Neutral Citation Number: [2022] EWHC 2176 (QB)

Case No: QB-2020-001013

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17th August 2022

Before :

The Honourable Mr Justice Griffiths

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Between :

Samuel Collingwood Smith	**Claimant**
- and -	
Esther Ruth Baker	**Defendant**

- -
- -

Samuel Collingwood Smith (in person)
Esther Ruth Baker (in person)

Hearing date: 26th July 2022

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Approved Judgment

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MR JUSTICE GRIFFITHS

The Honourable Mr Justice Griffiths :

1. This action originally consisted of a claim and counterclaim but the Claimant's claims have been settled and the former Second Defendant has a result ceased to be a party. All that remains is a counterclaim by the First Defendant, Ms Baker, against the former Claimant, Mr Smith. In it, she claims and damages and injunctions in proceedings based on causes of action in defamation and harassment.

2. This is a hearing to consider (1) directions for the further conduct of the action (2) an application by Mr Smith to strike out or obtain summary judgment on Ms Baker's counterclaim and (3) an application by Ms Baker for relief from sanctions and an extension of time for her Reply, which was due on 29 April 2022 and served on 25 July 2022, which was the day before the hearing.

3. It is logical to take these in reverse order and I will do so (and re-number them, accordingly). Ms Baker's application will affect the state of her pleadings. That, in turn, is the proper basis upon which to consider Mr Smith's application to strike out Ms Baker's claim or for reverse summary judgment against Ms Baker. Directions for the further conduct of the action will only be necessary if I decide not to strike out Ms Baker's claim and not to grant reverse summary judgment against her.

4. Both Mr Smith and Ms Baker have conducted these proceedings as litigants in person. As litigants in person, they are subject to the same rules as any other litigant. Per Lord Sumption in *Barton v Wright Hassall LLP* [2018] USKC 12 at para 18:

> "…lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court. The overriding objective requires the courts so far as practicable to enforce compliance with the rules: CPR rule 1.1(1)(f). The rules do not in any relevant respect distinguish between represented and unrepresented parties. In applications under CPR 3.9 for relief from sanctions, it is now well established that the fact that the applicant was unrepresented at the relevant time is not in itself a reason not to enforce rules of court against him: *R (Hysaj) v Secretary of State for the Home Department* [2015] 1 WLR 2472, para 44 (Moore-Bick LJ); *Nata Lee Ltd v Abid* [2015] 2 P & CR 3, [2014] EWCA Civ 1652. At best, it may affect the issue "at the margin", as Briggs LJ observed (para 53) in the latter case, which I take to mean that it may increase the weight to be given to some other, more directly relevant factor. It is fair to say that in applications for relief from sanctions, this is mainly because of what I have called the disciplinary factor, which is less significant in the case of applications to validate defective service of a claim form. There are, however, good reasons for applying the same policy to applications under CPR rule 6.15(2) simply as a matter of basic fairness. The rules provide a framework within which to balance the interest of both sides. That balance is inevitably disturbed if an unrepresented litigant is entitled to

> greater indulgence in complying with them than his represented opponent. Any advantage enjoyed by a litigant in person imposes a corresponding disadvantage on the other side, which may be significant if it affects the latter's legal rights, under the Limitation Acts for example. Unless the rules and practice directions are particularly inaccessible or obscure, it is reasonable to expect a litigant in person to familiarise himself with the rules which apply to any step which he is about to take."

5. Although they are both litigants in person, both Mr Smith and Ms Baker have some knowledge of the law. Mr Smith is not a qualified lawyer but he holds a Master's degree in law. Ms Baker is also not a qualified lawyer but she is studying for a law degree with the Open University. Moreover, in these and in other proceedings to which I will shortly refer, Mr Smith and Ms Baker have previous experience of the practice and procedure of the courts, including the Media and Communications List.

Baker v Hemming

6. In 2018, Ms Baker issued proceedings against John Hemming in the Media and Communications List claiming defamation in respect of publications online and in the *Daily Mail*. Mr Hemming admitted that the ordinary and natural meanings of these publications included that Ms Baker was a liar who had maliciously made up false allegations of rape against him, and that she was a fantasist who had made false allegations about the sexual abuse of children. By his counterclaim, Mr Hemming also brought his own claim of defamation against Ms Baker. These details, and others to which I will refer, are from the judgment of Steyn J in *Baker v Hemming* [2019] EWHC 2950 (QB).

7. After close of pleadings, Mr Hemming issued an application seeking to strike out Ms Baker's Defence to Counterclaim and for summary judgment on the counterclaim and dismissal of the claim. These applications were heard by Anthony Metzer QC, sitting as a High Court Judge, on 15 April 2019. He resolved them by ordering Ms Baker to amend her pleadings, and ordered Ms Baker to pay Mr Hemmings' costs.

8. Ms Baker did amend her pleadings but Mr Hemmings exercised the right, granted to him by the Order of Anthony Metzer QC, to revive his applications against her. Although Mr Smith was not a party to this action, he provided a witness statement which was relied upon by Mr Hemming (para 27 of the judgment of Steyn J).

9. On 5 November 2019, Steyn J granted Mr Hemming's application in part: *Baker v Hemming* [2019] EWHC 2950 (QB). She struck out parts of Ms Baker's pleadings. She gave judgment for Mr Hemming on his defamation counterclaim, based on the ordinary and natural meaning "that [Mr Hemming] raped and sexually assaulted [Ms Baker], then stalked and defamed her to cover it up" and that he had "committed other rapes and is a serial rapist" (paras 14 and 128(h) of the judgment of Steyn J).

10. She also ordered that Ms Baker's defamation claim was to be struck out unless she served yet further amended pleadings.

11. Steyn J's judgment provided a summary (at paras 30-33), with quotations (at para 32) from the version of Practice Direction 53 in force at that time, of the particular requirements of a pleading in a defamation case and of the provisions for striking out and summary judgment. She recognised Ms Baker's difficulties in representing herself, but said "it is obvious that merely repeating what she had already been informed was inadequate could not, on any view, comply with paragraph 7a of the Order [of Anthony Metzer QC]".

12. Steyn J referred to Ms Baker's reliance upon a letter dated 9 April 2019 from Dr John Stevens, a Consultant Psychiatrist. She said (at para 49):

> "This letter is not a report that complies with CPR Part 35. Nor does it address the question whether the Claimant had capacity to litigate…"

13. Steyn J made the point that the defects of Ms Baker's pleadings subsisted notwithstanding specific opportunities which had been given to her by Anthony Metzer QC to remedy them. Steyn J decided that these defects meant that the Practice Direction 53 para 2.1 requirement that the defendant be informed of the case he had to meet were not satisfied.

14. I am not aware of subsequent steps in in the case of *Baker v Hemming* but I do know that it remains on foot although it has not yet been tried.

Lavery v Baker

15. In January 2018, Andrew Lavery issued proceedings against Ms Baker in the County Court at Newcastle on Tyne. Mr Lavery claimed damages and an injunction against Ms Baker under section 3(1) of the Protection from Harassment Act 1997 as a result of what he contended was a campaign of online abuse directed at him by her on Twitter.

16. The case was tried before His Honour Judge Mark Gargan who gave judgment on 13 November 2019 (the "Gargan Judgment"). Judge Gargan identified 20 allegations of harassment against Ms Baker. Of these, one was abandoned and three were dismissed, but the remaining 16 were all found proved against Ms Baker. Judge Gargan found that Ms Baker's conduct was "vindictive, obsessive and unpredictable"; and that her harassment had been "particularly malevolent" and "part of a sustained campaign" (Gargan Judgment para 122). Ms Baker's victim, Mr Lavery, was a survivor of child sexual abuse who had core participant status at the Independent Inquiry into Child Sexual Abuse. He suffered from complex PTSD. The Gargan Judgment found (at para 112) that he suffered further damage as a result of the harassment from Ms Baker. Judge Gargan decided that Ms Baker "has demonstrated a facility to convince herself that whatever she is saying at the time is correct" and "even if she is honest, she is certainly not reliable" (para 49). Her evidence "bore little or no resemblance to the assertions made in her witness statement" (para 45).

17. Mr Smith relies on these findings in support of a submission that Ms Baker's reputation is such that her claim in defamation is weak. They do not, however, appear to me to be relevant to the procedural points which I have to consider first.

These proceedings

18. The Claim Form in these proceedings was issued on 12 March 2020. The Defence and Counterclaim in its original form by Ms Baker was dated 6 June 2020.

Judgment of Master Sullivan on 20 October 2020

19. On 8 July 2020, Mr Smith applied to strike out Ms Baker's Defence and Counterclaim and for summary judgment on the claim and counterclaim. This came before Master Sullivan for hearing on 30 September 2020 and she gave judgment on 20 October 2020: *Smith v Baker* [2020] EWHC 2776 (QB) ("Sullivan 1").

20. In Sullivan 1, Master Sullivan summarised the basis of the application to strike out and for summary judgment against Ms Baker as follows (para 6):-

> "i) the defendant has failed to comply with the court rules and practice directions when pleading her claim when she knew, given previous litigation, what those rules are. The default is said to be such that it amounts to an abuse of process;
>
> ii) where the defendant has properly pleaded matters, they have no realistic prospect of success at trial; and
>
> iii) the counterclaim is an abuse of process as it either should have been brought in the *Baker v Hemming* proceedings (the rule in *Henderson v Henderson*) or is a collateral attack on a judgment in that and other proceedings."

21. Master Sullivan noted (at para 70):

> "…the fact that, as a result of the defendant's failure to satisfy a costs order obtained against her in other litigation, she has been made bankrupt. The claimant is therefore litigating with no real prospect of recovering costs. The defendant has made procedural errors before and has had them pointed out, she says she will fix them but is given multiple chances which cases him great expense and distress."

22. Master Sullivan allowed Ms Baker's counterclaim to proceed. But she found that "there are substantial defects in the defence and counterclaim" (para 65), which she identified. She said "In my judgment there is a significant breach of the CPR and in particular PD53B" (para 72).

23. She said "I am not willing to strike out the defence and counterclaim at this stage. The defence and counterclaim do however require significant amendment… I wish to make it clear that if there is any significant breach in the amended pleading, the relevant part is likely to be struck out." (para 78). Master Sullivan said "the defendant is required to amend her defence and counterclaim to comply with the rules" (para 85).

24. As well as providing Ms Baker with another chance to fix her defective pleadings, Master Sullivan helpfully provided a summary of the relevant provisions of the CPR and of Practice Direction 53B (paras 80-84 of Sullivan 1).

Judgment of Master Sullivan on 18 February 2021

25. Ms Baker amended both her Defence and her Counterclaim on 27 November 2020.

26. After the amendments, Mr Smith renewed his applications to strike out the Amended Defence and Counterclaim and for summary judgment on the claim and counterclaim.

27. Master Sullivan heard the applications on 14 January 2021 and gave judgment on 18 February 2021: *Smith v Baker* [2021] EWHC 348 (QB) ("Sullivan 2"). Master Sullivan said (at para 6 of Sullivan 2):-

> "I do not accept that the defendant should be given further chances to amend her pleadings where they are still significantly in default. My previous judgment explained the rules and what is required for compliance. The defendant raised what she describes as her "ongoing and proven disabilities" and in addition the effects of medication she is on due to having suffered a TIA [a transient ischaemic attack or mini stroke]. She has not provided the evidence that would be required in order for me to make a decision on whether any adjustments were required as a result of any medical condition or medication taken as a result. I accept that she has psychiatric disorders and that she may suffer from issues with concentration. However, she has had a significant amount of time to draft her pleadings and amend those pleadings and so those difficulties have already been taken into account. I do also take into account that she has had similar issues in previous cases where what is required in pleadings has been explained. In my judgment she has had the opportunity to make good her pleadings, I must now assess them as they stand."

28. In Sullivan 2, Master Sullivan struck out Ms Baker's Amended Defence save for the issues pleaded in respect of meaning, serious harm and the requirement to prove harassment and loss; in other words, preserving passages relevant to the counterclaim. Master Sullivan also struck out certain passages in the counterclaim. The result was that Ms Baker's pleadings were significantly cut down, but her counterclaim lived on to fight another day. It was not struck out entirely, and summary judgment was not granted against her.

29. Master Sullivan ordered Mr Smith to serve a defence to counterclaim and she ordered Ms Baker to serve a reply if required or if she wished to.

The proceedings since Sullivan 2 and leading to the hearing on 26 July 2022

30. A settlement of Mr Smith's claims against Ms Baker was given effect by an order of Master Gidden on 23 February 2021, which set out the terms of settlement in an open

schedule. That left Ms Baker's counterclaim against Mr Smith as the only remaining cause of action in the case.

31. Nicklin J ordered on 22 October 2021, with the consent of the parties, that the issues of meaning, and whether each statement was defamatory, and whether each statement was of fact or opinion, should be determined by a judge without a hearing on the basis of written submissions to be filed by the parties. A total of 11 publications were in issue.

32. I gave judgment on those points on 10 February 2022, having considered the written submissions: *Smith v Baker* [2022] EWHC 246 (QB) ("Griffiths 1").

33. My judgment resulted in an Order dated 9 March 2022 ("the Griffiths Order") which, as well as deciding the issues of meaning, whether defamatory, and whether and fact or opinion, made orders for a further round of pleadings and for a case management hearing, which was the hearing listed before me on 26 July 2022 and in respect of which I am now giving judgment.

34. Pursuant to the Griffiths Order, Ms Baker served a Re-Amended Defence to Counterclaim on 18 March 2022.

35. On the same day, Mr Smith pointed out to her by email that her latest Re-Amended Defence to Counterclaim had reinstated certain passages struck out by Master Sullivan, pursuant to the Sullivan 2 judgment.

36. In response, Ms Smith apologised and uploaded, still on 18 March 2022, a revised version, which is the current Re-Amended Defence to Counterclaim. However, some passages struck out by Sullivan 2 are still in it.

37. Mr Smith served a Re-Amended Defence to Counterclaim on 8 April 2022 in response.

38. On the same day, 8 April 2022, Mr Smith issued his application to strike out the new Re-Amended Defence to Counterclaim and/or for summary judgment on it in his favour.

39. Ms Baker failed to serve an Amended Reply to Defence to Counterclaim in response, which para 39 of the Griffiths Order had required of her by 29 April 2022.

40. Ms Baker issued an application for relief from sanctions on 3 May 2022 arising out of her failure to serve an Amended Reply to Defence to Counterclaim and seeking an additional 14 days for doing so, i.e. an extension until 13 May 2022. With the application, she served a letter from Mersey Care NHS Foundation Trust Community and Mental Health Services dated 29 April 2022, unsigned but on headed paper, saying that Ms Baker was "currently struggling with low mood and in turn this is affecting her motivation to engage with the requirements of the upcoming court proceedings." The letter is lacking in substance and detail, and does not comply with the requirements of CPR 35, quite apart from there being no permission to rely on it as expert evidence. There has been no expert or other medical evidence about Ms Baker's ability to engage with the proceedings since then. At the hearing before me

on 26 July 2022, she and Mr Smith both presented their cases courteously and systematically and Ms Baker engaged appropriately.

41. Although Ms Baker's application for relief from sanctions envisaged that she would serve her Amended Reply and Defence to Counterclaim 14 days late, on 13 May 2022, she did not serve it at all. On 31 May 2022, in response to an email from Mr Smith, she said it was "nearly finished" but had taken longer than it ordinarily would because of all the defences raised, and she mentioned also "8 weeks of severe illness that I have undergone".

42. On 15 July 2022, Mr Smith emailed Ms Baker. He referred to the deadline for filing the bundle for the hearing on 26 July 2022 and asked for agreement on documents. He also asked for the Amended Reply to Defence to Counterclaim, which had still not been served. He said that he would agree to relief from sanctions and an extension of time for this if there was adequate medical evidence. However, this was on the assumption that it would, eventually, be forthcoming.

43. Ms Baker does not appear to have responded to this.

44. Mr Smith filed a bundle of documents for the hearing on 26 July, to which Ms Baker, as she confirmed to me, had nothing to add. Mr Smith filed his skeleton argument, on the date ordered, which was 19 July 2022.

45. Ms Baker also filed a skeleton argument, a little late, on 22 July 2022. In it, she conceded that she should not have reinstated in her Re-Amended Defence to Counterclaim on 18 March 2022, passages previously struck out by Master Sullivan, and conceded that those passages, but only those passages, should be struck out from that pleading.

46. Ms Baker filed an incomplete draft of her Amended Reply to Defence to Counterclaim on 25 July 2022, which was the day before the hearing on 26 July 2022. It is incomplete because, although the counterclaim is based on 11 publications between 6 May 2019 and 14 April 2020 (details of which are in the Griffiths Order), the draft Amended Reply to Defence to Counterclaim filed the day before the hearing deals only with Publication 1. Mr Smith's case on Publications 2-11 is not addressed at all. The last reference in Ms Baker's draft pleading to Mr Smith's pleading is (in para 81 of her draft) to paras 116-118 of Mr Smith's pleading. Mr Smith deals with publications 2-11 in paras 127 onwards of his pleading, and Ms Baker's draft has not got that far. Ms Baker's draft, being incomplete and in draft, is not signed by a statement of truth. At the hearing on 26 July 2022, Ms Baker said that her draft was a work in progress.

47. At the hearing on 26 July 2022, I asked Ms Baker when she would be able to serve a complete version. She suggested she would need a further week. I have reserved this judgment beyond that further week, but no further draft, complete or incomplete, has been provided by Ms Smith.

(1) Ms Baker's application for relief from sanctions and for more time to serve her Amended Reply to Defence to Counterclaim

48. Ms Baker applies for relief from sanctions in respect of her failure to serve the Amended Reply to Defence to Counterclaim which was due (by para 39 of the Griffiths Order) on 29 April 2022. She has not served it within the extended 14 day period sought in her application dated 3 May 2022. She did not serve it before the hearing of her application on 26 July 2022. She has not served it in the week after that hearing which was the extra time she said she needed.

49. CPR 3.9 provides:

> "(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need –
>
> (a) for litigation to be conducted efficiently and at proportionate cost; and
>
> (b) to enforce compliance with rules, practice directions and orders.
>
> (2) An application for relief must be supported by evidence."

50. In this case, no sanction was imposed by the Griffiths Order in the event of Ms Baker's non-compliance. However, Ms Baker has in effect sanctioned herself by failing to serve a complete Amended Reply to Defence to Counterclaim at all, so that she is without the benefit of such a document. Her draft is incomplete and (as she has made clear to me) not in final form.

51. When considering whether to grant relief from sanctions, or, indeed, whether to allow Ms Baker further time to serve her Amended Reply to Defence to Counterclaim in the future, the parties agreed that I should apply the three-stage test in *Denton v T H White Ltd* [2014] EWCA Civ 906.

52. The first stage is to identify and assess the seriousness of the breach. Ms Baker accepts that her breach is serious. Not only is she well out of time for serving the document, she has still not served it. The action cannot proceed efficiently until the pleadings have closed. This is particularly so in the case of a defamation claim, because Practice Direction 53B (Media and Communications Claims) paras 4.7 and 4.8 provide:

> "4.7
>
> Where a defendant relies on a defence under section 2(truth), section 3 (honest opinion), or section 4 (publication on a matter of public interest) of the Defamation Act 2013, the claimant must serve a reply specifically admitting, not admitting, or denying that defence and setting out the claimant's case in response to each fact alleged by the defendant in respect of it.
>
> 4.8

> (1) If the defendant contends that any of the statement complained of, or any part thereof, was honest opinion, or was published on a privileged occasion, and the claimant intends to allege that the defendant did not hold the opinion or acted with malice (as applicable), the claimant must serve a reply giving details of the facts or matters relied on.
>
> (2) If the defendant relies on any other defence, and the claimant intends to allege that the defence is not available because of the defendant's state of mind, the claimant must serve a reply giving details of the facts or matters relied on."

53. Mr Smith's Re-Amended Defence to Counterclaim raises the following defences:

i) "Truth, Honest Opinion, 100% failure to mitigate loss, Publication on a Matter of Public Interest, Qualified Privilege of Reply to Attack… and the fact that D1 has no reputation to defend": para 22, in relation to Publication 1.

ii) "Truth, 100% failure to mitigate loss, Publication on a Matter of Public Interest, Qualified Privilege of Reply to Attack and the fact that D1 has no reputation to defend": para 134, in relation to Publication 2.

iii) "Truth, 100% failure to mitigate loss, Publication on a Matter of Public Interest, Qualified Privilege of Reply to Attack and the fact that D1 has no reputation to defend": para 162, in relation to Publication 3.

iv) "Truth, Honest Opinion, 100% failure to mitigate loss, Publication on a Matter of Public Interest, Qualified Privilege of Reply to Attack and the fact that D1 has no reputation to defend": para 193, in relation to Publication 4.

v) "Truth, Honest Opinion, 100% failure to mitigate loss, Publication on a Matter of Public Interest, Qualified Privilege of Reply to Attack and the fact that D1 has no reputation to defend": para 210, in relation to Publication 5.

vi) "Truth, 100% failure to mitigate loss, Publication on a Matter of Public Interest, Qualified Privilege of Reply to Attack and the fact that D1 has no reputation to defend": para 238, in relation to Publication 6.

vii) "Truth, Honest Opinion, 100% failure to mitigate loss, Publication on a Matter of Public Interest, Qualified Privilege of Reply to Attack and the fact that D1 has no reputation to defend": para 253, in relation to Publication 7.

viii) "Truth, 100% failure to mitigate loss, Publication on a Matter of Public Interest, Qualified Privilege of Reply to Attack and the fact that D1 has no reputation to defend": para 275, in relation to Publication 8.

ix) "Truth, Statutory Absolute Privilege pursuant to s14 Defamation Act 1996, Statutory Qualified Privilege pursuant to s15 Defamation Act 1996, 100% failure to mitigate loss, Publication on a Matter of Public Interest, Qualified Privilege of Reply to Attack and the fact that D1 has no reputation to defend": para 304, in relation to Publication 9.

x) "Truth, Honest Opinion, Statutory Qualified Privilege pursuant to s15 Defamation Act 1996, 100% failure to mitigate loss, Publication on a Matter of Public Interest, Qualified Privilege of Reply to Attack and the fact that D1 has no reputation to defend": para 336, in relation to Publication 10.

xi) "Truth, Honest Opinion, Statutory Qualified Privilege pursuant to s15 Defamation Act 1996, 100% failure to mitigate loss, Publication on a Matter of Public Interest, Qualified Privilege of Reply to Attack and the fact that D1 has no reputation to defend": para 361, in relation to Publication 11.

54. This means that a reply from Ms Baker is absolutely required, and the implied joinder of issue applicable in the absence of a reply in an ordinary case does not apply, and does not suffice.

55. Mr Smith particularises his various defences elsewhere in his pleading.

56. I have no doubt that Ms Baker's failure to serve her final and complete Amended Reply and Defence to Counterclaim is a serious and significant breach of the Griffiths Order. The action cannot proceed properly unless and until the issues have been defined. For example, the ambit of disclosure and the contents of witness statements will depend on the issues defined in the pleadings. By failing to serve the pleading, as ordered, Ms Baker has effectively brought the action to a standstill. Worse still, she has not remedied the breach even in the many months since the date upon which the original obligation to serve the pleading fell due. Nor is there any real prospect of her doing so in the foreseeable future.

57. Stage two of the three-stage test requires me to consider why the default or breach occurred. The reason given by Ms Baker for her delay is (in her Application Notice dated 2 May 2022) "due to her disability and a recent exacerbation which has been going on for several weeks". The reason given at the hearing on 26 July 2022 was that Ms Baker had been ill. However, no medical evidence supported either the fact or the nature or the effect of the illness. When asked about medical evidence, Ms Baker said she would be seeing nurses and doctors the week after the hearing, although she also said she had no appointment. The specific illness she referred to was her mini stroke and an impairment of vision but this long preceded the Griffiths Order and did not explain a delay of many months, which continues. Ms Baker did not claim that her illness prevented her from doing the work, but only that it made it slower and more difficult. The fact that she produced her incomplete draft Amended Reply to Defence to Counterclaim showed that she was capable of doing the work.

58. Ms Baker has failed to show a good reason for failing to serve her final and complete Amended Reply and Defence to Counterclaim by the due date, or at all. She has also failed to show any reason why she should be allowed more time to do so in the future. There is no reason to think that she will do in future what she has failed to do until now.

59. My conclusions on stages one and two of the three-stage *Denton* test are, therefore, adverse to Ms Baker. But, despite this, I must still go on to consider all the circumstances of the case in order to deal with the application justly. Among the circumstances of the case I consider are:

i) The factors specified in CPR 3.9, namely, the need for litigation to be conducted and at proportionate cost and the need to enforce compliance with rules, practice directions and court orders. Ms Baker's failure has increased the costs by making it impossible to set directions now as envisaged by the Griffiths Order, the steps ordered in the Griffiths Order not having been completed.

ii) The requirements of the overriding objective in CPR 1.1, allotting to this case an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

iii) Ms Baker's knowledge from previous cases and orders, which I have summarised above, that she cannot expect to breach the requirements of the pleading rules without consequence.

iv) The lack of medical or other evidence to justify Ms Baker's delays and failures.

v) The inadequacy, even taking her medical explanation at face value, of that explanation to explain such a long delay and her continuing failure to engage with the requirements of the Griffiths Order and of Practice Direction 53B (which has been specifically drawn to her attention in previous judgments).

vi) The fact that there is no realistic prospect of Ms Baker complying in future, even if given time to do so.

60. In support of being relieved from sanctions, and being allowed more time, Ms Baker argued her lack of means. However, she is conducting the proceedings as a litigant in person, which costs her little or nothing. She began the case as a litigant in person and she has conducted the other cases as a litigant in person. She is entitled to do that, but doing that does not absolve her from the requirements of the rules or of orders made against her. She told me she had applied for exceptional legal funding on 18 March 2022 but provided no evidence of this and did not suggest there is any imminent prospect of such funding being granted. It does not seem to me likely that it will be granted. In any case, I do not think that legal funding would make much difference. Ms Baker is the only person who can respond to Mr Smith's case, and she would have to do so by giving instructions to a legal professional if she did not do so directly herself.

61. Ms Baker also said that Mr Smith is aware of the case against him. However, that is not correct. She has not pleaded her response to his various defences, and her current draft does not cover more than Publication 1. Even if it were possible to guess or speculate on what her response might be, perhaps by extrapolation from what she has pleaded so far, that is not good enough. It is for her to state her case, so that her opponent knows the case he has to meet.

62. I also bear in mind that Mr Smith cannot in this case be compensated by orders for costs. Ms Baker is not in a position to pay any substantial order for costs and has not yet completed payment of the costs already ordered against her in this and other actions.

63. I conclude that Ms Baker should not be granted relief from sanctions and should not be given more time to complete and file her Amended Reply and Defence to Counterclaim. I will, however, take account of the incomplete draft served on 25 July 2022 , for what it is worth, in the remainder of this judgment.

(2) Strike out of Ms Baker's counterclaim and/or reverse summary judgment against her

64. Mr Smith's application to strike out or obtain summary judgment on Ms Baker's counterclaim was issued on 8 April 2022, which was before Ms Baker failed to serve her Re-Amended Reply and Defence to Counterclaim. That failure is therefore an additional matter for me to take into account. I also bear in mind that the power to strike out can be exercised by the court on its own initiative, and not only in response to an application. It is a power to be exercised sparingly and only as a last resort. It requires a plain and obvious case.

65. I have to consider, not only whether there is a basis for striking out all or part of the counterclaim or granting reverse summary judgment, but whether that would be the just order to make in all the circumstances of the case, having particular regard to the question of whether striking out would be disproportionate: *Asiansky Television plc v Bayer Rosin* [2001] EWCA Civ 1792.

66. By CPR 3.4(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 or defending 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."

67. By para 4.1 of Practice Direction 3A, the court may exercise its powers under rule 3.4(2)(a) or (b) on application or on its own initiative at any time.

68. I will consider, first, the latest version of Ms Baker's Re-Amended Counterclaim (which is the second version filed on 18 March 2022). I will then consider her draft Amended Reply to Defence to Counterclaim, and the implications of the absence of a complete or final version of that pleading.

69. Paras 1 to 35 of the Griffiths Order determined the natural and ordinary meanings of each of the 11 Publications upon which the Counterclaim is brought, and whether, in each case, the meaning was a statement of fact or an expression of opinion, and whether it was defamatory at common law.

70. Para 37 of the Griffiths Order required Ms Baker, by 18 March 2022, to file and serve a Re-Amended Counterclaim "which is updated to reflect the rulings set out in

paragraphs 1 to 35 above… The Defendant does not have permission to amend in any other respect."

71. The second version of the Re-Amended Counterclaim filed on 18 March 2022 was Ms Baker's response to that order.

72. Mr Smith set out his objections to the Re-Amended Counterclaim in his Application Notice dated 8 April 2022, in his skeleton argument dated 18 July 2022 (which preceded Ms Baker's skeleton argument dated 21 July 2022) and his oral submissions at the hearing on 26 July 2022.

73. Ms Baker has not submitted any revised Re-Amended Counterclaim in response to these points. She has conceded that she has added passages which have already been struck out by Master Sullivan and that they should be struck out. Apart from that, she stands by her pleading and offers no amendment or improvement.

74. I bear in mind that Ms Baker has a history of non-compliance with pleading requirements, and has been to some extent schooled by previous rulings and judgments in what is required of her.

75. Para 15 of the Re-Amended Counterclaim pleads that the publications "include allegations of serious and dangerous mental illness, lying, discrediting other victims/survivors of childhood sexual abuse, delusional, violent, psychotic and easily manipulated." This is a free-wheeling characterisation of meaning which does not reflect the precisely defined meanings determined by paras 1-35 of the Griffiths Order. It is in breach of the requirement of para 37 of the Order that amendments should not go beyond the meanings determined by the Griffiths Order. It is also an abuse of process and is likely to obstruct the just disposal of the proceedings. This sentence – the first sentence of para 15 of the Re-Amended Counterclaim – must therefore be struck out. No alternative version has been offered. Ms Baker's previous history of defective pleading demonstrates to me that there is no prospect of her producing a satisfactory alternative version.

76. Para 16 of the Re-Amended Counterclaim is a repetition of para 28 of the previous version, but with the addition of text from that paragraph which have previously been struck out by Master Sullivan. Those additions must be struck out again.

77. With these deletions to paras 15 and 16, paras 15 to 17 of the Re-Amended Counterclaim reads as follows:

> "**Serious harm.**
>
> 15. [sentence deleted]. These are self-evidently likely to cause serious harm.
>
> 16. The publication clearly causes and is likely to continue to cause in the future serious harm to the defendant's reputation. [remainder deleted]
>
> 17. The publication complained of is plainly defamatory and has caused and likely to cause serious harm to the defendant. In support of this the defendant can rely on.

> (i) the defendant's reputation as a campaigner, as a survivor of abuse, and as a core participant at IICSA
>
> (ii) The claimant's standing as a legally trained prior successful litigant, who claims to have been praised by parliament, high court judges, a former politician, and owner of a "highly profitable company", an "ethical law blogger and journalist".
>
> (iii) that the blog has seen substantial publication and widely shared on other sites, which shows that it has been found credible by others
>
> (iv) that both acquaintances, former employers and strangers have seen the publications and that these people have shared the publication with the defendant and her acquaintances, family and friends."

78. So far as serious harm is concerned, the only point of substance now remaining in this passage is in para 16(iv), which states that "acquaintances, former employers and strangers have seen the publications and that these people have shared the publication with the defendant and her acquaintances, family and friends." However, none of the people in question are identified and no details of the sharing are given. It is a plea which in its current form does not allow Mr Smith to know the case he has to meet.

79. In context, the surviving passages refer only to Publication 1, and come after paras 10-12 of the Re-Amended Counterclaim which correctly reflect paras 2-4 of the Griffiths Order as follows:

> "The natural and ordinary meaning of the First Publication is:
>
> (1) Ms Baker has a mental illness and, as a result of this, she has been making allegations which are not true.
>
> (2) Her untrue allegations are dangerous and may discredit the campaign for real victims.
>
> (3) No attention should be paid to her when she makes them.
>
> Meaning (1) is a statement of fact. Meanings (2) and (3) are expressions of opinion.
>
> Meanings (1), (2) and (3) are defamatory at common law."

80. To this, Mr Smith defends on the basis of para 22 of the Re-Amended Defence to Counterclaim, which alleges "Truth, Honest Opinion, 100% failure to mitigate loss, Publication on a Matter of Public Interest, Qualified Privilege of Reply to Attack… and the fact that D1 has no reputation to defend".

81. Ms Baker has not pleaded to Mr Smith's case (on grounds set out elsewhere in his pleading) that it is true that Ms Baker has a mental illness and, as a result of this, has been making allegations which are not true, because she has not filed a Re-Amended Reply to Defence of Counterclaim.

82. In the draft which she provided on 25 July 2022, her response to the defence of truth does not appear to deny that she has a mental illness. In para 18 she says that she had "diagnoses including psychosexual trauma disorder and PTSD" and later in that paragraph, and in her oral submissions to me, she referred to having suffered auditory hallucinations (hearing voices) although she emphasised that she knew they were not real voices.

83. So far as the making of allegations which are not true is concerned, Mr Smith relies on the judgment of Steyn J in *Baker v Hemming* [2019] EWHC 2950 (QB) which found that Ms Baker had defamed Mr Hemming by stating that he had raped and sexually assaulted her, that he had then stalked and defamed her to cover it up and that he had committed other rapes and is a serial rapist. Steyn J found that Ms Baker had no defence to the defamation claim (she had, in particular, no defence of truth) and granted injunctive relief against her.

84. Ms Baker's draft Re-Amended Reply to Defence of Counterclaim responds to this by saying (in para 23), "The judgement in *Baker v Hemming* was made without sight of the evidence, and was based on procedural mistakes". In oral submissions, Ms Baker confirmed that she did not accept Steyn J's judgment. That is an unsustainable position. The judgment of Steyn J was final and binding on Ms Baker. She cannot now invite the court to depart from it.

85. Mr Smith also relies on the Gargan Judgment in *Lavery v Baker* (paras 42-47 of Mr Smith's Re-Amended Defence to Counterclaim) to support his defence of truth and lack of reputation. Ms Baker's draft Re-Amended Reply to Defence of Counterclaim responds (in para 28) by pleading that His Honour Judge Gargan was wrong. "In summary, the Judge formed an opinion, not based on the evidence, but on his perception of the claimant and defendant." However, the Gargan Judgment is a judgment against Ms Baker after a trial. It was based on the evidence, which is set out in the judgment. Ms Baker's position in this respect is unsustainable.

86. Since there is no dispute that Mr Smith did publish the statements identified in this action as Publications 1 – 11, and since both the ordinary and natural meanings of those publications, and the extent to which they were statements of fact or expressions of opinion, have been determined by the Griffiths Order, Mr Smith's defences, which I have summarised in para 53. above, are key to the resolution of the defamation case.

87. Ms Baker's draft Re-Amended Reply to Defence of Counterclaim is discursive and confusing in its response to these defences, even in respect of Publication 1, which is the only publication it deals with. It fails to define the issues or to set out a clear and coherent case in response to the defences. This would be so even if it were to be taken as a final pleading, verified by a statement of truth. However, it is not final, and not verified. It is a draft and a work in progress. It is therefore worth very little. In its present form, it makes it impossible for the action to proceed even in respect of Publication 1. Disclosure, witness statements and a trial cannot take place in respect of Publication 1 on the current state of the pleading. And yet there is in my judgment, based on the history, and on Ms Baker's position at the hearing on 26 July 2022, no prospect of an improvement.

88. The position is even worse in respects of Publications 2-11, because Ms Baker's draft Re-Amended Reply to Defence of Counterclaim has not got as far as dealing with

those at all.

89. In addition to her defamation claims, Ms Baker has in paras 115-124 of her Amended Counterclaim brought claims of harassment contrary to sections 1 and 3 of the Protection from Harassment Act 1977. As well as relying on her defamation claim (para 115 of the Amended Counterclaim), Ms Baker pleads harassment in para 116 of the Amended Counterclaim. This consists of 14 sub paragraphs numbered (i) to (xiv). However, sub-paragraphs (iii) to (xi) and sub-paragraph (xiii) resurrect passages which have already been struck out by Master Sullivan. They must be struck out again. What is left after that is vague and lacking in sufficient particulars to allow Mr Smith to know the case he has to meet.

90. At the very least, if the action proceeds, it seems inevitable that there will have to be further hearings either before a judge or a master in the course of which efforts are made to thrash out a legitimate and coherent pleading, or to coax one out of Ms Baker, by a process of criticism, exhortation, orders, striking out, further revision, and further review, on top of the process which has already taken place at hearings to date, particularly the two hearings before Master Sullivan and the hearing on 26 July 2022 before me. Experience shows that it is not enough to make orders against Ms Baker. She has still not complied with para 39 of the Griffiths Order. I consider even one such further hearing to be a waste of time with no real prospect of a useful, let alone a final, outcome in terms of progressing the ability of the court to try the case.

91. I see nothing in the past history or in the present state of affairs to suggest that allowing the action to limp on, making progress, if at all, only as a result of further hearings and orders, and most likely not even then, would comply with the overriding objective of enabling the court to deal with cases justly, expeditiously and fairly, and allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases and enforcing compliance with rules, practice directions and orders.

92. I do not have to strike out the draft Re-Amended Reply to Defence of Counterclaim, because it is only a draft. However, the absence of a proper Re-Amended Reply to Defence of Counterclaim leaves Ms Baker in breach of the requirements of Practice Direction 53B and without a sustainable or coherent case to advance to trial.

93. As matters stand, the action cannot go on. There is in my judgment no prospect of an improvement. Moreover, the current state of the pleadings means that Ms Baker has no answer to Mr Smith's defences. For that reason also, therefore, her case cannot proceed because it is hopeless in its present form and hopeless, also, for the future, because of the lack of any realistic prospect that it will be put into a sustainable form.

94. For these reasons, I am satisfied under CPR 3.9 that Ms Baker's statements of case disclose no reasonable grounds for bringing the claim, that her statements of case are an abuse of the court's process and are likely to obstruct the just disposal of the proceedings, and that they fail to comply with the requirements of Practice Direction 53B and the Griffiths Order. I am also satisfied under CPR 24 that Ms Baker has no real prospect of succeeding on her claims and there is no other compelling reason why the case should be disposed of at a trial.

95. I have considered whether striking out Ms Baker's case and entering summary judgment against her at this stage would be just and proportionate, or whether some other less draconian course would be possible and preferable. I have anxiously considered what orders I might make or what further hearings might take place, and what the realistic possible outcomes might be should any such further chances be given to Ms Baker. I have concluded, with reluctance and regret, that Ms Baker has already demonstrated, by the opportunities she has already been given, and the wasted chances she has already had to put her case in a correct and workable form, and to progress it, that any action short of striking out and reverse summary judgment on the pleadings as they now stand would be futile. It is just and proportionate to end the proceedings now, and there is no good reason to offer Ms Baker further chances.

Conclusion

96. Consequently:

i) I will strike out the Amended Counterclaim.

ii) I will not grant relief from sanctions in respect of Ms Baker's failure to serve an Amended Reply to Defence of Counterclaim in accordance with para 39 of the Griffiths Order.

iii) I will not grant further time to serve an Amended Reply to Defence of Counterclaim.

iv) I will not give permission to Ms Baker to file further or alternative pleadings.

v) I will enter judgment on the Counterclaim against Ms Baker and in favour of Mr Smith.

Costs

97. I heard submissions on costs at the hearing on 26 July 2022.

98. Ms Baker must pay the costs of and occasioned by (1) Mr Smith's application dated 8 April 2022 (2) Ms Baker's application dated 3 May 2022 and (3) the hearing before me on 26 July 2022. I have a schedule of Mr Smith's costs, and I will assess them summarily.

99. Ms Baker's only objection to items on the schedule was a challenge to costs of printing and delivering the hearing bundle, totalling £132.22 plus £26.44 VAT. I myself queried a claim of £450 for loss of income for attending the hearing.

100. The bundle costs appear to me to be reasonable. Ms Baker did not offer to produce or pay for the bundle and Mr Smith did a good job in producing bundles which were legible, well-organised, limited to relevant documents, indexed and paginated.

101. The claim for loss of income for attending the hearing was not supported by any evidence, and I am not satisfied that it should be allowed.

102. The total sum claimed by Mr Smith in respect of the applications and hearing before me on 26 July 2022 is £1,168.64. Subtracting the £450 which I have disallowed, I will

assess the costs at £718.64.

103. Ms Baker must also pay the costs of the rest of the action, on the standard basis. If not agreed, they can be subject to a detailed assessment. However, the parties indicated that they had no wish to go through a detailed assessment, and would like me to make a summary assessment of these also. I will give directions for written submissions in that respect and, with the consent of the parties, and bearing in mind the relatively small amounts involved given that Mr Smith has throughout been a litigant in person, I am willing to assess those costs summarily in due course on the basis of the written submissions.