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Case No: QB-2022-000650

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31 October 2022

Before :

THE HONOURABLE MR JUSTICE NICKLIN

- -

Between :

(1) Sir James Dyson
(2) Dyson Technology Limited
(3) Dyson Limited **Claimants**

- and -

(1) Channel Four Television Corporation
(2) Independent Television News Limited **Defendants**

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- -

Hugh Tomlinson KC and **Ian Helme** (instructed by **Schillings International LLP**)
for the **Claimants**
Adam Wolanski KC and **Gervase de Wilde** (instructed by **Simons Muirhead Burton LLP**)
for the **Defendants**

Hearing date: 6 October 2022

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Approved Judgment

This judgment was handed down by the Judge remotely by circulation to the parties and their representatives by email and by release to The National Archives. The date and time for hand-down is deemed to be 10:30am on 31 October 2022.

The Honourable Mr Justice Nicklin :

1. The Claimants have brought this claim for libel over a *Channel Four News* broadcast on 10 February 2022. This judgment follows the hearing of the trial of various preliminary issues.

A: The Parties

2. The First Claimant is the founder of the Dyson group of companies. The Second Claimant is the UK-based company within the Dyson group that holds Dyson's intellectual property, technology, and brand rights. The Third Claimant is the UK trading company.

3. The First Defendant is a UK broadcaster which owns and operates the national television network, Channel Four. The Second Defendant produces television news programmes. *Channel Four News* is produced by the Second Defendant and broadcast by the First Defendant. Material that appears on *Channel Four News* is also typically made available on the First Defendant's website, on YouTube and Facebook.

B: The Broadcast

4. An item concerning Dyson led the edition of *Channel Four News* broadcast on 10 February 2022 ("the Broadcast"). An agreed transcript of the relevant part of the Broadcast is set out in the Appendix to this judgment (with paragraph numbers added in square brackets). The Broadcast concentrates, principally, on allegations of what has taken place at a company in South East Asia that manufactured Dyson products, ATA Industrial ("ATA"). The following opening words of the Broadcast suffice to set out the topic and broad nature of the report:

> "Dyson, genius at cleaning carpets, now workers in one of their supplier companies claim that they were abused and mistreated. How did it happen? Can Dyson clean up its own image…
>
> Dyson's slogan is the 'vacuum that doesn't lose suction' but has this iconic British brand lost credibility, following the alleged treatment by its workers by ATA, a Malaysian company that helped make Dyson's high-end vacuum-cleaners and air filters.
>
> Tonight, in an exclusive report, we speak to ex-employees of ATA, who suffered abuse, inhuman work conditions, and in one case, even torture, while they were helping to make Dyson products on wages of £9 per day. Dyson has now severed links with ATA and denies any wrongdoing, but how could work conditions have got so bad, and why wasn't it picked up?"

C: The Claim and its procedural history

5. The Claim Form was issued on 25 February 2022. It sought damages, including aggravated damages, an injunction, and orders under ss.12 and/or 13 Defamation Act 2013.

6. Particulars of Claim followed on or around 8 April 2022. They have been the subject of two rounds of amendment since. The natural and ordinary meaning that the Claimants attributed to the Broadcast was:

> "(1) the Claimants were complicit in the systemic abuse and exploitation of workers at ATA, one of their suppliers located in Malaysia;
>
> (2) the Claimants were also complicit in the persecution and torture of a worker who blew the whistle on the working practices at ATA; and
>
> (3) the Claimants claim to act in a responsible and ethical way but when serious abuses of workers were brought to their attention these abuses were not properly investigated but were ignored and tolerated for a prolonged period of time while the Claimants tried to cover them up and shut down public criticism."

7. The original Particulars of Claim did not contain any particulars of reference (or indeed any averment that the Broadcast would be understood to have referred to the Claimants). It is an essential ingredient of a claim for defamation that the publication complained of must refer to (or identify) the claimant (see [17]-[36] below). In some cases, the claimant will rely solely on the intrinsic evidence contained in the publication to establish reference. Alternatively, a claimant can identify, and rely upon, extrinsic evidence; facts and matters known to some or all readers/viewers of the publication which, a claimant contends, would lead them reasonably to identify the claimant as the person the subject of the allegedly defamatory allegation(s). This is conventionally referred to as a 'reference innuendo'.

8. The Defendants sought further information, amongst other things, about the Claimants' case that the Broadcast had referred to the Second and Third Defendants. On 13 May 2022, the Claimants declined to provide any further information saying:

> "The information requested is not reasonably necessary to enable the Defendants to prepare their own case or to understand that case they have to meet. The Claimants' pleaded case is clear and the Defendants are not entitled [to] any further information. The Claimants do not plead a reference innuendo. The Claimants rely upon the content of the words complained of which it will be contended would be understood by an ordinary reasonable viewer of the Broadcast to refer to the Second and Third Claimants as prominent Dyson companies."

9. A Defence has yet to be filed. The parties sought to have resolved several preliminary issues, as is now commonplace in defamation proceedings.

D: Direction of trial of preliminary issues

10. After some discussion as to the scope of the preliminary issues that should be determined (and the Claimants' case on reference), on 13 June 2022, I made an Order directing that the following issues should be tried as preliminary issues:

> i) whether the Broadcast, in its natural and ordinary meaning, referred to the Second and Third Claimants;
>
> ii) the natural and ordinary meaning of the Broadcast;

iii) whether the meaning found is defamatory at common law; and

iv) whether the Broadcast was, or included, statements of fact or opinion.

11. By this stage, the Claimants had produced a draft Amended Particulars of Claim giving further details of their case on reference. The Order of 13 June 2022 granted permission to amend by consent. In Amended Particulars of Claim (filed on 14 June 2022), the Claimants set out their case on reference as follows:

> "7A. The Claimants' primary case is that reasonable viewers would understand the Broadcast to refer to each of the Claimants without special knowledge of extrinsic facts.
>
> 7B. In relation to the Second and Third Claimants, if and insofar as necessary, in the alternative, the Broadcast was understood by a substantial number of viewers of the Broadcast to refer to them.
>
> **Particulars of Reference**
>
> 7B.1 The Second and Third Claimants are the most prominent UK companies within the Dyson group. They are the only companies within the Dyson group that interact with UK consumers.
>
> 7B.2 The Second Claimant employs a number of Dyson's executive team and retains advisors to protect the reputation of Dyson.
>
> 7B.3 The Third Claimant is Dyson's trading company and makes sales of Dyson products to businesses and consumers in England & Wales.
>
> 7B.4 On the official Dyson website, the Third Claimant is identified as the company that users of the website make purchases from in the United Kingdom and the Second Claimant is identified as the company that, together with the Third Claimant, operates the Dyson website, apps and connected products.
>
> 7B.5 The above facts and matters were known to substantial numbers of viewers of the Broadcast."

12. To understand the Claimants' case on reference, it is also necessary to look at how they are described in the Particulars of Claim:

i) The First Claimant is described as the founder and Chairman of Dyson, defined in the Particulars of Claim as, "*the multinational technology enterprise established in 1991*".

ii) The Second Claimant is described as the UK-based company within the "Dyson group" that holds Dyson's intellectual property, technology, and brand rights. The Second Claimant is stated to be the company that employs several of Dyson's executive team and retains advisors to protect the reputation of Dyson.

iii) The Third Claimant is described as the group's UK trading company.

13. It is a point to which I shall return later in this judgment, but the pleaded case as to the Dyson group is somewhat opaque. The definition given to Dyson is not of a company, but rather an "*enterprise*" or brand. Whilst the Particulars of Claim do indicate that there is a corporate group (of which the Second and Third Claimants are part), nothing further is said about the group structure or the other corporate entities within it. It does not even identify the ultimate company that controls the group. The details provided in the Amended Particulars of Claim take matters only a little further forward. In paragraph 7B.1, the Second and Third Claimants are said to be the only companies within the Dyson group that interact with UK consumers.

E: The Defendants' case

14. As the Defendants had not yet served a formal Defence, the Order of 13 June 2022 also directed that the Defendants must file a statement of their position on the preliminary issues that the Court had directed to be tried. On 27 June 2022 the Defendants filed the summary of their case. It included the following:

    i) As to reference, the Defendants denied that the Broadcast referred to the Second and Third Claimants. They were not named and there was no information in the Broadcast that would lead a reasonable viewer to understand the Broadcast to refer to either of them. They added:

> "In the event that viewers turned their mind to the question of which corporate entity was being referred to (which is not admitted), given the repeated references to Dyson's activities in South East Asia and the use of a Singapore-based Michelle Shi as corporate spokesperson, they would understand that entity to be Singapore based entity. Neither the Second nor the Third Claimant is based in Singapore."

    ii) If their primary case on reference was not accepted, and the Second and Third Claimants established that the Broadcast did refer to them, then the Defendants contend that the Broadcast contained the following expression of opinion:

> "(1) the Second and/or Third Claimants were responsible for the abuse and exploitation of workers at ATA, one of their supplier companies located in Malaysia;
>
> (2) the Second and/or Third Claimants were also responsible for the persecution by ATA of a worker who blew the whistle on working practices at ATA; and
>
> (3) therefore, the Second and/or Third Claimants have not lived up to their advertised standards of ethics and corporate social responsibility."

    iii) In the further alternative, if the Broadcast contained a statement of fact, then the meaning of the Broadcast is:

> "… that there were reasonable grounds to suspect that:
>
> (1) the Second and/or Third Claimants were responsible for the abuse and exploitation of workers at ATA, one of their supplier companies located in Malaysia;

(2) the Second and/or Third Claimants were also responsible for the persecution by ATA of a worker who blew the whistle on working practices at ATA; and

(3) therefore, the Second and or Third Claimants have not lived up to their advertised standards of ethics and corporate social responsibility."

iv) As to the First Claimant, the Defendants' primary case is that the Broadcast bears no meaning defamatory of him, since it does not attribute any culpable conduct to him personally.

v) In the alternative, the Defendants contend that the Broadcast contains the following statement of opinion about the First Claimant:

> "… that the First Claimant publicly promotes the Dyson brand, allowing that brand to benefit from his personal prestige and status, and that he therefore bears some responsibility for the actions of the companies bearing that brand, including [the matters set out in [14(ii]) above]"

vi) The Defendants accept that their meanings (whether as expressions of opinion or allegations of fact) are defamatory of the relevant Claimant at common law.

15. On the preliminary issues, the Defendants therefore accept that the Broadcast refers to the First Claimant, but they contend that it does not bear any meaning defamatory of him. The Defendants accept that, if the Broadcast refers to the Second and Third Claimants, then it is defamatory of them at common law.

F: Legal Principles

(1) Natural and ordinary meaning, fact/opinion and defamatory at common law

16. The resolution of preliminary issues (ii)-(iv) (set out in [10] above) is relatively straightforward. The legal principles are well-established and no evidence, beyond the Broadcast itself, is admissible to determine these issues: see particularly ***Corbyn -v- Millett*** **[2021] EMLR 19** [8]-[10]; and ***Koutsogiannis -v- The Random House Group Limited*** **[2020] 4 WLR 25** [10]-[16].

(2) Identification/Reference

17. There is broad agreement as to key principles that apply to the determination of the first preliminary issue. However, discussion of them at the hearing has shown that there are some fundamental points of disagreement as to how they are to be applied to this case.

18. It is an essential element of the cause of action for defamation that the words complained of should be published "of and concerning" the claimant: ***Knupffer -v- London Express*** **[1944] AC 116, 121**.

19. It is not necessary for the claimant to be named. There may be some other way in which the hypothetical ordinary reasonable reader would identify him/her: ***Economou -v- de Freitas*** **[2017] EMLR 4** [9].

20. When assessing reference, the Court will adopt a similar approach as it does when determining the natural and ordinary meaning of a publication: ***Morgan –v- Odhams Press Ltd*** **[1971] 1 WLR 1239, 1254C-D** and **1269H-1270A**.

21. The identifying material may be contained in the words complained of themselves (intrinsic identification) or may be established by proof of specific facts that would cause the reader (with knowledge of those facts) to understand the words to refer to the claimant (extrinsic identification or 'reference innuendo'): ***Monir -v- Wood*** **[2018] EWHC 3525 (QB)** [95]. An example of the first category was given by Lord Reid in ***Morgan*****, 1243D-E**: a publication that alleged that X was illegitimate. Such a statement, on its face and without need for any extrinsic evidence, refers to X's mother. An example of the latter category is supplied by the facts of ***Morgan***; reference in the article to a "dog-doping gang" which the claimant contended would be understood to refer to him by readers with knowledge of extrinsic facts.

22. If the claimant relies upon extrinsic facts to establish reference, then s/he must plead and prove those facts. If those facts are proved (or admitted), the issue becomes whether a reasonable person knowing some, or all of, these facts reasonably believes that the publication referred to the claimant. In ***Morgan***, Lord Donovan explained (p.1264B-C):

> "The plaintiff must prove that the words of the article would convey a defamatory meaning concerning the plaintiff to a reasonable person possessed of knowledge of the extrinsic facts. This requirement postulates… not merely a reasonable person but also a reasonable conclusion. Mere conjecture is not enough.

Although Lord Donovan dissented, like the authors of the current edition of *Duncan & Neill* (5th edition, Butterworths, 2020) (§7.03), I consider this accurately to state the law.

23. There is a potential intermediate category, of particular relevance in cases in which a company claims to have been defamed but which also includes 'class' libels, where the publication complained of clearly identifies the target of the defamatory allegation, but does not name the claimant. Examples were given by Mason P in the New South Wales Court of Appeal in ***Channel Seven Sydney Pty Ltd -v- Parras*** **[2002] NSWCA 202** [49]-[51], including of a publication that falsely alleged that a department store, David Jones, had a pest infestation. The ability of the corporate entity that operated the department store was not dependent upon its company name being used in the publication:

> "It would be anomalous that, if it were said falsely that a David Jones store was riddled with cockroaches, David Jones Pty Ltd could recover substantial damages in defamation (if it were the owner) but ACN 346 Pty Ltd could not (if it were the owner) absent evidence that a reader knew the obscure name of the corporate owner of the well-known business."

24. The principle identified in ***Parras*** was accepted as representing the law in England & Wales by Steyn J in ***Scarsdale Grange LLP -v- JPIMedia NSMY Ltd*** **[2020] EWHC 1988 (QB)** [16]. The authors of *Gatley* (13th edition, Sweet & Maxwell, 2022), relying on these authorities, summarise the principle as follows (§8-002):

> "… a corporation may be defamed and its business damaged even though the persons to whom the words are published have no idea of its formal legal name."

25. In ***Parras***, Mason P also gave a further example of an article that referred to a performer, not by his/her well-known stage name, but by his/her less widely known birth name. Intrinsically, the article identified the person being defamed. I gave the example of Elton John/Reg Dwight when discussing the issue of reference in ***Monir*** [100]. The same issues arise where the claimant is not named, but a photograph is used. In that instance, a photograph in which the claimant is readily identifiable is likely to supply the necessary intrinsic reference. Ignoring issues of serious harm, a claimant is neither required to demonstrate that people recognised him from the photograph nor is his claim for damages limited to those who did.

26. Indeed, at common law, to establish a cause of action for defamation, it is not necessary for the claimant to adduce evidence that actual publishees understood the words of the publication to refer to the claimant. The test of reference/identification is wholly objective: ***Economou*** [11]; ***Lachaux -v- Independent Print Ltd*** **[2016] QB 402** [15]; and ***Monir*** [96]. Evidence relied upon by the claimant to establish that publishees did understand the publication to refer to him/her is admissible, but not determinative, on the issue of reference: ***Monir*** [103]. Nowadays, proof that readers did understand the words to refer to the claimant, and to defame him/her, may, depending on the circumstances of the publication and its extent, be important to the issue of serious harm under s.1 Defamation Act 2013: ***Economou*** [11].

27. Relying upon ***Knuppfer***, Mr Tomlinson KC submitted that the test for whether the words complained of refer to the claimant is whether the "*hypothetical ordinary reasonable reader would understand the words to refer to the claimant*". It is perhaps important to note the full passage from Viscount Simon LC's speech (at p.119):

> "Where the plaintiff is not named, the test which decides whether the words used refer to him is the question whether the words are such as would reasonably lead persons acquainted with the plaintiff to believe that he was the person referred to." (emphasis added)

28. The underlined words are important. ***Knupffer*** was an extrinsic evidence (or reference innuendo) case. Where the publication complained of clearly identifies – but does not name – the target of the defamatory allegation (whether by description of activity (as in ***Parras***), photograph, or birth name), it is an intrinsic reference case. If, using the example from ***Parras***, there happened to be 100 companies in the David Jones corporate structure, only the company that actually operated the department store could bring a defamation claim. On a proper construction of the publication, it was the only company that was the subject of the allegation. The hypothetical ordinary reader could not reasonably conclude that the publication referred, for example, to David Jones (Online) Pty Ltd (to pick a hypothetical example), a company that dealt solely with the online sales and which had nothing to do with the operation of high-street stores.

29. Other entities in the David Jones group might suffer damage (e.g. lost sales) as a result of the defamation of the entity referred to, but that does not give them a cause of action (see *Gatley* §2-032). The tort of defamation is personal to the person defamed. In ***Sungrave Pty Ltd -v- Middle East Airlines*** **(1975) 134 CLR 1, 23**, in the High Court of Australia, Mason J explained the principle as follows:

> "Not every statement likely to injure a person in his profession or trade is a statement about him. Thus, for a newspaper to observe in the course of a published

> report on the performance of a particular model of car that it was unsafe would be to make a statement likely to injure the distributors of the car in their business, yet it would not be a statement about the distributors and would therefore not defame them. Conversely, it could well be regarded as a statement about the manufacturer of the car, viz. that it produced an unsafe product likely to injure it in its business and therefore actionable by it."

30. Reflecting this principle, a contention that, because a company in a group structure had been caused loss by the publication of an alleged libel, it was thereby "*referred to*" was described by Eady J in ***Elite Model Management Corporation -v- BBC*** (unreported QBD, 25 May 2001) as a "*fundamental non sequitur*" [9]. In that respect, the law of defamation is not as generous as the law that applies to malicious falsehood: see *Gatley* §22-005.

31. In ***Euromoney Institutional Investor plc -v- Aviation News Ltd*** **[2013] EWHC 1505 (QB)** [61]-[62], Tugendhat J approved advice given in another of the key defamation textbooks:

> "If the words complained of are alleged to disparage unnamed corporations in the way of their business, and the business is identified, then the test is as set out by the editors of *Duncan & Neill on Defamation* 3rd ed para 10.02:
>
> > 'Where the publication relates to a business with a complex corporate structure care should be taken to bring the claim in the name of a company which (1) would be identified by reasonable readers <u>as the subject of the allegations</u> and (2) apt to suffer damage to its own trading reputation as a result of the publication.'
>
> It is not necessary that a corporate claimant should prove that a publishee of words complained of knows its formal legal name…"

The words I have underlined are important. They should inform the exercise of selecting the correct corporate claimant from such a group structure.

32. There is a further Australian case – cited by Mr Wolanski KC – that demonstrates the strictness of the rule, so far as it applies to companies, even if a name is used in the publication. In ***Palace Flims Pty Ltd -v- Fairfax Media Publications Pty Ltd*** **[2012] NSWSC 1136**, McCallum J (then the judge in charge of the Defamation List in the New South Wales Supreme Court) considered whether an article that referred to "Palace Films" referred to the claimant, Palace Films Pty Ltd. The Judge held that it did not. She expressed her conclusion as follows:

> "In my view, in the absence of any reference to Palace Films Pty Ltd by its full title (including the words Pty Ltd), it cannot be said that the matters complained of identify the first plaintiff without resort to knowledge of extrinsic facts. The reference to 'Palace Films' does not indicate that the entity referred to is a company. That is significant in the context that, as already explained, it is clear enough that the articles were concerned with the business in fact conducted by Palace Enterprises Pty Ltd trading as Palace Films. The fact that there existed a company carrying the name Palace Films Pty Ltd (which does not trade) brings the matter into the category of cases such as ***Lee -v- Wilson & MacKinnon*** **(1934) 51 CLR 276** where an unintended target of the same name is reasonably

> understood as having been referred to. However, without the full corporate title, I accept that the first plaintiff was not named in terms."

33. Having failed to establish *intrinsic* reference, the Judge went on to consider whether a hypothetical ordinary reasonable reader, who had knowledge of the *extrinsic* facts relied upon by the first claimant company, would have understood the words complained of to refer to it. The Judge found that s/he would not: see [22]-[24]. As a result, she struck out the claim and dismissed the proceedings. As her analysis is essentially based upon a consideration of common law authorities and principles – including ***Morgan -v- Odhams Press Ltd*** – I regard her analysis as persuasive and, indeed, correct.

34. The closest analogous authority in this jurisdiction is the decision of Eady J in ***Elite***. A libel action had been brought by three companies in the Elite Model group over a programme "*McIntyre Uncovered*" broadcast by the BBC in November 1999. Shortly before trial, in a judgment given on 14 March 2001, Eady J had directed trial by judge alone (rather than judge a jury). The issue that subsequently called for judgment and decision was the defendant's contention, following exchange of witness statements, that the programme did not refer to any of the three claimant companies. The three claimant companies were described in [8]. The text of the programme is not included in either judgment, but it appears from the argument that the programme may well only have expressly referred to Elite (or Elite Models). As such, it was not an intrinsic reference case and each claimant's case on reference depended upon it establishing, by evidence, that viewers would have understood the programme to refer to it. The defendant's case was that the programme had defamed only individuals, not any of the companies. The claimants' position was that the programme had defamed every company in the Elite Group. Eady J rejected that submission. He held [9]:

> "The issue is whether any reasonable viewer would understand the programme to reflect adversely on the reputation of any company or companies within the group; whether, in other words, the allegation was such as to refer to some corporate act or omission on the part of one or more companies, as opposed to merely reflecting upon the individuals identified: see e.g. ***Knuppfer -v- London Express Newspaper Ltd*** **[1944] AC 116**."

35. As appears from Eady J's judgment, determination of whether the programme referred to any (or all) of the claimant companies required an analysis of the allegations made in the programme. The Judge considered that the claimants' case on reference had "*squeaked home*" ([20]) and determination of whether the claimants could establish their case on reference would have to await determination at trial.

36. The absence of further authorities in this jurisdiction exploring the differences between intrinsic and extrinsic reference cases is largely due to the fact that, when defamation claims were tried by juries, it was either impossible to resolve the issue ahead of trial (because it depended on assessment of facts which was the province of the jury) or that there was no point in resolving only the intrinsic reference cases as, almost inevitably, it would be coupled with an alternative case on extrinsic reference (which had to be determined on the evidence). Some of the older authorities need to be considered carefully to ascertain what type of reference case they were dealing with. It may be that there remains no value in resolving intrinsic reference cases – whether as preliminary issues or at an ultimate trial – for similar reasons. I will return to this issue below.

G: Submissions

37. Mr Tomlinson KC on behalf of the Claimants argues that the main theme of the programme is the difference between Dyson's image, which it seeks to project and protect, and the reality, which is one of abuse and exploitation. The programme leaves the viewer in no doubt that there has been very serious wrongdoing in relation to workers in the company in Malaysia, ATA, that manufactures Dyson products, and Dyson has (at the very least) failed to take action to deal with that wrongdoing.

38. He contends that, although there was no reference to the Second and Third Claimants by their company name, the programme was published "*of and concerning*" all three Claimants. The First Claimant was named and pictured during the broadcast ([8]). The repeated references to "Dyson" in the Broadcast would be understood, by persons acquainted with the companies, to refer to the Second and Third Claimant. Certainly, the Broadcast clearly refers to a "company" (in [4] and [7]) and the Second and Third Claimants are the UK companies in the Dyson group. Mr Tomlinson KC submitted that persons acquainted with the companies would believe that the Third Claimant was "*the Dyson entity procuring supplies from ATA in Malaysia*". The fact that no particular corporate entity was named in the broadcast, Mr Tomlinson argues, would mean that viewers were "*left to draw their own conclusions*" as to the company in the Dyson group to which the Broadcast was referring.

39. As to the Defendants' case on reference, in his written submissions, Mr Tomlinson KC submitted:

> "On the Defendants' case, they can publish a Broadcast which refers throughout to Dyson as a corporate entity and yet, because they have chosen not to name any particular Dyson company, cannot be the subject of a legal claim by <u>any</u> Dyson company. This is an obvious absurdity. It is common for substantial businesses to be known by a single 'brand name' whilst trading through a variety of different companies… If the Defendants were right it would be possible to publish defamatory falsehoods about any such business with impunity provided the publisher used only their general brand name without identifying any individual company. Such an obviously counter-intuitive result would require clear and unequivocal authority to support it. There is none."

40. As to the remaining preliminary issues, Mr Tomlinson KC submits that the essential message of the Broadcast has three parts:

    i) An allegation that there has been abuse and exploitation of workers at ATA, one of the Dyson group's supplier companies located in Malaysia.

    ii) An allegation that a worker at ATA had been persecuted following his blowing the whistle on practices at ATA.

    iii) An allegation concerning the way in which Dyson behaved as against claimed standards of responsibility and ethics.

    The point of controversy between the parties, he submits, is the gravity of the allegations as they concern the Claimants. The Claimants contend that the Broadcast suggests that they were "complicit" in the activities in ATA whereas the Defendants contend that it means only that they are "responsible" for them.

41. Mr Tomlinson KC argues that the Broadcast makes clear allegations of complicity in the events at ATA that are the focus of the Broadcast. The Broadcast alleges guilt of wrongdoing not reasonable grounds to suspect. Dyson's denials of wrongdoing included in the Broadcast would be regarded as having no substance by the hypothetical ordinary reasonable viewer when set against the overwhelming evidence presented in the programme.

42. As to the First Claimant, Mr Tomlinson KC argues that he is clearly identified with "Dyson" and that the viewer is "*led to assume that he knows what goes on*" because he was the founder and remains the public face of the business. Mr Tomlinson emphasises the reference to the First Claimant having moved much of Dyson's production from the UK to Southeast Asia 20 years ago in [8]. Finally, he argues that there is nothing in the Broadcast which distances the First Claimant from the allegations being levelled at Dyson. On the contrary, the Broadcast makes no distinction between the First Claimant as an individual and the Dyson group; they are all complicit in the abuse and exploitation that took place in ATA.

43. Finally, as to fact/opinion, Mr Tomlinson KC submits that the Broadcast makes defamatory factual allegations against the Claimants. There is no expressed opinion. He makes the forensic point that, until the issue of whether the Court should determine fact/opinion as a preliminary issue, the Defendants had not sought to defend the Broadcast as an expression of opinion.

44. The starting point of Mr Wolanski KC's submissions for the Defendants is that the Broadcast did not name the Second or Third Claimants. The only entity referred to is "Dyson". From that, the hypothetical ordinary reasonable reader could not, without more, understand the Broadcast to be referring to the Second and/or the Third Claimant. He makes the point – which I have already noted ([13] above) – that the other companies that comprise the Dyson group, where they are based, and the identity of the company heads the group is not even pleaded in the Particulars of Claim. All that the Defendants were told when they asked for further information as to the Claimants' case on reference was that the Second and Third Claimants were "*prominent Dyson companies*" (see [8] above).

45. Mr Wolanski KC accepts that a person or entity can be defamed without being named in a defamatory publication, but this principle cannot be extended too far. He contends that the Claimants' case is directly analogous with ***Palace Films***. There is no material intrinsic to the Broadcast which identifies these corporate Claimants (or any other company in the Dyson group), and, in the determination of these preliminary issues, the Court is not considering the extrinsic facts that the Second and Third Claimants might rely upon to establish reference. To the extent that the Broadcast contains any pointers as to the Dyson group company that is being referred to, Mr Wolanski submits that the programme directs the viewer away from the UK and towards Southeast Asia. He relied upon several matters including the following:

    i) The Broadcast concerns matters which are alleged to have taken place in a supplier company, ATA, in Southeast Asia, principally in relation to operations at a factory in Malaysia.

    ii) Concerns raised with Dyson about the working conditions at ATA are said to have been addressed by Dyson's "*Global Director of Sustainability*" [26].

iii) The Broadcast states that complaints were raised, by "*labour rights activist*" Andy Hall, about the "*squalid accommodation and workers living in fear*" which led ultimately to an investigation by the US Customs & Border Protection [24]-[25].

iv) As part of the Broadcast, Michelle Shi appears as the spokesperson for Dyson. Ms Shi is introduced as Dyson's Global Manufacturing and Procurement Director in Singapore [56]. It would have been apparent to viewers that Ms Shi was speaking from Singapore as Mr Frei thanks her for staying up until 3am to speak on the programme.

v) Ms Shi, as spokesperson, would have appeared to viewers to be speaking on behalf of the company that had terminated the contract with ATA as a result of concerns about its working practices (see e.g. the use of "*we*" in [59], [63], [68], [70], [72] and [74]). She also states that she had been leading the response for the "*global supply chain for Dyson*" [63].

vi) There is reference to a legal claim that is being brought by 14 individuals, including Mr Limbu, represented by Leigh Day, accusing "*the company*" of negligence [45]. The Broadcast does not state in which jurisdiction the claim is being brought, nor does it identify the company being sued, but in the initial introduction it is said to relate to a "*series of labour abuses and exploitation at a supplier in Malaysia that makes [Dyson's] vacuum cleaners*" [4].

vii) Reference is made to the involvement of the Royal Malaysia police, which emphasises the alleged wrongdoing is in Malaysia.

46. Mr Wolanski KC, notes that further facts have been identified in the "particulars of reference", that were added to the Amended Particulars of Claim. Nevertheless, these facts are outside the matters that can be considered in relation to the determination of the preliminary issues because the parties have agreed that the decision as to reference has to be done without considering evidence of extrinsic facts alleged to be known by some or all of the viewers of the Broadcast.

47. As to fact/opinion, Mr Wolanski KC submits that the Broadcast raises the question as to whether Dyson is responsible for the abuses of labour rights at a company within its supply chain. This issue of responsibility (whether legal or moral) of a Western brand for failings in a supply chain based in a developing country would be familiar to viewers and, he argues, would be readily understood by them as an expression of opinion. On the assumption the Broadcast is found to refer to the Second and Third Claimants, the meaning of the broadcast is that they had "*not lived up to their advertised standards of ethics and corporate social responsibility*". That is quintessentially an expression of opinion and would be readily recognised as such.

48. Finally, in respect of the First Claimant, Mr Wolanski KC accepts that he is included in the Broadcast, but, he submits, not in a way that the hypothetical ordinary viewer would consider defamed him. No culpable conduct is attributed to him personally. There is no suggestion that the First Claimant has any knowledge of what has been going on at ATA. The First Claimant's sole appearance in the Broadcast is in a marketing/advertising capacity as the public face of the Dyson brand. He is identified

as the founder. When Ms Shi appears to defend Dyson, she is defending the brand or the company. No reference is made to the First Claimant.

H: Decision

(1) Reference

49. The parties agreed that the preliminary issues would be resolved without any evidence beyond the Broadcast itself. Importantly, that leaves over (potentially to be resolved at some point later in the proceedings) the Claimants' alternative case on reference, relying upon viewers' knowledge of the extrinsic facts, including those set out under Paragraph 7B of the Amended Particulars of Claim.

50. Mr Tomlinson KC's submissions oversimplify the principles that apply to reference. The decision on reference is likely to be highly fact specific and, apart from the most straightforward cases, is likely to require at least some consideration of the factual position. It is theoretically possible that a publication could libel an entire group of companies – giving each of them a cause of action – but such cases are likely to be rare. In most cases the focus of the allegation – and therefore the entity which is being referred to – will be readily identifiable from the publication. The touchstone of reference, as noted from the underlined passage from *Duncan & Neill* (as quoted in ***Euromoney***) (see [31] above) is whether the person (or company) would be identified by readers as the "*subject of the allegations*", i.e. the target.

51. Mr Tomlinson KC's stark submission of absurdity (see [39] above) – that the Broadcast's repeated reference to "Dyson" could be found not to have defamed *any* Dyson company – can be contrasted with an alternative finding, arguably equally absurd, that the Broadcast is found to have defamed *all* Dyson companies. The reality is that, on a proper application of the principles of reference, the answer is rather more nuanced. As I shall explain, the Broadcast's focus on Dyson may well give one or more Dyson companies a cause of action for libel; the question is which one(s). The answer to that question requires a consideration of what is being alleged in the Broadcast. It is not necessarily to be found simply by looking at which Dyson companies have most connection with this jurisdiction.

52. The key messages that the hypothetical ordinary viewer would understand the Broadcast to convey are as follows:

    i) The allegations centre on ATA, a Malaysian company that manufactures Dyson-brand vacuum cleaners and filters. The allegations in the programmes are neatly crystallised in the introduction. Employees of ATA "*suffer abuse, inhuman working conditions and in one case even torture*" and are paid £9 per day [3].

    ii) Dyson is an internationally recognised brand, trading globally, but the experience of the workforce of ATA stands in contrast to the image that Dyson likes to promote.

    iii) The key target is the Dyson company that has the agreement with, and therefore oversight of, ATA. It is a matter of dispute between the parties as to the gravity of the allegation, but it ranges from actual knowledge of what was happening at

ATA, to a failure to realise/properly investigate. On this point, the complaints by Mr Hall – and the way they were responded to, including by Tom Crawford, described as "*Dyson's Global Director of Sustainability*" – are a strong indicator of the Dyson company that is being identified as the target of the Broadcast's allegations, at least as it concerns Dyson (see [23]-[26]).

iv) Potentially, there is a further Dyson company targeted in the Broadcast. In [27]-[28] claims are made as to a response from Dyson's "*PR operation*". This is the subject of the Claimants' third meaning, alleging that this "*PR operation*" tried to "*cover up [the allegations] and shut down public criticism*". The "*PR operation*" may have been carried out by the same company as is alleged to have failed properly to investigate what was going on in ATA, but it could be a different company.

v) Mr Frei's interview with Ms Shi concentrates on the allegations of abuse of workers by ATA. As Mr Wolanski KC argued, the repeated use of the word "*we*", would tend to indicate to viewers that Ms Shi was speaking on behalf of whichever company had the commercial arrangement with ATA, an arrangement she emphasised had been "*terminated*" by Dyson [57]. Again, that is a clear pointer to the viewer that it is the Dyson company that had the contract that is the target of the criticism. Mr Frei's questions then centre on why it took so long for Dyson to discover that there was a problem at ATA [58]. He then repeats demands that Dyson should release the independent report that led Dyson to terminate its contract with ATA [62]-[68] before concluding the interview by putting it to Ms Shi that Dyson was paying workers £9 per day to produce its products that could be on sale for up to £500 [71]-[74]. The interview, critically, does not deal with the allegations of a "*cover up*" by the "*PR operation*".

53. The Broadcast's allegations were not, and would not reasonably be understood to be, directed at the entire Dyson group. It is not, therefore, a case in which every company in the group has a defamation claim arising from the Broadcast. In my judgment, the ordinary reasonable viewer would identify two candidates as the subject of the Broadcast so far as concerns Dyson: the corporate entity that was trading with ATA and whichever company was responsible for the "*PR operation*". Those companies might be the same; they may be different. If they are different companies, then each company may have a claim in defamation for the distinct allegations. Depending on the ultimate factual situation, one Dyson company could have a claim based on some form of the Claimants' first two meanings, and a further company have a claim based on the third. If the Second and Third Claimants are not the companies that are the subject of the allegations in the Broadcast, then they will fail to establish reference and will have no claim. If the Broadcast has caused any people to think less of the Dyson brand, and that has caused any loss to the Second or Third Claimant, then they are in no different position from individuals who are caused loss by a defamatory publication but are not referred to in it and therefore cannot bring a claim (see [29] above). There may be other Dyson companies in respect of whom, based on facts pleaded and proved, the Broadcast would convey a defamatory meaning to a reasonable person possessed of knowledge of those extrinsic facts. As yet, any such other candidate(s) have not been identified. The short point is that I cannot resolve those points at this stage.

54. The issue that I had to decide, in resolution of the first preliminary issue, was whether, without consideration of extrinsic evidence, the Broadcast refers to the Second and Third Claimants. For the reasons I have explained, it does not. This case is analogous to ***Palace Films*** and the result is the same. It may be possible for Dyson to put forward a revised claim on behalf of the current corporate Claimants, or for claims to be brought by other companies in the Dyson group. The Court will consider any reformulated claim that the Claimants wish to advance.

55. I considered with the parties at the hearing whether, if I found that the Broadcast did not refer to the Second and Third Claimants (without consideration of extrinsic evidence), I should nevertheless go on to decide the remaining preliminary issues on the basis that the relevant company is identified. Mr Wolanski KC was opposed to that course. Mr Tomlinson KC argued that the Claimants were entitled to an adjudication based on their pleaded case that they were referred to in the Broadcast.

56. In my judgment, Mr Wolanski KC's proposed course is correct. The issue was, without extrinsic evidence, whether the Broadcast referred to the Second and Third Claimants. I have determined that it does not. As such, the remaining preliminary issues fall away. Without establishing reference, those Claimants have no cause of action. To go on and determine, on what would be a hypothetical basis, the other preliminary issues would not be the right course. First, the Court does not decide hypothetical issues. Second, and more importantly, it would be unwise for the Court to embark on this exercise when the Claimants' case (whether the existing Claimants or new ones) is unclear. The current particulars of reference, even if assumed to be proved, would not support a case of reference for the Second and Third Claimants that would have a realistic prospect of success. The fact that these are the two companies of the Dyson group that operate, and are the most prominent, in the UK is not the point. To disclose a case with a real prospect of success, the relevant claimant must plead and prove the facts that would identify it as the company that is the subject of the Broadcast's allegations (as explained above). I have not reached (and therefore in this judgment not expressed) any concluded view on what the meaning of the Broadcast as it affects these companies. My observations (in [52] above) are to explain my decision on reference. I am not reaching any view on natural and ordinary meaning (or any of the other preliminary issues).

57. Before leaving the issue of reference, I should make some observations about whether reference is suitable to be resolved as a trial of a preliminary issue. In defamation claims, the general principle is that the Court will usually order the trial of preliminary issues on matters of dispute between the parties if they are capable of being resolved without the need for evidence beyond the publication itself: see ***Bindel -v- PinkNews Media Group Ltd*** **[2021] 1 WLR 5497** [27]-[34]. Conventionally, that opens the way for the determination of the issues of the natural and ordinary meaning of a publication, whether that meaning is defamatory at common law and whether the publication is or contains an expression of opinion or a statement of fact. This case has demonstrated that caution must be exercised before the Court directs reference to be determined as a preliminary issue. In a case where reference is disputed by the Defendant, and therefore where there is a realistic prospect that resolution of the issue will require an investigation of evidence and finding of facts, the issue may not be suitable for disposal as a preliminary issue. If the Court does order reference to be determined as a

preliminary issue, then the parameters must be spelled out very clearly and the cost/benefit analysis considered carefully.

58. In this case, I was alive to the potential for reference to open up factual disputes that could require resolution of facts. The parties agreed that the exercise would be conducted without evidence. Consequently, the Order directing trial of these preliminary issues made clear that the Court would not be considering any evidence beyond the Broadcast itself. That has avoided the pitfalls identified in ***Bindel***, but it does raise a question as to the value of what is likely to be achieved if the exercise is so limited. As it happens, in this case, it has helped to focus the parties' minds on an issue that would have become important at some stage. It may have therefore avoided interlocutory skirmishing that would have occurred further down the line had the issue not been tackled now. The point remains, however, that care needs to be taken before the Court directs reference to be determined as a preliminary issue and, if it does, it sets out clearly the basis on which the issue is being resolved.

(2) The First Claimant

59. There is no dispute that the Broadcast referred to the First Claimant. He was named and pictured. The issue is whether the Broadcast conveyed any meaning defamatory of him. Applying the well-established principles (identified in [16] above), I have concluded, without difficulty, that it does not.

60. The Broadcast identifies the First Claimant as the founder of the eponymous brand. He is referred to in one paragraph of the transcript and occupies a few seconds of the Broadcast. The Broadcast is simply not about him, and no ordinary reasonable viewer could conclude that he was being in any way criticised. As I have noted above, the allegations in the Broadcast were clearly targeted, but the targets do not include the First Claimant. Only a reader that was hopelessly naïve about the way in which global companies like Dyson operate could consider that a single person, its founder, had day-to-day management responsibility for what happened in a manufacturing plant that supplied its products. Such a conclusion would be unreasonable. As there is nothing in the Broadcast which attributes responsibility to him or suggests some other culpable act or omission, it is incapable of bearing any meaning defamatory of the First Claimant.

61. In respect of the claim brought by the First Claimant, the answer to preliminary issue (iii) is that the Broadcast conveys no meaning about the First Claimant that is defamatory of him. The remaining preliminary issues then fall away. In consequence, the First Claimant's claim will therefore be dismissed and judgment on that claim will be entered for the Defendants. I will ask Counsel to propose directions in respect of the future conduct of the action, by the Second and Third (and potentially other) Claimants.

Appendix – Agreed transcript of the Broadcast

[News Introduction]

[1] Dyson, genius at cleaning carpets, now workers in one of their supplier companies claim that they were abused and mistreated. How did it happen? Can Dyson clean up its own image?

[2] Good evening. Dyson's slogan is the *"vacuum that doesn't lose suction"* but has this iconic British brand lost credibility, following the alleged treatment of its workers by ATA, a Malaysian company that helped make Dyson's high-end vacuum cleaners and air filters.

[3] Tonight, in an exclusive report, we speak to ex-employees of ATA, who suffered abuse, inhuman work conditions, and in one case, even torture, while they were helping to make Dyson products on wages of £9 a day. Dyson has now severed links with ATA and denies any wrongdoing, but how could work conditions have got so bad, and why wasn't it picked up?

[The Broadcast moves to a different topic. Then continues with Dyson]

[4] It is one of Britain's most iconic companies but tonight Dyson is facing claims of appalling abuse and exploitation in the factories in Malaysia where its cordless vacuums and other appliances are made. 14 workers who were employed on its production line have started legal action against the company alleging forced labour, squalid accommodation, excessive hours and intimidation by management. Tonight, we hear from one worker who claims that he was tortured by police after blowing the whistle, claims that Dyson says it knows about and immediately acted on.

[5] Dyson emphatically denies any wrongdoing and says it has terminated its contract with that supplier.

[6] We'll be hearing from them live but first, here's Darshna Soni with this exclusive report.

[Voiceover]

[7] Ingenious and innovative, that's the image Dyson likes to project to its customers. Famed for ground-breaking designs of vacuums and air purifiers. Dyson is a household name globally and a flagship company in Britain.

[Broadcast shows footage of the First Claimant in a Dyson "demo" store, where he speaks to the camera and says "*here we are in a Dyson demo store where you can try out our technology*"].

[8] Founded by inventor, Sir James Dyson, one of Britain's richest men. Sir James controversially moved much of Dyson's production from the UK to South East Asia 20 years ago, reducing costs and maximising profits.

[Clips of Dyson Employees with a voiceover from the First Claimant saying: "*We do the research and development. We put huge amounts of money into it, and it has a long-term payback.*"]

[9] But behind the professional image Dyson likes to portray, there's a dark side to its supply chain, with claims of exploitation, intimidation and even torture.

[Footage of Mr Limbu with English subtitles]

[10] He would stop and then start beating again. I felt so scared.

[Darshna Soni]

[11] Tonight, we can reveal that more than a dozen workers are taking legal action against Dyson, claiming a series of labour abuses and exploitation at a supplier in Malaysia that makes its vacuum cleaners.

[Video clip apparently showing ATA workers fleeing from a factory]

[12] There are claims of unlawful working conditions, of false imprisonment, of squalid living conditions. Workers who did speak out have told us they were threatened by the supplier and even tortured by the police.

[Oliver Holland, Partner at Leigh Day]

[13] Dyson depicts itself as a very responsible company and ethical, so they should have known what was happening.

[Voiceover]

[14] Johor Bahru, a modern Malaysian city with high-tech industry at the heart of its economy. It's home to ATA IMS, one of South-east Asia's leading electronics companies.

[15] Dyson is by far its biggest customer. It churns out millions of products and components each year for the technology giant, ranging from cyclone bagless vacuum cleaners to air purifier fans. The majority of the workforce on these production lines are migrant workers, from poorer Asian countries, mostly Bangladesh and Nepal. Many paid hefty recruitment fees to get their jobs.

[16] Dhan Kumar Limbu travelled from Nepal to Malaysia ten years ago. He worked in quality control at ATA Industrial, part of the ATA IMS empire.

[Mr Limbu, speaking to camera with English subtitles]

[17] When I was working at ATA Industrial, I mostly worked on Dyson products.

[Voiceover]

[18] Workers at ATA earn a basic wage of just £9 per day. But payslips revealed some staff clocking up to 135 hours of overtime, in excess of the maximum allowed under Malaysian law.

[Mr Limbu, speaking to camera with English subtitles]

[19] I worked 12 hours a day, 7 days a week, 30 days a month. This led to immense pressure and sleep deprivation. After that my body would tire out.

[Voiceover]

[20] Living conditions for migrant workers in Malaysia are also infamously tough.

[Footage apparently from a worker's mobile phone showing accommodation with blue floor]

[21] Footage and photographs we've seen from last spring show some ATA workers crammed into one dormitory with up to 65 people. This video was verified by 4 witnesses who spoke to Channel 4 News. It's alleged many didn't have valid visas to work in Malaysia and feared deportation.

[Footage apparently from a worker's mobile phone showing workers climbing down onto crates and who appear to be fleeing]

[22] This footage, not independently verified, was posted online by an ATA worker. It purportedly shows illegal workers in 2019 fleeing an ATA Industrial factory in blind panic when inspectors arrived.

[Audible snippets from mobile phone footage translated with subtitles – "It's not the police. Those men are from Dyson. It's not the police"]

[Darshna Soni]

[23] We've seen emails and documents revealing that Dyson was warned about the conditions at ATA Industrial as early as November 2019.

[24] A labour rights activist named Andy Hall wrote to the company, alleging forced working conditions. He followed this up on numerous occasions yet was told by Dyson that the claims were factually incorrect.

[25] Last year Mr Hall followed up with further detailed information, alleging squalid accommodation and workers living in fear. The allegations were so serious that an investigation was launched by US Customs and Border Protection.

[Voiceover]

[26] On the 30th April last year, Dyson's Global Director of Sustainability, Tom Crawford responded to Andy Hall – "*We treat matters of supply chain worker welfare, including ethical recruitment, living conditions and health and safety with the utmost importance. Thank you for highlighting these matters, which we are following up" [with caption of quote].*

[27] But just weeks later, when details of the conditions at ATA Industrial were reported by the Sunday Mirror, Dyson's PR operation went into overdrive [Copy of the Sunday Mirror article front page]. The company told media it did not recognise the allegations [Caption: "We do not recognise the allegations"] and there was no evidence [Caption: "no evidence"], insisting the report gave an inaccurate impression of conditions in Dyson's supply chain. [Caption: "inaccurate impression of conditions in Dyson's supply chain"]

[28] Dyson issued a notice to the media, calling the report false and defamatory and subject to a legal complaint. The Sunday Mirror later published a partial correction. *[Caption: "false and defamatory and subject to a legal complaint"]*.

[Darshna Soni]

[29] Dyson told us it did investigate Mr Hall's claims promptly. Between November 2019 and June last year, they conducted five audits of ATA, but none of them identified any significant issues that couldn't be remedied quickly. They also stated that the overcrowded hostel in the video was not on the list of accommodation provided to them by ATA, and so, wasn't inspected by auditors.

[Voiceover]

[30] Meanwhile in Malaysia, ATA began to hunt for the whistle-blowers. Mr Limbu was under suspicion. After his phone was seized during a shift, he found an unexpected visitor waiting for him at his hostel.

[Mr Limbu]

[31] A car was parked up ahead. My manager was in the driver's seat. He opened the door and I got inside.

[Reconstruction footage shown]

[32] I was sure I was being taken to the police station. I left it to destiny and stayed quiet.

[Voiceover]

[33] At the police station, Mr Limbu claims he was interrogated by a plain clothes officer, who asked for details about his links to labour rights activists, insisting he must have been paid to provide information about the factory.

[Mr Limbu]

[34] They started beating me with books and kicking me where I was sitting. I said that I did not do it for money but they kept on insisting that I did. Saying, *"Why would you leak such big information?"*

[Voiceover]

[35] Mr Limbu says he was then taken into a smaller room, by the same police officer.

[Mr Limbu]

[36] Then he questioned me again and started beating me. When I screamed in pain, he stood on my knees. Then he hit me on the soles of my feet with a [rubber] pipe. He would stop and then start beating again. I kept thinking, "*How long will they keep me in jail, beating me like this?"*. I felt so scared.

[Voiceover]

[37] Despite the alleged beatings, Mr Limbu says he refused to sign a confession, he claims police then called ATA Industrial's Chief Operating Officer, Balachandran Govindasamy (or "Bala") to come to the station.

[Mr Limbu]

[38] He threatened to put me in jail for life and then he said I should help them. If I support them and give a statement, he would take me out of jail.

[Voiceover]

[39] Mr Limbu says under duress he signed a statement that he received 4,000 Ringgit, about £700, from labour rights activists to leak information about the ATA factory, only then was he allowed to return to his hostel. The next day, Mr Limbu says he was given new instructions

by Bala, to feed misleading information back to the labour rights activists, presenting ATA in a positive light.

[Mr Limbu]

[40] He said, "*You have to let me know what they ask you and I will tell you how to answer them".*

[Voiceover]

[41] A month later, Mr Limbu fled Malaysia without his passport. He only made it home with help from the Nepalese embassy.

[42] ATA did confirm that they took Mr Limbu to the police station but deny he was beaten. They say they engaged a law firm to investigate his allegations and found them unjustified and unsubstantiated and unlikely to have taken place. ATA say claims against Balachandran Govindasamy and other managers are preposterous.

[43] The Royal Malaysia police didn't comment but Dyson also interviewed Mr Limbu and refunded his flight home. They told us his story was one of the reasons they cancelled their contract with ATA.

[Darshna Soni]

[44] Dhan Kumar Limbu isn't the only worker who's made allegations of mistreatment against ATA Industrial. We've spoken to a number of others who've told us about the appalling conditions in hostels, about excessive hours, intimidation and violence.

[Voiceover]

[45] Mr Limbu and 13 others are now being represented by the lawyers, Leigh Day, who intend to file a claim against Dyson in court accusing the company of negligence.

[Oliver Holland, Partner at Leigh Day]

[46] Our clients allege that they work under conditions of forced labour, in unsanitary and crowded accommodation and they lived under the constant threat of punishment and persecution by the factory management if they didn't adhere to what they wanted them to do.

[47] Dyson depicts itself as a very responsible company and ethical, but, when allegations are put to them, they then tend to try and shut that down instead of taking the responsible approach and trying to improve conditions.

[Darshna Soni]

[48] Dyson categorically deny that they failed to act responsibly or covered anything up. They insist that they only obtained concrete evidence of serious problems at ATA when they commissioned their final audit, which was delivered in October last year.

[Voiceover]

[49] We asked to see that report, but Dyson declined. They told us it substantiated some of Andy Hall's claims. It found ATA was employing irregular workers, some had had their passports

and documents retained. It also found ATA hadn't reimbursed some worker recruitment fees and there were concerns about excessive hours.

[Mr Limbu]

[50] The things I had to go through in Malaysia, the police beating, has left me mentally unwell. I had to take a loan to come back to Nepal. I am looking for some relief from these things. So I am starting a legal battle against them.

[Voiceover]

[51] ATA is now in the centre of a storm. After losing its biggest customer, its share price plummeted 80% and it's been charged with violating the country's labour laws on living conditions.

[52] In a statement, ATA told us they're committed to ethical business practices. The company denied its workers were subject to intimidation, that they retained workers' passports or employed illegal workers. They say they abide by pay and working hour regulations although, a few managers have allowed their workers to work beyond the hours allowed.

[Caption: ATA Statement: "...a few managers have allowed their workers to work beyond the hours allowed."]

[53] They told us worker accommodation met the required standards.

[Caption: ATA Statement: "...worker accommodation met the required standards."]

[54] The company is confident that with the range of improvement actions taken, it is compliant with all regulations and standards.

[Caption: ATA Statement: "The Company is confident that with the range of improvement actions taken, it is compliant with all regulations and standards."]

[Promotional Footage of the First Claimant in store.]

[55] Meanwhile, Dyson is now facing legal action. Britain's favourite vacuum maker left having to clean up its reputation.

[Interview with Michelle Shi]

[Matt Frei]

[56] Darshna Soni with that exclusive report. Well I'm now joined by Michelle Shi who is Global Manufacturing and Procurement Director at Dyson in Singapore. Thank you very much for coming on the programme and I appreciate you staying up until 3 in the morning to answer these questions, and they are serious questions. So, let me start with this; Dyson is a company that Brits are incredibly proud of, how on earth did it get to this?

[Michelle Shi]

[57] Firstly, thank you for having me tonight Matt, what we have seen and what your viewers have seen are serious and are concerning, however they don't represent what Dyson stands for. Dyson has high standards in our corporate social responsibilities and we stand behind that and I think in your own report you talked about the audits that we have done and the

proactive actions we've taken with the ATA Industries as well and that should be clear [interrupted by news reader]... we did terminate our contract.

[Matt Frei]

[58] But it took you a long time? I mean... the audits... Sorry to interrupt but you've had... you started the audits in November 19 and they went on until last year but it's only in June of 21 (so 18 months later) that you discovered there was a problem, I mean what took you so long? These are really serious allegations. How come your audits of which there were 5, at the beginning, didn't pick any of this up?

[Michelle Shi]

[59] Well, two years between 2019 and 2020, the 6 audits we did, two were internal and 4 were by internationally recognised audit bodies and every finding in the audit reports we proactively drove improvement with ATA Industries, and it's only when ATA Industries were not making those improvements at a timely manner that we wanted, we terminated their contract, we made the ultimate sanction to actually terminate the contract.

[Matt Frei]

[60] Right but...

[Michelle Shi]

[61] And it's a great question, Matt...two years.

[Matt Frei]

[62] You only terminated the contract in November of last year. It took you two years to take that decision when the allegations were mounting up, so... and we know about this independent report, the big one that was done at the end, that's the one that led you to sever ties, why on earth won't you release the results of that report, the full report on the table – we've asked you repeatedly and you've said no.

[Michelle Shi]

[63] Well two years, I myself who lead this global supply chain for Dyson and my teams, have been working through the improvements, and driving the improvements with ATA Industry, and it's a very simple reason why we continuously to proactively work with them, they are thousands of workers in ATA's factory Matt, [interrupted by presenter] if we simply just say, go... [interrupted by presenter]...

[Matt Frei]

[64] OK, but why not release the report? Where's the report? Release the report!

[Michelle Shi]

[65] Well the report, we have the report and Dyson works on the report... [interrupted by presenter]... and that is why we took the actions, so that is...

[Matt Frei]

[66] Yeah, and we'd like to see it.

[67] Okay but we'd like to see the report in the interest of public disclosure – you want to clean up your image, there are very serious allegations made against you, it took you a long time to, you know after 5 audits to actually get to the one that finally severed relations with ATA, why not just release the whole thing?

[Michelle Shi]

[68] Well, the welfare of the workers, are our uttermost important priority, and that is why we've been working with them, working on the actions rather than just run away from the problem, we address the problems other people ignore and that's the right thing to do Matt and that is the responsibility we took.

[Matt Frei]

[69] Michelle, if the work, the welfare of the workers is your uttermost priority, as you say, don't they deserve some compensation?

[Michelle Shi]

[70] Well, Matt, that, the legal matter I cannot comment but we stand behind our corporate social responsibilities and we have worked proactively with ATA to drive these actions, and we now have taken the ultimate sanction on ATA as well.

[Matt Frei]

[71] Right. The average Dyson vacuum cleaner, I checked online, is between, I don't know 180 quid and £500, top of the range, you're paying your workers, you were paying your workers at ATA £9 a day to produce this product. £9 a day. They worked a 6-day week before they worked a 7-day week, I mean how is that humane frankly?

[Michelle Shi]

[72] Well, our products are the result of the technologies and the innovation we put into our products, and we very much are a global company and we are in the global supply chain, and we very much want to be competitive in every market we are in, and in every market, not only just Malaysia, but everywhere in the world...[interrupted by presenter]... we want to be competitive...

[Matt Frei]

[73] But you paid your workers a pittance. You paid your workers a pittance, and 14 of these workers are now taking you to court over misconduct and abuse. That is hardly looking after the welfare of your workers, is it?

[Michelle Shi]

[74] Well, I can't comment on the legal matter, but absolutely not Matt, we have not taken the advantage of the workers, we stand behind our standards, we've worked proactively, we take action, we recognise our responsibility, and we are doing that, we were doing that and we're

> going to continue to be doing that because the ethical supply chain for Dyson is what we stand for and that is also what we're going to continue to work on for the benefit of the people there.

[Matt Frei]

[75] Okay, Michelle Shi, thank you very much indeed.