Neutral Citation Number: [2024] EWHC 605 (KB)

Case No: QB-2020-000823
& QB-2020-000831

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 March 2024

Before :

His Honour Judge Lewis
(sitting as a Judge of the High Court)

- -

Between :

SYLVAN CLEMENT FRANCIS

Claimant

- and -

PAUL PEARSON

Defendant

and between:

SYLVAN CLEMENT FRANCIS

Claimant

- and -

SUSANNAH BURSTON

Defendant

- -
- -

Hugh Tomlinson KC and **Robert Sterling** (instructed by **Carruthers Law**) for **the Claimant**
John Stables (instructed by **Shakespeare Martineau LLP**) for **the Defendants**

Hearing date: 5 March 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 19 March 2024 by circulation to the parties or their representatives by e-mail and release to the National Archives

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HIS HONOUR JUDGE LEWIS

1. The claimant has brought two claims for libel. The first claim is against Paul Pearson (QB-2020-000823) and the second is against Susannah Burston (QB-2020-000831).

2. Although the claims are separate, for ease of reference I will refer in this judgment to Mr Pearson as the first defendant and Ms Burston as the second defendant.

3. All three parties are residents of a modern, gated housing estate known as Montague Park in Windsor.

4. The claim against the first defendant concerns an email sent by him on 31 March 2019 to the claimant and twenty-seven other residents of the estate.

5. The claim against the second defendant has been brought over an email sent by her on 14 April 2019 to ten residents.

6. The text of the publications complained of is set out in a schedule to this judgment.

7. In broad terms, the claimant says that the messages included allegations that he had assaulted a neighbour and a third party, stalked a neighbour, and conducted a campaign of anti-social behaviour that included sending hate mails. The claimant says that all of this is untrue.

8. By an application dated 5 October 2023, the defendants seek for each claim to be struck out as an abuse of process by virtue of want of prosecution and/or inordinate and inexcusable delay. Alternatively, the defendants apply to strike out the actions on "*Jameel* grounds", namely on the basis that the claims disclose no real or substantial tort and it would be disproportionate to allow them to proceed.

9. By applications dated 10 October 2023, the claimant seeks permission to re-amend his Particulars of Claim in both actions and to amend his Reply in the first action.

10. This judgment is given following a hearing of these cross-applications.

<u>The strike out application</u>

11. CPR rule 3.4(2)(b) provides that the court may strike out a statement of case, or part of one: "… if it appears to the court – (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings".

12. When considering such an application to strike out, the court is required to give effect to the overriding objective in the Civil Procedure Rules. This requires the court to deal with cases justly and at proportionate cost, which includes so far as is practicable… (b) saving expense; (c) dealing with the case in ways which are

proportionate to the amount of money involved; to the importance of the case; to the complexity of the issues; and to the financial position of each party; (d) ensuring that cases are dealt with expeditiously and fairly; (e) allotting to the case 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".

13. It is well established that a person who brings libel proceedings to vindicate their reputation should proceed expeditiously, see for example ***Adelson and another v Anderson and another*** **[2011] EWHC 2497 (QB)** at [20] – [24] per Tugendhat J.

14. In the context of an application to strike out a claim as an abuse of process, in ***Grovit v Doctor*** **(unreported) CA, 38 October 1993**, approved by the House of Lords [1997] 1 WLR 640, Glidewell LJ said at page 15:

> "The purpose of a libel action is to enable the Plaintiff to clear his name of the libel, to vindicate his character. In an action for defamation in which the Plaintiff wishes to achieve this end, he will also wish the action to be heard as soon as possible. If the Plaintiff delays in prosecuting such an action, and gives no valid explanation for his delay, the court is entitled to infer that his motive for the delay is not a proper one. Whether or not the Judge's suggested explanation for the delay is correct, we are entitled to infer that [the Plaintiff's] motive in delaying is not a proper use of a libel action and this constitutes an abuse of process"

15. In ***Asturion Foundation v Alibrahim*** **[2020] EWCA Civ 32**, the Court of Appeal considered the law applicable on an application to strike out a claim for abuse of process arising out of delay, see also ***Keith v Benka & Anor*** **[2023] EWCA Civ 821**.

16. The following legal principles are applicable in this case:

    a. The approach falls into two stages: "… first, the court should determine whether the claimant's conduct was an abuse of process; and if so, secondly, the court should exercise its discretion as to whether to strike out the claim.", ***Asturion*** at [64].

    b. Mere delay, however, inordinate and inexcusable, does not without more constitute an abuse of process, see ***Icebird Ltd v Winegardner*** **[2009] UKPC 24** at [7] and ***Asturion*** at [47]

    c. To commence and to continue litigation with no intention to bring it to a conclusion "can" amount to an abuse of process, but does not necessarily do so, ***Grovit v Doctor*** **[1997] 1 WLR 640** at 647G and ***Asturion*** at [61].

    d. This principle applies equally to the situation where a claimant has no intention of ever bringing the claim to a conclusion, and cases in which the claimant has no intention of bringing a claim to a conclusion at present, but intends to do so in future, perhaps depending upon some contingency, ***Asturion*** at [49].

e. It is likely to be an abuse of process for the claimant unilaterally to decide not to pursue a claim for a substantial period of time, even if the claimant remains intent on pursuing the claim at some future point, ***Arbuthnot Latham Bank Ltd v Trafalgar Holdings Ltd*** **[1998] 1 WLR 1426** and ***Asturion*** at [55].

f. It is not a requirement that the claimant's lack of intention to pursue the claim to trial should persist as at the date of the application to strike out, still less as at a later date (such as the date of the hearing or an appeal). It may be an abuse of process for the claimant unilaterally to "warehouse" the claim for a substantial period of time, even if the claimant subsequently decides to pursue it, see ***Solland International Limited and others v Harris*** **[2015] EWHC 3295 (Ch)** (Arnold J) at [54]

g. The question whether there has been an abuse of process depends on the reason why the claimant decided to put the proceedings on hold, and on the strength of that reason, objectively considered, having regard to the length of the period in question, ***Asturion*** at [61].

17. In this case, the defendants also rely on pre-proceedings delay. This was considered by Eyre J in ***Morgan Sindall v Capita & Sabre*** **[2023] EWHC 166 (TCC)**:

> "37… The relevant abuse must be in the context of an action which has been commenced. So, where a party is saying that an action has been put on hold during the course of proceedings it is that action in the course of the proceedings which is the abuse. Delay in the period before proceedings were commenced can, however, be highly relevant. First, it can support the view that a claimant intended to put the action on hold and also the conclusion that a claimant has no real intention to continue proceedings. It can support the view that a claimant's actions are to be seen as doing the bare minimum necessary to keep a potential claim alive. Second, it can be highly relevant to the question of whether putting the proceedings on hold is an abuse and to the related question of the sanction if it is.
>
> 38 A party who has delayed significantly before starting proceedings will find harder to show that it was appropriate to put the proceedings on hold at some point during the course of proceedings than a party who has been energetic in the pre-action stages. In addition a party who has delayed before the start of proceedings will find a contention that the proceedings were put on hold for good reason being viewed more sceptically.
>
> 39. Similarly, if there is pre-action delay as well as putting on hold during the course of proceedings it is more likely that it will be appropriate to strike out the claim as a response to the abuse of this kind. In such circumstances that will be because where there has been pre-action delay the adverse effects of putting the proceedings on hold in the course of proceedings will be compounded and there will be a greater risk that the administration of justice will be hindered and the defendant prejudiced by the staleness of the case."

Chronology

18. To understand the delay in this case it is necessary to consider the chronology.

19. The emails complained of were sent in March and April 2019.

20. The claimant's solicitors sent letters of claim to the defendants on 25 July 2019 in accordance with the Pre-Action Protocol for Media and Communications Claims. They requested a reply by 19 August 2019.

21. The first defendant received but did not reply to the letter of claim.

22. The second defendant replied through solicitors on 19 August 2019. The response is written in robust terms, making clear that the claim will be defended:

    a. The letter explained that several residents of the estate had confirmed that they would give evidence, and "if [the claimant] is unwise enough to issue a claim he will be met with… a defence of truth".

    b. The second defendant also asserted that a defence of qualified privilege would likely be pursued.

    c. The claimant was warned in the following terms "Libel claims are ruinously expensive even if halted (as we would firmly expect) at an early stage through interim disposal. Your client must be made aware both of the weakness of his claim and the colossal cost of High Court actions… We strongly suggest your client turns his back on his threat of a defamation claim and seeks more suitable ways to reach accommodation with his neighbours".

23. A further letter was sent by the claimant's solicitors two months later, on 29 October 2019.

24. Both claims were issued on 27 February 2020.

25. In the first action, the claim form identified four publications complained of dated 4, 6, 28 and 31 March 2019. The claimant sought an injunction and damages not exceeding £50,000, to include aggravated damages.

26. In the second action, there were two publications complained of, dated 14 and 18 April 2019. The claimant again sought an injunction and damages, to include aggravated damages, but limited this claim to £30,000.

27. The Claim Forms and Particulars of Claim were served on 17 April 2020.

28. The defendants instructed the same solicitor.

29. On 30 April 2020, both defendants filed an acknowledgement of service indicating an intention to defend. They also asked the claimant for an additional three weeks for the service of any defence.

30. On 1 May 2020, the claimant's solicitor wrote to the defendants' lawyers in sensible and constructive terms:

    a. He agreed an extension of time of 14 days for service of the defences, to 2 June 2020.

    b. In respect of the first claim, he noted that the first defendant had not replied to the letter of claim. He suggested that instead of preparing a defence straightaway, that the first defendant provide a response to the letter of claim. Presumably the claimant's solicitor had in mind paragraph 1.2 of the pre-action protocol which explains that it is intended to "encourage exchange of information between parties at an early stage and to provide a clear framework within which parties to a media and communications claim, acting in good faith, can explore the early and appropriate resolution of that claim."

    c. In respect of both claims, the claimant's solicitor also confirmed that if there is a dispute on meaning then there should be a trial of a preliminary issue before any costs are incurred by the defendants in preparing their defences.

31. The defendants' solicitor responded three weeks later, on 21 May 2020:

    a. The defendants' solicitor set out a list of paragraph numbers, identifying parts of the claimant's pleadings that were said to be deficient. The claimant was invited to re-plead his case, otherwise the defendants would consider making an application to strike out.

    b. The defendant's solicitor also confirmed that if a meaning application was issued by the claimant, then the defendants would "not oppose" such a course.

32. On 1 June 2020 the defendants issued applications to strike out the claims.

33. The applications were heard on 9 October 2020 when the Particulars of Claim in both actions were struck out by Senior Master Fontaine. The claimant was ordered to pay the defendants' costs.

34. The Senior Master gave the claimant until 13 November 2020 to file and serve draft Amended Particulars of Claim, with liberty to apply for permission to amend, if not agreed. If the parties agreed the pleading amendments, the order provided a date for service of any defence.

35. On 13 November 2020, the claimant served draft amended pleadings in accordance with the Senior Master's order.

36. On 8 December 2020, after being chased, the defendants' solicitors confirmed that the defendants did not consent to the proposed amendments.

37. The claimant reflected on the defendants' position and sent revised drafts on 25 January 2021. After further chasing, the defendants' solicitors confirmed on 17 March 2021 that they were likely to consent to the amendments and would reply within the next couple of days. The claimant's solicitor chased further for a response

on 14 April 2021, and received an email from the defendants' solicitors on 20 April 2021 confirming the defendants' consent to the pleading amendments. This was re-confirmed by the defendants' solicitors on 27 April 2021, which is when they also confirmed that they would be serving a defence on behalf of the first defendant, but not the second defendant because of the need to first resolve the dispute on meaning.

38. The Amended Particulars of Claim were formally served on 23 June 2021.

39. The claim against the first defendant was now confined to the publication of the email of 31 March 2019.

40. The claim against the second defendant was limited to the email of 14 April 2019.

41. I note that the claimant now seeks to amend both these pleaded meanings, following advice from Leading Counsel.

42. In the first claim, a Defence was served 30 June 2021. The first defendant denied that the claimant was identified by the email complained of. If he was identified, he agreed the pleaded meaning and put forward defences of truth and qualified privilege.

43. Following a response to a request for further information, a Reply was served on 7 October 2021.

44. In the second claim, there were discussions between the parties on whether there would need to be a preliminary trial on meaning. The second defendant's solicitors put forward alternative proposals on meaning on 22 July 2021, the claimant provided a revised formulation on 29 September 2021 and the second defendant replied to this on 10 November 2021.

45. It was then agreed that both claims should be stayed to allow for mediation.

46. By orders dated 5 November 2021 and 7 March 2022, the case was stayed by the court from to 31 March 2022.

47. On 10 March 2022 there was a mediation that was unsuccessful in resolving the claims.

48. On 4 April 2022, the claimant wrote to the court in respect of the first claim and asked for a CCMC to be listed. The same day, the claimant wrote to the court in respect of the second claim and said that a meaning application was being considered by the parties.

49. On 6 April 2022, the claimant's solicitors wrote to the second defendant's solicitors consenting to a meaning determination being conducted on paper, concluding as follows: "As we understand from your previous correspondence, you are to proceed to make the application".

50. The second defendant did not issue any meaning application, or indeed serve a defence. Instead, both defendants took a decision that they would not take any further

steps in the proceedings for the time being. The defendants' solicitors have confirmed the following in witness statements served in each action:

"Without waiving privilege, my client and I spent some time in April 2022 corresponding in relation to the case. In the event that occupied some time. Because in the intervening time we had heard no further from the Claimant's solicitors on this case or Ms Burston's, and because the Claimant's previous conduct of his claim had been stop-start, I was instructed not to incur further costs as and until the Claimant himself did something further to prosecute his claim."

51. There was then a period of 14½ months during which no procedural steps were taken by any party.

52. During this period of delay, the claimant's solicitor has confirmed in evidence that in May 2022 he instructed Heather Rogers KC to advise on the claim, and that over the next five months there were two consultations with the claimant himself, and work was undertaken on statements. In September 2022, I am told that Leading Counsel was instructed to prepare draft amended statements of case.

53. On 20 June 2023, the claimant's solicitors wrote to the defendants' solicitors, enclosing draft Re-Amended Particulars of Claim in both actions, and a draft Amended Reply in the first action. The solicitors asked the defendants to consent to the amendments.

54. A month later, on 20 July 2023, the defendants' solicitor indicated that an application would be made by the defendants to strike out both actions.

55. That application was eventually made on 5 October 2023. The claimant issued his application for permission to amend a few days later.

<u>The positions of the parties</u>

56. The defendants say:

    a. These are libel proceedings. They need to be pursued with vigour. Instead, it is now five years since the publication of the words complained of, and the claims have not even reached the stage of having a CCMC.

    b. There has been very significant delay. In fact, the most recent period of inactivity was longer than the relevant (one year) limitation period.

    c. The claimant clearly has no interest in pursuing matters to trial. He has abused the court's processes by taking it upon himself to decide at his convenience whether and when he should progress his claims.

    d. There are no reasons in the present cases for the delay that would negative a conclusion of warehousing. The claimant has not explained his inactivity at any point in the claims, and why he has not sought vindication with speed at any point. An overwhelming inference arises that the claimant knew he had warehoused his claims, and that in an effort to avoid dismissal of them he

sought to engage leading counsel very, very late in the day to produce a show of artificial interest.

e. The recent period of delay comes off the back of previous delay from issuing close to the limitation period, and the claimant refusing to amend defective pleadings, necessitating them being stuck out. The period of pre-action delay is relevant to the question of the claimant's intention.

f. It is accepted that the second defendant should have served a defence and is in breach of the court rules. However, at any point the claimant could have applied for default judgment, but he did not do so because he could not care less about the claims.

g. Determination of prejudice is not a necessary component of a finding of abuse of process. Nevertheless, a case such as this will rely on witness evidence and so there is a risk of prejudice arising out of delay. In this case, some former neighbours have moved away, and the lapse of time will make it difficult to contact them to ask them to give evidence.

57. The claimant says:

a. It is accepted that a lapse of 14.5 months in a defamation case is significant.

b. Mere delay is not abusive. There has not been any abuse of process. The claimant has not sought to "warehouse" the actions.

c. During the period of delay, there is evidence that the claimant was taking steps to prepare his case in both actions from May 2022. The court cannot properly infer an intention on the part of the claimant to put the case on hold and do nothing. There is no evidence of an intention to warehouse the case.

d. In respect of the first claim, a highly relevant factor is that the claimant was waiting to hear from the court, which was responsible in part for the lapse of time, meaning that this cannot be said to be an abuse.

e. In respect of the second claim, the claimant was waiting to hear from the second defendant's solicitors, who were meant to be issuing a meaning application. In the absence of such an application, the second defendant was in breach of CPR rule 15.4 by not filing a defence or seeking relief from sanction.

f. There was no breach of a court order by the claimant. Both parties have failed to comply with CPR rule 1.3 by assisting the court to ensure that the proceedings are conducted expeditiously and fairly. The defendants made an express decision to do nothing whereas the claimant was in fact taking active steps to progress the cases.

g. If the court needs to consider the second stage of the test, namely discretion, the evidence of prejudice is extremely weak. A period of 14 months does not sensibly make a material difference to witness recollection. Of the four

witnesses mentioned by defendants as having moved away, the first defendant has the address of one, two have given statements to the claimant and there is no basis for saying there would be "considerable difficulty" in locating them.

h. In contrast, very real prejudice would be suffered by the claimant if the claims were to be struck out. The libels are not of a trivial nature. They were published to a small number of people important to the claimant and were likely to circulate throughout the estate. Hostility has continued in the community, referable back to these libels, with some neighbours believing what was alleged. The first defendant has put a plea of truth on the record If the case is struck out, these are allegations that could be repeated at any time.

Jameel abuse

58. The *Jameel* abuse jurisdiction was first identified in ***Jameel v Dow Jones*** **[2005] QB 946**. It was summarised by the Court of Appeal in ***Tinkler v Ferguson*** **[2021] 4 WLR 27** at [33]:

> "Jameel confirms that the court has the power to strike out a claim as abusive where it discloses no real or substantial tort and where, colloquially, the game would not be worth the candle. This calls for an assessment of the value (in the widest sense) to the claimant of what is properly at stake and of the likely cost (in the widest sense) of the litigation. The jurisdiction is useful where a claim is obviously pointless or wasteful: Vidal-Hall v Google Inc. [2016] QB 1003. Such cases are to be distinguished from valid claims of small value or cases where vindication is of importance to the claimant and the court should only conclude that continued litigation would be abusive where a way cannot be found to adjudicate the claim proportionately: Ames v Spamhaus Project Ltd. [2015] 1 WLR 3409 [33]-[36] per Warby J citing Sullivan v Bristol Film Studios Ltd. [2012] EMLR 27 [29] to [32] per Lewison LJ."

59. The commentary in the white book characterises *Jameel* abuse as "pointless and wasteful litigation".

60. In ***Alsaifi v Trinity Mirror plc*** **[2019] EMLR 1** Nicklin J dealt with the correct approach to *Jameel* abuse in these terms:

> "[44] At the heart of any assessment of whether a claim is Jameel abusive is an assessment of two things: (1) what is the value of what is legitimately sought to be obtained by the proceedings; and (2) what is the likely cost of achieving it?
>
> [45] But it is clear from Sullivan that this cannot be a mechanical assessment. The Court cannot strike out a claim for £50 debt simply because, assessed against the costs of the claim, it is not 'worth' pursuing. Inherent in the value of any legitimate claim is the right to have a legal wrong redressed. The value of vindicating legal rights—as part of the rule of law—goes beyond the worth of the claim. The fair resolution of legal disputes benefits not only the individual litigants but society as a whole".

61. The jurisdiction is an exceptional one. As Warby J explained in ***Ames v Spamhaus Project Ltd*** **[2015] 1 WLR 3409**: "The Sullivan case also serves as a reminder, however, of why the jurisdiction is exceptional: it is a strong thing for a court to strike out a claim on proportionality grounds if it has at least arguable merit, and the court must be alive to the risk that it might unjustifiably deprive a claimant of access to justice." (at [33]-[34]).

62. The defendants say:

    a. The *Jameel* application flows from the effect of the abusive delay, which means that it is fanciful to think that vindication will be achieved.

    b. This is not a mass publication case, nor is it about permanent, persistent or on-going publication. The words complained of have not been repeated and there is no indication that they would be.

    c. Allowing the claims to progress would simply waste the resources of the parties and the court to no proper end.

    d. This is an exceptional case, with exceptional delay.

    e. This is not an especially serious libel. There were two emails sent to a limited number of people. The likelihood of damage is so slight that it is wholly disproportionate to continue the proceedings. There is nothing sensibly left for the claimant to pursue, and any vindication is now an illusion. There is nothing to suggest a likelihood of repetition.

63. The claimant says:

    a. This is not a case where the claim is obviously pointless or wasteful. The claim is not abusive, and there is no proper basis of exercising the exceptional Jameel jurisdiction in this case.

    b. The value of vindicating the claimant's legal rights goes beyond the financial worth of the claim. The claimant also needs an injunction.

    c. The claimant has valid claims. He has been accused of serious wrongdoing, with the first defendant standing by what has been said as true. The allegations are still circulating and causing the claimant damage.

<u>Discussion</u>

64. These are libel proceedings, and so one would expect a claimant keen to vindicate their reputation to pursue matters expeditiously.

65. There has clearly been unacceptable delay in progressing both cases.

66. The authorities make clear, however, that delay on its own is an insufficient basis to strike out a claim. There must be evidence of abuse, an example of which might be the continuing of litigation with no intention to bring it to a conclusion.

67. The evidence before the court does not support an inference that there has been an abuse of process, or that at the relevant time the claimant has not had a genuine desire to pursue his claims and bring them to a conclusion.

68. In saying this, I recognise that these proceedings have been going on for far too long. The claimant certainly could have done more to progress the claims. He could have issued proceedings more promptly. He could have reflected on the meritorious complaints made about his first set of pleadings, and agreed to amend them, avoiding the delay that was caused by having the first strike out hearing. He could have taken the initiative to issue the meaning application in the second set of proceedings. He could also have chased the court to list the CCMC.

69. The defendants have said a lot about the delay in issuing proceedings. The claimant did, however, raise his concerns promptly through solicitors. The first defendant did not trouble himself to reply at all, and there was correspondence with the second defendant into the autumn. There are many reasons why someone might pause for a few months before issuing High Court, multi-track proceedings against two of his neighbours. Indeed, the second defendant's solicitors specifically asked the claimant to consider these issues carefully before issuing his claim, reminding him that he would be at risk of "ruinous" costs. I do not think that any inference can be drawn from the timing of the proceedings that the claimant was not committed to taking steps to vindicate his reputation.

70. There is also evidence of the claimant taking steps to prepare his cases, and to try and progress matters proportionately and in accordance with the overriding objective. For example, he allowed the first defendant time after issue to respond late to the letter of claim. He was proactive in suggesting that a defence is not prepared until issues of meaning have been resolved. The correspondence also shows that the claimant's solicitors had to chase the defendants' solicitors repeatedly to progress matters.

71. There is also clear evidence from the claimant's solicitor of the work that was being undertaken during the period of delay. Whilst it is certainly true that some of this work could, and should, have been undertaken more quickly, it does not support the defendants' view that the claimant had no wish to pursue his claims. In fact, it suggests the opposite.

72. For me, it is also relevant that it was the claimant who "broke the silence" and took steps to progress the proceedings. This was a month before the defendants suggested that they might make their application to strike out for abuse of process.

73. It seems to me that the objective reason for the lapse of time was a combination of the court not dealing with matters on the first claim, the second defendant not dealing with matters on the second claim, the claimant failing to take proactive steps to push the cases forward, and neither the defendants nor the court taking steps to progress matters either.

74. I do not consider that the defendants have demonstrated that the claimant's conduct was an abuse of process.

75. If I am wrong on this, in exercising the court's discretion at the second stage, I would not consider it appropriate to strike out these claims:

    a. I accept that real prejudice would be suffered by claimant if the claims were to be struck out. Whilst publication is to a small number of people, these were neighbours in the community where the claimant lives. Striking out the claim would deprive him of vindication, not just to restore his reputation, but also to protect against re-publication. This is particularly relevant in this case where both defendants clearly stand by what they said in their emails, and so there is a real likelihood that matters might be repeated if proceedings end.

    b. The defendants' evidence does not set out any meaningful case on prejudice. I accept that any delay is likely to be prejudicial in some way to the parties, not least because of the stress of having proceedings hanging over them, and the increased costs that delay can cause. Recollections do of course fade over time, but the evidence does not suggest this has happened in this case. The other reasons given by the defendant are not particularly persuasive. In the second defendant's response to the letter of claim, she confirms that she had spoken to neighbours who had been prepared to give evidence. Even if they were not proofed at that stage, there is nothing beyond assertion to support the defendants' case that the witnesses will be difficult to trace and engage.

    c. In terms of the proportionality of any sanction for abuse, it needs to be recognised that the defendants are also responsible for some of the delay in this case. I appreciate it is for the claimant to pursue their claim. Nevertheless: (i) the first defendant failed to reply to the letter of claim; (ii) the defendants have taken a long time generally to answer correspondence, having to be chased; (iii) after the claimant amended his case in the second proceedings, the second defendant failed to serve a defence (which her counsel has accepted she was required to do) or issue the application on meaning; (iv) the second defendant adopted a rather unhelpful approach to meaning, at one point seemingly "not opposing" the application, and then not issuing the application, despite it being clear from correspondence that this was something that her solicitors were going to do; and (v) in April 2022 – at a time when the case should have been active – the defendants gave specific instructions to their solicitor to let the actions go to sleep.

76. In respect of the *Jameel* application, I acknowledge that the parties are five years on from publication. There are lengthy pleadings, and there have already been two substantive hearings dealing with applications to strike out. Significant costs must have been incurred already, and pleadings have not even closed. Against this, the claimant has a legitimate and proper purpose in pursuing these claims. As noted in paragraph 75a above, undue prejudice would be caused to the claimant if the claims were to be struck out at this stage. These are valid claims, there is a purpose to them, and I am not satisfied that it is appropriate for them to be struck out on *Jameel* grounds. That said, the court is required to ensure that cases are managed proportionately, and so it might be that some particularly robust costs and case management is needed at the CCMC to achieve this.

77. For these reasons the applications to strike out these proceedings are dismissed on both grounds.

Application to amend pleadings

78. For the past seven or so months, the defendants have opposed the claimant's application to amend his statements of case. The defendants' skeleton argument on this issue comprised ten pages, seven of which contained a detailed, line by line, analysis of the proposed amendments, setting out the defendants' objections.

79. Many of the points made by the defendants were wholly without merit, with a surprising number complaining about the existing pleadings, not the proposed amendments.

80. It was therefore unsurprising when counsel for the defendants confirmed during the hearing that the objections were all withdrawn, except for on one discrete point.

81. The point that remains in dispute is whether the claimant should be given permission to add the following to the plea of damage: "The Defendant, by publishing and persisting in the defamatory allegation in the 31st March Email, has caused lasting damage to the Claimant's reputation. In March 2021 (between 12th and 16th March), graffiti was sprayed on the wall at the entrance to Montague Park, stating "psychos live at no [X]" and "nutters at no [X]". As the Claimant and his wife have lived at [X] Montague Park since it was built, those vile claims were directed at them. The person(s) responsible for that graffiti is (or are) likely to have been affected in their view of the Claimant by the Defendant's defamatory allegation."

82. Mr Tomlinson says this is a perfectly proper plea. A reasonable inference can be drawn that the graffiti was the result of the hostility generated to the claimant as a consequence of the publication of the words complained of.

83. Mr Stables says that the graffiti appeared in March 2021, three years ago, and two years after publication of the libels. He says that this should have been pleaded sooner, is irrelevant to this claim, and is entirely speculative.

84. I give permission for this amendment. It is on a discrete point and, if proven, would likely be relevant to the question of damage. It will not add to the costs of the case significantly.

Next steps

85. Now that these applications have been determined, both parties need to step back and consider how these proceedings can be managed in accordance with the overriding objective. To be clear, this requires the court, and the parties, to ensure that the case is dealt with justly and at proportionate cost. Parties must reflect on what is said in CPR rule 1.4.

86. I recognise that the claimant's case is that he has suffered serious harm from the publication of the two emails. These messages do, however, appear to form part of a much wider falling out between people who are, at the end of the day, neighbours.

The parties all live on the same estate. They have many common acquaintances, and possibly even common friends. By virtue of their property ownership, they will have some shared interests in the management of the site. They also have a common interest in finding a way of being able to move on and live their respective lives free from neighbourly hostility.

87. I can see that the parties have already attempted mediation.

88. Experience shows that it is often in entrenched cases such as this that ADR can make a real difference, often requiring honest conversations with parties as to the merits of their respective cases, and the potential downsides, as well as looking at pragmatic ways forward.

89. As part of the process, mediators might also see the parties together, without their lawyers, to try and explore ways forward.

90. In a case such as this, it might also be possible for agreement to be reached on ancillary matters that help the parties move forward, but which the court may not have the power to order at trial.

91. The parties need to reflect on the reasons why the cases did not settle at mediation, and the costs of continuing this litigation – not just in terms of money, but the personal costs to each party for example from the time and energy spent fighting, the stress and worry the proceedings might cause, particularly in respect of outcomes, and the impact that it is going to have on the wider community in which they live.

92. I would strongly recommend that the parties re-consider some form of alternative dispute resolution process – which might include further mediation, or some other way of facilitating agreement - before matters in this case move forward and further costs are incurred.

93. If the dispute cannot be resolved, the parties will need to establish whether there is still any dispute in respect of meaning following the recent pleading amendments.

94. If there is, then the parties have agreed that there should be a trial of a preliminary issue. Presumably this will cover the questions of meaning, defamatory tendency and whether what is said is a statement of fact or of opinion.

95. The claimant must take responsibility for issuing a formal application (preferably by consent) for an order in respect of such a trial. The parties have said they would want this to be undertaken on paper. I can see that this might be appropriate in this case, although that will be a matter for the judge considering the application, if it is made.

SCHEDULE

FIRST ACTION – EMAIL COMPLAINED OF

Subject: Do you serve an ASBO on a neighbour

Dear Neighbours.

Things are getting out of hand , as some of you may of noticed two Police Officers came round to gather all my evidence, Hate mails, video footage, etc etc. They say that the threshold of Obtaining an ASBO has not only been met but exceeded.

I have asked for more time to think about this, and I have to be honest it is keeping me awake at night.

You must all understand this action would be against someone who whilst I realised was a complicated character, when we shared a beer and had a laugh together I thought we were becoming friends.

Alex Mayne was pushing me for a one to one meeting for a couple of weeks, I finally gave in on the understanding that he promises me he will be contacting ALL homeowners next week and reading / listening to there concerns.

This is a time when we need to show solidarity, we need to stand shoulder to shoulder in the coming weeks / months as there is still some Horse Trading to be done, have a wonderful Mothers Day.

Kind regards
Paul.

SECOND ACTION – EMAIL COMPLAINED OF

Subject: [Folded hands emoji]

Hello

Following Laurel-gate, I want to ask if you really want Paul's Laurels to be ripped out.

I have evidence that Alex approved them himself so long as they didn't bother his immediate neighbours.

I think you are also unaware of the situation between Mr Francis and Paul.

The police have told Paul that if his does not take out the legal enforcement mentioned in his email then on his head be it. They are not handed out easily.

I realise you will probably show this to Mr Sylvan.

There have been incidents of witnessed physical assault, stalking and much much more.

The police also have record of Mr Francis having physically assaulted another person on this development.

This is not the only incident.

I realise you think this is some sort of argument between them- but rest assured it is far worse than that.

Slyvan if and when you read this- I'm sorry but you cannot behave like this towards people. If Paul is number 1 who is number 2 and 3?

There are 6 people I know (not including myself) who have been upset and angry by your behaviour toward them.

I don't want arguments I want peace and I apologised for my overt reaction to your ' if she had brains' comment. I was broken- hearted at the time. However I will not be spoken down to. And I will not be bullied.

I cannot tolerate bullying and this has been witnessed by most of the residents of the park in one form or another.

It has to stop.

You are the only people who has any issue with the laurels. The council have told me you are the only person who complained.

Can I mention that I have noticed planting outside boundaries in several of the houses. All along the park.

If the laurels go- so will all the others, as I will notify Alex of these.

Please think as to whether this realistically affects your lives on a day to day basis.

If they go then as soon as the residents committee starts up, there will already be tension and dislike.

From that point on we can vote on such issues. Don't make life hell for Paul and his already extremely distraught wife, for no reason- please.

Susie
Susannah Burston