Neutral Citation Number: **[2023] EWHC 2490 (KB)**

Case No: QB-2021-0001513

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London
WC2A 2LL

Date: Friday, 23rd June 2023

Before:

MASTER DAGNALL

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Between:

(1) DENNY TAYLOR
(2) EZE
(3) MINA KUPFERMANN
(4) EMMA PICKEN
(5) EHL
(6) COLIN APPLEBY
(7) JULIE CATTELL
(8) EUAN PHIPPS
(9) ANDREW BURRIDGE

Claimants

- and -

DAVID EVANS (AS REPRESENTATIVE OF THE LABOUR PARTY) **Defendant**

- and -

(1) KARIE MURPHY
(2) SEUMAS MILNE
(3)GEORGINA ROBERTSON
(4) HARRY HAYBALL
(5) LAURA MURRAY

Named Third Parties

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APPROVED JUDGMENT

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MR. JONATHAN TURNER and MS. NATASHA HAUSDORFF (instructed by **3D Solicitors Ltd.**) for the **Claimants**

MS. ANYA PROOPS KC and MR. MICHAEL WHITE (instructed by **Greenwoods Legal LLP**) for the **Defendant**

MR. JACOB DEAN (instructed by **Carter-Ruck Solicitors**) for the **Names third Parties**

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If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

Transcript of the Stenograph Notes
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MASTER DAGNALL:

1. This is a costs case management conference in this claim and Part 20 claim. There are effectively two sets of informal applications before me: first, what to do with, and regarding, a claim made in this litigation in the High Court under the Equality Act 2010, where the County Court has exclusive jurisdiction to deal with such claims; and secondly, whether to provide that whatever matters are or remain in the High Court should be tried all at the same time or in stages.

2. The claim itself relates to an internal Report that the Labour Party compiled in the context of where the Party was being investigated by the Equality and Human Rights Commission (the "EHRC") regarding allegations of occurrences of anti-Semitism within the Party. The claimants made various complaints of or regarding anti-Semitism which were referred to in the then Draft Report. That Draft Report was leaked in early 2020, soon after the Labour Party's defeat in the December 2019 General Election and at a time when Jeremy Corbyn was being replaced as its leader by Sir Keir Starmer.

3. The claimants, who appear before me by Mr. Turner and Ms. Hausdorff of counsel, then brought this claim against Mr Evans as the asserted (it remains in issue as to whether Mr Evans or the Labour Party can be properly sued in this way) representative of the Labour Party, and I will call them all the "defendant" or "defendants", in the High Court, saying, in essence: first, that the claimants' identities and complaints were their personal data and with the result that various duties were placed upon the defendant under data protection law.

4. Secondly, that in all the circumstances they also had a reasonable expectation of confidence in such material; resulting in duties, under the law of confidence either

generally or as imposed consequent on the Human Rights Act, on the defendant to keep confidential their names and involvements.

5. Thirdly, that those duties were breached by the leaking of the Draft Report; and that they can and do claim against the defendant, as those individuals who leaked the Draft Report must have been employees or officers of the Party acting in the course of their employment of their relevant activities and that therefore the defendant is vicariously liable for them.

6. Fourthly, whether or not the preceding matters are correct, the claimants say that they can sue the defendant as a result of the defendant having owed duties in data protection or confidence law: (a) to take steps to prevent the leak occurring; and (b) to write the Draft Report in such a way so as to protect the claimants and their identities; and that such duties have been breached in any event.

7. Fifthly, the claimants say that as a result they have suffered vilification and distress. They do not allege personal injury such as depression in consequence of what had occurred, but do say that they are entitled to substantial damages; in total, amongst all the claimants, in the region of £150,000 to £190,000, although the claim form was actually issued on the basis of a value of the claim of £200,000 or more.

8. However, the claimants also included in their claim form and particulars of claim a claim under the Equality Act 2010 saying that that they have been harassed and/or victimised in relation to the Labour Party, being an association for the purposes for the Equality Act, due to matters of race.

9. The claim is put in various ways, some of which may be somewhat novel, but there is no dispute before me but that they have real prospects of success. In the particulars of claim it is accepted that the County Court has exclusive jurisdiction. The particulars of claim contain statements contending that the entire claim should be heard by a High Court Judge also sitting as a Judge of the County Court.

10. The defendant, who appears before me by Ms. Proops KC and Mr. White of counsel, challenge the claim in various ways. The main defence is the defendant says that it was the third parties, who were at the material time various employees and officers of the defendant, who leaked the Draft Report. The defendant says that it is not liable for those actions, as it says that: the third parties were in one way or another aligned with Mr. Corbyn and actions within the Labour Party who support or supported Mr. Corbyn; the third parties were engaged in a conspiracy to undermine Sir Keir Starmer; and tha the third parties sought to use the leaking of the Draft Report to advance such a conspiracy.

11. I am not altogether clear as to how such a leaking was said to achieve that objective; but no one has submitted that the factual assertion or its being relied by the defendant to seek to escape vicarious liability, such reliance being on various Supreme Court authorities, lacks reasonable prospects of success.

12. The claimants, of course, also rely on their other alternative arguments, to the effect that the defendant failed to take proper steps to safeguard either the Draft Report or the claimants, to say that even if they were to fail on the vicarious liability arguments they would still succeed against the defendant.

13. The claimants, in their reply, formally do not admit that those who leaked the Draft Report were the third parties, although in a response to a CPR Part 18 Further Information Request they do seem to say that they adopt the defendant's case against the third parties, being that it was the third parties who leaked the Draft Report, against the defendant. The claimants, however, have not sought to sue the third parties in the alternative to the defendant, seemingly due to fears regarding costs; although, as I will come back to later, as far as costs is concerned, the situation of a claimant suing a third party on the basis that the defendant blames that third party for the wrong is a situation which classically may attract what is called a *Bullock* or *Sanderson* Order where, effectively, the claimant achieves an outcome where all the costs are paid by whoever loses of the defendant and the third party.

14. The fact that the claimants have not sought to sue the third parties leaves the, at least theoretical, prospect that at trial the defendant may be successful in saying that it was the third parties who leaked the Report, but that the defendant is not liable for them under the law of vicarious liability, and so that the defendant is not liable to the claimants, but with the claimants being unable to obtain a judgment against the third parties in the circumstances because the claimants have not brought any claim against the third parties. However, that consequence, or possible theoretical consequence, is simply a consequence of the way in which these parties are brought and are seeking to conduct this particular litigation. I do note that the claimants say that they would succeed against the defendant even if they fail on the issue of vicarious liability.

15. I also note that Ms. Proops KC, for the defendant, says that if it cannot be shown who leaked the Draft Report, then the claimants will fail against the defendant: first, because

the claimants would be unable to demonstrate on the relevant balance of probabilities that it was somebody who was in a relationship of employment or akin to employment with the defendant who leaked the Report; and secondly, even if the claimants surmounted that hurdle, they would be unable to show that such leaking was within the legal tests of it being in the course of relevant employment or similar relationship. Ms. Proops would, therefore, intend to say in such circumstances that the claimants would fail in establishing both of the necessary stages of the legal requirements for there to be vicarious liability.

16. The claimants would dispute that: first, because they would contend that the defendant has actually formally admitted to them that it was the third parties who leaked the Report; secondly, they would dispute the defendant's position as a matter of law; and thirdly, they would rely on their alternative claims of the defendant having failed to take the appropriate steps to safeguard them.

17. In any event though, the defendant has brought its Part 20 claim against the third parties, on the basis that it was the third parties who did leak the Draft Report. The defendant contends that their doing so would have amounted to a breach of their contracts of employment and of various other duties owed by them, and also amount to a tortious conspiracy with an intention to injure the Labour Party. The defendants claim, as a result, against the third parties: first, an indemnity against the claimants' claim, including, also the costs of both the claimants and the defendant of the claimants' claim in amounts which are said to amount in total to at least £500,000; secondly, damages in terms of the costs of the defendant investigating what has occurred and taking preventative and amelioration steps, which costs are said to be in the region of

£1 million; and, thirdly, damages with regard to potential or actual claims from others named in the Draft Report who actually have claimed or may be intending to claim against the defendant.

18. It appears from investigations that there is at least one other claim brought by some 21 claimants which is presently stayed for alternative dispute resolution. Also a few other complainants have been identified, some of whom have brought proceedings, some of which such proceedings have been struck out by the courts. I was told that the total worth of the financial elements of the Part 20 claim might be in the region of as much as £3.5 million.

19. The third parties, appearing before me by Mr. Dean of counsel, defend on the basis that they simply were not the persons who leaked the Draft Report. They say that they do not know who did do it. That gives rise to the potential oddity of, at a trial, it being held that the third parties had not leaked the Draft Report with the result that the defendant would then fail in its claim against the third parties, but that this would be in circumstances where, as between the claimants and the defendant, the defendant had admitted that it was the third parties who leaked the Report albeit in circumstances where the claimants have somewhat hedged their response to that assertion. The parties agreed before me that that situation would give rise to some complexity, but no one has presently sought to amend their case to deal with it.

20. It simply seems to me that I can only proceed on the basis that it would give rise to various questions which the trial judge would have to deal with, including, for example, as to whether the defendant was estopped by its statement of case in advancing a case

against the claimants that it was not the third parties who had leaked the Report. However, it seems to me that those are all matters for a different time and day.

21. This litigation has already given rise to a number of substantial hearings before High Court Judges, including with regards to questions of an anonymity order and has not proceeded very far in relation to the real issues. Those various interim hearings and disputes seem to have involved the parties in very considerable expense, although certain cost issues remain to be decided, including those of the costs of recent hearings before Chamberlain J.

22. I have yet to engage in cost budgeting, but the defendant and the third parties say, and have advanced cost budgets to support contentions, that to try out the claims will, even if the parties only expend reasonable and proportionate costs, involve, even if all the claims were tried together, some 14 days of court time and total costs in excess of £4 million. While that figure is in excess of the amounts that are in dispute, the defendant and the third parties point to this litigation, or at least the third parties' Part 20 claim, which concerns an alleged conspiracy within His Majesty's loyal opposition to attack it, and say that these claims are a very real public interest and importance.

23. The claimants have something of a general complaint that their claims, amounting to values of no more than £200,000 and which are in relation to a leak that is common ground actually occurred, are being somewhat taken over by a Part 20 claim which extends well beyond them and their own interests, and that this should be relevant to the various discretions which I have to exercise.

24. In all of this I have given full consideration to and have applied the overriding objective which is set out in Civil Procedure Rule 1.1 and which provides:

"(1) These Rules are a procedural code with the overriding objective of enabling the court to deal with cases justly and at proportionate cost

(2) Dealing with a case justly and at proportionate cost includes, so far as is practicable – (a) ensuring that the parties are on an equal footing and can participate fully in proceedings, and that parties and witnesses can give their best evidence; (b) saving expense; (c) dealing with the case in ways which are proportionate – (i) to the amount of money involved; (ii) to the importance of the case; (iii) to the complexity of the issues; and (iv) to the financial position of each party; (d) ensuring that it is dealt with expeditiously and fairly; (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases; and (f) enforcing compliance with rules, practice directions and orders."

25. I also note that the High Court has powers and duties to transfer to the County Court in certain situations as set out in section 40 of the County Courts Act 1984, which provides:

"Transfer of proceedings to county court.

(1) Where the High Court is satisfied that any proceedings before it are required by any provision of a kind mentioned in subsection (8) to be in the county court it shall–

(a) order the transfer of the proceedings to the county court; or

(b) if the court is satisfied that the person bringing the proceedings knew, or ought to have known, of that requirement, order that they be struck out.

(2) Subject to any such provision, the High Court may order the transfer of any proceedings before it to the county court.

(3) An order under this section may be made either on the motion of the High Court itself or on the application of any party to the proceedings.

(4) ...

(5) The transfer of any proceedings under this section shall not affect any right of appeal from the order directing the transfer.

(6) Where proceedings for the enforcement of any judgment or order of the High Court are transferred under this section–

(a) the judgment or order may be enforced as if it were a judgment or order of the county court; and

(b) subject to subsection (7), it shall be treated as a judgment or order of that court for all purposes.

(7) Where proceedings for the enforcement of any judgment or order of the High Court are transferred under this section—

(a) the powers of any court to set aside, correct, vary or quash a judgment or order of the High Court, and the enactments relating to appeals from such a judgment or order, shall continue to apply; and

(b) the powers of any court to set aside, correct, vary or quash a judgment or order of the county court, and the enactments relating to appeals from such a judgment or order, shall not apply.

(8) The provisions referred to in subsection (1) are any made–

(a) under section 1 of the Courts and Legal Services Act 1990; or

(b) by or under any other enactment."

26. The High Court also has a power, subject to certain limits, to transfer proceedings which are in the County Court to the High Court, which exists in section 41 of the County Courts Act 1984 which provides:

"Transfer to High Court by order of High Court

(1) If at any stage in proceedings commenced in the county court or transferred to the county court under section 40, the High Court thinks it desirable that the proceedings, or any part of them, should be heard and determined in the High Court, it may order the transfer to the High court of the proceedings or, as the case may be, of that part of them.

(2) The power conferred by subsection (1) is without prejudice to section 29 of the Senior Courts Act 1981 (power of High Court to issue prerogative orders) ...

(3) The power conferred by subsection (1) shall be exercised subject to any provision made–

(a) under section 1 of the Courts and Legal Services Act 1990; or

(b) by or under any other enactment."

27. I further note generally that those powers, at least in circumstances where a discretion is to be exercised, are themselves to be considered and exercised in accordance with Civil Procedure Rule 30.3, which provides:

"(1) Paragraph (2) sets out the matters to which the court must have regard when considering whether to make an order under –

(a) section 40(2), 41(1) or 42(2) of the County Courts Act 1984 (transfer between the High Court and a county court);

(b) rule 30.2(1) (transfer within the County Court); or (c) rule 30.2(4) (transfer between the Royal Courts of Justice and the district registries).

(2) The matters to which the court must have regard include –

(a) the financial value of the claim and the amount in dispute, if different;

(b) whether it would be more convenient or fair for hearings (including the trial) to be held in some other court;

(c) the availability of a judge specialising in the type of claim in question and in particular the availability of a specialist judge sitting in an appropriate regional specialist court;

(d) whether the facts, legal issues, remedies or procedures involved are simple or complex;

(e) the importance of the outcome of the claim to the public in general;

(f) the facilities available to the court at which the claim is being dealt with, particularly in relation to –

(i) any disabilities of a party or potential witness;

(ii) any special measures needed for potential witnesses; or

(iii) security;

(g) whether the making of a declaration of incompatibility under section 4 of the Human Rights Act 1998 has arisen or may arise;

(h) in the case of civil proceedings by or against the Crown, as defined in rule 66.1(2), the location of the relevant government department or officers of the Crown and, where appropriate, any relevant public interest that the matter should be tried in London.

(3) Where in proceedings in the County Court the court considers that there is a real possibility that a party would in the course of the proceedings be required to disclose material the disclosure of which would be damaging to the interests of national security, the court must transfer the proceedings to the High Court."

28. I also have borne fully in mind that the court has a duty to engage in active case management as set out in Civil Procedure Rule 1.4 which provides:

"(1) The court must further the overriding objective by actively managing cases.

(2) Active case management includes –

(a) encouraging the parties to co-operate with each other in the conduct of the proceedings;

(b) identifying the issues at an early stage;

(c) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;

(d) deciding the order in which issues are to be resolved;

(e) encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure;

(f) helping the parties to settle the whole or part of the case;

(g) fixing timetables or otherwise controlling the progress of the case;

(h) considering whether the likely benefits of taking a particular step justify the cost of taking it;

(i) dealing with as many aspects of the case as it can on the same occasion;

(j) dealing with the case without the parties needing to attend at court;

(k) making use of technology; and

(l) giving directions to ensure that the trial of a case proceeds quickly and efficiently."

That includes actively considering how to deal with issues as set out in sub-rules (b)-(d) and for the court to control the timetable of a case as set out in sub-rule (g), in taking its decision to bear in mind the costs of taking various steps as set out in sub-rule (h) and also to consider dealing with as many aspects as appropriate on any single occasion as set out in sub-rule (i).

29. The court considers all such matters when exercising its general case management powers in CPR 3.1 which provides:

"The court's general powers of management

3.1 (1) The list of powers in this rule is in addition to any powers given to the court by any other rule or practice direction or by any other enactment or any powers it may otherwise have.

(2) Except where these Rules provide otherwise, the court may –

(a) extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired);

(b) adjourn or bring forward a hearing;

(bb) require that any proceedings in the High Court be heard by a Divisional Court of the High Court;

(c) require a party or a party's legal representative to attend the court;

(d) hold a hearing and receive evidence by telephone or by using any other method of direct oral communication;

(e) direct that part of any proceedings (such as a counterclaim) be dealt with as separate proceedings;

(f) stay the whole or part of any proceedings or judgment either generally or until a specified date or event;

(g) consolidate proceedings;

(h) try two or more claims on the same occasion;

(i) direct a separate trial of any issue;

(j) decide the order in which issues are to be tried;

(k) exclude an issue from consideration;

(l) dismiss or give judgment on a claim after a decision on a preliminary issue;

(ll) order any party to file and exchange a costs budget;

(m) take any other step or make any other order for the purpose of managing the case and furthering the overriding objective, including hearing an Early Neutral Evaluation with the aim of helping the parties settle the case.

(3) When the court makes an order, it may –

(a) make it subject to conditions, including a condition to pay a sum of money into court; and

(b) specify the consequence of failure to comply with the order or a condition.

(3A) Where the court has made a direction in accordance with paragraph (2)(bb) the proceedings shall be heard by a Divisional Court of the High Court and not by a single judge.

(4) Where the court gives directions it will take into account whether or not a party has complied with the Practice Direction (Pre-Action Conduct) and any relevant pre-action protocol.

(5) The court may order a party to pay a sum of money into court if that party has, without good reason, failed to comply with a rule, practice direction or a relevant pre-action protocol.

(6) When exercising its power under paragraph (5) the court must have regard to –

(a) the amount in dispute; and

(b) the costs which the parties have incurred or which they may incur.

(6A) Where a party pays money into court following an order under paragraph (3) or (5), the money shall be security for any sum payable by that party to any other party in the proceedings.

(7) A power of the court under these Rules to make an order includes a power to vary or revoke the order.

(8) The court may contact the parties from time to time in order to monitor compliance with directions. The parties must respond promptly to any such enquiries from the court."

I note that such powers include powers to deal with parts of the claim and issues separately including granting stays in relation to particular issues and aspects all as set out in sub-rules (e), (f), (j) and (k) and where the court is generally seeking to achieve the overriding objective as set out in (m).

30. Those various points and matters are also very applicable when the court decides as to how to deal with the procedural course of a matter where there is both a claim and a Part 20 claim and where the degree of connection between various aspects and matters is of particular and potential importance: see CPR 20.9 and its signposts which provide:

"(1) This rule applies where the court is considering whether to –

(a) permit an additional claim to be made;

(b) dismiss an additional claim; or

(c) require an additional claim to be dealt with separately from the claim by the claimants against the defendant.

(Rule 3.1(2)(e) and (j) deal respectively with the court's power to order that part of proceedings be dealt with as separate proceedings and to decide the order in which issues are to be tried).

(2) The matters which the court may consider include –

(a) the connection between the additional claim and the claim made by the claimants against the defendant;

(b) whether the additional claimant is seeking substantially the same remedy which some other party is claiming from them; and

(c) whether the additional claimant wants the court to decide any question connected with the subject matter of the proceedings –

(i) not only between existing parties but also between existing parties and a person not already a party; or

(ii) against an existing party not only in a capacity in which they are already a party but also in some further capacity."

31. However, although all those matters appear within the Civil Procedure Rules, the CPR do have to be seen in the context of, and have to accord with, any particular statutory provisions which may themselves deal specifically with particular types of proceedings.

32. I bear in mind that the Civil Procedure Rules are made under the Civil Procedure Act 1997, and are specifically to deal with the practice and procedure of the courts. As I said, the claimants have included claims in their claim form and particulars of claim under the Equality Act 2010, and in particular Part 7 of the Equality Act 2010 which deals with claims relating to associations.

33. As I will come to, the County Court has exclusive jurisdiction with regards to such matters. The claimants have also included claims for breach of confidence. I accept at least for the purposes of this judgment, as it is not in any way determinative of my various conclusions, that such claims can only be brought in the High Court as they do not fall all within any category of County Court jurisdiction; see *Cleary v Marston (Holdings) Ltd.* [2021] EWHC 3809 (QB) at paragraph 24, a decision that is binding on me whatever might subsequently be determined at a higher judicial level.

34. As part of case management at this costs case management conference, two sets of matters have been raised before me. The first – which was raised by me as no application regarding it had been made formally by any party although, subject to one point, all parties have moved towards an acceptance they have to deal with it – is that the County Court has exclusive jurisdiction in relation to Equality Act 2010 claims of a nature made in this claim. Part 9 of the Equality Act 2010 provides in various of its sections as follows:

“113 Proceedings

(1) Proceedings relating to a contravention of this Act must be brought in accordance with this Part.

(2) Subsection (1) does not apply to proceedings under Part 1 of the Equality Act 2006.

(3) Subsection (1) does not prevent—

(a) a claim for judicial review;

(b) proceedings under the Immigration Acts;

(c) proceedings under the Special Immigration Appeals Commission Act 1997;

(d) in Scotland, an application to the supervisory jurisdiction of the Court of Session.

(4) This section is subject to any express provision of this Act conferring jurisdiction on a court or tribunal.

(5) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.

(6) Chapters 2 and 3 do not apply to proceedings relating to an equality clause or rule except in so far as Chapter 4 provides for that.

(7) This section does not apply to—

(a) proceedings for an offence under this Act;

(b) proceedings relating to a penalty under Part 12 (disabled persons: Transport).

114 Jurisdiction

(1) The county court or, in Scotland, the sheriff has jurisdiction to determine a claim relating to—

(a) a contravention of Part 3 (services and public functions);

(b) a contravention of Part 4 (premises);

(c) a contravention of Part 6 (education);

(d) a contravention of Part 7 (associations);

(e) a contravention of section 108, 111 or 112 that relates to Part 3, 4, 6 or 7.

(2) Subsection (1)(a) does not apply to a claim within section 115.

(3) Subsection (1)(c) does not apply to a claim within section 116.

(4) Subsection (1)(d) does not apply to a contravention of section 106.

(5) For the purposes of proceedings on a claim within subsection (1)(a)—

(a) a decision in proceedings on a claim mentioned in section 115(1) that an act is a contravention of Part 3 is binding;

(b) it does not matter whether the act occurs outside the United Kingdom.

(6) The county court or sheriff—

(a) must not grant an interim injunction or interdict unless satisfied that no criminal matter would be prejudiced by doing so;

(b) must grant an application to stay or sist proceedings under subsection (1) on grounds of prejudice to a criminal matter unless satisfied the matter will not be prejudiced.

(7) In proceedings in England and Wales on a claim within subsection (1), the power under section 63(1) of the County Courts Act 1984 (appointment of assessors) must be exercised unless the judge is satisfied that there are good reasons for not doing so.

(8) In proceedings in Scotland on a claim within subsection (1), the power under rule 44.3 of Schedule 1 to the Sheriff Court (Scotland) Act 1907 (appointment of assessors) must be exercised unless the sheriff is satisfied that there are good reasons for not doing so.

(9) The remuneration of an assessor appointed by virtue of subsection (8) is to be at a rate determined by the Lord President of the Court of Session."

Section 118 entitled "Time limits" provides:

"(1) Subject to section 140AA proceedings on a claim within section 114 may not be brought after the end of—

(a) the period of 6 months starting with the date of the act to which the claim relates, or

(b) such other period as the county court or sheriff thinks just and equitable.

(2) If subsection (3) ... applies, subsection (1)(a) has effect as if for '6 months' there were substituted '9 months'.

(3) This subsection applies if—

(a) the claim relates to the act of a qualifying institution, and

(b) a complaint relating to the act is referred under the student complaints scheme before the end of the period of 6 months starting with the date of the act.

(4) ...

(5) If it has been decided under the immigration provisions that the act of an immigration authority in taking a relevant decision is a contravention of Part 3 (services and public functions), subsection (1) has effect as if for paragraph (a) there were substituted—

'(a) the period of 6 months starting with the day after the expiry of the period during which, as a result of section 114(2), proceedings could not be brought in reliance on section 114(1)(a);'.

(6) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(7) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

(8) In this section—

'immigration authority', 'immigration provisions' and 'relevant decision' each have the meaning given in section 115;

'qualifying institution' has the meaning given in section 11 of the Higher Education Act 2004, and includes an institution which is treated as continuing to be a qualifying institution for the purposes of Part 2 of that Act (see section 20A(2) of that Act);

'the student complaints scheme' means a scheme for the review of qualifying complaints (within the meaning of section 12 of that Act) that is provided by the designated operator (within the meaning of section 13(5)(b) of that Act).

119 Remedies

(1) This section applies if the county court or the sheriff finds that there has been a contravention of a provision referred to in section 114(1).

(2) The county court has power to grant any remedy which could be granted by the High Court—

(a) in proceedings in tort;

(b) on a claim for judicial review.

(3) The sheriff has power to make any order which could be made by the Court of Session—

(a) in proceedings for reparation;

(b) on a petition for judicial review.

(4) An award of damages may include compensation for injured feelings (whether or not it includes compensation on any other basis).

(5) Subsection (6) applies if the county court or sheriff—

(a) finds that a contravention of a provision referred to in section 114(1) is established by virtue of section 19, but

(b) is satisfied that the provision, criterion or practice was not applied with the intention of discriminating against the claimants or pursuer.

(6) The county court or sheriff must not make an award of damages unless it first considers whether to make any other disposal.

(7) The county court or sheriff must not grant a remedy other than an award of damages or the making of a declaration unless satisfied that no criminal matter would be prejudiced by doing so."

35. I note that section 113 provides that, "Proceedings relating to a contravention of [the 2010] Act must be brought in accordance with 'this Part'", which is generally Part 9 of the Equality Act 2010 in which the other sections which I have referred to appear.

36. I note that section is 114 of the Equality Act 2010 refers in its subsection (7) to a requirement "unless the relevant judge decides that there are good reasons" for the County Court to exercise its particular statutory power in section 63(1) of the County Courts Act 1984 to appoint an assessor, and that the Equality Act Practice Direction provides that the court will exercise its powers under Civil Procedure Rule 35.15 accordingly. It is common ground between the parties that the High Court can appoint assessors, the relevant power being in section 70 of the Senior Courts Act 1981 but that that power is not mentioned in the Equality Act 2010.

37. As I have said, and is it common ground, that the Equality Act 2010 claim sought to be brought in this litigation by the claimants are with regards to alleged contraventions of Part 7 of the Equality Act 2010. Accordingly, they fall within section 114(1)(d) and the provision that it is the County Court that has jurisdiction to determine the claim relating to such alleged contraventions.

38. It therefore seemed to me, when preparing for this costs case management conference, that the question arose as to what, if anything, I should do by reason of the fact that a combination of section 113 and section 114 provided that it was the County Court that had jurisdiction to determine this claim, and that it was the County Court where proceedings must be brought in relation to the Equality Act 2010, but where that claim had actually been brought in the High Court.

39. In those circumstances, I raised the question as to whether I could do anything in relation to the Equality Act 2010 claim while it remained in the High Court or whether I must strike it out or transfer it under section 40(1) of the County Courts Act 1984 on the basis that an enactment i.e. the Equality Act 2010, required the claim to be brought and determined by the County Court.

40. That resulted in Ms. Proops, for the defendant, contending that I must transfer the Equality Act 2010 claim to the County Court and leave the remainder of the claims in the High Court. Mr. Dean, for the third parties, was somewhat more ambivalent as he, for his clients, wishes to keep all the matters together and he could see potential reason, if that was to be achieved, for the entirety of the claim to be transferred to the County Court. However, he did not oppose Ms. Proops and her contentions but merely suggested that the court should consider the possibility of other solutions which would

lead to a trial of all matters, or at least as many matters as possible, on one occasion. Mr. Turner, however, for the claimants, said that there were a number of solutions which were available. He submitted that it would be preferable for me to adopt one or more of them rather than my simply transferring the Equality Act claim alone to the County Court for a different judge sitting in the County Court to deal with. Ms. Proops disputed Mr. Turner's contentions both as to matters of jurisdiction and discretion.

41. Here and elsewhere I have considered all the material advanced in counsel's various submissions advanced both in written skeleton arguments and orally. I deal with them shortly; that is as a result of the timing within which this claim needs to be progressed. If counsel feel that I have not dealt with any particular point fully or expressly then they can ask that I do so further as part of the process of seeking approval of a transcript of this judgment.[1]

42. In considering these aspects I note that there is something of a clear procedural difficulty and conundrum here. At first sight, first of all, the breach of confidence claim had to be issued and brought in the High Court: see the *Cleary* decision, simply because the County Court has no original jurisdiction to deal with it. On the other hand, the Equality Act 2010 claims have to be brought in the County Court. That is precisely what section 113 and then section 114 of the Equality Act 2010 says. It is at least common ground between the parties that as section 114(1) clearly states it is the County Court which "has jurisdiction to determine [such] a claim".

[1] No such request was made.

43. However, also at first sight, it is obviously at least potentially desirable for all of the claimants' claims to be determined together and at once and with the Part 20 claim. It is clear, at first sight, that the factual issues in them overlap, they will involve the same witnesses and go over the same ground and that many of the legal issues overlap. That did leave Ms. Proops, for the defendant, to say that the Equality Act and breach of confidence issues are minor and that this claim and Part 20 claim are all really about the data protection issues and aspects. She indeed asserted that Mr. Turner, for the claimants, had effectively intimated that he would not seek to press those first two sets of claims. Mr. Turner, however, clarified his position and stated that he disputed that. He stated that if his clients lost the data protection claim in the High Court they would still seek to fight the Equality Act claims in the County Court and vice versa even though he accepted that some findings in one trial might be binding in the other court in relation to the other claim. He was less emphatic with regards to his breach of confidence claim but intimated that he might still wish to advance it, even if he failed in the data protection claim and the Equality Act claims; although if he did fail in the Data Protection Act claim then, in many situations, depending on the reason for his failure, he might lose in relation to the breach of confidence claim. At some points, though, Mr. Turner did seem to adopt a position that he might be prepared to sacrifice the breach of confidence claim if, in return, all issues could be determined at once by the County Court.

44. I do recall that I pointed out to the parties that the Equality Act Claims Practice Direction required there to be notification to the EHRC of the case and I directed that the claimants effect such notification. Mr. Turner tells me that that has occurred and that the EHRC has not sought to take any resultant steps and I accept that as being the position.

45. As I said, I raised the question of the jurisdiction of the High Court to deal with Equality Act claims at this CCMC as I felt that it potentially impacted on my jurisdiction and what it was right for me, as a Master sitting in the High Court, to deal with. Mr. Turner's first submission was that the defendant and, insofar as they seek to do so, the third parties, cannot actually take any point with regards to jurisdiction, although his secondary submission was that, if the point can be taken or should be dealt with, various solutions are available.

46. In relation to this first aspect and his contention that the defendants and potentially the third parties cannot actually take the jurisdictional points at all Mr. Turner relied on Civil Procedure Rule Part 11 which provides:

"Procedure for disputing the court's jurisdiction

11(1) A defendant who wishes to –

(a) dispute the court's jurisdiction to try the claim; or

(b) argue that the court should not exercise its jurisdiction

may apply to the court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have.

(2) A defendant who wishes to make such an application must first file an acknowledgment of service in accordance with Part 10.

(3) A defendant who files an acknowledgment of service does not, by doing so, lose any right that he may have to dispute the court's jurisdiction.

(4) An application under this rule must –

(a) be made within 14 days after filing an acknowledgment of service; and

(b) be supported by evidence.

(5) If the defendant –

(a) files an acknowledgment of service; and

(b) does not make such an application within the period specified in paragraph (4),

he is to be treated as having accepted that the court has jurisdiction to try the claim.

(6) An order containing a declaration that the court has no jurisdiction or will not exercise its jurisdiction may also make further provision including –

(a) setting aside the claim form;

(b) setting aside service of the claim form;

(c) discharging any order made before the claim was commenced or before the claim form was served; and

(d) staying the proceedings.

(7) If on an application under this rule the court does not make a declaration –

(a) the acknowledgment of service shall cease to have effect;

(b) the defendant may file a further acknowledgment of service within 14 days or such other period as the court may direct; and

(c) the court shall give directions as to the filing and service of the defence in a claim under Part 7 or the filing of evidence in a claim under Part 8 in the event that a further acknowledgment of service is filed.

(8) If the defendant files a further acknowledgment of service in accordance with paragraph (7)(b) he shall be treated as having accepted that the court has jurisdiction to try the claim.

(9) If a defendant makes an application under this rule, he must file and serve his written evidence in support with the application notice, but he need not before the hearing of the application file –

(a) in a Part 7 claim, a defence; or

(b) in a Part 8 claim, any other written evidence.

(10) [[Omitted]]"

47. Mr. Turner contended that this is a situation of a potential dispute with regards to the court's jurisdiction to try the claim falling within CPR 11(1)(a). He submits that the rule provides that if a defendant wishes to take a point with regards to jurisdiction then the rule provides that they must first file an acknowledgment of service and then, within 14

days, issue an application for a declaration that the court lacks jurisdiction to take the claim and if they do not do so then under rule 11(5) they are to be treated as having accepted that the court has jurisdiction.

48. Mr. Turner then referred me, effectively at my own instigation, to the Court of Appeal's decision in *Hoddinott v Persimmon Homes* [2008] 1 WLR 806 and, first, to its paragraph 23 in which I note, at first sight, it appears to say that CPR Part 11 governs any situation where there is a challenge to the court having power or authority to try a claim. The judgment states:

> "23. But in CPR r 11(1) the word does not denote territorial jurisdiction. Here it is a reference to the courts power or authority to try a claim. There may be a number of reasons why it is said that a court has no jurisdiction to try a claim (CPR r 11(1)(a)) or that the court should not exercise its jurisdiction to try a claim: CPR r 11(1)(b). Even if Mr Exall is right in submitting that the court has jurisdiction to try a claim where the claim form has not been served in time, it is undoubtedly open to a defendant to argue that the court should not exercise its jurisdiction to do so in such circumstances. In our judgment, CPR r 11(1)(b) is engaged in such a case. It is no answer to say that service of a claim form out of time does not of itself deprive the court of its jurisdiction, and that it is no more than a breach of a rule of procedure, namely CPR r 7.5(2). It is the breach of this rule which provides the basis for the argument by the defendant that the court should not exercise its jurisdiction to try the claim.
>
> 24. We would, therefore, hold that CPR r 11 is engaged in the present context. This accords with what was said by Tugendhat J in *Mason v First Leisure Corpn plc* [2003] EWHC 1814 (QB) at [11], Judge Havelock-Allan QC in *Burns-Anderson Independent Network plc v Wheeler* [2005] 1 Lloyds Rep 580, para 45 and *Uphill v BRB (Residuary) Ltd* [2005] 1 WLR 2070, para 34 (although in this last case, it was common ground that CPR r 11 was engaged).
>
> *Did the application to set aside the order extending time for service render an application under CPR r 11(1) unnecessary*?
>
> 25 Mr Exall seeks to uphold the reasoning of the district judge. The question is whether, in a case where an application to set aside the order extending time for service has already been made, a defendant is to be treated as having accepted that the court should exercise its jurisdiction to try the claim, unless he also makes an application under CPR r 11(1) within 14 days after ling an acknowledgment of service. There is force in the observation made by the district judge, at para 7(a), that it is not the intention of the Civil Procedure Rules to insist upon a

succession of applications to be made seeking the same relief ... The issue is the same and the court should not be burdened with duplicitous or repetitious applications whose purpose is identical.

26 We doubt whether the Rule Committee addressed the problem that has arisen in this case. But in our view, the interpretation adopted by the district judge was not open to him. Subject to the point discussed, at para 28 below, the language of CPR r 11 is clear. Paragraph (1) permits a defendant to apply to the court for an order declaring that the court has no jurisdiction to try the claim or that the jurisdiction should not be exercised. Paragraph (2) provides that a defendant who wishes to make such an application 'must first *file* an acknowledgment of service in accordance with Part 10' (emphasis added). Paragraph (4) provides that an application under CPR r 11 must be made 'within 14 days *after* filing an acknowledgement of service' (again, emphasis added). Paragraph (5) provides that if the defendant files an acknowledgement of service and does not make an
application within the period specified in paragraph (4), 'he is to be treated as having accepted that the court has jurisdiction.'

27 In our judgment, the meaning of paragraph (5) is clear and unqualified. If the conditions stated in sub-paragraphs (a) and (b) are satisfied, then the defendant is treated as having accepted that the court has jurisdiction to try the claim. The conditions include that the defendant does not make an application for an order pursuant to CPR r 11(1) within 14 days after ling an acknowledgment of service. An application to set aside an order extending the time for service made before the filing of an acknowledgement of service is not an application under CPR r 11(1) nor is it an application made within 14 days after the ling of the acknowledgment of service. The district judge (rightly) did not hold that the application to set aside the order extending time for service was an application under CPR r 11(1). Rather, he said that the earlier application to set aside the order rendered it unnecessary to make an application under CPR r 11(1). But in our judgment, there is no warrant for holding that, if an application is made before the filing of an acknowledgment of service to set aside an order extending the time for service, this has the effect of disapplying the requirement for an application under CPR r 11(1). There is no such express disapplication, nor does one arise by necessary implication.

28 In our view, a defendant is fixed with the consequences stated in paragraph (5) if the two stated conditions are satisfied. At first sight, there is an apparent difficulty with the application of this approach to a case (such as the present) where the defendant wishes to argue that the court should not exercise its jurisdiction to try the claim, rather than to dispute the courts jurisdiction to try the claim. The distinction between the two categories of case seems to have been well understood by the draftsman. It is clearly drawn in paragraphs (1) and (6). But paragraph (3) provides that a defendant who files an acknowledgement of service does not, by doing so, lose any right he may have to dispute the courts jurisdiction; and paragraph (5) provides that if the two conditions in (a) and (b) are satisfied, the defendant is treated as having accepted that the court has jurisdiction to try the claim. It may, therefore, be argued (although it was not argued before us) that paragraphs (3) and (5) refer to paragraph (1)(a) but not paragraph (1)(b). We would reject such an argument. CPR r 11 must be read as a whole. It is clear that both paragraphs (2) and (4) are referring to applications made under paragraph (1)(a)

and (1)(b). Further, paragraph (5) provides that if the defendant does not make such an application (ie an application under paragraph (1)(a) or (b)), then the consequences will be as stated. Paragraph (5) cannot mean that, if a defendant does not make an application under paragraph (1)(b), he will be treated as having accepted that the court has jurisdiction to try the claim. It must mean that, if a defendant does not make an application under paragraph (1)(b), he will be treated as having accepted that the court should exercise its jurisdiction to try the claim. In our judgment, the reference to disputing the courts jurisdiction in paragraph (3) and accepting that the court has jurisdiction in paragraph (5) encompasses both limbs of paragraph(1). The reference to the courts jurisdiction is shorthand for both the courts jurisdiction to try the claim and the courts exercise of its jurisdiction to try the claim.

29 It follows that, since both of the conditions stated in paragraph (5) were satisfied in this case, the defendant is treated as having accepted that the court should exercise its jurisdiction to try the claim, notwithstanding the late service of the claim form. The effect of paragraph (5) was that it was to be treated as having abandoned its application to set aside the order extending the time for service. This conclusion is reinforced by the fact that in this case the defendant indicated on the acknowledgement of service that it did not intend to contest jurisdiction and did intend to defend the claim."

49. Mr. Turner contends that paragraphs 24-29 demonstrate that a statutory waiver exists where the CPR Part 11 process is not followed. I note that *Hoddinott* has been followed in a number of cases, most recently in *Pitalia v NHS* [2023] EWCA Civ 657. Ms. Proops submits that CPR Part 11 does not have the effect of allowing the High Court to try a claim where Parliament in the Equality Act 2010 has provided that the County Court has exclusive jurisdiction. Mr. Dean did not really make any submissions in relation to this aspect separate from Ms. Proops.

50. In my judgment, the following is the case: first, CPR Part 11 as interpreted in *Hoddinott* and subsequent cases does give rise to a statutory waiver with regards to all the questions of jurisdiction where a Part 11 application is not made. That has the practical effect that the defendant is barred from raising the point unless the defendant pursues an application for relief from sanctions which the defendant has not done. It seems to me

that this may be particularly relevant in relation to costs which I am not at the present point dealing with.

51. However, it seems to me, secondly, that the court can and should still take the jurisdictional point for the following reasons. It is part of the system of law in England and Wales and the consequent rule of law that the courts are subject to Parliament. It does not seem to me that the High Court can ignore the express requirement of Parliament in section 113 and elsewhere in Part 9 of the Equality Act 2010 that a statutory jurisdiction created by Parliament can only be exercised by the County Court. This is not what might be described as a common law or original or inherent jurisdiction of the High Court. This is a jurisdiction created by Parliament where Parliament has laid down how the jurisdiction is to be exercised and who it is to be exercised by.

52. For the High Court to deal with the case, subject to Mr. Turner's other points which I will deal with in due course, it seems to me would be for the High Court to arrogate to itself a jurisdiction it simply does not have, and that would be wrong. It is not the same situation as the court as a result of a waiver ignoring a point under the CPR which is it for the parties to raise if it is to be raised at all. It is also not the situation of the court ignoring some other procedural point regarding the court's power to try a claim where that is simply a procedural point separate from the claim itself. Here the claim is a Part 7 Equality Act 2010 claim and Parliament has said that those claims are for the County Court alone and laid that down expressly in section 113 and 114 and onwards. I do not see how CPR Part 11, a procedure which exists under the 1997 Civil Procedure Act which provides for rules to be made with regards to practice and procedure of the court, can override such statutory provisions.

53. Further, Parliament has laid down in section 40 of the County Courts Act 1984 what must happen if proceedings are issued in the High Court which are required to be issued in a different court, here, the County Court. It seems to me that the High Court must respect that. Again, I do not see that CPR Part 11 made under the 1997 Act can override those statutory provisions. Further it seems to me that the situation is at least potentially an abuse of process and the court can always deal with an abuse of its own process, even if the parties either decide not to do so or, for one reason or another, are not permitted to do so.

54. Therefore it seems to me that while this is all potentially relevant to costs, the court is not prevented by CPR Part 11 from dealing with this jurisdictional aspect; and indeed that the High Court has a duty, in particular under section 40 of the County Courts Act 1984, to deal with it.

55. I then come to the point itself. As I have said, section 113 and section 114 require the Equality Act proceedings to be brought in the County Court and provide that it is the County Court which has the power to determine those proceedings. Section 40(1) of the County Courts Act 1984 provides that, where an enactment requires proceedings to be brought in the County Court (see section 40(8)), the High Court has power to strike them out if the claimant did or should have known that the County Court had exclusive jurisdiction and, in any event, has a duty either to strike out or to transfer to the County Court.

56. It is common ground that when the Court of Appeal considered this in *Restick v Crickmore* [1994] 1 WLR 420, to which I drew the parties' attention, it was held that section 40(1) imposes a duty on the High Court not to retain the claim but that the High

Court has a discretion, but not a duty, to strike out if the claimant knew or should have known that the court had exclusive jurisdiction: see Stuart-Smith LJ's judgment at page 425H-426D:

"These considerations cannot affect what, in my judgment, is the plain meaning of the section. With all respect to them, the judges' construction ignores the word 'or' in combination with the word 'shall' when applied at the end of the introductory words of the subsection. Once the conditions set out in the opening words of section 40(1) are fulfilled, the court is required to do one of two things: to transfer the proceedings to the county court or strike them out. It plainly has a choice between the two courses of action. For my part, I cannot see that the use of the word 'shall', positioned where it is, requires the court to adopt one course rather than the other, simply because the necessary precondition for exercising choice *(b)* is also fulfilled. What the court cannot do is retain the action in the High Court. In this respect the discretion is different from that in subsection (2) where the court has a discretion whether to retain or transfer the action. In my judgment, the meaning of the section is plain and not ambiguous. The court is required to make a choice between the two alternatives, but it can only strike out if the additional condition is satisfied, namely, that the person bringing the proceedings knew, or ought to have known, of the requirement. But otherwise the choice or discretion is unfettered.

To construe the section in the sense contended by the defendants would, in my view, require different language. For example, after the opening condition, 'the court may order a transfer to the county court, but if satisfied that the person bringing the proceedings knew or ought to have known of that requirement, shall order that they be struck out'; or, alternatively, 'a court shall strike out the proceedings if it is satisfied that the person knew or ought to have known of the requirement, otherwise it shall transfer to the county court."

57. It was in fact common ground between counsel that in this case it would not be appropriate to strike out but rather, in principle, to transfer to the County Court. I have considered what was said in *Restick v Crickmore* generally and including at page 428D-G:

"The construction contended for by the defendants could give rise to very great injustice. If, for example, an action falling within the section is started well within the three-year period and is nearly ready for trial, by which time three years have passed from the accident, the defendant could then apply to strike out. If the defendants are right, this court has no alternative but to accede to the application. Such an unjust result is patently absurd.

> It may be asked: In what circumstances should the court exercise the power to strike out? I would be reluctant to attempt to lay down any guidelines which might be thought to fetter the undoubted discretion of the judge. Where the action should plainly have been started in the county court, and the failure to do so was not due to a bona fide mistake, but can be seen as an attempt to harass a defendant, deliberately run up unnecessary costs, be taken in defiance of a warning of the defendants as to the proper venue or where a party, or more likely his solicitor, persistently starts actions in the wrong court, it may well be desirable for the court to apply the more draconian order of striking out. These are merely examples and are not intended to be an exhaustive list. It may also be, in a particularly blatant case where the value of the plaintiffs claim is so obviously of a very low order, the action should be struck out if there are no extenuating circumstances.
>
> Since none of the judges in these cases considered that they had any discretion to transfer, it is necessary for this court to exercise the discretion. In all the cases I am satisfied that the two conditions in section 40(1) are satisfied."

I agree with counsel that it would be transfer and not strike out that would be appropriate.

58. Notwithstanding that, Mr. Turner submitted that the court should adopt one of a number of procedural mechanisms to enable me to at least case manage the Equality Act 2010 claim at this point. These were as follows: first, that I should retain the Equality Act 2010 claim in the High Court for case management. Here Mr. Turner referred to section 114(1) of the Equality Act and said that it only requires the County Court "to determine" the case and that that relates only to a final determination and that it would be permissible for the High Court to case manage the case in relation to pre-trial steps.

59. Ms. Proops submitted that that construction was plainly wrong and that the High Court is required to effect transfer to the County Court now; she relying on the wording of section 114, the scheme of Part 9 of the Equality Act, and *Restick* and other cases to which I will refer below. Ms. Proops said that this type of situation of different courts or tribunals having separate exclusive jurisdictions in relation to claims arising from the same facts is something of a common situation, pointing in particular to exclusive

jurisdictions which may exist in the County Court and tribunals with regard to employment matters, although the position can very well occur elsewhere, such as in relation to the law of landlord and tenant. I do note that has led to some concerns within rule makers as to whether it may be appropriate to provide that the same judge can sit in different jurisdictions at the same time. Those matters are for the rule makers; it does not seem to me that such considerations are relevant to the decisions I have to make in this judgment.

60. Secondly, Mr. Turner submitted that a solution would be for me to transfer the Equality Act 2010 claims to the County Court and then constitute myself as a Judge of the County Court and continue to manage those aspects of the claim. Mr. Turner pointed out that a High Court Master is "a Judge of the County Court", see section 5(2)(l)(ii) of the County Courts Act 1984, as is a High Court Judge, see section 5(2)(h), or a judge sitting as a Deputy Judge of the High Court under section 9 of the Senior Courts Act 1981, see section 5(2)(i) of the County Courts Act. He pointed out there were many cases including appeals where senior judges, in order to avoid jurisdiction problems, have determined that they can sit as a Judge of the County Court as well as a Judge of the High Court. I also note in this context that I, personally, am not only a Master of the King's Bench Division of the High Court but also hold an appointment as a County Court Recorder having civil jurisdiction within the South Eastern Circuit. Ms. Proops submits that that is neither here nor there; I should just transfer to the County Court and leave to it the County Court to deal with the Equality Act 2010 matter.

61. There was before me, eventually, some discussion as to which would be the appropriate County Court hearing centre in circumstances where there is now only a single County

Court with different hearing centres. I had assumed that the appropriate County Court hearing centre would be Central London, particularly as it has significant expertise in discrimination matters. Mr. Turner eventually suggested that an appropriate County Court would be one in the North West such as Liverpool or Manchester as some parties are based there and that would have the advantage of the matter being transferred to a hearing centre which would also be a significant High Court District Registry where the same judges often sit in both the County Court or the High Court.

62. Ms. Proops, and I think also, in relation to this aspect, Mr. Dean, objected to a transfer away from London.

63. I have borne in mind, in particular, that this possibility was raised at a very late stage; and that, on a quick look simply at the list of claimants, they appear to be scattered around this country, and indeed elsewhere. It seems to me that the County Court at Central London would be the obvious choice for the hearing centre; and, of course, a judge sitting there could always transfer to another County Court hearing centre. I do bear in mind that there is no application as such before me to transfer the entirety of this claim, including the High Court aspects, to a hearing centre and District Registry outside London. It seems to me that for a transfer of that nature to take place would require a consideration of such matters as the location of parties and relevant witnesses where I simply do not have the relevant material before me.

64. In view of the various complexities and difficulties I sought to carry out informal consultations with various other relevant judges who have relevant senior roles in these contexts, and as I have informed the parties. These informal consultations were simply part of the ordinary course of the judiciary co-operating with each other as part of the

civil court system seeking to achieve the overriding objective. They are voluntary processes where the other judges have their own commitments, and it is entirely within their own discretions as to whether or not they decide to make or to volunteer anything at all in terms of assistance or directions at this stage (or at all). Very importantly, they may well take the view that without a full opportunity to fully inform themselves of all the facts and circumstances (which was not possible in this case) their giving any assistance or making direction may simply be premature and inappropriate. I also make clear that this judgment is mine alone, and that I gave the parties a full opportunity to make submissions regarding what had been said to me by those members of the judiciary.

65. I sought to consult with the Designated Civil Judge for Central London County Court being His Honour Judge Dight KC. While this consultation was very limited, as it had to be in the circumstances, he intimated to me, very understandably, that his first thought was that the Equality Act claim was an appropriate matter for him (as Designated Civil Judge and a specialist in the Equality area) to deal with, and he was not (at least at this point) prepared to simply sanction me to deal with it, at least without his having had first an opportunity to carry out a fully informed consideration of the matter and which was not practical in the circumstances.

66. I further consulted with Soole J, as the Judge in charge of the King's Bench Division Lists, and, again very understandably, he was not prepared to take any step without there being first full consideration of the matter by myself and then, presumably, further consideration by him on a fully informed basis.

67. I further consulted with Nicklin, J as the Judge in charge of the Media and Communications List, where his first thought was to see some possible advantage in having the same judge try all matters, possibly by sitting in both the County Court and the High Court, but, again very understandably, he could and did not express any concluded view and felt, like those other members of the judiciary, that he did not have the material before him to give the matter a full and informed consideration which he, like them, regarded as being requisite.

68. Thirdly, Mr. Turner further submitted as part of this that the same judge should try all aspects of the case sitting as both Judge of the High Court and the County Court, being a course which had been advanced and is still advanced in the particulars of claim themselves. That could be done by a judge sitting in the County Court who is authorised to sit as a High Court Judge under section 9(1) of the Senior Courts Act 1981 such as HHJ Dight KC, or it could be a High Court Judge (or a Deputy High Court Judge) who is sitting as a County Court Judge.

69. In relation to this aspect, the parties took me to the decision of *Sube v News Group Newspapers* [2018] EWHC 1234 (QB) where something of a similar jurisdictional difficulty had arisen where there were combined defamation and Equality Act 2010 claims, the High Court having exclusive jurisdiction under the rules and relevant statute to deal with defamation claims, and the County Court having exclusive jurisdiction, as I already said, to deal with Equality Act 2010 claims. Warby J said this:

> "80. It is clear that this Court has no jurisdiction over such claims. An EA claim must be brought in accordance with Part 9: s 113. Section 114(1) of the EA provides that 'A county court … has jurisdiction to determine a claim relating to – (a) a contravention of Part 3 (services and public functions)'. It is common ground that this is an exclusive jurisdiction; any claim for discrimination contrary to the EA other than one relating to

employment must be brought in the County Court: see *David v Hosany* [2016] EWHC 3797 (QB) [9.2], *Hamnett v Essex County Council* [2017] EWCA Civ 6 [2017] 1 WLR 1155. Defamation claims, by contrast, can only be brought in the High Court, unless the parties agree in writing to confer jurisdiction on the County Court: County Courts Act 1984 ss 15(2)(c) and 18. Harassment and data protection claims can in principle be pursued in either venue, subject to the rules of allocation contained in PD7A.

81. No doubt, in a case which raised viable claims of discrimination in conjunction with other causes of action, the Court would exercise its powers so as to avoid concurrent trials of overlapping issues in different courts. It might do so by transferring the entire litigation to the County Court, as contemplated by HHJ Moloney QC in *David v Hosany*. The alternative advocated by Mr Engelman is for a Judge of this Court to hear all the claims together, sitting concurrently as the County Court and the High Court. Mr Engelman points to s 5(2)(h) and (i) of the County Courts Act 1984 (as substituted by the Crime and Courts Act 2013 Sch 9 Part 1 para 1), which provides that the judges of the County Court include a puisne judge of the High Court and a deputy judge of the High Court. This is an ingenious suggestion, though it is instinctively uncomfortable. There is however no need to explore it further, as I have reached the same conclusion as HHJ Moloney in *David v Hosany*: the claims should be struck out. In addition, the amendment to the claim form that introduced this claim must be disallowed."

70. Ms. Proops also took me to the decision in *Hamnett v Essex County Council* [2017] EWCA Civ 6. That considered a situation where, in relation to a particular claim, in relation to an Equality Act 2010 aspect, it was said to the County Court had exclusive jurisdiction, but where the claim was also asserted to attract a provision under the Road Traffic Act 1948 which provided, in effect, that the High Court had exclusive jurisdiction. The Court of Appeal resolved that difficulty by concluding that the Equality Act had effected an implied repeal of the Road Traffic Act provision. In his judgment, Gross LJ said this:

"27. In the present case, as I have sought to demonstrate, the Appellant, insofar as she alleges that the ETROs contravene s.29 of the 2010 Act, faces irreconcilable provisions as to jurisdiction: the RTRA 1984 providing for the High Court and the 2010 Act providing for the County Court. Those provisions cannot be made to stand together. Nor can it be said that the RTRA 1984 provisions were 'special' and the 2010 Act provisions 'general' in nature. They are either both 'general' or, if anything, the provisions of the 2010 Act are more 'special' in nature, dealing as they specifically do with discrimination. In my judgment, therefore, the High Court jurisdiction provided for in Schedule 9 to the RTRA 1984 must, to the extent necessary, be regarded as

impliedly repealed by the provision for County Court jurisdiction contained in Part 9 of the 2010 Act.

28. Spelling this out: the High Court did not have jurisdiction to entertain the Appellant's challenge to the validity of the ETROs on the ground of alleged contravention of s.29 of the 2010 Act because of the effect of Part 9 of that Act. The Appellant ought instead to have proceeded in the County Court, utilising the custom-made procedure found in the 2010 Act for doing so. Para. 37 of Schedule 9 to the 1984 Act must be treated as impliedly repealed, insofar (and only to such extent) as it prohibits recourse to the County Court in respect of such proceedings.

29. The practical attractions of this solution are readily apparent. As is not in dispute, questions as to the public sector equality duty (s.149 of the 2010 Act) – a duty of process, as described to us – remain in the High Court. If, however, separate questions arise as to an alleged contravention of s.29 – going to substantive matters – then they fall to be resolved in the County Court, which is well-equipped to resolve such factual disputes as may well be encountered, while at the same time enjoying the power (pursuant to s.119(2)(b) of the 2010 Act) to grant any remedy which could be granted by the High Court on a clam for judicial review.

30. I would therefore uphold the decision of the Judge (if for the somewhat expanded reasons set out above) and dismiss the appeal on the Jurisdiction Issue. My conclusion is that the County Court not the High Court had jurisdiction in this case to consider the challenge to the validity of the ETROs, insofar as the Appellant sought to rely upon an alleged contravention of s.29 of the 2010 Act.

31. I add this. I am conscious that the question of implied repeal was only lightly canvassed in the hearing before us. In other circumstances, it might well have been appropriate to have invited further submissions from counsel. However, in the light of my conclusion on Issue II (below), I am not inclined to do so in this case."

71. Although those paragraphs concerned an implied repeal where two statutes provided for a different court to have exclusive jurisdiction in relation to the same subject matter, I do note that, as recorded by Warby J in *Sube*, that decision stressed the exclusive jurisdiction of the County Court in relation to the Equality Act claims.

72. Ms. Proops submitted that I should simply not be managing the case and that it is for the County Court to consider all these matters in due course following a transfer, including such questions as to whether or not to stay the Equality Act 2010 claims pending the resolution of what remained in the High Court.

73. Fourthly, Mr. Turner proposed, following my drawing attention to the decision in *National Westminster Bank v King* [2008] EWHC 280 (Ch), that I could transfer the Equality Act claim to the County Court and then forthwith, following that, transfer it back to the High Court under section 41 of the County Courts Act 1984 on the basis that that would operate to confer jurisdiction on the High Court. The *NWB v King* case was actually a situation where the court only had argument on one side but the High Court judge had to deal with the question of whether the High Court could transfer to the County Court, under its discretionary powers contained in section 40(2) of the County Courts Act 1984, a case with a financial value which was outside the County Court jurisdictional limits imposed by the County Courts Act 1984 and statutory regulations made under it.

74. David Richards J (as he then was) concluded that the High Court could and that the transfer would confer jurisdiction on the County Court to determine the claim once it was effected; see paragraphs 23-26 of that decision:

> "23. The concern of the district judge in this case can readily be appreciated. The limits on a county court's jurisdiction are set by or pursuant to statute. Can an order of the High Court, exercising a statutory power of transfer, confer jurisdiction which the county court does not otherwise possess? It is arguable that the power of transfer must be subject to the implicit limitation that the transferee court has jurisdiction to hear the case.
>
> 24. The only express qualification to the High Court's power of transfer in section 40(2) are the opening words, to which I will return. The language is otherwise clear and unambiguous: 'The High Court may order the transfer of *any proceedings before it* to a county court'. If given its ordinary meaning, the provision is not constrained by the limits which otherwise exist on a county court's jurisdiction.
>
> 25. As a matter of legislative policy, there is every reason to consider that the High Court should have an unlimited power of transfer. If, on consideration of the circumstances of an individual case, the High Court decides that it is suitable for determination by a county court, it is in keeping with the modern policy of assigning cases to the appropriate tier in the Court system that it should transfer it, irrespective of the county court limit.

26. The legislative history, in my judgment, conclusively establishes that this is the correct approach. Under the County Courts Act 1959 as originally enacted, the High Court's power of transfer was in large part restricted by express provision to cases otherwise within the county courts' jurisdiction: See sections 45, 50, 54 and 63."

And also paragraphs 29-32:

"29. The purpose of Part I of the Courts and Legal Services Act 1990 was to give effect to the recommendations of the Civil Justice Review, as was made clear by the Lord Chancellor in debates on the bill in the House of Lords (Hansard Vol. 514 cols 123-124). Section 2 replaced section 40 of the CCA 1984 with the section in its current form. Section 1 of the 1990 Act conferred a power by order to make provision for the allocation of business between the High Court and county courts. The 1991 Order was made pursuant to section 1 and both the Order and the replacement of section 40 (and other transfer provisions) took effect on 1 July 1991. It would seem in the highest degree unlikely that there was any intention to reduce the High Court's power of transfer, and certainly none can be discerned from the debates on the bill in Parliament.

30. The power of transfer under section 40(2) is expressed to be subject to any provision of a kind mentioned in section 40(8). The only relevant provisions are those of the 1991 Order. As I have already mentioned, article 2(4) is expressed to confer jurisdiction under sections 89 to 92 of the LPA on county courts where the amount arising in respect of the mortgage or charge at the commencement of the proceedings does not exceed £30,000. To some extent it duplicates section 23(c) of the CCA 1984, as well as sections 90(3) and 91(8) of the LPA. Like many of the 1991 Order's provisions, it was included in exercise of the power under section 1(1)(b) of the 1990 Act to confer jurisdiction on the county courts. It does not qualify the power of transferring proceedings from the High Court.

31. It may be noted that while section 40(10)(b) of the CCA 1984 as originally enacted re-appeared as a new section 38(1), there was no re-enactment of sub-section (10)(a) which provided that where proceedings were transferred to a county court, it should have jurisdiction to hear and determine the proceedings. It is, however, implicit. If the transfer is to be effective, the county court must thereby be given the requisite jurisdiction.

32. In my judgment, therefore, the power of transfer under section 40(2) of the CCA 1984 is not limited to cases which would otherwise be within a county court's jurisdiction. It follows that Master Bragge had power to make the order for transfer in the present case on 24 August 2007 and that as a result the Portsmouth County Court had jurisdiction to hear and determine it."

75. *NatWest v King* was approved by the Court of Appeal in *Wallace v Crossley* [2009] EWCA Civ 896 at paragraph 23, although the approval was only in general terms without the Court of Appeal going further and in a case which was very similar to

NatWest Bank v King insofar as it concerned what the High Court could do in relation to a case where the value exceeded the County Court jurisdictional limits.

76. Ms. Proops submitted that for me to adopt this course would be contrary to and inconsistent with the jurisdiction provisions contained in the Equality Act and would not be permitted under section 41(1) as a result of the limitations on that power contained in section 41(3). In any event, she submitted there were numerous matters relating to discretion which would render such a transfer as being an impermissible exercise of the section 41(1) discretion even if I had jurisdiction effect such a transfer.

77. Fifthly, Mr. Turner fell back on a submission that if I was going to transfer the Equality Act claim to the County Court then I should transfer the entirety of the claim to the County Court; and that either by doing so I would confer jurisdiction on the County Court to deal with the breach of confidence claim or, alternatively, that the claimants would simply abandon it.

78. I have considered all the submissions of the parties, including those which I will come to in due course on the second aspect of potentially splitting issues and trials, but it seems to me to been convenient to express my conclusions as to this Equality Act 2010 aspect first.

79. I found this aspect concerning as at first sight it would seem very desirable, in order to achieve the overriding objective, for all aspects of the case to be managed and tried together. Subject to questions of splitting various issues (to which I will come) it seems to me that would be likely to lead to great savings of time, cost and court resource all in accordance with seeking to achieve the overriding objective. However, I have

concluded that I have no choice but to transfer the Equality Act 2010 claim to the County Court and to leave to the County Court to manage it under the supervision of the Designated Civil Judge, whether or not that Designated Civil Judge becomes the judge who actually manages the Equality Act 2010 claim.

80. My reasons are as follows: first, it is clear that the County Court has exclusive jurisdiction to determine the Equality Act 2010 claim and that the High Court lacks jurisdiction, and that the claim is required to be brought in the County Court. That is simply what sections 113 and 114(1) of the Equality Act say, and is effectively confirmed in both the *Hamnett* and *Sube* decisions.

81. Secondly, in those circumstances the High Court simply cannot retain the claim; see section 40(1), and where it is clear that section 40(8) is in point, and what is said in the *Restick* decision; therefore I must transfer it.

82. Thirdly, I do not see that the High Court can retain the case for case management. I reject Mr. Turner's submission as to the words of section 114 being "to determine a claim" allows the High Court to case manage it prior to its actual final determination for the following reasons.

83. First, it seems to me that on construing section 114 in the relevant context that it is clear that the word "determine" includes all steps to reach a determination.

84. I have applied the usual construction exercise of *Arnold v Britton* and related cases' principles by looking at the words in the context of the statutory scheme and where it seems to me that the main points are as follows: first, the words “to determine” usually includes managing to a determination.

85. Second, section 113 says that the proceedings "must be brought in accordance with this Part." It seems to me that that means that Part 9 of the Equality Act covers the entirety of the process of the proceedings.

86. Third, the entire structure of Part 9 of the Equality Act is based, as far as a claim of this nature is concerned, upon the County Court dealing with it; including the provisions of section 114(7) regarding assessors, section 118(1)(b) regarding the extension of time and section 119 regarding remedies, all of which are actually in point as far as this case is concerned.

87. Fourth, the High Court cannot manage this case in accordance with the provisions of the Equality Act as, first, section 114(7) requires a County Court judge to decide as to whether or not to appoint as assessor under the County Courts Act with specific reference to a particular section of the County Courts Act. That is a decision which takes place before trial and as part of case management. It is not a decision which can be taken by the High Court. Second, section 118 deals with a question of proceedings being brought out of time and of the time period being extended, and specifically provides that it is for the County Court to decide whether or not to grant such an extension. It is true that is often dealt with at trial, but that does not have to be the case. It can be dealt with at an earlier point as a preliminary issue or even as part of general case management. It is for the County Court to do that and it seems to me therefore that that provision can only be operative according to the statute if the matter is actually left within the County Court.

88. Therefore it seems to me that the Equality Act 2010 on its own true construction does not allow for the High Court to case manage the claim.

89. Secondly, neither does section 40(1) of the County Courts Act 1984 as construed in the *Restick* decision allow for the High Court to case manage the Equality Act 2010 claim. That decision states that the High Court cannot retain the Equality Act 2010 claim, it must transfer it.

90. Thirdly, neither does *Sube nor Hamnett* envisage this possibility of the High Court case managing the Equality Act 2010 claim before transferring it for trial.

91. It seems to me I should simply reject that course of case managing prior to an eventual transfer as a matter of jurisdiction; although all of the matters which I have identified above would be factors which would equally well lead me to rejecting the course as a matter of discretion even if I had jurisdiction.

92. The fourth point, I have to deal with is whether I should constitute myself as a County Court Judge for these purposes. I do not see that I can do so or that it would be proper for me to do so. I refuse to do so at least at this point both as a matter of jurisdiction and discretion, in essence, for the following reasons: first, all the above matters I have already dealt with lead me to the conclusion I am required to transfer the case forthwith. It will then be for the County Court to deal with – both administratively and judicially – including in relation to such matters as allocating it a case number and deciding who deals with it particularly at a judicial level.

93. Secondly, as far as that question is concerned, it is for the County Court judiciary and, in particular, the Designated Civil Judge, to decide how it is dealt with at a judicial level and by whom. That is the job of the Designated Civil Judge; and the relevant Designated Civil Judge, HHJ Dight KC, has already indicated that he wishes to look at the case and

consider it and potentially manage it himself. I am not prepared to contradict his informal view, albeit that it is merely an informal provisional view in circumstances where he simply has not had the material before him in order to take a final view. Rather, it seems to me that for me to deal with it would require his consent to be given.

94. Thirdly, I am not sure that I could properly sit as a judge of the County Court without the authority of the President of the King's Bench Division or perhaps of a County Court relevant presiding judge. These are matters of allocation of cases and sitting responsibilities of the judiciary, notwithstanding the general provisions of section 5 of the County Courts Act 1948, and not withstanding that I am a judge of the County Court both as Master and under my alternative judicial Recorder post. A High Court judge may, it seems to me, potentially properly decide these matters for themselves. It does not seem to me that in my particular judicial situation that I should do so.

95. Fourthly, I also lack sufficient knowledge of the appropriate and applicable County Court administrative procedure and practice; and that is very relevant with regards to the question as to how I can appoint an assessor, and particularly an assessor acting under a County Court jurisdiction, if I was to seek to go down the route of dealing with this as a County Court judge. Various administrative steps will be required which I simply do not have and cannot gain the relevant information when sitting, as I am presently doing, in the High Court.

96. I therefore do not think and cannot see that it would be right, even if I could constitute myself as a County Court judge, which I doubt, for me to do so in the circumstances of this case at this particular point within it.

97. That does not, of course, stop the Designated Civil Judge on reflection deciding to, in one way or another, allocating, under whichever was the relevant judicial responsibility, me to be the relevant judge to deal with the case in the County Court. However, for the reasons I have already given, it seems to me that is all a matter for the Designated Civil Judge, or possibly the presiders, and not something which I can or should unilaterally seek to direct that I should conduct.

98. The next point is as to whether, as Mr. Turner seeks, I could make a direction that this matter should be tried by a judge sitting as a judge both of the County Court and of the High Court. It does not seem to me that I either can or even if I could, should, direct that at this point, even though at first sight there are a number of reasons which suggest that it may be very desirable. That is for the following reasons. First, and most importantly, it seems to me it is for the County Court to give such a direction; and I cannot or will not give County Court directions at this point for the reasons I have already set out.

99. Secondly, I note that Warby J was hesitant as to whether or not this would be a proper course in any event, even though it may be that Nicklin J may not share Warby J's doubts. However the question as to whether it was proper for that to be directed would require careful situation, including with regards to matters of allocation of relevant judiciary. From what I have seen at the present I would certainly encourage such consideration, but it is not for me to so direct when it is a matter for the County Court, even though it is possible that I might be able to and decide to make some direction that this is something which should, or might usefully, be considered by the High Court in liaison with the County Court in the future.

100. With regards to the question as to whether I can or should adopt the approach of transferring to the County Court under section 40 and retransferring under section 41, however ingenious a solution it may be, I do not see it as being either within my jurisdiction or, if a discretion does exist, as being a proper exercise of it. That is for the following reasons: firstly, I accept Ms. Proops's submission that to do so would be contrary to section 41(3) of the 1984 Act. I see that course as being prohibited both by section 41(3) itself, but also, and which is material in applying section 41(3), by the provisions of the Equality Act 2010.

101. It is true there is no express prohibition against such transfers in either statute, but it would be surprising if the draftsman of any statute which gave exclusive jurisdiction to one court would have regarded it as necessary to specifically state that a transfer to another court would be prohibited rather than assuming that the conferral of an exclusive jurisdiction would prevent it being evaded by means of a transfer mechanism. The words used in the statutes are to be construed in the context of the relevant statutory scheme, and here Parliament has made clear that the County Court has exclusive jurisdiction, and which is clearly confirmed by both *Sube* and *Hamnett*. It seems to me that it is clear both that the statutes are saying that these Equality Act claims are for the County Court and that the entire scheme assumes that the claim will be both brought in and in any event remain in the County Court. It seems to me that these are provisions of enactments which fall within section 41(3) with the result that I cannot exercise what would otherwise be a section 41(1) jurisdiction.

102. Secondly, with regards to *NatWest v King*, it seems to me that it is distinctly unclear as to how wide its ambit actually is. It would be possible to confine it to questions of

conferring jurisdiction additional to what is provided in the County Court's own jurisdictional limits under the County Court Act 1984 itself or regulations made under it. That would be a limitation consistent with the *King* decision because section 41 of the County Court Act is itself a County Court Act provision, and therefore can be regarded as containing a power which overrules other provisions arising under that particular statute i.e. the County Court Act 1984, and particularly provisions made by regulations which were made under that particular statute.

103. However, even if *King* may extend, as it may well do so, to enabling jurisdiction to be conferred by a transfer made by the High Court under section 40 to the County Court in relation to matters which are not within the County Court's direct statutory jurisdiction but are matters within the common law or quasi common law, or even, perhaps, derived from the Human Rights Act jurisdiction of the High Court, such as breach of confidence, I do not see the reasoning in *King* as being capable of enabling an overriding of a statutory scheme of exclusive jurisdiction in the County Court, which statutory scheme is expressly laid down in the Equality Act 2010 itself.

104. Thirdly, I do accept Ms. Proops's submissions that for me to adopt that course, even if I have jurisdiction to do so, would lead to major problems in applying the statutory Equality Act scheme, as, first, the provision for assessors would effectively have to be modified to replace the County Court Act section referred to in section 114(7) of the Equality Act 2010 with the equivalent Senior Courts Act section. Secondly, the transfer would have to in some way or other extend the provisions of section 118(1)(b) of the Equality Act 2010 to enable the High Court to grant an extension of time.

105. I can see that if I could transfer jurisdiction to the High Court by means of a section 41 of the County Court Act order there are possible arguments available to say that the ability to transfer jurisdiction would carry with it an implied ability to modify these provisions. However, I see all this as placing much more weight on section 41(1) than it can bear, and it seems to me that I do not have jurisdiction to do what Mr Turner proposes. Even if that is wrong, these are all powerful arguments for not exercising any discretion that might exist.

106. Finally, although this is more relevant to discretion than jurisdiction, it seems to me that the statutory scheme involves Parliament having come to the view that it is the County Court that has the appropriate expertise to deal with Equality Act claims. It seems to me that I would need very powerful reasons to transfer to the High Court and remove the claim from that court which Parliament regarded as having the appropriate specialism.

107. For all of those reasons it does not seem to me that I have jurisdiction to go down this transfer course proposed by Mr Turner, but, even if I had it, it seems to me that I should not exercise it.

108. There is then the question raised by Mr. Turner as to whether, if I cannot or should not retain the Equality Act claim in any way within the High Court, I should transfer all the claim, and potentially also the Part 20 claim, to County Court with or without the breach of confidence claim which Mr. Turner is prepared to abandon if necessary.

109. I start off from the situation that these matters are all in the High Court because the claimants chose to issue them in the High Court. It seems to me that I would need reason

to transfer them and to change the position. The position might have been different if the claim had been issued in the County Court without the breach of confidence claim but that is not the situation before me.

110. I have considered the various factors set out in CPR 30.3(2). As far as value is concerned, the claim itself has a High Court level of value, even though that could be described as marginal since the County Court often deals with claims in the region of £200,000. However, the Part 20 claim value is certainly one which in almost all circumstances should be in the High Court rather than the County Court. As far as convenience is concerned that does not seem to be particularly relevant. As far as fairness is concerned, it seems to me that the claim and the Part 20 claim contain matters and issues which are deserving of being dealt with by a judge at High Court judge level, although I do bear in mind that a County Court circuit judge (or Recorder) may well be authorised to sit in the High Court under 9(1) of the Senior Courts Act.

111. Sub-rule (2)(c) deals with the question of the desirability of claims being dealt with by specialist judges and it seems to me that all the relevant issues are potentially within County Court specialisms as County Court judges often deal with data protection claims. It may be that as far as breach of confidence is concerned that Mr. Turner might be prepared to abandon it. It does not seem to me that specialism goes particularly either way except that the County Court, as I already said, is the place for and where there are specialist judges to deal with discrimination claims.

112. Subrule (d) relates to the complexity of the case. It seems to me that this is a complex case raising many different issues and which potentially points to the High Court as being the appropriate jurisdiction.

113. Subrule (e) is the importance to the public. For reasons which I have already given, it seems to me that this matter is of very considerable importance to the public. As I said, it relates to the second largest party in Parliament, being His Majesty's Loyal Opposition. It relates to what is asserted to be a conspiracy within that party and which is a matter of very considerable public importance. It also deals with how that party has dealt with anti-Semitism issues which are matters, it seems to me, of great public interest and potential great public importance. It does not seem to me that any sub-rules (f) to (h) are relevant.

114. I have considered everything together with counsel's submissions but it does not seem to me that there is sufficient here to justify transferring all or, indeed, simply the claim itself, to the County Court. Standing back and looking at the matter, this simply looks like a High Court claim for all the reasons which I have given.

115. It does not seem to me that the factors which do suggest that it would be convenient for the Equality Act claims to be heard at the same time and in the same way as the rest of the claims would justify the court transferring the entirety of the matter to the County Court.

116. This is especially so as, bearing in mind the overriding objective, it seems to me that it may well be that the County Court will direct parallel case management of the Equality Act claim in the County Court and may well make its own direction to the effect that the County Court Equality Act claim should be tried at the same time as the remainder of the claims by the same individual judge sitting in both the County Court and the High Court. I cannot reach any final conclusion with regards to that, but if the overriding objective does point to that outcome then it seems to me that I ought to assume and trust

that the County Court will case manage in that way in accordance with the overriding objective. Of course, if the County Court concludes that the overriding objective does not lead to that outcome then that in itself is a reason for the matters to be split between the two different courts.

117. I appreciate that I could in theory split the claim and the Part 20 claim, and that Mr. Turner contends that the existence of the Part 20 claim is being allowed to influence the proper procedural course of the claim; but, quite apart from the fact that the claimants have chosen to issue these proceedings in the High Court, it seems to me that this is all simply an aspect of the court seeking to achieve the overriding objective where the rules, in particular CPR 20.9, contemplate that there may be both a claim and a Part 20 claim; and the court simply has to consider and apply the overriding objective and provisions of the rules, in particular CPR 30.3(2) factors, to come to its conclusion. I do not see that splitting the claim and the Part 20 claim would be justified or appropriate and, indeed, would be likely to increase expenditure of cost and court resources, and potentially lead to inconsistent results.

118. For all of those reasons, I am simply going to transfer the Equality Act element of the claim to the County Court and leave the rest in the High Court, and so that I will simply manage the High Court aspects.

119. I should make clear though, first, that I will direct that disclosure in the High Court claim can be used in the County Court Equality Act proceedings, subject to any specific submissions which are made to me by counsel. I cannot see at the moment as to how that could not be appropriate.

120. Secondly, I do express my own feeling again that the overriding objective would be best achieved by the High Court and the County Court proceeding to a single trial of all the claims together for the reasons I have already given. However, that is only a feeling and I do bear in mind that Warby J in *Sube* expressed some disquiet about that possibility.

121. I do propose to case manage the High Court claim on the basis that there may well be a combined trial and to list a trial length accordingly. On the other hand, I propose to cost budget without taking account of the Equality Act 2010 claim as it seems to me that the cost of budgeting of the Equality Act 2010 claim will be a matter for the County Court. It will also be for the County Court to decide whether or not to produce parallel mirror directions to limit such matters as duplicating witness statements etc. and whether or not to invite appropriate judicial authorities to seek to have the same judge try both sets of matters. However it is premature for me to deal with that, because I simply do not know what will be the County Court's views as to these various aspects.

122. It will be for the Designated Civil Judge, as I have already said, to decide as who should case manage the County Court claim within the various judicial possibilities. What the parties should of course always do as part of their own duties to seek to achieve the overriding objective, is to liaise with regards to all these matters and to seek appropriate directions. In view of the history and other aspects of the case I would invite the County Court to list an appropriate case management conference or costs case management soon, but in any event it seems to me that I should direct that the file on transfer to the County Court should be placed before HHJ Dight KC together, assuming that one is to be prepared, with a transcript or at least note of my judgment today.

123. I now turn to the second set of disputes, being as to what trial or trials I should direct in relation to the matters which are remaining in the High Court. The claimants say that I should split issues and trials, and direct either (a) that the Part 20 claim be tried first with regards to liability, and then after it there be tried the claim with regards to liability, followed by trial of quantum in relation to whichever has succeeded (i.e. a potential sequence of three trials); or, alternatively, if that is to be rejected, (b) that liability be tried first in the claim and the Part 20 claim, and with a trial of quantum only taking place (if at all) on another occasion (i.e. a potential sequence of two trials).

124. As a result of various matters arising, and points and suggestions from me, the claimants proposed a possible alternative to course (a), being that there should be tried initially as a preliminary issue a factual question who leaked the Report as that would be potentially determinative of the Part 20 claim and have a massive effect of the progress of the claim itself.

125. The defendant and the third party say that whatever directions I make should be for all matters to be tried together at once.

126. The parties have produced differing estimates of trial lengths and costs of these various courses on the assumptions that the effects of dealing with split issues would not result in a termination of the Part 20 claim at a first stage (for example by its being held in the Part 20 claim that it was not the third parties who had leaked the Report) or the claim failing on liability. The claimants' estimates were very different from those of the defendant and the third parties, and especially in relation to the length of a trial of either all matters together or of the Part 20 claim on liability only, although there was some eventual agreement that a trial of all quantum matters would be likely to last three days.

127. Having heard from counsel of the number of potential witnesses in relation to the Part 20 claim alone, and also with regards to a trial simply of an issue as to who leaked the Report, it seems to me that those courses would each involve extensive cross-examination of each of the five individual third parties, and also extensive evidence from numerous other witnesses within the Labour Party. If the claim and the Part 20 claim were to be tried together, there would be significantly more witnesses; and this would be the case, even if there was a first trial confined to issues of liability, as such would involve evidence necessarily being given by the individual claimants themselves, especially in relation to the breach of confidence aspect and whether or not the claimants had a reasonable expectation of confidence.

128. Having considered counsel's submissions and possible trial timetables it seems to me I should adopt, for the purposes of this judgment, the defendant and third parties' estimates of a trial lasting for 12 days if it covered all issues of liability without quantum (with a further 3 days trial for quantum should such be required), of a trial lasting for 14 days if it covered all issues of liability and of quantum, and a total trial estimate of 16 days were the claimants' proposal of there being three separate trials to be adopted.

129. The claimants' position with regards to the Part 20 claim and Mr. Turner's proposal that it be tried first in relation to liability is a somewhat unusual one. I asked Mr. Turner as to how determinations made in such trial of the Part 20 claim on liability, a trial in which the claimants would propose not to take apart, might affect similar questions in relation to the claim; for example, questions of fact not only as to who leaked the Report but why they leaked it and how they had come to be able to leak it.

130. Mr. Turner said that the claimants would accept all determinations of fact and law made in the Part 20 claim as being binding on the claimants, even if the consequence was that the claimants' claim would fail. Mr. Turner said that that was very unlikely, bearing in mind his alternative case that even if there is no vicarious liability the defendant is responsible or actionably responsible for what happened as a result of asserted failures to safeguard data and confidential information. Mr. Turner said that the claimants must simply accept that risk.

131. Mr. Turner made clear that the claimants' concerns and reasons for advocating these steps is primarily due to cost. He referred to the parties' various cost budgets although he made two specific points. Firstly, they are prepared on different estimates of trial length and, if I accept the defendant/third party's trial length estimates, as I do, the claimants' figures, at least, may well be too low.

132. The estimates from the defendants and third parties, when combined with the claimants' existing figures, actually suggested combined totals of what are said to be reasonable and proportionate estimated, that is to say future, costs, of: a three stage set of trials of £4.75 million; a simple split liability and quantum two stage trials of £4.53 million; and of a single combined trial of £4.1 million.

133. I, of course, have not yet engaged in cost budgeting and have not in any way determined as to what figures would be reasonable and proportionate in relation to future costs. The figures given are at first sight distinctly concerning. I note that the claim itself is said to have a value of £150,000-190,000, and, even if the value of the Part 20 claim is some millions, the overall total of the values of the claim and of the Part 20 claim appears to be less than any of the combined costs figures given.

134. Mr. Turner submits that, in any event, I should not allow the existence and need to determine the Part 20 claim to result in a situation of the claimants being unfairly pressurised in relation to their costs and their exposure or potential exposure to the costs of other parties.

135. Mr. Turner further said that the parties' real costs may be much higher than those set out in their budgets as the parties may well to choose to spend on their lawyers amounts which are more than what are objectively reasonable and proportionate within the meaning of the Civil Procedure Rules. I do not see that last point as in any way affecting my ultimate decisions but I do see that particular submission as being fundamentally flawed for the following reasons.

136. It is true that parties very often spend more than is reasonable and proportionate, but that is simply their choice and is of no concern of the court (although, if the court eventually makes an indemnity costs order, proportionality is to be ignored on an assessment).

137. The overriding objective provides that the court is to deal with the case justly and "at proportionate cost". Cost budgeting is designed to assist and achieve that: see in particular CPR 3.17:

> "3.17
>
> (1) When making any case management decision, the court will have regard to any available budgets of the parties and will take into account the costs involved in each procedural step.
>
> (2) Paragraph (1) applies whether or not the court has made a costs management order.
>
> (3) Subject to rule 3.15A, the court —

(a) may not approve costs incurred up to and including the date of any costs management hearing; but

(b) may record its comments on those costs and take those costs into account when considering the reasonableness and proportionality of all budgeted costs.

(4) If an interim application is made but is not included in a budget, the court may, if it considers it reasonable not to have included the application in the budget, treat the costs of such interim application as additional to the approved budgets."

138. Proportionality, of course, involves much more than simply the financial value of a case: see the factors which are said to be particularly relevant to it, set out in CPR 44.3(5) and 44.4(3) although the court is also to have regard to all the circumstances (CPR44.4(1)). Proportionality also does not place a limit on what the court regards as being unavoidable costs: see *West v Stockport* [2019] 1 WLR 6157. I also bear in mind that the form Precedent H requires parties to sign a statement of truth on their cost budgets that they believe that their estimated costs are reasonable and proportionate.

139. In the light of all of this it does not seem to me that it is for the court to case manage on the basis that parties may choose to spend more than is reasonable and proportionate. The court's task under the rules is to manage the case so that it is conducted at proportionate cost. That, as set out in CPR 3.17, is a purpose of cost budgeting itself; and, even more importantly, it is a fundamental part of the overriding objective. It seems to me that I would be potentially subverting both the overriding objective and the rules relating to cost budgeting, if I was in some way or other to manage this case on the assumption that the parties would spend more than was reasonable and proportionate.

140. I therefore reject that particular submission but, in any event, it would not affect the outcome of what I consider it is appropriate to do in this case.

141. Mr. Turner, for the claimants, further expressed concern that if the claimants took part in a trial of liability of the Part 20 claim they might be ordered to pay the costs of the Part 20 claim. Mr. Dean, for the third parties, said that if the Part 20 claim failed he would be seeking the costs of it as against the defendant, which at first sight would seem relatively obvious. Ms. Proops, for the defendant, initially seemed to say that the defendant would not seek the costs of the Part 20 claim against the claimants whether or not the Part 20 claim failed or succeeded. However, she and her solicitors then somewhat changed their position to say that they did not wish to commit themselves as far as that was concerned, although Ms. Proops, in submission, then said that she could not see any particular reason why the defendants would ever seek or succeed in seeking their or, for that matter, the third parties' costs from the claimants unless, perhaps, the claimants had been guilty of some misconduct or unreasonable conduct.

142. It seems to me, and this can be clarified in due course if necessary, that it is important that what Ms. Proops said should be recorded and made part of a recital of an eventual order. However, even without that having been said, but all the more so with its having been, it seems to me that Mr. Turner's fears ought to be relatively low, as, first, this is a situation of A suing B and B saying it is all really the fault of C. That is a classic situation where if the claim against C fails, because they were not the wrongdoer at all, of a potential for the court making what is known as a *Bullock* or *Sanderson* order which ensures that B ends up paying all the costs of the claim against C on the basis that B has wrongly raised the issue and it should not be for A to bear the burden of B's decision to do that.

143. That principle often enables A to sue both B and C in the alternative and say that if A succeeds against B and fails against C then B should pay C's costs because, for the reasons I have already given, the fact that that claim was brought at all was simply because B sought to shift the responsibility on to C. However, that is not actually the situation before me because A (the claimants) has not, at least as yet, even sought to protectively sue C (the third parties), a situation which seems to me is likely to lessen further the chance of A (the claimants) having to pay relative costs rather than increase it.

144. Secondly, it seems to me that these principles are reinforced in this case where it is the defendant's statement of case and defence that the third parties were the persons who leaked the Report. At first sight, the defendant, having positively advanced that as a matter of defence, if it turns out that it did not occur, should not be able to turn around and say to the claimants that the claimants should not have proceeded on the basis that such had occurred and should have to pay the costs of the third party claim.

145. I do bear in mind in this aspect that the claimants' position is somewhat equivocal in the light of the differences between their reply, which contains a partial non-admission and the Part 18 request which contains a partial adoption of the defendant's case. However, it still seems to me that it is important that it actually a major plank of the defendant's defence to the claimants' claims that it was the third parties who leaked the Draft Report. In any event it seems to me that the risk is relatively low as far as the claimants are concerned on this aspect.

146. If, of course, there is a risk, it itself arises from the fact that the claimants have brought the claim where in the circumstances of the nature of the claim, it seems to me that it

ought to have been relatively foreseeable from the start, even if not actually mentioned in correspondence, that the defendant would seek to pass any damages remedy on to the third parties or at least those who it contended leaked the Report.

147. The claimants, however, still say that I should split the case in one of the various ways advocated for a number of reasons being essentially, firstly, that the claimants' claim against the defendant is for what they would say was a relatively modest amount, while the defendant's claim against the third party is for a much greater amount. Mr. Turner says it would therefore be logical for the Part 20 claim to be dealt with first, with the initial resources being devoted to that.

148. Secondly, that the claimants should not be exposed to the risk of paying any of the costs of the Part 20 claim costs, adopting one or more of these courses would reduce the likelihood of exposure or at least the size of the exposure.

149. Thirdly, that the risk of inconsistent results could be dealt with by the claimants accepting all results of the Part 20 claim liability trial.

150. Fourthly, that if I proceed down the process of a set of trials it may result in either a party leaving the litigation as being found not be liable or a settlement if the liability claim is resolved in various particular ways. Mr. Turner submits that those permutations could give rise to possible large savings of cost, time and resource.

151. Fifthly, Mr. Turner submits that the issues in the claim and in the Part 20 claim are really distinct and do not involve much potential overlap of witnesses.

152. Sixthly, Mr Turner submits that much of the quantum of the Part 20 claim has little to do with the claimants, if indeed anything at all.

153. The defendant and the third parties submit that I should not adopt these courses. Firstly, they draw attention to the need set out in the case law to approach questions of splitting issues with caution, and to consider them on a principled basis requiring a particular justification for and set of benefits to be derived from doing anything other than adopting the ordinary course of trying all the matters together at once.

154. I was taken to the decision in *Electrical Waste Recycling Group v Philips Electronics* [2012] EWHC 38 which states at paragraph 5:

> "Where the issue of case management that arises is whether to split trials the approach called for is an essentially pragmatic one, and there are various (some competing) considerations. These considerations seem to me to include whether the prospective advantage of saving the costs of an investigation of quantum if liability is not established outweighs the likelihood of increased aggregate costs if liability is established and a further trial is necessary; what are likely to be the advantages and disadvantages in terms of trial preparation and management; whether a split trial will impose unnecessary inconvenience and strain on witnesses who may be required in both trials; whether a single trial to deal with both liability and quantum will lead to excessive complexity and diffusion of issues, or place an undue burden on the Judge hearing the case; whether a split may cause particular prejudice to one or other of the parties (for example by delaying any ultimate award of compensation or damages); whether there are difficulties of defining an appropriate split or whether a clean split is possible; what weight is to be given to the risk of duplication, delay and the disadvantage of bifurcated appellate process; generally, what is perceived to offer the best course to ensure that the whole matter is adjudicated as fairly, quickly and efficiently as possible."

155. I was then taken to the decision in *Jinxin v Aser Media* [2022] EWHC 2431 which considers the *Electrical Waste* case and other authorities as follows:

> "22. In *Electrical Waste Recycling Group Ltd v Philips Electronics UK Ltd* [2012] EWHC 38 (Ch), at para. 5-7, Hildyard, J said that the Court should adopt an 'essentially pragmatic balancing exercise in assessing how the case is likely to unfold according to whether there is or is not a split'. The judge identified the relevant considerations to be taken into account amongst all of the facts of the case which guide the Court's discretion

in this respect (see also *Daimler AG v Walleniusrederierna Aktiebolog* [2020] EWHC 525 (Comm), at para. 25-32). The considerations identified by the learned judge, which I have adapted, include:

(1) Whether the prospective advantage of saving the costs of an investigation of the issues to be determined at a second trial if the determination of the first trial renders it unnecessary to determine such issues outweighs the likelihood of increased aggregate costs if a further trial is necessary.

(2) What are likely to be the advantages and disadvantages in terms of trial preparation and management?

(3) Whether a split trial will impose unnecessary inconvenience and strain on witnesses who may be required in both trials.

(4) Whether a single trial to deal with all issues will lead to excessive complexity and diffusion of issues, or place an undue burden on the Judge hearing the case.

(5) Whether a split may cause particular prejudice to one or more of the parties (for example by delaying any ultimate award of compensation or damages).

(6) Whether there are difficulties of defining an appropriate split or whether a clean split is possible.

(7) What weight is to be given to the risk of duplication, delay and the disadvantage of a bifurcated appellate process?

(8) Generally, what is perceived to offer the best course to ensure that the whole matter is adjudicated as fairly, quickly and efficiently as possible?

(9) Whether a split trial would assist or discourage mediation and/or settlement.

23. The fact remains that the decision to split what would otherwise be a single trial into more than one trial each dealing with defined issues is a step out of the norm, where in most cases there will be a single trial determining all of the issues arising in an action. Accordingly, there must be a real and substantial advantage if a split trial were ordered to take place. In *Bindel v PinkNews Media Group Ltd* [2021] EWHC 1868 (QB); [2021] 1 WLR 5497, Nicklin, J said at para. 33:

'*a case in which the court directs determination of a preliminary issue that will require resolution of disputed issues of fact, including disclosure, witness statements and cross-examination, must be regarded as an exception to the general rule, and one that requires careful consideration by the court and very clear justification*.'

24. It is also salutary to recall the warning of Lord Neuberger, MR in *Rosetti Marketing Ltd v Diamond Sofa Company Ltd* [2012] EWCA Civ 1021; [2013] 1 All ER (Comm) 308, at para. 1 in connection with the proposal for trials of preliminary issues:

'*... It represents yet another cautionary tale about the dangers of preliminary issues. In particular, it demonstrates that (i) while often attractive prospectively, the siren song of agreeing or ordering preliminary issues should normally be resisted, (ii) if there are none the less to be preliminary issues, it is vital that the issues themselves, and the agreed facts or assumptions on which they are based, are simply, clearly and precisely formulated, and (iii) once formulated, the issues should be answered in a clear and precise way*.'

25. Although the present application was not for a trial of preliminary issues, at least nominally, the Master of the Rolls' warning remains relevant where a party applies for specific issues to be determined separately from the majority of issues arising in the action, based on limited evidence and specified assumptions to be made.

26. Unless a split trial can be justified as a means of resolving the disputed issues in action in accordance with the overriding objective with clear benefits over and above those of a single trial, the peril exists that a split trial will add considerably to the parties' costs burden, will delay the conclusion of the action (with an unappealing drain on the Court's resources) and/or will lead to unanticipated difficulties."

156. I make clear that I have sought to consider and apply what is set out in those paragraphs in this judgment.

157. Secondly, the defendant and third parties say, in line with the expressed need for a judge to exhibit caution, that a splitting of issues can seem deceptively attractive at first sight, but may simply lead to both (a) duplication of material and hence waste of costs and (b) problems as a matter of reality when, for one reason or another which may not be foreseeable at this point, it turns out during the currency of any of the various trials that the attempt to split issues has actually turned out not to be sensible and to have thrown up problems.

158. Thirdly, they say that the third parties are very interested in the trial of the claim between the claimants and defendant itself as will at least very much affect the quantum of the Part 20 claim against the third parties; and so they will be attending that trial not only in relation to quantum but also in relation to liability, since if the claim fails on liability

there will be no quantum to be passed on to them, even assuming that the Part 20 claim succeeds.

159. Fourthly, it is submitted that there will be both overlap and repeat of witnesses and witness evidence in relation to all matters in both the Part 20 claim and the claim itself. They say that the third parties' witnesses will be required for the trial of the liability claim between the claimants and the defendant in the event that the Part 20 claim succeeds, or at least if the third parties are found to be those who leaked the Report, as their evidence will be relevant to the continuing and remaining issues as to whether the defendant is vicariously liable for the conduct of the third parties.

160. They submit that the claimants will need to give evidence as to liability as well as to quantum in any event; as, while the fact there has been a leak is clear and the contents of the Draft Report will be clear, the claimants will have to give evidence and be cross-examined in relation to the breach of confidence claim to establish that they had a reasonable and real expectation of confidence in the material. The defendant says this is particularly important because the defendant contends that the claimants' various identities and complaints were already generally known, prior to the leaking of the draft Report, by those interested due to the claimants having already campaigned on issues of asserted anti-Semitism within the Labour Party. They say that similar material and evidence will have to be given by the claimants in relation to their allegations of loss and its quantification; and hence the same witnesses will give evidence and similar material will be advanced in the main claim on issues both of liability and of quantum.

161. Mr. Turner disputes that that would occur. He says that, in any event, any duplication and associated costs and problems will be much ameliorated and mitigated by having the same judge deal with both liability and quantum.

162. Fifthly, the defendant and third parties say that for the claimants just simply to say that they will accept the findings which the court makes in a liability trial of the Part 20 claim is, first, unreal, and, secondly, will lead to problems regarding what exactly the court has decided and to what extent it is actually binding on the claimants dependant on what the claimants are seeking to advance in the main claim.

163. Sixthly, it is said that the claimants' hoped for cost savings are unreal when one looks at the total figures and that in fact the course proposed by the claimants will result in an overall increase in costs.

164. Seventhly, they say that all the matters simply are really very interrelated and connected within the principles set out in the rules (principally CPR 20.9 and CPR 30.3(2)) and the authorities to which I have referred. They submit that it is simply unreal to split matters apart, especially in relation to such crucial questions as to not only who leaked the Report, which is very much raised in both the Part 20 claim and in the defence to the main claim, but also as to why and how they did so.

165. Finally, raised particularly by Mr. Dean, they submit that to split the various trials will result in further delays to the resolution of these matters in circumstances where they raise issues of great importance to both the parties and the public, and where there has already been substantial delay in the procedural courses of these matters.

166. I note that I first started this cost case management conference in November 2022 and then adjourned to June 2023. That was due to the parties' inability to produce earlier dates of mutual availability. I also note that if the Equality Act 2010 claim is not tried at the same time at the other claims, that itself could result and would be likely to result in further delays to the overall resolution of these matters.

167. I have considered all of the submissions, I bear in mind very much that the split trial is not the norm, but I must still apply the overriding objective and consider all the matters set out in the *Jinxin* citations.

168. I have concluded that it is not appropriate to have a split trial so that liability in the Part 20 claim should be dealt with first or that the simple question of who leaked the Report should be dealt with first, but that is it appropriate to split issues of liability and quantum.

169. My reasons are as follows: first, I deal with the proposal that I should provide that liability in the Part 20 claims be determined first and separately from liability in the claim. First, I do not see that such a split being ordered on the basis that the claimants will accept all findings of fact and liability made in a separate Part 20 liability trial is likely to be workable or convenient for the following reasons. Firstly, it seems to me that it is likely to result in issues as to what precisely has been decided and how, if at all, the claimants may potentially seek to evade what is said to have been decided in the Part 20 liability trial.

170. Secondly, it will result in the claimants' liability trial, that is to say the main claim, being carried out on what is at least potentially an artificial basis. If it is held in the Part 20 claim liability trial that the third parties were not those who leaked the Report, that will

result in the claimants and possibly also the defendant having to point the others who may or may not have leaked the Report.

171. The witnesses in such a trial between the claimants and the defendant may well seek to blame those who have already been exonerated; or at least what they say in their evidence as to what they recall and what they believe may well suggest that the outcome of the Part 20 trial was incorrect. That process and result, it seems to me, would be both artificial and unworkable.

172. The court cannot prevent a witness having a genuine belief that one or more of the third parties were responsible for the leaking of the Draft Report, simply because the court has determined on the balance of probabilities on the basis of limited evidence that they had not. It seems to me that that might well give rise to all sorts of problems in relation to the second trial and in any event to a very considerable degree of artificiality, effectively infringing the general principle that it is desirable for all aspects of a single issue here who leaked the Report to be dealt with at once.

173. For the same reasons it seems to me that for the matter to be dealt with simply within the Part 20 claim in a separate trial of liability may well mean that the evidence in such a trial will be incomplete. It seems to me perfectly likely that the claimants at least might seek to call evidence in a subsequent liability trial in relation to the claimants' claim against the defendant, which would have been relevant to the court in dealing with a Part 20 claim liability trial and which would quite possibly have affected its outcome. It seems to me that this is a real possibility which could lead to a set of inconsistent outcomes which would not be either fair or appropriate.

174. Secondly, I do see very real potential for witnesses to be called twice, and also for the same ground to be gone over, in both trials. It is perfectly likely that issues of vicarious liability would not be determined in the Part 20 claim liability trial, even if it was held that one or more of the third parties had leaked the Draft Report. That would involve questions of fact as to what precisely were the scopes of the various third parties' employments or similar relationships with the Labour Party, as well as their motivations and conduct in leaking reports. While the latter might well be the subject of factual findings in the Part 20 claim liability trial, the former is less likely.

175. If not all matters were resolved then it seems to me that the same witnesses would have to be called and go over their same actual history or at least very closely related factual history again.

176. I do also bear in mind that if the third parties lost the Part 20 liability claim and were held to be those who leaked the Draft Report, it would be logical for them to support the defendant's contention that they had acted outside the course of their employment or related activities, as then the claimants might well fail against the defendant and the defendant might have no quantum to seek in relation to the claimants' claims against the third parties.

177. That, it seems to me, would be an incentive to the third parties, even if they lost the Part 20 liability claim, to attend the subsequent liability trial between the claimants and the defendant and to advance their evidence and contentions. That itself would result in the judge, perhaps (but not certainly) the same judge, having to reassess the credibility of their evidence in circumstances where they had, on the basis of more limited evidence, already been disbelieved with regards to the question as to whether they had actually

leaked the Draft Report. It seems to me that that would both be distinctly repetitive in terms of what was done and give rise to all sorts of possible unsatisfactory and unfair outcomes.

178. I note that this course might well save costs for the claimants and could possibly save substantial costs at least of the third parties, if the Part 20 claim failed at an initial liability trial. However, with regards to that, the main saving would be in relation to the third parties' costs of the remainder of litigation. The third parties are not seeking to advocate this particular procedural process, in fact they oppose it. Secondly, although it does seem to me there could be cost savings as far as the claimants are concerned, I need to balance that against the artificiality of what is proposed, indeed, the general artificiality of much of the claimants' claim being determined in potential absence of the claimants, notwithstanding that the claimants themselves are proposing such a course.

179. I do also bear in mind that if the defendant and the third parties came to a settlement – which may be unlikely but is not something that the court should ever simply ignore – the matter would then revert to there being a full trial involving the claimants. Even if the possibility of a settlement is unlikely, the question of settlement points up a further possible set of difficulties, namely if the defendant and the third parties were to agree on particular matters or issues, the question would then arise as to whether or not such agreements would be binding upon the claimants, those agreements being part of or at least related to the Part 20 claim trial. It seems to me that that possibility generates obvious difficulties which very much lean against the course advocated for by the claimants.

180. Thirdly, it seems to me this course would result in substantial delay as the resolution of the Part 20 claim on liability would not resolve the main claim on liability on any basis.

181. Fourthly, although I do accept that it is the issues on the Part 20 claim and liability on the Part 20 claim which are probably of the greatest public interest and importance, it seems to me that all of the issues in this matter are of some considerable public interest and, as I have already said, are matters which are appropriate for the High Court to deal with. It seems to me that there is a public interest and importance in both the Part 20 claim and the main claim being progressed without priority being given to one over the other.

182. Fifthly, it does seem to me clear that the Part 20 claim and the claim are very heavily interrelated. I appreciate that the claimants say that the course of their claim should not be dictated by the Part 20 claim, in particular where it would result in them incurring very substantial costs which they do not wish to incur. However, it does not seem to me that should justify an artificial solution, and it does seem to me that in any event the claimants are faced, whatever happens in the Part 20 claim, with some sort of full liability trial, for example with regards to the issue of vicarious liability and as to whether or not a duty of confidence existed, that is even if the Part 20 claim was resolved in a way which generally assisted the claimants.

183. Sixth, for the reasons I have already given, it does not seem to me that the claimants' fears about exposure to the costs of the Part 20 claim of others are particularly justified or weighty for the reasons which I have already gone through. In any event, in that connection, as I already said, the bringing of the Part 20 claim seems to me to be an occupational hazard for claimants when they seek to bring a claim of this particular

nature. Even if it was not mentioned in pre-action protocol correspondence, and on the material before me it was not, it seems to me that the claimants, when seeking to sue the defendant for saying that persons for whom they are responsible have leaked the draft Report, ought to expect that the defendant might well seek to sue those whom it considered had effected the leaking.

184. I have considered all of the factors and matters set out in *Jinxin* paragraphs 22-26. It seems to me what is said in paragraphs 22(3), (4), (6) and (8) are all very much in point and that for me to split the issues of the Part 20 claim liability and the liability in the claim itself risks the general problems referred to in paragraph 24 of that decision.

185. I do not see the split and course proposed by the claimants as being justified in any event. I certainly do not see the claimants as having overcome the burden of justifying an exception to the usual course on this basis, which burden is expressly referred to in paragraph 25 of *Jinxin*.

186. As I said, I myself raised, which was adopted by Mr. Turner, an alternative possibility of simply trying out at an initial stage the question as to who had leaked the Draft Report. It seems to me that taking that course will potentially avoid some of the problems which I have identified regarding artificiality and scope; but, on the other hand, would simply deal with one issue which, while it might terminate the involvement of the third parties, is something which would be of particular benefit to, if anyone, the third parties, but where the third parties are not prepared to advocate that course and rather oppose it. Although it would result in some of the problems I have identified being avoided, it would potentially result in a considerable increase in cost and in any event it seems to me would leave in place many of the other problems which I have identified.

187. It seems to me that this is not such an issue as can be dealt with shortly with just a limited number of witnesses. It would be likely to involve the vast majority of the witnesses who would be called in relation to main liability issues in both the Part 20 claim and the main claim; and, having considered the matter further, it does not seem to me that the burden of justifying an exception to the ordinary rule is discharged in relation to that proposal either.

188. I do however see a sufficient justification for splitting liability and quantum, essentially for the following reasons. First, if liability fails against the third parties or the defendant, it seems to me there would be potentially a very large cost saving. It is true that if there is a split and everything is eventually tried out at two trials there would be an increased cost, but in relation to the figures I have been given at present an increase cost would only seem to be in the region of something like 10% of the overall costs. It seems to me that it is relatively low in overall context, even if a significant figure in itself.

189. Secondly, very much of the Part 20 claimed quantum seems to me to be simply irrelevant as far as the claimants is concerned. These claimants are not concerned with the cost of and potential liability to the defendant relating to other complaints. They are also not concerned with the amounts of money which the Labour Party has spent in investigating what has happened or in seeking to take ameliorative steps. It seems to me there is a very considerable element of the Part 20 claims quantum which is simply distinct from the claim.

190. Thirdly, I accept that splitting liability and quantum may delay overall resolution, but it seems to me there are considerable advantages in terms of having a liability trial first.

The parties will be able to refine their approaches to quantum in the light of the findings on liability, which may potentially give rise to considerable savings. There will also be very much greater possibility of the parties via some form of alternative dispute resolution process achieving either global or at least partial settlements. Further it seems to me that in a case of this nature, it is likely that the same judge will be dealing with both liability and quantum and, thus, problems relating to a lack of judicial continuity seem to me to be relatively unlikely.

191. Fourthly, I do not see there is much of an overlap between witnesses or at least as to what witnesses would be dealing with in liability and quantum trials. The only real point it seems to me which has been raised is the question of the claimants giving evidence of similar nature both with regards to why they had a reasonable expectation of confidence on the basis of their previous activities and with regards to the damage which that have suffered as a result of confidence being breached, being damage which the claimants say that they would not have suffered had the Draft Report not been leaked.

192. It is common ground that what the claimants had been doing prior to the leaking of the Draft Report is potentially relevant to the question of existence of a duty of confidence. However it seems to me that it is only indirectly relevant to questions of damage where the claimants are concerned, and where the question of damage is a matter of the effect of post-leak events, while the question of existence of duty is only concerned with pre-leak events (since what happened after the leak cannot at first sight be relevant, at least directly, to the question as to whether or not the defendant was under a duty to take steps to prevent it).

193. I do accept that there is some potential overlap, particularly as the defendant may contend that those who are said to have vilified the claimants following the leak of the Draft Report would have done so anyway as a result of the claimants' pre-leak and likely post-leak date activities. I also see that there may well be arguments that the claimants should not be able to claim damages for distress by there being put again into the public arena material which was effectively already within it. However, it seems to me the degree of overlap is limited and somewhat speculative. In any event, if there is judicial continuity, as it seems to me is likely to be the case, problems of overlap it seems to me can well be avoided or mitigated.

194. The question as to whether or not to split liability and quantum is a very case specific one. In the circumstances of this case where the actual fact of the leak is admitted and the questions of liability relate very much to the question as to who leaked it and in what circumstances and in consequence; it seems to me that the main questions of liability are very distinct from the questions of quantum or quantification of such loss as is said to arise from the fact of the leak. In those circumstances, and after having fully considered *Jinxin* and the other material before me, it seems to me there is a full and good justification for a split between liability and quantum, and clear benefit to be derived from such occurring.

195. I therefore will, first, transfer the Equality Act 2010 claim to the County Court at Central London, and, secondly, proceed with this costs case management conference, although the actual directions of cost budgeting will be on the later date in October, on the basis that I will be providing for an initial trial on liability in relation to both Part 20 claim and the main claim and that directions and cost budgeting will take place on that basis,

and, subject to anything counsel says, with cost budgeting only being for the periods and phases up to the conclusion of the liability trial.

[After further argument]

196. I am asked to direct the defendant, at least, to produce separate cost budgets or separate elements of cost budgets with regards to matters which are not common to both the claim and the Part 20 claim, including potentially with regards to the question as to who leaked the Draft Report.

197. It does not seem to me to be appropriate to make such a direction at this particular point. Costs budgeting is not supposed to be a particularly complex exercise. It is directed to the parties producing a budget for each particular phase of the litigation. If the main claim and the Part 20 Claim are to be tried together as I have directed is to be the case, then, unless there is some particularly good reason, they are simply producing figures for each phase.

198. Secondly, for all the reasons I have given in my judgment, I am not at present convinced that there is such an element of costs with regards to liability at least, which is not common between the particular matters.

199. Thirdly, it seems to me that Ms. Proops is likely to be right to say that what I am effectively being invited to do is to set up a situation which will at least highly encourage a judge at trial to make a complex costs order between various different aspects of the individual disputes within the case.

200. However, at this point the underlying purpose of the budgeting process is to tell parties, what is reasonable and proportionate for each party to spend; and this is done by the court and the other parties simply being given proposed figures for each phase, and the figures for each phase then being settled by agreement or court approval. What I am being asked to do would go much further than that.

201. It seems to me it would be perfectly possible for a judge at trial to say that a particular costs order should be made which reflects the fact that some issues were, it turns out, not the concerns of the claimants and they have sought to distance themselves from those issues. It seems to me those are decisions which can only be taken at trial itself and I am not convinced myself at this point that it is clear that such is going to be the situation, and do not think that I should be directing the budgeting process on the basis that such is likely to occur.

202. I also bear in mind that it is always open to the judge to consider that there is good reason to depart from the costs budgets, and the judge can deal with such a situation at trial in a number of different ways, by making a variety of different costs orders or simply directing that the cost budgets will, in one way or another, be given no or only limited weight. But it seems to me that these are all matters pre-eminently for the trial judge. Costs budgeting may effectively limit the spending decisions taken by parties as they go along, but the actual consequences as to what should happen to costs should be matter for the trial judge.

203. In any event, I do not regard it as clear enough that there are uncommon costs to make a specific direction about any particular category of costs.

204. Further it seems to me that if I ask the parties them to differentiate out costs, that I will be effectively encouraging them to take a process which is likely to be expensive and speculative in its own right. The parties are under their ordinary duties when preparing costs budgets to consider whether or not the ordinary form of them is inappropriate. If they do so consider, and consider that there are costs which simply relate only to one of the other sides and not another, then the court would normally expect them to refer to that and, in some way or other, reflect it in their material. For me to lay down any rule at this point seems to me as inappropriate, so I am not going to do so.

205. In my judgment, the parties should just simply provide costs budgets on the ordinary basis.

[After further argument]

206. I have to consider the question of the parties' applications for costs in this matter. In the circumstances I generally have to apply Civil Procedure Rule 44.2 which provides:

"(1) The court has discretion as to –

(a) whether costs are payable by one party to another;

(b) the amount of those costs; and

(c) when they are to be paid.

(2) If the court decides to make an order about costs –

(a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but

(b) the court may make a different order.

(3) The general rule does not apply to the following proceedings –

(a) proceedings in the Court of Appeal on an application or appeal made in connection with proceedings in the Family Division; or

(b) proceedings in the Court of Appeal from a judgment, direction, decision or order given or made in probate proceedings or family proceedings.

(4) In deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including –

(a) the conduct of all the parties;

(b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and

(c) any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Part 36 apply.

(5) The conduct of the parties includes –

(a) conduct before, as well as during, the proceedings and in particular the extent to which the parties followed the Practice Direction – Pre-Action Conduct or any relevant pre-action protocol; [[(b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;

(c) the manner in which a party has pursued or defended its case or a particular allegation or issue; and

(d) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim.

(6) The orders which the court may make under this rule include an order that a party must pay –

(a) a proportion of another party's costs;

(b) a stated amount in respect of another party's costs;

(c) costs from or until a certain date only;

(d) costs incurred before proceedings have begun;

(e) costs relating to particular steps taken in the proceedings;

(f) costs relating only to a distinct part of the proceedings; and

(g) interest on costs from or until a certain date, including a date before judgment.

(7) Before the court considers making an order under paragraph (6)(f), it will consider whether it is practicable to make an order under paragraph (6)(a) or (c) instead.

(8) Where the court orders a party to pay costs subject to detailed assessment, it will order that party to pay a reasonable sum on account of costs, unless there is good reason not to do so."

207. I note that if there is a successful party then the general rule is the unsuccessful party is ordered to pay the successful party's costs but the court may still make a different order. The court will always have regard to all the circumstances as to deciding whether to make an order about costs and, if so, what order to make; and those circumstances include conduct, and where parties have succeeded in part, and whether it is reasonable for them to have raised, pursued or contested particular allegations in the manner in which they have done so; and where the court has a wide discretion as to what sort of order it may make.

208. The parties' general positions in relation to the questions of splitting trials is that in the circumstances of my conclusions, and this being part of a cost case management consequence, that I should make an order for simply costs in the case throughout. Apart from the costs of the Equality Act 2010 aspects, I will make such general costs in the case orders.

209. I now turn to the costs of the Equality Act 2010 aspects. Mr. Turner has submitted that if I am attracted by the concept of making a costs order in relation to the Equality Act 2010 aspects against the claimants, at least in terms of a costs in any event order, that instead I should look at the matter in the round and potentially make a different order such as costs in the case effectively across the board.

210. There are certain attractions in doing that. Although some of the parties say that they can apportion their costs by the application of limited percentages between the different matters which have been argued and the different work which has been done, and so which effectively divides between (i) costs of general preparation and of cost case management (ii) costs of the split trials issues and (iii) the Equality Act 2010 side; at

first sight that is a somewhat difficult exercise and a broad-brush approach is not necessarily appropriate. However, in the particular circumstances of this case, and to which I refer more below, it does seem to me that I should be considering the Equality Act 2010 matters as a separate aspect. I therefore will simply order costs in the case in relation to everything except for the Equality Act 2010 issues and arguments.

211. The situation here is that I have determined that the proceedings, in terms of the Equality Act 2010 claims, should not have been issued in the High Court, and have then come to the eventual conclusion that they should not stay in the High Court and that nothing should be done regarding them other than a simple transfer to the County Court.

212. In terms of what has happened, I have concluded in my judgment, in terms of looking at both the simple rules and the wording within CPR Part 11 but also the consideration in the *Hoddinott* case, that the correct way of dealing with the claim having been issued in the wrong court, is that the defendant should, rather than simply trying to take the point by way of defence, have issued an application in accordance with the CPR Part 11 procedure for a declaration that this court, the High Court, has no jurisdiction and for an appropriate consequential order. Although that consequential order (i.e. for transfer to the County Court) would not have been one of the orders within CPR 11(6), owing to the particular effect of section 40 of the County Courts Act 1984 the result of that course would have been for this court to have made the eventual order which it has.

213. It does seem to me that CPR Part 11 is in point and that the defendant, by seeking to take the point in the defence rather than simply filing an acknowledgment of service and making an application, "is to be treated as having accepted that the court has jurisdiction to try the claim" as set out in the CPR 11(5) and confirmed in *Hoddinott*.

214. In those circumstances it seems to me that the defendant had accepted, but wrongly had accepted, that the court had jurisdiction. What then happened was that I raised the point about what should be done of my own motion and I directed that the parties engage with the matter and provide appropriate submissions to the court. I remain of the view as set out in my judgment that that was the appropriate course for me to take.

215. What then happened, once I had raised the point, was that the defendant initially sought an order under section 40(1) of the 1984 Act that I should strike out the claim. It was only when that point was taken that I drew the parties' attention to the *Restick* decision, which resulted in the defendant, at the hearing in November 2022, adjusting its position to take a neutral approach between strike out and transfer, and then, after further consideration, adopting the position which was adopted on Wednesday of this week, that the transfer was the appropriate course. Once it had become clear that I was not prepared simply to leave the matter in the High Court, it eventually became a sort of common ground that some form of transfer had to occur, and which it seems to me was clearly going to be the case one the *Restick* decision had fallen to be considered.

216. What also happened though was that, prior to the November hearing, the third parties had taken the approach that the claimants' suggestion that in some way or other the case be managed so that a trial be heard by a single judge sitting in both the County Court and the High Court should be adopted, that being set out in Carter-Ruck's letter of 25th October 2022. The third parties were keen that all matters should be dealt with together at once, and so they at least supported – even if they did not positively advocate – the various possible procedural mechanisms raised by the claimants and suggested as being possibilities for the parties to consider and make submissions about by me. However,

having heard various of Ms. Proops's submissions, the third parties somewhat adjusted their position to adopt something more of a neutral attitude while still, it seems to me, suggesting to the court that if something could be done so that I could direct that all the matters would be tried together, that I should seek to do. In all this it seems to me that they were assisting the court, albeit somewhat mutating their position as matters went along.

217. In general it seems to me the position can therefore be seen fairly simply as follows: the claimants should never have included the Equality Act 2010 claim in the High Court proceedings. That was just simply contrary to the Equality Act 2010 for the reasons given my judgment. The defendant adopted an incorrect approach in terms of correctly identifying that the Equality Act proceedings should not have been included in the High Court claim but seeking to defend by way of statement of case asserting an absence of jurisdiction, when what they should have done is have advanced a Part 11 application. As a result of their not having done so the defendants are to be treated as having accepted that the court had jurisdiction to try the claim. The third parties effectively supported what the claimants were doing in general but in circumstances where it was not, at first sight, directly for them to contest the matter of jurisdiction; but, while they did not technically come within Part 11, they could probably have made an application based on section 40 of the County Courts Act 1984 had they wished to do so.

218. It was the court which compelled the parties to deal with this and required them to produce submissions. The defendant's original stance of seeking to strike out the claim failed, as they themselves quite properly eventually accepted; but the claimants instead, while simply accepting that the claim should be transferred to the County Court, then

sought to keep it, in one way or another, within this court or at least this judge's management and failed in relation to that.

219. Ms. Proops submits in those circumstances that the defendant has simply acted properly, and, having been required by the court to take a stance, took a final stance which has succeeded, and in circumstances where the claimants, rather than just accepting that the case must have been transferred, sought to resist that with the result that the defendant incurred substantial costs. Ms Proops submits that the defendants should therefore have a costs order in their favour.

220. The third parties say that they have effectively been locked into a dispute in a set of hearings, quite properly and correctly required by the court, in relation to a situation which is primarily the fault of the claimants for issuing and including the Equality Act 2010 claim in the High Court proceedings. They also submit that the defendants were at fault in failing to make an appropriate Part 11 application in circumstances where under Part 11, and where the defendants have not applied for relief from sanctions, the defendants are actually bound to accept that the High Court has jurisdiction; and where the High Court has, of its own motion, forced the issue. In those circumstances the third parties say that they should have some of their costs against the claimants and others of their costs against the defendant on a proportional basis. I bear in mind that the underlying reason why the third parties have incurred costs is simply because they have been brought into these proceedings, but only on a third party basis by the defendant.

221. It seems to me this gives rise to something of a difficult question of discretion as the appropriate course to take.

222. My initial view was that the appropriate solution was that the claimants, whose course of conduct is fundamentally the cause of all of this, should have something of a limited costs order made against them in favour of both the defendant and the third parties, being that they should both have an order for their costs in the case against the claimants.

223. I have, however, been persuaded to a limited degree that something greater is required in the circumstances where, rather than just simply accepting that the case should be transferred to the County Court, the claimants strove for a different outcome with the result that it seems to me that a greater level of costs was incurred than would otherwise have been the case.

224. However, it does not seem to me that I should impose a different outcome with regards to the November hearing. As far as that was concerned, the situation there was that the claimants had triggered the problem by wrongly including the claim in the High Court proceedings but the defendant was in the difficulty that they had failed to make a Part 11 application, and were not seeking to make any Part 11 application, and it was being left for the court to deal with the matter. Further, at that hearing, as I have said, the defendant's primary position, once the court indicated it was going to deal with this aspect, was to seek strike out. It was only because I eventually drew their attention the *Restick* case that they realised they had to modify that position, although even then, at that hearing, their position was to modify to one of neutrality between strike out and transfer.

225. It seems to me that I should just simply leave in place for that hearing what I had previously considered was appropriate.

226. It does, however, seem to me that the position is different with regards to what happened subsequently and particularly the hearing on Wednesday. It seems to me that that is much more a situation where I need to take account of the fact that the claimants advanced various proposed solutions, all of which I rejected in my judgment. On the other hand, I do have to balance against that both that the circumstances still arose in the context of the defendant having failed to make a Part 11 application and adopted what I regard as the inappropriate procedure as simply pleading the matter in their defence; and where, as I said in my judgment, the court was seeking submissions to assist it in trying to achieve the overriding objective, where the overriding objective, at first sight, seems to suggest that all matters at least be tried by one judge.

227. Nevertheless, it seems to me I should reflect the fact that insofar as there has been contest – which there has been – it seems to me that the claimants are much more on the losing side. I am therefore going to say as between the claimants and the defendant that the claimants should pay 35% of the defendant's costs relating to the Equality Act 2010 aspect for these June hearings but not for the November hearing where the order is simply to be the defendant's costs in the case. The remaining 65% of the costs relating to the Equality Act 2010 aspect for these June hearings as far as the defendant and the claimants are concerned will be defendant's costs in the case.

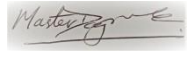
228. As far as the third parties are concerned, if the third parties' attitude had simply been, there should be a transfer and this is all the fault of the other parties, then again I would not be minded to make costs orders in the third parties' favour. However, it seems to me the third parties' position was very much that the court should strive to find one of the various possible solutions and that position was gradually mutated to an expression

of a situation of neutrality but mixed still with an expression of the court should do what it could to keep the Equality Act 2010 aspect with the remainder of the litigation. Nonetheless, none of this is the third parties' fault.

229. It seems to me the appropriate cost order to make is that as far as the third parties' costs are concerned, those should be the third parties' costs in the case as between the third parties and the defendant. Since I cannot actually really make them costs in the case as between the third parties and the claimants (since there is no "case" as between them), what I am going to do is direct they also be the third parties' costs reserved as between them and the claimants. That will give the third parties the opportunity in certain permutations to actually obtain an order for those costs to be paid by the claimants. That will mean that the third parties do not have to bear anybody else's costs of the Equality Act 2010 aspects whatever later happens in this litigation.

230. Thus to summarise my decisions on the costs of the Equality Act 2010 aspects. As far as November is concerned, as between the claimants and the defendant, it is the defendant's costs in the case. As far June is concerned, it is 35% defendant's costs in any event and 65% defendant's cost in the case. As far as the third parties are concerned, it is all third parties' costs in the case as between them and the defendant, and it is third parties' costs reserved as between them and the claimants. It is a complicated order but it reflects what seems to me to be a very complicated situation.

(Footnote: Following this judgment and consequential orders, the Claim in both the High Court and the County Court was compromised between the Claimants and the Defendant; and with the result that the order for a split trial of liability and quantum was set aside in favour of a single trial of both liability and quantum in the Part 20 Claim)

Approved  6.10.2023