

JONNY GOULD

Claimant

and

EVOLVE MEDIA LIMITED

Respondent

Under the CIArb/IMPRESS Arbitration Scheme Rules and
Under the Arbitration Act 1996

FINAL AWARD, SAVE AS TO COSTS

Introduction

1. This dispute arises from an article published online by the Respondent, Evolve Media Limited, on 24 January 2018 in which reference was made to the Claimant, Jonny Gould. Mr Gould is a TV and Radio broadcaster. He has a history of working as a sports broadcaster and now works for, amongst others, Sky News as a newspaper reviewer. The Respondent is an online media outlet providing news reporting and investigative journalism. It is hereafter referred to as Evolve.
2. Mr Gould's complaint is that Evolve's article is defamatory of him as, inter alia, it states that he had attended a fund raising event (hereafter called 'the Event') going under the name of, or described as being held by, 'the President's Club' and which was held at the Dorchester Hotel in London on the evening of 18 January 2018. In fact Mr Gould had not attended the Event. As is described below, the Event and the alleged behaviour of at least some of those attending it attracted a great deal of adverse publicity and notoriety.
3. Evolve admits that it published the article and admits that in it Mr Gould was referred to. It admits further that Mr Gould had not attended the Event. Evolve however denies that the article was defamatory of Mr Gould. It contends that the article does not bear the meanings that Mr Gould contends it does and denies in any event that

the article is defamatory because it has not been shown that it caused serious harm to Mr Gould's reputation, as required by s.1 Defamation Act 2013.

4. The issues on liability I have to determine therefore are (1) what meanings were borne by the article, (2) did those meanings have a defamatory tendency, and if so (3) whether it is established that the threshold of serious harm has been crossed. If, having determined those issues, I find the article to be defamatory, I have to decide what damages and any other remedies are appropriate. In his written application for arbitration Mr Gould states that in addition to a monetary payment he seeks a full retraction on Evolve's website and a full apology and retraction on Twitter.

Jurisdiction and Procedure

5. Evolve is a subscribing member of, and is regulated by IMPRESS, an independent press regulator recognised by the Press Recognition Panel. As it is required to do under clause 22 of the Royal Charter for the Self-Regulation of the Press, IMPRESS provides an arbitral process for civil legal claims brought against its subscribing members, which is administered by the Chartered Institute of Arbitrators ('CIArb'). Having agreed to refer their dispute to arbitration under this process, by their written Application for Arbitration, signed on behalf of Mr Gould on 20 February 2018 and on behalf of Evolve on 23 February 2018, the parties applied to CIArb for the nomination and appointment of an arbitrator to resolve this dispute in accordance with the CIArb/IMPRESS Arbitration Scheme Rules and the Arbitration Act 1996.
6. By email dated 1 March 2018, CIArb invited me, Ian Ridd, of Farrars Building, Temple London EC4Y 7BD, to accept the appointment as arbitrator. I accepted the appointment and confirmed in writing my independence and impartiality. On 2 March 2018 I was appointed sole arbitrator. The arbitration has been conducted under the CIArb/IMPRESS Arbitration Scheme Rules ('the Rules') and under the Arbitration Act 1996. The seat of the arbitration is England and as directed by Rule 18 of the Rules I have decided the substance of the dispute in accordance with the law of England and Wales.

Interlocutory procedural matters

7. In my preliminary (email) letter to the parties of 6 March 2018, in accordance with Rule 15, I directed both parties to send to each other and to me written Statements of their cases, along with copies of documents relied on, which the parties duly did.

8. A Preliminary Meeting was held by telephone on 18 April 2018. At that meeting Mr Gould was represented by his solicitor, Mr Mark Lewis, of Seddons Solicitors. Evolve was represented by Ms Jessica Miller and Mr Tom Rogers, Senior Editors at Evolve. At that meeting, both parties stated that they did not require an oral hearing and agreed that I should resolve the dispute on the papers. I gave directions for the exchange by both parties of further evidence and for the submission by Mr Gould of written submissions by 27 April 2018, to be followed within 7 days by any Response Evolve wished to put in. These directions were duly complied with by the parties.
9. Neither party put in evidence in the form of witness statements and evidence was provided in documentary form. With the consent of the parties I accepted as evidence, without further formality, the details provided to me by Mr Lewis at the Preliminary Meeting of the sums in damages and costs that had been paid to Mr Gould by the Financial Times and by the Sun newspaper for their having published that Mr Gould had attended the Event. In addition I was provided by Evolve with the link to two podcast interviews given by Mr Gould shortly after the publication of the Evolve article, in which he spoke about, inter alia, his reactions to having been erroneously reported as being an attendee at the Event, the steps he had taken to contain the damage to his reputation and also his assessment of the extent of the lasting damage of his reputation caused by the publication of the online articles. One of those podcasts was with Marcus Stead of Talk Podcasts, the other was with Adrian Goldberg of Talkshow. I have listened to both of them.

The facts

10. The facts are mostly undisputed and on the evidence before me I find them to be as set out below. The guest list at the Event was male only, and very shortly after it, widely publicised allegations were made there had been sexual misconduct and lewd behaviour on a extensive scale perpetrated by attendees during the course of the evening. Two undercover reporters from the Financial Times ('the FT') were present at the event, working as waitresses/hostesses, and it was they who were the source of these allegations of misconduct. Highly graphic and detailed accounts of the events of the evening were published by the FT, both online, on more than one occasion, and in the FT newspaper itself. One such article was published online by the FT, under the byline Madison Marriage, on the evening of 23 January 2018, at 21:07.

11. The headline of that article read:

*Men Only: Inside charity fundraiser where hostesses are put on show
FT investigation finds groping and sexual harassment at secretive black-tie dinner*

12. A flavour of the behaviour that allegedly occurred at the Event can be seen from the following short extracts from the FT article:

.... the entertainment included 130 specially hired hostesses. All the women were told to wear skimpy black outfits with matching underwear and high heels. At an after-party many hostesses - some of them students earning extra cash - were groped, sexually harassed and propositioned.

Over the course of six hours, many of the hostesses were subjected to groping, lewd comments and repeated requests to join diners in bedrooms elsewhere in the Dorchester.

Hostesses reported men repeatedly putting hands up their skirts; one said an attendee had exposed his penis to her during the evening.

13. Although Mr Gould - the Claimant - did not attend the Event, there is another person, also called Jonny Gould, who also works, or has worked as a sports Broadcaster, who did attend it. Not only did the second Mr Gould attend the Event but he played a prominent part in the fundraising activities, acting as enthusiastic auctioneer of articles or attractions being offered for sale to raise money for charity.

14. The opening lines of the FT online article of 23 January 2018 were:

At 10pm last Thursday night, Jonny Gould took to the stage in the ballroom at London's Dorchester Hotel. 'Welcome to the most un-PC event of the year' he roared.

Mr Gould – who presented Channel 5's Major League Baseball Show – was there to host a charity auction, the centerpiece of a secretive annual event, The President's Club Charity Dinner.

15. Following the publication of the FT article, as is made clear by him in the podcast interviews referred to above, almost immediately Mr Gould began to receive Twitter mentions wrongly identifying him as the host of the charity auction and the attendee referred to in the article. Many of those mentions were critical of him, to say the least. Some called for him to be sacked by Sky. Sensibly, late on the evening of 23

January, once he had discovered on his return home from a trip abroad what had happened, Mr Gould began to do what he could to damp down these adverse reactions by making it clear, as publicly as he could, that the Jonny Gould referred to in the FT article was not him. On the morning of 24 January 2018, Mr Gould consulted a solicitor, Mr Lewis of Seddons Solicitors and engaged him to act for him. By this stage the Sun newspaper online and other publications had also taken up the story, naming Jonny Gould as an attendee..

16. Some 19 hours after the FT article, Evolve published its own article referring to the Event. That article, which had been written late in the evening of 23 January 2018, was published on its website by Evolve at 16:18 on 24 January 2018. Evolve accepts that its article was based upon the online article in the FT referred to above. The Evolve article contained a hyperlink to that FT article, so that readers of the former article could very readily access the latter and Evolve repeated in the opening paragraphs of its article the substance of the extracts from the FT article set out in paragraph 12 above. Evolve contends that the focus of its article was intended to be a junior Government Minister who had also attended the Event. The headline of the Evolve article was: *“Tory MP attended secretive ‘men only’ event where numerous women were sexually assaulted.”*

17. In addition to its website, Evolve also maintained a Twitter account. Visitors to the Evolve Twitter account on the late afternoon of 24 January 2018 could immediately discover, via a tweet posted by Evolve, the existence of the article written by Evolve. The article was an attachment to the tweet, and viewers could see its headline and a photograph of the MP in question and could readily access the whole article via the Twitter site. In addition Evolve’s tweet was hashtagged Presidents Club. The tweet however did not itself refer on its face to Mr Gould.

18. The article published by Evolve on 24 January 2018 contained, at its twelfth line, the following:

Other attendees include David Walliams, Sky News Pundit Jonny Gould and Jonathan Mendelsohn, a Labour Peer.

Although this was the only reference to Mr Gould in Evolve’s article, there was of course within it the hyperlink to the FT article. Also, in its article Evolve had added its

own specific identification label to Jonny Gould, describing him as the 'Sky News Pundit'. Mr Gould contends that as he was at the time a reviewer of newspapers for Sky News this description served very clearly to identify him as being the person referred to in both articles.

19. On the evening of 24 January 2018, at 22:34 Mr Gould tweeted to Evolve in terms:

I have just seen this article. You claim incorrectly that I was at this event. Please apologise for your mistake, remove it immediately and clarify that I was not there by rewriting the piece or I will seek redress through @MLewisLawyer.

20. Later that same evening, at 23:07, Mr Lewis tweeted to Evolve:

Please follow. As @FT have confirmed online and in paper, the Jonny Gould was @JonnyMGould not @JonnyGould who you describe as "Sky Pundit" in your article. Please amend your article immediately do not libel someone due to confusion about a name.

21. Neither of those tweets were seen or responded to by Evolve on the night of 24 January 2018, as Evolve's editorial staff had logged off social media in a working capacity at 20:00, as was their normal routine. On the following day, at 12:19, Mr Lewis sent an email to Evolve, pointing out that the Claimant was not the Jonny Gould referred to in the articles, requesting an immediate retraction and apology and stating that he would write further regarding costs and damages. That email was read by Ms Jessica Miller of Evolve at about 14:00. She responded promptly by removing the reference to Mr Gould from Evolve's article and by adding a retraction and an apology at the end of the article, in bold print, that read:

Correction: the Jonny Gould previously referred to in our article, and initially based on previous inaccurate FT reports about The Presidents Club on January 23 and 24 is NOT at @JonnyGould, the radio and TV presenter who has worked at (among others) Smooth Radio, talkRADIO and appears on @SkyNews. We apologise for the distress caused.

22. Later on 25 January 2018, Mr Gould tweeted to Evolve 'Thank you for your apology'. Thereafter there followed an exchange of emails between Mr Lewis and Ms Miller. The precise dates in which these emails were sent is not clear from the copies of them I have been given, but the sequence is as follows. Mr Lewis sent an email in which he stated that the published apology "will have gone a long way to reducing

the damage but will not have extinguished it", said that he would take instructions about damages and legal costs. He informed Ms Miller that legal costs to date were less than £500 plus VAT. That was followed by an email from Ms Miller asking whether or not Mr Gould required the apology and retraction referred to above to be tweeted directly on Twitter and then by a further email from her in which she stated that Evolve would be prepared to donate £50 a charity of Mr Gould's choice. Mr Lewis replied by an email, which I am told was sent 'without prejudice' and of which I have only seen an unredacted part. The part I have seen states that Mr Gould wanted a charitable donation to be made to Great Ormond Street Hospital. Although I have not seen the remainder of that email, Mr Lewis informed me at the Preliminary Hearing that privilege in respect of it is waived to the extent that I should know that the counter offer that he made was for a payment in the sum of £1500 plus costs. In a lengthy email in reply, Ms Miller set out a quotation from the Talk Podcast interview with Mr Gould, in which he had stated that what he wanted from Evolve, which he described as the "smallish website", was his lawyers' fees to be covered and

" ... any settlement which would be, you know, not very much – a few hundred pounds – should be paid to me so I can give it to charity. And it's very important that it's paid to me, instead of to them. First of all I don't want their grubby name on my charity donation because it's my right to do it and the second thing, which is the most important thing, is that if I do it in my name, I get the gift aid."

In this same email Ms Miller stated that Evolve would be willing to pay the sum of £200 to Mr Gould and £100 towards his costs. That email was followed by an email from Mr Lewis, rejecting that offer.

Meaning

23. Mr Gould's case, as set out in paragraph 14 and 15 of his Statement of Case is that Evolve's references to him in the article, linked as it was to the FT article, bore the meaning (i) that he was a misogynist who engaged in outrageous sexual abuse and/or (ii) that he was culpable of outrageous behaviour. In the written submissions submitted by his solicitors the meanings contended for were that Mr Gould had acted in a sexist and misogynistic way and had incited misogyny and debauchery at the Event. It seems to me that at least in part those asserted meanings may well be based on a mistaken assumption about which FT article Evolve's article was in fact linked to. There had been a second online article published by the FT, in which some of the robust language used by the second Mr Gould whilst acting as

auctioneer had been repeated, but on the evidence before me, that was not the FT article to which Evolve's article had been linked.

24. Evolve denies that the article bore the meanings asserted by Mr Gould, although it does not set out its own assertion of what the true meaning was.
25. In deciding the meaning of the references to Mr Gould in Evolve's article I must read Evolve's article as a whole and I must read it together with the linked FT article as a whole, bearing in mind the context in which the references to Mr Gould appear in those articles. I must put myself in the position of the reasonable reader of both articles. I must not, in the position of the reasonable reader, select the most defamatory meaning available.
26. In considering the meaning of the references to Mr Gould in the Evolve article, it is instructive to look at what conclusions Evolve itself invited its readers to draw about a person, from the simple fact of his attendance at the Event. As noted above, the focus of the Evolve article was on the attendance of a Government Minister. In relation to him, the article said the following:

[His] attendance at such an event would always have been wrong. Whilst he is not accused of participating in the harassment of women, he attended an event that was obviously designed for it. However, in the current climate, his behaviour seems particularly tone deaf. He cannot deny that he didn't know it was wrong or that it wasn't happening. Sexual harassment and abuse are two vitally important issues, and [he] stood by whilst it happened. He lacks the moral integrity to represent his constituents or hold a ministerial brief, and no woman could ever feel represented by such a person.

It seems a reasonable inference that Evolve was inviting readers of the article to draw similar conclusions of lack of moral integrity about all the male attendees, including Mr Gould. That inference does not of itself determine the meaning of the references to Mr Gould in the article, but I do regard it as a material consideration in determining their meaning.

27. Taking all these matters into account, my conclusions on meaning are as follows:
 - a. I do not consider that the references to him in the Evolve article bear the meaning that Mr Gould was a misogynist who engaged in outrageous sexual abuse or that he had incited misogyny and debauchery at the event. To find

that they did bear that meaning would be to make the error of selecting the most defamatory meaning available.

- b. It seems to me that the ordinary reasonable reader would understand the references in the article to mean that Mr Gould was a man who was willing uncritically to attend and play a prominent part as celebrity auctioneer in a function such as the Event, knowing how the Event was to be operated and carried on and knowing that there would in all likelihood occur the sorts of behaviour described in the article. Some of that behaviour would have crossed the line into the realm of criminal behaviour. I consider that the article would convey imputations of condoning or even participating in illegal behaviour, or at least, in the climate of opinion in 2018, would convey imputations of unethical, immoral or socially harmful behaviour. As such it would indicate conduct on the part of Mr Gould falling seriously below the expected norm in 2018.

Defamatory tendency

28. A conclusion that Mr Gould should choose, in 2018, to attend a function such as the Event, and to play in it a prominent part, as celebrity auctioneer, would in my view substantially adversely affect the way in which right-thinking members of society generally would regard him. In these circumstances, I find that the natural and ordinary meaning conveyed by the references to Mr Gould in the article was plainly defamatory by the standards of the common law. I consider also that the meaning I have found the references to him to have conveys a serious defamatory imputation.

Extent of publication

29. I have no evidence about the extent of publication via the Evolve website alone. In relation to the publication via the tweet on the Twitter website, Twitter analytics provided by Evolve have shown the following tweet activity: Impressions 18,450; Total engagements 586. The engagements were made up as shown below:

Link clicks	200
Re-tweets	184
Likes	89
Detail expands	55
Replies	29
	9

Profile clicks	20
Hashtag clicks	9

30. The number of 'Impressions' does not of itself indicate the number of readers of the article. Impressions simply record the number of times the tweet is actually generated on a screen of a viewer who is active at that time. A substantial discount must be made from the figure of 18,450 to arrive at an estimate of readers. I note also that the number of total engagements is much smaller: in particular the number of 'link clicks' is 200 and 're-tweets' 184. Fortunately I am not required to determine with precision the extent of publication: what I need to do is to make the best assessment I can of the overall extent of the publication. On such evidence as I have, I consider that the extent of the overall publication of the article was relatively modest, probably in the low thousands.

Serious Harm

31. Evolve denies that the publication of its article has caused Mr Gould serious harm and asserts that he has no evidence by which he could demonstrate that it has.

32. The recent Court of Appeal case, *Lachaux v Independent Print Ltd* [2018] 2 WLR 387 has provided new guidance on how the provisions of section 1 Defamation Act 2013 are to be applied. That section 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.

33. *Lachaux* is authority for the proposition that it is not necessary in order to satisfy section 1 for the claimant in fact to call evidence of such serious harm. A claimant may prove serious reputational harm without calling any evidence, by relying on a process of inference from the seriousness of the imputation conveyed by the statement complained of, where necessary or appropriate, with the context in which the words were used. It is clear also from *Lachaux* that where it has been determined that the meaning of the publication complained of conveys a serious defamatory imputation, then an inference of serious reputational harm can and ordinarily should be drawn: see at paragraph 70 of the judgment of Davis LJ.

34. It is of course open to Evolve to seek to rebut or challenge the drawing of any such inference. It seeks to do this by asserting that the damage to Mr Gould's reputation had been caused by the publication of the FT article some 19 hours before the publication of its article. Evolve asserts that in fact no serious reputational harm had been suffered by Mr Gould arising out of the article it published. It asserts that all the damage to his reputation Mr Gould complains of had been caused before its article was published. Evolve also cites an earlier IMPRESS arbitration award, *Rice v Byline Media*, in which the issue of serious harm is addressed. That award however was made on 6 July 2017, before the judgment in *Lachaux* was delivered on 12 September 2017, and so it does not apply the new guidance set out in that case.
35. Following the guidance in *Lachaux* I am satisfied that I should find in this case that serious harm to the reputation of Mr Gould was caused by the article published by Evolve. I have found that the meaning of the references to Mr Gould in the article conveyed a serious defamatory imputation. I do not consider that the arguments advanced by Evolve seeking to challenge or rebut the inference of serious harm that flows from that finding are convincing. It is of course true that the Evolve article was published at a time after the initial damage had been done by the FT article, and at a time when the FT had already published a correction and an apology. I accept also that some of the readers of the Evolve article may well have been aware of the earlier FT publication and the retraction of the statement that Mr Gould had been present and had participated in the auction at the Event. Those readers may well have been aware that Mr Gould was not the Jonny Gould referred to by Evolve. However these matters in my view do not mean that serious harm to Mr Gould's reputation was not or could not have been caused by the further publication by Evolve. I am satisfied that I should draw the inference of serious harm that *Lachaux* indicates should ordinarily be drawn from my finding that the meaning of Evolve's article conveyed a serious defamatory imputation.

Remedies

36. In assessing damages, I must decide on the appropriate sum to compensate Mr Gould for the damage to his good name, to vindicate his good name and to take account of the distress hurt and humiliation which Evolve's article has caused him. In assessing what is appropriate I should have regard to the gravity of the defamation and the extent of publication and the substantive effect it had on Mr Gould. Any sum that I award must be proportionate. In addition, I must consider the impact, if any, of

section 12 Defamation Act 1952, which provides that a defendant to libel proceedings:

... may give evidence in mitigation of damages that the plaintiff has recovered damages in respect of the publication of words to the same effect as the words on which the action is founded or has received or agreed to receive compensation in respect of any such publication.

Section 12 is potentially engaged here, as the FT has paid the sum of £8,000 in damages to Mr Gould plus a sum towards his costs. The Sun newspaper has paid the sum of £4,000 plus a sum towards his costs. This compensation has been paid for publication of words to the same effect as the words on which Mr Gould's claim against Evolve is founded.

37. Guidance as to how I should apply section 12 is to be found in *Lewis v Daily Telegraph* [1964] AC 234 at 261:

- a. I must consider how far the damage suffered by Mr Gould can reasonably be attributed solely to the libel in the Evolve article and how far it ought to be regarded as the joint result of the libel in the FT article;
- b. If I think some part of the damage is the joint result of the two libels, I should bear in mind that Mr Gould ought not to be compensated twice for the same loss;
- c. I must do broadly the best I can to ensure that the sum which I award will fully compensate Mr Gould for the damage caused by Evolve libel.

38. It seems to me plain that far more damage was done to Mr Gould by the publication of the libels in the FT and in the Sun than was done by the much lesser publication in Evolve's later article. For that greater damage, Mr Gould has accepted payment of compensation in sums satisfactory to him. My task in these proceedings therefore is to endeavour to assess the compensation for the further, lesser damage caused solely by the libel in the Evolve article, linked as it was to the FT article, and that I will do. In this way I will avoid there being double recovery of damages by Mr Gould.

39. In assessing the amount of damages properly payable to Mr Gould by Evolve, I take into account the following:

- a. The relatively modest extent of publication of Evolve's defamatory article;
- b. The fact that the article was published after the date of the FT article and that by the time the Evolve article was published, the FT and also the Sun newspaper already publicly corrected their error in naming Mr Gould as an attendee at the Event and had publicly apologised to him. The fact that these corrections and apologies had been made I infer would have been known to some of the readers of the Evolve article;
- c. On the other hand, the description 'Sky News Pundit' in the Evolve article would have served to identify to a number of readers Mr Gould as being the person referred to;
- d. The fact that on 24 January 2018 there was a prompt correction of the error made by Evolve and a prompt apology and an offer made, albeit a very low one, of some financial compensation for the damage done. I take this into account, although this did not constitute an 'offer of amends' as defined in section 2 Defamation Act 1996. Nonetheless the prompt retraction and apology, for what I find to have been an unintentional defamation, warrants a discount from the damages that would otherwise have been awarded;
- e. The fact that as is required by Rule 24, this Award will be made public and so there will be some accessible public record of the vindication of Mr Gould's good name;
- f. The fact that the libel, although unpleasant in its implications, was not of the most serious;
- g. The fact that the damage caused by the libel to the reputation of Mr Gould, although serious, was short lived and there seems to have been no, or very little lasting damage done. I base these conclusions on what was said by Mr Gould in the two podcast interviews referred to above. In those interviews he spoke about his upset and distress and about the damage done to him in

what seemed to me to be very measured and sensible terms. Talking 'a few weeks on' he stated that, largely because of the prompt and effective steps taken by himself and by his legal team to get the message out that he was not the Jonny Gould referred to in the FT article or the later Evolve article, he did not consider that damage had been done to his career prospects or that much lasting damage had been caused to his reputation. I appreciate that he was talking principally about the damage done by the FT and the Sun's publications, but I take what he said to apply also to the damage caused by the Evolve article. In the TalkMedia podcast he described the whole event as having been 'a very very nasty storm in a minute teacup' and said that he though 'the worst of it was over.'

- h. I bear in mind also, although I do not regard it as determinative of the sum that I should award him, that in the same podcast Mr Gould had stated that what he wanted from Evolve was an apology and a 'few hundred pounds' that he could give to charity.

40. In their written submissions, Mr Gould's solicitors suggest that there have been aggravating factors arising out of Evolve's behaviour after the date of its apology and retraction and ask me to reflect those factors in the damages I award. I am invited to find that there have been attacks on Mr Gould and on his legal advisers. I do not find there to be any basis for finding that there have been any such attacks on Mr Gould. It is true that following the apology and the retraction by Evolve, it has continued to argue that no serious harm to the reputation of Mr Gould has been caused by the Evolve article. Implicit in that argument there may have been some criticism of Mr Gould for persisting with an assertion that he had been defamed, but even if that was so, I do not find it to have crossed the threshold of aggravating behaviour. Nor do I find there to have been attacks on Mr Gould's legal advisers by Evolve. It is true that Ms Miller has been forceful in her responses to the assertions made on behalf of Mr Gould in these proceedings and has been scathing of what she has characterised as inaccuracies in some of those assertions – in particular some of the assertions made in the initial Statement of Case put in on behalf of Mr Gould. Some of her complaints about inaccuracies in that document were in fact well founded. Her complaints ought to have been couched in less forthright language. Making allowance however for the fact that she is acting in person, that she is not particularly familiar with the intricacies of the law of defamation and that she feels frustrated as she believes (although

wrongly) that Evolve should not be pursued for damages for what she regards as simply an honest mistake with only trivial consequences for Mr Gould, I do not consider that the threshold of aggravating behaviour has been crossed here either. Accordingly I decline to award aggravated damages in this case.

41. In all these circumstances, I determine that a reasonable and proportionate sum to award Mr Gould as damages for the libel contained in the Evolve article is £900.

42. I consider that it is appropriate in the exercise of the power conferred by Rule 25(d) to direct that within 14 days of the date of this Award Evolve should publish a full apology on its website and a retraction and a full apology on Twitter, in a form to be agreed by the parties. If the parties are unable to agree a form, then on application made by the parties, I will decide on one.

Costs

43. At the Preliminary Meeting, the parties asked me to reserve my decision as to costs. The reason for this request is that I know that there has been some without prejudice correspondence that may be relevant to issues of costs, but I do not know the whole extent, or the terms of that correspondence. Clearly if that correspondence is relevant, I should see it before I make any decision on costs.

44. Pursuant to Rule 9, I have no power to make an award of costs against Mr Gould. Under Rule 11, I have a power where the Claimant has succeeded in whole or in part in his claim to make an award of costs in his favour, that 'in ordinary circumstances' is limited to £3,000. Matters I am required to have regard to are set out in Rules 11 and 12. Under Rule 11(b) I am required to 'hear' submissions on costs before making any award. I assume the word 'hear' precludes my dealing with costs on the basis of written submissions only.

45. Accordingly, if Mr Gould wishes to make an application for costs I direct as follows:

a. Within 14 days of the date of receipt of this Award he shall send to Evolve and copy to me written details of the orders he seeks, his reasons for seeking them and copies of any documents he relies upon;

b. Within 21 days of the date of receipt of this Award, Evolve shall send to Mr

Gould's solicitors and copy to me any written response it wishes to make, its reasons for that response and copies of any documents it wishes to rely on.

46. If Mr Gould does not wish to make an application for costs, then within 14 days of the date of this Award he shall notify Evolve and me of that fact.

47. On receipt of the materials referred to in paragraph 45 above, I will make arrangements with the parties for a telephone hearing to hear submissions on the question of costs and will issue a further Award on that topic.

Award

I AWARD AND DIRECT in full and final settlement of all claims in this arbitration that:

- (1) Evolve do within 28 days of the date of this Award pay to Mr Gould damages in the sum of £900.
- (2) Evolve do within 14 days of the date of this Award publish a full apology on its website and a retraction and a full apology on Twitter, in a form to be agreed by the parties, or in default of agreement, to be settled by me.
- (3) Any question of costs be reserved to my further Award.

Signed

Farrars Building
Temple
London EC4Y 7BD

Ian Ridd
Arbitrator

Dated May 2018