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Judgment: approved by the Court for handing down | *Delivered:* **9/8/2016**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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ROBERT JAMES GORDON COULTER

Plaintiff:

-and-

SUNDAY NEWSPAPERS LIMITED

Defendant:

_____

STEPHENS J

Introduction

[1] The plaintiff, Robert James Gordon Coulter, brings this action against the defendant, Sunday Newspapers Limited, alleging that an article which it published on Sunday 21 December 2014 in the "Sunday World" entitled "Wage-ing War" was defamatory in that it meant that the plaintiff was "a mean scrooge-like figure" and that he callously discharged the people employed in the Kilmorey Arms Hotel, leaving them without pay just before Christmas. That by the word "Scrooge" the defendant meant that the plaintiff had money but out of meanness he was not prepared to spend it in order save the jobs of his employees preferring instead to see them out of work and without pay in the weeks before Christmas. The defendant denies that the publication was defamatory of the plaintiff asserting that to refer to a person as "Scrooge" was a common epithet that was used so often in journalism that it did not have any defamatory meaning in the context of the article read as a whole. Alternatively if it did have a defamatory meaning that the article as a whole meant "that there were *grounds to investigate* or *reason to believe* that the plaintiff lacked "Christmas spirit" or displayed a certain meanness of spirit, having regard to the time of the year and inability to properly communicate with staff about their loss of wages and the closure of the hotel." The defendant pleaded justification in relation to that lesser meaning and in the alternative relied on a *Reynolds* defence.

[2] Mr Michael Lavery QC and Michael Lavery appeared on behalf of the plaintiff. Mr Lockhart QC appeared on behalf of the defendant.

The Article

[3] The article was published on page 24 of the Sunday World. It contains headings which are either in capitals and bold type or in bold type, photographs, a caption to the photographs and the narrative part of the article which has sub headings in larger bold type and parts in italics the use of which is not restricted to indicate a quotation. In this part of the judgment I summarise the article though the full text is also a part of this judgment being contained in the schedule.

[4] The heading of the article in capitals and in bold type was "**WAGE-ING WAR**" with a second heading in bold type and underlined "**Sacked staff left with no pay just before Christmas**." A large photograph of the plaintiff was published beside the article together with underneath it a smaller photograph of the hotel. The caption beside these photographs was "REGRET: Kilmorey Arms Hotel Owner Gordon Coulter". In an oval shape in the centre of the article was the notice which had been placed on the front door stating that the hotel was closed until further notice.

[5] The article commences with a paragraph in bold type stating

> **"Kilkeel Hotel owner Gordon Coulter has been branded a Scrooge for putting his staff on the street a week before Christmas."**

it continues:

> "His former workers at the Kilmorey Arms Hotel got a brief call from a receptionist last Tuesday to say that business has gone into administration."

The article went on to state:

> "But no one could tell the 22 full and part-time workers if they would get wages for the previous four weeks which should have been paid on Wednesday.
>
> And they're not the only people angry about the hotel's sudden closure.
>
> *Many of the Christmas meal bookings made by the local community had to be paid in advance, but those customers have been left high and dry too.*

> One distraught staff member who had been there for nearly a decade said he and other colleagues had called to Mr Coulter's home looking for answers, but no one there would speak to them. The hotel is co-owned by Mr Coulter, local businessman Wesley Newell and a third partner.
>
> "As I was arriving at his house one of the cleaners from the hotel was coming away in tears," says the former employee.
>
> "Everyone in Kilkeel is angry, calling him a Scrooge and the name does fit perfectly.
>
> An awful lot of people are unhappy because we had a lot of Christmas bookings which were paid in advance, so people haven't just lost their money, they can't get anywhere else booked.""

[6] In the next section of the article headed "Asked" it is stated that "the staff don't know what's going on" and after a passage in which it is stated that a member of staff got a phone call from a receptionist who said "that's it, it's all over" it was asked what she meant, to be told that it was that the hotel was closing and our jobs are gone. The final part of the article is headed "Contacted." It refers to the plaintiff as the Vice President of Kilkeel Chamber of Commerce and then states that an angry customer who contacted the Sunday World had paid £160 for a Christmas dinner and posed the question "Did the owners know then the company was going into administration and take my money anyway?" The article then states "*Gordon Coulter said: "It is with the deepest of regret that we find ourselves having to appoint administrators and cease trading. It is particularly hard in the week before Christmas for our staff and their families and we are devastated it has come to this."*

The pleaded meanings

[7] The plaintiff alleges that in their natural and ordinary meaning the words used in the article meant (a) that the plaintiff was a mean scrooge-like figure; (b) that he was callous and indifferent to the people employed in the Kilmorey Arms Hotel; (c) that he was greedy; (d) that he was mercenary; (e) that he callously discharged staff leaving them without pay just before Christmas; (f) that he wantonly caused financial difficulties for the staff; (g) that he caused anxiety and worry to the staff by unreasonably refusing to give them information.

[8] As I have indicated the defendant denies that the article has any defamatory meaning though Mr Lockhart accepted that this was not the defendant's strongest point and that the best way to put it was that it was not necessarily defamatory. The defendant in its final amended defence, served after closing submissions, alleged

that insofar as the words were understood to bear a lesser meaning they were true in substance and in fact. The lesser meaning was "that there were *grounds to investigate* or *reason to believe* that the plaintiff lacked 'Christmas spirit' or displayed a certain meanness of spirit, having regard to the time of year and inability to properly communicate with staff about their loss of wages and the closure of the hotel."

Legal principles as to the approach to meanings

[9] I am required to determine the single meaning of the article, see *Slim v. Daily Telegraph* [1968] 2 QB 157 per Diplock LJ at 173D/E. In making that determination and as a judge sitting alone without a jury I am required not to subject the publication to over-elaborate analysis which a lawyer might undertake, but there is the dilemma that I am expected to give reasons which inevitably involves an analysis. I will therefore first record the overall impression the article made on me when considering what impact it would have had on the hypothetical ordinary reasonable reader reading the article once in December 2014. Sir Thomas Bingham MR said in *Skuse v. Granada Television Limited* [1996] EMLR 278 at 289 that this was the approach of the Court of Appeal in that case:

> "Since we base our decision more on the impression which the programme made on us than on minute textual analysis of the transcript of the programme, there is limited value in analysing our reasons for differing from the Judge …"

After recording the overall impression which the article made on me I will then set out my reasons but this does not detract from the overall test being one of impression rather than a minute textual analysis. I adopt and apply what Gray J stated in *Charman v. Orion Publishing Co. Ltd* [2005] EWHC 2187 as follows:

> "It appears to me to be particularly important where, as here, a judge is providing written reasons for his conclusion as to the meaning to be attributed to the words sued on, that he should not fall into the trap of conducting an over-elaborate analysis of the various passages relied on by the respective protagonists. The parties are entitled to a reasoned judgment but that does not mean that the court should overlook the fact that it is ultimately a question of the meaning which would be put on the words of the book by the ordinary reasonable reader. Such a hypothetical reader is assumed not to be a lawyer."

[10] In determining meaning I am not limited to the pleaded meanings of the parties but even if, in essence, I agree with the pleaded meaning of one of the parties,

if I consider it appropriate to do so, I may find different words to express that meaning.

[11] I seek to apply the approach to the question of meaning set out by Sir Thomas Bingham MR in *Skuse v. Granada Television Limited* [1996] EMLR 278 at 285 that

> "The court should give to the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary reasonable viewer watching the programme once in 1985. The hypothetical reasonable reader … is not naïve but he is not unduly suspicious. He can read between the lines. He can read an implication more readily than a lawyer, and may indulge in a certain amount of loose thinking. But he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. (per Neill LJ, *Hartt v. Newspaper Publishing PLC*, unreported, 26 October 1989 …) While limiting its attention to what the defendant has actually said or written, the court should be cautious of an over-elaborate analysis of the material in issue. … The court should not be too liberal in its approach. We were reminded of Lord Devlin's speech in *Lewis v. Daily Telegraph Ltd* [1964] AC 234 at 277:
>
> > 'My Lords, the natural and ordinary meaning of words ought in theory to be the same for the lawyer as for the layman, because the lawyer's first rule of construction is that words are to be given their natural and ordinary meaning as popularly understood. The proposition that ordinary words are the same for the lawyer as for the layman is as a matter of pure construction undoubtedly true. But it is very difficult to draw the line between pure construction and implication, and the layman's capacity for implication is much greater than the lawyer's. The lawyer's rule is that the implication must be necessary as well as reasonable. The layman reads in an implication much more freely; and unfortunately, as

> the law of defamation has to take into account, is especially prone to do so when it is derogatory.'"

[12] There are a range of authorities in relation to the approach to meanings including *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130; *Neeson & another v Belfast Telegraph Newspapers Limited* [1999] NIJB 200; *Jameel v. Times Newspapers Limited* [2004] EMLR 31; *Gillick v. Brook Advisory Centres* [2002] EWCA Civ 1263 at [7]. I seek to apply the principles set out in all of those cases. In particular the approach to determining meaning was set out in *Gillick v Brook Advisory Centres* by Lord Phillips in the following way at paragraph [7]:

> "The court should give the article the natural and ordinary meaning which it would have conveyed to the ordinary reasonable reader reading the article once. Hypothetical reasonable readers should not be treated as either naïve or unduly suspicious. They should be treated as being capable of reading between the lines and engaging in some loose thinking, but not as being avid for scandal. The court should avoid an over-elaborate analysis of the article, because an ordinary reader would not analyse the article as a lawyer or accountant would analyse documents or accounts. Judges should have regard to the impression the article has made upon themselves in considering what impact it would have made on the hypothetical reasonable reader. The court should certainly not take a too literal approach to its task".

[13] The differences between shades of meaning ranging from an imputation of actual guilt at one end of the spectrum to the existence of reasonable grounds for believing that a person is guilty at the other end was considered in *Chase v. News Group Newspapers Limited* [2003] EMLR 11. As can be seen the plaintiff alleges that the article means that he *was* a mean scrooge-like figure whilst the defendant alleges that if the article has a defamatory meaning it means that there *were grounds to investigate or reason to believe* that the plaintiff lacked 'Christmas spirit' or displayed a certain meanness of spirit. Accordingly one of the issues in relation to meaning in this case is whether there is an actual imputation that he *was* or whether it meant that there were *grounds to investigate or reason to believe*.

[14] It is clear that in determining meaning that the tribunal of fact, whether judge or jury, must take the bane and antidote of the publication together: see *Chalmers v. Payne* (1835) 2 Cr M & R 156 at 159.

[15] In *Thornton v Telegraph Media Group Ltd* [2010] EWHC 1414, [2011] 1 WLR 1985, [2010] All ER (D) 169 Tugendhat J set out and considered the various

definitions of the word defamatory. He held that whatever definition was adopted of the word "defamatory", in order to exclude trivial claims it had to include a minimum threshold of seriousness. He stated that the preferred definition of "defamatory" was that "the publication of which (the plaintiff) complains may be defamatory of him because it *substantially* affects in an adverse manner the attitude of other people towards him, or has a tendency so to do." (emphasis added)

Determination of the single meaning

[16] My overall impression on reading the article is that a hypothetical ordinary reasonable reader would have understood the article as a whole, read once in conjunction with its headline, photographs and the caption to the photographs, to mean that the plaintiff *was* a mean Scrooge like figure as a matter of fact rather than comment. I also consider that the article meant that the plaintiff acted callously towards his staff without regard to their interests. Whilst the single meaning of the article included the meaning that the plaintiff lacked Christmas spirit and displayed a meanness of spirit I do not consider that this meant that there were reasonable grounds for believing or grounds to investigate but rather that this *was* the case. My overall impression is that the plaintiff's pleaded meanings are correct.

[17] I reject the contention that these meanings are not defamatory as I consider that they substantially affect in an adverse manner the attitude of other people towards the plaintiff and indeed fall within all the other definitions of the word defamatory as considered in *Thornton v Telegraph Media Group Ltd.*

[18] As I have indicated I have an obligation to give reasons and that necessarily involves some textual analysis.

[19] The first paragraph of the article is in bold type and it states that the plaintiff "has been branded a Scrooge". I consider that this is an unequivocal assertion that he *was* a Scrooge there being no expressed or any implied qualification that there are only reasonable grounds to believe or that there is reason to investigate. This is reinforced when the article goes on to state without any equivocation that the name Scrooge "does fit perfectly." The article gives further support to the plaintiff being a Scrooge in that it asserts that "this has come completely out of the blue," that there was no indication that "anything was wrong with the business" which "was gearing up for a busy Christmas." So it is asserted that in the midst of plenty without any warning signs the plaintiff put his staff "on the street" a week before Christmas.

[20] The assertion that the plaintiff was callous, as opposed to there being reasonable grounds to believe or to investigate that he was callous, is supported by the assertion that a longstanding member of staff and other colleagues had called to the plaintiff's home looking for answers but no one there would speak to them. It is also supported by the passage that states that a cleaner from the hotel was coming away from his house in tears.

[21] I have considered whether the statement published in the article that the plaintiff said that it was with the deepest of regret that an administrator had to be appointed and that it was particularly hard in the week before Christmas for staff and their families, detracts from the central meaning of the article that it perfectly fitted to called him a Scrooge. I consider that one would expect a mean callous individual to say exactly that and that this does not detract from the overall impression on reading the article that a hypothetical ordinary reasonable reader would form.

[22] It was also suggested that references in the article to the plaintiff's standing in the community and his business achievements gave balance to the article and thereby altered its meaning. I do not consider that it did balance or alter its meaning. Just because the plaintiff has an MBE did not detract from the meaning that he was a Scrooge but rather it made the adverse behaviour described in the article more newsworthy by reference to his standing in the community.

Justification

[23] Mr Lockhart stated that the defendant did not seek to justify any meaning that the plaintiff *was* a mean Scrooge like figure or that the plaintiff *did* act callously towards his staff without regard to their interests. It was only if the court found that the meaning of the article was that there were reasonable grounds for believing or grounds to investigate that the defendant wished to rely on the defence of justification. The defence of justification does not arise given my findings in relation to the single meaning.

***Reynolds* defence**

[24] The Reynolds defence involves 3 key issues namely:

(a) Whether the subject matter of the publication was of sufficient public interest;

(b) Whether it was reasonable to include the particular material complained of; and

(c) Whether the publisher had met the standards of responsible journalism.

[25] The *Reynolds* defence requires that there must be a real public interest in the subject matter of the publication and in the particular material complained of. In *Reynolds* [2001] 2 AC 127 at 176-177 the meaning of public interest was explained in the following terms:

> "We do not for an instant doubt that the common convenience and welfare of a modern plural

> democracy such as ours are best served by an ample flow of information to the public concerning, and by vigorous public discussion of, matters of public interest to the community. By that we mean matters relating to the public life of the community and those who take part in it, including within the expression "public life" activities such as the conduct of government and political life, elections (subject to section 10 of the Act of 1952, so long as it remains in force) and public administration, but we use the expression more widely than that, to embrace matters such as (for instance) the governance of public bodies, institutions and companies which give rise to a public interest in disclosure, but excluding matters which are personal and private, such that there is no public interest in their disclosure."

Public interest can embrace the governance of … companies.

[26] The issue as to whether it was reasonable to include the particular material complained of is considered in *Gatley on Libel and Slander*. It is stated that the fact that the general subject matter of the piece is of proper public interest does not necessarily mean that the defence applies to the entire contents. That this issue involves asking whether-given that the subject matter as a whole is a matter of public interest-it was reasonable to include the material complained of as part of the overall picture. But it is not necessary to find a separate public interest justification for each item in the story. For this purpose the story must be looked at as a whole in order to determine whether it is published in the public interest, with due allowance for editorial judgement about how it should be presented. Editorial discretion is an "important principle" so that "although the question of whether the story as a whole was a matter of public interest must be determined by the court, the question of whether defamatory details should have been included is often a matter of how the story should have been presented. On that issue, allowance should be made for editorial judgment." However a defendant who makes a specific charge, however, will not be allowed to dress up his defence with a plea of *Reynolds* privilege simply because the background to the charge involves a matter of public interest. Otherwise: "there is a danger that any plea citing a few generalities about the duty of the media to be a public watchdog will be allowed to pass muster and thus to prolong and complicate unnecessarily a significant number of libel actions in which qualified privilege has no legitimate role to play."

[27] The next question is whether the defendant has met the standard of responsible journalism. In *Reynolds* Lord Nicholls set out a non-exhaustive list of circumstances which would be relevant to the issue as to whether the standards of responsible journalism had been met in a given case. The ten circumstances are not to be seen as a series of hurdles to be negotiated in succession by the defendant with

a loss of the defence if he cannot pass one of them. The weight to be given to any of the ten circumstances or to any other relevant circumstance, will vary from case to case. This is a trial by judge alone and so any disputes of primary fact are for this court to resolve, as is the decision as to whether, having regard to the admitted or proved facts, the publication was subject to qualified privilege. The ten listed factors were:

> "1. The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true.
>
> 2. The nature of the information, and the extent to which the subject-matter is a matter of public concern.
>
> 3. The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories.
>
> 4. The steps taken to verify the information.
>
> 5. The status of the information. The allegation may have already been the subject of an investigation which commands respect.
>
> 6. The urgency of the matter. News is often a perishable commodity.
>
> 7. Whether comment was sought from the plaintiff. He may have information others do not possess or have not disclosed. An approach to the plaintiff will not always be necessary.
>
> 8. Whether the article contained the gist of the plaintiff's side of the story.
>
> 9. The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact.
>
> 10. The circumstances of the publication, including the timing."

Reynolds privilege exists where the public interest justifies publication notwithstanding that this carries the risk of defaming an individual who will have

no remedy. This requires a balance to be struck between the desirability that the public should receive the information in question and the potential harm that may be caused if the individual is defamed. By a consideration of these circumstances and any other relevant circumstances, the court is assisted in striking the correct balance in determining the question as to whether the public interest in freedom of expression should prevail over or yield to the public interest in an individual being able to vindicate his or her reputation.

[28] One of the circumstances to be considered in relation to responsible journalism is the seriousness of the allegation which depends on what the words mean. Once the meaning has been determined there is a balance to be performed because the more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true. But on the other hand the more serious the allegation the greater is likely to be the public interest in the fact that it may be true. So in performing that balancing exercise this court has to determine the meaning of the publication. Another circumstance to be considered in relation to responsible journalism is the steps taken to verify the article. This circumstance is also informed by the meaning of the article in that the more serious the defamatory meaning then the greater the harm to be caused to the individual then the greater the steps to verify. Alternatively there may be circumstances where the public interest determines that lesser steps to verify are appropriate and that may also be informed by the meaning of the words. There is a clear interplay between meaning and the *Reynolds* defence. That interplay is potentially complicated in that the test in relation to meanings in relation to the *Reynolds* defence may be different from the single meaning rule to be applied in relation to the rest of the action. In *Bonnick v Morris* [2003] 1 AC 300, Lord Nicholls held that the single meaning rule should not be applied when considering a claim to *Reynolds* privilege. He stated at paragraph 25:

> "Where questions of defamation may arise ambiguity is best avoided as much as possible. It should not be a screen behind which a journalist is 'willing to wound, and yet afraid to strike'. In the normal course a responsible journalist can be expected to perceive the meaning an ordinary, reasonable reader is likely to give to his article. Moreover, even if the words are highly susceptible of another meaning, a responsible journalist will not disregard a defamatory meaning which is obviously one possible meaning of the article in question. Questions of degree arise here. The more obvious the defamatory meaning, and the more serious the defamation, the less weight will a court attach to other possible meanings when considering the conduct to be expected of a responsible journalist in the circumstances."

So in deciding meanings for the *Reynolds* defence I have to consider whether the words were susceptible of another meaning and whether that meaning was one which a responsible journalist could be expected to perceive.

Factual background

[29] In order to give consideration to the *Reynolds* defence and if that defence is not made out, to the issues damages and mitigation of damages, I set out my findings in relation to the factual background though when it comes to the evidence of Roisin Gorman, the journalist who wrote the article, I will set out her evidence and in the next section of this judgment state my conclusions in relation to that evidence along with all the other evidence in this case relevant to the issue of the *Reynolds* defence.

[30] The plaintiff, 84 (DOB 15 April 1932) is a businessman who has lived and worked in Kilkeel, County Down throughout his life. During his business career he built up R & G Coulter Limited, Tough Glass Limited and associated companies in Kilkeel. He provided employment and also work and training for many people in the local community. At one stage his companies employed between 300 and 500 people. He is a former President of Kilkeel Chamber of Commerce and he established the Kilkeel Development Association acting as Treasurer of that Association. He also worked closely with others, including politicians, such as Margaret Ritchie MP, to drive the economic and environmental regeneration of Kilkeel, including developing tourism in the area. The plaintiff not only devoted his energies to business but also supported charities such as Mourne Stimulus and the RNLI.

[31] The plaintiff is married. Unfortunately since approximately 2011 both he and his wife have not enjoyed good health. The plaintiff has had cancer having to undergo major surgery. He then had further emergency surgery to deal with a burst gallbladder and infections. His wife had heart failure being treated in hospital for some nine months. She has been able to return to their home but is housebound, requiring constant care.

[32] The plaintiff stated in evidence and I accept that he was "gutted" by the article which hurt him and his family terribly. He stated that the article hurt him especially as he believed that it indicated that his MBE was undeserved and should be taken off him. He considered it heart breaking and unjustified particularly given the context of all the work that he had done over a lifetime in the Kilkeel area working for the community. When he read the article he considered it to be the worst day of his life and he did not want to leave his home and became reclusive for many weeks and months following it. He stated that the article still haunts him. My assessment of the plaintiff is that he was terribly affected by the article and that it did cause him to retreat into himself and his intimate family. That he continues to be affected by the article and also by the allegations that were made during the trial of this action and the numerous amendments to the basis of the defence of the action. I accept that he felt that the honour, which was public recognition of his service to the community,

was being called into question by the article on the basis that he had acted in a totally inappropriate way towards that community. The suggestion that to be described as a Scrooge was just journalistic hyperbole was the opposite of a clear and positive recognition by the defendant of the fact that the plaintiff did not obtain any financial reward for his involvement in the company and lost money. He stated and I accept that he was devastated listening to the evidence that was given on behalf of the defendant.

[33] In 2000 the plaintiff together with Wesley Newell, Charles McBride, the Campbell family and the Chambers family acquired all the issued shared capital in Kilmorey Arms (Kilkeel) Limited which company owned and operated the only hotel in Kilkeel. A reason, if not the main reason, for purchasing the hotel was to benefit the local community, as it was considered that the loss of a local hotel would be detrimental to the future economic growth of the town. The plaintiff was a minority shareholder owning some 11 per cent of the share capital, though he was Chairman of the Board of Directors of the company. All the shareholders agreed that they would not take any financial gain out of the company. Accordingly there would be no wages paid to any of the shareholders, no dividends and they would all pay for any food or drink which they consumed at the hotel. Between 2000 and 2014 none of the shareholders received any financial benefit of any kind whatsoever. I consider this is a reflection of the fact that the main reason why they purchased the hotel in the first place was out of a sense of community spirit, rather than for financial gain.

[34] A manager was appointed who was entrusted with the day to day running of the hotel so that the plaintiff and the other shareholders were not involved in making decisions as to which members of the staff should be hired or dismissed or in other aspects of the day to day running of the hotel. The plaintiff would have known the permanent members of the staff but not necessarily the temporary staff or those on night duty.

[35] The plaintiff and the other shareholders carried out a £2m expansion of the hotel in 2005-2008. To enable this development the plaintiff and the other shareholders obtained 40% grant aid with the remaining being financed either by the shareholders or with a bank loan. The development involved building new bedrooms, a wing and a new dining and function room. As a result of the expansion the hotel had previously been awarded 2 stars was now awarded 3 stars.

[36] In 2009 the company was hit by the recession with losses being incurred which by 2013 were running at approximately £30,000 per annum. Mr John Doherty of Phelan and Prescott, chartered accountants, attended each of the monthly meetings of the Board of Directors to keep an eye on the finances.

[37] On 16 September 2013 and in the context of continued losses the owners sought advice from John Doherty, who organised a meeting with Cavanagh Kelly accountants who have a business recovery and insolvency team which specialises in

advising on restructuring, recovery and insolvency options. The advice at the meeting was for the company to obtain an investor. Approaches were made to the Hastings Hotel Group, Weatherspoons, the owners of the Canal Court Hotel in Newry and to a local businessman. The attempts to obtain an additional shareholder were unsuccessful.

[38] In early 2014 the strategy changed in that the owners then looked for help from Invest NI and the Tourist Board. The advice from the Tourist Board was that further works were required to be carried out to attract business. These works were paid for by further investments by the shareholders totalling some £300,000 together with a loan of £50,000 from Invest NI which was personally guaranteed on 25 February 2014 by the plaintiff and two other shareholders, Charlie McBride and Wesley Newell.

[39] The additional works to the hotel did not turn around the financial position of the company so that in the Spring and Summer of 2014 the losses continued. The owners then sought the advices of a consultant and in response to those advices invested a further £50,000 in new linen in the bedrooms, tidying up the toilets, new window boxes and a total deep clean of the kitchen and hotel areas.

[40] At that time it became apparent to the owners that many suppliers had not been paid for many months and all were demanding payment and some refused to supply until the old debt was paid off.

[41] In September 2014 Mr Madden was appointed as the new hotel manager. He introduced a policy that deposits were taken for parties booking 10 or more as was common practice in any hotel to do this to avoid loss in the event of "no shows."

[42] On 18 September 2014 John Doherty organised a further meeting with Cavanagh Kelly at which meeting it was agreed that any outside investor as an additional shareholder was not possible and that the owners needed to sell urgently as despite all the changes made the company was still losing money in the region of £25,000-£35,000 per week. The shareholders agreed that Cavanagh Kelly should try to sell and that they could approach their clients. They were also to consult with Obsorne and King. It was hoped that the new manager and with the Christmas period, that it would be possible to attract a buyer.

[43] Mr Madden did make changes and substantially reduced the losses so that by early December they were running at approximately £5,000 - £7,500 per week. One technique used by Mr Madden to reduce losses was to reduce the number of hours of the staff who worked in the hotel thereby reducing the total expenditure on wages. This reduction in hours led to some members of staff deciding to terminate their employment and those members of staff were not replaced. During this process Mr Madden called a meeting of all the staff in the restaurant at the hotel so that he could inform all of them as to the serious financial position which the company was in and the need to reduce costs in the hope that the position could be

turned around. He explained the efforts that would be made to save their jobs and to rescue the business. I find that before that meeting was held and from in or about July/August 2014 all the members of staff at the hotel would have been aware of the serious financial position at the hotel. They knew that suppliers were not being paid. They knew that the previous manager was trying to avoid meetings with suppliers. They knew that the contract of employment of the previous manager and the chef had been terminated and they knew about all the cost cutting measures including reduction in hours. The lack of financial success of the hotel together with its financially precarious position would have been apparent to all the members of staff prior to the meeting and information was then provided to all the members of the staff at that meeting by Mr Madden. The members of staff were informed as to the position of the company.

[44] On 11 November 2014 the shareholders met with the Business Rescue Department of the First Trust Bank at which meeting a representative of Cavanagh Kelly also attended. The bank, which had a first charge on the hotel, were willing to continue to work with the company to achieve a sale though they would not lend any more monies or increase the company's overdraft facility.

[45] In the middle of November 2014 the shareholders met with John Osborne of Osborne King to further explore selling the hotel as a going concern.

[46] The weekend of 6 - 7 December 2014 proved to be a turning point in the financial viability of the company. The Men and Ladies Hockey Club dinner was booked for Saturday 6 December 2014. This event which was to be attended by several hundred people was a major opportunity for the company to earn substantial monies. However the company suppliers had all heard rumours that there were financial difficulties and a number of them refused to provide any more produce and demanded payment in full. On the Saturday evening the hotel staff had to go to the local supermarket to get tinned soups and what the plaintiff termed cheap bread for the dinner. That as a result the hotel was "the talk of the town". On Sunday 7 December 2014 the hotel was unable to open the Sunday carvery as there was no meat, fish or other food available given the financial position of the company. I consider that all the staff at this stage would have been aware of what was now the extremely precarious financial position of the company and would have had an appreciation that a company unable to operate a Sunday carvery was in immediate danger of being unable to trade with an obvious consequential impact on their employment.

[47] On Monday 8 December 2014 the shareholders contacted John Doherty to advise him of the events which had occurred over the weekend and he in turn contacted Cavanagh Kelly.

[48] On 9 December 2014 the members of staff were paid. I am not persuaded that any member of staff was not paid wages for a month prior to the closure of the hotel on 16 December 2014 as is alleged in the article.

[49] On Wednesday 10 December 2014 the shareholders attended a meeting at the offices of John Doherty which was also attended by representatives of Cavanagh Kelly. Even with the cut-backs the company was still losing money at the rate of £5,000 - £7,500 per week. There was only £380 of Christmas dinners booked. The decision was that the Christmas period would lose the hotel money, not make it. The overdraft was at its limit. No suppliers were prepared to extend credit or to supply the hotel. It was agreed that the directors and shareholders could no longer pursue the option of trading through the Christmas period and seeking a buyer of the hotel as a going concern, but rather had no other option but to put the company into administration, with the hope that the administrator having looked at the options, would either keep the hotel running and find a buyer or having closed the hotel, would still find a buyer after a few weeks.

[50] The sum subsequently claimed in the administration for Christmas dinners that had been booked was £375, though that may not be the full figure, as it depends on whether individuals went to the trouble of making a claim in the administration. However as the figure of £375 is close to the figure of £380, I find as a fact that the total amount of money paid for Christmas dinners that had been booked up to and including 16 December 2014 was £380. There were not "a lot of Christmas bookings which were paid in advance" as is alleged in the article.

[51] At the meeting on 10 December 2014 at the offices of John Doherty, the plaintiff and the directors were told that once the administrator was appointed they could no longer "take anything to do with the hotel" and had to hand over all papers and keys. That they could no longer act as owner and if they did they would be found guilty of criminal offences.

[52] Subsequently on 10 December 2014 a meeting of the Board of Directors of the company was held which passed a resolution to appoint the administrator. Mr Lockhart accepted that the financial position of the company was such that it was inevitable that it was going to be placed into administration or into voluntary liquidation. There was no other option available to the plaintiff. The members of staff were not told about the decision to put the company into administration which I consider was for the valid reason that if they were told then the prospects of a successful administration would have been greatly reduced.

[53] On some date in December 2014, which was after 10 December 2014 but before the administrator was appointed, Mr Madden was called to the plaintiff's house where he met the plaintiff and two other owners. He was told that an administrator was to be appointed. The plaintiff was quite emotional and he informed the plaintiff that he would call a meeting of the staff. Mr Madden met the staff on a daily basis and as soon as he heard that the administrator had been appointed he called the staff to a meeting to inform them that the hotel was in administration.

[54] The administrator was appointed and at the hearing the case proceeded on the basis that on and after 16 December 2014 all the decisions were the responsibility of the administrator who decided what information to make available to the staff and as to whether the staff should be made redundant. The decision by the administrator to terminate the contracts of employment of all the members of staff was made on 22 December 2014. So by 16 December 2014 the plaintiff no longer had the ability to make any decision in relation to the company and it is accepted that legally he could not provide any information to the members of staff. The plaintiff did not dismiss the members of staff. That was done by the administrator. As from 16 December 2014 the plaintiff could not be responsible for providing information to the members of staff. Again that was done by the administrator.

[55] At close of business on Tuesday 16 December 2014 the administrator closed the hotel and placed a notice on the door to that effect. No further business was conducted at the hotel after 16 December 2014. The members of staff were still employed but there was no work for them to perform. The article was published on 21 December 2014 at which date the members of staff were still employed though the article described them as having been "put on the street," "sacked" and as "former employees." On the date of publication of the article all of them were still employed.

[56] The plaintiff gave evidence which I accept that no member of staff attempted to contact him at his home. No cleaner from the hotel came to his home or went away in tears. He did not refuse to speak to anyone.

[57] On Wednesday 17 December 2014 the administrator called and then held a staff meeting at the hotel. It was explained that the hotel was closed for business and that the administrator was looking at all options. That it was hoped that a solution could be found. The staff members were told that if they had any questions they should ask the administrator.

[58] On Wednesday 17 December 2014 an employee of the company contacted Roisin Gorman, a journalist employed by the defendant by telephone. The telephone call was unsolicited. He identified himself to her giving his contact details but wished to remain anonymous so that his name would not be revealed nor would the nature of his job or how long he had worked at the hotel, though these details were also given to her. During the hearing of this action the anonymity of this source and the other source was maintained by for instance redactions of contemporaneous notes. However in the article that was published the male gender of the source was identified as was the approximate duration of his employment which out of 22 employees could have led to his identification. The source made a number of allegations to her including that:-

(a) The owners knew what was going to happen, did not pay staff, still took Christmas bookings and then folded the place.

(b) That lots of people had booked in for Christmas dinner functions and had paid.

(c) That he had been informed of the closure by a phone call from the receptionist on the evening of Tuesday 16 December 2014.

(d) That he had called to the plaintiff's house and he could not get in though there were definitely people there. When he was there the cleaner was just leaving, she could not get any answer and she was crying.

(e) That the plaintiff took as much money as he could at Christmas, everything was paid up front in advance so that he got as much money as he could from the public while not paying any of the staff.

(f) That the plaintiff does not care and all he cares about is money.

Roisin Gorman was not told by this member of staff about the meeting that had been held by the administrator with the staff on 17 December 2014, or of the information that had been provided to the staff by Mr Madden or that all the members of staff were fully aware and had been fully aware of the precarious position of their jobs for a considerable period of time. She remained unaware of all of this prior to publication of the article.

[59] On 17 December 2014 in order to investigate these allegations Roisin Gorman contacted Cavanagh Kelly, the administrators, who referred her to Maria McCann of their public relations company, McCann public relations. She phoned Maria McCann explaining why she was phoning. She was given Maria McCann's e mail address and subsequently on 18 December 2014 sent her an e mail.

[60] Also on 17 December 2014 and after having spoken to Maria McCann, Roisin Gorman received an unsolicited telephone call from a customer of the hotel who gave his contact details but also wished to remain anonymous. The customer informed her that he had paid £160 in advance for a Christmas dinner going on to say "they had ripped people off" which was "basically theft." The customer said "that the place isn't fit to be reopened" and that "(They) aren't fit to run a bath". The customer went on to say that he had ambushed the plaintiff who was trying to put the blame on the manager. The "Place is closed. Doors are locked. Owners are stonewalling. Owner is crooked." The customer also said "Everyone is angry because they have ripped off the local people. Think they can get away with it. Treating people like dirt." As can be seen from the facts which I have set out this was a completely unfair description. The facts were that the plaintiff and the other owners had invested heavily out of a strong sense of community maintaining jobs for as long as they could in Kilkeel without any financial reward over a 14 year period but rather risking and losing their own money. Ultimately they were presented with an impossible financial position and were driven to follow the

inevitable by placing the company into administration. Far from ripping people off or treating them like dirt each of them had made a substantial financial and emotional contribution to the community over a substantial period of time.

[61] On 18 December 2014 Roisin Gorman sent an e-mail to Maria McCann as follows:-

> "Hi Maria, we're running a story about the closure of the Kilmorey Arms Hotel after receiving calls from staff this morning. They were informed in a brief call from a receptionist on Tuesday that the hotel is closing and they have received no confirmation that their wages for the past month will be paid. Several have gone to the home of the owner, Gordon Coulter MBE, however he wouldn't speak to them. They report that most of the bookings taken for Christmas parties had to be paid in advance so they have also been approached by a lot of angry local people who have lost money. They have also received no notification about whether they will be given references. Could we get some information about whether they will received (sic) the wages they are owed as that's obviously a big concern for them the week before Christmas …"

There was only one call from staff. The reference to "calls from staff" is inaccurate. The assertion that "they" were informed in a brief call from a receptionist is an inaccurate description in that the information available to Roisin Gorman was that the one member of staff to whom she had spoken was informed in that way. When that inaccuracy was put to her in evidence during the trial she stated that she had adopted the gender neutral "they" rather than meaning more than one person. However this explanation does not sit easily with the content of the article which refers to "he" and "him." The e mail does not say that the plaintiff or the owners are going to be branded as a Scrooge in the article or that they are going to be criticised for sacking staff in the Christmas period.

[62] On 19 December 2014 not then having received a reply from Maria McCann Roisin Gorman sent a further e-mail as follows:-

> "Hi Maria, I'm just following up on my e-mail from yesterday about the Kilmorey Arms. Could I get a statement from the administrators about whether staff will be paid? If they are not adding anything to the original statement would you send that through to me as my deadline is this afternoon."

This e mail was seeking information from the administrators who were now in total control of the company.

[63] Maria McCann then replied to Roisin Gorman on 19 December 2014 as follows:-

> "Gerard Gildernew Cavanagh Kelly has been appointed the Administrator of the Kilmorey Arms Hotel in Kilkeel, County Down by the company directors.
>
> The Administrator is currently assessing the options available in respect of the business.
>
> The current business is not presently trading and the 22 employees including full-time and casual staff have been advised of the situation.
>
> The locally owned Kilmorey Arms Hotel has been a cornerstone of community life in Kilkeel for generations providing a venue for family gatherings, weddings, conferences and visitors to the fishing village. The business has struggled to remain profitable in recent years with the economic downturn and despite significant investment by shareholders and the unstinting efforts of members of staff, it has been unable to sustain the levels of business which once underpinned the hotel's popularity and success.
>
> Speaking about the closure Director, Gordon Coulter said, "It is with the deepest of regret that we find ourselves having to appoint administrators and cease trading. It is particularly hard in the week before Christmas for our staff and their families and we are devastated it has come to this. On behalf of the directors/shareholders I would thank all our loyal customers for their support throughout the years."
>
> Any business enquiries about bookings or expressions of interest in the business should be directed to: …"

The e mail then gave contact details for Cavanagh Kelly.

[64] Prior to publication of the article Roisin Gorman did not make direct contact with the plaintiff because the comment that came back from Maria McCann

contained a quote from the plaintiff. She assumed that the plaintiff had been contacted in order to obtain that quote. Furthermore Roisin Gorman relied on the fact that Maria McCann did not state that she was not authorised to respond on behalf of the plaintiff. Accordingly Roisin Gorman took no other steps to verify the information that she had received from the two anonymous sources. She felt she had put all the relevant issues to the plaintiff and it was his choice as to the issues to which he replied. In fact the plaintiff never met Maria McCann, he never appointed her and she was never in touch with him. The only thing that he heard was through his solicitor was in relation to a statement to be published in the press. The contents of the e mail dated 19 December 2014 was also released in the format of a general press release by Maria McCann.

[65] Roisin Gorman considered that she had put the essence of the article that she was going to write to the plaintiff through Maria McCann. However because Roisin Gorman did not regard stating that the plaintiff was a "Scrooge" was a serious allegation or that it was defamatory or damaging or hurtful, she did not put that part of the article to the plaintiff prior to publication for his comment. She did not feel it was actionable or defamatory. She stated that if she had thought it was a serious allegation then she would have put it to the plaintiff prior to publication.

[66] Roisin Gorman did not go to Kilkeel. The photograph of Mr Coulter which was published in the article was obtained from a local paper. One of the defendant's photographers went to Kilkeel and took a photograph of the hotel and of the notice on the door.

[67] Roisin Gorman did not see any point in contacting the manager stating that the most important person to contact was the plaintiff who was one of the owners. She considered that she had in fact contacted the plaintiff through Maria McCann. She did not seek or obtain the contact details of any other members of staff and did not seek to interview any of the other 22 members of staff. The article was based on the account of one member of staff and one customer. She did not for instance contact the receptionist who was referred to in the article. The account of the one member of staff contained double hearsay for instance in that he told her what he had been told by the cleaner and he also told her what he had been told by the receptionist. Roisin Gorman did not seek or obtain the name of the cleaner who it was alleged came away from the plaintiff's home in tears. She did not give consideration prior to publication of the article to obtaining the name of the cleaner to check the accuracy of the account that was given by the member of staff who had contacted her. She considered that there was no clear journalistic practice as to whether an account, even if it was an emotionally charged account, should be checked with other individuals who were identified by the source. She also did not obtain the name of the receptionist nor did she seek to check the accuracy of the account with the receptionist.

[68] In her evidence Roisin Gorman concentrated on the allegation contained in the article of a lack of communication however a lack of communication does not

mean that a person is financially mean or a financial miser and she initially accepted that if there was a lack of communication that this did not mean that there was financial meanness. However she suggested that the lack of communication with the staff prior to 16 December 2016 indicated a meanness of spirit and a lack of kindness on the part of the plaintiff though she recognised that this is considerably different from financial meanness or the callousness of putting employees on the street prior to Christmas.

[69] Roisin Gorman during the course of her evidence stated that the plaintiff chose to put the company into administration when he could have avoided it on the basis that other steps may well have been possible, though she then stated that she was not a financial expert and she accepted that she had given no consideration to what were the steps that could have been, but were not taken. She stated that there are no absolutes, meaning that the financial position of the company was not an absolute that could not have been worked around or overcome. This evidence was given despite the overwhelming evidence that was available at this stage to the defendant that there was no other outcome apart from administration or voluntary liquidation and despite the acceptance of that position by Mr Lockhart.

[70] As far as the sources of the story were concerned she considered that on occasions one had to take people on trust. The individuals concerned, though they had been anonymous, had given her their names and contact details to her. She recognised that she knew at the time that they were both aggrieved and held a high degree of resentment. She gave consideration to the question as to whether they would say anything. She considered that the allegation of theft was a serious criminal allegation and that it would be irresponsible to publish that allegation. She recognised that the member of staff who contacted her did not say that the plaintiff could have avoided the position but she considered that from the employee's point of view it was immaterial that the owners had invested and lost money. She did not consider that this had any impact on the article and the allegation that the plaintiff was a Scrooge.

[71] Roisin Gorman accepted that the article published on 21 December 2014 was incorrect in stating that the members of staff had been sacked. At that stage they were still employed though she felt that this was not an overstatement in the article as it was inevitable that they would lose their jobs. She accepted that the words in the article "our jobs are gone" did not appear in the notes of her conversation with the member of staff who was her source.

[72] The article states that the plaintiff's "former workers" in the plural "got a brief telephone call from a receptionist last Tuesday to say the business has gone into administration." The information recorded by Roisin Gorman was that the member of staff who spoke to her had got such a telephone call from the receptionist rather than that all the members of staff had got a telephone call. Roisin Gorman indicated that she remembered being told by the member of staff that the receptionist could not stay on the phone long as she had to phone other people. She had not made a

note of that part of the conversation and I do not accept the accuracy of that evidence.

[73] The article stated that "One distraught staff member who'd been there for nearly a decade said *he and other colleagues* had called to Mr Coulter's home looking for answers, but no one there would speak to them" (emphasis added). That as he "was arriving at the house one of the cleaners from the hotel was coming away in tears." The article as published has the member of staff going to the home with a number of other members of staff not another member of staff and finding a cleaner coming away. The impression given is of at least four members of staff going to the plaintiff's home. Roisin Gorman in her notes of what she was told by the member of staff records that he called to his house rather than that he and others called. She accepted in evidence that this part of the article was inaccurate suggesting that she meant that he and the cleaner went up to the house but that is difficult to understand if the source met the cleaner coming away from the house.

[74] Roisin Gorman recognised that she could have written an article about how angry the members of staff felt or that they lacked information and that they did not know that they were going to be paid without naming or blaming the plaintiff but she indicated that this would not have been newsworthy and would not have reflected the feeling in the community. The evidence of the feeling in the community upon which she was relying was the two anonymous sources.

[75] Roisin Gorman decided not to include in the article any reference to the considerable personal investment by the shareholders in the company which was referred to in the e mail dated 19 December 2014 from Maria McCann as if this was included then the comment on the story would be longer than the story.

[76] Roisin Gorman prepared the article on the afternoon of Friday 19 December 2014. Her deadline was 5 – 6 pm on Friday 19 December 2014. She received the e mail from Maria McCann at 14:53 on 19 December 2014 at which stage she did not have a working draft of the article. The article was written between 3 pm and at the latest 6 pm on 19 December 2014.

[77] The 21 December 2014 was the last publication date before Christmas and Roisin Gorman was of the view that one could not publish a Christmas story after Christmas.

[78] On 21 December 2014 the article was published in the Sunday World which had a circulation in Northern Ireland of 45,658. Its overall circulation is 178,867 and it has a total readership of 600,000.

[79] On 22 December 2014 the members of staff were made redundant and there was a meeting of staff with the administrator during which forms were made available to be completed in relation to redundancy payments.

[80] On 23 December 2014 a letter of claim was sent by solicitors on behalf of the plaintiff. The first substantive response was by letter dated 14 January 2015 which denied all liability but indicated that the defendant was willing to publish a "follow up" story should the plaintiff "wish to publish further information regarding payment of wages and creditors being discharged." The plaintiff's solicitors responded by requesting a full unreserved apology to vindicate his reputation. This then prompted a further response from the defendant indicating that it was prepared to publish the following words:

> "On 21 December 2014 we published an article about the closure of Kilmorey Arms Kilkee (sic), discussing job losses and the impact on the local community. In the article we published an allegation that Mr Gordon Coulter *was a "Scrooge*." We regret any distress caused to Mr Coulter or his family by such a description." (emphasis added)

It can be seen that this did not withdraw the allegation that he was a Scrooge or apologise for making it. Indeed it can also be seen that this does not sit easily with the defendants submissions at trial that the article did not mean that he *was* a Scrooge.

The *Reynolds* defence

[81] The first issue is whether the subject matter of the publication was of sufficient public interest. I consider that it was given that it involved the running of a company which owned an hotel providing employment and a centre of community life in Kilkeel.

[82] The second issue is whether it was reasonable to include the particular material complained of in the article. The answer to this issue may be informed by the question as to whether the publisher has met the standards of responsible journalism. I will address that issue before returning to the second issue.

[83] The third issue is whether the publisher has met the standards of responsible journalism.

[84] The allegation within the context of the community in which the plaintiff lived was serious even though it did not contain any assertion of dishonesty or of any criminal activity. A responsible journalist should have anticipated that it would cause a considerable degree of distress and harm to the plaintiff damaging a reputation that had been built up over many years and that there was the potential for the public in the plaintiff's community to be substantially misinformed. This view should have but did not inform the steps taken to verify the article.

[85] The source of the information was a member of staff and a customer. Both wished to remain anonymous. A responsible journalist would have questioned the quality of both sources on the basis that they were clearly angry, both had obvious axes to grind and were prepared to make what could only be termed wild allegations. For instance the customer asserted that the plaintiff was guilty of theft. Allegations of that nature should have caused a responsible journalist to question the reliability of both sources and to place a far greater emphasis on verifying the information. I do not accept that the sources were reliable or that a responsible journalist would have considered them to be reliable.

[86] I consider that the steps to verify the information provided by the sources did not amount to responsible journalism. There was no attempt to identify or to contact the cleaner or the receptionist. There was no attempt to contact the manager. I accept that significant parts of the story were put to Maria McCann and that the journalist did assume that Maria McCann had contacted the plaintiff. However given the seriousness of the allegations that were being made I consider that a responsible journalist would have contacted those other individuals to confirm the information provided by the source. I accept the evidence of the plaintiff that the cleaner did not come to his home. I consider that if the cleaner had been contacted by the journalist then it would have become apparent that there were serious credibility issues in relation to the account which had been given by the source. I also consider that if the manager had been contacted and told in blunt terms that it was going to be alleged that the plaintiff was a Scrooge, that the staff were uninformed and that there had been substantial Christmas bookings, that he would have immediately set the record straight explaining the plaintiff had not gained financially, that there was no other option but administration and that for a considerable period of time all the staff knew about the precarious position in which they found themselves. Furthermore that paid Christmas bookings were just £380.

[87] I also consider that simple fairness required that the journalist who was going to criticise the plaintiff calling him a Scrooge should put those specific allegations to him. The e-mail to Maria McCann did not state that the plaintiff was to be called a Scrooge or was to be criticised.

[88] I accept that news is a perishable commodity and that the article had more resonance before rather than after Christmas but I consider that accuracy and research were overborne by the imperative to publish. In this case that was another instance of a failure to meet the standards of responsible journalism.

[89] The article did publish the plaintiff's statement but the central charge was that he was a Scrooge. It did not contain his side of the story that the business had struggled to remain profitable, that there had been an economic downturn and that there had been significant personal investment by the shareholders. The response to the most damming allegation was not included in the article. Again I do not consider that amounts to responsible journalism.

[90] If the journalist had thought that the article did not bear any defamatory meaning at all then that could be an explanation as to why she would not have made further enquiries prior to publication. However I do not accept the journalist's evidence that at the time of publication she did not consider that the article was defamatory of the plaintiff.

[91] The article contained a number of inaccuracies and though these on their own would not amount to a failure to achieve a responsible level of journalism I consider that they are indications supporting that conclusion. Also I consider that the tone of the article using expressions such as "on the street" was not balanced. That on its own would not amount to irresponsible journalism but again I consider that it is an indication supporting that conclusion.

[92] I consider that there was a failure of the journalist to consider what the rights of employees were in a redundancy situation such as this and whether they would in fact receive payments secured by the State. I also consider that there was a failure by the journalist to consider if anyone was to blame who that person was. Was it the Administrator? Was it a 11% shareholder? When did the blame take place? Again I consider that these are indications of failure to achieve the standards of responsible journalism.

[93] The defendants have not established that they met the standard of responsible journalism.

[94] The failure to meet the standard of responsible journalism also means that I consider that the defendants have not established that it was reasonable to include the particular matter complained of in the article. In addition I consider that given the degree of information that was then available it would have been reasonable to write the article taking one of many other approaches that could have been taken.

[95] In conclusion I reject the defendant's Reynolds defence.

Legal principles in relation to the assessment of damages

[96] In *Elliot v Flanagan* [2016] NIQB 8 I set out the principles applicable in relation to the assessment of damages in defamation proceedings. I have sought to follow exactly the same principles and process in this case as I adopted in *Elliot v Flanagan* to arrive ultimately at a figure which is "necessary to compensate the plaintiff and re-establish his reputation" see *Rantzen v Mirror Group Newspapers (1986) Ltd* [1994] QB 670 at 692. In doing that I have again considered the awards to which I was referred in *Elliot v Flanagan* that had been approved or made by the Court of Appeal in England and Wales or by first instance awards by judge alone both in this jurisdiction and in England and Wales. I have also considered all the evidence going to aggravation or mitigation of damages. I have taken into account the purchasing power of money in accordance with the practice set out in *Sutcliffe v Pressdram Ltd* [1991] 1 QB 153 and followed in cases such as *Rantzen v Mirror Group Newspapers*

(1986) Ltd [1994] QB 670, 696 and *John v MGN Ltd* [1997] QB 586, 608. I will assess damages in accordance with the principles applicable to defamation but seek to maintain a sense of proportion with personal injury awards in Northern Ireland.

[97] It is not necessary to repeat all the principles which I seek to apply but rather I seek briefly to summarise. There are three main functions which are:-

(i) To act as a consolation to the plaintiff for the distress he suffers from the publication of the statement.

(ii) To repair loss to his reputation.

(iii) As a vindication for his reputation.

Damages are at large in the sense that they cannot be assessed by reference to any mechanical, arithmetical or objective formula (see *Broome v Cassell & Co Ltd* [1972] AC 1027 at 1071). The court is entitled to take into account a wide range of matters and in that regard I note the checklist that was adopted by Hirst LJ in *Jones v Pollard* [1996] EWCA Civ 1186 which was in the following terms:-

> "1. The objective features of the libel itself, such as its gravity, its prominence, the circulation of the medium in which it was published, and any repetition.
>
> 2. The subjective effect on the plaintiff's feelings (usually categorised as aggravating features) not only from the publication itself, but also from the defendant's conduct thereafter both up to and including the trial itself.
>
> 3. Matters tending to mitigate damages, such as the publication of an apology.
>
> 4. Matters tending to reduce damages, *e.g.* evidence of the plaintiff's bad reputation, or evidence given at the trial which the jury are entitled to take into account in accordance with the decision of this court in *Pamplin v Express Newspapers Ltd* [1988] 1 W.L.R. 116.
>
> 5. Special damages.
>
> 6. Vindication of the plaintiff's reputation past and future."

Vindication is an aspect of the award so that if the allegations should re-emerge, the damages must be large enough to proclaim the baselessness of the libel or as put in *Broome v Cassell & Co Ltd* [1972] AC 1027 at 1071 the plaintiff "must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charge." Also vindication can be achieved, either in whole or in part, by an apology or by a categorical statement by the defendant that the statement is unfounded.

Assessment of damages

[98] As I have indicated I consider that the libel is a serious libel in the context of the plaintiff's community. It featured on page 24 of the Sunday World which has an extensive circulation. It had a serious impact on the plaintiff's feelings not only due to the publication but also due to the defendant's conduct pleading justification and the journalist not accepting, despite all the evidence, that the plaintiff had no other option but to put the company into administration or voluntary liquidation. During the trial there was no recognition by the defendant that information had in fact been provided to all the employees nor was there any acceptance that the two sources were incorrect in that the plaintiff was not a Scrooge but rather had made a substantial financial commitment losing money and not receiving any financial reward over a 14 year period. There was no apology. I accept that there is an element of mitigation in that Maria McCann's reply to the journalist was not comprehensive though that is to be seen in the context that the central allegation was not put to her. In closing Mr Lockhart contended that if damages were to be awarded that an appropriate figure was £20,000. Mr Lavery contended that the starting point was £55,000 and that the total award should be between that amount and £70,000.

[99] I consider that an appropriate award of compensation is £50,000.

Conclusion

[100] I enter judgment for the plaintiff for £50,000. I will hear counsel in relation to costs.

Schedule

WAGE-ING WAR

Sacked Staff left with no pay just before Christmas

By ROISIN GORMAN

KILKEEL hotel owner Gordon Coulter has been branded a Scrooge for putting his staff on the street a week before Christmas.

His former workers at the Kilmorey Arms Hotel got a brief call from a receptionist last Tuesday to say the business has gone into administration.

But no one could tell the 22 Full and part time workers it they'd get wages for the previous four weeks which should have been paid on Wednesday. And they're not the only people angry about the hotel's sudden closure.

Many of the Christmas meal bookings made by the local community had to be paid in advance but those customers have been left high and dry too.

One distraught staff member who'd been there for nearly a decade said he and other colleagues had called to Mr Coulter's home looking for answers, but no one there would speak to them.

The hotel is co-owned by Mr Coulter, local businessman Wesley Newell and a third partner.

"As I was arriving at the house one of the cleaners from the hotel was coming away in tears" says the former employee "Everyone in Kilkeel is angry, calling him a Scrooge and the name does fit perfectly". An awful lot of people are unhappy because we had a lot of Christmas bookings which were paid in advance, so people haven't just lost their money, they can't get anywhere else booked.

ASKED

"The staff don't know what's going on because no one will tell us anything but you can't walk down the street without someone pulling you. They have done the same to us as they have done to everyone else."

The former employee who asked not to be named said he was told his job was gone on Tuesday afternoon in a brief phone call. They'd had no indication that anything was wrong with the business and were gearing up for a busy Christmas.

The Greencastle street hotel is the only one in the Co Down Town, and has operated for over 100 years.

"I got a phone call from a receptionist who said "that's it, It's all over". I asked what she meant and it was that the hotel was closing and our jobs are gone".

It was over in minutes. She said she had to keep it brief because there were people to tell and that's all I know.

"No one could tell us if we'd be paid if we would get references. This has come completely out of the blue and for a business to do this to the staff the week before Christmas is just unbelievable.

The hotels company director was awarded a MBE 1994 as Robert James Gordon Coulter for services to industry and the community.

He ran building firm RG Coulter for four decades, which at one stage provided employment for 300 people. It closed in 2008 with the loss of 35 jobs.

Contacted

Mr Coulter 81 is the vice president of Kilkeel Chamber of Commerce and the Treasurer of Kilkeel Development Association.

An angry customer who contacted the *Sunday World* said he'd paid £160 earlier this month for a Christmas

day dinner booking for four people. "I was a bit surprised that I had to pay the bill upfront but I thought it was because it was a Christmas Booking. Did the owners know then the company was going into Administration and take my money anyway"?

Gordon Coulter said: "It is with the deepest of regret that we find ourselves having to appoint an administrators and cease trading. It is particularly hard in the week before Christmas for our staff and their families, we are devastated it has come to this.

"On behalf of the Directors/Shareholders I would like to thank all our loyal customers for their support throughout the years," he says.

Health Minister Jim Wells the DUP MLA for South Down hopes the hotel can be sold as a going concern.

He says the area has lost a number of hotels and the Kilmorey Arms is a social hub. "It would be totally wrong for a town the size of Kilkeel not to have a hotel. It caters for a whole range of functions and events, not just for Kilkeel but for the people who come to Cranfield during the summer when it is a hob of activity," says Health Minister.