Neutral Citation Number: **[2021] EWHC 2341 (QB)**

Case No: QB-2020-000054

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST
Heard at the County Court in North Shields

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 August 2021

Before :

MR JUSTICE SOOLE

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Between :

RICHARD WOZNIAK (1) **BRIDGET KELLY (2)**	**Claimants**
- and -	
CHLOE RANDALL	**Defendant**

- -
- -

Robert Sterling (instructed by **Bell Park Kerridge**) for the **Claimants**
The Defendant in person

Hearing dates: 19-21, 24-27 May 2021

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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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MR JUSTICE SOOLE

Mr Justice Soole :

1. This libel action arises out of a dispute concerning ownership/rights of way over a parcel of land ("the disputed area") in the village of Rosgill in Cumbria. In 2015 the Claimants, Dr Wozniak and his partner Ms Kelly, purchased Abbott House in Rosgill. The Defendant has lived at Hall Garth, Rosgill since 2011. Since late 2017 she has been the operator of a local website called "Concerned of Rosgill". The libel claim concerns 9 articles posted by her on the website between April and October 2019. Following my decision at the start of the trial that Article 2 did not refer to the Claimants, this was reduced to 8 articles.

2. Rosgill is about 2 miles from Shap and rather less from Bampton. It has about 20 houses and 50 or so inhabitants. Much of the land in the area is owned by the Lonsdale Estate and there is a strong farming tradition. The disputed area is unregistered land. It lies between two public highways: to the north, the Shap-Bampton road; to the south, Rosgill Hill which descends through the village. It consists of a track, which at its southern end divides into two spurs; grass verges; and a triangular green. The track is about 80m long. The green is about 30m on each side and bounded by the two spurs and a section of Rosgill Hill. The Defendant and her supporters call the triangular area Rosgill Green. It is not registered as common land or as a village green.

3. On the basis of its registered title and filed plan, Abbott House comprises two parcels of land divided by the disputed area. The house and its grounds are north-west of the track; to its north-east is a field. In each case a grass verge runs between the parcel and the track.

4. The Claimants contend that they also own the whole of the disputed area. This claim is centred on the principle known as *'ad medium filum'*, namely a rebuttable presumption that an owner of land which abuts either a public or private highway owns the soil of the highway up to its centre point : Salisbury v. Great Northern Railway Company (1858) 5 C.B. (N.S.) 174; Commission for New Towns v. JJ Gallagher Limited [2002] EWHC 2668. That claim is disputed by the Lonsdale Estate which asserts its own ownership. I am told that there are continuing negotiations on that issue between the Claimants and the Estate. Ms Randall essentially supports the position taken by the Estate.

5. This uncertainty over the ownership of the disputed area is in turn reflected by the instruments which provide for the Claimants' access to Abbott House across the disputed area. The terms of the right of way granted by the Estate in favour of the Claimants' predecessors in title (Lawson) and enuring to the Claimants' benefit are limited to 'such right of way (with or without vehicles at all times and for all purposes) as the [Estate] may have…' over the track and is supported by a Statutory Declaration (3.6.08) from the Estate as to historic user as of right by the Estate and tenants of Abbott House.

6. Separately from the ownership dispute, Ms Randall and some other local residents have asserted vehicular and non-vehicular rights of way over the disputed area, in particular over the tracks. These have been opposed by the Claimants but broadly supported by the Estate.

7. In December 2017 Ms Randall applied to the Lake District National Park Authority (LDNPA) for a Modification Order under s.53(2) Wildlife and Countryside Act 1981. This sought modification of the definitive map so as to add a byway open to all traffic along the disputed area. Following a detailed enquiry, the LDNPA in February 2019 made a Modification Order but limited to a bridleway, i.e. not extending to vehicular traffic.

8. These disputes have resulted in very significant friction between the Claimants and Ms Randall and some others in the locality; and have culminated in the website posts of which complaint is made. The first Article dated 22 April 2019 was treated by both parties as the centrepiece. This states :

"Isn't this charming?

The offensive individuals at the top of the hill are now attacking medical staff trying to visit their seriously ill patients! Just how low can they stoop in their spiteful campaign to steal a piece of land? Liars, thieves and bullies we know them to be; we know they have been brainwashing at least two vulnerable elderly village characters into further confusion and bewilderment. Now they are threatening the vital carer network. Shame on them!"

9. The agreed meaning of this Article is :

'Dr Wozniak and Ms Kelly are offensive individuals. They are attacking medical staff. They are running a spiteful campaign to steal a piece of land in Rosgill village near to Abbott House. They are liars, thieves and bullies. They have brainwashed at least two vulnerable elderly village people. They are also threatening the vital carer network'.

10. The Claimants have throughout acted by solicitors and Counsel. Ms Randall has throughout acted in person. Whilst making no admissions that any of the statements is defamatory (and as a non-lawyer essentially and understandably leaving that and all issues of law to be determined correctly by the Court), her primary defence is of truth. Thus her Defence opens with a 'threefold defence' that:

The statements on the website 'Concerned of Rosgill' identified by the claimant are true, and there is a substantial body of evidence to demonstrate this

The statements are a matter of common knowledge in the village of Rosgill, and to large numbers of people in Shap, Bampton and beyond

The claimants have self-publicised their actions well in advance of these comments being posted on the website; the damage to their reputations is entirely self-inflicted.'

11. Ms Randall's Defence also included a statement that *'The qualities and actions attributed to the complainants are a matter of common and reasonable opinion, arising from the publicly displayed actions and behaviour of the complainants'*; but she made clear that her essential defence was truth in fact.

12. Over the course of six days evidence, I heard on the Claimants' side Dr Wozniak, Ms Kelly and another local resident Mr David Pitt. In addition to herself, Ms Randall called

the following residents : Mr Nicholas Lindwall, Mrs Laila Carruthers, Mr David Bubb, and her mother Mrs Janice Randall. She also adduced without objection, but without admissions and of course subject to weight as hearsay evidence, the witness statements of Mr Richard Carruthers, Ms Margaret Walker, Mr Richard Atkinson, Ms Hannah Proctor, Mrs Susan Bubb and Mrs Elizabeth Lindwall. It was also agreed that various statements made by the Defendant's late father Mr Robin (Bob) Randall and contained within documents in the trial bundles were admissible on the same basis. Evidence relating to some of the various incidents has also been given through CCTV and iPhone recordings. With one or two exceptions I have found these recordings and images to be of rather limited assistance.

13. In a directions order made on 23 November 2020 Master Sullivan had ordered exchange of signed statements of witnesses limited to 8 witnesses each, but with permission to apply to the court to rely on more witnesses of fact. At a late stage in her closing submissions I granted permission for the Defendant also to adduce the witness statements of Mr Stephen Thompson and his wife Mrs Tracey Thompson (each dated 24.2.20) and a further statement of Tracey Thompson dated 23.5.21. In the case of the first two statements, almost all of their contents replicated the contents of hearsay witness statements made by the Defendant as to their evidence and included without objection in the trial bundles. The Claimants did not consent to the very late applications. Having particular regard to Ms Randall's position as a litigant in person and the range of issues which had been canvassed in the course of the evidence I concluded that it was just in the particular circumstances for these further statements to be admitted.

14. In order to assist the witnesses and avoid transition from Cumbria to London during the continuing pandemic, arrangements were made shortly before trial for the hearing to be moved from the Royal Courts of Justice to the nearest available court, namely the County Court at North Shields.

Observations on witnesses and the dispute generally

15. Assessment of the witness evidence in this case has been rendered particularly difficult by the combination of the bitterness of the dispute between the Claimants and those residents who oppose them; the sheer number of the disputed incidents, their transience and in many cases their relative triviality. It is evident that on each side these incidents have been turned over and discussed remorselessly both before and during the litigation and that accounts have unsurprisingly become confused and coloured. I have nonetheless had to consider the evidence in no small detail because of the underlying mutual challenges to the integrity of each side and to the reliability of their accounts.

16. Whilst in many cases the evidence about individual incidents has on each side been at times confused and unreliable, I have been satisfied that each witness was giving honest evidence. I emphasise that this includes those occasions where I have not accepted the evidence of a particular witness. This general conclusion on honesty of course extends to witnesses whose evidence was admitted as hearsay through witness statements and otherwise.

17. I also conclude that the two sides in this dispute have been well-matched both in the intensity of their beliefs as to the rightness of their position and in the resources deployed. On the one hand, Ms Randall and her supporters have asserted their perceived

rights through user of the disputed area and through various acts of self-help, e.g. by parties carrying out works in the disputed area to undo steps taken by the Claimants; the website; pre-Covid forms of social distancing; and by the formal processes of enlisting support from the Parish Council and application to the LDNPA for a Modification Order. On the other, the Claimants have both carried out their own acts of self-help, e.g. in repeatedly going out and taking issue with those who use the tracks or green in ways that they consider to be unlawful, and by e.g. placing boulders and installing (ultimately unused) bollards; and also by the more formal process of solicitors' letters and complaints to the police, local authority and others. In all the circumstances I do not accept Ms Randall's underlying implication that there has been an imbalance of power between the two sides.

18. Dr Wozniak came across as a man with a very strong sense of his perceived legal rights and of his determination to uphold them against any perceived wrongful challenge. This is coupled with a manner which is relatively inflexible and not readily leavened by humour. Once convinced of his rights he did not hesitate to take such steps as he considered appropriate and lawful, including those referred to above. On occasions he demonstrated a lack of care in his evidence; and had to acknowledge that he could not maintain an account which he had previously given. However I am satisfied that there was no dishonesty in his evidence or accounts at any stage nor otherwise in his behaviour throughout these events.

19. Ms Kelly came across as a less forthright and much gentler personality, but one who strongly shared the beliefs held by Dr Wonziak as to the rights which are in dispute. She evidently had been greatly looking forward to taking part in social and community activities in and around their chosen retirement village; and had in various ways, e.g. the Bampton pantomime, sought to throw herself into the life of the locality. Her distress at the course of events in this dispute and its effect on their enjoyment of their retirement home was evident and sincere. I have not accepted her evidence in every respect but again am satisfied that at all times it was honest.

20. Ms Randall combines an evident intelligence and a ready wit with a profound passion for this area of Cumbria, its farming and other traditions and in particular for Rosgill. She has intensely-held views as to the perceived historic user rights of local residents across the disputed area. In her evidence she was prone to speak of the views of 'the village'. I am not persuaded that she was in a position to speak in those wide terms; and conclude that her views principally reflected those of the particular households (Thompson; Carruthers; Atkinson/Walker; Bubb; Lindwall; Randall) who featured prominently in the evidence of various incidents. Where my findings conflict with Ms Randall's evidence, I again accept that her account has been at all times honest. On the central issues of this case I have concluded that her passion for Rosgill and its perceived rights and traditions has on occasions overtaken her judgment and thus allowed her to make statements about the integrity of the Claimants which cannot be sustained.

Narrative

21. I will now set out my findings of fact on the history of this matter and the plethora of factual issues which have been raised, but limited to the extent that I consider necessary to determine the issues in this libel claim. My successive findings of course take account of the totality of the evidence which I have heard and read. Having made those findings, I will then turn to the specific issues which arise in respect of the claim of libel.

22. Dr Wozniak was in dental practice for about 37 years before retirement in 2010. Ms Kelly subsequently retired from her own professional career which included working for the National Westminster Bank, the accountants Price Waterhouse and an NHS Trust. They decided to retire to Cumbria and completed the purchase of Abbott House from Mr and Mrs Lawson on 30 April 2015. At that stage the house was an unfinished renovation project, comprising a cottage and attached barn and uninhabitable. The works of renovation were substantial, continued until some point in 2017 and involved a good deal of disruption with construction delivery vehicles and the like. At the outset, the Claimants spent the weekdays in a rental property in Hampshire and camped in one or two rooms in Abbott House at the weekend. They moved in fully in October 2015.

23. At the top of the track, where it joined the Bampton road, the Lawsons had in about 2010 installed a 5-bar farm gate across the track (the 'top gate').

24. Facing Abbott House on the other side of the green is Ash Hill, a farm owned by Mr and Mrs Stephen Thompson who lived there with their three children and Mr Thompson's mother. Whatever the true legal position, they were in the habit of using the tracks in the disputed area with farm vehicles and otherwise. In my judgment they are a very important part of the story, albeit their evidence has been limited to their witness statements and thus untested.

25. I accept Ms Kelly's evidence, unchallenged in the Thompsons' statements or otherwise, that on the date of completion (30.4.15) Mr and Mrs Thompson called at Abbott House; and as they were leaving advised the Claimants that the track around the grassed area at the front of Abbott House was to be kept clear at all times for their use.

26. The Claimants made no comment, but the manner and terms of this statement evidently riled them. In general terms I consider that the Thompsons' assertions and user of the track, and the Claimants objection to these, were together the germ of this unhappy dispute. Each side was strong minded and neither gave quarter.

27. In purchasing Abbott House the Claimants knew that the 'disputed area' was unregistered land. Access across the tracks to their home was vital to them. Their right of way for that purpose from the Estate was only insofar as the Estate was able to make such a grant. I accept Dr Wozniak's evidence that in purchasing the property he had searches undertaken to make sure that there was not some other owner of the land who might appear and prevent them using the track. In addition they took out indemnity insurance as what he called "belt and braces".

28. Ms Randall's home at Hall Garth is some way down Rosgill Hill. Her parents Mr and Mrs Randall lived with her there from 2011. In 2015 Mr Randall (then 82) was in the habit of taking a regular walk which took him along the track and past Abbott House. In his later submissions to the LDNPA (19.10.17; 31.1.18; 2.10.18) he stated that on a date in 2015 Dr Wozniak had confronted him on his walk at the northern end of the track and asserted ownership in terms "You realise you are on my ground – you can walk there as long as you understand it is mine"; and that when he rejected that claim stating that it was public land, Dr Wozniak continued something like "it's my land – if it isn't I intend to take it over." He went back and told his wife of this conversation; she recorded it in her diary; and in his submission of 31.1.18 he identified the date of the conversation as 8.6.15. Mr Randall died in 2019; and in due course Mrs Randall's diary was discarded.

29. Dr Wozniak accepts that he was in Rosgill on 8.6.15 (a Monday) but denies he had any such conversation with Mr Randall. He says that he first met him in July-October 2015 and they would pass the time of day and discuss the progress of his building works. Their relationship until late 2017 was entirely cordial; Mr Randall was a delightful gentleman; but he must be mistaken about the conversation. However in late 2017 he had called out to greet Mr Randall, who responded "You do not own this land and I don't need your permission to walk on it". He had replied "Bob I know I don't own the land but even if I did, you would still be welcome to walk through". He had explained that the land was unregistered but that in the course of his investigations his solicitor had come to the view that the Claimants had a valid legal claim to ownership.

30. Mr Bubb gave evidence that he had been told by Mr Randall of a conversation with Dr Wozniak in which he said that he owned the land. He could not remember the date of when Mr Randall told him this, but it was long before Ms Randall's application in December 2017 for a Modification Order.

31. I am not satisfied that the accounts of either Mr Randall or Dr Wozniak are correct; nor can I give any useful weight to Mr Bubb's limited hearsay evidence on the matter.

32. Whilst of course Mr Randall's account has not been tested in cross-examination and Mrs Randall's diary is no longer available, I think it likely that there was a conversation between him and Dr Wozniak about the disputed area on 8 June 2015. In particular (i) I think it inherently unlikely that, when submitting his information to LDNPA in October 2017 and January 2018, Mr Randall had confused an incident in 2017 with one occurring 2 years earlier; or that he had mis-recorded the year when subsequently checking his wife's diary (ii) Dr Wozniak was admittedly in Rosgill on that date. From the evidence of their respective characters, I think it unlikely that he would have taken the initiative in raising the topic with Dr Wozniak.

33. In reaching the conclusion I have duly taken account of the evidence in Mrs Randall's witness statement that "the first real inkling" of a problem was not until receipt of the Claimants' 'open letter' to the village of 2.10.17; and of her answer in cross-examination that the material conversation between Dr Wozniak and her husband had been sometime in the month or year of that letter. However in re-examination she stated that it occurred when the Claimants had recently moved in; and I accept that evidence.

34. By contrast, I am not satisfied that Dr Wozniak spoke in the terms which Mr Randall recalled. I conclude that Dr Wozniak initiated the reference to the land but that his words were to the effect that it was "private property" or "private land". That is a formulation which the Claimants have subsequently used, e.g. in the recorded remarks of Ms Kelly during the incident at the 'top gate' on 31.1.18. That phrase is also consistent with the evident focus on the distinction, as they saw it, between private and public rights over land. That concern had been initially triggered by the Thompsons' assertions and use of the tracks; and became an increasing concern as others in the locality made use of the tracks and sometimes the green.

35. In my judgment at this stage the Claimants' focus was on the issue of public rights over the land. I accept their evidence that the advice from the solicitors about a claim to ownership under the *'ad medium filum'* principle was not received until about July 2017. From my observation of Dr Wozniak's character and his legal rights and advice, I do not think it likely that he would have made a claim to ownership before that stage.

This conclusion is further supported by Mrs Randall's account in cross-examination of her husband's immediate report of his 'very peculiar meeting' with Dr Wozniak: "you do know you're walking on private land don't you? - I don't know anything of the sort - You can walk on here, but it is private land - I know nothing of the sort but I shall continue to walk here".

36. One weekend before the Claimants had moved in full-time, i.e. before October 2015, they were visited by Mr Nicholas Lindwall, a local councillor and long-standing resident of Rosgill. He told them that the triangular green was common land and for use of the community as a whole; and also that the Thompsons had a right to vehicular use of the track for their purposes. As to the green, I accept that Mr Lindwall at that time believed that his late mother had carried out the necessary registration of the green as common land. On checking with the Commons Commissioner he found that this was not correct and that his mother had made a mistake with the plans. He went back and apologised to the Claimants. However in broad non-legal terms he evidently regarded the green as common land.

37. It was Mr and Mrs Lindwall's custom to hold an annual Christmas drinks party for the whole village. The Claimants were duly invited to the party on 3.1.16. Ms Kelly's evidence was that they were made to feel uncomfortable by Mr Lindwall's manner towards them. I accept Mr Lindwall's evidence that he had no such intent. Three days later they attended a party at the home of Mr and Mrs David Pitt who had become friends in the village. During 2016 they formed other friendships in the village, in particularly an older couple Florence and Ronnie Gowling; also a farming family at Rosgill Head. Ms Kelly in particular became involved in a range of local activities, e.g. bell-ringing and the Bampton pantomime.

38. Although the evidence in respect of 2016 is relatively sparse, there was evidently some serious developing trouble between the Claimants and principally six households in the village concerning the use of the disputed area. This reflected both the Claimants' continuing building works; and user for farming and other purposes by (in particular) the Thompson, Carruthers and Atkinson/Walker households. The most direct problem was between the Claimants and the Thompsons at Ash Hill, with each challenging the other in their user. Mr Lindwall took on the role of mediator between the two, without success. Whilst I accept that he attempted this in good faith, it was clear from his evidence that his sympathies lay with the Thompsons and the rural community and its traditions generally. In Court he described the Claimants as 'coming from a suburban background' and said that they should have given way to the rural community which they had entered.

39. In preparation for his next year's Christmas party, Mr Lindwall saw the Claimants and issued an invitation, but added that if they came ('I wanted them to come') they would find at least six households at the party who would tell them how they felt about their behaviour. In evidence, he identified those households as the Thompsons, Atkinson/Walker, Bubbs, Carruthers, Randalls, 'and me'. Unsurprisingly, the Claimants did not accept this somewhat backhanded invitation; and there was no invitation in subsequent years.

40. In 2017 the problems between the Thompsons and the Claimants magnified. The statements of Stephen and Tracey Thompson provide limited detail of the position in that year. In broad terms, the overall picture is of the Thompsons making increasing use

of the tracks with vehicles for the purpose of their farm and the Claimants' rushing out to protest, particularly if they felt that their access to their home was being impeded. Each side evidently felt very strongly about their respective rights in the matter.

41. From time to time there were incidents where in my judgment it is likely that the Thompsons' primary motive was to make a point about their perceived rights; for example on 29 March 2017 when Stephen Thompson and his young daughter mowed the grass on the triangle and the verges on each side. This continued on a few occasions in 2018 and 2019.

42. On 24 July 2017, Dr Wozniak carried out work on the green. On his account it was restoration with topsoil and reseeding the area which had been damaged by the vehicles deployed in his building work on Abbott House. On the rival account it was an attempt to extend the area of the green and thus reduce the turning circle afforded by the tracks. I have been shown CCTV of that work being carried out and what is said to be Tracey Thompson then driving her 4x4 over the reseeded areas. The Claimants then placed stones/boulders on the corners of the triangle in order to prevent further damage. I prefer the Claimants' account of the matter; and do not consider the film to contradict it.

43. By about this time, in July 2017 as I accept, the Claimants had received advice from their solicitors that they had a claim to ownership of the disputed area on the *'in medium filum'* principle.

44. On 31 July 2017 the Claimants' solicitors sent a letter to Mr and Mrs Thompson which complained that they had on numerous occasions used the Claimants' 'access-way' in order to turn vehicles; had parked there and on the green and on occasions had blocked the access to Abbott House in part or in whole. The letter contended *"You have no rights to drive on, park on or obstruct or otherwise use that land for any purpose"*; that any such use must cease with immediate effect; and that for the avoidance of doubt they 'now' had no permissive right to use the land for any purpose whatsoever. The letter threatened Court proceedings, including but not limited to an application for an injunction. In the plan attached to the letter, the two parcels comprising the registered title for Abbott House and the disputed area are edged red as one unit.

45. Mr and Mrs Thompson forwarded this letter to the Lonsdale Estate. By email to the Claimants' solicitors dated 22 August 2017 the Estate's solicitors expressed their concern about the letter, for two reasons. First, because the red edging to the plan enclosed the tracks and verges (i.e. the disputed area) which had not been included in the 2008 sale by the Estate to the Claimants' predecessors (Lawson). Secondly, because of a strong implication in the letter that the Claimants owned that area and/or had the ability to control its use by third parties. The email stated that the Estate owned the verges in question and claimed ownership of the tracks in question; and that only the Estate could grant or limit rights over the land.

46. In the meantime, on 9 August 2017 the Claimants installed CCTV in their property. I accept Ms Kelly's evidence that this was on the advice of the police.

47. By letter dated 10 August 2017 the Thompsons' solicitors asked the Claimants' solicitors for information as to the basis of their claim to exclusive use of the disputed area; and stated that the Thompsons had throughout their ownership since 2011 used

the accessway for turning vehicles and trailers; as had their predecessors for many years before; and invited further discussion in a conciliatory spirit.

48. By their reply dated 22 August, the Claimants' solicitors asserted their ownership of the land on the basis of the legal presumption; and said that there was no evidence sufficient to establish any right of way over that land for any purpose whatsoever. They added that the Claimants would respect any rights established by satisfactory and conclusive evidence. On being pressed for that evidence, the Thompsons solicitors advised by letter dated 26 September that they were in the process of collating this.

49. By way of an example of the stance of those households who had particular objection to the Claimants' position over the disputed area, in a filmed incident on 2 September 2017 Mr David Bubb when driving his car down Rosgill Hill took a detour around the green before heading on down the hill. Having heard his evidence in cross-examination, I have no doubt that this was one of numerous incidents where those opposed to the Claimants made use of the tracks for the primary purpose of making a point as to their perceived right to do so.

50. The situation having deteriorated in this way the Claimants' friend and long-time resident Mr David Pitt arranged conciliation discussion with Mr Lindwall which took place on 1 October 2017 but this was unsuccessful.

51. At some point in a discussion between Mr Lindwall and Dr Wozniak, the latter made the remark that "I am a Pole and we fight to the death". This was denied in the Claimants' pleaded and verified Reply (29.7.20 para.10(8)) but acknowledged in Dr Wozniak's subsequent witness statement (25.2.21) and evidence in Court. His initial denial was undoubtedly careless, but I am not persuaded that it was dishonest.

52. The Claimants then took the step of writing and distributing an 'open letter' to the village. The letter (2.10.17) began by stating its purpose, namely to put across their point of view in answer to 'a great deal of misinformation' that had been distributed about the situation at Abbott House – "and leave it to you to draw your own conclusions".

53. The letter then stated how their intention in moving to Rosgill had been to fit in with the local community 'and especially our neighbours'; that they had involved themselves in a number of local community activities and projects and had without exception been warmly received. They referred to the building works and to their attempt to minimise the consequent disturbance. Those works were now almost complete.

54. The letter then set out the problems which had occurred with other members of the community "for reasons we struggle to understand". Their solicitor's searches before purchase had raised no issues about user of the tracks and green "but as we wished to be good neighbours and in any event were happy to share use of the track, we acquiesced, expecting in return that a measure of consideration and mutual respect for privacy would be shown". The letter then set out the history of incidents which had disappointed this expectation, including e.g. an increased use of the tracks, with journeys round the green undertaken for no good reason and access blocked; the acts of mowing the green and the verges; and the damage to the reseeding area. The latter had triggered their installation of CCTV cameras 'installed to record the spiteful behaviour' and the subsequent solicitors letters.

55. The letter continued that "We find it more disappointing and depressing than words can express that well-known members of a law abiding community with family and community responsibilities (including two local councillors) should stoop to behaving like hooligan delinquents", adding "however, now that we are here, we have no intention of being bullied or driven out".

56. Their concern was about establishing unimpeded access to their home and to a "cessation of mindless damage to its surroundings", but the issue was being turned into one of rights of way. "For the absence of doubt, we have never had any problem with anyone using the driveway or track when or if the need arose, irrespective of whether there is a right of way or not. For us, it is a matter of neighbourly behaviour, not one of "rights".

57. Under the heading "some inconvenient truths", the letter then set out their account of the legal position in four respects. First, the land was not common land or a village green; and driving over for parking vehicles on common land was expressly forbidden by law with the exception of those with rights of access to their property. Secondly, that the Claimants as owners of Abbott House had rights of access over their land. Their neighbours and others did not, nor had they any permissive right to use the access. "Nevertheless, we have always been happy to be neighbourly and helpful regardless of any rights". Thirdly, as to ownership: no historic owner of this unregistered land had been identified. However they had been advised of the presumption in law which the letter the then detailed. Fourthly, rights of way: the access track to Abbott House was not a public right of way, bridleway or public footpath. They added "however, should any other legal right of way come to light in the future, we will of course, honour it."

58. The letter concluded "we would like to thank you for your patience in reading this long letter and trust that we may now be allowed to enjoy our retirement in peace."

59. Before the letter was distributed, Mr Pitt on their behalf showed it to Mr Lindwall. Mr Pitt asked him to deliver the letter to the Thompsons, Carruthers and Bubbs with a message that if an apology was received by 18:30 hours that evening together with a promise not to use the green again, nothing more would be said. If no apology was received, the letter would be circulated around the village. As Mr Bubb confirmed in his evidence, the letter and that message were so delivered by Mr Lindwall.

60. The letter was not well received by those recipients, in particular because of the reference to "delinquent hooligans". No apologies being received, the letter was distributed to the village (21 households). Mr Bubb and another resident returned the letter to the Claimants' address. They received two written responses, i.e. from the Randalls and from Mr and Mrs Tony Smith. The Smiths' careful and measured letter (9.10.17) began by stating that they had been unaware of any problem; and concluded in terms which supported both the principle of historic user and the importance for the land to be kept tidy and for the Claimants to have unrestricted access to their home. In this case of increasingly bitter feelings and unflinching positions on each side, the letter stands out for its moderation and good sense.

61. On 6 October 2017 the Claimants' solicitors wrote again to the Thompsons' solicitors. They stated that visitors to Ash Hill had parked on and obstructed the access to Abbott House and that the Thompsons had taken no action to prevent this. Furthermore no evidence had been received in support of their assertion of a right of way or of any

entitlement to drive round the triangular green. In the absence of the receipt of any such evidence by 13 October the Claimants would 'take steps to close off the access in order to prevent the use of that access by unauthorised persons including your clients'; and in the event of further interference might apply for an injunction.

62. By letter of the same date the Claimants' solicitors wrote to Mrs Carruthers, with instructions that she had driven over the access track at considerable speed causing significant damage to the surface; that she had no right to use the tracks in any event; and threatening an application for an injunction and damages in the event of repetition.

63. In the absence of compliance with their letter of 6 October, on or about 17 October 2017 the Claimants installed two retractable bollards on the tracks, one at the entrance to each spur. In each case the bollard was erect for the period while the concrete was setting. The bollards were never deployed but their presence led to a subsequent incident in May 2018 when Mr Carruthers or his son (it matters not which) opened one up, causing it to lock in the erect position. Having called out the police Dr Wozniak then came out and locked it back down.

64. On 18 October 2017 there was an incident in the area of the green concerning the movement of cattle. The Carruthers' tenant farm included 190 acres at the top of Rosgill Hill. In the usual way it was necessary to bring the cattle down from there for the winter season, via Rosgill Hill. This was something of a community effort, with help from e.g. Ms Randall and Mr Lindwall, a former beef stockman. The route took them past the triangular green. A particular concern was to prevent them going onto the green. For that purpose Mr Lindwall put up a number of white cattle feed bags and fluorescent jackets in order to funnel them away. However this seems to have 'spooked' the cattle. Mrs Carruthers shouted at Mr Lindwall that the cattle were not going to come past with the bags and jackets in place. In the meantime Dr Wozniak had come outside. As I accept, at a point when the cattle were turning towards the righthand spur he picked up one of the fluorescent jackets and began waving it. The cattle 'spun' or turned back up the hill; but the situation was eventually resolved. On the available evidence of this confused and frantic episode I find it quite impossible to be satisfied that Dr Wozniak was responsible for the cattle turning. In any event, whilst he plainly should have kept away from any intervention in a task which was for those with appropriate experience, I am quite satisfied that he had no malevolent intent but was rather clumsily overreacting to an event which was involving this contentious piece of land.

65. At about this time Ms Randall decided to make preparation for an application to the LDNPA for a byway to be established by Modification Order. To assist in that purpose she set up the website 'Concerned of Rosgill'. Its general focus was the problems arising in the disputed area. Its immediate purpose was the dissemination and completion of LDNPA questionnaires relating to the application and the historic user of the disputed area : see e.g. the first post on the website dated 8.11.17. Approximately 70 such questionnaires were completed.

66. On 4 December 2017 Ms Randall addressed a meeting of the Shap Parish Council, referring to the historic user of the disputed area by local people and complaining of the placement of bollards and boulders. The Councillors present (Mr Lindwall declared an interest) indicated that they were minded to support the proposed application to the LDNPA. An extraordinary meeting was arranged for a week later. This, not attended by Mr Lindwall, resolved that a letter of support should be sent. These decisions having

come to their notice, the Claimants sought and were subsequently granted the opportunity to state their own position.

67. Ms Randall's 'Form A' application to the LDNPA is dated 11 December 2017. The application is for a byway open to all traffic between Rosgill Hill and the Bampton Road. I accept her evidence that the application was limited to the track. Although the attached plan edges the whole disputed area in red, its markings distinguish 'Track' and 'The Green' and she has added the manuscript note 'Coloured area shows tracks for which R.O.W. is claimed'. A further plan prepared by the LDNPA and headed 'claimed right of way' clearly indicates that claim by a dotted line along the tracks.

68. In the consultation response to the application, the Claimants stated "we do not consider any public rights of way exist over the route" and in the evidence section stated that until the last 11-12 months there had been no evidence of use by the general public with or without vehicles. In support of their case, they subsequently obtained and supplied a statutory declaration dated 15 March 2018 from Mrs Florence Gowling of The Barn, Rosgill. This stated that she her husband and son had farmed in Rosgill for 30 years (1973-2003) as tenants of the Estate and that Abbott House was part of the farm. It continued: "Throughout that period of time the Green Land and Access Track were not used by the general public either as a right of way for parking or any other purpose nor am I aware of anybody other than the residents of Abbott House using the Green Land or the Access Track for any such purpose." She added that very occasionally in bad winter, when heavy snow was predicted, a few residents cars from down the hill would park outside Abbott House so that they did not become stranded, to which they made no objection.

69. The statutory declaration was sworn at Mrs Gowling's home before an independent solicitor and in the presence of her husband, the Claimant's solicitor Mr Rodney Blezard and Ms Kelly. I accept Ms Kelly's evidence that she asked Mr Blezard if it would be appropriate for her to be present and that he said that it was, provided that she did not make any comment.

70. The LDNPA official (Mr Nick Thorne) who prepared the ultimate report had a meeting with Mrs Gowling and her son Keith at her home on 26 July 2018. As confirmed by his notes of that meeting, Mr Thorne's report of 23 January 2019 notes that Mrs Gowling and her son in their initial forms had both said that they had not seen the public using the track. He continues "In discussion with them, they clarified that what they really meant was that they had not seen the "wider public", but were well aware of villagers and farmers using the track… Whilst their own actual observation of direct use appears to have been relatively small, a lot of their comments were along the lines of "they will have used it", but when questioned as to whether they had actually seen that person using it, they were less clear. It was also fair to say that there was an acknowledgement that they would not necessarily have taken much notice of people using it, or who they were, because it was generally accepted that people could and did use it… There was nothing that the Gowlings said that showed that the local residents have not done what they have claimed that they have done. That is, used the route in various ways over many years. But their evidence stopped short of confirming the levels of use claimed. In Keith Gowling's words there was "nothing to say they haven't, but nothing to say they have either".

71. Ms Randall points to the difference between Mrs Gowling's Statutory Declaration and the account given by her to Mr Thorne; and says that the only explanation for the contrast is that Mrs Gowling must have been brainwashed by the Claimants into making a statutory declaration that was plainly false. By brainwashing she said she meant exerting undue influence on an elderly and frail person; and that was the only possible inference from the contrast between her accounts. This was supported by the declaration and signature having been obtained in the presence of Ms Kelly and the Claimants' solicitor.

72. I entirely reject the allegation of brainwashing, undue influence or any other form of impropriety in the obtaining of the Statutory Declaration. There is no evidence of want of capacity on the part of Mrs Gowling. If there had been, I consider that this would have been noted by the conspicuously thorough and careful Mr Thorne; and that the independent solicitor taking the oath would not have allowed it to proceed. Nor is the distinction between the declaration and the fuller account as stark as Ms Randall insists. In particular, Mr Thorne in his careful questioning drew out the distinction which both Mrs Gowling and her son made between local farmers and villagers and the wider public. As Mr Thorne noted, Keith Gowling had in his own initial form said that he had not seen the public using the track : see his answer 'no' to the question "Did you meet (or have you seen) other people using the path?" All in all there is simply no basis for drawing any inference adverse to the Claimants, let alone an inference of the gravity which Ms Randall suggests. As will appear later, I equally reject the suggestions that the Claimants brainwashed Mr David Pitt or Dr Brian Frost Smith.

73. In the meantime many other unhappy incidents occurred between the combatants.

74. In or about June/July 2017 the Claimants had installed a spring on the top gate, in order to keep it closed and to prevent vehicular access. Although not tested in cross-examination I accept the evidence of Mr Atkinson (Nook Farm) that in July 2017 he suffered injury to his hand when coming through the top gate on his tractor because of a strong spring which the Claimants had attached to the gate. The spring made it impossible for the gate to stand open. He removed the spring with bolt-cutters. Dr Wozniak came up from the house and challenged him. The spring was subsequently replaced. As a result of other incidents with such gate-springs in the area, this caused concern; but also fuelled by the underlying dispute as to the existence of a right of way. I also accept that the spring on the gate caused a bruising injury to Ms Randall; and (although untested evidence) see no reason to doubt Mr Thompson's double-hearsay evidence that his daughter suffered a bruising injury from the spring.

75. On 31 January 2018, with notice to the police but not to the Claimants, a party including Ms Randall, Mr Lindwall and Mr Bubb went up to install a post and chain at the gate. This was to enable the gate to be held open by riders and farmers using the track. As they must have foreseen, this inevitably resulted in the Claimants coming up to protest that they had no right to take this action. As the mobile phone footage records, Ms Kelly was repeatedly saying that this was private property. They told them that they had informed the police and 'had the landlord's permission'. A subsequent e-mail timed at 9.20 pm that evening from the Estate's John Turner confirmed the Estate was content for the gate to be held open by this means, *'thus allowing the Villagers to pass freely over this land on foot and with vehicles and when driving stock as has being the local custom for decades.'*

76. As recorded on the mobile, and the work having been completed, Mr Bubb decided to leave in his 4x4. He reversed the vehicle in order to turn round and then drove forward. Ms Kelly had been trying to film his number plate; Dr Wozniak was making his way down the track. The Claimants allege that Mr Bubb's vehicle struck her foot and her knee. The evidence from the work party is that there was no such collision; and that having rejoined Dr Wozniak down the track and spoken to him, Ms Kelly then put on an act of limping home. Ms Randall also challenges a photograph taken a few days later of alleged bruising to the knee. Ms Kelly reported the matter to the police, who spoke to her both on the phone in the morning and in person later that afternoon.

77. I am quite satisfied that there was a collision, evidently unintended by either party, between Mr Bubb's vehicle and Ms Kelly. The mobile footage provides little assistance on a brief and frantic episode but clearly records Ms Kelly crying out 'My toe'. I conclude that there was also a collision to her knee and that this resulted in the bruising which later manifested itself. I do not accept that there was any play-acting as she and Dr Wozniak returned home. In the heightened tensions of this relationship, I see no dishonesty in the response of anyone present. By this time either side instinctively distrusted the actions or motivations of the other in any event which occurred.

78. The police records of Ms Kelly's call, classified as "assault", reports her distress and reference to a 'dispute surrounding vehicular access across her land'; and in the subsequent conversation the Claimant's "claim that they are the rightful owners of the track and triangle of grass although they concede that the land is unregistered with the land registry". The police officer reviewed the footage and noted that "although not conclusive proof it does suggest that contact was made"; that Ms Kelly considered that she was assaulted albeit recklessly rather than deliberately; but that she did not wish to follow through with a prosecution.

79. Ms Kelly disputes telling the police that it was 'her land'. On balance I am not satisfied that she did. In my judgment the Claimants were inherently cautious in the language which they personally used about ownership of the land. In the light of the legal advice, I am satisfied that they believed themselves to be the rightful owners; but were conscious that this had yet to be established by successful registration of title. This qualification they expressly acknowledged, e.g. to the police later that afternoon; and in Dr Wozniak's later e-mail to the District Council on another topic on 9.11.19 (19.29).

80. True it is that Dr Wozniak's evidence in Court was to the effect that he did not consider them to own the land until this had been established by registration of title. In my judgment, this simply reflected his perception of the ultimate proof of ownership through registered title. It does not put in question his or Ms Kelly's belief in the validity of their claim. All in all, I do not accept that these various verbal distinctions provide any support for Ms Randall's case that the Claimants have been speaking dishonestly about the issue at the time of these various events nor in the evidence given to the court.

81. This applies equally to other evidence of references by the Claimants to ownership of the disputed area. Thus e.g. Mr Carruthers' witness statement gives an account of an incident on 21.9.17 when Dr Wozniak is alleged to have shouted 'get off my land'. In the absence of live evidence which has been tested in cross-examination, I do not feel able to accept this account. However, even if accepted, in my judgment it provides no support for the charge of dishonesty. Any such remark would have reflected Dr Wozniak's honest belief following receipt of legal advice in July 2017.

82. The Claimants subsequently disabled the chain on the gate by twisting it. This reflected their honest belief that Ms Randall and others had no right to take the action which they had; and they in turn honestly considered this to be a breach of the rights which they asserted.

83. On the day after the top gate incident on 31.1.18 Ms Kelly and Mrs Bubb encountered each other outside the Co-op in Shap. There is a dispute as to the precise language used by Mrs Bubb towards Ms Kelly, who then called the police. Not least in the absence of Mrs Bubb's evidence being tested in Court, it is impossible to reach any conclusion on this episode. In any event, its resolution could have no useful bearing on the issues in this action.

84. By letter to the LDNPA dated 18 April 2018 the Estate, by Mr Turner its Resident Agent, asserted its ownership of the disputed area and continued *'... I have always managed this land and ensured that it remains open and free for the quiet passing of villagers on foot, horseback or vehicle with or without stock. I have always removed any barriers, signs or obstructions to ensure the free passage of villagers over routes and between points A-B-C-D... I can confirm that these routes have always been available for villagers to use and Lord Lonsdale is happy for this custom to continue without obstruction, hindrance or harassment with no charge, and if this right of access can be formalised by a statutory designation of the route as a byway open to all traffic then no objection would be forthcoming from the Estate'.*

85. On 28 May 2018 Mrs Tracey Thompson had a birthday party at Ash Hill; and the incident with the raising of the bollard occurred. This is yet another minor incident of no gravity; but the conduct of each side has been seen by the other in the most unfavourable terms.

86. On 13 June 2018 there was an overnight storm which caused branches to fall from the Claimants' trees onto the Bampton Road. The next day the Claimants gathered up these branches and (and on their account) left them on the verge to await collection by contractors they had engaged, but taking care not to block the gate; and saw walkers negotiate the gate without difficulty. Supported by photographs, Ms Randall contends that the branches were dumped in a way which blocked the gate and was intended to do so. On the admittedly imperfect evidence of the photographs, I conclude that the branches were placed nearer the gate than Ms Kelly recalls. I am satisfied that her recollection was honest and that the primary purpose was to leave the branches for collection. However in the context of the ongoing dispute and their perceived rights, I conclude that the Claimants would not have been troubled if the effect was to impede at least vehicular access. I also accept Ms Kelly's unchallenged evidence that on 23 June 2018 a party of those involved in Concerned of Rosgill gathered up the still-uncollected branches, loaded them on a trailer and dumped them on the triangle green.

87. At or about the same time some of the boulders/stones were rolled out of position. Furthermore, as Ms Randall accepts and indeed asserts, on 15 November 2018 she and others organised what she called a 'boon day' to remove the remaining boulders on the green.

88. In the meantime, on 13 November 2018 Mr Thorne issued his report. This strikingly painstaking and detailed document concluded that public bridleway rights along the length of the track had been established through long user; but that vehicular rights had

not been established.. As to the latter, the claim was in particular hampered by the effect of the National Environment and Rural Communities Act 2006 which, as he explained it, *'extinguished, from the date of commencement, all existing unrecorded rights for mechanically propelled vehicles, thus breaking the automatic connection between horse and cart routes, and full motor vehicle routes of today'* (para.6.3). As to the bridleway he concluded that the top gate installed in 2010 could not be considered part of the highway during the dedication period and that accordingly *'the route should be recorded without the gate as a limitation.'* : para.6.5.15, also 7.3.

89. The LDNPA accepted Mr Thorne's report and conclusions and made a Modification Order in those terms on 19 February 2019, further confirmed on 21 May 2019.

90. In her witness statement Ms Kelly stated that following the order of 21 May the Claimants 'subsequently' removed the gate. That is literally correct, but the Claimants did not do so until 7 months later, i.e. 16 December 2019. The Claimants and their solicitors argued the position in correspondence with the LDNPA and by letter dated 10 October 2019 Mr Thorne ultimately had to threaten legal proceedings if the gate were not removed. Ms Kelly agreed in cross-examination that it would have reflected the position better if her statement had made this clear.

91. A range of further alleged incidents on the disputed area have been relied on by Ms Randall.

Blue bags incident

92. As I accept, it was Ms Randall's practice to play her part in roadside litter clearance, while walking with her successive dogs. Her route took her along Rosgill Road, by the green. At that point, before descending the narrow and twisty Hill, she would leave her litter bag on the corner of the green. She would do that on the day when the dustbin lorry was due; and later in the day pick up the blue replacement bag left by the dustmen.

93. On 22 April 2019 she received a message from Tracey Thompson that Ms Kelly had picked up the blue bag and put it with her own. This annoyed her as this would mean that the free replacement bag (otherwise costing about £1.35) would go to Ms Kelly. She came to an arrangement with the dustmen that they would bring the replacement bag direct to her. In December 2019 she received a message from Mr Hill of the District Council that there had been a complaint about her litter bag being left on the green. She told them that she had the permission of the Estate to do so. Mr Hill later rang to ask if it was possible to leave the bag elsewhere as he was getting involved with long streams of emails and other communications. She said no; that she had a right to leave it there; and that the arrangement had worked well for a number of years. Also the Council itself on occasions used the green as a collection point for blue bags. Mr Hill accepted the point.

94. Ms Kelly's account of 22 April 2019 is that on putting her own blue rubbish bag out for collection, she noticed another blue bag on the verge of the triangle. She had no idea who placed it there and simply moved it to be picked up with her own. Dr Wozniak went out and retrieved the bag and remove items not suitable for household collection. She retained the replacement bags. On checking CCTV they saw that it was Ms Randall who had left the blue bag on the green. This behaviour persisted, she suspected, in order

to cause annoyance and harassment to them. They complained without success to the council.

95. The correspondence from Dr Wozniak to the Council provides a good example of his manner of expression. His email of 11 November 2019 reports that Ms Randall has been collecting litter for the past three months and that 'In itself, this would be commendable were it not for the fact that she leaves a bagful of assorted rubbish on the roadside/green area outside our house. She is in effect depositing all the local street litter on our doorstep. The bin men don't pick it up as it's not domestic refuse so we get left with it and have to sort through it to separate out what is recyclable from what isn't. This is unpleasant and potentially dangerous. We don't feel we should be put in this position. Would someone please ask this lady to desist from dumping rubbish outside our house? If she wishes to continue in her public-spirited endeavour she should perhaps be asked to take her bag of rubbish home with her and deal with it appropriately there? CCTV in the evidence is available if needed."

96. By his reply of 5 December 2019 Mr Miller advised that the collection of the blue bag from the green would "automatically happen"; and if so "we wouldn't particularly consider this to be a significant issue, however if you are able to provide any information that differs to the above we can investigate this matter further".

97. Dr Wozniak quickly replied in terms that "the only issue is that lady doing this is leaving her bag of rubbish outside our house. This area is private property and she has no legal authority to deposit bags of rubbish on it. If she wishes to continue collecting roadside rubbish, she should be asked to leave the bag for collection outside her own house, not ours. I trust you will take the necessary steps to ensure private property rights are respected."

98. Mr Miller responded the following day that in the absence of new evidence they propose to take no further action. Later that same day Dr Wozniak replied that he wished to escalate the matter to a more senior level and sought contact details of the appropriate person. He continued "what you are proposing seems to me to amount to no less than official approval of small-scale fly tipping. For the absence of doubt, please confirm that you consider it acceptable that a member of the public can collect roadside rubbish and using a domestic refuse bag, drop it on any roadside verge and that the refuse contractor is obliged to collect such bags whenever and wherever they are dropped."

99. In cross-examination, he suggested that his reference to fly-tipping was "very much tongue in cheek". On my querying this surprising comment, he quickly withdrew it.

100. Ms Randall submitted that this withdrawn remark about 'tongue in cheek' was dishonest. Likewise Dr Wozniak had made false and dishonest statements in his correspondence with Eden District Council, i.e. in stating that the bag had been deposited 'outside our house' (5.12.19)/'on our doorstep' (9.12.19) rather than on the other side of the green; that Ms Randall lived 'about a hundred yards from our property' (9.12.19) rather than 300 yards; and that 'the bin men don't pick it up as it's not domestic refuse so we… have to sort through it to separate out what is recyclable from what isn't' (11.11.19) but was unable to identify any dates when it had not been uplifted.

101. In my judgment this otherwise trifling episode is just another example of the suspicion and mistrust which was now so well established between the Claimants on the one hand

and the Defendant and a group of supporters on the other; and in particular of the rival characters of Ms Randall and Dr Wozniak.

102. As to Ms Randall, I accept that she had established the practice of leaving the blue bag of collected litter on the green; but equally have no doubt that she obtained no small satisfaction from doing so in the face of the Claimants' assertion of rights which she disputed and in order to reinforce her point. As to Dr Wozniak (and Ms Kelly albeit in her case with less intensity), he felt very strongly about the property right which he believed he held; and was determined to stop what he regarded as a deliberate and provocative interference by Ms Randall with those rights. Thus each side was well-matched in their determination to assert their perceived rights.

103. I do not accept that there was dishonesty in Dr Wozniak's quickly retracted remark in the witness box nor in his correspondence with the Council; nor that there is any basis to contend that the Claimants were stealing replacement (or any) litter bags or in any way behaving dishonestly.

Photography

104. Mrs Carruthers said that since the summer of 2017 the Claimants had gone out of their way to harass anyone they saw using the green; this taking the form of accosting and telling them that they have no right to be there and that the police would be called if they did not go immediately; filming them via the CCTV; and rushing out with cameras which were 'shoved into people's faces'. By way of example, on 2 September 2017 (photos 502-503) she and her husband had seen Dr Wozniak taking photos of their tractor parked on the disputed land. He had warned them that if they continued to use the land he would bring trouble and prosecute them.

105. When collecting her children from the school bus which stopped on the Bampton Road, it was not safe to park up on that tight and fast road. Thus it was her practice to park up on the track. Dr Wozniak would come out and object and take photographs. This she found frightening in the winter dark, so she would leave her headlights on, 'possibly' on full beam. On 18 December 2019 when so parked up, Dr Wozniak came out and told her that she was illegally parked and against her wishes took photographs.

106. The Claimants accept in general terms that they have come out to make objection to what they see as wrongful parking on the land; and that on occasions they have taken photographs albeit not in the aggressive way alleged. As to the incident on 18 December 2019 Dr Wozniak's account is that Mrs Carruthers' car was parked on the track with the headlights on full beam into their living room window. This had been a regular occurrence in the winter months. He tapped on her window and asked her to turn off the headlights. She did not respond so he took two photographs to record the behaviour and identity as advised by the police. Mrs Carruthers got out of her car and shone her Iphone in his face. After telling her not to park there he had gone back inside.

107. I accept that when coming out to object to use of the track or green Dr Wozniak would on occasion take photographs for the purpose of evidence. I do not accept that he did so in any way which was intimidating or intended to be. I cannot otherwise make precise findings on the detail of these incidents, nor do I need to. They are simply yet further examples of the disagreement between the two sides as to rightful user of the disputed area; and in each incident the motive and conduct of each side being identified and

recalled in the most unfavourable terms. The reality was that each side was simply asserting their perceived rights, albeit that after February 2019 the position on vehicular use had been made clear by the Modification Order.

Accosting carers

108. The central dispute has concerned a visit by a carer, Hannah Proctor, to the Thompson household on 27 July 2019. On Ms Proctor's account in her witness statement, she had begun working in the area for just over a year. Her clients included Mrs Thompson senior at Ash Hill and Mr and Mrs Gowling at The Barn. At Mrs Gowling's request that day, she took her over to see her old friend Mrs Thompson for a cup of tea. The yard was full, so she parked on the green. She did not want to park on the public highway or the track. As she was helping Mrs Gowling to get out of the car, a woman (Ms Kelly) drove onto the green, stopped at the gate of Abbott House, got out and came over saying "This is my drive, you need to move!" Ms Proctor asked if she was joking and Ms Kelly replied "No, you need to move. This is my drive". In order to avoid Mrs Gowling becoming distressed, she simply ignored the protest and helped her into Ash Hill. She was upset by this episode and felt that she was being unfairly harassed. She repeated the account to Mrs Tracey Thompson, who records it in her own witness statement.

109. Ms Kelly's account of an encounter with Ms Proctor on 27 July is different. On that day (a Saturday) she was driven home from church by her friends Mr and Mrs Pitt. Mrs Pitt drove round to the 'cottage gate' of Abbott House and parked up in front of an empty car parked on the track. She remained chatting in the car for a few minutes. When she got out, Hannah Proctor (who she knew to be Mr Gowling's carer) came out of Ash Hill and walked across the road. Ms Kelly smiled at her. Ms Proctor was about to get into her car when she stopped and pointed to the far side of the green; and told her that she should park on the other side of the track. She asked why she should do that as she was being dropped off outside her own house. Ms Proctor said "are you kidding me?"; she replied that she was not. Ms Proctor said "this is not your property" pointing to the track. She replied that the track was the access to her property; and asked why Ms Proctor had not parked at Ash Hill where there was ample parking space. Ms Proctor got into her vehicle without answering. At this point Harry and Ava Thompson came out of Ash Hill with iPhones in hand. She felt uncomfortable and got back into the Pitts' car. Harry signalled to Ms Proctor to move her car from the track onto the green; she did so and followed them back into Ash Hill. Mrs Gowling was not present at any point in this incident.

110. I have been shown the Claimants' CCTV recording of what is said by the Claimants to be this incident. On the face of it, and as I understood Ms Randall to accept, it is not consistent with the incident narrated by Ms Proctor. In particular it does not show her car to be parked on the green, nor any other person (in particular Mrs Gowling) to be with her at any point. I reject any suggestion that there has been any improper editing of the CCTV footage.

111. One possibility is that the two participants are talking about two separate incidents on the same day. However neither Ms Proctor nor Ms Kelly suggests that there was more than one meeting; and there has been no opportunity for her account to be tested in cross-examination. I am satisfied that Ms Kelly gave an honest and reliable account of the exchange.

112. In any event, I consider that it matters very little to the issues in this case which is the correct version of their interchange.

113. Ms Randall also submits that there had been previous incidents involving Ms Kelly and carers visiting the disputed area. The evidence for this comes from the multiple hearsay in Mrs Tracey Thompson's witness statements (24.2.20 and 23.5.21) where it is said that Mr Wozniak and Ms Kelly had frequently harassed carers or district nurses coming to Ash Hill; that on one occasion a district nurse had been spoken to very rudely by Mr Wozniak for parking on the grass; and that she had taken a letter from Lonsdale Estates to Eden Country Care head office in Penrith to have to hand should they be contacted by the police.

114. The Claimants deny accosting or intimidating carers but accept that they have come out and told people not to park up on the tracks and the green.

115. The untested hearsay evidence is too frail and unparticularised to be given any useful weight. Whilst I accept that each of the Claimants has frequently come out to object when people have parked up on the track or green, that is simply a reflection of their beliefs as to their rights on the matter. I do not accept that, in making their undoubted protests against the perceived misuse of the tracks and green, the Claimants have sought to harass or hassle or intimidate anyone.

Accosting delivery drivers and other workmen

116. My conclusions are the same in respect of the similar allegations made about the Claimants' protest to delivery drivers and other workmen who have parked up on the track or green from time to time.

117. Mrs Carruthers gave an example of an occasion on 20 December 2019. When driving from the Bampton Road to Rosgill Hill she had seen Ms Kelly 'accost' the coal delivery man who had reversed into the yard at Ash Hill to make its deliveries. He had driven only his front wheels onto the track. Ms Kelly was telling him that he had no right to drive on the green and then gave him a letter of advice from the police dated 6 December 2019 : for which see further below. The driver had been shocked and upset.

118. Ms Randall gave hearsay accounts of complaints made to BT telephone workers in the winter of 2018/19 and to electricity workers in June 2018. Mr Stephen Thompson's statement gives hearsay evidence of Dr Wozniak telling a Pickfords driver on 27 September 2019 that he could not park there as it was the drive to Abbott House; and that the police would be called if he did not move. Mrs Tracey Thompson's statement gives hearsay accounts to similar effect in respect of drivers for DPD and DHL.

119. The documentary evidence includes Ms Kelly's e-mail complaints to the employers of Yodel drivers in April 2019 and July 2020; the coal merchant's note about her complaint concerning the coal delivery incident on 20.12.19 (p.768); and Eden Farm Supplies (Brough) Ltd's note of a complaint about a vehicle parking up on 19.9.19 (p.770).

120. In her witness statement and evidence Ms Kelly denied that they had 'accosted' drivers or anyone. She accepted that on a number of occasions she had politely pointed out to drivers using or parking on the track they were not entitled to do so 'because the track

is a bridleway and vehicles are not permitted'. Mr Wozniak's evidence was to the same effect.

121. In the face of evidence much of which is hearsay and untested in cross-examination, I can make no finding as to detail of incidents with delivery drivers, utility workers or others who parked up; nor do I need to. I have no doubt that each Claimant would have expressed objection to those who they saw parking up on the disputed area. This reflected their own belief that they had no right to do so; and as to vehicles was supported by the conclusion of the application for a Modification Order. Leaving aside the correct legal position as to the use of the land, I again do not accept that the Claimants did so in ways which were intended to intimidate or harass or hassle or which had that effect.

Reports to police

122. As the Claimants acknowledge, they did make numerous complaints to the police in these matters. I accept their evidence that they made calls for that purpose on the 101 number alone. I do not accept Ms Randall's contention that the evidence she has obtained under Freedom of Information requests in respect of 999 calls in the area provides any basis to doubt the Claimants' denial of calls on the emergency line.

123. Following complaints by the Claimants about the driving of vehicles on the now designated bridleway, Inspector Nick Oliver of Cumbria Police prepared a letter dated 6.12.19 addressed to homeowners. This stated that the bridleway was not to be used by vehicles of any kind; that he would be asking police officers to deal proactively with complaints about such use; and drawing attention to the relevant statutory provisions, in particular s.34 Road Traffic Act 1988 and the prohibition of driving a mechanically propelled vehicle elsewhere than on a road; and s.59 Police Reform Act 2002 concerning seizure of vehicles causing a disturbance.

124. By an amending letter to homeowners dated 22 December 2019, Inspector Oliver issued advice in significantly qualified terms, including that the offence under s.34 was subject to the words "if without lawful authority"; that this included permission from the landowner; and that "there is still an issue over ownership of the bridleway I mentioned in my previous letter which I believe is being reviewed by solicitors. This ownership would form part of any investigations we undertook".

125. In cross-examination Ms Kelly stated that she had handed out the letter of 6.12.19 on a couple of occasions to people who were parking on the bridleway. The Claimants had subsequently received the amending letter, but had not handed that out to anyone. It was difficult to know how to handle the situation. In contrast, paragraph 16(4) of their verified Reply stated that the Claimants 'admit that on occasions they did hand out (separately) the said letters'.

126. I accept Ms Kelly's corrected evidence that she and Dr Wozniak did not hand out the second police letter of 22.12.19. I have taken account of the inconsistent terms of the Reply, but again accept that this was honest error. It was not suggested, and in any event I do not find, that they handed out the first police letter after receipt of the second.

127. I have little doubt that the police did not welcome the time and trouble which resulted from their involvement in this village dispute. However I do not accept that the

Claimants' resort to the police in support of their perceived rights provides any support for the imputations made against them.

Leaving open the gate

128. Ms Randall contended that the Claimants had been in the habit of deliberately leaving open the farm-gate in their boundary wall which opens into the track. They had done so in order to restrict access. She pointed to photographs which had been taken and reported to the LDNPA; see also the list of reports to the LDNPA from 18.3.19 onwards.

129. Ms Kelly denied that they had used the gate to block the bridleway nor therefore left it open deliberately. There had been a difficulty with the latch. The first they knew of the correspondence with the LDNPA was when they received the trial bundles in March 2021. Having spoken to LDNPA, they had now arranged for the gate to be re-hung so that it opened inwards.

130. On the basis of the photographs I accept that the gate was left open from time to time and that this would have restricted access at that point. I do not accept that this was done deliberately by the Claimants or in order to cause trouble or restrict access. In particular I think it inherently unlikely that the Claimants would deliberately leave any gate to their property open.

Claimants parking and blocking the track

131. Ms Randall contends that the Claimants were in the habit of parking their vehicles on the track from time to time and at various times of the day in order to block access to others. She supports this in particular by reference to photographs taken in October 2017 and at other unrecorded times. The Claimants' evidence, in particular from Ms Kelly, is that her car is only parked up on the track infrequently and temporarily; and for the purpose of loading and unloading.

132. Whilst accepting that there have been occasions when Ms Kelly's car has been parked on the track, I am not persuaded that this has been for the purpose of preventing vehicular access. However, given the Claimants' views on vehicular access, together with the result of the application for a Modification Order, I do not doubt that the Claimants would be unconcerned if that were its effect.

The Articles and their meaning

133. I now set out the Articles which are alleged to be defamatory, in each case followed by their natural and ordinary and meaning as determined at the beginning of the trial in accordance with the principles summarised in Kousogiannis v. The Random House Group Ltd [2019] EWHC 48 (QB) per Nicklin J at [12]. The parties had reached substantial agreement on these before the trial. In addition to determining the few outstanding issues on meaning in favour of Ms Randall, in some cases I did not accept the agreement which had been reached and substituted a meaning which was more favourable to her case.

134. Article 1: 22 April 2019

"Isn't this charming?

The offensive individuals at the top of the hill are now attacking medical staff trying to visit their seriously ill patients! Just how low can they stoop in their spiteful campaign to steal a piece of land? Liars, thieves and bullies we know them to be; we know they have been brainwashing at least two vulnerable elderly village characters into further confusion and bewilderment. Now they are threatening the vital carer network. Shame on them!"

Meaning
Dr Wozniak and Ms Kelly are offensive individuals. They are attacking medical staff. They are running a spiteful campaign to steal a piece of land in Rosgill village near to Abbott House. They are liars, thieves and bullies. They have brainwashed at least two vulnerable elderly village people. They are also threatening the vital carer network.

135. Article 3: 9 July 2019

"Everyone is entitled to an opinion….
…
I wonder if this thoughtful person knows that Abbott House regularly threatens people such as district nurses, carers, utility workers, who try to park on this area? And the number of calls they have made to the police is unbelievable…"

Meaning
Dr Wozniak and Ms Kelly regularly threaten people such as district nurses, carers and utility workers, who try to park on the area near to Abbott House.

136. Article 4: 27 July 2019

"For all those of you…
….who saw a car parked on the Green this morning, please know the following:-
….

- *the female part of the ownership of Abbott House came home and accosted the carer.*
- *we are told her words were: "This is my drive, you need to move".*
- *the carer said "Are you joking?"*
- *the female replied "No, you need to move this is my drive."*

All such complete lies and intimidation: it is not "their drive" – they merely have a right of access, which was not blocked. Does Florence need this hassle? Can the female at Abbott House really be trying to make it difficult for Florence to visit Margaret, who will undoubtedly really value the company, as will Florence?
Don't these people understand what country life is all about?
Sad…..Why do they persist in their lies and harassment?"

Meaning
Ms Kelly improperly accosted the carer with the words "This is my drive" and "You need to move your vehicle as this is my drive". Ms Kelly was lying about the land near to Abbott House being hers and she was intimidating the carer. Dr Wozniak and Ms Kelly are persisting in telling lies and harassing people.

137. Article 5: 20 September 2019

"Earning a living in the country:

...it is hard enough without interference from townies trying to make it into a retirement park. Not content with harassing the caring profession, the Abbott Housers are now having a go at the Farm Supplies network. As newcomers, they obviously don't realise how the Green has traditionally been a place of rural business: mobile shops, delivery point for straw bales, etc. Happily we understand that the owner of this particular Farm Supplies network advised them of this practice in authentic Anglo Saxon terms."

Meaning

Dr Wozniak and Ms Kelly have been harassing not only the caring profession but also people delivering farm supplies.

138. Article 6: 20 September 2019

"Ha,ha, ha!

Apparently the social pariahs have even taken to following delivery drivers to Shap to tell them off! Do they really think their OWN deliveries will be made with loving care after that??"

Meaning

Dr Wozniak and Ms Kelly are social pariahs in Rosgill. They follow delivery drivers to Shap to tell them off.

139. Article 7: 27 September 2019

"Sorry folks...

To all those of you whose hearts rose, our commiserations! The removal wagon on the Green is not what you thought...Is great, however, to welcome returning people to Rose Farm! The new arrivals have had regular holidays there, so know all about the village "problem". Just as well, as the usual "Rosgill Welcome" was extended to their removal people by Abbott House. Fortunately Pickfords teams are used to dumb hassle from idiots who can't see that household removal lorries need space to park, turn, unload, and they were not distressed. Or moved.

Meaning

Dr Wozniak and Ms Kelly are idiots and have hassled removal teams.

140. Article 8: 27 September 2019

"And here it is...

...not even blocking access:

[Caption of a delivery vehicle]

Just incredibly hard to understand why some people play for their own hand alone. It's bad enough when you can't put yourself out to help anyone, but when you actively try to steal land for your exclusive use, and put everyone else out it's pretty much the Pits."

Meaning

Dr Wozniak and Ms Kelly are trying to steal land for their exclusive use.

141. Article 9: 28 October 2019

"Early morning feel-good factor!

A cold and frosty morning and we had noticed the litter was getting bad on the top road, so Gem and I did our intermittent collection. How nice to be thanked by (a) a regular user of the green and (b) our friendly dustbin lorry team, who specifically gave me an extra bag to replace the one I had left for collection, and whose replacement has hitherto mysteriously seemed to get stolen by some thieving local before I can get to it.

Public service accomplished, and it's only Monday morning!

[Caption of the area referred to with rubbish bag]*"*

Meaning

Dr Wozniak and Ms Kelly have been stealing litter bags from the land near Abbott House.

The law

Whether defamatory

142. As summarised most recently by the Court of Appeal (Corbyn v Millett [2021] EWCA Civ 567 per Warby LJ at [9]-[10]), the law since the promulgation of the Defamation Act 2013 is that a statement in its true meaning is defamatory if it satisfies three requirements:

(a) the common law 'consensus requirement' that the meaning must be one that tends to lower the claimant in the estimation of right-thinking people generally. The judge has to determine whether the behaviour or views that the offending statement attributes to a claimant are contrary to common, shared values of our society;

(b) the common law requirement, known as the threshold of seriousness, that the imputation must be one that would tend to have a substantially adverse effect on the way that people would treat the claimant; and

(c) an additional statutory requirement, from s.1 Defamation Act 2013 :

'(1) A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant.'

This means that a claimant must now prove not only that the statement has a defamatory tendency, but also that it did as a matter of fact cause serious reputational harm or was likely to do so : Lachaux v. Independent Print Ltd [2019] UKSC 27 [2020] AC 612 at [12].

For each requirement the burden of proof lies on the Claimants.

143. For this purpose each allegedly defamatory statement must be considered separately. The requirement of serious harm cannot be satisfied by aggregating the injury to reputation caused by two or more less harmful imputations : Sube v. News Group Newspapers Ltd [2018] 1 WLR 5767 per Warby J at [34].

144. As to s.1 and serious harm, Mr Sterling pointed to the helpful summary in Parris v. Ajayi [2021] EWHC 285 (QB : Mr Richard Spearman QC, sitting as a judge of the High Court). At [167]:

"As Lord Sumption explained in [Lachaux at [14]] *"…whether a statement has caused "serious harm" falls to be established "by reference to the impact which the statement is shown actually to have had", and that, in turn, "depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated". Further, as appears from [16], in light of wording of section 1(1)…a statement may not be defamatory even if it amounts to "a grave allegation against the claimant" if (for example) it is "published to a small number of people, or two people none of whom believe it, or possibly to people among whom the claimant has no reputation to be harmed." At the same time, the assessment of harm of a defamatory statement is not simply "a numbers game" (see* Mardas v New York Times Co [2009] EMLR 8, Eady J at [15]). *Indeed: "Reported cases have shown that very serious harm to a reputation can be caused by the publication of a defamatory statement to one person"*: Sobrinho v Impresa Publishing SA [2016] EMLR 12, Dingemans J at [47].*"*

The defence of truth

145. By s.2(1) Defamation Act 2013, it is a defence to an action for defamation for the defendant to show that the imputation conveyed by the statement complained of is substantially true. Thus for this purpose the burden of proof is on Ms Randall. The standard of proof is the civil standard, i.e. balance of probabilities. If the statement complained of contains two or more distinct imputations, then by s.2(3) : *'If one or more of the imputations is not shown to be substantially true, the defence under this section does not fail if, having regard to the imputations which are shown to be substantially true, the imputations which are not shown to be substantially true do not seriously harm the claimant's reputation.'*

146. Mr Sterling submitted that the Article 1 embodied nearly everything that was of concern to the Claimants and that the remaining Articles were largely further examples of the imputations contained in the first. Ms Randall's closing submissions had a similar primary focus on the Article 1.

147. Mr Sterling submitted that each of the articles met the common law and statutory ingredients of defamatory statements. They were all part of a concentrated attack on Claimants.

148. As to the extent of publication, this was in particular demonstrated by Ms Randall's own evidence in the cited terms of her Defence that *"The statements are a matter of common knowledge in the village of Rosgill, and to large numbers of people in Shap, Bampton and beyond"*. He stressed the importance of the website medium, which was akin to a village newspaper.

149. As to evidence of actual serious harm to reputation, Mr Sterling cited Dr Wozniak's evidence in his witness statement that as a consequence of the website output he and Ms Kelly had become isolated, shunned and excluded by a number of people who were formerly friendly neighbours and tradespeople. He felt apprehensive about doing any work at the front of Abbott House lest the Thompsons or their friends used the opportunity to provoke an incident; he now 'almost always' drove to Bampton along the northern route to avoid going through Rosgill and pass the homes of Ms Randall and her supporters; and that his health had suffered in that two previously well controlled stress related conditions had returned. He had lost weight, suffered depression and had difficulty sleeping.

150. In her witness statement Ms Kelly said that she felt humiliated, embarrassed and harassed by the posts on the website and like a prisoner in her own home. She had been eager to join in community activities but now thought twice before doing so for fear that other attenders had seen the comments and viewed her and Dr Wozniak in a negative light.

151. Mr Sterling also pointed to Ms Randall's letter to the Claimants' solicitors dated 20.11.19: *'We are sure that it is true that your clients are being shunned by parts of the community, and we are also aware that others boycott events which they are likely to attend. This is a natural consequence of their requesting you to send some thirty-plus letters around community, threatening all manner of retribution if the recipients did not comply with your clients' unreasonable demands. Many of these letters were sent to families who have lived in the area for several generations and consequently have a large and supportive acquaintance, so it is hardly surprising that your clients are not amongst the most popular people in the area'.*

152. Ms Randall in effect countered that her comments in that letter supported her case that any damage to their reputation was self-inflicted by their conduct; and thus that they had no reputation to lose.

Article 1 : Conclusion on whether defamatory

153. In my judgment the statements in this Article and their meaning plainly meet the three requirements for a defamatory statement as restated in Corbyn v Millett, in particular the imputations that the Claimants are liars, thieves and bullies; have run a campaign to

steal the piece of land; have brainwashed at least two vulnerable elderly village people; have attacked medical staff and threatened the vital carer network.

154. The first and second common law requirements are self-evidently satisfied. I am also satisfied, in accordance with s.1(1) Defamation Act 2013, that their publication on the 'Concerned of Rosgill' website has caused or is (at least) likely to cause serious harm to the reputation of each Claimant. Whilst the website is addressed to a relatively small number of people, their impact is in my judgment likely to be magnified by the very fact that the readership is all within or near to a small and distinct rural community and without the anonymity which is a feature of so much urban life.

155. I assess the extent of immediate publication at the approximately 25 households in Rosgill, Shap and Bampton identified on the photograph of the 'Concerned of Rosgill' 'rag' provided in the course of the trial; together with Ms Randall's evidence that the statements on the website are a matter of common knowledge in Rosgill 'and to large numbers of people in Shap, Bampton and beyond'.

156. I reject her argument that the Claimants had no reputation to lose amongst those who looked at the website, or that the damage was 'self-inflicted'. Allegations of being liars, thieves, bullies, brainwashers and of attacking medical workers and threatening the carer network went far beyond any general adverse feeling which arose from the dispute. Furthermore, as I have indicated, I do not accept that Ms Randall was speaking for the whole village of Rosgill.

157. I do not regard the statements that they are 'offensive individuals' or 'spiteful' as themselves defamatory; but they are only a minor part of the overall Article.

Article 1 : Defence of truth

Ms Randall's submissions

158. Ms Randall in her well-structured closing submissions dealt with each imputation in turn. I set out below the principal points of evidence to which she referred; but of course have not treated them as an exhaustive list and have duly taken account of the further summary in the schedules to her Defence and all the evidence which I have read, heard and viewed.

Liars

159. Ms Randall submitted first that the Claimants were liars in respect of the land ownership issue. She pointed to Dr Wozniak's correspondence with Eden District Council about 'blue bags' where (email 9 December 2019) he stated: *'The land she refers to is currently unregistered which means there is no owner… There are only two possible owners, ourselves and Lonsdale Settled Estates. The question of ownership is currently under legal review.'* Furthermore since the Estate's letter of 22.8.17, the Claimants had known that there was a rival claim to ownership. Accordingly from that point there can have been no honest statement that they were the owners. Nonetheless they had made

such statements of ownership through their various solicitors' letters e.g. to the Thompsons, Carruthers, Atkinsons/Walker; and likewise in paragraph 19(1) of their verified Reply and Ms Kelly's witness statement (*'... our ownership of the triangle, the track and verges'*). These false assertions of ownership were further supported by e.g. the evidence of her father Mr Bob Randall about the meeting on 8.6.15 and the police record of the incident at the top gate.

160. Despite that evidence the Claimants had in their witness statements denied making claims to ownership : Ms Kelly para.53; Dr Wozniak para.18. These dishonest statements of ownership were then used to suggest to the authorities that others were transgressing, e.g. Dr Wozniak's email of 8.12.17 to the Highways Department alleging trespass and damage.

161. Further the Claimants had lied about the incident at the top gate on 31.1.18; and about the blue bag episode. Dr Wozniak had lied in the Reply (para.10(8)), where he had verified the denial of the allegation that he had said *'I am a Pole and we fight to the death'*, but subsequently admitted this.

Thieves/campaign to steal land

162. The statement that the Claimants were thieves was supported by their repeated attempts to take exclusive possession of the disputed area. For the reasons given in respect of lies, this was a dishonest course in circumstances where they knew that there was a rival claim to ownership.

163. The steps that they had taken to achieve exclusive possession included their letter to the Thompsons dated 6.10.17 which threatened *'steps to close off the access in order to prevent the use of that access by unauthorised persons including your clients'*; the imposition of bollards and boulders; expansion of the green followed by reseeding; blocking the track with their car ; and stacking fallen branches so as to block the gate. This was a modern day attempt at enclosure; and seen as theft by people in the village.

164. The blue bag episode involved theft by the Claimants obtaining the replacement blue bag which would otherwise have been left for her on the green.

Bullies

165. Ms Randall approached bullying through a dictionary definition of seeking to harm, intimidate or coerce.

166. By the various letters from their solicitors threatening legal action against local residents, they had bullied the recipients. The responses, e.g. of Mr Atkinson (15.3.18) and Mrs Walker, demonstrated the distress which these had caused. From late 2019, there had been physical menace with Dr Wozniak coming out in the dark with a camera.

Brainwashing

167. Florence Gowling's interview with Mr Thorne made clear that her statement in the Statutory Declaration was patently untrue. The only conclusion was that undue influence have been placed on this elderly lady to make the statement. Only two people, the Claimants, had anything to gain from this. As was clear from her statement

(para.118) Ms Kelly had been party to the arrangements for the Statutory Declaration; and must have influenced her to make a statement which was untrue.

168. David Pitt had been a central part of village life and previously mild-mannered; but through his association with the Claimants had been turned against them. This was demonstrated by his alleged conduct on 15 November 2018 when the party of villagers was removing the boulders from the green and he was shouting and swearing at them. This change of character could only be attributable to his association with the Claimants.

169. Dr Brian Frost Smith was a regular visitor at Hall Garth. Her mother had given evidence of his distress after receipt of the open letter of 2.10.17 - he had exceptionally come up to the house without his hat. He went off to speak to the Claimants, and at her suggestion also the Thompsons. He had subsequently told her that the Claimants had really pulled the wool over his eyes. This was a further example of brainwashing.

Attacking medical staff/threatening the care network

170. This was demonstrated by the evidence of the 27.7.19 incident with Hannah Proctor; and on the other occasions referred to in the evidence.

Offensive individuals

171. Ms Randall cited in particular the Claimants' letter of 2.10.17 addressed to the village; and especially its reference to law-abiding individuals as 'hooligan delinquents'; and Dr Wozniak's 'highly offensive' behaviour at the cattle movement, causing risk to livestock and then trying to blame experienced farmers.

Spiteful campaign

172. Ms Randall cited in particular the act of attaching a spring to the gate at the top of the track, causing injury to Mr Atkinson, Ava Thompson and herself; his solicitors then denying any such risk; repeatedly twisting the chain into tight knots to prevent use – see also Ms Walker's statement 'We thought that this was a very spiteful thing to do'; and deliberately leaving their gate open onto the bridleway.

Article 1 : conclusion on defence of truth

173. In the light of my findings of fact, I conclude that the defence of truth to Article 1 fails. I will deal with the component imputations in turn.

Liars

174. In reaching my conclusion I have of course looked at all the evidence collectively as well as by reference to the individual incidents and matters complained of. Having done so I reject the allegation that either Claimant is a liar. I refer to the various passages where I have made my findings as to their honesty.

175. As to the central issue in respect of land ownership and rights, I am quite satisfied that the Claimants have at all times since receiving legal advice in June/July 2017 believed that they have a valid claim to ownership of the disputed area in accordance with the *ad medium filum* principle. In my judgment that belief is no less honest for the fact that

they have known there to be a rival claim to ownership by the Estate. I am equally satisfied that the Claimants have at all times held and expressed honest beliefs in respect of the issues of rights over the land; both before and after the Modification Order. Once again I reject the suggestion that the integrity of those beliefs is put in question by their knowledge that others, and in particular Ms Randall and her supporters, hold different beliefs.

176. The honesty of the Claimants' beliefs on the land ownership/rights issue is not put in question by any of the other matters relied upon by Ms Randall. In particular I do not accept the submissions based on: (i) the exchanges with Mr Bob Randall in June 2015; and other evidence relating to whether they have made claims to ownership; (ii) the fact of their knowledge of a rival claim; (iii) the terms of Dr Wozniak's e-mail to the District Council dated 9.12.19; (iv) their accounts of the incident at the top gate on 31.1.18 or the blue bags episode; (v) their accounts on other matters which have changed in the course of the litigation or which I have not accepted.

177. I equally reject the various suggestions that the Claimants or either of them have lied in respect of any other matter. As to the myriad of individual incidents on and about the disputed area, I find no dishonesty in the accounts of the Claimant or anyone else.

Thieves/campaign to steal land

178. The primary focus of this allegation is again on the land ownership and rights issue. There is simply no basis for the contention that the Claimants have stolen or tried to steal any part of the disputed area. A necessary ingredient of any allegation of theft or attempted theft is dishonesty. In my judgment there is no basis to conclude that the Claimants are guilty of any dishonesty in their words or deeds relating to the land. As I have held, their various assertions in respect of ownership and public rights over the land and at all times been honest. In the case of each incident complained of, their conduct is explained by an honest belief in their rights and their response to the conduct of those who act in a way contrary to those perceived rights. In the case of vehicular use their beliefs have naturally been strengthened by the terms of the Modification Order. Ms Randall's reference to historic unlawful enclosures adds nothing to her case.

179. There is no basis for the allegation of theft of litter bags, whether in respect of the originals or the replacements.

Bullies

180. On all the evidence I have heard and seen there is no basis to conclude that the Claimants or either of them have bullied anyone in this matter.

181. On each side, the conduct is explained by strong and honestly held views as to ownership and rights. As the evidence vividly demonstrates, this all makes for a very unpleasant state of affairs in the village and by the green in particular. However I see no basis to conclude that the Claimants have sought to harm, intimidate or coerce or that their conduct has had that effect.

182. In further support of this conclusion I return to my rejection of Ms Randall's implicit contention that there is an imbalance of power between the Claimants and the Defendant and her supporters. On the contrary, as I have repeatedly noted, the two sides

have been well matched. I specifically reject the suggestions that the sending of solicitors' letters provides support to this allegation; or that Dr Wozniak has acted with bullying physical menace.

Brainwashing

183. There is no warrant for the allegation that the Claimants have brainwashed anyone. As to Mrs Gowling, I refer to my conclusions above.

184. As to Mr Pitt, the evidence of his conduct on the occasion of the boulder removal 'boon day', even if it were accepted, provides no basis whatsoever for the allegation of brainwashing. In any event, none of this was put to Mr Pitt in cross- examination. Ms Randall told me that she had felt unable to do so, given their previous friendship.

185. As to the late Dr Brian Frost Smith, the evidence relied on again provides absolutely no basis for the allegation of brainwashing.

Attacking medical staff/threatening the care network

186. In my judgment the defence of truth fails also in this respect. As I have found above, I prefer Ms Kelly's account of the incident on 27 July 2019 and find no other basis to support the imputation.

Spiteful campaign/offensive individuals

187. As I have held, I am not satisfied that these parts of the Article are defamatory. In the alternative, the defence of truth has not been established. There has been no spiteful campaign, whether in the Claimants' conduct concerning the top gate or otherwise. Once again, the various incidents simply reflect the ongoing dispute between the two sides, each asserting its perceived rights in respect of the land.

188. I accept that the Claimants' reference in the letter of 2.10.17 to 'hooligan delinquents' was likely to and did cause offence. However I do not accept that that distinctly ill-judged remark, nor anything else in this unhappy story, justifies the imputation that they are 'offensive individuals'.

Article 3

Ms Randall's submissions

189. The evidence showed the Claimants regularly threatening district nurses and carers. As to threatening utility workers, this was supported by the evidence of the conduct of the Claimants towards electricity and telephone workers who had parked on the green; and other delivery drivers.

Conclusion

190. I conclude that the allegation is defamatory. For the reasons given under Article 1 and otherwise above, I reject the defence of truth in each respect.

Article 4

Ms Randall's submissions

191. Ms Randall repeated her submissions on the Hannah Proctor incident of 27 July 2019; and as to lies and harassment.

Conclusion

192. Having particular regard to the allegation relating to Ms Proctor and the general allegation of lies and harassment, I find this Article to be defamatory. As to Ms Proctor, I prefer Ms Kelly's account and reject the contention that she improperly accosted or intimidated Ms Proctor. I also reject the allegations of lies and harassment.

Article 5

Ms Randall's submissions

193. Ms Randall repeated the submissions in respect of harassing carers; and as to people delivering farm supplies relied on the evidence of the complaint made by Ms Kelly to Eden Farm Supplies (Brough) Ltd.

Conclusion

194. I find this Article to be defamatory. I reject the allegation that the Claimants have harassed the caring profession or people delivering farm supplies.

Article 6

Ms Randall's submission

In support of the statement that the Claimants are social pariahs in Rosgill, Ms Randall points in particular to the evidence of Mr and Mrs Lindwall and Mrs Carruthers as they relate to various social and other events in Rosgill.

Conclusion

195. I am not persuaded that this Article is defamatory, in particular having regard to the requirements of s.1 Defamation Act 2013. In the alternative, I reject the defence of truth in each respect. I am satisfied that the six households identified by Mr Lindwall have sought to avoid social contact with the Claimants. However the evidence does not demonstrate the universal social exclusion which the words imply. There is no satisfactory evidence as to the charge of following delivery drivers to Shap.

Article 7

Ms Randall's submission

196. It was idiotic to hassle people carers whom you might need in the future; or to hassle the Pickfords removal team.

Conclusion

197. This Article does not meet the test of a defamatory statement, whether at the common law test of seriousness or having regard to s.1 Defamation Act 2013. Alternatively, I consider that the defence of truth fails; both as to alleged idiocy and hassling the removal team.

Article 8

Ms Randall's submission

198. As under Article 1 and the alleged theft (or attempted theft) of land.

Conclusion

199. The allegation is defamatory. As found above, I reject the contention that the Claimants are trying to steal land.

Article 9

Ms Randall's submission

200. As under Article 1 and the allegation of theft in respect of litter bags.

Conclusion

201. Whilst the items are of trivial value, the allegation of theft meets the test of a defamatory statement. As found above, I reject the defence of truth.

Damages

202. The correct approach to damages for libel is conveniently summarised in Barron v. Vines [2016] EWHC 1226 (QB) per Warby J; as followed most recently in Hijazi v. Yaxley-Lennon [2021] EWHC 2008 (QB) per Nicklin J.

203. A successful libel claimant is entitled to recover, as general compensatory damages, such sum as will compensate him or her for the wrong (s)he has suffered. As with all torts, the damages are awarded by the Court as compensation, not punishment.

204. In accordance with the principles restated by Sir Thomas Bingham MR in John v. MGN Ltd [1997] QB 586 at 607-608, the sum awarded must compensate the claimant for the damage to his/her reputation; vindicate his/her 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 claimant's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his/her personality, the more serious it is likely to be. The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. A successful claimant 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. Compensatory damages may and should compensate for additional injury caused to the claimant'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.

205. Some additional matters identified in Barron v Vines which may be relevant in the present case include that:

(1) The initial measure of damages is the amount that would restore the claimant to the position (s)he would have enjoyed had (s)he not been defamed;

(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 the person was shunned, avoided, or taunted will be relevant;

(3) The impact of libel on a person's reputation can be affected by (a) their role in society; (b) the extent to which the publisher of the defamatory invitation is 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 among 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 and social networking sites, particularly for claimants in the public eye;

(4) in arriving at a figure it is proper to have to regard to jury awards approved by the Court of Appeal, the scale of damages awarded in personal injury actions and previous awards by judge sitting without a jury;

(5) 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. This limit is nowadays statutory, via the Human Rights Act 1998.

206. As to comparison with other awards I add the important qualification of Eady J in Al Amoudi v. Kifle [2013] EWHC 293 (QB) at [24] that references to 'comparables … are, of course, limited assistance only because circumstances vary so much from one case to another'.

207. Mr Sterling submitted that the nub of the case concerned the allegations of being liars, thieves, bullies and brainwashing; all of which was embraced in Article 1. He invited the Court to determine damages on the basis of Article 1; and then consider whether other Articles require further sums. A useful comparable was the decision in Doyle v. Smith [2018] EWHC 2935. In that case the defendant was a local councillor who operated an online community newspaper or blog for his village. The claimant was a local developer who had formulated a proposal for Luton Rugby football club to move to a new ground. The true meaning of the Second Article in that case was that there was very good reason to believe that the claimant had been guilty of participation in an attempt to defraud members of the club of many millions of pounds; and of the Third Article that the claimant had been lawfully arrested by the police and that there were reasonable grounds to suspect that he had committed serious criminal offences of blackmail and sending malicious and menacing communications in connection with the

proposed sale of land owned by the club to the claimant and deceiving members of the club into voting in favour of that sale. The second article had been available to be read online by anyone who visited the online website from about 19 July 2017 to early August 2017 and recently produced printouts stated that one version of the article had 242 views. The Judge awarded damages of £30,000 in respect of this article. The evidence appeared to show that the third article was viewed on 69 occasions. For this article the judge concluded that the allegation was rather less serious than in the second article, was less widespread and had less impact. There was a mitigating factor that it had been taken down and substituted with a non-defamatory article. The judge held that the claimant's distress had been increased by this further serious allegation, but was astute to avoid double counting and to produce an overall award which was just proportionate. He awarded £7500, making total damages of £37,500.

208. I do not find this decision to be a useful comparable for the present case. True it is that it concerns an online village blog or newspaper and a relatively limited number of visits to the articles in question; and allegations of reasonable cause to suspect criminal offences. However it is apparent the nature and detail of the allegations are of quite a different order to the circumstances in the present case.

Conclusion on Article 1

209. In agreement with the parties, I place my principal focus on Article 1. It evidently contains serious defamatory allegations which touch on the integrity and general reputation of each Claimant. In mitigation of the award it is right to take into account that the website is addressed to a small number of people, on the evidence perhaps 50 or so, but on Ms Randall's own account extending beyond Rosgill to Bampton and Shap. As against the small publication, I weigh the very fact of its locality and the likely consequent intensity of its effect on the publishees and the Claimants. This is then magnified by Ms Randall's persistence in pursuing these allegations through the trial.

210. All in all, I conclude that the appropriate award of compensatory damages to vindicate the reputation of each Claimant is £6,500, namely a total award of £13,000.

Article 3

211. This allegation of regularly threatening district nurses, carers and utility workers goes beyond the reference to threatening the vital care network in Article 1 and in my judgment requires further compensation by way of vindication. In each case I assess the award at a further £1000, namely a total of £2000.

Article 4

212. This allegation is in the same category as in Article 3, but relating to the specific alleged incident concerning Hannah Proctor. In my judgment no further award is necessary.

Article 5

213. This concerns the alleged harassment of carers, delivery drivers and other workers. In my judgment it needs no further award.

214. Articles 6 and 7 are not defamatory.

215. Article 8 repeats the defamatory allegation about trying to steal land. Article 9 makes the false allegation of stealing litter bags. Taking an overall view of proportionality, in each case I conclude that no further award is necessary.

216. I do not consider that an award of aggravated damages is necessary or appropriate.

217. I conclude that each Claimant should be awarded £7,500 damages, namely a total award of £15,000.

218. The Claimants do not apply for an immediate injunction to restrain further publication of the libels which have been established but seek liberty to apply in the event that they are repeated. Whilst I do not wish to give any encouragement to any continuation of this litigation, I agree to such an order. I will hear the parties' submissions on costs and any other consequential matters.