



OUTER HOUSE, COURT OF SESSION

[2025] CSOH 46

A228/23

OPINION OF LORD CLARK

In the cause

(FIRST) JAMES GILLESPIE and (SECOND) MARK MACMILLAN

Pursuers

against

ALAN WARDROP

Defender

Pursuers: Pugh KC; A & WM Urquhart

Defender: Dean of Faculty, Breen; Gillespie Macandrew LLP

4 June 2025

Introduction

[1] The pursuers allege that the defender made certain defamatory statements about them. They seek damages from the defender and an interdict to prevent him making further defamatory comments of that nature.

[2] The pursuers are involved in a charity named Kibble Education and Care Centre (“Kibble”). In February 2020, Kibble acquired a 27.5% shareholding in St Mirren Football Club (“SMFC”). As Kibble had become a significant minority shareholder, it was entitled to appoint two directors to the board of SMFC. The pursuers were appointed as directors of SMFC on 20 March 2020 and currently remain as directors. The defender became a director

in July 2016 and remained in that post until November 2022. This action concerns two statements made by the defender after he had ceased to be a director of SMFC.

[3] The first statement was made by the defender on 1 May 2023 as part of his campaign to seek election to the board of the St Mirren Independent Supporters' Association ("SMISA"). SMISA holds 51% of the shares in SMFC. This statement ("the campaign statement") was also published online and included the following words:

"Each St. Mirren director has a clear fiduciary duty under the Companies Act 2006 to declare any potential conflict of interest and act with openness and transparency and in the best interests of the company i.e. St. Mirren Football Club Limited.

Kibble club board representatives, Jim Gillespie and Mark Macmillan, failed to disclose to the St Mirren board, shareholders and fans Kibble supported plans to build on St Mirren owned land.

Together with Renfrewshire Council they applied to the Scottish Government for a £2.65 million grant under the name The St. Mirren Wellbeing and Regeneration Masterplan. It was not disclosed to other SMISA club board directors and no prior agreement was secured.

In addition, the application named St. Mirren FC Charitable Foundation as a partner when the charity had no knowledge of it and had not granted permission to submit it on their behalf. It only came to light when the Government announced that the application had progressed to a stage 2 application.

Both Kibble employees did not declare their plans to build on St. Mirren owned land to St Mirren SMISA board members but denied any conflict of interest.

Having discovered the issue under Freedom of Information, I raised it at the club's AGM. I, like many others, no longer have trust and confidence in Kibble's directors serving on the board of St. Mirren FC and I put my SMISA board application forward on the basis I wish to remove them".

The main point relied upon by the pursuers as being defamatory is the allegation of a plan for Kibble to build on St Mirren owned land.

[4] The second statement appeared in the Herald newspaper, both in print and online, on 14 May 2023 ("the Herald statement"). It is a quote from the defender, which forms part

a quite lengthy article. Other details of the article are discussed later. The central matter founded upon by the pursuers is that the journalist reported the defender as saying:

“I have been made out to be a liar by Kibble and the board of St Mirren, now it should be clear to everyone what a huge cover-up this has been, in denying, denying and denying, when they were actually lying, lying and lying.”

[5] The pursuers aver that the meanings of these statements are defamatory and that they have damaged the pursuers’ reputations. The defender accepts that he made these statements. However, he contends that neither of the statements complained of bears the meaning alleged by the pursuers. In any event, it is said that neither statement is actionable because the pursuers’ reputations have not sustained serious harm and are not likely to do so. If these statements are actionable the defences of truth, or publication on a matter of public interest, are relied upon. In respect of the defender’s comment published in the Herald article dated 14 May 2023, it is argued that the defences of honest opinion or fair retort should apply.

[6] The case called for a proof before answer, with evidence led over 6 days from the pursuers, the defender and a number of other witnesses. Each side lodged detailed written submissions and senior counsel then made oral submissions. The evidence and submissions will be summarised in brief terms, after having explained the background.

Background

[7] The first pursuer, James Gillespie, is the Chief Executive Officer of Kibble. The second pursuer, Mark MacMillan, is Kibble’s Director of Corporate Services although he is not a statutory director. For some years Kibble, as a specialist care and education charity, wished to develop a new model for the care and support of highly vulnerable young people, as an alternative to secure accommodation. This was described as a Wellbeing Centre. A

central issue in this case is whether Kibble wished to acquire land owned by SMFC as a place to build the Wellbeing Centre.

[8] Kibble created a Wellbeing Centre Business Plan in October 2019. The plan noted that the preferred location for the Wellbeing Centre would be within Renfrewshire and the surrounding areas and that it was anticipated that an area of 3-5 acres would be required.

The Appendix to the plan noted that:

“Renfrewshire Council is currently going through a master planning exercise to re-envision the Ferguslie Park area. Discussions have taken place with Renfrewshire Council regarding Kibble’s proposed partnership with SMFC and how this will contribute to the master plan. The partnership and Kibble’s access to the development opportunities afforded by the land is predicated on our purchase of the SMFC shares”.

Various potential areas of land close to the stadium were identified.

[9] Kibble’s Chief Executive Board Report, dated November 2019, was prepared by the first pursuer and recorded that:

“Discussions with St Mirren are taking place around partnership working to create mutual organisational benefits, particularly around young workforce development, sports facilities and land around the stadium for a potential wellbeing site”

[10] The SMISA minutes dated 16 December 2019 recorded, in the context of what was then a draft shareholders’ agreement governing Kibble’s purchase of SMFC shares, that Kibble: “are wanting to create a safe centre (Wellbeing building) within Ferguslie Park/Tannahill area.”

[11] The Kibble board minutes dated 7 January 2020 noted the first pursuer as being in attendance. Under the section headed “AOB”, the minutes stated that: “Mr Gillespie noted that the shares could be given back for a low cost if Kibble get what they want out of it, including the land for the Wellbeing Centre.”

[12] Shortly before Kibble acquired its shares in SMFC, it instructed architects to prepare plans for the Wellbeing Centre based on the land surrounding the SMFC stadium.

[13] The Scottish Government can provide funding which is designed to promote regeneration in disadvantaged communities. This is known as a Regeneration Capital Grant Fund ("RCGF"). The first round of RCGF applications took place in 2014. Applications for such funding are made in respect of particular projects and are submitted by the relevant local authority on behalf of the project developer. In 2020, the Scottish Government invited applications for the eighth round of RCGF funding. Applications for the ninth round were invited in 2021 and for the tenth round in 2022. In each year, RCGF applications were determined in two stages. Interested local authorities would first submit a Stage 1 application. The Scottish Government would then review the Stage 1 applications and determine which of those applications were to progress to Stage 2. Applicants who were successful at Stage 1 would be invited to submit a Stage 2 application. The Scottish Government would determine which projects were to receive RCGF funding on the basis of the Stage 2 applications.

[14] The second pursuer emailed the SMFC board members on 17 June 2020 to alert them to Kibble's proposed RCGF bid. The round 8 Stage 1 application had the project title "St Mirren Regeneration Masterplan Phase 1". The "project proposal summary" stated:

"Objective – St Mirren Regeneration Masterplan aims to develop 1.15 hectares of unused land opposite St Mirren Football Club to provide a range of facilities and amenities which will address inequality and support inclusive growth in the Ferguslie Park area of Paisley, an area consistently ranked in the top 10 most deprived SIMD data zones... The project has been developed as part of an innovative partnership between St Mirren Football Club, its Charitable Foundation and Kibble Education and Care Centre"

The defender expressed his support and suggested including reference to the St Mirren Charitable Foundation ("the Foundation"). The defender was a trustee of the Foundation

between 2013 and 2023. The proposed RCGF application was discussed at the SMFC board meeting the following day, 18 June 2020. The board agreed that the second pursuer should progress the application and discussions. As it turned out, there was insufficient time to prepare a funding application before the deadline for submission. The round 8 Stage 1 application was not ultimately submitted by Renfrewshire Council to the Scottish Government.

[15] From around November 2020, on behalf of Kibble the second pursuer was engaged in discussions with AS Homes regarding Kibble's potential interest in acquiring the site described as Junction 29 (also known as the St James Interchange). On 20 May 2021, the second pursuer emailed Paul Kelly of AS Homes, copying in the first pursuer, asking for AS Homes' architect to send geotechnical information regarding Junction 29 to the firm P3 Consulting, Kibble's project managers.

[16] In May 2021, Kibble was engaged in discussions with Renfrewshire Council in relation to the planned Wellbeing Centre. The pursuers, as representatives of Kibble, met with members of Renfrewshire Council on 24 May 2021. One of the members' notes of the meeting stated: "5 acres required – would prefer expansion space. Would prefer to be within the visibility of SMFC; about to appoint architects."

[17] On 13 June 2021, Paul Kelly of AS Homes sent an "indicative masterplan" for the development of Ferguslie to Alasdair Morrison and Fraser Carlin of Renfrewshire Council and to both pursuers. Paul Kelly's email noted that the masterplan "incorporates land in the ownership of the Council, Kibble/St Mirren and ourselves". A yellow shaded area was shown, marked "Kibble Opportunity Area". It incorporated the parcel of land north of Ferguslie Park Avenue owned by SMFC.

[18] On the same date, the second pursuer sent an email to Paul Kelly and Pat Kelly of AS Homes, and the first pursuer. The second pursuer expressed disagreement with the plan that had been provided by AS Homes to Renfrewshire Council marking out an area as a “Kibble opportunity area” referring to, among other things, flooding problems in the J29 area.

[19] On 16 June 2021, the second pursuer emailed Alasdair Morrison of Renfrewshire Council attaching a draft Stage 1 application for round 9 RCGF funding. The draft referred to the same project title as previously used, the “St Mirren Regeneration Masterplan – Phase 1”, and under the heading “Project Proposal Summary”, made a similar statement as quoted above (para [14]), but this time saying the intention was to develop 4 hectares of unused land.

[20] The draft round 9 Stage 1 application named the Foundation as a partner to the project. Renfrewshire Council informed the second pursuer that the application had been provided to them too late to be submitted for funding. Accordingly, the round 9 Stage 1 application was not submitted.

[21] Kibble continued to develop its plans for the Wellbeing Centre. The charity appointed Stallan-Brand as architects in respect of the project and Kibble commissioned them to conduct a site feasibility study in respect of the Wellbeing Centre. Stallan-Brand produced a site feasibility study on 21 September 2021. Kibble instructed Stallan-Brand to consider three sites: Ferguslie Park, Lochwinnoch and Kibble Campus. The “Ferguslie Park” site is identified on a map in the site feasibility study and it comprised the parcel of land immediately to the north of the St Mirren stadium on the other side of Ferguslie Park Avenue, encompassing land owned by SMFC. The map noted that the site area is 2.2 hectares, which is approximately 5 acres. It is recorded that:

“the proposed site is located to the North of the St Mirren ground, falling under the Kibble ownership. There are currently no buildings on the site, however consideration will need to be given to the context; the railway line and access roads.”

Junction 29 was never the subject of a formal feasibility study.

[22] Kibble’s Wellbeing Centre Business Plan was updated in January 2022. In relation to “Location” it stated:

“Situated on land close to the St Mirren Football Club, the Wellbeing Centre will be integrated within the community of Ferguslie Park...Ownership of the land will be transferred to Kibble via a nominal purchase fee”.

[23] The Kibble board met for a strategy day on 30 March 2022. The note of the meeting referred to the Wellbeing Centre and recorded that:

“The land in Ferguslie remains a possibility and there was a consensus that this would be the preferred option due to proximity to the campus and to emergency services, however there were some reservations regarding the train line that runs next to it”.

[24] In June 2022, Kibble submitted to Renfrewshire Council a Stage 1 application. The application recorded the project start date as 3 April 2023 and the project completion date as 3 March 2025. It requested funding of £2,650,000. It stated:

“The project has been developed as an innovative partnership between Kibble Education & Care Centre, St Mirren Football Club’s Charitable Foundation and Renfrewshire Council. The project will develop 4 hectares of land to develop a Wellbeing Centre which will support inclusive growth in the Ferguslie Park area of Paisley.”

It goes on state: “Construction will take place between April 2023 - January 2025. The Wellbeing Centre will open in March 2025.”

[25] On 10 June 2022, Stuart MacMillan (Regeneration and Place Manager at Renfrewshire Council) emailed Alasdair Morrison, George Hunter and Jamie Mackie, all employees of Renfrewshire Council, attaching a copy of “the finalised draft of Kibble’s application for RCGF”. Mr MacMillan stated in that email “Kibble have supplied some

good images of the centre and site, we can submit one additional page that could mark out a location and incorporate some of these images". On 13 June 2022, Jamie Mackie responded to Stuart MacMillan's email in the following terms: "I will ask the team to pull together an additional page which incorporates a location plan and some of the images supplied by Kibble, to support the application". The location plan attached to the Stage 1 application by Renfrewshire Council delineated as the site for the Wellbeing Centre the land owned by SMFC to the north of Ferguslie Park Avenue.

[26] On 17 June 2022, Alasdair Morrison of Renfrewshire Council emailed Angela Barr, who was the senior funding officer of Kibble, and the second pursuer attaching a copy of the final Stage 1 application that was submitted to the Scottish Government. Alasdair Morrison also attached to that email the location plan that had been prepared by Renfrewshire Council.

[27] SMFC board minutes dated 17 August 2022 record that the club's charity (the Foundation) was looking at providing a facility for its own Wellbeing Centre which might clash with Kibble plans for a Wellbeing Centre. The second pursuer confirmed there were plans for Kibble to develop a Wellbeing Centre locally but this would not clash with the charity or preclude it from developing its own plans.

[28] On 5 September 2022, the Scottish Government announced that Kibble's Stage 1 application had been successful and would proceed to Stage 2 of the RCGF application process. Shortly thereafter, on 23 September 2022, the defender became aware that the Stage 1 application had been made. The SMFC board minutes dated 29 September 2022 noted that the second pursuer would share the RCGF application with the board members. At a Zoom meeting on 7 October 2022 the second pursuer showed certain parts of the application, but not the location plan attached by the Council.

[29] On 3 October 2022, the defender emailed the Scottish Government requesting a copy of the Stage 1 application. The defender did not receive a response to this request but Kibble were informed by Renfrewshire Council (which had, in turn, been informed by the Scottish Government) that the request had been made by the defender.

[30] On 5 October 2022, the defender emailed the second pursuer (copying in the first pursuer and other SMFC board members) repeating his request for a copy of the Stage 1 application. The first pursuer responded, mentioning among other things that the second pursuer was on holiday and that the first pursuer was of the impression that the second pursuer would share more details at the SMFC board meeting on the coming Friday.

[31] The SMFC board met again on 7 October 2022. Both pursuers and the defender were minuted as present at the meeting. Excerpts of the Stage 1 application were shared on screen at the board meeting. The location plan which had been appended to the Stage 1 application by Renfrewshire Council was not shown. On 13 October 2022, Gayle Brannigan (Chief Executive of the Foundation) emailed Carol Hutchison of the Scottish Government to request a copy of the Stage 1 application. The Scottish Government passed that request to Renfrewshire Council who in turn passed it to the second pursuer and Angela Barr.

[32] Following notification that the Stage 1 application had been successful, Kibble proceeded to prepare a Stage 2 application. On 17 October 2022, 4 days before the Stage 2 deadline for submission, the second pursuer requested a meeting with the Foundation to discuss the Stage 2 application. Gayle Brannigan met with the second pursuer that day. Gayle Brannigan thereafter sent an update on this matter to the Foundation trustees, including the defender.

[33] The second pursuer provided a copy of Kibble's draft Stage 2 application to Gavin Whyte, a trustee of the Foundation, on 19 October 2022. The Foundation trustees

discussed whether to support the draft Stage 2 application. On 19 October 2022,

Gavin Whyte emailed the second pursuer, copying the defender and stated:

“We are happy for you to proceed as is, we see no benefit in compromising the success of the application at this crucial stage. However, we do need to catch up over the coming weeks and discuss the perceived lack of collaboration and transparency over this”

[34] The final signed version of the Stage 2 application was prepared on 20 October 2022.

The Stage 2 application stated that the start date for the project would be 3 April 2023 and the end date would be 28 March 2025. It also stated that the expected date for ownership of land to be concluded was January 2023, with work commencing on 8 May 2023. It confirmed that there had been no substantive changes to the project from the Stage 1 application. On page 11 of the application, it stated that “Sale of land has been agreed”.

On the same page, the following “key next steps” were identified:

“planning permission application submitted December 2022; land ownership transferred January 2023; site investigations January 2023 onwards; building warrant approval April 2023; funding confirmed March 2023; procurement for main contractor April-May 2023; construction works begin in July 2023, and completed by January 2025; opening of Sports community greenspace January 2025 and Wellbeing Centre March 2025.”

The Stage 2 application also stated that 4.1 hectares of vacant and derelict land would be remediated, de-risked or brought back into use.

[35] Section 6.5 of the Stage 2 application stated: “if you give information which you know or suspect is untrue or misleading you may be committing an offence which could lead to prosecution.” Section 7 of the application contained a statement of truth in the following terms: “As far as I know and believe, all of the information in this application form is true, accurate and complete. I am authorised to allow this project to go ahead”.

The Stage 2 application was electronically signed, using the signature of the first pursuer, on 20 October 2022. It was submitted, but in due course it was not granted.

[36] At the date of submission of the Stage 2 application, neither pursuer had provided the SMFC board with a copy of the Stage 1 application. On 1 November 2022, the defender emailed the Scottish Government for a second time (following his first request on 3 October 2022) asking for a copy of the Stage 1 application and additionally requesting a copy of the Stage 2 application. On 10 November 2022, the Scottish Government responded, saying Renfrewshire Council should deal with it. On 1 December 2022, Gayle Brannigan emailed Jacqueline Cameron of Renfrewshire Council requesting a copy of the Stage 1 application. On 13 January 2023, Jacqueline Cameron sent a copy of the Stage 1 application to Gayle Brannigan.

[37] On 26 January 2023, at the SMFC AGM, the defender made certain criticisms of the second pursuer, stating there was a conflict of interest. The second pursuer responded, and the first pursuer also gave his response. On that same day the defender made a formal request to the Scottish Government under the Freedom of Information Act for a copy of the Stage 1 application. The Scottish Government responded to that FOI request on 24 February 2023, attaching a copy of the Stage 1 application.

[38] Thereafter, on 1 May 2023, the defender's campaign statement was made, alleging that the pursuers planned to build on St Mirren owned land, and on 14 May 2023 the Herald statement was published in the newspaper article. Several other articles about the dispute had been published by the Herald shortly prior to the article on 14 May 2023.

Evidence

[39] Evidence was led from both pursuers, followed by nine additional witnesses: David Nairn, Duncan Sloan, Angela Barr, Leanne Docherty, Alex White, John Needham, Richard Robinson, Siobhain Forde and Fraser Carlin. The defender then gave evidence,

with further evidence given by Gayle Brannigan and Alasdair Morrison. These were all witnesses giving evidence of facts and each one of them adopted the contents of their affidavit. Further oral evidence was given. It is not necessary to explain the details of the evidence at this stage, some which will be touched on when I come to give my analysis and decision. However, it is appropriate to explain some of the headline points raised.

[40] The first pursuer's evidence dealt with the two statements made by the defender and the reasons why they were said to be untrue and defamatory. He said there was no link between acquiring the shares and the acquisition of the land. The primary benefit from the share acquisition was the opportunity to enhance Kibble's young workforce development programme. The reference to "Kibbles' access to the development opportunities afforded by the land is predicated on our purchase of the SMFC shares" simply meant that if the Wellbeing Centre was to be built in Ferguslie, it would be on land acquired from Renfrewshire Council. The RCGF application was predicated upon the Wellbeing Centre being constructed in Ferguslie.

[41] Mr Gillespie said that he had "always ruled out Ferguslie", never ruled Ferguslie in and it was not an option in mid-2022. He also accepted that both the Stage 1 and Stage 2 applications related specifically to Ferguslie. On the point that the Stage 2 RCGF application stated that "Sale of land has been agreed" that referred to Renfrewshire Council's willingness to transfer the ownership of derelict land, once identified. The words reflected an expectation that there had been an informal understanding with the council regarding transfer of land ownership once specific allocations had been determined. Mr Gillespie accepted that the Stage 2 application was wrong in a number of respects, including by stating that the sale of land had been agreed and that an application for planning permission would be submitted by December 2022 (within 2 months of the Stage 2 application being

submitted) despite the fact that planning permission would require land to be identified and despite the evidence of the pursuers that no such land had been identified.

[42] Mr Gillespie was unable to recall whether he had signed the application personally, and noted that his executive assistant, Leanne Docherty, may have applied his signature electronically, particularly as he was noted in email correspondence as having been on holiday. He was not closely involved in the RCGF process and relied upon colleagues to ensure that information was accurate. In his affidavit, Mr Gillespie referred to various comments made by the defender at the SMISA AGM on 17 May 2023. It transpired that one of those comments had in fact been made by another person present. He accepted that this was an error on his part. Mr Gillespie accepted that he was involved in preparing the Business Plan. He did not accept that Kibble's purchase of SMFC shares was predicated on the acquisition of SMFC land and instead suggested that the wording of the Business Plan was "misplaced".

[43] The second pursuer also gave evidence as to why the two statements made by Mr Wardrop were untrue and defamatory. In relation to the Stage 2 RCGF application, and the words "Sale of land has been agreed", Mr MacMillan repeatedly asserted that the bid was speculative in nature. He denied lying. Mr MacMillan recognised that no formal acquisition of land had taken place. At the time however, he did not know that Renfrewshire Council had submitted a map identifying the SMFC-owned land. He explained that the phrase about the sale having been agreed could have been worded better and that there were continuing discussions with the council and others about available land.

[44] Mr MacMillan was asked several times in cross-examination to explain how Kibble's access to land for the Wellbeing Centre was "predicated on our purchase of SMFC shares" and was not able to explain that usage in any detail. He accepted that he received only

one copy of the Stage 1 application submitted by Renfrewshire Council to the Scottish Government, attached to Alasdair Morrison's email of 17 June 2022. His evidence was that, as of 7 October 2022, he still had not opened the location plan attached to that email. Mr MacMillan accepted that the Stage 1 and Stage 2 applications related to Ferguslie but said that he would not find it surprising if someone were to suggest that, by June 2022, Ferguslie had been discounted as a potential location for the Wellbeing Centre. He accepted that the Stage 2 application was wrong in a number of respects.

[45] Mr Wardrop explained the reasons why he had made the two statements in those terms and why they were not false or defamatory. He covered a number of points in relation to potential defences. Mr Wardrop accepted that there were various errors in both his pleadings (for instance on the matter of whether the 14 May 2023 Herald article named the pursuers; the reasons for his resignation from the SMFC board; and whether he had asked the SMFC to investigate) and his affidavit. He accepted that he had previously given evidence in a case in the Court of Session, with the Lord Ordinary criticising him on credibility.

[46] The pursuers led evidence from two Kibble employees (Angela Barr and Leanne Docherty) and two members of the Kibble board (David Nairn and Duncan Sloan). In broad terms, their evidence supported the integrity and character of each of the pursuers and gave reasons as to why there was no intention on the part of Kibble to acquire land owned by SMFC. They also commented, in their affidavits, on awareness of the allegedly defamatory statements and the gravity of them. Various witnesses described their disbelief and upset in seeing the defender's claim.

[47] When the round 9 Stage 1 application was submitted Angela Barr was involved in updating the text from the version that had been prepared in the previous year. She

received an email from Leanne Docherty which stated “no site identified”. In relation to the Stage 2 application, there was no reference in her correspondence to the SMFC land.

At the time of the signature of the Stage 2 application, Angela Barr sent an email to Renfrewshire Council referring to Mr Gillespie as being on annual leave. Leanne Docherty stated that she was usually the one to apply Mr Gillespie’s signature to documents. Before doing so, she would have reviewed the particular document and had a conversation with Mr Gillespie.

[48] At the material time, Fraser Carlin was an employee of Renfrewshire Council. He said that there was never a specific site in mind for the Wellbeing Centre. It had to be a certain size; but it could have been on a number of sites in the local area between Junction 29 of the M8 and Drums Avenue, to the south of the football stadium. There was no preferred site. That remained the position by the time he left his post in November 2022. He was not involved in Kibble’s bid for RCGF funding. His evidence that Kibble had not identified a preferred site for its Wellbeing Centre was premised on what he had been told by Kibble.

[49] Mr White and Mr Needham were, at all material times, directors of St Mirren Football Club (SMFC). They had no knowledge of, or involvement in, the RCGF application process itself. In his affidavit, Alex White (a SMISA representative on the SMFC board) said that the defender would have been perfectly well aware that any asset of the club could only be sold with the approval of SMISA and that requirement is contained in the shareholders’ agreement. Mr White also said that the defender would have known that Kibble had never expressed any interest in acquiring the land. If they had done so, the shareholders’ agreement would have been adhered to and there would have been an independent valuation of the land.

[50] John Needham, who was the SMFC Chairman, said that to the best of his knowledge Kibble had never expressed any interest in buying the land. He described the steps that would have been taken had such an interest been flagged, and noted that SMISA, as the majority shareholder, have an effective veto on any sale of assets. A valuation would have been obtained, solicitors appointed, and any deal would have required formal approval by the main shareholders, including SMISA. None of that happened. Mr White and Mr Needham both commented on certain parts of the averments for the defender as not being true. They did not accept the defender's claim that he was acting in the public interest.

[51] Mr Robinson of the firm P3 Consulting and Ms Forde of Stallan-Brand each accepted that they had had no substantive involvement in the RCGF bid process.

[52] The witness Alasdair Morrison, who was an employee of Renfrewshire Council at the material time, explained that in his experience RCGF bids tend to be submitted at an early stage in project development, often before land is acquired. To that extent, he accepted that applicants may require to speculate to a certain extent. They may be unsuccessful in acquiring land that they have identified; more detailed investigations may render a site unsuitable. The speculative nature of development proposals is understood by those dealing with funding applications. The pursuers, as representatives of Kibble, met with George Hunter, Fraser Carlin, Alasdair Morrison and Jamie Mackie of Renfrewshire Council on 24 May 2021. Mr Morrison's notes are quoted earlier. Mr Morrison's stated, in his affidavit, that the plan which came to be submitted with the Stage 1 application "indicatively" reflected the location that had been communicated by Kibble in discussions in which he had been involved. In cross-examination, Mr Morrison accepted that his understanding of the area that Kibble was looking at came from two sources: the meetings

that he had attended in May 2021, and the plan which AS Homes sent to him after the meeting on 28 May 2021 (which identified the “Kibble Opportunity Area”).

[53] Gayle Brannigan gave evidence that the Wellbeing Centre project was not raised with her by Kibble. Kibble did not seek the Foundation’s consent to be named as a partner to the project. There was no discussion regarding a prospective RCGF bid related to the Wellbeing Centre and she did not become aware of the Stage 1 application until she was contacted by Motherwell Community Trust to congratulate her on its success.

Gayle Brannigan brought the existence of the Stage 1 application to the attention of Gavin Whyte (a trustee of the Foundation) who in turn informed Alex White, a director of SMFC. Ms Brannigan accepted that the Stallan-Brand site feasibility study was a high-level assessment.

Submissions

Submissions for the pursuers

Credibility and reliability of the pursuers and the defender

First pursuer

[54] When saying in evidence that he had “ruled Ferguslie out” Mr Gillespie was expressing his personal frustration at the lack of progress in the discussions that were taking place with AS Homes and Renfrewshire Council, particularly over the identification of a suitable site. But it still remained an aspiration for Kibble. Mr Gillespie and Kibble were not synonymous. Had the application been successful, funds would only have been released by Renfrewshire Council if the Ferguslie development took place. The Stage 2 RCGF application may have been clumsily expressed but reflected the expectation of the informal understanding with the council. When Leanne Docherty came to give evidence,

she explained that she was usually the one to apply Mr Gillespie's signature to documents and the evidence confirmed that his signature was applied by Ms Docherty. It was also clear that he was not closely involved in the RCGF process and that he relied upon colleagues to ensure that information was accurate. As to the error in his affidavit, it only referred to him having viewed the footage at the time and there was plainly no intention to deceive.

Second pursuer

[55] Despite what was put to Mr MacMillan in cross-examination, there was no evidence to suggest that a site feasibility study, as carried out by Stallan-Brand in September 2021 including on the SMFC owned land, was a necessary formality in advancing any development plan. It was a high-level assessment. There was no reason to believe that the high-level conclusions that it offered would not be equally applicable to a site close to that already assessed. Overall, the line of cross-examination pursued in respect of both Mr McMillan and Mr Gillespie relied heavily on the premise that the feasibility study was a cornerstone. In reality, it was not. The speculative nature of development proposals is understood by those dealing with funding applications. While in retrospect it could have been phrased more precisely, the council was content with the application as drafted.

Defender

[56] In the course of his evidence, the defender accepted that there were various errors in both his pleadings and his affidavit. He gave mutually contradictory answers in very short succession. One instance concerned his relationship with the pursuers. He was reluctant to accept the obvious implications of documents which were presented to him. He had previously given evidence and been criticised by the Lord Ordinary on credibility.

Acquisition of land

[57] The fact that there was no link between Kibble's acquisition of shares in SMFC and the acquisition of land for the Wellbeing Centre was obvious from a number of adminicles, including the following. Kibble did not, as a matter of fact, acquire any ownership of land through buying the shares and the land to the north of the stadium remained in SMFC's ownership. The shareholders' agreement provided for the majority shareholder, SMISA, to have a veto on any disposal of land. The SMFC land was plainly not big enough, being little over 1 hectare in size, as compared with a requirement for 4 hectares. The SMFC land was inappropriate, given its proximity to the railway line and the stadium. By the time of the RCGF Stage 1 submission in June 2022, Kibble's internal documents acknowledged that efforts were still underway to locate a suitable site. At no point had Kibble intimated to the SMFC board a desire to acquire the land, or even made an initial approach. No formal plans were drawn up, nor was any application for planning permission submitted. Kibble continued to have discussions with AS Homes and Renfrewshire Council regarding the potential allocation of land in the wider area between the stadium and J29. So, there was no plan, secret or otherwise, to build the Wellbeing Centre on SMFC land.

Meaning of the statements

[58] The first statement represented that the pursuers had acted in breach of their duties and in conflict of interest by failing to disclose a plan to build on SMFC land. The pursuers insisted that there was no such plan. There was nothing in the statement itself to suggest the defender was qualifying his claim, or simply proposing that this was a matter worthy of investigation. His affidavit plainly suggested that he believed the pursuers were acting

in conflict of interest and in breach of their duties, and wished to communicate that in his statement. The basis for his allegation was the plan to build, surreptitiously, on the land. There is equally no doubt that such meaning is defamatory of the pursuers. Both hold senior professional positions within the charity sector. The allegation that these individuals would conceal a plan to build on land, in conflict of interest, was such as to lower their reputations in the minds of the ordinary reader.

[59] The meaning of the second statement is that the pursuers were perpetrating a cover-up and had lied. The ordinary reader, considering the article as a whole, would have had little doubt that the pursuers were the target of the defender's statement. Many would have read the prior articles which were directly focused against the pursuers. Informed readers, such as fans of the club, would have regarded "Kibble" as shorthand for the two pursuers. In any event, the pursuers were the only individuals who fell into both categories specifically mentioned: Kibble and the board of St Mirren. Even if the allegation was directed more widely, it clearly included them.

Defence of truth

[60] To succeed in a defence of truth, the defender would need to establish that his central claims (that the pursuers had a plan to build on SMFC land, and that they had concealed this from the SMFC board) were true. The attempt to establish that such a plan existed formed a large part of this proof. The defender had failed to do so.

Defence of publication on a matter of public interest

[61] Publication in the terms of either statement complained of was not on a matter of public interest and in any event it was not reasonable for the defender to believe that publishing them was in the public interest.

Defence of honest opinion

[62] The defender also averred that the Herald statement (referring to cover-up, denying and lying) was an honest opinion. He says that this arose from the position of Renfrewshire Council. According to his averments, the council had said the location “was put forward by Kibble as being a possible area”. His defence of honest opinion may have had more merit if he had couched his statement in different terms, for instance by asserting that Kibble had failed to disclose their “interest” in the site. An honest person could not, on the basis of the information available, have reached the conclusion that the defender actually represented. Again, the second statement was, at its core, one of fact, not opinion.

Defence of fair retort

[63] The response from the pursuers, stated in the Herald article, had not changed. The first pursuer was assuring fans that Kibble did not want to build on SMFC land. The reference by the pursuers to a “false premise” does not mean lying. It was the premise that was being attacked, not the defender. It was also entirely fair to say this, as there was no plan of the kind alleged. This line of defence should also fail.

Submissions for the defenders

Credibility and reliability of the pursuers and the defender

First pursuer

[64] In contrast to the defender, the pursuers were not credible witnesses. In general terms, both pursuers repeatedly sought to obfuscate and to avoid answering the questions that were put to them. The first pursuer's attempts to absolve himself from responsibility for the RCGF bid process in relation to the Wellbeing Centre were not credible. When it was put to him that, if Ferguslie was not by 2022 considered to be a potential location for the Wellbeing Centre then Kibble's RCGF applications contained lies, the first pursuer sought to pivot his position by suggesting that J29 could have been a potential location had Kibble obtained geotechnical information. The first pursuer nonetheless accepted that the Stage 2 application was false in a number of respects.

Second pursuer

[65] On various occasions, the second pursuer had to have questions put to him several times and to be prompted by the court to provide a direct response. The second pursuer was asked nine times to explain how Kibble's access to land for the Wellbeing Centre was predicated on the purchase of SMFC shares but did not provide a coherent response. His evidence that, as of 7 October 2022, he still had not opened the location plan attached to Alasdair Morrison's email was wholly incredible: there were only two attachments to the email, one titled "application Form" and the other titled "Kibble Wellbeing Centre". The notion that the second pursuer ignored the second attachment to that email at least twice defied belief. He was equally driven to accept that the Stage 2 application was false in a number of respects.

The defender

[66] The defender was a credible and reliable witness who did his best to assist the court. He answered, in a straightforward and fulsome manner, the questions put to him in cross-examination. The defender made appropriate concessions where his recollection of matters was contradicted by contemporaneous documentary material. In relation to a Lord Ordinary in a previous case criticising the defender, that judge explained that he did not accept the credibility and reliability of certain aspects of the evidence given by five witnesses, including the defender, before concluding that he otherwise found the witnesses to be generally credible and reliable. The judge's assessment had no relevance to the defender's credibility and reliability in this case.

Acquisition of land

[67] The reference in the Wellbeing Centre Business Plan to access to the development opportunities afforded by the land being predicated on Kibble's purchase of the SMFC shares illustrated that the opportunity to develop a Wellbeing Centre on SMFC land was a critical factor in Kibble's decision to invest in SMFC. There was nothing within the extensive productions before the court that suggested any remotely serious consideration by Kibble of the land to the west of the stadium (on which, at all material times, there was housing owned by Renfrewshire Council). Kibble's Chief Executive Board Report dated November 2019 would not have been put in the terms stated if the land in question was not that owned by SMFC.

[68] It was, as shown in the SMISA minutes in December 2019, within the contemplation of both Kibble and SMISA as of the date of Kibble's investment in SMFC, that Kibble wished

to create a Wellbeing Centre within Ferguslie. This was supported by the first pursuer's comment, recorded in the Kibble board minutes in January 2020, that the shares could be “given back for a low cost if Kibble get what they want out of it”, including the land for the Wellbeing Centre. It was inconceivable that Renfrewshire Council would only deal with Kibble (regarding land or otherwise) if it first acquired shares in SMFC. There was no plausible explanation for how Kibble could acquire land for the Wellbeing Centre as a result of its investment in SMFC unless that land belonged to SMFC.

[69] The yellow shaded area in the indicative masterplan marked “Kibble Opportunity Area” incorporated the parcel of land north of Ferguslie Park Avenue owned by SMFC. Either the Stage 1 and Stage 2 applications related to (or at least included) the parcel of land to the north of Ferguslie Park Avenue, including land owned by SMFC, or the pursuers on behalf of Kibble were content to include known falsehoods in an application for £2.65m of public funds. It cannot reasonably be disputed that such land was, at some stage, within Kibble’s contemplation: Stallan-Brand were expressly instructed to conduct a feasibility study in respect of it. The land at Junction 29 had never been feasibility studied because AS Homes had never provided Kibble with the requested geotechnical information.

[70] The round 8 and round 9 Stage 1 applications each refer to “unused land opposite St Mirren Football Club”. As of June 2022, the only land within Ferguslie that Kibble’s RCGF bid could possibly relate to was the land to the north of Ferguslie Park Avenue, including land owned by SMFC. The Stage 2 application stated that the sale of land had been agreed and that planning permission would be submitted within a matter of weeks. Both of those statements were false. The suggestion by both pursuers that Ferguslie had been ruled out as the location for the Wellbeing Centre lacked any credibility.

Meaning of the statements

[71] The campaign statement was not capable of bearing, and did not in fact bear, the meaning advanced by the pursuers. Read as a whole, the campaign statement was accurate. The hypothetical reasonable reader would not understand the campaign statement to mean that the pursuers acted in a conflict of interest or in breach of their duties to SMFC. The premise of the defender's campaign for election to the SMISA board was that he did not have trust and confidence in the pursuers' continued presence on the SMFC board and wished to remove them from the board. The campaign statement expressly recorded the pursuers' position that they had not acted in conflict of interest. The reasonable reader would understand the campaign statement to have been made in the context of a dispute between the pursuers and the defender regarding the ongoing governance of SMFC. The meaning is restricted to either there being reasonable grounds to investigate whether the pursuers failed to disclose Kibble supported plans to build on St Mirren owned land, or to there being reasonable grounds to suspect that the pursuers failed to disclose Kibble supported plans to build on St Mirren owned land, and so acted in conflict of interest.

[72] In relation to the Herald statement, there was no basis in the evidence for holding the defender liable for anything in the article over and above what he is quoted as having said to the Herald. The defender's quote did not name either pursuer. The pursuers have not set up any basis upon which the defender might be held liable for the impact of the article itself, given the limitations of the words used by him.

[73] In any event, any serious harm that has been caused, or is likely to be caused, to the reputation of the pursuers has been expunged by the evidence provided by the pursuers in the conduct of this proof, about the false application for £2.65m of public funds. There is

no evidence that either pursuer's reputation has suffered as a result of the defender's statements.

Defence of truth

[74] If the campaign statement and/or the Herald statement are determined to bear a defamatory meaning and to meet the test of serious harm, then the defence of truth ought to prevail in respect of each statement. The defender had succeeded in proving the facts giving rise to reasonable grounds to investigate or suspect that the pursuers failed to disclose a plan to build on SMFC owned land and therefore acted in conflict of interest.

[75] Even if the meaning advanced by the pursuers was the correct one, it had been shown to be substantially true. Either the Stage 1 and Stage 2 applications contain known falsehoods, or they demonstrate a clear intention on the part of Kibble to build the Wellbeing Centre on SMFC owned land. It should not readily be presumed that the representatives of a charitable organisation have knowingly lied in an application for millions of pounds of public funds. An interest (whether personal or as a result of another directorship) in developing on land owned by the company of which an individual is a director is the paradigm example of a conflict of interest. It follows from the foregoing that the Herald statement is also true or substantially true.

Defence of publication on a matter of public interest

[76] The campaign statement and the Herald statement are publications on a matter of public interest. The defender clearly actually believed that publication of them was in the public interest. He so testified and was not challenged thereon. The defender did not rush to judgement. He took extensive steps to verify his belief that it was in the public interest to

publish that the pursuers had planned to build on SMFC land, had subsequently lied about it, and had accordingly acted in a conflict of interest. It was difficult to envisage what more the defender could have done to verify his honest belief that publication of the campaign statement and the Herald statement was in the public interest. The defender's belief that publication of the campaign statement and the Herald statement were in the public interest was reasonably held.

Defence of honest opinion

[77] The Herald statement constituted the defender's honestly held opinion that, by denying a plan to build on SMFC land, the pursuers were lying. On the facts, an honest person could plainly hold the opinion (or, to put it another way, draw the conclusion, inference or deduction) that the pursuers covered up and lied regarding a plan to build on SMFC land. The defender honestly held, and continues to hold, that opinion.

Defence of fair retort

[78] Additionally, the defence of fair retort should prevail in respect of the Herald statement, which was in direct response to comments that the defender was lying.

Analysis and decision

Credibility and reliability of the pursuers and the defender

First pursuer

[79] It is fair to say that on occasions in cross-examination rather than directly answering the question Mr Gillespie took the opportunity to make a separate point. While the defender did not behave in a similar manner, I do not regard this part of the first pursuer's approach

as indicating a lack of credibility or reliability. Indeed, I intervened on occasion to have the actual question answered and the Dean of Faculty repeated the question when necessary.

The questions were, at least in due course, answered although there was no clear explanation given as to the use of the word “predicated” in the Wellbeing Centre Business Plan.

[80] Mr Gillespie’s approach in relation to the RCGF bid process for the Wellbeing Centre was that he had no real responsibility for it. He had trust in those preparing the application. When it was made clear to him that he had signed the document, he accepted his involvement to that extent, perhaps by authorising Ms Docherty to attach his signature. In her evidence, she confirmed that she would normally check with him before doing so, although the details of what was discussed between them were not given. While he was of the view that Ferguslie Park was, by 2022, not considered to be a potential location for the Wellbeing Centre and it was put to him that the mention of this in the RCGF application was therefore a lie, he nonetheless suggested that J29 could have been a potential location. This reflects the point that he had his own views about Ferguslie Park but others in Kibble may have had different views. Kibble itself appears to have aspired to the Ferguslie Park area.

[81] He did accept that the Stage 2 application was wrong in a number of respects. However, it is not possible to conclude that the evidence showed Mr Gillespie to have deliberately used false information to seek to obtain public funding. Funds would only have been received if the development went ahead. As noted above, there was evidence given about taking a speculative approach when preparing such an application and the actual detailed preparation was not a matter he dealt with. There had been continuing discussions with the council about available land and, while no actual site had in fact been agreed, it appears likely that if the application had been granted an area would have been agreed.

[82] It is nonetheless plainly inappropriate that this Stage 2 application contained several falsehoods. Angela Barr, Kibble’s funding officer, was asked by the Dean of Faculty if she would be “horrified” to learn that Kibble had submitted a funding application containing known falsehoods. She said she would not be horrified. David Nairn and Duncan Sloan confirmed that, as trustees of Kibble, they would be horrified to learn that point. For that application to state that the sale of land had been agreed and that an application for planning permission would be submitted by December 2022 when the pursuers’ evidence was that no such land had been identified, is concerning. I have therefore taken a cautious approach to assessing the evidence. However, having done so, I conclude that there are no significant factors indicating that Mr Gillespie’s evidence on the key matters is not credible or reliable, including that he and Mr MacMillan had no plan to buy the shares in SMFC in order to obtain land owned by the club.

[83] A witness, Mr Sloan, confirmed that the pursuers’ conduct of the present litigation is being funded by Kibble. As submitted for the defender, this action has not been raised on behalf of Kibble, but charitable funds have been used to facilitate this action. This can also give rise to some degree of concern, but ultimately it is a matter for the board of Kibble to determine how and when to spend funds and the very fact of this financial involvement does not undermine the evidence given.

Second pursuer

[84] Mr MacMillan was also, at times, not particularly diligent in answering certain questions put to him in cross-examination and on occasion had to be told to answer. Like Mr Gillespie, he had no means of explaining why the word “predicated” had been used in the business plan. It is somewhat surprising that he did not open the second attachment

("Kibble Wellbeing Centre") to the email sent to him by Alasdair Morrison and showed only the first attachment on the screen in a remote meeting. But there were no clear reasons given as to why his account was not correct and he adhered to his position that it was not opened. There was of course a site feasibility study carried out by Stallan-Brand in September 2021 including on the SMFC owned land, but it was a high-level assessment and, having regard to all of the evidence, of itself it does not indicate that this was the intention of Kibble. Once again, this pursuer's evidence has to be scrutinised with a degree of caution, in particular because of his involvement in the Stage 2 application, with its incorrect elements. In doing so, the outcome is that I am not able to accept that he told lies in his evidence.

The defender

[85] Mr Wardrop accepted that there were certain errors in his pleadings and affidavit, but these were candid concessions made when shown other material. I do not consider that any significant part of his evidence involved contradictory answers. It is true that, as he accepted, in a case several years ago the Lord Ordinary criticised his credibility. While the fact that certain aspects of that evidence in a previous case were found not to be credible or reliable causes me again to take a reasonably cautious approach, it has no material bearing on his credibility and reliability in this case.

[86] As a consequence of these assessments, I am not persuaded that any aspect of the evidence of the pursuers or the defender, on the matters of specific relevance to the alleged defamation, falls to be treated as not credible or substantially unreliable. This is not a case in which one side was telling lies in the evidence put before the court. The court is left with the need to have regard to all of their evidence when determining whether there was defamation.

Other witnesses

[87] Witnesses employed by or connected with Kibble gave what can be described as evidence as to the character of each pursuer. Several of them said that Kibble had not expressed any interest in buying land owned by SMFC. It was submitted for the defender that the fact that Kibble is funding the pursuers' action indicated that those persons have "skin in the game". However, even if they were aware of the funding, which for many of them was not explored in the evidence, what matters is the assessment of the facts. It is not possible to draw the conclusion that the factual evidence was tainted by the funding point. There were differences in the evidence given by two witnesses from Renfrewshire Council, Mr Morrison and Mr Carlin, about what occurred at the meetings in May 2021, and these are considered below. No other real challenge to the credibility and reliability of any other witness was made and I have no reason to conclude that there were any serious problems with the evidence of any of these witnesses.

Acquisition of the land

[88] The fundamental issue is whether the conclusion reached by the defender about the pursuers having a plan to obtain land from SMFC is correct when one has regard to the whole circumstances. There are undoubtedly documents and wording which point in the direction alleged by the defender. In particular, the reference in the Wellbeing Centre Business Plan about access to development opportunities "predicated" on Kibble's purchase of SMFC shares could arguably apply to land owned by SMFC. There is some force in the defender's position that other references to the land, while involving a larger area, included SMFC land. Similarly, the extract from Kibble's Chief Executive Board Report dated

November 2019, quoted above and referring to land around the stadium, could suggest land that was owned by SMFC. That is potentially assisted by the other documentation relied upon by the defender, including the only feasibility study, conducted by Stallan-Brand, and the reference in the round 8 and 9 Stage 1 applications to “unused land opposite St Mirren Football Club.” In addition, the Kibble board minutes of 7 January 2020 referred to giving back the shares for a low cost if Kibble “got what they wanted out of it, including the land for the Wellbeing Centre”.

[89] Mr Morrison’s evidence that the plan which came to be submitted with the Stage 1 application “indicatively” reflected the location that had been communicated by Kibble, also provides some support. The reference in the note of the Kibble Board Strategy Meeting on 30 March 2022 to the land in Ferguslie being the preferred option due to proximity to the campus and to emergency services, but there being some reservations regarding the train line that runs “next to it”, is open to the inference that it is close to the railway line, although the precise meaning of “next to it” is not absolutely clear.

[90] The pursuers’ argument that Kibble did not, as a matter of fact, acquire any ownership of that land through buying the shares is neither here nor there, because the defender’s allegation is about the plan or intention, not the outcome. Equally, the fact that SMISA had a veto on any disposal of land does not preclude the intention to try to obtain that land.

[91] However, I am unable to accept the defender’s contention that there is no plausible explanation for how Kibble could acquire land for the Wellbeing Centre as a result of its investment in SMFC unless that land, or part of it, belonged to SMFC. Development opportunities “predicated” on Kibble’s purchase of SMFC shares can also be taken as referring to the Ferguslie Park area. Mr Morrison’s evidence about the location having been

communicated by Kibble was based in part on the AS Homes' plan sent to him, but that plan had been produced without consultation with Kibble. The evidence of Mr Carlin, who was at the meetings in May 2021 with Mr Morrison, was that there was never a specific or preferred site. On balance, I am unable to take Mr Morrison's evidence as showing that the pursuers' identified the SMFC land as the site.

[92] A further point is that the SMFC land was plainly not big enough for what Kibble had in mind, when the requirement was 4 hectares and it was just a little over 1 hectare in size. The first draft of the Stage 1 application (round 8) refers to developing 1.15 hectares of unused land opposite SMFC, which is closer to the scale of the SMFC land. However, as things developed it became clear that a larger area was needed and 4 hectares was mentioned in the round 9 Stage 1 application. The defender argues that this larger area could include the SMFC land, which is a possibility, but there is no real evidence of seeking to acquire an area of land owned by more than one party. While there were many references in documents to Ferguslie, the possibility of using land to the west of the stadium was mentioned, for example in the Holmes Miller plan. The use of "opposite" in the round 8 and round 9 Stage 1 applications does not necessarily point only to the north. The pursuers' evidence was that at the material time they did not know that SMFC owned the particular part of the land. There were also continuing discussions of other areas. There was no decision by the board of Kibble to acquire that piece of SMFC land. There is plainly no requirement to be a shareholder in SMFC in order to obtain land owned by Renfrewshire Council, but the implication from the evidence is that Kibble joining forces with SMFC to promote wellbeing might assist in doing so.

[93] Whether the existence of housing to the west would have prevented acquiring land there is not clear, that housing now having been demolished. The Ferguslie area is quite

large and there could have been other sites of unused land to build on, apart from the SMFC land. The evidence also supports the pursuers' position that this piece of SMFC land was inappropriate, given its proximity to the railway line and the stadium, and the feasibility assessment did say that consideration will need to be given to the railway line. The other points made for the pursuers about documents showing that Kibble was still seeking to locate a suitable site also assist in showing that getting land specifically owned by SMFC was not Kibble's plan. In addition, it remains unclear how the very fact that acquiring shares, resulting in Kibble staff joining the SMFC board, would result in getting this piece of land. That would be purely a matter for the whole SMFC board to decide, acting in the interests of the club.

[94] For those reasons, I do not accept that the pursuers planned to build the Wellbeing Centre on St Mirren owned land.

Meaning of the statements

[95] This action proceeds under the Defamation and Malicious Publication (Scotland) Act 2021. Section 1 states:

"1 Actionability of statements

- (1) This section applies to a defamatory statement made or published by a person (A) about another person (B).
- (2) A right to bring defamation proceedings in respect of the statement accrues only if— (a) A has published the statement to a person other than B, and (b) the publication of the statement has caused (or is likely to cause) serious harm to the reputation of B.

...

- (4) For the purposes of this Act, unless the context otherwise requires— (a) a statement about a person is defamatory if it causes harm to the person's

reputation (that is, if it tends to lower the person's reputation in the estimation of ordinary persons);”

[96] In *Koutsogiannis v The Random House Group Ltd* [2020] 4 WLR 25, Nicklin J accurately summarised the approach to be taken when deciding the meaning of a statement (paragraphs 11 and 12). He did so under reference to a large number of authorities, distilling the key principles. It is not necessary to quote the authorities or the key principles in full, but I have taken broadly the same approach. Among other things, the governing principle is reasonableness and the intention of the publisher is irrelevant. Over-elaborate analysis should be avoided and the court should certainly not take a too literal approach to the task. The publication must be read as a whole, and any “bane and antidote” taken together. In order to determine the natural and ordinary meaning of the statement, it is necessary to take into account the context in which it appeared.

[97] The single, natural and ordinary meaning of the campaign statement, in my judgment, is that: a director of SMFC has a fiduciary duty to declare any potential conflict of interest; the pursuers failed to disclose to SMISA or the Foundation their plans to build on St Mirren owned land; this was discovered by the defender when he obtained the funding application after his FOI request; the pursuers denied any conflict of interest; the defender had no trust and confidence in them serving as directors and wished to remove them. The defender’s contention that the campaign statement contains a number of accurate comments is plainly correct, but the statement does contain the expression that the pursuers failed to disclose plans to build on land owned by SMFC. The fact that it expressly recorded the pursuers’ own position that they had not acted in conflict of interest does not detract from the thrust of the statement that they had so acted, lowering the reputations of persons holding senior professional positions within a charity. The words go beyond meanings

restricted to reasonable grounds to investigate a failure to disclose or reasonable grounds to suspect a failure to disclose; rather, the words say that the failure to disclose was discovered.

[98] In relation to the meaning of the Herald article, the relevant details of the article are set out in the section below dealing with the defence of honest opinion. The single, natural and ordinary meaning of the article, in my judgment, is that: the defender intends to sue SMFC after issuing denials that the bid for public money was earmarked for its land; leaks confirmed that the land pinpointed for the development was owned by SMFC; the defender has accused the pursuers of a failure to disclose their intention; the pursuers say this is based on an entirely false premise, as the council wrongly shaded in the area of land owned by SMFC; the council does not agree that the areas of land indicated were produced in error and say the area earmarked was pinpointed by Kibble; the map attached to the application and set out in the article, shows that the land proposed to build on was in fact the St Mirren land; there is a row between the pursuers and the defender; the application states that the sale of land has been agreed; the defender is quoted as saying that he has been made out to be a liar by Kibble and the board of SMFC, but now it should be clear to everyone what a huge cover-up this has been in denying, denying and denying when they were actually lying, lying and lying.

[99] The defender's comment indicates the perpetration of a cover-up and lies. While the passage refers to "Kibble" and "the board of St Mirren", there is a specific mention of the two pursuers earlier in the article, where it is said that Mr Wardrop accused them of failing to disclose to directors, shareholders and fans the bid to build the centre on club land. Informed readers, when considering the whole article would have regarded "Kibble" as a shorthand for the two pursuers, or at least including them. The reference to the "the board

of St Mirren” is not merely a reference to the pursuers; rather, it is the board in its capacity as a board, but again the reference to the two pursuers tends to include them as involved.

[100] The defender’s argument that the reputation of the pursuers has been affected by the evidence provided at the proof, attributing to them a false application for £2.65m of public funds, in circumstances where this action has been financed by Kibble’s charitable funds, may have some force. However, there are less damaging interpretations open to the public about that false application, including that it was in reality poorly worded and wrongly expressed but with no actual intention to gain public money on a false basis.

[101] This leaves the question of whether either or both of the statements caused serious harm, as referred to in section 1 of the 2021 Act. I note that this test is in similar terms to the English legislation, which has been given recent consideration by the Supreme Court in *Lachaux v Independent Print Ltd* [2019] UKSC 27. This indicates that relevant considerations, beyond the meaning of the words and the situations of the parties, will therefore include the scale of the publications (in the present case, that includes publication in a national newspaper and its online service), the fact that others became aware of them, the likelihood of others becoming aware of them, and the gravity of the statements. It is clear from the affidavits of each pursuer and several other witnesses (including David Nairn, Duncan Sloan, Angela Barr, Leanne Docherty, Alex White, and John Needham) that the statements caused a sufficient degree of harm. I accept the defender’s position that each pursuer remains in a sound or strong working position and highly respected, but that does not exclude them from having, as the evidence supports, suffered serious harm as a result of the campaign statement or the Herald comment.

[102] On behalf of the defender, it is argued that the appropriate point to consider damage to the reputation should be at the time of court’s determination of the action and having

regard to all of the evidence. The requirement for “serious harm” necessitates consideration of the actual (or likely) real-world consequences of the statements complained of, as opposed to consideration of the inherent tendency of the words to result in reputational harm (*Lachaux v Independent Print Ltd*, Lord Sumption at paragraph 17). Warby J, in the first instance decision in *Lachaux*, said that the pursuit of an action, legitimate when it began, may cease to be so when circumstances change. In *Cooke v MGN Ltd* [2014] EWHC 2381 (QB), Bean J expressed the alternative view, *obiter*, that the appropriate time to determine serious harm was the date of the issue of the claim. The authors of *Gatley on Libel and Slander* (13th ed) suggest that Warby J’s reasons for choosing the date of determination of the issue by the court are more persuasive. Warby J was dealing principally with situations in which circumstances may have changed. The defender argues that the circumstances have changed here, as reputational damage to the pursuers arises from the false aspects of the Stage 2 application. That matter is considered below when dealing with the question of damages.

Defence of truth

[103] Section 5(1) of the 2021 Act states:

“(1) It is a defence to defamation proceedings for the defender to show that the imputation conveyed by the statement complained of is true or is substantially true.”

As noted above, I am not persuaded that the campaign statement set out reasonable grounds to investigate, failing which reasonable grounds to suspect, that the pursuers failed to disclose a plan to build on SMFC owned land and acted in conflict of interest. It went further than merely identifying reasonable grounds. The central claim, that the pursuers had a plan to build on SMFC land, is not established. The defence of truth must fail. As the

Herald statement can be taken to refer to the pursuers, it also meets the test of not being true or substantially true.

Defence of publication on a matter of public interest

[104] This is provided for in section 6 of the 2021 Act:

“6 Defence of publication on a matter of public interest

- (1) It is a defence to defamation proceedings for the defender to show that—
 - (a) the statement complained of was, or formed part of, a statement on a matter of public interest, and
 - (b) the defender reasonably believed that publishing the statement complained of was in the public interest.
- (2) Subject to subsections (3) and (4), in determining whether the defender has shown the matters mentioned in subsection (1), the court must have regard to all the circumstances of the case.
- (3) If the statement complained of was, or formed part of, an accurate and impartial account of a dispute to which the pursuer was a party, the court must, in determining whether it was reasonable for the defender to believe that publishing the statement was in the public interest, disregard any omission of the defender to take steps to verify the truth of the imputation conveyed by it.
- (4) In determining whether it was reasonable for the defender to believe that publishing the statement was in the public interest, the court must make such allowance for editorial judgement as it considers appropriate.
- (5) For the avoidance of doubt, the defence under this section may be relied upon irrespective of whether the statement complained of is a statement of fact or a statement of opinion”.

[105] There are several English authorities decided under reference to section 4 of the

Defamation Act 2013, which is in materially the same terms as section 6 of the 2021 Act.

These include *Serafin v Malkiewicz and others (Media Lawyers Association intervening)* [2020]

UKSC 23; [2020] 1 W.L.R. 2455; *Economou v de Freitas* decided by Warby J at [2017] EMLR 4,

and by the Court of Appeal at [2019] EMLR 7; and *Doyle v Smith* [2018] EWHC 2935 (QB).

As is explained in *Serafin* (at paragraph 72) it is wrong to consider that the elements of the statutory defence can be equated with those of the defence explained in *Reynolds v Times Newspapers Ltd* [1998] 3 WLR 862, although (at paragraph 69) that is not to deny that one or more of those points stated in *Reynolds* may well be relevant to whether the defendant's belief was reasonable.

[106] I have therefore had regard to whether any of the ten factors listed in *Reynolds* are relevant in this case, as well as principles set out in the other cases. In *Economou*, it was said that the focus must be on things the person making the statement said or knew or did, or failed to do, up to the time of the publication. In assessing the reasonableness of the defender's belief, it is relevant to have regard to the nature or gravity of the things said, the reliability and credibility of the defender's sources, the steps taken by the defender to verify the truth of the allegations, and whether the defender included the pursuers' side of the story.

[107] It is clear, as the defender submitted, that the content of applications for millions of pounds worth of public funds, the conduct of charity trustees and football club directors, and the development of a Wellbeing Centre which will be of significant import to the locality, are all matters of public interest. The campaign statement and the Herald article, including the quotation from the defender, certainly raised issues on matters of public interest.

[108] The defender gave evidence of his state of mind at the time the statements were made. Facts that he was not aware of at that time are not relevant. It was apparent from the evidence that the defender actually believed that publication of the campaign statement and the Herald statement were in the public interest. There is no suggestion that he knew that the defamatory facts presented were untrue. Far from it, his post-publication conduct

supports his actual belief and indeed on his evidence in court he remains in the belief that the statements were true. He did not unwarrantedly or gratuitously drag into the statements any allegations which do not have a real bearing on the theme of the statements generally.

[109] The next question, dealing firstly with the campaign statement, is whether that actual belief was reasonably held. The evidence supports the point that the defender took reasonably extensive steps to verify his belief that it was in the public interest to publish what was said. He raised his initial concerns at the SMFC AGM, made requests to recover the Stage 1 application from the second pursuer and from the Scottish Government, went on to make a Freedom of Information (“FOI”) request and inspected what was recovered, looked at the title sheets about SMFC land, considered correspondence, and took legal advice including on whether the pursuers’ actings could amount to acting in a conflict of interest. The sources of the information were documents rather than comments from others. They were reliable sources. The amount of information sought and obtained demonstrates the steps taken to verify the information. The status and content of that information, taken together, is reasonably capable of allowing the inferences to be drawn, resulting in his view. He carried out the enquiries and checks that were reasonable to expect and open to him, coming across no obviously contradictory evidence.

[110] The opening paragraph of the campaign statement highlights the point about conflict of interest. He had earlier raised questions with the pursuers on conflict of interest as a result of the Stage 1 application, in so far as failing to disclose information. This occurred at the SMFC AGM on 26 January 2023, at which the defender criticised the second pursuer, who responded to the allegation, and the first pursuer also responded. The defender regarded the first pursuer as sharing responsibility. In the campaign statement he

mentioned the pursuers' own position on conflict of interest. The defender's position was that he did not otherwise approach the pursuers directly at a later stage, when he had the further information, as "they had already made their position clear". He had asked the pursuers over the previous several months (as explained in his affidavit) for information about the Stage 1 application for funding but had not received any substantial responses. He then obtained the documents by FOI. In those circumstances, he felt that he did not require to ask the pursuers again about their position.

[111] The issue of whether comment was sought from the pursuers is relevant but an approach to them, or in this case a further approach, is not always necessary or required. The defender has explained the previous attempts to obtain information from the pursuers and why no further contact was made. Their limited responses to earlier approaches from the defender could justify the view that they would not have behaved any differently if approached again. While if approached they could have given more substantive and detailed information in support of their position, the gist of their side of the story (in their responses at the AGM on 26 January 2023) was that there was no conflict of interest. In short, the campaign statement said that they had acted in a conflict of interest in breach of their duties to SMFC and their earlier position, which was to the effect that there had not been a conflict of interest, was mentioned.

[112] It is true that at the time of the campaign statement the defender was not in possession of other documents that later became available, but there is no doubt that he had enough material before him to reach his belief. While he was also aware, at least until he left in October 2022, that Kibble and the SMFC board had not discussed the area of ground referred to and SMISA had the veto, his belief was about the pursuers' own intention or plan. The application was for some 4 hectares of ground and it may have been possible for

him to work out that the SMFC ground was considerably smaller, but that is a relatively minor issue, especially when the SMFC land could have formed only part of the site. Even if he was aware in September 2022 that Kibble's position was not a significant concern to the club, that did not affect his belief about the motives of the pursuers. He had his own agenda, and probably a negative sentiment towards each pursuer, but had grounds for his belief. It is true that he did not seek to differentiate them, but both were involved in what he believed to have occurred. The defender plainly subjectively believed that the pursuers had a plan to build on SMFC owned land and also believed that the publication of his claims were necessary in the public interest.

[113] This leaves the question of whether his belief at the time about what he said in the campaign statement was objectively reasonable. The nature and gravity of the allegations do not stray beyond what he felt able to infer from the information he had. There are certain steps, identified on behalf of the pursuers, which he did not take to verify his belief. But, as has been noted, he had been in contact with them prior to his FOI request and their position was that there was no conflict of interest. It is true that, if asked, they may have provided fuller information about the more detailed issue of having no plan to build on the SMFC land, but it had already been said that there was no conflict of interest. It is apparent that, viewed in the whole context of what had occurred, the defender could, objectively, believe that his statement was in the public interest. It is therefore established that the defender's belief that publication of the campaign statement was in the public interest was reasonably held.

[114] The Herald statement contains a specific allegation of dishonesty. Further evidence was available to the defender after the campaign statement was made, some of it stated in the Herald articles on 10 May and 13 May 2023. This included: the statement by a Kibble

spokesman that the defender's claims were based on a false premise; the first pursuer's "categoric assurance" that club land would not be used in the project; a statement by SMFC to the effect that it had not been expected to offer its land as part of the project; and a statement by Renfrewshire Council that the application itself was non-specific on the exact location of the proposed development, that they added an appendix to the Stage 1 application as a guide, showing a site plan with an indicative location, and should the funding bid have been successful, the exact location would have been subject to the outcome of a wider masterplan covering all development in the Ferguslie Park area.

[115] It was submitted for the pursuers that none of that additional evidence supported the claims of cover-up and lying that the defender chose to make and indeed it was plainly more consistent with the pursuers' position. However, the statement by the council quoted in the article dated 10 May 2023 was undermined by a further statement made on behalf of the council, as set out in the article on 14 May 2023. This was that the council did not agree that areas of land indicated on the submitted map were produced in error and that "the area earmarked in the application to Scottish Government was pinpointed by Kibble". On the defender's evidence, this was known to him when he made the Herald statement. He had been in discussions with the journalist from at least 3 May 2023 and his comments were a response to the journalist. From the position of the council, he concluded that there was a cover-up and that was why he made his comments. This position of the council was influential and allowed the defender not to make any further investigation or inquiry into the council's position. Further, he could believe that the premise was not false. In light of that information, the other factors mentioned, such as the "categoric assurance" and the SMFC position, did not give rise to a need for more steps to be taken to verify his belief that it was in the public interest to publish what he was to say. On balance, this was also an

objective belief. As a result, I conclude that the Herald statement meets the test that the defender reasonably believed that publishing it was in the public interest.

Defence of honest opinion

[116] Section 7 of the 2021 Act states:

“7 Defence of honest opinion

- (1) Subject to subsections (5) and (6), it is a defence to defamation proceedings for the defender to show that the conditions in subsections (2) to (4) are met.
- (2) The first condition is that the statement complained of was a statement of opinion.
- (3) The second condition is that the statement indicated, either in general or specific terms, the evidence on which it was based.
- (4) The third condition is that an honest person could have held the opinion conveyed by the statement on the basis of any part of that evidence.
- (5) The defence fails if the pursuer shows that the defender did not genuinely hold the opinion conveyed by the statement...
- (7) For the purpose of subsection (2), a ‘statement of opinion’ includes a statement which draws an inference of fact.
- (8) For the purpose of subsections (3) and (4), ‘evidence’ means—
 - (a) any fact which existed at the time the statement was published,
 - (b) anything asserted to be a fact in a privileged statement made available before, or on the same occasion as, the statement complained of, or
 - (c) anything that the defender reasonably believed to be a fact at the time the statement was published.
- (9) For the purpose of subsection (8)(b), a statement is a ‘privileged statement’ if the person responsible for its publication would have one or more of the following defences if defamation proceedings were to be brought in respect of it—
 - (a) the defence of publication on a matter of public interest under section 6,
 - (b) the defence of absolute privilege under section 9, or
 - (c) the defence of qualified privilege under section 10 or 11.”

[117] There are several English authorities dealing with defamation under the 2013 Act and offering comments on the relevant principles to be applied in relation to honest opinion. For example, in *Harcombe v Associated Newspapers Ltd* [2024] EWHC 1523 (KB), (paragraph 380), Nicklin J referred to his earlier decision in *Koutsogiannis v The Random House Group Ltd* (paragraphs 11-17) (approved by the Court of Appeal) and added:

“The court should be astute not to be too rigid in its approach to determining the issues of meaning and fact/opinion; it should be flexible and holistic: *Singh* [2011] 1 WLR 133, para 32 ; *Sube* [2018] EWHC 1234 (QB) at [33]; *Peck v Williams Trade Supplies Ltd* [2020] EWHC 966 (QB) at [11 (ii)]; and *Riley v Heybroek* [2020] EWHC 1259 (QB) at [49]. Although the particular context is everything, the more clearly a publication indicates that it is based on some extraneous material, the more likely it is to strike the reader as an expression of opinion: *Triplark* [2019] EWHC 3494 (QB) at [17].”

[118] Nicklin J also notes (at paragraph 382) that for the purposes of deciding the single natural and ordinary meaning of the publication, the ordinary reasonable reader is taken to have read the entire article (including headlines etc): *Charleston v News Group Newspapers Ltd* [1995] 2 AC 65, 72F-73D. This principle applies even if the article continues over several pages: *Dee v Telegraph Media Group Ltd* [2010] EMLR 20 (paragraph 27). He went on to say that the orthodoxy is that the single natural and ordinary meaning of a publication is to be determined by considering the publication as a whole, by the application of well-established principles. On the question of fact or opinion, these principles were noted in *Koutsogiannis* (paragraph 16) under reference to a large number of authorities:

“when determining whether the words complained of contain allegations of fact or opinion, the court will be guided by the following points:

- (i) The statement must be recognisable as comment, as distinct from an imputation of fact.
- (ii) Opinion is something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation, etc.

- (iii) The ultimate question is how the word[s] would strike the ordinary reasonable reader. The subject matter and context of the words may be an important indicator of whether they are fact or opinion.
- (iv) Some statements which are, by their nature and appearance opinion, are nevertheless treated as statements of fact where, for instance, the opinion implies that a claimant has done something but does not indicate what that something is, i.e. the statement is a bare comment.
- (v) Whether an allegation that someone has acted 'dishonestly' or 'criminally' is an allegation of fact or expression of opinion will very much depend upon context. There is no fixed rule that a statement that someone has been dishonest must be treated as an allegation of fact."

[119] On the last point, there are of course examples to be found either way. In

Wasserman v Freilich [2016] EWHC 312 (QB), Sir David Eady remarked (paragraph 22) that:

"an allegation of dishonesty, fraud or attempted fraud will usually fall fairly and squarely on the side of fact rather than opinion." However, in *Burki v Seventy Thirty Ltd & Ors* [2018]

EWHC 2151 (QB) Parks J held (paragraph 264) that:

"In my judgment, the allegations that the [the dating agency] appears to be solely focussed on obtaining its fees, without giving anything in return, and to be operating in a fraudulent way, are plainly to be seen as the expression of opinion."

In *Greenstein v Campaign Against Antisemitism* [2019] EWHC 281 (QB) Nicklin J found that two allegations that the claimant had lied were expressions of opinion. As he explained in

Zarb-Cousin v Association of British Bookmakers [2018] EWHC 2240 (QB) (paragraph 26):

"There is no fixed rule that a statement that someone has been dishonest must be treated as an allegation of fact. The real question is whether, in context, the allegation of dishonesty would be understood to be the deduction or inference of the speaker. In most cases, it will be the context in which the words appear or are spoken that will provide the answer to whether the words are (or would be understood to be) opinion or whether the statement is 'bare comment' and therefore potentially liable to be treated as an allegation of fact."

[120] In *Triplark Limited v Northwood Hall (Freehold) Limited* [2019] EWHC 3494 (QB),

Warby J explained (at paragraph 17) that the overall impression created by the publication

is likely to be the best guide whether a “bare comment” would be understood to be an allegation of fact or an expression of opinion and said:

"Although an inference may amount to a statement of opinion, the bare statement of an inference, without reference to the facts on which it is based, may well appear as a statement of fact: see *Kemsley v Foot* [1952] AC 345. As Sharp LJ, DBE, pointed out in *Butt* at [37], not every inference counts as an opinion; context is all. Put simply, the more clearly a statement indicates that it is based on some extraneous material, the more likely it is to strike the reader as an expression of opinion".

[121] It is worthy of note that the third condition (set out in section 7(3) of the 2021 Act) allows the defender to indicate “either in general or specific terms” the evidence on which the opinion is based and that the fourth condition (in section 7(4)) is that an honest person could have held that opinion “on any part of that evidence”. In this regard, the part of evidence relied on will need to be a true fact.

[122] The ultimate question or determinant will always be "how the statement would strike the ordinary reasonable reader": *Butt v Secretary of State for the Home Department* [2019] EMLR 23 (at paragraph 39). It involves an evaluation in everyday language of the statement. In relation to inferences, in *Kemsley v Foot*, Lord Porter quoted from *Odgers on Libel and Slander* and stated:

“If the defendant accurately states what some public man has really done, and then asserts that ‘such conduct is disgraceful’, this is merely the expression of his opinion, his comment on the plaintiff’s conduct. [The same result applies] if without setting it out, he identifies the conduct on which he comments by a clear reference But if he asserts that the plaintiff has been guilty of disgraceful conduct, and does not state what that conduct was, this is an allegation of fact for which there is no defence but privilege or truth.”

[123] The defender does not rely on this line of defence in relation to the campaign statement. That is understandable, because there is no reason to take the campaign statement as the expression of an opinion. Rather, it asserts the central point that the pursuers did not disclose or declare their plans to build on St Mirren owned land and states

that the defender “discovered the issue” under his FOI request. It is not presented as an opinion, drawn from other information.

[124] In assessing whether the quote in the Herald article of what the defender said is an expression of opinion, it is important to bear in mind other key points in the article. The headline is: “St Mirren faces court action as leaks ignite charity care centre row”. It goes on to state that St Mirren:

“faces court action after issuing denials that a bid for £2m of public money for a charity’s...care centre was earmarked for its land...

Questions have been raised about the legality of the bid after leaks confirmed that despite denials an application for Scottish Government funding showed that land pinpointed for the development was owned by St Mirren.”

[125] The article refers to a solicitor for the defender calling upon the club to withdraw a denial statement and issue an apology as it had emerged that a location map showed “the charity’s plan was earmarked for club land”. It goes on to say:

“Mr Wardrop, who is known by some as ‘Mr St Mirren’ has questioned the legality of the bid for public funds while concerns surface over the charity abusing its relationship with the historic Scottish Premiership club”.

The article also notes that the defender:

“accused Kibble club board representatives, Jim Gillespie and Mark Macmillan of failing to disclose to directors, shareholders and fans of the bid to build the centre that the care charity would run on club land in Paisley”.

[126] The journalist then refers to Kibble wanting to build a wellbeing hub “next to” the stadium and states that:

“But there are concerns that despite denials, St Mirren land was earmarked for the project without permission – while seeking £2m of public money by way of a grant of the Scottish Government”.

The article sets out Mr Gillespie's position, including that the council "wrongly shaded in an area of land owned by St Mirren" and mentions Kibble stating that the defender's allegations are based on "an entirely false premise".

[127] The author then states:

"The Herald on Sunday can reveal that the council does not agree that areas of land indicated on the submitted map were produced in error and say the area earmarked in the application to Scottish Government was pinpointed by Kibble".

The map attached to the application is put in the article, which says that it shows "the land proposed to be built on was, in fact, on St Mirren land". The article mentions the "row" between Kibble and the defender and quotes points from his campaign statement. It also refers to the application (Stage 2) saying that the sale of land "has been agreed".

[128] When the article is read as a whole, and its context is considered, it shows the facts on which the defender's comments were based, including the location plan that was attached to the Stage 1 application, and what the Herald revealed as Renfrewshire Council's position that it did not make a mistake in preparing the indicative location plan and that the area was pinpointed by Kibble. Applying the statutory principles, and having regard to the relevant case law, it is obvious that the defender's comment is based on extraneous material, and is a deduction, inference or conclusion. It is not, when viewed in its context, a bare comment. There are true facts, stated in the article, which form part of the evidence on which the defender's comment is based. He could take it as true that the council had said what the journalist reported. The expression "now it should be clear to everyone" is, in essence, that they would draw the same inference or conclusion. The pursuers' use of the expression "false premise" can be taken as meaning that the defender reached a view or conclusion based on the incorrect location plan. The quote from the defender would strike the ordinary reasonable reader as being an opinion.

[129] Based upon the true facts, it is clear that an honest person could hold the opinion (or draw the conclusion, inference or deduction) that the pursuers covered-up, denied and lied. For the reasons I have explained above, when one has regard to the whole of the evidence, weighing it all in the balance, that is not the true position, but it is a conclusion that could fairly have been reached by an honest person. Indeed, for what it is worth, although of no substantive relevance, according to the Herald article his view was supported by his solicitor. In terms of section 7(8), it has been established that the evidence upon which his expression of opinion relied on were facts which existed at the time the statement was published, as well as what was asserted to be a fact in a privileged statement made available before, and things that the defender reasonably believed to be a fact at the time the statement was published.

[130] Accordingly, the pursuers would have to establish that the defender did not genuinely hold that opinion. The evidence showed that it was genuinely held. It is therefore clearly established that the defender honestly held that opinion at the time of his statement.

Defence of fair retort

[131] The defender seeks to rely on the common law defence of fair retort in relation to the Herald statement and refers to *Gray v Scottish Society for the Prevention of Cruelty to Animals* [1890] 17 R 1185. It is perhaps not entirely clear that this line of defence remains in place, when the 2021 Act has identified the specific defences. However, the fair retort defence is not ruled out by the legislation. For it to apply, as Lord Shand explained in *Gray* (at 1198) under reference to *Odgers on Libel and Slander*, “the privilege of this defence extends only to such retorts as are fairly an answer to the plaintiff’s attacks”.

[132] I am not persuaded that the defence of fair retort should prevail. While it can be drawn from the statement that the defender was being challenged on things previously said, the expression “false premise” was used. The premise is the underlying incorrect basis for the inference, conclusion or deduction made by the defender rather than an allegation that the defender himself was lying. The language of the defender’s response goes beyond what could be described as only a fair answer to what was said against him.

Conclusions

[133] The central issues in this case are whether the statements were true and, if not, whether the defences under section 6 or section 7 of the 2021 Act succeed. Each side had sound reasons for the positions they took before the court, with evidence giving a fair degree of support. As has been explained, there was sufficient material before the defender which allowed him to reach his understanding about what the pursuers planned to do. But, on balance, it has not been shown that his allegations were true. They were defamatory. However, the circumstances result in the defence under section 6 applying in relation to the campaign statement and Herald statement, and also the defence under section 7 being made out for the Herald statement. As a consequence, the pursuers’ claims for damages have not been successful.

[134] It is not necessary to grant an interdict against the defender from making any such statements again, as sought in the pursuers’ first conclusion in the summons. The defender will be aware, from the reasoning I have given, that the statements made were defamatory and, but for the defences, would have led to awards of damages. There is no right or basis for him to be able to make such statements again and if he were to do so the defences would not apply. It would not be in the public interest to make such statements, since the true

position has now been determined, and as he now knows the statements were not true he could no longer have an honest opinion. There is no reasonable apprehension that he will continue to make such statements.

[135] If, contrary to the decisions reached, the defender had been liable in damages, I would have required to decide the sums due to the pursuers. The false aspects of the Stage 2 RCGF application could potentially have some impact on their reputations. But there are various elements that mitigate such a result, including the evidence about such applications being at times speculative, it being unclear as to precisely who made the incorrect points in the application and why they were expressed in the words used, and the fact that it must have been known that the funding would not be passed to Kibble if possession of the land was not achieved. This matter would not have precluded or seriously undermined an award of damages for the defamatory statements. As a result, if the defender had not established his defences, the awards of damages made would have been £40,000 for each pursuer.

Disposal

[136] I shall therefore repel the pursuers' pleas-in-law, sustain the defender's third, fifth and eighth pleas-in-law, along with the sixth plea-in-law (in part), and grant decree of *absolvitor*. In the meantime, all questions of expenses are reserved.