Neutral Citation Number: [2020] EWHC 594 (QB)

Case No: QB-2017-000020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/03/2020

Before:

MR JUSTICE WARBY

- -

Between:

Alexander Aristides Reid	**Claimant**
- and -	
Katie Price	**Defendant**

- -
- -

Philip Williams (instructed by **Sanders Witherspoon LLP**) for the **Claimant**
The **Defendant** did not appear and was not represented

Hearing date: 9 March 2020

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Approved Judgment

Mr Justice Warby:

1. This is an assessment of damages for breach of confidence, misuse of private information and breach of contract, and compensation under the Data Protection Act 1998 ("DPA"). It follows an order made on 27 November 2019, by which the Defence was struck out and judgment was entered for the claimant on liability.

The factual and procedural background

2. The claimant and the defendant are both celebrities. He is a martial artist, known as a "cage fighter", who appeared on and won the TV series Big Brother. She is a well-known TV personality and author. She is a former "glamour" model, who is also known by the stage name "Jordan". In or about 2009 the claimant and defendant became a couple. On 2 February 2010, they were married. The relationship foundered within about a year, and a divorce was finalised on 20 March 2012.

3. During the relationship, in October 2009 and June 2010, the defendant obtained video recordings and photographs of the claimant engaged in sexual activity ("the Private Information"). As a result of disclosures later made by the defendant the claimant sought, and on 12 September 2011 the defendant gave, written undertakings to the claimant that she would not, except in certain specified and limited circumstances, publish or disclose or cause republication of the video footage or any stills, or any description of the claimant's sexual acts recorded on the footage.

4. In 2017, the claimant sued the defendant for all the wrongs I have listed above, as well as harassment, contrary to the Protection from Harassment Act 1997. His pleaded case was, and is, that on a number of occasions in and between about 2012 and 9 January 2018, the defendant disclosed all or part of the Private Information to third parties, numbering at least 50. He also complained that she had breached the undertakings by publicly describing one aspect of the Private Information. The claimant's claim was for an injunction to restrain further breaches of his rights, damages, and other orders. The Claim Form stated "Value: For issue purposes the Claimant's damages claim is limited to £25,000". That limitation reduced the fee payable upon issue.

5. On 19 December 2017, an application was filed for an interim injunction pending trial, to prohibit disclosure of the Personal Information and any other processing of the personal data it contained. The claimant did not proceed with the application at that time. But on 16 April 2018, the harassment claim was dropped by way of an amendment and, at the same time, the claimant revived his dormant application for an interim injunction. On 25 April 2018, sitting in the Interim Applications Court, I heard an urgent application for such relief. I concluded that the time estimate of 1 hour was inadequate, and the matter was not urgent. I adjourned the application for hearing in May 2018.

6. On 18 May 2018, the application came before Jay J. The Judge heard Counsel for the claimant and the defendant, and read witness statements from each of them. Having considered the test provided for by s 12(3) of the Human Rights Act 1998, the Judge was satisfied that the claimant's prospects of success at a trial were sufficiently favourable to warrant the grant of interim relief. He made an order, which largely followed the Model Interim Non-Disclosure Order attached to the Master of the Rolls' Practice Guidance of 2011.

7. The order contained provisions requiring the defendant to deliver up to the claimant's solicitors within 48 hours all copies of the Private Information within her possession, and to provide disclosure of information, including details of what pieces of Private Information she had, and what she had done with them. On 24 May 2018 the defendant made a second witness statement, in purported compliance with those provisions.

8. On 14 June 2018, a Defence was served, admitting that the defendant had obtained the Private Information, but denying liability. The Defence maintained (among other things) that the recordings were made with the claimant's knowledge and consent; that the undertakings were non-contractual; that the defendant had not made any such disclosures as alleged; and that she had not retained any of the information since January 2014.

9. On 17 March 2019, the defendant gave notice that her solicitors had ceased to act for her, and that she was now acting in person. On 3 April 2019, the claimant's solicitors sent a hearing bundle for the case management conference to the defendant's home address by recorded delivery.

10. On 17 April 2019, the case management conference took place. Directions towards trial were given by Master Gidden. A trial date of 9 March 2020 was provided for, and directions for disclosure and exchange of witness statements were given. The Order contained a prominent warning to the parties that they must comply with the terms imposed by the order "otherwise your case is liable to be struck out".

11. At a hearing on 27 November 2019, Master Davison determined that the defendant had failed to comply with Master Gidden's directions. He struck out the Defence, and directed that judgment be entered for the claimant for an injunction, to last until 27 November 2024 or further order; delivery up of any documents or devices on which the Private Information had been stored; and for damages and compensation, to be assessed at this hearing.

This hearing

12. The claimant is present and represented. But the defendant is not present or represented, so the first question for consideration is whether I should proceed in her absence. I have concluded it is right to do so.

13. Similar questions arose in *Sloutsker v Romanova* [2015] EWHC 545 (QB), where the defendant failed to appear at the hearing of her own application to set aside service of proceedings on her outside the jurisdiction, and in *Brett Wilson LLP v Person(s) Unknown* [2015] EWHC 2628 (QB) [2016] 4 WLR 69, at the hearing of the claimant's application for judgment in default against defendants who had been served, but whose identity remained unknown. In *Sloutsker*, I said this:

> "22. Where a party fails to appear at the hearing of an application the court may proceed in their absence: CPR r 23.11. This is a power that must be exercised in accordance with the overriding objective. ... the court should be very careful before concluding that it is appropriate to proceed in the absence of a litigant in person who is seeking for the first time to adjourn a hearing: *Fox v Graham Group Ltd* (26 July 2001) (Neuberger J); *SmithKline*

> *Beecham Ltd v GSKline* Ltd [2011] EWHC 169 (Ch) (Arnold J), para 6. That is not the situation here, however. The defendant has not sought an adjournment …
>
> 23. Where a litigant fails to appear without giving a reason it is necessary to consider first whether they have had proper notice of the hearing date and the matters, including the evidence, to be considered at the hearing. If satisfied that such notice has been given, the court must examine the available evidence as to the reasons why the litigant has not appeared, to see if this provides a ground for adjourning the hearing."

In *Brett Wilson* [14-15] I adopted those principles, and added the following which is also pertinent in this case:

> "In the present case … there is another important facet to the requirement of proper notice, in the form of section 12(2) of the Human Rights Act 1998. Section 12 is engaged because the order the claimants seek involves "relief which, if granted, might affect the exercise of the Convention right to freedom of expression" within the meaning of section 12(1). Section 12(2) prohibits the court from granting such relief if the respondent is neither present nor represented, unless satisfied "(a) that the applicant has taken all practicable steps to notify the respondent; or (b) that there are compelling reasons why the respondent should not be notified."

14. This is not the hearing of an application. It is a trial on damages and compensation. So the rule that applies is not CPR 23.11, but r 39.3 ("Failure to attend the trial"). Rule 39.3(1) is similar in some ways to CPR 23.11. It provides: "The court may proceed with a trial in the absence of a party …" But the position of a defendant who fails to attend a trial is different from that of a defendant who fails to attend the hearing of an application. In the latter case the court has an unfettered jurisdiction to "re-list" the application, on application or of its own initiative: see r 23.11(2) and n. 23.11.3. If judgment is entered after a trial in absence, the defendant can apply to set aside the judgment (r 39.3(3)), but the application must be supported by evidence (r. 39.3(4)) and the Court "may only grant the application if" the defendant acted promptly, had a good reason for not attending, and has a reasonable prospect of success (s 39.3(5)). This arguably calls for a more cautious approach to hearing a trial, as opposed to an application, in absence. That is the approach I take.

15. This case has another feature which was not present in *Sloutsker* or *Brett Wilson*: the defendant is a bankrupt. A witness statement of the claimant's solicitor, Mr Gir, dated 5 March 2020 informs me that the defendant was made bankrupt on 26 November 2019 (the day before the order of Master Davison). This means that the case engages the following provisions of s 285 of the Insolvency Act 1986:

> "285 **Restriction on proceedings and remedies**
>
> (1) At any time when … an individual has been made bankrupt the court may stay any action, execution or other legal process

> against the property or person of the debtor or, as the case may be, of the bankrupt.
>
> (2) Any court in which proceedings are pending against any individual may, on proof that … he is an undischarged bankrupt, either stay the proceedings or allow them to continue on such terms as it thinks fit."

16. These provisions envisage that once a person becomes bankrupt a claim already commenced against them will continue, and execution may be levied against the bankrupt's property or person, unless the Court decides to impose a stay. It is clear that the defendant's Trustee in Bankruptcy is aware of these proceedings. Mr Gir's evidence is that the Trustee has told him that the defendant is not engaging with that process, and has failed to attend three appointments with the Official Receiver to establish her assets and liabilities. There has been no application by the defendant, the Trustee, or the Official Receiver for any stay of this action.

17. On the evidence and information before me I am satisfied that it is right to proceed, and to hear the trial, on the express condition that the judgment will not, without further order, be enforceable against the defendant otherwise than by proof in the bankruptcy, and that any process of execution is accordingly stayed, until further order.

(1) The requirements of HRA s 12(2) are met, as in my judgment the claimant had taken all practicable steps to notify the defendant of this hearing. The hearing date was identified in a letter of 13 June 2019, sent by recorded delivery and by email. Mr Gir's second statement records that correspondence to the defendant went unanswered in November 2019 and that the same was true when notice of this hearing was given to the defendant by letter and email on 3 March 2020. The contact details used included the email address which the defendant had given the court when giving notice of change in March 2019, and there is no reason to doubt that the mailing address used was correct. I cannot identify any other method that could have been used to make contact with the defendant.

(2) The defendant has made no application or request for an adjournment. She has not explained her absence. She has not communicated with the Court at all. Indeed, the record shows that the defendant has not engaged with these proceedings at any time since March 2019. She did not attend before Master Gidden, when directions were given. She did not attend before Master Davison, when he struck out her Defence and entered judgment against her.

(3) Looking at the matter overall, the bankruptcy may be a partial explanation for the defendant's inactivity. But it cannot fully explain it. The defendant was not bankrupt when the directions hearing came on before Master Gidden. Nor was she bankrupt when the time came to give disclosure and exchange witness statements for trial pursuant to the directions he gave. Looking at the overall position, the inference I draw is that, at some point after service of the Defence, the defendant made a deliberate decision not to engage further with these proceedings, and she has persisted in that attitude, with knowledge that this hearing is going ahead.

(4) Mr Williams accepts, on behalf of the claimant, that any award of damages "is potentially academic", but invites me to make an award, to bring an end to these

proceedings and vindicate the claimant's rights. It seems to me that there is no compelling need or reason to impose a stay on these proceedings. The claimant's wish to conclude the proceedings with a decision and order on quantum is a legitimate one. To stay the proceedings now would involve a waste of the time and costs taken up by the claimant and his legal team in preparing for this hearing.

(5) Section 285(3)(a) of the 1986 Act provides that after a bankruptcy order is made:-

> "no person who is a creditor of the bankrupt in respect of a debt provable in the bankruptcy shall (a) have any remedy against the property or person of the bankrupt in respect of that debt".

The object of that subsection has been described as "to prevent one creditor getting his hands on part of the bankrupt's estate to the actual or potential detriment of the general body of creditors": *Heating Electrical Lighting and Piping Limited (in Liquidation) v Ross* [2012] EWHC 3764 (Ch) [39]. This provision may have the effect of automatically preventing enforcement of this judgment, otherwise than by proof in the bankruptcy. Counsel's argument at the hearing, supplemented by written submissions afterwards, suggests that this judgment will create a debt provable in the bankruptcy: see s 382(1)(b) and (2) of the 1986 Act. But it is also suggested by Mr Williams that "elements of the judgment may survive the bankruptcy process" by virtue of s 281(5), unless the Court directs otherwise. That is, as I understand it, on the footing that the damages are, to some extent, "damages in respect of personal injuries …" within the meaning of that sub-section. I do not think these are issues that it would be appropriate for me to determine at this stage. I do not propose to make a direction under s 281(5). I do consider it safest to guard against any risks of unfair prejudice to the defendant or to her creditors by means of the limited stay that I have mentioned.

18. That brings me to the question of how I should approach the assessment process. First, I need to identify the wrongs for which my order is meant to compensate the claimant. As I understand the position, Master Davison's order to strike out was made pursuant to CPR r 3.4(2)(c), on account of the defendant's disobedience of the directions given by Master Gidden in what was an unless order; and the judgment on liability, together with the injunction and order for delivery up, were consequential orders pursuant to r 3.4(3), which provides that "Where the court strikes out a statement of case it may make any consequential order it considers appropriate."

19. Para 4.2 of 3APD expands on this, stating that

> "Where a judge at a hearing strikes out all or part of a party's statement of case he may enter such judgment for the other party as that party appears entitled to."

The wording resembles that of CPR r 12.11(1), which provides that where a claimant makes an application for a default judgment this shall be "such judgment as it appears to the court that the claimant is entitled to on his statement of case." That rule "enables the court to proceed on the basis of the claimant's unchallenged particulars of claim. There is no need to adduce evidence or for findings of fact to be made …": *Sloutsker v Romanova* [84].

20. Para 4.2 of 3APD does not contain the last five words that appear in r 12.11(1), but it is designed to deal with a range of factual situations; in a case such as the present I cannot see any basis on which the court could act, other than by reliance on the pleaded case. It therefore seems to me that the Court should proceed at this stage on the footing that judgment on liability was entered on the basis that the facts asserted in the Particulars of Claim are true; and the wrongs for which the claimant is to be compensated are those alleged in his statement of case, as amended on 16 April 2018.

The wrongs for which the claimant is to be compensated

21. The Amended Particulars of Claim identify two components to "the Private Information": video recordings and/or photographs obtained by the defendant (1) on or about the evening of 12 October 2009, when the claimant and defendant were staying at the Mayfair Hotel in London, and (2) on a date in or about June 2010, when the couple were staying at the house of two of the defendant's close friends. The information has two main aspects to it. The first is that the claimant is shown dressed as his cross-dressing alter-ego "Roxanne". The other is that the recordings depict sexual activity of the defendant and/or claimant.

22. In saying this much, I have set out some of the information recorded in the Confidential Schedule to the Amended Particulars of Claim; but this public judgment needs to provide enough to allow an interested reader to understand my decision. In all the circumstances I do not consider it unduly intrusive to identify the occasions on which the Private Information was acquired and captured on video, or the general nature of that information.

23. Counsel's skeleton argument for this public hearing refers to the claimant having enjoyed cross-dressing and having experimented with his sexuality. The claimant himself has said in his evidence to the Court: "I accept it is now widely known that I engaged in cross-dressing and had an alter ego called Roxanne", and he has admitted giving a number of interviews on the topic. (Whilst accepting that his cross-dressing has entered the public domain, the claimant blames the defendant for this, on the grounds that she "outed" him by showing photos at Simon Cowell's 50th birthday party in November 2009; but that disclosure, over 10 years ago now, is not one of the wrongs complained of in this action.)

24. More detail about the Private Information is given in the Confidential Schedule, but it would not be appropriate to place that on the public record in this judgment. Although the very nature of the claim is that some of the Private Information has been disclosed, in ways to which I shall come, and to some extent it may by now have lost the quality of confidence, it certainly cannot be said that the disclosures made have wholly defeated the claimant's privacy or data protection rights.

25. The acts that are alleged to constitute the wrongdoing are these:

> **"The Defendant's unlawful acts: disclosure of the Private Information in breach of contract, breach of confidence and amounting to a misuse of the Claimant's private information**
>
> 11. The Defendant continues to retain the Private Information… the Defendant disclosed all or part of the Private Information on

at least the following occasions to third parties (which prior to full disclosure and/or the provision of further information by the Defendant are the best particulars the Claimant can presently provide of this unlawful activity):

11.1 In or around 2012, to Jemma Henley (a.k.a Jemma Lucy);

11.2 At some time between September 2012 and October 2013 to Chantelle Houghton;

11.3 At some time between October 2012 and June 2017 to Kieran Hayler;

11.4 On or around October 2013 to Greg Houghton;

11.5 On 17 October 2017 to a number of individuals at the book launch of the Defendant's novel, "Playing with Fire";

11.6 On 9 January 2018 at the filming of the television show "Celebrity Big Brother's Bit on the Side" to Ellie Barresi, Michael Long and Peter Buwu, along with several other individuals, amounting to approximately 40 people in total.

12. The Claimant also avers that the Defendant disclosed some or all of the Private Information to an unknown number of additional friends whose identities are not yet known to the Claimant at some time between October 2009 and July 2017. Prior to full disclosure and/or the provision of further information by the Defendant, the Claimant will rely in support of this contention upon the following statement made by the Defendant to Heat magazine as reported in the article published on 18 July 2017 on the Daily Mail Online website entitled "*'It would disturb everyone to the grave ': Katie Price still has 'disgusting' footage of ex husband Alex Reid tucked away and she 's shown ALL her friends"* (which are the best particulars that he can presently provide of the Defendant's unlawful activities in this regard):

> *"When I've split up with exes, they've gone on a rampage slagging me off. The only way I get retaliation is I do books, but I don't slag them off, I tell the truth.*
>
> *'Now with Alex* [the Claimant] *for example, the amount of stories he's done on me, but he forgets what videos and pictures I have of him. All my friends have seen them, but not once have I ever put them out.*

> *'One it would disturb everyone to the grave and number two, they're not flattering, they're disgusting. You look at them and you're disgusted*. "
>
> 13. The Defendant further breached the Undertakings by referring in public to a description of part of the Private Information as set out in paragraph 2 of the Confidential Schedule."

26. Paragraph 2 of the Confidential Schedule identifies a description of the sexual activity involving the claimant on the second occasion, which is said to have been quoted in a media article of late June 2012.

27. The legal case advanced in the Particulars of Claim is that the Private Information was obtained and the disclosures were made without the claimant's consent and all of the disclosures represented (a) acts in breach of contract namely the undertakings of 2011; (b) an unjustified breach of the claimant's confidence; (c) a gross misuse of private information relating to the claimant; and (d) a breach of the statutory duty imposed by s 4(4) of the DPA. The defendant's continued retention of the personal data, which is said to be sensitive personal data within the scope of DPA, s 2, is alleged to amount to processing in breach of the duty imposed by s 4(4).

28. The Amended Particulars of Claim particularise the defendant's breaches of the duty to comply with the data protection principles. The particulars include the propositions that the information was obtained and processed without consent, for no lawful purpose, in breach of the claimant's rights in confidence, misuse of private information and contract, and kept for longer than was necessary. They also include, at 17.6, an allegation of breach of the seventh data protection principle (the requirement to take appropriate technical and organisational measures against the unauthorised or unlawful processing of the Private Information and against accidental loss of the data). The specific allegations in this respect are that such breach

> "… resulted in the disclosure of some or all of the Private Information to:
>
> "17.6.1. An individual who contacted the Claimant through his Twitter account in September 2013 by the name of "Ste Palmer @stepalmer3", who attempted to blackmail the Claimant claiming that he had compromising video recordings of him;
>
> 17.6.2 An individual identified as "Ben Bird" who contacted the Claimant through his Facebook account in December 2016, claiming that he had seen sexually explicit video recordings of the Claimant."

29. This, in summary, is the wrongdoing that I take to be established for the purposes of this assessment.

30. That said, the bare facts of the wrongdoing cannot be enough to allow a fair assessment of damages in case like this. It must be legitimate to take account of the claimant's detailed evidence about the nature and extent of the disclosures of which he complains,

the defendant's conduct, and the impact these have had on him, provided that evidence does no more than put flesh on the bones of the pleaded case, and does not go beyond its boundaries.

The evidence of the claimant

31. The claimant has made six witness statements, the last of them a short statement for this trial, which incorporates by reference five earlier statements made for the purposes of interim applications. At this hearing, he confirmed those statements on oath and answered a small number of questions from me. The defendant being absent and unrepresented there was no challenge to any of his evidence.

32. The main statement, for present purposes, is the first. The key features of the evidence, and my findings of fact, can be summarised under four headings.

(1) Background

33. By way of background, it was in late 2009 that the claimant first became aware that the defendant had obtained explicit and intimate images of him. He saw, on her laptop in the kitchen of their home, images from the first of the two occasions mentioned above. He spoke to her and she promised to delete the images. However, in February 2011, he received messages on Twitter from the defendant's new boyfriend, Leandro Penna, that indicated that he had seen explicit images of the claimant. It was this that led him to instruct solicitors, who secured the undertakings of 12 September 2011. He later became aware that the images seen by Mr Penna were from the second, June 2010 occasion that I have mentioned.

(2) The wrongs complained of

34. The article of late June 2012, referred to in paragraph 13 of the Amended Particulars of Claim, is an online article in a well-known news publication which remains in the public domain.

35. In 2013, the claimant learned of other post-undertaking disclosures by the defendant. She gave evidence in Family Court proceedings relating to the daughter of the claimant and his former partner Chantelle Houghton. In her evidence, the defendant referred to a video from 12 October 2009. During an adjournment of the proceedings, the claimant viewed the footage. Understandably, given the principle of witness immunity, the Amended Particulars of Claim do not complain of this disclosure; and I do not take it into account save as background.

36. The pleading does complain (at 11.2) of a disclosure to Chantelle Houghton in about 2012. The claimant became aware of that through the legal proceedings, as Ms Houghton included an explicit photograph of him in her court papers. That was evidently voluntary disclosure and reliance upon it as evidence of earlier disclosure by the defendant to Ms Houghton seems proper.

37. In 2013 the claimant was blackmailed by someone who said they had compromising videos of the claimant, which he "needed" because he was in court. The blackmailer appeared to have been told about the Family Court proceedings. The blackmailer purported to have obtained the videos from a laptop that had come into his possession.

The claimant was informed that the defendant had claimed that she had lost a laptop. He concluded that the defendant had provided the video to the blackmailer. That is the case pleaded in paragraph 17.6.1 of the Amended Particulars of Claim, to which there is now no Defence; and I take it to be established.

38. On 20 March 2014, a media article reported that Jemma Henley, a friend of the defendant, had seen "gross" videos of the claimant in the bedroom. The claimant was informed by police that this disclosure had taken place in around 2012. This is the basis of the case pleaded in paragraph 11.1 of the Particulars of Claim, which I take to be established.

39. In December 2016, the claimant was contacted by "Ben Bird" who claimed "Well I've seen you're porn video [sic] and you're dirty asf….". The inference invited is that "Ben Bird" was shown some of the Private Information as a result of a lack of security on the part of the defendant. This is the basis for paragraph 17.6.2 of the Particulars of Claim, which I take to be established.

40. Also in December 2016, the claimant learned from the defendant's publicist, Kirstie Shaw Rayner, that at the defendant's wedding to Kieran Hayler in March 2014 the defendant had shown sexually explicit material about him to her hairdressers and good friends Gary Cockerill and Phil Tuner, as well as Chantelle and Greg Houghton (paragraph 11.5 of the Particulars of Claim).

41. On 9 June 2017, at a school sports day, the claimant met a fellow parent named Jane Poultney, who had been a bridesmaid at his wedding to the defendant. She told him that the defendant had offered to show her the Private Information, and she knew others had seen it. The individuals included, according to Ms Poultney, Chantelle Houghton and her brother Greg, who had been shown the information in 2013 (see paragraphs 11.2 and 11.4 of the Particulars) and Kieran Hayler (see paragraph 11.3). Ms Poultney informed the claimant that the defendant would talk about the sexually explicit material and show it to people, when she was drunk.

42. In July 2017, the Daily Mail Online reported in the terms set out in paragraph 12 of the Particulars of Claim. I take the facts asserted in that paragraph to be established for the purposes of compensation.

43. On 15 January 2018, the claimant was contacted on Twitter by a woman called Ellie Barresi, a stranger to him, who told him that on 9 January 2018 she had been an audience member at "Celebrity Big Brother's Bit on the Side", a Channel 5 show. Before filming began, the defendant told audience members she had a video to show them and proceeded to shown them some of the Private Information. Ms Barresi said that the defendant had been drunk at the time. This information was later confirmed to the claimant by a Michael Long and a Peter Buwu, also members of the audience on 9 January 2018. The claimant later denied having had any such material on her phone and denied having shown TV audience members any such material, claiming "I have made clear I would never reveal tapes of Alex Reid or Roxanne".

44. On 13 February 2018, The Sun published an article reporting that the defendant was being investigated by police for "revenge porn", on the basis that the footage had been shown to "40 strangers" at the Big Brother event. Embedded within this article was a copy of an audio recording that had been made of the defendant making threatening

remarks about the claimant, said to have been recorded at her book launch on 17 October 2017. The article quoted "a source" at the book launch to the effect that the defendant, at that time, had explicit pictures of the claimant saved on her phone, which she had openly showed off, pointing out "that if Alex kept talking about her then she would do something about it". This is the basis for paragraph 11.6 of the Particulars.

(3) Other conduct of the defendant

45. The claimant identifies a series of other references to his sex life and the Private Information which the defendant made in public after signing the undertakings. Having mentioned the article of late June 2012, he refers in paragraph 23 of his witness statement to three further media articles quoting the defendant, on the topic of the claimant's sex life. In paragraph 25 he refers to statements made by the defendant on TV programmes in January 2016 and October 2016 (later corrected to October 2015), which he describes as "references". Paragraph 32 refers to "harassing comments" about the claimant made by the defendant during her one woman show in September 2017. Later statements refer to subsequent press reports relating to the events which are the subject of this case. However, none of this is complained of in the Amended Particulars of Claim as amounting to substantive breaches of the claimant's rights in confidence, privacy, contract or data protection. I cannot compensate for these incidents on the basis that they represented breaches of the undertakings or torts. I do take this evidence into account as part of the context in which the disclosures complained of were made. I can also properly take account of some of these statements in the context of aggravated damage, because paragraph 19.5 of the Amended Particulars of Claim specifically identifies them as matters of aggravation, all of which I find to be made out on the evidence.

46. I also can and do take into account, as matters tending to aggravate damages, the defendant's conduct in continuing to make wrongful disclosures, in spite of her agreement to delete the information, signing the undertakings, and receiving letters of complaint and claim from the claimant's solicitors; her false denials that she retained any of the Private Information; her combative and hostile response, via solicitors, to the complaints and claims; and the uncontradicted evidence in paragraph 25 of the claimant's third witness statement, about his feelings on learning from Jane Poultney in March 2018 that the defendant had emailed Ms Poultney with a request to support her case by lying about what she had seen the claimant doing in the past (paragraph 19.9 of the Particulars).

(4) Evidence of damage

47. Mr Williams has directed my attention to ten paragraphs of the claimant's first witness statement. The claimant says he was "absolutely horrified" when he realised in 2013 that the defendant was holding on to the footage of him. He found the repeated references to his sex life in the media "very demeaning and harassing". He was "horrified" again when he learned in 2016, of the defendant's 2014 disclosures to Gary Cockerill and Phil Turner. He was "mortified" by what he learned from Jane Poultney in June 2017, and concerned about the risk to his relationship with his daughter that the defendant's readiness to make disclosures might represent. He has been mocked and denigrated as a sexual deviant and predator. He has sought counselling for stress and anxiety, which he attributes to the defendant's disclosures. He has seen a number of

psychologists and a hypnotherapist. He has been through therapy about his low self-esteem. The claimant said:

> "I feel suicidal and sick every time Katie makes these statements" about his sex life, observing that "It cannot be right that every time she goes on television or writes an article she is allowed to refer back to the private information that she should never have obtained in the first place and certainly should not be keeping now all these years after our relationship ended. I believe that she is waging this war against me in part to get more publicity for her interviews and other media appearances …"

48. In his evidence to me, he said that he has felt the same in recent times.

Legal principles

49. The claimant has established a claim based on four different causes of action. But like Jay J, I do not consider that the contract claim adds anything of relevance. Nor do I see any material difference between the approach to be taken to the claims in confidentiality, misuse of private information, and breach of statutory duty. The essential task is to compensate the claimant for the wrongful retention and wrongful disclosure of images of his sexual conduct, and the wrongful disclosure of information about that conduct. In logic, and in the presentation of the case, it is the claim for wrongful disclosure that predominates. The claim in wrongful retention is secondary, and subordinate to that claim.

50. Compensation for the tortious disclosure of personal information should aim to restore the claimant to the position he would have occupied but for the tort. There is now a considerable body of academic writing on how this should be achieved (see, for instance, *Remedies for Breach of Privacy,* Varuhas and Moreham (eds) Hart, 2018.) The authorities are not very numerous. But principles identified in *Mosley v News Group Newspapers Ltd* [2008] EWHC 1777 (QB) [2008] EMLR 20 include the following: damages may include compensation for distress, hurt feelings and loss of dignity; it may also be appropriate to take into account any aggravating conduct by the defendant which increases the hurt to the claimant's feelings; damages should be proportionate, they should not be open to criticism for arbitrariness; but they must be adequate to mark the wrong and provide a measure of *solatium*; it will be legitimate to pay some attention to the current level of personal injury awards; and the court should have in mind the tariff applied so far as defamation awards are concerned (though the analogy with defamation can only be pressed so far).

51. Mr Williams has cited a number of subsequent cases, including *Cooper v Turrell* [2011] EWHC 3269 (QB), *Spelman v Express Newspapers* [2012] EWHC 355 (QB), *Weller v Associated Newspapers Ltd* [2014] EWHC 1163 (QB) [2014] EMLR 24, *Gulati v MGN Ltd* [2015] EWHC 1482 (Ch) [2016] FSR 12 and [2015] EWCA Civ 1291 [2017] QB 149, *TLT v Secretary of State for the Home Department* [2016] EWHC 2217 (QB), and *Richard v BBC* [2018] EWHC 1837 (Ch) [2019] Ch 169. Also of some relevance are *Burrell v Clifford* [2016] EWHC 294 (Ch) and the relatively recent decision of the Court of Appeal in *Lloyd v Google LLC* [2019] EWCA Civ 1599 [2020] EMLR 2. For reasons that will become apparent, I do not think it necessary or appropriate to indulge in any detailed analysis of these authorities. It is enough to say that among the points they add

to the principles identified above are the following: if damages are to be an effective remedy, they must not be subject to too severe a limitation; although vindicatory damages are not recoverable in this context, in misuse of private information and data protection claims, damages may be awarded for loss of autonomy or loss of control; the nature of the information disclosed and the degree of loss of control should bear on this aspect of the court's assessment of damages – the more intimate the information and the more extensive the disclosure, the greater the award.

Assessment

52. Mr Williams submits that on the facts of this case, and in the light of the established principles, an award of more than £60,000 would be justified. He refers me to the awards made in *Gulati* to Alan Yentob, of £85,000 [para 252] and Lauren Alcorn, of £72,500 [para 283] and submits that it is arguable that the claimant's claim merits more than either. He submits that the wrongdoing has "destroyed" the claimant's life, and points, in particular, to the "systematic, widespread and long-standing" nature of the wrongdoing, and the many aggravating features of the case that I have already identified.

53. Having said all that Mr Williams accepts, in the light of the rubric on the Claim Form, that without an amendment he cannot seek an award in excess of £25,000. He has not sought permission to make any such amendment, noting that the fee for doing so would be at least £5,000 which the claimant would likely never see again. In those circumstances, it suffices to say the following.

54. I am satisfied that this claim merits an award of at least £25,000, and that is the sum that I award.

55. I bear in mind that an aspect of the harm which is in evidence derives from taunts about the claimant's cross-dressing, but that was no secret by the time of the wrongs with which I am concerned, and the claim does not arise from disclosures of that nature. For those and other reasons, the case is not directly comparable with *Mosley*, in which the claimant's previously secret sexual preference was revealed in detail to millions by a popular Sunday newspaper, in a front-page splash published without prior notice. Nor are the facts comparable with those of the phone-hacking cases considered in *Gulati,* the essence of which was unauthorised access to personal information.

56. I do not accept the entirety of the claim put forward on the facts. I cannot find, on the balance of probabilities, that the threats and insults referred to were, or were all, attributable to the acts complained of. Some – such as taunts of paedophile tendencies - involve allegations which it is impossible or at least hard to link with the wrongful disclosures, as opposed to the matters relied on in aggravation. There is enough in the documentary evidence to identify other potential causes, and I do not have enough evidence to make a finding in favour of this aspect of the claimant's case (cf *Barron v Vines* [2016] EWHC 1226 (QB) [44-50]).

57. Nor can I conclude that the psychological problems of which the claimant has given evidence are attributable to the wrongs in respect of which the defendant has been found liable. To compensate for psychiatric harm, I would need much more detail of the symptoms, and a sound evidential basis, almost certainly including expert evidence, for attributing causation.

58. The submission that the claimant's life has been "destroyed" is, in my judgment, a rhetorical exaggeration. Comparison with the tariffs for general damages in personal injury cases (Judicial College Guidelines, 15th edition) reveals that an award in excess of £60,000 would equate to the damages recoverable by someone who loses all sight in one eye, with damage to the sight in the other; or by a man made impotent in middle age. An award on that scale would seem on the extravagant side, on these facts, and out of kilter with recent awards for libel, such as *Barron v Vines* (broadcast allegations of covering up knowledge of child sex abuse, £40,000) and *Monroe v Hopkins* [2017] EWHC (QB) [2017] 1 WLR 68 (publication to over 500,000 followers on Twitter of allegation that the claimant approved of vandalising war memorials with obscene political graffiti, £24,000).

59. I do however accept that the defendant's conduct has involved the deliberate exposure to a substantial number of individuals of moving and still images of the claimant's intimate sexual activity, which were taken without his consent and disclosed in the knowledge that he positively objected. Some of the disclosures were made to people who knew the claimant personally, and were known by him, including his ex-partner. He found out about these disclosures through mutual friends. Other disclosures were made on public occasions, to people who were complete strangers to the claimant and the defendant. In addition, the defendant has used graphic terms to describe an intimate sexual act to a media publisher, with a view to publication, and has thereby caused the publication of that description in an online article available to anyone and doubtless read by a very large number of people. I accept that the claimant has found it demeaning to have details of his sex life disclosed, repeatedly, in this way, and that he has suffered a real loss of personal dignity and harm to his self-esteem.

60. The defendant's conduct has considerably aggravated the harm caused by the disclosures themselves. Her behaviour has been persistent, flagrant, arrogant, high-handed, and inexcusable, and for those reasons very distressing and hurtful to the claimant. The claimant's perception that the defendant has lied about whether she retained copies of the Personal Information, and that she has acted maliciously, is reasonable, and he is entitled to be compensated for the distress he has suffered as a result. The defendant's frequent additional references or allusions to the Private Information, sometimes in threatening terms, have caused additional upset, "rubbing salt in the wound". Damages of £25,000 would be comparable to an award for moderately severe psychiatric harm, or a neck injury leaving markedly impaired function. Applying the principles I have identified above, an award at that level or more is fully merited, on any view of the authorities.

Costs

61. On 27 November 2019, Master Davison ordered the defendant to make an interim payment of £150,000 on account of costs. The Master had been told the defendant was bankrupt, but evidently saw no need or reason to stay execution of that order. As I have indicated, that may well be correct by virtue of s 285(3)(a) of the 1986 Act. But in line with the approach I have identified above, I shall impose a stay on enforcement of my damages award, the exiting costs order, and any further order for costs which may now be sought and granted in the light of my decision; but that stay shall be without prejudice to the claimant's right to prove in the bankruptcy.