IN THE COUNTY COURT AT
CENTRAL LONDON

Case No: L02CL274

Thomas More Building
Royal Courts of Justice
Strand
London, WC2A 2LL

Date: 14th November 2025

Before :

HIS HONOUR JUDGE HOLMES

- -

Between :

FXH & BXH **Claimants**

-and-

THE COMMISSIONER OF POLICE FOR THE METROPOLIS **Defendant**

- -

Miss Lorna Skinner KC (instructed by **Slater & Gordon UK Ltd**) for the **Claimants**
Mr Kiril Waite (instructed by **Weightmans**) for the **Defendants**

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Hearing date: 19th and 20th May 2025
Additional Submissions: 16th September 2025
Submissions on Quantum: 31st October 2025
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JUDGMENT

NOTE: These proceedings are the subject of an anonymity order made by Master Dagnall on 7th June 2023. The Claimants shall be referred to as FXH and BXH and any other details which, on their own or together with other information publicly available, may lead to the identification of the Claimant's (including any names of other immediate family members or their addresses) must be redacted before publication.

His Honour Judge Holmes:

1. After their own children had grown-up, FXH and BXH began to foster children. They had done so for 12 years when in mid-2019 they began to foster A and B who were brother and sister then aged 10 and 8. On 19th February 2020, A and B disclosed that they had been the subject of abuse from an older brother in their birth family. The Claimants passed the information on to the fostering agency and it was in turn given to the relevant local authority. This put in train investigations which led to proceedings being commenced or continued in the Family Court in relation to A and B.

2. During the course of the family proceedings the local authority sought disclosure of documents from the Metropolitan Police. The police complied with that request on 22nd April 2020. Amongst the documents disclosed was one which contained the Claimants' address. The local authority passed those documents on to the birth parents' solicitors who in turn passed them to the birth parents. Whether the birth parents read those documents is a matter of dispute. The Defendant's officers did not become aware of this onward transmission until 22nd May.

3. Meanwhile, another child, a twelve-year-old girl, L, was placed with the Claimants on 12th March. That placement was not entirely successful. The Claimants described her as being manipulative and that she caused problems between A and B. On 24th April, L accused BXH of pinching her bottom whilst they were playing a game. L was immediately removed from the Claimants, and A and B were removed later that evening.

4. At a looked after child review on either 1st May or 1st June, the birth mother made a threat against BXH. It was subsequently recorded by the police in these terms, "[Birth mother] said [BXH] put his hands down [A's knickers] and she knows where he lives and is going to go round and kill him." When the birth mother was asked if that was a threat, she replied that "she was making a promise." It was also thought to have been conditional on the birth mother discovering that BXH had abused her two younger children, C and D, who had spent a short period of time on one day with the Claimants when the carer of C and D had

been unwell. It is not clear from the evidence exactly when A and B had made allegations against BXH.

5. There is a lack of certainty as to when the threat was made. FXH says that she was told that the threat was made at a looked after child review and that she knew there was such a meeting on 1st May. FXH said that she was told by the carers of C and D that the threat was made on 1st May. The police were not told of it until 2nd June. In an entry made on the police computer on 3rd June, P.C. Mullis records that they received the information "from [social services] yesterday afternoon once our shifts had ended." There is a police document which says, "CRIS 4410831/20 is of note though, where in a video call with her social worker on 1st June 2020 [the birth mother] stated that she knew where the foster parents lived and was going round and kill them."

6. A police note from 3rd June 2020 records having received the following information from the local authority,

> "In [A] and [B's] [looked after child] Review today, [the birth mother] said that [C] and [D] have been round to [BXH's] house and asked what if something has happened to them, she said they need to be spoken to. I advised they have been interviewed and all was fine. [The birth mother] said [BXH] put his hands down [L's] knickers and she knows where he lives and is going to go round and kill him. [The independent review officer] asked if she was making a threat. [The birth mother] said she was making a promise. [The independent review officer] told [the social worker] to talk to [BXH] about this threat.
>
> …
>
> "[The social worker] has informed police that the threat was made due to the information that [the birth mother's] two younger children had been to visit [A] and [B] at [BXH's] house, who now there is an allegation of sexual assault from [L].
>
> "The threat was conditional in that she would only be looking to go follow through on the threat if there was any information that [BXH] had assaulted her two younger children. She was already aware of the allegation against [BXH] from [A] and [B].
>
> …
>
> "[BXH's] wife, [FXH] has been spoken to ([BXH] did not answer) who has said that she was not aware of the incident and was not too concerned

> about it and accepted police advice regarding what to do in an emergency."

7. On 3rd June, P.C. Mullis spoke to FXH and informed her of the threat that had been made against BXH. FXH says that the call was very vague. FXH was not told about the comment from the birth mother that the threat was a promise. FXH was not told of the data breach, so was unaware that the birth mother knew, or might know of, their address. FXH says that she was not told that the threat had included the words that the birth mother knew where they lived.

8. The Claimants both gave evidence about the lengths they had gone to in order for the birth parents not to become aware of their address. There had been regular contact between A and B and their birth mother at a contact centre. The birth mother and the Claimants did not meet, the birth mother entered by the front, and the Claimants brought the children to a separate entrance at the back. The mother did, however, wait to wave at the car as the Claimants were driving the children away. In meetings only the first names of the Claimants were used and their address was never disclosed. The Claimants were confident that A and B were unaware of the address of their home: the children were described as not being very bright. During lockdown, contact was facilitated by video conference. The Claimants, on advice, did not use their real names on the video call, they cleared out any personal effects from the room where the call was taking place and the children were not allowed to move the iPad to a different room.

9. When told of the threat to kill, as far as the Claimants were concerned, the birth mother did not know where they lived and they viewed the threat in that context. FXH describes not being overly concerned by the call. In addition to thinking that the address was not known, she was also comforted by the fact that the fostering agency had not called. She took this to be a sign that they were not taking matters too seriously. In a subsequent call with the agency, FXH was reassured that lots of birth parents make threats but do not carry them out. FXH says that she was also told that the LAC meeting at which the threat had been made had taken place on 1st May, and that the agency apologised for not having informed the Claimants sooner.

10. Matters changed on 5th June when D.C. Stratford called FXH. FXH was sitting in the car with her daughter when she took the call. They were visiting FXH's father's grave on the first anniversary of his death. There is no dispute that in that call, D.C. Stratford informed FXH that the Claimants' address had been included within documents sent to the local authority and that the information had been in the possession of the birth family, including the birth mother.

11. FXH's account of the conversation was that D.C. Stratford informed her that on around 22nd April, their home address had been mistakenly disclosed to the birth family. He said that the error had only been identified on 22nd May. The delay in notifying them had been due to leave or other commitments. FXH says that D.C. Stratford advised her to take legal action against the police. He also recommended that they should move to a safe house. She said that they said no to the safe house because of BXH's ill-health and the risk posed by Covid in being out of their home. FXH described taking the threat very seriously. She had put two and two together: the threat and the data leak. She was also concerned by the offer of a safe house given that this "happened in movies". D.C. Stafford says that no offer was made of a safe house. He now remembers little of the conversation.

12. The disclosure caused the police to seek information from the local authority. The local authority replied to questions posed by the police at 09:31 on 5th June saying that the information was shared with the solicitors for the parties in the care proceedings on 22nd April. The local authority said they would ask the solicitors when the information was shared with their clients. Then in answer to the question, "Did the clients view the data", this answer is given, "We know mum has, Dad has not – LA will confirm regarding GM and brother." It is said that the local authority is confirming with the solicitors whether the data has been recalled. Finally, it is said that the data breach was first noticed on 22nd May.

13. In an email at 11:57 on 5th June the local authority wrote to the other lawyers in the Family Court proceedings seeking information as to when the data was shared by the solicitors with their clients; when the data was recalled; whether the client viewed the data; whether and how the data was recalled from the client; and how the data was shared with the client.

14. In an email on 5th June at 16:46 the assistant solicitor for the local authority wrote this to the senior disclosure officer of the Defendant,

> "I am sorry, mum has yet to come back with the details you seek below. Mums (sic) solicitor has emailed to confirm earliest I will have this now is Monday…
>
> "[A party] and [another party]'s solicitors have confirmed that they did not send it out to their clients (nor did dads (sic) solicitor as mentioned earlier)."

15. At some point prior to 15th June the birth mother's solicitor replied to the email from the local authority solicitor seeking information. The reply was as follows,

> "The information was shared with my client on the day that the documents were served upon us on the 22nd April by email at 14.36. They were also sent to the Advocate … on this matter on the same day.
>
> "I have recalled the email on the 5th June. I know that my client had already received the email but she confirmed on the 5th June she had not read the evidence and has now deleted the email. I am awaiting confirmation from [the advocate] that she too has deleted the email
>
> "My client advises that she did not view the data
>
> "I have recalled it via email. I did not post a copy to her.
>
> "The data was shared by email with the Advocate and also with client."

16. FXH said that based on what she had learnt of the birth mother in the Family Court proceedings, she thinks the mother would have read the material.

17. On 29th June 2020 FXH wrote to the Defendant's legal services department in these terms, "I am in receipt of your email with your explanation of events. However there was clearly a data protection breach which has caused my husband and myself a lot of anxiety and worry following our notification from the Police and therefore we will be liaising with our Solicitor for advice." It was suggested that if she was unhappy with the police response, she should have said so and asked for proof that the birth family had not read the email. FXH said that she was advised to seek legal advice by D.C. Stratford.

18. It was suggested that in the RedArc notes (this was a form of counselling) that FXH appeared more concerned about the actions of the fostering agency than the police. FXH said that the involvement of RedArc was through the Fostering Network, an independent group for all foster carers. That was why the focus was more on the actions of the fostering agency.

19. BXH gave evidence of the impression that he had formed from his limited contact with the birth mother, that she was "quite aggressive and hostile to authority". He also says that they learnt that the birth family had been involved in violent crime.

20. BXH recalled a conversation with FXH on 5th June where he was told that the police had suggested they move to a safe house. BXH set out their reasons for not wishing to do so; mainly involving his health and the Covid pandemic. They did however follow through on an alternative suggestion from the police and installed a panic alarm. This was fitted by the police at their expense.

21. BXH says that trying to protect themselves from the birth mother became a financial and psychological burden. He says that the birth mother knew their car from having seen it outside the contact centre and they were fearful, after the threat was made, that the birth mother might see the car and use that to identify their home. He says that they were also fearful that the birth mother might interfere with the brakes of the car. As a result of these fears, BXH and FXH sold their Ford Galaxy on 2nd September 2022 and purchased a Suzuki. They paid £3,678.94 in addition to the trade-in value of the Ford Galaxy.

22. The police removed the panic alarm in October 2020. The police said that the threat had passed, BXH and FXH felt otherwise. As a result they arranged for their own alarm to be installed. A chain was also fitted to the door. The schedule of loss was limited to an invoice from November 2020 in the sum of £1,414.80. A further invoice dated 26th June 2020 was included in the bundle and BXH was asked about it in cross-examination. He accepted that the alarm was installed in November and did not seek to claim the monies on the June invoice.

23. The second-hand replacement car was purchased for £6,000 and the old car was sold for £2,321.06 to Webuyanycar.com. That explains the sum claimed of £3,678.94. Whilst complaint is made of the documentation, the evidence of the replacement vehicle is what BXH received and in my judgment is what one would expect in a private sale. I am satisfied that the sums are established.

24. It should be noted for completeness that the Family Court exonerated BXH of any wrongdoing in relation to the children.

25. FXH and BXH's daughter, gave evidence. She was with FXH when she received the call in the car on 5th June 2020. She recalls hearing mention of a safe house. She also recalls D.C. Stratford saying that her parents should sue the police over the data breach. She also makes reference to the shock and panic that her mother exhibited when she was told of the data breach. She also confirmed the effect of the data breach on her parents over the ensuing months.

26. When cross-examined she could not remember whether she had encouraged her parents to sue the police, she could not remember what her stance was. She could not remember whether she had seen the email her mother wrote saying that she would put it into the hands of their solicitor. She did not make notes at the time. She confirmed that D.C. Stratford had said that her parents should make a complaint. She confirmed her evidence that D.C. Stratford had said that they could have a safe house and panic alarms. She remembered thinking that this must be serious. She accepted that the officer and her mother might have been at

cross-purposes, but she remembered hearing the words 'safe house' and that they should complain.

27. D.S. Stoker gave evidence on behalf of the Commissioner. He described his involvement in the case and said that the disclosure provided by the police to the local authority was extensive, more than one hundred pages in length. He described how the police had disclosed the material using the BOX system, an online file sharing platform used by the Metropolitan Police. He was unsure precisely how it worked or to what degree it was interrogated. Once disclosed, those with accounts can gain access. D.S. Stoker agreed that the Claimants' address should have been redacted before disclosure was given. D.C. Stoker confirmed that the police had become aware of the threat made by the birth mother on 2nd June 2020. Once the threat was received, P.C. Mullis was tasked with investigating the matter. He noted of his conversation with FXH that, "she was not aware of this incident and was not too concerned about it and accepted police advice regarding what to do in an emergency." D.S. Stoker recorded his own view that the birth mother was making a 'comment' rather than a threat. As it was conditional, he did not think an offence of threats to kill was made out. There was nothing to suggest that C or D had been assaulted by BXH and therefore the action taken was placing a marker on the file to treat calls from FXH and BXH's home as urgent. He confirmed that he had had no contact with the birth mother. He could not confirm whether she had a criminal record, although he thought she had been arrested before. He thought that P.C. Mullis would have spoken to the person who heard the threat. Words of warning were given to the birth mother. It was also noted that it was unclear whether the birth mother had the Claimants' address and it had been over a month since the data breach and no incidents had been recorded. D.S. Stoker says that there was never any suggestion of the Claimants moving to a safe house. Unless there had been a significant escalation in the assessed level of threat, this was not something that would have been done.

28. D.C. Stratford gave evidence that he had informed FXH of the data breach on 3rd June 2020. FXH told him that she had not been aware of the data breach and was not concerned about it. FXH accepted police advice as to what to do in an emergency. D.C. Stratford arranged for their home to have a 'Treat All Calls as Urgent' marker placed on their address. D.C. Stratford says that he spoke to FXH and BXH on 5th June. He says he has a vague recollection of the conversation, but not the detail. He says he offered a panic alarm, this was declined, but later accepted. In his statement he says this, "I understand it is suggested that during the call on 5 June, I advised FXH and BXH that they ought to move to a police safe house. As far as I recall, I do not agree any such offer would have been

made, and I would merely have recommended that if they were fearful, they may wish to move to a friend or a relative's address or similar." He says that he has never in his career offered a 'police safe house'.

EVIDENCE OF THE EFFECT

29. FXH in her statement says that for about eighteen months after the data breach, she and BXH were in a state of constant vigilance and anxiety. As an example she says this, "I constantly looked around when leaving the house and when walking the dog, and I tried to avoid taking the same route and to avoid routine as much as possible. I remain vigilant even now, and still do these things, although probably less than before." FXH describes being more cautious before answering the door – always checking the Ring doorbell or the window to check who it is.

30. This was further exacerbated when they were joined to the Family Court proceedings concerning A and B. FXH had declined to provide a statement due to the fear of antagonising the birth family. FXH and BXH were concerned at the prospect of seeing the birth family. They could not afford representation, so had to represent themselves. There was a twelve-day remote hearing in May 2021. FXH describes the birth mother as being very angry and aggressive. There were also references during those proceedings to members of the birth family being engaged in violence. FXH also gave evidence that that as a result of the data breach, she and BXH incurred the cost of an alarm and a vehicle. The notes from RedArc showed that FXH received assistance between 23rd October 2020 and 17th January 2022. The focus of those notes is on the actions of the fostering agency.

31. FXH relies upon a report of Dr Jane O'Neill, a consultant psychiatrist, dated 7th June 2023. Having set out the background, Dr O'Neill records FXH's account of the consequence of the incident. She said she fell apart, the police were taking it very seriously which made her feel that the people were dangerous and that she and her husband were in serious danger. She became reluctant to leave the house. She said she was afraid to open the door. She became overprotective of her husband and children. Her whole life changed and she spent the whole time feeling anxious, worried, fearful and tearful. Dr O'Neill diagnoses an adjustment disorder – mixed anxiety and depression and says that FXH's symptoms were of moderate severity. Dr O'Neill opines that the adjustment disorder would not have occurred without the disclosure of her personal information. The symptoms resolved over eighteen months and no further treatment was required.

32. BXH described feeling incredibly anxious for a period in excess of a year and still did so to a lesser extent when he wrote his witness statement in October 2024. He was afraid to go out. He describes being, "very fearful that the birth mother, or some other adult in the birth family, or one of their criminal associates would be waiting outside for me to leave our house and would come for me." He avoided going out, but when he did, he was extremely vigilant. He also felt he was putting the burden of going out to shop and walk the dog on his wife, feeling that she might be at risk and would have no one to protect her.

33. BXH also gave evidence about the effect the Family Court proceedings had had on them. This increased their anxiety because of the likelihood of the birth mother having their address and her becoming more inflamed due to the proceedings. He described the birth mother as being very heated and hostile during the case. There was also reference to violence in the family and household. BXH says, "the run up to the hearing and the hearing itself was one of the most stressful experiences of my life." He says it would have felt different without the data breach. In cross-examination, BXH said that he saw the birth mother with an ankle tag which would have been consistent with having had a curfew imposed by a criminal court either as a bail condition, or as part of a sentence.

34. BXH accepted that he had not spoken to his GP about the anxiety. BXH also accepted that there was a lot of sources of stress at the time. He had been accused of criminal offences against children which were being investigated by the police and for which he was interviewed before they were discontinued. The family proceedings were stressful. BXH said that the data breach heightened the stress which was caused.

35. Dr O'Neill also provided a report on BXH. BXH reported a deterioration in his mood, rating it as 6/10, following the allegations the girls had made against him. He felt very low, with loss in motivation and poor self-confidence. He became socially withdrawn and worried that others would point the finger. He said there was an improvement in his mood in the six weeks before the data breach. His mood improved to 7/10. After the data breach, his mood was 1/10. He saw how seriously the police were taking it and he became fearful and frightened for his life. He felt vulnerable and defenceless even in his own home. He was hypervigilant and on edge. At night, every time he heard a noise he would get up and check the window. He was unable to sleep. He was unable to go out. He described occasional panic attacks occurring when he attempted to go to the High Street. There was some improvement from September 2022, just over two years after the incident.

36. Dr O'Neill describes an adjustment disorder – prolonged depressive reaction. Dr O'Neill acknowledges that the allegations made against him were a cause of stress, however for reasons she explains, the primary aetiological factor in the development of his adjustment disorder was the breach of personal data and the subsequent threat. Overall, Dr O'Neill says that BXH's prognosis is good, although she perceives that he may continue to struggle with low self-esteem and distrust of others.

37. Dr O'Neill was asked Part 35 questions in relation to both her reports. She stood by her opinions. Mr Waite says that Dr O'Neill stepped into the arena. He highlighted two responses in the Part 35 questions. In answer to question 7(ii), which asked whether if FXH had overstated her reaction would that potentially render unreliable the conclusions she had come to. Dr O'Neill said, "I am not of the opinion that the claimant overstated her reaction. She presented as a reliable historian." In question 8(i), Dr O'Neill was asked whether if no death threats were made and neither were at risk of any serious incident, would this potentially undermine the conclusions. Dr O'Neill replied,

> "I have been provided with very detailed statements by FXH and her daughter. If the court accepts their evidence her daughter who was present at the time of the telephone call from the police and heard it over the loud speaker in the car. FXH's daughter is clear that the threat was perceived to be serious. They were given two alternatives: 1- to move to a safe house or 2 – install panic alarms. They were also advised to seek legal advice and make a complaint."

38. The approach to experts' reports was recently considered by the Supreme Court in *Griffiths v. TUI (UK) Ltd* [2023] UKSC 48; [2025] A.C. 374. Just because an expert is not cross-examined, that does not mean that their report cannot be subjected to criticism. The rule which requires a witness, expert or otherwise, to be challenged before inviting a court not to accept their evidence is a flexible one. That said, in this case, whilst I accept that the answers given by Dr O'Neill suggest a misunderstanding of her role – that it is not for her to assess credibility of a witness – it does not seem to me to undermine her other conclusions. In addition, where I have accepted the Claimants' evidence and found them to have been credible witnesses, the criticisms are less material.

FINDINGS OF FACT

39. There are just a handful of factual issues which are in dispute and which it is necessary for me to reach conclusions on. The first is whether the birth mother read the confidential material. There is evidence which points both ways on this

subject: none of it is direct evidence. First it is necessary to consider the context. This was disclosure in ongoing family proceedings. The mother was represented by solicitors. The information had been passed by the Defendant to the local authority making use of its BOX system. This is an online system whereby the Defendant's officers or employees upload information to the BOX. A link is then sent to the person with whom the information is to be shared and, once they have an account, they can then access the information.

40. The email from the police to the local authority has been disclosed in these proceedings. What happened thereafter is not known with any degree of certainty. Whether the local authority downloaded the information and sent it to the birth family's solicitors or whether they forwarded a BOX link is not known. How the birth family's solicitors sent the information to their clients is not known either. It was suggested in evidence that at least what was done within the BOX system could have been ascertained by the police. It would have assisted to know whether the birth mother created a BOX account and downloaded the material. An email from the birth mother's solicitor says that the documents were sent by email: that rules out the hard copy, but does not definitively answer whether a link to BOX was sent, or whether she was sent a PDF of the papers. If the local authority had simply sent the BOX link on to the solicitors for the birth family, then the data would still have been held on a police system and the police would have remained a controller of that data.

41. It is certainly unsatisfactory that the police did not speak to the birth mother direct about either the threat or whether she accessed the information. It was not done, and therefore the court must try to piece it together.

42. The next piece of evidence is the threat itself. The birth mother is recorded as having said that "she knows where he lives". It is unlikely given the measures put in place by the Claimants and others that the birth mother was aware of the Claimants' address from a source other than the police disclosure. It is possible that the birth mother said that she knew the address when she did not: perhaps she thought it added a degree of verisimilitude to the threat.

43. On 5th June there was an email, which was sent by the Senior Disclosure Officer of the Defendant to a solicitor working for the local authority which asked a series of questions. The answers in bold appear to have been provided by the solicitor working for the local authority. One of the questions was, "Did the clients view the data?" The reply is, "We know mum has …" Most of the other questions received answers that suggested that the information was not currently available. The email, which it seems to me was sent at the same time as the

replies were given, says this, "I am sorry, mum has yet to come back with the details you seek below. Mums (sic) solicitor has emailed to confirm earliest I will have this now is Monday. I am sorry, but I do not work on Monday, so earliest I can forward this information will be Tuesday."

44. The final word comes from the birth mother's solicitor in an email sent at some point between 5th June and 15th June. In answer to various questions from a solicitor working for the local authority, this was said:

> "The information was shared with my client on the day that the documents were served upon us on the 22nd April by email at 14.36. They were also sent to the Advocate […] on this matter on the same day.
>
> "I have recalled the email on the 5th June. I know that my client had already received the email but she confirmed on the 5th June she had not read the evidence and has now deleted the email. I am awaiting confirmation from [the Advocate] that she too has deleted the email
>
> "My client advises that she did not view the data"

45. On 26th June, the Head of Professional Support for the Defendant wrote to FXH providing this information to her. There is an element of that email which appears to go beyond what the birth mother's solicitor states. The email states of the birth mother, that she "was never able to access it and has not read it." The first part of that sentence does not have any foundation in the email from the mother's solicitor. It is not clear where it came from. The second part is clearly accurately reporting what was said.

46. The paucity of direct evidence on this issue is unfortunate. The burden rests on FXH and BXH to establish that the documents were read. Either party could have tried to obtain a witness statement from the birth mother. One can understand the reluctance of FXH and BXH to do so, given the risk of reigniting the issue in the birth mother's mind. There is no reason why the police did not obtain a statement from her. The best evidence comes from the birth mother's solicitor's email in which it is said the birth mother did not read the evidence. The earlier email saying that they know the birth mother had viewed the data provides some support for the opposite conclusion, but the precise source of that information is unknown and the final position from the solicitor is, on balance, the more likely to be correct.

47. The terms of the threat issued by the mother, that "she knows where he lives", again provides some limited support for the contrary conclusion. But whether

she knew the address from another source, or whether she has lied to her solicitor about not reading the material, or whether she wanted to make her threat sound a little more believable is not clear. The threat, "I know where you live" is hardly new. Given that threats are not delivered on oath, or at least not often, it is entirely possible that on occasions the threat is hollow.

48. I am not persuaded, on the balance of probabilities, that FXH and BXH have established that the documents were seen by the birth mother. They do, however, establish that they had an objectively well-founded fear that the information had been passed on to the birth mother: D.C. Stratford told FXH that this had happened on 5th June 2020. It was only on 26th June 2020 that they were informed that the birth mother's solicitor was saying that the birth mother had not read the material.

49. The only other issue of fact is whether D.C. Stratford offered FXH and BXH a safe house on 5th June 2020. D.C. Stratford's recollection of the call is not good after the passage of time. Both FXH and her daughter are clear in their evidence that such an offer was made. I found FXH and her daughter to be honest witnesses doing their best to accurately set out for the court what they recall of the conversation. There seems to me to be a significant risk that there was a misunderstanding as to what was meant by a 'safe house'. I accept that D.C. Stratford used the words 'safe house' during the telephone conversation on 5th June 2020. I accept that FXH was reasonable in thinking that to mean that they would be moved from their home to a property controlled by the police where they could be kept safe. In many ways for this case, that is what matters. This gave FXH and BXH a view as to the seriousness of the situation by reference to his response. Whether D.C. Stratford was really considering a safe house and is now denying it because he realises he went beyond what the Commissioner would have authorised, or whether he was careless in his language and was suggesting they move to the home of family or friends for a period is rather less important.

THE PLEADED CLAIMS

50. The Particulars of Claim assert three heads of claim. First, the tort of misuse of private information. Secondly, a self-standing action for breach of confidence. Thirdly, a claim based on liability under the UK General Data Protection Regulations (UKGDPR) and the Data Protection Act 2018 (DPA). I will begin by setting out the law in relation to each of those heads of claim.

MISUSE OF PRIVATE INFORMATION

51. The elements of misuse of private information can be found in *McKennitt v. Ash* [2006] EWCA Civ. 1714; [2008] Q.B. 73. In paragraph 11, Buxton, L.J. set out a two-stage test in these terms,

> "First, is the information private in the sense that it is in principle protected by article 8? If "no", that is the end of the case. If "yes", the second question arises: in all the circumstances, must the interest of the owner of the private information yield to the right of freedom of expression conferred on the publisher by article 10?"

52. In *Campbell v. MGN Ltd* [2004] UKHL 22; [2004] 2 A.C. 457, Lord Hope, at paragraph 99, described the first questions as being, "what a reasonable person of ordinary sensibilities would feel if she was placed in the same position as the claimant and faced with the same publicity." In *Murray v. Express Newspapers plc* [2008] EWCA Civ. 446; [2009] Ch. 481 at paragraph 36, the Court of Appeal said this:

> "As we see it, the question whether there is a reasonable expectation of privacy is a broad one, which takes account of all the circumstances of the case. They include the attributes of the claimant, the nature of the activity in which the claimant was engaged, the place at which it was happening, the nature and purpose of the intrusion, the absence of consent and whether it was known or could be inferred, the effect on the claimant and the circumstances in which and the purposes for which the information came into the hands of the publisher."

53. The second stage is the countervailing balance of the article 8 rights with any other rights, normally those contained in article 10. This is not a classic publication case involving a celebrity and a newspaper. The Defendant does not suggest that there was any countervailing right in this case.

BREACH OF CONFIDENCE

54. The test for breach of confidence is to consider whether there is a reasonable expectation of confidentiality in the information, see *Imerman v. Tchenguiz* [2010] EWCA Civ. 908; [2011] Fam. 116 at paragraph 66, adopting the test expounded by Lord Hope in *Campbell's* case (at paragraphs 21 and 85). It is also clear from *Imerman* that information can be both private and confidential. Actions for misuse of private information and breach of confidence cover similar areas and will often overlap, but they are distinct, see *Vidal-Hall v. Google Inc.* [2015] EWCA Civ. 311; [2016] Q.B. 1003 at paragraphs 21 to 25.

DATA PROTECTION

55. Finally, there is the claim under the data protection legislation. Article 5(1) of the UKGDPR provides, in relevant part,

> "Personal data shall be:
>
> (a) processed lawfully, fairly and in a transparent manner in relation to the data subject;
>
> (b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with Article 89(1), not be considered to be incompatible with the initial purposes ('purpose limitation'); …
>
> (f) personal data shall be processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality')."

56. Article 6(1) provides, in relevant part:

> "Processing shall be lawful only if and to the extent that at least one of the following applies:
>
> (a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes; …
>
> (c) processing is necessary for compliance with a legal obligation to which the controller is subject; …
>
> (e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller; …"

57. Section 8 of the Data Protection Act 2018 provides:

> "In Article 6(1) of the [UKGDPR] (lawfulness of processing), the reference in point (e) to processing of personal data that is necessary for the performance of a task carried out in the public interest or in the

exercise of the controller's official authority includes processing of personal data that is necessary for—

(a) the administration of justice, …"

DISCUSSION

DATA PROTECTION

58. I am going to deal first with the data protection issue because a case of this sort falls more naturally into the data protection regime rather than misuse of private information or breach of confidence which, at least normally, tend to deal with different factual scenarios.

59. The Claimants argue that the Defendant was processing their personal data and that in doing so they were in breach of Article 5(1)(a) and (b) of the UKGDPR. That it was in breach of Article 5(1)(a) because the processing was unfair. Finally, it was in breach of Article 5(1)(f) because the processing was not carried out in a manner that ensured the appropriate protection of personal data by appropriate redaction.

60. The Defendant disputes liability arguing that the relevant disclosure was undertaken by the local authority, that the local authority was the relevant data controller and that therefore the responsibility for the relevant disclosure was theirs. The Defendant is right that the information passed from the police to the local authority, then to the birth family's solicitors, and finally to the birth family. It is the role of the local authority which is the focus of Mr Waite's submissions. Mr Waite argues that the local authority must have been aware of the Claimants' address because it was the authority which placed the children with the Claimants. The disclosure by the police therefore did not provide the local authority with anything which was confidential from them. Whilst there is an absence of evidence on the point, and the Claimants gave evidence that they made contact through the agency they worked for, Mr Waite's point must be right. The next stage in Mr Waite's argument is that the local authority became the data controller. It was therefore the local authority's processing, rather than that of the police, which led to the information coming into the hands of the birth family.

61. Where I part company with Mr Waite's argument is this. The police were data controllers. They processed that data. They failed to redact documents which they accepted should have been redacted. There is a positive duty when processing data to ensure appropriate security of the personal data and against accidental loss of the data (see Article 5(1)(f)). I accept that the purpose of the disclosure to the local authority was in connection with Family Court

proceedings. If properly redacted, the police could not be criticised for what it did. Thereafter, the local authority would be expected to do what it seems this authority did, and provide the police disclosure to the other parties in the proceedings. The onward transmission of the address was therefore entirely foreseeable, hidden away as it was in over one hundred pages of documents. It was accepted that the Claimants' address should have been redacted before the documents were disclosed to the local authority. In my judgment that is an acknowledgment of the legal obligation to protect the Claimants' personal data. It is said that the local authority became a data controller once it received the disclosure. That may well be right. However, I can see no basis upon which that expunges the police's failure to comply with its data protection obligations or prevents a claim based on the failure to comply.

62. Section 8 of the DPA does not assist the Commissioner. It provides an exception permitting disclosure in an official capacity where necessary for the administration of justice. But that can only be as far as is necessary. The disclosure of the Claimants' address was not necessary for that disclosure. I was not taken to any disclosure agreement. I am not aware that there was any court order requiring unredacted documents. The Commissioner accepts, quite properly, that the address should have been redacted. Just because the intention was to comply with a lawful request that does not absolve the Commissioner from a failure to redact the information appropriately to prevent otherwise confidential information from being disclosed. Nor, as Miss Skinner observes is it compatible with the Defendant's admission that his officers or staff had erroneously failed to redact the Claimants' address and that this was a "technical breach" of the Regulations.

63. The next question is what loss flowed from the police's breach. Article 82 of the UKGDPR confers a right to receive compensation for material or non-material damage suffered as a result of an infringement. Article 82 provides as follows:

> **Article 82 Right to compensation and liability**
>
> 1. Any person who has suffered material or non-material damage as a result of an infringement of this Regulation shall have the right to receive compensation from the controller or processor for the damage suffered.
>
> 2. Any controller involved in processing shall be liable for the damage caused by processing which infringes this Regulation. A processor shall be liable for the damage caused by processing only where it has not complied with obligations of this Regulation specifically directed to

> processors or where it has acted outside or contrary to lawful instructions of the controller.
>
> 3. A controller or processor shall be exempt from liability under paragraph 2 if it proves that it is not in any way responsible for the event giving rise to the damage.
>
> 4. Where more than one controller or processor, or both a controller and a processor, are involved in the same processing and where they are, under paragraphs 2 and 3, responsible for any damage caused by processing, each controller or processor shall be held liable for the entire damage in order to ensure effective compensation of the data subject.
>
> 5. Where a controller or processor has, in accordance with paragraph 4, paid full compensation for the damage suffered, that controller or processor shall be entitled to claim back from the other controllers or processors involved in the same processing that part of the compensation corresponding to their part of responsibility for the damage, in accordance with the conditions set out in paragraph 2.

64. It will be noted that Article 82, paragraph 2, provides that the controller of data is responsible for damage *caused* by processing. Paragraph 3 exempts a controller or processor if it proves that it is not "in any way" responsible for the event giving rise to the damage. Paragraphs 4 and 5 deal with a situation where two or more entities are involved in "the same processing". In my judgment the police and the authority were involved in the same processing. This was data which was sent by the Defendant to the local authority in the sure and certain expectation that it would be disclosed to the parties in the Family Court proceedings. To separate them out appears to be artificial.

65. If I am wrong in that, then one would go back to the word "caused" in paragraph 2 of Article 82. Without the actions of the police, the unredacted data would not have been sent to the birth family. If similar considerations to those in the law of tort are applied then one would consider whether there was a *novus actus interveniens* (a new act intervening). That generally requires a consideration of all of the circumstances. What in my view militates against seeing the processing of the data by the local authority as an intervening act is the nature of the disclosure process which the police and local authority were involved in. The provision of disclosure by the police for the purpose of Family Court proceedings is part of a single process. As the police did in this case, they would be anticipated to have redacted personal information from the data before it was disclosed to the local authority. Save for the address of the Claimants, that pre-disclosure

redaction had been performed properly by the police. The police case on this issue relies upon the local authority checking what the police has done. The local authority may have a liability for processing the data themselves, but in my judgment that does not relieve the police of their liability.

66. Thereafter the scope of compensation available is set out in the case of *Farley v. Paymaster (1836) Limited* [2025] EWCA Civ. 1117. One of the issues resolved by the Court of Appeal was that proof that the data was disclosed is not an essential ingredient of an allegation of processing or infringement (see [6]). My conclusion that the Claimant cannot establish that the birth mother read the document containing the address does not, therefore, prevent the Claimants from recovering damages. Warby, L.J. held that, "in principle a claimant can recover compensation for fear of the consequences of an infringement if the alleged fear is objectively well-founded but not if the fear is (for instance) purely hypothetical or speculative." (at [75]). In paragraph 80, the judge went on say that the absence of proof that the data was opened and read, "does not of itself show that the fears they entertained were not well-founded. The test of reasonableness cannot depend on hindsight. It must be applied with reference to the facts and matters that were or should have been known to the appellant at the time they experienced the stated fear." Finally, if a claimant's "fears of what might happen were objectively well-founded, compensation for any consequential impact on the appellant's mental health is in principle recoverable. If, on the other hand, the fears were not well-founded, the claim for compensation must fail in its entirety." (at [92]).

67. The Claimants' fears in this case were well-founded. FXH was told by D.C. Stratford on 5th June 2020 that the address of their home had been mistakenly disclosed to the birth family, including the birth mother. I also accept that the thrust of what FXH was told by D.C. Stratford was to emphasise how seriously the police were taking the situation. The fear that the birth mother had their address and that she had threatened to kill BXH was more than sufficient to amount to damage for the purpose of Article 82.

68. Again, it is established in *Farley* (and in *Lloyd v. Google* [2021] UKSC 50, [2022] A.C. 1217 at [92]) that as a matter of principle damage can include psychological injury. It would be a strange result if damages for distress were recoverable (as s.168(1) of the Data Protection Act 2018 provides), but not for psychological injury. I can see no good reason for excluding psychiatric injury. There appears to be no similar concept in damages for data protection for the principles used in the law of negligence to limit the recovery of damages for psychiatric injury. Mr Waite relies specifically on the limitation in the

recoverability of damages for psychiatric loss in the tort of negligence as set out in *Page v. Smith* [1996] A.C. 155 and the distinction between primary and secondary victims. It is not immediately clear to me, even if one adopts the primary/secondary victim dichotomy, that FXH and BXH are not to be seen as primary victims. The 'wrong' for these purposes is the disclosure, it is their data that has been disclosed, there is no other primary victim to the data loss. The threat was made against BXH but that is not the wrong with which this case is concerned. The wrong is and must remain the data breach.

69. The control mechanism is that set out in paragraph 75 of *Farley* and the need for the fear of the consequences to be objectively well-founded rather than purely hypothetical or speculative. Both Claimants surpass that threshold because the consequence of any attack on BXH would have an effect on them both. Releasing a person's personal data, raising concerns as to whether that data would fall into the hands of someone who may wish them harm, creates a reasonably foreseeable risk of harm. Mr Waite also relies upon the principle expounded in *Rothwell v. Chemical & Insulating Co. Ltd* [2007] UKHL 39; [2008] 1 A.C. 281 that the creation of the risk of a disease was not in itself actionable; that the apprehension of harm which never materialises is not recoverable in law. However, comparing *Rothwell* and *Lloyd*, in my judgment the recoverability of damages in the tort of negligence on the one hand, and damages for distress in the context of the DPA are different in nature and recoverability. It is quite clear from *Farley* and *Lloyd* that the Claimants can recover and that there is no limitation because the well-founded fear did not materialise.

70. It follows that, in my judgment, the Defendant is in breach of its data protection obligations. The Commissioner cannot absolve himself of responsibility because the data passed through the local authority. The fear of misuse of the information was well-founded and as a result the Claimants are entitled to recover damages.

71. I can deal briefly with a further argument which was pleaded in the defence that the claim is statue barred because the claim is one which includes a claim for personal injury. The simple answer, rather than engaging with whether damages under the UKGDPR are strictly claims for personal injury for these purposes, is that identified by Miss Skinner. Section 11(4)(b) of the Limitation Act 1980 provides that time runs from the date of knowledge. In this case the Claimants were informed of the data breach on 5th June 2020. The proceedings were issued on 30th May 2023. The claim was therefore brought within three years of the earliest possible date of knowledge. The date of manifestation of injury was in all probability later, but that is not something which needs to concern me. The limitation defence is hopeless.

MISUSE OF PRIVATE INFORMATION

72. Given my conclusion on the data protection issue, I can express my conclusions on the remaining bases for the claim shortly. I am satisfied that the information in this case is private in the sense that it is protected by article 8. It was not argued before me that the address was not confidential. That must be right in circumstances where steps were taken by the Claimants to keep their address private and the acknowledgment by the police officers in their evidence that the address of foster carers should not be disclosed, the first stage of the *McKennitt* test must be met.

73. As to the second stage a consideration of all of the circumstances of the case is required. However, there is no countervailing article 10 factor in this case. In any event the circumstances of the case clearly point in the Claimants' favour. They were acting as foster carers. They were thereby exposing themselves to a situation in which a birth family may wish to make contact with them or their children without the consent of the foster carers, the local authority, or the Family Court. Whilst some birth families will no doubt behave perfectly well towards foster carers, some will not. This was acknowledged by the police witnesses. There was no purpose in the intrusion or use of the offending private information. It is accepted that the address should have been redacted before otherwise lawful disclosure was given. It is clear that there was an absence of consent, it is not suggested otherwise, but I am satisfied that the Claimants would not have consented, and the police knew this. The effect on the Claimants has been significant. The information came into the hands of the police as part of an investigation. The police are used to receiving highly confidential information in the course of their work. They are well aware of the need to treat that information appropriately. In my judgment there was a reasonable expectation of privacy in this case in respect of the Claimants' address and no countervailing reason for making the information public.

74. Mr Waite advances similar arguments to those he deployed in relation to the data protection claim in seeking to avoid liability on the part of the Commissioner. For the same reasons I have already given, those arguments lack merit.

BREACH OF CONFIDENCE

75. The Claimants contend that their surname, address and other contact details were confidential and were not to be disclosed to the birth family. In my judgment the Claimants had a reasonable expectation of confidentiality in the material. I say that for these reasons.

76. The Claimants were foster carers. For reasons already stated that is a position which exposes the Claimants to a risk that a birth family may seek to cause difficulties. The Claimants allege that the birth family were involved in criminality. At the very least the Claimants were made aware of the birth family's involvement in criminality. It is said, rightly in my view, that disclosure of the address would create a safeguarding and security risk to the Claimants. It was also likely that disclosure of their address would cause substantial upset to the Claimants. As a result their address should not have been disclosed. It was suggested that there was an absence of proof as to the birth families' criminality. I see no reason why the police could not have confirmed whether this was true or not. The Claimants' belief in the birth family's involvement in criminality appeared to me to be well-founded given what they had been told of them. However, even absent established criminality, the need for a foster carer's address to remain confidential is clear and obvious. Many birth families would no doubt never dream of causing difficulty for those who look after their children during times of trouble, but it is not difficult to foresee circumstances in which some birth families might see things differently. This was acknowledged by the officers who gave evidence and I did not understand Mr Waite to be arguing to the contrary.

77. Given the established confidentiality in the material the police had an obligation to maintain that confidence. For reasons already given I do not see that the passing of the information through the local authority to the birth family absolves the Commissioner of his liability. It was the actions of the police that put in train the breach of confidence.

DAMAGES

78. Having circulated a draft of my judgment to the parties, Mr Waite asked for the opportunity to make further written submissions. He said that he had not addressed quantum in his oral submissions and had told the court he would not do so pending the court's decision on whether to reserve judgment to await the decision of the Court of Appeal in *Farley*. I do not recall him having said that and do not entirely understand why one would await *Farley* (which concerned liability rather than quantum) before hearing submissions on damages. But given the passage of time and Mr Waite's submission that he had not addressed the court on quantum and wished to do so before a final decision was taken, together with the absence of clear authority on how such cases are to be approached, I asked the parties to submit further written submissions on quantum. I am grateful for their helpful submissions.

79. Miss Skinner invited me to make three types of award of damages, first an award of general damage of between £10,000 and £20,000 for each claimant (before adding damages for psychiatric injury); second an award to reflect the psychiatric injury caused to each; and third special damage. Mr Waite says that such an approach is wrong in principle. He says that the court should award a single sum for general damage and a single sum for special damage.

80. There are a number of authorities dealing with damages in cases of misuse of private information. Mann, J. in *Sir Cliff Richard v. BBC* [2018] EWHC 1837 (Ch), [2019] Ch. 169 at [350] said this,

> "The following factors should be taken into account in assessing general damages in this case:
> (a) Damages can and should be awarded for distress, damage to health, invasion of Sir Cliff's privacy (or depriving him of the right to control the use of his private information), and damage to his dignity, status and reputation. (*Gulati's* case in the Court of Appeal [2017] Q.B. 149, para 45; *Gulati's* case [2016] F.S.R. 12 at first instance; and the discussion above about reputation.)
> (b) The general adverse effect on his lifestyle (which will be a function of the matters in (a)).
> (c) The nature and content of the private information revealed. The more private and significant the information, the greater the effect on the subject will be (or will be likely to be). In this case it was extremely serious. It was not merely the fact that an allegation had been made. The fact that the police were investigating and even conducting a search gave significant emphasis to the underlying fact that an allegation had been made.
> (d) The scope of the publication. The wider the publication, the greater the likely invasion and the greater the effect on the individual.
> (e) The presentation of the publication. Sensationalist treatment might have a greater effect, and amount to a more serious invasion, than a more measured publication."

The Court awarded Sir Cliff general (including aggravated) damages in the sum of £210,000.

81. Mr Waite observes that the *Richard* case was not a claim which included a claim for personal injury. He also notes that it was a case which concerned the sensationalist nature and scope of the broadcast of a police entry and search of

Sir Cliff's home, and the consequent adverse effect on his reputation. He says, in effect, that *Richard* is of no assistance in assessing damages in this case.

82. In *Richard*, Mann, J. refers to his own judgment in *Gulati v. MGN Ltd* [2015] EWHC 1482 (Ch); [2016] F.S.R. 12 (upheld on appeal at [2015] EWCA Civ. 1291; [2017] Q.B. 149). Those were cases arising out of the phone hacking scandal. Mann, J. rejected any general band or tariff in these types of cases with one exception. The exception was to award a sum to reflect "general hacking" which he defined (at paragraph 230) as,

> "a figure to reflect the fact that for a considerable period an individual's voicemail, and those of associates, were listened to and the private lives exposed there were studied by at least one journalist and probably more, on a frequent, sometimes daily, basis. All the claimants in this case have this common factor. I think that a starting point for that element should be £10,000 for each year of serious levels of hacking."

It is worth noting that the sums awarded to the various claimants in that case were (in ascending order) £72,500; £85,000; £117,500; £155,000 £157,250; £188,250; £201,250; £260,250. The judge sub-divided his awards by reference to hacking, private investigators, by reference to each article published, distress and, aggravated damages (see the annex to Arden, L.J.'s judgment at pages 183 to 187 of the Queen's Bench report).

83. Arden, L.J. delivering the judgment of the Court of Appeal noted,

> "These appeals, hopefully, concern an exceptional situation. There were misuses of private information beyond our ability to know and count. So it is wrong to look at the global sums in the schedule which each claimant has been awarded without remembering that fact. In addition the circulation of the private information was to a very large number of persons and touched on the most intimate part of the lives of the some of the claimants. It understandably caused great distress."

84. Mr Waite submits that Arden, L.J. at paragraphs 27 to 30, agreed with Mann, J.'s approach that it was inappropriate to award damages in privacy cases by reference to the decision of the Court of Appeal in *Vento v. Chief Constable of West Yorkshire Police* [2002] EWCA Civ. 1871, [2003] I.C.R. 318 (see paragraphs 185 to 199 of Mann, J.'s judgment in *Gulati*). I do not read Arden, L.J. as approving or disapproving of reliance on *Vento*. The issue under determination was whether to make a global award or separate awards for invasion of privacy. Arden, L.J. concludes (at paragraphs 68 and 69),

> "The choice between whether to make a global award or separate awards for invasions of privacy must be a matter for the exercise of judicial discretion. There may be some kinds of cases in which it has been implicitly established that it would be wrong to assess damages save on the basis of a global sum. That is not, however, applicable to the present appeals. This court can only interfere in the exercise of the judicial discretion to make separate awards if it is satisfied that the judge was plainly wrong or misdirected himself in law, which is not demonstrated in this case. There is furthermore no ground of appeal directed at challenging the choice the judge made.
>
> "Moreover, whatever choice the judge makes on whether to make a single global award or break the award down in some way, the tariff set out in the Guidelines consists of a sum within certain brackets and thus this is a recognition of the fact that the actual award has to be tailored to the circumstances of the particular case. That means, in the case of general damages for personal injuries, that factors such as the severity of the pain, or even sometimes gender if that is relevant to the effect of the injury (e g facial scarring) can be taken into account. Similarly in the *Vento* guidelines, the court can take into account factors which are likely to vary in every case, such as the period during which discrimination has taken place and whether it was deliberate."

85. That case is, however, clear authority that the court can decide whether to make a single award for general damage or whether to break down the quantification of those sums. The only risk, it seems to me, in breaking it down is the potential for double counting some of the damage that has been caused. As against that risk is the benefit for the parties (and any appellate court) of knowing how the judge approached his or her task. The benefits of the latter approach were acknowledged by the Court of Appeal in *George v. Pinnock* [1973] 1 W.L.R. 118, CA.

86. Mr Waite also refers me to *TLT v. The Secretary of State for the Home Department* [2016] EWHC 2217 (QB) which arose out of the Home Office's inadvertent publication of the personal details of 1,598 applicants for asylum and their families. The data was removed from the website after 13 days. Mitting, J. held that assistance was not to be derived in fixing the appropriate level of damages from cases involving the deliberate dissemination of private and confidential information for gain, such as those involving Max Clifford (*Burrell v. Clifford* [2016] EWHC 294 (Ch); [2017] E.M.L.R. 2).

87. Mitting, J. makes reference to paragraph 48 in *Gulati* where Arden, L.J., said,

> "Damages in consequence of a breach of a person's private rights are not the same as vindicatory damages to vindicate some constitutional right. In the present context, the damages are an award to compensate for the loss or diminution of a right to control formerly private information and for the distress that the [claimants] could justifiably have felt because their private information had been exploited, and are assessed by reference to that loss."

Mitting, J. then proceeded to make awards varying from £3,000 to £12,500. TLT was also not a personal injury case.

88. The only personal injury case that has been cited to me is *Raine v. JD Wetherspoon plc* [2025] EWHC 1593 (KB). That was a case which is not entirely dissimilar to this one. The claimant was employed by the defendant company. She had provided personal information to the company in the course of her employment including her own contact details and the contact details of her mother as her emergency contact. Her ex-partner had been abusive to her. He was remanded in custody. On Christmas Day 2018 he obtained a mobile phone whilst in prison. He rang the pub where the claimant had worked and pretended to be a police officer saying he needed to speak to the claimant urgently. He obtained the claimant's mother's number (the claimant having changed her mobile number after the abuse she had suffered). He rang the claimant's mother, who was with her daughter enjoying Christmas lunch. He again pretended to be a police officer saying he needed to speak to the claimant. When the claimant's mother passed the phone to her, the ex-partner proceeded to abuse the Claimant and make various threats, before she hung up.

89. The Recorder in that case awarded £4,500 for pain suffering and loss of amenity where the judge had found that the defendant's breach had exacerbated the claimant's existing psychological damage. Mr Waite (who appeared for the defendant in *Raine*) places significant reliance on the fact that the Recorder awarded a single sum with no additional award for distress for loss of control over her personal data. In dealing with an appeal, Bright, J. says, at paragraph 53,

> "Ground 9 asserts that the Recorder wrongly substituted personal injury damages for pain, suffering and loss of amenity in place of the normal measure of loss. This complaint is not a fair reflection of the judgment at [7], [15], and [31]. The Recorder did not accept that the Defendant's breaches caused any injury. He found that they exacerbated the

> Claimant's existing psychological damage. He seems to have had this distinction well in mind at [31]."

It is then clear from the next paragraph that what had been claimed was damages for personal injury. Bright, J. therefore found no error in the Recorder's approach. Likewise Bright, J. found no error in the damages of £4,500. Beyond this being an exacerbation of pre-existing injury very little is set out as to the injuries suffered or the approach the court should take to the assessment of damages.

90. Despite these authorities, there remains very little guidance on the appropriate level of compensation for the first type of general damage which Miss Skinner identifies. In *Data Protection Law and Practice* (Rosemary Jay, Sweet & Maxwell, 5th edition, 2020) at 21-090, it is said that there is no guidance available as to the level of payment that may be appropriate in a DPA case when a claimant has suffered distress. A parallel is also drawn with damages for injury to feelings in discrimination cases as set out by the Court of Appeal in *Vento* where at para. 65, Mummery L.J. set out the following guidance:

> "Only in the most exceptional case should an award of compensation for injury to feelings exceed £25,000. (ii) The middle band of between £5,000 and £15,000 should be used for serious cases, which do not merit an award in the highest band, (iii) Awards of between £500 and £5,000 are appropriate for less serious cases, such as where the act of discrimination is an isolated or one off occurrence. In general, awards of less than £500 are to be avoided altogether, as they risk being regarded as so low as not to be a proper recognition of injury to feelings."

In broad terms those figures, adjusted for inflation are: in excess of £57,000 for the most exceptional; a middle band of between £11,500 to £34,000; and £1,150 to £11,500 for the less serious cases.

91. Whilst there is a parallel, damages for injury to feelings in discrimination are not entirely analogous to damages for distress in DPA cases. I accept, given the rejection of *Vento* by Mann, J. in *Gulati* (which is binding upon me), it would be wrong to take as a starting point the *Vento* guidelines. However, as Arden, L.J. set out in *Gulati*, it is necessary to have the sums awarded in personal injury cases as a reality check to the sums awarded. It is not that there can be a direct correlation, but there does need to be a reasonable relationship between the scale of awards in personal injury and the award the court makes. It seems to me that in paragraph 69, Arden, L.J. is recognising that the *Vento* guidelines are seeking

to achieve a similar correlation between damages for discrimination and damages for personal injury. The same underlying principles apply. Whatever the starting point, however, the court must assess the appropriate damages by reference to factors present in the particular case with which it is concerned.

92. In terms of the psychiatric injury, it is necessary to begin with the Judicial College Guidelines (17th Edition, 2024). Chapter 4, Section (A) – Psychiatric Damage Generally, provides:

> The factors to be taken into account in valuing claims of this nature are as follows:
>
> (i) the injured person's ability to cope with life, education, and work;
>
> (ii) the effect on the injured person's relationships with family, friends, and those with whom he or she comes into contact;
>
> (iii) the extent to which treatment would be successful;
>
> (iv) future vulnerability;
>
> (v) prognosis;
>
> (vi) whether medical help has been sought.
>
> **(a) Severe** **£66,920 to £141,240**
> In these cases the injured person will have marked problems with respect to factors (i) to (iv) above and the prognosis will be very poor.
>
> **(b) Moderately Severe** **£23,270 to £66,920**
> In these cases there will be significant problems associated with factors (i) to (iv) above, but the prognosis will be much more optimistic than in (a) above. While there are awards which support both extremes of this bracket, the majority are somewhere near the middle of the bracket. Cases involving psychiatric injury following a negligent stillbirth or the traumatic birth of a child will often fall within this bracket. Cases of work-related stress resulting in a permanent or long-standing disability preventing a return to comparable employment would appear to come within this category.
>
> **(c) Moderate** **£7,150 to £23,270**

> While there may have been the sort of problems associated with factors (i) to (iv) above there will have been marked improvement by trial and the prognosis will be good.
>
> Cases of work-related stress may fall within this category if symptoms are not prolonged.
>
> **(d) Less Severe** **£1,880 to £7,150**
> The level of the award will take into consideration the length of the period of disability and the extent to which daily activities and sleep were affected. Cases falling short of a specific phobia or disorder such as travel anxiety when associated with minor physical symptoms may be found in Chapter 14: Minor Injuries.

FXH

93. Miss Skinner places FXH's case at the top end of the moderate bracket. Mr Waite suggests an award of £2,500 which is towards the bottom of the less severe category. I agree that it falls within the moderate bracket.

94. Mr Waite submits that it is necessary to consider that FXH had clinical symptoms at the time of breach for which she was undergoing counselling with RedArc. That is not my reading of the records. The first entry is from 23rd October 2020 which post-dates the disclosure by several months. The last entry is from 11th May 2023. I do accept the point that Mr Waite made at trial, namely that the focus of the RedArc counselling records is on the fostering agency rather than the police, but as I have already set out, I accepted FXH's evidence that the reason was that the RedArc counselling was obtained through a fostering network and was provided for support with fostering.

95. I have already set out (at paragraphs 29 to 38) the evidence on which FXH relies for her personal injury claim. I accept her as an honest witness and despite Mr Waite's efforts, I accept Dr O'Neill's conclusions. Mr Waite says in his written submissions on quantum, "In Dr O'Neill's report, she explains that the significant symptoms from December 2020 to June 2021 were caused by the stresses of the family law court process and the refusal of legal aid for representation." I fear that Mr Waite is misreading paragraphs 70 and 71 of Dr O'Neill's report (to which he is referring). They read,

> "70. They had to attend the family Court and make a statement in relation to Girl A and Boy B's disclosures. Court proceedings lasted from December 2020 to June 2021, they didn't qualify for Legal Aid. The legal fees cost £85,000 and they had to represent themselves. The whole

> process was very frightening and stressful. She worried by going to court that the threat against FXH and BXH would increase.
>
> "71. Over a period of 18 months from June 2020, FXH described becoming withdrawn, tearful, with poor motivation and loss of interest. She was unable to switch off at night and get to sleep due to persistent anxious ruminations. She was hypervigilant and jumped at the slightest noise."

96. There is also no support for Mr Waite's contention in the remainder of paragraph 16 of his written submissions on quantum. He states, "Moreover, even if the medical evidence is accepted in its totality it rests on insecure foundations: - see Dr O'Neill's report at [paragraph 82], where she bases her opinion on the threat to kill. There was never any real or actual threat to kill either FXH or BXH. In so far as there was any threat it was directed at BXH not FXH." Paragraph 82 of Dr O'Neill's report reads,

> "When FXH was informed that her personal information had been disclosed understandably she felt under threat as the foster children's mother had threatened to kill BXH. This was compounded by the fact that the family were known to the police and involved in criminality. However the allegation made against her husband BXH and the prolonged stressful costly court case have contributed to her psychological difficulties."

Dr O'Neill has not misunderstood the position. A threat was made by the birth mother against BXH. The police (and the CPS, if advice was sought) had to decide whether there was a realistic prospect of a jury convicting the birth mother of threats to kill. One can, perhaps, understand their caution given the need to prove that the mother intended those who heard her threat to believe that it would be carried out. But leaving aside the technical legal position in the criminal law, FXH and BXH understood it to be a threat to kill BXH and to the extent necessary I accept that they were reasonable in doing so.

97. I accept, of course, as Dr O'Neill does, that the allegations against BXH and the court proceedings contributed to the psychological difficulties. It is important also to note that in paragraph 83 of her report, Dr O'Neill says that the adjustment disorder would not have occurred if the personal information had not been disclosed. In other words, without the disclosure, the allegations against BXH and the court proceedings would not have caused the adjustment disorder.

98. Further, I do not accept Mr Waite's submission that FXH was already symptomatic at the time of the breach. There is no evidence in the case to support

that contention. Whilst Dr O'Neill acknowledges the stress caused by the court case and the allegation against BXH, her evidence on causation is clear. Mr Waite is also wrong when he says that the evidence was that "in the family law proceedings, the Cs' names were not redacted and therefore the perceived threat could have happened in any event." There was evidence about whether there was anonymity granted to the Claimants in the Family Court. The evidence was not clear as to whether a formal order was made, but FXH's evidence was that the birth family only knew of their first names. This accorded with what would have been disclosed whilst they were fostering the children. Miss Skinner's note appears to accord with mine. Even if Mr Waite is right, the disclosure of names would have taken place over a year after the initial disclosure of the address and after the police had concluded that there would not be a criminal prosecution. There is also no suggestion that the address was disclosed during the Family Court proceedings.

99. I agree with Miss Skinner that FXH's injury falls into the moderately severe category on the guidelines. I disagree with her that it falls towards the top of the bracket. I accept there was constant vigilance and anxiety, FXH would check to see who was at the door, and became over-protective of her husband. I gained the impression that FXH continued to do most things that she had done before, it was that symptoms of anxiety were triggered as a result of doing so. I accept her evidence that there was a significant impact on her ability to cope with life. As is recorded by Dr O'Neill (at paragraph 46), "I fell apart." In the following paragraph, Dr O'Neill records that FXH became reluctant to leave the house. When she did, she was constantly on edge and looking over her shoulder. She was suspicious of parked cars. She was afraid to open the door at night and would check the camera and keep the chain on. She became overprotective of her children and BXH. Dr O'Neill records (at paragraph 49) FXH as saying, "my whole life changed. I spent the whole time feeling anxious, worried, fearful and tearful." Further she describes (at paragraphs 52 to 54),

> "From June 2020 FXH describes becoming withdrawn, tearful and crying all the time. She lost motivation, interest and energy. She struggled to get to sleep at night due to anxious ruminations. She was constantly ruminating that someone might come to their door. She was hypervigilant and she would jump if the doorbell rang or there was a knock at the door. She changed her car so that it wouldn't be recognised. FXH described a complete change in personality from upbeat, sociable, optimistic and relaxed to anxious, withdrawn, with no motivation. She would describe her symptoms as being severe over an eighteen month period, currently seventy-five to eighty percent back to normal."

I accept that evidence and in my judgment it shows a significant impact on the first two sub-categories identified by the Judicial College Guideline. I do accept that there are various other stressors present, but Dr O'Neill's evidence is clear that but for the disclosure, the adjustment disorder would not have arisen. Therefore, whilst it is important to consider all factors, it is not a case for any form of apportionment.

100. In Dr O'Neill's opinion the adjustment disorder resolved over 18 months and there is no indication of any future vulnerability. The symptoms and the impact indicated by the first two sub-categories places this squarely in the moderate bracket. The absence of treatment (beyond the RedArc counselling which was more focused on the fostering agency and assisting FXH through the Family Court proceedings) and the good prognosis reduce what the award would otherwise have been and brings it into the lower third of the moderate bracket. In my judgment an appropriate award would be £10,000.

BXH

101. Miss Skinner places BXH in the moderately severe bracket. Mr Waite places the appropriate quantum at £3,000 which would be in the bottom third of the less severe category.

102. The position for BXH is more complex than that for FXH. The allegations made against him by the children in April 2020 did have an impact on his mental health. He was worried about his loss of reputation and how others would perceive him. He says that his mood dropped to 6 out of 10. He felt very low. He became socially withdrawn. BXH says that during the six weeks between the allegations and the disclosure there was some improvement and his mood rating increased to 7/10. He felt hopeful that the police had decided to take no further action against him.

103. With the disclosure his mood dropped to 1/10. He describes becoming hypervigilant and on edge. At night he would get up every time he heard a noise and check the window. He was unable to sleep. He felt vulnerable and defenceless even in his own home. He was unable to go out as he didn't want to be seen. He feared he would be attacked if he went out. BXH described occasional panic attacks when he attempted to go to the High Street. These were precipitated by crowds of people walking towards him. The symptoms were at their worst for a period of 18 months (later in the report (paragraph 115) she says they were most severe for two years and three months). From September 2022 (27 months post) there had been some improvement in his level of socialisation. He began to see friends, but did not return to holding dinner parties.

104. Dr O'Neill's report is three years post disclosure and at paragraph 99 of the report she records that despite the improvement in symptoms, BXH is still hypervigilant and over-protective of his grandchildren. He continues to have poor motivation, interest and energy. He feels sad all the time and gets little enjoyment in life. He struggles to sleep and his appetite remains poor. He is not as preoccupied by the threat of being killed, but is still worried that others might harm him.

105. Dr O'Neill recognises the causation of the adjustment disorder could be multifaceted and includes the allegations of sexual abuse that were made against BXH. Dr O'Neill also says that BXH would benefit from psychological intervention from a psychologist trained in trauma and from the prescription of antidepressant medication. Dr O'Neill diagnoses an adjustment disorder with the most severe symptoms for a period of 27 months.

106. In answer to Part 35 questions, Dr O'Neill accepts that the Family Court proceedings was very distressing, prolonged and contributed to BXH's symptoms. Dr O'Neill was asked, "But for the data breach, by when would his psychiatric condition have resolved taking into account the court case in 2020/1?" She answers,

> "It is difficult to ascertain when his psychiatric condition would have resolved, however considering his previous improvement in a further six months. The court case was an important aetiological factor in that he had to have further interaction with the biological mother of A and B which led to an increase in feelings of threat. In particular a fear of retaliation by the birth mother. The court case in itself was very stressful having to represent themselves and the lack of funding."

Dr O'Neill was asked to apportion the causation of the adjustment disorder between the two causes. Her answer was,

> "There is no scientific basis for percentage apportionment in terms of causation. On the balance of probabilities the primary aetiological factors leading to the deterioration in BXH's mental state in June 2020 related to the data breach in the context of the death threat that the mother made. This was compounded by ongoing interaction with the mother during a very difficult court case. In my opinion these are the major aetiological factors."

107. Finally, Dr O'Neill, when being asked about BXH's failure to seek medical assistance, said that "BXH presented as a gentleman who minimised his

symptoms and was reluctant to seek help. Even at the time I assessed him I perceived he had a range of depressive symptoms and as such would benefit from antidepressant therapy."

108. I accept that BXH's symptoms were more severe than those of his wife. The duration was also longer. Indeed, three years after the data breach there were still marked symptoms. I accept that there were clear symptoms within the first two sub-categories in the Judicial College Guidelines. Those symptoms had a significant effect on BXH's life. What brings the case down from the moderately severe category to the moderate category, in my judgment, is the reasonably good prognosis, the absence of clear future vulnerability and the possibility of treatment. In my judgment an appropriate level of compensation would be some £18,000.

109. It is necessary to consider whether there should be an apportionment or a reduction to reflect the different causes or contributory factors of the stress. Dr O'Neill felt unable to apportion, but the court must do so to avoid over-compensation. Dr O'Neill is clear that the data breach was the primary factor. It seems to me that that must be right. The symptoms caused by the sexual allegation were improving prior to the data disclosure. Even at their worst the symptoms following the allegation were not as bad as those following the data disclosure. It also seems that the Family Court proceedings acted to continue the worry caused by the threat to kill (which was given its strength by the data disclosure). In my judgment the appropriate apportionment is 75% to the data breach and 25% to the other factors. The sum of £18,000 therefore needs to be reduced to £13,500.

110. I then return to the appropriate level of compensation for the loss of control of the data. Mr Waite suggests that there should not be a separate award. I disagree. First of all, it is clear that courts are encouraged to show their working and to show, to the degree possible, the thought process which has led to a final figure being arrived at. It is also clear that the fact of the data breach sounds in damages on its own accord as does the misuse of private information and breach of confidence. Any element of the award for distress is likely to be subsumed into the award for personal injury. In *Gulati* the court awarded £10,000 per year for the fact of serious phone hacking and other sums to reflect the use of private investigators. On top of that basic sum, further sums for various newspaper articles, general distress and aggravated damages were provided. There is clear support for making separate awards.

111. It is impossible to say what the award would have been had there been no psychiatric injury because it would depend on the level of distress which had been caused. The sums awarded in *Raine* seem surprisingly low to me. There was no cross-appeal before the High Court judge to consider whether the award was too low. It does not sit well with the sums awarded in other cases. Whilst the differences with the celebrity cases are manifold, those were cases without a diagnosed psychiatric injury. It is important to remember that this is a single inadvertent disclosure of information not, for example, long term and intrusive phone-hacking. It is also important to remember that I was not satisfied on the evidence that the birth mother had actually read the documents which contained the address. Finally, it is important to ensure that there is not double recovery, that the court is not compensating for the same loss twice. Keeping all of those factors in mind I award the sum of £5,000 to each Claimant in addition to the sums already identified. In doing so I am satisfied that there is no double compensation. The award for FXH will therefore be £15,000 and that for BXH will be £18,500.

112. In terms of special damage, I am satisfied that the sum of £1,200 should be awarded for the treatment proposed by Dr O'Neill for BXH. Whilst he has not yet undergone the treatment it is clear that Dr O'Neill is of the opinion that he would benefit from it. At least in part her opinion appears to be predicated on the basis that this will bring about a resolution of his symptoms. He was not cross-examined on whether he would have the treatment or not. In my judgment it is recoverable.

113. For reasons already explained, I am satisfied that the sum of £1,414.80 reflects the limit of the claim for the installation of the alarm. I also regard the replacement of the car as being caused by the data breach and that the appropriate quantum is £3,678.94. There was no explanation as to what the miscellaneous expenses were, and in those circumstances the loss is not proved and nothing is recoverable.

DISPOSAL

114. I ask that Counsel liaise to agree an order giving effect to this judgment and any necessary consequential orders. If necessary, the matter can be listed before me to resolve any matters which remain in dispute.