Neutral Citation Number: [2020] EWHC 3035 (QB)

Case No: QB-2020-000089

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties and their representatives by email and release to Bailii on the date shown.

Date: 12 November 2020

Before:

THE HON. MR JUSTICE WARBY

- -

Between:

Yvonne Ameyaw	**Claimant**
- and -	
(1) Christina McGoldrick	
(2) Louise Coyne	
(3) PricewaterhouseCoopers Services Limited	**Defendants**

- -
- -

The Claimant did not appear and was not represented
Rupert Paines (instructed by **Fladgate LLP**) for the **Defendants**

Hearing date: 5 November 2020

- -

Approved Judgment

I direct that copies of this version of the judgment as handed down may be treated as authentic.

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MR JUSTICE WARBY

Mr Justice Warby:

1. On 5 November 2020, I declined to adjourn the hearing of two applications in this action and decided to proceed in the absence of the claimant, for reasons to be given later. I considered and dismissed the claimant's application. I read and heard argument on the defendants' application, and reserved judgment. I now give reasons for the decisions made on the day of the hearing and give judgment on the issues which I reserved.

The action

2. Yvonne Ameyaw sues three defendants in respect of their actions, or alleged actions, towards her over the period from about 31 January 2017 until the commencement of these proceedings on 9 January 2020. The defendants are Christine McGoldrick, Louise Coyne, and PricewaterhouseCoopers Services Limited ("PwC").

3. Ms Ameyaw is a chartered management accountant who was employed by PwC in its Financial Services Risk & Regulation Service Line from April 2014 to October 2017, when her employment was terminated. In her Particulars of Claim she identifies herself as a Black African woman. In 2015 and 2016, Ms Ameyaw brought proceedings against PwC in the Employment Tribunal ("ET") alleging direct race and/or sex discrimination ("Claims 1-3"). Ms Ameyaw brought further proceedings in May 2017, amended in 2018 following the termination of her employment ("Claim 4"). Claim 4 included additional claims for harassment, victimisation, 'whistleblowing' detriment, and unfair dismissal.

4. Claims 1-3 were dismissed by the ET (Judge Baron and members) on 14 March 2018, and, on 11 December 2019, the Employment Appeal Tribunal ("EAT") dismissed an appeal. Claim 4 was dismissed by the ET (Judge Grewal and members) on 16 April 2019. Limited permission has been granted for an appeal to the EAT, which is pending at the time of writing.

5. Ms McGoldrick and Ms Coyne are solicitors, employed in-house, who were instructed by PwC to represent the company in the ET proceedings, and in the appellate proceedings which Ms Ameyaw has brought. Ms Coyne acted for PwC until November 2018. Ms McGoldrick then took over responsibility for the conduct of PwC's case. Ms Ameyaw describes the two individual defendants as "believed to be White British and White American women respectively". Ms Coyne says she is Canadian, but there is no other dispute about ethnicity.

6. Ms Ameyaw claims damages for what she describes as a course of conduct in which the defendants are alleged to have committed the torts of libel, malicious falsehood, harassment, negligence, breach of confidence, and breach of her privacy and data protection rights. She also claims exemplary damages for

"perverting the course of justice and unreasonable or oppressive conduct". In paragraph 19 *bis* of her Particulars of Claim[1] she asserts that

> "Collectively, by their deliberate and calculated acts and omissions, the Defendants have caused the Claimant great distress and embarrassment and tarnished her personal and professional reputation to a very large extent indeed. In particular, the Defendants conduct of the ET proceedings, have severely prejudiced the Claimant's employment claims and led to unfair criticism of the Claimant in public judgments issued on 17 March 2017 and 12 April 2019 (both now subjects of appeals before the Employment Appeal Tribunal)".

7. There is also a claim for injunctions to restrain the publication of further libels or malicious falsehoods. Paragraph 27 of the Particulars of Claim addresses the question of limitation. It asserts that the events complained of amount to a continuing course of conduct but contains an application, should any of the matters be deemed out of time, for the Court to extend time "on the basis that it is just and equitable to do so".

8. A Defence on behalf of all defendants was filed on 10 February 2020. Paragraph 3 contains this overall response to the claim:

> "By reason of the matters particularised … below, the Claimant's claims are wholly without merit and liable to be struck out. In particular, the Claimant's claims (i) comprise re-litigation of and/or a collateral attack upon matters that have been the subject of numerous judgments of the Employment Tribunal and appeals therefrom; (ii) challenge publications that are protected by absolute or qualified privilege, (iii) cannot show any serious harm to the Claimant's reputation (or risk thereof); and (iv) are in large part time-barred."

9. Other matters are raised by way of defence, some of which I shall have to touch upon, but it has not been necessary for me to examine or consider every aspect of the Defence for the purpose of deciding the two applications that are now before me.

The applications

10. The first of those applications was made by the defendants, by a notice dated 30 March 2020, seeking:-

> "**[1]** An order determining preliminary issues between the parties on (i) the meaning of certain statements of which the claimant complains; (ii) whether those

[1] The numbering of the Particulars has gone awry. There are two paragraphs 19. This is the second of them.

> statements are defamatory of the claimant either at common law or under s. 1 Defamation Act 2013; and (iii) whether the statements complained of are statements of fact or opinion.
>
> **[2]** An order striking out the Claimant's claim pursuant to CPR 3.4(2)(a) and/or (b).
>
> **[3]** An order for summary judgment under CPR Part 24 and/or s. 8 Defamation Act 1996 against the Claimant on the whole of her claim, because she has no real prospect of succeeding on the claim or issue and there is no other compelling reason why the claim or issue should be disposed of at a trial."

(I have added the bold paragraph numbering).

11. These applications are supported by a witness statement of Ben Drew, of the defendants' solicitors, dated 20 March 2020.

12. The defendants' application was placed in the warned list for hearing on 1 July 2020. By Order of 26 June 2020, I declined to act on a letter, dated 17 June 2020 from the claimant, seeking to vacate that hearing.

13. On 30 June 2020, the claimant filed the second application which is before me today. It is an application for injunctions, filed as a matter of urgency, with a view to hearing on 1 July 2020. The application notice seeks orders that:-

> "**[1]** The defendant Louise Coyne must [be] prohibited from use of confidential medical information belonging to the Applicant, namely medical reports dated 10 May 2017 and 5 June 2018, and repeated in the Judgment of the Employment Tribunal promulgated on 12 April 2019. To be effective immediately until the end of the full appeal hearing of case number UKEAT/0291/19/LA & UKEAT/0298/19/LA before the Employment Appeal Tribunal; or until a time otherwise determined by the court [and] return the above named-documents to the Application no later than 9am on 1 July 2020
>
> **[2]** The defendant[s] Christina McGoldrick and PricewaterhouseCoopers Services Limited be forbidden (whether by himself or by encouraging or permitting any other person) … from use of confidential information belonging to the Applicant namely medical reports dated 10 May 2017 and 5 June 2018 … [and] return the above-named documents to the Applicant no later than 9am on 1 July 2020."

(Again, the bold numbering is mine).

14. The claimant's application is supported by a witness statement, dated 30 June 2020. In circumstances I shall mention, neither application was determined on 1 July 2020. On 21 September 2020, Mr Drew made a second witness statement, in response to this application.

Procedural history

15. There is a complex procedural history to this litigation. Much of it is described in a series of judgments of Steyn J, DBE. I have familiarised myself with the background, but not all of it has any bearing on the issues I have to decide now. I shall set out those parts which have a bearing on the substantive applications and some additional matters which are relevant to the first issue for decision, namely whether this hearing should proceed or be adjourned.

16. It is relevant to mention first the matter of representation. Throughout these proceedings, the defendants have been professionally represented by solicitors and Counsel. Ms Ameyaw has represented herself. From time to time, she has had a McKenzie Friend to assist her, by the name of Leonard Ogilvy. Latterly, at least, she has had support from her mother, Mrs Doris Mensah. I have taken these features of the case into account in all case management or discretionary decisions.

17. Secondly, there are some aspects of the procedural history since the claimant's application notice was filed on 30 June 2020 that need to be mentioned:-

    (1) On 1 July 2020, Steyn J began hearing the applications that are now before me. The hearing was adjourned, after the claimant collapsed in court.

    (2) On 2 July 2020, Dr Ruth Harrison of the claimant's GP practice wrote a letter "To Whom it May Concern". She reported her understanding of the collapse in court, the claimant's transfer to hospital, and what happened thereafter.

    (3) According to this report, the claimant's symptoms had resolved by the time she reached hospital, where the investigations and observations were normal. The diagnosis was, in lay terms, a faint. Dr Harrison reported speaking to the claimant, and what she had reported. She mentioned a history of anxiety and depression, and recorded that the claimant

        > "… feels she will be unable to attend court for a period of 4 weeks to allow time for recovery and to commence counselling."

    (4) On 3 July 2020, Steyn J made an order, paragraph 3 of which directed that the defendants' applications for the trial of preliminary issues "will be determined on the papers, without an oral hearing."

(5) On 10 July 2020, Steyn J ordered that the remaining applications that are now before me be listed for an oral hearing, on the first available date in the Michaelmas term. They were later listed for hearing on 6 October 2020.

(6) On 26 July 2020, the claimant filed an application notice seeking orders staying execution of various orders that had been made by Steyn J on 3, 9, 10, 13, 15 and 17 July 2020 ("the Stay Application"). What she wanted was an absolute stay on some costs orders and a stay pending appeal against the Judge's decision, of 3 July 2020, to direct that the preliminary issues application be determined on the papers. In support of her application the claimant filed a "statement of case" and evidence. On 27 July and 4 August 2020, she filed written submissions in relation to the stay application.

(7) On 14 September 2020, with the agreement of the parties, Steyn J determined the Stay Application on the basis of the papers submitted, and without a hearing. She varied her earlier order for determination of the preliminary issues on paper, but only to the extent of giving the claimant an extension of time for making written submissions. She refused the rest of the application, dismissing as "totally without merit" the application to stay the orders of 3, 9, 10 and 17 July. She indicated that the oral hearing should be before the same judge as determined the preliminary issue application.

(8) The Judge's written reasons for these decisions ran to 35 paragraphs. In paragraphs [17-20], Steyn J rejected an argument advanced by the claimant, that the order of 3 July 2020 had been made on the false premise that the claimant had agreed to a determination on the papers. The Judge was satisfied that the premise was correct. The Judge's reasons also dealt with applications to stay, based on the proposition that the claimant was ill, saying this:

> "21. The Claimant also seeks a stay of the order by which she was required to provide any further written submissions in respect of the Defendants' preliminary issues by 27 July on the basis that she is unwell. In an email sent on my behalf on 10 July 2020, my clerk wrote to the Claimant:
>
> > "…if Ms Ameyaw is unwell, and if there are matters which as a result she needs more time to deal with, she may seek an extension of time. Unless any extension sought is agreed, or very short, ordinarily an application based on ill-health would need to be supported by medical evidence."
>
> 22. Similarly, rejecting the Claimant's application for a stay, Flaux LJ stated:

> "Whilst I am not unsympathetic to the claimant's apparent medical problems, the right course would be for her to apply to extend time by application in the lower court if compliance with existing orders is rendered impossible. Such an application would need to be supported by proper medical evidence: see *Levy v Ellis-Carr* [2012] EWHC 63 (Ch) at [63]."

23. The Claimant seeks either a stay indefinitely or until the Court of Appeal has determined certain applications for permission to appeal, rather than an extension of time. In the witness statement attached to this application the Claimant stated that she wished to provide "supplementary medical evidence in addition to that provided on 2 July" and she asked to be permitted to provide it on 10 August. More than a month after the time she requested has expired, the Claimant has provided no "supplementary medical evidence". The medical evidence submitted on 2 July does not support the Claimant's application for a stay. The GP noted that by the time the Claimant reached hospital on 1 July, her symptoms had resolved. The Claimant self-reported that she had feverish symptoms on 2 July and that she felt unable to attend court for a period of 4 weeks. Despite this, on 6 July the Claimant sought an oral hearing "within the next 21 days", but it was not possible to accommodate that request.

24. No medical evidence has been submitted that would support the contention that the Claimant was unable to provide written submissions by 27 July or is unfit to do so now. In the ordinary course, submissions on the preliminary issues would have been made at the hearing on 1 July 2020. When the Claimant applied for this part of the hearing to be dealt with on the papers, she sought only 7 days in which to file further submissions. The Defendants' letter of 27 July refers to the steps in the proceedings that the Claimant has taken since the judgment in Ameyaw (3), and the numerous submissions that she has filed in support of two applications for permission to appeal, as well as in support of this application.

…

26. The second aspect of the Claimant's application seeks, more broadly, a stay of the orders of 3 July and 10 July….

…

> 31. The application is made on the basis that the Claimant states she is unwell and not fit to continue the proceedings at this time. As I have said, the Claimant has not submitted any medical evidence in support of this contention. The GP's letter of 2 July does not provide any medical evidence that the Claimant is unfit to engage in these proceedings. It refers to her self-report that she felt unable to attend court for a period of four weeks from 2 July. Even that is inconsistent with Claimant's request on 6 July for an oral hearing within 21 days, but in any event the period referred to has passed. I also note that, insofar as the Claimant relies on her own evidence regarding her state of health, her evidence is not supported by a statement of truth.
>
> 32. On the evidence before me, there is no basis whatsoever for staying proceedings and vacating the hearing on 6 October."

(9) In the event, the hearing fixed for Tuesday 6 October 2020 was vacated. This was not done on the basis of medical need (there had been no further evidence or submissions on that issue). It was done by me in the exercise of my functions as Judge in Charge of the Media and Communications List. On Friday 2 October 2020, I made an order that "UPON perusing the Court file and ... reviewing the available judicial resources" the hearing should be vacated, and a fresh date fixed for the earliest available date on or after 20 October 2020. I gave these reasons:-

> "Writing at 11.30am on Friday 2 October, I am told that no hearing bundles have yet been lodged. There would appear therefore to be a default. In addition, I have spent some time considering the state of the lists, and the available judicial resources. I have eventually concluded that this order is unavoidable. It will not be possible for these applications to be heard next week. I have no reason to doubt that a hearing can be fixed on or after the date I have identified. The hearing bundle should be lodged without delay, despite the vacation of the hearing date, and I have made a direction accordingly."

(10) On Wednesday 7 October 2020:-

(a) Queen's Bench Listing ("Listing") notified the parties in writing of the revised hearing date, 5 November 2020.

(b) The claimant's mother sent an email to Listing stating that she was dealing with the claimant's emails. She had seen my order of 2 October 2020. She asked for a response from the court to the

claimant's application of 26 July 2020. This would suggest that she was unaware of the Order of Steyn J dated 14 September 2020.

(c) The defendants' solicitors emailed in reply, drawing attention to the Order of 14 September 2020, and providing a copy.

(d) The claimant's mother then sent an email to the defendant's solicitor, Mr Drew, with a copy to Listing, in the following terms.

> "Dear Judge Warby,
>
> I am writing to let you know that the NHS is looking into the issue of obtaining an acceptable medical report for the court. This is because Yvonne's GP has reviewed the court requirements and confirmed that none of the GP's at our Practice have the required medicolegal expertise to provide the report, they can only provide a statement of medical history. I am in direct contact with the NHS and I will let them know about the court's decision that I received today. In the time being, I want you to know that Yvonne will not be able to meet any deadlines because she is not well and the only help that I can give is to communicate information from the NHS."

This email was addressed to me, but not sent to me. That is quite proper. High Court litigation is not conducted via emails between the parties and the Judge, nor are applications to adjourn to be made in this informal way, by email from a relative of the litigant without supporting evidence.

(11) On Wednesday 28 October 2020, Listing received a further email from Mrs Mensah, in these terms:

> "Please refer to the email below sent to Judge Warby on 7 October 2020.
>
> You will see from my email that I informed Judge Warby that Yvonne is not well and I am writing to let you know that her condition remains the same. Yvonne has been struggling with anxiety, stress and depression for all that she has been put through by PwC, their legal team and others, and what happened with Judge Steyn in July made her condition worse. I also wrote in my email that Yvonne's GP has said that she does not have the relevant expertise to provide a medical report to the standard requested by the court and that a referral to an NHS specialist has been requested.

> PwC lawyers and the court will know from previous medical reports that Yvonne uses NHS health care services and that this process can take time. Yvonne does not have the resources to pay for a medical report from a private clinic like PwC did for Jane Woolcott at very short notice during the employment tribunal hearing in May 2017. Besides being expensive, Yvonne has told me that the information provided in the privately paid medical report recorded what Jane Woolcott told the doctor and that it was accepted by the court. In July, Yvonne's GP prepared a medical report which included information provided by NHS professionals at St Thomas Hospital and the Ambulance Service and a telephone consultation with Yvonne (bearing in mind that due to covid in person GP appointments have been suspended). We do not understand PwC lawyers and Judge Steyn criticism of the medical report and it seems a higher standard of medical evidence is required for Yvonne.
>
> Also knowing that Judge Steyn has refused to give Yvonne time to recover and is still in charge of this case makes it very difficult for us all. We are still processing the trauma of our experience with the judge in the courtroom on 1st July 2020 and there is also an on-going investigation. On top of dealing with the trauma, Yvonne is feeling overwhelmed by stress and anxiety and having regular panic attacks because she does not feel able to face the Judge again. If PwC lawyers think it is right or fair to go to court when Yvonne is not well then what they really want is a repeat of 1 July when Yvonne faced prejudice and hostility and was denied a fair chance to present her case in court. Yvonne is not well and does not have the mental strength to go through this again at the present time and it could make her condition worse as well as delay her recovery.
>
> As soon as Yvonne has a referral appointment for evaluation by a NHS doctor specialising in depression/anxiety issues she will let the court know."

(I have corrected some typographical errors in the original).

(12) The matter was referred to me. On 3 November 2020, Listing sent the following email in reply (with copy to the defendants' solicitors):

"Dear Mrs Mensah

Your email has been referred to Mr Justice Warby, to see what should be done about it.

You are suggesting that the hearing fixed for next week should not go ahead, because of ill health of your daughter.

The Judge will not comment on what you say about the facts, or the history. Before making any decision, the Court will wait to see what is said on behalf of the defendants about your suggestion. But the Judge has asked me to make the following points (with copy to the solicitor for the defendants):

1. A judge has not yet been assigned to the hearing next week, but it will not be Mr Justice Warby or Mrs Justice Steyn as both have other commitments. Mr Justice Warby is dealing with this matter in the meantime, as the Judge in Charge of the Media and Communications List. It may well be that another judge will have to make the decision about adjournment.

2. Applications by a claimant in legal proceedings are normally to be made by the claimant (or her authorised legal representative), rather than by or through relatives or other third parties.

   A person who is unfit to carry on a case in court may have a "litigation friend" to conduct the case in their place, but there is a procedure for the appointment of a litigation friend which has to be followed. If there is no litigation friend, it is difficult for the court to take action on the say-so of someone other than the claimant herself. The Court would need at least clear evidence that the claimant has authorised the other person to speak and act on her behalf, and an explanation of why that has been done. In this case, as you may know, there have been issues when others have appeared to act on Mrs Ameyaw's behalf.

3. Applications to the Court should not normally be made by email. The general rule requires an application notice under Part 23 of the Civil Procedure Rules, with documentary evidence in support, filed and served on the opposite party.

4. Three clear days' notice is normally required. The Civil Procedure Rules can be accessed here. A copy of the application notice is attached.

5. The relevant general principles about adjourning hearings for medical reasons are clearly set out in the judgment of Warby J in *Decker v Hopcraft* at paragraphs [21-30] (a link to the online copy of the judgment is provided). Those are the principles that any judge considering an application to adjourn next week's hearing would apply.

6. The Court would act on the evidence in the case before it. What a different tribunal did in relation to medical evidence about a different person in proceedings in the employment tribunal in 2017 would have no bearing on a decision in relation to the hearing next week involving the health of your daughter.

7. Mrs Ameyaw would do well to consider obtaining legal advice or help from one of the agencies who help litigants in person: see (for instance) this link to the website of the Access to Justice Foundation."

(The references to "next week" are explained by the fact that this email was written on Friday 30 October. Its transmission was delayed due to an administrative oversight in Listing).

(13) In the meantime, the defendants' solicitors had written stating that their clients were content for the Court to treat the emails as an application to adjourn and for that application to be dealt with on its merits "taking into account any supporting evidence". They said they would be content for the Court to deal with both parties' applications "on the papers" failing which, they implied, they wished the hearing to proceed.

(14) On 4 November 2020, Mrs Mensah replied to the email from Listing as follows:-

> "Thank you for your email.
>
> Yvonne will send an email to the court giving her consent for me to write to the court on her behalf and Leonard Ogilvy (who assisted with preparation of her case in June and July) has provided input with drafting the reply below.

I am writing in accordance with paragraph 3(1) & 3(2) of Practice Direction 23A bearing in mind the proximity to the hearing date of 5 November 2020 and your email reply dated 3 November to my emails dated 7th and 28th October 2020.

In accordance with the overriding objective, the court is required to have respect for the Claimant's ability to participate effectively in these proceedings and the perception of the process. In Osborn v Parole Board [2013] UKSC 61, Lord Reed referred at [68] to the principle that: "justice is intuitively understood to require a procedure which pays due respect to persons whose rights are significantly affected by decisions taken in the exercise of administrative or judicial functions. Respect entails that such persons ought to be able to participate in the procedure by which the decision is made, provided they have something to say which is relevant to the decision to be taken". That applies to the present case.

The Claimant in this case, Yvonne Ameyaw, is a litigant in person who is suffering from stress, anxiety, depression and trauma, and in her Application Notice dated 26 July 2020 has provided personal evidence of her health condition. She remains unwell and therefore in no position to deal with this case at a hearing on 5th November and for the same reasons cannot make written submissions at the present time. Likewise, she is not able to prepare an Application Notice to address the issues raised in your email.

For reasons given in my emails of 7th and 28th October, Yvonne is unable to provide medical evidence **at this stage** (with emphasis) because she is awaiting referral appointment to a NHS Specialist who is qualified to provide expert medical opinion on Yvonne's condition to the standard required by the court.

I am doing my best in the circumstances to support Yvonne and to assist the court however please note that due to my lack of familiarity with court processes I am not able to prepare an Application Notice at this short notice. An Application Notice will take some time to process including fee remission, the latter being a separate Department that may not appreciate the urgency of the matter. It is also important to mention that I will need help

from others to prepare an application and that given the current uncertainties of the second wave of the COVID pandemic and a second national lockdown, there are significant delays in accessing pro bono services.

An application to appoint a litigation friend will require careful consideration and it would be unfair to Yvonne to make a rushed application, keeping in mind the difficulties encountered on 1 July 2020 when Mrs Justice Steyn refused to grant Mr Ogilvy a right of audience in the High Court and the adverse comments made against Mr Ogilvy in a public judgment.

Mrs Justice Steyn has already decided that the Defendants' strikeout application and Yvonne's application for an injunction should be determined at an in person having considered a number of written representations from the parties and promulgated orders to such effect. The Order made stands in that material respect and was never appealed by the Defendants. The Defendants are well aware that in an Application Notice dated 29 June 2020, Yvonne gave full reasons why she couldn't participate effectively in a remote hearing, this Court agreed to an in person hearing. The Defendants are also aware that the President of the Employment Appeal Tribunal also upheld this position in the interest of justice and held that Yvonne's appeals should be an In Person hearing. Furthermore, Yvonne has already made written submissions as to why it is not in the interest of justice for the Defendants applications to be determined on the papers which was accepted by the court and Orders made to that effect by Mrs Justice Steyn. For the avoidance of doubt, Yvonne is not in agreement to a remote hearing proceeding in her absence.

For the Defendants it has been 10 months since claims were brought against them however for Yvonne it has been **3 years and 10 months** of pain and suffering since being falsely accused and defamed by the Defendants based on alleged events at a private hearing. The question of the untested pejorative material being made public remains live and yet to be determined by any court. It is a trite law that consistent with natural justice that a person should be entitled to make representations that may

> either rebut, contradict or affirm an allegation made or asserted against that person. The various attempts being made by the Defendants to delegitimise Yvonne's claims are all too plain to see.
>
> Please let me know if I can be of any further assistance."

An email received from the claimant at more or less the same time stated that she consented to her mother making representations on her behalf. I am satisfied that is a genuine email.

(15) In the event, there was no application notice, nor any evidence in support, nor have I received any further medical report or letter. When the matter came on for hearing the claimant did not appear, nor did anybody else on her behalf. The claimant's mother emailed in the morning before court, to say that she would be at work and would not be contactable.

The first issue: should the hearing proceed?

18. The rules allow the Court to proceed in the absence of a party: CPR 23.11. Whether to do so is a fact-sensitive case management decision, to be made in the light of the overriding objective, and the principles established in the authorities.

19. On a number of occasions I have had to consider what approach to take if a litigant in person does not appear at a hearing: see for example *Sloutsker v Romanova* [2015] EWHC 545 (QB) [22-23] and [2015] EWHC 2053 (QB) [25-28], [73], *Brett Wilson LLP v Persons Unknown* [2015] EWHC 2628 (QB) [2016] 4 WLR 69 [14-16] and *Pirtek v Jackson* [2017] EWHC 2834 (QB) [1], [19-23]. I have reminded myself of the careful approach required, as explained in those cases. It is always essential to be satisfied that the litigant has had proper notice of the hearing. It is necessary then to assess what is likely to be the reason for non-appearance, and whether the reason is a good one which calls for an adjournment.

20. It is perfectly clear that the claimant has had proper, indeed ample, notice of the issues to be decided at this hearing, the evidence to be relied on, the arguments, and the authorities. The written submissions on the preliminary issues were filed long ago. The defendants' evidence was served many weeks ago. The defendants have gone to some lengths to ensure that all the cases they consider potentially relevant have been made available to the claimant.

21. Mrs Mensah's most recent email refers to the provisions of PD23A by which an application may be made without service of an application notice

> "(1) where there is exceptional urgency [or] (2) where the overriding objective is best furthered by doing so".

I am not persuaded that this is a case of exceptional urgency. The material before the Court does not support the view that it was not possible for the claimant or those assisting her to give timely and proper notice of an application to adjourn, in accordance with the rules. But I accept that I should treat the correspondence as tantamount to an application notice seeking an adjournment, and to address that application on its merits.

22. In this case, the ostensible reason for non-appearance, and the basis for the adjournment application, are the same: the claimant's ill health. None of the cases I have cited involved an application to adjourn for medical reasons. But I dealt with that issue in *Decker v Hopcraft* [2015] EWHC 1170 (QB) (the case cited in the email correspondence above). I distilled the principles to be derived from a number of cases, including *Levi v Ellis-Carr* (the case cited by Flaux LJ in the passage quoted above). Other authorities on adjournments on medical grounds, that have been referred to by Counsel for the defendants in this case, include *General Medical Council v Hayat* [2018] EWCA Civ 2796 and *Financial Conduct Authority v Avacade Ltd and others* [2020] EWHC 26 (Ch) [59]-[73] (Lewison LJ). I have had regard to all these authorities, which it is unnecessary to cite in detail.

23. The authorities contain valuable guidance, and really speak with one voice. Points of importance to be derived from them include the following. No litigant can expect to secure an adjournment by merely asserting ill-health, and a consequent inability to take part in the proceedings. The court needs to be satisfied that the litigant genuinely cannot be present, or take part, and the onus is on the litigant to prove the need for an adjournment. There must be some evidence which addresses the party's health in more than merely general terms and considers its impact on the party's ability to participate. The evidence should satisfy the Court that it is likely that what is being asserted is true, and that it means that there cannot be a fair hearing, even if reasonable accommodations are made – such as breaks in the hearing. Further, if the ground for the adjournment is stress, brought on by the litigation, the court needs to consider whether an adjournment would serve any useful purpose, or whether the stress would simply recur at any adjourned date.

24. In the light of these principles, the evidence, and the history of this litigation, I formed the clear view that I should not adjourn.

    (1) The matters raised by the defendants, as long ago as March 2020, and by the claimant, in late June 2020, are all ripe for determination. The evidence, arguments, and authorities are all before the Court. The papers include a skeleton argument from the claimant in relation to the application to strike out or for summary judgment. The case is fully prepared for the resolution of the applications.

    (2) This hearing has been much delayed. Further delay is inherently undesirable and would lead to substantial wasted costs.

    (3) The defendants include two individuals, whose needs and feelings also require consideration.

(4) No good reason has been shown for any further adjournment of the hearing, or for any delay in the determination of the application for the trial of preliminary issues.

(5) The only medical evidence before the court is a GP Letter from early July 2020, four months ago. That letter recorded a self-report by the claimant that she "felt" she would be unable to attend court for 4 weeks. Since early July 2020, the claimant has however been active in these proceedings, submitting applications, letters and arguments to this Court and the Court of Appeal on 14, 17, 20, 22, 23 and 27 July 2020.

(6) The GP letter was considered and found wanting when Steyn J considered whether to stay proceedings in September 2020, nearly two months ago. Nothing new has been produced to suggest that any different assessment of that letter should be made now. The only new information before the Court is contained in emails from the claimant's mother, which describe the position in the vaguest of terms. The material before me now falls far short of what the authorities require. There has, on the face of it, been ample time and opportunity to obtain further and better medical evidence, but there is none.

(7) The explanation for that is not satisfactory. There is no reason why a GP could not provide a report that meets the standards I have mentioned. The requirements are not especially onerous. They do not require a specialist. It is a matter of common knowledge that general practitioners deal, day in, day out, with patients suffering from stress and mental health difficulties. They also commonly write short letters to the Court to explain why, if it is the case, they are unable to diagnose or report on a patient and need to refer to a specialist. No such letter is before me. The information about the referral is entirely general, providing no dates or details.

(8) The defendants point to judgments in the Employment Tribunal which, I agree, cast further doubt on the reliability of the assertion that the claimant is unable to participate due to ill-health. I refer to the reasons of Judges Baron (at [6]) and Grewal ([30-40], and in particular [36]). These are judgments in proceedings between the claimant and the third defendant, which bind the claimant, and present a picture of a litigant who has repeatedly sought to adjourn on unsubstantiated or flimsy grounds when she was unhappy with the way proceedings were going, or might go.

(9) It was also pointed out that a hearing was due to take place in the EAT on Tuesday 10 November 2020, which the claimant intends to attend. She is represented in those proceedings, and I was shown a very recent letter from her solicitors on that topic, pressing for an in-person hearing.

(10) I am satisfied that the applications now before me can fairly be dealt with in the absence of the claimant. The applicable law is settled and clear, there is scarcely any need to reach conclusions on disputed matters of

fact, and I am well able to make a fair assessment of the merits of the rival applications without the assistance of the claimant.

(11) That is most obviously the position in relation to paragraph [1] of the defendants' application notice: (a) for reasons I shall give, this is a case in which it is appropriate to proceed directly to the trial of the three issues identified in that paragraph, rather than fixing the trial for a later date; (b) decisions on those issues call for the application to undisputed facts of established law with which I am very familiar; (c) the outcome of the trial turns principally on the meaning of the words complained of, which is very much a matter of impression, not fit for extended argument; and (d) I have the assistance of specialist Counsel for the defendants, who owes the Court a duty to alert it to significant points that could fairly be made by the claimant, to which his skeleton argument (and in due course his oral submissions) made clear he was fully alive.

(12) Similar considerations apply to the applications in paragraphs [2] and [3] of the defendants' application notice. The procedural law that governs striking out and summary judgment is not in dispute, and very familiar territory. The substantive law relied on in support of these applications is familiar to me. The claimant has made full and clear written submissions in relation to those matters as well.

The second issue: injunctions to protect medical information

25. I heard and determined this application next because it was clear that its principal aim was to ensure this Court should not receive or consider, or make public in a judgment, the content of the medical evidence which is the subject of the application. On the face of the claimant's evidence, it is the prospect of a hearing in open court, on 1 July 2020, that sparked this application.

26. The nub of the case set out in the claimant's witness statement, dated 30 June 2020 can be shortly summarised. She provides a detailed account of aspects of the proceedings before the Employment Tribunal and Employment Appeal Tribunal in her claims. She complains that, in various ways, PwC misused confidential medical information relating to her that had been submitted in those proceedings for limited purposes, and provided to the defendants on restricted conditions. The information is contained in two reports which have been referred to as "The Scorer Report" (dated 10 May 2017) and "The Boswell Report" (dated 5 June 2018). The allegations of misuse are that PwC made illegitimate collateral use of the reports by (among other things) improperly placing the evidence in the trial bundle for the second trial, and causing it to be made public in a judgment ("the Grewal Judgment") dismissing her claim after that trial. The claimant asserts that the defendants are now seeking, as part of their application to strike out or obtain summary judgment, to rely on the Grewal Judgment, and she suggests that this would be misuse "as collateral evidence in entirely separate proceedings". She asserts that:-

> "The intent is to humiliate me by widely circulating my confidential medical report on the Internet and to cause me extreme mental distress in so doing. High Court

> judgments attract wide attention and it was not conceivable that strictly confidential medical information given to the ET for limited use would be appropriated and misused with the uttermost disregard being shown for my Article 6 ECHR rights."

27. The defendants maintain that there are procedural irregularities about this application: in form, it is an interim application in the present proceedings, but (a) it seeks relief which is perpetual in form, and (b) to the extent it relates to the Boswell Report, the relief sought goes beyond the scope of the final relief claimed in the Claim Form. There is merit in these points. The claimant appears to be seeking a final order for delivery up of the reports on an interim application in proceedings that are only concerned with one of them. On the other hand, the form of prohibition sought against Ms Coyne is interim relief: see [12] above. And I do not regard these as matters that are fatal to the application. They are both capable of resolution, by way of amendments to the Claim Form and/or by limiting the duration and scope of the relief granted.

28. On the substance of the matter, the defendants make three main points:-

    (1) It is not the case that the defendants intend to humiliate the claimant by "widely circulating [her] confidential medical report on the Internet" as alleged. They have not put the medical reports on the Internet, or referred to them publicly; nor did they include them in the bundle for these applications (although the claimant included the Scorer Report in her bundle). The defendants say there is no reason why the content of either medical report should feature before the Court at all on these applications.

    (2) The evidence is that Ms Coyne left PwC's employment in 2018 to co-found her own employment law practice, has no access to the reports, and will not be provided with any, unless that is necessary for the purposes of litigation.

    (3) As regards PwC and Ms McGoldrick: both the medical reports were disclosed in Claim 4, in which there is a 'live' appeal in progress. PwC is the respondent in that appeal, and Ms McGoldrick has conduct of those proceedings in her role as an in-house lawyer at PwC. The defendants must be entitled to hold documents disclosed in those proceedings, particularly while those proceedings continue. That is *a fortiori* in the case of the Scorer Report, which is the subject of a ground of claim both in these proceedings and in the EAT. There is no tenable case of misuse of private information. The storage of information disclosed by the Claimant in 'live' proceedings does not comprise an interference with her Article 8 rights; even if it did, it would be justified by the defendants' interests in defending the litigation.

29. There is a procedural oddity about the claimant's application that goes beyond the points I have mentioned. Given that the main aim of the application is to prevent information being aired publicly in these proceedings, at a hearing or in a judgment, it would have been more appropriate to seek orders for the

exclusion of evidence as irrelevant and inadmissible and/or for a hearing in private and/or reporting restrictions to protect confidentiality, under CPR 39.2(3) and (4). Those are the means by which the Court controls its own processes, and guards against the risk that open justice may result in an inappropriate disclosure of private or confidential information. That, again, is not necessarily a fatal flaw. But it is a significant point to make, because it helps to focus attention on what seems to be the main issue at the present time, namely whether the Court needs to take steps to prevent this hearing in these proceedings resulting in consideration of the contents of the two reports and/or publicity for their contents that would be illegitimate or inappropriate. In my judgment, the claimant has wholly failed to establish that.

30. Any applicant for an injunction or order restricting the admission of documents in evidence or the public disclosure of such evidence must show that the order sought is a necessary and proportionate means of protecting the applicant against a genuine risk of wrongful conduct by the respondent. Where the applicant seeks an interim order restraining an exercise of the right to freedom of expression, the usual *American Cyanamid* test does not apply. Section 12(3) of the Human Rights Act 1998 sets a heightened threshold test:

> "(3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed."

31. The claimant's evidence fails to get over the first of the hurdles I have mentioned. It falls well short of meeting the s 12 threshold. It is not in dispute that the information is inherently private and confidential. The issue for consideration is whether an order is necessary to guard against the prospect that the information may be misused. That is not the case. The defendants have not put any of the medical evidence before the Court, nor have they referred to the medical evidence, other than to rebut the claimant's application. No part of the relevant evidence was referred to in the defendants' written submissions or skeleton argument or read to the Court during the hearing. I have not had to read it, and I have not done so. I am satisfied that this is not the case just because of the claimant's application. The information in the two reports has no real bearing on the issues raised by the defendants' application. I do not believe there ever was a significant risk, let alone a likelihood, that the hearing of that application would result in publicity for the contents of the reports in question.

32. Nonetheless, at the outset of the hearing, and for the avoidance of any doubt, I made an order pursuant to CPR 31.22(2), that the restrictions on collateral use of the two reports imposed by rule 31.22(1) should continue to apply until further order, notwithstanding any reference to them in the course of the proceedings before me. In the circumstances, I do not need to deal in any detail with the various points made in the claimant's skeleton argument, to the effect that the hearing bundle should be pruned of various documents that are said to be irrelevant. I reject as wholly unfounded the submission (in paragraph 2(c) of the skeleton argument) that it is "highly improper" to place before this Court a judgment that is under appeal before the EAT. I am not persuaded that any of

the claimant's other points on this topic have merit. But it is unnecessary to go further.

33. To the extent that the claimant's application is aimed at preventing inappropriate publicity for the contents of these reports in the course, or as a result, of proceedings before other Courts or Tribunals (such as the EAT or the Court of Appeal), it must fail on the ground that these proceedings are not the proper forum in which to make such an application. Subject to any rights of appeal or review that may exist, it is for those Tribunals and Courts to control their own procedures, including the admissibility of evidence, whether it is heard or read in public, and what is contained in the judgments they give.

34. There is no evidential basis for any assertion that the defendants threaten or intend to make any disclosure of the contents of these two reports, other than in the course of legal proceedings over which the control I have described can, where appropriate, be exercised. As the reports have been disclosed and referred to in the ET and EAT proceedings, and the evidence suggests that they may yet be required for those purposes, or in the Court of Appeal, I see no basis for any order for interim delivery up.

The third issue: trial of preliminary issues

35. On analysis, the defendants' application seeks the trial of four preliminary issues, not three. That is because the issue of whether the words complained of are defamatory raises two separate and distinct questions: whether the words satisfy the common law requirements, and whether they also satisfy the serious harm requirement laid down by s 1 of the Defamation Act 2013. I shall call these "defamatory tendency" and "defamatory impact".

36. Conventionally, the four issues would be addressed in the following order: (i) meaning, (ii) fact or opinion, (iii) defamatory tendency and (iv) defamatory impact. That said, the questions of what a statement means and whether it is factual or an expression of opinion should not always be considered in watertight compartments, lest "the answer to the first question may stifle the answer to the second": *Singh v British Chiropractic Association* [2010] EWCA Civ 350 [2011] 1 WLR 133 [32].

37. I asked myself, first of all, whether it would be right to proceed to determine these preliminary issues forthwith. This has not been expressly addressed so far. Generally, the court has been reluctant to make an order for trial of such issues and then proceed to try them on the same occasion. The norm is for this to be a two-stage process. One reason for that is that the Court might disagree with the parties' views on what issues are suitable for preliminary trial. The two-stage process avoids the risk of expensive preparation for the trial of issues that, in the event, the Court concludes cannot or should not be tried. Another reason for the two-stage process is that the Court has identified a need to keep control over the costs of such trials, as experience has shown that the sums claimed can sometimes be excessive. Costs budgeting is ordinarily required.

38. In this case, I was satisfied that it was appropriate to proceed to the trial of the first three issues forthwith. The only evidence that is admissible on the issues

of meaning, fact or opinion and defamatory tendency is the publication complained of, and any relevant context. There was nothing inappropriate about the trial of these issues in this case, nor did the claimant suggest that there was. A delay to allow costs budgeting would have been entirely disproportionate. Indeed, it would have been counter-productive, given that the defendants were fully prepared already.

39. Different considerations arise when it comes to the question of whether to try defamatory impact as a preliminary issue. It is a question I addressed on a number of occasions before the Supreme Court's decision of 12 June 2019 in *Lachaux v Independent Print Ltd* [2019] UKSC 27 [2020] AC 612: see *Ames v Spamhaus Project Ltd* [2015] EWHC 127 (QB) [2015] 1 WLR 3409 [101] and *Lachaux v Independent Print Ltd* [2015] EWHC 2252 (QB) [2016] QB 402, and see also the cases summarised in *Brown v Bower* [2017] EWHC 1388 (QB) [38], and *Brown v Bower* itself. In *Lachaux,* the Court of Appeal was not convinced that a preliminary issue trial was generally appropriate, considering that it risked over-elaboration and undue expense ([2017] EWCA Civ 1334 [2018] QB 594). The Supreme Court upheld my approach to the meaning and effect of s 1, but did not express a view on whether preliminary trials are appropriate. In *Hamilton v News Group Newspapers Ltd* [2020] EWHC 59 (QB) [8], I said (obiter) that in the light of the Court of Appeal and Supreme Court decisions in *Lachaux* it remained an open question whether the Court can sensibly try at the preliminary stage, the issue of whether the publication complained of satisfied the serious harm requirement.

40. A finding on serious harm requires a fact-finding exercise of a different kind from a finding on meaning, fact or opinion, or defamatory tendency. The question is whether the claimant has established on the evidence the existence or likelihood of serious reputational harm. Depending on the circumstances, a range of categories of evidence may be relevant and admissible. The parties and the court would have to consider the extent to which disclosure was appropriate, and give suitable directions for the exchange of witness statements and how the evidence should be dealt with at the trial. None of this has been addressed in this case, and in all the circumstances I do not consider that it would be procedurally appropriate to proceed at this stage to a trial of serious harm. But - for reasons that will become apparent later - nor do I consider there is any need or any compelling reason to do so.

The publications complained of as libels

Head 1

41. The claimant's first head of claim ("Head 1") is a claim for libel in three internal emails sent by employees of PwC to one another. It is put this way in paragraph 5 of the Particulars of Claim.

> "ENTERING THE CLAIMANT['S] HOME ON 3 FEBRUARY 2017
>
> The first of the two-pronged attack occurred on 3 February 2017, when the First Defendant entered the

> Claimant's home with a security guard to hand deliver a letter of suspension. Whilst at the property, the First Defendant took numerous photographs of the Claimant's apartment door, the building communal hallway, front entrance door including door number, front door bells, private pathway and building façade. All photographs were taken at close proximity and without prior consent or authority. And via email timed at 13:30 on 3 February 2017, the First Defendant distributed the photographs to several recipients including the Second Defendant. The First Defendant wrote: **[2]** *very nice security lady Margaret was smaller than me … so I have to say I was glad no one was home ;)*. This was in addition to her comment that it was **[1]** *not very eventful as Yvonne didn't seem to be in…* made in an earlier email timed at 13:26. That same day, the First Defendant also set up a "File Note" on PwC Legal systems containing details of the precise location of the Claimant's flat at her home address. In reply, Sarah Henry (head of PwC Consulting HR) sent an email timed at 13:34 saying **[3]** *How sad is it that we have to go through all these hoops.*"

42. I have inserted the numbers in square brackets, to pick out the three statements complained of as defamatory, and identify the order in which they were made. The evidence before me includes the entire email chain of which those statements form a part, which I have read.

43. Paragraphs 6 to 8 of the Particulars of Claim set out the claimant's case as to the libellous nature of the words complained of, in their context:-

> "6. In their natural and ordinary meaning (including the entirety of the publications as context) the words in italics (as interpreted by s.16 Defamation Act 2013)
>
> (1) were defamatory of the Claimant, and
>
> (2) meant and were understood to mean that the Claimant is unpleasant to work or deal with. That the Claimant is not a nice person;
>
> (3) were racially offensive and were meant to demean the Claimant and understood as such.
>
> 7. The clear innuendo is that the First Defendant considered the Claimant a threat and she required protection by PwC Security personnel during the visit. That the Claimant could be irrational or otherwise violent or aggressive.
>
> 8. The allegations are unfounded and based on entirely false accusations."

Head 2

44. The second libel claim relates to a letter, dated 6 February 2017, written by Ms McGoldrick. Paragraph 9 of the Particulars of Claim sets out the words complained of as follows:-

> "The second attack was on 6 February 2017 when the First Defendant submitted a signed letter addressed to the Employment Tribunal seeking to strike out the Claimant's employment claims. The First Defendant alleged that the Claimant *"shouted at Employment Judge Hall-Smith, Miss Bell of Counsel and Mrs Coyne. Despite being warned by Employment Judge Hall-Smith that her behaviour would not be tolerated by the Tribunal, and having a number of breaks, the Claimant persisted in her bad behaviour which culminated in aggressive and threatening behaviour and language towards the Respondents' representatives, and the Judge. Employment Judge Hall-Smith called for security to attend on two occasions. Despite leaving the hearing part way through, the Claimant remained in the Tribunal building. Such was the perceived risk that the Claimant posed to the Respondents' representatives, the Tribunal security guards were not content for them to leave via the front door and escorted them through the rear of the building.*"

45. This is complained of as a libel and/or as a malicious falsehood. The preliminary issues are concerned only with the claims in libel. At this stage, therefore, I consider only what is said about that claim. Paragraphs 10 to 12 of the Particulars read as follows:-

> "10. In their natural and ordinary meaning (including the entirety of the publications as context) the words in *italics* (as interpreted by s.16 Defamation Act 2013)
>
> (1) were defamatory of the Claimant, and
>
> (2) meant and were understood to mean that the Claimant had behaved in a highly disruptive, loud, argumentative, threatening, aggressive, abusive and disrespectful manner, and that she posed a risk to members of the public;
>
> (3) were highly offensive and were meant to demean the Claimant and understood as such.
>
> 11. The clear innuendo is that the Claimant behaviour was so exceptional that she was perceived as a serious threat to the Judge and users of the tribunal service.

> 12. The allegations are unfounded and based on entirely false accusations."

46. Again, the entire letter is before me in the evidence and I have read and considered it.

47. The claimant's case on injury to her reputation and feelings is contained in paragraph 19 *bis* of the Particulars of Claim, the terms of which I have already set out at [6] above.

Legal principles

48. The relevant principles can be identified shortly:-

(1) The court must identify a single natural and ordinary meaning for each publication complained of, applying the principles distilled by Nicklin J in *Koutsogiannis v The Random House Group Ltd* [2019] EWHC 48 (QB) [2020] 4 WLR 25 [11-15]. In summary, the Court must place itself in the position of an ordinary, reasonable reader - someone who is neither naïve nor avid for scandal - and identify the meaning that reader would take from the words complained of, having read them in their full context: *Gubarev v Orbis Business Intelligence Ltd* [2020] EWHC 2912 (QB) [23]. This is very much a matter of impression.

(2) It is common (and good) practice among judges dealing with issues of meaning in defamation claims to read the words complained of and form a provisional view about meaning before turning to the parties' pleaded cases and the arguments about meaning: see, for instance, *Allen v Times Newspapers Ltd* [2019] EWHC 1235 (QB) [16].

(3) The law relating to whether a statement is one of fact or opinion is also helpfully summarised in *Koutsogiannis* at [16-17]. The statement must be recognisable as a comment, that is to say something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation or the like. Again, this is very much a matter of impression. The ultimate question is how the words would strike the ordinary reader.

(4) At common law,

> "A meaning or imputation, whether it be one of fact or opinion, is defamatory only if it would tend to have a substantially adverse effect on the way that right-thinking members of society generally would treat the claimant"

Swan v Associated Newspapers Ltd [2020] EWHC 1312 (QB) [20(3)] and cases there cited. This formulation encapsulates the common law threshold of seriousness identified in *Thornton v Telegraph Media Group* [2010] EWHC 1414 (QB) [2011] 1 WLR 1985 [94] (Tugendhat J) and what I have called "the consensus requirement". These are objective tests that turn on

the inherent tendency of the words. See also *Monroe v Hopkins* [2017] EWHC 433 (QB) [2017] 4 WLR 68 [23(1)-(2)] and *Lachaux* (SC) [6] (Lord Sumption, with whom the other Justices agreed).

Assessment

Head 1

49. The words set out at [40[1]] above were contained in the introduction to an email, the purpose of which was to report on the visit to the claimant's address by way of a file note. The email appears to have been headed "File note and update". The email refers to the file note ("which Margaret has read and is happy with and photos to follow!") and the file note itself appears below the words complained of. The file note runs to 16 lines. It contains a detailed factual account of the visit, in bland terms. Nothing is contained in the note that reflects on the claimant.

50. The natural and ordinary meaning of the words complained of, in that context, is that there were reasonable grounds for believing that, if the claimant had been in when Ms McGoldrick attended her home, the claimant would have caused some kind of trouble. The email is not cast in terms of an opinion, nor do the subject-matter or context suggest it would have been read as such. This is a factual meaning. It has a (mildly) defamatory tendency, but in my judgment it does not meet the common law threshold of seriousness. This is defamation at such a low level that no reasonable person would allow their attitude to the claimant to be substantially affected by it, without more.

51. The full text of the second email, containing the words at [40[2] above, is as follows: "Photos below- *very nice security lady Margaret was smaller than me* (I didn't know that was possible) *so have to say I was glad no one was home ;)*". That is the immediate context. But this email has to be assessed in the context of the words I have just considered, in the previous paragraph.

52. In that context, the natural and ordinary meaning of the words complained of is that there were reasonable grounds for believing that some force or show of strength might have been necessary, if the claimant had been in when Ms McGoldrick attended her home. Although the email expresses the author's feelings – in what is presented as a jocular way – there is an underlying factual suggestion, the basis for which remains unstated. This therefore is presented to the reader as an implied factual imputation. Again, it has a mildly defamatory tendency. It is a little bit stronger than the meaning of the first email. But in my judgment, it also falls short of the common law threshold of seriousness. Such an imputation would not, without more, have a substantial adverse effect on the attitudes of right-thinking people to the claimant.

53. The full text of the third email complained of is "Thanks a lot. *How sad is it that we have to go through all these hoops*." (The words complained of have the words "is it" in the wrong order). That sentence has to be read in the context of the full text of the email correspondence complained of. It contains a rhetorical question that suggests the answer that it is indeed sad. That is clearly a comment or expression of opinion. But again, the basis for it is unstated. The natural and

ordinary meaning of these words, absent any innuendo meaning, is a factual one: that the claimant has behaved in such a way as to force PwC and the staff concerned to undertake elaborate procedures to serve a letter at her address. Again, that is (very) mildly defamatory, but fails to cross the common law threshold of seriousness.

54. These are substantially the conclusions I arrived at, reading the words complained of before considering the meanings attributed to the words by the claimant and the defendants, and the written submissions. I have not altered my views materially in the light of those matters.

55. I note, from the Defence, that the defendants have responded to paragraph 7 of the Particulars of Claim as if it advanced a "true innuendo" meaning (as to which see *Monroe v Hopkins* [23(3)]). I do not think it does. No particulars of any innuendo facts are provided. In my judgment, paragraph 7 is to be read as putting forward what is technically known as a "false innuendo"; it is simply an elaboration of the case on natural and ordinary meaning advanced in paragraph 6 of the Particulars.

56. Mr Paines has submitted that the claimant has fallen into the error identified by Nicklin J in *Koutsogiannis* [17], of supplying some inferential meaning that depends on the reader's own moral judgment rather than the content of the words complained of. I do not believe that is quite right. The claimant's case is overstated, I agree, but not for this reason. The reason is that the claimant has added her own speculation about the nature of the possible confrontation which the emails implied was possible. The milder meanings which I have drawn from the words complained of are inherent in those words. Indeed, I think this is recognised in the defendants' own pleaded case. This includes the proposition that statement [1] meant "it was possible that hand-delivery of the suspension letter might have led to confrontation with the claimant …" The second limb of the meaning attributed by the defendants to these words is "that Ms McGoldrick was glad that delivery of the letter had been effected without such confrontation." That is a meaning which violates the repetition rule.

57. Mr Paines' submissions also placed reliance on the limited scale of publication, the identities of the publishees, and what those publishees already knew or believed. My conclusions on the scope of the preliminary issue trial mean that such contextual matters have no bearing at this stage, when I am making an objective assessment of the meaning of the words used and their defamatory tendency in their immediate context, rather than any wider context.

58. On the other hand, it follows from the conclusions at [50-53] above that I reject the meanings complained of in paragraph 6(2) and 7 of the Particulars of Claim, which I find to be considerably overstated.

59. The other sub-paragraphs of paragraph 6 of the Particulars of Claim do not assist the claimant. Paragraph 6(1) asserts that the words complained of are defamatory, but does not identify any defamatory meaning. Paragraph 6(3) relies on the intention of the author, which is legally irrelevant to meaning: *Koutsogiannis* [12(ii)]. More importantly, paragraph 6(3) does not attribute any defamatory meaning to the words complained of. It does not attribute *any*

meaning to them. It is not clear, without further explanation, what exactly the claimant identifies as being "racially offensive" about the words complained of. But in any case, a statement that words are "racially offensive" is not a statement about their meaning, or about their tendency to defame. It is a statement as to the tendency of the words to cause offence, which is a different matter.

60. These conclusions are sufficient to justify an order dismissing all the claims in Head 1.

Head 2

61. As the Particulars of Claim make clear, the words complained of were contained in a letter written by Ms McGoldrick to the Court, containing an application for an order striking out the claimant's employment claims ("the Application"). The express basis for the Application was that "The Claimant's conduct at London South Employment Tribunal on 31 January 2017 was scandalous and vexatious." The letter was communicated to Ms Ameyaw at the same time as it went to the ET. A full copy of the letter is before me.

62. My conclusion is that the natural and ordinary meaning of the words complained of, in their context, is that, during the hearing before Employment Judge Hall-Smith, the claimant engaged in aggressive and threatening behaviour towards the Judge, Counsel and Ms Coyne; that she persisted in such behaviour, despite a warning from the Judge and a number of breaks; and that her shouting and aggression was highly disruptive, and so frightening, as to require the attendance of security personnel on two occasions. This is a factual meaning, and not just an expression of opinion. And there can be no sensible dispute that the meaning is defamatory at common law.

63. Turning to the claimant's case, I note that the meaning I have found is not very different from the meanings pleaded by her in paragraphs 10(2) and 11 of her Particulars of Claim. This section of the Particulars of Claim follows a format similar to that adopted in paragraphs 6 to 9, and the observations at [59] above apply equally. The essence of the claimant's case is that the words bore a defamatory natural and ordinary meaning, encapsulated in paragraphs 10(2) and 11. The remainder of these paragraphs adds nothing of consequence, for present purposes at least. Again, the reference to innuendo is to be treated as an assertion of a "false innuendo", that is to say a natural and ordinary meaning.

64. The defendants do not dispute that the words complained of are defamatory of the claimant at common law. They seek to contend that the words meant only that "PwC considered that" the claimant had behaved badly at the hearing, "in a disruptive, threatening and aggressive fashion, such that security had been called." It is submitted that this is mere opinion. These arguments are wholly misplaced. It is trite law that a person does not escape liability for defamation by prefacing a defamatory allegation with the statement that it is "my opinion that". In any event, that is not what the Application did. It plainly asserted as fact that the claimant had behaved in this way, and invited the ET to dismiss her claim on that footing.

65. It is true that the Application contains evaluative language, such as "scandalous", and "vexatious", but those words are not complained of. The words that are complained of also include some evaluative terminology, such as "bad". That is not an imputation of which the claimant complains, either. The essence of the words complained of is to attribute to the claimant, as a fact, conduct that has certain characteristics. The defendants suggest that the terms "aggressive" and "threatening" are comment or opinion. I disagree. In context, these are no more comment or opinion than they would be if found in an indictment alleging (for instance) threatening behaviour. They characterise objective features of the conduct.

66. For the reasons given at [57] above, this is not the place to assess the defendants' contention that there was and is no prospect of the words complained of causing serious harm to the claimant's reputation. That argument falls for consideration at the next stage of the analysis.

The fourth issue: strike-out or summary judgment

67. These are separate applications, to which different principles apply. But it is convenient to take them together, for several reasons. First, the defendants attack each head of claim on a variety of bases, some under CPR 3.4(2) and others under CPR 24. Secondly, there is a degree of overlap in the factual matrix, and in the arguments. I propose to deal in turn with each head of claim, considering first whether it should be struck out and, if not, whether I should grant summary judgment.

Principles

The procedural regime

68. CPR **3.4** provides:-

> "(1) In this rule and rule 3.5, reference to a statement of case includes reference to part of a statement of case.
>
> (2) The court may strike out a statement of case if it appears to the court -
>
> (a) that the statement of case discloses no reasonable grounds for bringing … the claim;
>
> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
>
> (c) that there has been a failure to comply with a rule, practice direction or court order.

The defendants' application relies on each limb.

69. Part 24 provides relevantly as follows:-

> **"24.2** The court may give summary judgment against a claimant … on the whole of a claim or on a particular issue if –
>
> (a) it considers that –
>
> (i) that claimant has no real prospect of succeeding on the claim or issue; …
>
> and
>
> (b) there is no other compelling reason why the case or issue should be disposed of at a trial."

70. Ms Ameyaw's skeleton argument refers to a number of familiar authorities including *Easyair Limited v Opal Telecom Limited* [2009] EWHC 339 (Ch) and *Global Asset Capital Inc v Aabar Block SARL* [2016] EWHC 298 (Comm) [2017] 4 WLR 163. A convenient modern summary of the applicable principles is to be found in the judgment of Asplin J as she then was *Tesco Stores Ltd v Mastercard Incorporated* [2015] EWHC 1145 (Ch). Among other things:-

> (1) the court must consider whether the applicant has a realistic as opposed to fanciful prospect of success – in this context, a realistic claim is one that carries some degree of conviction and is more than "*merely arguable*".
>
> (2) the court must not conduct a "mini-trial" and should avoid being drawn into an attempt to resolve conflicts of fact which are normally resolved by the trial process.
>
> (3) if the application gives rise to a short point of law or construction then, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should "*grasp the nettle and decide it*".

71. This summary was cited by Walker J in *Global Asset Capital* at [36]. Ms Ameyaw adds, and I accept, that the Court must not take at face value, and without analysis, everything that a party says in his or her statement before the Court; and it must take into account the evidence that could reasonably be expected to be available at a trial. I also accept Ms Ameyaw's submission that where a pleading is deficient the Court may decide not to strike it out but instead to give the party concerned an opportunity to amend. That of course is a matter of discretion.

Defamation

72. The principles I have just stated apply to all cases. Some points of particular relevance to claims in defamation are as follows:

(1) A claim which satisfies the common law threshold of seriousness may still be dismissed as an abuse of process if the publication does not cause actual damage which is more than minimal. This is because the Court is required by the Human Rights Act 1998 to dismiss a libel claim which was so trivial that its continuation would involve a disproportionate interference with freedom of expression.: *Jameel (Yousef) v Dow Jones & Co Inc* [2005] EWCA Civ 75 [2005] QB 946, *Lachaux* (SC) [7], *Gubarev* [37-38].

(2) A claim which crosses the *Jameel* threshold may fail because it does not satisfy the serious harm requirement laid down by Parliament in s 1(1) of the Defamation Act 2013, with effect from 1 January 2014:-

> "A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant."

This provision

> "not only raises the threshold of seriousness above that envisaged in *Jameel (Yousef)* and *Thornton*, but requires its application to be determined by reference to the actual facts about its impact and not just to the meaning of the words."

Lachaux (SC) [12].

(3) The question whether a particular publication has caused or is likely to cause serious harm to reputation may be tested by way of inference; there is no reason why inferences of fact as to the seriousness of the harm done to a claimant's reputation should not be drawn from considerations such as the meaning of the words, the situation of the claimant, the circumstances of publication and the inherent probabilities: *Lachaux* (SC) [21].

(4) A claimant is obliged by the Civil Procedure Rules to set out "full details of the facts and matters on which they rely in support of any claim for damages", including 53BPD 2.2 & 4.2(5). This includes, in particular, "the facts and matters relied on in order to satisfy the requirement of section 1 of the Defamation Act 2013": 53BPD 4.2(3).

(5) In *Ames v Spamhaus* (above) at [101] I suggested that it may sometimes be better to address a dispute about the issue of serious harm by way of a trial, rather than by way of summary judgment. But as I explained in *Brown v Bower* (above) all depends on the circumstances of the case.

73. I do not understand the reference in the Particulars of Claim to s 16 of the Defamation Act 2013, which is headed "consequential amendments and savings". Mr Paines has been unable to help. I have examined the section to see whether it contains anything of relevance and fail to see anything of that nature. It may be that this is a typographical error for s 1(1).

Issue estoppel and re-litigation abuse

74. A significant strand of the defendants' arguments on these applications is that the claims, or some of them, are (a) barred by res judicata/issue estoppel because they raise issues that have been decided against the claimant by the ET and/or EAT and/or (b) are an abuse of process because they represent an illegitimate attempt at re-litigation (commonly known as *Henderson v Henderson* abuse) or a collateral attack on decisions of the ET and EAT. The defendants' position, as summarised by Mr Paines in his skeleton argument for this hearing, is that

> "The basic intent [of this litigation] appears to be to mount a collateral attack on the legitimacy of the conclusions reached in the Employment Tribunals, by interrogating and impugning the detail of PwC's conduct of those proceedings."

75. The law is set out by the Supreme Court in *Virgin Atlantic Airways v Zodiac Seats UK Ltd* [2014] AC 160 [17]-[26]. I have been referred by the defendants to a recent example of the application of these principles in the context of a claim for malicious falsehood in *Tinkler v Ferguson* [2020] EWHC 1467 (QB) [34]-[38], [46]-[49] (Nicklin J). Ms Ameyaw has referred me to *Takhar v Gracefield Develpments* [2019] UKSC 12, [20] for the limits of the *Henderson v Henderson* doctrine.

76. The defendants' case is that they can all rely on res judicata and issue estoppel; they say that although only PwC was sued in the employment proceedings, the individual defendants are their privies. In the alternative, Ms McGoldrick and Coyne rely on the doctrines of abuse by re-litigation or collateral attack.

77. Other relevant legal principles are best dealt with in the context of the specific arguments and issues that arise.

Evidence

78. No evidence is admissible on an application under CPR 3.4(2)(a), which must be resolved on the face of the statements of case. Evidence is admissible in support of an application to strike out for abuse or non-compliance under CPR 3.4(2)(b) and/or (c), and evidence is essential for an application under Part 24. The evidence before me on these applications comes from Mr Drew, in his first and second witness statements and their exhibits, and from Ms Ameyaw in her witness statement of 30 June and her hearing bundle for the 1 July 2020 hearing.

Assessment

Head 1: the emails

79. For the reasons already given, paragraphs 5 to 8 of the Particulars of Claim are liable to be struck out as failing to disclose a reasonable basis for a claim in libel. Even if that were wrong, this part of the claim would fall to be dismissed for a number of further reasons. The claimant has failed to plead any adequate case of serious reputational harm. In any event, it is plain on the evidence that

the claimant has no realistic prospect of establishing that any of these publications caused or is likely to cause serious harm to her reputation, or that there is a risk of tortious repetition. There is certainly no compelling reason for a trial of this claim; to the contrary. Indeed, the evidence discloses a state of affairs that would lead me to strike out this claim as an abuse of the *Jameel* variety.

80. As a matter of pleading, the claimant has asserted serious reputational damage in general terms, but she has pleaded no facts to explain why the Court should conclude that her reputation suffered serious harm in the eyes of the publishees of the emails complained of. She has not complied with PD53 2.2, 4.2(3) and (5). Paragraph 19 *bis* cannot be regarded as compliance. First, it groups various kinds of harm together. Secondly, insofar as it makes an allegation of reputational harm, it does so by reference to the "collective" effect of various wrongful acts. A claimant who needs to satisfy the serious harm requirement obviously cannot pray in aid the effects of other torts. Further, it is not legitimate for the purposes of s 1 to aggregate the harm caused by different defamatory imputations: see *Sube v News Group Newspapers Ltd* [2018] EWHC 1961 (QB) [2018] 1 WLR 5767. A case that serious reputational harm resulted from limited internal circulation of mild allegations, as is evident on the face of the Particulars of Claim, would in my judgment be impossible to sustain as a matter of pleading.

81. As a matter of evidence, Mr Drew's 1st witness statement sets out the factual background to the publications complained of, which can be shortly summarised.

(1) On 31 January 2017, there was a preliminary, case-management hearing in the ET before Employment Judge Hall-Smith ("the Hall-Smith Hearing"). It was attended by Ms McGoldrick, Ms Coyne, and Denise Lake. After the hearing, Ms Ameyaw sent emails to the Tribunal, the parties' legal representatives, and the Evening Standard newspaper, giving her account of events at the hearing.

(2) After, and as a result of, these events PwC decided to suspend the claimant from her employment, and to serve the letter giving notice of that suspension at the claimant's home address. The decisions were taken on 3 February 2017 by Sarah Henry, a Director of PwC and the relevant Human Resources lead.

(3) At Ms Henry's request, Ms McGoldrick attended the claimant's home to deliver the suspension letter, in the company of a PwC security guard called Margaret Nilsson. The email correspondence complained of relates to what then took place. The emails containing statements **[1]** and **[2]** were published by Ms McGoldrick to three individuals: Mss Henry, Coyne and Lake. The email containing statement **[3]** was published by Ms Henry to Mss McGoldrick, Lake and Coyne.

82. The evidence thus makes plain that the scope of the publications complained of is extremely limited; and that the publishees were either present at the Hall-Smith Hearing, and witnessed what did or did not happen on that occasion, or

(in the case of Ms Henry) had already received and acted on an account of the claimant's behaviour. The notion that either of the emails from Ms McGoldrick would have had any material impact on the claimant's reputation in Ms Henry's eyes is entirely fanciful. So is the idea that Ms Coyne or Ms Lake would have thought the worse of the claimant on account of those emails. It would be untenable to suggest that Ms Henry's email caused any harm, let alone any serious harm, to the claimant's reputation in the eyes of any of those who were present at the Hall-Smith hearing.

83. The present case bears comparison with *Otuo v Watch Tower Bible and Tract Society of Britain* [2019] EWHC 1349 (QB), where the Court (Richard Spearman QC, sitting as a Deputy High Court Judge) dismissed the claim as an abuse. There too, the publication was very limited. The judge had no doubt that those to whom the offending words were published "had already formed their own views" about the claimant and about the allegation (an allegation of fraud). The judge was "unable to accept that the utterance of the words complained of … occasioned any, let alone more than trivial, harm to [the claimant's] reputation": see [28] and [30].

84. For all these reasons, the claimant has shown no viable cause of action for libel under Head 1. The defendants have demonstrated that the claim could not succeed, and ought not to go to trial. The defendant would also have had two defences which in my judgment would be unanswerable.

85. **Qualified privilege.** It is, in my judgment, incontestable that each of the occasions on which the emails complained of were published was one that attracted qualified privilege, also known as qualified immunity from suit in defamation. The principles are discussed in *Otuo* at [147-153], where the authorities dating from 1843 are reviewed. I regard this case as plainly one of common or corresponding duties or interests. Those concerned all had a duty to record and report what had happened at the claimant's flat, or a duty or legitimate interest to receive the report. The claimant's submissions in response to this point (paragraphs 13 and 17 of her skeleton argument) are entirely misplaced. They are to do with vicarious liability, which is not in issue, and legal professional privilege, which is an entirely separate and distinct concept.

86. A qualified privilege can be defeated by proof of malice, that is to say a dominant improper motive. Any case to that effect must be pleaded by way of Reply. PD53 makes this clear: see PD 4.8(1). It is many months since service of the Defence, and there is no such plea. Nor could there be.

87. The allegation would have to be that the authors of the emails (Ms McGoldrick and Ms Henry) had a dominant improper motive for writing what they did, to the limited internal group they addressed. Paragraph 4 of the Particulars of Claim alleges that on or around 31 January 2017 Mss McGoldrick and Coyne "purposefully" gave a false and misleading account of the Hall-Smith hearing to Ms Henry. That is inconsistent with a case that Ms Henry was malicious when she wrote the email complained of some days later. It is consistent with malice on the part of Ms McGoldrick. But it is not in the Reply, and it is not a plea of malice in relation to the emails.

88. Nor is this a properly or adequately pleaded case. It is in diffuse or general terms, which relate to a different occasion and fail to identify the supposed improper motive. A plea of malice must be pleaded with scrupulous care and specificity, not by way of assertion or broad generalities; and such a plea is only legitimate if it pleads facts that raise a probability of malice: see *Turner v MGM* [1950] 1 All ER 449, and the discussion in *Huda v Wells* [2017] EWHC 2553 [2018] EMLR 7 [70-74] (Nicklin J). Paragraph 4 does not meet these requirements. I see no real prospect that the claimant could put together a tenable or credible case of malice. An allegation of malicious motivation for these internal emails would be wholly fanciful. What on earth could the authors have hoped to achieve?

89. The prospects for a plea of malice are only weakened still further by the adverse findings of Employment Judges Hill-Smith, Mason and Grewal about the way the claimant behaved at the Hill-Smith Hearing. Those findings of fact (set out or summarised below) are binding as between the claimant and PwC; and Mss McGoldrick and Coyne are entitled to say, and I find, that any attempt to go behind them in this action would represent an abuse of process of the re-litigation and collateral attack varieties.

90. **Limitation.** The limitation period for libel is 1 year: s 4A, Limitation Act 1980. Time runs from the date of first publication. The limitation period in respect of these emails therefore expired on 3 February 2018, nearly 2 years before the Claim Form was issued. The pleaded defence of limitation would be bound to succeed, unless the claimant could secure an order disapplying the limitation period pursuant to s 32A of the Limitation Act 1980.

91. The grounds on which a court may grant such an order are that

> "it would be equitable to allow [the] action to proceed having regard to the degree to which (a) the operation of section 4A prejudices the plaintiff… and (b) any decision of the court under this subsection would prejudice the defendant."

The Court is required to have regard to all the circumstances of the case, including a number of factors specified in s 32A(2)(a) to (c).

92. Ordinarily, a claimant must apply for an order for disapplication, by means of an application notice. Here, there is no such application. But the claimant has claimed an extension in paragraph 27 of the prayer for relief (see [7] above). Her contention in that paragraph, that the claimant's actions amount to a course of conduct, cannot assist her in the present context. She makes no allegation that the defendants have republished these alleged libels. Even if she did, she would be met with the "single publication rule" in s 8 of the Defamation Act 2013.

93. The authorities make clear that the discretion conferred by s 32A is largely unfettered, but that a claimant who delays bringing her action faces a heavy onus. The purpose of a libel action is to vindicate reputation, and a claimant who wishes to achieve this will want to take swift action. Such claims ought therefore to be pursued with vigour. All these points and more are to be found

in the key authority of *Bewry v Reed Elsevier UK Ltd* [2014] EWCA Civ 1411 [2015] 1 WLR 2565, most recently applied by Steyn J in *Alsaifi v Npower* [2020] EWHC 480 (QB).

94. The claimant has filed no evidence or argument in support of this aspect of her claim. Applying the well-established principles to which I have referred to the facts before me now, I would refuse the application. Even assuming I am wrong on every other point, this can surely not be viewed as a case of great significance or merit. The prejudice to the claimant of losing it cannot be given any great weight. The prejudice of having to defend it out of time is in my view considerable. Section 32A(2) identifies, as relevant factors,

> "the length of and the reasons for the delay on the part of the plaintiff" and, where the reason is ignorance of facts relevant to the cause of action, "the date on which any such facts did become known .. and the extent to which he acted promptly and reasonably…"

The claimant did not know about these emails when they were sent, but (as is common ground) they were disclosed to her on 10 January 2020. She took a day under a year to bring this claim. That cannot be viewed as prompt. No reasonable explanation for that delay has been provided, nor is one apparent. As Brooke LJ observed in *Steedman v British Broadcasting Corporation* [2001] EWCA Civ 1534 [2002] EMLR 17 [33]:

> "If claimants place as little information before the court when inviting a section 32A discretion to be exercised in their favour as occurred in the present case, they should not be surprised if the court is unwilling to find that it is equitable to grant them their request."

Not only do I see no good grounds on which to disapply the limitation period now, I cannot see any real prospect that such an application could succeed.

95. Mr Paines advanced a further argument, to the effect that the claimant's allegation that the email correspondence was racially offensive represents re-litigation abuse in the light of the ET's judgment, dismissing allegations of sex and race discrimination advanced before it (he relies on paragraphs 70-73, 120 and 134 of the Grewal Judgment). This may be so, but since the allegation of racial offensiveness is made in the context of the libel claim only, and plainly cannot be maintained as such, I do not need to deal with this ground of attack.

Head 2: the Application

Libel

96. Paragraphs 9 to 12, 21 and 19 *bis* of the Particulars of Claim set out some of the ingredients of a viable claim in libel at common law. But the pleaded claim is deficient in two respects. First, it fails clearly to identify the publishee(s) of the letter complained of, which is simply said to have been "addressed to" the ET. Secondly, it fails adequately to state a case on the statutory requirement of

serious harm to reputation. In this respect also, paragraph 19 *bis* is non-compliant with PD53 2.2, 4.2(3) and (5).

97. The first of these defects could be cured. The second could not. Not only has the claimant failed to plead a reasonable basis for a contention that the publication of this letter to the ET caused serious harm to her reputation, it is plain that she could never do so, and that she has no real prospect of establishing that proposition. There is no compelling reason for a trial of that issue. Again, her case on actual harm is so weak that it fails the *Jameel* test. On those and other grounds, there is every reason to dismiss the claim and enter judgment for the defendants, and I do so. I shall return to serious harm, dealing first with three other grounds on which this claim would be bound to fail.

98. **Limitation.** The claimant has no real prospect of defeating the defence of limitation. She was aware of the contents of the Application on the day it was filed, or very soon after. The limitation period for any claim in libel in respect of the Application expired on 6 February 2018. This claim was not brought until January 2020. The claimant has adduced no evidence to justify or explain that delay, nor has she identified any reason why the Court should disapply the limitation period, nor can I see any reason to conclude that it would be equitable to do so. For reasons already given and others I shall come to, the operation of the normal limitation period does not materially prejudice the claimant and disapplication would seriously prejudice the defendants.

99. **Absolute privilege or immunity.** The Application was a formal step in legal proceedings, invoking the jurisdiction of the Employment Tribunal to dismiss a claim. The claimant complains of statements made to the Tribunal in the course of those proceedings, in an application for an order. It is beyond sensible dispute that the publication complained of was made on an occasion of absolute privilege. This has been the applicable law for centuries. The 19th and 20th century authorities were reviewed by Nicklin J in the case cited by the defendants, *Huda v Wells*, at [53]-[56]. Depending on how one analyses the matter, the present case falls firmly into the first or the second of the three categories identified by Devlin LJ 60 years ago, in *Lincoln v Daniels* [1962] 1 QB 237, 257-258. Those are categories to which the application of the privilege is firmly established. As Lopes LJ put it 70 years earlier, in *Royal Aquarium v Parkinson* [1892] 1 QB 431, 451:

> "The authorities establish beyond all question ... that neither party, witness, counsel, jury nor judge can be put to answer civilly … for words spoken in office; that no action for libel …lies ... against ... parties for words spoken in the course of any proceeding before any court recognised by law and this although the words were written or spoken maliciously, without any justification or excuse, and from personal ill will or anger against the party defamed."

100. None of the arguments advanced by the claimant in response to this point can bear any weight. She submits that absolute privilege cannot attach because the application failed. The argument is manifestly untenable and fails to recognise

the nature of an absolute privilege or (as it is more commonly known today) immunity from suit. Her argument that immunity does not apply because the Application "was not testimony in the course of a trial" is wrong in law. She seeks to suggest that the privilege does not apply because the statement was defamatory and made in a public document. But those are reasons for conferring the privilege, not exceptions to it. Citation of *Mann v O'Neill* (1997) 71 ALR 903, 907 (Brennan CJ) is not to the point. The passage is concerned with whether the acknowledged immunity for statements made in judicial proceedings should be extended to other kinds of statement.

101. **Serious harm.** In the circumstances, it is not strictly necessary to address the issue of harm. One reason for the existence of absolute privilege or immunity is to safeguard a defendant from the need to engage with such issues. Nevertheless, I consider it best to deal with the point, as it affords yet another good reason to enter judgment for the defendants on this claim, and has a bearing on the malicious falsehood claim which I consider next.

102. The only person to whom it can plainly be inferred that the contents of the Application were published is the Judge who heard and decided PwC's application: Employment Judge Morton. In paragraph 10 of her judgment on that application, the Judge identified the issue before her.

> "The question for me was whether the Claimant had on 31 January, conducted herself in such a way (whether by scandalous, vexatious or unreasonable conduct) that a fair trial was no longer possible."

No Judge would allow her conclusions on such a matter to turn solely on the content of the application documents. So, it cannot be maintained that this initial publication caused serious harm to reputation, even on the assumption that the Judge read the Application before reading anything else.

103. Nor can it credibly be maintained that the claimant's reputation was seriously injured in the eyes of the Judge, in the ultimate analysis. The record shows that, by the time she came to make her decision on the question of what happened at the Hall-Smith Hearing, Judge Morton had available to her the judgment given by Judge Hall-Smith following that hearing, and some other written reasons of Judge Hall-Smith also containing relevant findings of fact. PwC relied on these findings and did not adduce any evidence of fact in support of its application. Judge Morton declined to hear evidence from the claimant and based her conclusions on what Judge Hall-Smith had said. She explained:-

> "4. I took the view that the status of Judge Hall-Smith's reasons and his account of the hearing is that of findings of fact as to what occurred. They are unusual only in that the conduct that they described was unusual. It is, as Ms Bell submitted, commonplace for Tribunals to make findings as to the conduct of parties and witnesses during the course of proceedings before them
>
> …

> 10. I confirmed with the parties before adjourning to consider my decision on the application that I would focus on the words used in the reasons of Judge Hall-Smith. I also accepted Mr Herbert's submission that the focus must be on the Claimant's behaviour and not that of others."

104. It is unnecessary to set out Judge Hall-Smith's relevant findings in full, but they included findings that the hearing had been "very significantly disrupted by disruptive conduct from the claimant and her mother directed towards me" which the Judge "was not prepared to tolerate" (para [5]) and which was "wholly unjustified" (para [6]). The Judge recorded that he had "warned the parties" that he was "not prepared to conduct a hearing" so disrupted. The Judge further found that "having announced my ruling, the claimant interrupted me … [Counsel for the claimant] endeavoured to address me but was shouted over by the claimant" ([26]). "I found it increasingly difficult to manage the proceedings in circumstances where the claimant continued to interrupt me" ([30]). "Because of the continued disruptive behaviour by the claimant, a security guard had been alerted… After the claimant had left the room I informed the guard that he could leave" ([32]). "A minute later both the claimant and her mother flung open the door to the Tribunal room and entered the Tribunal. The claimant's mother was shouting aggressively waving her arms and shouting …" ([33])."It was clear to me that Ms Bell and her solicitor Ms Coyne had been very shaken and alarmed by the continued disruptive behaviour of the claimant and the aggressive and threatening behaviour of the claimant's mother" ([36]). ".. there was no justification for the conduct of both the claimant and the claimant's mother… [which] on any view, was disgraceful conduct … during the course of a legal hearing" ([37]).

105. Judge Morton conducted a careful analysis of Judge Hall-Smith's findings of fact, and reached the following conclusions:-

> "19. My conclusion from the materials on which I based this decision is that the Claimant undoubtedly lost her cool at times during the hearing and behaved reprehensively [sic] but did not do so without justification. Something had broken down in her communication with her solicitors and she found herself at a hearing with matters not proceeding in accordance with her instructions. Her mother's intervention plainly was disgraceful and singularly unhelpful and I am reassured by Mr Herbert's assurance that the Claimant's mother will not be participating in any future proceedings in this case. However all are agreed that the Claimant's mother's conduct cannot be attributed to the Claimant. The Claimant's conduct on its own, although at time uncontrolled and unacceptable, does not in my view on these particular facts amount to conduct that is so exceptional that I need not consider whether a fair trial is still possible.

> 20. Applying that consideration I do consider that a fair trial is still possible. There are no grounds for a firm conclusion at this stage that the Claimant's conduct, which was on 31 January explicable if not reasonable, is bound to recur at a future hearing such as to vitiate the possibility of a fair trial. Having said that I give the Claimant a very clear warning that there must not be any occurrence of uncontrolled and disrespectful behaviour at any future hearing of this case. Parties are given some allowance for the emotional intensity that can characterise Tribunal proceedings, but all participants are nevertheless expected to conduct and express themselves with restraint and courtesy."

106. This makes several matters plain: first, that Judge Morton did not accept in full the propositions advanced by the defendants in the Application; secondly, that the Judge did nonetheless take a significantly adverse view of the claimant's behaviour at the Hall-Smith Hearing; thirdly, that she took that adverse view on the basis of things said by Judge Hall-Smith by way of findings of fact in earlier proceedings, and not on the basis of the contents of the Application; and fourthly, that Judge Hall-Smith's findings provided an amply sufficient basis for the conclusions arrived at by Judge Morton.

107. For all these reasons, in addition to the unanswerable defences of limitation and absolute privilege, this claim would be bound to fail for want of serious reputational harm.

Malicious falsehood

108. Paragraphs 18 to 21 of the Particulars of Claim follow paragraphs 9-12,[2] and are also concerned with the letter of 6 February 2017. They fall under the general sub-heading of "Malicious falsehood and harassment". That is all that is said about harassment anywhere in the body of the Particulars of Claim. I shall deal here with the claim in malicious falsehood and return to harassment later.

109. The pleading discloses no reasonable basis for a claim in malicious falsehood, for two reasons. First, the allegations of malice in paragraphs 18 and 19 are of the broad-brush variety I have already analysed and found wanting. The claimant simply asserts that Ms McGoldrick "knew that the statement was untrue" and that "her actions were… intended to injure the claimant", or that she was reckless as to loss or harm. It is alleged that she "wilfully lied to the courts". Nothing is said by way of detail to support these allegations. The pleading fails to disclose a reasonable basis for alleging malice. There is also an allegation of racial motivation. If that is capable in law of amounting to malice (as to which I make no determination), it is equally unparticularised. Secondly, a claimant seeking a remedy in that tort must plead and prove that the publication caused special damage, or that it is in one of the exceptional cases provided for by statute. The Particulars of Claim contain no such averment. The

[2] The Particulars of Claim contain no paragraphs 13 to 17.

damage alleged in paragraph 19 *bis* is injury to reputation and feelings, and prejudice to the claimant's employment claims.

110. I can see no real prospect that the claimant would be able to make good either of these omissions. For that reason, the claim in malicious falsehood would be bound to fail. I enter summary judgment in respect of it for that reason, and for the further and equally good reason that the points made above about limitation and absolute immunity apply equally to this claim. Section 4A of the Limitation Act 1980 applies not only to libel and slander but also to malicious falsehood. As the passage I have cited from Lopes LJ makes clear, absolute immunity from suit is precisely that: it is absolute and not defeasible by proof of malice.

111. In the circumstances it is enough to mention that there appear to be other real difficulties with the claimant's case of malicious falsehood. Although falsity is alleged, and particulars are given, a substantial number of the averments of falsity appear to be barred by issue estoppel, so far as PwC is concerned, and precluded by the prohibitions on re-litigation abuse or collateral attack, so far as the other defendants are concerned. It is alleged, for instance, that the claimant "did not shout at the Judge, Miss Bell or the second Respondent", "was not warned by the Judge …", and "did not behave in a threatening or aggressive way towards the Judge…" Those averments are hard to reconcile with the findings of the ET judges referred to above. If they can be reconciled, the distinctions appear to be very fine. But it is unnecessary to go further.

Head 3: the Scorer report

112. The allegation (in paragraphs 13-15 of the Particulars of Claim) is that Ms Coyne, having obtained a copy of the Scorer Report from the ET on a strictly confidential basis, disseminated it to Ms Henry, whereafter it was stored on the databases of PwC and others. The complaint is of breach of confidence and misuse of private information. It is further alleged that Ms Coyne caused PwC to misuse the information "for collateral purposes", namely in pursuit of disciplinary action with "an ulterior motive of subjecting the highly sensitive, confidential information to public glare". Complaint is made that "full details" of the information were subsequently published in the Grewal Judgment.

113. There is little dispute as to what happened. The defendants take issue with the legal conclusions drawn, and with the allegations of collateral purpose and improper motive. They advance four grounds of challenge to this claim:

(1) They contend that these issues have all been raised in the ET proceedings, and decided against the claimant in that context, so that pursuit of this claim in the present action is barred by issue estoppel and re-litigation abuse. Mr Drew asserts, in his 1st witness statement, that the ET "found that the way in which PwC had dealt with the report was correct, in Ms Ameyaw's own best interests, and did not subject her to any detriment".

(2) The defendants further argue that

a. enforcement of the terms as to confidentiality imposed by the ET is a matter for the ET and those terms cannot found a private law claim for breach of confidence or misuse of private information;

b. for the reasons given by the ET, there was no breach of confidence or misuse of private information;

c. there is no evidential foundation for the allegation of ulterior motive. They contend that it was the claimant who brought issues about the Scorer before the Tribunal, alleging that the way it was dealt with by Ms Coyne and PwC represented a detriment to her; and

d. the pleading fails to identify any loss sustained by Ms Ameyaw as a result of the alleged wrongdoing.

114. Ms Ameyaw submits (in paragraphs 25 to 29 of her skeleton argument) that her present claims are not an abuse. They raise issues that are not the same as those decided by the ET, and which could not have been before the ET, which has no jurisdiction over claims in misuse of private information or breach of confidence. She submits that the questions raised by her claim engage Article 8, are highly fact-sensitive, and require separate and independent consideration by this Court. That consideration is incapable of being undertaken on a summary basis, she submits; it could only be properly undertaken at a trial.

115. I do not find it necessary to reach a conclusion on all of the defendants' grounds of challenge to this aspect of the claim. I accept that the Particulars of Claim set out no properly pleaded case of ulterior motive, and that there is no evidence before me to sustain it. That, however, is not necessarily fatal to the claim. Nor, in my judgment, is the absence of any plea of material loss. Distress is alleged, and the authorities suggest that it may be enough that there was an infringement of rights. I base my decision to dismiss this claim on two grounds.

116. The first is that this claim is abusive. In my judgment, the core issues in any private law claim for breach of confidence or misuse of private information would be (a) what use was made of the report by the defendants and (b) whether such use was a breach of confidence or misuse of private information. Assuming the facts to be as alleged by the claimant, it is plain in my judgment that the ET's conclusions should be treated as conclusive on the second of these issues, as between the claimant and all three defendants. The relevant paragraph of the Grewal judgment, paragraph [131], addresses the claimant's contention that she had been "subjected to a number of detriments in the dismissal process". One of those contentions related to the Scorer report. The Tribunal dealt with that in these terms, at [131(iii)]:

> "Louise Coyne disclosed the Claimant's confidential medical report to Sarah Henry. It is not in dispute that Ms Coyne shared the report with others in the legal team who then passed it on to Ms Henry. If the Respondent's lawyers become aware of information about the Claimant's health that might have an impact on her ability to participate in disciplinary hearings or that

> indicates that continuing with the process at that time might have an adverse impact upon her health, it is only right that they should share it with those managing the disciplinary process. To do so would not be to the detriment of the Claimant but in her best interest to ensure that she was well enough to participate in the process or that continuing with it would not harm her health. The Respondent did not subject the Claimant to a detriment by Ms Coyne sharing that report with the Claimant."

117. That, in summary, is a conclusion that the disclosure of the report by Ms Coyne was not wrongful, because it was a necessary or legitimate disclosure for the purposes of the disciplinary process. It is illegitimate in my judgment for the claimant to complain in this Court that disclosure of the report was wrongful, having raised that issue before the ET and failed. It is true that the legal context is different and that the Tribunal does not here allude expressly to the terms on which the report was disclosed by the ET to the defendants. Those factors mean there is no cause of action estoppel and may well mean that there is no issue estoppel. But as the Supreme Court made clear in *Virgin Atlantic*, those are but instances of a broader principle. It does not follow that this is not an instance of re-litigation abuse or abuse by collateral attack. In my judgment, applying the principles identified above, it is both. The claimant is inviting this Court to reach conclusions which, if they were arrived at, would be inconsistent with the grounds for dismissing her ET claims of detriment. Taking a broad view of the public interests involved, my clear conclusion is that it would be contrary to the public interest in the due administration of justice, and confidence in the legal system, to permit this claimant to pursue these claims before this Court. It would be contrary to the underlying principle that, in the words of Lord Bingham "there should be finality in litigation and that a party should not be twice vexed in the same matter" (*Johnson v Gore-Wood & Co* [2002] 2 AC 1, 31).

118. My second ground is related to the first. Authority holds that where a Court or Tribunal imposes a duty of confidence or some similar duty in respect of documents produced in the course of legal proceedings, which governs further use of that material, the limits of that duty are set by the Court or Tribunal, and the proper forum in which to litigate any complaint of breach is before the Court or Tribunal that imposed the duty. The authorities that compel this conclusion are *Derby & Co Ltd v Weldon (No 2)* The Times, 20 October 1988, *Prudential Assurance Co. Ltd v Fountain Page Ltd* [1991] 1 WLR 756, 767 (Hobhouse J), *Apple Corps Ltd v Apple Computer Inc* [1992] 1 CMLR 969 [78]-[92] and *Alphasteel Ltd v Shirkhani* [2013] EWCA Civ 1272 [2014] C.P. Rep. 1 [22].

119. The central proposition is, in the words of Hobhouse J, that

> "… [t]he remedies that arise, if at all, arise from the duty owed by the relevant person to the court and the capacity of a person with an interest in the enforcement of those rights to obtain further orders from the court against persons directly or indirectly involved in breaches of that duty."

Further, and in any event, any private law duty that may co-exist cannot be any wider, more extensive or onerous than the duty to the Court. On that view, the Tribunal's determination must be taken to settle the matter.

120. I add that the pleaded claim for relief by way of damages for breach of the claimant's Article 8 rights is plainly untenable. The defendants are not public authorities against whom a human rights claim can be brought.

Head 4: document disclosure

121. The claims appear in paragraphs 16 to 18 *bis* of the Particulars of Claim, under the heading "Subject access requests/disclosure orders". In summary, the claimant complains of (1) a failure to disclose information in response to a subject access request ("SAR") dated 15 August 2017; (2) a failure to comply with disclosure orders made by the ET on 30 November 2018; (3) a denial, before the ET, of the existence of any further relevant documents concerning disciplinary action taken against the claimant, which the claimant suggests was false, given the disclosure on 10 January 2019 of the photographs and correspondence relating to the "entry to the claimant's home" on 3 February 2017.

122. It is not easy to analyse the precise content or legal nature of these claims, and the defendants' complaint that these paragraphs disclose "no clear cause of action" has force. The defendants' "two simple points" in answer to this part of the claim are that "there is no cause of action and there is no loss" (because the documents were in due course disclosed). I agree that this much can be said:

(1) The complaint of breach of ET orders is not tied to any claim for relief. In any event, any such complaint is manifestly not a matter on which this Court can or should adjudicate, or a matter in respect of which this Court can grant relief. It is a matter that should be, or should have been pursued, if at all, before the ET. No reasonable basis for a claim is disclosed by this aspect of paragraph 17.

(2) Nor am I able to detect any viable basis for a claim in respect of the alleged denial of the existence of other relevant documents. No cause of action is identified. There might in principle be a procedural or other remedy before the ET. But such a statement, if made, would be protected from suit by absolute immunity against claims for defamation or malicious falsehood, and other torts.

123. That leaves the alleged failure to comply with the SAR. This is tied to a claim for relief. Paragraph 25 claims damages for "breaches of rights pursuant to DPA 1998/2018". I do not believe the defendants' "two simple points" afford an answer to this aspect of the claim. The Data Protection Act 1998 was in force at the time, and afforded the claimant rights of subject access. She has pleaded a breach of those rights. Section 13 of the DPA 1998 provides that

> "An individual who suffers damage by reason of any contravention by a data controller of any of the

> requirements of this Act is entitled to compensation from the data controller for that damage."

124. Authority establishes that the term "damage" in this context has a broad meaning which goes beyond material loss, and covers non-material harm (such as distress) and loss of control over personal data: see *Lloyd v Google LLC* [2019] EWCA Civ 1599; [2020] QB 747 [3], [45-47]. The Particulars of Claim do not clearly identify the damage said to follow from this alleged wrongdoing, but I consider this claim to disclose a reasonable basis for a claim and to be (just) adequately pleaded. Further detail may be sought if necessary. I do not regard this as a claim to be struck out as plainly a *Jameel* abuse. I do not, however, consider that the High Court is even arguably the right forum for this claim which can only have the most modest value. The proportionate means of disposing of this claim is to transfer it to the County Court, for resolution (I would think) in the small claims track.

Other claims

125. The defendants submit (in paragraph 49(3) of their skeleton argument) that "various complaints are made in paragraph 4 of the PoC and the prayer" which are nowhere particularised and "cannot survive the defendants' application". I agree. The same is true of other aspects of the Particulars of Claim.

"Attack on reputation"

126. In paragraph 4 of the Particulars of Claim, under the general heading "The Claim" it is alleged that Ms McGoldrick and Coyne

> "purposefully gave false and misleading evidence about the Claimant's conduct at an employment tribunal preliminary to their instructing client Sarah Henry of PwC HR, and advised the Third Defendant to suspend the Claimant from work."

The claimant asserts her belief that this was "a strategy or tactic" to facilitate the striking out of her ET claims, and to "manufacture" a reason for dismissing the claimant. The claimant goes on to assert that this evidence

> "amounted to a highly improper interference with the proper administration of justice and a perverse attack on the Claimant's character and reputation."

127. The way the case is pleaded fails to make clear whether or not this is intended to set out a separate cause of action, or merely background. That makes the paragraph obstructive of the due administration of justice. I have addressed already the question of whether this can stand as a plea of malice in relation to the emails complained of. If it is intended to be a stand-alone claim, in defamation or malicious falsehood, it is manifestly deficient. It fails entirely to specify the words complained of, which is an essential element of either tort. It asserts that two individuals acted, but fails to state who did what. It pleads no meaning, and there are no particulars of falsehood, or of malice. It is not

pleaded, either, that the "evidence" and/or "advice" led to any special damage, nor is any basis put forward for concluding that proof of special damage is not required. For all these reasons it cannot be allowed to remain on the record.

Perverting the course of justice

128. The Claim Form and Particulars of Claim both seek exemplary damages for "perverting the course of justice and unreasonable or oppressive conduct". The claim for exemplary damages is wholly unparticularised, and the Particulars of Claim fail to disclose any reasonable basis for such a claim. The only allegation in the Particulars of Claim that refers to the administration of justice is the passage in paragraph 4 cited above, which is muddled up with complaints about reputational damage and far too vague to be acceptable as a means of pleading so serious an allegation.

129. I am unable, however, to see how particulars could save this part of the pleading. Perverting the course of justice is a crime but not a tort. There is a tort of abusing civil process, but it is one of limited scope (see generally Clerk & Lindsell on Torts 23rd ed Ch 15 at para 15-69). It is very hard to see how the claimant could invoke that tort on the facts of this case, and her pleaded case does not profess to do so. Nor is there any tort of oppressive and unreasonable conduct. Conduct which has those characteristics can amount to the tort of harassment, but only if the conduct satisfies all the requirements of that tort, which I shall deal with below.

Breach of privacy and Article 8 rights

130. Paragraph 5 of the Particulars of Claim not only pleads a claim in defamation but also contains allegations about what happened on 3 February 2017, when the suspension letter was served at the claimant's home. The pleading describes the taking of "numerous photographs … at close proximity and without prior consent or authority", and their distribution by Ms McGoldrick to "several recipients" including Ms Coyne. It also refers to the File Note being set up on the PwC Legal systems "containing details of the precise location of the claimant's flat".

131. The matter is left there, with no further explanatory or consequential allegations (for instance, of breach of the claimant's rights, or consequential loss or distress). It is entirely unclear whether this is meant to put forward a cause of action, or merely background. The claim for breach of privacy and Article 8 rights which appears in the prayer for relief is not tied in any way to any of these allegations. Overall, these assertions appear to be gratuitous material, with no link to the causes of action that are asserted.

132. If this part of paragraph 5 is intended to advance some cause of action for misuse of private information, it is non-compliant with the rules of pleading. Part 53 BPD53 para 8.1 sets out the pleading requirements for a claim for misuse of private information. The claimant must specify

> "(1) … the information as to which the claimant claims to have (or to have had) a reasonable expectation of

> privacy (2) the facts and matters upon which the claimant relies in support of the contention that they had (or have) such a reasonable expectation; (3) the use.. which the claimants was .. a misuse; and (4) any facts and matters upon which the claimant relies in support of their contention that their rights… outweighed (or outweigh) any rights of the defendant to use the information in that manner."

133. In all the circumstances these averments tend to obstruct rather than assist the due administration of justice; and, for that reason, these aspects of the Particulars represent an abuse of the court's process.

Harassment

134. The Claim Form and the prayer for relief at the end of the Particulars of Claim both seek damages for "harassment". The tort and crime of harassment are both provided for by the Protection from Harassment Act 1997, and they are co-extensive. They prohibit a course of conduct amounting to harassment. To make out a claim in the tort, a claimant must plead and prove 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). As Lord Sumption put it in *Hayes v Willoughby* [2013] UKSC 17 [2013] 1 WLR 935 [1],

> "Harassment is a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress."

135. There is an assertion in the Claim Form of "unreasonable and oppressive conduct", and there is an allegation of a "course of conduct" (see [6] above). But the only assertion of harassment contained in the body of the Particulars of Claim is to be found in the cross-heading to paragraphs 18 to 21 (see [108] above). On the face of it, the cause of action for harassment, if there were one, would be for harassment by publication. In such a case, PD53 10.3 requires a claimant to specify in the Particular of Claim

> "the acts of the defendant alleged to constitute a course of conduct which amount to … harassment … including specific details of any actual or threatened communications."

That is but a particular instance of a general requirement of pleading. The statement of case here is plainly non-compliant. It nowhere specifies what acts are alleged to amount to harassment. If the claimant's factual case were to rest on Ms Coyne's letter of 6 February 2017 it could not possibly succeed. That is a single letter, addressed to the Court. Paragraph 29 of the claimant's skeleton argument suggests that the Court, assessing her third head of claim, would need to consider whether it makes a difference "if photographs are taken in

circumstances that amount to harassment". This is hard to relate to the facts of this case, but, on any view, it is not something raised in the Particulars of Claim.

136. The claim for harassment therefore falls to be struck out under CPR 3.4(2)(a), (b) and (c). As it stands, the pleading fails to disclose a reasonable basis for a claim in harassment. The Particulars of Claim are non-compliant with the relevant practice direction and they are an abuse, because they tend to obscure and confound the case. I strongly suspect that there is no room, on the facts of this case, for any tenable claim in harassment. Any course of conduct that might be complained of would appear to be protected by absolute immunity from suit. But I do not decide that issue, on which I have not been addressed. It would appear that any such argument would need to take account of (among other cases), the trio of decisions in the *Iqbal v Dean Manson* litigation: the two Court of Appeal decisions [2011] EWCA Civ 123 and [2013] EWCA Civ 149, and my own decision at first instance, [2014] EWHC 2418 (QB).

Negligence

137. The Claim Form and paragraph 23 of the prayer for relief in the Particulars of Claim both seek damages for negligence. There is however no pleading of any duty of care, nor any particulars of breach of such duty, nor any plea of any material loss or damage. The statements of case disclose no reasonable basis for a claim in the tort of negligence.

Interest pursuant to statute

138. The claim is for general damages for harm to reputation and feelings. Such damages are assessed at the date of trial and interest is not recoverable. The statement of case discloses no reasonable basis for this claim.

Conclusions and disposal

139. For all the reasons set out above, my conclusions are these:

(1) Head 1 (libel) is struck out pursuant to CPR 3.4(2)(a) and (c). In addition, I grant summary judgment on this claim.

(2) Head 2 (libel and malicious falsehood) is struck out under r 3.5(2)(a) and (c). In addition, I grant summary judgment on this claim.

(3) Head 3 (wrongful disclosure of medical information) is struck out under r 3.4(2)(b), and judgment will be entered accordingly.

(4) Head 4 (document disclosure) is struck out under r 3.4(a), save for the allegation of failure to disclose information in breach of the Data Protection Act 1998, which will be transferred to the County Court.

(5) The rest of the Particulars of Claim is struck out under r 3.4(a), (b) or (c).

140. The decisions summarised at (1) to (4) above are final decisions that mandate the entry of judgment for the defendant on all four of the main heads of claim

and any other claims identified in paragraphs (1) to (3), (5) *bis*[3] and (6) of the Claim Form, save for harassment and breach of privacy (other than Head 3). Taken together with my other decisions, they mandate the striking out of the entirety of the existing Particulars of Claim. The claimant is entitled, however, to apply for permission to serve Amended Particulars of Claim alleging breach of privacy (other than Head 3) and/or harassment and/or negligence. I say this for the sake of clarity only. I should not be taken to encourage her to do any of those things. To bring some certainty to the matter I propose to direct that any application for permission to amend must be made within a specified period.

[3] There are two paragraphs (5) in the Claim Form.