Neutral Citation Number: [2023] EWHC 2574 (KB)

Case No: QB-2018-000752

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/10/2023

Before :

THE HONOURABLE MR JUSTICE LINDEN

- -

Between :

HAMZA IJAZ	**Claimant**
- and –	
GHAFOOR MANAN	**Defendant**

- -
- -

Amardeep Dhillon (instructed by **Prosperity Law LLP**) for the **Claimant**
Nicholas Leviseur (instructed by **Peacock & Co. Solicitors**) for the **Defendant**

Hearing dates: 20 – 25 July 2023

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 17 October 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

THE HONOURABLE MR JUSTICE LINDEN

MR JUSTICE LINDEN:

Introduction

1. The Claimant completed his bachelors degree in dentistry at the University of Karachi in Pakistan in 2010. In 2011, when he was in his early 20s, he came to the United Kingdom on a student visa to study for a MSc in Experimental Pathology at Queen Mary College, London.

2. The Claimant's father, Hamid Ijaz, and the Defendant had been friends since 1974 when they were neighbours in Lahore. The Defendant attended Hamid's wedding in 1977 when the Defendant was 18 years old and they have various close family ties and mutual friendships. He came to this country from Pakistan in 2003 having qualified as a dentist and, in 2004, he bought a dental practice in Wandsworth in London which became the Wandsworth Town Dental Practice ("the Practice"). By the time of the events which led to this case, the Defendant also owned a practice in Morden.

3. In 2011, the Claimant's uncle introduced him to the Defendant and, between 2012 and May 2018, the Claimant worked for the Defendant, initially as a dental nurse and then as a practice manager at the practice in Morden. From 2013, however, he worked as a practice manager at the Practice in Wandsworth. In September 2016, he then passed the Licentiate in Dental Surgery ("LDS") at the Royal College of Surgeons and was therefore qualified to work as a dentist in this country which he did from October 2016.

4. For most of the time that the Claimant worked at the Practice the parties had a good relationship. The Claimant is a member of the Ahmadiyya Muslim Community and the Defendant is seen as an elder in that Community. The Claimant worked very hard indeed and was reliable and highly trusted by the Defendant, who acted as his sponsor for immigration purposes and was effectively a father figure, and a mentor to the Claimant's family. In the weeks before May 2018, however, relations between them soured and the Defendant made accusations of fraud and dishonesty against the Claimant which ultimately led to his resignation on 2 May 2018, after he had been told by the Defendant to leave.

The pleaded issues

Overview

5. Proceedings were issued on 27 December 2018. The Claimant brings claims in breach of contract, defamation and harassment.

Breach of contract

6. The breach of contract claim is founded on an alleged written agreement which the Claimant says was signed by both parties on 25 July 2017, albeit the date of the signatures on the document is stated to be 28 August 2016. I will refer to this agreement as "the Contract" although its authenticity was in dispute. The Contract provided that the Claimant would be engaged as an "Associate Dentist T/A Hamza Trading Limited" for a period of 5 years from 1 September 2016 and did not

expressly provide for earlier termination on notice. The Claimant alleges that his resignation was an acceptance of repudiatory breaches of contract by the Defendant and he claims in damages for loss of earnings:

i) There is a claim for losses to the date of termination of the Contract. Essentially, it is common ground that the Claimant had not been paid for all of the dental work which he carried out before his resignation. By the end of the trial, the figure for the shortfall was agreed in the sum of £35,130.30.

ii) There is also a claim for losses in respect of the period from 2 May 2018 to 31 August 2021, which is the end of the five year term. Originally, the claim was pleaded on the basis that it was a term of the Contract that the Claimant would earn a minimum of £150,000 per annum for NHS and private work combined. The claim was therefore for £487,500, which was the equivalent to 39 months' minimum earnings at a rate of £150,000 per annum, with the Claimant accepting that he would have to give credit for his earnings from subsequent jobs during this period. In an "Updated schedule of loss" served on 10 July 2023, however, the pleaded claim was for the difference between what the Claimant would actually have earned during the balance of the contract period, based on his average earnings in the six months prior to 2 May 2018, and what he did earn from work which he did for other dental practices after the termination of the Contracts. The figure ultimately claimed, in a "Re-Updated schedule of Loss" dated 25 July 2023, following agreement as to the figures, is £133,055.

7. The Defendant's position is that the Contract is a forgery. He did not agree to a five year fixed term and he would never have done so. His defence in relation to the claim for loss of earnings to 2 May 2018 is set-off of certain sums which he counterclaims. His defence to the claim for loss of earnings during the balance of the contract period is that the Claimant had committed fraud and had thereby repudiated the Contract, which repudiation he lawfully accepted in telling the Claimant to leave. In addition to the allegation of forgery, the allegations of fraud made by the Defendant are as follows:

i) First, he alleges that there was a contractual limit on the number of units of NHS dental work (Units of Dental Activity, or "UDAs") which the Claimant was permitted to perform. In breach of contract and unbeknown to the Defendant, the Claimant performed more work than this limit, claimed payment for this work and was overpaid as a result, in the sum of £46,171.84.

ii) Second, the Defendant alleges that the Claimant falsely claimed and received payment for dental work on patients which was actually carried out by another dentist, Dr Ayeesha Siddiqua, in the total sum of £10,553.10.

iii) Third, he claims that the Claimant kept money which was paid by patients for antibiotics in the sum of £3,096, when that money should have been remitted to the Practice.

8. The Counterclaim is for damages and/or in unjust enrichment under these three heads, each of which is disputed by the Claimant.

Defamation

9. The claim in defamation is based on three communications: an email from the Defendant to the General Dental Council ("the GDC") dated 15 April 2018 ("the GDC email"), a letter to His Majesty's Revenue and Customs dated 1 May 2018 ("the HMRC letter"); and an email to his then employer, Envisage Dental, dated 23 October 2018 ("the ED email"). The meaning of these communications was determined by Saini J on 7 December 2021. He held that:

    i) The relevant part of the GDC email meant that there were *"reasonable grounds to suspect that the Claimant was guilty of committing fraudulent acts in the Defendant's surgery while he was a VTE trainee"* i.e. it had a Chase level 2 meaning, under the classifications identified in *Chase v News Group Newspapers Ltd* [2002] EWCA (Civ) 1772, [2003] EMLR 11 at [45].

    ii) The relevant part of the HMRC letter meant that *"there are grounds to investigate the Claimant for having committed acts of fraud within the Defendant's company"* i.e. it had a Chase level 3 meaning.

    iii) The relevant part of the ED email meant that *"the Claimant defrauded the Defendant and forged a contract when employed by the Defendant and was likely to have forged references to obtain employment"* i.e. it had a Chase level 1 meaning.

10. The Defendant denies that any of these communications *"has caused or is likely to cause serious harm"* for the purposes of section 1(1) of the Defamation Act 2013. He also relies on the defences of qualified privilege and truth.

Harassment

11. The claim in harassment is based on the three communications which are said to be defamatory and other conduct by the Defendant particularised in paragraph 26(1)-(12) of the Amended Particulars of Claim ("APOC"). Mr Dhillon told me in opening the case that paragraph 26(1) was not pursued. In summary, in addition to the GDC email, the HMRC letter and the ED email the Defendant sent two texts to the Claimant's father in April and May 2018 which criticised the Claimant. He also sent hostile communications to the Claimant. He refused to confirm the Claimant's completion of VTE training in May 2018 and he sent two emails to the NHS on 26 July 2018 stating that the Claimant was under investigation for fraud.

12. The Defendant admits the facts pleaded in support of the allegation of harassment but denies that these matters, individually or cumulatively, amounted to harassment contrary to section 1(1) Protection from Harassment Act 1997. He also argues in the alternative that the conduct alleged was for the purposes of preventing crime and/or reasonable in the particular circumstances so that section 1(1) of the 1997 Act does not apply: see section 1(3)(a) and (c).

Housekeeping

13. There were two pleading points raised by Mr Leviseur:

i) The first was whether the Claimant should be permitted to claim, as part of his claim for loss of earnings to 2 May 2018, the figure of £20,402.70 for work done in December 2017. The calculation of this claim included in the APOC contained the letters "n/a" in relation to this particular month/payment. Although this might be taken to mean "not applicable" i.e. that there was no claim in respect of this month, Mr Dhillon told me he meant "not able" i.e. not able to quantify the sum claimed, so the sum was claimed for the first time in the Updated Schedule of Loss.

ii) The second pleading issue was whether the Claimant should be permitted to claim loss from 2 May 2018 to 31 August 2021 on the basis set out in the Updated Schedule of Loss or should be confined to the claim as set out in the APOC. This mattered because, if the "top line" was based on the Claimant's minimum earnings under the Contract – as originally pleaded - he had not suffered any loss because his earnings from other sources during the balance of the contract period were £621,538. If, on the other hand, the estimated actual earnings approach in the Updated Schedule of Loss was taken, the difference between what he would have earned based on average earnings and what he did earn post termination was said to be £133,055.

14. I allowed the Claimant to both pursue both claims.

i) As far as the first point was concerned, the Defendant had been aware since 10 July 2023 that the sum in respect of December 2017 was claimed and no evidential or other difficulty in meeting this claim, or prejudice to the Defendant in the event that it was litigated, was identified by Mr Leviseur. In the event, however, the Claimant accepted in evidence that he had been paid in respect of December 2017. The claim in respect of this month therefore was not pursued and the figure for underpayment of earnings to 2 May 2018 was agreed.

ii) As far as the second point is concerned, it is true that the APOC gave the impression that the claim was limited to a claim for the minimum earnings to which the Claimant was alleged to be entitled under the Contract. But, again, no real difficulty in addressing this claim or other prejudice to the Defendant other than the increase in the size of the claim was identified by Mr Leviseur in the event that I allowed it to be quantified on this basis. By the end of the trial, the figures were agreed.

15. There was also an issue between the parties about the admission of certain documents in evidence. These documents were contained in a separate bundle of disputed documents. Ultimately, it was agreed that they would be admitted. After discussions between Counsel on the first day of trial an issue remained about certain emails given that they had not been disclosed (albeit their attachments had been disclosed separately), but this issue was resolved by the Claimant providing disclosure of these emails overnight, together with a number of other documents which ought to have been disclosed in any event.

Observations about the evidence

16. My task in this case was made more difficult by the indifferent quality of the evidence put before the court on both sides, but particularly on the Defendant's side. I had various concerns.

17. First, the disclosure exercise did not appear to have been carried out with care on either side or, at least, there were major gaps in the documentary evidence. For example:

    i) On the Claimant's side, 251 pages of documents were disclosed overnight after the first day of the trial, following prompting by the court in the light of answers which the Claimant had given in evidence and the dispute about the admissibility of certain documents to which I have referred. These documents included emails which went to the heart of the issue as to the authenticity of the Contract and, ironically, supported the Claimant's case. There was also a number of documents about the Claimant's applications for authorisation to carry out NHS work which shed light on the issue as to the authenticity of the Contract. I make clear that I did not form the view that the Claimant was deliberately withholding these documents, not least because the emails in particular were helpful to his case. But there appeared to have been a clear lack of thoroughness in the disclosure exercise carried out on his side.

    ii) Similarly, on the Defendant's side there were gaps in his disclosure which, as explained below, meant that he failed to prove his case on key issues. It was not suggested by Mr Dhillon that he had deliberately suppressed the relevant documents and I therefore make no finding that he did. However the gaps in the documentary evidence were a key reason why his Counterclaim failed.

18. Second, on both sides the written witness evidence was brief, incomplete and/or vague. The parties provided short witness statements of their own – two in the case of the Claimant and four in the case of the Defendant – together with very short statements from other witnesses:

    i) In the case of the Claimant, ultimately he called Mr Asad Jabber, who had worked as a trainee dental nurse in the Practice from June 2014 to December 2015, and Ms Atiqa Naseer who worked for the Defendant as a trainee dental nurse from 2016 until 2019. The Claimant had served a statement from Ms Bushra Malik, another trainee dental nurse, but she was not called and no application was made to rely on her statement. I was told that she could not read English and that although her statement was in English it had been read to her by her brother before she signed it. However, the decision not to call her was made on the Claimant's side without any real exploration with the court of ways to address this difficulty. It may well have been considered that her evidence would not take matters further.

    ii) On the Defendant's side, he served statements made by Dr Syed Shah and Dr Asifa Hamid but ultimately did not call any witnesses, and no application to rely on these statements was made.

19. With respect to them, on the basis of their witness statements none of the supporting witnesses had anything of real significance to add and that was also apparent when Mr Jabber and Ms Naseer gave evidence. It was noteworthy that neither party put in

statements or called witnesses from the Practice who might have been able to assist on the key issues. There was some evidence that the Defendant had discouraged certain witnesses from giving evidence in support of the Claimant or assisting him. The Defendant also said that witnesses had agreed to give evidence in support of his case but had then withdrawn. But the reasons why particular witnesses had not been called were not explored in any detail in cross examination. I therefore did not draw any adverse inferences against either party based on the absence of evidence from what might otherwise be thought to be witnesses who ought to have been called. Again, however, this left gaps in the evidence and/or meant that some of the claims made on either side were unsupported by any other witness evidence.

20. Third, as far as the oral evidence is concerned I found the Claimant to be a reliable witness on most points. The same cannot be said of the Defendant whose evidence was shown to be inaccurate and/or lacking in credibility in material respects, and who persisted in claims which he must have been advised could not succeed because he could not prove them and/or because they did not make sense. His evidence also included an eccentric mixture of unfounded and ill-considered allegations against the Claimant and Ms Malik, sometimes made by way of angry denunciation from the witness box, with some refreshing but surprising admissions about aspects of his own conduct towards the Claimant. The impression given was that he had a strong but irrational sense of betrayal by the Claimant, both at the time of the relevant events and when he gave evidence, and that this materially affected his judgment including in his conduct of the litigation.

21. In making my findings of fact I have therefore done the best I can on the basis of the whole of the evidence, such as it is. The fact that I do not refer to any given item is not an indication that it has been ignored: it is a reflection of the way in which the case was prepared and presented and my wish to focus on the key factual findings which are necessary to determine the Claim and the Counterclaim and to explain my decision in a proportionate way.

Was the Contract genuine?

22. The position was that the Claimant could not practise as a dentist in this country until he had passed the LDS. He therefore worked as a dental nurse and then as a practice manager whilst he studied for the relevant exams, the last of which he passed in September 2016. From October 2016 he then worked as a dentist.

23. It was also clear from the evidence that the Claimant was extremely hard working, diligent and capable, and was highly trusted by the Defendant. I was shown various examples of him being asked to carry out tasks for the Defendant which involved the handling of substantial sums of money including cash, signing documents on behalf of the Defendant, acting as the Defendant's eyes and ears when he was away and, for example, picking him up from the airport. The Defendant accepted that he had found the Claimant to be trustworthy, although he said that it was not blind trust as he carried out his own checks on the Claimant's activities.

24. Both parties gave evidence that the relationship went beyond that of colleagues given the family and community connections between them. The Defendant himself gave evidence in his first witness statement that he attended the Claimant's engagement party in Lahore in around January 2017 where he met the Claimant's family, and he

and his wife were presented with gifts in recognition of his role as mentor to family members in the United Kingdom.

25. The Claimant was issued with written contracts of employment as a practice manager at the Practice at the very end of 2011 and in September 2012. These documents were templates which had been filled in. The first was for nine months, from January to September 2012, and it was common ground that it was signed by the parties and stamped with the Defendant's personal stamp. The second was for a year from October 2012. The Claimant pleaded in his Reply and Defence to Counterclaim that the Defendant authorised Mr Mujahid, who was a manager, to sign this document on the Defendant's behalf and this was not challenged by Mr Leviseur.

26. There was then a third contract of employment between the parties, dated 30 March 2013. This was to work as a practice manager at Morden for a three year term from 1 April 2013, although in fact the Claimant moved to the Practice at around this time. Again, the contract was the familiar template, which had been filled in. As is apparent from this document, the signature on behalf of the employer was not the actual signature of the Defendant and it was stamped with the stamp of the Morden practice rather than his personal stamp. In his Reply and Defence to Counterclaim the Claimant pleaded that he had signed this document on the Defendant's behalf and with the Defendant's authority to do so.

27. The Defendant denied that this contract was genuine but I did not accept his evidence on this point. Apart from my assessment of him as a witness, there were various examples of the Defendant asking the Claimant to sign documents on his behalf. This the Claimant then did, albeit there was no attempt to imitate the actual signature of the Defendant: effectively the Claimant either wrote the Defendant's name or initialled the documents. There was no question of him attempting to forge the Defendant's signature on these occasions. Although it was put to the Claimant that when this occurred it was a strict requirement that he write "pp [the Defendant]", and the Defendant initially maintained that this was so in his oral evidence (though he had not mentioned it in his written evidence), under cross examination he conceded that in fact it was not so. There were various examples, in the bundle, of the Defendant asking the Claimant to sign as the Defendant and then scan the document to him. In none of these examples did the Claimant sign "pp" and in none did the Defendant query this.

28. Furthermore, it is apparent that at the beginning of 2013 the Claimant was having dealings with the immigration authorities. His student visa had expired and the Defendant was supporting his application for a Tier 2 visa. A letter from the Defendant to the UK Border Agency, dated 2 January 2013, is effusive about the Claimant and says *"I have given him full time permanent employment as practice manager and oral pathologist at my dental surgery"*. This was inconsistent with the Defendant's evidence that he only ever gave 12 month contracts and consistent with him agreeing a three year contract. Indeed, the Defendant's written evidence (at paragraphs 6 of his first witness statement and 19 of his second one) was that the job was for three years and (at paragraph 40 of his second witness statement) he linked the three year term to the application for a visa, albeit maintaining that the contract was "fake".

29. There were difficulties in obtaining the visa and the Defendant supported the Claimant in legal proceedings in relation to this, including by attending court. The Claimant told me, and I accept, that in the event he was given a Tier 2 visa for 30 months.

30. There was then a five year contract of employment as "Practice Manager & Oral Pathologist" from 2 May 2016 to 30 April 2021. This was signed by the parties on 15 April 2016 and, again, stamped using the Defendant's personal stamp. The Claimant told me, and I accept, that this was entered into in the context of his application to renew his visa, with the Defendant as sponsor, and to support that application by providing evidence of his employment.

31. The Defendant's position in relation to the April 2016 contract was curious. The text at paragraph 39/40 of his second witness statement, which said that the Claimant had produced three contracts which the Defendant had not actually entered into, specifically referred to the three year 2013 contract but did not refer to the five year April 2016 contract. But, against these paragraphs, his legal representatives had included the bundle reference to the April 2016 contract amongst the references to four (rather than three) contracts which were in the bundle and were said not to be genuine. In cross-examination the Claimant was asked who had produced the April 2016 document and he said that he thought that the Defendant or a practice manager had printed it out, but it was not put to him that he had forged the April 2016 contract and nor was any reason for doing so suggested. An explanation for this became apparent when, in cross-examination, the Defendant accepted that the signature on this contract was his and that it had been stamped with his personal stamp.

32. Insofar as there was a dispute as to the authenticity of the April 2016 contract, then, I preferred the Claimant's evidence that the document was entirely genuine. There is no evidence that he forged it, other than the Defendant's protestations that he would never agree to a contract of more than 12 months, nor of any reasons why the Claimant would forge this contract. The document in question appears to be an entirely genuine Practice template with relevant details filled in and, as I say, the Defendant accepted that his signature and stamp appear on the final page.

33. In September 2016, the Claimant passed the LDS and was therefore authorised to practise as a dentist in this country, albeit not to do NHS work. Apparently in preparation for him working as a dentist, Hamza Trading Limited was incorporated by the Claimant's accountant and registered at the accountant's address. The Claimant said that he did this for tax reasons and on the advice of his accountant, and it is apparent that thereafter this company invoiced the Defendant on a monthly basis for the Claimant's services.

34. From October 2016, the Claimant worked as a dentist. Although he submitted an application, on 21 October 2016, to be authorised to do NHS work and added to what is known as "the national performer list" for this purpose, he was not given a national performer number until June 2017. It was at this point that he was supposed to begin his Vocational Training by Equivalence ("VTE"). He therefore was not authorised to do NHS work before June 2017 but he nevertheless did so, and the work which he did was presented by the Practice to the NHS as having been done by the Defendant for the purpose of justifying payment from NHS funds.

35. The Claimant told me that the Defendant told him, and he understood, that as soon as he made the application in October 2016 he was permitted to do NHS work under the supervision of the Defendant. Other dentists, who he named, who were working in the Practice were doing the same and, like him, their NHS work was presented as having been done by the Defendant. He said that he understood that he only needed the performer number if he moved to work at a different practice. He said he only became aware of the true position in May/June 2018 when, in the context of his dispute with the Defendant, he described the arrangements at the Practice to Dr Anushika Brogan of Damira Dental Studios. He then wrote a letter to the NHS, which was in the bundle, in which he blew the whistle on what he said were various fraudulent and irregular practices at the Practice.

36. I accepted that the Defendant said to the Claimant that he could and should start doing NHS work in October 2016, and that others in the Practice were carrying out NHS work before they were authorised to do so. But I did not accept that the Claimant was unaware that he was not authorised to do so. He is clearly highly intelligent and understood the rules, as is apparent from the documents evidencing his exchanges with the NHS on the subject of a performer number. He cannot have thought that he could embark on NHS work as soon as he had applied for authorisation to do so, but before authorisation had been received. Despite the Defendant's protestations to the contrary, however, I did accept that the Defendant was fully aware that dentists in the Practice were doing NHS work without authorisation and that the Practice was presenting their work to the NHS as having been done by the Defendant. Indeed, he told the Claimant that this would be the approach, and it appeared from the evidence to be part of the Defendant's business model. I will return to this point below.

The drafting of the Contract

37. In July 2017, the Claimant wished to buy a house and therefore needed to enter into a mortgage. He told me that he needed to borrow £450,000 and that he needed to prove his income to the lender.

38. The emails disclosed by the Claimant in the course of the trial show that on 19 July 2017 he sent copies of the invoices for the work for the Practice which he had carried out in January to June 2017 to his estate agents. On 21 July 2017 they then asked him for a copy of his P60 for 2017 and to *"get a contract from the practice stating your hours and pay etc"*.

39. The Claimant's evidence was that he approached the Defendant and the practice manager to ask for a formal contract and they discussed what the terms would be. They agreed that the contract would be for a five year fixed term, as his previous contract had been. As for pay, the Defendant suggested that they take an average over the previous six months. This was more than £14,000 per month and this led to a statement in the Contract that *"Your annual salary income would be minimum £150,000/- year which will include NHS & Private patients"*.

40. The Claimant also asked his accountants to assist him in relation to the drafting of the contract given that he was supposed to be working on a self-employed basis through his company. At 6.15pm on Saturday 22 July 2017, he emailed to them a "Contract of Employment" which ran to 27 clauses and was effectively the Practice template but

with provision for a 5 year term to run from 1 September 2016 (clause 3) and the statement about his income set out above (clause 8).

41. By email dated 25 July 2017 and timed at 11:13am, the Claimant's accountants sent the draft back to him. This was still headed "Contract of Employment". It was still for a five year term and it still included the statement about pay, but it is evident that the accountants had made substantial alterations to it which were intended to reflect that the Claimant was providing his services on a self-employed basis. Thus, the parties were now the Defendant and, under the heading "Contractor", "Hamza Hamid Ijaz T/A Hamza Trading Limited". Under "Job title" the document said "You are Self-employed as Associate Dentist T/A Hmza (sic) Trading Limited". Alterations to the clauses on hours of work and holiday had also been made to reflect the Claimant's putative self- employed status, and clauses 13-22 of the Practice's template contract of employment had been deleted so that the sequence of clauses was 1-12, 23, 27.

42. At 2:02pm that day the Claimant emailed the Contract to his estate agents. This document was printed on the headed notepaper of the Practice. Clauses 1-12, including the five year term and the statement about payment, were the same as in the previous draft but three clauses from the template contract, dealing with health and safety, disciplinary rules and procedures and immunisation, had been reinserted. The clauses of the Contract now ran continuously from 1-17 and the document bore the signatures of both parties. The date "28/8/2016" was typed below each signature and the Defendant's personal stamp appeared next to his signature.

43. The Claimant's evidence was that in the interim the Defendant and the practice manager had required the reinsertion of three clauses and the Defendant had signed the Contract. The Defendant's position in Mr Leviseur's skeleton argument, and when the Claimant was cross-examined, appeared to be that the signature on the document was not that of the Defendant. The Claimant was said to be in the habit of signing documents on behalf of the Defendant but without indicating that he did so "pp" the Defendant. However, when he gave evidence the Defendant was clear and emphatic that this was his signature and his personal stamp. I therefore asked how it was suggested that the Defendant had not agreed to the terms of the Contract. The Defendant said that he had read the document which he signed but that it had not been for a five year term and had not contained the payment term. He was emphatic, and said repeatedly throughout his evidence, that he would never have agreed such terms.

44. The Defendant was less clear when I pressed him on how the Claimant was alleged to have forged the Contract given that it appeared entirely genuine and to have been signed by him. In his closing submissions, Mr Leviseur pointed out that the Defendant accepted that he had signed a contract with the Claimant in August 2016 and said in his witness statement that that that contract had later been found to be missing from the Claimant's "personal file". It was suggested (although this had not been put to him in cross examination) that the Claimant must have taken the fourth page from that contract, which included the signatures dated 28 August 2016, and added it to pages 1-3 of a different document which included the five year term and the statement about income.

45. For a number of reasons, I do not accept that the Claimant did this.

46. First, there is nothing about the Contract which would indicate that it had been doctored. The internal page numbering runs from 1-4 and the text of the paragraphs span pages. So, for example, clause 10 on "Timekeeping" starts on page 2 and ends with the word "Persistent". It then continues on page 3 with "lateness will lead to disciplinary action…". More significantly, page 3 ends "following termination of your" and continues at the top of the signature page (page 4) with "employment". The clauses of the Contract also run from 1 on page 1 to 17 on the signature page. It would have required careful work to create pages 1-3 and then add a preexisting page 4 which came from another contract but which was entirely consistent with the fake first three pages.

47. Second, the Defendant accepted that he regarded the Claimant as highly trustworthy based on their dealings over the years from 2012. He was not able to explain why the Claimant would suddenly act so dishonestly.

48. Third, whilst I accept that the Claimant had access to the Practice templates, there would have been no reason for the Claimant to do this. His previous contract had been for a five year term. There is no suggestion in the evidence that, for example, he asked the Defendant to agree to another five year term and this was refused, so that he needed to resort to trickery.

49. Fourth, the manoeuvre would have been difficult to achieve in the less than three hours from receiving the draft from the Claimant's accountants to sending out the final Contract, and highly risky given that the practice manager and others were in the Practice. As Mr Dhillon pointed out, the evidence also shows that the Claimant had a busy list that day. Why would he not have waited until the evening when he would have more time and no one would be around?

50. Fifth, the Defendant appeared to accept, when it was put to him, that there had been a discussion of the Claimant wanting to buy a house and a discussion of averaging the Claimant's pay over a six month period. It is difficult to explain this discussion if not in the way in which the Claimant explained it i.e. it took place in the context of a conversation about preparing a contract which would prove his likely income for the purposes of entering into a mortgage and in July 2017 rather than August 2016.

51. Sixth, there is no evidence to suggest that the Claimant acted in the way alleged other than the Defendant's denial that he would ever have agreed to such terms – he only ever agreed to 12 month contracts - and his evidence that he had signed a different contract in August 2016 and that this contract is now missing. He also supported his denial that he would ever agree to such terms with evidence about other contracts which he had entered into and it was suggested that the "/-" after "£150,000" in the Contract was indicative of the typist being from India or Pakistan.

52. But there was a number of problems with these aspects of the Defendant's evidence:

    i) As I have found, contrary to his protestations, he did agree to a three year and a five year contract with the Claimant before this.

    ii) Whatever the Defendant may or may not have agreed with others, there were ample reasons why he would be willing to agree another five year term with the Claimant who was particularly hard working and with whom he had the

special relationship to which I have referred. He had also shown himself, in the past, to be willing to provide evidence to demonstrate that the Claimant's employment was secure/permanent and well remunerated. Moreover, the statement about income was drafted in a way which tended to confirm what the Claimant's earnings were likely to be rather than give any guarantee, and there was no real dispute that he was earning at a rate of at least a minimum of £150,000 per year at the relevant time.

iii) The evidence about what the Defendant agreed with others was also less than convincing. No witness was called to verify the contracts on which he relied. It is not necessary for me to determine the Claimant's contention that these contracts were themselves created for the purposes of this litigation, but suffice it to say that the picture which emerged was of a less than rigorous approach on the part of the Defendant. Even assuming that the contracts which he produced were genuine, they did not cover all of the relevant dentists working at the Practice at all material times. There were various dentists and/or periods of time for which there was no contract and, by contrast, there were cases where the same dentist had more than one contract, with different terms, for the same role and covering the same period of time. The documents did not establish an invariable practice and, even if they did, it was entirely open to the Defendant to depart from it in the case of the Claimant.

53. As for the evidence about signing a contract in August 2016, at paragraph 21 of the Defendant's second witness statement said this:

> *"In the meantime, the Claimant passed his overseas qualifying exams held by the GDC and decided to work as a VTE (Vocational Training Equivalent) with us from October 2016, this is an essential requirement for all trainee dentists before they start working as fully qualified dentists. It is a 12-month training period approved by the NHS London Deanery. I was the Claimant's VTE Supervisor from October 2016, however unknown to me at the time, his paperwork to become a VTE had not gone through. In April 2017, the NHS wrote to me and informed me that since I was already supervising two VTEs, I could not be a supervisor for a third VTE, which in this case was the Claimant. I understand that the Claimant was asked to nominate another Dentist at the Practice, and that he chose Dr N U Ahmad to be his supervisor. The VTE supervisor form that has Dr N U Ahmad's signature can be seen at* **….** *I understand that the delay in the paperwork and the change in supervisor delayed his training and that is why he had not finished his training when he left the Practice in May 2018. I can see that the Claimant has inserted my signature and a different date into the VTE Supervisor Form at…and I can only assume that this was an attempt to hide the fact that he had started acting as a VTE before he had sign off from the NHS."*

54. At paragraph 40 he said:

> *"The actual contract which I issued and signed myself in August 2016 with the Claimant Hamza Ijaz was a 12 months VTE contract similar to Dr Abdul Moeed's VTE contract & Dr Hurya's VTE contract which have already been exhibited at….in which he had been allocated 3190 UDAs at £22.19 per UDA. This contract was later found to be missing from his personal file and kept in the Surgery at Wandsworth."*

55. Quite apart from the fact that paragraph 23(p) of the Amended Defence specifically pleads that *"No written Contract of employment was entered into for 2016-2017 and beyond"*, paragraph 21 of the Defendant's statement was shown by Mr Dhillon to be almost entirely inaccurate. For example, it was not the case that the Claimant was doing his VTE from October 2016. Nor was it the case that it was unknown to the Defendant that the paperwork had not gone through – clearly it had not, as the application for a national performer number had only been made on 21 October 2016. Nor was it the case that the Defendant could not supervise the Claimant because he was already supervising two others. He was not; nor was it the case that the Claimant chose Dr Ahmad to be his supervisor, nor that the Claimant had inserted his signature into a VTE supervisor form as the Defendant alleged.

56. Importantly, the Defendant also accepted that as at August 2016 the Claimant had not passed the LDS and it was not known whether he would do so or when. The Defendant therefore would not have issued a VTE contract to the Claimant in August 2016 in anticipation of him passing and then, after an application, being authorised to work as a VTE. The Defendant attempted to deal with this point by saying that the August 2016 contract had been issued on a conditional basis and had contained terms which said that it was provisional, and then by saying that the contract to which he was referring may have been issued in September 2016 after the Claimant had passed the LDS as he would not have issued such a contract before this.

57. Suffice it to say that the Defendant's evidence about the signing of a VTE contract for 12 months in August 2016 was wholly unconvincing. This, then, was not source of the signature page which the Claimant was said to have attached to the allegedly bogus first three pages of the Contract.

58. It did give me pause for thought as to why, on the Claimant's account, the Contract had been backdated and the signatures were dated 28 August. However, I was satisfied that this was done because September 2016 was the point at which he had become eligible to work as a dentist in this country and, indeed, he had been doing so since October 2016. The Contract was therefore stated to run from 1 September on page 1 and the signatures were dated three days before this.

59. For all of these reasons, then, I concluded that the Contract was entirely genuine and was for a five year term.

60. At this stage I add that I do not accept Mr Leviseur's suggestion that the parties to the Contract were Hamza Trading Limited and the Defendant, such that the wrong party to the proceedings has been named as Claimant. This suggestion was not pursued with any vigour, and rightly so. Although there is reference to the company in the Contract, and it invoiced the Practice and was paid for the Claimant's services, the reality is that all of the obligations on the Claimant's side under the Contract were obligations of the Claimant himself. In relation to who was entitled to be paid, clause 8 refers to "Your annual contracting income…Your pay …and Your pay advice". Even if there were anything in this point, I would have allowed the Claimant to amend to add the company as a party given that such an amendment would not cause any prejudice to the Defendant. Where this leaves the Claimant's tax affairs is a matter in which HMRC may take an interest in due course.

The Counterclaim

Alleged overpayment of the Claimant

61. By way of further explanation of this claim, at the material time the Practice had a contract with the NHS to carry out 18,500 units of dental activity per year. A given dental procedure will equate to a fixed number of UDAs ranging from 1 for the simplest of procedures to, for example, 12 for root canal work. The NHS pays the dental practice for one twelfth of its allocation of UDAs each month and there is then a process of reckoning up at the end of the year. Within small margins, if the dental practice has done more UDAs than its allocation it will not be paid for the surplus. If it has done less, it may have to repay some of the money which it has been paid over the course of the year.

62. The Defendant agreed with his dentists the sum which he would pay them per UDA. Typically this was substantially less than the sum which the Practice (i.e. the Defendant) was receiving from the NHS. In the case of the Claimant, he was paid £11.10 per UDA up to April 2017 and £12 thereafter, or about 40% of the sum which the Practice received.

63. Each dentist kept a daily ledger of the private and the NHS work which s/he had carried out and priced each item of work up in cash (for private work) or UDAs (for NHS work). At the end of each month that ledger was submitted to the practice manager so that the work which the dentist said they had carried out could be verified by reference to patient records, and the practice manager could calculate what they should be paid by the Practice. The UDAs which had been carried out that month, and the name and performer number of the dentist who was said to have carried them out, were also transmitted to the NHS by administrative staff through the Compass system. It was clear from the Defendant's own evidence that he paid close attention to the calculation of the pay of each dentist at the end of each month and closely monitored the UDAs carried out on a monthly basis so as to ensure that the agreed annual total for the Practice would be reached but not exceeded. He also said that if a dentist or the Practice were doing too many UDAs bearing in mind the global allocation, or too few, dentists would be asked to do fewer UDAs or they or a colleague would be asked to do more. Adjustments were frequently made.

64. In the case of the Claimant and certain other dentists, their UDAs were transmitted to the NHS under the Defendant's performer number. In the case of the Claimant and, it appears, the others, this continued even after they had been given a performer number and authorised to do NHS work, so this practice does not appear to have necessarily been an attempt to conceal from the NHS the fact that they were doing such work without authorisation. What it did mean, however, was that the Defendant could concentrate on private work. In addition, he would receive the profit from his share of the payment by the NHS for the UDAs carried out by other dentists, and his pay for the purposes of the NHS pension scheme was also a good deal higher than it would have been if only the UDAs which he had actually done were transmitted via Compass. At the same time, the dentists who did the UDAs did not get the benefit of doing so for the purposes of the NHS pension scheme. Again, it is not necessary for me to make findings about the honesty or integrity of this practice, and the extent to which it had been investigated by the relevant NHS bodies was not clear from the evidence.

65. The Defendant's claim was founded on the contention that there was a term of his contract with the Claimant that the latter would not carry out more than 3190 UDAs per year. In breach of contract, between January 2017 and March 2018 the Claimant carried out, and claimed for, 7829.2 UDAs. The concern was not that he had not done the work – he had – but it was alleged that he was not entitled to exceed the agreed limit and that the Defendant had not been aware that he had done so. Nor had the Defendant he been aware that the UDAs were being transmitted under his performer number rather than the Claimant's. The fraud was said to be that the Claimant had concealed what he was doing from the Defendant.

66. This claim fails for two main reasons. First, it depends on the existence of a contractual limit to the number of UDAs which the Claimant was permitted to perform; and, second, it requires the Defendant to establish loss or that it was unjust for the Claimant to be paid the sum in question. Neither of these was made good on the evidence. Nor did I accept that the Defendant was unaware that the Claimant was doing a large number of UDAs and that they were being transmitted under the Defendant's performer number.

67. I do not accept that there was the term alleged. The Claimant has consistently denied that there was any such limit since it was first put to him by the Defendant in April 2018, albeit the limit was then said to be 2000. No such term is contained in the Contract which, I have found, was entered into between the parties and set out the terms on which the Claimant worked as a dentist from 1 September 2016. This is not decisive as there evidently was an agreement outside the terms of the Contract as to, for example, the rate at which the Claimant would be paid per UDA. But the Defendant did not give specific evidence about when the limit was agreed with the Claimant, nor produce any documentary evidence which supported the existence of the term.

68. The Defendant relied on a one page table at page 276 of the Bundle which set out UDA allocations to each dentist on an annual an monthly basis as well as figures for sessions. But this document was undated and there was nothing to indicate that it had been communicated to any of the dentists, let alone agreed by any of them as a term of their contract. Rather, it appeared to be a table which the Defendant had prepared for the purposes of his dispute with the Claimant either in the course of an investigation which he claimed had been carried out or for the purposes of this litigation. The document was therefore self-serving but not even sufficiently self-serving to make good the Defendant's case.

69. Similarly, at page 113 there was a calculation of the sum counterclaimed against the Claimant, entitled "Summary for UDAs in Hamza Ijaz ledgers" but this was no more than that. The Defendant also relied on contracts with some of the dentists who worked in the Practice over the years which stated that they would be allocated a specified number of UDAs. But these were not contracts with the Claimant and, in any event, they were expressed as an allocation rather than a limit. In other words, the dentist was entitled to carry out a certain amount of work and to be paid for it at a specified rate, but there was nothing to indicate that it would be a breach of contract for them to do more.

70. The thrust of the evidence suggested that dentists at the Practice were given targets in terms of UDAs and/or were entitled to work specified minimum numbers of UDAs so

as to ensure that they earned reasonable sums, but that the approach was very fluid. The position was monitored closely. If it was apparent that the Practice or a dentist was behind in terms of the number of UDAs carried out at a given point, or in a given month, another dentist or other dentists might be asked to do more. If the dentists were carrying out too many UDAs, so that the Practice was ahead of target, the dentists would be asked to slow down. But the evidence showed that in practice there was no imposition or enforcement of limits above which a dentist could not go. This is unsurprising given that there was a large number of UDAs which required to be carried out and they were less well paid than private work.

71. As to the question of loss to the Defendant, Mr Leviseur said that his case was that there was loss because the UDAs which were performed by the Claimant would otherwise have been performed by the Defendant. That case was contrary to the evidence, from which it was perfectly clear, and indeed admitted by the Defendant, that he was working 6 days per week and at full capacity. He did not have capacity to do the work done by the Claimant as well even if he had wanted to, which is highly doubtful. The true position is that the Claimant's efforts were entirely to the Defendant's advantage, as they meant that the Practice achieved its UDAs and he retained 50-60% of the NHS payment for each UDA worked by the Claimant. The fact that the work was accounted for to the NHS under the Defendant's name meant that he was also able to represent to the NHS that his pensionable pay was a good deal higher than it ought to have been based on the NHS work which he had actually carried out. There was therefore no loss to the Defendant, and the claim in damages fails.

72. As to whether the Defendant was aware that the Claimant was doing as much NHS work as he was, and that this work was being transmitted to the NHS under the Defendant's performer number, I am quite satisfied that he was. As I have said, his own evidence was that he closely monitored the UDA situation on a monthly basis and that he checked what dentists were being paid. He also could not have failed to appreciate that the number of UDAs attributed to him in the Practice's transmissions to the NHS was far greater than the work which he had actually done. The Claimant was not responsible for the transmission process in any event: he did no more than present the work which he had done at the end of the month and wait to be paid. No doubt for this reason the Defendant repeated the scurrilous suggestion that the Claimant was having an affair with Ms Malik and had inveigled her into assisting him in covering up what he was doing. This suggestion and his allegation of fraud against the Claimant were unfounded.

73. As to unjust enrichment, there was no dispute that the Claimant had done the work for which he had been paid and that the Defendant had benefited financially from this work. Other than assert the claim, Mr Leviseur did not develop the argument or refer me to any authority or textbook which would support it. I cannot see any basis on which it would be just for the Claimant to be required to repay the sums which he received for the work which he did.

74. I therefore dismiss this counterclaim.

<u>Work allegedly done by Dr Ayeesha Saddiqua but claimed for by the Claimant</u>

75. The allegation under this heading required the Defendant to prove that Dr Saddiqua did work which was the subject of the counterclaim but the Claimant wrongly claimed payment for it. The fundamental problem with his case was that he was unable to produce documentary evidence that she had done the work claimed for by the Claimant and/or that he was not entitled to claim for it. In similar vein to his claim based on the Claimant working more UDAs than was permitted, the Defendant produced an undated calculation comprising a list of patients allegedly treated by Dr Saddiqua but claimed for by the Claimant and some other documents which appeared to have been prepared for the purposes of the dispute, but not a full set of the underlying evidence on which these documents were based. He could show that the Claimant claimed in respect of the work in question and had been paid for it, but he could not make good his case that the Claimant had not in fact done the work or was not entitled to claim for the work. His calculation was therefore self-serving.

76. The Defendant's allegation that the Claimant had not done the work claimed for by him was said to be based on what the Claimant's dental nurse, Ms Rizwan, told the Defendant in the course of an investigation which had been carried out by the Defendant and others after November 2017. The Defendant's evidence was that Ms Rizwan had quickly printed out a list of all of the relevant patients and there had then been a tearful confession from Dr Saddiqua when she was confronted with this list. However, there were no documents evidencing the investigation, nor a report of the investigation, other than various statements of the Defendant's findings – there was no statement from Ms Rizwan or Dr Saddiqua and there were no notes of what they had said during the investigation, for example – and the Defendant's evidence in this regard was therefore also entirely self-serving. Neither Ms Rizwan nor Dr Saddiqua gave evidence or provided a witness statement in the litigation either. The Defendant's evidence was that Ms Rizwan had not come into work on the day after she produced the list and had resigned from her role. He said that Dr Saddiqua had been asked to provide a witness statement but had refused.

77. Having assessed the Defendant's credibility and the evidence as a whole, I was not prepared to accept his evidence and assertions in relation to this aspect of the counterclaim without the independent evidence to support them. The Claimant's evidence, which I accepted, was that he did not claim for work which he was not entitled to claim for. There was a handful of case notes which showed him and Dr Saddiqua dealing with the patient. The explanation for this was that she was not entitled to work as an NHS dentist and therefore worked as a nurse. There were occasions when she assisted and/or was supervised by him but on these occasions he was the treating dentist and he was therefore entitled to claim payment for the work.

78. I therefore dismiss this counterclaim also.

Payments for antibiotics

79. In relation to the claim that the Claimant pocketed payments for antibiotics, again Mr Leviseur confirmed that there is no evidence to support this contention other than the Defendant's say so. The Claimant denied that he did this. Again, I did not accept the Defendant's evidence and I accepted the Claimant's evidence on this point.

Conclusion on the Counterclaim/the Claimant's claim for breach of contract

80. I therefore dismiss the Counterclaim. It also follows from my findings that the Defendant has not proved any breach of contract by the Claimant, still less any repudiatory breach. Nor has he proved any fraud. The Claimant's claim for breach of contract therefore succeeds.

81. That being so, the Claimant is entitled to £35,130.30 plus interest in respect of outstanding arrears of pay as at the date of termination of the Contract.

82. As far as the claim for loss of earnings to the end of the contract term is concerned, Mr Leviseur argued that the full amount of the claim should not be awarded. Apart from the pleading issue which I have dealt with above, one of the points which he made, as I understood it, was that the statement as to pay in the Contract was not a guarantee. I tend to agree, but it was not clear how this affects the issue. It seemed to me that the Claimant was entitled to claim for loss of earnings consequent on the premature termination of the fixed term. The effect of the termination of the Contract was that his work at the Practice was brought to an abrupt halt and he was unable to work and generate the income which he would otherwise have made. No argument was advanced that, even if the Contract was genuine, it did not provide for a minimum term or was terminable on notice. Nor was it argued that there had been a failure on the part of the Claimant to mitigate his losses. In principle, therefore, the Claimant is entitled to the damages claimed.

83. As to quantum, Mr Leviseur argued that the calculation of what the Claimant would have earned had the Contract not been terminated should be based on the average for the 12 months prior to termination, rather than the six months. However, I accept the evidence that it takes 1-2 years for a dentist to build up their private practice in particular, and that the Claimant was still in the process of building up his practice when the Contract was terminated. This is also apparent from his earnings figures. The final six months are therefore more likely to be indicative of what he would have earned had the Contract continued.

84. I did consider whether damages should be limited to the period prior to the sale of the Practice in June 2021. However, this was not a point taken by Mr Leviseur and there was no evidence to suggest that the new owner would have dispensed with the Claimant's services. On the contrary, given the Claimant's qualities as a dentist it is unlikely that he would have done so.

85. For all of these reasons, then, I award damages under this head in the sum of £137,555.

Defamation

86. This part of the case was not advanced with any real vigour by or on behalf of the Claimant. The bulk of his efforts and those of the Defendant were directed at the claim and counterclaim for breach of contract, albeit there was a connection between these aspects of the case and the defamation claim.

87. Section 1(1) Defamation Act 2013 provides that:

> *"A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant"*

88. Paragraph 4.2(3) of CPR Practice Direction 53B requires a claimant to set out, in the particulars of claim, the facts and matters relied upon to satisfy this test. The Claimant's pleaded case, at paragraph 22 APOC, is that the statements in the three communications relied on are individually or in combination *"self-evidently grave and have caused already, and/or are likely to cause in future, serious harm to the Claimant's reputation"*. At paragraph 23 it is asserted that they have caused the Claimant considerable distress and embarrassment.

89. Paragraph 22 of the APOC is denied by the Defendant. The GDC email and the HMRC letter, it is pleaded, would not have diminished the Claimant's reputation until such time as the matter was investigated. It was also understood by the Defendant that Envisage Dental continued to employ the Claimant after the ED email.

90. Consistently with his pleaded case, the Claimant did not adduce any specific evidence of harm to his reputation. Instead, Mr Dhillon's relied on passages from *Drummond-Jackson v British Medical Association & Others* [1970] 1 All ER 1094 at 1104 and *Rubber Improvement Limited & Another v Daily Telegraph Limited* [1964] AC 234 to assert that an allegation or implication of fraud against a professional person necessarily causes or is likely to cause serious harm to their reputation. However, the judicial statements on which he relied did not make good this assertion and they were made in a different factual and legal context in any event.

91. As is well known, in *Lachaux v Independent Print Limited* [2019] UKSC 27, [2020] AC 612 the Supreme Court held that the effect of section 1(1) of the 2013 Act was that a statement which would previously have been regarded as defamatory because of its inherent tendency to cause some harm to reputation was not to be so regarded unless it had caused or was likely to cause harm which was serious. The words of the section refer to the consequences of the publication, not the publication itself, and they point to some historic harm which is shown to have actually occurred. Whether this has been the effect of the publication depends on a combination of the inherent tendency of the words and their actual impact on those to whom they have been communicated. The words *"likely to cause serious harm"* refer to probable future harm, rather than an inherent tendency to cause harm.

92. I did not accept Mr Dhillon's submission, in effect, that I could infer that serious harm to the Claimant's reputation had been caused or was likely to be caused based on the words used in the communications complained of and the identity of the recipients alone. Each of the three communications complained of was sent to a single recipient. The communications were short and had a somewhat random flavour, such that it could not be assumed that they would be taken seriously and they might well simply have been ignored. In the light of this and the Defendant's pleaded case, it was clearly necessary for the Claimant to provide evidence that there was some reaction to them by the recipients which indicated that *serious* reputational damage had been sustained, but he did not do so.

93. The GDC email stated:

> *"Dear Sir/Madam*
>
> *Re: Mr Hamza Ijaz*

One of my VTE trainees Mr Hamza Ijaz is under investigation for fraud in my Surgery.

I wish to inform you that that [sic] during the investigations he must not be allowed to work at other places. We are getting all the details together and [will] forward those details to yourself.

Kind Regards

Dr Ghafoor Manan"

94. There was no evidence about any reaction to the GDC email in the form of a response, an investigation or otherwise, nor of any consequence for the Claimant. It may well have been noted or simply ignored. As Saini J held, the GDC email did no more than say that there were reasonable grounds to suspect fraud. Moreover, the recipient was the regulatory body for the profession, and could be expected to remain neutral until there had been an investigation.

95. The HMRC letter was similar. It stated:

"Dear Sir,

I wish to inform you that the above mentioned is a Dentist registered with the GDC & is under investigation for alleged fraud in our company. We will let you know the results of the investigation within 3-4 weeks.

Yours Truly

Dr Ghafoor Manan"

96. Again, there was no evidence about any reaction to this communication by HMRC. Here, the meaning went no further than that there were grounds to investigate. Again, it cannot be assumed that HMRC would take what the Defendant said at face value or reach any view prior to investigating the matter, and nor was there any evidence of any consequences for the Claimant.

97. As for the ED email, this was written six months later, on 23 October 2018. The Defendant said:

"Dear Jude,

Further to our conversation on the phone today. Mr Hamza Ijaz worked had worked [sic] with us since 2012 first as a dental nurse then as practice manager and lastly as a Dentist. He was dismissed from our Surgery for fraud in May 2018 this year [sic] with a receptionist Mrs Bushra Bibi Malik who was found to be colluding with him. The matter was reported to the GDC & NHS for fraud and is still under investigation. I have come to know that he is currently working with you and Smiledental in Basingstoke.

He has produced a fake contract with our Surgery in the past of which we have a copy & was also found guilty of other misconduct by our internal investigation.

What I what [sic] to bring to your notice is that did he inform you that he was currently under investigation by the GDC & NHS during his interview or not & secondly he must have produced references to get a job with yourself and if so then who has signed his references as he might have forged the references.

I would be grateful if you could answer my queries."

98. There was a response within minutes as follows:

"Dear Mr Manan

Thank you so much for your prompt email. I have passed this directly on to Mr Harry Gill the owner of Envisage and we will investigate further. As soon as I know anything more I will keep you informed.

Thank you again

Kindest regards

Jude"

99. The Defendant followed up a week later, asking for an update, but it appears that he did not receive a reply or, at least, no reply was included in the bundle.

100. At paragraph 28 of his second witness statement the Claimant gave evidence of harm which he suffered when the Defendant contacted a different employer, Smileright Dental Practice at Boots. He then dealt with the ED email at paragraph 30 where he said "*The Defendant also tried to damage my reputation at another practice (Envisage Dental) where I worked."* (emphasis added). He went on to say *"The effect on my career has been negative and it set me back quite a lot of time. It took me a long time to get back to the level of earning that I had achieved before the Defendant started to make my life so difficult".* However, these sentences appear to be general assertions about the Defendant's behaviour in 2018 which the Claimant also describes as harassment. In his first witness statement the Claimant merely said that he *"felt that the Defendant's contact with Smileright and Envisage Dental caused trust issues".*

101. Notwithstanding the *Chase* level 1 meaning of this communication, the lack of anything specific in terms of a reaction and consequences for the Claimant at Envisage Dental is striking, and to some degree in contrast with his evidence about Smileright Dental in his second witness statement. He does not say anything specific about what happened. The inference, given lack of any evidence in response to the Defendant's pleaded case, is that Envisage Dental did not consider that there was any cause for concern about the Claimant, quite possibly because they appreciated that the Defendant had his own agenda, and they could see that the Claimant was reliable and trustworthy. At all events, in the absence of any specific evidence I was not prepared to hold that section 1(1) of the 2013 Act was satisfied in relation to the ED email either.

102. The Claimant's defamation claims therefore do not "get off first base". It follows that I need not decide whether the Defendant's defences would have been made out save that, for the reasons given above, the defence of truth would not have succeeded in

relation to any of the three communications complained of even bearing in mind that only one of them had a *Chase* level 1 meaning. As far as the qualified privilege defence is concerned, this was complicated by the fact that in sending the relevant communications, the Defendant was largely motivated by his dispute with the Claimant rather than a sense of legal or moral duty, but the Claimant has not pleaded malice (see CPR Practice Direction 53B paragraph 4.8(1)) nor identified this in the Agreed List of Issues. I therefore express no concluded view on the point.

Harassment

Legal framework

103. Section 1(1) of the Protection from Harassment Act 1997 provides:

> ***"Prohibition of harassment.***
>
> *(1) A person must not pursue a course of conduct—*
>
> *(a) which amounts to harassment of another, and*
>
> *(b) which he knows or ought to know amounts to harassment of the other."*

104. Section 1(3) provides:

> *"(3)Subsection (1)…does not apply to a course of conduct if the person who pursued it shows—*
>
> *(a) that it was pursued for the purpose of preventing or detecting crime,*
>
> *(b)…*
>
> *(c) that in the particular circumstances the pursuit of the course of conduct was reasonable."*

105. Section 7(2) provides:

> *"(2) References to harassing a person include alarming the person or causing the person distress."*

106. Section 7(3)(a) provides that a course of conduct in relation to a particular person must involve conduct on at least two occasions, and section 7(4) confirms that conduct includes speech.

107. I drew the attention of the parties to the judgment of Nicklin J in *Hayden v Dickson* [2020] EWHC 3291 (QB) at [44] in which he analysed the relevant authorities and summarised the applicable law in the context of allegations of harassment based on speech or publication. This summary was approved by the Divisional Court in *Scottow v Crown Prosecution Service* [2020] EWHC 3421, [2021] 1 WLR 1828 at [24].

108. The whole of Nicklin J's summary is very useful but the following aspects are of particular relevance here. I omit references to the authorities on which his summary

was based but have added emphasis to certain passages:

> *"(i) Harassment is an ordinary English word with a well understood meaning: it is a persistent and deliberate course of unacceptable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress; "a persistent and deliberate course of targeted oppression"…….*
>
> *(ii) The behaviour said to amount to harassment must reach a level of seriousness passing beyond irritations, annoyances, even a measure of upset, that arise occasionally in everybody's day-to-day dealings with other people. The conduct must cross the boundary between that which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the border from the regrettable to the objectionable, the gravity of the misconduct must be of an order which would sustain criminal liability under s.2…….*
>
> *(iii) The provision, in s.7(2) [of the 1997 Act], that "references to harassing a person include alarming the person or causing the person distress" is not a definition of the tort and it is not exhaustive. It is merely guidance as to one element of it….It does not follow that any course of conduct which causes alarm or distress therefore amounts to harassment….*
>
> *(iv) s.1(2) provides that the person whose course of conduct is in question ought to know that it involves harassment of another if a reasonable person in possession of the same information would think the course of conduct involved harassment. The test is wholly objective……*
>
> *(vi) Where the complaint is of harassment by publication, the claim will usually engage Article 10 of the Convention and, as a result, the Court's duties under ss.2, 3, 6 and 12 of the Human Rights Act 1998. The [1997 Act] must be interpreted and applied compatibly with the right to freedom of expression. It would be a serious interference with this right if those wishing to express their own views could be silenced by, or threatened with, proceedings for harassment based on subjective claims by individuals that they felt offended or insulted…*
>
> *(viii) Consequently, where Article 10 is engaged, the Court's assessment of whether the conduct crosses the boundary from the unattractive, even unreasonable, to oppressive and unacceptable must pay due regard to the importance of freedom of expression and the need for any restrictions upon the right to be necessary, proportionate and established convincingly. Cases of alleged harassment may also engage the complainant's Article 8 rights. If that is so, the Court will have to assess the interference with those rights and the justification for it and proportionality…. The resolution of any conflict between engaged rights under Article 8 and Article 10 is achieved through the "ultimate balancing test" identified in In re S [2005] 1 AC 593 [17]….*
>
> *(ix) The context and manner in which the information is published are all-important…. The harassing element of oppression is likely to come more from the manner in which the words are published than their content....*

> *(xi)….. The truth of the words complained of is likely to be a significant factor in the overall assessment (including any defence advanced under s1(3)), particularly when considering any application for an interim injunction….. On the other hand, where the allegations are shown to be false, the public interest in preventing publication or imposing remedies after the event will be stronger…. The fundamental question is whether the conduct has additional elements of oppression, persistence or unpleasantness which are distinct from the content of the statements; if so, the truth of the statements is not necessarily an answer to a claim in harassment."*

109. Mr Dhillon also referred me to *Iqbal v Dean Mason Solicitors* [2011] EWCA Civ 123 at [41] in which it was held that three letters written to a solicitor, Mr Iqbal, which deliberately attacked his professional and personal integrity in an attempt to embarrass him into declining to act for his client or advising his client to meet the demands of Dean Mason Solicitors, gave rise to an arguable case of harassment which, therefore, ought not to have been struck out. As I pointed out to him, however, the passage on which he relied set out facts which were materially different to the facts of the present case, and the decision went no further than that there was an arguable case on those facts. *Iqbal* is of assistance, however, in emphasising that the whole of the course of conduct alleged to have amounted to harassment should be examined. A key error which the first instance judge made in that case was to consider whether each of the three letters amounted to harassment rather than to look at the course of conduct as a whole.

The Claimant's pleaded case

110. The acts of harassment pleaded on behalf of the Claimant was largely based on WhatsApp messages and emails. In chronological order, they were as follows. I have highlighted the remarks made by the Defendant which are relied on in the APOC.

111. On 13 April 2018, there was the following exchange in the context of the Defendant challenging the Claimant about the number of UDAs which he had done and been paid for:

> *"3:12 pm – hamza ijaz: Assalam o Alaikum sir! Sir i need sometime please as i want to discuss with my parents as i mentioned you earlier my mum had eye surgery recently*
>
> *3:17 pm – Dr Ghafoor Manan: Walaikumassalam Sorry Hamza no more time. This is a matter for your decide not your parents. We don't want to cause them any stress because of you greed and meanness. Consider this a one months notice and leave till the 14th of May. You don't owe me anything, keep all your money and please go. Thank you for your services. Wasalam*
>
> *Cc Confidential Saadat Tahir*
>
> *3:49 pm – Dr Ghafoor Manan: Sorry Hamza the party is over I didn't expect an Ahmadi to be so selfish, stubborn, dishonesty, mean and greedy. Who is not even happy to pay £50.0 to park his new car in my parking lot. Wasalam*
>
> *Cc Saadat*

4:00 pm – hamza ijaz: Sir this is quite unfair with me and have always treated you like a father figure!"

112. On 15 April 2018 the Defendant sent the GDC email which is set out at [93] above. There was also the following exchange about whether it was fair that the Claimant had claimed nearly 7,000 UDAs for a period of 15 months:

"7:46 am – hamza ijaz: Even with my UDA's you are getting more then half of the value of UDA. Everybody knows how fair person i am and its all my hard earned money

7:49 am – hamza ijaz: And i just used to see patients whichever were booked and never calculated how much i have done as according to you we were supposed to see every patient and Alhamdolillah over 70% work was private

7:51 am – Dr Ghafoor Manan: OK good one last sentence and it will solve the problem: When the GDC finds out that as a VTE you have done 6947.4 UDAs and as a VTE trainer I have done only 188 for the year. The might appoint you as the trainer and myself as the trainee. As a VTE the max you are allowed are 2000 Udas. The other 2 Trainees get 0 UDAs. Try explaining that to the GDC please.

7:52 am – Dr Ghafoor Manan: Not only they will remove you permanently from the register, you will also go to jail for it and ultimately also deported. Think about it Boss

7:55 am – Dr Ghafoor Manan: Just like your poor wife who was deported recently

7:57 am – Dr Ghafoor Manan: You have noted each UDA in you own handwriting in you book boss : see pic

7:58 am – Dr Ghafoor Manan: All the evidence is here in your own hand writing

7:59 am – hamza ijaz: Sir there are no limitations of UDA's under VTE training and secondly there was no limitations of UDA's either verbally or written

8:02 am – Dr Ghafoor Manan: Very well. So you have decided then the investigation after I complete it will Inshallah go to the GDC. Wasalm

8:03 am – hamza ijaz: Allah knows better and Allah will always guide me the right path. Ameen

8:04 am – Dr Ghafoor Manan: During a GDC inquiry you can't work anywhere when it is going on. And this can take years. Jazakumallah for letting me now. Inshallah Allah with decide now. Wasalm

8:05 am – Dr Ghafoor Manan: Enjoy the holidays at home."

113. On 29 April 2018, the Defendant sent the Claimant's father a text in the following terms:

"Mohtaram Hamid Sahib AaAasalamoaliakum

I hope you and your wife are well. Lately I have noticed that Hamza has been having endless bad luck. I have thought about it and even told Hamza many time. He insists that he has done nothing. The actual truth is that he has been dishonest with me; filing his bank account and emptying my Surgery's bank account in return.

He had fraudulently taken about £60,000.0 maybe more from my Surgery account. I am in the process of calculating now how much loss he had caused but he is adamant that he had been working hard and making me a lot of money instead. You can ask Talha and Saadat my managers and they will inform you of the actual truth.

Now I am writing to you so that you can talk some sense in him. I want to give him one last chance but if he doesn't mend his ways & insists that he is right ; then I am afraid the law is going to take its course and he might end up in jail & be eventually deported from the UK.

I have been looking after him like a father but he has been behaving like a "Kapoot"

Wasalam

Dr Ghafoor"

114. This was one of two texts to the Claimant's father which Saini J held, having heard the evidence of Hamid Ijaz himself, had not had a negative impact on the Claimant's reputation in the eyes of his father. Hamid Ijaz had taken the Claimant's side, was proud of his son and gave no credence to the notion that he had behaved dishonestly. Saini J therefore struck out the claims for libel based on these two texts. The second text was sent on 2 May 2018 and I deal with it below.

115. On 1 May 2018, the Defendant sent the HMRC letter set out at [95] above.

116. On 2 May 2018, the Defendant sent a further text to the Claimant's father which said that the Claimant had *"illegally transmitted nearly 7,000 UDAs under my name and number without permission despite having his own number and PIN. That constitutes a 100% fraud"*.

117. On 11 May 2018, the Defendant refused to confirm the completion by the Claimant of the VTE. This was admitted by the Defendant.

118. On 15 May 2018, the Defendant sent a message, copied to the two practice managers at the Practice *"It is essential to kill the traitor"*. It was common ground that this referred to the Claimant.

119. On 25 May 2018, the Defendant sent the Claimant what purported to be a copy of an email to the GDC adding a further allegation against the Claimant. This was the allegation of fraud in relation to the Dr Siddiqua matter referred to above. The Defendant stated that she was willing to testify against him if asked. In fact the Defendant had not sent this email to the GDC.

120. Two months later, on 26 July 2018, the Defendant sent two emails to the NHS which purported to set out the results of the investigation into the Claimant which had been conducted. The emails made the allegations which are the subject of the Counterclaim in respect of excessive UDAs worked by the Claimant and claiming for work carried out by Dr Siddiqua. It was also alleged that a number of patient complaints were still coming in and that Ms Malik had colluded with him in achieving his aims. The GDC was said to be conducting its own inquiry into the matter.

121. On 23 October 2018, the Defendant sent the ED email set out at [97] above.

122. Although the Claimant's evidence, in his first witness statement, cast the net somewhat wider in relation to this aspect of the case, it was opened by Mr Dhillon on the basis that the acts of harassment were as per his statement of case. Very properly, he also cross examined and made his submissions on this basis. I have therefore taken into account the context as set out in the Claimant's written evidence but have focussed on the course of conduct which was actually pleaded.

Discussion and conclusion on the harassment claim

123. Ultimately, I was not persuaded that the Defendant's conduct crossed the boundary from being unreasonable and unattractive to being oppressive and amounting to harassment contrary to the 1997 Act. It did not have the degree of persistence or level of seriousness, in terms of its nature or effect, which was of an order which would warrant criminal liability.

124. I have concluded that the Defendant's allegations of fraud and dishonesty against the Claimant were unfounded but it did appear that he genuinely believed that he was the victim of underhand behaviour by the Claimant. They therefore fell out with each other at the beginning of April 2018 and exchanged emails and texts in which they argued about the rights and wrongs of what the Claimant had done. There were numerous exchanges and in some of these the Defendant made the unjustified allegations of dishonesty, greed, selfishness etc to which I have referred above. The Defendant also repeated his views and allegations to the Claimant's father, the GDC and HMRC and was obstructive in relation to the completion of his VTE during this period.

125. There was then a gap in the pleaded events from the end of May until the Defendant sent the outcome of his investigation to the NHS at the end of July. As I have noted, although he has not proved the truth of his findings he appeared to be convinced that they were well founded. He sent them to the NHS in the context of the Claimant himself making allegations of fraud against the Practice and therefore as part of the escalation of the argument between them.

126. There was then a further gap before the ED letter was sent, just under 3 months later. Here, again, the Defendant was convinced of his views about the Claimant albeit his reasons for contacting Envisage Dental were largely vindictive.

127. In coming to my conclusion I have not lost sight of the imbalance of power between the Claimant and the Defendant, nor of the fact that the Defendant's behaviour led the Claimant to resign, albeit after he had been told to go. Nor have I overlooked the seriousness, from a professional point of view, of the allegations which the Defendant

was making, nor of the fact that he copied some of his messages to the Claimant's colleagues or former colleagues and involved third parties including the GDC. Clearly, it was also highly unpleasant to say, referring to the Claimant, that it was essential to kill the traitor and I was also very concerned when I read what appeared to be attempts by the Defendant to exploit the Claimant's immigration status and to damage or destroy his career.

128. Nor have I overlooked the unreasonable and in some respects irrational nature of the Defendant's behaviour and his admission that, in the April/May 2018 exchanges, he was seeking to put pressure on the Claimant to reimburse him for what he saw as a loss to the Practice. Although he defended the GDC, HMRC and ED communications as seeking to convey the truth to people who had a right to know, the Defendant himself admitted, in effect, that some of the things that he had said were foolish. He accepted that the traitor reference was "awful", that he went too far and that he was ratcheting up the pressure on the Claimant, albeit he described his feelings as those of a father who had been betrayed by his son and said that this accounted for his emotional reaction.

129. I also have no doubt that the Defendant's behaviour was unwelcome to the Claimant. However, despite his written evidence, the overall impression which I was left with was that he was not particularly upset by the Defendant's actions. He appeared to have no difficulty in responding to the Defendant's vituperative messages and he did not appear to have been intimidated, even if this was the Defendant's aim. No one took the kill the traitor remark seriously. Nor did the Claimant give evidence that he was fearful that he would indeed lose his immigration status in this country or be deported. He is a robust and intelligent individual and he appears to have been supported by others in the profession but outside the Practice. He found well paid work rapidly and he responded to the Defendant with counter allegations about the Practice. As I have noted, the Claimant's father did not give the Defendant's allegations any credence and nor, on the evidence, did the GDC, HMRC or Envisage Dental. The overall flavour of the evidence, then, was that the Defendant's behaviour was unpleasant but seen as eccentric, rather than being particularly harmful. In short, his vituperation was not taken particularly seriously by anyone, including the Claimant.

130. For all of these reasons, then I dismiss the claim in harassment.

Conclusion

131. I therefore allow the Claimant's claims for breach of contract and dismiss his claims in defamation and harassment. The Counterclaim is also dismissed.

132. I will invite the parties to agree a draft order which reflects my decision and deals with interest, costs and any other consequential matters. Unless there is good reason to hold a hearing, in the event that they are not able to agree on any matter, they are invited to suggest a timetable for written submissions and I will then deal with the matter on the papers.