Neutral Citation Number: [2023] EWHC 3001 (KB)

Case Nos: QB-2020-003558
and: KB-2023-002707

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/11/2023

Before :

MRS JUSTICE HILL DBE

- -

Between :

JOHN ALEXANDER MELVIN HEMMING

Claimant

-and-

SONIA VANESSA POULTON

Defendant

-and-

SAMUEL COLLINGWOOD SMITH

Third Party

-and-

DARREN LAVERTY

Fourth Party

- -
- -

Matthew Hodson (instructed on a Direct Access basis) for the **Claimant**
The Defendant, Third Party and Fourth Party appeared **in person**

Hearing dates: 17-18 October 2023
Written submissions: 22-23 November 2023

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Approved Judgment

This judgment was handed down remotely at 11.00am on 24/11/23 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE HILL

Mrs Justice Hill DBE:

Introduction

1. The Claimant was the UK Member of Parliament for Birmingham Yardley from 2005-2015 and is currently a business person. The Defendant is a freelance journalist and broadcaster.

2. In case number QB-2020-003558 ("the QB claim"), the Claimant brings defamation and data protection claims against the Defendant seeking damages (including aggravated damages) and an injunction. The claims relate to statements made by the Defendant during the course of an interview published on 19 November 2019 ("Publication 1").

3. The Third Party runs a website on which he goes by the name 'Matthew Hopkins, the Witchfinder General'. The Third and Fourth Parties are said to be friends with each other and with the Claimant. The Third Party has legal qualifications and has been involved in litigation on his own behalf and helping others. The Defendant's case is that the Fourth Party has harassed her through Twitter and other means, leading to a police investigation.

4. The Defendant denies liability in the QB claim and has brought a counterclaim against the Claimant, as well as the Third and Fourth Parties, seeking damages and injunctive relief for harassment contrary to the Protection from Harassment Act 1997 ("the PHA 1997").

5. The Fourth Party counterclaimed against the Defendant for defamation. Proceedings between the Defendant and the Fourth Party have been settled.

6. Applications by the Claimant for summary judgement and/or strike out of the Defence and by the Defendant for permission to amend the Defence and Counterclaim were addressed by Deputy Master Bard in his comprehensive judgement dated 11 June 2021: [2021] EWHC 3863 (KB) ("*Hemming No. 1*"). This is my judgment on a series of

further interlocutory applications brought by the parties, which were considered at a Case Management Conference ("CMC") over 17-18 October 2023.

7. The issues that required determination were as follows:

(1) The Claimant's application dated 15 February 2022 seeking permission to amend the Particulars of Claim ("POC"), including to add new defamation, data protection and harassment claims (**"the First Application"**): see [42]-[127] below;

(2) The Claimant's linked application dated 13 July 2022 for an order under the Limitation Act ("the LA"), s.32A to disapply the limitation period as required in respect of the proposed new defamation claims (**"the Second Application"**): see [128]-[149] below;

(3) The Defendant's application dated 13 February 2023 seeking permission to re-amend the Defence and Counterclaim, including an application to withdraw an admission under CPR 14.5 (**"the Third Application"**): see [150]-[206] below;

(4) The Claimant's application dated 18 August 2023 to lift the stay in KB-2023-002707 ("the KB claim"), a claim by which the Claimant brings a further data protection claim against the Defendant, and for directions as to the future conduct of that claim (**"the Fourth Application"**): see [207]-[247] below;

(5) The Defendant's application dated 1 September 2023 and the Fourth Party's cross-application dated 11 September 2023, each seeking injunctive relief and other orders against the other for alleged breaches of their settlement agreement in the QB claim (**"the Fifth and Sixth Applications"**): see [248]-[268] below;

(6) The directions required to progress the QB claim to trial: see [269]-[289] below; and

(7) Various issue relating to costs: see [290]-[316] below.

8. The Claimant was represented by Mr Hodson of counsel, instructed on a Direct Access basis, who provided considerable assistance. The Defendant represented herself though has previously instructed both solicitors and counsel in the proceedings. The Third and Fourth Parties represented themselves.

The factual background

9. The factual background to the claims was set out in detail in *Hemming No. 1* at [6]-[23], to which I gratefully refer.

10. In summary, the claims arise out of the fact that in around 2014/2015 Esther Baker claimed that she had been raped and sexually assaulted by an MP in Cannock Chase, when she was a young girl. She reported the matters to the police who investigated the allegations, including interviewing the Claimant. The Claimant was not charged with any criminal offences.

11. Although Ms Baker did not identify the Claimant by name, his case is that she provided enough background information to allow those who wished to investigate further to identify him through "jigsaw identification". At the conclusion of the police investigation, on 5 September 2017, the Claimant published a '*Statement re False allegations from Esther Baker*' on his blog. He was also referenced in two articles published in the Daily Mail and/or on their website on 19 January 2018 and 22 June 2018.

12. Between 2015 and 2018 the Defendant made a documentary programme called '*Paedophiles in Parliament*' ("PIP"). On 2 August 2018 this was published on YouTube. The Claimant took exception to it and began communicating with the Defendant on the day it was published. He complained that she was re-publishing Ms Baker's false allegations about him. The Defendant contended that these were all issues in the public domain and that she was legitimately reporting about them. The Claimant did not issue any claim against the Defendant arising out of PIP at that time: *Hemming No. 1* at [7] and [17]-[19].

13. On 13 September 2018 Ms Baker brought defamation proceedings against the Claimant arising out of the three publications referred to at [11] above. He defended Ms Baker's claim and counterclaimed against her for defamation in relation to a Tweet she had published on 11 November 2017. Further details of this claim and counterclaim can be found in the judgment of Steyn J dated 5 November 2019: *Baker v Hemming* [2019] EWHC 2950 (QB).

14. In his counterclaim the Claimant asserted that the natural and ordinary meaning of Ms Baker's Tweet was that he had "raped and sexually assaulted [Ms Baker], then stalked and defamed her to cover it up" and had "committed other rapes and is a serial rapist". He also asserted that the words bore an innuendo meaning that he had abused her as part of a ritual cult involving Cabinet Ministers, MPS, Lords and Judges: *Baker v Hemming* at [10]-[14].

15. By her 5 November 2019 judgment, Steyn J struck out various parts of Ms Baker's claim. She granted the Claimant summary judgment on his counterclaim, in respect of the pleaded natural and ordinary meaning: *Baker v Hemming* at [87]-[98] and [128(h)].

16. On 19 November 2019 Steyn J made a final injunction restraining Ms Baker from repeating the allegations that the Claimant "raped or sexually assaulted [her], then stalked and defamed [her] to cover it up" or any words to similar effect. The reasons Steyn J gave for making the injunction included at [1] that Ms Baker had "deliberately chose[n] not to contend that the defamatory allegation was true" and that "the effect of my judgment is that the allegation has been "found to be untrue and defamatory".

17. On the same day as the final injunction made by Steyn J, Publication 1 was published. It was a video entitled '*Prince Andrew, Epstein, Saville and McCann Part 1: Sonia Poulton – True Crime Podcast 59*' in which the Defendant was interviewed by Shaun Attwood. The video was published on Mr Attwood's YouTube channel and in audio form on Spotify and Stitcher, both worldwide audio streaming services. The Defendant's case is that it was recorded on 3 November 2019.

18. The Third Party has also been involved in litigation with Ms Baker. He brought a claim against her and another Defendant. The claims were settled. Ms Baker counterclaimed against the Third Party for defamation and harassment. The allegedly defamatory words were said to bear the natural and ordinary meaning that Ms Baker had a mental illness, leading her to make allegations that were not true, were dangerous and may discredit the campaign for real victims and that no attention should be paid to Ms Baker when she made the allegations. The Third Party defended the counterclaim in part on the basis that what he had said was true. On 17 August 2022, Griffiths J granted the Third Party summary judgment on the counterclaim: *Smith v Baker* [2022] EWHC 2176 (QB) at [64]-[95] and [96(v)].

19. The Third Party also brought a claim against Muhammed Naeem Butt, for whom the Defendant works in a freelance capacity: *Smith v My Media World and Butt* (QB-2020-0003936). Mr Butt attended the hearing before me with the Defendant and provided a witness statement in support of her position on the Fourth Application. My understanding is that the Claimant has also brought proceedings against two of Ms Baker's supporters, Graham Wilmer and David Hencke; and that these have settled on terms that Mr Wilmer and Mr Hencke are prohibited from stating that Ms Baker's allegations were true.

20. There have been further cases involving the parties and their respective supporters. The above summary suffices for the purposes of this judgment.

The procedural history and outline of the claims and counterclaims

21. On 9 October 2020 the QB claim was issued and POC served.

22. The Claimant's case is that the words used by the Defendant during Publication 1 constituted defamation and a breach of his data protection rights as set out in Article 8 of the EU Charter of Fundamental Rights, the General Data Protection Regulation (EU) 2016/679 ("the GDPR") and the Data Protection Act 2018 ("the DPA").

23. The words complained of in Publication 1 and the meanings contended for by the Claimant are set out in Annex 1 to this judgment. For the purposes of the defamation claim he contends that the words had the following meanings:

> Meaning 1: The Claimant is a paedophile who raped Esther Baker when she was a child; and
>
> Meaning 2: The Claimant has used baseless legal threats to attempt to hide his sexual misdeeds with children.

24. The Claimant argues, in summary, that the Defendant's repetition of Ms Baker's allegations in Publication 1 was particularly impermissible in light of Steyn J's judgment and the restraining order made against Ms Baker, in favour of the Claimant.

25. The Claimant's data protection claim is advanced on the basis that in speaking as she did in the interview the Defendant breached his data protection rights. Deputy Master Bard observed that "there is a sense in which this perhaps adds little of substance to the libel claim, and to some extent covers the same terrain": *Hemming No. 1* at [22]. While

the legal tests for the two claims are different, I share Deputy Master Bard's overall impression.

26. The Defendant's original Defence and Counterclaim dated 14 January 2021 advanced alternative meanings for the words used; denied responsibility for publication; put the Claimant to proof in respect of some of his allegations as to the extent of publication; admitted serious harm based on the meaning contended for by the Claimant but otherwise denied it; and advanced defences to the defamation claim of truth, honest opinion and public interest under the Defamation Act 2013 ("the DA"), ss.2, 3 and 4. The data protection claim was defended on a range of grounds, including the provisions specific to journalists in paragraph 13 of Schedule 1 and paragraph 26 of Schedule 2.

27. The Defendant's Counterclaim alleges a course of harassment by each of the Claimants and the Third and Fourth Parties sometimes acting individually and sometimes acting in concert (whether two or three of them). As at the time of the hearing before Deputy Master Bard some 23 particulars of harassment had been pleaded. He identified that 11 of them referred to the Fourth Party alone, but the remainder involved "the Claimant, the Third Party, or both (and sometimes also the Fourth Party)": *Hemming No. 1* at [23].

28. The Claimant's Reply and Defence and Counterclaim was dated 21 January 2021. The Defences to the Counterclaim from the Third Party and Fourth Party were both dated 27 January 2021.

29. On 26 February 2021 the Claimant issued an application for summary judgment and/or strike out of all or some of the Defence and Counterclaim. On 27 April 2021 the Defendant issued an application to amend her Defence and Counterclaim. Deputy Master Bard heard the applications together on 30 April 2021.

30. By his judgment dated 11 June 2021 (revised in a modest respect on 15 June 2021) the Deputy Master refused the Claimant's applications for summary judgment and strike out, save that certain sub-paragraphs of the Defendant's particulars of truth at [19] of the Defence and the plea of honest opinion at [20]-[21] were struck out (albeit that the Defendant had permission to deploy those averments elsewhere in the Amended Defence if relevant). The Deputy Master also allowed the Defendant's application to amend save in respect of one paragraph. These included her application to withdraw from the Defence the alternative meanings of Publication 1 for which she contended.

31. On 23 June 2021 the Fourth Party served an amended Defence to the Counterclaim and commenced a Counterclaim against the Defendant for libel arising out of a publication on 30 August 2020. It was said that the Defendant had appeared in an interview with James English on his YouTube channel, entitled '*The dark side of journalism. Sonia Poulton Exposes all*' and had defamed the Fourth Party therein.

32. By order dated 23 November 2021 Senior Master Fontaine recorded that the Defendant and the Fourth Party had agreed terms of settlement in relation to the Defendant's claim against him and his claim against her. It was ordered that all further proceedings between these parties were stayed upon the terms agreed, except for the purpose of enforcing the terms. Each of the parties was given permission to enforce the terms of the order without the need to bring a new claim. The settlement agreement itself is dated 2 September 2021. Master Fontaine also stayed the remaining proceedings for further

settlement negotiations. The negotiations did not resolve matters between the remaining parties. On 15 February 2022 the First Application was issued. The stay expired on 13 March 2022.

33. The First Application was due to be heard by Master Brown on 13 July 2022. The Defendant raised the issue of limitation the day before the hearing. Both parties were prepared to deal with the issue at the hearing. However Master Brown adjourned the application for the following reasons:

> "i) determination of the present Application may be assisted by a ruling on the meaning of the publication currently sued upon (although the court was cautious not to express any final view on whether that was appropriate);
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> ii) parties may not be fully ready to deal with the issues arising under section 32A of the Limitation Act 1980; and further
>
> iii) concerns having been raised about the time estimate".

34. Master Brown also recorded in his order dated 20 July 2022 that the Claimant and Defendant would enter into a "standstill agreement" on limitation in respect of the further publications referred to in the draft amended POC, or should be treated as having entered into such an agreement, such that the Claimant would not, in respect of limitation, be prejudiced by the Defendant's actions. Master Brown assigned the application to Nicklin J for further directions and reserved the costs of the Claimant's application.

35. A CMC was fixed for 19 January 2023. This was vacated on 12 January 2023 by consent of the parties.

36. On 8 February 2023 Senior Master Fontaine made a *Norwich Pharmacal* order requiring the Third Party to provide specified information to the Defendant to assist her in identifying the persons registered on a website he runs with two particular user names.

37. By order dated 25 May 2023 Nicklin J observed that the parties had not taken steps to have the CMC re-listed and made arrangements for that to occur. The CMC was duly listed for 17-18 October 2023.

38. On 18 June 2023 the KB claim was issued. By order dated 21 July 2023 Master Stevens stayed the claim of the court's own volition. This was on the basis that "QB-2020-003558 relates to similar issues between the parties". The Master directed that the Claimant should, if so advised, file and serve a witness statement setting out why he considered it was necessary in the KB claim to pursue similar matters to those already being heard in the QB claim. The Master's order provided that further directions should be given in the KB claim at the 17-18 October 2023 hearing, including consideration of whether the claim should be dismissed as an abuse of process.

39. Provision was made for the remaining applications listed at [7] above to be heard at the 17-18 October 2023 hearing, save that by order dated 18 September 2023 Nicklin J

ordered that the Sixth Application was to be listed for directions only. Nicklin J also ordered the Defendant to provide a witness statement responding to the Sixth Application.

40. The recital to the order explained the reasons why the Sixth Application could not be determined at the 17-18 October 2023 hearing. In essence, there would be insufficient time at, or in the time leading up to, the hearing for the application to be considered properly. The court needed, first, to ascertain whether there was a dispute of fact between the Fourth Party and the Defendant. The order noted that if there was such a dispute, it was "likely" that the court would direct identification of the issues by the exchange of statements of case and that thereafter "there may be a need for disclosure, witness statements and a trial". The order explained that none of this could be completed in advance of, or at, the hearing on 17-18 October 2023.

41. The court informed the parties that the same was the case for the Fifth Application, ie. that it was listed for directions only on 17-18 October 2023.

(1): The First Application

42. The Claimant first wrote to the Defendant to indicate an intention to apply for permission to amend his POC on 25 January 2022. However the Claimant was concerned that the limitation period in relation to what is referred to as Publication 2 (6 April 2022) was approaching and so issued the application, on 15 February 2022, before the Defendant had provided a substantive response to the proposals.

43. By her solicitor's letter dated 3 March 2022 the Defendant consented to some of the proposed amendments and set out detailed objections to the remainder. The Defendant relied on this letter in her oral submissions before me. Some of these objections were addressed by the Claimant in a further draft of the POC.

44. The final version of the draft amended Particulars of Claim ("APOC") dated 25 March 2022 was the one on which the Claimant sought permission to rely. Unhelpfully, this is simply a "track changed" version of earlier drafts, and so shows as struck through text amendments which have never been consented to by the Defendant or approved by the court.

45. The contentious issues involve the Claimant seeking permission to amend the POC by **(a)** expanding his case with respect to Publication 1; **(b)** adding defamation claims in respect of three further publications (Publications 2-4, to which limitation issues apply); **(c)** adding a defamation claim in respect of a further publication (Publication 5); and **(d)** adding Publications 2-4 to the data protection claim, as well as a new harassment claim referring to all five publications.

46. Publications 2-4 took place respectively, on 6, 9 and 12 April 2021. Publication 5 took place on 10 September 2021. It is agreed that no limitation issues arise in respect of the new defamation claim in relation to Publication 5, given the standstill agreement recorded by Master Brown after the13 July 2022 hearing, by which point the limitation period in respect of Publication 5 was still running. It is also agreed that no limitation issues arise on the proposed amendments to the data protection claim or the proposed new harassment claim.

Legal principles relating to amendments under CPR 17.1 and 17.3

47. If a statement of case has been served, a party may amend it only with the written consent of all the other parties (under CPR 17.1(2)(a)) or with the permission of the court (under CPR 17.1(2)(b)). CPR 17.3 makes clear that the power of the court to give permission to amend under that rule is subject to the provisions of CPR 17.4, which apply where a party seeks to add a new claim after the end of the limitation period.

48. The general principles governing the discretion to grant permission to amend under CPR 17.3 were distilled by Lambert J In *Pearce v East and North Hertfordshire NHS Trust* [2020] EWHC 1504 (QB) at [10]. In summary:

    (i) The overriding objective is of central importance, and such applications always involve striking a balance between injustice to the applicant if the amendment is refused, and injustice to the opposing party and other litigants in general, if the amendment is permitted;

    (ii) A strict view must be taken of non-compliance with the CPR and court directions, and the court must take into account the fair and efficient distribution of resources, not just between the parties but amongst litigants as a group;

    (iii) The timing of the application should be considered and weighed in the balance and an amendment can be regarded as "very late" if permission to amend threatens the trial date, even if the application is made some months before the trial is due to start;

    (iv) The prejudice to the resisting party if the amendments are allowed will incorporate, at one end of the spectrum, the simple fact of being 'mucked around' to the disruption of and additional pressure on their lawyers in the run-up to trial and the duplication of cost and effort at the other; and

    (v) The prejudice to the amending party if the amendments are not allowed will include its inability to advance its amended case, but that is just one factor to be considered; and if the prejudice has come about by the amending party's own conduct, then it is a much less important element of the balancing exercise.

49. A proposed amendment must be arguable, carry a degree of conviction, be coherent, properly particularised and supported by evidence that establishes a factual basis for the allegation: see *Kawasaki Kisen Kaisha Ltd v James Kemball Ltd* [2021] EWCA Civ 33 at [18].

50. Further, as the White Book explains at 17.3.6, the authorities show that proposed amendments must have "some" prospects of success. However:

> "...for the amendment to be allowed it must be shown to have "a real prospect of success", as draws upon the test for summary judgment. Here there is a distinction between whether the amendment: (i) introduces a new claim or alternatively (ii) provides further particulars, based on factual material, in support of an existing pleaded point. The former will not be permitted if the new allegation carries no reasonable prospect of success. To the contrary, the latter should not invite an

> assessment whether the particulars have a real prospect of success, these being matters for trial".

51. As the Court of Appeal reiterated in *CNM Estates (Tolworth Tower) Ltd v Simon Peter Carvill-Biggs Freddy Khalastchi* [2023] EWCA Civ 480 at [77]:

> "It would clearly be pointless to allow an amendment if the claim or defence being raised would be defeated by a summary judgment application. However, at the stage of considering a proposed amendment that test imposes a comparatively low burden and the question is whether it is clear that the new claim or defence has no prospect of success. The court is not to engage in a mini-trial when considering a summary judgment application and even less is it to do so when considering whether or not to permit an amendment."

52. Finally, the power to allow amendments is to be exercised in accordance with the overriding objective in CPR 1.1 of enabling the court to deal with cases justly and at proportionate cost. Among the court's case management powers is the power to exclude an issue from consideration under CPR 3.1(2)(k) and the power to take any other step or make any other order for the purpose of managing the case and furthering the overriding objective under CPR 3.1(2)(m).

(1)(a): Proposed amendments to the defamation claim regarding Publication 1

53. The Claimant seeks to add an allegation of malice in respect of Publication 1 in the draft APOC at [15]-[17](vii). His proposed case is, in summary, that the Defendant's improper motive to cause serious harm to his reputation can be inferred from her knowingly giving a misleading account about him which deviated from expected standards of journalism, and which demonstrates that she acted without an honest belief in the truth of what she was publishing. The draft APOC at [16]-[17] plead that (i) the Defendant has, including in her Defence, held herself out to be a respectable professional journalist; and (ii) she had actual knowledge of ongoing litigation and various other exculpatory matters but despite this knowledge published Publication 1 without further investigation. In particular, it is averred that prior to Publication 1, the Defendant had knowledge of (i) the Claimant's case against Mr Wilmer (see [19] above), in which Mr Wilmer did not try to argue that Ms Baker's allegations against the Claimant were true; (ii) the existence of *Baker v Hemming*; and (iii) the fact that the police had decided to take no action against him as a result of the CPS decision not to prosecute.

54. The Defendant opposed these proposed amendments. She contended that the words used in Publication 1 make clear that she was not making any accusations and did not know the truth of Ms Baker's allegations. She argued that none of the matters referred to in the draft APOC come close to meeting the high threshold for malice. In particular, (i) the fact that she is a professional journalist is irrelevant; (ii) failing to mention something or making supposedly misleading incomplete statements it not a particular of malice; (iii) the Claimant's dispute with Mr Wilmer is not evidence of the truth or falsity of the Claimant's chosen meaning; and (iv) the existence of *Baker v Hemming* does not amount to malice.

55. The relevant principles in relation to malice are summarised in Gatley on Libel and Slander (13th Edn) at 18-003 thus:

> "*Absence of honest belief*
>
> (a) If it can be proved that the defendant did not believe that what he published was true, that is generally conclusive evidence of expressed malice "for no sense of duty or desire to protect his own legitimate interests can justify a man in telling deliberate and injurious falsehoods about another". The burden of proof, at least where conduct extraneous to the privileged occasion is not relied on, is not a light one
>
> (b) If the defendant publishes untrue matter recklessly, without considering or caring whether it be true or not, he is treated as if he knew it to be false, but carelessness, impulsiveness or irrationality in arriving at a belief is not to be equated with indifference to truth".

56. I am satisfied that the Claimant's proposed amendments with respect to malice, as so defined, meet the principles set out in *Kawasaki Kisen Kaisha Ltd* at [18]. The Claimant's original POC at [5] and [6] relied on Steyn J's judgment in *Baker v Hemming* and the proceedings involving Mr Wilmer and Mr Hencke. It has always been the Claimant's case that the Defendant must have known it was not right to repeat the allegations in light of this material. The proposed amendments develop this point further into a coherent case of malice, while referring to other allegedly exculpatory matters which the Defendant is said to have failed to take into account. It does so by reference to documentary evidence, namely email correspondence and a determination of the Independent Inquiry into Child Sexual Abuse which referred to *Baker v Hemming.*

57. Applying the *Pearce* factors as relevant, the Claimant will be prejudiced if he is unable to advance what is a credible case on malice. The timing of the application and its limited extent mean that the Defendant will be able to deal with it fairly.

58. I agree with Mr Hodson that any uncertainty over the Defendant's state of mind is properly a matter for live evidence at trial.

59. It is also relevant that resolution of the issue of malice is closely linked with the issue of the meaning of Publication 1 and the detail of the Defendant's public interest defence, both of which are disputes which Deputy Master Bard has already held are not ones suitable for summary determination: *Hemming No. 1* at [28]-[45] and [78]-[81]. I have seen nothing to justify departing from that assessment.

60. Accordingly, even if one takes the view most adverse to the Claimant, namely that the amendment in respect of malice constitutes a "new claim", I do not consider that it can be said at this stage that the Claimant's case carries no reasonable prospect of success, having regard to the comparatively low burden and the need to avoid a min-trial set out in *CNM Estates (Tolworth Tower) Ltd*. It follows that if these proposed amendments are properly characterised as "further particulars, based on factual material, in support

of an existing pleaded point", such that a lower merits threshold is appropriate, I consider that they should be allowed.

61. I therefore grant the Claimant permission to amend the POC in respect of Publication 1 under CPR 17.3.

(1)(b): Proposed addition of new defamation claims regarding Publications 2-4

62. The Claimant seeks to amend the POC by adding defamation claims relating to Publications 2-4 under CPR 17.4. This provides in material part as follows:

> "**17.4 Amendments to statements of case after the end of a relevant limitation period**
>
> (1) This rule applies where –
>
> (a) a party applies to amend their statement of case in one of the ways mentioned in this rule; and
>
> (b) a period of limitation has expired under –
>
> (i) the Limitation Act 1980…
>
> (2) The court may allow an amendment whose effect will be to add or substitute a new claim, but only if the new claim arises out of the same facts or substantially the same facts as are already in issue on a claim in respect of which the party applying for permission has already claimed a remedy in these proceedings".

The procedure to be adopted in respect of the limitation issues

63. In his skeleton argument, Mr Hodson suggested that the court should order that the issue of limitation be left to trial; alternatively that the question of limitation should be tried as a preliminary issue. With all due respect to counsel, it was not entirely clear to me whether the Claimant's position in this regard related to his CPR 17.4 application, his s.32A application or both.

64. He did not develop the suggestion of deferring a ruling on limitation to trial in his oral submissions. In my judgment he was correct not to do so. In *Chandra v Brooke North* [2013] EWCA Civ 1559; [2014] TCLR 1 consideration was given to the procedure to be adopted where limitation issues arise in an amendment application. The Court of Appeal identified two options, namely dealing with the matter as an amendment application or ordering a preliminary issue trial on limitation. The option of deferring the limitation issue and the amendment application until the "full" trial was not one of those considered.

65. Further, on the facts of this case, to defer determination of the Claimant's s.32A application to trial would be inconsistent with the overriding objective. This is because it would permit the Claimant to advance several wholly distinct claims, which the Defendant would have to meet, and which would require potentially extensive court

time and resources, when the trial judge might ultimately determine that the limitation issues meant that there was no proper for them to have been brought at all.

66. Mr Hodson maintained that limitation should be dealt with as a preliminary issue in his oral submissions. His position appeared to be that if I considered the s.32A application arguable, a preliminary issue trial would be appropriate. He posited that such a trial might take one day.

67. In *Chandra* at [67] and [70], the Court of Appeal held that where limitation issues arise in the context of an amendment application, the court "usually" deals with the matter as a conventional amendment application; and it will "seldom be appropriate" to order a trial of the limitation issue before deciding whether to give permission to amend, with such a course only being appropriate in "rare cases".

68. If the court adopts the first approach, it "will not descend into factual issues which are seriously in dispute" but will limit itself to considering whether the defendant has a "reasonably arguable case on limitation". If so, the court will refuse the claimant's application. If not, the court will have a discretion to allow the amendment if it sees fit in all the circumstances: *Welsh Development Agency v Redpath Dorman Long Ltd* [1994] 1 WLR 1409 at 1425H, cited in *Chandra* at [67].

69. In *Ballinger v Mercer Ltd* [2014] EWCA Civ 996; [2014] 1 WLR 3597 at [27], the Court of Appeal confirmed that (i) if the availability of the limitation defence "depends upon the resolution of factual issues which are seriously in dispute, it cannot be determined summarily but must go to trial"; and (ii*)* as the claimant is "in effect inviting the court to make a summary determination that the defence of limitation is unavailable", it is for the claimant to show that the limitation defence is not reasonably arguable.

70. However, Mr Hodson specifically accepted that there was no real factual dispute relevant to the limitation issue in this case. The Defendant did not suggest that there was any such dispute. Neither party suggested that any oral evidence was required. Neither referred to any other kind of evidence they might wish to advance on the limitation issue.

71. The fact that both the First and Second Applications would be determined at the CMC had been emphasised by Nicklin J's orders dated 14 December 2022, 12 January 2023 and 25 May 2023, but neither party had applied for a preliminary issue trial on limitation as an alternative course. Both parties had come to the hearing fully prepared to deal with the limitation issue. It had, after all, been adjourned since July 2022 for that specific purpose. Mr Hodson advanced detailed submissions on the merits of the First Application, and the linked and Second Application, over some 85 paragraphs in his skeleton argument. The Defendant responded to those submissions.

72. The merits of the limitation issue were fully argued before me. The First and Second Applications occupied the entirety of the first day of the CMC. Indeed in his written cost admissions after the hearing Mr Hudson characterised the hearing of these applications as "effectively a preliminary issue hearing that was fully contested". In those circumstances it was hard to see what a further preliminary issue hearing would achieve.

73. Mr Hodson advanced no other reason to suggest that this was one of those "rare" cases where a preliminary issue trial on limitation was appropriate before the amendment issue could be resolved; nor could I discern any.

74. All of these reasons apply with equal force to the s.32A application.

75. I therefore consider that both the First and Second Applications can fairly be resolved at this stage, based on the material and submissions placed before me.

The issues on the CPR 17.4 application

76. In *Mulalley & Co Ltd v Martlet Homes Ltd* [2022] EWCA Civ 32, the Court of Appeal observed that it is conventional to say that four questions need to be answered when considering CPR 17.4:

    (1) Is it reasonably arguable that the opposed amendments are outside the applicable limitation period?

    (2) Did the proposed amendments seek to add or substitute a new cause of action?

    (3) Does the new cause of action arise out of the same or substantially the same facts as are already in issue in the existing claim?

    (4) Should the Court exercise its discretion to allow the amendment?

    I address these in turn.

(1): Is it reasonably arguable that the opposed amendments are outside the applicable limitation period?

77. The primary limitation period for libel and slander claims is set out in the LA, s.4A thus: "no such action shall be brought after the expiration of one year from the date on which the cause of action accrued". At common law, accrual of the cause of action in libel and in slander actionable without proof of special damage occurs at the date of publication because at that moment the cause of action is complete: Gatley at 20-009.

78. Publications 2-4 took place respectively, on 6, 9 and 12 April 2021. The words complained of in respect of each of the publications and the meanings contended for by the Claimant for each are set out in Annex 1 to this judgment.

79. Limitation is to be judged at the date that an application to amend is determined and not when it is issued: see the *Welsh Development Agency* case. Although the Claimant contends that this Court of Appeal authority is wrong, it binds this court. Accordingly, the fact that his application to amend was made within the limitation period (on 15 February 2022) is irrelevant to question (1) (albeit that it may be relevant to the discretion issue under (3) below). By their standstill agreement the parties have effectively agreed that the date of the amendment is deemed to be in July 2022, that reflecting the anticipated hearing before Master Brown. However, this was still after

the one year limitation period had expired for defamation claims in respect of Publications 2-4.

80. For these reasons the starting point is that the Defendant does have a reasonably arguable case on limitation because (i) the three causes of action accrued on the dates of publication; (ii) the primary one year limitation periods expired on, respectively, 6, 9 and 12 April 2022; and (iii) no amendment to the claim to include these new claims was made before time expired.

81. Mr Hodson sought to meet this difficulty in two ways.

82. First, he relied on the fact that the Claimant has made an application to extend time in respect of each of these proposed defamation claims under the LA, s.32A. It is recognised that the power in s.32A should only be exercised in "exceptional" cases: [131] below. Given that, and the legal framework applicable to the CPR 17.4(2) application (see [68]-[69] above), this submission required the Claimant to prove that the Defendant had no reasonably arguable basis for contending that a judge would refuse to exercise an "exceptional" power. That would be a difficult threshold to meet in any case. In this case, it is not met. I have found that the Claimant's s.32A application was not only one which the Defendant could oppose on a reasonably arguable basis, but one which should be dismissed: see [133]-149] below. It follows that the s.32A "route" does not enable the Claimant to show that the Defendant does not have a reasonably arguable case on limitation.

83. Second, he advanced a novel argument to the effect that that there was, in fact, no limitation issue at all with respect to Publications 2-4. This was on the basis that (i) a publication which remains on line may become defamatory at the point when a public interest defence falls away: see the Court of Appeal's judgment in *Banks v Cadwalladr* [2023] EWCA Civ 219 at [17], [41]-[43] and [47]-[48]; (ii) any possible public interest defence which might have been available to the Defendant in respect of Publications 2-4 must have fallen away by 17 August 2022, the date of Griffiths J's judgment in *Smith v Baker* (see [18] above); (iii) to publish something when a public interest defence is no longer available constitutes publication in a manner that is "materially different" from the manner of an earlier publication, for the purposes of the DA s.8(4); (iv) the single publication rule in the DA, s.8(3) did not therefore apply; and (v) accordingly the causes of action for Publications 2-4 did not accrue until 17 August 2022, by which point the parties had entered into their standstill agreement. The Defendant did not respond to this argument in any detail. However it relies on a number of legal and factual issues, the resolution of which are not all, in my judgment, clearly in the Claimant's favour. I do not therefore consider that the *Banks* "route" assists the Claimant on this issue either.

84. For these reasons, the Claimant cannot show that the Defendant does not have a reasonably arguable case on limitation and the answer to issue (1) is "Yes". Permission to amend could be refused under CPR 17.4 for this reason alone. However I have gone on to consider the remaining issues on the application in case I am wrong on this issue.

(2): Did the proposed amendments seek to add or substitute a new cause of action?

85. The Claimant accepts that the proposed amendments to add defamation claims in respect of Publications 2-4 seek to add new causes of action. The answer to issue (2) is therefore "yes".

(3): Does the new cause of action arise out of the same or substantially the same facts as are already in issue in the existing claim?

Legal principles relating to the test under CPR 17.4(2)

86. The question of whether one factual basis is "the same" or "substantially the same" as another factual basis for the purposes of CPR 17.4(2) involves a "value judgment", but the relevant criteria must clearly have regard to "the main purpose" of the provision, namely:

> "…to avoid placing a defendant in the position where if the amendment is allowed he will be obliged after expiration of the limitation period to investigate facts and obtain evidence of matters which are completely outside the ambit of, and unrelated to those facts which he could reasonably be assumed to have investigated for the purpose of defending the unamended claim": *Ballinger* at [34].

87. Further, the underlying policy of the provision is that, if factual issues are, in any event going to be litigated between the parties, the parties should be able to rely upon any cause of action which substantially arises from those facts: *Ballinger* at [34].

88. In *Ballinger* at [37], the Court of Appeal emphasised that the term "same…or substantially the same" is not synonymous with "similar"; further, that "[t]he word 'similar' is often used in this context, but…should not be regarded as anything more than a convenient shorthand. It may serve to divert attention from the appropriate enquiry".

89. In considering what facts are already "in issue" for the purposes of CPR 17.4(2) the court can look beyond the Particulars of Claim: as Pepperall J explained in *Mulalley* at first instance, [2021] EWHC 296 (TCC) at [36], "[t]he cases demonstrate…that the court must take a wider view of the facts arising on the claim that also encompasses consideration of the Defence".

90. In a defamation claim it is not enough that the new claims involve defamatory allegations the same as or similar to those already complained of; a broader assessment is required of what is and will be in issue: see *Komarek v Ramco Energy Plc* (unreported, 21 November 2002) [62] to [65] (Eady J), as cited by Warby J (as he then was) in *Economou v de Freitas* [2016] EWHC 1218 (QB) at [48]-[49] and *Lokhova v Longmuir* [2016] EWHC (QB) 2579; [2017] EMLR 7 at [49].

91. In *Komarek*, Eady J refused the claimant permission to amend to add a claim in respect of further publications of "the very same words" as were already in issue in the action, explaining the position thus:

> "In one sense, the facts sought to be relied upon in the proposed amendments are similar to those already pleaded; that is to say, the

> allegations about the claimants are similar. The essence of a claim in libel, however, is not the nature of the allegations but their publication. Each publication gives rise to a different cause of action. The publication to [the second publishee] cannot, therefore, be characterised as (even "substantially") the same fact as the publication to [the first publishee]…the litigation of the factual issues relating to the [first] publication does not mean that the issues relating to the alleged later publications to and by [the second publishee] are bound to be litigated in any event": *Economou* at [48].

92. Warby J similarly concluded in *Economou* that the new causes of action did not arise out of the same or substantially the same facts as were already in issue, such that he had no power or discretion to permit the amendments, on the following basis:

> "…The meanings attributed to the [words in the new publication] are very similar to those which are attributed to publications of which the claimant already complains, but that is not enough to satisfy s 35(5)(b) or CPR 17.4(2). The new claim "arises out of" [the new publication]. There is no extant claim that arises out of that communication": *Economou* at [49].

93. CPR 17.4(2) was considered recently by Julian Knowles J in *Wright v McCormack* [2021] EWHC 2671 at [118]-[136]. There, he granted permission to the claimant to advance certain new claims under CPR 17.4(2). However this was because of the "unusual circumstances" of that case (see [136]), namely that the Claimant had already put in issue the new publications and so had the Defendant (see [131] and [136]).

Application of the legal principles based on the current statements of case

94. In my judgment, based on the current statements of case, this application is on all fours with the approaches taken in *Komarek* and *Economou*.

95. *Komarek* made clear that the essence of a libel claim is in the element of publication, not the nature of the allegations. The publication of even the same words in a further publication cannot fall within CPR 17.4(2) as arising out of the "same" or "substantially the same" facts as are already in issue. This is because the issues on the further publication are not bound to be litigated in any event. *Economou* emphasised this approach in respect of words said to bear a "very similar" meaning to those in already in issue. These cases are underpinned by the general proposition derived from *Ballin*ger that for the purposes of CPR 17.4(2) "similar" does not mean "the same…or substantially the same".

96. For these reasons I cannot accept Mr Hodson's overarching submission that because, in all five publications, on the Claimant's case, the Defendant published words with a similar meaning – namely, that Ms Baker's allegations were true – the requirements of CPR 17.4(2) are met. Even if the words used were the "very same", *Komarek* shows that that is insufficient.

97. In any event, the Claimant's case is far more complex than the suggestion that the same or similar words were used in each publication.

98. As Annex 1 illustrates, the words complained of, and the meanings contended for, by the Claimant differ as between the current claim relating to Publication 1 and each of the proposed claims relating to Publications 2-4. Publication 1 is said to involve a direct repetition of Ms Baker's original false allegations, but the case on meaning in respect of Publications 2-4 involves (i) reliance on the Defendant's use, or express approval of, the word "truth" in respect of the claim in relation to Publication 1; (ii) the assertion that "truth" in this context meant that the Defendant wanted to prove the truth of her statements about the Claimant and that Ms Baker's allegations were true; and (iii) reliance on both the natural and ordinary meaning of the words and an innuendo meaning.

99. The Defendant contended that the Claimant's case on Publications 2-4 relied on "strained and unreasonable meanings". She vehemently denied the alleged meaning of her use of the word "truth" in these publications. She said she was referring to the "truth" of her experience of being harassed over the last three years by the Claimant, Third and Fourth Parties in the litigation over Publication 1.

100. Accordingly, notwithstanding the difficulties for the Claimant's argument caused by *Komarek* and *Economou*, there are differences between the alleged meanings across Publications 1-4. Further, the Claimant's case is that Publications 2-4 each had specific further meanings about the conduct of the Claimant, and Third and Fourth Parties over and above the "truth" issue. These cannot be said to arise from Publication 1.

101. For similar reasons I cannot accept Mr Hodson's argument that it is likely that the Defendant would defend defamation claims arising out of Publications 2-4 on the same public interest basis as she defends the claim in relation to Publication 1. That submission does not address the fundamental issue, emphasised in *Komarek* and *Economou*, that these were all different publications. There is nothing currently in issue in the claim about the viability of the public interest defence in respect of Publications 2-4. If the claims proceeded, the public interest defence (if relied on) would need to be determined in respect of each of the publications.

102. I also observe that not only were the five publications on different dates, but they were to different audiences than was involved in Publication 1: that was a video published on YouTube whereas Publications 2-4 involved the Defendant's use of Twitter and posts to the fundraising page of her website. In those circumstances, notwithstanding the "different publication" difficulty highlighted above, the serious harm issue may well vary across the publications.

103. Mr Hodson prayed in aid the fact that the further publications involved publications by the Defendant while trying to garner funds and support for her defence of the claim in relation to Publication 1. The further publications were "about" Publication 1. This illustrates a chronology of events, and a factual nexus between the potential claims, but is not sufficient to meet the CPR 17.4(2) test.

Application of the legal principles based on the amended statements of case

104. Mr Hodson's alternative submission was that, consistent with the need to take a "wider view of the facts" described by Pepperall J (see [89] above), I should look at the nature

of the claim if permission was granted to amend the claim to add (i) the defamation claim in relation to Publication 5; (ii) the expanded data protection claim in respect of Publications 2-5; and (iii) the harassment claim in relation to all five publications. He contended that if those amendments were granted, then the CPR 17.4(2) criteria were met in respect of the proposed new defamation claims in relation to Publications 2-4.

105. This argument relies on the way in which the draft APOC is structured. The proposed new defamation claims in relation to Publications 2-4 are set out over 50 paragraphs from [23]-[81]. The new defamation claim in relation to Publications is at [82]-[94]. The key amendment to the data protection claim for this purpose is a reference back to all the publications: [95]-[108]. The new harassment claim is pleaded over three paragraphs at [109]-[112]. It simply refers back to the totality of the defamation claims, as described at [1]-[94], and asserts that all the publications constituted a course of conduct that amounted to harassment.

106. Mr Hodson's point was therefore similar to that advanced by counsel for the Claimant in *Lokhova*, as recorded at [56]: namely that "the new claims arise out of facts that *will* be in issue…if I grant permission to amend to expand [the] damages claim in the way sought" [his emphasis]. As to this argument, Warby J observed that:

> "56. On the face of it, facts cannot *already be in issue on* an existing claim if at the time the application is made the facts are not yet pleaded, but are only put forward as part of the same set of proposed amendments as the new claims. This seems to have been the view of Hobhouse LJ in the *Lloyd's Bank* case, on the basis that "the statute has to be strictly construed" but his observation was *obiter* and the case was decided under different rules and before the Human Rights Act. [Counsel for the Defendant] has not taken this point. It could be circumvented by, for instance, issuing two applications in quick succession. I do not think it would be right to decide the application on this somewhat technical basis" [his emphasis].

107. Accordingly, consistently with the final sentence of this passage, it is appropriate to look at the claim, *as it would be* after decisions had been made about the other additional claims; and to determine whether the proposed new defamation claims in relation to Publications 2-4 could be said to arise out of the "same facts or substantially the same facts" as those new claims.

108. For the reasons set out under section **(c)** below, I have decided to grant the Claimant permission to amend his claim to add a defamation claim relating to Publication 5. However, the existence of this claim does not assist the Claimant in satisfying the CPR 17.4(2) test for Publications 2-4 for the same reasons as I have set out at [94]-[103] above in relation to Publication 1.

109. For the reasons set out under section **(d)** below, I have decided to grant the Claimant permission to expand his data protection claim in respect of Publications 2-5; and to add a harassment claim in relation to all five publications.

110. The proposed new defamation claims in relation to Publications 2-4 arise out of the same factual background as the expanded data protection claim and the new harassment

claim to the extent that they all relate to the same publications, they all rely on the Claimant proving that he was being referred to and they all involve the same assertion by the Claimant as to the meaning of the Defendant's use of the word "truth". To that extent, if the Defendant had to meet those new defamation claims, she would have to "investigate facts and obtain evidence of matters" which she "could reasonably be assumed" to need to investigate for the purpose of defending the new claims (to adopt the words approved in *Ballinger* at [86] above).

111. However, if the new defamation claims were permitted, the Defendant may well also have to investigate facts and obtain evidence of matters "completely outside the ambit of, and unrelated to" the facts of the expanded data protection and harassment claims (again to adopt the words from *Ballinger*). I have in mind the work that she may wish to do to meet the Claimant's case on extent of publication and serious harm and/or to mount any defences of truth, honest opinion or public interest she chose to advance to the new defamation claims. These are all issues specific to the tort of defamation. As Mr Hodson himself advanced, the data protection and harassment claims involve entirely different legal frameworks. In particular, the serious harm test is highly fact-specific: see, most recently, *Miller & Power v Turner* [2023] EWHC 2799 (KB) at [45]-[46], per Collins Rice J.

112. In my judgment these further issues could not be said to arise from the "substantially the same facts" as the expanded data protection and harassment claims, bearing in mind the underlying purpose of the provision, which must be taken into account. I note that in *Mulalley* at [74] Toulson LJ (with whom Baker LJ and Andrews LJ agreed) referred to the "modest degree of leeway permitted for expansion or elaboration or explanation" (beyond the existing pleaded facts) but held that "[a]nything else would be contrary to the (limited) flexibility provided by the words "the same or substantially the same".

113. For these reasons, I consider that the answer to issue (3) is "no", whether regard is had to the current statements of case or the amended versions.

(4): Should the Court exercise its discretion to allow the amendment?

114. As the White Book at 17.4.1 makes clear, the court's power to allow amendments under CPR 17.4 is confined to certain tightly limited circumstances and even in a case falling within those limits the court still has a discretion to refuse the amendment on general principles refuse the amendment on general principles.

115. The approach to be taken to the discretion under CPR 17.4(2), where it arises, is essentially the same as the approach to the LA, s.32A: *Wood v Chief Constable of the West Midlands* [2005] EWCA Civ 1638; [2005] EMLR 20 at [84], cited in *Economou* at [60].

116. I have dismissed the s.32A application: see [133]-[149] below. It follows that even if the Claimant had satisfied issues (1) and (2) above, I would have declined to exercise the discretion to permit the amendments under issue (4).

Conclusion on (b)

117. For all these reasons I refuse the Claimant permission to amend his POC to add defamation claims relating to Publications 2-4 under CPR 17.4.

(1)(c): Proposed addition of a new defamation claim regarding Publication 5

118. Publication 5 took place on 10 September 2021. It involved the Defendant posting the words set out in Annex 1 in a blog on her fundraising page. Again it did not mention the Claimant by name and there is a dispute between the parties as to whether the words used would have been understood to be references to the Claimant.

119. This proposed amendment relates to a "new claim". I accept Mr Hodson's submissions on this claim, to the effect that it is not one that can be said to have no reasonable prospect of success, again having regard to the principles set out in *CNM Estates (Tolworth Tower) Ltd.*

120. The other *Pearce* factors militate in favour of granting the Claimant permission in respect of this claim. It is more consistent with the overriding objective to permit him to do so by amendment to this claim rather than by requiring him to issue a new claim which would inevitably be consolidated with this one.

121. I therefore grant the Claimant permission to add a new defamation claim regarding Publication 5 under CPR 17.3.

(1)(d): Proposed addition of Publications 2-4 to the data protection claim and proposed addition of a new harassment claim referring to all five publications

122. As noted at [105] above, the proposed amendments to the data protection claim are relatively straightforward in that their principal purpose is to refer to the four new publications. The proposed addition of the harassment claim is similarly straightforward, and refers to all five publications.

123. The Defendant argued that these amendments would add nothing to the defamation claims other than increasing expense and the court time necessary to deal with this claim. They were, it was said, likely to obstruct the just disposal of these proceedings and take up disproportionate and unreasonable court time and costs. On that basis they should be excluded under CPR 3.2(k) and/or (m). However, as Mr Hodson highlighted, the data protection claim is based on different legal principles and has different remedies attached to it; and there is no limitation issue on this claim. In any event, I have refused permission to add the defamation claims in respect of Publications 2-4 under either CPR 17.4 (see [76]-[117] above) or LA, s.32A (see [133]-[149] below), so the concern about inappropriate duplication identified by the Defendant has fallen away.

124. Deputy Master Bard has already held that there are triable issues between the parties on the data protection claim relating to Publication 1: *Hemming No. 1* at [82]-[107]. I have seen nothing to depart from that assessment. It follows that the same applies to the proposed new claims in respect of the four further publications.

125. Mr Hodson submitted that adding Publications 1-5 together created a credible case that there has been a campaign of harassment of the Claimant by the Defendant. The

Defendant objected to the addition of this claim on the basis that her conduct was not serious enough to amount to harassment. However if the Claimant's case on meaning is accepted, there is a reasonably arguable issue in this regard, not least as the Defendant had herself recognised in Publication 1 that being accused of being a child abuser or a paedophile is a "horrendous thing" that "makes your life dangerous". Further, I accept his submission that the Defendant's objection to the proposed harassment claim on the basis that she was not the author of all the publications is rendered problematic by the fact that she had chosen to re-publish the tweets in Publications 3 and 4 and was therefore responsible for the consequences. It therefore cannot be said that this claim has no reasonable prospects of success.

126. The *Pearce* factors support permission being granted for the amendments, especially given that I have refused permission in respect of the defamation claims relating to Publications 2-4 and thus narrowed the overall scope of the claim; and given that no limitation issues apply to them.

127. I therefore grant the Claimant permission to amend his POC by expanding his data protection claim and adding a new harassment claim, under CPR 17.3.

(2): The Second Application

128. By this application dated 13 July 2022 the Claimant seeks an order under the LA, s.32A disapplying the limitation periods as required for the proposed new defamation claims relating to Publications 2-4.

Legal principles relating to the s.32A application

129. The LA, s.32A provides that:

> "**32A Discretionary exclusion of time limit for actions for defamation or malicious falsehood**
>
> (1) If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which –
>
> (a) the operation of section 4A of this Act prejudices the plaintiff or any person whom he represents, and
>
> (b) any decision of the court under this subsection would prejudice the defendant or any person whom he represents,
>
> the court may direct that that section shall not apply to the action or shall not apply to any specified cause of action to which the action relates".

130. The section continues in material part:

> "(2) In acting under this section the court shall have regard to all the circumstances of the case and in particular to –
>
> (a) the length of, and the reasons for, the delay on the part of the plaintiff…

> (c) the extent to which, having regard to the delay, relevant evidence is likely –
>
> (i) to be unavailable, or
>
> (ii) to be less cogent than if the action had been brought within the period mentioned in section 4A…".

131. It is recognised that a court should be hesitant to exercise its discretion under s.32A for the reasons explained by Sharp LJ in *Bewry v Reed Elsevier UK Ltd* [2014] EWCA Civ 1411, [2015] 1 WLR 2565 at [5] thus:

> "The discretion to disapply is a wide one, and is largely unfettered: see *Steedman v British Broadcasting Corpn* [2002] EMLR 318, para 15. However it is clear that special considerations apply to libel actions which are relevant to the exercise of this discretion. In particular, the purpose of a libel action is vindication of a claimant's reputation. A claimant who wishes to achieve this end by swift remedial action will want his action to be heard as soon as possible. Such claims ought therefore to be pursued with vigour, especially in view of the ephemeral nature of most media publications. These considerations have led to the uniquely short limitation period of one year which applies to such claims and explain why the disapplication of the limitation period in libel actions is often described as exceptional."

132. It is accepted that s.32A can be relied on to allow an out of time amendment that is not within CPR 17.4(2): *Wright* at [139].

Submissions and analysis

(i): Prejudice

133. The starting point under s.32A(1) is to weigh the prejudice in disapplying the limitation period as against the prejudice of not doing so.

134. The prejudice to the Defendant in disapplying the limitation period is that she will be required to defend three defamation claims that are otherwise time-barred. As noted at [110] above she would need to respond to the Claimant's case on reference and meaning in any event in the expanded data protection claim and the new harassment claims. However, she would also have to meet the case on issues specific to the defamation claims. The wider "circumstances" of this case which are relevant under s.32A(2) include, in my judgment, the new breach of contract claim intimated by the Fourth Party, which is already adding to the burden on the Defendant. This would effectively increase the prejudice of permitting the defamation claims to go forward.

135. The prejudice to the Claimant in refusing to disapply the limitation is that he will not be able to advance his case in respect of these three publications as fully as he would like. However, the Claimant's case for the purposes of the CPR 17.4 argument was to the effect that the meaning advanced on all five publications was "similar": see [96] above. On that basis, there are real doubts about whether new defamation claims in respect of Publications 2-4 would add to the vindication of the Claimant's reputation that will be achieved, if appropriate, by the determination of the current defamation

claim relating to Publication 1 (and the claim in relation to Publication 5 which I have permitted: see [118]-[121] above).

136. In this respect, I consider that the case is akin to *Lokhova*. There, Warby LJ refused permission to add a further libel claim in part on the basis that the Claimant already had a claim before the court "in respect of the publication of a similar message" such that "to the extent that she needs vindication in that respect, the existing claim is an adequate vehicle": [66]. Further, the Claimant would not suffer material prejudice if he refused permission in respect of several new claims, because the Claimant had "no need" for them "in order to secure the vindication she says she seeks…[because]…the claims that are presently pleaded seem to me to be amply sufficient for the purpose": [75].

137. Further, any prejudice the Claimant will suffer by not being able to litigate these defamation claims is mitigated to some degree by the fact that I have permitted him to include reference to them in the expanded data protection claim and the new harassment claim: see [122]-[127] above.

(ii): The factors in s.32A(2): delay, loss of evidence and cogency

138. As to the "length of, and the reasons for, the delay" within s.32A(2)(a), Mr Hodson contended that the Claimant had provided the draft amendments in good time, within the limitation period, and pressed the Defendant for a response to no avail. He had done so during the lifetime of the stay when he was under no obligation to act. It took 5 months for the court to list the application. It would be unjust to use that delay against him. Master Brown also suggested that the Defendant's late raising of the limitation issue might have been tactical, which was relevant.

139. In my judgment there is some force in all of these points. However, Gatley at 20-108 emphasises that the length of the delay is to be considered having regard to the length of the primary limitation period. For this reason, a delay of several months, when considered in the context of a limitation period which is only one year, would be considered a lengthy delay. Here, assuming that delay for these purposes is calculated by reference to delay after the expiry of the limitation period and taking the view of the chronology that is most favourable to the Claimant, there was delay from early April 2022 (when the one year limitation periods expired in relation to the defamation claims relating to Publications 2-4) to mid-July 2022 (when the standstill agreement was reached). That is delay of around three months. This is not insignificant given that the primary limitation period is only one year.

140. Further, when looking at "all the circumstances of the case" as s.32A requires, it is appropriate to look at the overall progress of the litigation. This is a claim that was issued on 9 October 2020 relating to a sole publication that took place on 19 November 2019. More than three years since the claim was issued and four years since Publication 1, and the Claimant's POC are still being amended (including in relation to Publication 1).

141. As far as I understand it, the Claimant was made aware of Publications 2-4 when they took place in April 2021. It was not clear to me why he did not raise them as possible defamation claims at any point in 2021, at a time when extensive court resources were being deployed through the applications heard by Deputy Master Bard, based on the

much more limited defamation claim he was advancing at that point. Although a stay for the purposes of settlement was effected on 23 November 2021, I note that in *Lokhova* it was not considered that a stay precluded the claimant from notifying the defendant of an intention to pursue the claim in question: *Lokhova* at [71](1).

142. The Claimant then agreed to vacate the 12 January 2023 CMC hearing at which his applications about these claims were to be heard; and as Nicklin J observed on 25 May 2023, did not take steps to have the CMC re-listed until directed to do so.

143. These aspects of the chronology suggest to me that the Claimant has not consistently pursued the proposed defamation claims in relation to Publications 2-4 with the "vigour" required (see, for example, *Adelson v Associated Newspapers Ltd* [2007] EWHC 3028 (QB), per Eady J at [20]) and borne in mind the "time is of the essence" principle set out in the Pre-action Protocol for Media and Communications Claims at 1.4.

144. I accept Mr Hodson's submissions that there is limited evidence that the delay has led to any loss of or lack of cogency of evidence under s.32A(2)(c). However, delay is in itself contrary to the public interest: *Adelson* at [11], referring to *Steedman* at [22].

(iii): Other matters relevant to the circumstances of the case: the merits, proportionality and the Welsh issue

145. The proposed new defamation claims would undeniably be complex. They would involve, at the very least, disputes about the meanings of Publications 2-4; whether the Claimant could be identified in them (including in some respects by innuendo reference); the significance if any of the fact that the Defendant was not the original author of Publications 3 and 4; whether the Defendant's repetition of the views of others amounted to her honest opinion; and whether her publications were in the public interest.

146. As to the merits, I do not accept the Defendant's submission that the claims are convoluted and implausible and do not stand up to scrutiny. I do not consider them so weak that that in itself is a reason to refuse to extend time under s.32Al but the merits of the claims is only one factor to be taken into account.

147. As in *Lokhova* at [61], I am concerned that the time and costs devoted to this case risk becoming disproportionate to the importance of the claim, if indeed they are not already. This was a further reason why Warby J refused permission in *Lokhova* (applying the same principles as underpin s.32A): he concluded that the new claims and the new plea in aggravation of damages would, in the context of the claim as a whole, represent an "unnecessary and disproportionate complication of a relatively straightforward piece of litigation": see *Lokhova* at [64] and [78]-[79] and thus refused permission on proportionality grounds. In my judgment, the same concerns apply here to the proposed defamation claims in relation to Publications 2-4.

148. Finally, Mr Hodson urged me to take into account the Claimant's position that the *Welsh Development Agency* principle (to the effect that that limitation is to be judged at the date that an application to amend is determined and not when it is issued) is wrong, as contrary to common sense, natural justice and the overriding objective. He

developed a detailed argument to the effect that the Law Reform Committee Twenty-First Report on limitation (Cmnd 6923) (2006) at paragraph 2.72-2.74 supports the proposition that a new claim should be "made" for the purposes of the LA, s.35(3) when the application to amend is issued, not when it is heard. While Mr Hodson developed these arguments carefully and creatively, they can only be of limited assistance given that the Court of Appeal case-law binds this court.

Conclusion on the s.32A application

149. Pulling all these threads together, I am not persuaded that I should exercise the exceptional discretion under s.32A to disapply the limitation period for the proposed new defamation claims relating to Publications 2-4. As explained above, the key reasons for this are (i) my findings that the prejudice to the Defendant by disapplying limitation would be greater than that to the Claimant by not doing so, not least because of his extant defamation claims in relation to Publications 1 and 5 which should sufficiently vindicate his rights; and (ii) my wider concerns about delay, the overall impact of these claims on the litigation and proportionality.

(3): The Third Application

150. By this application dated 13 February 2023 the Defendant seeks to re-amend her Defence and Counterclaim in various respects and, to the extent necessary, to withdraw an admission under CPR 14.5. The application was prepared by the Defendant's former solicitors. In representing herself at the hearing before me, she adopted what they had written on the application notice and in correspondence about the application

151. The application relates to the Defendant's case on serious harm. As to this, the DA, s.1 provides as follows:

> **"Serious harm**
>
> A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant.
>
> For the purposes of this section, harm to the reputation of a body that trades for profit is not "serious harm" unless it has caused or is likely to cause the body serious financial loss".

152. In the original Defence dated 14 January 2021, the Defendant's case on serious harm was advanced on alternative bases, depending on whether the meanings the Claimant advanced, or the ones she then advanced, were accepted by the court.

153. At [17] it was denied that the words complained of, in the meaning contended for by the Defendant, bore any meaning defamatory of the Claimant. The Defence then set out nine particulars of the denial of serious harm.

154. At [18], the Defendant admitted the issue of serious harm with respect to Meaning 1 and 2 as follows:

> "18. For the avoidance of doubt, if the Court rules in favour of the Claimant's pleaded meanings, it is admitted that the meanings contended

> for by the Claimant both have a tendency to cause harm and satisfy the threshold of seriousness pursuant to s.1 of the Defamation Act 2013, subject to the defences pleaded therein. The extent of any alleged harm and the cause of it is not admitted".

155. On 27 April 2021 the Defendant applied to amend her Defence and Counterclaim. This application involved her seeking to amend her case in relation to Meaning 1, Meaning 2 and the issue of serious harm, as well as her pleaded defences of truth, honest opinion and public interest: *Hemming (No. 1)* at [14], [42], [55], [63] and [69].

156. Deputy Master Bard permitted all of the amendments sought by the Defendant save that a proposed new introductory paragraph (i) to [19] was disallowed. This related to one aspect of the Defendant's truth defence: *Hemming (No. 1)* at [63]-[66] and 129(e). He struck out certain sub-paragraphs of her truth defence in relation to Meaning 2 and her plea of honest opinion: *Hemming (No. 1)* at [67]-[77] and 129(b).

157. The amendments to the Defendant's case on meaning permitted by the Deputy Master involved the Defendant abandoning the two meanings contended for in the original Defence, and substituting a denial of the Claimant's meanings, averring that it was "based on an overly simplistic and mechanistic approach to the repetition rule": *Hemming (No. 1)* at [32]-[45]. That remains the Defendant's case on meaning.

158. The amendments to the Defendant's case on serious harm which the Deputy Master permitted involved the Defendant making various additions to [17] of the Defence, where her denial of serious harm based on the meaning she (then) contended for were set out: *Hemming (No. 1)* at [54]-[62]. The effect of his judgment was that [17] read as follows (with the amendments he approved in underlined / struck through text):

> "17. Paragraphs 14 and 15 are denied. The Defendant denies that the words complained of, in the meanings contended for by the Defendant, bore any meaning defamatory of the Claimant:
>
> **PARTICULARS OF DENIAL OF SERIOUS HARM**
>
> It is denied that the mere <u>mention by the Defendant in answer to a question during the long interview of the</u> fact that Ms Baker had made an allegation that she was abused as a child by the Claimant (albeit a very serious allegation), in circumstances when the Defendant made it clear that the Claimant denied the allegation<u>, when the Claimant's denial of the allegation was extremely widely known, and the Defendant stated that she did not know the truth of the allegation and was not seeking to make any allegation herself;</u>, is sufficient to ~~have a tendency to cause harm or~~ satisfy the statutory threshold ~~of seriousness~~ pursuant to s.1 of the Defamation Act 2013;
>
> <u>ia. S.1 must be interpreted in accordance with Article 10 of the European Convention on Human Rights. This requires, inter alia, that politicians must show a greater degree of tolerance as to any potential damage to their reputation than private citizens, especially in respect of reports of</u>

allegations made by third parties: see, eg, *Olafsson v Iceland*, ECHR case no. 58493/13, (2018) 67 E.H.R.R. 19.

ii. Paragraphs 8, 9, 10, 11, 13, 14 and 16 above are repeated;

iii. The Defendant published the words complained of to 3 people whilst the interview took place on 3 November 2019: Mr Attwood, his cameraman and an audio engineer;

iv. The imputation contended for by the Defendant falls short of asserting that the Claimant has behaved in such a way as to bring suspicion on himself or to provoke the need for an investigation;

v. All of the matters referred to in the words complained of were already in the public domain, including having been published in far more disparaging terms and on websites with far greater prominence, such that anyone with any interest in or importance to the Claimant already knew of them. Paragraphs 19(i) (ii), (iii), (v), (vii) and (viii) below are ~~is~~ repeated; each of those matters were widely reported in the media. The Claimant also spoke to the media about these matters on several occasions, emphasising his innocence, for example in an interview with the Daily Mail and MailOnline (the world's most popular news website) published on 22 June 2018. The Claimant is put to strict proof of the precise alleged harm resulting from the words complained of published to 3 people, given, in particular, the above matters already known to anyone with any interest in or significance to the Claimant, and that the Defendant was not suggesting she had any new information about the truth of the allegations. ~~rather than from any other publications;.~~

vi. Conveying information about threats of legal action, whether to protect reputation or otherwise, is highly unlikely to cause people to think less of the Claimant;

vii. The Claimant is put to proof that he had a good reputation, particularly insofar as his sex life was concerned;

viii. Paragraphs 16 and 17 are not admitted;

ix. Paragraph 18 is not admitted. Further:

a. As to paragraph 18.1, paragraphs 9, 13, 16 and 17(iii) above are repeated;

b. Paragraph 18.2 is embarrassing for want of particularity;

c. As to paragraph 18.3, it is unclear which comments the Claimant is referring to. In any event, responsibility for the publication is denied, paragraphs 9, 13, 16 and 17(iii) above are repeated;

> d. Paragraph 18.4 is denied. References to credibility were given by Mr Attwood and, properly understood in the context they were made, were not referring to the allegations made by Ms Baker so as to reinforce the truth of them;
>
> e. Paragraph 18.5 is denied. The words complained of were spoken prior to the judgment in *Baker v Hemming* [2019] EWHC 2950 QB".

159. There was no application to amend [18] of the Defence, as to which the Deputy Master observed:

> "The effect of paragraph 18 of the Defence is that if the Claimant succeeds in establishing either Meaning 1 or Meaning 2 in full, then "serious harm" is not an issue (at least, in relation to that meaning), although paragraph 17 of the Defence still goes to quantification of damage".

160. The version of the proposed draft re-Amended Defence and Counterclaim appended to the application notice provided to me was unclear. It included many passages of text in red, with underlining and struck-through text, in accordance with PD 17, para. 2.4. It also contained several passages which were both in red text and highlighted yellow. I had assumed that all of the parts in red reflected the amendments approved by Deputy Master Bard and those highlighted yellow were the proposed re-amendments. However, that was not the case: for example, the sub-paragraphs of [19] and [20]-[21] which he had struck out were both coloured red and highlighted; and the re-amendments to [17] and [18] which the Defendant sought to effect by this application were both red and highlighted.

The issues on the Third Application

161. The Claimant consents to all the proposed re-amendments to the Defence, save those in respect of [17]-[18]. As far as I can tell, by cross-referring to *Hemming No. 1*, the non-contentious re-amendments seek to add further details to the public interest defence to the defamation claim at [22] and to the specific statutory defences to the data protection claim at [30] and [31] (as well as correcting a date at [35]). As the Claimant has consented in writing to these re-amendments to the Defence, the permission of the court is not required: CPR 17.1(2)(a).

162. The proposed amendments to the Counterclaim seek to add further particulars of alleged harassment, relating to the actions of the Third Party acting alone and/or with the Claimant, from 26 August 2022 onwards. Reference is made to an allegedly harassing statement the Third Party made about the Defendant and the Fourth Party on 2 September 2022.

163. The Third Party wrote as follows in respect of these:

> "The 3rd Party consents to the amendments but nevertheless considers these to be an abuse of process. The Defendant initially threatened a libel claim. Confronted by defences of Truth, Honest Opinion and Publication in the Public Interest, she has brought a harassment claim instead. It is

> trite law that a harassment claim relating to press publications, including citizen journalist publications, must please a conscious or negligent abuse of power by the media. None has been pleaded. The 3rd Party consents to the amendments only because he believes it is in the public interest to prove the truth and reasonableness of his allegations made in the articles".

164. Notwithstanding the Third Party's observations about the substance of the proposed re-amendments, it is clear that he has consented to them. Again, therefore, the permission of the court is not required.

165. The contentious issues therefore relate to the Defendant's proposals to re-amend [17] and [18] of the Defence in three respects.

166. First, the Defendant seeks to add a further particular to her denial of serious harm in [17] as follows:

> "vii-a. All or the vast all the viewers of the lengthy interview of the Defendant by Shaun Attwood would have been followers of the Defendant's journalism and aware of her reporting of allegations of paedophilia against politicians and/or persons in her 'echo chamber,' such that publication of her answer to Mr Attwood's question to this audience did not cause serious harm to the Claimant's reputation".

167. Second, the Defendant seeks to effect this amendment to [18]:

> "~~For the avoidance of doubt, if the Court rules in favour of the Claimant's pleaded meanings, it is admitted that the meanings contended for by the Claimant both have a tendency to cause harm and satisfy the statutory threshold of seriousness pursuant to s.1 of the Defamation Act 2013, subject to the defences pleaded herein. The extent of any alleged harm and the cause of it is not admitted~~".

168. Third, the Defendant seeks to re-amend the introduction to [17] by adding the words underlined below and deleting those that are struck through:

> "Paragraphs 14 and 15 are denied. The Defendant denies that the words complained of have caused or are likely to cause serious harm to the reputation of ~~in the meanings contended for by the Defendant bore any meaning defamatory~~ of the Claimant:".

169. The Claimant initially objected to these proposed re-amendments on the basis that at least some of them amounted to an application with withdraw an admission which the Defendant had not made, such that the court simply had no jurisdiction to grant the Defendant's application. Mr Hodson rightly withdrew this point in oral submissions: the application notice explicitly states that it is an application to amend, and if necessary, one to withdraw an admission.

Submissions and analysis

(i): The proposed new sub-paragraph [17] vii-a

170. As can be seen by looking at the totality of the current [17] and the proposed addition to it (see 158] and [166] above), the Defendant seeks by this application to provide one further particular of the overarching denial of serious harm.

171. This is a solely a proposed re-amendment. There is no suggestion that it amounts to the withdrawal of an admission. On that basis, the general principles relevant to the discretion to permit amendments to statements of case, summarised at [47]-[52] above, constitute the appropriate legal framework.

172. *Pearce* makes clear that compliance with the CPR and directions, and the timing of the application, are relevant factors. It is unfortunate that the application was not made earlier in the litigation, including when the Defendant sought to amend her case on serious harm in other respects by her application dated 27 April 2021. However, this application was made in accordance with the timescale set by Nicklin J by his order dated 19 January 2023. He was clearly keen to ensure that any such application was made in time for it to be considered alongside the Claimant's application to amend the Particulars, and that occurred. Further, the reality is that, for a range of reasons, despite having been commenced in 2020, these proceedings are at an early stage. Indeed, the process of all parties serving their final statements of case has not yet been completed. There is no trial date imminent. Accordingly this cannot be regarded as a "very late" application to amend.

173. *Pearce* also emphasises that the overriding objective and consideration of the competing injustice and prejudice to the various parties are relevant. If this re-amendment is not permitted, the Defendant will suffer the injustice of not being able to advance this further element of her case on serious harm. Mr Hodson pointed to no specific elements of injustice or prejudice to the Claimant if the re-amendment was permitted, beyond the fact of it being an additional part of the Defence that he would no doubt try to meet. Further, it is relevant that the remainder of [17] already puts in issue similar or related factors which are said to undermine his case on serious harm. The White Book at 17.3.5 cites *Toucan Energy Holdings Ltd v Wirsol Energy Ltd* [2021] EWHC 895 (Comm*)*, Annex, [9]–[10] as authority for the proposition that if the case sought to be advanced by the proposed amendment is one which the parties had already been addressing whether by other pleas or in evidence, that is a relevant factor, although that consideration will be less material where the new case has received only peripheral attention to date. That principle in my judgment applies here.

174. Accordingly, in my judgment, application of the *Pearce* principles militates in favour of permitting this amendment.

175. Mr Hodson argued that the proposed re-amendment should be refused because it was legally flawed in light of the judgment of the Court of Appeal in *Banks v Cadwalladr* [2023] EWCA Civ 219. He surmised (although this was not the Defendant's submission) that the application to re-amend had been made based on the first instance judgment of Steyn J in the same case (at [2022] EWHC 1417 (QB); [2022] 3 WLR 167). There, Steyn J had found that harm was diminished in respect of some parts of the claim because most of those to whom the relevant publications were made were in the defendant's "echo chamber": see [93] and [98]. However, Mr Hodson argued that the Court of Appeal judgment, which post-dated the making of the application, and which allowed the Claimant's appeal with respect to some of the echo chamber findings

made by the judge, showed that the proposed new sub-paragraph did not have reasonable prospects of success.

176. The Defendant did not specifically respond to the legal submissions based on *Banks* (perhaps because they had not been developed in detail in the skeleton argument). However, I am not persuaded that they justify refusing her permission to add the proposed new sub-paragraph for two reasons.

177. First, these proposed amendments "provide…further particulars, based on factual material, in support of an existing pleaded point". On that basis, it is not appropriate to invite an assessment of whether they have a real prospect of success: see [50] above. What matters is that they have some such prospect and comply with the principles set out at *Kawasaki Kisen Kaisha Ltd* at [18].

178. Second, in my assessment *Banks* illustrates that echo chamber arguments of the sort set out in the proposed new sub-paragraph are more complex and fact-sensitive than Mr Hodson suggested.

179. In *Banks*, Warby LJ (with whom Singh LJ and Sharp P agreed) concluded that the judge had erred on this issue because (i) if what the judge meant by echo chamber was that "most publishees were people who disliked or had a generally low opinion of the claimant", that was irrelevant to the question of serious harm; but (ii) if, as he believed, what the judge meant was that in the minds of most publishees, the claimant already had a bad reputation for the specific misconduct of taking foreign money in breach of electoral law and lying about it, the evidence did not allow such a finding: see [6] and [7].

180. Warby LJ set out the legal principles pertinent to the interrelationship between evidence of echo chambers and the concept of serious harm thus:

> "55. Where a defendant publishes a specific allegation of a seriously damaging kind in circumstances which would ordinarily lead to an inference of serious reputational harm the fact, if it be so, that those to whom that allegation is published are politically opposed to the claimant or dislike him or have a generally low opinion of him for some other reason is not a proper basis on which to reject that inference. Such an approach would be at odds with well-established and salutary principles. A person's reputation is not a simple question of whether they are liked or disliked. Nor is reputation a single indivisible whole, it is composed of sectors. At common law it is clear that evidence of bad reputation must be confined to the sector of the claimant's character relevant to the libel: see *Gatley on Libel & Slander* 13th ed (2022) at 34-083 and cases there cited. If it were otherwise a person who was widely disliked or had a bad reputation in one sector of their reputation would find it hard to succeed in a defamation claim whatever grave falsehood was published about them. That would be unprincipled and contrary to the public interest.
>
> 56. It is for this reason, I believe, that judges of the Media and Communications List have consistently, and in my view correctly, rejected arguments to the effect that a serious allegation of specific

> wrongdoing does not cause serious harm if the audience dislikes the claimant for some other reason…".

181. Warby LJ continued:

> "57. In the circumstances, I doubt that the judge made the error attributed to her by Mr Williams. In my opinion what she meant by her reference to an "echo chamber" is a closed environment in which the information people receive is merely repetition of the same things that they have heard or said before and already believe. That is consistent with the literal meaning of "echo". I agree that it cannot be assumed that Twitter itself is an echo chamber in this sense, but the judge did not do this. What she said was specific to the defendant and her followers on Twitter. Nor do I think that what the judge said about those matters can fairly be described as an "assumption". What emerges from a fair reading of the judge's language is that she considered it reasonable to infer that the majority of the publications complained of were sent into an "echo chamber" of this kind. That inference fed into the judge's overall conclusions that serious reputational harm was not established in respect of the Tweet or Phase Two publication of the TED Talk.
>
> 58. This is a legally permissible line of reasoning, up to a point. Proof that the relevant sector of the claimant's reputation is bad among those to whom the statement complained of was published can reduce damages, perhaps very substantially. A claimant is only entitled to recover compensation for injury to the reputation he actually has. By the same token proof of an existing bad reputation in the relevant sector must be relevant to the question of whether the publication of a statement caused serious harm to the claimant's reputation.
>
> 59. However, the authorities set clear limits on the means by which a relevant bad reputation can be proved. Other publications to the same effect as the words complained of, or relating to the same incident as referred to in those words, are inadmissible for this purpose, and this rule covers previous publications by the same defendant: *Gatley* (op. cit) at 34-086 citing *Dingle* and *Lachaux* SC at [22]…".

182. Applying those principles to the new proposed new sub-paragraph, if it were allowed into the Defence, consideration would need to be given to, at least, the following evidential issues: (i) whether the viewers of the relevant interview were, in fact, followers of the Defendant's journalism and aware of her reporting and/or persons in her echo chamber; (ii) whether this equated to publication in a "closed environment" in which the information they received was merely repetition of the same things that they had heard or said before and already believed, bearing in mind the *Dingle* rule; and (iii) whether those who viewed the interview were "merely" politically opposed to, disliked or had a generally low opinion of the Claimant or whether he has a bad reputation in the "sector" of the claimant's character relevant to the libel alleged.

183. More generally, in rejecting the Claimant's application for summary judgment and/or strike out on the issue of serious harm, Deputy Master Bard concluded that (i) *Lauchaux*

v Independent Print Limited [2019] 3 WLR 18 at [14] and [16] clearly suggested the role of the factual circumstances in considering whether a publication had caused or is likely to cause serious harm; (ii) the Defendant was entitled to point to the circumstances of the publication as set out in the existing [17] in support of her contention that the statutory threshold for serious harm had not been crossed; (iii) the factors relied on therein - including the *Olafsson* principle and the fact that all of the matters referred to in the words complained of were already in the public domain and would have been familiar to those with an interest in such issue - were all factors properly to be taken into account when considering serious harm; and (iv) the question of whether an inference of serious harm could be drawn was one for the trial judge, not least because it would depend upon the exact meaning of the words as determined at trial: *Hemming (No 1)* at [58]-62].

184. In light of the number of nuanced evidential issues inherent in the echo chamber argument, and the contextual matters referred to by Deputy Master Bard, I do not consider that it can be said that the proposed new sub-paragraph should not be permitted.

185. For all these reasons I permit this amendment. The Defendant may therefore amend the Defence by the insertion of a new sub-paragraph [17] vii-a.

(ii): The proposed deletion of [18]

186. The Defendant argued that the fact that the admission in the original [18] was "hypothetical" or "contingent" on the court ruling in favour of the Claimant's meaning meant that it was not a "true" admission. I cannot accept this: as Mr Hodson submitted, a conditional admission is still an admission. In my judgment the original [18] was a clear pleaded case that if the Claimant succeeded on either Meaning 1 or 2, serious harm would not be disputed. That was how Deputy Master Bard also interpreted it: see [159] above.

187. The proposed amendment strikes out the entirety of [18]. It goes further than being a mere "shift in emphasis" in the Defendant's case on serious harm as she contended: it amounts to the withdrawal of an admission, for which the Defendant requires permission.

188. Applications for permission to withdraw admissions are governed by CPR 14.5, which provides as follows:

> **"14.5 Application for permission to withdraw admission**
>
> In deciding whether to give permission for an admission to be withdrawn, the court shall consider all the circumstances of the case, including—
>
> (a) the grounds for seeking to withdraw the admission;
>
> (b) whether there is new evidence that was not available when the admission was made;

> (c) the conduct of the parties;
>
> (d) any prejudice to any person if the admission is withdrawn or not permitted to be withdrawn;
>
> (e) what stage the proceedings have reached; in particular, whether a date or period has been fixed for the trial;
>
> (f) the prospects of success of the claim or of the part of it to which the admission relates; and
>
> (g) the interests of the administration of justice".

189. The White Book at 14.5.1 explains that CPR 14.5 enshrines, with some variations, the provisions of para.7.2 of the now deleted PD 14. On that basis, the court's approach under the old Part 14 offers some guidance as to how CPR 14.5 should be interpreted. For example, in *Clark v Braintree Clinical Services Ltd*, [2015] EWHC 3181 (QB), permission to withdraw a conditional admission made in a Defence was refused where the parties had proceeded on the basis of the partial admission for some time, the application for permission to withdraw had not been made promptly, and there would be inevitable prejudice to the claimant if granted and no significant prejudice to the defendant if refused.

190. As to factor **(a)** in CPR 14.5, Box 10 of the application notice asserted that the original [18] was "premised on an outdated approach to the law in respect of serious harm to reputation". No particulars of this were given, nor did the Defendant identify any. It does not appear to have been the judgment of Steyn J in *Banks* given that [18] does not refer to echo chambers or matters of that nature, but rather focuses on the serious harm issue insofar as it relates to the Claimant's case on meaning.

191. It was also averred in Box 10 that the original [18] was "inconsistent both internally (with the non-admission to causation of, and extent of, harm) and with the reasons for denying serious harm set out in paragraph 17 – which reasons mitigate against serious harm regardless of any ruling as to the single meaning". Deputy Master Bard did not seem to consider that [18] was internally inconsistent or inconsistent with [17]. Nor do I: it seems tolerably clear that [18] was an admission to serious harm if the Claimant succeeded on either of his pleaded meanings, in relation to that meaning; that [17] was a denial of serious harm otherwise; and that [17] would still be relevant to the issue of damage even if the Claimant did succeed on one of his meanings. The specialist counsel who drafted the Defence clearly did not consider the two paragraphs problematic either.

192. For these reasons, I do not find either of these points persuasive grounds for withdrawing the admission.

193. As to **(b)**, the Defendant made no suggestion that the application to withdraw the admission was being made due to new evidence that was not available when the admission was made.

194. As to **(c)**, I do have concerns about the Defendant's conduct of this issue. As noted above, no clear arguments were provided to me to suggest that the original [18] was

indeed based on an outdated approach to the law. Even if there were concerns that the original [18] was somehow internally inconsistent or inconsistent with [17], it is hard to see why these concerns were not identified when the extensive application to amend dated 27 April 2021 was made. Almost two further years passed before this application was made, with no explanation provided to me for that delay.

195. Balanced against that is the Claimant's conduct. As Mr Hodson explained, the Claimant relied on the original [18] dated 14 January 2021 as an assurance that serious harm based on his contended meanings was no longer in issue. On that basis, efforts to prove the issue of serious harm were abandoned after that date.

196. This feeds into **(d)**, the issue of prejudice to the Claimant if the admission is withdrawn. As Mr Hodson submitted, the question of serious harm is one that can take up considerable time, costs and efforts due to the inherent difficulty a person has in proving that publishees have been swayed against them, in circumstances where those publishees are by definition by then hostile.

197. The Claimant did append to [18] of his POC a number of online comments from viewers of Mr Attwood's channel to seek to demonstrate serious harm. I note that of those comments, Deputy Master Bard did not identify a single express reference to either the Claimant or Ms Baker: *Hemming No. 1* at [61]. This appears to reflect the extent of the evidence the Claimant had collated on the issue of serious harm before 14 January 2021 when the original [18] of the Defence was received; and he was justified in ceasing efforts in that regard thereafter.

198. I accept Mr Hodson's submission that the passage of over two more years until late January 2023, when the Claimant was first informed of the application to withdraw the admission, would significantly prejudice his ability to obtain such evidence.

199. As to prejudice to the Defendant if she is refused permission to withdraw the admission, she will be denied the ability to argue her case on serious harm as fully as she would like. However, consistent with my observations in relation to factors **(a)** and **(c)** above, this appears to be largely a problem of her own making. Further, as Mr Hodson highlighted, she is still able to argue her alternative case on serious harm as set out in [17].

200. As to **(e)**, no trial window or date has been set. As Box 10 of the application notice highlighted, the Claimant is likely to need to revise his Reply to the Defence in any event, to address the amendments to the Defence to which he has consented. To that extent, progress of the claim would not be impacted by permitting the Defendant to withdraw the admission. However the stage at which this application was made has contributed to the prejudice to the Claimant referred to at [197]-[198] above.

201. As to **(f)**, Box 10 of the application notice relies on Deputy Master Bard's judgment that the Defendant's case on serious harm had reasonable prospects of success. Reference is made to [54]-[62] of his judgment. However, these paragraphs were expressly focussed on the denial of serious harm in [17]. The Deputy Master was not concerned with any arguments around [18]: he simply noted the admission therein and then moved on. The fact that he concluded that the denial of serious harm in [17] had reasonable prospects of success does not mean that a wider denial, including a denial

based on the Claimant's contended meanings (which would be the effect of withdrawing the admission), also has such prospects.

202. Mr Hodson contended that the original pleader of the Defence made a sensible concession; and that to deny the issue of serious harm based on the Claimant's contended for meanings was unrealistic. He relied on the fact that in *Baker v Hemming*, Ms Baker (as Defendant to Mr Hemming's counterclaim) conceded the issue of serious harm on very similar and related facts. His case on the natural and ordinary meaning of the Tweet in question had been set out at [107] of the Amended Defence and Counterclaim and was that he had "raped and sexually assaulted [Ms Baker], then stalked and defamed her to cover it up". Further, "The reference to 'other victims' meant he committed other rapes and is a serial rapist": *Baker v Hemming* at [14]. Later in the judgment, Steyn J referred to this meaning, and recorded that Ms Baker had conceded that "such a grave allegation was bound to cause serious reputational harm": [97]. On that basis, Mr Hodson argued that the issue of whether the meanings contended for by the Claimant meet the serious harm threshold has effectively already been determined. Further, even if Steyn J had not given this ruling, it was a matter of common sense that to assert someone had sexually abused a child was bound to cause serious harm. In my judgment, these submissions have considerable force.

203. As to **(g)**, the interests of the administration of justice, Box 10 of the application notice contended that refusing permission to withdraw the admission would "artificially constrain the trial judge in dealing with the issue of serious harm". I do not accept this: rather than constraining the judge, the original [18] narrowed the issues, which is generally helpful.

204. Pulling these various threads together: the grounds advanced for withdrawing the admission are not persuasive; there has been considerable unexplained delay in making the application; the Claimant will be significantly prejudiced by the admission being withdrawn; the prejudice to the Defendant by refusing the application is of her own making; and the prospects of succeeding on the merits of the issue if the admission is withdrawn appear weak. Bearing in mind all these factors, and considering all the circumstances, I conclude that the Defendant's application to withdraw the admission should be refused. [18] of the Defence will therefore remain as originally pleaded.

(iii): The proposed amendments to the introduction of [17]

205. Mr Hodson highlighted that the introductory wording of the current [17] is now anomalous because, in light of Deputy Master Bard's judgment, there is nothing in the Defence to advance an alternative meaning.

206. In light of my refusal of permission to withdraw the admission of [18], the wording of [17] does need revision but not in the manner contended for in the application. Rather, it needs to be re-amended simply to make clear that the matters therein reflect the Defendant's case if the court finds a meaning other than one of those contended for by the Claimant.

(4): The Fourth Application

207. The Fourth Application dated 18 August 2023 relates to the separate KB claim commenced by the Claimant on 18 June 2023, and stayed by Master Stevens shortly thereafter (see [38] above).

208. The claim advances a single data protection claim against the Defendant. It refers to the PIP publication, described at [12] above. This was first published by Defendant in 2018, but it is still live on YouTube. The Claimant's case is that it has been republished by the Defendant, or at least with her consent, on rumble.com, where it appears under a profile called 'EXPOSE the PEDOS end of the CABAL'. The Defendant submitted that she was unaware that PIP had been published on Rumble.

209. The claim is advanced on the following basis: (i) in the section of PIP relied on, the Defendant explicitly named the Claimant as the man Ms Baker was accusing and implied that there were substantial grounds to suspect him guilty of the allegation; (ii) this amounted to the processing of his personal data, specifically 'special category data' and data about criminal offences; (iii) since the original publication of PIP there have been several vindications of the Claimant, demonstrating his innocence of the allegations and restraining Ms Baker from any repetition of them; (iv) the Defendant has failed to make any of the requested corrections and instead has even more widely published PIP or consented to the publication of it; and (v) the Defendant's conduct therefore amounts to unlawful processing of the Claimant's data in a range of ways.

210. By the Fourth Application the Claimant seeks an order lifting the stay in the KB claim and directions for its future conduct

(i): Whether to lift the stay in the KB claim

211. Master Stevens imposed the stay due to concerns that the KB claim appeared to raise similar issues between the parties as the QB claim and might be an abuse of process.

212. PIP was published over five years ago, on 2 August 2018. The Claimant was concerned about it on the very day of publication, as Deputy Master Bard noted in his judgment: see [12] above. However, he brought no claim in relation to it at that point, or when he commenced the QB claim relating to Publication 1 in October 2020. He did not seek to litigate anything to do with PIP until 18 June 2023 when he issued the KB claim.

213. Accordingly, the Master's concern about the similarity of the KB claim with the QB claim reflected the category of potentially abusive proceedings described in the White Book at 3.4.4 thus:

> "…vexatious proceedings, ie. two or more sets of proceedings in respect of the same subject matter which amounts to harassment of the defendant in order to make them fight the same battle more than once with the attendant multiplication of costs, time and stress".

214. In *Aldi Stores Ltd v WSP Group Plc* [2008] 1 WLR 748; [2008] PNLR 14 at [6], the Court of Appeal referred with approval to the judgment of Clarke LJ (as he then was) in *Dexter v Vlieland-Boddy* [2003] EWCA Civ 14, where he summarised the principles to be derived from the authoritative House of Lords case on *Johnson v Gore Wood & Co (No.1)* [2002] 2 AC 1, as follows:

> "i) Where A has brought an action against B, a later action against B or C may be struck out where the second action is an abuse of process;
>
> ii) A later action against B is much more likely to be held to be an abuse of process than a later action against C;
>
> iii) The burden of establishing abuse of process is on B or C or as the case may be;
>
> iv) It is wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive;
>
> v) The question in every case is whether, applying a broad merits based approach, A's conduct is in all the circumstances an abuse of process; and
>
> vi) The court will rarely find that the later action is an abuse of process unless the later action involves unjust harassment or oppression of B or C."

215. The "broad, merits based approach" does not refer to the substantive merits but the merits relevant to the question of whether the claimant should have brought their claim as part of the earlier proceedings: *Stuart v Golberg Linde* [2008] EWCA Civ 2; [2008] 1 WLR 823, CA, cited in the White Book at 3.4.5.

The evidence and submissions

216. Mr Hodson argued that (i) far from seeking to abuse the legal process, the Claimant was seeking to "streamline" it by pursuing a discrete and simple data protection claim; (ii) the KB claim related to a serious publication which (unlike Publication 1 in the QB claim) remains in the public domain and continues to attract a wider audience every day; (iii) there has been no final determination of the issues around PIP and then an attempt to relitigate the issue; (iv) the Claimant had good reason for not pursuing the KB claim earlier, namely that over time, as the Defendant had "doubled down" on her original assertions and refused to alter the contents of PIP, despite the judgments of Steyn and Griffiths JJ, he finally concluded that "enough was enough"; and (v) just because the Defendant said she felt oppressed, it did not mean the claim was abusive.

217. He was highly critical of the Defendant's conduct of the litigation to date, contending that she continued to add "layer upon layer" to the QB claim as with her application against the Fourth Party and her threat to add a Fifth Party by way of further counterclaim.

218. Both the Third and Fourth Parties supported the Claimant's assertions on the abuse of process issue, asserting that he could not have brought the KB claim any earlier and that the claim was meritorious. It is questionable whether they had standing to make submissions on the issue of whether the stay in the KB claim (to which they are not parties) should be lifted, as opposed to the impact of lifting that stay on the QB claim (to which they are).

219. The Defendant's position, as set out in her 28 September 2023 witness statement and developed further in her submissions, was that the KB claim was an abuse of process. She contended that (i) the KB claim was "incredibly similar" to the QB claim; (ii) it was only being pursued as a data protection claim because the Claimant was out of time for bringing a defamation claim; and (iii) the ongoing litigation and the manner in which it has been conducted has had an adverse impact on her health.

220. She also submitted that (i) the claim had only been brought because she had refused to settle the QB claim on terms that would have disadvantaged her; (ii) it is part of a pattern of the Claimant and Third and Fourth Parties working together to pursue her, her supporters (such as Mr Butt) and her legal representatives; (iii) specifically, it is a "SLAPP" (a Strategic Lawsuit Against Public Participation), intended to intimidate, and silence her, in particular to increase her costs so as to interfere with her fundraising; (iv) in fact, due to the demands of the "complete bombardment" of litigation she had experienced over the last three years, she no longer had lawyers to assist her; and (v) the Claimant and the Third Party are serial litigants who engage in litigation more widely than cases against her, with reference being made to examples of the Claimant being criticised by judges and an assertion that the Third Party has acted contrary to the guidance for the conduct of McKenzie Friends.

221. She also contended that the Claimant was acting with an improper ulterior motive, namely his "continuing battle" with her, such that the claim constituted harassment of her and an abuse of process. This claim was therefore directly comparable to *Higinbotham (formerly BWK) v Teekhungam and Perry* [2018] EWHC 1880 (QB) at [65], where Nicklin J upheld a Master's strike out decision on this basis.

222. The category of potentially abusive proceedings brought for an "improper collateral purpose" is described in the White Book at 3.4.15 thus:

> "It is an abuse of process to pursue a claim for an improper collateral purpose. However, what is an improper collateral purpose is not easy to define and few cases have been struck out solely on this basis…
>
> The cases suggest two distinct categories of such misuse of process: [1] the achievement of a collateral advantage beyond the proper scope of the action; and [2] the conduct of the proceedings themselves (including the initiation of the claim itself) is not so as to vindicate a right but rather in a manner designed to cause the defendant problems of expense, harassment, commercial prejudice or the like beyond those ordinarily encountered in the course of properly conducted litigation.
>
> Only in the most clear and obvious case will it be appropriate upon preliminary application to strike out proceedings as an abuse of process so as to prevent a plaintiff from bringing an apparently proper cause of action to trial..".

223. Finally the Defendant submitted that permitting the KB claim to proceed would do nothing other than increase expense and the demands on court time, and the court should exclude it from consideration under CPR 3.1(2)(k) and/or CPR 3.1(2)(m). She

was therefore arguing that the KB claim also fell within a third category of abuse, namely "pointless and wasteful litigation", as described in the White Book at 3.4.14.

224. This form of abuse can arise in circumstances where it can be demonstrated that the benefit attainable by the claimant in the action is of such limited value that "the game is not worth the candle" and the costs of the litigation will be out of all proportion to the benefit to be achieved: *Jameel v Dow Jones & Co* [2005] EWCA Civ 75; [2005] QB 946. It was described by Nicklin J in *Higinbotham* at [44] as giving the court jurisdiction to stay or strike out a claim where no "real or substantial wrong has been committed and litigating the claim will yield no tangible or legitimate benefit to the claimant proportionate to the likely costs and use of court procedures".

225. *Jameel* was a libel case but this form of abuse is not confined to such cases. At [54], Lord Phillips MR said as follows:

> "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".

226. This theme was also addressed in *Amersi v Leslie and others* [2023] EWHC 1368 (KB), to which the Defendant referred. Before citing the passage above, Nicklin J observed that:

> "44…The days when the Court simply provided a playing field and an umpire/referee, and generally left the parties to play the game they chose are gone. The Court will want to look carefully at the history of this litigation…to see whether it is being conducted efficiently, for a legitimate purpose, and at proportionate cost...
>
> 238…In pursuit of the overriding objective, the Court strives to deal with cases justly and at proportionate cost. That includes, so far as practicable, saving expense, ensuring that a case is dealt with 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: CPR 1.1…".

227. In Mr Butt's statement in support of the Defendant's position he said that he has been harassed by the Claimant and the Third Party since 2020. He also referred to the impact on the Defendant's health of the litigation.

Discussion

228. Mr Hodson was plainly right to argue that this was not a case involving an attempt to re-litigate an issue that has already been determined. I also accept that both the KB claim and the QB claim are (regrettably, as far as the latter is concerned) still at the stage at which proceedings are being finalised, such that, conceivably the claims could progress in tandem or be consolidated.

229. However neither of those propositions of themselves means that the KB claim is not an abuse of process.

230. The White Book at 3.4.4 observed that a claim will not be considered vexatious in the sense described at [213] above if a claimant has sufficient justification for commencing concurrent proceedings. As to this issue, I found the Claimant's "enough is enough" argument unpersuasive, in light of his immediate expressions of concern about PIP at the time it was published; his general willingness to litigate against the Defendant (and more widely); the fact that the KB claim was brought not only many years after PIP was published, but as a separate claim; and the fact that it was brought almost a year after the latest of the judgments on which he relies as an exculpatory finding (that of Griffiths J on 17 August 2022: see [18] above).

231. The totality of the material I have seen makes clear that the parties have been involved in litigation, conducted at a very "high temperature", for several years, and that their difficulties pre-date the litigation. While the Claimant is, strictly, seeking to vindicate his data protection rights in relation to PIP through the KB claim, I do have concerns that the manner of the proceedings is designed to cause the Defendant problems of expense and harassment of the sort that calls into question whether it is being pursued for an improper collateral purpose. The bringing of this claim as a separate claim, and the forceful arguments that it should proceed separately (to which proposition the Third and Fourth Parties added strong support) adds to this picture, especially when it appears tolerably clear that if the KB claim does proceed, it should be consolidated with the QB claim (see [243]-[247] below).

232. When one also factors in (i) the Claimant's application to add a significant number of claims to the QB claim; (ii) the Third Party's application for permission to commence detailed costs assessment proceedings against her for a sum of £95 (see [312]-[316] below); and (iii) the Fourth Party's new breach of contract claim against her, the Defendant's submissions about harassment and oppression appear persuasive.

233. That said, I cannot ignore the assertions that have been made about the Defendant's own conduct of the litigation; that I have given permission to the Claimant to advance a harassment claim against her; and that ultimately the Fourth Party's allegations of harassment against her may be upheld.

234. For these reasons I do not consider it appropriate to strike out the KB claim as an abuse of process at this stage. I say this not least because striking a claim out is a draconian power and it should only be used in exceptional cases: *Stelios Haji-Ioannou v Dixon* [2009] EWHC 178 at [30], per Sharp LJ, cited in *Higinbotham* at [44] and/or in the "most clear and obvious cases" (see [222] above).

235. That said, I continue to have very real concerns that this claim is not "worth the candle" and is thus potentially within the third category of abuse described at [223]-[226] above. In the QB claim the Claimant is litigating defamation claims in relation to two publications as well as data protection and harassment claims in relation to five. In those circumstances it is, at present, hard to see what this claim based on very similar facts, but in relation to an even earlier publication in time, and which is not being litigated as a defamation claim, will add.

236. On balance I have decided that the most appropriate course is to decline to strike the KB claim out, but also to decline to lift the stay on it. Once the QB claim has been litigated the question of whether the stay should be lifted can be revisited. At that point submissions can be made as to whether litigating the KB claim is appropriate in proportionality terms. I have reached this decision bearing in mind the guidance in *Amersi* above, but also conscious that the court should only conclude that continued litigation of the claim would be disproportionate to what could legitimately be achieved where it is impossible "to fashion any procedure by which that claim can be adjudicated in a proportionate way": *Sullivan v Bristol Film Studios Ltd* [2012] EMLR 27 [29]-[32] per Lewison LJ, cited in *Higinbotham* at [44]. In my judgment the course I have set out in this paragraph provides such a procedure on the facts of this case.

(ii) Future management of the KB claim

237. This issue does fall for determination in light of my decision to leave the stay in place. However, the point was fully argued before me, and so I briefly summarise the parties' contentions and the decision I would otherwise have made.

Submissions

238. Mr Hodson argued that the KB claim involves a single, straightforward cause of action that should proceed in the usual way and should not become "ensnared" in the QB claim. The QB claim is complex, "deeply burdened with technical procedural and substantive legal points", already over three years old and far from ready for trial.

239. Alternatively Mr Hodson contended that the KB claim should be consolidated with the QB claim under the CPR 3.1.2(g); or that the QB claim should be amended to include the contents of the KB claim under CPR 17.3.

240. In the Claimant's 18 August 2023 witness statement, provided in accordance with Master Stevens' order, he contended that the Defendant's conduct of the QB claim had caused the Third Party stress that had led to an adverse effect on his health. The Claimant appended to his witness statement various extracts from the Third Party's medical records, in particular in relation to his eyes, dating from March to July 2023. One clinician had written on 5 July 2023 that the Third Party had been suffering from stress, but otherwise I did not discern clear medical evidence in support of the proposition advanced as to the cause of it.

241. The Third Party supported the Claimant on this issue. He emphasised that the KB claim did not involve him or the Fourth Party and so should proceed as far as possible without delaying progress in the QB claim, so as not to adversely impact their rights. Trying the KB claim separately would, he said, also reduce costs for all concerned. The Fourth Party also contended that the KB claim should proceed separately, and as quickly as possible.

242. The Defendant submitted that the last three years had been damaging to her health and was keen to avoid further delay in the QB claim progressing to trial. She opposed the joinder of the KB claim to the QB claim as it would unfairly disadvantage her. She said it would create "more chaos". She said she had no intention of issuing a claim against the potential Fifth Party.

Discussion

243. In my assessment it is clear that the factual basis for the KB claim overlaps significantly with the QB claim. PIP is indeed the first relevant event between the parties in the chronology set out at [12] above. More specifically, PIP was the background to Publication 1 and was expressly discussed in it: see Annex 1. The data protection claim in relation to PIP advanced in the KB claim is put on the same basis as those advanced about Publications 1-5 in the QB claim. It is tolerably clear that the Defendant would defend the KB claim on the same basis as the data protection claims in the QB claim, by invoking the various defences and exemptions in the statutory regime.

244. The White Book at 3.1.9 sets out a series of factors to be considered when deciding whether to consolidate proceedings under the CPR 3.1.2(g). The first is the extent to which there is an "overlap of the parties, facts or issues"; and the second is "the extent to which consolidation might avoid the risk of inconsistent findings". In my judgment both of these factors would militate powerfully in favour of consolidating the KB claim with the QB claim, given the clearly overlapping issues of fact and law. To do otherwise would have made the risk of inconsistent findings, which is plainly undesirable in principle, a very real one.

245. In my judgment consolidation would also be more likely to lead to a saving of costs and time and thus be more consistent with the overriding objective.

246. It is right to recognise that the effect of consolidation would be to involve the Third and Fourth Parties in an aspect of the claim in which they had no direct involvement, but their involvement and costs could be limited by sensible case management. In my view this is not such a powerful factor that it would justify allowing the claims to proceed separately.

247. For these reasons, if I had lifted the stay I would have had no difficulty in ordering that the KB claim be consolidated with the QB one. For simplicity I would not have ordered that the QB claim be amended to include the contents of the KB claim, simply that they be case managed and tried together.

(5): The Fifth and Sixth Applications

Outline of the applications

248. These two applications involve the Defendant and the Fourth Party each seeking injunctive relief and other orders against the other for alleged breaches of their settlement agreement in the QB claim.

249. The Fifth Application, that by the Defendant dated 1 September 2023, was supported by a lengthy letter dated 31 August 2023. There, she detailed nine alleged breaches of the agreement by the Fourth Party (although they are not numbered as such).

250. In summary, she contended that the Fourth Party had deviated from the permitted statements recorded in the agreement; had harassed one of her lawyers over a weekend in September 2021 in relation to an allegation that she had breached reporting

restrictions; had claimed she had breached the settlement; had breached the non-disparagement and confidentiality elements of the settlement by his statements about her and his conduct generally in a podcast/You Tube video on 8 October 2021; had acted similarly in a further You Tube video on 13 March 2022; had further disparaged her in a BNT/My Media World video on 23 May 2022 in misrepresenting a claim the Third Party had brought against her; had sought to extort money from her as recently as 30 May 2023; and had breached the "claims settled and released" and "agreement not to sue" parts of the settlement agreement by supporting the Claimant in relation to the KB claim being pursued separately from the QB claim, and by acting jointly with the Third Party and the Claimant to further harass her.

251. The Sixth Application, that by the Fourth Party dated 11 September 2023, was supported by a witness statement from him of the same date. the Fourth Party described the agreement as "particularly draconian".

252. In summary, he contended that she had disparaged him in a post on her fundraising page on 10 September 2021 by her use of phrases such as "dark characters" and people who had been "trolling and harassing her", effectively alleging that he had made false complaints to the police and the Attorney-General to conceal the alleged rape of Ms Baker by the Claimant and an abuse cult and undermining reporting restrictions to protect the anonymity of certain children imposed by Pauffley J in *P and Q (Children: Care Proceedings: Fact Finding)* [2015] EWFC 26. He also submitted that she had further disparaged him in a You Tube video posted on 10 March 2023 seeking funding for the defence of this claim.

253. The Fourth Party also provided a detailed response to each of the alleged breaches of the agreement relied on by the Defendant. He argued that certain breaches were trivial and the court should not be concerned with them; denied disparaging her in breach of the agreement; observed that some of the allegations were hard to follow and related to the actions of third parties; had communicated with the Defendant's legal representatives in accordance with the agreement; and had not acted inappropriately with respect to the KB claim.

254. In accordance with Nicklin J's 18 September 2023 order (see [39] above), the Defendant filed and served a statement in response to the Fourth Party's application dated 5 October 2023. She provided a detailed response to the two breaches of the agreement against her and gave further information about each of the breaches she alleged against the Fourth Party.

The procedure for determining the applications

255. In his written submissions for the hearing the Fourth Party contended that certain aspects of the Defendant's position were "absurd" and "incoherent" and contradicted her 9 June 2021 statement. He submitted that the court's time should not be taken up with the Defendant's defence to the Sixth Application and that it should simply be granted.

256. It was not appropriate for me to take this course. As noted at [39] above, Nicklin J had already ordered that only directions in respect of the future case management of the Sixth Application would be given at the 17-18 October 2023 hearing. This was for two

key reasons. First, Nicklin J anticipated there would be insufficient court time for it to be considered properly at the hearing. His prediction in this respect was entirely accurate: the hearing was listed with a time estimate of 1½ days, but ultimately two full days were required for resolution of all the other issues discussed herein. Second, Nicklin J anticipated that the applications were not fully "hearing ready" as it was necessary to consider whether there was "a dispute of fact" underlying the application and if so, to make consequential case management directions in respect of it. The Fourth Party's own submissions as summarised in the preceding paragraph make clear that there is such a dispute. However, the summary of the parties' competing positions as set out at [249]-[254] above makes clear that both the Fifth and the Sixth Applications raise a significant number of disputes of fact.

257. The Third Party, though not a party to the applications, suggested that they could be transferred to the County Court on the basis that they are, effectively, discrete breach of contract claims which are not of such a high value that the High Court should retain jurisdiction over them.

258. In my judgment such a transfer would be inappropriate. These applications arise out of alleged breaches of a High Court settlement agreement and are made in the course of an ongoing High Court claim. As noted at [32] above, Senior Master Fontaine's order makes clear that fresh proceedings are not required if any alleged breaches occur. Even if it were logistically possible to permit one part of the same proceedings to be determined in the High Court and another in the County Court, such a course is fraught with difficulty, not least in terms of need to avoid the risk of inconsistent judicial findings being made on different claims that raise related issues and similar parties and the restricted ability to case manage the claims robustly and consistently.

259. More fundamentally, though this was not a point raised by any of the parties in submissions, one of the Fourth Party's two claims relates directly in part to the Defendant's post on 10 September 2021, which is Publication 5 for the purposes of the substantive QB claim. There are other significant overlaps of fact and thus of evidence between the harassment alleged in these applications and the harassment alleged in the substantive claim.

260. In those circumstances it is important that these applications be managed alongside the substance of the QB claim. The reasons why I would have ordered consolidation of the KB claim with the QB claim set out at [243]-[247] above apply with equal force to these applications.

Statements of case on these applications

261. As noted at [40] above, Nicklin J anticipated in his order that formal statements of case might be needed in respect of the Sixth Applications if it raised a factual dispute. As I have said, it is clear that it does and that the Fifth Application does too.

262. I agree with the Fourth Party that given the order in which the applications were made, the proper chronology for statements of case is as follows: (i) the Defendant should file POC, setting out the breaches of the settlement agreement she alleges against the Fourth Party; (ii) the Fourth Party should then file a Defence and Counterclaim, responding to the allegations against him and setting out the breaches he alleges against her; and (iii)

the Defendant should respond by way of a Defence to the Counterclaim. Replies may be considered appropriate.

263. The Defendant's claim and the Fourth Party's counterclaim should succinctly list their respective cases in respect of any alleged breaches they continue to rely on, for the assistance of the other party and the judge determining the applications. All the statements of case will, of course, need to be verified by a statement of truth.

264. In his written submissions the Fourth Party argued that statements of case should be provided within timescales of 7 days. In my judgment this is too short a period. However, given that the Defendant has already provided a detailed letter and statement, and the Fourth Party has provided a comprehensive statement, the process of setting out the respective cases should not be unduly onerous.

265. Indeed, it appears to me sensible and proportionate for the timetable for these statements of case to align with the process for amended statements of case in the substantive QB claim. In other words, when the Defendant provides her amended Defence and Counterclaim in response to the Claimant's amended POC in the substantive claim, she will also provide the document referred to at [262](i) above, and so on.

Hearing of the applications

266. The draft order provided by Mr Hodson (agreed by the Third and Fourth Parties), suggested that both applications could be determined in a "standalone" hearing lasting one day. The Defendant appeared to agree. The parties appeared to envisaged that such a hearing could take place relatively quickly, before the QB claim was determined at trial.

267. I do not consider that progressing in that fashion is appropriate at this stage. It seems to me that there is a question over whether it is appropriate to divert the resources of the Defendant and the court to addressing these applications while the remaining issues as between the Claimant, the Defendant and the Third Party in the already delayed QB claim remain unresolved. As I have said, it is also clear that the applications overlap substantially with the issues in the QB claim such that it may be considered appropriate to have them heard together, sequentially and/or by the same judge. I also doubt that a one day time estimate is realistic given the fact that the applications are now, effectively, competing breach of contract claims with a not insignificant number of alleged breaches that fall to be considered.

268. These are complex issues which are, in my judgment, best considered at a CMC once the statements of case have been finalised on these applications and in the main QB claim.

(6): Further directions to progress the QB claim to trial

Statements of case

269. The POC in the QB claim will need to be amended to reflect my decisions on the First and Second Applications. The detail that set out each element of the proposed defamation claims in relation to Publications 2-4 will need to removed and replaced

with text which pleads the case on these publications only so far as is necessary to support the data protection and harassment claims.

270. The Defendant will need to serve an amended Defence and Counterclaim which responds to the amended POC and which makes the amendments reflected in my decision on the Third Application.

271. The Claimant may wish to Reply to the Defence. The Third Party will need to respond to the Counterclaim.

272. Deputy Master Bard has already observed that the statements of case before him (and that was before any reference was made to Publications 2-5) were "longer and fuller" and contained "more comment…than is desirable". He reminded the parties of the requirement set out in the PD 53B, paragraph 2.1 to the effect that "Statements of case should be confined to the information necessary to inform the other party of the nature of the case they have to meet. Such information should be set out concisely and in a manner proportionate to the subject matter of the claim": *Hemming No. 1* at [118]. I reiterate both of these points.

273. Further, this is a case where it is not only desirable but necessary for the original text, amendments and re-amendments to be clearly indicated on the face of the statements of case. I direct that all the statements of case comply with PD 17, paras. 2.3-2.4, using red to reflect the first set of amendments agreed to or ordered, with further amendments in green, then violet and yellow. Amended text which the parties had sought to include but which were not agreed to or ordered should not feature.

274. The process of amendment of the statements of case in the QB claim should run in parallel to the process for statements of case on the Fifth and Sixth Applications: see [262] and [265] above.

The next CMC

275. Once the statements of case have all been finalised, a further CMC should take place before a judge of the Media and Communications List to consider the future conduct of both the substantive QB claim and the Fifth and Sixth Applications. It might be that the possibility of a trial to determine the meaning of the two publications relied on for the defamation claims in the QB claim, as raised by Master Brown, should be revisited. Consideration should also be given to how best to determine the Fifth and Sixth applications alongside the remaining issues on the QB claim and in accordance with the overriding objective.

Disclosure

276. Mr Hodson proposed that disclosure on the QB claim be dealt with by way of the process set out in CPR 31.5(3)-(8). This would require all parties to file disclosure reports, verified by statements of truth, providing among other things proposals for disclosure. I agree that this is a sensible approach and that this should take place ahead of the next CMC. The Claimant and Fourth Party should also make proposals for disclosure on the Fifth and Sixth Applications.

277. At the CMC, future directions can be given for disclosure, witness statements and the the other pre-trial steps as appropriate. At the hearing before me the parties agreed that a 7-day time estimate for trial was appropriate. However that figure may need revision down to reflect the fact that the Claimant has not been permitted to add the defamation claims relating to Publications 2-4; and revision up, if the trial is to include the issues on the Fifth and Sixth Applications.

Costs budgets

278. While the parties are litigants in person, they are not required to file costs budgets: CPR 3.13(1). The same applies where Direct Access counsel are instructed.

279. CPR 3.13(1) permits the court to order otherwise and on 28 June 2021, Deputy Master Bard ordered the Claimant to provide a costs budget. He has not done so. It was not entirely clear to me why that was the case. It was suggested that this was because of the stay that had been imposed to allow the parties to settle the claim, but that expired on 13 March 2022.

280. The Claimant, Third and Fourth Parties sought an order requiring the Defendant to provide a costs budget. She is currently a litigant in person and thus not required to do so. However she indicated that she is likely to instruct a solicitor and counsel later in the proceedings, including for trial, as she has done previously in the claim. At that point she will be required to file a costs budget. She said that she would welcome an indication of the Claimant's likely costs. My understanding from the Defendant's submissions during the hearing was that she was content to provide a budget for her own costs at this stage, even though one is not strictly required. In written submissions filed in response to circulation of the draft judgment the Defendant said she was reluctant to do so.

281. In my judgment costs indications may well assist the parties in the decisions as to the future conduct of the claim; and are thus consistent with the overriding objective. I therefore order that the Claimant and Defendant file and serve costs budgets 14 days before the CMC, with the usual responsive documents filed and served 7 days before. The time for compliance with Deputy Master Bard's order in this respect as far as the Claimant is concerned is extended in accordance with this paragraph.

282. The Third and Fourth Parties are litigants in person and intend to remain as such. Costs budgeting is not required in respect of them and no-one suggested otherwise.

The Third Party's CPR 31.22(2) application in relation to the Norwich Pharmacal order

283. The Third Party raised two issues relating to the 8 February 2023 *Norwich Pharmacal* order made by Senior Master Fontaine (see [38] above).

284. First, he sought an order under CPR 31.22(2) to the effect that information disclosed pursuant to the order be deemed not to pass into the public domain even if used in court.

285. CPR 31.22 provides as follows in material part:

> "**31.22**

> (1) A party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed, except where –
>
> (a) the document has been read to or by the court, or referred to, at a hearing which has been held in public;
>
> (b) the court gives permission; or
>
> (c) the party who disclosed the document and the person to whom the document belongs agree.
>
> (2) The court may make an order restricting or prohibiting the use of a document which has been disclosed, even where the document has been read to or by the court, or referred to, at a hearing which has been held in public.
>
> (3) An application for such an order may be made –
>
> (a) by a party; or
>
> (b) by any person to whom the document belongs.

286. The Third Party contended that the proposed Fifth Party's name was only provided to the Defendant under the Senior Master's order for the purpose of bringing a claim and if that does not occur, there is a basis for protecting that person's identity, not least because they fear repercussions if they are named. The Third Party explained that he had prepared the bundle for the hearing and was concerned that he might have inadvertently missed redacting the identity of the potential Fifth Party. He feared that this person's name might be accidentally mentioned in court, such that the order was needed to protect this person.

287. This person's name was not "read to" the court or "referred to" at the hearing before me. If this person's name is mentioned in a further hearing, it can be addressed then. Given the presumption of open justice, and the need to ensure that any inroads into that principle are strictly necessary, I do not consider it appropriate to make a pre-emptive order of the type sought by the Third Party.

288. To the extent that the Third Party considers it necessary to try and restrict the supply of documents to a non-party from court records under CPR 5.4C, that would need to be the subject of an application notice, supported by evidence.

289. Second, the Third Party sought an order that the Defendant be prohibited from making further use of the information disclosed pursuant to the order within these proceedings or otherwise. This order did not feature in the draft order provide by Mr Hodson (which had been agreed by the Third Party) and was not pursued in the Third Party's oral submissions. I therefore assume he accepts that this order was unnecessary given that the Senior Master's order had already addressed this issue, in the usual way: at [6], it specified that the Defendant had permission to use the information obtained as a result of the order only for the purposes of complying with the relevant pre-action protocol in

relation to, or bringing proceedings against, any person identified as a result of the order.

(7): Costs

290. The appropriate costs orders depend, in some respects, on the decisions I have made in this judgment. In my draft judgment I provided some provisional decisions on costs, on which the parties made further submissions. They have been taken into account.

The First Application

291. PD 17 makes clear that a party applying for an amendment will usually be responsible for the costs of and arising from the amendment.

292. Mr Hodson contended that a variation of this rule was appropriate in respect of the 13 July 2022 hearing, which had been listed to consider the First Application, irrespective of whether the Claimant succeeded on that application. This was on the basis that the hearing had only been adjourned due to the Defendant raising the issue of limitation very late, a position that the Master thought might have been "tactical".

293. The Defendant opposed this application. She accepted that the limitation arguments had not been set out until the day before the hearing by her counsel. She contended that the main reason why the hearing was adjourned was due to the meaning issue, and not the limitation issue. However, it is clear from reading Master Brown's order that the issue of meaning was thought to be potentially linked with the issue of limitation. In those circumstances I am satisfied that the reason, or at least a key reason, why the hearing could not proceed was the Defendant's late raising of the limitation arguments. This is conduct by the Defendant which I consider relevant to the discretion with respect to costs set out in CPR 44.2(4)(a). In my judgment it justifies an order that the Defendant pay the Claimant's costs of the 13 July 2022 hearing in any event. I do not consider that those costs are capable of summary assessment in light of the overlap between those costs and the other costs issues relating to the First and Second Applications. In my judgment all these costs issues should be considered together.

294. As to the remainder of the costs of the First Application, the Claimant succeeded in some respects on the application, but did not succeed on what was the most complex and time-consuming issue, namely that relating to the proposed addition of the defamation claims regarding Publications 2-4. On that basis Mr Hodson's argument that the Defendant should pay the costs in any event as she failed to agree to the amendments and required a hearing of them falls away. In all the circumstances, I consider that the usual rule set out in PD 17 should apply to these costs, such that the Claimant should be responsible for the costs of and arising from the amendments for which permission was granted as a result of the First Application.

295. The application of the usual rule is subject to one caveat, which is that the parties have agreed in correspondence that the costs of amendments arising from new events alleged to have occurred after filing of the earlier pleadings shall be costs in the case; and have confirmed their intention to abide by that agreement. This agreement was helpfully drawn to my attention by Mr Hodson and the Third Party in submissions filed in response to circulation of the draft judgment. I see no reason to go behind that

agreement. The application of this agreement may, in fact, have a significant impact on the costs in relation to this application (given that much of it did relate to events that occurred after the original Particulars were filed), but that will be a matter for detailed assessment.

The Second Application

296. The Claimant did not succeed in this application. In those circumstances, the Claimant should pay the Defendant's costs of meeting the application, in accordance with the general "loser pays" rule set out in CPR 44.2(2)(a).

297. In her written submissions filed in response to circulation of the draft judgment the Defendant invited me to summarily assess these costs. However, neither the informal schedule she provided before the hearing nor the documentation provided after it (an invoice from her solicitors for the period 1 February to 18 March 2022) set out the details required by PD 44, para. 9.5(2)). More fundamentally, the invoice related to a period of time before the Second Application was made and so was more likely related to the issues in the First Application. Summary assessment would not have been easy in relation to the Defendant's costs of the Second Application anyway, in light of the potential overlap with the issues, and thus the costs, of the First Application. Accordingly, these costs will need to be subject to detailed assessment if they cannot be agreed.

The Third Application

298. The Defendant was partially but not wholly successful on this application for the purposes of CPR 44.2(4)(b). I estimate that she succeeded on around 50% of the application but lost on the remainder. In those circumstances the parties have agreed that the Defendant shall pay the costs of and arising from the amendments granted as a result of the Third Application, save that (as with the First Application) the costs of amendments arising from new events alleged to have occurred after filing of the earlier pleadings be costs in the case. Otherwise, they agree there should be no order for costs on the Third Application.

The Fourth Application

299. The Claimant proposed that there be no order for costs on this application. The application did not succeed, but neither did the Defendant succeed in having the KB claim struck out as an abuse of process. In those circumstances I consider that the Claimant's proposal reflects the correct order. The Defendant indicated through the draft order filed after circulation of the draft judgment that she agreed.

The Fifth and Sixth Applications

300. These applications are at an early stage. Neither party clearly won or lost their applications. In those circumstances the appropriate order is for costs in the applications, such that the successful party on each application will ultimately be able to recover their costs to date.

The remaining costs of this hearing

301. The draft order provided by Mr Hodson proposed that the remaining costs of the hearing – which I consider to be those parts that dealt with future directions, or issue **(6)** above – should be costs in the case, with one modification.

302. That modification was that the Third Party sought an order that the Defendant pay ¼ of his costs of the hearing including his costs of preparing the bundle. He submitted that this was appropriate due to the Defendant's conduct in (i) failing properly to redact the name of the proposed Fifth Party; and (ii) including improper and irrelevant material in the bundle, such that the costs had unnecessarily increased. The Fourth Party supported the Third Party's application in this respect.

303. As to argument (i) above, the Defendant accepted that the Third Party had said that one of the redactions she had applied in respect of the proposed Fifth Party was incomplete, once the image was expanded, but contended that the Third Party's costs of addressing this electronically would have been limited. She said she had not wanted to submit any bundle that was "sub par" and had behaved courteously at all times in trying to agree it. I was shown no clear evidence to the effect that the issues over the redactions in relation to the proposed Fifth Party were extensive.

304. As to argument (ii), the Third Party referred to the inclusion of Mr Butt's statement on the Fourth Application, which was not relied on by the Defendant and which included allegations against him and the Fourth Party. He also referred to certain passages in the Defendant's 28 September 2023 statement which he contended included an irrelevant personal attack on him with respect to the McKenzie Friend issue.

305. Prior to the hearing, Nicklin J had directed that any documents the Defendant wanted to be included in the bundle should be included, with the admissibility or relevance of those documents being dealt with at the hearing.

306. The bundle included, as is often the case, documents that no party felt the need to rely on during submissions. However, both the documents the Third Party took me to as examples of allegedly inappropriate inclusions in the bundle by the Defendant were ones that had been included on the relatively limited proposed pre-reading lists provided by Mr Hodson and the Defendant. On that basis they were regarded as ones that were important. They have both been referred to in this judgment.

307. In light of these circumstances it is hard to sustain the argument that the Defendant's conduct in insisting on the inclusion of these documents was inappropriate, let alone so inappropriate that she should be penalised in costs.

308. I therefore do not see a basis for ordering the Defendant to pay ¼ of the Third Party's costs of the bundle as sought. He advanced no further arguments to support his application that the Defendant should pay his hearing costs beyond the preparing of the bundle. I observe that he chose to attend the full two days of the hearing, even when applications that did not affect him were being considered.

309. The Fourth Party's written submissions at [11] sought his own costs of the hearing, but the draft order which I was told he had agreed did not provide for this. He advanced no grounds on which the Defendant or any other party should pay his costs of the hearing and I can see none.

310. For these reasons I order that the remaining costs of the hearing are cost in the case.

The Third Party's costs applications in relation to the Norwich Pharmacal order

311. At [4] of the *Norwich Pharmacal* order (see [38] above) provision was made for the Defendant to pay the Third Party's costs of making the application, which had been agreed in the sum of £100. The Third Party told me that these have not been paid. The Defendant indicated that she had always intended to pay this sum and would do so but that the Third Party had never provided her with the necessary bank details. For the avoidance of doubt I will order that he provides those details forthwith; and that the Defendant makes the payment of £100 within 14 days, the usual timescale for payment under CPR 44.7.

312. At [5] of the order provision was made for the Defendant to pay the Third Party's costs reasonable costs of complying with the order, such costs to be subject to detailed assessment, if not agreed. He told me that these costs were in the region of £95. He sought permission to commence detailed costs assessment proceedings under CPR 47 in relation to those costs, arguing that the same was appropriate because the matter in relation to the proposed Fifth Party had now been resolved (the one year limitation period in relation to the relevant publication having expired) and because such proceedings would "help provide a much-needed reality check for the Defendant". During the hearing the Defendant again suggested that she had no difficulty in paying these sums.

313. Under CPR 47.1, the general rule is that the costs of any proceedings or any part of the proceedings are not to be assessed by the detailed procedure until the conclusion of the proceedings, but the court may make a "forthwith" or "immediately" order to have them assessed earlier. The purpose of the general rule is, in essence, to ensure that "all costs are assessed by the same person at the same time…notwithstanding the introduction of summary assessment at the end of interim hearings": Cook on Costs at 28.7.

314. The Defendant's clear indication that she does not propose to sue the proposed Fifth Party could be said to provide a basis for "hiving off" the *Norwich Pharmacal* element of these proceedings, so as to justify a "forthwith" or "immediately" order. However, in my judgment such a course would plainly be disproportionate and inconsistent with the overriding objective given the very modest sum involved and the Defendant's indication that she will pay it.

315. In written submissions filed in response to circulation of the draft judgment the Third Party submitted that he agreed that detailed assessment was disproportionate. However, he contended that the Defendant's solicitors had insisted on this course, "consistent with her normal disproportionate approach".

316. It has not been possible or proportionate for me to establish whether that was the case. I simply observe that in none of the Defendant's written submissions lodged in advance of the hearing, her oral submissions at the hearing (as to which see [312] above) or her written submissions filed in response to circulation of the draft judgment did she advance any suggestion that detailed assessment in respect of this sum was appropriate. In fact, in the latter document she contended that it was "such a paltry amount to make

an issue about" and observed that obtaining the identity of the person in question was "worth far more" to her. She reiterated that she would be content to pay the £95. I order that she does so within 14 days.

Conclusion

317. Accordingly, for the reasons set out herein:

(i) The aspects of the First Application which seek permission to amend the POC under CPR 17.3 succeed, but the aspect which seeks permission to add the new defamation claims relating to Publications 2-4 under CPR 17.4 is dismissed;

(ii) The Second Application is dismissed, such that I decline to disapply limitation under the LA, s.32A in respect of the proposed defamation claims relating to Publications 2-4;

(iii) In respect of the Third Application, the Defendant is granted permission to amend the Defence and Counterclaim but not to withdraw the admission at [18]; and

(iv) In respect of the Fourth Application, I decline to lift the stay on the KB claim but I also decline to strike it out as an abuse of process.

318. I have given further directions to progress the Fifth and Sixth Applications and the QB claim; and made various costs orders, at sections **(5)-(7)** above.

Annex 1:

The words complained of and the Claimant's contended meanings in respect of Publications 1-5

[paragraph numbers below relate to the paragraph numbers in the draft amended Particulars of Claim]

Publication 1

Words complained of

7. On 19 November 2019 and continuing online, the Defendant published and/or was responsible for publication of a YouTube video with the title of, "*Prince Andrew, Epstein, Savile And McCann Part 1: Sonia Poulton | True Crime Podcast 59*", (now removed from online but originally available at URL: https://www.youtube.com/watch?v=23Lv0I43Ah0). The video was also published in audio form on the platforms Spotify and Stitcher. All of the publications contained the following words defamatory of the Claimant:

"*Shaun Atwood [Host] ('SA'): Today we have Sonia Poulton on the podcast. This podcast is gonna go over everything from Jimmy Saville to more contemporary big story in that category Epstein. We've a whole slew of political names that are gonna come up and I have watched Sonia's documentary three times now. It's just absolutely blown my mind the level of research she has done into this and whereas you see some people putting videos out really sensationalising and getting into the most extreme claims, what I like about Sonia is that she draws the line at an appropriate place and it enhances the reliability of what she's about to tell us. But before we go to that dark realm, how are you qualified to speak on this subject?*

Sonia Poulton ('SP'): Well um apart from the fact that I was actually abused as a child so I do understand that, um but that isn't really my entrance. My entrance was meeting people who had been extensively abused as children, finding an empathy with them, understanding them, where they were coming from, seeing that their biggest problems were actually dealing with the system and challenging the system that had enabled them to be abused...

SA: So, going back to "Paedophiles in Parliament" then Esther Baker and Hemming, we've not discussed them yet, have we? […]"

"SP: What I can say to you is, Esther Baker came out several years ago, I think her first interview was, was Sky News. I know Esther, I've talked to Esther several times. And she came out and she was saying that she had been abused as a child in – at Cannock Chase and she said it was an MP - and she never named the MP, she never said the M… - it was actually John Hemming who outed himself, on his own blog…"

John Hemming was the first person to threaten me with legal action for when I released "Paedophiles in Parliament" and said he needed it to be removed that day otherwise, and he's very au fait with legalese, I think he has a legal background. Erm, and I think, that, to me, I'm not making any accusations about John Hemming but it is quite clear

that Esther Baker, feels that she has a case that needs to be examined - appropriately examined - and what I have seen with Esther is Esther has been savaged by some of the most AWFUL trolls online. Now there, some of them, cross over with my stalkers, some of them are my stalkers. Same people, who stalk me and in fact, Esther and I had a case against the same stalker at the same time and it was thrown out, so if you can imagine how she felt as someone is, I'm saying alleging, alleging that she is a victim of child abuse at the hands of a politician. So, imagine how she felt to be told not only is the case not going through for your stalker but he's given a core participant role on the Child Abuse Inquiry. Pretty awful stuff really, so I don't know the truth of the story, what I do is that John Hemming is extremely proactive at any suggestion to do with anything to do with reputation and I don't have a problem with that either, coz I'm extremely pro-active about my reputation because my reputation is important to me. So I don't have a problem with *that. What I had a problem with was the way that he approached me and was basically insisting that I remove it, like there and then, as if I'm just going to do it at your behest, you've got to be crazy mate. So I didn't, and I withstood the pressure, and the … err ...threats of what would happen and nothing has happened since. So yeah…*

SA: So did he actually take any court action to you or did he try and get you to do like a strike against those documentaries?

SP: Well, I don't know if he tried to get a strike. I don't know that. But he approached me directly and said that what I had said was wrong, it was damning and he was going to take legal action unless I removed it there and then. I was like, nah, nah, I'm not. Coz I'm not accusing him of anything in it, I'm telling the story, we are allowed to tell stories, I'm a journalist, my job is to report what other people are saying, it isn't to furnish opinion - that's when I have an opinion role. But my job as a journalist is to report the story, and he had a problem with me just reporting the story, which I thought was quite interesting given that he had outed himself. She never outed him - he'd outed himself.

SA: Did you have any other legal action from any other quarters?

SP: I have threats, almost on a regular basis. Erm, I have been, oh now let me see, I've been, fallen foul of the McCanns several times, as everybody does, everybody who speaks out and err I've… their spokesman, Clarence Mitchell, went into a newspaper and called me a conspiracy theorist which was absolutely designed to just say ignore her, you know, as soon as you start that person dabbles in conspiracies, we know what it's about. It's the… might as well have just said, you know, she's got mental health problems, it would've had the same impact. So, I've had that kind of stuff where people use their establishment contacts to demonise me, to smear me, to try and make me lose work, but I'm still around.

SA: Just adds more credibility to you as far as I'm concerned.

SP: Well the thing is, honestly, you know and I said this to you two earlier [pointing at the production team] is my attitude very much is: we're all gonna die, so I'd rather go down in a hail of bullets than on my knees. [SA laughs]. That's really the bottom line. Right, because I'm not going to submit to anybody, right but if that's the way it has to be then that's the way it has to be.

SA: You're the personification of a Spitfire".

Meaning

8. In its natural and ordinary meaning, Publication 1 meant and was understood to mean that:

   (i) the Claimant is a paedophile who raped Esther Baker when she was a child;

   (ii) the Claimant has used baseless legal threats to attempt to hide his sexual misdeeds with children.

Publication 2

Words complained of

34. In the run-up to the Claimant's application to strike-out, and / or for summary judgement, which was listed for the 30 April 2021, the Defendant began a fundraising campaign, which she advertised on Twitter on 06 April 2021, with a tweet ('the fundraiser tweet') at the following URL - https://twitter.com/SoniaPoulton/status/1379464465637388290.

35. The words of the tweet were – "What I'm up to and my Fighting Fund https://soniapoulton.co.uk/fighting-fund". The tweet linked to a page on the Defendant's website.

36. The words currently on the website, have been continually updated in additive blog form with new material under the heading of a date. For convenience, the page as at 11 June 2021, with all updates by date, is included as Annex 4.

37. The text of the fund-raising page included the following words –

"*[…] As many know, I have temporarily pulled back from my journalistic and broadcasting work.*

This is primarily for two reasons:

Because I am currently being sued by two men (including an ex-MP) and I am suing three men for harassment (the ex-MP on a counterclaim with two associates included) and I need time to prepare. […]".

38. It went on –

"*[…] This post is not about the current cases because they are live proceedings and I do not wish to harm that in any way.*

I want to proceed to full trial so the truth may be heard. […]"

"*[…] I have to be careful what I write, but it is a fact that some of my enemies – and I have quite a few these days - are relentlessly targeting me. I am watched 24-7. This is not an exaggeration but a frightening reality.*

It is scary and creepy and the police are failing to protect me from those who have expressed an intention to cause harm to me. […]"

"*[…] My enemies work hard contacting anyone they feel may have an interest in suing and pursuing me at home and abroad.*

They contact my livestream guests and smear me with the aim of having people pull out.
They contact people who have hired me and they lie and threaten them into dropping me. […]".

Meaning

39. These words in their natural ordinary meaning have the following imputations:

    (i) "*I want to proceed to full trial so the truth may be heard*": that the allegations for which she is being sued for libel are true, and that that will be proven in trial.

    (ii) "*I am watched 24-7. This is not an exaggeration but a frightening reality. It is scary and creepy and the police are failing to protect me*": that the Claimant (in person or through others such as the 3rd and/or 4th Parties) is watching the Defendant 24 hours a day, every day of the week and is stalking her. Furthermore, that his actions are criminal and the police should take action to protect her.

    (iii) "*They contact my livestream guests and smear me with the aim of having people pull out*": that the Claimant, 3rd Party and 4th Party have made deliberate, dishonest statements to procure the dismissal and refusal of work from the Defendant. This is an allegation of dishonesty.

Innuendo meaning

40. Paragraphs 25-33 are repeated. Those reading publication 2 would have knowledge of the subject matter of the claim - not least because the publication itself had as its purpose the raising of funds to fight this very claim. The reasonable reader with knowledge of the extrinsic facts set out in paragraphs 25-33 would naturally assume, particularly in the absence of any explanation by the Defendant as to what she actually meant by "the truth", that the reference to "truth" was a reference to the truth of Esther Baker's underlying allegations, as the primary subject matter of the case.
41. Accordingly, the words, "*I want to proceed to a full trial so the truth may be heard*" bore the innuendo meaning that the Claimant is a paedophile who raped Esther Baker when she was a child.

Publication 3

Words complained of

54. On 9 April 2021 at 9:49 am the Twitter account holder, **@zoeLjohnston**, tweeted the following words, and at some point thereafter Sonia Poulton retweeted the post and liked it using her account **@SoniaPoulton**:

"*Please take a moment to read what @SoniaPoulton is up against and the confirmation that dark forces really do try to stop the Truth!! She never ever asks for help yet I feel we are 'due' her for her determination over the last year _ _ _ _ _ _ _ #amazingwoman*".

55. The tweet was published at the URL - https://twitter.com/zoeLjohnston/status/1380442811116453892.

Meaning or innuendo meaning

56. Paragraphs 25-33 are repeated, as is the point that this publication was retweeted in the context of a fundraising campaign for these proceedings. In the circumstances, Publication 3 is likely to have been seen alongside the pleaded extrinsic facts as well as Publications 1, 2 and 4, and construed together. Accordingly the words were understood by their readers, who had the extrinsic knowledge particularised at paragraphs 25–33 above, to refer to the Claimant and to bear the natural and ordinary, or innuendo meanings that:

(i) "*dark forces*": the Claimant and his supporters were to be regarded as bad or evil people working towards bad or evil goals (natural and ordinary meaning, or innuendo in light of the extrinsic facts pleaded at paragraphs 25 – 33);

(ii) "*dark forces really do try to stop the Truth*":

a. the allegations made against the Claimant were true: the Claimant is a paedophile who raped Esther Baker when she was a child (innuendo meaning); and

b. the Claimant and his supporters ("dark forces") were trying to stop that truth from coming out (innuendo meaning).

Publication 4

Words complained of

68. On 12 April 2021 at 7:42 pm the Twitter account holder, **@NoWingMedia1**, tweeted the following words, and at some point thereafter Sonia Poulton retweeted the post and liked it using her account **@SoniaPoulton**:

"*Like very many Independent Journalists of today @SoniaPoulton of the #RawReport, featured on @brandnewtube , is facing various smear campaigns from the predator class for simply holding #Truth 2 power, please read her below statement & help out if you can. https://soniapoulton.co.uk/fighting-fund*"."*nd*"

69. The tweet was published at the URL https://twitter.com/NoWingMedia1/status/1381679075203371008.

Meaning or innuendo meaning

70. Paragraphs 25-33 are repeated, as is the point that this publication was retweeted in the context of a fundraising campaign for these proceedings. In the circumstances, Publication 3 is likely to have been seen alongside the pleaded extrinsic facts as well as Publications 1, 2 and 4, and construed together. Accordingly the words were understood by their readers, who had the extrinsic knowledge particularised at paragraphs 25–33 above, to refer to the Claimant and to bear the natural and ordinary, or innuendo meanings that:

    (i) "*predator class*": the Claimant is to regarded as someone who victimises those who are weaker than him (natural and ordinary meaning) and in particular commits sexual offences against those weaker than him (innuendo meaning in light of extrinsic facts pleaded at paragraphs 25 – 33);

    (ii) "*is facing various smear campaigns from the predator class for simply holding #Truth 2 power*": the allegations made against the Claimant were true: the Claimant is a paedophile who raped Esther Baker when she was a child; (innuendo meaning); and the Claimant was acting in a manner typical of a sexual predator by trying to stop that truth from coming out (innuendo meaning);

    (iii) the Claimant was seeking to prevent the truth by the use of "*smear campaigns*" – which the reader would have understood to mean that the Claimant was making dishonest and untrue statements to harm the Defendant's credibility (natural and ordinary meaning and/or innuendo meaning in light of the extrinsic facts pleaded at paragraphs 25–33 above).

Publication 5

Words complained of

79. The words complained of are as follows –

    "*September 10, 2021*

    POLICE UPDATE

    Earlier this year I was interviewed by the police about a potential breach of a reporting restriction regarding an old case.

    The police have come back to say No Further Action will be taken. All involved were satisfied with the interview I gave.

    There is a general feeling that this all went too far. There is a reason for that.

    There was inordinate pressure applied to the Attorney General's office, the Metropolitan Police and the CPS by people who are desperate to stop me reporting on matters of public interest including child abuse.

My brilliant criminal lawyer, Sophie Hall, attended the interview with me – as did Muhammad Butt of BNT – and both witnessed me putting on record the names of people pushing for me to be charged and to take me away from exposing Establishment abuse. These names have been noted by all involved.

It is important for people to know that there are some dark characters out there who spend a huge chunk of their day trolling and harassing survivors of child abuse as well as attacking those who bring awareness to the issue of child abuse.

I would recommend that these people cease and desist from publishing defamatory statements about me regarding this issue. Particularly as it brings the spotlight to them.

I work for the public good, it's time to start asking who these people work for. And why.

80. Earlier posts followed those words, including the ones naming the Claimant and 3rd Party set out under Publication 2.

81. Below were a number of earlier posts about the ongoing dispute between the parties to these proceedings which will be referred to under reference. These posts are clearly visible on the same page and expressly name the Claimant and the 3rd Party.

Meaning

82. These words bore the following meanings:-

(i) "*There was inordinate pressure applied to the Attorney General's office, the Metropolitan Police and the CPS by people who are desperate to stop me reporting on matters of public interest including child abuse*": In their natural and ordinary meaning these words mean that the Claimant together with the 3rd Party and the 4th Party DL had falsely reported the Defendant to the police for a crime she did not commit and applied pressure to the Attorney General's Office to question and prosecute the Defendant.

(ii) *"My brilliant criminal lawyer, Sophie Hall, attended the interview with me – as did Muhammad Butt of BNT – and both witnessed me putting on record the names of people pushing for me to be charged and take me away from exposing Establishment abuse*": These words bore the innuendo meaning (the extrinsic facts at paragraphs 25 – 33 above are repeated) that the Claimant, the 3rd Party and the 4th Party had the motive of covering up child abuse by those, such as the Claimant himself, who were or had been members of the 'Establishment' such as MPs or former MPs;

(iii) These words bore the further innuendo meaning (based upon the same extrinsic facts at paragraphs 25 – 33) that the Claimant's motive was to cover up the allegation that he is a paedophile who raped Esther Baker when she was a child.