



Neutral Citation Number: [2020] EWHC 1312 (QB)

Case No: QB-2019-000846

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

Royal Courts of Justice
Strand, London, WC2A 2LL

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Date: 22 May 2020

Before:

MR JUSTICE WARBY

Between:

Teal Swan
- and -
Associated Newspapers Ltd

Claimant

Defendant

David Hirst (instructed by **Pinder Reaux & Associates Ltd**) for the **Claimant**
David Glen (instructed by **ACK Media Law**) for the **Defendant**

Hearing date: 18 May 2020

Approved Judgment

Mr Justice Warby:

1. The claimant brings this libel action in respect of an article (“the Article”) published in MailOnline, on the website www.dailymail.co.uk (“the Daily Mail website”) on 11 March 2018, and made accessible ever since that date, via the Daily Mail website and links to it on the Daily Mail Facebook and Daily Mail Australia Facebook pages.
2. This has been the trial of preliminary issues in the action, pursuant to an Order of Julian Knowles J, dated 28 February 2020. As is commonplace, and appropriate, it has taken place before service of any Defence.

The parties

3. The Particulars of Claim describe the claimant as “a US-based modern day spiritualist who writes, broadcasts and presents talks and workshops around the world based upon her own modern spiritual beliefs”, at the core of whose mission as a spiritualist is “to inspire people to experience a greater sense of freedom, joy and personal authenticity and to suppress social conformity and pretension”.
4. The defendant is the publisher of the Daily Mail and Mail on Sunday, and maintains the Daily Mail website, via which MailOnline is published. The claimant also attributes to the defendant responsibility for the operation of the two Facebook pages. I am not clear if that is disputed, but in any event it is not an issue for today.

The Article

5. The Article, attributed to “Dailymail.com reporter”, carried the following main headline and sub-headlines:

Meet the glamorous American cult leader nicknamed the Gucci Guru who claims she's part alien and destined for world domination as followers flock to her Costa Rican jungle hideout

- **Teal Swan is an American cult leader who prefers tight skirts and stilettos to robes**
- **She lives in Costa Rica, where people from all over flock to attend her workshops**
- **Swan once convinced a follower he had been 'brutally sodomized' by a gray alien**
- **Also claimed she was sewed into a corpse while being abused in a cult as a child**

6. The claim relies on the headlines and on the full text of the Article, the remainder of which is set out below, with paragraph numbers added for ease of reference.

By DAILYMAIL.COM REPORTER

PUBLISHED: 02:44, 11 March 2018 | UPDATED: 09:21, 11 March 2018

- [1] She believes she's an alien destined for world domination, says she can enter people's brain stems, and claims Hitler was the greatest contributor to world peace.
- [2] She has called death 'delicious', seemingly endorsed suicide, but also believes she has the power to help people 'stay physically alive'.
- [3] She is Teal Swan, better known as the Gucci Guru, and she has become what some call the leader of a terrifying posh cult detailed in a new Medium article.
- [4] You will never find Swan in robes, she prefers tight skirts. And the self-appointed leader is unabashed about her preference for expensive jewels and luxurious hotels.
- [5] 'I knew that I wanted to be famous and be on people's television screens and be on stage,' she once said.
- [6] 'At a cellular level, I knew that I was destined to be a performer.'
- [7] 'Before I even came down, there was an entire panel of Arcturian beings - sixth dimensional beings - who even chose the way I would look in this life.'
- [8] It may sound silly to some, but Swan has successfully spread her message far and wide.
- [9] She has 434,000 subscribers on YouTube, 53 million total views on her videos, 162,000 Facebook likes, and 60,000 followers on Instagram.
- [10] And that's not including the people who come from all over the world to attend Swan's workshops and seminars at her center in Atenas, Costa Rica.
- [11] It is there Swan was able to convince one follower he had been 'brutally sodomized' by a gray alien, and told another that her cat was a 'holographic soul projection from the planet Sirius' who was trying to warn them about their blood sugar.
- [12] What is Swan's endgame? She wants to build a company that will become one of the wealthiest 'in the world', an 'unstoppable monolith' that will buy countries and 'build new societies'.
- [13] Swan sees herself as a revolutionary, going so far as to compare herself to Martin Luther King Jr, Jesus Christ, and Gandhi.
- [14] 'What's happening with them is what's happening with me,' she said. 'If I stand up on stage and someone puts a bullet through my head, I have more attention.'

- [15] Swan believes she is part human, part extra-terrestrial, as well as 'nonphysical', and claims to have the power to force herself into people's brain stems.
- [16] 'I activate the part of their brain which is in charge of breathing (and other autonomic functions like the heartbeat)', she said in one video.
- [17] 'This allows them a channel back into their body'.
- [18] Swan also claims she can 'hear thought forms', as well as a person's 'bones, organs, nerves, veins', and professes to 'see the future' through 'prophetic visions and dreams'.
- [19] 'How do I have all this information? It's because I'm extra sensory,' she has said. 'I'm not limited to this dimension or time-space reality.'
- [20] 'I did not come to earth with a specific message. I came here as a course turner. I am the game changer.'
- [21] Swan sees her followers as soldiers that she has trained for her 'collective awakening' or - as she once phrased it - 'members of my army'.
- [22] But there appears to be a dangerous underside to Swan's following, which promotes itself via emblazoned booty shorts and matching tattoos.
- [23] Swan has been recorded making a number of racist comments, such as when she recalled seeing a group of African American women who she claimed 'were actually feeling so hopeless that they were wanting rape'.
- [24] 'A really beautiful woman down in Africa may come up to the US and be considered pretty ugly,' she said in another instance.
- [25] During one interview Swan even claimed that Hitler had done more for peace than anyone else in the world.
- [26] 'If you are on the highest vibrational level looking at this planet, the person who added to peace more than anyone else on this planet is Hitler,' she said.
- [27] 'No one was thinking about world peace until he came along.'
- [28] Swan has also made a number of concerning remarks about death and suicide, made all the more worrisome after two of her own followers killed themselves.
- [29] 'People who commit suicide - what you'll see is that they've fulfilled their purpose because they are understanding - you know, the higher self,' she once said.

- [30] 'Their source stream is understanding the concept of love. But they only unite with that love they have created when they commit suicide.'
- [31] Swan, who once claimed she was sewed [sic] into a corpse for 12 hours while being abused in a cult as a child, has also said death is 'delicious'.
- [32] 'When you die, it's like lining up with the best food you've ever eaten, and the lover who you've always wanted,' she said in one video.
- [33] Swan has also told her followers that 'we shouldn't just assume that living is always right' and that 'death is not wrong'.
- [34] 'Death feels wonderful no matter who you are,' she added.
- [35] One friend called Swan the 'most unstable person' they had ever met, adding that she was 'pathologically manipulative'.
- [36] 'She makes you believe that she sees the truth,' another friend said. 'The truth is, she likes the control and the power over other people.'
- [37] The latter is something Swan herself has admitted.
- [38] 'I am a master at mental chess,' she once said. 'I play mind games with people.'

7. As stated in the Particulars of Claim, the Article “was illustrated with 10 large colour photographic images of the claimant”. The claimant relies on “the ... photographs and captions, and the context and mode of its publication online including the Link on Facebook”.
8. There is no need to reproduce the photos. They show a slim white woman with long dark hair, seemingly in her 30s, in a variety of locations, dressed in various ways. In most, she is posing for portraits. One shows her in a bikini, another sitting cross-legged in a loose flowing garment, akin to a kaftan. Others show her in yoga wear, or a close-fitting dress. Two of the photos show the claimant apparently speaking or presenting to groups. Five of them show a large tattoo on her left upper arm: a circle within a square within a triangle within a circle.
9. It is relevant to set out the captions, which have been lettered for ease of reference:-
- A. She is Teal Swan, better known as the Gucci Guru, and she has become what some call the leader of a new - and terrifying - posh cult**
 - B. Swan has spread her message far and wide. She has 434,000 subscribers on YouTube, 53 million total views on her videos, and 60,000 followers on Instagram**
 - C. That's because Swan is as forthright in her thirst for fame as she is with the belief that she was anointed in this life by 'sixth dimensional beings'.**

- D. You will never find Swan in robes, she prefers tight skirts. And the self-appointed leader is unabashed about her preference for expensive jewels and luxurious hotels**
- E. Swan is as forthright in her thirst for fame as she is with the belief that she was anointed in this life by 'sixth dimensional beings'**
- F. Swan sees herself as a revolutionary, going so far as to compare herself to Martin Luther King Jr, Christ, and Gandhi**
- G. People who come from all over the world to attend Swan's workshops and seminars at her center in Atenas, Costa Rica**
- H. Swan claims she can 'hear thought forms' and professes to 'see the future' through 'prophetic visions and dreams'**
- I. Swan has called her followers a soldier that she has trained for her 'collective awakening' or - as she once phrased it - 'members of my army'. They even get a tattoo to match her own**
- J. Swan has made a number of concerning remarks about death and suicide, made all the more worrisome after two of her own followers killed themselves**

The issues

10. The Order identifies the following issues for trial:
 - (1) the natural and ordinary meaning borne by [the Article];
 - (2) whether the Article contained a statement of opinion or fact.
11. The parties' arguments led me to suggest, and in the course of the hearing the parties have agreed, that I should also determine the extent which the meaning I find the Article to bear is defamatory at common law. I have therefore added that third issue to the list in the order of Julian Knowles J.
12. The skeleton argument of Mr Glen, for the defendant, addressed a fourth issue: whether any statement of opinion in the Article satisfies the second requirement of the statutory defence of honest opinion, that it "indicated, whether in general or specific terms, the basis of the opinion": Defamation Act 2013, s 3(3). Orders are quite often made for that issue to be included in a trial such as this. But nobody asked for such an order here. Mr Hirst for the claimant had understandably not prepared to deal with the point. He also submitted that the answer could depend on what the Court's found to be the opinions conveyed by the Article. Mr Glen did not press for this trial to be expanded in this way, and I decided that, if that issue turns out to need a judicial decision, that should be done on a later occasion, in the light of this judgment.

The claimant's case

Meaning

13. Paragraph 7 of the Particulars of Claim reads as follows:-

The Article contains a large number of false statements which are grossly defamatory of the Claimant. In its publication context, the Article bore and was understood to bear the following natural and ordinary meanings false and defamatory of the Claimant:

7.1 The Claimant endorses suicide and has a particular obsession with death and suicide as part of her worldview and teachings

7.2 There are reasonable grounds to conclude that the Claimant's endorsement of suicide in her teachings has caused or inspired two people to kill themselves;

7.3 The Claimant is a racist and/or has a track record for making a number of statements that were overtly prejudiced against a racial group on the grounds of that group's racial characteristics;

7.4 The Claimant has made dangerously irresponsible, repugnant and ahistorical claims that Adolf Hitler promoted peace;

7.5 The Claimant's modern spiritualist teachings have included a conviction that she was brutally sodomized by a grey-coloured alien and that her cat is a holographic soul projection from the planet Sirius warning about blood sugar levels;

7.6 And, in these circumstances, the Claimant is to be regarded as a dangerous, terrifying and deluded megalomaniac cult leader who peddles messages of the most irresponsible and harmful kind to her followers.

14. These are not, however, the meanings contended for at this trial. More than six months ago now, the parties exchanged correspondence on the topic of meaning. The defendant advanced detailed criticisms of the meanings as set out above. The upshot was a revision of the claimant's case. The meanings now contended for are these:

(1) The Claimant is a cult leader who has sought to cultivate devotion, power, and fame but whose teachings have a disturbing underside which has involved the Claimant propagating some terrifying, dangerous, and irresponsible theories, therapies and beliefs amongst her followers, including:

(2) Making a number of racist comments

(3) Making a claim that Hitler had done more for peace than anyone else in the world

- (4) Making a number of concerning remarks celebrating death and endorsing suicide which, there are grounds to suspect, caused two of the Claimant's followers to kill themselves.

(My emphasis: see [16] below).

15. Those meanings were first set out in a letter from the claimant's solicitors, dated 1 October 2019. They have since been incorporated in draft Amended Particulars of Claim. There has been no application, as yet, for permission to make those amendments. But that is a sensible approach, as it is always a real possibility that the Court will arrive at a meaning at least slightly different from that contended for by the claimant. It is common for a trial of meaning to result in an amendment of the Particulars of Claim, to reflect the court's conclusions.

Fact or comment

16. The claimant's case, as presented by Mr Hirst, is that the words underlined above are comment, and the remainder are factual in nature. The underlining is mine, but reflects the claimant's argument. In identifying the claimant's case on the fact/comment distinction in this way I am following the helpful approach adopted by the defendant in stating its case.

The defendant's case

17. The defendant's case on meaning was summarised in a letter dated 3 October 2019, and then set out in an application notice of 4 October 2019, by which the defendant sought an order for the trial of preliminary issues. The defendant's case remains largely the same. It contends that the Article bore the following meanings, the underlined words being comment or opinion:

The Claimant is a cult leader who has sought to cultivate devotion, power, fame and wealth by propagating some outlandish, dangerous and irresponsible theories, therapies and teachings amongst her followers, including for example:

(a) Making racist comments;

(b) Seeking to manipulate and indoctrinate her followers, including by styling herself as part-alien with extra-sensory powers and playing mind games with them in order to convince them to accept bizarre and disturbing ideas about themselves, their experiences and their health;

(c) Making concerning remarks about death and suicide which are all the more worrisome after two of her followers killed themselves;

(d) Making a claim that Hitler had done more for peace than anyone else in the world on the footing that until he came along, no-one was thinking about world peace.

Paragraph (d) has been added since last October.

The ambit of the dispute

18. It will be clear that the parties' rival cases are close to one another in several respects. It is common ground that the Article expressed a general comment or opinion about the claimant's conduct as a "cult leader", supported or illustrated by some examples. There is a large measure of agreement on what the overall expression of opinion was. It is agreed that the overall opinion is a defamatory one. There is some agreement on the subject-matter of the supporting examples.
19. There are, however, disagreements about (a) the scope and detail of the overarching comment or opinion; (b) the true meaning of the illustrations or examples; and (c) whether those examples are, as the claimant contends, purely factual in character or, as the defendant contends, mixed statements of fact and opinion. There is a further question, as I have already indicated, namely (d) to what extent the natural and ordinary meaning of the Article is defamatory at common law. The parties are at odds, in particular, about the meaning of the passages in the article that attribute statements about Hitler to the claimant, and those that refer to death and suicide, including the suicides of two followers of the claimant.

Legal principles

20. These are not in dispute. For present purposes, the core principles can be shortly summarised:
 - (1) The Court should identify the single, natural and ordinary meaning which the published statement would convey to an ordinary reasonable reader, reading the whole of the statement. The principles are more elaborately summarised by Nicklin J in *Koutsogiannis v The Random House Group Ltd* [2019] EWHC 48 (QB) [2020] 4 WLR 25 [11-15], to which I have been referred at this trial, as is usual.
 - (2) A comment is something in the nature of a deduction, inference, conclusion, criticism, remark, observation, etc.; it must be recognisable as such; and again, the key question is how the words would strike the ordinary reasonable reader: see also *Koutsogiannis* at [16-17].
 - (3) The common law has a threshold of seriousness, by which a meaning or imputation, whether it be one of fact or opinion, is defamatory only if it would tend to have a substantially adverse effect on the way that right-thinking members of society generally would treat the claimant: see *Thornton v Telegraph Media Group Ltd* [2010] EWHC 1414 (QB) [2011] 1 WLR 1985 [96] (Tugendhat J) and my decision in *Lachaux v Independent Print Ltd* [2015] EWHC 2242 (QB) [2016] QB 402 (affirmed, [2019] UKSC 27), at [15(5)].
21. It is unnecessary to set out the passages cited in full, or to say more at this stage about the common law threshold of seriousness. It is appropriate, however, to pick out some principles that have particular significance for the arguments in this case.

Meaning

22. Four points from *Koutsogiannis* deserve to be highlighted:

- (1) The ordinary reasonable reader can read between the lines and indulges in a certain amount of loose thinking, but is neither avid for scandal or unduly naïve; this hypothetical reader does not seize on the worst possible meaning of the statement nor on the least damaging, but takes a middle course: *Koutsogiannis* [12(iii)].
 - (2) Both literalism and over-elaborate analysis should be avoided, both by the parties and by the Court: *ibid.* [12(iv), (v)].
 - (3) The Court should have regard to the impression the article has made upon it: *ibid* [12(xii)].
 - (4) The Court is not bound by the meanings advanced by the parties: *ibid* [12(xiii)].
23. Mr Glen, for the defendant, has referred me to authorities which provide guidance on whether a statement contains a specific charge (such as “X stole my wallet last night”), or carries a “general sting” (such as, “X is a thief”), and identify the relevant pleading principles. As Mr Glen points out, a defendant that contends – as this defendant does - that the words complained of contain a general charge, or that they contain a number of specific imputations with a “common sting”, should raise that point at the time of any preliminary trial of meaning: *Bokova v Associated Newspapers Limited* [2019] QB 861 [8] (Nicklin J).
24. Three main points emerge from the authorities cited by Mr Glen, none of which is controversial:-
- (1) Where a single publication contains a number of separate and distinct defamatory imputations, a claimant is entitled to limit his claim to one or more of those imputations, and it is not open to a defendant to expand the parameters of the claim by advancing a defence to other potentially actionable imputations of which no complaint was made.
 - (2) But a claimant cannot seek artificially to narrow or to circumscribe the claim by selective complaint of words or passages taken out of context; and conversely a defendant is entitled to point to other passages in an article in order to aver that the words in their context bear a different and/or wider meaning from that alleged.
 - (3) Whether different defamatory statements in a publication are truly separate and distinct (and therefore severable or excisable) will be a question of fact and degree in each case.
- See *Polly Peck (Holdings) plc v Trelford* [1986] QB 1000, *S&K Holdings Ltd v Throgmorton Publications Ltd* [1972] 1 WLR 1036, 1039, *Charleston v News Group Newspapers Ltd* [1995] 2 AC 65, *Cruise v Express Newspapers Plc* [1999] QB 93.
25. Useful tests of whether the statement contains a wider or more general meaning include whether or not the allegations complained of (a) overlap at any point with those made elsewhere in the article; (b) share a “common sting” with other defamatory statements found in other parts of the relevant publication; or (c) would reasonably have been understood to be examples of a more general charge about the claimant’s conduct or behaviour: *Polly Peck* 1039, *Warren v Random House Group Ltd* [2007] EWHC 3062 (QB) [29] (Eady J), *Carlton Communications plc v News Group Newspapers Ltd*

[2001] EWCA Civ 1644 [2002] EMLR 16 [46] (Simon Brown LJ), *Rothschild v Associated Newspapers Ltd* [2013] EWCA Civ 197 [2013] EMLR 18 [22-23] (Laws LJ).

Fact or comment

26. The following further principles are relevant to the arguments advanced at this trial:

(1) The enquiry is one that looks only at the words complained of and the immediate context: *Telnikoff v Matusevitch* [1992] 2 AC 343, 352.

(2) The Court should be alive to the danger that a process which seeks to identify comment which is implicit in the words used may stray into one which adds to the natural and ordinary meaning a moral judgment that is not part of the published statement, because it is, in reality, supplied by the reader; but the possibility that a statement may imply a comment, rather than spelling it out, cannot be ruled out: see my analysis in *Lord Mohamed Sheikh v Associated Newspapers Ltd* [2019] EWHC 2947 (QB) [22], citing *Tinkler v Ferguson* [2018] EWHC 3563 (QB) [37] and *Koutsogiannis* [17]. This is a risk in relation to factual imputations also: see the discussion in *Allen v Times Newspapers Ltd* [2019] EWHC 1235 (QB) [28], where I said this:

Maintaining the focus on implication rather than inference may help ensure that the Court does not arrive at a meaning which is unreasonable because it does not emerge from the words themselves.

(3) “Not every statement that ‘is or can be inferred to be ... [an] inference’ is necessarily to be treated as an expression of opinion”: see *Sheikh v Associated* [23], where I continued:

The Explanatory Notes to the Defamation Act 2013 say that “an inference of fact is a form of opinion”. But as Sharp LJ observed in *Butt v Secretary of State for the Home Department* [2019] EWCA Civ 933 [37], the matter is “perhaps expressed too broadly” in that passage, as “this is often, but not invariably the case.”

(4) A statement which appears to be one of opinion, but contains no indication of or reference to any supporting facts, may be treated as a statement of fact: *Joseph v Spiller* [2010] UKSC 53 [2011] 1 AC 852 [88–89] (Lord Phillips).

(5) When considering whether a statement is one of fact or opinion it is relevant to consider whether it asserts something verifiable (*Greenstein v Campaign Against Antisemitism* [2019] EWHC 281 (QB) [19]) but this is not conclusive, and there is no fixed rule about this (*Zarb-Cousin v Association of British Bookmakers* [2018] EWHC 2240 (QB) [26] (Nicklin J)).

(6) The subject-matter and context will often be important indicators of whether a statement is, to the ordinary reader, an expression of opinion or a statement of fact:

British Chiropractic Association v Singh [2010] EWCA Civ 350 [2011] 1 WLR 133 [26], [31].

(7) Section 3 of the Defamation Act 2013 did not affect the common law rules about how to identify statements of fact and opinion: *Barron v Collins* [2015] EWHC 1125 (QB), [13]-[15].

Gravity

27. One issue for consideration is the level of gravity of any defamatory meaning to be derived from the statements about death and suicide which the Article attributes to the claimant, and what it says about the suicides of followers. The claimant's meaning (4) has been referred to by Mr Hirst as a "Chase Level Two" meaning. The terminology is familiar. As Nicklin J explained in *Brown v Bower* [2017] EWHC 2637 [2017] 4 WLR 197 [17], the language

... come[s] from the decision of Brooke LJ in *Chase v News Group Newspapers Ltd* [2003] EMLR 11 [45] in which he identified three types of defamatory allegation: broadly, (1) the claimant is guilty of the act; (2) reasonable grounds to suspect that the claimant is guilty of the act; and (3) grounds to investigate whether the claimant has committed the act. In the lexicon of defamation, these have come to be known as the Chase levels.

28. "It is however clear law that the Chase levels are not a 'straitjacket': *Sheikh v Associated* [20], where I also said this:

Neither the parties nor the court are forced to select one of the three levels. Nor is the court bound by the meanings contended for by the parties. It can, indeed must, recognise and give effect to the almost infinite capacity of words to convey subtle shades of meaning, which may fall between the Chase levels. Thus, nobody suggests that Gray J was wrong, when in *Charman v Orion Publishing Group Ltd* he found a meaning of "cogent grounds to suspect": [2005] EWHC 2187 (QB) [58]. In *Feyziyev v The Journalism Development Network Association*, I found that one of the two articles complained of bore a Chase Level Two meaning, but the second bore a meaning of "strong grounds to suspect": [2019] EWHC 957 (QB) [25], [36].

The meaning I found in *Sheikh* at [37] included the imputation that the claimant's conduct "provides strong grounds for suspecting" that he was secretly an anti-Semite.

The extent and location of the publication complained of

29. At one stage, it appeared to me that the claim, and the issues for trial, might relate not only to publication in England and Wales, but also publication beyond the jurisdiction

of this court. That made me wonder if this might have implications for the determination of meaning.

(1) The Particulars of Claim give further information about the claimant:

The Claimant maintains active and extremely popular sites on Facebook (547,000 following), YouTube (600,000 following and 75million views) and Instagram (118,000 following) and has undertaken a number of successful international speaking tours, including in the United Kingdom. The Claimant includes many individuals based in the UK amongst her extensive international following, many of whom self-organise into her online community groups using social media.

(2) The Particulars of Claim also give circulation figures for the Daily Mail. More importantly, it would seem, they give figures for MailOnline, and the two Facebook pages relied on:

2... Internet traffic to MailOnline/dailymail.co.uk is measured at approximately 11,000,000 daily global unique visitors across all digital platforms (source: Newsworks, accessed 9 July 2019).
...

8.3 The Daily Mail Facebook page has 17.5million followers and the Link was commented upon 1329 times and shared 138 times. The Daily Mail Australia Facebook page has 4.5m followers and the Link was commented on 137 times and shared 20 times.

(3) These appear to be global figures, and on a superficial reading it might appear that the claim relates to publication worldwide. That impression is bolstered by other passages in the Particulars of Claim. Paragraph 8 asserts that “The Article was published online to a large, but presently unquantifiable number of readers within the jurisdiction *and beyond*” (my emphasis). In support of the claimant’s case on serious harm, paragraphs 10.3 and 10.4 rely on “a hostile television report on Costa Rican television” and “the foreseeable widespread republication of the imputations contained in the Article in other international print and social media”.

(4) The Particulars of Claim as a whole suggest, however, that the claim is limited to publication in this jurisdiction. Paragraphs 2 and 8 invite inferences that

a substantial proportion of traffic to MailOnline/ dailymail.co.uk and affiliated Facebook pages for the Daily Mail originated within the jurisdiction of the court.

And there is no pleading about foreign law, as there would have to be given the continued application of the double-actionability rule in this tort. Mr Hirst has confirmed that the claim is confined to publication in England and Wales and has offered to amend the Particulars of Claim to spell this out.

(5) I am therefore concerned at this trial with the reaction of the hypothetical ordinary reasonable reader in England and Wales. I can safely ignore whether any special considerations might have arisen in deciding meaning, if the claim was one that embraced publication abroad. I do not have to deal, either, with any other issues that may in fact arise from reliance on things that happened abroad, such the causation of any reputational or business harm flowing from events in Costa Rica or other foreign jurisdictions and/or the recoverability of damages for any such harm.

Submissions

35. What follows is a summary that may not do full justice to the high quality and subtlety of the submissions made in writing and orally at the trial by both Counsel, to which I pay tribute.

For the claimant

36. Mr Hirst highlights what he says is the Article's clear and deliberate six-part structure: (I) an "eye-catching" headline with the memorable nickname "Gucci Guru"; (II) the introductory bullet-points setting out "alleged eccentric or unusual conduct" and a penchant for glamorous clothes; (III) byline information and publication metrics data; (IV) three paragraphs reciting statements attributed to the claimant, all of which are repeated later ([1-3]); (V) a long section introducing readers to the claimant by reference to her appearance and personal objectives, mixed with reported statements by the claimant herself ([4-21]); and (VI) a shorter, concluding section which sets out "a number of matters which point to an alleged 'dangerous underside' to the claimant's conduct and beliefs" ([22-38]).

37. The claimant's case relies principally on section VI. It is this, submits Mr Hirst, that contains the allegations to which the claimant objects, and which are "allegations of fact about her conduct and its effects". Mr Hirst submits that, with the exception of paragraphs [1-3] the first half of the Article narrates a quantity of largely non-defamatory material about the claimant. At paragraph [22], however, there is a marked change of direction and tone, signalled by the words "But there appears to be a dangerous underside ...". The paragraphs that follow contain what Mr Hirst calls "the case against" the claimant, leading up to a defamatory attack in closing, which depicts her teachings as "objectively 'disturbing'".

38. Mr Hirst submits that the second half of the Article contains most of the words that contribute to its defamatory sting, and contains few words that are in the nature of comment. It is mainly a recitation of factual allegations of conduct by the claimant. The exceptions are the terms "concerning" and "worrisome" in [28]. Those terms are reflected in the claimant's meanings by the words "disturbing" and "irresponsible", which Mr Hirst suggests are synonymous with the words used in the Article. The remainder of this section of the Article comprises imputations of fact.

(1) The assertion that the claimant has made racist comments is, in context, a factual matter, presented as the first plank of the factual case as to why she has a "dangerous underside". The Court will be well placed at a trial to determine as a matter of fact whether she did make racist comments, by applying (for example) the law contained in Part III of the Public Order Act 1986.

- (2) A statement that someone claimed that Hitler did more for peace than anyone else is “obviously defamatory”. Such a person would be regarded with distaste and revulsion by the ordinary reader, who would consider it to be a terrifying and irresponsible view. Paragraph [25-26], read in context, and having regard to paragraphs [1-3], suggest to the reader that the claimant’s statements about Hitler are a matter of greater importance than other statements, which are not repeated in the Article.
 - (3) The words of paragraph [28] contain verifiable allegations of fact, giving rise to the following question for trial: “did the statements made by Ms Swan about death and suicide, in their proper context, amount to an endorsement of suicide as the Article asserts?”.
 - (4) The statement that the claimant’s remarks about death and suicide are “all the more worrisome after two of her own followers killed themselves” conveys the additional factual imputation that there are grounds to suspect that the claimant’s conduct in making those remarks caused two of her followers to kill themselves. She is presented as an influential person, with a significant following. Bearing in mind the attributed comments about death being “delicious”, the reader can “read between the lines” that the claimant’s theories have caused two people to commit suicide.
39. Mr Hirst summarises the claimant’s case in this way. The Article contains a defamatory expression of opinion, anchored by the words of paragraph [22]. Then “a roster of defamatory factual allegations” is presented to the reader, each “verifiable in nature and referencing the evidence on which the allegation is based”, identifiable as “factual matters trailed in support” of the defamatory opinion. The claimant’s meaning has the virtue of simplicity, and closely and faithfully reflects the structure and content of the Article.
40. Mr Hirst has three main criticisms of the defendant’s meaning:
- (1) That it erroneously enlarges the general charge by adding in imputations that are not to be found in the Article. There is no suggestion that the claimant is seeking personal gain, on the contrary: [12-13] quotes comparisons with noted ascetics; and the word “outlandish” is an illegitimate intrusion, contrary to the *Tinkler* principle.
 - (2) That it includes terms that are components of the Article, but which are not defamatory, or not defamatory in this context. Mr Hirst points in particular to the word “manipulative”, submitting that this is a low-level imputation that falls short of the common law threshold of seriousness. He invites comparison with the imputations of being “disrespectful and dismissive of the McCartneys and Annie Lennox” that were held to fall short of that standard in *Ecclestone v Telegraph Media Group Ltd* [2009] EWHC 2779 (QB) (Sharp J, DBE).
 - (3) That the defendant has downplayed some key aspects of the Article: “the notable and memorable allegation” that the claimant has advanced “disturbing statements that Hitler was a force for world peace”, and the implied attribution of responsibility for suicide. The Hitler aspect of the Article was originally ignored altogether by the defendant, he submits. The defendant’s new paragraph (d) reflects it only in a watered-down way.

For the defendant

41. Mr Glen describes the claimant's revised meaning as "problematic in certain key regards". He identifies three "residual issues" with it.
- (1) First, there is a criticism that I would label "impermissible selectivity". Mr Glen submits that, when it comes to the "sub-imputations", the claimant's meaning notably fails to take any account of a prominent feature of the Article, namely "the charge that she seeks to manipulate and indoctrinate her followers". Counsel points to paragraphs [11] ("able to convince"), [15] ("claims to have power to force herself into people's brain stems"), [21] ("sees her followers as soldiers that she has trained ... 'members of my army'"), [35] ("pathologically manipulative"), [36] ("likes the control and the power over other people") and the reference to mind-games in paragraph [38].
 - (2) Secondly, it is submitted that the claimant continues to misconstrue what the Article said about the claimant's comments about Hitler and world peace. The Particulars of Claim allege that the relevant passage ([25-27]) accused the claimant of having said that "Hitler promoted peace". Mr Glen argues that was clearly wrong, and has rightly been abandoned, but the claimant persists with a meaning that ignores the claimant's own explanation, as quoted in the Article. If that context is properly taken into account, the suggestion in the Article is "that Hitler acted as a catalyst for people to think about world peace for the first time". The Court should reject any meaning that insinuates that the claimant was arguing that Hitler was himself an advocate for world peace.
 - (3) Thirdly, Mr Glen submits that the claimant's meaning (4) distorts what is said in the Article about the claimant's teachings on death and suicide. In his submission, the claimant's approach involves an unreasonably strained interpretation of what the Article says. It mistakenly "seeks to transform a clear expression of opinion about the 'concerning' nature of ... [those] teachings ... into a narrowly directed statement of fact about the cause of two individual deaths". It is wrong to try to "reinterpret this section of the Article through the prism of *Chase* levels", as the Article makes no attempt to analyse or report on the circumstances of the two suicides, or to "construct a case of suspicion" in respect of them.
42. Turning to the fact/opinion issue, Mr Glen submits that the claimant's analysis of the Article's structure is overly rigid and formalistic. It fails to reflect the fact that comment or opinion is to be found in a variety of places within the article. He submits that not only is the general defamatory charge made by the Article clearly a matter of opinion, but also that this extends to the elements in the defendant's meaning which are not reflected in the meaning complained of, such as the "deduction" that the claimant has sought to cultivate power, fame and wealth.
43. As for the sub-imputations, the term "racist comments" is, in context, an expression of opinion about the quoted remarks and other, unspecified instances. The words "concerning" and "worrisome" clearly indicate that the defendant's contentions about the claimant's teaching on death and suicide are comment, rather than statements of fact. The reference in that context to the followers killing themselves should be treated as a bare factual assertion that underlies those expressions of opinion. It would be

artificial and wrong to read that reference as containing any further, implied assertion of fact, that there were grounds to suspect the claimant of bringing about those deaths.

Decision and reasons

44. In this case, I followed the now-standard path of reaching a provisional view about the meaning of the Article by reading it, in its published format, before reading or listening to any of the parties' arguments. This is a simple and effective way of implementing *Koutsogiannis* principles (iv), (v) and (xii). Before doing this, I reminded myself of the applicable legal principles by reviewing the relevant elements of the skeleton arguments. My preliminary conclusions have then been tested against the parties' written and oral arguments on the law and the facts.
45. At the end of this process, my conclusion is that the Article as a whole bore the following natural and ordinary meaning.
- (1) The claimant is the leader of a cult *with huge ambitions, who has sought to cultivate devotion, power, and fame among her many followers.*
 - (2) *Her beliefs, claims and teachings include a number which may be regarded as silly, but she has a dangerous underside.*
 - (3) She is a pathologically manipulative person with a highly unstable personality, who has propagated outlandish theories, and demonstrated an ability to persuade others of ideas about themselves that are bizarre and disturbing;
 - (4) and she has:-
 - a. made a number of racist comments,
 - b. spoken of Hitler as the greatest contributor to world peace, and
 - c. made positive statements about death which are concerning and worrisome, and which appear to endorse suicide;
 - (5) so, there is a real possibility that her teachings may have caused or contributed to two of her followers killing themselves; and
 - (6) she is to be regarded as terrifying.
46. This is an overall meaning, which contains elements that are in themselves defamatory, and others which are not themselves defamatory (some of which are not complained of), but amount to contextual material that makes a contribution to the defamatory imputations. I have identified defamatory comment or opinion as before, by underlining. The non-defamatory contextual material is identified by italics. I have not found it necessary to distinguish between fact and comment when it comes to non-defamatory content.

47. The Article does prominently convey other meanings, for instance that the claimant is a glamorous American, with a taste for luxury, tight skirts and stilettos, whose cult is “posh”, and who has been nicknamed “the Gucci guru”. Some of those matters at least are disputed, and objected to; that could be relevant to damages if the issue arises. But in my judgment, none of this makes any contribution to the defamatory imputations conveyed, so I have left it all out of account. The same applies to the photographs, which seem to me entirely neutral for present purposes, save perhaps for the fact that they show the claimant to be white, which may have some bearing on the racism meaning.
48. Although the shape of the meaning I have found differs from the shape of those contended for by the parties, it has a number of features in common with those meanings. It contains a general charge that the claimant is a cult leader who has sought to cultivate devotion power and fame; and a general charge that she has a dangerous side (rightly regarded by both parties as a comment). It contains a list of “sub-imputations” which overlaps with the lists propounded by the parties. It does however differ from the meanings advanced by one or both of the parties in several respects.
49. I shall seek to avoid over-elaboration in giving my reasons.
50. There is much to be said for Mr Hirst’s structural analysis, but I agree with Mr Glen that it is overly rigid. The body of the Article does not divide as neatly as Mr Hirst suggests, into a non-defamatory first section, a defamatory comment, and some factual imputations.
51. The allegation that the claimant is the leader of a cult is an assertion of fact (“leader”), coupled with a disparaging and, in context, defamatory evaluation of the organisation she leads. As the parties appear to agree, the account of the claimant’s aims and ambitions is an integral part of the overall defamatory portrayal. Contrary to the impression given by the parties’ meanings, however, I do not consider that account to be defamatory in itself. I do not agree, either, with the defendant that the Article suggests that the claimant is a wealth-seeker. It is the kind of suggestion a reader would expect in an article about a charismatic cult leader, but it is not made explicitly and on my reading it was not implicit either; indeed, it was conspicuous by its absence. Mr Hirst’s rebuttal of this aspect of the defendant’s case provides a satisfactory explanation of why that is.
52. The explicit assertion that some of the claimant’s beliefs are “silly” (paragraph [8]) is non-defamatory, but part of the narrative, setting up the contrast with her “dangerous underside”.
53. The meaning I have found includes an imputation that the claimant is manipulative. This is cast in terms that reflect the actual words of the Article, which in my judgment convey a meaning that is clearly comment, and clearly defamatory by the *Thornton* standard. Whatever might be said of a charge that a person likes to play mind games, and takes satisfaction in doing so, an imputation that she is “pathologically” manipulative is plainly more serious. It suggests a psychological disorder, likely to have harmful effects on others. It is an imputation that would tend to lead an ordinary person to shy away from the claimant. Similar reasoning applies to the imputation that the claimant has an “unstable personality”. The terminology is attributed to so-called

“friends” of the claimant, but the ordinary reader would treat the reported allegations no differently on that account; this is limb one of the well-known “repetition rule”.

54. The assertion that the claimant is manipulative is an imputation distinct from others comprised in the meaning I have found, such as the allegation of racist comments, but it is by no means separate. It occupies an influential position, in the closing paragraphs. It makes a material contribution to the other, more serious, defamatory meanings conveyed by the Article (in particular, to imputation (5)), and to the general charge. I would have included it as an element of the overall defamatory meaning even if it was not defamatory in itself.
55. My meaning includes the term “outlandish” as a characterisation of the theories identified in the Article. That is not a word that can be found in the Article, and I see the force of the submission that relies on *Tinkler*. But I accept the argument of Mr Glen, that this term reflects what is implicit in the Article. It is a meaning the reader would draw from what is said, rather than one the reader would supply. Mr Glen pertinently observes that the point has been implicitly acknowledged in the claimant’s skeleton argument, which repeatedly uses the term “eccentric”, a word not to be found in the Article. Similar reasoning applies to the adjectives “bizarre and disturbing”: they reflect the thrust of what is said, as it would be understood by an ordinary reader, applying established community standards. In my judgment, imputations that a person has propagated such theories or persuaded someone of such ideas cross the common law threshold of seriousness. These terms are all observations in the nature of comment.
56. Whether or not the imputations I have discussed so far satisfy the serious harm requirement in s 1(1) of the 2013 Act is another question, not before me today. It may not matter greatly, because the main significance of these components of the meaning I have found is that they provide a contextual underpinning for the important allegation of persuasive ability, which in turn lends support to the central defamatory charges at paragraphs (4)-(6) of the meaning.
57. My reasons for resolving the three key points of dispute in the way that I have are these:
 - (1) The term “racist” is capable of a range of meanings. It does not have any defined meaning as a matter of law. Some forms of speech and behaviour are criminal because of their tendency to stir up racial hatred, or they are criminal – or more gravely criminal – because of racial motivation; but Mr Hirst has not identified any criminal offence that is cast in terms of “making racist comments”. In any event, the “charge” in the Article is not that the claimant has committed a public order offence, or any racially aggravated offence. In its context, it represents an evaluation in everyday language of the statements quoted in the Article and others, alluded to but not identified. In ordinary language the term “racist” may refer to speech or conduct that is motivated by racial prejudice, or to statements or behaviour that are objectively discriminatory, whatever their motivation. Discrimination may be direct or indirect. There is a range of views about the proper application of the term. Some, for instance, deplore the use of stereotypes about nationalities, or “cultural appropriation” as racist. Others would regard that as a misapplication of the word.
 - (2) The “Hitler” meaning that I have arrived at is the one I first thought of, when reading the Article unaffected by the parties’ submissions. In my judgment, it reflects the

reaction that the hypothetical reasonable reader would have. It is very close to the literal wording of paragraph [2], where the allegation is presented prominently by the defendant. This would strike the reader forcefully. As everyone knows, loose talk about Hitler is apt to arouse strong feelings. I do not accept Mr Glen's submission that it would have been clear to the reader that all the claimant was saying was that Hitler had, inadvertently, benefited the world by bringing to light the advantages of world peace. As Mr Glen conceded in the course of argument, the defendant's argument comes down to this: the contents of paragraph [27] would have drawn any sting contained in paragraphs [2] and [25-26]. It is a little unreal to attribute that level of analytical sophistication to someone (anyone) reading this article, which embeds in the reader's mind at an early stage the clear message that the claimant "claims Hitler was the greatest contributor to world peace". This, in my assessment, is a defamatory factual meaning, essentially for the reasons advanced by Mr Hirst.

- (3) The reader is told early on that the claimant has "seemingly endorsed suicide": [2]. Reference is then made to "concerning remarks" about death ([28]) followed immediately by reference to the suicide of two followers. Those deaths are introduced as a fact which makes the claimant's statements "all the more worrisome". The claimant's alleged statements about death and suicide are then set out extensively at [28-34]. The Article links statements by the claimant and the suicide of two followers. Mr Glen's ambitious submission, that the deaths would be regarded by the ordinary reader as nothing more than bare facts, supporting the observation that the claimant's teachings are "worrisome", cannot be accepted. It begs the question of why the deaths should be regarded as relevant, if there could not be any causal link between them and the claimant's teachings. More prosaically: why are the deaths mentioned at all, if there is no suggestion that they might be causally related?

I am satisfied that the ordinary reader would infer that the writer wanted to suggest at least the possibility of a causal link, and that this is what the Article was "getting at" in this context. (The writer's actual intention is irrelevant, but it is clear law that the ordinary reader's perception of that intention "may colour the meaning": *Berkoff v Burchill* [1997] EMLR 139, 151 (Neill LJ)). In any event, on its face, the Article is drawing together a number of facts and suggesting they may be linked. The reader's mind would already be conditioned, by the time they got to this passage, by the Article's earlier comment, that the claimant's statements "seemingly endorse suicide". I do not consider that the suggestion there may be a connection between her statements and the deaths would strike the ordinary reader as a comment. The statement of opinion is that the deaths make the claimant's statements "all the more worrisome". The claimant's case on this aspect of the Article is considerably overstated, but I conclude that the imputation is a factual one at a low level, at or perhaps somewhat below Chase Level 3.