or caused or authorised or invited anybody else to publish, in whole or in part. Its relevance to the issues in the case is to his state of mind when he made or caused the publication of quite different statements in the media, in November and December 2014. Given my findings as to his actual state of mind, and Mr Economou's abandonment of his case of malice, the document is relevant only to whether Mr de Freitas' belief that the public interest was served by the publication of those different statements was a reasonable one.

207. I would accept that an exploration of Mr de Freitas' conduct in putting together the chronology could cast light on that issue. But in the event I do not find that it assists me greatly.

    (1) It was put to him that he had selectively edited the Facebook exchanges with which the chronology begins. The full print out was in the advance information. But his evidence was that he had not seen that until recently. He had merely been shown excerpts by the defence solicitors, which is where he derived his material.

> The excerpts used were those the legal team regarded as of note. I accept that evidence. Mr de Freitas had of course had already been shown excerpts by Ms de Freitas. The attempt to demonstrate wilful selectivity failed completely.

(2) It was put to him that by the time he prepared the chronology he had seen Mr Economou's witness statement in full. He denied it, explaining that references to it in the chronology were based on memory, having seen it in October 2013. I accept that evidence.

208. In my judgment, Mr de Freitas prepared the chronology without any very specific aim in view, at a time when he was still in the grip of grief over his daughter's death a few months earlier. The document is certainly open to criticism as an unbalanced and tendentious account of things, and it is undoubtedly selective. But to his credit Mr de Freitas saw clearly enough to recognise this and to point it out when he sent the document to others. To Mr Lee of EBR Attridge he emphasised the document was a working document. He asked for input. To Ms Crallan he wrote: "Please bear with the partisan nature of the comments." And, as I have emphasised, he never sought to publish the document or to put it before the coroner or any other public decision-maker.

209. **Exchanges with DI King.** These took place on 25, 26 and 27 August 2014, whilst the chronology was in preparation. They began with Mr de Freitas' email to DI King explaining, "I am trying to get a better understanding of the CPS's involvement in the various aspects of this case, and their interaction with the police". Mr de Freitas was genuinely concerned to obtain further factual information. The exchanges are relied on by Mr Barnes as a demonstration that Mr de Freitas knew, at the time of the publications complained of, (a) that the decision not to prosecute his daughter had not been based purely on public interest grounds and (b) that the police had not determined that no further action should be taken on the question of PCJ by Ms de Freitas. They had simply declined to investigate. I do not consider the position to be nearly as simple as that.

210. As to the first point, Mr de Freitas sought confirmation of his understanding of the reasons for not prosecuting Mr Economou, which he summarised. His summary reflected the account he had been given by his daughter ([169] above). It included this: "you did not want to put Eleanor through the trauma of a trial unless you were reasonably confident of a conviction. You lacked this confidence because of evidence that could question Eleanor's credibility as a witness." It was suggested that the police had wanted to avoid her being on trial, when she was vulnerable with bipolar. DI King replied briefly on 26 August, stating that it had been his decision to take no further action against Mr Economou. He went into more detail on 27 August, summarising the decision as made

> "after taking into consideration all of the facts … I believed that a realistic chance of a successful conviction would not have been achieved based on those facts. Equally I took into consideration as to whether it would have been in the public interest to continue to allocate police resource to the enquiry based on the facts that led me to believe that a conviction wouldn't have been achieved."

211. DI King went on to give details of factors taken into account. These were the lack of forensic corroboration for Ms de Freitas' account, communications before the event,

her conduct afterwards (including at Ann Summers), Mr Economou's good character, and a previous caution for theft. As Mr Barnes points out, DI King did not confirm the account put to him by Mr de Freitas. But nor did he deny it. There is no doubt that the position as explained by DI King was more complex and detailed than the summary put to him by Mr de Freitas. But the two were not inconsistent. Mr de Freitas' account acknowledged evidential weaknesses. DI King did not say that the police had taken no account of Ms de Freitas' vulnerability. Mr de Freitas followed up, asking for the date of the caution (of which he had been ignorant). DI King gave the caution details.

212. As for the police decision-making on the issue of PCJ, Mr de Freitas sought confirmation that "having decided to take no further action against AE, you considered – as a matter of course – whether Eleanor had deliberately fabricated her allegation, and whether she should be considered for perverting the course of justice. You considered all the evidence, including that which questioned Eleanor's credibility as a witness, in coming to the conclusion that there were no grounds for prosecuting Eleanor." He asked for confirmation that Mr Economou had provided nothing further thereafter; that there was no other evidence from other sources that DI King would feel supported a prosecution; that after the CPS intervened DI King's decision not to prosecute Ms de Freitas for PCJ remained unaltered. I am satisfied that this summary represented Mr de Freitas' sincere understanding of the position at the time.

213. DI King's response of 26 August was that "I also informed the CPS that a prosecution should not be made against Eleanor for perverting the course of justice." On 27 August he expanded, referring to the October 2013 meeting with Sarah McLaren. He said "The CPS were informed that there was no firm evidence that Eleanor had in fact lied with regards to her allegation and that the allegation of crime was recorded as rape." He added that on 9 November 2013 "confirmation was provided to Sarah McLaren that the police would not be undertaking any prosecution with regards to Eleanor." He referred to the "exceptionally high" burden of proof in all criminal cases. This response was in my opinion broadly in line with Mr de Freitas's request for confirmation. It is true that DI King referred to there being "no *firm* evidence", but Mr de Freitas knew there was evidence which, in his words, "questioned Eleanor's credibility as a witness", and that this included what she had said and done before and after the alleged rape. To place great weight on the word "firm" is to take far too semantic an approach.

214. In his follow up email, Mr de Freitas asked whether Mr Economou had provided the police with any further evidence of PCJ after receiving the harassment warning from DC Dial. DI King said "I am not aware of any conclusive evidence that was provided by AE" but referred him to the CPS, and the disclosure provided to Ms de Freitas. This exchange supports my conclusion, above, as to the limited extent to which Mr de Freitas had been shown or even told of the content of the Advance Disclosure provided to his daughter and those advising her by Mr Economou's solicitors.

215. **Birnberg Peirce.** The background to the involvement of Ms Wistrich is set out at [37] above. Ms Crallan sought her involvement in supporting claims for an Article 2 inquest, or at least a thorough inquest hearing, with the potential to bring to light evidence that would enable Mr de Freitas to bring a civil claim against the CPS. It was clear to Ms Crallan, as she made plain in her evidence, that Mr de Freitas was not after compensation but information. When Ms Wistrich's first attempt to secure an adjournment of the inquest was rejected by the coroner ([38] above), she raised with Mr and Mrs de Freitas the possibility of media coverage.

The media strategy

216. It is an important strand of Mr Economou's case that this was an inherently improper strategy, or at least that it was improper in its intentions and purposes. Put simply, the case advanced by Mr Barnes is that the purpose of going public was to put pressure on the Coroner to make a decision in favour of Mr de Freitas, for fear of public criticism if he did not. It is important to focus on the situation as it stood, and the nature and purposes of the media coverage which was sought. The factual position when the issue first arose was that the Coroner had rejected an application to adjourn to enable argument to be advanced that a full Article 2 inquest, or a broader inquest, was necessary. He had however left the issue open for further argument, having held no hearing and ruled only "on paper".

217. As for purposes, Mr de Freitas' statement puts it this way. He says that Ms Wistrich "raised with me the possibility of highlighting in the media some of the issues we were seeking to raise with the coroner." He and his wife were reluctant and anxious about press intrusion and the risk of aggressive litigation from Mr Economou. However, as he puts it, he "was persuaded" that following what he saw as the coroner's refusal to recognise the significance of the issues of public interest involved, it was right to bring those issues into the public domain: "There were important issues for the future treatment of rape complainants and those with mental illnesses and had serious ramifications for the future reporting of rape offences."

218. Mr Barnes put it to him that his statement to the Guardian and his BBC interviews were all timed to coincide as closely as possible with the lead up to the inquest, and he agreed. But he did not accept that the aim was to seek through media pressure to influence the coroner to expand the scope of the inquest. He explained that in speaking of "put[ting] pressure on the coroner", which Ms Crallan had, he and his team meant raising public interest awareness. It was relevant to the task of persuading the coroner, he said, to demonstrate that the issues being raised were matters in which the public were in fact interested. He made the point that the coroner had never expressed any unhappiness. In substance, the case being put to Mr de Freitas was that he and his supporters, Ms Crallan and Ms Wistrich, were engaged in an improper attempt to pervert the course of justice in the inquest proceedings by using media coverage to intimidate the Coroner into doing what they wanted.

219. In my judgment this line of argument fails on the facts. I would accept that in principle a decision to whip up media coverage with such an objective would be improper. The line of argument was a proper one. But all depends on the facts. Here, I would accept, Mr de Freitas' purpose was not to intimidate. I do not believe that he would have seen that as an achievable, let alone proper objective. I accept that what he had in mind was to show the Coroner that the issues he wished to have investigated, and which he (rightly) believed to be matters of public interest were recognised as such by others. I do not consider that to be improper, or illogical.

220. In the circumstances it is not necessary to make findings about the purpose(s) that others had in mind, when assisting in the media coverage complained of. However, as Mr Barnes put the same or a similar case to Ms Wistrich and Ms Crallan, and suggested that there was a common intention I think in fairness I should record my conclusions on their evidence. It was put to Ms Wistrich that the collective purpose was "to ramp up in the coroner's out of court experience the need for an Article 2 inquest" and that a

decision had been made "to generate a public clamour for an Article 2 inquest so the coroner could see that when he opened his paper on 7 November." Ms Wistrich accepted that there was an intention to put pressure on the coroner, but she did not accept it was improper pressure, "It's about raising those issues in the public domain", she said. There were several strands to the motivation. She saw nothing wrong with making the coroner aware, if it could be achieved, that the public thought the issues important. What she did not accept was that there was any element of intimidation here.

221. As for Ms Crallan, who wrote the email referring to pressure, she accepted that to some extent the creation of a public clamour about the issues raised would assist the aim of broadening the inquest, and that this was something she had in mind. But she made clear in answer to questions from me that putting pressure on the coroner was not the reason for going to the press. Inquest often puts out press releases before an inquest, stating its position. That would not be a way of trying to persuade a coroner but of publicising the organisation's position.

222. Attempts to intimidate a court or tribunal into deciding a case in a particular way are improper. But media coverage asserting that litigation before professional judges raises issues of public interest is in principle entirely legitimate. It is legitimate to express views on such issues whilst litigation is pending. To highlight a point of view publicly, when the tribunal may become aware of it can be characterised as "pressure" on the tribunal. There may sometimes be a thin line between pressure and intimidation. But in this context I am quite satisfied that it was not likely, nor was it intended, that the coroner would be intimidated by the media coverage that was procured. It is important to consider what form of coverage was sought and achieved. It was signally not coverage which sought to denounce the coroner for a decision made or to be made. It was measured and proper in its tone. There was nothing intimidatory in nature.

223. **Identification** Ms Wistrich advised Mr de Freitas, and he accepted, that they should work with trusted journalists who could set the agenda for future reporting. She identified Sandra Laville of the Guardian and the Today team at the BBC. She advised Mr de Freitas not to name Mr Economou and he agreed. His statement says he was very happy with this approach, as **"**The Claimant was simply not the focus of the concerns which I intended to air. Those concerns were focused on the role and conduct of the CPS and the decisions that the CPS had made." However, as mentioned at [47] above, Ms Wistrich disclosed to Ms Laville the statement prepared by Mr de Freitas for the inquest which contained Mr Economou's name, and implied that he was guilty of the rape alleged against him. That fact, and what has been said about it on Mr de Freitas' side of the case, has generated some dispute.

224. The dispute arose because, originally, it was Mr de Freitas' pleaded case that the wording complained of in the First Guardian Article came from the witness statement. That is clearly wrong, as will be clear from the above. I had to deal with issues arising from this at the PTR: see my PTR judgment at [33], [37]-[42], [67]-[68]. Now, it seems to me that Mr Barca QC is right to describe the issue as moot, inasmuch as the witness statement is not said to have played any part in any of the offending publications. To the extent it matters on the issue of intention to identify, my conclusions are these. As Mr de Freitas' solicitor with a broad retainer Ms Wistrich had his implied authority to disclose the statement: cf *Regan v Taylor* [2000] EMLR 549. But I accept the evidence of Mr de Freitas that he did not expressly authorise this disclosure. He did not know about it. I accept his explanation that the false account

given in the Defence was no more than a pleading error by his previously instructed Counsel. Muddle is obviously the most likely explanation.

225. **Further information.** The history of the publications complained of is recounted above. For present purposes the events of relevance are those that conveyed further information to Mr de Freitas, as the media coverage unfolded. The further information came from three main sources: Mr Economou, DI King, and the DPP. The relevant events of November and December 2014 can be summarised as follows.

226. On 6 November 2014 Mr Economou sent Mr de Freitas the threatening email and hard copy document referred to at [45] above. His purpose was to stop "incorrect statements to the media". But Mr de Freitas saw it as an attempt to influence his evidence to the coroner.

227. On 14 November 2014, after the first four publications complained of, and the First Mail Article, Mr Economou sent Ms Wistrich an e-mail saying "I know the family hate me, but please could we have a dialogue? I think there's been some wires crossed and I would like to give you some info to help the media situation for us both. I can't help thinking they don't know the full picture. As the prosecutor I can tell you pretty much everything you want to know to fill in the gaps." It is common ground that Ms Wistrich was obliged to and did report this and Mr Economou's other communications with her to her client.

228. Ms Wistrich responded two days later by asking Mr Economou to explain what he meant by helping the media situation. Mr Economou responded with a string of emails setting out in what he rightly calls "graphic detail" the case against Ms de Freitas. He said "At the moment the press seems to think there is "no evidence" when I have in my possession CCTV on 5 cameras showing EDF and I buying £340 sex toys for 25 minutes AFTER the alleged incident (sic). As well as statements from 20 other people, 6 phone reports etc etc."

229. On 18 November Ms Wistrich responded to the threats of defamation proceedings contained in Mr Economou's emails. She said she could see no basis for the threats, that he should comply with the pre-action protocol if he wished to pursue the matter, and strongly urged him to seek legal advice. On the same day Ms Wistrich and, via her, Mr de Freitas received an email from Sebastian Gosden-Hood which was disparaging of Mr Economou and, among other things, asserted that at one or more meetings in the Kings Road he had been told by Mr Economou "I want to bankrupt her family" or similar. Mr Gosden-Hood followed up with an email describing Facebook messages he had been sent by Mr Economou in the past as "unhinged".

230. On 20 November 2014 Mr de Freitas and Ms Wistrich had a meeting with the DPP, Alison Saunders, at which Ms Saunders addressed a list of questions they had asked. The substance of her response was that she considered that the decision to take over and continue the prosecution of Ms de Freitas was correct. Both limbs of the prosecutors' test were satisfied. There is a detailed note of the meeting. Mr Barnes places particular emphasis on the following passages:

> "… DPP said she had a full schedule of evidence but, primarily, CPS believe the rape allegation was false based on dialogue between Alexander Economou (AE) and EDF before and after the event, their accounts of the event and CCTV of the visit to

> Ann Summers. DPP explained the nature of the correspondence between EDF and AE before the incident, which was then reflected in both their accounts and the contradiction between EDF's account and the CCTV.
>
> … NM [Legal Advisor to the DPP] said there were around 10 inconsistencies, one of which is in relation to the CCTV. EDF was adamant she behaved oddly in the shop, randomly shopping, and not really aware of what she was buying. The CCTV shows a very different picture.
>
> …
>
> DPP said all evidence was taken into account, including the fact that what had occurred between EDF and AE said had happened was foreshadowed beforehand in text messages. The fact that EDF said she did not know what would take place was contradicted by the text messages, and there was more than one example.

231. On 22 November Ms Wistrich sought further information from DI King about why he had not supported a prosecution of Ms de Freitas. He responded by email on 25 November, saying that "I have always maintained that Eleanor shouldn't have been prosecuted for PCJ. In this case there are no clear facts that she had falsified her claim of rape. The fact that I authorised no further action for Mr Economou does not imply that the victim had lied about her allegation … We have never doubted as to whether Eleanor's complaint of rape was genuine or not." Ms Wistrich wrote a follow up letter to the DPP on 25 November, posing further questions.

232. On 27 and 28 November, Mr Economou sent a further series of emails to Ms Wistrich, threatening defamation proceedings against Mr de Freitas for alleging harassment. He indicated that he was going to the press. In one email he wrote "I am the owner of eleanordefreitas.com. The truth is coming out in 48hrs. Just get ready ok. You will never be able to block the truth. I will be proven innocent by Monday morning. I have the videos, the messages etc. I have had enough of listening to lies lies lies." Mr de Freitas took the view that Mr Economou was somewhat unhinged, and determined to hurt him and his wife. Ms Wistrich replied, warning against further harassment. In the event, of course, Mr Economou did go to the press with the result that the Second Mail Article appeared on 30 November.

233. On 3 December 2014 the DPP sent Ms Wistrich two letters responding to her further queries. Mr de Freitas took her advice. They agreed that they could not come to any conclusion about the details of the DPP's analysis of the evidence on which the CPS had acted, because they had not been able to see that evidence. Mr de Freitas says they remained concerned that that CPS decision had been taken on the basis of myths about how rape victims are supposed to behave, which could not properly be the basis of a case that Eleanor had positively lied, particularly given her mental condition. Ms Wistrich emailed DI King the same day asking if he could comment. He replied confirming that he stood by his decision and did not believe that Eleanor should ever have been prosecuted for perverting the course of justice.

234. On or about 7 December 2014 Mr de Freitas learned that Mr Economou had written to the Coroner on 3 December 2014 enclosing a USB stick including a recording of the

phone call with PCSO Tulsi, claiming he had evidence that Eleanor lied, and asking the coroner to put a stop to the request for a jury inquest. In giving his reasons for this stance, the Claimant pointed out to the Coroner that the witnesses in his private prosecution did not want to appear in court. The Coroner had responded returning the USB stick and stating that the Claimant's letter was "wholly inappropriate". This exchange reinforced Mr de Freitas' view that the CPS's continuance of the prosecution needed to be fully explored.

235. On 8 December 2014 Mr Economou emailed Ms Wistrich setting out in some detail his account of the story. He stated that "any e-mails I have sent you or your client have been from a wronged man trying to sort out an awful situation". He followed that e-mail with a series of e-mails attaching screenshots of the Ann Summers CCTV.

236. Mr de Freitas and Ms Wistrich were warned in advance of the DPP's intention to issue a press release. They agreed that they would make a public statement in response. The statement was prepared by Ms Wistrich and a colleague and approved by Mr de Freitas before issue. On 9 December 2014 the DPP's statement was published ([101] above). Shortly afterwards, the agreed response was released (paragraph [102] above).

Discussion and conclusions

The legal analysis

237. Mr Barnes submits that in answering the question, whether a defendant's belief that publication was in the public interest was reasonable, the court should be guided by the *Reynolds* checklist. He adopts the argument advanced by the editors of Gatley, that it would be wrong to interpret s 4(1)(b) as requiring nothing more than a belief based on rational grounds, or good faith, or honesty. This would not give effect to Article 8, or the statutory requirement to have regard to "all the circumstances of the case". He submits that Gatley is right to suggest that the new defence can be expressed succinctly in the words of Lord Brown in *Flood v Times Newspapers Ltd* [2012] UKSC 11, [2012] 2 AC 273 [133]:

> "…could whoever published the defamation, given whatever they knew (and did not know) and whatever they had done (and had not done) to guard so far as possible against the publication of untrue defamatory material, properly have considered the publication in question to be in the public interest?"

238. Mr Economou's pleaded case, and Mr Barnes' submissions on the merits, are tailored to this legal analysis. He argues, for instance (and without limitation) that there was no reliable or credible *source* of any evidence to support Mr de Freitas' "condemnation of the evidential case" against his daughter; that no steps were taken by Mr de Freitas to *verify* the truth of his allegations before he made them; that Mr de Freitas was taking issue, for inadequate if any reasons, with *investigations which command respect* (the CPS decision to continue the prosecution, and the DPP's confirmation that this was a correct decision); that Mr de Freitas sought no *comment* from Mr Economou, but ignored what he was told by him; that he failed to include even the gist of Mr Economou's *side of the story*; and that his *purpose* in going public was improper. For these and other reasons, he submits, the public interest defence must fail in relation to each and every publication complained of.

239. There is much to be said for Mr Barnes' legal analysis. It seems hard to describe a belief as reasonable if it has been arrived at without care, in the absence of any examination of relevant factors, and without engaging in appropriate enquiries. The analysis also draws support from the Explanatory Notes to the Act, at para 29. Mr Barca acknowledges that s 4(2) means that factors that were crucial in considering the question of 'responsible journalism' may be relevant and indeed important to the issue raised by s 4. But there are some features of the *Reynolds* defence which it seems to me must on any view carry through into the new law.

240. Among these are flexibility and, by statutory definition, adaptability to the circumstances of the individual case. A third is a recognition that, as the ECtHR put it in *Hrico v Slovakia* (2005) 41 EHRR 18 "There is little scope under Art.10(2) of the Convention for restrictions on... questions of public interest…" Fourthly, there is the allowance for editorial judgment which the court is required to make by s 4(4). I would not go all the way with Mr Barca's submission that this "must simply refer to the subjective judgment of the defendant". It seems to me that this is linked with the requirement of flexibility and the need to demonstrate convincingly that a restriction on Article 10(1) rights is necessary and proportionate in pursuit of an identified legitimate aim.

241. I would consider a belief to be reasonable for the purposes of s 4 only if it is one arrived at after conducting such enquiries and checks as it is reasonable to expect of the particular defendant in all the circumstances of the case. Among the circumstances relevant to the question of what enquiries and checks are needed, the subject-matter needs consideration, as do the particular words used, the range of meanings the defendant ought reasonably to have considered they might convey, and the particular role of the defendant in question.

242. Mr Barnes has described Mr de Freitas' role as that of a "citizen journalist", and it is on that basis that he submits that his conduct falls far short of what the *Reynolds* approach requires. These submissions would have obvious force, if Mr de Freitas had acted as a journalist, composing and publishing what purported to be investigative journalism concerning the rape allegations and the PCJ prosecution. That however was not Mr de Freitas' role. In the case of the First Guardian Article, for instance, his role was to authorise Ms Wistrich to engage Ms Laville's interest in "a story re state involvement that may have led to the suicide of a rape victim". The article was composed by Ms Laville. Mr de Freitas agreed to and did provide three paragraphs of text for incorporation in the article. He did not dictate what use would be made of that material. He had no role in writing the rest of the article, nor did he play any editorial role. His role was closer to that of a source or contributor than that of a journalist. In the case of the *Today* Item, Mr de Freitas was not a journalist but an interviewee. He agreed to give an interview. He is responsible for his answers. But he did not set the questions, nor did he compose or edit the "bookends" to the interview. It is necessary to consider whether and if so how these particular circumstances, and those of the other publications complained of, affect the approach to be taken to the Reasonable Belief requirement.

243. *Malik v Newspost Ltd* [2007] EWHC 3603 (QB) is authority that a person who writes a letter to a newspaper for publication cannot claim *Reynolds* privilege in respect of the publication of the letter, in the form in which it was sent, to the world at large. In *Starr v Ward* [2015] EWHC 1987 (QB) [117] Nicol J doubted, obiter, that *Reynolds* could avail an individual sued for a TV interview in which she publicly accused a celebrity of

sexually assaulting her. But in *Hays Plc v Hartley* [2010] EWHC 1068 (QB) in which Tugendhat J considered a more nuanced factual scenario, he concluded that the *Reynolds* defence might be available to someone who contributed to the publication of a newspaper article.

244. Mr Hartley operated a news agency. He provided the publisher of the *Sunday Mirror*, MGN Ltd, with information about allegations of racism that had been levelled at the claimant company by former employees. The allegations were reported in an article headed "'KKK chants' and racist abuse claim at top firm But recruitment bosses fight 3 black workers' tribunal case". The claimant sued the defendant, and not MGN. The defendant's submissions in support of the *Reynolds* defence were summarised by Tugendhat J at [70]-[71]:

> "70 … The Defendant's practice, which he followed in this case, is to seek to filter out stories which are obviously false, and to forward them on to another journalist to be given further investigation. … The Defendant does not assume all the tasks that would have to be performed before publication to the world at large could be held to be responsible journalism. For example, he does not check the story with the subject of the story whom might be defamed. He has established relationships with other journalists. He does not publish to the world at large, and his understanding with the journalists to whom he does publish stories is that they, or the organisations for which they work, will carry out the tasks necessary to be performed if publication to the world is to be counted as responsible journalism. He published the words complained of to the Journalist and through him to MGN on that understanding. They agreed that MGN would need to take legal advice. He was justified by events: MGN did publish to the world, and they did so in a form which met the requirement of responsible journalism.
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> 71 … it is not necessary for the Defendant to have acted as if he was the person who made the publication to the world at large. He acted responsibly in confining his publication to one publishee in the circumstances and on the understanding set out above. That is sufficient. The Strasbourg Court has recognised the need to give protection to sources in the different context of disclosure of sources. But the same principles require *Reynolds* privilege to be afforded to at least an intermediate source such as the Defendant. See *Financial Times v UK* Application no 821/03 [2009] ECHR 2065 [59] …"

245. Tugendhat J concluded that he should not strike out or grant summary judgment on this defence. He used the facts of *Reynolds* itself to test the argument. Recalling that in addition to Times Newspapers Ltd (D1) there had been two individual defendants (D2 and D3) he said this:

> "76 … it is necessary to consider what might have happened if the corporate defendant D1 had succeeded, on the basis that

> (acting through its representatives) it had satisfied the requirements of responsible journalism. Suppose the individual defendants worked on the story performing different roles, so that only one of the individual defendants D2 had taken steps to verify the information and sought comment from the subject of the story, while the other D3 had done neither of these things, but had confined himself to receiving information from the source or sources. The appeals of D1 and D2 would then have succeeded. Would the appeal of D3 failed? My provisional view is that that would be contrary to the principles that the House of Lords was formulating. I see no principle on the basis of which each defendant has individually to satisfy all the criteria for responsible journalism, regardless of whether he is one of a number of individuals contributing to the final publication in circumstances where the roles are shared out or the tasks distributed. If that provisional view is right, the next question arising is: would it make any difference if D3 was not employed by D1, but freelance, or if (like the Defendant) he was providing a service to the source?
>
> "77 That as it seems to me is the question that is raised in this case. This is a point which is an important one and may be fact sensitive."

246. I agree, and would go further. It seems to me wrong in principle to require an individual who contributes material for inclusion or use in an article or broadcast in the media to undertake all the enquiries which would be expected of the journalist, if they are to rely on a defence of public interest. The enquiries and checks that can reasonably be expected must be bespoke, depending on the precise role that the individual plays. It is hard to see how an individual could rely on the public interest defence to escape liability for a false factual statement about events within their own knowledge (see *Starr v Ward*). But I see no reason why the defence should not avail an individual source or contributor who passes to a journalist for publication information the truth or falsity of which is not within the knowledge of the contributor. The contributor may well be entitled to rely on the journalist to carry out at least some of the necessary investigation and to incorporate such additional material as is required, in order to ensure appropriate protection for the reputation of others.

247. Mr de Freitas accepted in his evidence that in contributing to, causing, authorising, and making the offending publications he did not focus on the impact these might have on Mr Economou's reputation. I am sure that is right. Mr de Freitas was at all times concentrating his thoughts on what to say about the CPS, and its decision-making. But I do not consider this to be as reprehensible as Mr Barnes contends. The defamatory meanings that I have found were conveyed by the publications complained of are all implied meanings. They are secondary to the principal messages of the articles and broadcasts, all of which are squarely aimed at the CPS. They are not only implied but, to a large extent, necessarily implied.

248. I raised with Mr Barnes the question of how Mr de Freitas could have expressed himself without unlawfully harming Mr Economou's reputation, by implication. His answer was that he could and should have refrained from attacking the CPS as he did. If

it is not strictly true, it is not far from the truth to say that the options were stark: to say nothing adverse to the CPS, or to do so and impliedly defame Mr Economou. What Mr de Freitas did was to criticise or at least raise questions about the conduct of the CPS, but without naming Mr Economou or, for the most part, expressly referring to him in any other way. This limited room for manoeuvre seems to me a further factor to take into account when assessing the reasonableness of Mr de Freitas' belief.

Application of principles.

249. **The November articles.** I can deal quite shortly with these. In my judgment Mr de Freitas' belief that the relevant publications were in the public interest was reasonable because (1) he reasonably regarded the issues raised as matters of considerable public importance; (2) he was in a unique position to raise the issues, with reference to the tragic circumstances of an individual case, which was likely to catch public attention; (3) he had some inherently reliable information, having observed some of the history first hand; (4) he had made what, for a person in his position, were reasonable and responsible investigations into the merits of the case against his daughter; he was not bound to accept that the CPS had made a correct decision, and he had sufficient material on which to challenge that view; (5) in each case what he said was "about" the CPS and his daughter; it was targeted at the public authority concerned, not Mr Economou; (6) he deliberately avoided naming or referring to Mr Economou; (7) he had, in all the circumstances prevailing at the time of these publications, no reason to suppose that Mr Economou would be widely identified by readers, listeners, or viewers, as the man involved; (8) there was a degree of urgency about raising these matters, given the stage that had been reached with the inquest proceedings; (9) it was reasonable for him to leave it to the media organisations concerned to conduct such further investigations, and to solicit such comment (if any) as the public interest required; (10) similarly, as regards Mr Economou's "side of the story", though since the story was about the CPS that was very much a secondary issue; (11) the tone of what he wrote and said was responsible and measured; (12) it is hard to see how Mr de Freitas could have expressed his sincere doubts about the conduct of the CPS without the risk of implicit defamation of Mr Economou. I have already rejected Mr Economou's case, that there was an improper purpose to Mr de Freitas' contributions.

250. Standing back from these individual points, my conclusions are that Mr de Freitas could and did properly consider the publication to be in the public interest; and that a judgment in favour of Mr Economou would represent an interference with Mr de Freitas' free speech rights out of any reasonable proportion to the need to protect and vindicate Mr Economou's reputation.

251. I have no doubt at all that Mr Economou was deeply upset by these earlier publications, and angered by them. His own contemporary statements demonstrate the fury that he felt. I have no doubt, either, that he believed then and up to trial that his reputation had been seriously harmed by the allegations. I have rejected his case to that effect. But even if I had accepted it, I would have concluded that the public interest defence succeeded. The issues at stake were of real political importance and Mr de Freitas' publications made a reasonable contribution to a proper debate.

252. Mr Economou appears to have considered that the evidence he had amassed was conclusive proof that Ms de Freitas had lied. But another view was possible. Mr Economou did not help his own cause by the offensive and bullying manner he adopted

in putting his case across to Mr de Freitas. Mr de Freitas' complaints of harassment ultimately led to a prosecution of Mr Economou. He was acquitted. I share the view of the District Judge who tried the case, that Mr Economou's conduct did not cross the line drawn by the law between vigorous insistence on a point of view, and unacceptably oppressive behaviour. But it was understandable that Mr de Freitas considered that his daughter and he had both been the targets of harassing conduct. If Mr de Freitas paid a little less attention to the detail of Mr Economou's representations than he might have done if they had been put over in a more reasonable and measured way, by a lawyer or some other independent third party, that was not unreasonable in all the circumstances. In any event, in my judgment, the way that Mr de Freitas expressed his sincere views fell within the generous bounds the law permits for speech on important issues of public policy.

253. **The December articles.** My conclusions as to these are on not dissimilar lines. By the time these publications took place, of course, the context had changed. The publication of the Second Mail Article made it unavoidable that large numbers would identify Mr Economou as the man involved in the story about which Mr de Freitas was writing and talking publicly even if he continued, as he did, to avoid naming him. The information available to Mr de Freitas had also evolved. In particular, the DPP's evaluation of the CPS decision-making represented a significant evolution in the evidential context. Nonetheless, in my judgment, Mr de Freitas published in good faith, for proper purposes, taking aim at the CPS not Mr Economou; and he had a sufficient factual basis for writing what he did. Of the factors listed above the majority remained the case. This was true of factors (1)-(3), (5)-(6), (8), (11) and (12).

254. Factor (7) no longer applied. The fact that Mr Economou was now publicly known as the man accused of rape is a relevant factor when assessing what if any further publication on these issues could reasonably be considered to serve the public interest. But it was Mr Economou who had brought about his public identification as such. And however his identity had become public it was reasonable, given factor (12), not to regard this as in itself a bar to further publication, if it was otherwise legitimate to question the conduct of the CPS. The critical issue is factor (4): whether the belief that Mr de Freitas held was a reasonable one, in the light of the altered evidential picture. Put another way, does the additional information received change the outcome of the reckoning on that front? In my judgment it does not.

255. Clearly, the DPP's considered and detailed analysis of the CPS decision-making represented an investigation demanding appropriate respect. But that is not the same thing as saying that it was beyond reasonable questioning, or criticism. The words from the Birnberg Peirce Press Release that appeared in the Telegraph Article were forceful. But the thrust of those words was that the DPP, in endorsing the CPS decision, had given too much weight to "rape myths". This is a highly debatable proposition, and not one with which I would necessarily agree; but it was not in my judgment an untenable one, on the basis of the information then before Mr de Freitas. Whether it was *reasonable* to believe that the publication of this proposition was in the public interest is of course a different question. But it is here that "editorial judgment" has a role to play, I believe.

256. There are five particular factors that influence me. First, the words contain what is in substance an expression of opinion, albeit one that is accompanied by some factual propositions and implies others. Secondly, it is to be noted that the words complained

of acknowledged that Ms de Freitas had behaved in ways that were confusing and inconsistent with the behaviour of the "classic victim". That affords a degree of balance, and provides the context for the criticism. Thirdly, the criticism is that the DPP has "precluded as a possibility" that Ms de Freitas did not consent. This is not an unequivocal assertion that she told the truth when making her accusation of rape. Fourthly, Mr de Freitas was in this context placing reliance on a solicitor who was expert in the field. Fifthly, in my judgment Mr de Freitas was entitled to place some weight on what DI King had said, repeatedly, about his own view of the merits of a PCJ prosecution. DI King was of course a much more lowly state official than the DPP, who had the benefit of expert advice from Alison Levitt QC. But he had the advantage of direct personal dealings with the individuals involved. And his view merited some consideration. Overall, bearing in mind the need to take a strict approach to interference with political speech, I am persuaded that Mr de Freitas' belief was a reasonable one.

257. The same applies, with additional force, to the few words complained of in the Third Guardian Article. It also applies, with some modification, to the de Freitas Article. In that instance, it is relevant to note that Mr de Freitas made a particular point of the fact that he had not seen the evidence gathered, as he had no right to do so. (Para [6] of the Article).

258. In my judgment, these points are sufficient to justify the conclusion that the public interest defence succeeds in the case of each of the December publications. A failure to put Mr Economou's "side of the story" would not defeat the defence. In context, this would have made little sense; at any rate, it was not necessary. But I am inclined to think that factors (9) and (10) applied in respect of the December publications as well. The words complained of in the Telegraph Article were taken from the Birnberg Peirce Press Release. If Mr de Freitas had been sued on the publication of the Press Release to the public at large, any public interest defence might well have turned solely on whether he and/or Birnberg Peirce had made reasonable enquiries, and made a reasonable judgment about whether publication required an opportunity for comment from Mr Economou or an account of his side of the story. As it is, he was entitled to place some reliance on the media publishers in those respects. Similarly, as regards the words complained of in the Third Guardian Article which came from Mr de Freitas as a contributor or source. The de Freitas Article was his own work, unedited – so it appears. But again, this was a submission to a national newspaper by a contributor who was in my view entitled to place some reliance on the publisher to undertake appropriate checks and provide appropriate balance.

259. In summary, Mr de Freitas' belief that the publication of his words in the three December articles was in the public interest was a reasonable belief. For that reason, the claims in respect of the Telegraph Article and the de Freitas Article fail. The claim in respect of the Third Guardian Article would have failed in any event, for reasons given above.

OVERALL CONCLUSIONS

260. Mr Gosden-Hood told me, convincingly, of meetings he had with Mr Economou in which he was told that Mr Economou wished to bankrupt Mr de Freitas. It has not been alleged, and I do not find, that this was his dominant purpose in bringing this claim. I do not believe it was. Mr Economou has pursued this case with sincerity but, as I find,

in anger and with elements of vengefulness. Defamatory imputations can cause injury to feelings which is out of all proportion to the harm they cause to reputation. That, so far as the earlier publications are concerned, is this case. So far as the later publications are concerned, and more generally, Mr Economou has made the error of seeing this case from his own perspective as a victim, paying too much attention to the impact on him and his feelings, and giving insufficient consideration to the other perspectives, indeed the other rights and interests, that demand and deserve consideration.