Neutral Citation Number: [2022] EWHC 3128 (KB)

Case No: QB-2021-001857

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7 December 2022

Before :

MR JUSTICE GRIFFITHS

- -

Between :

ABC

Claimant

- and -

TONY PALMER

Defendant

- -
- -

The Claimant in person
The Defendant in person

Hearing date: 5 December 2022

- -

Approved Judgment

Mr Justice Griffiths:

1. In this case, the Claimant's name has been anonymised as ABC by order of Master McCloud dated 30 April 2021. I will refer to the Claimant as "Ms C" and the Defendant as "Mr Palmer". In view of the subject matter of the claim, I will reduce the number of references in this judgment to specific matters which might make it easier to identify Ms C.

2. The Claimant is a private individual who on 12 May 2015 pleaded guilty in a London Magistrates Court ("the Magistrates Court", the precise location of which I will not state in this judgment) to 9 counts of fraud set out in the information (the charge sheet) as follows:

> 1) On 10 April 2012 you dishonestly made a false representation to London Borough of Lambeth intending to make a gain for yourself, namely in a claim for Housing Benefit and Council Tax benefit (NP/01) in an on line application namely that you were renting from a private landlord at [address in SW9] from 7 April 2012 and that this was an assured shorthold tenancy, where your landlord was [Names A and B] and that your rent was £675 every calendar month.
>
> Contrary to section 1 and 2 Fraud Act 2006
>
> 2) On 20 April 2012 you dishonestly made a false representation to London Borough of Lambeth Benefit Section, intending to make a gain for yourself, namely by providing a letter (NP/02) which purported to be from [Names A and B] stating that you were their tenant and resident at [address in SW9].
>
> Contrary to section 1 and 2 Fraud Act 2006
>
> 3) On 28 February 2014 you dishonestly made a false representation to Royal Borough of Kensington & Chelsea, intending to make a gain for yourself, namely in a claim for Housing Benefit and Council Tax Reduction, (exhibit PH/01) that you had a tenancy at [address in W11] and held a short hold tenancy from 17 March 2014 until 16 March 2016 and rental of £360 per week.
>
> Contrary to section 1 and 2 Fraud Act 2006
>
> 4) On 28 February 2014 you dishonestly made a false representation to Royal Borough of Kensington & Chelsea intending to make a gain for yourself, namely in a claim for Housing Benefit and Council Tax Reduction, (exhibit PH/01A) that a letter you enclosed with your application for Housing Benefit and Council Tax benefit was purportedly from [Name C].

Contrary to section 1 and 2 Fraud Act 2006

5) On 28 February 2014 you dishonestly made a false representation to Royal Borough of Kensington & Chelsea intending to make a gain for yourself, namely in a claim for Housing Benefit and Council Tax Reduction (exhibit PH/01A) you indicated that you had not claimed housing benefit or Council tax benefit before whereas you were claiming from London Borough of Lambeth and had claimed the London Borough of Harrow.

Contrary to section 1 and 2 Fraud Act 2006

6) On 14 February 2014 you dishonestly made a false representation to London Borough of Lambeth Benefit Section intending to make a gain for yourself, namely in an email (NP/07) and attached change of address form dated 12 February 2014 (NP/07a) notifying that you had moved out of [M Mews address] on 5 February 2014 and into 1st floor flat [C Road address] on 6 February 2014 whereas in fact you moved into the property at [C Road address] on 24 March 2014.

Contrary to section 1 and 2 Fraud Act 2006

7) On 14 February 2014 you dishonestly made a false representation to London Borough of Lambeth Benefit Section intending to make a gain for yourself namely in providing a letter dated 10 February 2014, which purported to be from your landlord at [C Road Address], [Name of person] (NP/07c).

Contrary to section 1 and 2 Fraud Act 2006

8) On 14 February 2014 you dishonestly made a false representation to London Borough of Lambeth Benefit Section intending to make a gain for yourself namely in providing a copy of a document which you indicated in your email of that date was your tenancy agreement for [C Road address] (NP/07).

Contrary to section 1 and 2 Fraud Act 2006

9) On 5 June 2014 you dishonestly made a false representation to Royal Borough of Kensington & Chelsea intending to make a gain for yourself namely in a claim for Housing Benefit and Council Tax benefit, (exhibit PH/03) by emailing the authority stating that you were still living at the address of [C Road address] and attaching a letter purportedly from Thames Water to you at that address.

Contrary to section 1 and 2 Fraud Act 2006

3. The Defendant is a freelance journalist who is a member of the National Union of Journalists and who sells reports of court hearings to national newspapers and posts them on a blog he runs called Square Mile News. The Claimant brings this action as a result of a report by the Defendant which purported to be of the hearing of her case at the Magistrates Court and which he posted on his blog, Square Mile News ("the Blog Post") dated 13 May 2015.

4. The claim is set out in Particulars of Claim dated 3 September 2021 and a defence has been filed dated 30 September 2021.

5. There are numerous disputes of fact between the parties which I will examine and resolve later in this judgment. Based on her version of the facts, Ms C alleges that the Blog Post, both as originally posted and as subsequently reposted on various occasions, was a misuse of private information, that Mr Palmer has pursued a course of conduct which amounts to the tort of harassment contrary to sections 1 and 3 of the Protection from Harassment Act 1997, that Mr Palmer acted in breach of various provisions of the Data Protection Act 1998 (in force between 13 May 2015 and 25 May 2018) and in breach, also, of the General Data Protection Regulation (EU) 2016/679 ("GDPR") which had direct effect until 31 December 2020 and thereafter as transposed into UK law from 1 January 2021, and in breach, also, of the Data Protection Act 2018. She also claims a right to be forgotten, incorporated into Article 17 of GDPR, following the date in 2017 when her convictions became spent under the Rehabilitation of Offenders Act. She also relies on Article 8 of the European Convention on Human Rights (the right to respect for private and family life) and claims, in the round, that her rights on the facts of this case were greater than any rights or defences that Mr Palmer might point to, whether by way of a journalist's exemption or in the exercise of free speech or by way of reporting in the public interest. Many of her claims of fact, and all of her claims in law, are resisted by Mr Palmer.

6. At the trial, both Ms C and Mr Palmer gave evidence and were cross examined. No other witnesses were called.

7. I had three volumes of trial bundles, running to a little less than 400 pages, which were referred to in the evidence. Both sides also filed detailed skeleton arguments and made short closing speeches.

The facts

8. The following essential facts were either undisputed or, where disputed, were established to my satisfaction applying appropriate burdens of proof by the evidence of the witnesses and the documents in the bundles.

9. In making my assessment, I found the Defendant to be a more plausible witness than the Claimant. The Defendant's case was supported by documents which appeared to me to be genuine. The Claimant's case was largely unsupported by documents, not least because she claimed to have destroyed some of those which she would have relied on, such as emails, and a press release, because she found them distressing. The Defendant gave his evidence straightforwardly and convincingly. The Claimant's evidence often strayed from what was relevant and, when she did give direct answers to questions, which was not always, they tended to be speculative and did not always

convince. For example, a great deal of her case was based on a suggestion that all the information that the Defendant published about the court hearing was derived, not from his own attendance at the hearing, but from other sources, but she was not able to identify any other sources which either did, or would in my judgment be at all likely to, contain the information in question. This included facts such as her having a younger brother, and having earlier cautions for theft and assault.

10. I also bear in mind that the Claimant was convicted of 9 counts of fraud, involving dishonesty with the intention of making a gain, which undermines her credibility on matters not corroborated by other evidence. The Claimant said in her evidence that she was not really guilty and that her guilty pleas were because her lawyer (she was professionally represented before the Magistrates Court and in receipt of legal aid) did not challenge the case against her and she herself felt overwhelmed. She showed me some documents which, she said, supported her innocence, but they were not, in fact, inconsistent with her guilty pleas, although they provided some background to her living arrangements and her benefit claims. She agreed that she entered guilty pleas and she has never appealed her convictions. I am satisfied that she was guilty as charged, and that her guilty pleas reflected her guilt of the various offences as set out in the information I have quoted.

11. I accept Mr Palmer's evidence that he makes his living as a journalist and court reporter. He works alone. He showed me a National Union of Journalists press card valid for the period including the date of Ms C's plea and sentencing hearing. He has been a journalist since 1988. Apart from his working experience, his only training has been in Teeline shorthand, which he learned in about 2010. He sells stories to national newspapers, such as the Sun, the Mirror, the Star, the Daily Mail, the Daily Express, the Times, the Telegraph and the Evening Standard. He showed me some articles with his name "Tony Palmer" as the byline, reporting court cases. He also posts court reports on his blog, Square Mile News, a website which he runs alone and is proud of ("SMN"). When he has failed to gain the interest of the printed press for his reports, he leaves them on SMN. His SMN reports may state, as the Blog Post in issue in this case did, "Exclusivity Option – Contact [email address] for sole rights to story and removal". He rejected the suggestion that this was to blackmail those embarrassed by his reports into paying to have them taken down. He denied an allegation by the Claimant that he had made such a demand of her, in an email. She was not able to produce any such email, having (she said) destroyed it. Most of the emails in the bundles were produced by Mr Palmer from his own records, and I have no reason not to believe his evidence that he found no email corresponding to this allegation. He explained that the notice on SMN was to encourage national papers to buy and run his stories, and to assure them that, if they did, they could have them as exclusives and the stories would be removed from SMN in order to give them that exclusivity. This seemed to me to be plausible.

12. Mr Palmer was shown an internet screenshot apparently showing a message from a private individual to Google on 29 September 2021 in which that person raised a copyright claim to Google and claimed to have purchased the exclusive rights from SMN (referring to Mr "Tony Sullivan", rather than "Mr Tony Palmer", but Mr Palmer might have been referred to, since no-one else is involved with SMN) and said that the content could not therefore be published without that person's permission. Whilst this does lend some support to this person having paid the fee in order to suppress the

report (although Mr Palmer denied any recollection of such a transaction), there was no evidence from that person, and no evidence at all that the purchase was the result of a direct request, let alone blackmail, from Mr Palmer. On the balance of probabilities, I am not satisfied that Mr Palmer directly asked Ms C for money in order to take down his report. I agree with his point that she would have kept such a demand, or complained about it at the time, had it been made. I bear in mind her lack of credibility generally, to which I have referred.

13. A key dispute in this case is whether Mr Palmer attended the hearing of Ms C's case at the Magistrates Court on 12 May 2015, as he claims, or whether he was not there at all, as Ms C claims. Ms C's evidence that he was not there is that she did not see him there, or notice him there, and that she did not notice him taking photographs of her outside court.

14. Mr Palmer's evidence is, however, compelling on this point. I was shown an email from HMCTS sending him the Magistrates Court list for the week commencing 12 May 2015 and I was shown the attached copy list itself, which included both Ms C's case and another case in the same building on the same day which Mr Palmer reported on, under his Tony Palmer byline, in a national newspaper. He got the cause list in order to spot cases that it might be worth his while to attend and report on.

15. I was also shown his Teeline shorthand notes of the hearing, and the original notebook from which the photocopies in the bundle were made. In his oral evidence, he read out the meaning of the notes and it was obvious (Teeline being a relatively simple system in which many characters are self-explanatory even to the untrained reader) that his explanation of what they meant was correct. The notes sounded exactly as one would expect a court hearing to go, starting with the submissions of the prosecutor, continuing with the submissions of the defence, and concluding with the sentencing remarks of the District Judge.

16. I was also shown copies of photographs taken by Mr Palmer of defendants whose stories he had decided to write up which he took outside court. He explained that having a photograph enhances the value and interest of his stories to potential buyers from the national newspapers. These photographs were all grouped together on his Apple Mac (in a screenshot) under the correct date 12 May 2015 in a series of 8 photographs. The first 3 were of the person in the other case on that day which Mr Palmer did successfully sell as a bylined report in a national paper, which I was shown. The next four of the Claimant, of which the most distinct was used in the Blog Post.

17. I am therefore satisfied on the evidence that Mr Palmer did personally attend the hearing of Ms C's case as he claims, that he took a contemporaneous Teeline note of the proceedings, and that he took the photograph of Ms C himself. She accepts that it is a photograph of her.

18. The next key dispute is what was said at the hearing. Ms C's claims that many things in the Blog Post were not true, and were not said at the hearing, and from this I should infer that he either made them up or obtained them improperly from other sources, in breach of her rights of privacy, her right not to be harassed, and her GDPR and Data Protection Act rights.

19. Ms C took no notes of the hearing and has produced no transcript or other witness to contradict what I accept was Mr Palmer's contemporaneous Teeline shorthand note as the hearing progressed. I am satisfied that his note, while not verbatim, was a very full and accurate note of what he was hearing as the case progressed, consistently with his mastery of Teeline shorthand from years of experience, and his regular practice as a journalist taking notes for newspaper court reports. It was not something written up afterwards (this was not suggested to him). It was written as he heard what was being said. Ms C did not have any plausible explanation for the notes if they were not genuine and contemporaneous, although she continued to maintain that they were neither.

20. The notes start with the date, 12 May. They note the relevant Magistrates Court, using the first three letters of the place (which I will not set out) as an obvious abbreviation. They note cases from the cause list which might be of interest to Mr Palmer, including, specifically, the case which he did get published in a national paper, and Ms C's case.

21. Then the name of the prosecutor in Ms C's case, Sue Obeney, is noted. I accept Mr Palmer's evidence that he either got this name by asking on the day, or because she was the regular prosecutor for local authorities in this court, and he was himself a regular reporter in this court (as press reports corroborate), and knew her name before the case began.

22. After notes of the cases before Ms C's case (including the case which he successfully sold under his byline), Ms C's surname is in the notes. The prosecution opening of the facts is then noted down. These notes cover 3 pages (starting in the middle of electronic page 127 of trial bundle "Evidence 2", and ending in the middle of page 130, with prosecution costs claimed at £26,500). They closely correspond to what Mr Palmer subsequently included in his Blog Post report.

23. From the middle of page 130 to the bottom of page 131 are Mr Palmer's Teeline notes of the defence submissions on behalf of Ms C. They begin (picking up from something noted in the prosecution opening of the facts) "She does have OCD, mental health issues", "she ended up having to share with other people, and her OCD", "She claimed for borough she wasn't living in to top up her benefit to allow her to reside in her self contained flat", "now receives extra benefit for OCD", "£5,300 overpayment", "PIP [Personal Independence Payment] eligible", "£325 per week extra PIP", "£20 disability", "Housing Benefit now £250 per week", "She's rated at high end of disability", "She cares for her younger brother, and has been given two-bedroom flat so her 11 year old brother can live with her", "Employment Support Allowance of £300 per fortnight".

24. I am satisfied that all these things were said, as noted, by Ms C's own legal representative in open court when making submissions on her behalf to the District Judge. I reject Ms C's claim that they were not said and that there was no reference to her OCD or mental health issues, or to her brother.

25. Finally, the Teeline note of this hearing concludes (p 132 of the electronic bundle) with the sentencing remarks of "Wattam", i.e. District Judge Wattam. There is a note of him referring to "the significant degree of sophistication and you supplied false details. Your offending was quite deliberate and dishonest." The sentence passed is

noted (correctly) as "4 months [imprisonment] suspended for 12 months", with "£25 costs, £80 victim surcharge". The name of Ms C's legal representative is noted, again correctly, as "Ms Goodwin, defence".

26. The hearing took place, as I have said, on 12 May 2015.

27. Ms C relies on what has been referred to as a press release by the Royal Borough of Kensington & Chelsea posted on their website on, she says, 13 May 2015 ("the Press Release"), as being the real source of Mr Palmer's reporting. But he says he did not see it until long after his report was written up. I accept that evidence. He had his own notes, and the report he filed closely follows those notes, including by way of verbatim quotation from the prosecutor, the defence representative, and the judge. There is no reason to think that he would wait for a council website page to base his report upon, or that he would go looking for such a source instead of using his own notes.

28. Ms C has not produced any evidence of what the Press Release said. She claims to have destroyed her copies of it. Mr Palmer, on the other hand, has produced what he says is the text of it, which he has obtained subsequently. I accept that the version he has produced is accurate, although the original is no longer on the council website, for reasons I will explain. I can see that the Press Release does not include many of the details and verbatim quotations that are both in Mr Palmer's Teeline notes and in his Blog Post report of the hearing. This further supports my conclusion that his notes were his source, and the Press Release was not.

29. Mr Palmer published the Blog Post on SMN under the date 13 May 2015 with two of the photographs he had taken of Ms C on the day of the hearing. The text of the Blog Post as reproduced in a confidential annex to the Particulars of Claim is as follows (but with some details redacted in order to protect Ms C's identity):

> "Wednesday, 13 May 2015
>
> [Headline:] OCD Benefit Cheat Didn't Want to Homeshare
>
> A benefit cheat with Obsessive Compulsive Disorder (OCD) swindled an extra £5,300 in hand outs to finance a self-contained flat because she could not bear to share space with other people.
>
> [Ms C], [age], forged tenancy agreements and utility bills to claim money for properties she did not live in and continues to receive benefits of approximately £1,625 per month, a court heard.
>
> "She does have OCD and mental health issues and ended up having to share with other people," Pamela Goodwin, defending, told [Placename] Magistrates Court yesterday.
>
> "She claimed for a borough she was not living in to top up her benefits to allow her to reside in a self-contained flat.

"She is rated at the high end of disability and has been given a two-bedroom flat so her eleven year-old brother, who she cares for, can live with her."

The court heard [Ms C] now receives a Personal Independence Payment of £325 per month; Employment Support Allowance of £300 per fortnight and £250 per week Housing Benefit.

[Ms C], [age], of [address, misspelled in the Blog Post exactly as it was misspelled on the cause list], pleaded guilty to nine counts of fraud by false representation between April 10, 2012 and June 5, last year.

Five counts relate to lies she told the London Borough of Lambeth online, via email and via letter regarding where she was living and the details of her tenancies.

Four counts relate to the Royal Borough of Kensington & Chelsea who were fed false information by [Ms C] relating to her benefit claim history and details of her tenancies within the borough.

"This lady has used a false identify, false tenancy agreements and letters from people she purposed to be her landlord to claim benefits for living at premises she was not resident at," prosecutor Sue Obeney told the court.

"This is a joint prosecution between Kensington and Chelsea and Lambeth. She also claimed in the London Borough of Harrow, but they wrote it off."

[Ms C] was only exposed when one of her purported landlords applied for a parking permit in Kensington & Chelsea and the details given did not tally with information the local authority already had on file from the defendant.

"It became obvious she was not his tenant and she had forged his signature and she had forged a Thames Water bill, which falsely showed she was a resident at the address."

The Harrow claim, which ran from November 2011 until May, 2013 did not result in any charges and the borough is not pursuing compensation from [Ms C].

She has not repaid any of the money she received and £26,500 of legal work was generated by the two boroughs in bringing the case against her.

Deputy District Judge Nicholas Wattam told [Ms C]: "There was a significant degree of sophistication and you supplied false documents.

> "Your offending was quite deliberate and dishonest."
>
> She was sentenced to four months imprisonment, suspended for twelve months and was ordered to pay £25 costs and an £80 victim surcharge."

30. I am satisfied that this was an honest and accurate report of the hearing.

31. Ms C said that it was "disgusting" and "grossly offensive". She characterised it as saying that she was being called "a cheat and a criminal for having OCD". However, it does not say that. It reported what had been said about her mental health difficulties in open court by her own representative as mitigation, and, indeed, led with what had been said on her behalf in that respect, rather than with the prosecution facts which had come first in time. The words "cheat" and "criminal" were not used in court, but she was pleading guilty to criminal charges in a criminal court, and the charges were of fraud, dishonesty, and an intention to obtain financial advantage, for which "cheat" was a fair paraphrase and used in a context which was a straightforward reflection of what had been said in court. Nothing in the report added personal criticism or opinion from Mr Palmer himself, let alone anything in the nature of personal abuse.

32. It was put to Mr Palmer that he wrote and published his report knowing and intending that it would cause Ms C alarm and distress. He denied this. I accept his denial. It was a factual report, albeit written in terms accessible to the lay reader of a national newspaper. It was reporting what had been said by others at a public hearing, and it was intended as an expression of free speech and to provide the public with information of what had happened in a criminal court, recording what had been admitted on Ms C's behalf by way of criminal activity on her part and the context in which it had been carried out. Court reporting is how Mr Palmer makes his living, and he did this report in order to feed the national press with news of interest to the public, and not in order to pursue (contrary to the suggestion put to him) any personal cause or vendetta.

33. Mr Palmer was shown a number of other reports of his in which he covered benefit fraud cases and other cases which were discreditable to the defendants involved, by no means limited to benefit fraud. These reports did not persuade me that he had any personal animus towards Ms C, who he had never met, and who he did not approach or speak to on the day of the hearing. He took his photographs on the street, without her realising. Court reporting is in the public interest. Court hearings are public hearings for a reason. It is through public hearings and free (accurate) reporting of those hearings that all those involved, including those found guilty of crimes, are held to account by the public which has an interest and a stake in the effective functioning of the justice system.

34. Mr Palmer was also shown tweets from a Twitter account which he deleted before these proceedings were brought because he no longer wanted to be involved with Twitter. The tweets were opinionated, but did not support Ms C's contention that he was shown to be of the "far right" or (in the words of her evidence in chief) "Neo-Nazi" and did not, in any case, alter the facts, as I have found them, that his Blog Post was straightforward reporting of what he had noted down in Teeline shorthand and heard others say in court. In fairness to Mr Palmer, I should make it clear that the abuse directed by Ms C against Mr Palmer personally throughout the case, accusing

him (for example) of taking sadistic pleasure in tormenting both her and other disabled or disadvantaged people, was not justified at all by the evidence relied upon to support it.

35. On 13 May 2015, at 4 pm, Ms C contacted the press department of the Royal Borough of Kensington & Chelsea and objected to the Press Release, asking them to take it down. She also said:

> "You have put private and confidential medical information about me into the public domain. It is highly distressing that you are disclosing to the public that I have OCD and apparent "mental health issues". This was NOT disclosed in open court. You cannot put my mental health condition on the internet. I am not at all open about this and it is an extremely private issue to me."

36. On my findings of fact, what she said here was not true. There had indeed been reference to her OCD in open court and it had been said by her own legal representative in mitigation. This was in the public domain through the public hearing. Ms C's evidence that it was only referred to in the papers, but not in open court during oral submissions, is wrong. I prefer the contemporaneous notes of Mr Palmer to her evidence on this point.

37. The Royal Borough of Kensington & Chelsea appears, however, to have accepted what she said at face value because, in reply, their Media and Communications department said:

> "The article has been removed. We sincerely apologise that your medical information was disclosed."

38. I accept the Claimant's evidence that she came across Mr Palmer's Blog Post as a result of carrying out a Google search which confirmed that the Press Release was no longer accessible, but the Blog Post was now listed in response to her search. I also accept that the Blog Post, although dated 13 May 2015, may have been uploaded a little later. Mr Palmer himself said this. He said that he could not remember or ascertain the exact date of uploading but that, in order to make the report look as fresh as possible, he might well have used the day after the hearing as the Blog Post date even if it was not uploaded until a day or two later.

39. On 4 June 2015, Ms C emailed the SMN gmail address (which went, in fact, to Mr Palmer) saying that she had just noticed the Blog Post and what had distressed her was "you've included details of my mental health". She said "I keep details of my mental health as private as I possibly can as it's a sensitive subject for me." She politely asked him to take the story down.

40. On the same day, Mr Palmer responded, saying:

> "I have deleted a paragraph that mentions disability and ongoing treatment.

> Please understand I am under no obligation to do this as it was said in public open court, but I have decided to do it because you say you are distressed.
>
> Unfortunately, I cannot delete posts that people do not like because if I did there would be none in the blog so have to draw the line somewhere.
>
> I think the account of the court proceedings is accurate and that is the most important thing."

41. Although I have not been shown different versions of the Blog Post, it is common ground, and I accept, that Mr Palmer did make the deletions he had promised, but that (as he had said he would) he kept the rest of the Blog Post up and accessible at that time.

42. However, there is no evidence that anyone other than Ms C actually saw the Blog Post. The number of comments to it is noted on the screen shots as zero. Ms C said during her cross examination "Nobody reads your blog". I do not have much to go on, but on the evidence I have, I am not persuaded that anyone other Ms C and Mr Palmer read the Blog Post until Ms C began to make complaints about it, at which point the evidence suggests, and I find, that the only other people who did see it were those advising Ms C and Mr Palmer about the matter, or responding to her complaints about it. Ms C's own case is concentrated on her personal distress at knowing the Blog Post existed and does not claim that any third party spoke to her about it except at her request.

43. Ms C's conviction (on her guilty pleas) and her sentence of four months imprisonment (suspended for 12 months) became spent for the purposes of the Rehabilitation of Offenders Act 1974 in September 2017, which was 2 years after the end of the 4 month sentence of imprisonment passed on 12 May 2015.

44. I accept Ms C's evidence that Google, which had refused earlier requests, in October 2017 agreed to remove Google search engine links to the Blog Post. This did not, however, remove the Blog Post itself.

45. I make the following findings of fact on the evidence about when the Blog Post itself was taken down and put back up, after the initial alterations which Mr Palmer had made at Ms C's request in June 2015.

46. On 3 April 2020, solicitors acting for Ms C sent Mr Palmer a "Notice of Objection to Further Processing under the General Date Protection Regulation", which was also stated to be a letter of claim written pursuant to the Pre-Action Protocol for Media and Communications Claims. It was an 8-page letter which set out a legal case for removal, with extensive references to GDPR, the Data Protection Act, and the Prevention of Harassment Act. The factual basis of the letter, on instructions from Ms C, was in significant part untrue. In particular, it wrongly said that she had not put information before the Magistrates Court about her mental health and that Mr Palmer's report was inaccurate. It wrongly said that he was not acting as a reporter who had been in court, but had copied the Blog Post from information in the Royal Borough of Kensington & Chelsea Press Release. It seemed to suggest that she was

not guilty of the frauds for which she was punished, with the peculiar phrase (a good deal less direct in its denial of any culpability than Ms C was in her evidence to me): "The highly specialised and technical nature of the law in this area does not lend itself easily to the determination of liability at a Magistrates' Court trial". It also said (correctly) that the convictions were in any event spent under the Rehabilitation of Offenders Act 1974. It raised specific objection to what it said was Mr Palmer's processing of four URL locations, and demanded that he should delete the posts and images to which they referred, failing which legal action in the High Court was threatened. The four URL locations were:

i) http://squaremilenews.blogspot.com/2015/05/ocd-benefit-cheat-didn't-want-to.html?m=0 (referred to in the letter as "the First Blog Post")

ii) http://squaremilenews.blogspot.com/2015/05/?m=0 (referred to as "the Second Blog Post")

iii) http://3.bp.blogspot.com/[random letters and numbers omitted]/[Ms C's name]%2Bbenefit%2Bfraudster%2Bleaving%2B court.jpg (referred to as "the First Image")

iv) http://1.bp.blogspot.com/[random letters and numbers omitted]/[Ms C's name]%2Boutside%2B[location of Magistrates Court].jpg (referred to as "the Second Image")

47. In response, Mr Palmer took down the Blog Post and the associated photographs so far as it was in his power to do so. The date of this seems to have been on or about 27 May 2020. The result was that the Blog Post was not accessible on the SMN website. But it seems, and I find on the evidence, that the images had been cached or for some other reason remained accessible on the internet, without Mr Palmer taking any further action to make them available, and despite his best efforts to remove access to them so far as he could. I accept his evidence in this respect. They had been on the internet for a number of years by then, and this makes it more plausible that they had reached URL addresses which were outside his control. I accept Ms C's evidence that she continued to find the photographs when she looked for them, but I reject her suggestion that this was because Mr Palmer was in any way reposting them. I accept Mr Palmer's evidence that he never attempted to make his photographs accessible independently of the Blog Post itself, and that his first reaction to the letter of 3 April 2020 was to do his best to take the Blog Post off the internet altogether.

48. This is supported by a document in the bundle which is a screenshot, marked as being visible only to Ms C and the solicitors who wrote the letter of 3 April 2020 for her, showing "200528 SMN blog removal confirmation.pdf" associated with messages, presumably from Mr Palmer at this time, entitled "Evidence of both blogs removed from SMN website" and "Hello [Ms C's first name], Please see the attached evidence confirmi…". I was not referred to the messages themselves.

49. It is also supported by an email exchange between Mr Palmer at SMN and Ms C's solicitors on 27-28 May 2020 in which Mr Palmer says, on behalf of SMN (in reality, his own trading name), "expressly without any admission of liability as to the validity of the complaint we are willing to remove the article complained of", to which the

solicitors respond with thanks but objecting that the images remain accessible from the URLs ending with .jpg.

50. Mr Palmer then took legal advice from the National Union of Journalists.

51. The National Union of Journalists wrote a formal response on his behalf to Ms C's solicitors, dated 12 June 2020. They said that Mr Palmer was in court at the hearing in question, and his reporting was "based solely on what was said at that hearing in open court." They addressed the legal claims and set out a case on his behalf that Mr Palmer had been entitled to publish the Blog Post and none of the claims proposed against him, whether under GDPR, the Data Protection Act, or by way of harassment, were correct.

52. Mr Palmer (I find) believed that the National Union of Journalists were right in saying, for the reasons set out in detail of their letter of 12 June 2020, that he had not been obliged to take down the Blog Post after all. As a result, he again made it accessible on the internet. The date of this is not clear from the evidence, but Ms C says, and I accept, that she noticed it on 20 June 2020, so it must have been on or shortly before that date.

53. The Claim Form was issued on 7 May 2021. There was presumably correspondence before that, although I was not specifically shown it during the trial. However, both sides agreed that, by the time the Claim Form was issued, Mr Palmer had taken the Blog Post down again. I find that he did so because he wanted to avoid the threatened legal action. I find that, to the extent that some images remained accessible on the internet, this was now outside his control.

54. On 21 July 2021, Ms C appeared in person before Mr Justice Jay who, in the absence of Mr Palmer, but having read documents on the court file, granted an interim injunction restraining Mr Palmer "from reposting the blog". This wording confirms my understanding that the Blog Post was not, at the date, on the internet, having been taken down by Mr Palmer before issue of the Claim Form.

55. The Claim Form was served on Mr Palmer by email on 3 September 2021, with the Particulars of Claim (which are dated the same day).

56. I find that the Blog Post was never reposted by Mr Palmer after he took it down when he realised that legal proceedings were imminent in or about May 2020, nor were any images or other associated material reposted by him, or allowed by him to remain on the internet (notwithstanding traces of the photographs of Ms C which remained on the internet for reasons outside his control).

57. Ms C claims in her evidence that, because she found traces of the photographs, including two URLs in addition to those cited in her solicitors' letter of 3 April 2020, Mr Palmer must have reposted them multiple times, including (she says in her evidence) before 6 September 2021. I reject that allegation, which is not proved by the evidence. It is also improbable. Mr Palmer was making concessions in order to avoid legal proceedings, and there was no point in him leaving any remnant at all if he could help it. On the contrary, he had done his best to back down, and to remove what he could, and he had done this before the proceedings were served on him and probably before the Claim Form was issued.

58. In summary, therefore:

i) The Blog Post with its associated photographs was uploaded on or shortly after the date it bears, 13 May 2015.

ii) Mr Palmer took out references to disability and ongoing treatment in June 2015 in response to a personal request from Ms C. But apart from that, it stayed up for nearly 5 years.

iii) He then took the whole Blog Post down, with its associated photographs, in response to the letter of claim dated 3 April 2020.

iv) After a robust defence had been put up on his behalf by the National Union of Journalists in their letter of 12 June 2020, he put the Blog Post up again, including the photographs, on or before 20 June 2020.

v) When Ms C made it clear that she would pursue a High Court claim, he took it down again, and has never reposted it since then. He did this before the proceedings were served on him in September 2021, and probably before they were issued (but not served) in May 2021. He had certainly done it before a without notice application was made by Ms C to Mr Jay on 21 July 2021.

vi) Mr Palmer did not repost the photographs separately and the traces that Ms C has from time to time found are outside his control and are the result of the images being picked up during the 5 years before he removed the Blog Post by other internet locations for which he is not responsible.

59. Ms C has not been rehabilitated by her convictions and sentence. At the time, she admitted her guilt, and she will have received what will have been a lower or more lenient sentence as a result. However, following her conviction, she has wrongly asserted her innocence, and perpetrated a false narrative both of what happened at the hearing and of the underlying offences. In her evidence to me at trial, she said:

> "I did not commit fraud by false representation as described in section 2 of the Fraud Act 2006, which was the Act used by the Council to prosecute me. The wording in the Act is to dishonestly make a false representation with the intent to make a gain. Not only did I not make a false representation, not make a gain or intend to make one, but there was no dishonesty in the gain I was accused of making."

60. I am satisfied by the evidence of Ms C's guilty pleas (when she was in receipt of legal advice and representation), the evidence of what was said at the hearing at the Magistrates Court, including by the prosecutor and the District Judge, and notwithstanding the points she has put to me in argument, including the documents she has shown me in evidence, that this is not true. She did commit fraud by false representation. She did so dishonestly with intent to make gains. She used false documents to claim financial benefits and she did so on multiple occasions and to more than one local authority. Her offending demonstrated, in the words of the judge, a "significant degree of sophistication" and her offending was "quite deliberate and dishonest".

The claims

61. Having found the facts, I will now examine and decide Ms C's legal claims, as set out in the Particulars of Claim.

Misuse of private information

62. The information published in the Blog Post was not private information and Ms C could have no reasonable expectation of privacy. It was information which had been aired in open court by Ms C's own legal representative in mitigation of the sentence to be passed on her for crimes to which she was pleading guilty. It was published only a matter of days after the public hearing. Her privacy was not breached by the Blog Post.

63. For the same reasons, Article 8 of the European Convention on Human Rights, which grants the right to privacy, is easily outweighed on the facts of this case by the Article 10 rights of freedom of speech and expression.

64. Different considerations may apply after the convictions became spent in September 2017 by reason of the Rehabilitation of Offenders Act 1974. I will return to these in the context of the right to be forgotten claim, below.

Harassment

65. Harassment under section 1 of the Protection from Harassment Act 1997 means a course of conduct which amounts to harassment of another, and which he knows or ought to know amounts to harassment of the other.

66. Harassment is "an ordinary English word with a well understood meaning… a persistent and deliberate course of unreasonable conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress": *Hayes v Willoughby* [2013] 1 WLR 935.

67. A course of conduct is not actionable as harassment if it was "in the particular circumstances… reasonable" (section 1), the burden being on the defendant to prove this.

68. In this case, there was no course of conduct but only a single Blog Post, which was left, largely unread, on the internet from 2015 to 2020, save for early modifications made at the request and for the benefit of Ms C. Although it was reposted after briefly being taken down, before eventually being taken down permanently before the issue of these proceedings, this did not amount to a course of conduct for the purposes of section 1. The Blog Post was not targeted at Ms C and it was not calculated to cause her alarm, fear or distress. Although I have no reason to disbelieve her evidence that she was in fact distressed by it, the level of distress she alleges, including a feeling that she cannot tell anyone her name, and cannot participate in society in any way (para 6 of her witness statement), is irrational and unforeseeable as a consequence of the Blog Post. It is also more accurately described as a consequence of her public convictions and sentence than of the reporting of them, since Mr Palmer was only the medium for a message which had been sent by others, including Ms C herself by pleading guilty, and her legal advisor when referring to her OCD in mitigation.

69. The Blog Post was an accurate factual report of a public hearing and did not constitute harassment within the natural and correct meaning of that word.

70. I am satisfied that it was reasonable to write and post the Blog Post as a report of the hearing, and that there was nothing in either its contents or the manner in which it was uploaded (including the re-uploading) which was other than reasonable in all the circumstances.

71. There was no harassment in this case.

GDPR and Data Protection Act claims

72. Ms C brings claims pursuant to Article 82 of the GDPR, sections 168 and 169 of the Data Protection Act 2018, and section 13 of its predecessor the Data Protection Act 1998.

73. All the data held by Mr Palmer about Ms C and her case was accurate, save in trivial and irrelevant respects, such as the misstatement of her legal representative's first name (which Ms C said in evidence was not Pamela) and the slight misspelling (by one letter) of Ms C's home address (which was a mistake made in the court list, and not Mr Palmer's fault).

74. Mr Palmer processed what he had fairly and reasonably, in order to produce an accurate court report which was it was in the public interest he should be allowed to produce, and which was an exercise of his rights of freedom of speech and expression, and his legitimate work as a freelance court reporter. Those interests outweighed Ms C's interests in the circumstances of this case.

75. He retained the data necessarily, in order to defend himself against any claims that might be made. The essential record in this respect was his reporter's notebook. He retains all of these routinely, and operates on the basis that they should be kept for at least 7 years. That is in my judgment reasonable, given that normal limitation periods are 6 years and claims may be issued at the end of that period and not served immediately. Mr Palmer's retention of records has enabled this trial to be conducted on the basis of good evidence. It is fortunate that he did retain his notebook, in particular. Otherwise, the untrue evidence of Ms C that he was not there, and that things that he reported were never said in court, might not have been so easily disproved. When, as in this case, there is a stark conflict of oral evidence, the retention of documentary records is vindicated.

76. All the data in question was "manifestly made public by the data subject herself" (Schedule 1, Part 3, paragraph 32 of the Data Protection Act 2018). Under both this Act, and its predecessor (as to which see the observations of Warby J in *NT1 Google LLC* [2019] QB 344), Ms C by committing criminal offences, exposing herself to a public hearing, being convicted on her guilty pleas, and relying on the facts in the Blog Post about her mental health and personal circumstances in mitigation, disentitled herself to bring the present claims in respect of the publication of the Blog Post and the retention and processing of the information that lay behind it, at least before the convictions became spent in September 2017. Mr Palmer knew nothing about Ms C, and retained no data about her, which was not directly derived from what he heard at the public hearing in the Magistrates Court.

77. None of the principles or provisions of the Date Protection Acts or of the GDPR have, in my judgment, been infringed in this case, with the possible exception of the right to be forgotten under Article 17 of the GDPR, which I will now consider separately.

Article 17 of the GDPR and the right to be forgotten

78. Article 17 of the GDPR provides (with words in square brackets added by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019/419 Schedule 1 para15):

> "Article 17 Right to erasure ('right to be forgotten')
>
> 1.
>
> The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies:
>
> (a) the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;
>
> (b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or point (a) of Article 9(2), and where there is no other legal ground for the processing;
>
> (c) the data subject objects to the processing pursuant to Article 21(1) and there are no overriding legitimate grounds for the processing, or the data subject objects to the processing pursuant to Article 21(2);
>
> (d) the personal data have been unlawfully processed;
>
> (e) the personal data have to be erased for compliance with a legal obligation [under domestic law];
>
> (f) the personal data have been collected in relation to the offer of information society services referred to in Article 8(1).
>
> 2.
>
> Where the controller has made the personal data public and is obliged pursuant to paragraph 1 to erase the personal data, the controller, taking account of available technology and the cost of implementation, shall take reasonable steps, including technical measures, to inform controllers which are processing the personal data that the data subject has requested the erasure by such controllers of any links to, or copy or replication of, those personal data.

> 3.
>
> Paragraphs 1 and 2 shall not apply to the extent that processing is necessary:
>
> (a) for exercising the right of freedom of expression and information;
>
> (b) for compliance with a legal obligation which requires processing [under domestic law] or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
>
> (c) for reasons of public interest in the area of public health in accordance with points (h) and (i) of Article 9(2) as well as Article 9(3);
>
> (d) for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) in so far as the right referred to in paragraph 1 is likely to render impossible or seriously impair the achievement of the objectives of that processing; or
>
> (e) for the establishment, exercise or defence of legal claims.

79. The Particulars of Claim rely on an Article 17 request for deletion in Ms C's solicitors' letter of 3 April 2020.

80. This request was made after her convictions had become spent for the purposes of the Rehabilitation of Offenders Act 1974, and I recognise that that is a relevant consideration, although deletion at this point is not specifically prescribed, either by the 1974 Act itself, or by GDPR: see *NT1 Google LLC* [2019] QB 344 per Warby J at paras 163-166. I will perform the balancing exercise explained by Warby J in that passage.

81. In this case, in addition to the features I have already mentioned, I note the following:

i) The Blog Post was, in fact, taken down in response to the letter of 3 April 2020, although Mr Palmer did not delete his underlying records. It was put up again on or before 20 June 2020, after the response from the National Union of Journalists, but it was taken down finally and permanently (I have found on the balance of probabilities) before issue of the Claim Form in May 2021. It was, therefore, on the internet after the Article 17 request only in the period June 2020 - May 2021.

ii) The information in question is accurate and relates in part to criminal convictions, the references to OCD being less directly essential in that respect.

iii) The convictions have been spent and Ms C has not, so far as I know, reoffended.

iv) Ms C now denies that she was dishonest or guilty. She is stating a false case, which both the Blog Post and Mr Palmer's underlying notes help in refuting.

v) The Article 17 request letter of 3 April 2020 stated a case which was false in other respects. It said that the Blog Post was not a true report of the hearing, in that what it reported was not said at the hearing and was, in some cases, not true at all. It said that Mr Palmer was not, as he claimed, present at the hearing. It said that the information was private and confidential and had not been disclosed in court.

82. In these circumstances, I have concluded that all Mr Palmer's records other than the Blog Post itself are necessary in relation to the purposes for which they were made, namely, in order to defend himself from any legal claims and in order to be able to demonstrate, whenever necessary, that his Blog Post was a fair and accurate account of a hearing which he attended and reported upon as a professional journalist. In view of Ms C's attack on his integrity as a journalist and as a person, it seems unlikely that he ought to be compelled to dispose of his records for the foreseeable future. It was certainly not right that he should have done so in response to a letter which made the very allegations which his records demonstrated to be unfounded.

83. Similarly, notwithstanding Ms C's lack of consent to him retaining his records, his right to keep them in order to vindicate his reporting whenever necessary provides overriding legitimate grounds.

84. So far as the reposting of the Blog Post itself between June 2020 and May 2021 is concerned, I consider that the necessary exercise of Mr Palmer's legitimate rights of freedom of expression and information outweighed Ms C's rights to privacy and other rights at this time, because she was actively making false claims about him and about events which he had witnessed. The Blog Post was his version of events, and it was a true version. I also take into account that the harm to her was limited to her own reaction to knowing the Blog Post was up, since no-one else was interested in it and no-one else, so far as the evidence shows, was looking at it so many years after 2015, except in connection with Ms C's own complaints. This point is particularly strong since Google had de-listed it in 2017 and it was therefore not easy to find.

85. Taking account of the factors discussed by Warby J in *NT1 Google LLC* [2019] QB 344, as applied to the facts of this case which I have considered throughout my judgment, I have concluded that Mr Palmer committed no breach by making the Blog Post publicly visible again between June 2020 and May 2021 in the way that he did.

Conclusions

86. All the Claimant's claims are, therefore, dismissed and there will be judgment for the Defendant.