



Neutral Citation Number: [2024] EWHC 781 (KB)

Case No: QB-2020-002526

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 10<sup>th</sup> April 2024

**Before :**

**His Honour Judge Antony Dunne**  
**(sitting as a Judge of the High Court)**

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**Between :**

**(1) ASHFORD BOROUGH COUNCIL**  
**(for and on behalf of itself, its current and former**  
**officers, employees, councillors and agents)**  
**(2) MRS TRACEY KERLY**  
**(for and on behalf of all of the current and former**  
**officers, employees, councillors and agents of the**  
**First Claimant (Pursuant to CPR 19.6))**

**Claimants**

**- and -**

**MR FERGUS WILSON**

**Defendant**

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**Adam Solomon KC and Samuel Davis (instructed by Ashford Borough Council Legal**  
**Services) for the Claimants**

**The Defendant appeared in person**

Hearing date: 12<sup>th</sup> March 2024  
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**Approved Judgment**

## **His Honour Judge Antony Dunne (sitting as a Judge of the High Court):**

### **Introduction**

1. On 12<sup>th</sup> February 2024 the Claimants made an application to commit the Defendant for contempt of court. They allege that the Defendant has, on 44 occasions, breached a final injunction order imposed on the Defendant on 22<sup>nd</sup> September 2021. These allegations are contained within the Claimants' schedule of breaches of injunction.
2. On 12<sup>th</sup> March 2024 I conducted a trial to determine whether the Defendant had breached the injunction order and was therefore in contempt of court. This judgment contains my written findings as required by CPR 81.4.

### **The parties**

3. The First Claimant is Ashford Borough Council (hereafter "ABC"). ABC is a local authority in Kent responsible for the borough of Ashford. The second Claimant is Mrs Tracey Kerly who is ABC's Chief Executive. The Claimants act on behalf of the current and former employees, officers, councillors, and agents of ABC.
4. The Defendant is Mr Fergus Wilson who was described in the injunction proceedings as a large scale landlord in Kent.

### **The Injunction**

5. On 22<sup>nd</sup> September 2021, on the application of the Claimants, a final injunction order was made by Daryl Allen KC sitting as a Deputy High Court Judge.
6. The terms of the injunction are as follows:

“3. The Defendant is restrained from pursuing a course of conduct which amounts to harassment of the Protected Persons within the meaning of the Act.

AND

4. In particular, the Defendant be restrained from doing, causing, permitting, encouraging or assisting any of the following:

4.1 Threatening, intimidating or otherwise interfering with any Protected Person;

4.2 Posting on social media or the internet about Protected Persons or which is intended to cause alarm, fear or distress;

4.3 Knowingly making:

4.3.1 any communication to any Protected Person whether orally, by telephone, in writing, by facsimile, by email or other electronic means, which shall include for the avoidance of doubt any emails, texts, letters, communication through social media or telephone calls to a Protected Person(s); or

4.3.2 any communication whatsoever to any Protected Person at their private home, or on their private telephones, email addresses or social networking sites.

4.4 Compelling or coercing any Protected Person against his will from doing something he is under no obligation to do or not do something he is entitled to or required to do.

5. This order shall continue indefinitely as a final injunction unless revoked or varied by a Judge of the High Court.

SAVE THAT nothing in this Order shall prevent the Defendant from communicating with the First Claimant in writing, and in a manner which does not harass the Protected Persons, with Mr Terrence Mortimer of the First Claimant (or any other person designated in writing by the First Claimant to the Defendant as a replacement for Mr Mortimer in this role) by post to Civic Centre Tannery Lane, Ashford TN23 1PL or by email to terry.mortimer@ashford.gov.uk (or to any other address or email address designated in writing by the First Claimant to the Defendant as a replacement for those given here).

AND SAVE THAT nothing in this Order shall prevent the Defendant from communicating with the First Claimant in respect of this litigation, in writing, and in a manner which does not harass the Protected Persons, with Mr Terrence Mortimer of the First Claimant (or any other person designated in writing by the First Claimant to the Defendant as a replacement for Mr Mortimer in this role) by post to Civic Centre Tannery Lane, Ashford TN23 1PL or by email to terry.mortimer@ashford.gov.uk (or to any other address or email address designated in writing by the First Claimant to the Defendant as a replacement for those given here).

AND SAVE THAT nothing in this order shall prevent the Defendant from communicating with a former councillor in a non-harassing manner if the Defendant does not know and cannot reasonably be expected to know that they are a former councillor of the First Claimant.”

“Protected Persons” are defined in the injunction order at paragraph 2.4 as:

“2.4 “Protected Persons” shall mean:

2.4.1 the Second Claimant;

2.4.2 the current and former officers, employees, councillors and agents of the First Claimant.”

7. The injunction order contained a penal notice to the Defendant in the required form.

8. The injunction order was personally served on the Defendant on 22<sup>nd</sup> September 2021. Mr Wilson also had the benefit of a direct email from the judge, Mr Darryl Allen KC, on 22<sup>nd</sup> September 2021 at 17:03 attaching the judgment and the final injunction order and confirming that *'the date of the injunction is 22<sup>nd</sup> September 2021 ... it is in force with immediate effect. It replaces the interim injunction which was originally issued by HHJ Auerbach'*.
9. There is ample evidence that the Defendant was aware of the injunction. The Defendant appealed the final injunction order and permission to appeal was refused by Warby LJ on 14<sup>th</sup> July 2022. The Defendant has also been an active participant in the litigation concerning the costs arising from the injunction proceedings. Finally, when giving evidence in these proceedings, the Defendant confirmed he had been served with the final injunction order and had read it.

### **Fairness of the proceedings - compliance with the requirements of CPR 81.**

10. CPR 81.4 lays down rules for the service and conduct of committal proceedings which are designed to ensure that those proceedings are fair. The Claimants have satisfied the requirements of CPR 81.4 as follows.
  - (a) The application for committal was supported by the Second Affidavit of Terence Mortimer. The affidavit contained the evidence relied upon by the Claimants in support of its application.
  - (b) The contempt application form N600 set out the nature of the alleged contempt, namely a breach of the final injunction order. It enclosed the Schedule of Breaches of Injunction which particularised the alleged breaches including the relevant dates and terms. Forty-four breaches were alleged in total.
  - (c) The Form N600 confirmed the date of personal service of the final injunction order was 22<sup>nd</sup> September 2021.
  - (d) The Form N600 confirmed that the final injunction order included a penal notice complying with CPR 81.4(2)(e).
  - (e) The Schedule of Breaches of Injunction particularised the forty four alleged breaches in chronological order.
  - (f) The Form N600 confirmed that Mr Wilson has the right to be legally represented in these proceedings, that he is entitled to a reasonable opportunity to obtain legal representation and to apply for legal aid (which may be available without a means test), that he may be entitled to an interpreter, that he is entitled to reasonable time to prepare for the hearing, that he is entitled, but not obliged, to give evidence in his defence, that he has the right to remain silent, that the court may proceed in his absence, and the potential punishments if he is found in contempt. The N600 also states that if Mr Wilson admits the contempt and wishes to apologise that is likely to reduce the seriousness of any punishment, that the court's findings will be provided in writing and that the court will sit in public unless and to the extent the court orders otherwise and that the findings will be in public.

- (g) The contempt application was personally served on Mr Wilson.

### **The Hearing on 23rd February 2024**

11. In addition to the information contained within Form N600 a directions hearing was held before HHJ Auerbach, sitting as a Judge of the High Court, on 23<sup>rd</sup> February 2024. The Defendant attended that hearing and confirmed that: (a) he had been personally served with the contempt application documentation; (b) that he knew he was entitled to legal representation at the hearing on 12<sup>th</sup> March 2024; (c) that he understood the nature of the 12<sup>th</sup> March 2024 hearing and that he was liable to be imprisoned and/or fined and/or have his assets seized if he were found guilty of contempt; (d) that he understood that he could not be compelled to give evidence at the hearing on 12<sup>th</sup> March 2024 and that he had the right not to incriminate himself; (e) that he accepted he was the author of the emails and letters relied upon as evidence by the Claimants and that he did not require Terence Mortimer to give oral evidence but that he denied any of his admitted actions constituted breaches of the final injunction order.

### **The hearing of 12th March 2024**

12. The Defendant attended the contempt hearing on 12<sup>th</sup> March 2024 unrepresented. At the start of the hearing the Defendant confirmed that he had been informed of the right to legal representation, but that he wished to represent himself. I reminded the Defendant he was entitled to give evidence in his defence, but that he had the right to remain silent, the right not to incriminate himself and that he could not be compelled to give evidence. I then explained the purpose of the hearing was to determine whether the Defendant had committed any of the alleged breaches of the injunction. I explained that I would make those findings in a written judgment and that if any of the contempt allegations were proved I would hold a second hearing to decide what sanctions were appropriate. I then outlined how the hearing would progress. Finally the Defendant was given a hearing loop to help him effectively participate in the hearing.
13. The hearing proceeded with Counsel for the Claimants, Mr Solomon KC, summarising the Claimants' affidavit evidence and making submissions as to why the Defendant had breached the injunction and was in contempt of court. The Defendant then gave oral evidence before making submissions as to why he had not breached the terms of the injunction. The Defendant also submitted a bundle of documents at the hearing and the Claimants made no objection to me relying upon them as evidence.

### **The alleged breaches**

14. The Claimants submitted two injunction clauses have been breached.

#### Paragraph 4.3 (the "single point of contact provision")

15. Paragraph 4.3 creates (along with the saving provisions) the single point of contact. It prohibits the Defendant from knowingly making:

“any communication to any Protected Person whether orally, by telephone, in writing, by facsimile, by email or other electronic means, which shall include for the avoidance of doubt any

emails, texts letters, communication through social media or telephone calls to Protected Person(s); or

Any communication whatsoever to any Protected Person at their private home, or on their private telephones, email addresses or social networking sites”

16. The only means of communication the injunction permitted the Defendant to have with the Claimants was with ABC’s legal director, Terence Mortimer, with the condition that any such communication must not amount to harassment.
17. The Claimants submitted a breach of the single point of contact provision was immediately ascertainable when the Defendant sent communications to any person who is not the single point of contact (Mr Mortimer). The Claimants alleged the Defendant breached the single point of contact provision on fourteen occasions. Details of the alleged breaches are given in the Schedule of Breaches attached to the second affidavit of Terence Mortimer and are as follows:
  - (a) Emails to Noel Ovenden, the Leader of ABC, alleged breaches 29, 31, 32, 34, 36, 37, 39 and 44 of the Schedule of Breaches.
  - (b) Correspondence with the Freedom of Information Team at ABC, alleged breaches 25, 30, 38 and 43 of the Schedule of Breaches.
  - (c) Letters to Mrs Kerly, alleged breaches 40 and 42 of the Schedule of Breaches.

### Paragraph 3 (the Harassment Prohibition)

18. Paragraph 3 of the final injunction order prohibits the Defendant from ‘pursuing a course of conduct which amounts to harassment of the Protected Persons within the meaning of the Act’. The Claimants submitted that this condition was breached on multiple occasions. The breaches of the harassment provision are summarised by the Claimants in Terence Mortimer’s second affidavit as follows:

#### **“Phase 1**

After exploring the limits of the Final Injunction Order after it had been issued, Mr Wilson utilised his appeal application against the order of Mr Darryl Allen KC, then proceeding under Appeal Case No. A2-2021-1623 to continue his campaign of harassment against the Claimants. From 8 November 2021 until 8 June 2022, Mr Wilson adopted a strategy of sending correspondence for the purported purpose of adding it to the appeal ‘file’. This correspondence was copied to me and it was often rambling, voluminous, irrelevant and offensive. It was a transparent attempt by Mr Wilson to continue his campaign of harassment under the façade of legitimate litigation conduct.

#### **Phase 2**

Though there were breaches between June 2022 and the summer of 2023 (see Schedule/19-25), Mr Wilson has escalated and

ramped up his campaign of harassment and his breaches of the Final Injunction Order since July 2023. The Claimants have identified 15 individual breaches since July 2023 and that ‘phase 2’ period has seen Ashford Borough Council subject to far more frequent, escalating correspondence. During ‘phase 2’ Mr Wilson has re-started regularly breaching the single point of contact restrictions, for example he has sent emails to Noel Ovenden’s personal email address, sent letters to the Second Claimant and sent requests to the First Claimant’s Freedom of Information team. The Freedom of Information requests are particularly concerning, as Mr Wilson appears to be trying to identify information about Samantha Clarke so that he can continue his campaign of harassment against her through a professional regulator.”

The Claimants submitted that ascertaining whether there was any breach of the harassment prohibition required an analysis of the defendant’s behaviour and whether it amounted to harassment.

### **Contempt – breaches of injunction orders**

19. In order to establish that a person is in contempt by their breach of an injunction order it is necessary to show that the following elements are proved against that person:
- (i) he knew of the terms of the order;
  - (ii) he acted (or failed to act) in a manner which involved a breach of the order; and
  - (iii) he knew of the facts which made his conduct a breach.

See, for example, *Masri v Consolidated Contractors International Company SAL & Ors* [2011] EWHC 1024 (Comm), at paragraph 150.

20. In this case the Defendant accepts that element (i) is met because he knew of the terms of the order. The Defendant also accepts element (iii) is met because he accepts that he wrote to the Claimants in the manner alleged in the Claimants’ affidavit. However the Defendant disputes that element (ii) is met because he submits his actions, in writing to the Claimants, did not involve a breach of the order.

### **The approach the Court should take on an application for committal for contempt.**

21. The jurisdiction of the High Court in civil contempt cases is an unusual one. The burden of proof is on the party alleging the contempt but the standard of proof is the criminal standard (see, for example, *Nield v Loveday* [2011] EWHC 2324). The sanctions available to the court in the event that contempt is proven are imprisonment (for a period up to two years), a suspended sentence of imprisonment, seizure of assets, or a fine, sanctions more familiar to a criminal than a civil court.
22. The obligations to ensure a fair hearing are the equivalent of those applicable in criminal proceedings. But there is not the division of functions that are found in a Crown Court; I sit as judge of fact and law. It seems to me appropriate, however, that I should direct

myself as to the approach I should take to the evidence in a manner similar to the way a judge in the Crown Court would direct a jury. In particular:

- (i) I will apply the criminal standard of proof, asking myself whether the Claimants have made me sure on each breach I consider.
- (ii) I will consider each of the forty four breaches separately, and come to a separate decision on each alleged breach. However, in reaching my decision on each ground I am entitled to consider the totality of the evidence relevant to each ground. In this case, the conduct in many of the alleged breaches is said to be part of a course of conduct amounting to harassment and is a breach of the harassment condition of the injunction order. In relation to each of those breaches I am entitled to consider the other evidence relating to that course of conduct. In addition, where the relevant course of conduct which is said to amount to harassment began before the injunction order was granted, that conduct may be directly relevant to the question of whether the individual breach amounts to harassment and will also form part of my consideration in relation to each individual breach.
- (iii) I will consider the evidence given by the Defendant in the same way as I assess the evidence of the evidence of the Claimants.
- (iv) On circumstantial evidence, I will decide what pieces of evidence are reliable and what conclusions can fairly be drawn from them.

### **The law on Harassment**

23. Because the Claimants allege a breach of the harassment prohibition in paragraph 3 of the injunction, it is necessary to consider the relevant law on harassment to ascertain whether the Defendant's actions were harassment and therefore in breach of paragraph 3 of the injunction.
24. The relevant statutory provisions are contained with the Protection from Harassment Act 1997.
25. Section 1 provides:

***1.— Prohibition of harassment.***

*(1) A person must not pursue a course of conduct—*

*(a) which amounts to harassment of another, and*

*(b) which he knows or ought to know amounts to harassment of the other.*

*(1A) A person must not pursue a course of conduct—*

*(a) which involves harassment of two or more persons, and*

*(b) which he knows or ought to know involves harassment of those persons, and*



*(c) by which he intends to persuade any person (whether or not one of those mentioned above)—*

*(i) not to do something that he is entitled or required to do, or*

*(ii) to do something that he is not under any obligation to do.*

*(2) For the purposes of this section or section 2A(2)(c), the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to or involved harassment of the other.*

*(3) Subsection (1) or (1A) does not apply to a course of conduct if the person who pursued it shows—*

*(a) that it was pursued for the purpose of preventing or detecting crime,*

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

*(c) that in the particular circumstances the pursuit of the course of conduct was reasonable.*

26. Section 2 provides that a breach of section 1 is an offence punishable by up to 6 months imprisonment. Section 3 and 3A provide that actual and apprehended breaches of section 1(1) and 1(1A) may be restrained by injunction.

27. Section 7 provides, insofar as is relevant:

**7.— Interpretation of this group of sections.**

*(1) This section applies for the interpretation of sections 1 to 5A.*

*(2) References to harassing a person include alarming the person or causing the person distress.*

*(3) A “course of conduct” must involve—*

*(a) in the case of conduct in relation to a single person (see section 1(1)), conduct on at least two occasions in relation to that person, or*

*(b) in the case of conduct in relation to two or more persons (see section 1(1A)), conduct on at least one occasion in relation to each of those persons.*

*(4) “Conduct” includes speech.*

(5) *References to a person, in the context of the harassment of a person, are references to a person who is an individual.*

28. The nature of the tort of harassment was considered by Nicklin J in *Hayden v Dickinson* [2020] EWHC 3291 (QB) who surveyed the relevant authorities and then drew out twelve principles (at 44). In this case the first five principles are of particular relevance and I quote them in full:
- i) Harassment is an ordinary English word with a well understood meaning: it is a persistent and deliberate course of unacceptable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress; ‘a persistent and deliberate course of targeted oppression’: *Hayes v Willoughby* [1], [12] per Lord Sumption.
  - ii) The behaviour said to amount to harassment must reach a level of seriousness passing beyond irritations, annoyances, even a measure of upset, that arise occasionally in everybody’s day-to-day dealings with other people. The conduct must cross the boundary between that which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the border from the regrettable to the objectionable, the gravity of the misconduct must be of an order which would sustain criminal liability under s.2: *Majrowski* [30] per Lord Nicholls; *Dowson* [142] per Simon J; *Hourani* [139]-[140] per Warby J; see also *Conn v Sunderland City Council* [2007] EWCA Civ 1492 [12] per Gage LJ. A course of conduct must be grave before the offence or tort of harassment is proved: *Ferguson v British Gas Trading Ltd* [17] per Jacob LJ.
  - iii) The provision, in s.7(2) PfHA, that ‘references to harassing a person include alarming the person or causing the person distress’ is not a definition of the tort and it is not exhaustive. It is merely guidance as to one element of it: *Hourani* [138] per Warby J. It does not follow that any course of conduct which causes alarm or distress therefore amounts to harassment; that would be illogical and produce perverse results: *R v Smith* [24] per Toulson LJ.
  - iv) s.1(2) provides that the person whose course of conduct is in question ought to know that it involves harassment of another if a reasonable person in possession of the same information would think the course of conduct involved harassment. The test is wholly objective: *Dowson* [142]; *Trimingham* [267] per Tugendhat J; *Sube* [65(3)], [85], [87(3)]. ‘The Court’s assessment of the harmful tendency of the statements complained of must always be objective, and not swayed by the subjective feelings of the claimant’: *Sube* [68(2)].
  - v) Those who are ‘targeted’ by the alleged harassment can include others ‘who are foreseeably, and directly, harmed by the course of targeted conduct of which complaint is made, to the extent that they can properly be described as victims of it’: *Levi v Bates* [34] per Briggs LJ.
29. In this case, analysing whether the Defendant’s conduct crosses the borderline from the regrettable to the objectionable requires consideration the cumulative impact of his behaviour on those who are the victims of it. If one were to look at each alleged breach in isolation then one might consider that the individual instances were merely

regrettable. However, where there are many examples of the same behaviour one is more likely to consider the behaviour objectionable.

30. Deputy Judge Allen KC analysed the caselaw relevant to the Defendant's conduct in his judgment on the injunction. He considered *DPP v Hardy* [2008] All ER (D) 315 (Oct); *Roberts v Bank of Scotland PLC* [2013] All ER (D) 88 (Jun); and *Royal Institute of Chartered Surveyors and Another v Rushton* [2017] All ER (D) 212. All three cases make the same point, conduct that may only be irritating and annoying at the outset may, if it is repeated persistently, become objectionable and may amount to harassment.
31. This is illustrated by the first instance judgment in *Royal Institute of Chartered Surveyors and Another v Rushton* [2017] All ER (D) 212. In this case the Defendant launched a protracted campaign of abuse directed towards the RICS after a charity linked to the RICS provided financial assistance to the Defendant's estranged wife. May J stated:

“60. Having considered the interplay between the Act and Article 10, and taken in the context of this case, I have concluded as follows: In my view, taking into account the content and quantity of communications and publications emanating from Mr. Rushton's desk in France, his activities do cross the boundary into harassment. One or two of the kinds of emails he has written to members of staff, who send him perfectly reasonable responses to an initial enquiry, would not cross the line. They could be dismissed as the ravings of a disappointed man but the remorseless repetition and insistence of the messages and posts making ever wilder allegations of dishonesty, corruption, cover-up and conspiracy amounts, in my view, to more.

61. The position is similar to that in the cases of *Roberts v. The Bank of Scotland* [2013] EWCA Civ 882, where there were repeated calls to a debtor, amounting to harassment; the case of *DPP v. Hardy* [2008] EWHC 2874 (Admin), involving repeated calls pursuing a complaint; and the case of *Nursing & Midwifery Council v. Nowak* [2014] EWHC 2945 (QB), a nurse who had been conducting a campaign of emails and posts against the Nursing Midwifery Council.

62. Mr. Rushton may originally, in 2011 to 2013, have had proper grounds to feel aggrieved and sufficient reason for complaint. The terms in which he complained were, from the outset, aggressive and offensive, but that factor alone would probably not have justified an injunction then, particularly not in the context of his successful appeal. However, it is the quality of relentless persistence of wild allegation against anyone at RICS who enters his orbit, that transforms what started as a justifiable grievance into abuse to the point of harassment.”

32. The Claimants have brought the injunction proceedings and make this committal application on a representative basis on behalf of the employees, officers, agents and

councillors of ABC who have allegedly been harassed by the Defendant. They are permitted to do this by the Protection from Harassment Act 1997 and the Civil Procedure Rules. However, for a finding of harassment to be made there must be a course of conduct that relates to a person and that this person must be an individual and not a corporation. For harassment under section 1(1) the course of conduct must be conduct on at least two occasions towards that person and for harassment under section 1(1A) where the course of conduct is in relation to two or more persons (and where it must also be proved that the intention of the Defendant is to persuade somebody to do something or not to do something) the conduct must be on at least one occasion in relation to each person.

### **Relevance of the Defendant's conduct leading to the grant of the injunction**

33. In these proceedings the Defendant's conduct which led to the granting of the injunction to restrain further harassment is plainly potentially relevant to my consideration of whether the alleged breaches of paragraph 3 of the injunction do in fact amount to harassment. The definition of harassment makes clear why this is so. Section 1(1) provides:

*(1) A person must not pursue a course of conduct—*

*(a) which amounts to harassment of another, and*

*(b) which he knows or ought to know amounts to harassment of the other.*

34. The definition is therefore focussed on the Defendant's "course of conduct". Assistance on the meaning "course of conduct" was provided by the Divisional Court in the case of *Scottow v Crown Prosecution Service* [2020] EWHC 3421 (Admin) as follows:

"(1) A person alleging harassment must prove a "course of conduct" of a harassing nature. Section 7(3)(a) of the PfHA provides that, in the case of conduct relating to a single person, this "must involve ... conduct on at least two occasions in relation to that person". But this is not of itself enough: a person alleging that conduct on two occasions amounts to a "course of conduct" must show "a link between the two to reflect the meaning of the word 'course'": *Hipgrave v Jones* [2005] 2 FLR 174, para 74 (Tugendhat J). Accordingly, two isolated incidents separated in time by a period of months cannot amount to harassment: *R v Hills* [2001] 1 FLR 580, para 25. In the harassment by publication case of *Sube v NewsGroup Newspapers Ltd* [2020] EMLR 25 I adopted and applied this interpretative approach, to distinguish between sets of newspaper articles which were "quite separate and distinct". One set of articles followed the other "weeks later, prompted, on their face, by new events and new information, and they had different content": paras 76(1) and 99 (and see also para 113(1))."

In this case the Defendant's "course of conduct" is his repeated contact with ABC. The alleged breaches of the injunction continued immediately after the granting of the

injunction up to the present day. There is in my view a continuous course of conduct on the part of the Defendant towards the Claimants both before and after the granting of the injunction and therefore the Defendant's conduct before the grant of the injunction is relevant to an assessment of whether the Defendant's conduct after the injunction amounts to harassment.

35. It is therefore necessary to look at the entire course of the Defendant's conduct, both before and after the grant of the injunction to see whether the alleged breaches of paragraph 3 of the injunction meet the definition of harassment, in that they: (a) amounted to harassment; and (b) are such the Defendant knew or ought to have known they amounted to harassment.

### **The Defendant's conduct which led to the grant of the injunction**

36. As noted above the injunction order was made on 22<sup>nd</sup> September 2021 and a judgment was handed down the same day by Deputy High Court Judge Daryl Allen KC, with neutral citation [2021] EWHC 2542 (QB).

37. In that judgment, the judge summarised the correspondence from the Defendant which led to the application for an injunction and which the judge found were relevant facts when making his factual findings and reaching his conclusions on whether the conduct amounted to harassment. That summary is at paragraphs 11-102 of the judgment. In that summary the judge noted that the conduct started in 2017, which followed a letter on 21<sup>st</sup> October 2016 from Sharon Williams, the First Claimant's then director of housing advising the Defendant that it considered his contact with ABC to be largely vexatious and that all future correspondence should be addressed to Sharon Williams, unless the correspondence related to legal proceedings, where contact could be made with the legal department.

38. I will take account of the judge's summary of the relevant facts in paragraphs 11-102 of his judgment when reaching my conclusions. I will not repeat all of the judge's summary in this judgment. However, it is worth recording at this point that the judge made specific reference to the impact of the Defendant's comments on Ms Samantha Clarke who is employed in the First Claimant's legal department. At paragraph 79 the judge quoted Ms Clarke's witness statement where she stated that the Defendant's relentless attacks on her character, appearance, professionalism and integrity had had an impact on her mental and general health. The judge made the following finding at paragraph 80:

“In my judgment the Defendant's correspondence with and comments about Ms Clarke were intended to cause her embarrassment, humiliation and distress. That is precisely how they were understood by Ms Clarke and the effect that they had upon her. I accept Ms Clarke's description of the impact of the Defendant's conduct.”

39. Having summarised the relevant correspondence the judge made factual findings about the Defendant's conduct at paragraph 145 of his judgment. Those factual findings were:

“i) The Defendant engaged in a campaign of repetitive, frequent, oppressive and offensive correspondence with the Claimants. On

occasion he has sent multiple letters in a day or over a short period of days. He has continued with correspondence seeking to resurrect complaints and events from many years earlier. The contents of his letters are repetitive and ignore reasoned responses provided by the Claimants.

ii) The Defendant's correspondence has included frequent personal insults directed at ABC Councillors and employees. Ms Clarke and W have been the most obvious targets.

iii) The Defendant's correspondence includes:

a) two suggestions that an ABC Councillor should commit suicide;

b) numerous examples of personally offensive comments about appearance, weight, intelligence and capability;

c) unfounded accusations of criminal conduct including allegations of misfeasance in public office, perverting the course of justice, perjury and conducting restricted legal activities without lawful authority to do so;

d) unfounded allegations of professional misconduct;

e) frequent hollow threats of reporting an individual to CILEX or some other regulator;

f) frequent hollow threats of judicial review or other legal proceedings;

g) requests that ABC Councillors or employees should resign or should be dismissed.

iv) The volume of correspondence was at the level described by the Second Claimant, namely 454 pieces between February 2016 and July 2020.

v) The Defendant elected to ignore the Claimants' reasonable, proportionate and clearly explained proposals/requests to adopt a single point of contact system.

vi) The Defendant elected to ignore the Claimants' reasonable, proportionate and clearly explained proposals/requests to adopt an email divert system.

vii) The Defendant sent multiple emails to many Councillors in the full knowledge that those Councillors had no responsibility for/involvement in the issue he was seeking to raise. There was no legitimate or reasonable justification for sending those emails to those Councillors.

viii) The Defendant's intention when suggesting that a Councillor or employee should commit suicide was to cause maximum distress, offence and upset.

ix) The Defendant's intention when sending personally offensive/insulting correspondence was to cause distress, offence, humiliation and upset to the named individual.

x) The Defendant's intention when requesting that a Councillor or employee should resign or should be dismissed was to cause distress and upset to the named individual.

xi) The Defendant's intentions when threatening criminal prosecution of a named individual was

(i) to cause distress and upset to the named individual,

(ii) to pressure ABC and/or the named individual into doing what he wanted them to do, and

(iii) to influence ABC to take action/not take action to the Defendant's advantage.

xii) The Defendant's intention when making hollow threats of judicial review or other legal proceedings was

(i) to cause distress and upset to the named individual,

(ii) to pressure ABC and/or the named individual into doing what he wanted them to do, and

(iii) to influence ABC to take action/not take action to the Defendant's advantage.

xiii) In addition to the above, when sending his emails and letters to the Claimants the Defendant was also seeking to frustrate and to occupy ABC Councillors and employees with extensive and repetitive correspondence.

xiv) If and insofar as the Defendant had a legitimate concern or complaint which he wished to raise, that concern or complaint was properly addressed by the Claimants. Any such concern or complaint did not justify the volume, frequency, tone or content of the Defendant's correspondence.

xv) Whilst the Defendant's correspondence may have commenced with legitimate queries as to steps taken by ABC, its Officers or staff, those queries were superseded by the repetitive, offensive and unacceptable correspondence described.

xvi) On a number of occasions, the Claimants clearly and expressly informed the Defendant that they considered that his

correspondence and conduct (i) was causing alarm and distress to ABC employees, and (ii) amounted to harassment. Notwithstanding those warnings and warnings that the First Claimant would be forced to take legal action, the Defendant deliberately persisted with, and on occasions escalated, his correspondence and conduct.”

40. The judge also made the following factual finding at paragraph 114 of the same judgment:

“There is, however, correspondence which represents a continuation of the Defendant’s earlier approach of sending emails and attachments to the First Claimant which have no relevance to the First Claimant. For example, he sent copies of numerous emails between himself and Maidstone Borough Council and Tonbridge and Malling Borough Council. Sending large volumes of documentation which does not relate to properties within the Ashford area and which have no relevance to or bearing upon the First Claimant’s dealings with the Defendant is, in my judgment, unreasonable and oppressive behaviour, designed to frustrate or annoy the First Claimant and/or Mr Mortimer.”

41. Having made these factual findings, the judge reached the following conclusions as to whether the Defendant’s conduct amounted to harassment:

“146. In the light of my findings I have no hesitation in finding that the Defendant’s conduct was harassment in breach of section 1 of the 1997 Act.

147. The Defendant’s conduct repeatedly went far beyond merely irritating and annoying. It was deliberately offensive. It included numerous unfounded allegations of professional misconduct and criminal conduct. It included multiple threats of criminal or other legal proceedings which were never pursued. The Defendant’s conduct amounted to harassment within the terms of s.1(1)(a).

148. The Defendant knew or ought to have known that his conduct amounted to harassment [see s.1(1)(b)]. He had been informed on numerous occasions by the Claimants that it amounted to harassment. Any reasonable person in possession of the same information would recognise that the Defendant’s conduct amounted to harassment [see s.1(2)].

149. The Claimant’s conduct was intended to cause alarm, upset and distress. It did cause alarm, upset and distress.”

42. The judgment was personally served upon the Defendant and it was emailed to the Defendant by the judge on the same day. In his evidence in these proceedings, the Defendant accepted that he received the judgment and that he had read it. I am therefore



satisfied that the Defendant was fully aware of the contents of the judgment and the judge's findings that his conduct amounted to harassment.

43. The same conclusions were reached by Warby LJ when refusing the Defendant permission to appeal and upholding Deputy Judge Allen KC's reasoning.
44. In my view, the Defendant could be in no doubt that further correspondence with the Claimants of the same character as the correspondence which had led to the grant of the injunction would be considered to be harassment and in breach of paragraph 3 of the injunction order of 22<sup>nd</sup> September 2021.

### **Discussion of the evidence of the breaches of the injunction and findings**

#### **The Defendant's evidence**

45. During the hearing of 12<sup>th</sup> March 2024 the Defendant gave oral evidence and also produced a bundle of written documents as evidence. I have relied upon this evidence when reaching my conclusions and I will refer to the evidence given by the Defendant as I consider each of the allegations.

#### **Paragraph 4.3 – the single point of contact condition**

46. I will deal first with the allegation that the Defendant has breached paragraph 4.3 of the injunction, the single point of contact condition. As noted above, paragraph 4.3 provides that the Defendant must not contact any protected person, namely any current or former officer, employee, councillor or agent of the First Claimant with the exception that the Defendant may contact Terence Mortimer in writing by post or email, providing that contact does not harass any protected person, which includes Terence Mortimer.
47. The Claimants allege that this condition has been breached on 14 occasions. The specific allegations in the Schedule of Breaches are allegations 25, 29, 30, 31, 32, 34, 36, 37, 38, 39, 40, 42, 43, 44.
48. The Defendant accepts that he has made contact in writing with the following people who are not Terence Mortimer:
  - (a) Noel Ovenden, the Leader of ABC, (breach allegations 29, 31, 32, 34, 36, 37, 39 and 44 of the Schedule of Breaches). The Defendant's emails to Mr Ovenden date from 14<sup>th</sup> August 2023 until 8<sup>th</sup> January 2024. The correspondence was sent to both Noel Ovenden's council email address and his personal address. A summary of the content of what I consider to be representative sample of the emails is set out below:

(BA 29) 14<sup>th</sup> August 2023 – Quotes include:

'I fear the problems with your Council could be resolved by all Members of Staff going to the Office every day!' 'Can I suggest you insist they all return to work?' and attaches an article from the Independent about working for home.

(BA 31) 19<sup>th</sup> August 2023 – the email attaches a letter (addressed to Mr Ovenden's home address) including the following quotes:

‘You will have noticed the conviction of the nurse (a reference to Lucy Letby) yesterday and the fact no one would take any notice of those trying to report it! I draw a comparison with ABC where no one would listen! Look at the situation ABC now has! Those in a position of responsibility cannot be wrong! ABC cannot exercise its Duty of Care and no one can give a damn! I walked away. What is to be done? Well, I do not know but I do give a damn, but I have no answer! ABC should have listened! I attach a pull from Kent Online giving the figures as of today! ABC only has itself to blame for the homelessness young people with small children face.’

(BA 32) 21<sup>st</sup> August 2023 an email containing the following quotes:

“Terry Mortimer now seeks to sweep it under the carpet! That is what happened in the Lucy Letby case. Senior Officers of ABC most definitely lost young people with small toddlers their home! Do you wish to deal with this by a meeting with Elected Members or do I call for a Public Inquiry?” (This was a reference to the Defendant’s long standing dispute with ABC following the sale of his rental properties)

(BA 34) 4<sup>th</sup> September 2023 an email title CALL TO ACT: LUCY LETBY which includes the following quotes:

“Just why I took the decision to no longer purchase properties in Ashford in 2006 is before your time but simply it was due to Tracey Kerly! She needed to think before putting pen to paper! If you insult your main supplier, it is not good business! I did not purchase another property in Ashford since. In 2016 ABC told the Guardian Newspaper that Ashford could cope without Fergus Wilson! The increase to 1500 on the waiting list tends to suggest ABC was wrong! In 2017 I asked ABC under a Freedom of Information request what procedure it was using in regard to the Homeless Reduction Act 2017. ABC ignored the request. I asked precisely the same question of Maidstone Borough Council and Folkestone and Hythe District Council, and both gave perfectly acceptable answers! I complained to the Information Commissioner and he told ABC to reply which it did on 17th February, 2020. The following day Samantha Clarke wrote an extremely lippy letter and I hit the roof! When replying I referred to her size! Mr Mortimer reported me to Kent Police who said no offence had taken place. He then decided to bring a civil case! The net result was I sold all houses in Ashford and ABC now has 1500 on the waiting list. So, who was more important Ms Clarke or 1500 on the waiting list? If Ms Clarke had not written her letter of 18th February, 2020 would ABC have far less people on the waiting list? I now turn to the letter I have received from Peter Buddan. Enough is enough! I call upon you to take action. It is a question of the Lucy Letby issue. Senior Officers ignored everything and look what happened! I draw to your attention exactly what should have happened. Senior Officers turned, a blind eye to what Mr Mortimer and Ms Clarke were doing! Please let me know what action you intend to take to investigate this.”

(BA 44) An email with the title “Responsibility ultimately with the Chief Executive. It includes the following quotes:

“The article from the Daily Express of 22nd August, 2023 raises the question of whether the four officers should go to prison. The legislation is already in place. If convicted of Mafesance, then a prison sentence follows.’ ‘I am prepared to accept that Samantha Clarke was “following orders” but it is for you to make a Judgement. I am prepared to accept that Peter Budden was “following orders” but it is for you to make a Judgement.”

I am satisfied that the content of this email demonstrates that the Defendant is suggesting that one of the four officers who should go to prison for mafesance is Samantha Clarke.

- (b) Correspondence with the Freedom of Information Team at ABC (breach allegations 25, 30, 38 and 43 of the Schedule of Breaches). This correspondence includes requests for homelessness figures (BA 25), a request for the 454 letter letters which formed part of the injunction claim (BA 30 and 38), and a request for detail of the establishment of the ABC legal team, including how many CILEX staff were employed there (BA 43).
  - (c) Letters to Mrs Tracey Kerly (alleged breaches 40 and 42 of the Schedule of Breaches). Numbers 40 and 42 are in fact the same letter and there is therefore only one alleged breach. The letter attaches documents about the Defendant’s Covid vulnerability and asks her to read a Court of Appeal case, Churchill v Merthyr Tydfil Borough Council.
49. The Claimants submit that the above correspondence is a breach of condition 4.3 of the order because the order requires all correspondence to the Claimants to be addressed to Terence Mortimer.
50. The Defendant gave oral evidence about these alleged breaches as follows:

First, Mr Wilson accepted he made contact with Noe Ovenden. However, Mr Wilson said that such contact did not amount to a breach of the terms of the injunction because it was contact with a leader of the council about legitimate political concerns. Mr Wilson stated “if I want to contact Noel Ovenden and want to give him something in the media it is no different to what I do with other councils.” and “Councils have a corporate responsibility they are individually responsible – is there anything wrong with writing to Rishi Sunak, saying this is not how you run the country and saying you are useless.”

Second, Mr Wilson accepted he made contact with the Claimant’s freedom of information team. However Mr Wilson said this contact was necessary because otherwise he would not have got the information he needed. Mr Wilson said that the only way to get information from a local authority under the Freedom of Information Act was via a portal on the internet which covered all local authorities. You made your request via the portal and then selected the name of the Local Authority you wanted the information from. If you did not do this and emailed the freedom of information team at ABC directly the request went in the bin and you got no response, which is what happened to him in 2020. Mr Wilson did not say whether he had tried to make a freedom of information request to the single point of contact, Terence Mortimer.

Third, Mr Wilson accepted that he had made contact with Tracey Kerly but he said he was just trying to be helpful as the case he referred to talked about the benefits of mediation.

51. The Defendant also submitted a bundle of papers on the day of the hearing which I have also considered.
52. I have considered the evidence of the Claimants and the evidence of the Defendant and conclude that the Defendant has breached paragraph 4.3 of the injunction order on the occasions alleged in allegations 25, 29, 30, 31, 32, 34, 36, 37, 38, 39, 40, 43, and 44 of the Schedule of Breaches. The breach of paragraph 4.3 alleged in allegation 42 is not proved because it is a duplicate of allegation 40. In reaching this conclusion I remind myself that I must be satisfied to the criminal standard of proof.
53. The reasons why I am sure that paragraph 4.3 has been breached in these breach allegations are:
  - (a) The terms of the injunction order are very clear. The only Protected Person connected with the Claimants the Defendant is allowed to contact is the Claimants' head of legal, Terence Mortimer. Noel Ovenden, the members of ABC's freedom of information team, and Tracey Kerly are all protected people which, as the injunction order makes clear, the Defendant is prohibited from contacting.
  - (b) I have considered the Defendant's reasons as to why it was necessary for him to breach the single point of contact provision. I find that they lack merit. As can be seen, the communications with Noel Ovenden do not support the Defendant's account that they fulfil a legitimate political purpose. The most obvious example of this is the communication contained within allegation 44 where the Defendant writes to Noel Ovenden to suggest that members of his legal department, including Samantha Clarke, are guilty of misfeasance and should go to prison. This is not legitimate political comment, it is a continuation of the harassment which the injunction order was intended to restrain. In relation to the freedom of information requests those requests must be made using the single point of contact. The Defendant did not give any evidence that he had tried to make such a request of Mr Mortimer and had failed to get a response. The claim that it was necessary to make contact with the freedom of information team through the national system therefore lacks merit. Finally, I cannot see what the reason was for contacting Tracy Kerly, and I reject the Defendant's suggestion that he was just trying to be helpful, based both on the content of the letter and also taking into account the wider context of the Defendant's relationship with the Claimants.
  - (c) However, the determinative factor in my finding that the Defendant is in breach of the injunction order is that the injunction order is an order of the Court and its terms must be obeyed. The Defendant does not have the option of deciding that it is reasonable for him to breach any of the conditions of the injunction. If the Defendant considered that any of the terms of the injunction were unreasonable, then his remedy was to apply to the Court for the terms of the injunction to be varied. The Defendant cannot, as I have found he has done on thirteen occasions, disregard the terms of the injunction and breach it.

54. As I explain at paragraph 42 of this judgment, the Defendant was aware of the terms of the injunction and he also accepts that he was responsible for writing the correspondence which was said to be in breach of paragraph 4.3 of the injunction order. The only issue was therefore whether this correspondence in fact breached the injunction. In light of my findings at paragraph 52 and 53, the Defendant has breached paragraph 4.3 of the injunction order and allegations 25, 29, 30, 31, 32, 34, 36, 37, 38, 39, 40, 43, and 44 of the Schedule of Breaches are proved.

### **Paragraph 3 the prohibition of harassment prohibition**

55. Allegations 1-24, 26-28, 33, 35, and 41 all concern communications sent to the single point of contact, Terence Mortimer. There is therefore no breach of the single point of contact condition in paragraph 4.3 of the injunction order. However, paragraph 3 of the order together with the three saving provisions following paragraph 6 of the order make clear that when communicating with Mr Mortimer, the Defendant must do so in a manner which does not harass the protected persons. The Claimants submit that each of the communications from the Defendant to Mr Mortimer amount to harassment.
56. In addition the Claimants submit that each of alleged breaches 25, 29, 30, 31, 32, 34, 36, 37, 38, 39, 40, 43, and 44 in the Schedule of Breaches amount to a breach of the anti-harassment prohibition at paragraph 3 of the order as well as being breaches of the single point of contact provision in paragraph 4.3.
57. The Claimants' submissions as to why these communications amount to harassment and are a breach of paragraph 3 are twofold:
- (a) The Defendant continues to make (i) hurtful personal comments; and (ii) unfounded allegations of criminal conduct against Samantha Clarke, an employee of ABC. The threats and personal comments about Samantha Clarke are said to be a continuation of a course of conduct against her which commenced before the injunction was granted and was one of the reasons why the injunction was granted. The continuation of this course of conduct amounts to harassment of Samantha Clarke. The Claimants allege the alleged breaches 5, 6, 9, 14, 15, 16, 18, 19, 21, 22 and 44 of the Schedule of Breaches contain harassment of this nature.
  - (b) The Defendant continues to write correspondence to the Claimants which contains a large amount of information which it claims is irrelevant and shows that the Defendant has not accepted the outcome of the injunction hearing. In its Schedule of Breaches the Claimants say that such correspondence amounts to harassment because:
    - “The sending of emails which are irrelevant to the Claimants continues a course of conduct by Mr Wilson which Mr Darryl Allen KC found to be ‘unreasonable and oppressive behaviour, designed to frustrate or annoy the First Claimant and/or Mr Mortimer’
- Mr Wilson is continuing to reject the findings of the Court and to try and argue that his behaviour did not constitute

harassment. His refusal to accept the findings is now a feature of his ongoing harassment.”

The Claimants submit that breach allegations 1-18, 19, 23, 24, 26, 27, 28 and 33 of the Schedule of Breaches contain harassment of this nature.

58. The Defendant gave evidence both orally and in writing, in particular in a document titled “ABC 240312”, that his correspondence with the Claimants did not amount to harassment. This evidence is in addition to the evidence I have already referred to at paragraph 50 above. Mr Wilson stated:
- (a) He was annoyed about the Claimants’ conduct of the costs dispute. He stated that the Claimants have had the opportunity to apply for a detailed costs assessment and have not done so. Mr Wilson said that he was unhappy that the Claimants had not progressed the Costs dispute to detailed assessment.
  - (b) The Claimants’ costs figure has now reached £440,000 which he says is disproportionate to the issues in the litigation. Mr Wilson said that the issue of costs should be resolved by mediation and the Claimants’ pursuit of its costs against him is unreasonable. Mr Wilson alleges that the Claimants are applying for his committal for contempt of court for breaches of the injunction to enforce its costs. He says this application is about money.
  - (c) His issue with Ms Clarke is not her competence, it is the fact that she is not qualified to conduct litigation. He says that the Claimants are seeking to claim costs for her work that are excessive because, he says, Ms Clarke is not entitled to conduct this litigation. Mr Wilson alleges that the Claimants have sought to charge costs at the category A level for work done by Ms Clarke when they are not entitled to do so. Mr Wilson asserts that the costs claimed for Mr Mortimer’s work was in fact for work done by Ms Clarke. He says that he believes that Ms Clarke’s conduct of litigation in his case is a criminal offence because he has been told by HHJ Simpkins in a previous case that conducting litigation when not qualified to do so is a criminal offence.
  - (d) That as far as he was concerned the conduct alleged by the Claimants started in 2020 and not in 2017 as alleged. Mr Wilson asserts that much of the evidence relied upon by the Claimants to prove harassment is out of time because of the limitation period imposed for prosecution of offences of harassment. Mr Wilson also says that had the police taken action at the request of the council the matter would have been dealt with as a summary offence with a maximum £500 fine and he would have been summonsed within six months.
  - (e) Mr Wilson said that he was unable to write to the Claimants about his legitimate legal dealings with them because they would say this was harassment and that he was in breach of the injunction.
  - (f) Mr Wilson stated that the Claimants’ evidence in the injunction proceedings that 454 letters represented excessively voluminous correspondence was not accurate because Mr Wilson had needed to correspond with the Defendant in relation to his many rental properties.

(g) Mr Wilson states he is not guilty of contempt of court.

59. I shall first consider the allegations that the Defendant continued to harass Samantha Clarke before considering the allegation that the Defendant's irrelevant and voluminous correspondence with the Claimants amounts to harassment.

**Allegations of continued harassment of Samantha Clarke – discussion of evidence and conclusions.**

60. Before discussion of the communications themselves and whether they harassed Ms Clarke, it should be noted that the communications contained within the alleged breaches were not addressed to Ms Clarke. However, they were addressed to ABC's legal department. In evidence the Defendant accepted that he suspected that the communications would come to the attention of Ms Clarke as she was the one who wrote all of Mr Mortimer's correspondence, a fact he makes complaint about in costs proceedings between himself and the Claimants. I conclude that the Defendant knew or ought to have known that in writing this correspondence to ABC's legal department, the correspondence would come to the attention of Ms Clarke.
61. I now turn to the alleged breaches of harassment against Ms Clarke (i) by hurtful personal comments and (ii) by making unsubstantiated allegations about her lack of legal qualifications and unwarranted threats to take action. In doing so it is necessary to refer to the findings of Deputy High Court Judge Allen KC before then considering whether the breaches of the injunction imposed by him amount to harassment.

(i) Hurtful personal comments

62. As noted at paragraph 38 above, Deputy High Court Judge Allen KC concluded that the Defendant's conduct amounted to harassment of Samantha Clarke. The judge described the conduct which led him to this conclusion. First, he found at paragraphs 72-78 of his judgment, that from the 18<sup>th</sup> February 2020 the Defendant had made numerous personal comments about Ms Clarke's appearance. Indeed the first of these comments was copied to 45 councillors which the judge found was a deliberate attempt by the Defendant to humiliate Ms Clarke. I now turn to consider whether the breach allegations of further personal comments amount to continued harassment of Ms Clarke.
63. Breach allegation 6 is an email dated 6<sup>th</sup> February 2022 to Terence Mortimer and the Civil Appeals Office. It contains a continuation of comments about Ms Clarke's appearance by attaching a magazine and saying that in that magazine, lads have called women fat and this is not harassment. This is an example of a communication which, when seen in the context of the Defendant's course of conduct as a whole is clearly directed towards Ms Clarke.
64. Breach allegation 14 is an email to the Civil Appeals Office and Terence Mortimer which contains the following comment from the Defendant: 'According to the Internet. It is not Harassment to call a lady Fat! It follows that it is not Harassment to call a lady Michelin Lady. I ask the Appeal Judge to make a decision on this point!'. Again, seen in the context of the course of the Defendant's conduct as a whole this comment is clearly directed towards Ms Clarke.

65. Breach allegation 18 is an email to the Civil Appeals Office and Terence Mortimer containing 35 attachments one of which is a note dated 8<sup>th</sup> June 2022 from the Defendant. It repeats the Defendant's comments about Ms Clarke's size and says that such a comment is merely ungentlemanly not harassment.
66. The Defendant gave evidence that many of the documents submitted to the Claimants were his own file notes. However, in my view this does not assist the Defendant as the file notes became communications to the Claimants when he made the decision to send these file notes to the Claimants.
67. When giving evidence under cross examination the Defendant was asked why he had made further comments to the Claimants that Ms Clarke was fat. Mr Wilson accepted that since the injunction order was made that he had called Ms Clarke fat. He said that he had read the injunction judgment and the evidence that Ms Clarke was distressed by his comments. Mr Wilson accepted he should not have said it and that he takes the judge's point. Mr Wilson said he couldn't remember how many times he had commented on Ms Clarke's appearance, but accepted that he had done so, and that it distressed her. Mr Wilson said that he regretted it, that he said it because he was annoyed, and that there were people who were worse off than Ms Clarke. Mr Wilson also said that the main issue he had with Ms Clarke was her lack of professional qualifications.
68. In reaching my conclusions on this issue have considered the evidence and submissions of the Claimants and the Defendant.
69. I am satisfied that, in light of Ms Clarke's evidence in the injunction proceedings of her distress, there is strong circumstantial evidence that Ms Clarke would have been distressed by these further personal comments.
70. I note that each of the comments relied upon by the Claimants in breach allegations 6, 14 and 18 were addressed not just to the Claimants but were also addressed to the Civil Appeal Office as they were ostensibly related to the Defendant's appeal against the injunction order. I have considered whether in these circumstances the Defendant's actions were reasonable and do not amount to harassment because of the availability of the defence under section 1(3) of the Protection from Harassment Act 1997. If the Defendant's purpose in repeating his comments about Ms Clarke's appearance was to challenge the conclusion by Deputy Judge Allen KC that they in fact amounted to harassment then the Defendant would be legitimately exercising his right to challenge the imposition of the injunction, his actions would be reasonable and he would not be guilty of harassment. However, I am satisfied that when making these comments the Defendant's purpose was not to appeal the judge's findings, his purpose was to cause further distress to Ms Clarke. The reasons for my conclusion are twofold. First, the content of the communications themselves is articulated in deliberately provocative terms. Second, in his evidence in these proceedings the Defendant accepted that the judge making the injunction had a point when ordering him not to make further comments about Ms Clarke's appearance because they distressed her and that he knew it was wrong to make further similar comments. I conclude that the Defendant did not believe that he was making a valid point in legal proceedings when repeating these comments about Ms Clarke's appearance and that this conduct was not therefore reasonable.



71. I therefore conclude that the comments made by the Defendant in breach allegations 6, 14 and 18 amounted to harassment, that the Defendant knew the comments would cause Ms Clarke distress, as a result the Defendant therefore harassed her. I conclude to the criminal standard of proof that breach allegations 6, 14 and 18 are proved.

(ii) Comments alleging Ms Clarke has committed criminal offences and threats to take legal action

72. Breach allegations 5, 9, 14, 21, 22 and 44 refer to correspondence from the Defendant: impugning the validity of Ms Clarke's professional qualifications, making allegations that she has committed criminal offences and making threats that she should be prosecuted.
73. When imposing the injunction order Deputy Judge Allen KC made findings on these issues at paragraphs 81-91 of his judgment. To be able to understand whether the alleged breaches of the injunction do, or do not amount, to harassment it is necessary to understand the reasons why the anti-harassment term of the injunction was imposed and to quote the relevant passages of Deputy High Court Judge Allen KC's judgment where he sets out the Defendant's conduct and why it amounts to harassment. The relevant paragraphs are set out below

“81. On 7th May 2020, the Defendant wrote to Mr Clarkson alleging that Ms Clarke did not enjoy rights of audience to appear in Court and had committed a breach of s.1 of the Legal Services Act 2007, which carries a maximum custodial sentence of two years.....

83. On 15th May 2020, he wrote to Mr Mortimer accusing Ms Clarke of passing herself off as a solicitor and committing a criminal offence of practising law which, according to the Defendant, she was not permitted to do. He repeated that allegation in two further letters to Mr Clarkson dated 23rd May 2020. In the second of those letters he stated,

“I am intending to ask the High Court (Queens Bench) to consider whether the Decision of the High Court on 8th July, 2019 should be quashed. Before I do so I should give the Council the opportunity to consider the matter. Can you let me know within 14 days whether the Council agrees to the matter being Set Aside? The Grounds Are that Ms Samantha Clarke was actively involved in this litigation when she was not qualified to do so.”

84. As before, no Judicial Review proceedings were ever issued by the Defendant.

85. The allegation against Ms Clarke was repeated again in a letter to Mr Mortimer dated 29th May 2020.

86. On 12th June 2020, the Defendant wrote to Mr Mortimer under his own reference “BIG SAM”. The main heading for his

letter was “SAMANTHA CLARKE”. His use of that reference was facile and insulting to Ms Clarke. He once again alleged that Ms Clarke appeared to have acted unlawfully and asked,

“Please confirm what disciplinary action the Council intends to take.”

87. The allegation was repeated in another letter from the Defendant to Mr Mortimer dated 15th June 2020. By letter dated 26th June 2020, he accused Ms Clarke of overcharging when claiming £217/hour as her charge-out rate. Once again he accused her of the criminal offence of practising law “which is a reserved activity”. He concluded his letter with

“... I hope not to have to take this to the High Court but be assured that I will if necessary. ...”

89. On 28th June 2020, the Defendant wrote two further letters to Mr Mortimer. The first is at and relates to Ms Clarke, “Since writing yesterday, I have read up on Misconduct in Public Office. It does seem to me that there is a case to answer. If Samantha Clarke wishes to avoid this then let me know what remedy you propose by 10th July, 2020. It carries a custodial sentence and Samantha Clarke should be aware of it! Be clear if I do not hear from you by 19th July, 2020 I shall instruct Council to prepare papers to lay before Magistrates for a Private Prosecution. Further, I will refer the matter of overcharging to the High Court.

91. By letter dated 2nd July 2020, the Defendant claimed that he had given instructions for Counsel to draw up papers to be placed before Magistrates regarding Ms Clarke if he did not hear from Mr Mortimer before 19th July 2020. On 6th July 2020, he wrote to Mr Mortimer accusing Ms Clarke of misconduct in public office. That letter concluded with the following,

“The Courts now have a backlog for years. To save us all time would you care to indicate how Ms Clarke intends to plead? Does she wish the easy way out?””

74. In his findings of fact (at paragraph 145) the judge concluded that when making these threats to Ms Clarke his intention was:
- (i) to cause distress and upset to her,
  - (ii) to pressure ABC and/or Ms Clarke into doing what he wanted her to do, and
  - (iii) to influence ABC to take action/not take action to the Defendant’s advantage.
75. The above findings illustrate an important point which will be relevant to my consideration of whether the alleged breaches amount to harassment. In the letter of

15<sup>th</sup> June 2020 referred to at paragraph 87 of the injunction judgment the Defendant makes an observation about the Claimants' costs and whether Ms Clarke and the Claimants are overcharging. This is a comment which may well be entirely legitimate when making observations as to whether the Claimants' costs are reasonable. However the Defendant then goes on to make an allegation that Ms Clarke has committed a criminal offence. In the view of Deputy High Court Judge Allen KC this allegation went beyond a legitimate observations about costs and is a was a comment that amounted to harassment.

76. I now discuss whether the specific breach allegations are proved.
77. Breach allegation 5 – 1<sup>st</sup> February 2022. The Defendant sent correspondence containing the following comments:

‘Samantha Clarke can only charge £50 per hour and not £217 per hour! That is the rate of a Paralegal. She is not a Solicitor even on rate D let alone rate A. She is not a FCILEx. She has to extract her “profits” reducing to £33.33 per hour. There is no VAT with a Council. Mr Mortimer says If he wishes to use Samantha Clarke as a Litigation Lawyer then he can! Well, Mr Mortimer needs to understand that she cannot “Conduct Litigation” without being appropriately qualified! Overcharging is a matter for the High Court so we will have to await what the High Court Decides. Without the correct certification Samantha Clarke cannot Practice Law! No more than I can but I am a Litigant in Person!’

78. Breach allegation 5 contains a statement from the Defendant that the Claimants have been overcharging and in doing so makes reference to Ms Clarke's professional status. However, it does not allege that Ms Clarke has committed a criminal offence, nor that there should be sanctions on her. In my view the Defendant is entitled to make submissions as to whether the Claimants' costs are appropriate. The Defendant has given evidence that he disputes the costs claimed by the Claimants, in particular that they are overcharging for work done by Ms Clarke, because her level of qualification does not justify the fees claimed. This is a point that the Defendant is entitled to make when challenging the Claimants' costs. Further it is not inappropriate for the Defendant to suggest that overcharging is a matter for the High Court to determine. However, what the injunction order judgment makes clear the Defendant cannot do is make an unwarranted suggestion that Ms Clarke has committed a criminal offence and that she should be subject to unjustified legal proceedings. The comments in breach allegation 5 do not accuse Ms Clarke of committing a criminal offence or include a threat to make her subject to unwarranted legal proceedings, they merely suggest that ABC has applied too high a charging rate for Ms Clarke's services. I am not satisfied to the criminal standard that this allegation amounts to harassment. Breach allegation 5 is not proved.
79. Breach allegation 9 is an email to the Claimants and the Civil Appeal Office dated 2<sup>nd</sup> April 2022. It contains the following comment:

Samantha Clarke is neither a Solicitor nor is she a Fellow of CILEx and is unable to conduct litigation. I will flag, at this point, that the most she can charge is £50 per hour and not £217.

For the same reasons as given in breach allegation 5 I am not satisfied to the criminal standard that this allegation amounts to harassment. I find that breach allegation 9 is not proved.

80. Breach allegation 14 – is contained within an email dated 4<sup>th</sup> May 2022 to the Claimants and the Civil Appeal Office. It states:

‘Mr Deakin laid Evidence Before the Court in relation to a Private Prosecution of Samantha Clarke in relation to “overcharging” fees. Well, that has passed as the Magistrates Court has actioned the matter and it is live albeit Mr Deakin suggested it be delayed until after this current action.’

81. This statement does include an allegation that a private prosecution will be launched against Ms Clarke. The suggestion that Ms Clarke has committed a criminal offence is unwarranted, and the Defendant knows from the judgment imposing the injunction order that such allegations and threats will amount to harassment. Further such a suggestion is not relevant to the issues the Court of Appeal had to determine and in my view was a communication which was further calculated to distress Ms Clarke. I find that this communication (a) continued a course of conduct towards Ms Clarke which amounted to harassment of her; and (b) that the defendant intended that this communication should harass Ms Clarke. Breach allegation 14 is proved.
82. Breach allegation 21 is a letter to Terence Mortimer dated 27<sup>th</sup> September 2022 containing the following comment:

‘All the work has been done by Samantha Clarke who is not a Solicitor (nor FCILEx) and is therefore unable to conduct litigation which is a reserved activity. She could go to prison as it is a Criminal Offence.’

The suggestion that Ms Clarke has committed a criminal offence is unwarranted, and the Defendant knows from the judgment imposing the injunction order that such allegations and threats will amount to harassment. I find that this communication (a) continued a course of conduct towards Ms Clarke which amounted to harassment of her; and (b) that the defendant intended that this communication should harass Ms Clarke. Breach allegation 21 is proved.

83. Breach allegation 22 is a letter to Terence Mortimer dated 1<sup>st</sup> November 2022 containing the following comment:

‘Samantha Clarke ... is not able to do so or sign costs schedules on your behalf as it can only be done by a person who is able to carry out a reserved activity’

In this allegation the Defendant restricts himself to observations that Ms Clarke is not authorised to sign the costs schedules. He does not make any allegation that she has committed a criminal offence or threaten that she should be prosecuted. For the reasons given at breach allegation 5 I am not satisfied to the criminal standard that this communication amounts to harassment.

84. Breach allegation 44 is a letter to Noel Ovenden dated 8<sup>th</sup> January 2024. It contains the following comments:

‘The article from the Daily Express of 22nd August, 2023 raises the question of whether the four officers (which include Ms Clarke) should go to prison. The legislation is already in place. If convicted of Malfeasance, then a prison sentence follows.’ ‘I am prepared to accept that Samantha Clarke was “following orders” but it is for you to make a Judgement.’

In this communication the Defendant makes the suggestion to the leader of ABC that Ms Clarke and three other employees should go to prison for malfeasance. The suggestion that Ms Clarke has committed a criminal offence is unwarranted, and the Defendant knows from the judgment imposing the injunction order that such allegations and threats will amount to harassment. I find that this communication (a) continued a course of conduct towards Ms Clarke which amounted to harassment of her; and (b) that the defendant intended that this communication should harass Ms Clarke. Breach allegation 44 is proved.

85. In relation to the allegations of harassment of Ms Clarke by making unwarranted allegations that she has committed criminal offences, I find to the criminal standard of proof that breach allegations 14, 21 and 44 are proved.

**Alleged Breaches 1-18, 19, 23, 24, 26, 27, 28 and 33 - Unreasonable and oppressive behaviour, designed to frustrate or annoy the First Claimant and/or Mr Mortimer**

86. The Claimants submit that following the injunction the Defendant has continued to write voluminous correspondence to the Claimants which is irrelevant and shows that the Defendant has not accepted the outcome of the injunction hearing. In its Schedule of Breaches the Claimants say that such correspondence amounts to harassment because:

“The sending of emails which are irrelevant to the Claimants continues a course of conduct by Mr Wilson which Mr Darryl Allen KC found to be ‘unreasonable and oppressive behaviour, designed to frustrate or annoy the First Claimant and/or Mr Mortimer’

Mr Wilson is continuing to reject the findings of the Court and to try and argue that his behaviour did not constitute harassment. His refusal to accept the findings is now a feature of his ongoing harassment.”

87. The Claimants submit that breach allegations 1-18, 19, 23, 24, 26, 27, 28 and 33 of the Schedule of Breaches contain harassment of this nature.
88. The Claimants’ primary submission is that this correspondence amounts to harassment because in the final injunction order judgment Deputy High Court Judge Allen KC concluded the evidence contained within the fifth witness statement of Terence Mortimer dated 2<sup>nd</sup> February 2021 was conduct which amounted to harassment. That statement made allegations that following the trial hearing on 2<sup>nd</sup> February 2021, the

terms of the interim injunction order had been breached by the Defendant and that the Defendant misused the single point of contact condition permitting contact with Mr Mortimer to continue his harassment, and abuse the single point of contact.

89. The judge's findings on the Claimants' submissions are at paragraphs 106-114 of the judgment. The judge rejected many of the Claimants' submissions that the Defendant's further correspondence amounted to harassment. Correspondence relation to the Defendant's application for permission to appeal an order of Spencer J was not harassment, nor were 40 pages of comments downloaded from various news sites about the ongoing litigation. However, at paragraph 114 the judge concluded:

“There is, however, correspondence which represents a continuation of the Defendant's earlier approach of sending emails and attachments to the First Claimant which have no relevance to the First Claimant. For example, he sent copies of numerous emails between himself and Maidstone Borough Council and Tonbridge and Malling Borough Council [Exh TM5/013-033]. Sending large volumes of documentation which does not relate to properties within the Ashford area and which have no relevance to or bearing upon the First Claimant's dealings with the Defendant is, in my judgment, unreasonable and oppressive behaviour, designed to frustrate or annoy the First Claimant and/or Mr Mortimer”

90. The issues for me to determine are (a) whether the correspondence sent by the Defendant is irrelevant to his legitimate dealings with the Claimants; and (b) if it is irrelevant, whether the conduct is unreasonable or oppressive, designed to frustrate or annoy the Claimants and (c) whether, as a result, the conduct amounts to harassment. In determining whether correspondence from the Defendant to the Claimants is irrelevant to the Defendant's legitimate dealings with the Claimants I remind myself that allegations must be proved to the criminal standard of proof.
91. Breach allegations 1-18 are emails addressed to both the Claimants and the Civil Appeal Office. The fact the correspondence was addressed to the Civil Appeals Office is evidence that the Defendant's intention when sending it was for the purposes of his appeal against the injunction order. On the face of it correspondence with the Claimants and the Civil Appeals Office challenging the injunction order would not appear to be material which has no relevance to the Claimants.
92. The Claimants suggest that some of the correspondence contained within these allegations goes beyond what is necessary for the conduct of litigation and is therefore harassment. However, this is a very high bar for the Claimants to surmount. When considering the Defendant's appeal against the injunction order Warby LJ did complain that the documents submitted to the Court by the Defendant were voluminous and rambling and constituted an abuse of the Court's process. However, he declined to offer a view as to whether the documents submitted amounted to harassment, saying that the question of whether the Defendant was in contempt of court should be dealt with in enforcement proceedings such as this.
93. I have considered the correspondence in breach allegations 1-18 and conclude that it is not possible to sufficiently distinguish whether it is: (a) for the legitimate purpose of

conducting litigation; or (b) clearly irrelevant to the claimants and oppressive; to be able to reach a finding to the criminal standard that this correspondence amounts to harassment.

94. In addition, the Claimants' suggestion in many of breach allegations 1-18 that the Defendant "is continuing to reject the findings of the Court and to try and argue that his behaviour did not constitute harassment" and that "His refusal to accept the findings is now a feature of his ongoing harassment" are weak points to make when the Defendant is pursuing the entirely legitimate course of conduct of appealing the injunction order to the Court of Appeal.
95. I am not satisfied to the criminal standard that the communications in breach allegations 1-18 are irrelevant to the Defendant's dealings with the Claimants and oppressive so as to amount to harassment.
96. Allegations 19, 23, 24, 26, 27, 28 and 33 post-date the appeal proceedings.
97. Allegation 19 is an email from the Defendant to the Claimants dated 29<sup>th</sup> August 2022 which is entitled "File notes for the public inquiry". It attaches 70 documents and contains over 400 pages of material. It contains no information of relevance to the Defendant's legitimate dealings with the Claimants. It is accurately characterised by the Claimants in the schedule of breaches as containing documents which are "irrelevant, often historic and constitute a voluminous and oppressive body of material. The attachments also contain offensive material that continues Mr Wilson's campaign of harassment". I am satisfied that in sending such a large volume of material for no purpose relevant to the Defendant's legitimate dealing with the Claimants the correspondence was part of an ongoing campaign of sending an oppressive body of material to the Claimants with the intention of harassing them. A further example of such correspondence is to be found within breach allegation 26.
98. I am satisfied to the criminal standard that breach allegations 19 and 26 are proved because the Defendant harassed Mr Mortimer, the single point of contact, by sending large volumes of irrelevant material to the Claimants and that this was the continuation of what Deputy High Court Judge Allen KC found to be an oppressive course of conduct. The reasons for my findings are that:
  - (a) This correspondence was part of a course of conduct which amounted to harassment of Mr Mortimer because of the sheer volume of irrelevant information that the correspondence contained and this was the continuation of a course of conduct involving similar correspondence which led to the imposition of the injunction.
  - (b) The evidence from the injunction proceedings that Mr Mortimer was harassed by the Defendant's correspondence provides ample circumstantial evidence that this correspondence would have harassed Mr Mortimer.
  - (c) The Defendant intended to harass Mr Mortimer because he was fully aware of the Deputy High Court Judge Allen KC's findings at paragraph 114 of his judgment that further such correspondence would amount to harassment and deliberately chose to disregard those findings and the injunction order.

99. I am not satisfied to the criminal standard that the volume or content of the correspondence contained within breach allegations 23, 24, 27, 28 and 33 amounts to harassment. These allegations are not proved.

### **Conclusion**

100. The following breach allegations in the Schedule of Breaches are proved to the criminal standard of proof:

(a) Breach of paragraph 3 of the injunction order (the anti-harassment prohibition)

Breach allegations 6, 14, 18, 19, 21, 26 and 44.

(b) Breach of paragraph 4.3 of the injunction order (the single point of contact prohibition)

Breach allegations 25, 29, 30, 31, 32, 34, 36, 37, 38, 39, 40, 43, and 44.

101. The remaining breach allegations are not proved.
102. It will now be necessary to make arrangements for a further hearing to consider the question of sanctions for the above breaches.