Claim No. K10CL527

IN THE COUNTY COURT AT CENTRAL LONDON

BEFORE: HER HONOUR JUDGE EVANS-GORDON

ON: 14 JULY 2025

BETWEEN:

JEREMY COWDREY

Claimant

-and-

VANESSA GIBSON

Defendant

JUDGMENT

1. This judgment follows the trial of yet another neighbour dispute although it is relatively unusually framed as a claim for malicious falsehood/slander to title and harassment. Jeremy Cowdrey ("the Claimant" or "Mr Cowdrey") is the owner of a property known as Crowbourne Farm in Kent. It is comprised of three pieces of land registered under separate titles: Crowbourne Farm, Smiths Lane, Goudhurst, Cranbrook, Kent TN17 1ET, registered under title number TT43370 ("Crowbourne Farm"); Cart Lodge, Crowbourne Farm, Smiths Lane, Goudhurst, Cranbrook, Kent TN17 1ET, registered under title number K815050 ("Cart Lodge"); and, a field to the northwest of Crowbourne Farm, registered under title number K787751 ("Chicken Run Field"). I use the term 'Crowbourne' to refer to the three pieces of land as a whole. Vanessa Jane Gibson ("the Defendant" or "Ms Gibson"), is the freehold owner of four neighbouring properties or pieces of land known respectively as Dovecote Barn, Smiths Lane, Goudhurst, Kent TN17 1ET, registered under title number TT80627; land to the west side of Dovecote House, Crowbourne Farm, Smiths Lane, Goudhurst, Cranbrook, Kent TN17 1ET, registered under title number K830248; land at Dovecote House, Crowbourne Farm, Smiths Lane, Goudhurst, Cranbrook, Kent TN17 1ET, registered under title number TT81074. These three pieces of land were acquired at the same time, and I will refer to them collectively as 'Dovecote Barn'. She is also the owner of land to the north of Station Road, Goudhurst, Cranbrook, Kent, registered under title number K120535 ("the Strip").

2. The Defendant's land, although held under four different title number is, in large part, a coherent whole consisting of her home (TT80627), an adjacent field (part of

TT81074), two small pieces of land adjacent to Dovecote Barn (part of K830248) and a further separate field adjoining Smith's Lane (also TT8107 and part of K830248). However, it is also comprised of three other small and completely separate pieces of land of no obvious value or utility in themselves (part of TT81074, part of K830248 and the Strip). It appears that ownership of these small pieces of land gives the Defendant some control over her neighbours arising out of the different conveyances or transfers of the various pieces of land which she and they own and the covenants therein. It is this diversity of ownership and conveyances that gives rise to a large part of the dispute. It is the result of the development and breaking up of a much larger farm in or around 1998.

3. The Claimant was represented by Ms Lyne of Counsel, instructed by Fosters LLP while Ms Gibson appeared in person. I am grateful to Ms Lyne for her Skeleton Argument, which set out the background and the law, and her cross-referenced chronology. I am grateful to both Ms Lyne and Ms Gibson for the measured way in which they conducted the case.

Issues

4. It is common ground that during a period when the Claimant was seeking to sell Crowbourne in April to June 2023, the Defendant raised various issues relating to the boundary between the Strip and Crowbourne Farm ("the Boundary Dispute"), breaches of covenant and planning law in relation to the main house at Crowbourne Farm ("the Crowbourne Farm Covenant Dispute"), breaches of restrictive covenants in relation to Cart Lodge ("the Cart Lodge Covenant dispute"), unlawful utility services laid across the Defendant's land for the benefit of Cart Lodge ("the Cart Lodge Services Dispute"), flooding of Dovecote Barn and a third party property, Dovecote House, by or from a lake on Crowbourne Farm ("the Flooding Dispute"). I will not set out the allegations in any greater detail as there are many of them, what was said is not in dispute as it is all in writing and I do not wish to lengthen this judgment any further. Ms Gibson also insisted that the potential purchasers be informed of the matters she raised. Broadly, the issues for me are i) whether the Defendant's allegations or any of them, were false; ii) at the time they were raised or pursued, did the Defendant know they were false or was she reckless as to their truth or falsity; iii) whether the Defendant 'published' her false allegations; iv) whether the Claimant suffered loss and/or damage in consequence of issues i) – iii); and v) whether the Defendant engaged in a persistent and deliberate course of conduct that amounted to harassment of the Claimant.

5. It seems to me that the specific issues are:

    i) Was the Boundary Dispute still live in April 2023 or had it been settled?
    ii) Did Cart Lodge have utility easements over the Defendant's land?
    iii) Was the conversion of Cart Lodge into residential accommodation/ a holiday let, a breach of covenant? Was Cart Lodge used as a holiday let?

iv) Was the construction of a swimming pool at Crowbourne Farm a breach of any covenant?

v) Was the conversion of outbuildings to residential accommodation at Crowbourne Farm a breach of covenant. Did or would the use of such converted buildings for the accommodation of live-in staff or family and friends involve Crowbourne Farm being used as anything other than a "single private dwelling house"?

vi) Did the owner of Crowbourne Farm require permission from the Defendant or her predecessors in title to apply for planning permission before carrying out any works? If yes, is the Defendant time-barred?

vii) Do the covenants in the Third Schedule of the 1998 conveyance or the transfer of Cart Lodge in 2000, run with the land or were they personal to Embassy Property Group Limited ("Embassy")?

viii) Was Crowbourne Farm the source of flooding of Dovecote Barn (or Dovecote House)?

ix) Did the Defendant publish false allegations?

x) Were the allegations made maliciously?

xi) Did the allegations cause loss to the Claimant and, if yes, what is the *quantum* of loss?

xii) Did the Defendant's conduct between April and June 2023 in raising the above matters on numerous occasions constitute oppressive and unacceptable behaviour calculated to, and which did, cause the Claimant anxiety, distress, humiliation and/or financial loss?

xiii) If yes, what damages should be awarded?

6. In relation to issues i)- vii) and viii), I must also determine whether Ms Gibson knew her allegations were false.

Background

7. As stated, all of the land owned by the parties was in common ownership in 1998. A contract for the sale of the whole of the land was entered into with Embassy. However, the legal title to part of the land was not transferred to Embassy but, at its direction, was transferred to the Claimant's predecessors in title by way of an intermediate sale. It is not necessary to set out the full history of the conveyances or transfers of the various parcels of land, it is sufficient to say that Crowbourne Farm and Chicken Run Field are subject to covenants in a conveyance dated 31 July 1998 ("the 1998 conveyance"), specifically, in the Third Schedule to that conveyance.

8. By a transfer dated 2 August 2000 ("the 2000 transfer") Embassy transferred Cart Lodge to the Claimant's predecessors in title. That transfer contained various covenants binding on Cart Lodge. The Strip has the benefit of those covenants to the extent that they run with the land. On 12 June 2001 planning permission was granted for the conversion of Cart Lodge for use as holiday let accommodation. Over the next 18 months or so to roughly the end of 2002, the conversion works were completed.

9. On or around 30 July 2001, the Defendant and her husband bought Dovecote Barn and all the other pieces of land save the Strip. At the time, the Defendant's land included further land on which she and her husband subsequently built a property known as Dovecote House. They sold Dovecote House in or around 2020. That land has the benefit of the covenants in the 1998 conveyance.

10. On or around 3 May 2018, the Defendant's land, excluding the Strip, was transferred into her sole name. It appears that her husband was in significant financial difficulties and was made bankrupt shortly thereafter. He told me that he had informed his trustee-in-bankruptcy about the transfer of his interest to his wife. In 2020, the Defendant and her family moved to Dovecote Barn and sold Dovecote House.

11. On 12 January 2022, the Claimant acquired Crowbourne from a Mr and Mrs Brunton. At the time, a tennis court belonging to Crowbourne Farm was placed partly on the Strip. Mr Gibson's solicitor raised doubts about title to the Strip, or the relevant part of it, but Mr Cowdrey preferred to rely on assurances from Mr Peppitt of Savills. On the ground, it appeared that the Strip, or the relevant part of it was incorporated into the grounds of Crowbourne Farm. However, on 1 April 2022 the Defendant became the registered owner of the Strip, having bought it for £10,000 from Bidvest Limited ("Bidvest"), Embassy's successor in title. It seems that the Strip had been retained by Embassy as an access for a potential development that never took place. Who has the benefit of those covenants is an issue in this case. Were the relevant covenants for the benefit of, what was described as the "Adjoining Land", which was that land conveyed to Embassy on the same day, or were the covenants personal to Embassy? If the covenants ran with the land the benefit of those covenants, for these purposes, runs with the Strip, owned by the Defendant.

12. In ignorance of the Defendant's purchase of the Strip, the Claimant attempted to buy it from Bidvest. There is a dispute about what the Defendant knew about the proposed purchase and whether or not she concealed her purchase of it from the Claimant. It is common ground that the Claimant tried, unsuccessfully, to buy the Strip from the Defendant in late 2022 and that the Defendant contested the right of the Claimant to maintain the tennis court on the Strip. There was correspondence between the Claimant's then solicitors, Moore Barlow LLP and the Defendant. Relations between the parties became more acrimonious.

13. By the first half of 2022, the Claimant had decided to sell Crowbourne, at least partly due to disputes with Defendant. The Defendant was aware of this from around May 2022 or, at the latest, by 7 September 2022. Following some informal marketing, in or around November 2022, the Claimant found a buyer in a Mr and Mrs Waters. However, the sale did not proceed because of the Waters' concerns about the Defendant's "unpredictable and apparently at times malicious tendencies." A second expression of interest by a Mr and Mrs Thomas was withdrawn in mid-April, it is said, due to the Defendant's behaviour. The Claimant decided to abandon his claim to the Strip and the parties compromised the dispute. This involved the Claimant moving the tennis court and erecting a fence along the boundary between his land and the

Strip as shown on the registered plan. The agreement was reduced to writing. The agreement was first signed by the Claimant and delivered to the Defendant on 15 March 2023 ("the Boundary Agreement"). The Claimant did not know that because the Defendant had stated on 18 March that she needed to discuss the Boundary Agreement with her solicitors and on 20 March, stated that she was unable to sign it, and would need to revert to a defined boundary application. In fact, the Defendant signed the Boundary Agreement on 22 March 2023 on which day she also posted an application to register the agreement to the Land Registry. The Defendant did not provide a copy of the Boundary Agreement as signed by her until many months later. The first the Claimant was aware that the Boundary Agreement had been signed was when his solicitor discovered that the Defendant had Lodged an application to register it with the Land Registry. The Defendant had not informed the Claimant of the application.

14. Following his signing of the Boundary Agreement, the Claimant formally put all of his land on the market. He informed the Defendant of his intention on 5 April 2023. A Mr and Mrs Hunn offered £3.85 million for the whole of the land on 26 April 2023. The settled dispute over the Strip was disclosed to them. There was a proposed completion date of 9 June 2023. Between 27 April and mid-June 2023, the Defendant sent 23 letters and emails to the Claimant and/or his solicitors raising the above-mentioned issues, many, if not most, of which insisted that the Defendant's claims be disclosed to prospective purchasers. Mr Hunn told the Claimant he was withdrawing from the purchase on 7 June 2023 because, it is said, his "solicitor would not allow him to exchange while the ferocity of the Defendant's correspondence continued". They formally withdrew on 12 June 2023. The Claimant took the view that the disputes with the Defendant would have to be resolved before he could sell his property and withdrew it from the market.

15. After attempts at resolving the matter in correspondence, the claim was issued on 29 August 2023.

Law

16. As stated, I am grateful to Ms Lyne for her summary of the law in her skeleton argument and post-trial written submissions. She also took me and the Defendant through the key authorities and documents in opening. Ms Gibson did not provide me with a note on the law at the outset. On day two or three of the trial, she produced a ring binder called the 'Defendant's Authorities Bundle'. It consisted only of 1.5 pages of A4 listing up to 19 authorities or statutes under 5 different headings with a one-line summary of what the Defendant asserts they say. I was not provided with copies of the cases themselves. Some of the summaries appear to be consistent with Ms Lyne's propositions. Ms Gibson has not challenged Ms Lyne's summary save to the extent that her list of authorities and principles may appear to be inconsistent with it. Ms Lyne's summary of the applicable principles, with additions from Ms Gibson, is as follows:

<u>Malicious Falsehood/Slander of Title</u>

i) At common law, the tort of malicious falsehood requires four conditions to be met: (1) a publication by the Defendant about the Claimant (2) which is false (3) which is published maliciously and (4) which causes special damage (*Ratcliffe v Evans* [1892] 2 QB 524 at 527);

ii) Publication includes making a statement where it is reasonably foreseeable that the statement will be repeated or republished or where the statement is made to a person under a duty to repeat it (*McManus v Beckham* [2002] EWCA Civ 939 at [34]; *Terluk v Berezovsky* [2011] EWCA Civ 1534 at [272]-[28])

iii) Malice means that a Defendant was actuated by some wrong or improper motive such as to injure the Claimant (*Horrocks v Lowe* [1975] AC 135);

iv) An honest belief in an unfounded claim does not constitute malice nor does a plea that the Defendant 'ought to have known' their statement was untrue (*Spring v Guardian Assurance plc* [1995] 2 AC 296);

v) If a Defendant knew that their statement was false that will generally be conclusive of malice (*Cruddas v Calvert* [2013] EWHC 2298 (QB) at [204]-[205]);

vi) Malice may also be inferred where a Defendant was reckless as to the falsity of their statement (*Clerk v Lindsell on Torts* at [22-14] and the cases there cited);

vii) At common law, financial loss must be proved with some certainty and precision both as to cause and *quantum*;

viii) Where s.3.1 of the Defamation Act 1952 ("the 1952 Act") (slander of title) is applicable, there is an irrebuttable presumption of law that financial loss has been caused although it is still necessary to prove *quantum* (*George v Cannell* [2024] UKSC 19 at [47]-[54]);

ix) For these purposes, s.3(1) of the 1952 Act requires a Claimant to prove that the words relied upon were calculated to cause pecuniary loss to the Claimant and are published in writing or some other permanent form;

x) Damages can include diminution in the value of land as a result of a relevant statement or for loss of a contract of sale which the statement has baulked (*McGregor on Damages* (22nd ed.) at [49.013]);

xi) Damages for malicious falsehood can include aggravated damages (*George v Cannell (supra))* at [114]-[119];

<u>Harassment</u>

i) To establish harassment under the Protection from Harassment Act 1997 ("PHA 1997"), a Claimant must establish (1) conduct that occurred on at least two occasions; (2) targeted at the Claimant; (3) objectively calculated to cause such alarm or distress; (4) the perpetrator knew or ought to have known that the conduct was likely to cause alarm and distress in that it was objectively oppressive and unacceptable and (5) may depend on the social or working context in

which the conduct occurs (s.1(1), s.7(2), (3)(a) and (4) of the PHA 1997 and *Dowson v Chief Constable of Northumbria* [2010] EWHC 2612 (QB) at [142]);

ii) Harassment "is a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress." (*Hayes v Willoughby* [2013] UKSC 17 at [1]) and involves considering the totality of the conduct as a whole (*Iqbal v Dean Manson* [2011] EWCA Civ 123);

iii) The test for "ought to know" is objective: would a reasonable person in possession of the same information think that the course of conduct amounted to or involved harassment (s.2 of the PHA 1997);

iv) It is a defence to show that the course of conduct was reasonable (s.3(c) of the PHA 1997);

v) Damages may be awarded for financial loss and for anxiety "among other things" (s.3(2) of the PHA 1997). The loss does not have to be reasonably foreseeable (*Jones v Ruth* [2011] EWCA Civ 804);

vi) The *Vento* bands may be of assistance in assessing appropriate *quantum* (*Suttle v Walker* [2019] EWHA 396 (QB) and the court may award aggravated damages (*McGregor on Damages* at [44-24);

<u>Business use and single dwelling/private residence</u>

i) Whether use as a holiday let or for short-term letting breaches a covenant depends on the wording of any relevant covenant;

ii) Where there is a covenant to use a property as a "private dwellinghouse", a "single private dwelling", a "residence" or "for residential purposes", short holiday lettings are likely to constitute a breach of such a covenant (see e.g *Nemcova v Fairfield Rents Ltd* [2016] UKUT 303 (LC);

iii) "Business use" must be construed in its ordinary sense and is to be given a broad meaning as such prohibitions are intended to preserve the amenities of residential premises and neighbourhoods (*Florent v Horez* (1984) 12 H.L.R. 1 CA)'

iv) Where a covenant prevents business use, taking in lodgers or short-term lettings on a systematic basis is capable of amounting to business use (*Thorn v Madden* [1925] Ch 847; *Tendler v Sproule* [1947] 1 All ER 193). However, the Upper Tribunal has held that the letting of a flat as a serviced apartment did not breach a covenant against carrying on a business although it did breach a covenant restricting use to a private dwellinghouse (*Triplerose Ltd v Beattie* [2020] H.L.R. 37);

v) Short term lettings are treated as a business or trade under many statutes such as The Finance Act 1984, the Capital Allowance Act 2001 and for VAT purposes.

17. More generally, he who asserts a fact bears the burden of proving it. The standard of proof is balance of probabilities. I bear in mind the guidance in *Gestmin v Credit*

Suisse [2013] EWHC 3560 (Comm) to the effect that memories are not always reliable and contemporaneous documentary evidence is more reliable. I also bear in mind that lies must be material and intended to mislead. It must be a realisation of wrongdoing. People lie for lots of reasons including fear, shame or simply to bolster an otherwise true case.

Evidence

18. For the Claimant, I heard oral evidence from Nathan Dyke ("Mr Dyke"), the solicitor who was acting for Mr Cowdrey on the sale of Crowbourne Farm to Mr and Mrs Hunn, Julia Meadowcroft ("Ms Meadowcroft") of Knight Frank, the estate agent acting on the sale in March to June 2023, Mr Timothy John Waters ("Mr Waters"), who had been interested in buying the property in late 2022 but withdrew. He is currently renting Crowbourne from Mr Cowdrey. I also heard from Mr Cowdrey himself. In my view all these witnesses were honest and doing their best to assist the court. Occasionally Mr Cowdrey's memory was not entirely accurate, but he readily accepted this. Mr Dyke plainly recalls his frustrations in his dealings with Ms Gibson but was at all times measured and courteous as was Ms Meadowcroft. I am satisfied that both remember the events quite well. Mr Waters and Mr Cowdrey each have a measure of hostility towards Ms Gibson as a result of her actions, their more personal interest in the outcome of this case and their experiences of her as residents of the area. However, in my judgment this did not affect the reliability of their evidence, and both remained calm and courteous.

19. There was little written evidence filed on behalf of the Defendant. She herself, did not file written evidence dealing with any of the issues. Ms Gibson told me that she didn't realise she had to file a witness statement. I was not wholly persuaded by this, not least because she attempted to file a witness statement at the last minute on the basis HHJ Gerald had permitted her to do so, which he had not. In any event, that witness statement did not address the issues. Ms Gibson did not adduce any expert evidence. She was given an opportunity to rely on such evidence by the order of 18 June 2024. She told me that she had understood that the Order was for a single joint expert. I do not accept that submission. The order is absolutely clear on its face and the Claimant's costs' budget, which was approved at that hearing, set out the costs of instructing a separate expert. Further, the Skeleton Argument provided by the Claimant for the PTR on 21 February 2025 drew the Claimant's attention to the fact that she had not filed such evidence. No correspondence was put before me which indicated that Ms Gibson had sought to agree a joint expert or a joint letter of instruction. Finally, in her witness statement of 8 August 2024, Ms Gibson indicated that that she would "seek the Courts [*sic*] permission to include the Expert Report [of a Mr Hardcastle] when it has been sourced." In my view, in this respect, Ms Gibson was, at best, disingenuous and, at worst, deliberately misleading me. Ms Gibson knew what she had to do but failed to take the necessary steps.

20. I heard oral evidence from the Defendant and her husband, Stephen James Gibson ("Mr Gibson"). Mr Gibson's oral evidence was less contentious than some of his written evidence in some respects and he did not always support the Defendant's

evidence. For example, he was much more willing to accept the obvious meaning of documents such as emails exchanged with a Mr Eley on 7 September 2022 which were plainly seeking and giving advice on how they should deal with Mr Cowdrey's offer to buy the Strip or pursue a claim to it. He disclaimed knowledge of various matters particularly, details of his wife's purchase of the Strip.

21. Ms Gibson was a difficult witness. She was, at times, disingenuous or dishonest. Her evidence was inconsistent with the documents. She did not accept the obvious purpose and meaning of the above-mentioned emails with Mr Eley. Ms Gibson denied knowledge of Mr Cowdrey's intention to sell Crowborough Farm when the documents plainly show she was aware of it. Ms Gibson stated that she was not aware of the proximity of exchange of contracts with Mr and Mrs Hunn when her emails at the time referred to "this late minute development" [*sic*]" and "at a very late stage in the conveyancing". Ms Gibson was disingenuous in asserting that her May/June 2023 correspondence was merely "seeking clarification" not raising issues when her own words in some of that correspondence referred to "issues". Ms Gibson was taken to her email of 19 May 2023 in which she stated in relation to services to Cart Lodge: "Mr Brunton highlighted that there was no permission granted to go over our land and if not addressed they will be discontinued as from 26.05.2023". Notwithstanding the clear wording, Ms Gibson said that she didn't agree that that this constituted a threat although she offered no reasonable alternative meaning. In my view, Ms Gibson made statements that she thought would support her case rather than answering honestly. I found her oral evidence to be unreliable. She is a disputatious person having on numerous occasions fallen out with neighbours. Mr Waters gave evidence that she had fallen out with a Mr and Mrs Street, Mr Tony Wilson, a local solicitor and a Mrs Murdoch. Mr Cowdrey gave evidence that Ms Gibson had fallen out with a Mr and Mrs Hamill and the impact was so great Mrs Hamill didn't feel able to give a witness statement in this case. Mr Cowdrey also stated that Ms Gibson had had a dispute with her son's school. He also said the primary reason his wife left Crowbourne Farm was Ms Gibson's conduct. Mr Cowdrey also asserted that Ms Gibson had accused Mr Brunton of exposing himself to her children, a very serious allegation she did not subsequently pursue. The only alleged dispute that Ms Gibson challenged was her relationship with Mrs Cowdrey. She did not challenge Mr Waters' or Mr Cowdrey's evidence as to her other disputes. Far from being the neighbourly person she insisted she is, Ms Gibson's actions indicate the contrary. For example, she built a fence along the Strip closing off a gateway onto it from Mr Waters' daughter's land which had been in use for many years. Ms Gibson's history speaks rather louder than her words.

22. Ms Gibson filed and served a witness statement by a Benjamin Charles Town, the current owner of Dovecote House ("Mr Town"). His statement is limited to the flooding of Dovecote House and conversations he had on that topic with Mr Brunton and Mr Cowdrey. Mr Town did not attend to give oral evidence. I was told by Ms Gibson that he was ill but saw no evidence of such illness nor was I asked to hear his evidence remotely or on a different day.

23. I have also read the pleadings, all the witness statements, the various documents to which I was taken during the course of the hearing, the skeleton arguments and post hearing written submissions. I have read some other documents in the bundles in the course of preparing this judgment but have not attempted, nor been asked, to read the balance of the nearly 1800 pages contained in the bundles.

Discussion and Decision

24. There are a few general issues of fact which relate to all of the matters I am asked to determine. They are:

    i) Did Ms Gibson conceal her purchase of the Strip from Mr Cowdrey in 2022?
    ii) Did Ms Gibson know that Mr Cowdrey wanted to sell Crowbourne Farm in mid to late 2022?
    iii) Did Ms Gibson know that a sale to Mr and Mrs Hunn was imminent in late May/early June 2023?

Did Ms Gibson conceal her purchase of the Strip from Mr Cowdrey in 2022?

25. Mr Cowdrey's evidence is that he informed Ms Gibson that he wanted to buy the Strip and that Ms Gibson had given him the contact details for Mark Joslin of Bidvest, the then owner, in connection with the Strip. Ms Gibson accepted that she had told Mr Cowdrey that, during the previous year, she had been given an opportunity to buy the Strip. She asserted in her oral evidence that she had told Mr Cowdrey, at a drinks party held in his house on or around 4 March 2022, that she had bought the Strip. Ms Gibson denied giving Mr Cowdrey Mark Joslin's contact details and denies attending Mr Cowdrey's house when he had a phone conversation with Mr Joslin. However, she accepts that she was joined to a conference call with Mr Cowdrey and Mr Joslin but says she was cut off quite quickly and does not know what was said.

26. The Strip was of great importance to Mr Cowdrey – his tennis court was built on part of it. It seems to me unlikely that he would have forgotten if Ms Gibson had told him that she had already purchased the Strip as opposed to having an, unacted upon, opportunity to buy it. Irrespective of whether Ms Gibson was physically present in Mr Cowdrey's home or joined to a conference call, it seems to me to be very unlikely that Mr Cowdrey would have contacted Mr Joslin at all if Ms Gibson had already told him that she had bought the Strip. It is also very unlikely that he would have joined her to a conference call had he known. Ms Gibson's evidence was unreliable in that she initially denied being party to any call and then accepted that she had been joined but cut off quite early on. This cannot be true. In his email of 7 September 2022, Mr Eley referred to Mr Cowdrey trying to "gazumpt us and by it from embassy (the conference call) etc" [*sic*][1]. Mr Eley could only have known that if Mr or Ms Gibson had told him. Ms Gibson must have been a party to the call in order to hear that Mr Cowdrey wanted to buy the Strip. Further, she first told me correctly, that she completed on the

[1] In the email of 7 September 2022, 'Cricket' is Mr Cowdrey and 'Lux' is Mr Gibson. 'Ness' is Ms Gibson.

Strip on 1 April 2022 but then tried to suggest that she had completed earlier than that, perhaps in an effort to persuade me that she told Mr Cowdrey that she had already purchased the Strip. There is no mention in any document of Ms Gibson owning the Strip until 25 August 2022 when she raised it in an email to the Claimant. Given the importance of the Strip to Mr Cowdrey and the unreliability of Ms Gibson's evidence, I prefer Mr Cowdrey's evidence to that of Ms Gibson. I am satisfied that Ms Gibson did not disclose that she had either exchanged contracts on the Strip or was close to it and that she gave Mr Cowdrey Mr Joslin's contact details. I am satisfied that she concealed her purchase from Mr Cowdrey probably until it would be to her advantage to disclose it. It is extraordinary that she did not raise the issue of the tennis court until 25 August 2022. I do not accept Ms Gibson's use of the word "readdress" referred to previous disclosure of purchase but to discussions about Mr Cowdrey's interest in it.

Did Ms Gibson know that Mr Cowdrey wanted to sell Crowbourne Farm in mid to late 2022?

27. In my judgment, Ms Gibson was plainly aware that Mr Cowdrey intended to sell Crowbourne Farm by August 2022. On 4 August 2023, Ms Gibson, in a letter to Mr Cowdrey's current solicitors, Forsters LLP, stated that Mr Cowdrey had informed her in May 2022 that he would be "quietly marketing the property in Spring 2022". She must have meant 2023. By August 2022 a friend of Mr and Mrs Gibson, a Mr Eley, had been told that Mr Cowdrey wanted to sell Crowbourne Farm because he said so in his email of 7 September 2022. His only source of knowledge would have been Mr and Mrs Gibson. It was not suggested that Mr Gibson may have known but Ms Gibson did not – such a suggestion would have been incredible, and she would, in any event have learnt of it from Mr Eley's email. That email makes it clear that the Gibsons were concealing their knowledge of Mr Cowdrey's plans. I do not accept Ms Gibson's poor attempts to convince me that she did not understand this email or to suggest that Mr Eley was referring to sport when he said 'Cricket'. It is equally plain that Mr and Ms Gibson wished to use this knowledge to extract a high price from Mr Cowdrey.

Did Ms Gibson know that a sale to Mr and Mrs Hunn was imminent in late May/early June 2023?

28. The answer to this question is plainly yes. As set out above, Ms Gibson, in at least two emails referred to the late stage or point in the conveyancing. She also stated on 19 May 2023 that she wanted a response to her letter of that date "no later than close of business Friday 26th May 2023, and prior to your exchange."

Was the Boundary Dispute still live in April 2023 or had it been settled?

29. The answer to this question is plainly that the dispute had been settled by 22 March 2023 at the latest. By this date, the Boundary Agreement had been signed by both parties and Ms Gibson had sent it to the Land Registry for registration.

30. Arguably, the dispute was settled a little earlier, on or around 14 March 2023, when the Defendant signed a determined boundary agreement, which had already been

signed by Mr Cowdrey, and sent it to the Land Registry for registration. Mr Cowdrey, in the belief that the Defendant had not signed the determined boundary agreement but had rejected it, asked Mr Dyke to draft a boundary agreement in its stead. Mr Cowdrey held this belief because i) the Defendant told him that she no longer wished to enter into the determined boundary agreement which she considered to be restrictive; ii) he asked her to tear up that agreement as signed by him; and, iii) in her response, the Defendant did not refuse to do so or give any other indication that she wished to sign the determined boundary agreement and register it. All of this is recorded in WhatsApp messages between the parties.

31. Mr Cowdrey then arranged for Mr Dyke to draft a further boundary agreement. The Defendant, having rejected the agreement prepared by Mr Dyke, put forward her own draft agreement. Mr Cowdrey accepted that draft and signed it on 15 March 2023 when he also hand-delivered it to Ms Gibson's property asking her to sign it and return it to Mr Dyke. At no point during the exchanges in relation to Boundary Agreement did Ms Gibson inform anyone that she had not only signed the determined boundary agreement but had also sent it to the Land Registry for registration. On 17 March 2023, Ms Gibson had, falsely, suggested that she had signed the Boundary Agreement when she said "Yes I confirmed to Nathan [Mr Dyke] I had received it. I'm not sure if posted yet shall check with PA". Over the next few days, Ms Gibson raised various reasons why Mr Cowdrey could not collect the signed Boundary Agreement from her. On 18 March 2023 Ms Gibson emailed stating that she had not signed the Boundary Agreement and on 20 March 2023 stated in email that she would not sign it.

32. As matters have turned out, Ms Gibson in fact signed the Boundary Agreement on 22 March 2023 and on the same day posted an application to the Land Registry seeking registration of that agreement. However, Ms Gibson did not contact the Claimant or Mr Dyke and inform them that she had signed the Boundary Agreement or that she had made an application to register it to the Land Registry. The first hint that the Boundary Agreement might have been completed came on 27th April 2023, over a month later, when Ms Gibson, by email, asked the Claimant for confirmation that matters relating to the Strip were "concluded". She did not state that she herself had signed the Boundary Agreement or state that she had made an application to the Land Registry to register it. On 2 May 2023 Ms Gibson emailed Ms Meadowcroft and stated that Mr Cowdrey had signed a legal agreement to the effect that the Strip was owned by her but does not assert that she herself has signed it. Indeed, in the same email, Ms Gibson identified the boundary with the Strip as an issue "which must be resolved before new owners [*sic*]. Please ensure that my position on [the Strip] is very clear to any potential buyers."

33. On 19 May 2023 Ms Gibson wrote to Mr Cowdrey again repeating that *he* had signed the Boundary Agreement and asserting that copies of the document were with Mr Dyke. It was not until 25 May 2023 that Ms Gibson wrote to Mr Dyke, again referring to two legal agreements that Mr Cowdrey had signed and stated that the Boundary Agreement had been sent to the Land Registry with a copy for Mr Dyke's

conveyancing files. She did not state that she herself had signed it. Mr Dyke replied the following day, 26 May 2023, stating that both parties needed to sign the documents for them to be legally binding and asking Ms Gibson if she was proposing to sign them. He asked her to provide him with copies of the signed documents to which she referred because he himself did not have any copies. Later the same day, Ms Gibson replied stating that both parties had signed and dated the agreements, but she did not attach copies of them. On 2 June 2023 Mr Dyke again wrote to Ms Gibson asking her to send him copies of the signed and dated documents. He also informed her that the buyers' lawyer had noted that there were pending registrations affecting the Strip which had been submitted by Dean Wilson LLP. Ms Gibson replied suggesting that Mr Dyke intended to dispute the signed agreement and, if he did, the dispute over the Strip would be live. Again, she did not attach copies of the signed documents, nor did she explain that she had made the two applications to the Land Registry, one in relation to the determined boundary agreement and one in relation to the Boundary Agreement. Ms Gibson merely insisted that Dean Wilson LLP were not acting for her and that Mr Dyke could obtain information either from the Land Registry or from her. The latter assertion was ironic given that Mr Dyke had twice asked Ms Gibson for copies of the signed agreements without success and Ms Gibson had not provided any information about the Land Registry applications although Mr Dyke had raised them with her.

34. On 5 June 2023, Ms Gibson again told Mr Dyke that he should obtain copies of the documents from the Land Registry and required Mr Dyke to inform the buyers' solicitor, that the boundary was in dispute. A further letter dated 5 June 2023 from an email address called Personal Assistant Litigation was sent on behalf of Ms Gibson again referring to the signed boundary agreements but asserting that Mr Dyke had raised a potential dispute in his earlier correspondence of that date. This email did not provide a copy of the signed agreements. Later that day, in a third email, Ms Gibson attached a copy of the Boundary Agreement. I asked to see a copy of that email together with the attachments to see if Ms Gibson had provided a signed copy of the Boundary Agreement. She had not; she had supplied simply the draft agreement unsigned. On 6 June and 8 June respectively Ms Gibson asserted that Mr Dyke stated that he was unaware of a Boundary Agreement and would be seeking adverse possession. This latter assertion was not true, Mr Dyke never made any assertion in relation to a claim for adverse possession of the Strip or any part of it.

35. Ms Gibson's conduct, as set out above, is bizarre, particularly in relation to the procuring of the Boundary Agreement when she had already signed the determined boundary agreement and sent it to the Land Registry. Why she did not inform either Mr Cowdrey or Mr Dyke of this for many weeks is incomprehensible. Why she did not provide signed copies of the two agreements when asked is equally incomprehensible. In her oral evidence, Ms Gibson asserted that she had provided a signed copy of the Boundary Agreement to Mr Dyke. She did so in reliance on an email from Mr Dyke to her dated 17 March 2023 in which he stated that he understood that she had put a signed copy of the Boundary Agreement in the post to him. This could not be true because Ms Gibson did not sign that document until 22

March 2023. A further example of making up evidence is her assertion for the first time in oral evidence that she had placed a signed copy of the Boundary Agreement in Mr Cowdrey's letterbox and "perhaps [his] housekeeper took it". In my judgment, Ms Gibson was lying to me in order to conceal her intention at the time to interfere with Mr Cowdrey's sale of Crowbourne. In saying this I remind myself of the *Lucas* warning about lies. I have difficulty in relying on what Ms Gibson says about the Boundary Agreement.

36. What is clear to me is that Ms Gibson knew, at all relevant times that the Boundary Agreement had been signed by both parties and sent to the Land Registry. She also knew that both parties were bound by the Boundary Agreement at that point in time, not least because Mr Dyke had told her so, in terms, in his email of 26 May 2023. Further, she was the only person who knew that she had signed both the determined boundary agreement and the Boundary Agreement until after the sale had fallen through. The Claimant's case is that the first time the signed Boundary Agreement was provided was with the defence. There is no reliable evidence to rebut this. There is no evidence that Mr Dyke asserted that Mr Cowdrey would claim the Strip by adverse possession in May or June 2025. Indeed, he was asserting that the dispute had been settled. In those circumstances, Ms Gibson knew that her statement to Ms Meadowcroft of 2 June 2023 to the effect that it was necessary to resolve the issue of the Strip was false as were subsequent emails to the same effect of 5, 6 and 7 June 2023.

Did Cart Lodge have utility easements over the Defendant's land?

37. The Defendant raised the issue of the utility services for Cart Lodge in an email to the Claimant of 27 April 2023. This was the first time that she had done so. In that email she stated that Mark Brunton, Mr Cowdrey's immediate predecessor in title, had informed her that the services to Cart Lodge went over her land and that there was no permission to do so and that the parties should resolve that issue together before any new interested parties carry out conveyancing. On 2 May 2023 Ms Gibson wrote to Ms Meadowcroft raising, amongst other things, the services to Cart Lodge and asking that Ms Meadowcroft discuss those matters with her as they "must be resolved before new owners" [*sic*]. On 19 May 2023 Ms Gibson again wrote to the Claimant asserting that Cart Lodge was not entitled to services over her land and threatening to discontinue those services on 26 May 2023 if the issue had not been addressed. She stated that she wanted the issues resolved by that date and prior to any exchange of contracts by the Claimant. On 25th May 2023 the Defendant wrote to Mr Dyke again raising the question of Cart Lodge and asking him to ensure that the buyer's solicitors have a copy of her letter. On 26 May 2023 Mr Dyke wrote to Ms Gibson and pointed out that express easements were granted to Cart Lodge over her land in the 2000 transfer. He also pointed out that even if there had been no express easements granted the services had been in place for more than 20 years therefore Mr Cowdrey had acquired prescriptive rights by over 20 years user. He concluded by saying, in this respect, that it would not be necessary to do anything at all in relation to the services. In her reply of 30th May 2023 Ms Gibson notes what he says about the services.

Notwithstanding this on 5 June 2023 Ms Gibson again raises the issues of the easements to Cart Lodge asking for details of the easements and asserting that Cart Lodge was derelict until 2002 and no permissions were sought from her over her land.

38. As far as the witness evidence is concerned the Defendant put in no written evidence on this issue. Her husband, Mr Gibson, said merely that the Bruntons had installed new services to Cart Lodge across Ms Gibson's land without permission. However, he said that this was in 2019 therefore it does not relate to the services to which the Defendant refers. This must be an error as it is unlikely in the extreme, that the Defendant would have taken no action at all in 2019 if Mr Brunton was busy digging up her field. Ms Gibson accepted throughout that the disputed services were installed or utilised at the time that Cart Lodge was converted to residential accommodation after planning permission was granted in 2001. There is no evidence that Ms Gibson raised this issue with Mr Cowdrey before 27th April 2023, approximately five weeks after the dispute over the Strip was settled. As stated Ms Gibson asserted that she had forgotten Mr Brunton had informed her that the services to Cart Lodge went over their land.

39. The relevant provision in the 2000 transfer is as follows:

> "THE FIRST SCHEDULE
> The Rights
>
> (b) The right for the Transferee and the Transferee's successors in title the owners and occupiers for the time being of the Property together with the Transferor and all others so entitled to use any sewers drains septic tanks cesspits pipes cables and water courses now in under or upon the Retained land [the Defendant's land] or any part thereof and freely to run and pass water soil electricity and telephone ("the Services") through and along the same or any of them"

40. None of the parties or the witnesses profess any direct knowledge about what happened in 2001-2002 in relation to the conversion of Cart Lodge and any installation of utilities. The documents show that planning permission was granted on 12 June 2001 therefore the conversion probably took place thereafter. There may have been utility services in place at the time. If there were, then Cart Lodge was granted express rights to use those services by the 2000 transfer. Ms Gibson and her husband acquired the land under which the services run on 30 July 2001. If the services were laid after this date, on balance of probabilities, Ms Gibson would have known of it but neither she nor Mr Gibson assert that they were aware of any such works. Laying such services does not happen overnight and the evidence remains visible for some time. Indeed, their evidence is that they were informed of the laying of utilities by Mr Brunton. In light of this, in my judgment it is most likely that the utility services were already in place by 30 July 2001 and Mr Cowdrey had acquired easements by long user by 31 July 2021.

41. If I am wrong about this, it seems to me that it is likely that the conversion of Cart Lodge followed on fairly promptly after the grant of planning permission. Planning permission was initially refused therefore there had already been some delay. It is likely that the services were laid in the early part of the conversion works, although, as I have said, it is highly unlikely that Ms Gibson, as the owner of the land, would have been unaware of the works. In the circumstances, I am satisfied that any new utility services laid across the Defendant's land were in place more than twenty years before she first raised the issue on 27 April 2023. Accordingly, Cart Lodge has a prescriptive right to run utilities across the Defendant's land by unchallenged user for twenty years. I do not accept her evidence that Mr Brunton had informed her of an absence of permission.

42. I am prepared to accept that Ms Gibson was not aware of the existence of the express easements granted in the 2000 transfer or of the law on prescription when she first raised the issue with Mr Cowdrey. She should have been because they were expressly set out in the title documents for the Strip, but constructive knowledge is not sufficient for slander of title or malicious falsehood. However, as she accepted in her oral evidence, Mr Dyke's letter of 26 May 2026 satisfied her that there was no issue over Cart Lodge's services easement. She told me that she "was satisfied by" Mr Dyke's letter which resolved the dispute. She also cross-examined Mr Cowdrey on the basis that the services dispute was resolved by that letter. Her Defence, at paragraph 211, asserts that she did not raise this issue after 26 May 2023. It is plain, in my judgment, and, indeed, in the view of the Defendant herself, that there was no dispute about Cart Lodge services by 5 June 2023 but Ms Gibson again wrote to the Claimant, copying in Mr Dyke and Ms Meadowcroft asserting that "Cart Lodge was derelict until 2002 and no permissions were sought from us over land owned by us." In my judgment the Claimant was again raising a dispute about services to Cart Lodge which dispute, on her own case and evidence, had been resolved ten days before. This assertion of a dispute was, therefore, untrue and Ms Gibson knew that it was untrue.

Was the conversion of Cart Lodge into residential accommodation/ a holiday let, a breach of covenant? Was Cart Lodge used as a holiday let?

43. Cart Lodge was transferred to the Claimant's predecessors in title by a transfer dated 2 August 2000 ("the 2000 transfer"). The 2000 transfer imposes covenants for the benefit of land including Dovecote Barn. The Transferor was Embassy. It contained the following relevant covenants:

THE THIRD SCHEDULE
The Covenants

….

(b) Not to carry on any trade profession or business on or from the Property but to use the Property only as land and outbuildings ancillary to Crowbourne Farmhouse and not for any other commercial or industrial use

……

(h) (i) ……..

(ii) Not to submit an application for planning permission for any purpose on the Property without the Transferor's consent"

44. Ms Gibson raised three issues in relation to Cart Lodge. The first was that it was being used for business or commercial purposes contrary to restrictive covenants in the 2000 transfer. Secondly that a covenant entitled her to a 30% clawback in consequence of the breach of covenant. She also asserted that Cart Lodge was in breach of planning permission as it was not being used for purposes ancillary to the use of Crowbourne Farm. These assertions were raised for the first time on 19th May 2023 in a letter sent by the Defendant and her husband to the Claimant. Following Mr Dyke sending Ms Gibson a copy of the 2000 transfer on 26th May 2023, she raised the question of other restrictive covenants although she did not specify to which she referred. On 31st May 2023 she again raised the question of unidentified breached restrictive covenants and, for the first time raised the issue of breached planning permission regarding the usage of Cart Lodge. On 5th June Ms Gibson wrote or authorised three emails/letters reiterating allegations of breach of covenants in relation to Cart Lodge. The first stated that the 2000 conveyance provided to her by Mr Dyke illustrated that Mr Cowdrey was in breach of restrictive covenants affecting Cart Lodge. She was not specific about which covenants to which she was referring. About two hours later an e-mail was sent from 'personal assistant litigation', which Ms Gibson accepted was sent at her direction and with her authority, in which it was asserted that the use of Cart Lodge as a holiday rental since 2019 was a breach of covenant in that such use constituted a business. The email also asserted that such use was a breach of planning permission. The third e-mail was sent by Ms Gibson herself to Mr Cowdrey at 16:15. In that e-mail Ms Gibson repeats her allegation that the letting of Cart Lodge as holiday let or any letting was a breach of covenant but she appears to accept that planning permission was granted for conversion and use as a holiday rental. She states that such permission cannot override an express covenant. Ms Gibson asserts that Mr and Mrs Brunton ran Cart Lodge as a business from 2019 and repeated the allegation that there was a 30% clawback. She asserted that she had just become aware of the existence of the covenants as result of Mr Dyke providing her with the 2000 conveyance. She asked for the potential buyers solicitors' details.

45. On 6th June 2023 Ms Gibson declined an offer of settlement and asserted that her claims were valid breaches of covenant noting that it was Mr Dyke who alerted her to the breaches of covenant for Cart Lodge. She also asked for the 1998 conveyance of Crowbourne. On 7th June 2023 Ms Gibson wrote to Mr Dyke stating that her e-mail was a letter before claim. She put him and, through him, Mr Cowdrey on notice of her intention to pursue breaches of covenant in relation to Cart Lodge and Crowbourne Farm. It appears that she had obtained what she calls the title for Crowbourne Farm

and notes that similar covenants to those affecting Cart Lodge apply to Crowbourne Farm. Ms Gibson offers to modify the covenants in relation to both properties subject to compensation which would include a transfer to her of Chicken Run Field. She gives Mr Cowdrey until 5:00 pm the following day to accept her offer. On 9th June 2023 Ms Gibson sends a further e-mail pointing out the covenant not to carry out any trade profession or business at Cart Lodge and the contrast with the planning permission granted for use only as holiday let. Again, Ms Gibson states that she will pursue the breaches of restrictive covenants and again asserts that all previous owners of Crowbourne would have been aware of the 30% uplift. By then Mr and Mrs Hunn had withdrawn their offer to purchase Mr Cowdrey's properties. There were subsequent communications, but the sale had been lost by that time.

46. There is no written evidence from the Defendant in relation to these matters nor does the defence allege that Mr Cowdrey has himself rented out Cart Lodge. As I have already indicated, the Defendant, contrary to Mr Gibson's written evidence and her defence was well aware of the proposed sale to Mr and Mrs Hunn even if she was not aware of their names; see, for example, the e-mail of 19th May 2023 which states "Await your responses and resolutions no later than close of business Friday 26th May 2023, and prior to your exchange"; "a very late stage in the conveyancing on 5th June 2023; and, "there is now an open dispute which you must declare" on 6th June 2023.

47. It is certainly true that there is a covenant binding Cart Lodge restricting its use for "any trade profession or business on or from the Property but to use the Property only as land and outbuildings ancillary to Crowbourne Farmhouse and not for any other commercial or industrial use" ("the user covenant"). It seems to me that the weight of the authorities cited above come down in favour of a conclusion that using Cart Lodge for the purpose of holiday or short term lets would constitute using it as a business. It would increase the amount of traffic on the common driveway, it could result in anti-social behaviour and thus adversely affect the residential nature of area. The purpose of the covenant is plainly to prevent its use as a dwelling separate to that of Crowbourne Farm. There is force in what is said in Ms Gibson's written submissions about the relationship between Cart Lodge and Crowbourne Farm by reference to the 1998 conveyance and the 2000 transfer. In my judgment, reading both the 1998 conveyance and the 2000 transfer together, it is clear that Cart Lodge may be used only as ancillary to Crowbourne Farm. It may not be sold separately from the Farm. Crowbourne Farm is subject to use as a single private residence. However, I do not make my decision on that basis as Ms Lyne did not have an opportunity to address those submissions which really should have been made in relation to the issue of the nature of the covenants in the Third Schedule to the 2000 transfer.

48. However, there is no sufficient evidence that the Claimant, during his ownership, let out Cart Lodge. Ms Gibson did not cross examine him on that point nor did she assert so in her Defence. The Particulars of Claim stated that Mr Cowdrey had not breached this covenant, something repeated in his Reply. In her oral evidence Ms Gibson asserted, for the first time, that the Claimant rented out Cart Lodge but she gave no particulars. While the Bruntons may well have done so that is not a breach of

covenant to be laid at the Claimant's door. I acknowledge that Mrs Cowdrey in a WhatsApp message to Ms Gibson between 31st July 2022 and 2nd August 2022 suggested that she had let out Cart Lodge. In those messages Mrs Cowdrey states that "it's normally £600 a week". While she refers to people having left they appeared to have been friends as Mrs Cowdrey refers to them by their first names. She also refers to a possible use on the 1st September that year but there is no indication as to who that involved. To the extent that Cart Lodge was being used by family and friends, that is not a breach of a covenant not to use for trade or business purposes. I am not satisfied that Cart Lodge was being let out by the Claimant in light of the lack of positive evidence even from the Defendant that it was, at least during Mr Cowdrey's ownership at the material time. The burden of a restrictive covenant runs only in equity. Accordingly, only equitable or remedies would have been available. These are an injunction or damages in lieu of an injunction. If Mr Cowdrey was not letting out Cart Lodge and did not intend to do so then there was no prospect of getting an injunction against him and no prospect of damages in lieu of an injunction. It follows that there was, at the material time, no use of Cart Lodge which was not ancillary to Crowbourne Farm. In the circumstances, the assertion that Mr Cowdrey was in breach of that covenant was untrue at all material times.

49. In her post-hearing written submissions, Ms Gibson relies on a letting of Cart Lodge by Mr Waters from October 2024 to date. The difficulty with that submission is that a 2024 breach of covenant does not go to the issues before me as contained within the pleadings namely, whether there was a breach of covenant in May and June 2023 or to the truth of Ms Gibson's assertion that there was such a breach for which she was entitled to damages. Further, there is no evidence that the current occupants of Cart Lodge are short term or occupying under a holiday let. Indeed, even on Ms Gibson's current case, a long term let would not constitute business use and thus would not constitute a breach of the user covenant. None of the authorities cited by her support a contrary position. Further, Ms Gibson refers to a Savill's marketing document in her post hearing submissions. I do not know the date of that document but note that, at the end, the small print refers to fees in 2018. Further, the furnishings are different to those in the Knight Frank brochure used in 2023. In my judgment, it is likely that the Savill's brochure relates to the sale by the Bruntons to Mr Cowdrey for those reasons. Any reference therein to a successful letting business of Cart Lodge therefore can have no bearing on whether or not Mr Cowdrey breached the user covenant. However, I am not satisfied that Ms Gibson knew that that assertion was false or was reckless as to its truth or falsity because she did have some rational basis for believing that Cart Lodge was being let out, that basis being Mrs Cowdrey's WhatsApp messages in July and August 2022.

50. Neither party has identified for me any covenant providing for a 30% clawback for breach. It follows that this allegation was also false. In my judgement, the Defendant was at best, reckless as to the truth of this allegation. She seems to have raised this allegation after being provided with the 2000 conveyance which she had plainly read as that was her source of knowledge of the restrictive covenant. If she read those covenants, as she had, it was clear to her that there was no covenant that the owner of

Cart Lodge would pay a 30% uplift or any sum of money in the event of a breach therefore she knew that there was no such covenant when she asserted in her 19 May 2023 email that "Covenants states [*sic*] a 30% up-claw [*sic*] if found in breach" an allegation repeated on 5 June 2023. She could not have confused it with the covenants affecting Crowbourne Farm as there is not such covenant in the 1998 conveyance either.

51. Finally, Ms Gibson asserts that there was a breach of the covenant to seek planning permission from the Transferor before submitting the application for planning permission to convert Cart Lodge ("the pp covenant"). Planning permission was granted on 12 June 2001 at a time when Embassy still owned all of Ms Gibson's current land holding, Dovecote House. On balance of probabilities, Embassy would have received notice of the application which was made on 1 December 2000. In the circumstances, the only reasonable inference is that Embassy did give the Carlton-Smiths permission to make the application in accordance with paragraph (h)(ii) of the third Schedule to the 2000 transfer ("the pp covenant"). Ms Gibson accepted in her oral evidence that it was likely that Embassy did grant permission in 2001. I find as a fact that such permission was granted by Embassy. Accordingly, the allegation that such permission was not sought and there was a breach of the pp covenant was false.

52. Mr Dyke set out this position on this issue in his email of 2 June 2023. I am satisfied that Ms Gibson was reckless as to the truth or otherwise of her allegation to the contrary following this email. She had no basis whatsoever for continuing to make this allegation. She has not given evidence that she took any steps at all to investigate the issue notwithstanding the passage of over 20 years since the conversion of Cart Lodge and Mr Dyke's email of 2 June 2023 nor given any evidence as to the basis of her continued allegations.

Was the conversion of outbuildings to residential accommodation at Crowbourne Farm a breach of covenant? Did the use of such converted buildings for the accommodation of staff involve Crowbourne Farm being used as anything other than a "single private dwelling house"?

53. The provisions in the two relevant Schedules in the 1998 conveyance are (the specific provisions are underlined):

> "3.1 There are reserved out of the Property for the benefit of the Adjoining Properties the rights set out in the Second Schedule
>
> 4. <u>The Transferee so as to bind the whole and every part of the Property covenants with the Buyer [Embassy] for the benefit of the whole and every part of the Adjoining Properties as set out in the Third Schedule</u>
>
> SECOND SCHEDULE
> The Reserved Rights

(a) The right for the Buyer and the Buyer's successors in title of the Adjoining Properties or any part thereof …. [connection to and use of all utility conduits];
(b) A right of way with or without agricultural vehicles [through a gate to access the Orchard]….;
(c) The right for the Buyer and the Buyer's successors in title of the Adjoining Properties or any part thereof [access for maintaining services]
(d) The right of the Buyer and its successors in title to come on the Property within twelve months of the date of completion[to connect with septic tank or cess pool and thereafter a drainage easement for 3 and 4 Crowbourne Cottages];
(e) The right for the Buyer and the Buyer's successors in title [right of way over a footpath]

THE THIRD SCHEDULE

The Covenants

(a) To pay a service charge to the Company [Crowbourne Estate Company Limited, the estate management company];
(b) To maintain at all times the boundary fences surrounding the Property and marked with a T mark on the plan
(c) Not to carry on any trade profession or business on or from the Property but to use the Property as a single private dwelling house and not for any other commercial or industrial use
(d) Not to park any vehicle on the driveway coloured brown on the plan;
(e) Not to fell top or destroy any trees now standing on the Property which may in any reasonable respect adversely alter the visual amenity of the Adjoining Properties provided that this provision shall not apply in relation to any such tree in a state of decay disease or dead or otherwise in reasonable need of tree surgery
(f) Not to do or allow anything to be done on the Property which may be or grow to be a nuisance to the Transferor or its successors in title who are the owners for the time being of the Adjoining Properties or any part thereof
(g) To observe and perform the provisions set out in an agreement dated the 3rd June 1998 and made between Vivian Ernest Barton Stephanie Coleman and Robert Johnson Coleman (1) the said Stephanie Coleman (2) and the Buyer (3) so far as the same affects the Property
(h) Not to transfer the Property unless contemporaneously with such transfer:
    (i) the purchaser applies for membership of the Company (such application not to be unreasonably withheld or delayed); and
    (ii) the purchaser executes a Deed of Covenant with the Company to pay the service charge pursuant to paragraph (a) hereof
(i) Not to raise any objection or cause others to raise any objection to any planning applications that the Buyer or its agents or the Buyer's successors in title may make in respect of the Adjoining Properties for the development of not more than five detached dwellings

(j) To fully support any application which the Buyer or the Buyer's successors in title may make or cause to be made for consent to divert any footpaths that presently cross the Adjoining Properties provided that no diversion shall result in new footpaths being laid across the Property
(k) to permit access to the Property by the Company (or its agents) at all reasonable times after reasonable prior notice to enable the Company to comply with its obligations in the Fourth Schedule the Company making good any damage caused as a consequence of such entry"

54. It is common ground that Crowbourne Farm is subject to a covenant restricting its use to a single dwelling. Ms Gibson asserted that the works done to outbuildings at Crowbourne Farm created two separate dwellings which put Mr Cowdrey in breach of the covenant to use Crowbourne Farm as a single dwelling ("the single dwelling covenant"). Secondly, she asserted that Mr Cowdrey had not sought her permission to apply for planning permission either to install his swimming pool or to convert outbuildings at Crowbourne Farm in breach of a planning permission covenant. She made these allegations in the Personal Litigation Assistant email of 5 June 2023, for the first time. Ms Gibson repeated these allegations later the same day in her personal email to the Cowdreys in which she relied on an unidentified marketing document which she said "illustrates "two outbuildings converted for separate dwelling with their own kitchens and WC" [*sic*]. I have not seen such a marketing document. The Knight Frank brochure in use in May and June 2023 referred to the outbuildings as follows:

> "Further outbuildings include a studio complete with shower, WC and kitchenette. This would make a fabulous entertaining space, and is currently used as a large gym. In the past it has been used as an artist studio and even a home office. The clockhouse is a converted piggery which is fully insulated and ideal for storage. In addition there is a poolhouse, garaging and quadruple carport."

There is no mention of any of these outbuildings being a separate dwelling. However, the brochure does refer separately to Crowbourne Farm Cottage and says:

> "Crowbourne Farm Cottage is a spacious one-bedroom property which overlooks the garden of Crowbourne Farm. It has a spacious bedroom, bedroom, shower room and kitchenette and vaulted sitting area with mezzanine floor above."

There is no mention of a separate dwelling although the cottage could be used as such. There is no evidence at all that any of these buildings were occupied as a separate dwelling to Crowbourne Farm. It was not put to Mr Cowdrey that any of the Crowbourne Farm outbuildings were occupied at all never mind as a separate dwelling. Having family and friends to visit for, say, a weekend or for Christmas, and accommodating them in accommodation comprising Crowbourne Farm does not, in my view constitute use as a separate dwelling. Capacity for use as such does not equate to actual use. Actual use as separate dwellings would be required to establish a breach of covenant.

55. I am not satisfied that occupation by a live in housekeeper would constitute a breach of covenant absent evidence of a separate tenancy or licence agreement granting some sort of exclusive occupation. A housekeeper or nanny occupying a room in a home would not be construed as creating a separate dwelling. Where a dwelling is composed of more than one building, it does not seem to me that occupation of any particular part of that dwelling would somehow create a separate dwelling either.

56. In the circumstances, I am satisfied that the allegation that Mr Cowdrey was in breach of the covenant restricting use of Crowbourne Farm to a single dwelling was false at the time it was made. I am not satisfied that Ms Gibson knew or was reckless as to the truth of this allegation. There was material available to support a contention that the outbuildings were capable of constitution separate dwellings, as set out above. The distinction between potential and actual use is, arguably, a fine one which would not necessarily be clear to a lay person. While Ms Gibson has stated, after the lost sale, that she had taken legal advice, it is not clear as to the extent of that advice.

Did the owner of Crowbourne Farm require permission from the Defendant or her predecessors in title to apply for planning permission before carrying out any works? If yes, is the Defendant time-barred?

57. There is no covenant affecting Crowbourne Farm requiring the owner to seek anyone's permission before applying for planning permission, as Ms Gibson was forced to accept in oral evidence. Accordingly, this allegation was false at the time it was made. I cannot see how Ms Gibson could have believed that her allegation was true in light of the terms of 1998 conveyance, which she had read therefore she knew the allegation was false or was reckless as to its truth. In the circumstances, the second question does not arise.

Do the covenants in the Third Schedule of the 1998 conveyance and/or the 2000 transfer run with the land or were they personal to Embassy Property Group Limited ("Embassy")?

58. In my judgment the pp covenant and the user covenant are not covenants personal to Embassy; they do run with the land. It is fair to say that both the 1998 conveyance and the 2000 transfer is poorly worded. In summary, the Claimant says:

    i) The Buyer in the 1998 conveyance and the Transferor in the referred to Embassy and the Transferee to the Carlton-Smiths;
    ii) Where rights or restrictive covenants were to run with the retained land, the words "and the Buyer's successors in title" or "and the Transferor's successors in title", as appropriate, followed the word "Buyer" or "Transferor'';
    iii) Where rights or restrictive covenants were to run with the transferred land, the words within the Third Schedule in both documents "and the Transferee's successors in title followed the word "Buyer" or

"Transferee" or the covenant is expressed to "bind the whole and every part of" the transferred land;

iv) The covenants in the Third Schedule were expressed to be for the benefit of the Buyer or the Transferor without the words "and the [Buyer's/Transferor's] successors in title" (paragraph 4 of the 1998 conveyance and paragraph 5 of the Additional Provisions in the 2000 transfer);

v) Where a covenant in the Third Schedule is nonetheless intended to benefit the Buyer's/Transferor's successors in title, those words are included, namely, paragraphs (a) and (f) of that Schedule in the 1998 conveyance and paragraphs (e) and (i) of that Schedule in the 2000 transfer;

vi) Neither the pp covenant nor the user covenant contain any mention of the Buyer's/Transferors' successors in title, therefore, the covenants were personal to Embassy.

59. While the restriction of paragraph 4 of the 1998 conveyance and paragraph 3 of the Additional Provisions to the 2000 transfer refer to the Buyer or Transferor alone and the occasional reference to "successors in title" within the Schedules may seem clear, it is necessary to read paragraphs 4 and 3 respectively as a whole. The covenants in the Third Schedule are expressed in paragraphs 4 and 3, to be "for the benefit of the whole and each and every part of the Retained Land". That wording is more consistent with a scheme of arrangement intended to run with the land. Further, many if not most of the covenants in that schedule usually run with land, e.g. the covenant against parking on the common driveway and that preventing the removal of trees so as to affect the visual amenity of the retained land. It would be highly unusual if they were personal to Embassy.

Was Crowbourne Farm the source of flooding of Dovecote Barn (or Dovecote House)?

60. It is common ground that Dovecote House and the grounds of Dovecote Barn have been flooded or experienced high levels of groundwater on two specified occasions - 14/15 November 2020 and in April 2022. There is no other evidence of any flooding Dovecote Barn. In the case of Dovecote Barn, the water has not penetrated the house. Ms Gibson told me that she is raising matters of concern to her neighbour at Dovecote House on the basis that it is a neighbourly thing to do and because she views Dovecote House as 'her baby' because she was so heavily involved in its design and construction. Ms Gibson recognises that she has no rights in that respect. Crowbourne Farm has also flooded on one occasion during the Claimant's ownership, on or shortly before 23 February 2022 – see Mrs Cowdrey's WhatsApp message of that date. Mrs Gibson makes no mention of any flooding at Dovecote Barn or Dovecote House in her responses to that message therefore it appears that that flood was attributable to some unknown source and is unrelated to the flooding complained of by the Defendant. Only the flooding in November 2020 is associated with anything approaching heavy rainfall. However, Mr Grime was informed that there was also a

flood in April 2022. It is not clear what caused that flood as *per* Mr Grime's report, there was no significant rainfall at that time, indeed, Mr Grime described it as a dry April. I should note that Mr Town, in his witness statement referred to flooding of Dovecote House in late 2021 into early 2022. Mr Grime was not informed of that flooding or cross-examined on it. His charts show that there were no extreme events during that period.

61. The Defendant has consistently asserted that the source of the flooding at Dovecote House and Dovecote Barn is the lake on Crowbourne Farm. She states that it is attributable to 2 different causes or potential causes - the first being the fact that the outflow pipe has a smaller diameter than the inflow pipe causing the lake to overflow and, secondly, by the poor quality soakaways installed by Mr and Mrs Brunton.

62. The first cause is based on what she and Mr Gibson describe as common sense in that if water is permitted to flow into the lake at a faster rate than it can leave, it is likely to overflow and flood neighbouring properties. Further, if the outflow pipe is allowed to become blocked, that could also cause the lake to overflow. These are, of course, possibilities. However, as Mr Grime pointed out there is no evidence that either of these possibilities have, in fact, occurred during Mr Cowdrey's ownership of Crowbourne Farm.

63. Mr Grime correlated the alleged dates of flooding with rainfall, by reference to official measurements and reports. His view was that an overflow of the lake, absent a blocked outflow pipe was unlikely based on his own observations on the day after Storm Ciaran, 23 November 2023. Mr Grime states, by reference to official figures, that Storm Ciaran was the largest rainfall event over the previous 12 months but there was no evidence of flooding to the Claimant's or that part of the Defendant's property which he was able to view without trespassing. There was some ponding on the Claimant's land and standing water (puddles) on the driveway but nothing that would cause or evidenced flooding as alleged. Indeed, Ms Gibson has not suggested that there was any flooding as a result of Storm Ciaran. Mr Grime's observations were that the pooled water was standing and was not flowing. This storm was a particularly fierce storm which did cause a lot of flooding and damage in areas of the country. During his inspection of Crowbourne Farm, there was no evidence of the lake being overfull or of any flooding. The outflow pipe was clear. Mr Cowdrey's evidence is that the outflow pipe is checked at least monthly and Mr Grime said this should be sufficient.

64. Ms Gibson did not submit any evidence of her own in relation to flooding. Her witness statement was limited to her intention to procure evidence from Mr Hardcastle as an expert. In her oral evidence she accepted that there is no evidence that any flooding is caused by Crowborough Farm. Ms Gibson then said that Mr Hardcastle told her that her property was flooding because of Crowborough Farm but that she didn't tell the Claimant this. Ms Gibson opined that Storm Ciaran did not cause a problem in Kent because it "was just rain". Her evidence is not consistent with that of her husband. In his written evidence Mr Gibson opines that flooding to

Dovecote Barn is caused by Mr Brunton's actions on Crowbourough Farm. He bases this on what he says he was told by Mr Brunton. This was the installation of soakaways to disperse water across Crowbourne Farm and a "bung" of soil to divert water into Smith's Lane. This work was carried out in 2019. To a large degree he bases this on Mr Hardcastle opining that the soakaways were not fit for purpose. In his oral evidence, Mr Gibson accepted that a statement that the soakaways were inadequate was not the same as saying that they caused the flooding but asserted that, as a matter of common sense, they could have caused the flooding. Mr Gibson also said, in his written evidence, that, on one occasion, Mr Brunton accepted, and Mr Gibson saw, that flooding was caused because Mr Brunton failed to keep the outflow pipe clear.

65. I prefer Mr Grime's evidence to that of Mr and Mrs Gibson in all material respects. Mr Grime explained that there was a small risk of flooding from the lake onto the Defendant's land in the case of extreme events expected to occur between once in a hundred and once in a thousand years. He said the soakaways did not cause flooding to Dovecote Barn or Dovecote House because of the natural flow of water and its attenuation before it would reach neighbouring land. The soakaways were not, in any event visible unless what was meant was the new drain running to Cart Lodge. In his opinion the visible new drain towards Cart Lodge probably falls away from the Defendant's property and would not affect it. That was the only visible alteration on Crowbourne Farm. He saw nothing else that could have changed the flow of water over and through Crowbourne Farm or increase the risk of flooding from Crowbourne Farm. Mr Grime pointed out that the natural flow of water downhill as provided by the OS has not changed for many years and is consistent with the observable drainage position. When asked by the Defendant what the cause of the flooding to Dovecote House was likely to be, Mr Grime stated that the cause was probably works or changes to land adjacent to that house or blockages in the drainage on land which was not owned by Mr Cowdrey. It is owned by Ms Gibson. This is wholly consistent with the oral evidence of Mr Cowdrey and Mr Waters to the effect that Ms Gibson has built a fence across the historic drainage route. She did not challenge their evidence in this respect.

66. Neither of the Gibsons are experts in the field. They have jumped to conclusions not fairly open to them on the basis of Mr Hardcastle's opinion on the soakaways (as Mr Gibson accepted) and Mr Brunton's statements as to the work he carried out in 2019. I do not accept Ms Gibson's oral evidence that Mr Hardcastle stated that flooding was caused by Crowbourne Farm. It was not supported by Mr Gibson's evidence and he was present at the same meeting. The "bung" referred to by Mr Brunton, which is no longer visible, did not, in any event, achieve the desired outcome. Its purpose was to divert water away from Crowbourne Farm into Smiths Lane. However, Mr Gibson gave evidence that he tested the flow of water from Smith's Lane in 2021, after Mr Brunton told him of the works. Mr Gibson put blue dye into the water in Smith's Lane which illustrated that the water flowed into the lake and not onto the Defendant's land or Dovecote House. Further, at least some of the flooding was caused by Mr Brunton's failure to keep the outflow pipe clear. This does not mean

that there is some sort of inherent issue with flooding from Crowbourne Farm which needs to be addressed. In my judgment there is no evidence to support such an allegation.

67. It follows that the allegations that there was a flooding issue attributable to Crowbourne Farm was false. However, I am satisfied that Mrs Gibson had no actual knowledge of the falsity of her allegations. Was she reckless as to their truth? In my judgment that has not been established. There was flooding which had started in or around 2020. It followed works carried out by Mr Brunton. Ms Gibson may have leapt to the wrong conclusion about its source but it seems to me that her allegations were, at worst, negligent, in that she had never taken any adequate steps to investigate the matter or considered whether her own actions might have caused or contributed to the problem.

Did the Defendant publish false allegations?

68. There is no real dispute about this. Ms Gibson accepts and the emails and letters at the time make it clear that Ms Gibson made her allegations to Mr Dyke and Ms Meadowcroft as well as to Mr Cowdrey – see emails of 2 May 2023, 17 May 2023, 30 May 2023 (x2), 31 May 2023, 5 June 2023 (x3), 6 June 2023 and 8 June 2023, and 9 June 2023. Ms Gibson also insisted that her correspondence and/or concerns be communicated to the buyers and/or their solicitors – see emails or letters 25 May 2023, 30 May 2023, 31 May 2023 of 19 May 2023, 5 June 2023 (x3), 8 June 2023, and 9 June 2023. This constitutes publication (*McManus v Beckham*; *Terluk v Berezovsky (supra)*).

Were the allegations published maliciously?

69. The allegations that there were ongoing disputes in relation to the boundary with the Strip, the utility services to Cart Lodge, the breach of the covenants binding Cart Lodge and those binding the rest of Crowbourne Farm were false, as was Ms Gibson's claim to a covenant providing for a 30% uplift for breach of covenant, as set out above. I have also found that Ms Gibson either knew or was reckless as to the truth of the allegations in relation to the alleged boundary dispute over the Strip, the services to Cart Lodge, the 30% uplift for breach of covenant, the breach of the pp covenant in relation to Cart Lodge and the existence of a pp covenant in relation to the rest of Crowbourne Farm by, at the latest, 5 June 2023 when she either had all the documentation or had accepted the position in relation to Cart Lodge utilities or the matters were in her own knowledge (the settlement of the boundary dispute over the Strip). Knowledge that an allegation is false is generally conclusive of malice (*Cruddas v Calvert (supra)*). However, in my judgment, I do not need to rely solely on this principle.

70. Standing back and looking at Ms Gibson's conduct from about March 2022 through to June 2023, it seems to me that her actions were motivated by an improper purpose, namely to cause harm, specifically, pecuniary loss to Mr Cowdrey by preventing him

from selling Crowbourne Farm unless he paid her any price she sought. As set above, I am satisfied that Ms Gibson concealed her purchase of the Strip from Mr Cowdrey until she could use her ownership to extract significant payment from him. Her conduct in signing and registering both the determined boundary agreement and the Boundary Agreement and concealing this from him is explicable, on balance of probabilities, only by her intention to use this to extract unreasonable sums of money for from him so he could complete the sale of Crowbourne Farm. Suddenly remembering the issue of the Cart Lodge services does not have the ring of truth given the parties had been trying to resolve their issues for at least seven months by then. Continuing to raise issues that, on her own case, had been determined and insisting that they be disclosed to the purchasers was, in my judgment, designed to achieve the same purpose. In my judgment, in denying the plain meaning of her own words, Ms Gibson was seeking to cover up her true intentions.

71. Ms Gibson was, of course, entitled to forward her own interests which can include benefitting financially from her land and the covenants benefitting that land but there comes a point where proper motivation tips over into an improper purpose and, in my judgment, that point was reached in this case. On 13 February 2023, Ms Gibson suggested to Mr Cowdrey that the Strip was worth £120,000 according to an unidentified London Auction House. This seems to me to be unlikely because an auction house would be advising on value of property on the open market and they would have insufficient knowledge of the subject properties to offer any meaningful advice as to a particular strip of land. Ms Gibson told me she only spoke to them once on the telephone. I do not accept Ms Gibson's oral evidence to the effect that she was not offering to sell the Strip for £120,000 because she expressly states that she would be happy to accept Chicken Run Field as part of the price. This price had nothing to do with restrictive covenants and appears to relate solely to the issue of the tennis court.

72. At one point Ms Gibson told me she did not want Chicken Run Field but that is plainly untrue because, on 7 June 2023, she again expressly required that that field be included in any settlement. Not only did Ms Gibson continue to raise issues that had been resolved but she went out of her way to find new issues such as covenants affecting Crowbourne Farm raised for the first time on 5 June 2023. There had never been any concerns raised by Ms Gibson in relation to the conversion or use of Cart Lodge or the conversion or use of outbuildings on Crowbourne Farm until a sale was imminent and Mr Cowdrey was in a relatively vulnerable position. I am satisfied that Ms Gibson's conduct went well beyond any proper promotion of her own interests and tipped over into a form of blackmail or maliciousness. Nothing she said persuaded me that she had no ill intent towards Mr Cowdrey notwithstanding her repeated assertions that she was only being neighbourly and concerned to look after his best interests. In oral evidence, Ms Gibson told me she had bought the Strip to achieve 'unity of seisin' thereby increasing the utility and value of her own land. If that were the case, it is likely that she would have been considering the covenants binding her own land that would be released by purchasing the Strip. She would have

had the covenants well in mind and been in a position to deal with them from the outset rather than raising them very late in the conveyancing process.

73. I am satisfied that part of Ms Gibson's concealment of her motives was her evidence as to the role of Dean Wilson in May and June 2023. In writing, she repeatedly stated that they were not acting for her in relation to the Boundary Agreement or any application to the Land Registry or in relation to the disputes (2 June 2023 email to Mr Dyke). She says their instruction ceased when the purchase of the Strip was completed. However, in her oral evidence she informed me that a member of that firm, Carl Post, was giving her advice and had advised her to send a letter before action. Dean Wilson themselves said they were not acting. In summary, I am satisfied that Ms Gibson's actions were malicious in that the predominant motive was to cause pecuniary harm to Mr Cowdrey although she was also seeking to obtain a benefit for herself.

74. Further, Ms Gibson subsequently stated on a number of occasions that she had taken legal advice on the issues she was raising. She said she had done so on 9 June 2023, 16 June 2023, 10 July 2023, 3 August 2023. If she did so then would have known that her allegations were untrue. If she was not being truthful about this then she was, on any footing, reckless as to their truth. Ms Gibson has maintained her allegations all the way up to trial and has refused to abandon any of them or to undertake not to repeat them.

Causation

75. I am also satisfied that it was Ms Gibson's actions which caused the sale of Crowbourne Farm to Mr and Mrs Hunn to fall through. Mr Cowdrey, Mr Dyke and Ms Meadowcroft were all quite clear about that. Mr Cowdrey gave very clear evidence about his conversation with Mr Hunn on 7 June 2023 when he was told that Mr Hunn's lawyers would not let him proceed because of Ms Gibson's many emails and issues. Mr Dyke stated that the sale fell through because of Ms Gibson's persistent raising of issues. Ms Meadowcroft told me "The Hunns didn't buy because of the ongoing dispute with Ms Gibson." She said that she had numerous conversations with the Hunns after 7 June but they couldn't overcome the stumbling blocks. "They withdrew because Ms Gibson continued to raise issues." Ms Meadowcroft stated that it was not the dispute over the Strip that was the Hunns' concern but the other matters being raised and the Strip being brought up again and again. Given the proximity of the completion date, I am satisfied, on balance of probabilities, that the sale would have gone ahead but for Ms Gibson's actions. I am not satisfied that damages should be assessed on the basis of loss of a chance, an issue raised only after the draft judgment was circulated.

Quantum

76. I am satisfied that the loss to Mr Cowdrey may be calculated by reference to the difference between the price agreed with Mr and Mrs Hunn, £3,850,000, and its current value of £3,700,000. The latter figure is the opinion of value given by Batchellor Monkhouse, chartered surveyors, as at 27 February 2025, a figure which is

not challenged by the Defendant. The headline loss is therefore £150,000. After the hearing, Ms Gibson submitted that the costs of sale must be deducted from that figure as Mr Cowdrey would have had to pay Knight Frank and Mr Dyke had the sale to the Hunns gone ahead. However, he will have to pay those sums on sale in any event therefore the sum he receive on sale will be £3,700,000 less the costs of sale as opposed to £3,850,000 less the costs of sale. I acknowledge that the commission payable to Knight Frank is likely to be £1,500 - £2,250 less on a sum of £3,700,000 but the conveyancing costs are likely to have been a little higher than usual because of the issues raised by Ms Gibson. It seems to me that the differences are likely to balance out and it would be disproportionate to enter into an account of the precise figures. In my judgment the sum of £150,000, together with interest, is the correct measure of damages.

Did the Defendant's conduct between April and June 2023 in raising the above matters on numerous occasions constitute oppressive and unacceptable behaviour calculated to, and which did, cause the Claimant anxiety, distress, humiliation and/or financial loss?

77. In my judgment Ms Gibson's actions did amount to harassment. Ms Gibson sent 23 emails between 26 April and 10 July 2023 directed or targeted at Mr Cowdrey. Sixteen were sent between 2 May and 9 June 2023. This constitutes persistent and deliberate conduct, in my judgment. The repeating of claims that she had previously accepted as settled is oppressive and unreasonable objectively speaking. In my judgment, it was unreasonable to send, or cause to be sent, three separate emails on one day, 5 June, all raising the same or similar points. Any reasonable person, in my view, would see this as unreasonable and likely to cause anxiety, alarm or distress. On this basis, Ms Gibson ought to have known that her conduct would have that effect. She had no proper basis for raising most of the issues that she did raise.

78. The consequence of this is that Mr Cowdrey lost a sale; however, he cannot recover that loss twice. He is also entitled to damages for the anxiety and distress caused to him by this conduct. I am satisfied that Mr Cowdrey has suffered such anxiety and distress based on his second witness statement which was not significantly challenged in cross-examination.

79. The *Vento* principles provide guidance in terms of *quantum* for such damage (*Suttle v Walker (supra)*). In *Vento v Chief Constable of West Yorkshire Police (No 2)*, [2003] ICR 318, the Court of Appeal held that there were three levels of seriousness which attract different levels of damages. At the time, the most serious kind lay between the range of £15,000 and £25,000, less serious claims fell within a range of £5,000 to £15,000, and the least serious claims between £500.00 and £5,000. Of course, in the over 20 years since *Vento*, those bands have been increased by reference to inflation per *Da'Bell v NSPCC* [2010] IRLR 19 (EAT) and subsequent cases. These bands today are addressed by guidance provided by the President of the Employment Tribunals from time to time. The current bands are £1,200 to £12,100 for less serious cases, a middle band of £12,100 to £36,400 for cases not meriting the upper band, and an upper band of £36,400 to £60,700 for the most serious cases.

80. Further help is provided by the case of *HM Prison Service v Johnson* [1997] ICR 275. Judgment was given by Mr or Ms Justice Smith who said at p. 283 (b) to (d):

> "We summarise the principles which we draw from these authorities. (i) Awards for injury to feelings are compensatory. They should be just to both parties. They should compensate fully without punishing the tortfeasor. Feelings of indignation at the tortfeasor's conduct should not be allowed to inflate the award. (ii) Awards should not be too low, as that would diminish respect for the policy of the antidiscrimination legislation. Society has condemned discrimination, and awards must ensure that it is seen to be wrong. On the other hand, awards should be restrained, as excessive awards could, to use the phrase of Sir Thomas Bingham, M.R., may be seen as the way to "untaxed riches." (iii) Awards should bear some broad general similarity to the range of awards in personal injury cases. We do not think this should be done by reference to any particular type of personal injury award, rather to the whole range of such awards. (iv) In exercising their discretion in assessing a sum, tribunals should remind themselves of the value in everyday life of the sum they have in mind. This may be done by reference to purchasing power or by reference to earnings. (v) Tribunals should bear in mind Sir Thomas Bingham's reference to the need for public respect for the level of awards made."

81. Ms Lyne suggests an award of £35,200 which is towards the upper end of the middle band. While I accept that the impact on Mr Cowdrey has been significant and it has continued over two years, there is no evidence of any clinical effect on his mental health. It seems to me that an appropriate award is £9,000. It is towards the upper end of the less serious cases. This equates to approximately £375 a month for c.two years. It is not dissimilar to the upper end of awards for less severe psychiatric or psychological damage. This judgment should resolve Mr Cowdrey's anxiety and stress. A larger award might undermine public respect for and confidence in such awards which should not be as high as those for permanent or long-term physical harm such as permanent impairment of vision. The harassment has not affected Mr Cowdrey's ability to carry out his work nor has it involved a threat of harm to himself or his family. There is no evidence of any clinical harm.

82. I am also asked to award aggravated damages but no sum or sums have been put forward nor was there any real argument about the issue. While I accept that Ms Gibson's actions were malicious, I am not satisfied that Mr Cowdrey has not been adequately compensated by the awards I have made. I feel sure Ms Gibson has learned a very salutary lesson but do not feel she should be punished any further.

83. In conclusion, I will make declarations as to the effect of the various covenants and services at issue in this case, as determined above. I will make injunctions preventing Ms Gibson from making specific allegations that are false and will always be false. I cannot and will not make injunctions preventing her from raising disputes about

future breaches of covenant. The wording of the declarations and injunctions will have to be carefully considered and will require another hearing. I award £150,000 in damages for malicious falsehood/slander of title plus interest and £9,000 damages for harassment.