Neutral Citation Number: [2019] EWHC 1321 (QB)

Case No: QB-2019-000097

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/05/2019

Before :

THE HONOURABLE MR JUSTICE WARBY

- -

Between :

Tariq Siddiqi	**Claimant**
- and -	
(1) John Aidiniantz	
(2) Andrea von Ehrenstein	
(3) The Sherlock Holmes Museum Limited	
(4) Rollerteam Limited	
(5) Sherlock Holmes Limited	**Defendants**

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- -

The Claimant in person
Kate Wilson (instructed by **Reynolds Porter Chamberlain LLP**) for the **Defendants**

Hearing date: 16 May 2019

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE WARBY

MR JUSTICE WARBY:

Introduction: the dispute and the parties

1. This action is a spin-off of a long-running and undoubtedly bitter dispute over a family business, the Sherlock Holmes museum in Baker Street, London.

2. Those interested in that dispute can read more in the judgment of Robert Engelhart QC, sitting as a Deputy High Court Judge, in *Rollerteam Ltd v Riley* [2015] EWHC 1545 (Ch) (affd [2016] EWCA Civ 1291). That was a case about whether four pieces of litigation had been effectively compromised.

3. This is an action for damages and an injunction brought by a supporter and adviser of one family faction, against the head of another faction, his wife, and associates of his. The claimant complains that since 2012 he and his family have been the targets and victims of the publication of derogatory, confidential and/or private information, on a website bearing the claimant's name, and in correspondence.

4. The claimant, who has represented himself at this hearing, with help from his wife and a friend, describes himself as a successful business entrepreneur who has been involved with many business enterprises. It is clear that one aspect of his business activities has been in property development. The first defendant describes himself as a retired businessman who founded the Sherlock Holmes museum and managed it until January 2014.

5. The claimant and the first defendant appear to have known one another for quite a few years, and it is common ground that they had some business discussions at some stage, and that relations were cordial enough at that time. It is also common ground that the relationship has soured. Exactly when and why that happened is in dispute, but I cannot resolve the disagreement at this stage of this case, when I am dealing with interim applications.

6. This much is clear. From some time in or around 2012 the claimant became an ally or associate of the first defendant's mother, Grace Riley. He came to allege that the first defendant had wrongfully excluded his mother and other family members from control of the family business, taking control of the shares and the entrance revenue. The claimant now alleges, and has for some time been asserting, that the first defendant at various times and in various ways fraudulently transferred the shares and revenue, so as to dispossess and deprive his mother and siblings of the family business.

7. For his part, since about October 2012 the first defendant has been publishing material online, at a website initially located at www.tariq-siddiqi.com, to which the claimant and his family take strong objection. The existence of the website seems to have been announced to the claimant by an email of 27 October 2012. The claimant has said of the website that it "bitterly, all of a sudden, accused and depicted the claimant of being a fraudster who was trying to defraud Grace Riley, …". Over the years, at different times, the claimant has formulated a number of other complaints about the contents of the website. His complaints have stepped up over the last year, and ultimately led to this High Court action, which was started in January 2019.

8. The second defendant is the wife of the first defendant. They married in recent years, having met in the early 2010s, it appears. The fourth defendant is a company owned by the second defendant. The fourth defendant owns the premises of the Sherlock Holmes museum. The third and fifth defendants are companies which are said by the defendants to be dormant.

9. The Claim Form, issued on 10 January 2019, and Particulars of Claim filed on 16 January 2019, set out details of a claim against all five of these defendants. The pleaded claim is for £4,149,911.84 by way of damages and interest thereon. The statements of case allege injury to reputation and consequential financial loss resulting from what the Claim Form describes as a "course of criminal conduct". The claimant alleges offences of blackmail contrary to s 21 of the Theft Act 1968, and harassment contrary to s 1(1A) and (3) of the Protection from Harassment Act 1997, and he alleges libel causing serious harm to reputation, citing ss 1(1) and 5 of the Defamation Act 2013.

Applications and Issues

10. The defendants now apply, by notice dated 12 April 2019, for orders striking out the claims and entering summary judgment in favour of the second to fifth defendants. The claimant has responded by indicating that he now wishes to abandon the original Claim Form and Particulars of Claim, and to substitute entirely new wording by amendment. His draft amendments would drop the claims for blackmail and defamation. They would retain the claim in harassment. But they would add further causes of action. The draft Amended Claim identifies five causes of action, as follows (except that I have added the numbering in square brackets):

> "The Claimant claims damages for **[1]** conspiracy to injure by unlawful means and/or **[2]** wrongful interference and/or **[3]** breach of confidence and/or **[4]** harassment and/or **[5]** interference with his Article 8 rights by (i) the creation of websites in his name and without his consent namely [*Web addresses specified*] and the use of them to publish and promote false derogatory and damaging allegations of him and his family (ii) the publication of false derogatory and damaging allegations of him and his family both online and to third parties and (iii) the publication of private and confidential information relating to him and his family."

11. The Amended Particulars of Claim ("APoC") are concise, at 15 pages long, but they are accompanied by 59 pages of Schedules and chronology, bringing the total length of the document and its appendices to 74 pages. That is not the end of it, however, because the Schedules contain references to other documents, attached, and to exhibits, which are far more voluminous. Schedule 4, for instance, "includes" three documents. One is the chronology. The second is the Claimant's Initial Notice of Complaint and Notice to Admit facts dated 12 October 2018, of 18 pages. The third is the claimant's "Full and Final" Notice of Complaint dated 1 November 2018, of 37 pages.

12. The claimant's application for permission to amend his statements of case is the subject of an application notice dated 10 May 2019, but filed on Monday 13 May 2019. When served, it was accompanied by a raft of witness statements. All of this was less than 3 clear days before this hearing, so the claimant's amendment application was late, and

he required an order abridging time for service. But that was not opposed, and I granted it.

13. At the same time, the claimant also seeks at this hearing the following orders, for which he had applied at an earlier stage:-

    (1) an injunction restraining further publication (application notices of 30 January 2019 and 4 April 2019); and

    (2) an order for the defendants to give disclosure of information and/or documents (application notice of 4 April 2019).

14. The defendants' position is as follows:-

    (1) the existing Particulars of Claim should be struck out with costs, as the claimant has in effect conceded the defendants' application to that extent;

    (2) permission to amend should be refused;

    (3) I should enter summary judgment for the second to fifth defendants against the claimant;

    (4) the injunction application should be refused, and the disclosure application dismissed.

15. The defendants must be right in their first contention. Save in exceptional circumstances, which are not to be found in this case, a party who brings and then abandons a claim will inevitably be required to pay the costs of and caused or thrown away by doing so. But the main business at this hearing has concerned the amendment and summary judgment applications, and the question of whether an injunction should be granted.

Evidence and submissions

16. I have voluminous documentation before me, consisting in the end of no fewer than seven lever arch files of statements of case and evidence; the claimant has prepared two of his own bundles, and the defendants have prepared five more. The bundles are all very well prepared, but their content overlaps to some degree. There is a further lever arch file of authorities.

17. The material that was served late included Mr Siddiqi's skeleton argument, which was not lodged with the Court until 4.30pm the day before the hearing. It had a list of suggested pre-reading, the time estimate for which was 2 ½ hours. This was if anything an under-estimate. This was less than helpful, but it has been possible to deal with all the matters in issue in the course of a single day's hearing.

18. I have so far avoided investigation of how this excessive volume of paper came to be put before the Court, and why some of it was filed so late. That may be necessary when it comes to costs.

Open justice

19. Among the documents exhibited by the claimant were two emails which I was asked to and did direct should be withheld from the public. I made an associated reporting restriction order under s 11 of the Contempt of Court Act 1981, and an order restricting access to the Court file under CPR 5.4C. These were orders sought by the defendants' application notice of 12 April 2019. They were not opposed by Mr Siddiqi, though he did not consent to them. I directed that the material be withheld in the exercise of the Court's inherent jurisdiction to control its own procedures, considering myself duty bound to do so under s 6 of the Human Rights Act 1998. That gave me power to grant a s 11 Order.

20. Ms Wilson has rightly reminded me of the high threshold for withholding information from the public, when it is deployed in Court. This is a derogation from open justice which should only be made when it is strictly necessary for the proper administration of justice: see the discussion in *Khan (formerly JMO) v Khan (formerly KTA)* [2018] EWHC 241 (QB) [82]-[86]. However, the orders that I made represented the most minimal interference with open justice.

21. The emails appeared to me at the time to be entirely irrelevant, or of only the most tangential relevance to the issues for decision. They probably would not have been read aloud in open court under any circumstances. But they contain allegations of a personal and highly sensitive nature, which Mr Siddiqi suggested were central to an understanding of the first defendant's character. I concluded that it would be quite wrong to run the risk that, in this acrimonious case, their contents might be made public under the protection of privilege. Having now heard the substantive arguments, I am satisfied that the emails and their contents are of no assistance whatever in resolving the issues now before me.

22. Other evidence and submissions are public, and accessible on the Court records, to the extent that the rules and the authorities provide for this to be so. The principles are explained in *Cape Intermediate Holdings Ltd v Dring* [2018] EWCA Civ 1795 [2019] 1 WLR 479.

Amendment and summary judgment

Principles

23. The procedural regime is clearly established.

    (1) A party seeking permission to amend must state his case with clarity and particularity, in a way that complies with the CPR and Practice Directions; he must state a case which discloses a reasonable basis for claiming the relief he seeks; and he must satisfy the Court that the amended case is one that has some real prospect of success: see nn 17.3.5 – 17.3.6 of Civil Procedure 2019 and cases there cited.

    (2) A defendant seeking summary judgment in his favour on a claim or issue must satisfy the Court that the claimant has no real prospect of succeeding on that claim or issue, and that there is no other compelling reason why the case or issue should be disposed of at a trial: CPR 24.2.

24. The CPR require the claim form to "(a) contain a concise statement of the nature of the claim" and "(b) specify the remedy which the claimant seeks". Particulars of Claim must include "a concise statement of the facts on which the claimant relies" (r 16.4(1)), and "a subsequent statement of case must not contradict or be inconsistent with an earlier one ...": PD16 9.2. The court may strike out a statement of case which "discloses no reasonable basis for bringing ... the claim" or "is … likely to obstruct the just disposal of the claim": CPR 3.4(2)(a) and (b). Plainly, permission will not be granted for a statement of case that would be struck out on one of these grounds.

25. All of these are matters to be determined without regard to evidence. On an application for summary judgment, evidence can be adduced. The principles that apply in that context are equally applicable to an application for permission to amend. I set out the key principles in *Bode v Mundell* [2016] EWHC 2533 (QB) [11] (drawing on *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) [15]). Omitting internal citations, they are these:

> "i) The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success:
>
> ii) A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable …
>
> iii) In reaching its conclusion the court must not conduct a "mini-trial" …
>
> iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents …
>
> v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial …
>
> vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus, the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case …"

The Associates

26. It is convenient to deal first with the position of the second to fifth defendants. The claimant's many lengthy letters or "Notices of Complaint" have described the first defendant as "the author" of the website. On 7 September 2018 the claimant wrote to

him alone, alleging that he had "created and funded" the website. But later, the claimant's "Full and Final" notice of complaint dated 1 November 2018, included "Andrea and Associates" as the "funders". The companies were described as "their associates for whom they acted for and on behalf of." The existing Particulars of Claim also sought to pursue claims against these defendants on the basis that they were "associates" of the first defendant, funding the website. The case is not put in quite the same way now. But it is convenient to adopt the generic term used by the claimant at an earlier stage ("the Associates").

27. I have concluded that the application for permission to amend must be dismissed so far as the Associates are concerned, and that they should be granted summary judgment against the claimant on all of the claims against them.

28. This is on the straightforward basis that (1) there is no sufficiently pleaded allegation that any of these defendants bore responsibility in fact or law for the publication of the Website, or any other offending publication, (2) even if there were such a pleading, the claimant has not shown that his case that the Associates were responsible for publication has any real prospect of success; indeed, I would go further and say that (3) the evidence on these applications shows that the claimant has no real prospect of establishing that any of the Associates bore responsibility or bear responsibility for the publications of which he complains. However the claimant's case against these defendants has been framed or might be framed as a matter of law, it could not prevail at any trial. I can see no other reason why, in these circumstances, it could be appropriate to allow these claims to proceed to trial.

29. The claimant's current case on the Associates' responsibility for publication is to be found set out in the body of the APoC and in Schedules 2 and 3 to that document.

30. The APoC begin by setting out details of the defendants. It is alleged that the first defendant "has been" and the second defendant "is" a director and shareholder of the third to fifth defendants. It is alleged that the first and second defendants "had close financial ties before their marriage in 2014", and that the first defendant appointed his wife-to-be as a director of the fourth defendant. It is said that "Evidence in support of the involvement and collusion between the first and second defendant and the companies is described in Schedule 2 and Schedule 3 hereto."

31. Paragraphs 8 and 9 contain the following allegations:

> "8. In or about October 2012 the First and Second Defendants agreed to create websites in the Claimants name to publish and promote false and damaging allegations of the Claimant and pursuant to such agreement the First Defendant built and launched the websites.
>
> 9. The websites have been used by the First and Second Defendants on behalf of themselves and the Third to Fifth Defendants to publish and promote false and damaging allegations of the Claimant. The words complained of in posts and the correspondence identified below are set out in the document which appears at Schedule 4 hereto."

The underlining is mine, and is intended to identify the key words for present purposes.

32. "Particulars" of these allegations are set out in the paragraphs which follow. The following extracts sufficiently cover the substance of the relevant passages. I have underlined what seem to me to be the key words.

> "10. The First Defendant and the Claimant had a cordial business relationship until in or about October 2012. A deterioration was caused when the First Defendants' family approached the Claimant for support and advice having been completely excluded abruptly from the family business by the First and Second Defendant. The Claimant's investigations strongly suggested that the First and Second Defendant had misappropriated the shares and the revenue of the family business, The Sherlock Holmes Museum. In response the First and Second Defendants agreed and decided to publish derogatory posts of the Claimant.
>
> …
>
> 14. … the websites enabled them to publish and promote damaging allegations as part of their attempts to defeat the claims of asset misappropriation.
>
> 15. The First and Second Defendants' course of conduct stems from the Claimant's friendship with Grace Riley the mother of the First Defendant and his siblings; the Riley family, and the Claimant's efforts to assist the Rileys in securing their rights.
>
> …
>
> 17. The First Defendant admits authorship of the abusive website funded, published and promoted with paid advertising …
>
> …
>
> 23. The First and Second Defendants' conduct was intended to inflict as much reputational and financial damage as possible to the Claimant but also aims to achieve something of importance to the First and Second Defendants, namely to bring to an end any investigations of the misappropriations of the ownership and revenue of the Sherlock Holmes Museum in London. …
>
> a. Via the websites created and funded under the domain names of www.tariq-siddiqi.com initially and [*website address*] thereafter.
>
> b. Via correspondence to connected third parties…
>
> c. Via defamatory correspondence sent directly to targeted third parties…
>
> d. Via defamatory and harassing correspondence persistently sent to the Claimant's solicitors and other legal representatives of the Claimant's acquaintances, business partners and relatives to increase the Claimant's legal expenses as much as possible…

> …
>
> 26. The Claimant relies on the judgment of Robert Englehart QC dated 4 June 2015 [2015] EWHC 1545 (Ch). At page 6 paragraph 8 the Judge states that: "Mr Aidinaintz had even published a website containing highly derogatory statements about Mr Siddiqi…"
>
> …
>
> 28. The statements published by the First and Second Defendants have devastatingly and substantially interfered with the Claimant's reputation and have caused him and his family upset and distress.
>
> …
>
> 32. The variety of the methods and channels employed to deliver the harassment demonstrates that the First and Second Defendants were planning and executing each of their actions to cause the Claimant as much serious reputational damage and financial loss as a direct and foreseeable consequence of their conduct.
>
> …
>
> 42. The Defendants' abusive website and email campaign against the Claimant dates back to October 2012, over six years. Clearly, the 1st and 2nd Defendants should be able to support their allegations with factual evidence as they have had ample time and opportunity to do so …
>
> …
>
> 44. … Unless restrained by this Honourable Court the First and Second Defendants threaten and intend to publish further derogatory and/or confidential and/or private information online and elsewhere relating to the Claimant and his family."

33. The relief claimed includes not only damages, as claimed in the Claim Form, but also various forms of injunction. Consistently with the wording of APoC paragraph 44, all the injunction claims are made against the First and Second Defendants only. There is no allegation that the corporate defendants threaten or intend to do anything, and no claim for an injunction to restrain them from doing anything.

34. Schedule 2 to the APoC is entitled "The First Defendant John Aidiniantz". It has a sub-heading "Particulars with Complementary Information about the 1st Defendant who is the husband of the Second Defendant Andrea Von Ehrenstein… and is or has been a Director and Shareholder of the Third to Fifth Defendants." Much of it focuses on the history of the relationship between the claimant and the first defendant, allegations of fraudulent transfers, and attempts to evade service of proceedings. It does allege that the second defendant "together with the 1st defendant is effectively funding the abusive website" (paragraph 10). It also alleges that the first defendant is "still directly involved in the management" of the companies (paragraph 13). And in paragraph 19 it alleges

that the first and second defendants have "continued to work and make amendments to the abusive websites" at the same time as the proceedings were afoot.

35. Schedule 3 is headed "The Second Defendant Andrea von Ehrenstein". It has a sub-heading that begins, "Particulars with complementary information about the Second Defendant …" The Schedule runs to 39 paragraphs over 12 pages, concluding with a Table, headed "Summary of financial ties between 1st and 2nd Defendant". Schedule 3 beings with a Preamble stating that the "full and current involvement and collusion" became evident from data discovered recently, after January 2019. The essence of what is then alleged can be summarised.

(1) It is said that the first and second defendants were both involved with the corporate affairs of the companies, probably aware that correspondence was being sent to them and their companies, and discussing that correspondence. There were changes of service address. These two defendants are "both likely to be 'on the run' to avoid these proceedings", and are "hiding", and failing to pay debts due to others. They are trying to stop any investigation concerning the misappropriation of the Sherlock Holmes museum.

All of this is about motives, and conduct from which the claimant invites inferences of guilt. None of it identifies anything done by any of the second to fifth defendants in relation to the publications complained of.

(2) There is then a section headed "The conduct of 2nd Defendant ... in relation to these proceedings." In this section the claimant alleges that the first defendant is trying "to evade all his creditors", and suggests that the first defendant is seeking to take responsibility for publication so that others, to whom assets have been transferred, can escape. That, again, does not identify any conduct that could confer responsibility on any of the other defendants. But the claimant also speaks of "consent … by acceptance" on the part of the second defendant.

(3) Paragraphs 26 onwards seem to explain this. They say there is "implied consent by the 2nd defendant … implicitly granted by her actions and the facts and circumstances". It is alleged that she is the "driving force" behind her husband's decision-making; that she acquired knowledge of the extent to which the abusive website was affecting the claimant and his family; and that her implied consent "is manifested by both the person's silence and apparently deceptive inaction…" She had "multiple opportunities … to distance herself if she desired", as well as opportunities to avoid the claim. She "clearly displayed a silent but implied consent over all the actions of the 1st defendant". The matter is summarised in paragraph 5 of the Conclusions, in this way:

> "The 2nd Defendant expressed implied consent to the action of the 1st Defendant based on the information that she was provided with. The Third to Fifth Defendants are vicariously liable for the actions of the First and Second Defendants."

36. This will not do.

37. The principles as to responsibility for publication in libel are well-established and tolerably clear. I summarised them in *Hourani v Thompson* [2017] EWHC 432 (QB) [94]:-

> "Liability for publication arises from participation in, or authorisation of, the publication complained of: *Watts v Times Newspapers Ltd [1997] QB 650*, 670. Someone who is a joint author of an article is liable, as is a person who reads and edits text for publication. It may not be necessary for the defendant to know the specific words to be used, but it is necessary to show some knowing and active involvement in the process of publication of the words or message complained of; a "passive instrumental role" in that process is insufficient: *Bunt v Tilley [2007] 1 WLR 1243* [23]. It is certainly not enough to be aware of a defamatory publication and to fail to take steps to prevent it: *Underhill v Corser [2010] EWHC 1195 (QB)*"

38. *Hourani v Thomson* was not a defamation claim, but a claim in harassment, to which I applied these principles. I believe that I was right to do so. In the present case, reliance is placed on other torts. I adopt the same approach in relation to those. There is much to be said for coherence in the law generally, and I see no reason why the principles should differ depending on the particular tort under consideration.

39. Applying these principles, it is clear that the APoC fail sufficiently to state a reasonable basis for any claim against any of the Associates. It might perhaps be argued that the body of the APoC sufficiently alleges publication by the first and second defendants, and that this was done by them on behalf of the third to fifth defendants. But even that is questionable, at best. There are internal conflicts within the APoC, and some gaps.

    (1) There is a sufficient case against the first defendant. The document expressly alleges that he was the author, relying on his admission to that effect. The APoC expressly rely on a finding that the first defendant was the publisher of the website. It asserts, in the prayer, that he is the owner of the websites and domain names. The basis for contending he is responsible for publication is sufficiently clear.

    (2) But the reader would properly expect to see some detail as to the factual basis for attributing responsibility to the second defendant, to whom none of this applies. Paragraph 8 alleges that she was party to an agreement to publish, but contains no explanation of how or when this agreement was made. Paragraph 9 alleges that she "used" the website "to publish", and subsequent paragraphs assert that she "published" material. But the reader is told nothing about the role or capacity in which she is supposed to have done this.

    (3) Paragraph 11 makes reference to an email "from the second defendant's email address", but this was only to warn of the website. The APoC do not allege that it was the second defendant who sent this email (and, as the evidence reveals, rightly so: see below). The whole tenor of the APoC is that it was the first defendant who launched the website and wrote and published its contents.

(4) Clearly, the second defendant is not presented as the author, or an author of any content. Sometimes the role attributed to a defendant is plain on the face of a statement of case, as when a defendant is identified as the editor of a newspaper in which a defamatory article was published. But the second defendant is not alleged to be an editor.

(5) As for the companies, they are not alleged to have acted other than through the first and second defendants. The only stated basis for holding them responsible is the assertion in paragraph 9, that the first and second defendants acted "on behalf of themselves and the Third to Fifth Defendants". It is true that the APoC identify the couple as current or former directors of the companies, but it is not alleged that either of them carried out the offending acts in their capacities as director. The first defendant is said to be a *former* director. The basis for asserting that in carrying out the offending acts the couple were acting on behalf of the companies is unexplained.

40. The sufficiency of the pleaded case is not to be determined, however, by reference only to the body of the APoC. The APoC are amplified and explained by the Schedules, to which reference is made in the APoC. When the Schedules are considered, it becomes clear that the claimant is not in a position to identify any act on the part of the second defendant which played any part in bringing about the publications of which he complains. He makes a broad assertion that she is the decision-maker in the relationship, but nowhere alleges that she persuaded or induced the first defendant to write and publish the offending matter. The essence of the claimant's case against the second defendant is that she failed to act. His case is that she agreed or consented to the first defendant doing what he did, either at the outset or at least later on when she had full knowledge of what was happening, when she had opportunities to step in and stop it, and influence that might have enabled her to do so. In law, that is not enough.

41. There are, as defamation lawyers well know, some circumstances in which a person may be held responsible for a publication initiated by someone else, on the basis that the defendant could have brought an end to the publication but failed to do so. But the pleaded facts do not come close to setting out a case that would engage this principle. The classic instance is the golf club notice-board case, *Byrne v Dean* [1937] 1 KB 818. The principle established by that case was identified by Nicklin J in *Monir v Wood* [2019] EWHC 3525 (QB) [175]:

> "where a third party publishes material via a medium over which the defendant has control, the defendant can become liable for the publication if, in all the circumstances, it can be inferred that the defendant, from his failure to remove the defamatory material, acquiesced in or authorised the continued publication."

But this is liability based on authorisation of continued publication, which can be inferred from proof of knowledge coupled with the ability to control the publication or continued publication: see *Monir v Wood* [178]. The APoC allege knowledge, but they contain no allegation that the second defendant had control over the website or the correspondence complained of. The APoC allege that she had influence over her husband, but the principle is not based on influence.

42. I have considered whether the APoC disclose a reasonable basis for a claim based on liability as a joint tortfeasor. The summary in *Hourani v Thompson* does not in terms address the requirements of that form of liability. The APoC do allege that the second defendant "agreed" to publish. But in my judgment that bald allegation lacks any supporting factual foundation. In the context of the Schedules it can be seen to amount to nothing more than another way of putting the case on consent. It is clear law that a person cannot be treated as a joint tortfeasor on the basis of nothing more than tacit or even express agreement that someone else should perform the wrongful act; there must be some act of assistance that is more than minimal and does more than merely facilitate the tort: *Fish & Fish Ltd v Sea Shepherd UK* [2015] UKSC 10 [2015] AC 1229.

43. The closest the pleaded case comes to clearly alleging any act in support of publication is to say that the Associates "funded" the website, or "effectively" did so. I am not aware of any precedent for imposing liability on a person because they "funded" an enterprise which published a libel. There may be circumstances in which a funder could be held liable. But here, despite the volume of material it is not at all clear what is meant by the allegation of "effective funding". The statement of case is too vague by far, and lacks any supporting detail. Similar reasoning applies to the allegation of conspiracy, if anything with even greater force.

44. As for the companies, a bare allegation of vicarious liability is not enough. It is plain that the claimant would like to have other defendants with other, perhaps deeper, pockets than he believes the first defendant would have if liability was established. He is clearly concerned that the first and second defendants have arranged things, or will arrange things, so as to make any money judgment against him worthless in practice. But the remedy for that, if there is one, would be a freezing order. The risk of ending up with a judgment against a straw man cannot be a sufficient reason for joining another person as a defendant.

45. The APoC assert that when his solicitors complained in 2013, the first defendant responded on behalf of himself and the corporate defendants. But the claimant's attribution of responsibility to the companies could not rest on that proposition (even if it were true, which it is not: see below). Otherwise, there is nothing in the APoC or Schedules that helps explain why the companies or any of them should be held vicariously responsible for the acts of the first and second defendants. The mere fact that (as alleged) the individual defendants are directors, or shareholders, or *de facto* controllers of the companies' affairs cannot suffice. I would add that the aims and motives attributed to the individual defendants would appear to be at odds with the interests of the companies.

46. This brings me to the evidence. This provides further reasons for rejecting the claimant's draft amended case, and justifies me in entering judgment for these four defendants. The amendment application is supported by the claimant's second affidavit. This adds nothing relevant to the factual case in support of the amendments. Like Schedules 2 and 3 to the APoC, it is largely concerned with matters that have little or no bearing on the question of responsibility for publication. The affidavit covers the ground about changes of registered address and service address, and it repeats the allegation that the individual defendants are "hiding". It also suggests that the second defendant has failed to deny her responsibility for publication in correspondence, despite opportunities to do so. But it does not identify any fact which could make her responsible in the first place.

47. As it happens, the claimant's suggestion that I should draw an adverse inference from silence is very weak indeed. Some pre-action correspondence from the claimant was addressed to all five of those who are now defendants, in the technical sense that all their names appeared as addressees at the top of the claimant's letters. But in substance the letters were addressed to the first defendant. They were sent to a single postal address (221b Baker Street); the salutation on each occasion was "Dear John Aidiniantz"; the content was addressed to him, as the author of the website; and complaints were addressed to him (for instance "You failed to remove the website … within 25 hour of my legal Notice of Complaint. dated 12th/10/2018.") In any case, silence in the face of assertions of responsibility might allow the Court to draw an inference that could contribute to a circumstantial case, but it could never be enough. An allegation of responsibility has to include an assertion of some conduct which would make the defendant responsible in law.

48. The claimant's own evidence undermines aspects of the case stated in the APoC:

    (1) As noted above, the second defendant cannot be implicated on the basis of the email "from the second defendant's email address" that is relied on. The document itself does not contain the second defendant's name. It is from a corporate email address. On its face it is from the first defendant, writing in the first person singular, and its content shows the first defendant taking full personal responsibility, referring to "a little page I have started – any comments before I publish it to the internet …?"

    (2) I have also noted already that the APoC mis-state the position in relation to the first defendant's response to his solicitor's letter of claim. On 20 March 2013, Mishcon de Reya wrote a letter of claim to the first defendant, and only him. On 22 March 2013, he replied in his own name, challenging the claimant to sue if he could afford it. He wrote in terms that made clear his adoption of personal responsibility for the website.

    (3) Mr Siddiqi's response to this point reveals a misunderstanding which evidently underlies the error in the APoC. He has pointed me to the text of another email from the first defendant to Mishcon de Reya dated 24 March 2013, written "for and on behalf of" all the other defendants. The email itself is not in evidence, but extracts set out in a Notice to Admit served by the claimant on 12 October 2018 make clear on their face that this was a letter of complaint by and on behalf of the first defendant and others, threatening proceedings against Mr Siddiqi and the Trustees of the Pervaiz Naviede Family Trust. It does not help the claimant to pin responsibility for the website on the Associates. Rather the contrary; the contrast between the individual response on 22nd and the collective complaint on 24th March undermines the claimant's case.

49. The defendants' evidence on this issue is contained in witness statements from the first and second defendants. The first defendant's witness statement takes complete and exclusive responsibility for the website. He is unequivocal, and comprehensive: "None of the Second to Fifth Defendants have had any involvement whatsoever with the webpage and the Claimant has given no evidence to suggest otherwise." He says they have "played no part in publication of the website", and that he is "solely responsible", having written, edited, and published everything. Nobody else has access to the server to edit the website, and it is he who purchased the domains and has funded renewal and

hosting. He has never received any input from anyone else, including his wife the second defendant and cannot recall even discussing the contents of the website with her. He has never considered himself to be doing any of this as a director, and there have been no meetings or resolutions or other corporate decisions about the matter.

50. The second defendant's evidence is that she and the corporate defendants are "not in any way responsible for" the website or any of the matters complained of. She explains that the third and fifth defendants are dormant companies, which ceased trading in September 2012 and September 2015 respectively. The webpage was never discussed in administering the business of those companies, or that of the fourth defendant. Her evidence is that she was not even aware of the existence of the website until some time after its creation, and did not really look at it until the claimant asked her to (he approached her in a pub). She says that she does not know how to register a domain or create or edit a webpage, and denies that she has contributed to or supported the creation, content or funding of the site.

51. "He would say that, wouldn't he?", as Mandy Rice-Davies is supposed to have said. The claimant did not use these words, but in his position others might have done so. It is a point to be borne well in mind in relation to the evidence of both the individual defendants. They might be concealing the truth. Certainly, their reliability and credibility has been placed firmly in issue by the claimant. But the onus is on the claimant to present a case that is not just sufficiently pleaded but also more than merely arguable. His own evidence in support of the application does not support the pleaded case. The extensive evidence from others which he served on the Monday of the week of this hearing does not address the points made by the defendant's statements. A challenge to their credibility is not enough to make up the gap. I recognise the need to be wary of shutting the door too readily. But the claimant must do more than merely assert responsibility. I do not see any reason to suppose or suspect that disclosure would assist the claimant. He certainly cannot present this or any aspect of his case on the basis that something might turn up.

52. In the circumstances, I conclude that the claim against the Associates is hopeless, and that there is every reason why it should be brought to an end by way of summary judgment.

53. I think there are other reasons why the case originally pleaded against these defendants, or much of it, would have had to go. The original Particulars of Claim were overlong, in large parts incoherent or very difficult to understand and, taken overall, tended to obstruct rather than to assist in the identification and resolution of the matters in dispute. There is no civil cause of action for blackmail, and that aspect of the claim was legally misconceived. Allegations of criminal offences generally were irrelevant and/or unnecessary in these civil proceedings. The libel claims were not properly pleaded, in accordance with the rules and Practice Directions. They would have needed substantial amendment to comply with PD53. In any event they were, at least in large part, doomed to failure on the basis that the combined effect of s 4A of the Limitation Act 1980 and the "single publication rule" s 8 of the Defamation Act 2013 was that a defence of limitation would inevitably have succeeded. The claimant has however taken a clear stance on the original Particulars, abandoning them entirely in favour of the Amended Particulars of Claim. It is therefore unnecessary to go further into these points, in this part of this judgment.

54. In the absence of any viable contention that any of the Associates bear, or bore, responsibility for the offending publication, the claimant's applications for injunctions against them must fail. There is no other basis on which he could claim an injunction. There is no evidence of any threat or risk that any of the Associates will publish any of the offending material, unless they are restrained by injunction. The disclosure application must likewise fail, so far as the Associates are concerned. For reasons I shall come to, I consider that those applications would have failed in any event, for other reasons.

The First Defendant

55. There has never been any dispute that he bears legal responsibility for the Website. Two main questions arise so far as he is concerned: (a) whether the APoC sufficiently state a case against him, such that permission to amend should be granted; and (b) whether an injunction should be granted to restrain further publication.

56. I refuse permission to amend in the form of the draft documents now before the Court.

General points

57. My decision on the claims against the Associates means that permission could not be granted for this precise form of amendment, in any event. There are some additional points of a more technical nature. The APoC are inconsistent with the draft amended Claim Form, in that they contain additional claims for relief. Whereas the Claim Form seeks only damages, the APoC also seek injunctions to restrain the publication of "any information disparaging the claimant or his family", from creating any website in the name of the claimant or any family member or using the family names, and from publishing "confidential and/or private information relating to the claimant or his family." The APoC also seek an order requiring the first defendant to transfer to the claimant ownership of the domains and websites bearing the claimant's name. As will appear, there are also claims advanced in the Schedules to the APoC which are not to be found in the Claim Form or the body of the APoC itself. All of this is liable to obstruct the just disposal of the case.

58. There is a a further general point, which is not technical and is of some importance. The amended Claim Form and APoC complain of correspondence to third parties, but they fail to identify it. Schedule 4 and the Chronology fail to make clear what correspondence is relied on, let alone what is said to be wrong with it. The Notices of Complaint which are referred to in Schedule 4 focus on the website. In my judgment, the amended Claim Form and APoC disclose no reasonable basis for any claim in respect of any correspondence.

Economic torts: financial loss

59. Ms Wilson submits that both the claims for economic tort must be rejected on the footing that financial loss is an essential ingredient of both torts, and the claimant has no arguable claim for financial loss. I accept that financial loss is a necessary element of both torts (see Clerk & Lindsell on Torts, (22nd ed) at para 24-72 to 24-77 and 24-98), but I have not been persuaded that this aspect of the claim is hopeless.

60. The claim is certainly unusual. The entire financial loss alleged consists of sums that, on the claimant's case, would have been paid to him by his brother but for the offending publications. The first element of the alleged loss is that "In February 2014, the claimant's monthly financial support provided to him and his family by his brother Pervaiz Naviede since 2000 stopped completely". This is said to amount to £695,000 to date. The second aspect is lost commission on a business deal in 2014 "for the estimated value of approximately" £2,500,000. The causative factor identified is "strain caused by the pressure on Pervaiz Naviede from the abusive content published by the defendants against both the claimant and Mr Naviede and the clear links the defendants have sought to make between the two."

61. This does all look rather vague, and somewhat remote, with some potential complications when it comes to causation. But Ms Wilson focuses on the evidence. Her submission is that the claimant's evidence not only fails to support these contentions, it positively contradicts them. The claimant relies on an email exchange of 18 February 2014 between him and his brother. This, as Ms Wilson observes, appears to show them negotiating over the fee or commission to be paid to the claimant in respect of his role in a property development project. The claimant's email refers to an offer from the brother of £500,000, which the claimant rejects as "a blatant abuse of trust", pressing for at least £2.5m. The brother's response is curt: "Tariq, I am not going to get into a debate. 500k is it – and as said on the phone the monthly payments stop." This does not appear to be a debate about rights, as opposed to expectations. And, as Ms Wilson points out, the implication is a shortfall of £2m, not £2.5m. There is no reference here to the website, or its impact on the claimant or the brother.

62. Mr Siddiqi acknowledges in his affidavit that the connection may not be so evident in this exchange, but he says it becomes clear in some later correspondence. He has taken me to emails passing between him and his brother's solicitor in January 2015. He says these support the view that Pervaiz had cut himself off from the claimant because he, Pervaiz, had suffered loss as a result of the website. The claimant says his brother was retaliating against him for not deserting the Riley family. I have reservations about this evidence, and these lines of argument, but do not consider the evidential position on this application is clear enough to justify a finding that the claimant cannot hope to prove that the website publication caused the financial loss which he alleges, or some of it.

Conspiracy to injure

63. There are however other reasons why the claim for conspiracy cannot be allowed. Most fundamentally, if – as is evident – the intention is to allege a conspiracy between the first defendant and one or more of the Associates then the claim cannot proceed. For the reasons already given, the APoC, read with the Schedules, fail to disclose any sufficient basis for alleging participation by any of the Associates in any wrongdoing, or even the making of an agreement that wrongdoing should be committed, and the claimant has no real prospect of establishing any such conduct or agreement. In short, there are no conspirators.

64. Permission to add this claim would have been refused for other reasons:-

    (1) The APoC fail to make clear what unlawful acts are relied on in support of this cause of action.

(2) If and to the extent that the claimant could obtain a remedy for any such unlawful act without the need to rely on conspiracy, the addition of a claim in conspiracy would be superfluous and unnecessary, and permission to plead it would be refused as a matter of discretion: see Clerk & Lindsell para 24-08 text to n 43.

(3) For this and other reasons, the claimant could not be permitted to sue for conspiracy to defame him. The natural cause of action for the publication of derogatory statements online or in writing would be libel. The claimant relied on libel initially, but has dropped that claim. I believe he was right to do so, on limitation grounds at least. In any event, it could not be legitimate for a claimant to abandon a cause of action, and then covertly re-assert the same cause of action as "unlawful means" for the purposes of a claim in conspiracy to injure. Further, in defamation at least, the conspiracy merges in the tort: *Ward v Lewis* [1955] 1 WLR 9 (CA).

(4) This rule would appear to be one of general application. In any event, a claim for conspiracy to harass the claimant by publication of derogatory statements about him would meet the objection identified at (2) above: if the claimant has a basis for such a claim, it can be pursued against any participant in the harassment, without the need to rely on conspiracy.

65. The claimant alleges that torts have been committed and are threatened against members of his family. Normally, a claimant cannot recover damages, or obtain an injunction, in respect of wrongs committed against others. The tort of conspiracy to injure can however be committed where two or more combine to cause injury to the claimant by committing wrongful acts against a third party. But it follows from what I have said already that there is no sufficient pleading of such a combination; even if it were pleaded it would have no real prospect of success; and there is no good reason for any such claim to be disposed of at a trial.

Wrongful interference

66. To establish this tort, the claimant must show that the defendant used unlawful means with the intention of causing him damage, and that he did cause him pecuniary loss. I have not been persuaded by Ms Wilson's argument about pecuniary loss, and it may be that a sufficient case is stated about the intention to damage. But there are two difficulties in the claimant's path here. First, the defendant's actions must be shown to have interfered with a third party's freedom to deal with the claimant: *Clerk & Lindsell* loc cit. The APoC fail to make such an allegation or to state any clear or comprehensible basis for such a contention. They disclose no reasonable basis for a claim in this tort.

67. Secondly, the point made above applies equally here: if the unlawful means consist of a civil wrong for which the claimant is seeking a remedy anyway, it is hard to see why the claimant should be permitted to add needless complexity by adding a parallel claim for wrongful interference. The point is all the stronger if the other unlawful act alleged is one for which the claimant can recover general damages, regardless of financial or other material loss, and without the need to prove an intention to cause damage - as is the case in all the other torts relied on: harassment, breach of confidence and privacy. I would refuse permission to plead this tort on discretionary grounds in any event.

Harassment

68. This is a statutory cause of action, created by the Protection from Harassment Act 1997 ("PHA"). Section 1 of the PHA prohibits the pursuit of a "course of conduct (a) which amounts to harassment of another, and (b) which [the defendant] knows or ought to know amounts to harassment of the other …" Harassment includes, though it is not limited to, conduct which causes alarm or distress. A "course of conduct" must involve, in the case of conduct in relation to a single person, conduct on at least two occasions: s 7(3)(a). The key requirements are conduct on at least two occasions which is, from an objective standpoint, calculated to cause alarm or distress and oppressive, and unacceptable to such a degree that it would sustain criminal liability: *Dowson v Chief Constable of Northumbria Police* [2010] EWHC 2612 (QB) [142] (Simon J).

69. It is now clear law that a person may harass another, contrary to the PHA, by means of publications in the media or online. In this context, the Court must be alive to the need to take account of and balance all the Convention rights that are engaged on the facts of the case, including the right to freedom of expression as well as the right of the claimant and others to respect for their private lives. The principles are identified in *Hourani v Thomson* at [141-146].

70. It is at least questionable whether continued publication of the same information or allegation(s) over a period of time meets the requirement of a course of conduct. The papers contain a legal Opinion to the effect that this is not the case, so that publication of the website would not qualify. But that is not advanced as a fundamental objection to the further pursuit of this claim. Nor am I asked to decide whether the publications complained of cross the thresholds identified in the authorities on freedom of expression. Ms Wilson complains of a "fatal" lack of particularity, submitting that it is impossible to discern what are the specific actions in the alleged course of conduct which he contends amounts to harassment. I agree. Despite, or perhaps because of, their voluminous nature, the APoC and their Schedules and associated documents fail to make clear what the allegedly harassing conduct is. This is just one aspect of a distinctly unhelpful way of framing the case for the claimant.

71. The claimant does not help the Court, but hinders the process, by submitting two different Notices of Complaint as part of the formal statement of case which he asks the Court to permit, by amendment. It is a hindrance that both those Notices contain allegations of blackmail and libel, when the claimant has expressly abandoned reliance on any such claims. A further confounding factor is the inclusion in both Notices of complaints of breach of the Data Protection Act, when no such cause of action is relied on in the existing Claim Form or Particulars of Claim, or in the draft amended Claim Form and APoC.

72. The APoC themselves nowhere list or otherwise identify clearly the conduct which is alleged to amount to harassment. Schedule 4 to the APoC refers to the Notice of 1 November 2018, and contends that it "identifies and addresses …(b) what the statement complained of says, and why it is defamatory of and harassing for the claimant…" There are several problems with this proposition, not the least of them is that the Notice does not say clearly which of the statements complained of are harassing for the claimant, and why.

73. The key section of this document identifies fifteen statements or sets of statements "collected" on 20 August 2018. The section is introduced as follows:

> "Your website, far from publishing the truth, involves slanderous and offensive abuse of freedom of expression whereby from 2012 the false statements you published have had, and still have today, a serious major harmful impact on my reputation, on that of my close and extended family and on my financial condition."

Those are not allegations of harassment, but of defamation – the cause of action which the claimant has now abandoned.

74. In dealing with each statement or set of statements, the claimant has attempted to follow the Pre-Action Protocol for Defamation (the cause of action now abandoned). The majority of his complaints do appear to be complaints of defamation. Analysis is not easy, because some of the complaints incorporate multiple causes of action. But by my calculation, defamation is the main complaint in respect of twelve of the fifteen statements or sets of statements complained of. In some of these, the complaint is of defamation of third parties: the claimant's brothers, and sister. In one instance, the main complaint is breach of confidence or privacy, though data protection is mentioned. In the other two, the complaint is principally a breach of data protection law. In one of those instances the complaint is of disclosure of information relating to the claimant. The other complains of a disclosure of information about the claimant's wife. The word harassment is used here and there, but inconsistently.

75. The first and twelfth complaints illustrate some of the difficulties. The first relates mainly to the words "Have you been swindled by this character? TARIQ SIDDIQI". The principal complaint is that the word "swindled … implies a fraud". It is said that "This is clearly a statement … clearly aiming to impact on Tariq Siddiqi's reputation which is intrinsically abuse, misleading and inaccurate." It is alleged that the statement would lower the claimant in the estimation of right-thinking members of society generally. All of this is the language of defamation law. There is also a complaint in this section about the use of a nickname ("Mr Fixit") in a derogatory manner, and of the use of the claimant's image – seemingly a photo taken from his Facebook account - without his consent as a data subject. There is not a word about harassment.

76. The twelfth complaint concerns an alleged wrong against someone else: the "Illegitimate and unauthorised use of personal data – picture of Mr Siddiqi's wife Lucy Siddiqi". The complaint covers three pages of single-spaced text, which embraces multiple complaints, as illustrated by the following:

> "The private and personal images of Mr Siddiqi's family members associated to the overall content of the website are intended not only to defame Mr Siddiqi's and his other close family members (the four children) but also harass <u>them</u>. There is overlap amongst those areas.
>
> These harassing actions have nothing to do with any purported freedom of speech and any excuse or possible links that may satisfy the criteria for the tort to be excused based on the

> imperative of free speech. The claim is that the information was obtained and released through some breach of privacy."

The emphasis is mine. It identifies an inconsistency: APoC Schedule 4 asserts that the Notice of 1 November identifies "why the statement complained of … is harassing for the complainant", but this complaint – which does mention harassment – identifies harassment of someone else.

77. These are all good reasons to refuse permission to put forward the APoC in their present form. The APoC are not by any means a concise statement of the essential facts. They are over-long, confusing, and unclear. They are liable to obstruct the process of justice. I do think these deficiencies are to some extent a function of the rather scatter-gun approach to causes of action which has been adopted in the draft Amended Claim Form and APoC. But they are also due to the interweaving of different complaints, and the incorporation of argumentative prose in addition to assertions of fact. The claimant's case as it presently stands lacks any clear focus. Ms Wilson's points represent a valid objection to the form of pleading that is before the Court, but not a fundamental objection to the pursuit of a claim in harassment based on website publication. That said, considerable work – and in particular, pruning - is required to put them into shape.

78. The work required should also involve a look at these two aspects.

(1) The case on harassment of others. The current version of the Claim Form makes reference to s 1(1A) of the PHA. That is the provision which prohibits a source of conduct "which involves harassment of two or more persons". The draft amended Claim Form and APoC make no reference to this subsection. If s 1(1A) is not relied on, and the conspiracy claim cannot be pursued, it is hard to see how the claimant can rely on allegations that his family members have been the victims of harassment, or any other tort. If the claimant does wish to rely on s 1(1A) it will be incumbent on him not only to identify a course of conduct, and to plead that this amounted to harassment of identified individuals, but also to assert, and state the facts relied on to show, that the defendant intended by that course of conduct "to persuade" someone "(i) not to do something he was entitled or required to do, or (ii) to do something that he was not under any obligation to do": see s 1(1A)(c).

(2) The case on harm. The APoC and Schedules contain many allegations of reputational harm but, unusually for a pleading alleging harassment, they contain no, or no clear statement of the alarm or distress or other consequences caused by the publication complained of. I do not consider that to be a fundamental or fatal flaw. In the end, the test of whether conduct amounts to harassment is an objective one. But the claimant's submissions and evidence contain allegations of distress. If he wishes to allege and recover compensation for actual harm he must plead it, concisely. If he wishes to allege that he has suffered financial loss due to harassment, he will need to explain the causative links. As things stand, the allegations of financial loss appear to be linked to reputational harm.

Human Rights Act ("HRA")

79. This claim is hopeless, and I have no hesitation in refusing permission to amend in this respect. The provisions of the HRA and the Convention Rights are relevant in other respects. But there can be no direct claim under the HRA. It is not alleged, and it obviously is not the case, that the first defendant is a public authority, or doing anything that could count as a public function. Nor for that matter are any of the Associates even arguably public authorities or performing public functions.

Breach of confidence

80. A claim for breach of confidence is identified in the draft amended Claim Form, but the APoC and their Schedules fail to make clear exactly what confidential information is relied on, and to give the necessary details of the breaches of confidence complained of.

81. I had to consider the relevant pleading requirements in *Candy v Holyoake* [2017] EWHC 373 (QB), a claim for breach of confidence, misuse of private information, and breach of the Data Protection Act. I said this:

> "47. The nature of the information is unquestionably an element of a claim in traditional breach of confidence, and one of the factors that go into the mix when applying the circumstantial test for whether information is private in nature …
>
> 49.In this case it is in my judgment essential, if there is to be a fair and efficient resolution of the claims, for the claimant to identify the information he seeks to protect and to specify the matters relied on in support of the contention that the retention, disclosure or use of the information would represent a misuse of private information or a breach of confidence. A proper pleading of this claimant's case would need to itemise (inevitably, in a private and confidential document) the items of information for which protection is sought, what the "nature" of that information is said to be, and any matters to be relied on as to why information of that "nature" is (inherently or for any other reason) private or, as the case may be, confidential. If this is not done, there is a real risk that the trial of the action will descend into confusion. If it is done, the trial judge will be able properly to evaluate the claim and determine what if any relief should be granted in privacy or confidentiality."

82. Ms Wilson submits that the claimant's draft statements of case fail these tests. I agree. The only specific allegation of breach of confidence that I can find in the APoC themselves is a reference (at paragraph 24) to an email of March 2013, sent to the claimant's solicitor. But this fails to identify who sent it or what the nub of the complaint is. The claim seems to relate to the disclosure of Particulars of Claim in High Court proceedings, which is far from obviously confidential information. I am unable to identify anything else. Schedule 4 contains no details. The second set of statements complained of in the Notice of 1 November 2018 and the Chronology both appear to contain complaints of breach of confidence by publishing on the website some "private information" or "private and confidential correspondence". Reference is made to the

subject line an email, stating "Highly Confidential". But the nub of the complaint is very hard to discern.

Misuse of private information

83. This cause of action is not identified by name in the draft amended claim form, but it is mentioned in the APoC and the Schedules (for instance in relation to the second set of statements complained of), and in the Notices of Complaint. This tort is closely related to breach of confidence, from which it has emerged under the influence of the HRA. So it may well be that the claimant intends to embrace claims in this tort under the umbrella term of Breach of Confidence.

84. On that footing, I deal with this cause of action as follows. This tort is nowadays separate and distinct from breach of confidence, with different ingredients. It is inadequately identified in the draft amended statements of case as a tort of which the claimant wishes to complain. The draft amendments fail adequately to identify the acts which are alleged to amount to misuse of private information. They fail to identify the basis on which those acts are alleged to constitute this civil wrong. And they fail properly to plead or to identify the nature of the harm which the claimant says was caused by the alleged tort, and for which he wishes to recover compensation.

Overall conclusions

85. For all these reasons, I refuse permission to amend the case against the first defendant in the form of the draft proposed. This decision is final so far as it relates to the claims in conspiracy, wrongful interference, and under the Human Rights Act. The conspiracy claim has no real prospect of success. I would not grant permission to plead either of the economic torts relied on, even if the pleaded case was in good order. The direct claim under the Human Rights Act is hopeless, as a matter of law. As to harassment, breach of confidence and misuse of private information, my decision is that the Claim Form and APoC cannot go forward as they stand; but this is not a decision that there is no claim in any of those torts that might succeed. The claimant may wish to re-apply for permission to amend. To keep that option alive, I shall not strike out the entirety of the existing Claim Form. It must be amended to cut it down to a claim for damages for harassment, but the possibility of adding to it will remain live.

Injunction

86. As Ms Wilson accepts, my refusal of permission to amend does not foreclose the possibility of an injunction. A claimant may in principle obtain an interim injunction even if he has not formulated his case with the clarity and precision the Rules require. I am not persuaded, however, that on the pleadings and evidence before me, and on the current state of the law, it would be appropriate to grant this claimant any injunction.

87. This is not the trial of the action but an interim application, which I have heard before the service of any Defence. I have only written evidence. My task is to decide what should be done, if anything, before the parties' rights have been decided at a trial. The claimant may have a legitimate claim, which might succeed at trial. Mr Siddiqi complains that the defendants have not put forward any good reason why the website needs to remain live. It may be that, in financial terms at least, the balance of convenience, or the balance of justice, would favour the grant of an injunction. But those

are not, on any view, the relevant criteria on an application such as this, where the claimant seeks to restrain free speech on the basis of harassment by derogatory publication and/or breach of confidence or privacy.

88. There are four main reasons why I refuse the application for interim injunction. First, as on any application for an injunction, the order sought must not only be clear and specific it must also go no further than is justified. I do not consider those requirements are met here. Secondly, *American Cyanamid* principles do not apply. Because the case engages the right to freedom of expression, the lowest hurdle the claimant must surmount is the test of "likely" success at trial, provided for by HRA s 12(3). A higher test still is applicable in cases where the nub of the claim is injury to reputation. "The defamation rule" requires proof that the claimant is bound to win at trial. That, in my judgment, is the threshold test that I should apply to the majority of the claimant's claim. The claimant has not persuaded me that he would be bound to succeed at trial. Nor, in my judgment, is the test under HRA s 12 met for those (relatively limited) aspects of the claim that do not or may not engage the defamation rule.

89. The third and fourth factors are linked, on the facts of this case. There is the matter of delay. This is invariably a factor to take into account when considering the exercise of the Court's discretion. Here, the offending statements have been on the website for a long time. Further, in the light of the delay, I would consider that damages are likely to be an adequate remedy for the wrongs complained of by the claimant.

The law

90. It is axiomatic that any injunction must be clear, so that the defendant knows precisely what he or she may or may not do. The scope of the injunction must be related to the rights asserted, and no wider than is necessary to uphold the rights which the Court has decided should be given protection.

91. Parliament has prescribed a minimum requirement for the grant of an interim injunction to restrain free speech. Section 12 of the HRA applies whenever a court is considering "relief which, if granted, might affect the exercise of the Convention right to freedom of expression". Section 12(3) lays down the test for the grant of relief "so as to restrain publication before trial". I summarised the position in *YXB v TNO* [2015] EWHC 826 (QB) [9]:

> "The test that has to be satisfied by the claimant on any application for an injunction to restrain the exercise of free speech before trial is that he is 'likely to establish that publication should not be allowed': [s.12(3)]. This normally means that success at trial must be shown to be more likely than not: *Cream Holdings -v- Banerjee* [2005] 1 AC 253… In some cases it may be just to grant an injunction where the prospects of success fall short of this standard; for instance, if the damage that might be caused is particularly severe, the court will be justified in granting an injunction if the prospects of success are sufficiently favourable to justify an order in the particular circumstances of the case: see *Cream* at [19], [22]. But ordinarily a claimant must show that he will probably succeed at trial, and the court will

> have to form a view of the merits on the evidence available to it at the time of the interim application."

92. A higher threshold test for the grant of an interim injunction to restrain the publication of a libel is well-established by the common law authorities. It goes back to the seminal decision of a five-judge Court of Appeal in *Bonnard v Perryman* [1891] 2 Ch 269. In *Greene v Associated Newspapers Ltd* [2004] EWCA Civ 1462 [2005] QB 972 the Court of Appeal reviewed the common law authorities between 1891 and 1998, concluding that:-

> "This survey of the caselaw shows that in an action for defamation a court will not impose a prior restraint on publication unless it is clear that no defence will succeed at the trial."

93. In *Greene* that rule came under attack, on the basis that it could not stand with HRA s 12(3) or the Convention jurisprudence. It had already been established that it is not compatible with the Convention to give presumptive priority to freedom of expression, when it comes into conflict with the Convention right to respect for private life: *Douglas v Hello! Ltd* [2001] QB 967 [133], [135] (Sedley LJ), *Campbell v MGN Ltd* [2004] 2 AC 457 [55] (Lord Nicholls), [111] (Lord Hope), [138]-[139] (Baroness Hale). Generally, the test to be applied in such a case is the one laid down by the Supreme Court in *In Re S (A Child) (Identification: Restriction on Publication)* [2005] 1 AC 593 [17]. This requires the Court to treat the competing Convention rights as of inherent intrinsic value and involves a balancing process, which focuses intently on the value of the specific rights at stake, the outcome being ultimately determined by proportionality. The Court of Appeal, having considered these authorities, reaffirmed the rule in *Bonnard v Perryman*. It held (at [66]) that "there is nothing in section 12(3) of the Human Rights Act 1998 that can properly be interpreted as weakening in any way the force of the rule in *Bonnard v Perryman"* and (at [77]) that "... in our judgment there is nothing in the European Convention of Human Rights that requires the rule to be done away with."

94. The application of the rule is not confined to claims that are framed in the tort of defamation. Where the claimant does not sue in defamation, but the nub of the complaint is reputational damage, the test for whether or not to grant an application is the same as if the claim were in defamation. So "... if the claim based on some other cause of action is in reality a claim brought to protect the plaintiffs' reputation and the reliance on the other cause of action is merely a device to circumvent the rule, the overriding need to protect freedom of speech requires that the same rule be applied": *Service Corporation International Plc -v- Channel Four Television Corporation* [1999] EMLR 83. See also *McKennitt v Ash* [2008] QB 73 [79] (Buxton LJ). But the case need not smack of abuse of process. In *Khan v Khan* (above) at [72] Nicklin J collected some of the key authorities:

> "… the defamation rule applies if the 'nub' of the claimant's claim is the protection of reputation: *Cushnahan -v- BBC & Another* [2017] NIQB 30 [11]-[12] *per* Stephens J. The Court should "stand back and ask itself what really is the gist and purpose of the application": *Viagogo Ltd -v- Myles & Others* [2012] EWHC 433 (Ch) *per* Hildyard J). "[O]ne cannot obtain an easier route to an injunction preventing publication, where the gravamen of the complaint is as to reputation, by merely

> choosing another cause of action": *Browne -v- Associated Newspapers Ltd* [2007] EMLR 19 [30] *per* Eady J."

95. There may come a time when it is appropriate to revisit the defamation rule, and its application across the board in this way. One of the bases for the Court of Appeal's conclusion in *Greene* was the role of the jury in the resolution of defamation claims: see [57], [76]. The Court of Appeal also stressed the distinction between "a defamation case (where the claimant's right to a reputation has been put in issue and the issue cannot be effectively resolved before the trial) and a case which raises direct issues of privacy or confidentiality": see [81]. As Nicklin J pointed out in *Taveta Investments Ltd v The Financial Reporting Council* [2018] EWHC 1662 (Admin) [97(ii)], the legal context has since changed. Parliament has all but abolished jury trial in defamation cases: Defamation Act 2013, s 11; *Yeo v Times Newspapers Ltd* [2014] EWHC 2853 (QB) [2015] 1 WLR 971. Nicklin J suggested (ibid.) that "a key plank of the justification for retaining the rule in *Bonnard v Perryman* has therefore gone". I would add that the Strasbourg jurisprudence has gone rather further in recognising serious attacks on reputation as engaging Article 8 than it had in November 2004, when *Greene* was decided: see the discussion in *Yeo v Times Newspapers Ltd* [2015] EWHC 3375 (QB) [2017] EMLR 1 [141-146].

96. But domestic law on the defamation rule is clear. Even if it might be open to me to take a different course from that prescribed by the Court of Appeal authorities I have mentioned, I would not consider doing so in this case. The policy justifications identified in *Greene* as supporting the rule in *Bonnard v Perryman* were by no means limited to the role of the jury. The claimant is unrepresented. The issues I have mentioned were not even debated in argument before me.

97. I bear in mind, however, that where the claim is in harassment the truth of what is alleged in the offending statements may be irrelevant, or at least not a conclusive answer to the claim or the application for an injunction. A person can publish information or allegations in a way that is so oppressive, unpleasant and distressing as to reach the level of criminality, and justify a civil remedy in the tort of harassment, regardless of its truth or falsity: see *Law Society v Kordowski* [2011] EWHC 3185 (QB) [2014] EMLR 2 [133] (Tugendhat J) and *Merlin Entertainments LPC v Cave* [2014] EWHC 3036 (QB) [2015] EMLR 3 [40-41] (Elizabeth Laing J).

Application to the facts

98. Ms Wilson complains, with justification, that the terms of the order sought are "incredibly wide and imprecise", and that it cross-refers to the original Particulars of Claim which are no longer relied upon. The form of order sought is highly unsatisfactory. It is unnecessary to set it all out, but the injunctions sought would prohibit the defendants from, among other things, "further publishing or causing the publication or the dissemination of (i) any of the libellous and/or defamatory and/or harassing statements and/or action complained of in the Particulars of Claim, in the affidavit sworn and filed by the Claimant and in the Full and Final Legal Notice of Complaint dated 1st November 2018 …" They would bar the defendants from "contacting the Claimant, his close family members or any other members of the public with abusive correspondence to third parties containing any of the libellous and/or defamatory and/or harassing statements and/or action complained of …" They go further and seek to restrain any publication "that can cause or is likely to cause serious

harm to the reputation of the claimant" or that "can cause or is likely to cause harassment to the claimant or his close family members". Very considerable cuts and reformulation would be required. The draft order also retains reference to complaints of blackmail. It has not been updated to reflect the reconfiguration of the claim, as now set out in the draft amended Claim Form and APoC. Those documents themselves are unsatisfactory in the ways I have described. The Court could not possibly justify the grant of orders in these terms, or anything similar.

99. I am not satisfied that any injunctions would be justified as a matter of substance. The main focus of the claimant's case is, as it has always been, on injury to his reputation. The wording I have quoted from the draft injunction illustrates this, as do the passages from the Full and Final Notice of 1 November 2018 and the APoC which I have cited earlier in this judgment. Having considered all the evidence I cannot conclude that the claimant would be bound to succeed at trial.

100. The first step for the claimant would be to identify clearly the defamatory imputations complained of and persuade me that they would inevitably be established at trial. He has done neither. I accept that he would probably succeed in establishing that the statement complained in the first section of the Full and Final Notice conveys an imputation of fraud or deception or something similar. But I have not been asked to, nor have I been able to make a final determination of the meaning of that or any of the other statements complained of. In any event, that first statement has been on the website for years, in the same or substantially the same terms. The limitation period in defamation is one year. The fact that publication has continued to date is no answer, because the effect of the "single publication rule" provided for by s 8 of the Defamation Act 2013 is to bar any claim once a year has passed since first publication. The Court has power to disapply the primary limitation period, but there is no application for that purpose. In any event, so far as this and other allegations on the website are concerned, the first defendant's evidence makes clear that he would seek to defend what he has published on the basis that the publications complained of are substantially true. The prima facie effect of the defamation rule is that I could only grant an injunction if, and to the extent, that I was satisfied there were imputations conveyed by the words which could not be successfully defended on that basis. The claimant has not convinced me of that.

101. It is unnecessary, and would be inappropriate, to go into great detail on this interim application. Suffice to say the following. The first defendant's case is that in 2010 the claimant introduced him to a barrister, who then gave some advice in a one-hour meeting. No discussions had taken place about commission. The claimant then demanded payment for this introduction in what Ms Wilson calls the "eye-watering sum" of £100,000. The first defendant regarded this as an attempt to extort money from him. The first defendant criticises the claimant for involving himself in litigation over the family business in the capacity of a paid legal adviser to the first defendant's half-siblings, "despite not being legally qualified or having any qualifications at all for that role". The first defendant maintains that the claimant says he was paid £5,000 per month for such assistance. He says that he formed the view, which he continues to hold, that the claimant was dishonest, and that he had involved himself in the litigation for improper purposes including his own financial gain.

102. These are hotly disputed issues. The factual background is plainly a complex one. I cannot reach any firm conclusions at this stage, on the evidence now available. This is

pre-eminently a case in which the truth could only be established through the trial process.

103. The claimant has complained of harassment, and I do not regard that as a sham complaint. The evidence before me suggests, however, that the claimant's main motive is to protect his reputation, and that reputational harm is the main reason for any distress suffered by him or his family. I am not satisfied, in any event, that the derogatory aspects of the publication have been published in so oppressive, unreasonable, and distressing a manner that I can or should ignore the prospect that the first defendant may establish their substantial truth. The Court must guard against the use of harassment as a way of getting round the principles that apply in defamation. In my judgment, on the evidence before me now, the real nub of the complaint here is of reputational harm, and its consequential impact on the feelings of the claimant and his close family.

104. I have not been persuaded that the complaints of breach of confidence and misuse of private information are truly separate and distinct from the reputational complaints. They are not stated clearly enough, as I have already said. Even if they were, I could not reach a conclusion that the claimant was likely to succeed at a trial in establishing that publication should not be allowed.

105. The delay in this case is not as extreme as it might appear. The claimant sought to persuade the authorities to prosecute the defendants. It is only after that failed that he turned to civil proceedings. But the delay is nonetheless long, and inadequately explained in my view. This is of particular significance when it comes to the claim in confidence and misuse of private information.

106. The claimant's case on financial loss does not assist when it comes to the application for an injunction. The substantial loss he claims to have suffered is all years in the past. An injunction in 2019 could do nothing to eradicate it. There is no evidence to show that continued publication will or is likely to cause any significant future loss.

Disclosure

107. This application is refused. Applications for disclosure of documents are plainly premature. There is not even a Defence as yet. For the same reason, reliance on CPR Part 18 is misplaced. This application appears to have been based on two false premises: first, that the onus lies on the defendant to show that what he has said is true; secondly, that a disclosure application is an appropriate way to test any such contention. At the trial of a defamation action, a defendant does bear the burden of proving truth, if he raises it as a defence. But that is not the position when an interim injunction is sought. And disclosure of documents is not an appropriate mechanism for the resolution of a dispute about truth at this stage of the action.

Overall conclusions

108. I grant summary judgment in favour of the Associates. The claim can only proceed against the first defendant. I strike out the whole of the existing Particulars of Claim. I strike out the existing Claim Form, save for the harassment claim, which can be retained in a form to be settled. Permission to amend the Claim Form in the form of the draft, and to substitute the APoC for the existing Particulars of Claim, is refused. The claimant's application for an injunction is refused. So is his application for disclosure.