Neutral Citation Number: [2022] EWHC 2999 (KB)

Case No: QB-2021-001805

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/12/2022

Before :

MASTER DAVID COOK

- -

Between :

KAMALA DEVI SINGH	**Claimant**
- and -	
(1) GRIEF TO GRACE	
(2) DOMINIC JOHN ALLAIN	
(3) ROMAN CATHOLIC ARCHDIOCESE OF SOUTHWARK	
(4) – (15) MICHAEL DAVID JONES and others (sued as Trustees of Salford Roman Catholic Diocesan Trust)	
(28) JOHN STANLEY KENNETH ARNOLD	**Defendants**

Louis Browne KC and Tom Longstaff (instructed by **Keller Postman UK Ltd**) for the **Claimant**
Claire Overman (instructed by **Stone King**) for the **1st** and **2nd Defendants**
Kate Wilson (instructed by **Keoghs**) for the **3rd Defendant** the **4th** to **15th Defendants** and **28th Defendant.**

Hearing dates: 18th July and 24 October 2022

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MASTER COOK:

1. This is the hearing of the Claimant's application for an anonymity order pursuant to CPR39.2 and to amend the claim form and particulars of claim pursuant to CPR 17.1 (2)(a). A third issue relating to service of the proceedings on the 2nd Defendant was resolved between the parties prior to the hearing. The Defendants professed to be neutral in relation to the issue of the anonymity order but opposed the application to amend.

A brief introduction to the background and to the parties.

2. The application was supported by the witness statement of Matthew Evans dated 11 July 2022. The 1st and 2nd Defendants relied upon the witness statement of Jonathan Copping dated 11 July 2022. The 4th to 15th and 28th Defendants rely upon the witness statement of Katie Rose dated 11 July 2022.

3. The Claimant is a practising Catholic. She wished to be admitted to consecration in the *Ordo virginum* within the Roman Catholic Church. A description of the *Ordo virginum* (its history, nature, and matters relating to the path to consecration) can be found in the "*Instruction on the Ordo Virginum*", a publication by the Vatican which is exhibited to Ms Rose's witness statement. Paragraphs 46-51 of the *Instruction* set out the role of the diocesan bishop in the process and paragraphs 47 and 50 state that consecration of a woman is, ultimately, a decision for the diocesan bishop.

4. The Claimant first met the 28th Defendant, now the Bishop of Salford, ("the Bishop") in 2013 in connection with her desire to be consecrated into the *Ordo*. At the time, the Bishop was an Auxiliary Bishop attached to the Archdiocese of Westminster, where the Claimant then lived. The Bishop took up his role in Salford in December 2014.

5. The Claimant moved to Salford in July 2015 where she continued to seek consecration, however the Bishop concluded he would not consecrate her. It is abundantly clear from the material before this court that the Claimant is disappointed not to have achieved her objective.

6. The 4th to 15th Defendants are trustees of the Salford Roman Catholic Diocesan Trust and are alleged to be vicariously liable for the acts of the Bishop. I shall refer to these Defendants as "the Salford Defendants".

7. The First Defendant is a company and registered charity providing a specialised 5 day programme of spiritual and psychological healing for anyone who has suffered sexual, physical, emotional or spiritual abuse in childhood, adolescence or adulthood by a member of the clergy. The 2nd Defendant is a Roman Catholic Priest and a director of the 1st Defendant. The 3rd Defendant is alleged to be vicariously liable for the acts and omissions of the 2nd Defendant.

8. In April 2020 the Claimant applied to attend a retreat organised by the First Defendant for which purpose she completed an application form. After consideration of the material submitted to them on 1 May 2020 the Second Defendant informed the Claimant that she was not a suitable candidate for the retreat. On 12 May 2020 the Second Defendant sent an e-mail to Ms Lundergan, who was the director of

safeguarding for the Diocese of Salford because of concerns derived from the contents of her application form that she may have been a victim of clergy abuse.

The procedural background

9. On 8 September 2020 solicitors acting for the Claimant sent a pre-action protocol letter to the Bishop advancing a claim in harassment. The Claimant sought; i, an apology, ii, the Bishop's consent to accept the Claimant for consecration into the *Ordo virginum,* iii, a contribution to her costs and expenses. The letter sought production of documents and concluded with a threat to commence proceedings "*which would be a matter of public record"* if the remedies claimed were not forthcoming. It also reserved the right to bring a claim in defamation.

10. On 3 November 2020 solicitors for the Bishop responded with a detailed letter rebutting the claims of harassment and asserting that the Claimant had harassed the Bishop following her move to Salford and provided a large number of relevant documents.

11. On 1 April 2021 the Claimant made a Subject Access Request to the Data Protection officer of the Salford Diocese. A large number of documents were supplied to the Claimant's solicitors including many which had been disclosed in November 2020.

12. The claim form was issued on 11 May 2021 and an amended claim form and particulars of claim were served on all Defendants on 10 September 2021. The particulars of claim were over 44 pages long. It is fair to say that these particulars of claim were not a model of clarity. The Claimant's solicitors when writing to the 2nd Defendant on 8 September 2021 stated, *"we appreciate that it may be difficult for you, looking at the Claim Form and Particulars of Claim, to understand the description of the claim(/s) against you as a defendant. This is very regrettable.".*

13. The claims set out in the amended claim form and particulars of claim are extensive and arise from the e-mails and documentation referred to above. I do not intend to set them out in detail because the particulars of claim have since been replaced in their entirety. But I will set out a short summary derived from paragraphs 13 and 14 of Ms Wilson's skeleton argument.

14. As against the Salford Defendants:

    i) Injunctions to rectify inaccurate personal data and to restrain the use of the e-mail sent by the Second Defendant on 12 May 2020 [the Email] and to identify to whom the Email or its contents had been disclosed: Amended claim form continuation sheet 2 paragraph 3.

    ii) Damages for harassment: Amended claim form continuation sheet 2 paragraph 6.

    iii) Damages for libel and/or conspiracy in respect of the Email: Amended claim form continuation sheet 2, para 7 and particulars of claim paragraph 72.

    iv) a claim in malicious falsehood in parallel with the libel claim in respect of the Email; particulars of claim paragraph 81.

15. As against the Third Defendant

i) Claims for breach of confidence, misuse of private information, and breach of the Data Protection Act 2018 in respect of "*incidents*" on 11 and/or 12 May 2020 and *"consequential incidents*".

ii) Claims for injunctions to rectify the Claimant's inaccurate personal data, restrain the use of the Email and to inform her to whom they had disclosed the Email or its contents: Amended claim form continuation sheet 2, paragraph 3.

iii) a claim against the Third Defendant based on vicarious liability for the Second Defendant. The Claimant asserted that there is a "*special form*" of vicarious liability for dioceses in respect of priests in their area (particulars of claim paragraphs 90-91). She thereby sought a finding of liability against the Third Defendant in relation to all causes of action advanced against the Second Defendant, namely in deceit and malicious falsehood/conspiracy.

16. The parties agreed to extend time for the service of defences to allow for mediation. Following an unsuccessful mediation which took place on 21st January 2022 the Claimant's solicitors stated their intention to amend her claims and serve a draft amended particulars of claim. They also formally discontinued claims against the 16th to 18th Defendants.

17. The Claimant produced a 33 page draft amended particulars of claim on 18 February 2022 and subsequently a draft re-amended claim form on 4 March 2022. By these draft statements of case the Claimant abandoned all the claims which she had previously advanced against the Salford Defendants and sought to advance new claims. She abandoned various claims against the Second Defendant, and thereby the Third Defendant, but did retain (albeit redrafted) claims for libel, breach of confidence, misuse of private information and Data Protection Act claims arising from or otherwise connected to the Email: see draft amended particulars of claim paragraphs 91, 95, 100 and 113.

18. Following further correspondence between the parties in which further shortcomings in the pleadings were raised the Claimant's solicitors indicated that they would produce a further revised draft of the amended particulars of claim and make a formal application to amend the claim.

19. The application to amend was originally listed for hearing before me on 18 July 2022 with a time estimate of a half day. On that occasion I agreed to sit in private pending resolution of the Claimant's application for anonymity. In the exercise of my case management powers under CPR 3.1 (m) I decided to hear the application to amend in relation to the defamation claims and to adjourn the balance of the application to a further hearing. I made this decision partly because there was insufficient time to deal with all of the amendment issues and partly because the Claimant was alleging misuse of confidential information in circumstances where she had not set out in a confidential schedule the particulars of the information, she alleged to be confidential as provided for by PD 53 para 8.2. I invited Mr Browne KC to revisit the pleading of the Claimant's claims in the context of my decision on the defamation claims. He agreed to this course of action.

20. At the conclusion of the hearing on 18 July 2022 I gave an oral judgment refusing the Claimant's application to amend and striking out the defamation claims against all

Defendants. In relation to the defamation claims against the First and Second Defendants I found the amendments had no reasonable prospect of demonstrating that the words complained of bore a natural and ordinary meaning defamatory of her at common law or of demonstrating that the publication by the Second Defendant to Ms Lundergan caused or was likely to cause serious harm to the Claimant's reputation. In relation to the Salford Defendants I held that the amendments had no reasonable prospect of success because there was no prospect of demonstrating that the publications relied on caused or were likely to cause serious harm to the Claimant's reputation and that she had no reasonable prospect of relying upon the discretionary power under s 32A of the Limitation Act 1980 to extend the time limit provided in section 4A of the Limitation Act 1980 in circumstances where the claims had been put forward outside the one year limitation period and there was no prospect of relying upon the doctrine of relation back. It is not necessary, and I have not been asked to expand upon those reasons in this judgment.

21. On 12 October 2022 the Claimant produced a revised draft amended particulars of claim together with a confidential schedule. The revised pleading removed the claims in defamation but made only limited revisions to way in which the claims for breach of confidence, misuse of private information and breach of the data protection legislation were advanced. This was the fifth iteration of her claim.

22. Both Ms Overman and Ms Wilson on behalf of the Defendants maintained their opposition to the proposed amendments. They were both neutral in relation to the Claimant's application for anonymity.

The anonymity application

23. The basis of the application for anonymity is set out at paragraph 6 of Mr Evans' witness statement:

> "The issues raised in this case concern the Claimant's highly sensitive and confidential information. The non-disclosure of that information is necessary to protect her interests and to secure the proper administration of justice. The AmPOC highlight very clearly the nature of the sensitive and confidential information which, respectfully, necessitates the making of an order in the terms sought."

24. In his oral submissions Mr Browne KC confirmed that the sole basis of his client's application for anonymity was the need to protect her confidential information.

25. CPR 39.2(4) provides:

> "The Court must order that the identity of any party or witness shall not be disclosed if, and only if, it considers non-disclosure necessary to secure the proper administration of justice and in order to protect the interests of that party or witness."

26. Orders that a party to a civil claim be anonymised in the proceedings and reporting restrictions prohibiting his/her identification are derogations from the principle of open justice. The principles to be applied are clearly set out in *Practice Guidance (Interim*

Non-Disclosure Orders) under the heading 'Open Justice'. The following core principles emerge;

i) Open justice is a fundamental principle. The general rule is that hearings are carried out in, and judgments and orders are, public.

ii) Derogations from the general principle can only be justified in exceptional circumstances, when they are strictly necessary as measures to secure the proper administration of justice and be no more than strictly necessary to achieve their purpose.

iii) The grant of derogations is not a question of discretion. It is a matter of obligation and the court is under a duty to either grant the derogation or refuse it when it has applied the relevant test.

iv) There is no general exception to open justice where privacy or confidentiality is in issue. Applications will only be heard in private if and to the extent that the court is satisfied that by nothing short of the exclusion of the public can justice be done. Exclusions must be no more than the minimum strictly necessary to ensure justice is done and parties are expected to consider before applying for such an exclusion whether something short of exclusion can meet their concerns, as will normally be the case.

v) The burden of establishing any derogation from the general principle lies on the person seeking it. It must be established by clear and cogent evidence.

vi) When considering the imposition of any derogation from open justice, the court will have regard to the respective and sometimes competing Convention rights of the parties as well as the general public interest in open justice and in the public reporting of court proceedings. It will also adopt procedures which seek to ensure that any ultimate vindication of article 8 of the Convention, where that is engaged, is not undermined by the way in which the court has processed an interim application. On the other hand, the principle of open justice requires that any restrictions are the least that can be imposed consistent with the protection to which the party relying on their article 8 Convention right is entitled.

27. In ***JIH v News Group Newspapers Ltd* (*Practice Note)*** [2011] 1 WLR 1645 the Court of Appeal summarised the principles applicable to competing Convention rights as follows;

> "(1) The general rule is that the names of the parties to an action are included in orders and judgments of the court
>
> (2) There is no general exception for cases where private matters are in issue.
>
> (3) An order for anonymity or any other order restraining the publication of the normally reportable details of a case is a derogation from the principle of open justice and an interference with the article 10 rights of the public at large.

> (4) Accordingly, where the court is asked to make any such order, it should only do so after closely scrutinising the application and considering whether a degree of restraint on publication is necessary, and, if it is, whether there is any less restrictive or more acceptable alternative than that which is sought.
>
> (5) Where the court is asked to restrain the publication of the names of the parties and/or the subject matter of the claim, on the ground that such restraint is necessary under article 8, the question is whether there is sufficient general, public interest in publishing a report of the proceedings which identifies a party and/or the normally reportable details to justify any resulting curtailment of his right and his family's right to respect for their private and family life.
>
> (6) On any such application, no special treatment should be accorded to public figures or celebrities: in principle, they are entitled to the same protection as others, no more and no less.
>
> (7) An order for anonymity or for reporting restrictions should not be made simply because the parties consent: parties cannot waive the rights of the public.
>
> (8) An anonymity order or any other order restraining publication made by a judge at an interlocutory stage of an injunction application does not last for the duration of the proceedings but must be reviewed at the return date.
>
> (9) Whether or not an anonymity order or an order restraining publication of normally reportable details is made, then, at least where a judgment is or would normally be given, a publicly available judgment should normally be given, and a copy of the consequential court order should also be publicly available, although some editing of the judgment or order may be necessary."

28. In ***Khan v Khan*** **[2018] EWHC 241 (QB)** Nicklin J made the following observation;

> "88. In the area of media and communications law, issues concerning exercise of the Court's jurisdiction to sit in private and to anonymise one or more parties arise most frequently in privacy claims. When parties are anonymised, or hearings take place in private, that is because the Court has been satisfied that it is strictly necessary to do so. Usually, that is because, if the parties were named and the hearing took place in public, there is at least a risk (and in most cases an inevitability) that the Court by its proceedings would destroy that which the Claimant was, by those very proceedings, seeking to protect. That would be to frustrate the administration of justice."

29. Having regard to these principles I have reached the clear conclusion that making an anonymity order would not be an appropriate derogation from the principles of open justice. The Claimant began this claim intimating a desire for publicity. As noted by Mr Copping at paragraphs 17 and 18 of his witness statement the Claimant did not seek an anonymity order at the outset of proceedings and included reference in public court documents to material which she now asserts to be highly sensitive.

30. To the extent the Claimant now seeks to assert claims for misuse of private or confidential information the use of a confidential schedule setting out the information alleged to private and confidential would be an appropriate safeguard and one which represented the least interference with the principles of open justice. As the Claimant has now adopted the use of a confidential schedule, I am satisfied that identification of the Claimant will not frustrate the administration of justice.

The Proposed Amendments

The legal test for permission to amend

31. The parties were, with one exception, agreed as to the appropriate legal framework for consideration of the application to amend. Permission to amend a statement of case may be granted pursuant to CPR 17.1(2)(b) and 17.3. The discretion is a broad one. A helpful recent summary of the applicable principles was provided by Lambert J in *Pearce v East and North Hertfordshire NHS Trust* [2020] EWHC 1504 (QB)

> "10. … The case-law is replete with guidance as to how that discretionary power should be exercised in different contexts. I need cite only two cases which taken together provide a helpful list of factors to be borne in mind when considering an application such as this: *CIP Properties (AIPT) Ltd v Galliford Try Infrastructure Ltd* [2015] EWHC 1345 (TCC) and *Quah Su-Ling v Goldman Sachs International* [2015] EWHC 759 (Comm). From those cases, I draw together the following points.
>
> a) In exercising the discretion under CPR 17.3, the overriding objective is of central importance. Applications always involve the court striking a balance between injustice to the applicant if the amendment is refused, and injustice to the opposing party and other litigants in general, if the amendment is permitted.
>
> b) A strict view must be taken to non-compliance with the CPR and directions of the Court. The Court must take into account the fair and efficient distribution of resources, not just between the parties but amongst litigants as a group. It follows that parties can no longer expect indulgence if they fail to comply with their procedural obligations: those obligations serve the purpose of ensuring that litigation is conducted proportionately as between the parties and that the wider public interest of ensuring that other litigants can obtain justice efficiently and proportionately is satisfied.

> c) The timing of the application should be considered and weighed in the balance. An amendment can be regarded as 'very late' if permission to amend threatens the trial date, even if the application is made some months before the trial is due to start. Parties have a legitimate expectation that trial dates will be met and not adjourned without good reason. Where a very late application to amend is made the correct approach is not that the amendments ought, in general, to be allowed so that the real dispute between the parties can be adjudicated upon. A heavy burden lies on a party seeking a very late amendment to show the strength of the new case and why justice to him, his opponent and other court users requires him to be able to pursue it. The timing of the amendment, its history and an explanation for its lateness, is a matter for the amending party and is an important factor in the necessary balancing exercise: there must be a good reason for the delay.
>
> d) The prejudice to the resisting parties if the amendments are allowed will incorporate, at one end of the spectrum, the simple fact of being 'mucked around' to the disruption of and additional pressure on their lawyers in the run-up to trial and the duplication of cost and effort at the other. The risk to a trial date may mean that the lateness of the application to amend will of itself cause the balance to be loaded heavily against the grant of permission. If allowing the amendments would necessitate the adjournment of the trial, this may be an overwhelming reason to refuse the amendments.
>
> e) Prejudice to the amending party if the amendments are not allowed will, obviously, include its inability to advance its amended case, but that is just one factor to be considered. Moreover, if that prejudice has come about by the amending party's own conduct, then it is a much less important element of the balancing exercise."

32. An amendment which seeks to introduce a new claim must have a "real prospect" of success". As explained in ***SPI North Ltd v Swiss Post International (UK) Ltd*** [2019] EWHC 2004 (Ch) this is same test that is applied to an application for summary judgment. A real prospect of success is to be contrasted with a "fanciful" prospect of success.

33. A proposed amendment may also be refused where it is not sufficiently clear, see ***Swain Mason v Mills & Reeve LLP*** [2011] EWCA Civ 14 or prolix, see ***Hague Plant Lit v Hague and ors*** [2014] EWCA Civ 1609 and the note to the White Book at 17.3.5.

34. Where the proposed amendment will introduce a new claim after the limitation period has expired CPR 17.4 applies;

> "17.4 This rule applies where –

> (a) a party applies to amend his statement of case in one of the ways mentioned in this rule; and
>
> (b) a period of limitation has expired under –
>
> (i) the Limitation Act 1980[1];
>
> (ii) the Foreign Limitation Periods Act 1984[2]; or
>
> (iii) any other enactment which allows such an amendment, or under which such an amendment is allowed.
>
> (2) The court may allow an amendment whose effect will be to add or substitute a new claim, but only if the new claim arises out of the same facts or substantially the same facts as a claim in respect of which the party applying for permission has already claimed a remedy in the proceedings."

35. As stated in the White Book at 17.4.1 "*is confined to certain tightly limited circumstances. Even in a case falling within those limits the court still has a discretion to refuse the amendment on general principles."*

36. The approach to applications where limitation is in issue was considered by the Court of Appeal in ***Mulalley & Co v Martlet Homes Ltd*** [2022] EWCA Civ 32. When considering CPR 17.4 four questions need to be answered;

> "i) Is it reasonably arguable that the opposed amendments are outside the applicable limitation period?
>
> ii) Did the proposed amendments seek to add or substitute a new cause of action?
>
> iii) Does the new cause of action arise out of the same or substantially the same facts as are already in issue in the existing claim?
>
> iv) Should the Court exercise its discretion to allow the amendment?"

37. Section 2 of the Limitation Act 1980 provides for a six year limitation period for actions in tort. Where a claimant advances an equitable cause of action, such as breach of confidence, the specific time limits in Part 1 of the Limitation Act 1980 do not apply directly. However, where the facts relied upon are capable of giving rise to a claim at law and in equity and the relief claimed is the same, the limitation period applicable to the claim at law applies by analogy in equity, even if the claim is only advanced in equity, see ***P&O Nedlloyd B.V. v Arab Metals Co & ors*** [2006] EWCA Civ 1717 at [38];

> "*These passages support the conclusion that if a statutory limitation provision, properly interpreted, applies to the claim under consideration, equity will apply it in obedience to the statute, as indeed it must. However, even if the limitation period*

> *does not apply because the claim is for an exclusively equitable remedy, the court will nonetheless apply it by analogy if the remedy in equity is "correspondent to the remedy at law". In other words, where the suit in equity corresponds with an action at law a court of equity adopts the statutory rule as its own rule of procedure.*"

38. Limitation is potentially in issue as far as the breach of confidence and misuse of private information claims against the Salford Defendants are concerned in that the events giving rise to them took place in the period September 2015 to December 2015.

39. There was an issue between the parties as to the meaning of the "facts in issue" in the context of this claim. On behalf of the Claimant Mr Browne KC submitted that the original particulars of claim should be regarded as the source of the facts which were in issue between the parties until such time as they were struck out or permission to amend was granted. He maintained that the original particulars of claim continued to have effect at as the time when permission to amend was sought from the court. On behalf of the Defendants Ms Wilson submitted that Mr Browne KC's approach was wrong and contrary to authority in situations where claims have been abandoned or struck out before permission to amend had been sought from the court. Both counsel referred me to the case of ***Libyan Investment Authority v King*** [2020] EWCA Civ 1690.

40. At paragraphs 39 to 43 of the ***Libyan Investment*** case Nugee LJ dealt with the issue in the following way;

> "39. For both these reasons there is in my judgment no doubt that we are bound to read CPR r 17.4(2) as if it contained the words *"are already in issue on"* as set out in *Goode v Martin*. On any normal reading of this language that requires identifying, at the time when permission is sought from the Court, what facts are then in issue, and this cannot be done by looking at facts that were previously in issue, but are no longer in issue.
>
> 40. Mr Onslow said that this was to put far too much weight on the single word *"are"* and submitted that it was a perfectly tenable interpretation of the rule that it included facts that had been put in issue on a claim previously advanced. I am unable to accept this submission. The usual presumption is that ordinary words are to be given their ordinary meaning unless there is any reason not to. One therefore starts by giving the word *"are"* (or perhaps one should say the phrase *"are already in issue"*) its normal meaning, and its normal meaning requires one to look at the relevant time at matters that are then in issue, not those that were previously. There is to my mind no justification for reading it in any other way.
>
> 42. The point can be illustrated by taking a very simple example, which is no doubt much more common than the rather unusual circumstances of the present case. Suppose a claimant issues a claim and pleads two causes of action, A and B. Some time later

he drops cause of action B and deletes it from his pleading along with the facts relied on in support of it. He then seeks to amend to add cause of action C which is by now statute-barred. The Court can undoubtedly permit him to do so if the facts relied on in support of cause of action C are the same, or substantially the same, as the facts in issue on cause of action A. But can the Court do so by comparing the facts relied on in support of cause of action C with the facts formerly pleaded, but now deleted, in support of cause of action B? I would have thought the answer to that was plainly No, on the simple basis that those facts are no longer in issue and hence not facts that *"are ... in issue"* at the time the Court is asked to grant permission.

42. When this example was put in the course of argument to Mr Onslow, he accepted that that might be so, and very properly referred us to *Carr v Formation Group plc* [2018] EWHC 3575 (Ch) where Morgan J at [42] considered almost precisely this example, as follows:

> "In these circumstances, I need to ask for the purposes of the limitation issue which has now arisen, whether I should disregard the fact that paragraph 14 was removed from the claim form by an amendment in February 2016. I consider that the answer to that question emerges from considering the following example. Suppose that a claim form contains a concise statement as to the nature of two different claims, claim A and claim B. Both claim A and claim B are in time as regards limitation. Some time after the claim form is issued, it is amended to remove claim B. Some time later, the claimant wishes to amend the claim form again to reintroduce claim B, which is now out of time. Should the court hold that claim B is not a new claim because it was in the original claim form before amendment or should it consider that claim B is a new claim because it is not already in the claim form when the claimant applies to reintroduce it? I consider that the answer is clearly the second of these alternatives. It follows from this reasoning that when I consider the claim against the First Defendant as a joint tortfeasor which appeared in the particulars of claim served pursuant to the 2018 claim form, I should compare the claims in the particulars of claim with whatever remained in the 2015 claim form in 2018."

43. I agree with Morgan J in the example he gives. And for these purposes I do not see that it makes any relevant difference whether the claimant has unilaterally dropped cause of action B, or the Court has struck it out, or granted summary judgment on it. In each case, the facts formerly relied on in support of cause of action B are no longer on the pleadings and no longer in issue, and cannot be used for the comparison required by CPR r 17.4(2).”

41. Having regard to Nugee LJ's conclusion at paragraph 43 of the judgment I reject Mr Browne KC's submission. I agree with Ms Wilson that the Claimant has, in the circumstances of the case, abandoned the original particulars of claim. I note that all four versions of the amended particulars of claim put forward on behalf of the Claimant state they are filed in substitution for the particulars of claim dated 8 September 2021. I will therefore confine my consideration of the facts to those set out in the revised amended particulars of claim.

42. However, limitation is not the only issue raised by the Defendants in opposition to the proposed amendments. I will now turn to each cause of action for which permission is sought.

Pleading breach of confidence, misuse of private information and data protection claims

43. Breech of confidence is an equitable cause of action. In order to succeed in such a claim, it must be shown; that the information is confidential in character, that the defendant owes a duty of confidence in respect of it and that the use or disclosure that is threatened would represent a breach of that duty.

44. Misuse of private information is a relatively recent cause of action that has emerged as an off shoot of breach of confidence. There are two essential elements to the cause of action. Firstly, the claimant must show that they enjoy a reasonable expectation of privacy in respect of the information in question. Secondly, if a reasonable expectation of privacy is established the court must engage in scrutiny of the specific rights in play before it and determine, whether on the one hand, the privacy rights of the claimant should yield to the rights of the defendant and others to the free flow of information or, the claimant's rights should prevail over others, see ***Campbell v MGN*** [2004] UKHL 22, ***In re S (A Child)*** [2004] UKSC 47 **and** ***Murray v Big Pictures Ltd*** [2008] EWCA Civ 446.

45. In ***Coco v AN Clark Engineers Ltd*** [1969] RPC 41 the court set out the elements of a claim for equitable breach of confidence;

> "First, the information itself, … must "have the necessary quality of confidence about it". Secondly, that information must have been imparted in circumstances importing an obligation of confidence . Thirdly, there must be and unauthorised use of that information to the determent of the party communicating it."

46. Given the nature of these causes of action the rules of court now provide that the particulars of claim should contain "necessary particulars" in all claims for the misuse of information.

47. In relation to claims for misuse of private information PD 53 para 8. provides;

> "In a claim for misuse of private information, the claimant must specify in the particulars of claim (in a confidential schedule if necessary to preserve privacy)—
>
> (1) the information as to which the claimant claims to have (or to have had) a reasonable expectation of privacy;

> (2) the facts and matters upon which the claimant relies in support of the contention that they had (or have) such a reasonable expectation;
>
> (3) the use (or threatened use) of the information by the defendant which the claimant claims was (or would be) a misuse; and
>
> (4) any facts and matters upon which the claimant relies in support of their contention that their rights not to have the specified information used by the defendant in the way alleged outweighed (or outweigh) any rights of the defendant to use the information in that manner.."

48. In relation to a claim for misuse of confidential information or breach of confidence PD 53 para 8.2 provides;

> "In a claim for misuse of confidential information or breach of confidence, the claimant must specify in the particulars of claim (in a confidential schedule if necessary to preserve confidentiality)—
>
> (1) the information said to be confidential;
>
> (2) the facts and matters upon which the claimant relies in support of the contention that it was (or is) confidential information that the defendant held (or holds) under a duty or obligation of confidence;
>
> (3) the use (or threatened use) of the information by the defendant which the claimant claims was (or would be) a misuse of the information or breach of that obligation."

49. Data protection claims involve claims for compensation in respect of actual or threatened publication which the claimant asserts involves unlawful "processing" of their personal data in breach of the Data Protection Act 1998, or if post 25 May 2018, the General Data Protection Regulation (now the GDPR) and/or the Data Protection Act 2018. The claimant must prove that his personal data has been processed in breach of the statutory duty to do so in accordance with the data protection principles set out in the 1998 Act and GDPR.

50. In relation to claims for breach of data protection legislation PD 53 para 9 provides;

> "In any claim for breach of any data protection legislation the claimant must specify in the particulars of claim—
>
> (1) the legislation and the provision that the claimant alleges the defendant has breached;
>
> (2) any specific data or acts of processing to which the claim relates;

> (3) the specific acts or omissions said to amount to such a breach, and the claimant's grounds for that allegation; and
>
> (4) the remedies which the claimant seeks."

51. The requirements of PD 53 paras 8 and 9 are fundamental. Unless each element of the claim is pleaded the defendant will not know the case it has to meet. For example, without knowing the specific information/data which is the subject of the claim, the defendant cannot investigate whether it was in the public domain. Just as importantly the provision of the required particulars will enable the trial judge to properly evaluate the claim. The importance of proper pleading and its relation to case management was underlined by Warby J, (as he then was) in ***Candy v Holyoake*** [2017] EWHC 373 (QB);

> "47 …neither privacy rights nor confidentiality rights are imposed in respect of information purely by virtue of the fact that it is disclosed and comes to a person's attention on an occasion which is private, rather than public. Nor does information attract the protection of the law of confidence purely by reason of being confided. The nature of the information is unquestionably an element of a claim in traditional breach of confidence, and one of the factors that go into the mix when applying the circumstantial test for whether information is private in nature."
>
> "49. In this case it is in my judgment essential, if there is to be a fair and efficient resolution of the claims, for the claimant to identify the information he seeks to protect and to specify the matters relied on in support of the contention that the retention, disclosure or use of the information would represent a misuse of private information or a breach of confidence. A proper pleading of this claimant's case would need to itemise (inevitably, in a private and confidential document) the items of information for which protection is sought, what the "nature" of that information is said to be, and any matters to be relied on as to why information of that "nature" is (inherently or for any other reason) private or, as the case may be, confidential. If this is not done, there is a real risk that the trial of the action will descend into confusion. If it is done, the trial judge will be able properly to evaluate the claim and determine what if any relief should be granted in privacy or confidentiality."

General observations on the proposed amendments

52. As a general observation the claims set out in the revised amended particulars of claim remain drafted in a prolix and unclear manner. Save for the deletion of the previously proposed claims in defamation the revised amended particulars of claim makes only limited variations to the way in which the Claimant proposes to advance her case for breach of confidence, misuse of private information and under data protection legislation.

53. The most obvious difference is the addition of a confidential schedule which contains 33 items of information. This confidential schedule is only referred to twice in the pleading. Firstly, at paragraph 15 where it is said the schedule sets out details of the matters listed at paragraph 14 which in turn concerns details discussed at meetings with the Bishop which took place on 30 October 2013 and 31 January 2014. Secondly, at paragraph 60, where the remaining items in the schedule are said to refer to information contained in the Claimant's application form to attend a retreat.

54. As far as the confidential schedule is concerned I accept the criticisms made by Ms Wilson. Firstly, much of the information listed lacks the 'necessary quality of confidence' to be the foundation of a breach of confidence claim or is not, inherently or obviously, private. Examples include; the fact of the Claimant's baptism in the Church of England, the name of her father, that she graduated with a first, was a leader of her university's Christian union (prima facie a public position), worked in Central London and lived in Ealing. Other information listed would, at the very least, require the Claimant to advance particulars as to why that information was confidential or private to warrant protection by the Court for example, that she takes centrum vitamins and that she had been a member of certain religious groups like "the pious union of the infant jesus". Secondly, the draft revised amended particulars of claim still do not identify what specific confidential or private information the Claimant contends was disclosed and/or misused on the various different occasions which are relied upon. Paragraphs 89 and 94 of the pleading still do not identify what specific confidential and or private information the Claimant contends was disclosed or misused on the various different occasions which are relied upon.

The breach of confidence claims

55. The breach of confidence claim against the 1st and 2nd Defendants is set out at paragraphs 85 to 87 of the revised draft amended particulars of claim. As against the remaining Defendants it is set out at paragraphs 88 and 89. In each case there is extensive reference to facts and matters contained in preceding paragraphs of the pleading. I accept the submission made on behalf of the Defendants by Ms Overman and Ms Wilson that the manner in which this has been done is such that there has been a failure to provide the necessary particulars required by PD 53 para 8 and that the latest iteration of the pleading has done nothing to remedy the deficiencies which have been pointed out in the correspondence and in the skeleton arguments prepared for the hearing on 18 July 2022.

56. I also accept the submission made by Ms Wilson that the majority of the claims made against the Salford Defendants are advanced in the alternative as claims for misuse of private information and that save for the matter advanced at paragraph 53 in relation to an e-mail dated 19 September 2019, they would be bought outside the limitation period on the basis of ***Nedlloyd***.

The misuse of private information claims

57. The misuse of private information claim against 1st and 2nd Defendants is set out at paragraphs 90 to 92 of the revised draft amended particulars of claim. As against the remaining Defendants it is set out at paragraphs 93 to 94. Again, these claims suffer from the same lack of clarity and particularisation as the breach of confidence claims. For example, paragraph 93 purports to identify the private information which is the

subject of the claim; it does so by cross-reference to 17 earlier paragraphs. However, other than paragraph 14, all those paragraphs are alleged in the pleading to advance the case of misuse of the allegedly private information. I accept the submission that such pleading is likely to obstruct the just disposal of proceedings.

58. I the course of the hearing I invited Mr Browne KC to show me where in the pleading of the Claimant's case the requirements of PD 53B para 8.1 (4) were met. This requirement is particularly important where, as here, the Claimant's claim is based upon limited alleged disclosures to "individuals in or associated with the Catholic Church and with whom the Bishop worked". The ensuing journey which rambled through the draft amended particulars of claim and at times doubled back on itself did little to persuade me that the requirements of the Practice Direction had been met.

59. Again, I accept Ms Wilson's submission that the majority of the claims made against the Salford Defendants are bought outside the 6 year limitation period. The pleading does not seek to address section 35 of the 1980 Act or CPR 17.4 and I have already held at paragraph 41 above that the Claimant has abandoned all her previous claims.

The data protection legislation claims

60. The data protection legislation claims are set out against the 1st and 2nd Defendants at paragraphs 96 to 97, 100 to 105 and 105 of the draft amended particulars of claim. As against the remaining Defendants it is set out at paragraphs 98 to 102 and 104.

61. The tables at paragraph 103 and 104 of the pleading purport to identify the Claimant's personal and/or sensitive personal data which has been processed by the Defendants in breach of duty. This table contains no particulars of the specific acts of processing or the specific acts or omissions which are said to amount to a breach of duty or the grounds for any such allegation as required by PD 53B para 9 (2) and (3). In my judgment these are not minor defects, as explained above, data protection laws are directed to protecting information not merely documents and to enable a fair and proportionate consideration of such issues it is essential the pleading complies with the Practice Direction.

62. Additionally in light of my earlier findings the events set out at paragraph 104 (a) to (n) of the draft amended particulars of claim which are alleged to have occurred before 9 January 2016 would afford the Salford Defendants a limitation defence.

63. Lastly, in relation to the Third Defendant. The Claimant asserts the Third Defendant is vicariously liable for the acts of the Second Defendants. I accept the submissions made by Ms Wilson that the draft amended particulars of claim are confusing and unclear in relation to this issue. For example no particulars are given to support the contention that the Third Defendant is liable for the Second Defendant. All the actions of the Second Defendant about which the Claimant complains occurred in relation to his role at the First Defendant which is a company limited by guarantee. A request to provide such particulars was refused by the Claimant's solicitor on 21 June 2022. Further the Claimant asserts that the Third Defendant was a "data processor" or "data controller". There are no particulars of this assertion and on its face, it appears to be inconsistent with the way in which the Claimant puts her case. She does not assert the Third Defendant held, processed or had control over data. I would accept the submission of Ms Wilson that the references in paragraphs 102 and 103 of the pleading to the Third

Defendant was processing data appears to be a result of the Claimant failing to distinguish the difference between the First and Second Defendant on the one hand and the Third Defendant on the other.

Conclusion

64. In my judgment the latest draft of the particulars of claim is little improvement on the previous versions, the pleading remains prolix, confusing, incoherent and does not comply with the requirements of PD 53.

65. The Claimant has had ample time to remedy these defects which have been repeatedly drawn to the attention of her legal advisers by the solicitors acting for the Defendants and by the court. The defects which have been identified in the pleading go to the very essence of the claims and I have no doubt that they have the effect of obstructing the just disposal of these proceedings. Whilst I appreciate the Claimant may have her own perceptions and very strong feelings about the events giving rise to her claims, such perceptions and feelings must not obstruct the requirements for brevity and clarity which are central to the requirements of the Civil Procedure Rules for statements of case.

66. Additionally, I have identified limitation issues which arise in many of the claims against the Salford Defendants which would justify refusal to amend under CPR 17.4.

67. In the circumstances and having regard to the principles set out at paragraphs 31 to 51 above I have no hesitation in refusing the proposed amendments. In my judgment the Defendants have been put to unnecessary trouble and cost by the chaotic manner in which the claimant has chosen to conduct this litigation. I will direct that the claim be struck out.