Neutral Citation Number: [2020] EWHC 2217 (QB)

Case No: QB-2019-004601

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/08/2020

Before:

HIS HONOUR JUDGE LEWIS
(sitting as a Judge of the High Court)

- -

Between:

MARTIN GILHAM	**Claimant**
- and -	
MGN LIMITED **REACH PLC**	**Defendants**

- -
- -

Jacob Dean (instructed by **Carter-Ruck**) for the **Claimant**
Christina Michalos QC (instructed by **Reach PLC Legal Department**) for both **Defendants**

Hearing date: 19 June 2020

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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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HIS HONOUR JUDGE LEWIS

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 2pm on 12 August 2020.

His Honour Judge Lewis:

1. The claimant seeks the court's determination of the amount(s) to be paid to him by way of compensation pursuant to s.3(5) of the Defamation Act 1996, following his acceptance of a qualified offer of amends.

2. The following matters are in issue:

   i) Whether there should be a single award or separate awards of compensation in respect of each defendant;

   ii) General damages:

      a) the sum or sums to be awarded to the claimant by way of compensation;

      b) the admissibility of two of the defendants' *Burstein particulars*; and

      c) the impact, if any, which the defendants' *Burstein particulars* have on the level of the compensatory award; and

   iii) The discount to be applied to the award of general damages to take account of the qualified offer of amends.

3. I have considered all the evidence in the bundle, including witness statements from the claimant, his wife and the defendants' in-house lawyer.

4. The claimant has worked as a teacher for over forty years and is also a rugby coach. He lives in Kent. The first defendant is the publisher of the Sunday Mirror newspaper and the website www.mirror.co.uk. The second defendant is the parent company of the first defendant, and publisher of the website www.kentlive.news.

5. The articles complained of were about an incident that took place at the claimant's school on 3 February 2017, and its aftermath. The following is not disputed, and derives mostly from the claimant's evidence:

   i) On 3 February 2017, the claimant noticed that one of the children in his class had walked mud into the classroom. He held a pupil's collar, raising him slightly but not off the ground, and moved him towards the door. This was witnessed by the boy's father, to whom the claimant apologised straightaway.

   ii) The school suspended the claimant immediately. There was a formal disciplinary hearing on 26 May 2017. The claimant explained in his witness statement that the incident was found to have amounted to gross misconduct, justifying dismissal without notice. The claimant appealed. There was an appeal hearing on 13 July 2017 at which the dismissal was upheld.

   iii) The school referred the matter to the Teaching Regulation Agency (TRA). There was a public hearing on 3 December 2017 at which the TRA heard evidence from the pupil's father. The TRA has published its decision, which the claimant has put in evidence, and on which both parties rely:

a) The allegation considered by the TRA panel was whether the claimant was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, namely that he engaged in inappropriate physical contact with a pupil which involved the use of unnecessary force. At the TRA hearing, the position advanced on behalf of the claimant was that his actions were misjudged but the contact was neither inappropriate nor involved the use of unnecessary force, and had been used to prevent damage to the carpet from muddy feet.

b) In considering whether to make findings of fact:

   i) The TRA panel found the following proven: whilst employed as a teacher at Northdown Primary Academy, the claimant engaged in inappropriate physical contact with Pupil A, on or around 3 February 2017, which involved the use of unnecessary force.

   ii) The TRA panel "considered that [the claimant's] actions were inappropriate and that the force used was unreasonable, since there was a less intrusive option available to [the claimant] of halting the children from coming in by use of his voice, rather than engaging in physical contact. This allegation is therefore found proven."

c) The TRA decision noted: (i) the agreed position was that contact was with the pupil's clothing only; (ii) the pupil's father had felt comfortable for the pupil to return to the classroom; (iii) when asked about whether he felt safe, the pupil's first response did not relate to the incident; (iv) the pupil's father confirmed that the child had subsequently moved school because of the unsettling effect of there being numerous supply teachers; and (v) "it was fair to draw the conclusion that there was no psychological harm" to the pupil as a result of the incident.

d) The TRA panel then went on to consider whether the facts proven amounted to unacceptable professional conduct and/or conduct that may bring the teaching profession into disrepute. It recorded the following:

   i) "The panel considered [the claimant's] conduct to have been misjudged but that it did not meet the threshold to constitute misconduct of a serious nature, nor did it fall significantly short of the standard expected of a teacher. Any breach of Part Two of the Teachers' Standards, was relatively minor."

   ii) "The panel did not consider this to be an act of violence… The panel considered this to be a case of [the claimant] having made a poor professional choice as to how he handled the situation, but that a single incident of this nature did not come near to approaching the degree of serious misconduct that warrants

action by a regulator."… "Accordingly, the panel is not satisfied that [the claimant] is guilty of unacceptable professional conduct". Furthermore, "the panel did not consider his conduct to have been sufficiently serious that the public would consider that it may bring the profession into disrepute".

iv) On 11 December 2018, the TRA sent a letter to the claimant confirming that he had not been found "guilty of unacceptable professional conduct/conduct that may bring the profession into disrepute", that "no further action would be taken" and that the claimant's "ability to teach remains unaffected". The claimant relies on this letter and says its importance cannot be overstated.

6. There are four articles complained of:

i) An article published by the first defendant on the Mirror's website at 23:11 on 15 December 2018 and removed on 20 December 2018.

ii) An article published by the first defendant in the 16 December 2018 edition of the Sunday Mirror newspaper. It was published on page 18, below the fold, occupying most of the bottom half of the page with the headline in a large font.

iii) An article published by the second defendant on the Kent Live website at 07:43 on 18 December 2018.

iv) An updated version of the Kent Live article published by the second defendant at 13:04 on 20 December 2018 and available until 15:06 or thereabouts on 21 December 2018 ("the Updated Kent Live Article").

7. The text of the second article complained of was as follows:

Sunday Mirror Article: 16 December 2018
Headline: I saw teacher drag my son by scruff of his neck

EXCLUSIVE BY JOHN SIDDLE

A teacher grabbed a seven-year-old boy by the scruff of his neck – unaware that the lad's dad was standing at the classroom door.

Martin Gilham lost his temper because little Robbie Rayner and other pupils had come into class with mud on their shoes.

So he dragged tearful Robbie out – and frogmarched him straight into the arms of his dad. Gilham apologised but was sacked and found guilty of using "excessive and unnecessary force" at a tribunal.

Dad Rob Rayner, 38, said: "I had just dropped Robbie off at the classroom and there were other kids who had gone in with muddy shoes.

> "Robbie didn't have the tiniest bit of dirt on his shoes but Gilham went straight for him, despite him being the smallest kid in his class. He yelled something like, 'I will not have muddy feet in my classroom.
>
> "He grabbed Robbie by the scruff of his neck and dragged him about five metres to the door. Robbie's clothes were up behind his ears. He was crying his eyes out. He jumped straight into my arms."
>
> [Picture of Robbie and Rob with caption "SHOCKED Robbie and his dad Rob"]
>
> Mr Gilham was said to have gone "as white as a sheet" when he realised that Rob had witnessed the whole incident at Northdown Primary in Margate, Kent.
>
> Rod said: "He wasn't aware that I was still at the door to the classroom.
>
> "He looked shocked, let go and said. 'That was out of order, I'm sorry'. I was angry. I had to control myself.
>
> "If there weren't other kids around, I'd probably have dragged him out to the car park and stamped on his head. He had no right to put his hands on my son." Robbie, now nine, has moved to Palm Bay Primary after struggling with lessons after the incident in February last year.
>
> [Picture of the school with caption "ORDEAL Northdown School"]
>
> "He was really unsettled and he stopped wanting to be at school," said Mr Rayner, a retail worker who is married to Claire, 37, an NHS worker. "Nearly two years on, he's at a new school and starting to enjoy education again."
>
> Mr Gilham was found guilty of unacceptable professional conduct by the Teaching Regulation Agency in Coventry. His punishment will be announced later.
>
> Mr Rayner, who gave evidence at the hearing, said: "Gilham had a reputation for being strict and other parents had run-ins with him. He was quite abrupt."
>
> A school spokesman said: "Following allegations of misconduct relating to a teacher, an internal investigation was immediately instigated. We take all allegations of wrongdoing very seriously."
> scoops@sundaymirror.co.uk

8. The first and third articles complained of were variations of the same piece. The wording of each is set out in an appendix to this judgment, with the text of the Updated Kent Live Article marked up to show what was changed.

The December 2018 apologies

9. The claimant's wife contacted the defendants straightaway. She explained what was wrong with the articles and provided the defendants with the TRA's letter.

10. The first defendant accepted within ninety minutes that it had made an error in reporting a guilty finding in respect of unacceptable professional conduct:

i) The article was taken down from the Mirror's website the next day and it has not been re-published on that site since.

ii) An apology was published in the next edition of the Sunday Mirror newspaper on 23 December, at the bottom of page 2, and on the Mirror's website homepage at 18:55 the same day. The wording was sent to the claimant at 3pm on Friday 21 December, stating that it would be "in full and final settlement" of the complaint and making clear it was for publication in that Sunday's newspaper. There was no response and so the apologies were published. The text of both was materially the same:

"CORRECTION: MARTIN GILHAM. In last week's Sunday Mirror (16-12-18) "I saw teacher drag my son by scruff of his neck" we incorrectly reported Martin Gilham had been found guilty of unacceptable professional conduct by the Teaching Regulation Agency in Coventry following an incident at Northdown Primary in Margate, Kent. In fact the agency found Mr Gilham's conduct did not meet the threshold to constitute misconduct of a serious nature, nor did it fall significantly short of the standard expected of a teacher. We apologise for the error and are happy to clarify the outcome of the agency hearing."

iii) On 28 December 2018, the Claimant's Solicitors took issue with this wording, and invited proposals for a further, "full and proper apology". The main concerns raised by the Solicitors (then, and in April 2019), were that the apology (i) did not make clear that there was no question of the TRA imposing punishment on the claimant; and (ii) did not address all the inaccuracies in the article, eg the false claims about the effect of the claimant's conduct on the child. Complaint was also made about positioning, and that the apology had not been directed towards the claimant.

iv) In his witness statement, the claimant explains that he considers these apologies to have been inadequate and gives further examples of inaccuracies that he says were not addressed, namely (i) the suggestion he had used "excessive force" against the pupil; (ii) the implication that his dismissal and the findings of the TRA "were closely linked to one another"; and (iii) the attribution of the pupil's school move to the incident.

11. Things went less smoothly with the second defendant:

i) On 20 December the second defendant accepted that it had made a "serious error", and that what the claimant had done was not misconduct of a serious nature, nor did it fall significantly short of the standard expected of a teacher.

ii) The second defendant chose not to apologise and decided to amend the article. For reasons that are difficult to understand, the second defendant added further defamatory material, to the effect that the claimant might be banned from the classroom. This was incorrect, as the second defendant would have known from reading the TRA's letter.

iii) The claimant brought this further mistake to the website's attention, and the content was changed again on 21 December. The claimant has not sued over

the 21 December version of the article, which was taken down on 22 December following receipt of a letter from the claimant's solicitors, Carter-Ruck.

The Qualified Offer of Amends

12. All then went quiet for some months. On 3 April 2019, Carter-Ruck wrote to the defendants about its ATE insurance cover and the stepped premiums. Letters of claim followed on 9 April 2019.

13. The defendants made a qualified offer of amends on 13 May 2019, accompanied by an offer to take certain specific steps pursuant to the offer of amends, namely:

    i) to pay such compensation as may be agreed or determined to be payable;

    ii) to publish apologies in the Sunday Mirror and on the two websites;

    iii) to pay the claimant's reasonable legal costs excluding any additional liabilities (for reasons explained in the letter);

    iv) to provide an undertaking not to repeat that the claimant had been found guilty of unacceptable professional conduct; and

    v) to participate in a bilateral statement in open court.

14. The defendants pointed out that items (iv) and (v) went beyond what they were required to offer as part of this process. The defendants included proposed wording and said they were happy to discuss reasonable amendments. The defendants also apologised to the claimant: "we owe your client an apology as it is clear that, contrary to what we said, your client was not found guilty of unacceptable professional conduct by… the TRA. Please convey our apology to your client. We are, of course, happy to put that apology in a separate letter addressed to your client if he would like us to do that. Please let us know.".

15. The qualified offer of amends was accepted on 22 May 2019. The agreed meaning is that: "[the claimant] was, and had been found to be, guilty of unacceptable professional conduct by the Teaching Regulation Agency and would be the subject of punishment by them having used excessive and unnecessary force when he dragged a 7 year old boy, Robbie Rayner, by the scruff of his neck across his classroom which resulted in [the claimant's] dismissal with the incidents causing the child to struggle with lessons and become so unsettled that he stopped wanting to go to school."

16. The letter making the qualified offer of amends also put the claimant on notice that the defendants would be seeking to rely on certain matters in respect of damages: "although we were clearly wrong to say your client had been found guilty of unacceptable professional conduct by the TRA, and should pay your client compensation for that incorrect suggestion, it is important that any compensation is restricted to that incorrect suggestion and does not (and must not) compensate your client for the (true) facts of your client's behaviour towards the pupil which led to your client's dismissal from his job and the findings of fact by the TRA in relation to that incident".

17. There is a list of thirteen *Burstein particulars*, including the full terms of the TRA decision, the behaviour of the claimant towards the pupil and the findings made against him. The claimant accepts these are matters that can properly be taken into account. There is, however, a dispute over the admissibility of the fact that after the incident there was a disciplinary hearing leading to the claimant's dismissal without notice, and the fact that on appeal that decision was upheld.

The June 2019 apologies

18. The parties then sought to agree the wording of a first apology for Kent Live, and second apologies for the Sunday Mirror and its website. After initial negotiations, the defendants put forward some compromise proposals on 18 June 2019. In response, the claimant's solicitors explained that the proposed wording was "inadequate, and is effectively rubbing salt into our client's wound". Alternative wording was proposed, with Carter-Ruck stating that if this was not acceptable, the claimant would have to accept that the December apologies should be "considered to meet paragraphs 2(4)(a) and (b) of the Defamation Act 1996 for the purposes of the Offer to Make Amends". The words proposed by the defendants, and the claimant's amendments, were as follows:

> "Martin Gilham – An Apology
>
> In an article published on [date] we said that Martin Gilham had been found guilty of unacceptable professional conduct by the Teaching Regulation Agency (TRA) and that his punishment would be announced later ~~following an incident where he dragged a seven year old boy across his classroom which led to his dismissal~~. We are happy to clarify that ~~although the incident as described in our article happened resulting in Mr Gilham's dismissal,~~ in fact the TRA did not find him guilty of unacceptable professional conduct and imposed no punishment on him. We apologise to Mr Gilham for our error [and confirm that his ability to teach remains unaffected]." The extra words at the end of the apology related to the version to be published on Kent Live.

19. The fundamental point of disagreement between the parties was the extent to which the apology should refer to the incident. The defendants indicated that they were prepared to consider reporting what was said in the TRA letter, but that this needed to be put in context and not mislead readers about the TRA's findings, namely that the claimant's actions were inappropriate and the force used was unreasonable.

20. The defendants went ahead and published their version of the apology on 30 June 2019 on the Mirror's website, the Kent Live website and on page 18 of the Sunday Mirror. There was no response to publication from the claimant and things appear to have then gone quiet again until 7 November when the claimant's solicitors sent a letter about damages.

21. The claimant says he is aggrieved by the publication of the June apologies and can see no reason why the defendants needed to refer to his dismissal twice, or mention details of the original incident at all. His main complaint though is the republication by the newspaper of information that he says is damaging and untrue when it said that "the incident as described in our article happened" and that he had "dragged a seven year old boy across a classroom".

22. On 15 November or thereabouts, the claimant provided draft proceedings and his witness statement to the defendants. The defendants noted the claimant's unhappiness with the June apologies and offered to remove them from the websites, which it has since done.

Open discussions on damages

23. In May and June 2019 there were also discussions about damages. The parties have taken me to extensive open correspondence on this issue. This comprises repeated requests by the defendants for the claimant to set out clearly in 'without prejudice save as to costs' (WPSATC) correspondence the amounts he is seeking from each defendant, and the claimant's solicitors maintaining that this information had already been provided and criticising the defendants for not making an offer on damages that was capable of acceptance. What is expected of parties in offer of amends cases is well established, see for example ***Cleese v Clark*** **[2003] EWHC 137 (QB)** [19] – [24]. No doubt all will become clear when the WPSATC correspondence is disclosed on the question of costs.

24. Part 8 proceedings seeking the determination of the amount(s) to be paid by way of compensation were issued on 19 December 2019.

The two-stage test

25. Compensation under s.3(5) of the Defamation Act 1996 is to be determined on the same principles as damages in defamation proceedings, see s.3(5) of the 1996 Act.

26. When assessing the level of compensation, the usual approach is to take as the starting point the level of damages which would have been awarded without reference to the impact of the offer of amends, and then to discount as appropriate for it, ***KC v MGN Limited*** **[2012] EWCA Civ 1382** per Judge LCJ at [45].

27. The two-staged process has also been described as follows: "The first stage is to identify the figure I should award at the conclusion of a hypothetical trial in which the defendant had done nothing to aggravate the hurt to the claimant's feelings (e.g. by pleading justification or by insulting cross-examination) and nothing to mitigate (e.g. by the publication of an apology). At the second stage, I must consider to what extent, if at all, that figure should be discounted to give effect to any mitigating factors of which this Defendant is entitled to take advantage.", ***Turner v News Group Newspapers Limited & Another*** **[2005] EWHC 892 (QB)** per Eady J, at [45].

28. There is a difference between the parties about whether the December 2018 apologies should be considered at stage one or stage two. Either way, it is agreed that they merit a discount to the amount of compensation payable. The claimant says they fall within stage one, whereas the defendant's analysis places them within stage two. It seems to me that on the facts of this case they are best considered within stage one.

29. As identified in ***KC*** (supra), the purpose of the first stage is to identify what would likely be awarded had an offer of amends not been made. If the claimant had brought substantive proceedings for libel, the December 2018 apologies, and the other steps taken at that time, would be considered by the court when assessing damages. It is rare for two apologies to be published following a libel, and Eady J's reference in

Turner to excluding mitigation (such as an apology) appears to be directed at any apology made following an offer of amends, and not at the situation in this case. The focus of stage two is on the mitigation arising out of the fact that an offer of amends has been made, and the steps taken in fulfilment of such an offer. An apology published months beforehand does not fit easily with this.

30. This approach is consistent with that taken in respect of aggravation in ***Barron & Others v Collins*** **[2017] EWHC 162 (QB)** when it was said: "It would seem logical… to take any aggravation of harm into account at the step in the analysis to which it chronologically belongs. So, where the circumstances justify it, aggravation that has occurred prior to the offer of amends should be reflected in the stage one figure; later aggravation may lead to a reduction in the discount at stage two and could, in an extreme case, yield an increase in the stage one figure." per Warby J at [54].

Stage One – Legal Principles

31. The principles on which damages are awarded in defamation proceedings were referred to by Sir Thomas Bingham MR in ***John v MGN Limited*** **[1997] QB 586** at p607:

> ''The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of publication is also relevant; a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of damages to vindicate his reputation; but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place. It is well established that compensatory damages may and should compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross examines the plaintiff in a wounding or insulting way.'

32. The notional "ceiling" on libel awards is currently about £300,000. Awards at that level are reserved for the gravest of allegations, such as imputations of terrorism or murder, and each individual case must be placed in its proper position on the scale that leads up to this maximum, see ***Barron v Collins*** (supra) at [26].

33. In ***Barron & Another v Vines*** **[2016] EWHC 1226 (QB)** at [21], Warby J made some additional observations on damages:

> (1) "The initial measure of damages is the amount that would restore the claimant to the position he would have enjoyed had he not been defamed: *Steel and Morris v United Kingdom* (2004) 41 EHRR [37], [45].

(2) The existence and scale of any harm to reputation may be established by evidence or inferred. Often, the process is one of inference, but evidence that tends to show that as a matter of fact a person was shunned, avoided, or taunted will be relevant. So may evidence that a person was treated as well or better by others after the libel than before it.

(3) The impact of a libel on a person's reputation can be affected by:

a) Their role in society. The libel of Esther Rantzen was more damaging because she was a prominent child protection campaigner.

b) The extent to which the publisher(s) of the defamatory imputation are authoritative and credible. The person making the allegations may be someone apparently well-placed to know the facts, or they may appear to be an unreliable source.

c) The identities of the publishees. Publication of a libel to family, friends or work colleagues may be more harmful and hurtful than if it is circulated amongst strangers. On the other hand, those close to a claimant may have knowledge or viewpoints that make them less likely to believe what is alleged.

d) The propensity of defamatory statements to percolate through underground channels and contaminate hidden springs, a problem made worse by the internet and social networking sites, particularly for claimants in the public eye: *C v MGN Ltd* (reported with *Cairns v Modi* at *[2013] 1 WLR 1051*) [27].

(4) It is often said that damages may be aggravated if the defendant acts maliciously. The harm for which compensation would be due in that event is injury to feelings.

(5) A person who has been libelled is compensated only for injury to the reputation they actually had at the time of publication. If it is shown that the person already had a bad reputation in the relevant sector of their life, that will reduce the harm, and therefore moderate any damages. But it is not permissible to seek, in mitigation of damages, to prove specific acts of misconduct by the claimant, or rumours or reports to the effect that he has done the things alleged in the libel complained of: *Scott v Sampson* (1882) QBD 491, on which I will expand a little. Attempts to achieve this may aggravate damages, in line with factor (d) in Sir Thomas Bingham's list.

(6) Factors other than bad reputation that may moderate or mitigate damages, on some of which I will also elaborate below, include the following:

a) "Directly relevant background context" within the meaning of *Burstein v Times Newspapers Ltd* [2001] 1 WLR 579 and subsequent authorities. This may qualify the rules at (5) above.

b) Publications by others to the same effect as the libel complained of if (but only if) the claimants have sued over these in another defamation

claim, or if it is necessary to consider them in order to isolate the damage caused by the publication complained of.

c) An offer of amends pursuant to the Defamation Act 1996.

d) A reasoned judgment, though the impact of this will vary according to the facts and nature of the case.

(7) In arriving at a figure it is proper to have regard to (a) Jury awards approved by the Court of Appeal: Rantzen 694, John, 612; (b) the scale of damages awarded in personal injury actions: John, 615; (c) previous awards by a judge sitting without a jury: see John 608.

(8) Any award needs to be no more than is justified by the legitimate aim of protecting reputation, necessary in a democratic society in pursuit of that aim, and proportionate to that need: Rantzen v Mirror Group Newspapers (1986) Ltd [1994] QB 670. This limit is nowadays statutory, via the Human Rights Act 1998".

Stage Two – Legal Principles

34. Section 3(5) of the 1996 Act provides that in making its assessment: "The court shall take account of any steps taken in fulfilment of the offer and (so far as not agreed between the parties) of the suitability of the correction, the sufficiency of the apology and whether the manner of their publication was reasonable in the circumstances, and may reduce or increase the amount of compensation accordingly."

35. The purpose of the second stage is to consider how far the resort by the defendants to the statutory procedure has in fact served to mitigate the damage, ***Angel v Stainton & Another*** **[2006] EWHC 637 (QB)** per Eady J at [29]. As was pointed out by the Court of Appeal in ***Nail v News Group Newspapers Ltd*** **[2005] 1 All ER 1040** at [41]−[42]:

"Each case depends on its own facts and this will apply to the determination of compensation under section 3(5). That said, if an early unqualified offer to make amends is made and accepted and an agreed apology is published, as in the present cases, there is bound to be substantial mitigation. The defendant has capitulated at an early stage without pleading any defence, has offered to make and publish a suitable correction and apology (and has in fact done so in agreed terms in the present cases) and has offered to pay proper compensation and costs, these to be determined by the court if they are not agreed - see sections 2(4), 3(5) and 3(6). The Claimant knows that his reputation has been repaired to the full extent that is possible. He is vindicated. He is relieved from the anxiety and costs risk of contested proceedings. His feelings must of necessity be assuaged, although they may still remain bruised (and he is still entitled to say so, if that is so). He can point to the agreed apology to show the world that the defamation is accepted to have been untrue and unjustified. There may be cases in which some of these features are absent, or in which their impact may be slight. An example could be if the defendant had offered and published a correction and apology, which the claimant had not agreed and which the court found to be unsuitable and insufficient—see s.3(5), second sentence. There may also be aggravating features, although the use of the procedure would generally suggest

that there is unlikely to be significant aggravation after the making of the offer to make amends. 'A healthy discount'' may be a more colourful phrase than ''substantial mitigation'', but they mean the same thing. The adoption of the procedure will have what the judge referred to as a major deflationary effect upon the appropriate level of compensation because adopting the procedure is bound to result in substantial mitigation".

36. In ***Barron v Collins*** (supra), Warby J identified some of the factors that bear on the level of the discount [29] – [33]:

> (1) Whether the offer is prompt or delayed. If the latter, the discount may be reduced: see *Angel v Stainton* [2006] EWHC 637 (QB) and *Undre v The London Borough of Harrow* [2016] EWHC 2761 (QB), where the offer took 3 months and the discount was reduced to 25%.
>
> (2) Whether any correction or apology that is published is prompt and fulsome. An apology that is published late or is off-hand or only grudging is likely to lead to a reduced discount: Campbell-James v Guardian Media Group [2005] EWHC 893 (QB) [2005] EMLR 24, Veliu v Mazrekaj [2006] EWHC 1710 (QB) [2007] 1 WLR 495.
>
> (3) Whether the defendant has acted in a way inconsistent with the conciliatory stance which an offer represents. If the defendant has advanced an ill-founded defence in correspondence, or indicated that the claimant's character may be attacked, the mitigating effect of the offer may be reduced: see for instance, Campbell-James.
>
> (4) Whether a Defendant's conduct has increased the overall hurt to the Claimant's feelings. For instance, correspondence may increase hurt to feelings by treating the Claimant dismissively, or by expressing a grudging attitude: Angel v Stainton [2006] EWHC 1710 (QB) [2017] 1 WLR 495 [31], [33], Veliu [32]. Such conduct may at least theoretically make it appropriate to allow no discount at all: Turner v News Group Newspapers Ltd [2006] EWHC 892 (QB) [46] (Eady J)."

One or two awards?

37. The defendants ask the court to make a single award in respect of all the publications, worried that otherwise there might be double recovery. This is the reverse of the position taken in correspondence where it appears that the defendants pushed for the claimant to split the damages as between the two publishers. The defendants have confirmed they would be prepared to be jointly and severally liable for any award.

38. The claimant says that there need to be at least two awards, one against each defendant. Otherwise, it is said that this could lead to problems with enforcement, or if one defendant appeals and the other does not. It is also said that the cases against the two defendants are different, including in terms of readership, only one defendant publishing the December apologies and the Kent Live website suggesting that there might be a classroom ban.

39. In an action in respect of two or more libels, the court has a discretion to compensate the claimant by a single award of damages: ***Lisle-Mainwaring v Associated Newspapers*** **[2017] EWHC 543 (QB)**. In that case, whilst there were two defendants, the court was asked to treat them as one.

40. The reality in this case is that the articles were written by the same person, and certainly the first three articles were materially the same. They were published within days of each other. The offer of amends was made in respect of all the publications, and the negotiations appear to have been conducted on a global basis. The June apologies were also identical, save for the additional words at the end for the one published by Kent Live. None of the parties have suggested that they need an award to be split for costs purposes.

41. I think it would be artificial to seek to separate out the awards, add an unnecessary level of complexity to the damages calculation and introduce a real risk of double-counting. Given the confirmation from the defendants that they will accept joint and several liability, there does not appear to be any compelling reason why split awards are needed, or desirable.

Stage 1

42. The claimant's evidence explains how he was affected badly by his suspension from teaching, and the disciplinary process. He describes his relief when he received the TRA's letter and the formal confirmation that he could continue to earn a livelihood teaching, which is what he is passionate about. Until this point, he had not felt able to return to a teaching job and believed that he would not get a job whilst he was under investigation. This is the position he was in prior to the publication of the articles.

43. The claimant says he was devastated and very distressed to see the defendants' reports on the outcome of the TRA hearing. He was particularly concerned by the suggestion that the TRA decision had affected his ability to teach, and that the articles suggested that he had been sacked as a result of the regulator's decision. His statement refers to the difficulties he had experienced trying to get matters corrected, Kent Live's decision to publish further defamatory material and the need to resort to solicitors to get matters sorted out. The claimant's evidence is that since the articles he has suffered increased stress and anxiety. He now has low self-esteem and does not feel able to socialise, embarrassed by what has been published. He says that not a day goes by that he does not think of the articles and the effect they have now had on how he is perceived in the community. He describes the adverse impact that the publications have had on his home life and his family relationships.

44. The claimant says that the articles have also damaged his reputation as a junior rugby coach and referee. He feels he can no longer confidently offer his help in the local club and that since the articles were published he has received fewer invitations to participate and contribute to the club's events. He feels ostracised in his local community, which is also his hometown where he was born and raised.

45. The allegations published went to the core of the claimant's professional reputation. It is relevant here that he is a teacher, and so any suggestion that he might have been violent towards a child, or left them so unsettled that they did not want to go to

school, is particularly damaging. So too is the suggestion that he is facing the imposition of a penalty from his professional regulator.

46. These allegations were made in a respected national newspaper and a mainstream local news website. The articles purported to report a professional regulator, adding credibility to what was being reported. This was not simply an aggrieved parent making allegations to the press.

47. The Sunday Mirror newspaper sold 423,783 copies on 16 December 2018 and it is generally accepted that readership will be higher than this. The Mirror online article received 18,925 unique user views with the average time each user spent on the article being 22 seconds. Of course, the number of readers might be lower than this if someone has accessed the article using more than one device, although equally it might be higher if more than one person has seen the article on the same device, for example on a shared tablet.

48. The two Kent Live articles combined received 8,441 unique user views. Whilst a relatively modest figure, these readers are likely to be local to the area in which the claimant lives, and where his professional and personal reputation matters most. There is evidence that the second defendant used Facebook to promote articles, and it seems likely that some of the article views will have been generated by the second defendant drawing readers attention in this way to the news story on the website.

49. I accept that there might have been a degree of overlap as between the readership of the print and online versions of the Mirror, and between the two websites, but in the absence of evidence it seems unlikely this was substantial.

50. In respect of the Mirror articles, credit must be given for the December apologies which were published quickly and it seems in good faith. Whilst the wording was not agreed, the claimant was provided with a draft and invited to comment. It would have been better for the claimant to have been given longer in which to consider the wording, but I can understand why the first defendant would have wanted to avoid delay and meet the print deadline for what is a weekly publication.

51. The December apology did not come across as grudging or insincere. It corrected perhaps the most serious error, which was the suggestion that the claimant had been found guilty of professional misconduct. It would have been implicit from this that no sanction would be imposed. I note that the apology did not seek to correct some of the details in the article about the incident, but this was less straightforward given the factual finding of the TRA. There was also an apology: whilst the claimant might have wanted this directed to him personally, the ordinary reader would have got the gist that the newspaper was saying sorry.

52. In respect of the claims against the first defendant, it seems to me that substantial credit needs to be given for the publication of the December apologies, which would have gone a long way to addressing aspects of the harm caused by the publication of the Mirror articles.

53. Whilst acknowledging that each case turns on its own facts, I have been provided with comparators by both sides. I am grateful to Mr Dean for providing adjusted figures to reflect inflation, following the approach taken by Warby J in ***Barron v Vines*** (supra).

54. Mr Dean has relied on the following:

a. ***John v MGN Limited*** (supra) involved a single article in the Sunday Mirror, without online publication. The allegation was that the claimant was hooked on a bizarre new diet which doctors had warned could kill him, and suggesting he had bulimia. It was said to be not trivial, false, offensive and distressing but it was noted that it did not attack his personal integrity or damage his reputation as an artist. On appeal a sum of £25,000 was substituted (£48,400 today).

b. ***Nail v News Group Newspapers*** (supra) involved publication in the News of the World. The allegations were characterised by counsel for the claimant as alleging that the claimant had "progressed from being a dog meat eating yob, who engaged in grubby and obscene sexual behaviour, to heartless prima donna" [13]. The stage one figure was £45,000 (£69,611 today).

c. ***Lisle-Mainwaring v Associated Newspapers Limited*** (supra) involved two articles published by Mail Online, one of which also appeared in print. The 'open' allegations went to the claimant's personal honour and integrity and impugned the central characteristics of her personality. Some of the allegations were said to be hurtful and unpleasant and the court accepted they had caused substantial personal distress. They were not the gravest of allegations. The starting point fixed by the Judge was £90,000 (£95,400 today).

55. Ms Michalos QC relies on

d. ***Angel v Stainton*** (supra), where the respected director of an aircraft and defence equipment company was said by a business rival to have been convicted and imprisoned for illegal arms trading. The allegation was made in a letter with limited circulation but sent to people able to do harm to the claimant and his business. The allegations caused great anxiety, frustration and personal distress. There was little evidence of substantial injury to reputation, and damages were awarded primarily for the impact on feelings and distress. £40,000 was awarded (£58,000 today).

e. ***Cairns v Modi*** **[2012] EWHC 756 (QB)** involved a tweet with an immediate audience of 65 people republished to an estimated 1,000 additional readers. The allegation of corruption (match fixing) was serious and widely re-reported. General damages were awarded of £75,000 (£89,200 today).

f. ***Turley v Unite the Union*** **[2019] EWHC 3547 (QB),** £75,000 was awarded to the claimant, an MP, for the allegation that there were reasonable grounds to suspect that she had dishonestly and fraudulently joined a trade union in order to vote in its leadership election. The second defendant had continued to publish the article without apology. The award included aggravated damages.

g. ***Miller v Associated Newspapers Limited*** **[2012] EWHC 3721 (QB)**, in which £65,000 (£77,000 today) was awarded for a front page Daily Mail story alleging that there were reasonable grounds to suspect that the IT consultant claimant was a willing beneficiary of improper conduct and cronyism because of his friendship with the then Deputy Commissioner of the Metropolitan police over the award of multi-million pound publicly funded contracts. The award included aggravation.

56. The claimant says the ***Lisle-Mainwaring*** award is about the right starting point for publication in one paper alone. Off the cuff, it was suggested by Mr Dean that the stage one figure should be around £80-100,000 for the four articles together, before any *Burstein* reduction.

57. The defendants suggest that the relevant bracket is £50,000 to £60,000, although their calculations are based on the December apologies falling within stage two, whereas I have taken them into account at stage one. The defendants suggest the closest comparator is ***Angel***, in which the allegations went to the claimant's professionalism. The defendants say that whilst the allegations in that case were much more serious, the publication was more limited. They say the other examples relied upon contain allegations much more serious than those made against the claimant. They say this case is only of moderate gravity, that the material was hurtful and unpleasant but was not remotely comparable with allegations of terrorism or fraud or criminality. They also rely on the fact that the claimant's evidence identifies that some of the distress and hurt he has suffered pre-dates the articles and arises out of the incident and his dismissal, although clearly he is not entitled to recover damages in respect of such matters.

58. I can accept that the publication of the articles would have been hurtful and humiliating for the claimant given that much of his life was focussed on working with children, and the events related to the local community in which he lives. I can also accept that it would have been distressing, placing on hold his plans to resume his career. This distress must have been heightened on the publication of the Updating Kent Live article.

59. My starting point is to consider the agreed meaning of the articles complained of, which the defendants have agreed to compensate the claimant for. This is not just a case where the claimant has suffered distress and hurt feelings. Whilst the allegations were not at the most serious end of the scale, they would have been highly damaging to the claimant's professional reputation, not just as a teacher but in respect of his work in the community as a children's rugby coach. In addition to the publication in a national newspaper (and its website), the article was published locally to people who know him, which I consider to be significant. Also relevant here is the initial response of Kent Live, causing further harm to the claimant's reputation and additional hurt and distress. Taking this into account, I consider an award of £85,000 to be appropriate. From this I need to deduct something to give credit to the first defendant's mitigation through the publication of the timely December apologies. I consider around 15% to be appropriate, bringing damages to £72,000.

Burstein

60. In ***Abu v MGN Limited*** **[2003] 1 WLR 2201**, Eady J explained that with an offer of amends case, "the principles to be applied, whether in the course of libel proceedings or without action having been brought, must be taken as intended to be precisely the same as on any assessment of damages in such proceedings. Those principles take account of such issues as mitigation, aggravation and causation of loss". Later, in his judgment, Eady J noted: "What the defendant cannot do, of course, is to allege directly or indirectly that, in any defamatory meaning to which the offer relates, the words complained of were actually true. That would be impermissible as "justification by the back door".

61. *Burstein particulars* are directly relevant background context which go to the claimant's reputation in the relevant sector of his or her life. If evidence is to qualify under the principle spelt out in *Burstein's* case, it has to be evidence which is so clearly relevant to the subject matter of the libel or to the claimant's reputation or sensitivity in that part of his life that there would be a real risk of the jury assessing damages on a false basis if they were kept in ignorance of the facts to which the evidence relates, ***Turner v News Group Newspapers*** **[2006] EWCA Civ 540** per Keene LJ at [56].

62. There is a dispute about whether the bare fact of the claimant's dismissal from his job (and his subsequent unsuccessful appeal) is admissible on this basis. The defendants clarified during the hearing that are not suggesting that the dismissal was justified, or that the fact of dismissal is, in itself, evidence of the truth of any underlying allegation. They say that the fact that someone has been sacked from a job is, in itself, relevant background context whether or not their dismissal was warranted and that it would be unreal to say that this is not relevant to harm and his reputation.

63. The claimant says this is hearsay opinion evidence about his conduct, and is not admissible as evidence of truth. The simple fact that he was dismissed does not take matters anywhere.

64. Certainly, the fact that the claimant lost his job is a key piece of information within the articles complained of, and the claimant himself refers to it in his witness statement. It relates to the same sector of the claimant's life, namely his profession as a teacher. I consider that the bare fact that the claimant has been dismissed from a job is admissible, subject to the qualifications I have outlined.

65. The parties accept that the facts set out in the TRA decision are correct, and that the findings reached are admissible and relevant.

66. It is agreed that the compensatory award should be reduced to take into account relevant background information. The defendants say this should be a 50% reduction, so that the claimant is only compensated for the incremental reputational damage caused by the untrue allegations when set against the true position, namely that he had been sacked and found by the TRA to have behaved inappropriately and used unreasonable force in his contact with the pupil. The claimant suggests a discount of closer to 10% is more appropriate.

67. I accept that what happened on 3 February is relevant to the assessment of damages, and should reduce the amount of compensation payable. Whilst the claimant was not found to have breached the applicable regulatory standards, the fact remains that he did behave in a way that the TRA considered to be inappropriate. Whilst recognising that the incident should not have happened, it is important to go back to the agreed meaning of the articles that were published. The publications turned a momentary lapse of judgment considered minor by the regulator into a serious, career-threatening incident that resulted in a child being caused emotional and educational harm. Looked at in this way, whilst the *Burstein* material is clearly relevant, it seems to me that it does not justify more than a 15% reduction to the stage one figure, bringing it to £61,200.

Stage Two - Discount

68. The claimant says that the defendant is not entitled to any discount. It is said that the defendant was aware that the claimant did not want the June apology to be published and that it would be worse than nothing, and that the apology in effect repeated parts of the libel which the defendants accept were untrue. It is said that the apology had an aggravating effect, rather than a mitigating one.

69. The defendants say the appropriate discount is 50% as there has been serious delay on the part of the claimant in pursuing his claim for which no proper explanation has been offered. It is said it would be contrary to Article 10 to expect the defendants to publish a correction and apology that glosses over what did, in fact, happen. I remind myself that the defendants' proposed stage two figure includes mitigation arising out of the December apologies, which I have already taken into account at stage one.

70. There are three main points in the defendants' favour.

71. Firstly, there is the fact that they made the offer of amends promptly, not long after the letters of claim were sent. This will have given the claimant the comfort of knowing that the defendants were not going to seek to justify what they had said (which he would have known as far back as December).

72. Secondly, there is the fullness of the offer of amends. Whilst qualified, the agreed meaning went further than that proposed by the claimant and included an offer to make amends in respect of additional allegations. Furthermore, the defendants did not just send a letter complying with the statutory requirements. They included a direct apology to the claimant and, in addition to the required remedies, offered a bilateral statement in open court and undertakings.

73. Thirdly, the open correspondence also shows the defendants doing what they could to try and resolve all the issues in dispute, with the momentum coming very much from them rather than the claimant to get this all sorted out and to avoid the need for a contested court hearing.

74. The main point against the defendants arises out of the June apologies.

75. I acknowledge that they were published reasonably soon after the offer of amends had been accepted and that attempts were made to try and agree a compromise. Without sight of the WPSATC correspondence, it is difficult to get a complete picture, and the

extent to which all parties sought to work together. The apology in the newspaper was on the same page as the article itself, although clearly it would have been much smaller. I assume that the online apologies were placed on the homepage initially, and would also have been searchable. We know that when the defendants did a Google search for the claimant's name, the apologies were very prominent within the results.

76. The main problem is that what was published was grudging, unsuitable and insufficient in terms of providing adequate vindication, restoring the claimant's reputation and reducing the distress and upset caused to him. For me, there are four main difficulties:

    a. The apologies gave the impression that much of what was originally published was true, by including the words "the incident as described in our article happened". Whilst of course there was an incident, the articles went much further than what is accepted by the TRA happened, for example with it being said that the boy was tearful and crying his eyes out. The defendants have not sought to assert that such facts are true.

    b. The apologies repeated the allegation that the claimant "dragged a seven year old boy across his classroom", although this was part of the defamatory meaning for which the defendants had offered to make amends. It is not supported by the TRA decision. It is also not something relied upon within the *Burstein particulars*, no doubt because this would be at attempt to prove truth by the backdoor.

    c. The defendants have not corrected and apologised for the allegation that the boy "had become so unsettled that he stopped wanting to go to school". This was part of the meaning included within in the offer of amends

    d. The defendants had been told that the claimant would rather not have anything published.

77. Clearly, the defendants should not be expected to publish something that is misleading. Whilst the TRA decided that the incident did not cross the threshold of seriousness to justify a regulatory finding of unacceptable professional conduct, the TRA did make factual findings and certainly did not say that what happened was appropriate. I can see that it might be felt necessary to refer in some way to the background to avoid giving a misleading impression, but this needs to be done in a way that is consistent with the purpose of the correction and apology, which is to mitigate harm. It is relevant here that in December, the first defendant published wording that managed to correct matters without misleading its audience or referring to the detail of the story. Given this, it is difficult to see why this has been such an issue.

78. The claimant says that the closest comparable case is ***Barron v Collins*** where the judge made a "generous" "residual discount" of 10% in a case where the offer had been made late and no steps taken to implement it. That is not the position here. It needs to be remembered that the apology is not the only mitigating feature likely to be derived from the use of the offer of amends procedure. The claimant has had the benefit from the outset of knowing that the defendants are prepared to pay proper

compensation and costs, and to subject these to judicial determination if they are not agreed. The claimant has also known from the outset that the defendants were not seeking to defend what was published as being true. Taking this into account, I am going to apply a discount of approximately 20%, bringing damages to £49,000. This stage two discount would have been higher if the first defendant's December apologies had not already been taken into account at stage one.

79. I have set out the calculation of damages in a linear format, step by step, which is also the approach taken by the parties in submissions. I am conscious that this could lead to a distortion in the proper amount that should be awarded. The award of libel damages is not a scientific exercise, and so it is important that I step back and check that the sum I propose to award is proportionate and appropriate, taking into account the evidence and the respective Article 8 and Article 10 rights of the parties. I am satisfied that it is, and that it is also consistent with the wider comparative framework identified.

Costs

80. I am told by Mr Dean that this is a case in which the conditional fee agreement was entered into before the change in the recoverability of success fees within defamation proceedings. He has explained that the current position on the authorities is that the 10% uplift in damages introduced by ***Simmons v Castle*** **[2012] EWCA Civ 1039** is provided "in lieu of the opportunity to recover a success fee". It was said that if a party has a CFA which is of a type which allows them to claim a success fee then they are not entitled to the additional 10 per cent on the damages (the penny). (see ***Gulati v MGN*** **[2016] FSR 12** at [163] – [166]).

81. The defendants have indicated that at any costs assessment they will be arguing that a success fee should not be recoverable in this case because it would be contrary to Article 10. The claimant's concern is that if this argument is accepted by a costs judge, and the 10% damages uplift has not been applied, then that would unfairly deprive the claimant of compensation.

82. I am not asked to reach any decision on this point. It does, however, seem to be answered by ***Gulati***: in this case, the claimant has the *opportunity* to recover a success fee, and so it appears to follow that they are not entitled to a 10% uplift. The claimant's costs must be assessed in the usual way, and the costs judge will take a decision on whether to allow the success fee to be recovered, or not. If he or she decides not, I have not been shown any authority to suggest that this would entitle the claimant to an uplift.

APPENDIX

Mirror Online Article: 15 December 2018

Teacher grabs boy, 7, by scruff of neck while dad watched because he had muddy feet

Martin Gilham lost his temper because little Robbie Rayner and other pupils had come into class with mud on their shoes

By John Siddle 23:11, 15 Dec 2018

[Picture captioned "Robbie with father Rob"]

A teacher grabbed a seven-year-old boy by the scruff of his neck – unaware that the lad's dad was standing at the classroom door.

Martin Gilham lost his temper because little Robbie Rayner and other pupils had come into class with mud on their shoes.

So he dragged tearful Robbie out – and frogmarched him straight into the arms of his dad. Gilham apologised but was sacked and found guilty of using "excessive and unnecessary force" at a tribunal.
Dad Rob Rayner, 38, said: "I had just dropped Robbie off at the classroom and there were other kids who had gone in with muddy shoes.

"Robbie didn't have the tiniest bit of dirt on his shoes but Gilham went straight for him, despite him being the smallest kid in his class. He yelled something like, 'I will not have muddy feet in my classroom'.

"He grabbed Robbie by the scruff of his neck and dragged him about five metres to the door. Robbie's clothes were up behind his ears. He was crying his eyes out. He jumped straight into my arms." [Picture of school]

Mr Gilham was said to have gone "as white as a sheet" when he realised that Rob had witnessed the whole incident at Northdown Primary in Margate, Kent.

Rod said: "He wasn't aware that I was still at the door to the classroom.

"He looked shocked, let go and said, 'That was out of order, I'm sorry'. I was angry. I had to control myself.
"If there weren't other kids around, I'd probably have dragged him out to the car park and stamped on his head. He had no right to put his hands on my son." Robbie, now nine, has moved to Palm Bay Primary after struggling with lessons after the incident in February last year.

"He was really unsettled and he stopped wanting to be at school," said Mr Rayner, a retail worker who is married to Claire, 37, an NHS worker. "Nearly two years on, he's at a new school and starting to enjoy education again."

Mr Gilham was found guilty of unacceptable professional conduct by the Teaching Regulation Agency in Coventry. His punishment will be announced later.

Mr Rayner, who gave evidence at the hearing, said: "Gilham had a reputation for being strict and other parents had run-ins with him. He was quite abrupt."

A school spokesman said: "Following allegations of misconduct relating to a teacher, an internal investigation was immediately instigated. We take all allegations of wrongdoing very seriously."

Original Kent Live Article: 18 December 2018

Margate teacher grabbed a boy by the scruff of the neck unaware his dad saw everything

"He looked shocked, let go and said, 'That was out of order, I'm sorry'

By John Siddle 07:43, 18 Dec 2018

A teacher who lost his temper because his pupils had traipsed mud into the classroom grabbed a boy by the scruff of his neck.

Martin Gilham had become angry at Northdown Primary School in Margate, unaware that the youngster's father was standing at the classroom door.

The Mirror [hyperlink] reported that he had dragged a tearful Robbie Rayner out and frogmarched him straight into the arms of his dad who as dropping him off for the day.

Gilham apologised but was sacked and found guilty of using "excessive and unnecessary force" at a tribunal.

Dad Rob Rayner, 38, said: "I had just dropped Robbie off at the classroom and there were other kids who had gone in with muddy shoes.

"Robbie didn't have the tiniest bit of dirt on his shoes but Gilham went straight for him, despite him being the smallest kid in his class. He yelled something like, 'I will not have muddy feet in my classroom'.

"He grabbed Robbie by the scruff of his neck and dragged him about five metres to the door. Robbie's clothes were up behind his ears. He was crying his eyes out. He jumped straight into my arms."

'He stopped wanting to be at school' [picture of school]

Mr Gilham was said to have gone "as white as a sheet" when he realised that Rob had witnessed the whole incident at Northdown Primary in Margate, Kent.

Rob said: "He wasn't aware that I was still at the door to the classroom.

"He looked shocked, let go and said. 'That was out of order, I'm sorry'. I was angry. I had to control myself.

"If there weren't other kids around, I'd probably have dragged him out to the car park and stamped on his head. He had no right to put his hands on my son." Robbie, now nine, has moved to Palm Bay Primary after struggling with lessons after the incident in February last year.

"He was really unsettled and he stopped wanting to be at school," said Mr Rayner, a retail worker who is married to Claire, 37, an NHS worker. "Nearly two years on, he's at a new school and starting to enjoy education again."

Mr Gilham was found guilty of unacceptable professional conduct by the Teaching Regulation Agency in Coventry.

His punishment will be announced later.

Mr Rayner, who gave evidence at the hearing, said: "Gilham had a reputation for being strict and other parents had run-ins with him. He was quite abrupt."

A school spokesman said: "Following allegations of misconduct relating to a teacher, an internal investigation was immediately instigated.

"We take all allegations of wrongdoing very seriously."

Updated Kent Live Article: 20 December 2018

Margate teacher grabbed a boy by the scruff of the neck unaware his dad saw everything

"He looked shocked, let go and said, 'That was out of order, I'm sorry'

By John Siddle 07:43, 18 Dec 2018
UPDATED 13:04 20 Dec 2018

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Martin Gilham had become angry at Northdown Primary School in Margate, unaware that the youngster's father was standing at the classroom door.

The Mirror reported that he had dragged a tearful Robbie Rayner out and frogmarched him straight into the arms of his dad who as dropping him off for the day.

Gilham apologised but was sacked and his conduct found to have been misjudged – however it did not constitute misconduct of a serious nature. ~~found guilty of using "excessive and unnecessary force" at a tribunal~~.

~~Dad Rob Rayner, 38, said: "I had just dropped Robbie off at the classroom and there were other kids who had gone in with muddy shoes.~~

~~"Robbie didn't have the tiniest bit of dirt on his shoes but Gilham went straight for him, despite him being the smallest kid in his class. He yelled something like, 'I will not have muddy feet in my classroom'.~~

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~~'He stopped wanting to be at school' [picture of school]~~

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Mr Gilham was found guilty of unacceptable professional conduct by the Teaching Regulation Agency in Coventry.

His punishment will be announced at a later date but sanctions could include a ban from all classrooms.

~~Mr Rayner, who gave evidence at the hearing, said: "Gilham had a reputation for being strict and other parents had run-ins with him. He was quite abrupt."~~

~~A school spokesman said: "Following allegations of misconduct relating to a teacher, an internal investigation was immediately instigated.~~

~~"We take all allegations of wrongdoing very seriously."~~