Neutral Citation Number: [2020] EWHC 3469 (QB)

Case No: QB-2020-001139

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/12/2020

Before :

MR JUSTICE JULIAN KNOWLES

- -

Between :

SAYED ZULFIKAR ABBAS BUKHARI	**Claimant**
- and –	
SYED TAUQEER BUKHARI	**Defendant**

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- -

Jacob Dean (instructed by **Stone White Solicitors**) for the **Claimant**
Ben Hamer (instructed by **Law Lane Solicitors Limited**) for the **Defendant**

Hearing dates: 30 October 2020

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Approved Judgment

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Mr Justice Julian Knowles:

Introduction

1. The Claimant has sued the Defendant for libel and harassment. The issue before me only concerns the libel claim. I held a remote public hearing on 30 October 2020. The issue I have to decide is comparatively narrow. In essence, it is whether the Defendant should be required to state his case on meaning and other preliminary matters in relation to all of the publications complained of in the libel claim (the Claimant's proposal), or only on a restricted number of them (the Defendant's proposal).

2. The Claimant is represented by Mr Dean and the Defendant by Mr Hamer. I am grateful to both of them for their focussed written and oral submissions.

Factual background

3. The Claimant is commonly known as Zulfi Bukhari. He is a dual British and Pakistani national. Paragraph 1 of his Particulars of Claim avers that he is a very well-known and successful businessman in the UK and is involved in various charitable and humanitarian projects in the UK. He is currently based in Pakistan, having been appointed as an adviser to Prime Minister Imran Khan in September 2018. He visits England regularly, where many members of his family live, including his young children.

4. The Claimant and the Defendant are cousins.

5. Since about September 2019 the Defendant has published many hundreds of Tweets concerning the Claimant, often several times a day. The Claimant's case is that the Tweets contain a number of common themes, namely that the Claimant is corrupt, that his family wealth is derived from serious crime, and that the Defendant and his father are the victims of criminal conduct by the Claimant and the Claimant's father. Many of the Tweets contain embedded videos of the Defendant speaking to camera in Urdu, making allegations concerning the Claimant and his father. The Defendant's tweeting has continued on a regular basis throughout the progress of these proceedings.

6. The Claimant alleges that the Defendant deliberately publishes his Tweets in such a way so as to ensure that they come to the attention of the Claimant, and of a large number of other Twitter users. For example, [9.1.3] of the Particulars of Claim avers:

> "On several occasions the Defendant's aim of using his Twitter account to bring his allegations to the attention of an audience much larger than his own followers has been very successful. By way of example, a Tweet dated 18 November 2019 (Tweet 163), in which the Defendant accused the Claimant of corruption and of being behind an attack on the Defendant at his home, was Retweeted by the well-known Pakistani journalist Reham Khan, who has over 2.4milion Twitter followers. This led to the video embedded in that Tweet (Video 11) being viewed over 10,000 times. The inference will be invited that a very substantial

> proportion of those views were made by Urdu speakers within this jurisdiction."

7. The Defendant's Tweets during the relevant period of which the Claimant is aware are set out in a Table of Tweets in Appendix One to the Particulars of Claim. This Table gives each Tweet a number, sets out the content of the Tweet, states whether there was a video embedded within it (by reference to the number given to the video as described below) and states the number of any Retweets or 'likes' which the Tweet attracted.

8. The content of the embedded videos is given in the Table of Videos in Appendix Two to the Particulars of Claim. That Table gives each video a number and sets out the original Urdu language of the video along with a true English translation.

9. The defamatory meanings relied upon by the Claimant number some 20 in total and are listed in [14] of the Particulars of Claim, and further detailed in Appendix 3 to that document. They include that the Claimant dishonestly pretends to have made his money as a businessman when in fact his wealth is derived from family money obtained from illegal activity; that he is a perjurer and a criminal; that he is corrupt and a thief; and that he has committed a fraud against, and stolen land and valuables from, the Defendant's father. These are plainly very serious allegations. Paragraphs 16 and 17 of the Particulars of Claim aver:

> "Each of the meanings set out above under paragraph 14 are defamatory of the Claimant at common law and are seriously so. Given the extent of publication of the Tweets in question, and the nature and identity of the publishees, the Claimant will invite the inference that serious harm has been caused to his reputation by the publication of each such Tweet.
>
> Damage
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> 17. In addition to serious harm to his reputation the Claimant has been caused very severe distress and embarrassment by reason of the publication of the defamatory Tweets complained of and has been caused serious alarm, anxiety and distress by reason of the harassing course of conduct complained of."

10. According to the Defendant's Skeleton Argument at [3], he has made an open offer to make undertakings not to tweet about the Claimant, delete the Tweets complained of, and for a statement in open court, but that the Claimant has so far refused mediation.

Procedural history

11. The way this issue has come before the Court is not entirely straightforward, so I need to set out the procedural history in some detail.

12. A letter of claim pursuant to the Pre-Action Protocol for Media and Communications Claims (the PAP) was sent by the Claimant's solicitors, Stone White, on 10 December 2019. In that letter Stone White summarised the Claimant's complaint and sought remedies including the immediate cessation of the Defendant's Tweeting and suitable

undertakings as to his future conduct. A response was requested by 4pm on Wednesday 18 December 2019.

13. The Defendant received the letter of claim. He did not respond directly but sent a Tweet on 15 December 2019 (pleaded at [12] of the Particulars of Claim) which read in part:

> "Tell your solicitor @sayedzbukhari to file a case against me on Monday pls don't wait until Wednesday"

14. '@sayedzbukhari' is the Claimant's Twitter handle. Including it in a Tweet ensures that the Tweet will come to the attention of the Claimant in his Twitter feed. Doing this was usefully described to me in another case as an 'electronic knock on the door'. Paragraph 9.1.2 of the Particulars of Claim aver that the Defendant also very often includes the Twitter handle of a number of other Twitter users within his Tweets, with the intention that the Tweet will come to the attention of those individuals who have been 'tagged', and in the hope that the Tweet will be Retweeted by that individual, or that it will otherwise come to the attention of a wider audience.

15. A chasing letter was sent on 10 January 2020. The Defendant continued to fail to engage with the PAP and continued to Tweet about the Claimant.

16. Proceedings were drafted, and they were issued and served on 20 March 2020.

17. On 17 April 2020 the Defendant's solicitors (Law Lane) made the suggestion that there should be a trial of preliminary issues. They repeated that suggestion on 22 April.

18. In response to that suggestion, Stone White asked Law Lane to state the nature of any proposed Defence and the nature of the preliminary issues which they were proposing the Court should resolve.

19. On 23 April 2020 Law Lane replied indicating that (a) that 'the meaning of many of the tweets pleaded is strained and far too high" and (b) that the Defendant would seek to 'defend some of the tweets as true or honest opinion'. A trial of preliminary issues and meaning was again requested, and *Bokova v Associated Newspapers Limited* [2018] EWHC 2032 (QB), [9]-[10], was referred to. In those paragraphs Nicklin J said:

> "9. To an extent, this represents a culture shift in defamation pleadings, but it is one that has to be embraced in the new era where meaning will regularly be tried as a preliminary issue. Since the abolition of the 'right' to trial by jury in defamation proceedings, by s.11 Defamation Act 2013, libel actions now fall to be determined (and case managed) in the same way as any other civil proceedings in the High Court. One of the principal benefits of the change in mode of trial is that the way is now clear for the Court to determine the actual meaning of a publication as a preliminary issue. Indeed, as the natural and ordinary meaning of a publication is a matter upon which no evidence beyond the words themselves is admissible, in most

> cases meaning can be determined as soon as it is clear that the issue of meaning is disputed between the parties.
>
> 10. The benefits are obvious. Indeed, if there is no factual dispute on the issue of publication (e.g. a dispute over the actual words published, reference or innuendo), I struggle to see circumstances in which the parties would want to proceed through the stages of defamation litigation *without* having meaning determined. Its determination can lead to the parties resolving the dispute without the need for further litigation. Even if the claim cannot be settled at that stage, there remain significant benefits for the future conduct of the case. A defendant would know, for example, what would be required for any truth defence to have a real prospect of success. Equally, if meaning is determined *before* a Defence is served, it remains open to a defendant to make an offer of amends under s.2 Defamation Act 1996 (an opportunity that is lost "*after serving a defence*" (s.2(5)). But most importantly, it avoids the spectre of hugely wasteful litigation (perhaps requiring up to a year's preparation and several weeks of trial) of a meaning that the words are found not actually to bear. Some of the pitfalls of pleading a defence before the determination of meaning became apparent in *Morgan v. Associated Newspapers Ltd* [2018] EWHC 1725 (QB)."

20. On 28 April 2020 Stone White responded:

> "It is not every case in which meaning is in dispute where it is appropriate or proportionate to have a preliminary trial on meaning. Again, it depends on the nature of the remainder of any Defence. It may also depend on the nature and extent of the dispute about meaning. It is not sufficient for you merely to say that the 'meaning of many of the tweets is strained and far too high' and that your client 'seeks to defend some of the tweets as true or honest opinion'. Our client, and the Court, is entitled to a proper description of the nature and ambit of your client's proposed Defence in order to consider the case management implications of any preliminary trial, and if there is to be a preliminary trial, the issues which the Court should be asked to decide."

21. Law Lane's response of 30 April 2020 said the following (*sic*):

> "Our previous letter stated that our client wishes to defend the above claims not only on truth but also:
>
> 1) Honest Opinion
>
> 2) As your client is a public figure it is a matter of public interest that the truth is revealed.

3) The meanings pleaded are strained and far too high.

4) The serious harm threshold has not be proven."

22. Law Lane also said that the Defendant was 'collating all the evidence, documents and other witnesses that will be willing to attest to the validity of the assertions made.'

23. In response dated 5 May 2020 Stone White alleged that the Defendant was in breach of [3.7] of the PAP, in that he had not given a sufficient indication either of any facts on which he was likely to rely in support of any substantive defence, nor had he stated the imputations which he contended were conveyed by the statements complained of. Nevertheless, Stone White agreed that 'subject to the approval of the Court, a preliminary trial on the issue of meaning is likely to be appropriate'. As I shall explain, that there should be such a hearing was common ground before me. Stone White also suggested that the court be asked to determine the issue of whether the words complained of are defamatory at common law and whether they are statements of fact or opinion. The letter also said:

> "In order to allow that trial (and preparation for it) to take place on an informed basis, it will be necessary for your client to indicate in relation to each publication complained of (a) what meaning(s) he contends the publications complained of contained (b) whether that meaning is defamatory at common law and (c) whether the statement is fact or opinion. Only when that information is provided will it be possible to determine with any accuracy the time estimate for the hearing, and the detailed directions."

24. A draft consent order was provided with the letter which embodied Stone White's suggested way forward. That was eventually agreed by Law Lane and filed at court in May 2020 for the approval of the Master. In summary, the order provided as follows:

    a. that there be a preliminary trial on meaning, defamatory status and whether the words complained of were fact or opinion;

    b. the Defendant must state his case on meaning, defamatory status and fact or opinion in relation to each publication complained of;

    c. after the Defendant has stated his case, the parties were to agree a time estimate for the preliminary trial and any necessary directions for the hearing of it; and

    d. time for the Defence was extended to 28 days after the determination of the preliminary trial.

25. An order in the terms of agreed between the parties was made by Master Gidden on 29 May 2020.

26. However, before Master Gidden's Order was sealed (which did not take place until 20 June 2020) a conflicting order was made by Nicol J on 12 June 2020, apparently in

ignorance of Master Gidden's order. The reasons for this are not clear, but it is likely simply to have been a case of administrative oversight.

27. Nicol J declined to make the order which had been agreed between the parties, but rather ordered that the application by the parties for the trial of a preliminary issue be listed for a remote hearing before him or another judge from the Media and Communications List. Giving reasons for his order, he said the following at [3]:

> "The claim relates to a large number of tweets, some 249 are listed in Appendix 1 to the Particulars of Claim. In addition, some 21 videos are referred to in Appendix 2 to the Particulars of Claim. Although the Particulars of Claim allege that there are common threads of meaning running through the tweets, their meaning will require consideration of each individual tweet. That will be a burdensome task for the court. The parties are invited to consider how this task might be approached in a proportionate manner."

28. The parties being faced with two conflicting orders, Stone White asked for guidance from the judge in charge of the Media and Communications List by letter dated 24 July 2020**,** suggesting that the matter be listed for a case management conference.

29. The matter came before Soole J on 28 July 2020 on paper. He made the following order:

> "1. The Consent Order of Master Gidden is set aside.
>
> Reasons
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> (i) The parties' application for the trial of preliminary issues includes an application for determination of meaning. An application for determination of meaning must be made to a Judge: Practice Direction 53B paragraph 6.4; see also paragraph 6.3. However the application for a Consent Order was made to and granted by a Queen's Bench Master.
>
> (ii) The Order of Nicol J was evidently made without knowledge of the (unsealed) Order of Master Gidden.
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> (iii) In my judgment the necessary remedy is to set aside the Order of Master Gidden; and for the application to proceed in accordance with the Order of Nicol J."

30. The hearing before me therefore took place pursuant to the order of Nicol J. The parties are agreed, as I have said, that there should be a preliminary trial of issues pursuant to CPR PD53, [6.1], on the issues of (a) meaning; (b) defamatory status of the words complained of and (c) whether they contain allegations of fact or opinion. The issue I have to decide is what further directions should be given for that trial to proceed in a proportionate manner, and what, if any, other directions should be made.

The parties' submissions

31. The Claimant's position is that an order should be made for the trial of preliminary issues, with a direction that, first, the Defendant state his case on meaning in respect of each of the Tweets, and that the parties then seek to agree a time estimate for the preliminary trial and any other necessary directions.

32. In other words, the Claimant's position is that I should make an order in similar terms to that made by Master Gidden, with consequent directions for an early preliminary trial. He says that the Claimant's need for the relief sought has only increased in recent months because the Defendant has continued to Tweet about him.

33. The Claimant's core submission is that the consent order approved by Master Gidden represents an appropriate and proportionate next step in the proceedings. He acknowledges that there are a number of publications complained of in the libel claim but says that Nicol J was in error in thinking that there were 249 Tweets and 21 Videos and may not have been aware of the Defendant's agreement to pleading to all of the Tweets and videos complained of in the libel case. Mr Dean said those figures are the totality of the material complained of to demonstrate the harassing course of conduct. In relation to the libel claim there are, in fact, only 58 defamatory Tweets complained of and 13 defamatory videos. He says that the Defendant has never stated his case in relation to defamatory meaning of those Tweets. He makes the point that the Law Lane letter of 23 April 2020 complained that the meaning 'of many of' the Tweets was too high, and says this appears to indicate that meaning is not in dispute in relation to at least some of the Tweets.

34. The Claimant points out that the Defendant agreed to this course of action in May and that his reversal of position following Nicol J's order is 'opportunistic'.

35. The Claimant says that it is highly likely that once the Defendant's legal team have turned their minds to the question of the individual Tweets which are relied on as part of the libel claim, then any dispute on meaning will be very substantially narrowed. In a letter dated 24 July 2020 Stone White said:

> "We suspect that once the way forward agreed by the parties and embodied in the direction made by Master Gidden has been complied with, it will be possible very substantially to narrow the issues between the parties, and so address Nicol J's concerns about the proportionality of the preliminary trial (which was of course first proposed by your client)."
>
> We invite your client to do this as soon as possible, and in any event before the end of the month, or any further court hearing is earlier, so that the Court may understand the breadth and nature of any remaining issues between the parties which would fall to be determined at any preliminary trial."

36. By way of example, the Claimant points to the defamatory meaning pleaded at [14(2)] of the Particulars of Claim, namely that 'The Claimant is corrupt'. Fourteen tweets and two videos are said to contain that meaning. The Claimant says that of those Tweets

and videos only a small handful admit of any realistic argument that they do not bear that meaning. If that meaning is admitted in relation to the majority of the publications, then it may well be possible, in the interest of proportionality, for the Claimant to waive reliance on some of the others. However, he says that that is a process which should begin with the Defendant stating what his case is, and that it is not for him simply to drop reliance on conduct which his pleaded case states is unlawful.

37. The Claimant submits I should make an order in similar terms to the draft that was approved by Master Gidden which I summarised above at [24].

38. The Defendant's position is that the Claimant should select the 'best' examples of the (from the Claimant's point of view – his 'top ten', if you will), and that the preliminary issues trial be restricted to those. The Defendant has therefore apparently retreated from the position he took when the draft order put before Master Gidden was agreed by him. A letter from Law Lane dated 19 August 2020 stated:

> "In compliance with the overriding objective and to assist the Court in dealing with this matter, we suggest your client select ten sample meanings, with your client confining his case to these top ten meanings. Your client should adopt a discriminating approach and substantially reduce the number of tweets that would legitimately serve his purpose."

39. The Defendant has prepared a draft order, part of which provides:

> "1. The Claimant shall serve a document identifying ten publications from the First and/or Second Appendices to the Particulars of Claim ("the Sample Publications") by 4.30pm on [date];
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> 2. By 4.30pm on [date], the Defendant shall serve a statement of case setting out, in relation to each of the Sample Publications:
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> (a) the natural and ordinary meaning which he contends that the statement contains;
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> (b) whether he contends that the said meaning is not defamatory at common law; and
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> (c) whether he contends that the statement is a statement of fact or a statement of opinion."

40. In response to this suggestion, Stone White wrote on 2 September 2020:

> "We note your suggestion that our client confine his case to his 'top ten meanings'. It may well be possible to limit the ambit of the dispute for the Court at any preliminary issue trial. However before that can be done it is necessary for your client to set out his case on the publications which are complained of.

> We have repeatedly asked him to do so, and indeed he has agreed to do so, by consenting to the Order which was made by Master Gidden. Once he does so, we are confident that the areas of dispute between the parties will be very substantially narrowed. To the extent that dispute remains, it may then be possible to narrow the issues for the Court even further.
>
> We invite your client, yet again, to comply with this sensible, proportionate, and indeed agreed, way forward. Should he not do so, we will ask the Court to make a direction to that effect at the forthcoming hearing, and will invite the Court to order your client to pay the costs wasted by his refusal to date to comply with his obligations under the Overriding Objective to assist the court in the active case management of proceedings."

41. On behalf of the Defendant, Mr Hamer submitted, rightly, that the parties are obliged under CPR r 1.3 to help the court to further the Overriding Objective. The Overriding Objective includes r.1.1(2)(e) to allot *'*an appropriate share of the court's resources'. He said that the Claimant's proposal was 'oppressive' and would fail to deal with the matter either justly or at proportionate cost (Skeleton Argument, [20]).

42. Mr Hamer said that to understand the case properly 'a substantial paper-chase' must be undertaken by the reader. In order to find the pleaded meanings of each of the tweets (or indeed whether they are complained of in libel at all) the reader must follow a considerable number of steps which he set out in [21] of his Skeleton Argument (essentially, a tracing exercise through the Appendices to the Particulars of Claim and a cross-referencing exercise to the relevant defamatory pleaded meaning in [14]). He said this was an unsatisfactory approach to pleading meaning and that Warby J explicitly warned against 'pleading by way of annexes' in *Sube v News Group Newspapers Ltd* [2018] EWHC 1234 (QB) at [34].

43. Mr Hamer also said some of the Tweets complained of are part of a longer thread, which would need to be considered. He said that while some of the Tweets may appear to have a tolerably clear meaning as pleaded in the Claimant's appendices in isolation, the wider context cannot and should not be ignored, and might have a significant bearing on meaning. He also pointed out the language issue and referred me to the passage in *Gatley on Libel and Slander* (12th Edition), [3.27], fn. 304, about the approach to defamation in foreign languages:

> "(1) The requirement that the words should have been published to someone understanding the language is satisfied by proof that copies of the newspaper were sold since it can be inferred that it was bought by Serbo-Croat speakers. (2) The ordinary meaning of the words complained of will have to be established by agreement or by testimony. (3) Once that is done, no further evidence is admissible as to the meaning of the words or the sense in which they were understood, just as such evidence would not be admissible if the words had been published in English: see para.34.25, below. (4) The claimant may, of course, plead an innuendo if he complains of a defamatory meaning in the foreign language which depends upon extrinsic facts known to the readers."

44. As to this, Mr Hamer made clear that the Defendant is content to proceed on the basis that the translations as provided in the Appendices are accurate, and leave the question of meeting the requirement that the words were published to someone understanding the language to a later stage of proceedings; cf *Shakil-Ur-Rahman v ARY* [2015] EWHC 2917 (QB), [5].

Discussion

45. The essential question for me is how best to fashion a procedure by which the Claimant's libel claim can be adjudicated in a just and proportionate way. Nicol J invited the parties at [3] of his order to consider such an approach. I also bear in mind the Court of Appeal's words in *Jameel v Dow Jones & Co Inc* [2005] QB 946, [54]:

> "It is no longer the role of the court simply to provide a level playing-field and to referee whatever game the parties choose to play upon it. The court is concerned to ensure that judicial and court resources are appropriately and proportionately used in accordance with the requirements of justice."

46. Essentially for the reasons given by Mr Dean in his Skeleton Argument and orally, and the following reasons, I am satisfied that the proper, proportionate and correct course is for the Defendant to set out his case on meaning in respect of each of the Tweets and videos complained of, and for the trial of meaning and the other issues to take place once that exercise has been undertaken.

47. The Defendant was amenable to that course of action in May when the consent order was agreed that was put before Master Gidden. At [25] of his Skeleton Argument Mr Hamer said:

> "While it is accepted that D agreed to a preliminary trial of meaning it is now apparent that such an approach would be disproportionate. Determination of meaning for around 58 tweets including 13 videos (as far as it has been possible to discern from the Third Appendix) would be an arduous task for the court. Particularly at a time when the court system is under acute pressure due to the COVID-19 pandemic.

48. I note that no good reason is advanced for the Defendant's reversal of position and why something that was not thought to be unduly burdensome or disproportionate in May (when the country was in lockdown due to the pandemic, which it now is not) is thought to be so now.

49. I consider that Mr Dean was right to submit that the Claimant ought to be entitled to rely upon all of the publications he complains of in support of his claim for damages and for an injunction and ought not to be restricted in the manner suggested, now, by the Defendant.

50. Also, there is, I think, force in the point Mr Dean made that the number of publications complained of in the libel claim is very much smaller than the total number of publications listed in the various Appendices to the Particulars of Claim, and very much

smaller than the number of publications which Nicol J referred to at [3] of his order when he adverted to the Court's potentially 'burdensome' task of considering the meaning of 249 Tweets and 21 videos. Had there been that number of publications in issue in the libel claim then, like Nicol J, I might very well have concluded that to require a preliminary trial of issues on all of them would be disproportionate and burdensome, but that is not the case.

51. I do not consider it would be overly burdensome for the Defendant to set out his case on the restricted number of Tweets and videos in the libel claim (as I have said, according to Mr Dean, they number 58 and 13 respectively), or for the Court then to consider meaning and other issues in relation to those restricted number of publications. I accept Mr Dean's point that it is quite likely that the meaning of some of them will be obvious and there will quite likely, in relation to those, be very little to argue about. I do not consider that the exercise of determining the relevant defamatory pleaded meaning is especially complicated or difficult, as Mr Hamer submitted. I take Warby J's general point in *Sube*, supra, but there were particular criticisms he made in that case of the way it had been pleaded. Mr Dean's pleading is, if I may say so, clearly set out. To the extent that Mr Hamer said that the context might require consideration of other Tweets, then he can plead the context accordingly. The same would be true if only 10 tweets were chosen: the issue is simply one of scale, and as I have said, I do not consider the scale of publication I am concerned with to be disproportionate.

52. I consider that this course of action is consonant with the need to further the overriding objectives in the CPR, in particular, CPR r 1.4(1) and 1.4(2)(b):

> "(1) The court must further the overriding objective by actively managing cases.
>
> (2) Active case management includes –
>
> …
>
> (b) identifying the issues at an early stage;"

53. For these reasons, I will make an order in similar terms to that agreed by the parties in May. I invite them to supply a draft order accordingly.