Neutral Citation Number: [2024] EWHC 1999 (KB)

Case No: KB-2024-001330

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/08/2024

Before :

DEPUTY HIGH COURT JUDGE AIDAN EARDLEY KC

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Between :

(1) ROBERT SULLY **Claimants**
(2) ANDREW SULLY
(3) VICTORIA RUSSELL
- and -

Defendants

(1) JULIA MAZUR
(2) JEROME STUART

- -
- -

David Nicholls (instructed by **Girlings Solicitors**) for the **Claimants**
The Defendants appeared in person

Hearing dates: 26 July 2024

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Approved Judgment

This judgment was handed down remotely at 12.00pm on Friday 2nd August 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Aidan Eardley KC:

1. On Friday 26 July 2024 I granted an interim injunction in harassment prohibiting the Defendants from contacting the Claimants and certain third parties, other than by writing to the Claimants' solicitors. These are my reasons.

2. The Claimants were represented by David Nicholls of counsel. The Defendants are unrepresented. It was mostly the First Defendant who addressed me, setting out her case with great clarity. Her position on this application is the same as that of the Second Defendant.

Factual background

3. Putting matters as neutrally as possible, I can summarise the background as follows. The Claimants are siblings. Sunhill House, a property in rural Sussex, was in the Claimants' family for many years. It was occupied by the Claimants' parents until they moved to Somerset in late August 2023. They sought a buyer and, after one sale fell through, they eventually succeeded in selling it in March 2024. The Defendants live in a nearby property, Rystwood Lodge. Between the two properties is a field ('the Field'). This too has been in the Claimants' family for many years and is presently owned by the Claimants, who would like to sell it. They allow a local person to graze sheep on it. The only vehicular access to the Field is from the driveway to Rystwood Lodge (**the Drive**) via a gate close to the beginning of the Drive. The Drive is owned by the Defendants but the owners of the Field have a right of way over it. The Drive also serves another property, Rystwood Acre.

4. The Drive has a simple, post and rail fence running along the boundary with the Field. In about August 2022, the Claimants erected a six-foot wood panel fence running parallel to the Defendants' fence but within the boundary of the Field. They say they did this, in summary, because they did not want to be spoken to or observed by the Defendants when they and their families were using the Field.

5. The Defendants are strongly opposed to the Field being built on for housing. The Claimants say they have never wished to build on the Field but the Defendants are concerned that they will sell it to someone who does. As long ago as March 2021, the Defendants wrote to the Claimants stating, *"we will do whatever it takes to protect the value of our estate"*. The Claimants' parents offered to sell the Field to the Defendants but negotiations broke down.

6. The Defendants' chosen method of protecting the Field (as they would see it), or interfering with the Claimants' rights to use and dispose of the Field (as the Claimants would put it) has been to raise multiple disputes about the right of access and related matters. This has already led to litigation in the County Court which was settled in June 2023 on agreed terms set out in a schedule to a consent order. The schedule states that "the full terms of the right of way" are as set out in a conveyance dated 2 November 1967 (**the Conveyance**). In summary, the Conveyance states that the owners of the Field have a "full right of way" (pedestrian and vehicular) over the whole of the Drive up to the boundary of Rystwood Lodge "for the purpose only of the use of [the Field]" subject to the owners contributing to the upkeep of the Drive. It does not specify the amount of such contribution. The owners of Rystwood Acre also have a right of way

over part of the Drive and the relevant conveyance for that property specifies that the owners must contribute 50% of the costs of maintaining that part of the Drive.

7. It might have been thought that relations between the parties would improve once the County Court litigation had been resolved. However, not long afterwards, the Defendants raised more issues: they dispute that they have an obligation to maintain a fence between Rystwood Lodge and the Field; they assert they have an easement of drainage over the Field relating to a disused cesspool, to which they say the Claimants have blocked access; they object to any utilities serving the Field being connected to their own pipes and cables; they assert that they are entitled to charge the Claimants 50% of the cost of maintaining the whole of the Drive; and they assert that the new fence that the Claimants have erected in the Field deprives their property of light and amounts to private nuisance (**the New Dispute**).

8. The Claimants say that the new owner of Sunhill House has expressed interest in buying the Field for domestic purposes but not until the current disputes are resolved, so they have granted him an option (of 2 years duration).

9. The Claimants complain of harassment by the Defendants before, during and after the County Court litigation. For the purposes of this application, the Claimants invite me to focus on the post-litigation phase from June 2023 to the present.

Procedural History

10. The present claim was started under CPR Part 8 on 19 April 2024. The Claim Form was accompanied by the First Claimant's First Witness Statement. The Defendants filed an Acknowledgment of Service on 10 May 2024 in which they objected to the use of Part 8. They each served a Witness Statement with the Acknowledgment of Service. The Claimants served evidence in reply on 21 June 2024. Meanwhile, the Claimants issued this on-notice application for an interim injunction on 11 June 2024 supported by further witness statements. The Defendants have served evidence in response to the application.

11. On Wednesday 24 July 2024, I heard applications by the Defendants for (a) an order requiring the Claimants to attend the interim injunction hearing to be cross-examined; and (b) an order that this claim continue under CPR Part 7. I refused the application for cross-examination and gave my reasons orally. I adjourned the application for transfer to Part 7 until I had heard the interim injunction application, since that would give me a greater insight into the extent of factual disputes in the case. I address this application below.

Legal Principles

Harassment

12. Section 1 of the Protection from Harassment Act 1997 (**PfHA**) materially provides:

> "(1) A person must not pursue a course of conduct - (a) which amounts to harassment of another, and (b) which he knows or ought to know amounts to harassment of the other.
> (1A) […]
> (2) For the purposes of this section […], the person whose course of conduct is in question ought to know that it amounts to […] harassment of another if a

reasonable person in possession of the same information would think the course of conduct amounted to […] harassment of the other.

(3) Subsection (1) […] does not apply to a course of conduct if the person who pursued it shows -

(a) that it was pursued for the purpose of preventing or detecting crime,

(b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or

(c) that in the particular circumstances the pursuit of the course of conduct was reasonable."

13. Section 7 provides some definitions including:

"[…]
(2) References to harassing a person include alarming the person or causing the person distress.

(3) A *"course of conduct"* must involve –

(a) in the case of conduct in relation to a single person (see section 1(1)), conduct on at least two occasions in relation to that person, […]

[…]
(4) *"Conduct"* includes speech.

(5) References to a person, in the context of the harassment of a person, are references to a person who is an individual."

14. The PfHA creates both criminal offences (see e.g. s.2) and civil liability (s3). The civil remedies available are an injunction and damages which "may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment.": s.3(2).

15. The question of what amounts to harassment has been considered in a large number of appellate and first instance cases. In *Hayden v Dickenson* [2020] EWHC 3291 (QB) at [44] Nicklin J summarised the principles that can be extracted as follows (citations omitted):

"i) Harassment is an ordinary English word with a well understood meaning: it is a persistent and deliberate course of unacceptable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress; " a persistent and deliberate course of targeted oppression" […].

ii) The behaviour said to amount to harassment must reach a level of seriousness passing beyond irritations, annoyances, even a measure of upset, that arise occasionally in everybody's day-to-day dealings with other people. The conduct must cross the boundary between that which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the border from the regrettable to the objectionable, the gravity of the misconduct must be of an order which would sustain criminal liability under s.2: […].

iii) The provision, in s.7(2) PfHA, that "references to harassing a person include alarming the person or causing the person distress" is not a definition of the tort and it is not exhaustive. It is merely guidance as to one element of it […]. It does not follow that any course of conduct which causes alarm or distress therefore amounts to harassment; that would be illogical and produce perverse results […].

iv) s.1(2) provides that the person whose course of conduct is in question ought to know that it involves harassment of another if a reasonable person in possession of the same information would think the course of conduct involved harassment. The test is wholly objective: […]. "The Court's assessment of the harmful tendency of the statements complained of must always be objective, and not swayed by the subjective feelings of the claimant"[…].

v) Those who are " targeted " by the alleged harassment can include others "who are foreseeably, and directly, harmed by the course of targeted conduct of which complaint is made, to the extent that they can properly be described as victims of it" […].

vi) Where the complaint is of harassment by publication, the claim will usually engage Article 10 of the Convention and, as a result, the Court's duties under ss.2, 3 , 6 and 12 of the Human Rights Act 1998 . The PfHA must be interpreted and applied compatibly with the right to freedom of expression. It would be a serious interference with this right if those wishing to express their own views could be silenced by, or threatened with, proceedings for harassment based on subjective claims by individuals that they felt offended or insulted […].

vii) In most cases of alleged harassment by speech there is a fundamental tension. s.7(2) PfHA provides that harassment includes "alarming the person or causing the person distress". However, Article 10 expressly protects speech that offends, shocks and disturbs. "Freedom only to speak inoffensively is not worth having" […].

viii) Consequently, where Article 10 is engaged, the Court's assessment of whether the conduct crosses the boundary from the unattractive, even unreasonable, to oppressive and unacceptable must pay due regard to the importance of freedom of expression and the need for any restrictions upon the right to be necessary, proportionate and established convincingly. Cases of alleged harassment may also engage the complainant's Article 8 rights. If that is so, the Court will have to assess the interference with those rights and the justification for it and proportionality […]. The resolution of any conflict between engaged rights under Article 8 and Article 10 is achieved through the "ultimate balancing test" identified in *In re S* [2005] 1 AC 593 [17] *per* Lord Nicholls.

ix) The context and manner in which the information is published are all-important: [...]. The harassing element of oppression is likely to come more from the manner in which the words are published than their content […].

x) The fact that the information is in the public domain does not mean that a person loses the right not to be harassed by the use of that information. There is no principle of law that publishing publicly available information about somebody is incapable of amount to harassment.

xi) Neither is it determinative that the published information is, or is alleged to be, true: […]. "No individual is entitled to impose on any other person an unlimited punishment by public humiliation such as the Defendant has done, and claims the right to do": […]. That is not to say that truth or falsity of the information is irrelevant […]. The truth of the words complained of is likely to be a significant factor in the overall assessment (including any defence advanced under s.1(3)), particularly when considering any application interim injunction […]. On the other hand, where the allegations are shown to be false, the public interest in preventing publication or imposing remedies after the event will be stronger […]. The fundamental question is whether the conduct has additional elements of oppression, persistence or unpleasantness which are distinct from the content of the statements; if so, the truth of the statements is not necessarily an answer to a claim in harassment.

xii) Finally, where the alleged harassment is by publication of journalistic material, nothing short of a conscious or negligent abuse of media freedom will justify a finding of harassment. Such cases will be rare and exceptional […]."

16. It is the course of conduct itself that must have the requisite harassing quality, not each individual piece of conduct. Harassment can, and often does, arise through the persistent, unwanted repetition of acts which, viewed in isolation, may be innocuous: see *Iqbal v Dean Manson Solicitors* [2011] EWCA Civ 123 at [45].

17. *Iqbal* also illustrates that harassment can arise through the sending of inter partes correspondence in connection with legal disputes. Rix LJ said, at [41], *"The judge was perhaps concerned, and rightly so, not to set up every complaint between lawyers as to the conduct of litigation as arguably a matter of harassment within the Act. It must be rare indeed that such complaints, even if in the heat of battle they go too far, could arguably fall foul of the Act"*. He added, at [54], *"Whatever the hardships involved in litigation, it is not the occasion for irrelevant and abusive dirt to be thrown as part of a malicious campaign. Just as even freedom of the press may be abused in a rare case …, so even litigation, whose natural contentiousness also requires its own freedom of speech, can exceptionally be abused…"*.

Interim injunctions

18. The injunction sought by the Claimants would, if granted, affect the exercise of the Defendants' rights under ECHR Art 10. Accordingly, Human Rights Act 1998 s.12(3) applies. I cannot grant an interim injunction unless satisfied that the Claimants are likely to establish at trial that the Defendants should be restrained from corresponding in the way they have done to date. "Likely" generally means "more likely than not", though in exceptional circumstances (such as extreme urgency or a very great degree of risked harm) a lesser likelihood of success will suffice: *Cream Holdings Ltd v Banerjee* [2005] 1 AC 253 [21].

19. If the HRA s.12(3) threshold is satisfied, the grant of the injunction is a matter for the Court's discretion. Relevant considerations will include the adequacy of an award of damages at trial in the event that the Defendants are not restrained and continue to engage in conduct that is found to have amounted to harassment; and the balance of convenience.

20. An injunction may also be refused if the claimant has "unclean hands". The authorities show that "*the scope of the application of the unclean hands doctrine is limited as the misconduct or impropriety of the claimant must have an immediate and necessary relation to the equity sued for […]. Ultimately in each case it is a matter of assessment by the judge, who has to examine all the relevant factors in the case before him to see if the misconduct of the claimant is sufficient to warrant a refusal of the relief sought*" (Bean on Injunctions, 14th edn at 2-05).

21. A further ground for refusing an interim injunction is delay on the claimant's part. The editors of Gee on Commercial Injunctions, 7th edn at 2-033, suggest that *"the court should consider delay as a discretionary matter which needs to be looked at taking into account the prejudice, if any, caused to the defendant by that delay, and all the other circumstances of the case."*

The Claimants' case

22. The First Witness Statement of the First Claimant appears to put forward a variety of types of activity by the Defendants that are said to constitute a course of conduct amounting to harassment. However the Claimants have indicated that they will restrict their claim to correspondence sent by the Defendants and that was how the interim injunction application was argued before me. The Claimants' skeleton argument sets out an outline of how the Defendants' alleged harassment by correspondence has developed. It is a useful starting point, although there is a great deal more correspondence to take into consideration:

    (1) On 3 August 2023 the Defendants invoiced the Claimants' parents for £2,710.50 as a contribution for maintenance costs to the Drive over the past 6 years plus the costs of some tree surgery the Defendants said had been necessitated by the erection of the Claimants' fence. The maintenance costs were said to be based on a 50% liability. The letter asked the Claimants' parents to pay within 1 month, failing which they would be charged interest and regarded as trespassers if they accessed the Field from the Drive. They wrote, *"If you refuse to pay we will be entitled to stop the trespass by locking the gate"*.

    (2) On 24 August 2024 the Defendants complained to Claimants' solicitors, Girlings, about the Claimants' legal representative (Lee Quickenden) on the grounds of (i) harassment by threatening property damage; (ii) harassment by threatening to issue duplicate proceedings; (iii) harassment by blackmail; (iv) harassment by inciting racial prejudice; (v) harassment by false accusation. They also reported Mr Quickenden to the Chartered Institute of Legal Executives.

    (3) On 29 August 2023, the Defendants refused to communicate with Girlings at all until their complaint was dealt with and on 4 September 2023 the Defendants commenced communicating with the Claimants.

    (4) On 10 September 2023, the Defendants contacted the estate agents appointed by the Claimants' parents (Jackson Stops) stating that the prospective purchaser of Sunhill House may also wish to purchase the Field and stating that they should therefore be made aware of various matters in dispute. This was followed by three further emails on 20, 21 and 23 September 2023 either sent directly or copied to Jackson Stops, in

which the Defendant made allegations of dishonesty against the First and Second Claimants.

(5) Also, on 10 September 2023, the Defendants sent the First Claimant a 7-page letter concerning the New Dispute. A similar letter was sent to Girlings on 29 September 2023.

(6) On 19 September 2023, the First Claimant wrote to the Defendants and stated that he was handing matters back to his lawyers. The Defendants replied to all three Claimants the same day objecting to having to deal with Mr Quickenden and stating that if Mr Quickenden writes to the Defendants they will treat it as an act of harassment and would inform his regulator.

(7) The Defendants continued to write to Claimants directly including, in the case of the Third Claimant, to her work email address.

(8) On 11 October 2023, the Defendants sent a 9-page letter to Girlings, reiterating the various new disputes and asking 20 questions of fact and law, demanding a response by 25 October 2023 by reference to the relevant facts and authorities. Girlings did not reply within the Defendants' self-imposed deadline and so the Defendants re-commenced their direct communications with the Claimants on 26 and 27 October 2023.

(9) On 31 October 2023, the Second Defendant wrote to the dispute resolution partner at Girlings, David Mallinson, about Mr Quickenden's continued involvement asking him for him to be removed from all correspondence and stating: "*If we receive one more piece of correspondence from Mr Quickenden (or if he is copied on any correspondence to us), I will hold you personally responsible for encouraging him to continue harassing my wife. I will report you to the police and the SRA.*"

(10) Also on 31 October 2023, the First Claimant asked the Defendants only to contact the Claimants' solicitors and not to contact the Third Claimant at her work email while she was on maternity leave. This elicited another email from the Defendants to the Claimants (including to the Third Claimant at her work email) the same day, and again the following day.

(11) After correspondence between the Defendants and Girlings in November 2023, on 19 November 2023 the Defendants emailed Girlings' David Mallinson, cc-ing the Claimants, and alleged that David Mallinson had threatened to damage the Defendants' property stating: "*Two of your clients are practising solicitors and your threat is incompatible with their duties under the SRA Code of Conduct.*"

(12) On 20 November 2023, the Defendants sent Girlings another letter of complaint regarding Mr Quickenden and, on 23 and 24 November 2023, wrote to Girlings, copying the Claimants.

(13) On or around 24 November 2023 the First Defendant contacted the Third Claimant's employer DAS Law Ltd (**DAS Law**) by telephone alleging that the

Claimants had engaged in bullying, harassment, intimidation and threatening behaviour.

(14) The Defendants then reiterated their complaints to William Ellerton, who was a partner in DAS Law with oversight of the Third Claimant. They did this by email on 24 November 2023, alleging criminal damage, trespass, threatening behaviour and more. The Defendants contended to Mr Ellerton, and in their evidence before me, that this was something that DAS Law needed to know about. This exchange continued over 4 days to 27 November 2023 even after Mr Ellerton had stated in terms that, *"I am not prepared to continue with this dialogue as I have repeatedly made our position clear"*.

(15) On 25 November 2023, the Defendants complained again to Mr Mallinson about Mr Quickenden's involvement.

(16) On 19 January 2024, the Defendants resumed correspondence with Jackson Stops, sending five emails in quick succession in which they: (a) asked the agents to advise the buyers not to buy Sunhill House without also buying the Field; (b) stated that the Claimants intended to develop the Field, such that the value of Sunhill would be adversely affected; (c) made accusations against the Claimants and their parents, including an accusation of blackmail.

(17) After having been notified on 21 March 2024, that the Claimants intended to permit a local woman, Gill Bennett, to put sheep into the Field (and therefore to use the right of way), the Defendants stated that the right of way was suspended owing to the Claimants' non-payment of their invoice for maintenance. This was followed by two letters to Ms Bennett herself.

(18) After another email to Jackson Stops on 14 April 2024, the Defendants wrote to the solicitors for the purchaser of Sunhill House asking them to provide the purchaser with information which they said may adversely affect the value of Sunhill House. This was on 17 April 2024, less than 48 hours before the intended completion date for the sale. The email stated, *"Your clients should not buy Sunhill House unless the Sullys give them a covenant not to develop the Field"*. It also made an entirely new claim about inadequate drainage for the swimming pool at Sunhill House and suggested the pool may be unlawful to use.

23. The Claimants invite me to analyse the allegedly objectionable features of the Defendants' correspondence under 7 headings.

24. First, they say that the Defendants have communicated directly with the Claimants and others in the face of repeated requests that they write only to the Claimants' solicitors. The First Claimant says these requests had been made often in the past but that, in August 2023 the Defendants wrote directly to his parents, and then between September 2023 and March 2024, they wrote directly to one or more of the Claimants (usually all of them) on some 13 occasions. During this time, he says, he and Girlands made several requests to the Defendants to cease contacting the Claimants directly. The Defendants have also copied the Claimants in to at least 3 emails to the Claimants' solicitors.

25. Second, the Claimants rely upon the content and frequency of the Defendants' correspondence, which Mr Nicholls describes in his skeleton as "*repetitive, lengthy and demanding letters often with a high degree of frequency in a short period of time"*.

26. Third, the Claimants rely on the fact that the Defendants' correspondence makes personal attacks on the Claimants, including allegations of criminal activity.

27. Fourth, the Claimants object to the Defendants' communications with DAS Law, the Third Claimant's employer.

28. Fifth, the Claimants complain about the Defendants' communications with Jackson Stops and the purchasers' solicitor.

29. Sixth, the Claimants say that the Defendants have made unjustified demands for a contribution to the maintenance of the Drive.

30. Seventh, the Claimants object to the Defendants complaining about their choice of legal representatives.

31. The Claimants say that they are likely to succeed in obtaining a permanent injunction at trial and that the discretionary factors that fall to be considered all point strongly towards the grant of an interim injunction.

The Defendants' case

32. In overview, the Defendants deny that their correspondence amounts to harassment. They say that it does not cross the line into unacceptable and oppressive conduct of a gravity that could sustain a finding of criminal liability. They say that, in any event, their correspondence was reasonable when considered in light of all the relevant circumstances. They therefore say that there is no serious issue to be tried and no likelihood of the Claimants obtaining a final injunction at trial.

33. To summarise the Defendants' case in response to the seven features of the correspondence on which the Claimants rely:

    (1) The Defendants say they have never refused to communicate with the Claimants' solicitors and, where they have communicated directly with the Claimants or their parents, they always had good reason to do so, i.e. (a) the Claimants had not instructed solicitors at the material time; (b) they were responding to an email sent directly to them by one of the Claimants; or (c) it was reasonable and sensible to do so because, e.g. they were simply sending an invoice or because Girlings had not replied to the Defendants' letters. The Defendants make the point that the vast majority of their correspondence has been with Girlings, not the Claimants.

    (2) The Defendants reject the criticisms of the tone, content, and frequency of their communications. They say that their correspondence was reasonable and proportionate at all times and that much of it was in response to communications sent by Girlings and so not targeted at the Claimants. They refer me to the words of Nicklin J in *Khan v Khan* [2018] EWHC 241 (QB) at [50]: *"It is harder to say that the Defendant's emails are harassment if they form part of a dialogue rather than*

standing alone". They say that, to the extent that their letters were repetitive, that was because Girlings were not giving answers to questions that they had legitimately asked about issues that remained outstanding after the County Court proceedings. They say that it was Girlings who first intimated, in a letter of 25 August 2023, that there would need to be a further round of litigation. The First Defendant (who wrote most of the communications) accepted at the hearing that she may have gone a little over the top at times, particularly in November 2023, when the stress of the situation was getting to her, but she maintained that there was at least a reasonable basis for raising/disputing the various issues that came up in the correspondence.

(3) The Defendants contended that they had at least a reasonable basis for including in their communications serious allegations about criminal and professional misconduct by the Claimants.

(4) The First Defendant explained that she contacted DAS Law because the Defendants have an insurance policy, including legal expenses cover, with its associated company DAS Insurance, and that she understood that any claim she made under the policy would be referred to DAS Law for advice. She says that, in November 2023, the Defendants were about to go away for a long holiday and that she apprehended that, in their absence, the Claimants might try to tarmac over part of the verge to the Drive in front of the gate to the Field and that this would give rise to a legal claim against them, the costs of which might be covered by the Defendants' insurance policy. She says that, since she knew that the Third Claimant worked for DAS Law, she needed to understand how she could exercise her right to obtain legal advice under the insurance policy in circumstances where there may be a conflict of interest preventing DAS Law from providing that advice.

(5) The Defendants say that they contacted Jackson Stops (and then the purchasers' solicitors) to ensure that any prospective purchaser was aware of the current disputes; to persuade the purchasers of Sunhill House to also purchase the Field; and to make sure the purchasers knew that they were reasonable people, happy to resolve the outstanding issues about the Field. They say that it was reasonable for them to contact Jackson Stops directly because, when Sunhill House was first put on the market in 2022, the agents were not aware that there was litigation ongoing about the Field. They say that their interventions were welcomed by Jackson Stops and have had a positive effect. They deny that this was activity targeted at the Claimants.

(6) As to the demands for maintenance payments, the Defendants say they have sent two invoices for past maintenance costs and have explained the basis for the invoices in correspondence. They say it is reasonable to calculate the contribution on a 50% basis. They also say that the Drive will require resurfacing soon and it is reasonable to alert the Claimants to this likelihood. The First Defendant told me at the hearing that they suggested that cost of resurfacing might be a six figure sum because they had received a quote some 6 years ago for £80,000, and that they had given similar notification to the owners of Rystwood Acre.

(7) As to the Defendants' complaints about the Claimants' appointed lawyers, they say that these were justified by reason of how Mr Quickenden conducted the County

Court proceedings and how he has now responded in respect of the New Dispute. They say that they have never demanded that Mr Quickenden should not work on the case for the Claimants, only that he should not correspond with the Defendants. They say that, in any event, this was not conduct targeted at the Claimants.

34. As well as their case that the Claimants are unlikely to succeed at trial, the Defendants say that the application for an interim injunction should be refused as a matter of discretion. That, they say, is because the Claimants have not come to Court with clean hands; because they have delayed; and because the balance of convenience favours a refusal.

Discussion and conclusions

35. I remind myself that, on the threshold question of likelihood of success, I am not required to make any findings of fact about the Defendants' conduct. I am required to make a prediction, based on the evidence so far available, as to the likely outcome at trial. The written evidence has not yet been tested in cross-examination, and there may well be more evidence available at trial which may reveal a very different picture.

36. I shall consider the evidence about the Defendants' conduct by reference to the seven themes identified by the Claimants.

"Refusing to communicate only with the Claimants' solicitors"

37. The Defendants may be right that they never refused in terms to communicate only with Girlings. It may also be right that they were unaware to begin with whether, once the County Court proceedings had settled, Girlings remained instructed by the Claimants' parents and/or were instructed by the Claimants themselves. On 7 September, I note, the First Claimant emailed the Defendants asking them not to contact his siblings but expressly inviting them to correspond with him in an effort to avoid involving external lawyers again. He wrote, *"If necessary, matters can be handed back to the lawyers"*.

38. Nevertheless, the First Claimant did feel it necessary to hand matters back to the lawyers and, on 22 September 2023, he asked the Defendants to direct all correspondence to Girlings. Girlings reiterated this in a letter dated 27 September 2023. The Defendants did correspond with Girlings on occasions, and it may be right that this accounted for the majority of their communications, but they also persisted in writing directly to the Claimants or copying them in to emails sent to Girlings or Jackson Stops, despite further requests not to do so.

39. I consider that the trial Judge is unlikely to accept the Defendants' justifications for this direct contact in the face of the Claimants' express requests, and likely that they will consider this to be an aspect of the Defendants' conduct that contributes to its oppressiveness. Their first two reasons (unaware that Girlings were instructed; responding to direct communication from the First Claimant) would seem to evaporate by late September 2023. In her First Witness Statement, the First Defendant advances miscellaneous reasons in respect of later direct correspondence (e.g. urgency on some occasions; the time it was taking for Girlings to respond; the need to inform the Claimants directly of the Defendants' response to Girlings' "threats" of trespass and criminal damage; the disproportionality of sending invoices to Girlings when they were for modest sums). For the most part, these look like ex post facto justifications. In many respects they are founded on interpretations of events which themselves seem

exaggerated (e.g. the "threats" made by Girlings, to which I return below). The more likely analysis, on present evidence, is that the Defendants chose to contact the Claimants directly when that would serve to place them under additional pressure.

Content and frequency of the correspondence

40. I do not need to say anything about the validity or strength of the legal claims that the Defendants assert and which have given rise to the New Dispute. For present purposes, it is the tone and manner in which those claims are asserted that is relevant.

41. One striking feature of the Defendants' correspondence is their tendency to take a piece of conduct by one of the Claimants or their advisors that they dislike and then to describe it in terms that seem very extravagant. Thus, informing them that the Claimants propose to tarmac a short stretch of the verge to facilitate entrance through the gate into the Field becomes a "threat of criminal damage"; an offer to sell the Defendants the Field becomes "blackmail"; a reference in a pleading to the First Defendant's nationality becomes "racially aggravated harassment" and so on. I return to some of these examples below. The allegation once made, is then added to their list of complaints and frequently repeated, including to third parties.

42. Then there is the length and repetitiveness of the Defendants' correspondence. The same points are made at great length again and again. The Defendants say that this is because the Claimants and Girlings were not answering their questions. It is likely that the trial Judge will take the view that it is more a case that the Claimants and Girlings were not giving the Defendants the answers they wanted. An inability to take "no" for an answer is often said to be a hallmark of harassment. The First Claimant gives, as an example, September 2023, when the Defendants were writing to the Claimants, Girlings or Jackson Stops on average every three days.

43. Then there is the tone of the letters and emails, which a Judge is likely to consider to be peremptory and demanding. Long lists of questions are sent, with a demand for a response within a tight timeframe and in which the Claimants are required to explain their position "by reference to the relevant facts and authorities" . Sometimes, in a way that appears to increase the pressure, the Defendants add that they will take it that the Claimants agree with them if no response is received in time.

44. The Defendants may be right that it was Mr Quickenden who first threatened a new round of litigation, in a letter on 25 August 2023, though by then the Defendants had already written twice or three times. In any event, as Mr Nicholls said, harassment is often not about how things start, but how they carry on. As to the Defendants' reliance on *Khan v Khan* at [50] the whole paragraph reads:

> "It is difficult to decide, on an interim application, that the correspondence sent by the Defendant is a course of conduct amounting to harassment – or more accurately that it is more likely than not that the Claimant will demonstrate at trial that it is – when (with only few exceptions) I have only seen one side of that correspondence. It is harder to say that the Defendant's allegations are harassment if they form part of a dialogue rather than standing alone."

Here, both sides of the correspondence (or at least enough to give a flavour of it) are in evidence. The Defendants are correct to point out that some of Girlings' letters are also

long and robust, but that is hardly unexpected when they are having to protect their clients' interests in the face of peremptory demands for fully reasoned responses to the Claimants' many points. I think it unlikely therefore that the trial Judge will feel able to dismiss this as six of one, half a dozen of another. I also consider that the Judge is likely to find that the correspondence to Girlings targets the Claimants. The Claimants still have to be informed about it and give instructions on it and so it is likely to be considered just another way of wearing the Claimants down.

Personal attacks on the Claimants

45. To be clear, I have seen no evidence that makes it likely that the trial Judge would find that the Claimants or their parents have committed any of the offences that are mentioned in the Defendants' correspondence. What is pertinent for present purposes is how these allegations came to be made and what the Defendants then do with them. I shall concentrate on three examples. There are more contained in the evidence.

46. In a letter to the Defendants dated 22 June 2021, Mr Quickenden wrote that the Claimants' parents had been planning to replace the post and rail fence with a six foot fence, but that they would not do so if the present hostilities could be brought to an end. Insofar as the post and rail fence was on the Defendants' land, it was not something the Claimants or their parents could legally remove. On 1 July 2021, the First Claimant wrote to the Defendants himself, saying that, "*Unfortunately the terms of the offer were misunderstood in the drafting process"* and clarifying that the proposal was to erect an additional fence next to the post and rail fence and within the boundary of the Field.

47. In the Defendants' minds, or at least their correspondence, this was a threat of criminal damage not just a drafting error, quickly corrected, or a misunderstanding about ownership (which would have amounted to a lawful excuse for the purposes of the offence).

48. In July 2022, in an effort to settle the original dispute, Girlings sent the Defendants an email containing a proposal written by "our client, Mr Sully" (i.e. the Claimants' father, although the Defendants contend that it must have been written by the First Claimant). It offered to sell the Defendants the Field for £400,000 (which was said to be half the price that the Field could be sold to a developer for) and suggested that this would be in the Defendants' interests because it would increase the size and value of their property and allow them to "secure the view" , so that the Field would remain "the open field that you wish to see". On 2 August 2022, Girlings wrote to the Defendants telling them that the Claimants intended to erect the new fence. The reasons given were (in summary) the unwelcome attention the Claimants felt they had been receiving from the Defendants when they were in the Field and hence their desire to "avoid further confrontation and stress".

49. In the Defendants' minds (or at least in their correspondence) the offer to sell becomes a demand for payment, and the notification about the new fence amounts to "menaces" such that, taking these things together, the First Claimant and/or his father have made an "unwarranted demand with menaces" constituting blackmail contrary to the Theft Act 1968, s.21. On present evidence, this suggestion seems fanciful.

50. In a long letter dated 29 September 2023, the Defendants objected, among many other things, to Gill Bennett parking on the verge in front of the gate to the Field when she

was feeding her sheep. Girlings responded to this point in a letter dated 15 November 2023, in which they wrote:

> "In the circumstances, and in order to avoid any further escalation between the parties, our clients have decided to create a hard-standing area inside the Field Gate, so that they and their guests can enter into the Field when visiting. In order to be able to do this throughout the year, they will need to extend the hard-standing from the Field Gate up to the tarmac of your Driveway, so that vehicles can enter without getting stuck in the mud nor making a mess. Our clients will make good any damage done as a result of this groundwork, in line with the Right of Way.
> Please identify any time in the next 3 months when it would not be convenient for such work to be done, or any preferred times (for example if you are away for a week on holiday"

51. In the Defendants' minds (or at least in their correspondence) this was a further threat to commit criminal damage. I am very doubtful that this proposed course of action would have amounted to criminal damage: Mr Nicholls points me to a passage in Gale on Easements suggesting that the Claimants have a right to undertake work to improve their right of way (and hence, a "lawful excuse"). But more to the point, the characterisation of this as a "threat" seems extreme when the Claimants are simply notifying the Defendants of a proposal aimed at solving another problem and asking when it might be convenient to undertake the work. It gave the Defendants ample opportunity to object (as they did).

52. But, as I say, the real concern for present purposes is how the Defendants deployed these allegations once they had formulated them. They made their allegations to third parties and/or threatened to make them to the legal regulators for the First Claimant, the Third Claimant, Mr Quickenden and Mr Mallinson. The allegations sometimes featured prominently in the subject line of emails. By way of example, I was shown an email to Jackson Stops on 19 January 2024 alleging blackmail; allegations to Mr Mallinson in an email dated 24 November 2023 (headed "trespass and criminal damage") and threatening to report the First and Third Claimants to the Solicitors Regulation Authority; an email to the Third Claimant's employers dated 24 November (headed "threat of property damage by Victoria Russell…"), and another email to her employers on 26 November 2023 repeating the allegation of threatened criminal damage.

53. In my judgement on the evidence so far presented, the Court is likely to decide at trial that this is an unacceptable way to deploy serious allegations of criminal conduct that have little if any basis in fact. The Court is likely to conclude that this was done to expose the Claimants and their advisors to personal and professional embarrassment in order to apply pressure to them.

Communicating with the Third Claimant's employer

54. I have already mentioned some of these communications. Altogether the First Defendant contacted DAS Law 6 times in late November (a call and 5 emails). I consider it very unlikely that the Court will eventually determine that it was reasonable for the Defendants to contact DAS Law in the way that they did. The First Defendant

says she did this to ascertain how their legal expenses insurance with DAS Insurance would work in the event that the Claimants tarmacked the Drive and the Defendants then wished to obtain legal advice due to them under their policy in circumstances where the related company, DAS Law, would be conflicted because they employ the Third Claimant.

55. The premise for this request seems unlikely – the Claimants had asked the Defendants when it might be convenient to do the tarmacking; the suggestion that they would have gone ahead without further discussion does not strike me as very plausible. The insurance contract is poorly evidenced at present. All the Defendants have provided is a policy summary from 2018 which says that customers of DAS Insurance benefit from a 24-hour helpline operated by DAS Law offering telephone advice "on any personal legal issue". It is not clear whether the First Defendant was even availing herself of that service when she first contacted DAS Law.

56. The record of the First Defendant's contact with DAS Law suggests that this was just a contrivance. It suggests that the Defendants had spotted the connection between their insurers, DAS Law, and the Third Claimant and had decided to exploit this in order to cause trouble for the Third Claimant and increase the pressure on all the Claimants. To establish this likelihood, the Court does not need to rely on the attendance note of the First Defendant's initial telephone contact with DAS Law (which she says is a forgery). The subsequent email exchanges with Mr Ellerton will suffice.

57. The First Defendant's first email to Mr Ellerton (as I have mentioned), is headed "*Threat of property damage by Victoria Russell against clients of DAS Insurance"*. There then follow seven paragraphs of defamatory allegations about the Claimants. Only in the penultimate paragraph is the question of a conflict of interest raised. Mr Ellerton responded stating that he regarded the dispute between the Claimants and the Defendants as a private matter but reassured the First Defendant that DAS Insurance had a wide panel of solicitors and that there was no requirement that DAS Insurance should use DAS Law. That ought to have allayed the Defendants' purported concerns (or rather, the trial Judge is likely to think so), but instead the First Defendant persisted in corresponding with Mr Ellerton, even after he told her in terms that he regarded the correspondence to be at an end.

58. At one point in this correspondence, the First Defendant writes to Mr Ellerton "*The best way to solve this problem is to prevent the Sullys from damaging our property in the first place ….the Sullys do not need to tarmac our grass verge. It is already configured for vehicular access. Perhaps you could advise Mrs Russel to withdraw the threat?"*. That rather chimes with what the First Defendant said to me in an unguarded moment in her submissions (though she quickly resiled from it) namely that she had decided to contact DAS Law in order to get the Third Claimant's brothers to withdraw the threat to tarmac the verge.

59. This aspect of the Defendants' conduct is likely to contribute to an eventual finding that they were harassing the Claimants.

Communicating with the estate agents

60. I was taken through the whole of the correspondence with Jackson Stops during the period I am concerned with (15 communications between September 2023 and April

2024). I do not need to recite it here. Suffice it to say that, on an objective reading, it suggests that the Defendants were seeking to deter people from buying Sunhill House unless they were also prepared to buy the Field on terms that would prevent it from being developed. The Defendants do not appear to dispute this. The correspondence included suggestions that the First Claimant and his parents had committed blackmail and that the Second Claimant had made a false complaint to the police. It appears that these allegations were included to add emphasis to a suggestion that, if they remained owners of the Field, the Claimants would sell it for development (whatever they might have said to the contrary). These representations were made with typical forcefulness. The agents were told that they must pass this information on to prospective buyers, and that they would be in breach of their relevant statutory obligations if they did not.

61. In my judgement, the Court is unlikely to accept that this was reasonable behaviour by the Defendants or that it was conduct targeted at the purchaser. The likely analysis is that this was conduct targeted at the Claimants, and intended to interfere with their ability to dispose of Sunhill House and the Field as they saw fit.

Making demands for contribution to the maintenance of the right of way

62. The Conveyance, as recorded in the County Court settlement agreement, was silent on how maintenance contributions were to be calculated and paid. The Defendants say the Claimants should pay 50%; the Claimants say it should be a smaller amount, reflecting the fact that they did not need to go very far down the Drive to reach the gate into the Field. I do not need to decide what the right figure is, or even whether the Defendant's suggestion of 50% is, in itself unreasonable[1]. What is likely to strike the Court at trial is how the Defendants appear to have weaponised the uncertainty over maintenance costs in order to increase pressure on the Claimants to deal with the Field in a way that suited the Defendants.

63. From the very first invoice, the Defendants advanced their claims for payment in a manner that seems unnecessarily aggressive. It ought to have been a matter for sensible negotiation. Instead, the demand for payment on a 50% basis came out of the blue and was accompanied by a threat to charge interest at 8% above base rate and to lock the gate to the Field if payment was not made. Soon afterwards, the Defendants began to mention a possible six-figure sum for resurfacing (of which the Claimants would be charged 50%). Whether or not the Defendants are correct and this work does need doing and will be expensive, the manner in which they introduced it into the correspondence is likely to be seen as overbearing. The Defendants began to assert with increasing regularity that the Claimants were trespassers while the invoices remained unpaid (something Mr Nicholls disputes as a matter of law, but which I do not need to decide). Latterly they widened this allegation to include Gill Bennett, writing to her twice in one day to allege that she would be a trespasser if she brought her sheep on the field. Unsurprisingly, she ceased doing so which, the First Claimant explains, created a further problem for the Claimants because the grass in the Field is now growing uncontrollably. This is likely to be seen as another method of targeting the Claimants.

[1] The Defendants explained that, under this arrangement, they would still have borne some maintenance costs themselves because the 50% contribution they were entitled to from Rystwood Acre was in relation only to a portion of the Drive.

64. A sensible approach, one might think, would have been to accept a small contribution from the Claimants while negotiations about the applicable percentage continued, but the First Claimant says the Defendants wanted full payment or nothing.

65. One striking feature of this aspect of the case is that, when the Claimants proposed their smaller percentage, the Defendants portrayed this as an "admission" that the right of way was not a "full" right of way at all, but permitted access to the Field only for domestic and agricultural use (i.e. not development). They proposed that the matter could be settled by recording this in a deed. In other words, it seems, they were seeking to reopen the settlement of the County Court litigation, and achieve a result that they had not been able to achieve in that litigation.

66. Accordingly, regardless of the merits of the parties' position on the correct level of maintenance charge, it is likely that the Court will find that the Defendants pursued this issue in an oppressive way.

Complaints about the Claimants' legal representatives

67. I should record that I have not seen any evidence that could support the serious allegations of professional misconduct made by the Defendant about Mr Quickenden and others. I do not propose to say any more about the merits of the complaints (which concern Mr Quickenden's conduct of the County Court proceedings). What is important for present purposes is how they were advanced and persisted in. Mr Mallinson wrote to the Defendants in August 2023 saying he had investigated and rejected the complaints. I was told that the Defendant's complaint about Mr Quickenden to Cilex had also been rejected. That should have been the end of it but, once again, the Defendants seem unable to take "no" for an answer. They have persisted in repeating their allegations about Mr Quickenden (including to third parties), demanding that he be prohibited from corresponding with them, and they have widened their attack to include Mr Mallinson as well.

68. The Defendants say that this conduct (as well as being justified) has been targeted at Girlings, not at the Claimants. However, I consider that the Court is likely to see it as part of a course of conduct on which the Claimants are entitled to rely. It appears to be an attempt to interfere with the Claimants' rights to instruct lawyers of their own choosing and it is likely to have exacerbated their distress. See also *Hayden* principle (v).

Likelihood of success at trial

69. Standing back and looking at the whole picture (as required by *Iqbal*), I consider it likely that the Claimants will establish at trial that the Defendants have pursued a course of conduct amounting to harassment, and that they knew or ought to have known that they were doing so. The impression I have formed on the documentary evidence so far available is that the Defendants will indeed "do whatever it takes" (as they threatened to back in 2021) to force the Claimants to deal with the Field in a way that suits the Defendants' wishes. The Court is likely to find that their conduct has been oppressive, unacceptable, and of an order which would sustain criminal liability under PfHA s.2. The Court is likely to find that this was calculated to cause the Claimants alarm and distress and has in fact done so. The Court is likely to reject the defence of reasonable conduct and likely to put in place permanent injunctive relief.

70. I therefore turn to the discretionary factors relevant to the grant of an interim injunction.

"Unclean hands"

71. The Defendants allege that the First Claimant has made 5 untrue statements in his evidence in support of this application. The Claimants formally withdrew reliance on three of these in advance of the hearing (not by way of admission; simply to avoid satellite disputes) and placed no reliance on the fourth. I need say no more about these since they did not have an "immediate and necessary connection" with the relief sought.

72. The fifth "untruth" is said to be the First Claimant's evidence that the Claimants did not bring this claim earlier because they wanted to conclude the sale of Sunhill House first. In his First Witness Statement dated 18 April 2024 (just before the sale of Sunhill House was completed the First Claimant wrote, when explaining the need for an injunction: *"I am also concerned that the Defendants' behaviour will put off the buyer that my parents' estate agents have found for Sunhill, who would also like to buy the Field and Ditch Strip but will not do so until these issues are resolved"*(my emphasis). In his Second Witness Statement dated 31 May 2024. He wrote: *"..our main objective was to sell Sunhill House…But we were all fearful that …if we commenced any kind of proceedings or applied to the Court for an injunction against the Defendants that it would exacerbate their behaviour and that ongoing litigation would further jeopardize the sale of Sunhill House. It is only now that Sunhill House has been sold that we feel able to bring these proceedings. The purpose behind them is not only to bring the harassing conduct to an end, but to enable us to resolve the issues relating to the right of way in a sensible and reasonable way, and thereby to be able to sell the Field"* (my emphasis).

73. I do not think that this is the stark contradiction the Defendants claim it to be, once the underlined words are taken into account. In both places, the First Claimant appears to be saying that the purpose of the proceedings is to prevent the buyer of Sunhill House being put off from buying the Field. That is not inconsistent with saying that he wanted to wait until the House itself was sold before issuing proceedings. I do not consider that this was a deliberate attempt to mislead.

74. The Defendants allege that the Third Claimant has "misled the Court" by "failing to disclose the fact that they were clients of DAS Law" but also that she has behaved improperly by disclosing communications between the Defendants and DAS Law. This seems contradictory and is in any event baseless.

75. When the Defendants contacted DAS Law in November 2023, they were customers of DAS Insurance, not clients of DAS Law and there is nothing in the telephone attendance note or the email exchanges with Mr Ellerton to suggest that they were seeking or receiving confidential legal advice. They were asking how legal advice might be provided by DAS Law in a hypothetical situation which might arise in the future (and the Court is likely to find that this was just a pretext for making defamatory allegations about the Third Claimant). Some of Mr Ellerton's emails were marked confidential in the footer, but this does not change the substance of the exchanges.

76. The Third Claimant gives evidence that, in May 2024, she was informed at work that the Defendants had contacted DAS Legal Expense Insurance (a company affiliated with DAS Law) and had specifically mentioned herself and Mr Ellerton. The First Defendant

says that her call with DAS Legal Expense Insurance was strictly confidential but, if so, I do not see how the Third Claimant could or should have known this based on what she was told. Most likely it struck her as a continuation of the allegedly harassing conduct that had occurred the previous November. I do not think she can be criticised for mentioning it in her Witness Statement.

77. Finally, the Defendants allege that the Third Claimant has forged a letter from her GP to support her claim that the Defendants' conduct has caused her to suffer stress-related illness. The basis for this extraordinary allegation is the fact that, in the photograph of the letter exhibited to the Third Claimant's Witness Statement, the GP's name and surgery and the date of the letter are not visible. She can be asked about this at trial if necessary but I am certainly not prepared to make such a serious finding on the basis of the Defendant's arguments.

78. I am therefore not persuaded that I should refuse relief on the basis of "unclean hands".

Delay

79. The Defendants say that the Claimants first mentioned harassment proceedings in 2021, and could have brought a harassment claim alongside the County Court Proceedings, since that would not have further jeopardised the sale of Sunhill House (which was effectively unsellable until the County Court case was settled).

80. I do not accept that I should refuse relief on grounds of delay. One of the features of harassment is that its alarming and distressing effects increase over time so the fact that a claimant could have, but did not, take action at an earlier stage in the course of conduct counts for little if that course of conduct is continuing. Here, it was continuing: the Defendants emailed the solicitors for the purchaser of Sunhill House on 17 April 2024 (two days before proceedings were issued) in an apparent attempt to derail the sale. I cannot see how the timing of the claim has been prejudicial to the Defendants.

Other matters relevant to the exercise of my discretion

81. Damages would not adequately compensate the Claimants if I refuse an injunction and the Defendants' conduct continues to trial. Damages are a poor substitute for the peace of mind that an injunction can bring.

82. The Defendants say that no injunction is necessary because they have no intention of contacting the Claimants directly. They point to their email to Girlings on 10 May 2024 in which they wrote, *"We will not communicate with your clients, except to prevent an unlawful act, e.g. trespass or criminal damage"*. The difficulty with that is that the Defendants appear to have a very broad conception of what counts as unlawful, and are quick to allege unlawful activity, so this promise may not give the Claimants much protection. Moreover, I was shown instances in the past where the Defendants have said they would not communicate with one person or another but have then resumed doing so, and the Defendants have declined to give undertakings. Since proceedings were issued they have continued to complain about the Claimants' choice of legal representatives and have spoken about the Third Claimant to an affiliate of DAS Law. There is therefore a real risk in my judgement that they will continue to behave as before if I were to refuse an injunction.

83. The Defendants say no injunction is necessary because the Claimants can simply block their emails. That is never an attractive position and it is particularly inapposite here. First, because the Defendants have a habit of making demands and saying words to the effect of "if we do not hear back from you, we shall take it that you agree", so the Claimants cannot safely ignore emails from them if they are sent. Second, an important feature of the Defendants modus operandi involves making statements to third parties about the Claimants.

84. The Defendants provided a long list of reasons why they say they would be prejudiced by the grant of an injunction. Where these concerns were legitimate (the need to phone Ms Bennett if the sheep get out; the Defendants' apparent contractual right to call the DAS Law 24-hour helpline) I have made appropriate adjustments to the Order. Some of the things they mention are not prohibited by the injunction (they can still object to "trespass" and send invoices, so long as this is via Girlings). Some scenarios they put forward were fanciful (that the Claimants would use the fact of the injunction to make false complaints to the police).

85. The Defendants also say that the balance of convenience is against the grant of an injunction because it will damage their reputations, whereas the claim can go to trial swiftly and/or the need for proceedings will evaporate once the Field is sold to the new owner of Sunhill house. I have explained above that I am not making findings of fact about the Defendants' conduct in this Judgment. Any reputational harm will be limited and can be repaired at trial if it turns out to have been unwarranted. I am not as optimistic as the Defendants about the trial coming on swiftly and the Claimants have explained that the new owner of Sunhill House is unwilling to exercise his option to buy the Field until the issues around the right of way have been resolved. In the meantime, in my judgement, there is a pressing need to put these limited restrictions in place for the benefit of the Claimants which outweighs the inconvenience to the Defendants.

Part 7 or Part 8?

86. The Claimants are keen to proceed under CPR Part 8 so as to have the claim determined quickly and on paper. Mr Nicholls was prepared to limit the scope of relief sought if the claim would otherwise have fallen within the mandatory requirement to proceed under Part 7 that is set out in CPR PD 53B para 10. In my judgement however, Part 7 is the only viable option for a fair trial of this claim given the likely extent of factual disputes.

87. The Claimants have limited their claim to harassment by correspondence, but the Defendants say their correspondence was not oppressive and/or was reasonable and they will be entitled to go into the background to some extent to explain to the Court why they wrote to the various recipients and in such terms and with such frequency. I have seen enough to be sure that this will throw up significant disputes of fact. Further, the Claimants seek damages for alarm and distress and it is clear that the Defendants dispute the fact, extent and causation of this. They are entitled to test the Claimants' case on this in the normal way, which usually involves cross-examination.

88. I am very far from saying that every factual dispute that was ventilated before me will need to be resolved at trial. I think it unlikely, for example, that the Court will need to determine anything about the maintenance costs, the construction of the Conveyance

containing the right of way, or questions about other easements. And I repeat that the truth or falsity of allegations is rarely a key issue in cases of harassment by publication: the focus will be on the manner in which the Defendants made and then persisted in making their allegations: *Hayden* principles (ix) & (xi). The claim will need careful case management and the Court will be astute to ensure that these proceedings do not themselves become another form of harassment. The parties can expect that allegations that are unarguable or have no real bearing on the issues the Court has to determine will be summarily dismissed, struck out, or excluded from evidence.