Neutral Citation Number: [2020] EWHC 2776 (QB)

Case No: QB-2020-001013

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/10/2020

Before :

MASTER SULLIVAN

- -

Between :

SAMUEL COLLLINGWOOD SMITH	**Claimant**
- and -	
ESTHER RUTH BAKER	**Defendant**

- -
- -

The **Claimant** appeared in person
The **Defendant** appeared in person

Hearing dates: 30 September 2020

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Approved Judgment (corrected)

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

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties by email and release to BAILII. The date and time for hand-down is deemed to be 10.30am on 20 October 2020

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MASTER SULLIVAN

Master Sullivan :

Following the handing down of this judgment (which I did not circulate to the parties in advance) I have received submissions by email from the claimant asking me to correct two typographical errors, in paragraphs 30 and what is now paragraph 82 and also correcting a factual error in paragraph 31, which I have done. I was also asked to address the matters I have now set out in paragraphs 76 and 77 below.

1. This is a claim and counterclaim for defamation and harassment relating to publications posted on twitter (in respect of the claim) and blogposts (in respect of the counterclaim). The claimant made an application on 8 July 2020 to strike out the defence and counterclaim and for summary judgment on the claim and counterclaim. Both parties are litigants in person but are parties with some experience of litigation in the Media and Communications list.

2. I heard submissions on this matter on 30th September 2020 by remote video hearing and reserved judgment in part in order to read further documents in the extensive bundle which I did not have an opportunity to read prior to the hearing. The pleadings with annexes alone run to 293 pages. The hearing was heard in public with 11 members of the press and public, many of whom have an interest in this litigation or the other litigation which the parties are involved in, attending by remote video link.

Brief background history

3. The claimant writes what he describes as a law-blog under the name "Matthew Hopkins – Witchfinder General". He describes himself as a company director, former borough councillor and he holds a Masters degree in law with legal practice course. His blogs have included blogs on ongoing defamation proceedings between the defendant in this case and Mr John Hemming. He has also assisted Mr Hemming in that claim. The form of that assistance is a matter of dispute in this claim.

4. The defendant describes herself as a student and a campaigner against all forms of abuse and the victim of childhood sexual abuse. She has commenced a law degree with the Open University. She was a core participant in the Independent Inquiry into Childhood Sexual Abuse.

5. She made an allegation of rape against Mr Hemming which he denies. Mr Hemming has in turn accused the defendant of being a fantasist and of having committed perjury. No formal criminal proceedings have been pursued against either Mr Hemming or the defendant. The litigation between the defendant and Mr Hemming surrounds those allegations. Although the claim is ongoing, judgment was entered against the defendant in favour of Mr Hemming on part of his counterclaim, namely that the allegation that Mr Hemming raped or sexually assaulted the defendant then stalked and defamed her to cover it up, was defamatory. On 19 November 2019 Mrs Justice Steyn ordered that the defendant be restrained from publishing those words or words to the same or similar effect.

The application to strike out and for summary judgment

6. The application was made on the basis that the defence and counterclaim amount to an intentional abuse of process and have no real prospect of success. In summary it is argued that:

i) the defendant has failed to comply with the court rules and practice directions when pleading her claim when she knew, given previous litigation, what those rules are. The default is said to be such that it amounts to an abuse of process;

ii) where the defendant has properly pleaded matters, they have no realistic prospect of success at trial; and

iii) the counterclaim is an abuse of process as it either should have been brought in the Baker v Hemming proceedings (the rule in Henderson v Henderson) or is a collateral attack on a judgment in that and other proceedings.

7. The claimant also initially sought to make arguments based on limitation but did not pursue that point at the hearing and confirmed following the hearing that for the purposes of the application he did not pursue those arguments.

The law

8. CPR 3.4(2) provides that the court may strike out a statement of case if it appears to the court (a) that the statement of case discloses no reasonable grounds for bringing the claim, or (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct just disposal of the proceedings, or (c) that there has been a failure to comply with a rule, practice direction or court order.

9. The power to strike out is a discretionary one. Where there has been non-compliance with rules, practice directions or court orders I should consider whether any lesser sanction is appropriate. I should also take into account the principles on relief from sanctions where there is a default.

10. CPR 24.2 provides that the court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if (a) it considers that (i) the claimant has no real prospect of succeeding on the claim or issue or (ii) the defendant has no real prosect of successfully defending the claim or issue and (b) there is no other compelling reason why the case or issue should be disposed of at trial.

11. In determining those questions, I must consider whether the party has a realistic as opposed to fanciful prospect of success and a realistic claim is one that carries some degree of conviction. I must not conduct a mini-trial in reaching my conclusions and must take into account not just evidence before me now but evidence that it is likely will be placed before the court at trial.

12. Practice Direction 53B sets out what must be pleaded in cases of defamation claims, as this one is, issued after October 2019.

The claim and counterclaim

13. The claim against the defendant was issued in March 2020 and is in respect of 3 sets of tweets published in June 2019 and November 2019. The counterclaim is in respect of 11 publications in blog posts on the claimant's blog between 6 May 2019 and 14 April 2020. All of the blog posts are about the litigation between the defendant and Mr Hemming and others or about the defendant's allegations of sexual assault and rape against Mr Hemmings and others.

14. In the interests of keeping this judgment to a reasonable length, I will not set out the words of each of the publications complained of but will refer to them by number as in the pleadings.

The claim

The First Publication

15. In respect of the first publication, which comprises a series of 3 tweets (there is a fourth but it is a spelling correction), one meaning is pleaded for each of the tweets. Paragraph 15 of the particulars of claim pleads the following meaning in respect of the first tweet: "the claimant is unemployed, lives with his mother and is not permitted to utter the word Evanescence".

16. In the defence at paragraph 14, the meaning in respect of the first tweet is admitted. It is denied that it is capable of causing serious harm. In the alternative the defendant pleads "honest opinion, public interest and qualified privilege in response to attack". The defendant goes on to note that similar comments have been published about the claimant since 2016 and no action had been brought. Examples were exhibited.

17. Two complaints are made, the first that the defences of honest opinion, public interest and qualified privilege in response to attack are not properly pleaded as the facts and matters relied on are not set out and they are not pleaded in the alternative.

18. The second is that it is no defence to say someone else has said the same thing in the past. The rule that a defendant cannot rely in mitigation of damage on the fact that similar defamatory statements have been published about the same claimant by other persons (*Dingle v Associated Newspapers* [1964] AC 371) applies also to the serious harm test (*Lachaux v Independent Print Ltd* [2019] UKSC 27, paragraph 24). The claimant contends that therefore this should be struck out.

19. In my judgment, paragraph 14 of the defence fails to comply with PD 53B paragraphs 4.4, 4.5 and 4.6. It does not set out the facts and matters relied on to say it was honest opinion or was on a matter of public interest or on a privileged occasion in response to attack. There are matters which might be said to be relevant in paragraph 11 of the defence – in particular in respect of qualified privilege in response to attack, but it is not properly pleaded.

20. The pleading of previous similar publications by others is legally irrelevant to the matters required in the pleading and cannot be relied on whether in mitigation or in respect of the serious harm test. That part of the pleading is therefore struck out.

21. In my judgement, the defendant is entitled to raise the issue of whether the publication is capable of causing serious harm.

22. The meaning in respect of the second tweet is admitted. It is "that there is a court order against the claimant in favour of the musical band Evanescence". Again it is denied that this is capable of causing serious harm. I note that the claimant pleads that there is no court order, but that it is public knowledge that there is a contractual agreement (which the claimant now disputes is legally valid) which, according to the claimant, prohibits the parties speaking about certain narrowly defined matters.

23. The defendant repeats the same general pleading of honest opinion and response to attack as in the first tweet. It has the same defects as above.

24. The defence of public interest is also pleaded. It is said the agreement was widely reported on, and it was in the public interest because the defendant was responding to questions about who the author of a video was. In respect of that, the claimant says it is not sufficient to show public interest.

25. The pleading as to public interest is not sufficient. It does not comply with PD53B paragraph 4.5.

26. In respect of the third tweet, the meaning contended for is that the claimant is "used" to hassling "teenage girls" and is therefore not only a paedophile but, "used to it – a habitual paedophile". Paragraph 16 of the defence denies meaning and denies in particular that it refers to the claimant as being a paedophile. Whilst an alternative meaning is not specifically formulated, it is clear that the defendant is alleging that the tweet refers to harassment of teenage girls. She goes on to annex what she says is "evidence and commentary of this well documented harassment of teenage girls".

27. The same general pleading in the alternative of truth, honest opinion and public interest is repeated. That has the same pleading defects as set out above.

28. The claimant sought to argue that the annexes amounted to the defendant relying on extrinsic evidence to prove meaning. In my judgment that is clearly wrong. The annexes are attempts at pleading evidence to make good the defence of truth. There was some discussion in the hearing about the source of the tweets being an online forum, kiwi farms, which it is submitted has also posted live streaming of terrorist attacks. The claimant argued that therefore the annexes, coming from a disreputable forum, should not be of probative value.

29. I am not conducting a mini trial. The question is whether the defendant has properly pleaded her defence and whether there is or might be evidence which will make that defence good. The defence is not properly pleaded. The facts and matters relied upon to prove the truth of the allegations are not set out. That would require details of which teenage girls it is said the claimant harassed and when.

30. The claimant sought to argue that the only reference to a teenage girl that was in the annex was in relation to an incident where he was raising safeguarding issues and therefore it could not be harassment. That is a matter of fact to be decided at trial and not for me to determine today. Based on what I have seen, although there are clear deficiencies in how the defence is pleaded, I cannot say at this stage that there is no realistic prospect of evidence which could make the allegations good. That would be a matter for disclosure and witness evidence.

31. The claimant has asked for further information of paragraph 20 of the defence about how many of the defendant's followers are UK-based. Subsequent to the hearing, the defendant has provided a reply to other part 18 requests but not that question. I have not considered that reply for the purposes of this judgment as it does not deal with the main deficiencies I have identified in the pleadings. Paragraph 20 as it stands is not sufficiently pleaded.

32. The claimant in paragraphs 35 to 38 of the particulars of claim has pleaded that the allegation of paedophilia is motivated by malice against him. He pleads that the defendant knew the allegations were false and wrote them out of spite because of the claimant's involvement in the Hemming case. He relies on a letter of claim he wrote in June 2019 which set out that the tweet was false and asked her to take it down. The defendant did not reply. Her response in the defence is that she has told the claimant many times that she regards any communications from him as baseless and harassment.

33. It is said this is not a proper defence to malice. In my judgment it could amount to a proper defence depending on the evidence. For malice to be established there has to be no other lesser explanation. That may provide one.

Publication 2

34. The claimant pleads that the meaning is "that the claimant is a benefits fraudster who has claimed benefits whilst failing to declare income from his company." (particulars of claim para 41). In paragraph 32 of the defence, the defendant denies the alleged meaning. No alternative meaning is pleaded. It is said the defendant will plead truth and honest opinion but no facts are set out in support of that. This pleading in not in compliance with PD53B.

35. Serious harm is denied and one particular is given in paragraph 33 of the defence. Large parts of the earlier pleading are then repeated, which related to earlier and different publications. It is difficult to see how those earlier matters are relevant to the issue of serious harm in respect of this publication.

Publication 3

36. It is helpful on this occasion to set out the tweet complained of.

> "And I'm sure Mr Smith would like to either confirm or deny whether he has assisted in this Claim. Because it appears they've denied that in court papers ... however Mr Smith's blog says repeatedly completely the opposite. So …which is it then. Lying to the court or on the blog?"

37. There is then a twitter link which is said to be a picture of a quote from the judgment in *Baker v Hemming* [2019] EWHC 2950. The tweet is annexed to the particulars and the picture shows the following "the claimant [Ms Baker] describes Mr Smith as the defendant's McKenzie friend. In fact he has not acted in that capacity for the defendant in these proceedings, although he has done so in other proceedings and he has assisted the defendant."

38. The claimant pleads that the meaning of the tweet is that the claimant lied in his witness statement to the court in Baker v Hemming by denying offering legal assistance to Mr Hemming, whilst admitting it on his blog. The claimant then quotes his witness statement in Baker v Hemming and says it was a truthful statement.

39. The defendant denies the meaning alleged (paragraph 37 defence). Again, although the claimant has not expressly formulated a meaning, she states that the tweet is clearly a question of which of two different versions of the same story that have been given by the claimant and Mr Hemming are the truth. The defendant pleads "truth and honest opinion". She exhibits the answers to a part 18 request which I am told was made in the Baker v Hemming case and in which Mr Hemming has described the claimant as his McKenzie friend. There is no reference to any particular statement on the claimant's blog.

40. The claimant's case is that the positive defences are not properly pleaded and the defence of truth is so obviously false that it can be disposed of by summary judgment. The claimant asserts that he never referred to himself as a McKenzie friend and therefore that is the end of it.

41. I agree that the particulars of the defence of truth are not sufficiently pleaded. For example as noted above, there is no reference to where in his blogs it is alleged that Mr Smith has denied being a McKenzie friend.

42. I do not agree that summary judgment is appropriate. There is a clear dispute on meaning, and the defence of truth may or may not succeed in part depending on the

meaning found. It is clear that Mr Hemming has referred to Mr Smith as a McKenzie friend, it could therefore be found that the claimant was in fact a McKenzie friend.

43. The claimant also submitted that the difference between a lay advisor and McKenzie friend is a matter of semantics and so because the distinction is irrelevant, it cannot be dishonest. I do not accept that is self-evidently correct. The distinction between being a McKenzie friend and an adviser is made by Steyn J. The relevance of the distinction is a matter for argument.

44. The claimant again submits that paragraphs 42 and 43 of the defence which repeat earlier paragraphs relating to earlier publications are not proper pleadings. I agree, each allegation of serious harm must be responded to in respect of the publication in question.

45. I do not go through the harassment pleading as, rightly, it was submitted that the substance of the harassment allegations follows the defamation.

The counterclaim

46. The main arguments in respect of the counterclaim are that it pleads matters already determined (res judicata) in the Baker v Hemming case, or it falls foul of the rule in *Henderson v Henderson* (1843) 3 Hare 100. That principle is that it is an abuse for a party to raise in subsequent proceedings matters which could and should have been raised in previous proceedings. I will deal with the two issues in turn.

Henderson v Henderson

47. The claimant argues that the defendant's part 20 claim is an abuse of process as it could and should have been brought in the Baker v Hemming proceedings.

48. The defendant made an application in that claim to strike out Mr Hemming's defence and counterclaim as an abuse of process. In her witness statement in support of that application there is a section headed, "the behaviour of the defendant's "McKenzie friend"". The "McKenzie friend" is a reference to the claimant in this action. The witness statement then sets out complaints about the content of a number of the claimant's blog posts. Those blog posts include those which contain publications 1 to 5 of the counterclaim in this action. The claimant says his defence to the counterclaim, on the basis of truth, is essentially the same as Mr Hemming's defence in Baker v Hemming. In that claim, the defendant in this claim is alleging that publications by Mr Hemming that she is a fantasist and has committed perjury are defamatory.

49. It is clear, as the claimant said, he has cut and pasted some of the amended defence of Mr Hemming into his pleading. The claimant therefore argues that these are all matters that could and should have been raised by joining him as a defendant to the Baker v Hemming case and the failure to do so is an abuse of process.

50. The defendant points out that the other publications post-date her September 2019 application, the publications are not matters which are in issue between her and Mr Hemming and Mr Smith is not a party to that action.

51. I do not accept that the counterclaim is an abuse of process in the *Henderson v Henderson* sense. The Baker v Hemming case is a dispute about different publications made by those parties. Whilst it is undoubtedly right that this action has come about as a result of the claimant's involvement in that case, that does not mean it was an abuse of process for the claimant to raise her claim in this action rather than

the Baker v Hemming action. The claimant commenced an action against her, it is appropriate that she raises her counterclaim against his publications in this action and not in an action against a different party.

Res judicata

52. There are a number of arguments raised under this head. First that, in respect of publications 1-5 the complaints about the claimants conduct were dismissed as having no merit by Steyn J and therefore this is an attack on her judgment, secondly the meanings the defendant complains of in respect of the publications have either been determined in Baker v Hemmings or will be. There are then specific issues in respect of publications 9 to 11 with I will deal with separately.

53. In respect of matters where no determination has yet been made in Baker v Hemmings, but where common issues may arise, it would not be appropriate to strike the claim out as res judicata. In fact no determination has been made. If those matters progress, it may be a reason to either hear the cases together, or to stay one claim pending the determination of the other, but it is not a basis for strike out or summary judgment.

54. Publications 1 to 5 are contained in the blogs that the defendant relied on in Baker v Hemming. That strike out application was dismissed as being totally without merit. Paragraph 127 of the judgment deals with the blog posts. Nothing in that judgment determines the issues in this case. The decision was that the content of the blog posts does not begin to establish even a remotely arguable claim that Mr Hemming's counterclaim and defence to counterclaim should be struck out for abuse of process. That was the issue Mrs Justice Steyn had to decide. Her comments that Mr Smith is entitled to report on public hearings and that he has made clear the limits of decisions he has reported does not determine any of the issues in this case.

55. There are a number paragraphs of the defence and publications in the counterclaim where the claimant argues that the facts stated or meanings contended for are an impermissible collateral attack on the judgment of Steyn J and the terms of the injunction set out at paragraph 5 above.

56. I have read all of the paragraphs complained about. In my judgment, the defendant is not entitled to plead or contend for any meaning which amounts to saying that Mr Hemming raped or sexually assaulted her. However, she has made allegations that she has been the victim of abuse and rape by men other than Mr Hemming. She is entitled to plead or contend for any meaning in relation to those other allegations of abuse and rape. She is also entitled to contest claims about her being a fantasist, that is a matter left open in Baker v Hemming.

57. In my judgment, there some paragraphs which may fall on the wrong side of the line but do not clearly do so, and I have in mind in particularly paragraph 21. There are however others that do plead matters which the defendant cannot properly plead.

58. The first sentence of paragraph 41 is impermissible; the court has determined the issue in respect of the accusation of rape against Mr Hemming. I strike out that sentence.

59. Paragraph 52(vii) and the meaning pleaded at 64 together with the denial at 65 in my view also, just cross the line into undermining the judgment of Steyn J that Mr Hemming did not rape the defendant, and must be struck out. The discussion of the

mark that Mr Hemming did or did not have is so closely related to the allegation that he raped her that it cannot in my view be severed from that allegation.

60. However, in my view there are no other allegations which are specifically about Mr Hemming which are impermissible, rather they are more general allegations about abuse.

61. The 9th publication is in relation to a blog post about the case of Lavery v Baker. I have seen the transcript of the judgment in that case which is in the bundle. The claim was a civil claim under the Protection from Harassment Act 1997. The defendant in this claim was found to have harassed Mr Lavery. There is no indication in the transcript that any anonymity order was made and I have not been told that it was.

62. In respect of this publication, the nub of the meaning complained of is the allegation that the defendant is a "stalker". There main dispute between the parties in this claim is whether the harassment she is found to have committed amounts to stalking. That is an issue for determination of meaning or a factual enquiry and is not proper for me to determine in this judgment.

63. The same is true for the issues in publications 10 and 11 arising out of the same matter.

64. I note that, although again the defendant's harassment claim was treated as a matter which will stand or fall with the defamation claim in the hearing, the particulars of harassment at paragraphs 202 onwards are not in my view properly pleaded. For example, allegations are made about the claimant contacting the defendant's mental health provider and the police and others about her but no dates (or time periods) are given nor is it always clear what the method of contact is, in writing or orally for example. Quotes from what I assume are blog posts by the claimant are included without a date reference.

Discretion

65. I have found that there are substantial defects in the defence and counterclaim. In addition the specific matters above, the claimant complains that the defence and counterclaim are unreasonably prolix. They run to 45 pages of pleading and 172 pages of annex. There are 213 paragraphs in the counterclaim. I agree that they are prolix and are not always easy to follow.

66. I pause here to comment that the seems to be, on both sides, a lack of recognition of the distinction between pleadings and evidence. Pleading requires a concise statement of the relevant facts on which the party intends to rely. The evidence in support is not required as part of a pleading.

67. I do not however find that the defendant's pleadings are an abuse of process in the *Henderson v Henderson* sense nor that, save for the few matters set out above, they are res judicata.

68. The claimant submitted that I should take into account the procedural history in the Baker v Hemming case when considering the defaults in pleading in this case. In that case, an application to strike out the defendant's pleading was made first in April 2019. The defendant was given an opportunity to correct the pleadings and provided amended pleadings. Those pleadings were then the subject of a further strike out application in October 2019 before Mrs Justice Steyn. She struck out part of the defendant's claim and defence to counterclaim and made the order set out above.

Some further parts of the defendant's reply to the defence to counterclaim were struck out by Mr Justice Soole on 30 January 2020.

69. It is argued that although the defendant is a litigant in person, she was told the requirements of Practice Direction 53B in those hearings and so on this occasion she should be taken as deliberately failing to comply. I note that PD53B was not relevant to that claim, as PD53B came into force after November 2019, but the defaults complained of a similar in nature in this case to those in the Hemming case, including for example bare denials as to meaning. It is also pointed out that she is studying for a law degree.

70. The claimant also relies on the fact that, as a result of the defendant's failure to satisfy a costs order obtained against her in other litigation, she has been made bankrupt. The claimant is therefore litigating with no real prospect of recovering costs. The defendant has made procedural errors before and has had them pointed out, she says she will fix them but is given multiple chances which cases him great expense and distress. It is submitted I should not provide her with any further chances in this case.

71. The defendant's position is that a strike out would be a disproportionate step when other sanctions are available for any procedural issues.

72. In my judgment there is a significant breach of the CPR and in particular PD53B. The defence and counterclaim attach evidence which they should not and fail to set out a concise statement of the matters required by the practice direction. They are very long and difficult to follow.

73. I have to consider the circumstances of the case. I take into account the fact the defendant is a litigant in person. Whilst it is right that she has been involved in other litigation and has sometimes had legal assistance and sometimes she has not, she is not legally qualified, and whilst she must still comply with the rules, the fact she is a litigant in person is a relevant factor to my discretion on sanctions for breach of those rules. The fact that she is studying for a law degree does not in my view take the matter any further.

74. I do not accept that she has deliberately breached the pleading rules. The rules for pleading defamation cases are technical and it is not unusual for litigants in person and indeed some lawyers to get it wrong. The previous cases were before the new PD53B, which is much more particular and detailed than the previous practice direction.

75. Whilst it is right that the defendant is bankrupt and any costs orders are unlikely to be met, the claimant was well aware of that fact before embarking on litigation.

76. In defamation claims a reply to a defence is mandatory if certain defences, namely truth, honest opinion or public interest are raised. If a claimant (including a claimant in a counterclaim) wishes to rely on a plea of malice to defeat any defence, that must also be pleaded in a reply (PD53B paras 4.7 and 4.8). The claimant asks me to take into account that the defendant has not provided a reply to his defence to counterclaim which raises relevant defences. CPR 15.8 requires a reply to be filed with the direction questionaries. Those were due in this case on 11th August 2020 (and I note it appears that the defendant has also not filed a directions questionnaire).

77. By the time the reply was due, the claimant had filed and served his strike out application. The hearing date was set on 24th August 2020. In correspondence the defendant said she was focussing her attention on dealing with the strike out

application before filing a reply. In view of the fact the application was to strike out the defence and counterclaim, and for summary judgment, in my judgment whilst the failure to file a reply is a technical breach of the rules, it is a trivial one. It is often appropriate to await the outcome of a strike out application before embarking on more costly and time-consuming pleadings when they may be affected by the outcome of the application. This, in my judgment, is one of those cases.

78. In those circumstances, I am not willing to strike out the defence and counterclaim at this stage. The defence and counterclaim do however require significant amendment. I was urged by the claimant (as a fallback position) to make an unless order in respect of any amended pleading. I am not going to do so on this occasion, but I wish to make it clear that if there is any significant breach in the amended pleading, the relevant part is likely to be struck out. If this were a case with legal representation, I may have made an unless order but as both sides are unrepresented, and based on the arguments before me in this application, I can anticipate that there may be a disagreement as to whether any amended pleading is in significant breach of the rules which I would have to determine in any event.

79. One further argument was made which I should note. The claimant says that the defendant has lied in her defence in paragraph 2 where she denies that there are multiple court restraining orders for harassment and defamation. He submitted that is not true. She does have restraining orders against her and having signed a statement of truth, proceedings for contempt of court could be brought. It is submitted I should take that into account. The defendant says she understands restraining orders to be criminal orders and she the orders against her are civil injunctions. I am not going to make any findings about the honesty or otherwise of paragraph 2 of the defence and as a result I do not take it into account in my discretion. It is a matter for credibility at any trial rather than a matter for me to make a determination on now.

80. In order to be as clear as possible, I set out a summary of the rules that the defendant must comply with (and the clamant in any amended pleading). She should read Practice Direction 53B and comply with it. As it states, statements of case should be confined to the information necessary to inform the other party of the nature of the case they have to meet. I would add that it also has to inform the court; it is insufficient to say the other party knows the case. If in respect of any matter that is pleaded, or required to be pleaded, a reader could ask the questions who, what, when, where, how (which would include by what means) or how ofen, it is likely that the answer should be pleaded.

81. In respect of any defence, PD 53B sets out what is required for the defence of truth (4.3), honest opinion (4.4), public interest (4.5) and privilege (4.6). The reference in each of those paragraphs to the "imputations contended for" is to the meaning alleged.

82. In respect of the counterclaim, paragraph 4.2 of the practice direction sets out what is required for pleading a defamation claim. In respect of harassment, CPR 16.4 and practice direction 16 set out what is required. Again a summary of the facts relied on are required, and for example where a course of conduct is pleaded in a harassment claim, the dates on which the conduct is said to have occurred are required, where it occurred or if it was in writing or orally. If any personal injury is claimed, the matters required in PD16 should be clearly set out.

83. The requirement in PD 53B that "facts and matters relied on in support of the case" must be pleaded does not however require the provision of evidence. The majority of

the annexes to the current defence are evidence. PD 53B requires a concise summary of the facts or other matters which will be relied upon to make out the case. Although it is a concise summary, it must nonetheless include details relied on. That will often involve names, dates and places (the who, where, what, when and how questions). For example, in respect of publication 3 in the claim, if the defendant seeks to assert that the claimant has said he was a McKenzie friend in a blog but has denied it elsewhere, the date and name of the blog should be set out and the date and location of the denial set out. The blog itself, or other document should not be annexed as it is evidence.

84. The pleadings should also not contain commentary or irrelevant matters. Although this application concerns the defendant's pleadings, I note that the claimant in his reply to defence and counterclaim has strayed, in my view, over the line of what is required or appropriate. I refer in particular to his response to the defendant's reliance on the kiwi farms forum posts. He raises matters which have nothing to do with this case and would potentially be distressing to third parties who have absolutely no involvement in this case if it were to come to their attention. Those details are not necessary in order to plead his case.

85. In conclusion, the application for summary judgment or to strike the claim and counterclaim out is dismissed save for the few items set out above in respect of paragraphs 14 of the defence and paragraphs 41, 52(vii), 64 and 65 of the counterclaim but the defendant is required to amend her defence and counterclaim to comply with the rules. I am not making an unless order for the reasons set out, but if there is any substantial breach in the amended pleadings, the relevant part is likely to be struck out.

86. I therefore intend to make an order requiring the defendant to amend her defence and counterclaim then for the claimant to either plead an amended reply and defence to counterclaim or to restore this application to strike out the pleading if he considers there is continued serious default. I am minded to order that each party has 28 days to take their respective steps but will arrange a short hearing to hear any submissions on future directions and other consequential orders.

Post Script

87. I would like to thank my listing clerk and the staff at Liverpool Crown Court who were able to organise, at short notice, a room which the defendant could use to attend the hearing remotely so that she had a suitable place to attend the hearing.

88. I would also like to remind the parties, and ask any of the people who are interested in following this claim, to pause and think before emailing me directly. I will only read emails that are asking me to make a decision, responding to such a request by the other party, or providing me with documents I have requested. In the 10 days leading up to the hearing, I received well over 50 emails on this matter, not all from the parties. Some were properly alerting me to documents or issues I needed to decide or consider. Many were not. The majority of those were copied to my listing clerk had to consider them to see if there was anything she was required to do. I received a further 15 emails after the hearing and before handing down this judgment, again some of which were properly sent; others were not.

89. I have to deal with matters in accordance with the overriding objective. That includes allocating appropriate resources to each case. I am, as will be clear, willing to receive emails directly when it enables matters to be dealt with efficiently. If I continue to

receive unnecessary emails I will block the sender and all correspondence will have to be done through the post, the court's generic email or CE file.