IN THE HIGH COURT OF JUSTICE CLAIM NO: HQ03X02561

QUEEN'S BENCH DIVISION

HIS HONOUR JOHN PREVITÉ QC (SITTING AS A HIGH COURT JUDGE)
4 NOVEMBER 2005

BETWEEN:

MARTIN WINSTON CRAY CLAIMANT

-AND-

(1) ANTHONY SANDFORD HANCOCK
(2) CORINNE ELIZABETH HANCOCK DEFENDANTS

NOTE OF JUDGMENT
4 NOVEMBER 2004 AT 10.30 AM

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1. In these proceedings, the Claimant is Martin Cray. Mr Cray is a solicitor who is practising in partnership with Mr M Mitten in Brighton. That practice was established in 1984. The Defendants are Mr Anthony Hancock and his wife Mrs Corinne Hancock. Matthew Nicklin appears for the Claimant, Mr Hancock appears (and conducted the trial) in person, and Mrs Hancock has not attended the trial. She is ill.

2. The claim form was issued on 13 Aug 2003. The claims are for damages for libel and for damages for harassment under the Protection from Harassment Act 1997. Mr Cray claims aggravated damages. Those were the claims against both Defendants, subsequently the claims in libel and harassment against Mrs Hancock were withdrawn.

3. By his Defence & Counterclaim, Mr Hancock denies publication of the libels; in the alternative he contends that the words and imputations are in the meanings which he specifies in his pleadings, true: so there is a defence of justification. He relies on certain matters in mitigation

of damages. He seeks to establish that Mr Cray at the time the words complained of were published, had a bad reputation.

4. There is a Counterclaim by Mr & Mrs Hancock for damages for negligence for conduct in the proceedings in the Brighton County Court: those proceedings had been brought against a firm called Hammonds, in relation to fitting a bathroom. Mr Cray's firm had the conduct of those proceedings. The day to day work was carried out by an employed solicitor, Mr Gabriel Marks.

5. I will have to come back to the history of those proceedings in more detail but in summary, those proceedings were compromised on 6 Jan 2003 when a consent order was made. Under the terms of the consent order, Hammonds were to make good the defects in the bathroom, and pay costs of a little over £7000. A schedule drawn up, experts were to meet to draw up a schedule of specified works. Unfortunately, there was delay in the experts – Mr Tupper and Mr Williams – doing this. Mrs Hancock got exasperated and terminated her instructions of the Claimant's firm on 29 April.

6. Those proceedings in the County Court, are the background to this case. The correspondence between Mr Cray's firm for the purpose of the County Court proceedings was all with Mrs Hancock, and the telephone conversations concerning the conduct of the case were also with her. It was after those County Court proceedings had been compromised, and after Mrs Hancock had terminated her instructions, that Mr Hancock became personally involved in the matter.

7. The claims in libel arise out of 2 publications, 2 alleged publications. The first is a letter dated 1 July 2003, written by Mr Hancock and addressed and posted to the firm Martin Cray & Co. That letter is the first cause of action in paragraph 3 of the now Re-Amended Particulars of Claim, and is attached to the pleading. It was written on paper bearing as its heading 'The Print Factory', giving the address and other details of Mr Hancock's business as a printer. This is handwritten and reads: (reads out)

8. And accompanying that letter was a printed page which again is appended to the pleading, and it reads: (reads out).

9. The envelope in which those two documents were sent was, as I have said, addressed to Martin Cray & Co. Edwards St, Brighton. It was not marked 'private and confidential' and there was no indication on it that it was for the particular attention of Mr Cray.

10. The second matter complained of was contained in a 2 page fax sent on 10 July and received at the offices of Martin Cray & Co. The words are set out in paragraph 5 of the Re-Amended Particulars of Claim, and are attached to that pleading. Those words were handwritten, and again on the same document bearing the printed letter heading of Mr Hancock's business. The first page of the fax reads: (reads out)

11. The second page, sent on the same letter heading: (reads out)

12. The issues in respect of those matters complained of are firstly, the question whether the letter and fax were published to persons other than Mr Cray. Mr Hancock denies publication, and he contends that there is some sort of privilege attached to sending some sort of complaint to the office of a solicitor, so the contention is that if the letter did not immediately come into the hands of Mr Cray, the person who is the subject matter of the letters, it doesn't amount to publication if it is read by someone else on the way to Mr Cray.

13. That is a complete misunderstanding of the law in relation to the publication of defamatory matters. The fact is the envelope was addressed to Mr Cray's firm, it was not marked 'Private and Confidential', it was not marked 'For the Attention of Mr Cray'. It was opened in the post room by the Claimant's secretary, Natalie French. In her evidence to court and in her witness statement she said: (quotes from witness statement)

14. Valerie Langridge confirms in her statement that Natalie French showed her the letter. And Mr Mitten confirms that he saw and read the letter and informed Mr Cray of its contents on the phone. Mr Cray saw and read it for himself the next day. In those circumstances, it has been proved that the letter complained of was published to Valerie Langridge, Natalie French and Mr Mitten.

15. Publication of the fax is similar. On 10 July, Natalie French was, as she said in her witness statement, attending to her duties in the basement of the office, when a fax arrived, she then read the fax, and showed it to Valerie Langridge because she saw the first letter and sent a fax to Mr Cray.

16. What Natalie French and Natalie French saw was the first page of a two page fax. The second page arrived later on the same day and was retrieved from the fax machine by Mr Cray himself. That second page I have read. I am satisfied that publication of the first page of the fax has been proved, in that it was published to Natalie French and Valerie Langridge. Publication of the second page has not been proved – it was retrieved by Mr Cray and read by him.

Although it does not constitute a cause of action for libel, the 2nd page is materially relevant to the claim of harassment which I will turn to later in this judgment.

17. There was an intervening fax, which came in point of time between the letter complained of and the fax complained of. That was sent on Mr Hancock's usual letter headed paper dated 8 July 2003: (reads it out)

18. The receipt of the letter and the faxes caused great distress to Mr Cray, particularly at the suggestions contained in them that further publicity would be occasioned unless he did as demanded in those documents. I shall refer to that and what Mr Cray did presently. But first I have to consider what meaning the letter and the fax complained of would bear to a reasonable reader.

19. Meanings are attributed to the letter and the fax in the pleadings. It is pleaded in respect of the letter: (reads out meanings in the PoC). In support of those meanings, the Claimant relies on the fact that he is the founding partner in the Claimant's firm and the fax refers to the proceedings in the Brighton County Court.

20. In my view, no innuendo is really necessary in this case. The words complained of are defamatory on the face of it. If a special fact is needed in order to give the words the meaning attributed to them in the pleading, all that needs to be known is that Mr Cray is a solicitor, and that fact is plainly well known to the people to whom the letter was published, Mr Mitten, Natalie French and Valerie Langridge, and it is clear from the contents of the letter itself that it was written in the context of Mr Cray and his practice as a solicitor. The context in which words complained of are written is crucial to the meaning in which they were understood by people who read the words.

21. In considering the meaning to be attributed to the words complained of, I remind myself of the judgment of Eady J in the case of *Mrs Victoria Gillick v Brook Advisory Service*, and in particular the passage in the judgment which was approved by the Court of Appeal: (reads out)

22. It is of course established law on good authority that the court should have regard to any inference which a reasonable reader would draw from the words. That too is part of the natural and ordinary meaning. The particular words in the letter complained of that are important are the words 'rogue' and 'overpriced' and 'incompetent'.

23. In my view, the natural and ordinary meaning, the meaning in which those words would be understood by a reasonable reader, is that Mr Cray in his practice as a solicitor, was habitually incompetent, and habitually overcharged his clients.

24. Turning now to the fax, I have regard only to the first page of the fax. In the Re-Amended Particulars of Claim, both pages of the fax are set out as being part of the words complained of, but I ignore the last 2 lines because they were on page 2 of the fax and I have found as a matter of law that they were not published. (reads out meaning claimed in Particulars of Claim in relation to the fax). And the same – insofar as any special facts are required to be known by the readers to support those meanings – innuendo facts are pleaded.

25. It might be said that the fax does not identify Mr Cray as being a solicitor, but that fact is clearly known by the publishees, and clearly is written in the context of his practice as a solicitor. So, in determining the meaning (according to the test to which I have referred), I bear in mind that the reader knows he is a solicitor.

26. Again, the context is important. The words that are particularly significant in this fax, are in my view the words at the head of the letter: 'Cray at sue ripoff and rudd' – ripoff being the significant word – and the words: 'you ripped off my wife, return the money now and you will hear no more of this matter.'

27. In my judgment, the reasonable reader – knowing that Mr Cray is a solicitor – would understand the words in that fax to mean that Mr Cray in his capacity as a solicitor, had deliberately overcharged his client. The sting of the letter complained of and of the fax is deliberate overcharging of clients. That, to my mind, is the thrust of those two documents supported by the charge of incompetence. The inference that a reader would draw from those documents, and the deliberate overcharging of clients, is that Mr Cray acted in a dishonest and unprofessional manner in conducting his practice. Those inferences are the natural and ordinary meaning of the two libels.

28. In the Defence to the claim, the Defendant attributes somewhat different meanings to the words complained of. Those meanings were considered by the court on an application that was made before Eady J, and some of the meanings which the Defendant sought to justify – to prove to be true – by his plea of justification, were struck out as being meanings which the words complained of were not capable of bearing. Following that striking out order, what is left is that the Defendant's contentions in respect of the letter: (reads out the meanings contended for by the Defendant)

29. In respect of the fax complained of, the only meaning that was left after the application to strike out is the Claimant is "greedy for fees". So what is left really is contentions that the words meant no more than that the Claimant is greedy for fees, and had acted incompetently in conducting his clients' business. What is said by Mr Nicklin on behalf of Mr Cray, is even if those words were in those meanings proved to be true, they would fall a very long way short of proving the sting of the libels: namely, deliberate and habitual overcharging, as being the main sting of the libels.

30. In support of the meanings which Mr Hancock by his pleading contends are true: namely being greedy for fees, and incompetent, Particulars of Justification are set out in the Defence. The only witness to be called was Mr Hancock himself. Mrs Hancock is too ill to attend the court, no witness statement has been provided by her, and no notice has been given to admit any witness statement as hearsay without calling the witness on the grounds of ill health, as it might have been done. That has not happened.

31. What emerged in the cross-examination of Mr Hancock is that he knows practically nothing of the proceedings in the Brighton County Court. He left that to his wife. He was fully occupied with his printing business and he wished to ensure his wife had something to occupy her mind, so he left the matter entirely to her.

32. Remarkably – in view of the fact that in relation to the plea of justification, the burden of proof is on him to prove the meanings he contends (greed and incompetence) – Mr Hancock admitted he had not troubled to read the voluminous correspondence that passed between Mrs Hancock and Mr Cray's firm in the course of the County Court proceedings. Much of that correspondence was concerning the escalating costs, about which Mr Cray and Gabriel Marks became increasingly concerned because it became apparent to them that if the matter came to trial, the costs involved, including counsel and the expert witness, would be likely to exceed the sum claimed against Hammonds. It was absolutely essential to inform Mrs Hancock and Mr Hancock – If he had been interested in the litigation – what the dangers were and obtain confirmation they wished to continue.

33. I don't propose to go through the correspondence. Mr Nicklin went through it in court and took Mr Hancock through it in cross-examination. It is absolutely plain, firstly from the interim bills that were submitted, started in 2002, continuing till the last one in 2003, that interim bills were submitted. Mr Hancock disputed that his wife had received the interim bills. He is wholly mistaken about that. For instance, it is clear that a letter sent to Mrs Hancock on 16 May

enclosed two things: an interim Bill and a draft Part 36 offer. It is plain from a file note that the draft Part 36 offer had been received, so the interim bill must have been received. The file is littered with notes from Mr Cray and Gabriel Marks which made it clear Mrs Hancock was receiving the documents sent to her.

34. At one stage in his evidence, Mr Hancock suggested that documents in the Hammonds file had been manufactured. Mr Nicklin put it to him in cross-examination that this was preposterous and utterly baseless – and I found that to be so. In any event, as Mr Nicklin points out, it is not open to Mr Hancock to make such a contention, because the documents disclosed are deemed to be authentic under the CPR unless their authenticity is put in issue which it was not.

35. Mr Nicklin also drew the attention of the Court in his closing submission to the history and sequence of client care letters. Again, I needn't go into detail, it is absolutely plain that from the early stage to Dec 2002 the client care letters were sent to keep Mr and Mrs Hancock fully in the picture with regard to the rising costs. No complaint was made by Mrs or Mr Hancock during the course of the litigation, at least up to after it had been compromised, and they made payments on account on various dates, by Dec 2002, to just over the sum of £11,000. By the date of trial, the costs incurred by Mr Cray's firm were a little over £11,000, and including counsel and Mr Tupper – around £15,000.

36. A very important letter in the context of the escalating costs in the County Court is the letter written by Mr Cray to Mrs Hancock on 13 November 2002, in which he informed her that he needed to increase the client care limit to £15,000 and asked for £2,500 on account.

37. He says on 13 December 2002 – 'I sent them an updated client care later….I had informed them fully of the additional costs….neither of them had made any complaint whatsoever….'

38. The nub of Mr Hancock's claim is really based on the over-optimistic reading of the original client care estimate. That's come about because he has wholly failed to take on board the information and letters sent to Mrs Hancock during the course of the litigation. This put it beyond doubt that the costs of the litigation would rise inevitably if it went to trial, and that it was going to cost a great deal more than it would have done if Hammonds had sought to compromise. They [Hammonds] held on till the last minute – till the door of the court.

39. It was, having been fully appraised of the costs situation, Mrs Hancock's decision to go ahead to trial and was in those circumstances that the claim was happily compromised at the door of court. The consent order was made. And it is really from the date of that consent order in

January that it is claimed there was incompetence in failing to enforce that consent order. At that stage, Ms Weir, a trainee in Mr Cray's firm, had conduct of the case in the County Court. No complaint is made against her. The complaint after the consent order is that Mr Cray and his firm failed to take steps to enforce the consent order for more than 2 months. In respect of breach of the order what was to be done was to remedy the defects and pay costs. When all is considered, the delay was caused because the two experts – Mr Tupper and Mr Williams – delayed. That was largely the fault of Hammonds' expert, Mr Williams who it appears was dragging his feet. The failure to pay costs was the failure of the court to transfer the money. As soon as it was brought to her attention, Ms Weir contacted the court immediately.

40. There is no advantage in reviewing the full evidence as to the steps taken to enforce the order, the attempts by Mr Tupper to contact Mr Williams, because in my view what did occur is by no means unusual where solicitors are very much in the hands of experts. Mr Tupper was doing his very best to meet Mr Williams and do the tasks required under the consent order.

41. Having considered the evidence of the conduct of the proceedings, including the conduct in relation to the consent order, I reject Mr Hancock's contention that those matters show that Mr Cray was greedy or incompetent. I find that there is no evidence – no credible evidence – that can support the plea of justification in the meanings established by Mr Hancock of greed and competence.

42. I find that the plea of justification wholly fails both in respect of the conduct of the litigation up to the compromise, and in respect of the enforcement of the compromise agreement. I shall have to return briefly to these matters when I consider the counterclaim of Mr and Mrs Hancock based on negligence whish arises out of the same matters.

43. I should say this too: even if the limited plea of justification had been established, it would have fallen a long way short of establishing the meanings I have found of deliberate overcharging.

44. I turn now to damages. The denial of publication having failed, and the defence having failed. An appropriate level: I bear in mind the very limited respects in which the publications were published.

45. The purpose of the award of damages is to compensate the Claimant for the hurt to feelings. Awards are regarded as serving three purposes: firstly vindication, the sum has to be sufficient to stand as a public vindication but where the trial is conducted by a judge alone and a judgment is given explaining that the libel was in my view wholly unjustified, is to some extent a

vindication in itself. The award is also to compensate the Claimant for harm to his reputation. I have to bear in mind the nature of the publications, the extent of the publications, whether they've been withdrawn, an apology or as here no retraction but a contention that, in a lesser meaning, an effort to prove that words were in part true. Thirdly, the court must bear in mind, is compensation for the hurt the Claimant. That hurt can be either aggravated by the conduct of the defamer, or can be mitigated depending on what steps have been taken. Here there are a substantial amount of matters which aggravate the hurt: unsuccessful partial defence of justification, persisted in throughout the trial, persisted in by Mr Hancock when he conceded not only that he had not troubled to acquaint himself with the Hammonds litigation, but he hadn't even bothered to acquaint himself with that material in this trial. He said he was too busy conducting his business to acquaint himself with the letters.

46. Here, there has been no retraction and no apology. The cross-examination of Mr Cray by Mr Hancock was offensive and obviously hurtful to Mr Cray's feelings. I should identify examples under that offensive cross-examination: For example, Mr Hancock put to Mr Cray that, questioned him as to whether he was having a sexual relationship with Mrs Foster, Mrs Foster being a very important witness in this case. I shall come to her evidence later in relation to the harassment claim. Absolutely no basis for that allegation. Similar offensive questioning was whether he was under investigation for mortgage fraud, receiving kickbacks from criminals, whether he had been backdating interim bills as his firm had done for legal aid forms. I shall refer to that shortly.

47. Much weight has been placed by Mr Hancock on Mr Cray's running the risk of publicity by pursuing these proceedings.

48. Mr Hancock claims that Mr Cray, by issuing the proceedings, has himself brought about the publication of these matters which causes damage to his reputation far beyond the damage caused by the limited publication. That has to be considered in the context of what Mr Cray did when he became aware of the libel. I should refer to the steps taken by Mr Cray.

49. I have already referred to the letter of 8 July which was written as soon as the letter complained of was received. He wrote on 8 July (reads from the letter before action dated 8 July 2003): He wrote on the following day: (reads out the letter before action dated 9 July 2003)

50. He tried again after the fax of 10 July had been received. He had a telephone conversation with the Hancocks, he'd not received a reply to his earlier letters, and wrote on 15 July: (reads

out this letter) He sent a letter on 5 August (reads out this letter, which refers to the 25 July letter before action). He asked again for the assurances sought in the earlier letter.

51. He emphasises that in his witness statement; his desire not to have to commence proceedings, but to have assurances that the defamatory allegations would not be repeated. He did not receive the assurances, and proceedings were issued.

52. On the other hand, matters are relied upon by Mr Hancock in reduction of damages. In particular, he relies on the findings of the Solicitors' Disciplinary Tribunal ('SDT') of 4 December 2002 in support of his contention that Mr Cray has a general bad reputation as a solicitor. Those proceedings were in the matter of Mr Cray, Mr Mitten, Mr Marsh, Mr Harris and Mr Loader – and arose under the Solicitors Act 1974.

53. The allegations against Mr Cray were that he had instructed or caused employees to …create false documentation…legal aid documents to comply with the regulations, and in so doing had acted in a fraudulent or deceitful way. That was allegation number 2. Allegation number 1 was that he or other members of his firm created the false documents referred to in paragraph 2, either with or without his knowledge, then he acted in breach of the Solicitors Practice Rules. Paragraph 3 was that he failed to supervise his employees from doing this. Mr Cray admitted allegation 1 on the footing that the backdated documents were created by other employees – he admitted this on the basis of his responsibility as a partner. He denied paragraph 2 – said it had happened without his knowledge – and admitted paragraph 3…He admitted that his style of management and supervision of staff took insufficient account of human frailty in the face of that pressure.

54. The tribunal found all the allegations to be substantiated as admitted, but – in the case of Mr Mitten and Mr Cray, found that the documents were created without their knowledge.

55. The tribunal went on to find that Mr Cray is to be given credit for accepting full responsibility for what went on, albeit without his knowledge.

56. Those findings are relevant to Mr Cray's reputation as a solicitor, and in relation to the capacity in which he carries on his practice. Perhaps the key to it is that the tribunal reached the view that Mr Cray and the other respondents had been found guilty of conduct unbefitting a solicitor. The tribunal made it clear also that that was in his supervisory capacity. None of the witnesses who were publishees were asked if they were aware of the findings of the tribunal, and of the effect it had of their view of his reputation. The fact is the tribunal has made those findings, and

has expressed the view that they amount to conduct unbefitting a solicitor. Those findings were made in 2002. Mr Cray of course has a practice certificate. It is unconditional – no finding was attached to it in the light of the tribunal.

57. Mr Hancock submits in effect that those findings have reduced Mr Cray's reputation significantly. I find that the findings do have an impact in respect of his conduct as a solicitor. They are findings that I do take into account in deciding what award to make for the 2 libels. Of course, I have to balance what is urged in mitigation against what is urged in aggravation. It is quite impossible to make a precise calculation, but I do take into account in making my awards, the limited extent of publication, the nature of the libel, the matters I have identified tending to aggravate the hurt to Mr Cray's feelings, and I take on the other hand into account the extent to which his reputation has suffered on account of the tribunal.

58. A matter I have not referred to is Mr Cray's own evidence as to his hurt feelings on account of these 2 libels. He found them extremely offensive but his evidence in court was mainly directed to the acts which I shall come to in relation to harassment. It is clear in the letters to which I've referred that at the time when the libel letter and fax were received, he was extremely anxious and wanted to ensure that the allegations would not be repeated.

59. Bearing in mind those factors, I award £5,000 in respect of the letter, and the sum I award in respect of the fax is £4,000.

60. I can turn now to the claim for damages for harassment. I shall start with the Protection From Harassment Act 1997. That Act reads (quotes to words):

61. Many acts of harassment are complained of by Mr Cray. All those acts have been set out in a comprehensive manner in a very helpful schedule prepared by Mr Nicklin. Apart from the two libels and certain other communications which Mr Hancock admits he was responsible for, there are other communications which he denies he was responsible for. To establish the tort of harassment under the Act, the burden is on the Claimant and the standard of proof is the civil standard: namely, the balance of probabilities. Mr Nicklin reminded me of the standard of proof required where the charge or case is of a grave or serious nature. It is still on the balance of probabilities, but the evidence must be correspondingly convincing. Mr Nicklin took me to *Phipson on Evidence*, paragraph 6.54, the judgment of Lord Nicholls, where Lord Nicholls addresses the problem of considering whether more evidence is required.

62. The schedule which Mr Nicklin prepared comprises some 23 items. He has set them out in chronological sequence, he has identified the matters complained of, and he has set out the Defendant's answer to that claim, and in part he has set out in respect of various items the relevant evidence, derived from a note taken during the course of the hearing. I am going to direct that this schedule be appended to my judgment, but I shall go through it – all the matters relied on to show that all the matters are, on the balance of probabilities to be found to have been brought about by Mr Hancock.

63. Firstly, Mr Nicklin submits, comparison of the language of the e-mails, telephone calls etc. in whatever form tends to show – and does show – the repetitive use of certain offensive words and expressions which he suggests should result in the Court determining all these matters were either directly or indirectly, the work of Mr Hancock. Similarly, in so far as it is clear that emails were sent from differing email addresses, he submits that an analysis of these matters tends to show that they were the work of one person. He also submits that where Mr Hancock was cross-examined on these matters, he frequently changed and trimmed his evidence to suit what was being put to him, when it began to appear that the answer he was giving could not be maintained.

64. I go to the schedule. Item 1, the 1 July letter, the fax of 8 July, the fax of 10 July, the telephone call to which I have referred earlier, which concludes with Mr Hancock calling Mr Cray a little shyster. Mr Hancock admits the telephone call. The 5th item he denies having anything to do with, that was an item sent to newsgroups, soliciting gay clients. It was sent from an email address: martincray_solicitor@hotmail.com

65. That email reached MC from a Mr Chris Cooper on 7 October 2005. It forwarded the original message which purported to be from martincray_solicitor@hotmail.com on 4 October. (reads out the email) *"SUBJECT: If you are HIV positive, read this…."*

66. So that purported to come from that email address. The next matter is an email from Mr Tony Rawlinson to Martin Cray forwarding what purported to be an email from martincray_solicitor@hotmail.com (reads out this email).

67. The significant thing is that purported to come from martincray_solicitor@hotmail.com the same email address as the previous item, Mr Nicklin's contention is that those emails must have been generated by the same person, and moreover that whoever sent it must have known that Valerie Langridge was Practice Manager in the Claimant's firm. He also says that

the allegation of dishonesty against Valerie Langridge is consistent with the tenor of Mr Hancock's other allegations.

68. Item 7 is an email purporting to come from another email address: martincray_solicitor@yahoo.com the relevant part of the email reads: (reads out) *"…Existing clients may continue to use our hotmail address…"*

69. Mr Nicklin submits that the distinctive yahoo address is similar to the address in items 5 and 6, and he draws attention to the similarity in language, and he submits that the reference to the hotmail account ties in with items 5 and 6.

70. Item 8 is an email sent from ovur@hotmail.com on 23 October 2003, the same day as item 7. It says 'love your new site on geocities….' It gives the website address. Mr Nicklin emphasises it was sent on the same date as item 7, similar language, demonstrates it must have come from the same person.

71. Mr Hancock was asked about the language there. He contended that it was common usage, nothing there to indicate that he was the source or cause of these messages.

72. Item 9 – this is an email sent by Mr Hancock to his own solicitor at Osmond & Osmond, then forwarded to Mr Robert Edwards, who forwarded it to Mr Cray. He admits that he wrote it. (reads out this email).

73. It is at about this time, January 2004, that a cartoon drawn by Mr Edwards, but - it is submitted by Mr Nicklin - commissioned by Mr Hancock, came into existence.

74. The cartoon is appended to the original Particulars of Claim. It will be appended to my judgment. One will need to look at it to see what it contains. Similarly, the libel complained of and the fax complained of will be appended to my judgment. To return to the cartoon, it is Mr Cray's case that this was commissioned by the Defendant. It depicts 2 gravestones (gives description of the cartoon).

75. That cartoon was created not by Mr Hancock, but by Robert Edwards. He denies commissioning it. In his witness statement, he says 'Among the people who received the first two pages of the "Greedy Solicitors" 'thread' on the *"This is Brighton and Hove"* web site was one Robert Edwards, a freelance cartoonist and illustrator, for whom I have done occasional printing jobs. Entirely on his own initiative and without any instruction or suggestion from me,

Mr Edwards drew a cartoon lampooning the Claimant herein in particular and the legal profession in general and submitted it to the "*This is Brighton and Hove*" web site…I categorically deny being the instigator of Mr Edwards' cartoon…"

76. One of the very significant features of the cartoon, is of course the reference to the legal aid forms, deriving from the matters before the SDT. There is also a reference to there being something 'fishy'. Mr Hancock categorically denies commissioning that cartoon, or being in any way responsible for it.

77. A very important witness in this case is Mrs Foster who is a cousin of Mr Hancock. Her evidence was that on 30 January 2004, she visited Mr Hancock at his printing works. He wasn't there when she arrived, when he returned they had a conversation. Mrs Foster's husband had been involved in some proceedings and Mr Hancock asked who she had used. Her evidence is that he replied 'Oh that tosspot' and then produced from his filing cabinet copies of the letter and fax he had sent MC she said they were very childish…(reads out Deenagh Foster's witness statement)

78. I found Deenagh Foster to be a wholly credible and convincing witness. I entirely accept her evidence. Of course, Mr Hancock knew before he gave evidence himself that Mrs Foster would be called. She was called and gave her evidence and was cross-examined by Mr Hancock and she confirmed in her answer to questions in cross-examination that Mr Hancock had referred to Mr Cray as 'that tosspot', that she'd been shown the fax and emails. He asked her if she was sure he used the word commissioned, to which she replied, 'I definitely recall you used the word commissioned.'

79. When Mr Hancock gave evidence he was asked about the cartoon. He said it was Robert Edwards who'd asked him about creating the cartoon, but not at his prompting. He said 'do it if you want', he didn't disapprove. Robert Edwards initiated it. In respect of the legal aid forms, his explanation of how it came to be included in the cartoon, he suggested that Mr Edwards had asked him for information for the cartoon, all he needed to do was go to the Argus, and he said to Mr Edwards, 'if you search in the archives, it's all there'. For reasons I will come to later, I am not in any way impressed by or accepting of the evidence of Mr Hancock, particularly on this issue of whether he commissioned the cartoon. The evidence of Mrs Foster is wholly credible, and leads me to the finding that it was indeed Mr Hancock who commissioned the cartoon, and suggested to Mr Edwards some of the references to be included, including the reference to legal aid forms.

80. The next item in the schedule as of 4 June 2004 is at item 11. This is an email from Mr Robert Edwards, forwarded to Mr Sam Thomson, with copies forwarded to Mr Hancock, and Mr Cray. (reads out). The significant thing about that email was the persons to whom it was forwarded, the Argus journalist and Mr Cray.

81. 2 days later, a person using the name 'Tom Paine' posted a contribution to the Argus Forums at item 12 which is a replication of item 11. (Judge refers to Mr Hancock's evidence in cross-examination, as set out in the schedule at item 12).

82. Notwithstanding that it's within a day of the original email being sent, it gets posted to the Argus Forums.

83. The next item, item 13, Mr Edwards sends a copy of his cartoon to Mr Cray on 30 June. He says in the last paragraph of that email: *"…I trust we shall have no need to lampoon you in this fashion again"*. That, submits Mr Nicklin, must be a reference to Mr Hancock and Mr Edwards and confirms what the court heard from Mrs Foster, that Mr Hancock commissioned the cartoon from Robert Edwards.

84. Item 14 is an email that Mr Hancock admits sending. (reads out)

85. Item 15 is a letter from Mr Hancock, enclosing a leaflet he proposes to circulate. I enclose a hardcopy of the enclosed leaflet. This is his request for people able to give evidence as to legal reputation. (reads out): *"Heading: The Great Tosspot Trial…"*

86. That is followed by another posting from Tom Paine. It is submitted that the use of the word 'dysfunctional' echoes that in item 15, and it repeats what was sent by Mr Hancock to Mr Cray.

87. The next items in the schedule are items 17 and 18 which are two anonymous letters, allegedly from 'disgruntled clients'. Mr Nicklin brought to my attention there the similarity in language, particularly in the first item to 'tosspot'.

88. Then I come to items 19 and 20, from an email address 'tosspot@martincraysucks.com' sent on 7 June, stating 'hello tosspot…'(reads out).

89. The significant thing about that is that on the following day – not the following day, later in June, a website is set up at www.martincraysucks.com that has links that enables you to link upon the Argus forums, the cartoon, and a poem which was extremely offensive to Mr Cray.

Cross-examined about that, Mr Hancock suggested that the poems and the setting up of the website is something Mr Cray did himself to detract from serious criticism.

90. Item 21 contains a reference back to the website: martincraysucks.com. It is text of a posting on the newsbackup.com. Reads out the email: *'it appears that….'* And again what's suggested is that… [*note incomplete*]

91. Item 23. With regard to what is said about Howard Johnson, there is a remarkable resemblance between what is said there and what was put to MC in his cross-examination. The inference I am invited to draw is that because of the similarity here, that Tom Paine is one of Mr Hancock's pseudonyms.

92. I have at some length and I apologise for the length of time that has taken, reviewed what Mr Nicklin has set out in that schedule, because I have come to the conclusion that those similarities of language the timing and the threats are very persuasive evidence that those matters were caused by Mr Hancock; he is responsible, either directly or indirectly, for those postings set out in the schedule. I come to that conclusion not only because of that, but also because of Mrs Foster's evidence that Mr Hancock would endeavour to disguise what he did so they could not be traced back to him. I've referred previously to the nature of the evidence that Mr Hancock has given during this trial which is unsatisfactory, that too leads me to reject his denials, on the balance of probability, and bearing in mind the matters to which I have referred earlier, I come to the conclusion that the acts of harassment were the responsibility of Mr Hancock.

93. I could perhaps add if I haven't already made it sufficiently clear that I am satisfied that he procured Robert Edwards to produce the cartoon and gave him information or led him to information to complete the matters in it.

94. Clearly, on the basis of what is set out in the schedule, they are relied on as acts of harassment, and clearly the acts are numerous. I am also satisfied that the acts amounted to harassment. Mr Hancock conceded that the matters relied on were oppressive, unreasonable and menacing, and I am satisfied that he was aware, that he knew, that this court of conduct amounted to harassment of Mr Cray. It's quite clear from the nature of the matters that I have reviewed that any reasonable person would regard those acts as harassment.

95. As to damages: again, what is important here is the compensation which Mr Cray should receive for the anxiety caused by these acts. Mr Cray dealt with that in his witness statement,

and also in his evidence. He was asked in chief if he could explain to the court the impact of the letters, faxes etc. He said that as a whole it was extremely embarrassing and upsetting…"*the sheer venom in the way Mr Hancock expresses himself is unique*". The way in which he summed it up was: "*the best way to sum it up was I was always aware, and he gave me to believe…he was capable of anything. And I was anxious in a way I never believed….before in my professional career.*"

96. In his witness statement he also points out that "*launching these proceedings has done nothing to stem the flow of his harassing conduct…his tactics can only be described as 'terror tactics… (quotes to words).*" His fears have been borne out. The harassment has continued for two years right up to the day before trial.

97. I wholly accept what Mr Cray has said in his evidence about the effect upon him. I exclude from compensatory damages any compensation for the two libels, in respect of which awards of damages have already been made.

98. My award in respect of the acts of harassment is the sum of £10,000.

99. I come now to the claim for negligence. Obviously, a solicitor acting for clients is under a duty of care. Mr Cray denies that there has been any breach of that duty to the Defendants. The standard required is that of a reasonably competent solicitor. The test is what the reasonably competent practitioner would do having regard to the standards normally adopted in the profession

100. The Claimant's firm plainly did. In my view, they acted in a thoroughly conscientious manner, with a particular concern for the type of anxieties expressed by litigants like Mr and Mrs Hancock.

101. I find there was no lack of diligence in the conduct of the litigation up to the compromise. Criticism can be made of the delay which followed the Consent Order in respect of drawing up the schedule and the payment from the County Court. The delay in the schedule was caused by the problems of Mr Tupper and Mr Williams – the delay in getting the money, was a mistake of the Court, which was put right as soon as Mrs Hancock brought it to the attention of Ms Weir. Overall the delay in the region of 2 months, in my view, is by no means an unusual delay in County Court proceedings. It's regrettable, of course, but as was pointed out by Mr Nicklin and I accept, had Mr Cray returned to County Court to take enforcement proceedings, I don't

think he'd be welcomed by the court. Once aware of the reasons for the delay, the Court would have been likely to let the matter stand.

102. I find that there was no breach of a duty of care in the conduct of the matters post the consent order. Further, it is necessary, in order to establish a cause of action, that the Defendants establish that the breach caused some loss. There is no evidence to sustain that. Nor is there any evidence to support the Defendants' claim that there was a loss of amenity. In each of these matters, the burden of proof is on the Defendants. That burden has not been discharged. For those reasons I dismiss the counterclaim of Mr and Mrs Hancock.