Neutral Citation Number: [2019] EWHC 3389 (QB)

Case No: QB/2019/000194

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/12/2019

**Before** :

**MR JUSTICE JULIAN KNOWLES**

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**Between :**

| | |
|---|---|
| **HIS HONOUR JUDGE SIMON OLIVER** | **Claimant** |
| **- and -** | |
| **JAVED SHAIKH** | **Defendant** |

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**Ben Silverstone** (instructed by **GLD**) for the **Claimant**
**The Defendant appeared in person**

Hearing dates: 29 November 2019

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# Approved Judgment

**The Honourable Mr Justice Julian Knowles:**

**Introduction**

1. The Claimant is a Circuit Judge and an additional judge of the Administrative Appeals Chamber of the Upper Tribunal (the AAC). He has brought proceedings for harassment against the Defendant, Javed Shaikh, who was a litigant in proceedings before him in the AAC in 2014. The AAC ruled against the Defendant. The Claimant's case is that since about 2016 the Defendant has harassed him and his family and has caused him and them serious alarm and distress. The harassment has been perpetrated primarily through an internet website/blog with the URL https://judgesbehavingbadlyblog.wordpress.com which, says the Claimant, is operated, controlled and/or published by the Defendant. I will refer to this as 'the Website'.

2. By an application notice dated 3 September 2019 the Claimant seeks an order that:

   a. the Defendant's Defence and Counterclaim be struck out;

   b. summary judgment be entered for him on his Claim; and

   c. the Defendant be subject to a final injunction restraining him from harassing the Claimant including by publishing further material about him online.

3. In summary, the Claimant says that the Defendant's Defence and Counterclaim contain no reasonable grounds for defending the claim or bringing the Counterclaim. He says the Defence is simply a bare denial which should under CPR PD 3A, [1.6], be struck out. He says it and the Counterclaim make a number of abusive and vexatious allegations, are non-compliant with the CPR, and in any event have no realistic prospects of succeeding at trial. He says that although he has drawn these defects to the Defendant's attention on numerous occasions, the Defendant has taken no steps to remedy them. Accordingly, he says that I should strike them out under CPR r 3.4(2). He also says that the Defendant has no realistic prospect of defending the claim and so I should grant summary judgment under CPR r 24.2. The Claimant submits the evidence that the Defendant has harassed him via the Website is overwhelming.

4. Mr Silverstone for the Claimant made clear that his client accepted that, as a judge, he must expect scrutiny of his work and robust comment about how he performs his judicial duties. But he said that the Defendant's conduct has gone far beyond the limits of reasonable or permissible criticism, so that this Court should intervene in order permanently to restrain the Defendant from pursuing what the Claimant says is a malicious and damaging vendetta against him.

5. The Defendant resists the application. He says he is not responsible for the Website in any way. He denies harassing the Claimant. He says he has pleaded all that is necessary. His case is that the matter ought to proceed to trial.

**Preliminary matters**

6. I need to deal with two matters at the outset.

7. The Defendant was made subject to an interim injunction by Warby J on 6 February 2019. The return date was 18 February 2019. The matter was heard by Nicol J on that date. The Defendant appeared and made submissions. Judgment was reserved. On 26

February 2019 Nicol J continued the injunction until trial or further order.

8. At the hearing before me, the Defendant said that he had not received the bundles for the hearing. I was shown correspondence by Mr Silverstone demonstrating that they had been sent to the Defendant by special delivery on 22 November 2019, and that a covering letter had been emailed to the Defendant on the same date. The Defendant said he thought the bundles were still at the Post Office. The Defendant told me that he was content to proceed as he had many of the documents in any event from the earlier hearings. He also had Mr Silverstone's Skeleton Argument. He did not apply for an adjournment. During the hearing the Defendant was assisted by Mr Silverstone, who supplied him with some additional documents. During the short adjournment I invited the Defendant to liaise with Mr Silverstone over any additional documents he might be missing but might want to refer to during his submission in the afternoon. He did not take up the invitation.

9. I am satisfied that the Defendant deliberately chose not to obtain the bundles that had been sent to him. However, notwithstanding that, I am satisfied that he had a full opportunity to present his case in response to the Claimant's application.

10. The second matter relates to Article 8 of the European Convention on Human Rights (the Convention) and the principle of open justice. Mr Silverstone said that because the Claimant is a member of the judiciary, he did not seek a hearing in private or an anonymity order. He accepted that although a public hearing was likely to result in (further) interference with his client's Article 8 rights, the principle of open justice required such an interference. I agree.

**Factual background**

*Events prior to the Defendant's appeal to the AAC*

11. Between March 2007 and June 2009, the Defendant worked as a trainee cardiac physiologist for the Royal Brompton and Harefield Hospital NHS Trust (the Trust) at Harefield Hospital. In June 2009 he was dismissed for gross misconduct. On 22 January 2010 the Trust referred the Defendant to the Independent Safeguarding Authority (ISA). This was a public body that existed until 1 December 2012, when it merged with the Criminal Records Bureau to form the Disclosure and Barring Service (the DBS).

12. The Defendant challenged his dismissal in the Employment Tribunal, which dismissed his claim in a judgment handed down in October 2010. The Tribunal found that the Defendant had (a) created forged and/or false documents and online postings; (b) carried out tests on patients that he was not qualified to perform; and (c) informed patients of test results when he should not have done so.

13. On 3 February 2011 the ISA decided to place the Defendant on the Adults' Barred List. The ISA found that he had committed various improper acts including plagiarism; undertaking work and giving out results that he was not authorised to undertake or give out; providing a false reference to gain employment; and claiming to have qualifications that did not exist or to which he was not entitled.

14. The Defendant sought permission to appeal the ISA's decision to the AAC. Permission

was granted on 21 July 2011.

15. On 6 June 2012 on the basis of new information which had come to light, the ISA placed the Defendant on the Children's Barred List. The ISA found that Defendant had (among other things) created a Facebook page entitled 'Gollywogs at Harefield Hospital', containing homophobic and racist abuse against his former colleagues; created an internet blog with titles including 'Has Harefield Hospitals Cardiology Department Lied About you?' and 'Harefield Hospitals Robert Bell – A Story of a Corrupt Chief Executive'; applied for 14 jobs with Oxford Radcliffe Hospitals NHS Trust, 11 of which involved regulated activity from which he was barred; provided falsified documents to the AAC as part of his appeal; and submitted further fabricated documents as part of his representations to the ISA.

16. The Defendant sought permission to appeal this second ISA decision to the AAC. Permission was granted on 27 September 2013.

17. The Defendant's appeals against the two ISA decisions were assigned to the Claimant, in his capacity as an additional judge of the AAC.

18. At this point I need to deal with proceedings which were brought in the Queen's Bench Division against the Defendant by the Trust and certain employees for harassment and libel: *Royal Brompton and Harefield NHS Foundation Trust v Shaikh* (HQ 14D 01016). (the QBD Proceedings). On 8 April 2019 Green J heard an application for injunctive relief against the Defendant to restrain him from harassing 29 current and former employees of the Trust. It was alleged that the Defendant had committed over 100 acts of harassment between July 2009 and February 2014. This included publishing malicious, offensive and abusive material on social media and blogging platforms; setting up fake and offensive and defamatory profiles on LinkedIn and Facebook, and using those profiles to send offensive and defamatory messages; repeatedly making fake job applications (containing offensive, defamatory and distressing material) in the name of one of the claimants; sending fake e-mails containing offensive and abusive allegations; making nuisance and silent telephone calls; and making malicious reports and referrals to regulatory and/or examining bodies in the healthcare sector. Green J granted the injunction, concluding that that there was 'strong evidence that [the Defendant] has engaged in unlawful, persistent and deliberate conduct amounting to unlawful harassment': [2014] EWHC 1380 (QB), [18].

19. On 9 May 2014 Sir David Eady (sitting as a judge of the High Court) granted judgment in default against the Defendant in those proceedings and made a final injunction against the Defendant ('the May 2014 injunction').

*The Defendant's appeals to the AAC*

20. I now turn to the Defendant's appeals to the AAC which brought him into contact with the Claimant. As I shall explain, the appeals were unsuccessful and, in its judgment, the AAC made a number of findings that were severely critical of the Defendant. It is the Claimant's case that the Defendant's campaign of harassment against him is motivated by revenge for these findings and the overall adverse outcome of the appeals.

21. The Defendant's appeals were heard between 23 June 2014 and 26 June 2014. They

were heard by a panel chaired by the Claimant sitting with two lay members. The Respondent to the appeals was the DBS. It was represented by Mr Ben Jaffey of counsel.

22. The AAC gave its judgment on 31 July 2014: *JS v Disclosure and Barring Service* [2014] UKUT 355 (AAC). It dismissed the Defendant's appeals on the basis that the decisions did not disclose an error or law or fact. The AAC found that the Defendant had (among other matters): (a) forged a transcript of a meeting in order to support his case; (b) engaged in plagiarism; (c) forged a reference and a bank statement; (d) lied about his qualifications; (e) undertaken at least one test which he was not qualified to perform and without appropriate supervision or authorisation; (f) provided other forged documents to the AAC as specified in the Annex to the judgment; (g) applied for regulated jobs while he was barred, and therefore not entitled to apply for such jobs, and had been charged with harassment; (h) created numerous false LinkedIn pages, Facebook pages (containing racist and homophobic comments and criticism of Harefield Hospital), and false email addresses, including 17 false email addresses purporting to belong to one of his former colleagues; and (i) made at least 578 false job applications purporting to be from a former colleague.

23. The AAC concluded at [116]-[120] of its judgment:

> "116. At the end of the day, we are satisfied that, given the evidence above, JS cannot be trusted on any matter. If he is not barred we are of the opinion that everyone who is vulnerable is at risk …
>
> …
>
> 118. Further, if JS has been prepared to lie and to fabricate as much as he has, how can we ever be certain that he will not lie about or fabricate results/diagnosis in the future and thereby put people at risk ?
>
> 119. JS pursued a course of vilification and destruction of people's characters and lives simply because they dared to stand up to him or he perceived that they crossed him or challenged him and refused to allow him to get away with his behaviour …
>
> 120. JS stopped at nothing to pursue his vendetta. He set up false email accounts, made spurious applications using vile email addresses (particularly against MO) and even pursued Freedom of Information requests (using false email accounts and names, of course) to find what external contracts people had and how much they were being paid. JS even obtained returns sent to Companies House in relation to businesses owned by MO.

*Events following the AAC judgment*

24. On 16 July 2014 HHJ Moloney QC, sitting as a judge of the High Court, awarded the claimants in the QBD proceedings damages of £150,000. At [5] the judge said that the evidence showed that:

> "… from the outset of the hospital's taking action against him and continuing unrelentingly until at least the beginning of this year … Mr Shaikh has taken it upon himself to pursue an extraordinary campaign of harassment against the hospital generally and many individual people associated with it, in particular those four individual claimants who have chosen with the assistance of the hospital to bring these proceedings against him."

25. On 12 August 2014 the Defendant was convicted at Isleworth Crown Court of offering to engage in regulated activity from which he was barred, contrary to s 7 of the Safeguarding Vulnerable Groups Act 2006. He was sentenced to one month's imprisonment suspended for 12 months. His renewed application for permission to appeal was dismissed: [2016] EWCA Crim 504. The Court of Appeal agreed with the single judge's observation that the appeal was 'hopeless' (at [23]).

26. The Defendant sought permission to appeal against the AAC's decision, however permission was refused by the panel chaired by the Claimant on 19 December 2014.

27. On the same day, Sir David Eady (sitting as a judge of the High Court) gave judgment in an application to commit the Defendant for breaches of the May 2014 injunction. He found 36 breaches proved and committed the Defendant to prison for a period of nine months, suspended for two years.

28. By a letter dated 21 May 2015 the Defendant applied to set aside the decision of the AAC. The Claimant considered the matter on the papers and refused the application in a decision dated 21 July 2015. In the final paragraph the Claimant made reference to the possibility of the Defendant being made subject to a civil restraint order.

29. On 8 September 2015 the Claimant received a letter from Charles J, in his capacity as President of the AAC, enclosing letters bearing the Defendant's name containing a complaint of judicial misconduct against the Claimant and the other members of the panel of the AAC who had heard the Defendant's appeals.

30. The Claimant and the other panel members responded to the complaint on 2 October 2015. On 9 November 2015 Charles J forwarded to the Claimant and the other panel members an extract from another letter apparently sent by the Defendant, and a further letter apparently from him dated 19 October 2015. On 16 December 2015 Charles J rejected the Defendant's complaints, referring in the course of his decision to the 'absurdity' of some of the points he had made (at [44]).

31. The Defendant applied for permission to appeal against the committal order of Sir David Eady of 19 December 2014, 23 months out of time. That application was refused by Jackson LJ in a decision dated 25 March 2017.

*The Website*

32. With that lengthy but necessary introduction I turn to the Website, which lies at the heart of this case. Notwithstanding that he has a motive to be hostile towards the Claimant, and notwithstanding that he been found by several judges in different legal proceedings to have conducted numerous internet vendettas over a long period of time, the Defendant maintains that the Website has nothing to do with him.

33. The Claimant says in his first witness statement that he first became aware of the Website in August 2016 when it was drawn to his attention by a member of staff at the court where he was sitting.

34. I have a selection of pages from the Website in the exhibits. Mr Silverstone told me that the Website consists of a single lengthy webpage which would run to hundreds of pages if it were printed out. The extract I have is in two sections. The first section contains a series of accusations against the Claimant and commentary about the Defendant's appeals to the AAC, as well as other matters concerning the Defendant, eg, the complaint to Charles J. The second section is a comments section where purportedly different people have posted comments about the Claimant. I say 'purportedly' because although the comments appear under a variety of different names, the Claimant's case is that the Defendant is responsible for all or nearly all of the comments. The Defendant says that he is not, and that the messages are from third parties unconnected to him who have their own grievances against the Claimant.

35. The following extracts give the flavour of what has been written on the Website.

36. The start of the Website reproduces a photograph of the Claimant, followed by the words:

> "HHJ SIMON OLIVER – EXPOSED AS TAKING BRIBES IN COURT
>
> PART OF OPERATION 'X'
>
> HIS HONOUR JUDGE SIMON OLIVER
>
> INTRODUCING A CRIMINAL IN A ROBE"

37. The Website continues that 'Operation X is here to help the public against bribery and corruption in the British judicial system'. It then says:

> "This website deals with HHJ Simon Oliver asking for, accepting and taking bribes to pervert the course of justice. He is racist, very corrupt, perverts the course of justice and commits perjury in return for illegal and criminal bribes in the UK court system."

38. The paragraph is followed by three further photographs of the Claimant, above the following comment:

> "A judge for sale: These are pictures of His Honour Judge Simon Oliver. He is the one who takes bribes using the term 'gift'. He is the criminal in the court system and eyewitness testimony exists to confirm this and the substantial amounts of comments on this site confirms it further."

39. The Website then goes on to give a detailed account of what is obviously the hearing of the Defendant's appeals before the AAC in June 2014. It begins:

> "On June 24th, 2014, my team were sat in the Upper Tribunal located in the Breams Buildings in London for a case involving an unrepresented member of the public against a government department called the Disclosure and Barring Service (DBS). The DBS has functions to bar people from working with children and vulnerable adults."

40. The Website goes on:

> "At the oral hearing which lasted 4 days, HHJ Simon Oliver asked for a 'gift' from the parties concerned. The DBS gave him a gift in the form of a box which was wrapped up in a Sainsbury's Carrier bag. Since then, HHJ Simon Oliver made a mockery out of the court system and the judgement he gave.
>
> IF YOU HAVE THIS JUDGE IN YOUR CASE, PLEASE NOTE, HE TAKES BRIBES IN THE FORM OF GIFTS.
>
> IF THE JUDGEMENT YOU RECEIVED IS FILLED WITH LIES, ITS BECAUSE HHG SIMON OLIVER HAS RECEIVED A GIFT THROUGH OTHER MEANS.
>
> IF HE GIVES YOU A CORRUPT JUDGEMENT AND PENALTY, APPEAL IT AS ITS MOST LIKELY HE RECEIVED 'GIFTS'."

41. Under the heading 'Police Investigation' the Website says:

> "As of June 2016, HHJ Simon Oliver, Michael Flynn, Justice William Charles and the Government legal department Solicitors Kevin Brooks are being investigation by London police."

42. Then, under 'Personal Life' the Website says:

> "Judge Simon claims he practices religion in his private life and seems to know a little about the religions practices although this is also a fraud considering he takes bribes in his professional life. He is lying to God and to everyone

> else around him about his faith as he does not practice what he preaches."

43. There is then a section which makes a number of very personal allegations about the Claimant and the nature of his relationship with his wife.

44. Finally, I will quote one allegation which appears under the heading, 'Several allegations have also been made again Mr Oliver. These consist of: (sic)

> "Fabricating judicial judgements and orders in return for obtaining state funds for foster care."

45. Mr Silverstone asked me to note the phrase 'judicial judgements' and also the spelling used. I will return to this later.

46. I turn to the 'Comments' section of the Website. The Claimant says that whether or not the Defendant is the author of the comments (and he maintains that he is the author of all, or nearly all, of them), he certainly is responsible for publishing them and so guilty of harassment on that basis.

47. I have carefully read the selection of comments which are in the evidence, and also how they are described in the witness statements. They can be grouped according to the following themes: (a) repeated allegations of serious criminality against the Claimant in his work as a judge; (b) offensive and abusive language repeatedly directed at Claimant; (c) allegations of criminality against the Claimant's sons who are named and against whom very serious threats are made; (d) the Claimant's home and work addresses; (e) photographs of the Claimant and his home; (f) repeated, specific and highly intimidating threats against the Claimant, his family and his home; (g) intimidating and obscene threats against the Claimant's wife; (h) incitement to others that they should attack the Claimant and his wife and family, burgle the Claimant's house and engage in further harassment by online publication; and (i) personal information and photographs which indicate that the Claimant, his wife and granddaughter have been subject to surveillance.

48. As an example of (b), on 29 December 2017 at 2:21am a person calling themselves 'Harper' posted that the Claimant was a 'briberer, murderer and rent-boy abuser'. An example of (c), (f) and (h), is this, posted by 'Gary' on 13 January 2018 at 9.32pm:

> "This prick has two sons who also work in the legal industry. One is called [name] and other one is called [name] and they are also known to be bribing judges. Let's get their children and the grandchildren as well and hold them hostage until we get our children back ! No degree of violence is little."

49. An example of (b), (f) and (h) is this post from 'Burt' on 6 January 2018 at 1:28am:

> "The reason he is in hospital all the time is because he keeps getting attacked and beaten up for making the false and fictional judgments he does. Last time i heard he was

> in berkshire hospital because of stab wounds a broken back. Lool. Well done to the hero who did this."

50. I should make clear there is no evidence that the Claimant has been in hospital for the reasons described.

51. An example of (b) and (g) is a post from 'Two loving parents' on 23 January 2018 at 8:04pm who said the Claimant had been responsible for his/her/their daughter being raped by six boys because he 'put her into care for no good reason'. It went on to describe the Claimant in obscene terms and concluded by making a serious threat of sexual violence against his wife.

52. In early February 2018 there were a series of messages suggesting a protest about the Claimant outside the Ministry of Justice. Then, on 6 February 2018 someone posted this message;

> "Maybe we should all go outside his house on [redacted] and protest there so all his neighbours know what hes doing and to be warned from him too."

53. This was followed on 20 February 2018 by a post part of which read:

> "OK LET'S GET TO THE NITTY GRITTY, WHO HAS GOT THE BALLS TO PROTEST AT THIS SCUM BAGS HOME ! …"

54. In light of these comments, the Claimant was particularly disturbed by a post from 'Prefer not to say' on 26 August 2018 at 9:02am, which referred to his wife having a particular make and colour of car, and to the fact that the person posting had seen it parked outside the Claimant's house. The details of the make and model were correct, leading to the inference that the writer had indeed been in the vicinity of the Claimant's house.

*Further alleged online publications by the Defendant*

55. The Claimant's case is that the Defendant is responsible for a number of other blogs, webpages and posts which have been published online and which make harassing allegations about him that are identical or very similar to those in the Website and/or which contain links to it. The details and relevant URLs are set out in his first witness statement at [77-83] and I need not set them out. The Claimant's case is that given the close links, the only reasonable inference is that the Defendant controls, operates and/or publishes these websites also.

*The Defendant's Defence, Counterclaim and first witness statement*

56. The Particulars of Claim (PoC) are dated 31 January 2019 and were served shortly thereafter. On 12 February 2019 the GLD received an Acknowledgement of Service (AoS), Defence, and Counterclaim, and a witness statement from the Defendant.

57. The Defence is handwritten and very brief. The Defendant states the following:

> "1. I Deny [*sic*] all the allegations made by the Claimant
>
> 2. I have not harassed him in any way whatsoever
>
> …
>
> 8. The Claimant has not provided any evidence against me of any wrong doing [*sic*] except his word."

58. The other paragraphs of the Defence complain about the AAC judgment in 2014 and that the Claimant is now trying to use the High Court proceedings to harass him.

59. This form contains a counterclaim against the Claimant. The section of the Defence headed 'If you wish to make a claim against the claimant (a counterclaim)' was partially completed. The Defendant answered the question 'What are your reasons for making the counterclaim ?' with the following:

> "Because the Claimant is using the court system to harass and cause harm to me in addition to his previous conduct. The Claimant has unclean hands and has not been entirely honest about his claim."

60. The Defendant's witness statement states the following in response to the Particulars of Claim:

> "In response to the allegations that complainant makes against me, I deny all of it. The claimant has not provided any evidence to state that I am responsible for any online activity against him. The claimant's case is entirely on his own belief, his word and not evidence. This is similarly to his judicial judgment in the past where it's not supported by evidential facts but just his beliefs and facts that he makes up. I have never pursued any campaign of harassment against the claimant."

61. Later, the Defendant states, 'I can also confirm and make absolutely and abundantly clear that I have not set up online web blogs addressing concerns against the claimant's behavior (*sic*).'

*Events subsequent to service of the Defence, etc*

62. As I have said, an interim injunction was granted by Warby J on 8 February 2019 and this was continued by Nicol J on 26 February until trial or further order.

63. On 9 April 2019 Ms Redman of the GLD wrote to the Claimant in relation to the AoS and the Defence and Counterclaim. She set out various parts of the CPR and pointed out that the Defendant had not given a proper address for service (it said the address he had given was a storage facility) and that the Defence was deficient because it did not plead what the Defendant accepted, denied, or was unable to admit or deny. Where

there was a denial, the letter said that Defence had not set out the reasons for that denial; or put forward any positive alternative case. The letter intimated that unless the Defendant filed and served a Defence which complied with the CPR, the Claimant would apply for orders that (a) the Defence and any Counterclaim be struck out and/or that judgment, and/or summary judgment be entered for the Claimant, (b) there be a permanent injunction against the Defendant in terms similar to those in the order of Nicol J of 26 February 2019; and (c) the Defendant pay the Claimant's costs of the claim.

64. The Defendant replied the same day by email. He said that the address he had given was a mailbox address. He also said (referring to his witness statement):

> "I clearly stated that I am not responsible for the claims the claimant makes. As the claimant has not been specific what allegations he has made against me, it is difficult to defend it specifically. All I can say is that I have not stalked the claimant, create a site against him and managed and maintained it. I have said this several times to the court and the police. It seems like the claimant is obsessed that he wants me to be responsible despite me saying that i'm not. I would like to reiterate that I deny all the allegations the claimant makes and I am not admitting anything. Therefore, this complies with the defence."

65. Following the issue of the present application on 3 September 2019 and service of the first witness statement of Ms Lloyd-Jones of the GLD, which again set out deficiencies in the Defence, a response was provided by the Defendant under cover of a letter dated 30 September 2019 attaching a second witness statement. In relation to [11] of Ms Lloyd-Jones' witness statement, in which she said that '… the Defence discloses no reasonable grounds for defending the claim; is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; and fails to comply with CPR 16.5 ….' the Defendant responded:

> "… I challenge this claim as all I can do is deny the allegations. I have no knowledge who has done so. The claimant has an obsession that he wants me to be guilty of the allegations despite providing no evidence for his case or providing reasons for his beliefs. The claimant is abusing the court with baseless allegations by pointing the finger of blame at me and subjecting me to a campaign of civil harassment."

66. Ms Lloyd-Jones' witness statement states at [23] that as of 3 September 2019, 272 entries had been added to the Website since 18 February 2019.

**Legal principles**

67. Before turning to the detail of how the Claimant puts his case, I should set out the legal principles. These are largely uncontroversial.

*The test on an application to strike out a defence/for summary judgment on a claim*

68. CPR r 3.4(2)(3) states:

> "(2) The court may strike out a statement of case if it appears to the court –
>
> (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
>
> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
>
> (c) that there has been a failure to comply with a rule, practice direction or court order.
>
> (3) When the court strikes out a statement of case it may make any consequential order it considers appropriate."

69. CPR PD 3A states insofar as relevant:

> "1.4 The following are examples of cases where the court may conclude that particulars of claim (whether contained in a claim form or filed separately) fall within rule 3.4(2)(a):
>
> (1) those which set out no facts indicating what the claim is about, for example "Money owed £5,000",
>
> (2) those which are incoherent and make no sense,
>
> (3) those which contain a coherent set of facts but those facts, even if true, do not disclose any legally recognisable claim against the defendant.
>
> 1.5 A claim may fall within rule 3.4(2)(b) where it is vexatious, scurrilous or obviously ill-founded.
>
> 1.6 A defence may fall within rule 3.4(2)(a) where:
>
> (1) it consists of a bare denial or otherwise sets out no coherent statement of facts, or
>
> (2) the facts it sets out, while coherent, would not even if true amount in law to a defence to the claim."

70. The rules governing what a defence must contain are set out in CPR r 16.5:

> "(1) In his defence, the defendant must state -

(a) which of the allegations in the particulars of claim he denies;

(b) which allegations he is unable to admit or deny, but which he requires the claimant to prove; and

(c) which allegations he admits.

(2) Where the defendant denies an allegation—

(a) he must state his reasons for doing so; and

(b) if he intends to put forward a different version of events from that given by the claimant, he must state his own version."

71. The relevant rules in respect of a counterclaim are in CPR r 20.4:

"20.3(1) An additional claim shall be treated as if it were a claim for the purposes of these Rules, except as provided by [CPR 20]…

20.4(1) A defendant may make a counterclaim against a claimant by filing particulars of the counterclaim."

72. In consequence, the content of the particulars of the counterclaim are governed by CPR 16.4 which states at (1)(a) that:

"Particulars of claim must include… a concise statement of the facts on which the claimant relies."

73. Summary judgment is dealt with in CPR r 24.2, which provides:

"The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if –

(a) it considers that –

(i) that claimant has no real prospect of succeeding on the claim or issue; or

(ii) that defendant has no real prospect of successfully defending the claim or issue; and

(b) there is no other compelling reason why the case or issue should be disposed of at a trial."

74. The test to be applied on an application for summary judgment is well settled: see eg *G4S Care and Justice Services v Luke* [2019] EWHC 1648 (QB), [19]; *AC Ward & Son v. Caitlin (Five) limited* [2009] EWCA Civ 1098, [24]; *Easyair Limited v. Opal Telecom Limited* [2009] EWHC 339 (Ch), [15]. In *JSC VTB Bank v Skurikhin* [2014] EWHC 271 (Comm), [15], Simon J set out this helpfully comprehensive analysis:

> "(1) The Court must consider whether the defendant has a 'realistic' as opposed to a 'fanciful' prospect of success, see *Swain v Hillman* [2001] 2 All ER 91, 92. A claim is 'fanciful' if it is entirely without substance, see Lord Hope in *Three Rivers District Council v Bank of England* [2001] UKHL 16 at [95].
>
> (2) A 'realistic' prospect of success is one that carries some degree of conviction and not one that is merely arguable, see *ED & F Man Liquid Products v. Patel* [2003] EWCA Civ 472.
>
> (3) The court must avoid conducting a 'mini-trial' without disclosure and oral evidence: *Swain v Hillman* (above) at p.95. As Lord Hope observed in the *Three Rivers* case, the object of the rule is to deal with cases that are not fit for trial at all.
>
> *(4)* This does not mean that the Court must take everything that a party says in his witness statement at face value and without analysis. In some cases it may be clear that there is no real substance in factual assertions which are made, particularly if they are contradicted by contemporaneous documents, see *ED & F Man Liquid Products v. Patel* (above) at [10]. Contemporary activity or lack of activity may similarly cast doubt on the substance of factual assertions.
>
> (5) However, the Court should avoid being drawn into an attempt to resolve those conflicts of fact which are normally resolved by a trial process, see *Doncaster Pharmaceuticals Group Ltd v. Bolton Pharmaceutical Co 100 Ltd* [2006] EWCA Civ 661, Mummery LJ at [17].
>
> (6) In reaching its conclusion, the court must take into account not only the evidence actually placed before it on the application for summary judgment, but the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond ( No. 5)* [2001] EWCA Civ 550, [19].
>
> (7) Allegations of fraud may pose particular problems in summary disposal, since they often depend, not simply on facts, but inferences which can properly drawn from the

relevant facts, the surrounding circumstances and a view of the state of mind of the participants, see for example *JD Wetherspoon v Harris* [2013] EWHC 1088, Sir Terence Etherton Ch at [14]…

(8) Some disputes on the law or the construction of a document are suitable for summary determination, since (if it is bad in law) the sooner it is determined the better, see the *Easyair* case. On the other hand the Court should heed the warning of Lord Collins in *AK Investment CJSC v Kyrgyz Mobil Tel Ltd* [2012] 1 WLR 1804 at [84] that it may not be appropriate to decide difficult questions of law on an interlocutory application where the facts may determine how those legal issues will present themselves for determination and/or the legal issues are in an area that requires detailed argument and mature consideration, see also at [116].

(9) The overall burden of proof remains on the claimant,
... to establish, if it can, the negative proposition that the defendant has no real prospect of success (in the sense mentioned above) and that there is no other reason for a trial, see Henderson J in *Apovodedo v Collins* [2008] EWHC 775 (Ch), at [32].

(10) So far as Part 24,2(b) is concerned, there will be a compelling reason for trial where 'there are circumstances that ought to be investigated', see *Miles v Bull* [1969] 1 QB 258 at 266A. In that case Megarry J was satisfied that there were reasons for scrutinising what appeared on its face to be a legitimate transaction; see also *Global Marine Drillships Limited v Landmark Solicitors LLP* [2011] EWHC 2685 (Ch), Henderson J at [55]-[56].”

*Protection from Harassment Act 1997 (PHA 1997)*

75. The relevant provisions of the PHA 1997 can be summarised as follows.

76. Section 1(1) provides that a person must not pursue a course of conduct which amounts to harassment of another; and which he knows or ought to know amounts to harassment of the other.

77. Section 1(2) provides that the question of whether a person ought to know that his conduct amounts to harassment is determined by asking whether a reasonable person in possession of the information he has would think the course of conduct amounted to harassment.

78. The circumstances in which a ‘course of conduct’ will amount to ‘harassment’ are not set out in the PHA 1997, save for the following:

a. Section 7(2): References to harassing a person include alarming the person or causing the person distress;

b. Section 7(3): A 'course of conduct' must involve conduct on at least two occasions;

c. Section 7(4): 'Conduct' includes speech.

d. Section 1(3) provides that s 1(1) does not apply to a course of conduct if the person who pursued it shows:

(i) that it was pursued for the purpose of preventing or detecting crime; (s 1(3)(a));

(ii) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment (s 1(3)(b)), or

(iii) that in the particular circumstances the pursuit of the course of conduct was reasonable (s 1(3)(c)).

79. Section 3(1) provides that an actual or apprehended breach of s 1 may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question. Section 3(3)(a) explicitly recognises the court's power to grant an injunction against a person to restrain any conduct which amounts to harassment.

80. In *Hayes v Willoughby* [2013] 1 WLR 935, [1], Lord Sumption (with whom Lord Neuberger, Lord Wilson and Lord Mance agreed) said:

> "Harassment is both a criminal offence under section 2 and a civil wrong under section 3. Under section 7(2), 'references to harassing a person include alarming the person or causing the person distress', but the term is not otherwise defined. It is, however, an ordinary English word with a well understood meaning. Harassment is a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress …"

81. Some relevant legal principles were summarised by Warby J in *Hourani v Thomson* [2017] EWHC 432 (QB). That case arose from a campaign of street protest, online publication, and sticker distribution by the defendants against the claimant Mr Hourani and others, which denounced them as murderers, responsible for the torture, drugging, beating and sexual assault of a young woman. The judge said at [138]-[146]:

> "138. The use of the words 'alarm and/or distress' in [counsel for the Defendants'] submission is a reflection of s 7(2) of the 1997 Act, which provides that 'references to harassing a person include alarming the person or causing

the person distress'. This is not a definition of the tort. It is merely guidance as to one element of it. Nor is it an exhaustive statement of the consequences that harassment may involve. The Supreme Court gave further guidance in *Hayes v Willoughby* [2013] 1 WLR 935, where Lord Sumption SC said at [1] that harassment is '… an ordinary English word with a well understood meaning. Harassment is a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress.'

139. As these words suggest, behaviour must reach a certain level of seriousness before it amounts to harassment within the scope of PHA s 1. That is not least because the 1997 Act creates both a tort and, by s 2, a crime of harassment. The authoritative exposition of this point is that of Lord Nicholls in *Majrowski v Guy's and St Thomas's NHS Trust* [2007] 1 AC 224 [30]:

> '[Where] the quality of the conduct said to constitute harassment is being examined, courts will have in mind that irritations, annoyances, even a measure of upset, arise at times in everybody's day-to-day dealings with other people. Courts are well able to recognise the boundary between conduct which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the boundary from the regrettable to the unacceptable the gravity of the misconduct must be of an order which would sustain criminal liability under section 2.'

140. There must, therefore, be conduct on at least two occasions which is, from an objective standpoint, calculated to cause alarm or distress and oppressive, and unacceptable to such a degree that it would sustain criminal liability: see *Dowson v Chief Constable of Northumbria Police* [2010] EWHC 2612 (QB) [142] (Simon J).

141. The reference to an 'objective standpoint' is important, not least when it comes to cases such as the present, where the complaint is of harassment by publication. In any such case the Court must be alive to the fact that the claim engages Article 10 of the Convention and, as a result, the Court's duties under ss 2, 3, 6 and 12 of the Human Rights Act 1998. The statute must be interpreted and applied compatibly with the right to freedom of expression, which must be given its due

importance. As Tugendhat J observed in *Trimingham v Associated Newspapers Ltd* [2012] EWHC 1296 (QB) at [267] '[i]t would be a serious interference with freedom of expression if those wishing to express their own views could be silenced by, or threatened with, claims for harassment based on *subjective* claims by individuals that they feel offended or insulted' (emphasis added).

142. The Court's assessment of whether conduct crosses 'the boundary from the regrettable to the unacceptable' needs to be conducted with care in cases such as this, for several well-established reasons. Among them are that freedom of expression

> (1) '… is the lifeblood of democracy. The free flow of information and ideas informs political debate. It is a safety valve; people are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice of the country':

*R v Secretary of State for the Home Department, ex p Simms* [2000] 2 AC 115, 126 (Lord Steyn)

> (2) '… is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also those that offend, shock or disturb':

*Nilsen and Johnsen v Norway* (1999) 30 EHRR 878 [43].

> (3) '… is subject to exceptions which must, however, be construed strictly, and the need for any restrictions must be established convincingly':

*Nilsen and Johnsen* (ibid).

143. In *Nilsen* the Court set out the well-known three part test for justification of an interference with a fundamental right. 'The test of 'necessity in a democratic society' requires the Court to determine whether the 'interference' corresponded to a 'pressing social need', whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it are relevant and sufficient.'

144. A summary of the way in which these principles are to be applied where a series of press publications is

alleged to amount to harassment is to be found in the judgment of Lord Phillips MR in *Thomas v News Group Newspapers Ltd* [2001] EWCA Civ 1233 [2002] EMLR 4:

> ‘30. "Harassment" is, however, a word which has a meaning which is generally understood. It describes conduct targeted at an individual which is calculated to produce the consequences described in section 7 and which is oppressive and unreasonable. …
>
> 31 The fact that conduct that is reasonable will not constitute harassment is clear from section 1(3)(c) of the Act. While that subsection places the burden of proof on the defendant, that does not absolve the claimant from pleading facts which are capable of amounting to harassment.
>
> …
>
> 32 Whether conduct is reasonable will depend upon the circumstances of the particular case. When considering whether the conduct of the press in publishing articles is reasonable for the purposes of the 1997 Act, the answer does not turn upon whether opinions expressed in the article are reasonably held. The question must be answered by reference to the right of the press to freedom of expression which has been so emphatically recognised by the jurisprudence both of Strasbourg and this country.
>
> …
>
> 34 In general, press criticism, even if robust, does not constitute unreasonable conduct and does not fall within the natural meaning of harassment. …
>
> 35 … before press publications are capable of constituting harassment, they must be attended by some exceptional circumstance which justifies sanctions and the restriction on the freedom of expression that they involve. … such circumstances will be rare.
>
> …
>
> 50 … the test [of reasonableness] requires the publisher to consider whether a proposed series of articles, which is likely to cause distress to an individual, will constitute an abuse of the freedom of press which the pressing social needs of a

> democratic society require should be curbed. This is a familiar test and not one which offends against Strasbourg's requirement of certainty.'
>
> 145. In the present case, although this is by no means at the forefront of [counsel for the Defendants'] argument, it is right to recall that the fact that the Events involved street demonstrations means that the right to freedom of assembly is also engaged. That right is protected by Article 11(1) of the Convention: "Everyone has the right to freedom of peaceful assembly and to freedom of association with others, …"
>
> 146. When applying these principles it is necessary to have in mind not only that the rights under Articles 10(1) and 11(1) are qualified rights but also that in this, as in many publication cases, the countervailing rights to be considered appear to include the fundamental right to respect for private and family life, under Article 8 of the Convention. The gravity of the imputations against Mr Hourani and their consequences for him mean that this right is engaged. It is necessary to assess the gravity of any interference and whether such interference is justified under Article 8(2). That task itself involves the application of the three part test. The resolution of any conflict between Article 8 and Articles 10 and 11 is achieved through the 'ultimate balancing test' referred to in *In re S (A Child)* [2004] UKHL 47 [2005] 1 AC 593."

82. Publication on a website of the name of an individual in the knowledge that such publication will inevitably come to his/her attention on more than one occasion and on each occasion cause them alarm or distress may constitute harassment: *Law Society v Kordowski* [2014] EMLR 2, [61] and [75]. That was a claim for injunctions requiring the Defendant, the publisher of the 'Solicitors from Hell' website, to cease publication of the Website in its entirety and to restrain him from publishing any similar website. The causes of action relied upon were libel, harassment under the PHA 1997 and breach of the Data Protection Act 1998. The claim was brought as a representative action on behalf of all those currently featuring on the website and those who might, in the future, feature on the website. Tugendat J said:

> "61. The publication by the Defendant on the Website of the name of the solicitors and individuals, including the Third Claimant, in the knowledge that such publications will inevitably come to their attention on more than one occasion and on each occasion cause them alarm and distress constitutes harassment under the PHA. Listing any of the Represented Individuals would also constitute harassment for the same reason.
>
> …

> 75. I accept the submission of Mr Tomlinson. Even if an allegation posted on the Website were true (or if there is no evidence from a person or firm named on the Website that it is false) the use of the Website as it has been used could not, even arguably, come within the PHA s.1(3). In my judgment it is plain beyond argument that it was not pursued for the purpose of preventing or detecting crime; not pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment; and was not reasonable.2

83. In *Hayes v Willoughby*, supra, [15], Lord Sumption provided the following guidance as to the basis upon which a defence under s 1(3)(a) (preventing or detecting crime) will succeed:

> "Before an alleged harasser can be said to have had the purpose of preventing or detecting crime, he must have sufficiently applied his mind to the matter. He must have thought rationally about the material suggesting the possibility of criminality and formed the view that the conduct said to constitute harassment was appropriate for the purpose of preventing or detecting it. If he has done these things, then he has the relevant purpose. The court will not test his conclusions by reference to the view which a hypothetical reasonable man in his position would have formed. If, on the other hand, he has not engaged in these minimum mental processes necessary to acquire the relevant state of mind, but proceeds anyway on the footing that he is acting to prevent or detect crime, then he acts irrationally."

84. The approach to a defence of reasonable conduct under s 1(3)(c) PHA in a speech-related case was discussed in *Hourani, supra,* [184-188].

85. In *Morice v France* (2016) 62 EHRR 1, [125], the Grand Chamber of the European Court of Human Rights considered the exercise of Article 10 rights in the context of criticism of the judiciary. It noted that such comments required a 'high degree of protection' even where there was a 'degree of hostility' and were 'potentially serious'. However, it went on to say at [128] that:

> "As the guarantor of justice, a fundamental value in a law-governed State, [the judiciary] must enjoy public confidence if it is to be successful in carrying out its duties. It may therefore prove necessary to protect such confidence against gravely damaging attacks that are essentially unfounded, especially in view of the fact that judges who have been criticised are subject to a duty of discretion that precludes them from replying".

86. In *Foskett et al v Ezeugo*, a claim under the PHA 1997 was brought by a High Court Judge, a Circuit Judge and a Deputy District Judge against an individual who had engaged in various forms of harassment of them (including by online publications) after appearing before them in court. In that claim an interim injunction was granted against the defendant by Jay J in terms similar to those now sought by the Claimant: [2017] EWHC 2292 (QB). Default judgment was subsequently entered for the claimants, and a permanent injunction ordered, by Jeremy Baker J: [2017] EWHC 3749 (QB).

**Submissions**

*The Claimant's case*

87. The Claimant submits that the Defence fails to engage in any meaningful way or at all with the allegations in the Particulars of Claim. It contains no response to his averments and no proper basis on which the claim could be defended at trial. He says that it falls squarely within two of the examples in CPR PD 3A, [1.6], by which a defence 'discloses no reasonable grounds for bringing or defending the claim' if it 'consists of a bare denial' and 'otherwise sets out no coherent statement of facts'.

88. Further or alternatively, the Claimant says that the Defence does not comply with CPR r 16.5 in that it does not state which of the allegations in the Particulars of Claim the Defendant denies; which allegations he is unable to admit or deny, but which he requires the Claimant to prove; and which allegations he admits. The Claimant says that it is nonsensical for the Defendant just to deny 'all the allegations made by the Claimant', when it is plain that he has to accept many of them are true. Insofar as the Defendant denies any allegations, the Claimant says that the Defence does not give the Defendant's reasons for doing so and, if the Defendant would intend at trial to put forward a different version of events, what that version would be.

89. Further, the Claimant does not accept that the partially completed form within the Defence served by the Defendant constitutes a counterclaim because the Defendant has not completed the boxes headed 'My claim is for' or 'I enclose the counterclaim fee of'. More significantly perhaps, he also says that it contains no legally recognisable basis on which a counterclaim could be maintained. He also says that the Counterclaim does not include a concise statement of the facts on which the Claimant relies, contrary to CPR r 20.3(1) and CPR r 16.4.

90. The Claimant also submits that both the Defence and the Counterclaim are abusive, vexatious and likely to disrupt the just disposal of the claim. He says that is because they seek to re-open matters relating to the Defendant's 2014 appeals before the AAC which have been subject to final judicial determination, and they also seek to impugn judicial immunity. They contain scandalous allegations against the Claimant which cannot form a proper part of any proceedings. He says the incoherence and vagueness of the allegations obstructs the fair trial of the claim.

91. Finally, the Claimant says that the Defendant has been on notice for some considerable time that his pleadings are deficient. He relies on the correspondence and evidence from the GLD to that effect. There has been no application by the Defendant to amend his pleadings, and indeed at the hearing before me the Defendant sought to justify their

adequacy. Although no application was made by the Defendant for leave to amend his pleadings, it is clear that the Claimant would resist any such application.

92. In relation to his application for summary judgment, the Claimant submits as follows.

93. The Defence contains a bare denial of the allegations in the Particulars of Claim, and gives rise to no clearly pleaded issue in respect of those allegations. The Claimant therefore says that to the extent that any potential issue can be discerned from his two witness statements, it arises from the Defendant's denial of responsibility for the Website and other online publications.

94. The Claimant says the evidence is overwhelming that the Defendant is responsible for the Website and that his defence that he is not responsible is not even fanciful, so that summary judgment should be granted. He says the Defendant has no answer to the evidence. He says that the inescapable inference from the evidence is that the Defendant operates the Website, publishes its contents, is the author of the main text and most – if not all - of the posts in the 'Comments' section.

95. The Claimant therefore submits that I should give summary judgment in his favour on his claim and on the Defendant's Counterclaim.

*The Defendant's case*

96. The Defendant is obviously an intelligent man, as his former job as a physiologist shows. The AAC in its judgment at [32] described this is a 'specialist clinical role' which requires a 'degree-level education'. He clearly and courteously articulated what his case is. He said that he is not responsible for the Website, or any of the other sites. He does not publish them and is not responsible for their content. In response to a question from me, he said that he had not tried to find out who was publishing the Website, even though it obviously refers to him and takes a close interest in his affairs. He said that he did not want to become involved in it. In relation to the pleadings, he said that, as a litigant in person, he had done all he could reasonably be expected to do by way of his Defence and Counterclaim. He said that he did not think he could reasonably have said any more. He argued that the matter ought to go to trial, when witnesses (unspecified) could be called to support his case.

**Discussion**

*The strike-out application*

97. I am satisfied that this is a proper case to strike out the Defendant's Defence and Counterclaim for all of the reasons advanced by the Claimant, and for the following reasons.

98. I am very aware that the Defendant is representing himself, and is therefore at a disadvantage to the Claimant. However, that does not absolve him from the requirement to comply with the CPR and the pleading rules contained within them. The position of unrepresented parties was considered by the Supreme Court in *Barton v Wright Hassall llp* [2018] 1 WLR 1119, [18] where Lord Sumption JSC said this:

> "18 … In current circumstances any court will appreciate that litigating in person is not always a matter of choice. At a time when the availability of legal aid and conditional fee agreements have been restricted, some litigants may have little option but to represent themselves. Their lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court. The overriding objective requires the courts so far as practicable to enforce compliance with the rules: CPR r 1.1(1)(f). The rules do not in any relevant respect distinguish between represented and unrepresented parties. In applications under CPR 3.9 for relief from sanctions, it is now well established that the fact that the applicant was unrepresented at the relevant time is not in itself a reason not to enforce rules of court against him … The rules provide a framework within which to balance the interest of both sides. That balance is inevitably disturbed if an unrepresented litigant is entitled to greater indulgence in complying with them than his represented opponent. Any advantage enjoyed by a litigant in person imposes a corresponding disadvantage on the other side, which may be significant if it affects the latter's legal rights … Unless the rules and practice directions are particularly inaccessible or obscure, it is reasonable to expect a litigant in person to familiarise himself with the rules which apply to any step which he is about to take."

99. I have set out the details of the Defendant's Defence and Counterclaim. It is obvious that neither of them complies with the CPR. The Defence is no more than a bare denial of the Claimant's case, coupled with an attack on the judgment of the AAC in 2014 and its consequences, including matters that on no rational view have anything to do with this case, eg, [5(e)]:

> "The judgment he gave breached my human rights by …
> (e) having me convicted of a crime I should never had been charged with or a crime I committed."

100. I do not accept the Defendant's submission that he could not be expected to have pleaded any more than a bare denial. As I have said, he is an intelligent man. The form he was sent contained, under the heading 'How to fill in this form', instructions as to what to write, eg, 'you must state which allegations in the particulars of claim you deny and your reasons for doing so …'. The PoC run to 17 pages. There was much in the PoC which the Defendant could not dispute, including his employment history; his dealings with the ISA/DBS and AAC; his trial and conviction before Isleworth Crown Court; and many other things. Other matters were pleaded in respect of which the Defendant now advances (apparently) a positive case, eg, that he was not responsible for one or more of the letters to Charles J, but about which the Defence is silent. I will

return to this point later. Many more points could be made. It is not necessary to do so. The Defence obviously does not comply with CPR r 16.5. Mr Silverstone was right to submit that it is precisely the sort of Defence which falls within CPR PD 3A, 1.4 and should be struck out.

101. I am equally clear that this is not a case where I should grant the Defendant relief from sanctions for failure to comply with the CPR and give him the opportunity to re-plead his Defence. He did not make such an application and indeed, as I have said, he maintained that he had done all he could be expected to do. However, in fairness to him, I have considered the matter as if he had. I have well in mind the *Mitchell/Denton* principles and the required three-stage approach: *Mitchell v News Group Newspapers Ltd (Practice Note)* [2014] 1 WLR 795 and *Denton v TH White Ltd (Practice (Note)* [2014] 1 WLR 3926. Firstly, the breach of the Rules was serious and substantial. There has been a wholescale failure to comply with them. Second, the default occurred because the Defendant is labouring under the misapprehension that he cannot and should not be expected to say more than he has said. As I have said, he can, and should. Third, I need to consider all the circumstances. The Defendant has had it pointed out to him several times beginning in February this year that his Defence was deficient, but he has declined to take any step to rectify matters. In these circumstances, the balance comes down firmly against allowing him the opportunity now, in late 2019, to re-plead his Defence.

102. I therefore strike out his Defence pursuant to all three limbs of CPR r 3.4(2).

103. I need say little about the Counterclaim. It is obviously deficient, abusive and vexatious and should be struck out under all three limbs of CPR 3.4(2).

*Summary judgment*

104. I am satisfied that this is a proper case for summary judgment on the Claimant's claim. The Defendant's bare denial that he is responsible for the Website does not even reach the 'fanciful' level. The evidence is overwhelming that he controls the Website and is the author of a great deal – if not all - of its content. There is no doubt that what has been published on the Website since at least 2016 amounts to the tort of harassment, such that it is appropriate to grant a permanent injunction against the Defendant to prevent him from continuing his vicious and unwarranted campaign against the Claimant. To the extent that such an injunction will interfere with the Defendant's rights under Article 10 of the Convention then such an interference is plainly justified.

105. The starting point is the 2014 AAC judgment and the other judgments which have found that one of the Defendant's *modus operandi* is the pursuit of internet vendettas against individuals who have crossed him, often using false persona. They show he has a long history of doing precisely what he is accused of doing in this claim. Also, the Defendant has a motive to pursue the Claimant because of the 2014 AAC judgment. In his Defence at [4] he accused the Claimant of 'fabricating' a 'judicial judgement' against him. If one looks at the abuse heaped on the Claimant by the publisher of the Website and asks, 'Cui bono ?' then the answer is obvious. It is the Defendant.

106. The evidence is conclusive that the Defendant is the author of much of the Website's content and that he is responsible for operating it. It contains information which could

only have been known to the Defendant at the time it was published on the Website. I am also satisfied and that it contains language which matches language used in documents known to have been written by the Defendant. My analysis is as follows.

107. Firstly, there is information on the Website about the AAC hearing in 2014 which could have been known to someone who attended it. Of those present, only the Defendant has an interest in publishing it in a manner critical of the Claimant. The information in question is dealt with in the Claimant's first witness statement at [61]. It includes the first name and surname of the solicitor from the Treasury Solicitor/GLD acting for the DBS; the use of the word 'Gollywog' at the hearing; the fact that there was a discussion about how the decision of the AAC should be circulated, in the event that the appeal was dismissed, because evidence was given that the Trust had become the subject of national comment as a result of the Defendant's activities; and the fact that the Claimant stated to the Defendant at the hearing that the Defendant had 'misquoted' another witness.

108. Second, there is the Claimant's decision on the papers of 21 July 2015 in which he dismissed the Defendant's application to set aside the decision of the AAC, and the reference in that decision to the possibility of a civil restraint order. The Website stated, 'The Appellant received a somewhat concerning letter and response from HHJ Simon Oliver basically stating that he will in future consider issuing a civil restraint order …' Only the Defendant received this 'letter' (actually, it was judicial decision not in the form of a letter) and so only he could have posted this information to the Website.

109. Next, there is the similarity of parts of the Website to the complaints to Charles J made in letters bearing the Defendant's name. The Website contains a fantastical account of the Claimant receiving a bribe during the AAC hearing. It states:

> "[KB] from the Treasury Solicitors (TSOL), now called the Government legal department, approaches the judicial bench with a box (the size of a book) in an orange Sainsbury's carrier bag. HHJ Simon Oliver immediately puts his other hand up whilst his initial hand was still on the microphone and stops [KB] in his tracks."

110. That can be compared with this near identical passage from the letter of complaint dated 19 October 2015 to Charles J under the Defendant's name:

> "[KB] from the TSOL approaches the judicial bench with a box (the size of a book) in an orange Sainsbury's carrier bag. Simon Oliver immediately puts his other hand up whilst his initial hand was still on the microphone and stops [KB] in his tracks."

111. When I put this point to the Defendant at the hearing his response was to deny writing the letter to Charles J. He said that the Claimant had written it himself. I clarified whether it really was his case that the Claimant had written a letter of complaint about himself to Charles J. The Defendant confirmed that that was indeed his case. Plainly, such a suggestion is ridiculous. It is also inconsistent with what the Defendant told Nicol J, namely, that he had written '80% of the letter'.

112. The next point is the use of the curious duplicative phrase 'judicial judgement' (the latter with an 'e'). This occurs both in the Website (in a number of different places, as set out by Ms Redman in her fourth witness statement at [19(c)]) and also in documents authored by the Defendant. As I have said, in his Defence the Defendant alleged that the Claimant had 'fabricated a judicial judgement against me'. In his first witness statement, he similarly asserted that '[t]he claimant fabricated a judicial judgement' and that the Claimant's 'allegations against me this time round have been invented just like his judicial judgement'. The repeated use of this striking phrase strongly supports the conclusion that the Defendant authored the relevant parts of the Website.

113. Other language in the Defendant's first witness statement has marked similarities to language used in the Website. For example, the Defendant's witness statement asserts that the Claimant made 'police reports against me', 'requested that the [AAC] judgement be widely distributed in the NHS' and that he 'widely distributed his judicial judgement'. It also alleges that, because of the AAC judgment, others think that the Defendant is an 'abuser and a harmer'. The Website contains all of those phrases often on several occasions: see Ms Redman's Fourth Witness Statement at [19(e)].

114. Next, there is the point that in the Website, the first-person singular pronoun is repeatedly written in the lower case ('i'). The Defendant's letter to Charles J dated 19 October 2015 also contained repeated uses of the word 'i' (lower case) instead of 'I' (upper case).

115. A further point, dealt with in the Claimant's second witness statement at [7], is that in an earlier version of the Website, the account of matters relating to the AAC's refusal of permission to appeal referred to the Defendant in the first person, stating as follows:

> "The appellant received a somewhat concerning letter and response from HHJ Simon Oliver basically stating he will in future consider issuing a civil restraint order that i [sic] do not agree with his judgement when the appeal was on errors of law."

116. That sentence was subsequently amended to change the word 'i' to 'the appellent [sic]', as follows:

> "The appellant received a somewhat concerning letter and response from HHJ Simon Oliver basically stating he will in future consider issuing a civil restraint order that the appellent does not agree with his judgement when the appeal was on errors of law".

117. Mr Silverstone also asked me to note the misspelling of the word 'appellent' here (with two 'e's) contained the letter to Charles J of 19 October 2015 ('Apellent').

118. The next point is one which I put to the Defendant. I asked him, if he was not responsible for the Website, whether he had tried to find out who was, given it was taking such a close interest in his life. I asked the question in part because one of the Defendant's complaints against the Claimant is that he allegedly publicised the 2014

AAC judgment (see [5(b)] of the Defence, where the Defendant complained that the Claimant had distributed the judgment to third parties). The Defendant said that he had not tried to find out who was behind the Website. His answer was to the effect that he did not want to get involved with it. I regard his answer as wholly unconvincing. Obviously, if the Defendant was not responsible for the Website, he would have tried to find out who was, eg, by posting a comment on it asking the webmaster to get in contact with him. And if he really was concerned about publicity, as he claimed in his Defence, he would have asked the webmaster to desist. That he did none of these things helps to show he is responsible for the Website.

119. For all of these reasons I am satisfied that the Defendant is the publisher of the Website and the author of much of it. Such is the nature of the internet, I do not exclude the possibility that others may have posted comments about the Claimant. It is an unfortunate aspect of modern life that some people will take any opportunity to dish out abuse whilst hiding behind the luxury of an anonymous keyboard. However, even if the Defendant was not the author of some of the comments, he is responsible for them because I find that he operates, controls and/or publishes the Website on which they appear and so he has knowingly participated in their publication, and/or has authorised and/or ratified their publication: *Davison v Habeeb* [2011] EWHC 3031 (QB); *Tamiz v Google Inc* [2013] 1 WLR 2151; *Monir v Wood* [2018] EWHC 3525 (QB).

120. I turn to the question of whether the Defendant's conduct amounts to harassment of the Claimant. Clearly it does. The Defendant does not rely on any of the 'defences' in s 1(3) of the PHA 1997, eg, reasonableness. But in any event what the Defendant has done goes far beyond anything that could be considered reasonable or fair comment, even allowing for the fact that the Claimant is a judge and so, as he accepts, must expect robust criticism of his work. The conduct complained of in this case clearly satisfies the test in *Hayes v Willoughby*, supra, as being persistent and deliberate conduct that is unreasonable and oppressive, has been targeted at the Claimant, and has been calculated to, and has, caused him alarm, fear and distress. On the last point, it is sufficient to quote [75] and [84] of his first witness statement:

> "75. I absolutely hate reading the blog [the Website] as it makes me very upset. I try not to think about it if at all possible … I feel sick in my stomach every time I hear about it or read it. The posts referred to above about going to my house, gang-raping my wife, taking my children and grandchildren hostage, robbing my house and sprinkling anthrax over the house are deeply upsetting things to read …
>
> 84. The Blog has caused, and continues to cause, anxiety and distress to both my wife and me."

121. Plainly, the Defendant knows exactly what he is doing and that it amounts to the harassment of the Claimant. That is why he is doing it. As I have said, he has a proven track record of exactly this sort of behaviour.

122. I next turn to the question of relief and whether I should grant a final injunction. I have had regard to the principles in the passage from *Hourani v Thomson*, supra, that I cited

earlier. To the extent that the Defendant's Article 10 rights are engaged, I am wholly satisfied they are outweighed by the need to protect the Claimant's Article 8 rights. No-one should have to suffer the sort of threats and abuse that have been made against the Claimant and his family simply as a consequence of doing his job.

123. I am satisfied that this is a proper case for an injunction permanently restraining the Defendant from harassing the Claimant. That is because the Defendant has a history of harassing many different victims. He has not complied with the injunctions ordered by Warby J and Nicol J. The Website is still live and comments are still being added. I am satisfied that in light of the Defendant's conduct, there is an overwhelming likelihood that, unless restrained by the Court, he will continue to abuse and harass the Claimant.

124. I will therefore grant a final injunction in the form of the draft order in the bundle, amended if necessary. That restrains the Defendant from pursuing a course of conduct amounting to harassment of the Claimant. As is standard practice, it contains a number of sub-paragraphs covering respects in which he is specifically restrained. Their purpose is to clarify for the Defendant what will or will not amount to harassment and therefore be a breach of the order.

125. I invite the Claimant to supply a draft injunction incorporating any changes from the draft in the bundle, together with any submissions as to service and consequential orders. The Defendant may reply. I will deal with any outstanding matters on the papers, unless I conclude otherwise.