



Neutral Citation Number: [2022] EWHC 2421 (KB)

Case No: QB-2021-003782

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30 September 2022

Before :

THE HONOURABLE MRS JUSTICE HEATHER WILLIAMS DBE

Between :

DR THEODORE PIEPENBROCK

Claimant

- and -

**(1) LONDON SCHOOL OF ECONOMICS AND
POLITICAL SCIENCE**

Defendants

(2) NEMAT SHAFIK

(3) CRAIG CALHOUN

(4) SUSAN LIAUTAUD

(5) ALAN ELIAS

(6) JOANNE HAY

(7) SAUL ESTRIN

(8) GWYN BEVAN

(9) HPN

(10) ASSOCIATED NEWSPAPERS LIMITED

(11) JONATHAN HARMSWORTH

(12) GEORDIE GREIG

(13) TOBYN ANDREAE

(14) ANTONIA HOYLE

(15) MARK DUELL

Garry Piepenbrock, addressing the Court as McKenzie Friend for the **Claimant**
Laura Johnson QC (instructed by **DAC Beachcroft LLP**) for the **First – Eighth Defendants**
Alexandra Marzec (instructed by **ACK Media Law LLP**) for the **Tenth – Fifteenth**
Defendants

Hearing dates: 23, 24 June & 14 July

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Mrs Justice Heather Williams:

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Introduction

1. The Claimant was employed as a Teaching Fellow by the London School of Economics and Political Science (“LSE”) between September 2011 and September 2014. After the termination of this employment he commenced High Court proceedings in negligence, breach of contract and under the Protection from Harassment Act 1997 (“PHA 1997”). In a judgment handed down on 5 October 2018, [2018] EWHC 2572 (QB), Nicola Davies J (as she then was) rejected the PHA 1997 claim and accepted some of the allegations of negligence and breach of contract but dismissed those causes of action as the psychiatric illness upon which the Claimant relied had not been reasonably foreseeable. I refer to this as “the 2018 Judgment”. Following this, articles about the Claimant’s case were published in the *MailOnline* on 10 and 12 October 2018 and in the *Daily Mail* on 13 October 2018. The Claimant began a claim for defamation against Associated Newspapers Limited (“ANL”), as the publishers of the articles; and against the LSE and an employee, Joanne Hay, on the basis that she was the anonymous source referred to in two of the articles (“the 2020 Claim”). On 1 July 2020, Nicklin J declared that the Claim Form was not served during its period of validity and consequently the Court had no jurisdiction over the claim: [2020] EWHC 1708 (QB) (“the 2020 Judgment”).
2. On 7 October 2021 the Claimant commenced the current action, relying on claims in negligence and under the PHA 1997, the Equality Act 2010 (“EQA 2010”), the Human Rights Act 1998 (“HRA 1998”), the Data Protection Act 2018 (“DPA 2018”) and the General Data Protection Regulations 2018 (“GDPR 2018”). The Second to Eighth Defendants are sued on the basis of their relationship to the LSE. I refer to them collectively as “the LSE Defendants” and individually as “D2”, “D3” and so forth. The Ninth Defendant, HPN (“D9”) was formerly a graduate teaching assistant (“GTA”) at the LSE. She is separately represented in these proceedings and was not directly involved in the applications before me. The Eleventh to Fifteenth Defendants are sued on the basis of their relationship to ANL. I refer to them collectively as “the ANL Defendants” and individually as “D11”, “D12” and so forth.
3. There are three applications before me. Firstly, by an application notice dated 2 March 2022, the LSE Defendants applied for the Claimant’s Particulars of Claim to be struck out in whole or part pursuant to CPR 3.4(2)(a), (2)(b) or (2)(c) and the claim dismissed and/or for summary judgment or for an order staying any remaining part of the claim

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pending payment of the costs ordered in the defamation claim and/or provision of a CPR compliant Particulars of Claim. Secondly, by an application notice dated 7 March 2022, the ANL Defendants made a similar application. The ANL Defendants also applied for the claim to be transferred to the Media and Communications (“MAC”) List; and by an Order dated 9 March 2022 Nicklin J transferred the case to the MAC list. By an application notice dated 4 May 2022, the Claimant applied to vary or discharge this Order, which is the third application that I am concerned with.

The issues

4. At the hearing Ms Johnson QC clarified that the LSE Defendants’ no longer relied upon CPR 3.4(2)(c). The following contentions were maintained:
 - i) The Particulars of Claim disclose no reasonable grounds for bringing the claim against any of the LSE Defendant and thus should be struck out in their entirety pursuant to CPR 3.4(2)(a);
 - ii) The Particulars of Claim are an abuse of the Court’s process in so far as they relate to the LSE Defendants and thus should be struck out in their entirety pursuant to CPR 3.4(2)(b). This submission rests primarily on the *Henderson v Henderson* (1843) 3 Hare 100 form of abuse, namely that in certain circumstances a party is precluded from raising in subsequent proceedings matters which could have been part of an earlier claim. Reliance is also placed on the form of abuse that may arise where a second claim is brought in relation to the same subject matter as a first claim which was struck out as an abuse of process or for inexcusable procedural failure;
 - iii) Alternatively, summary judgment should be entered in respect of the claims against all of the LSE Defendants pursuant to CPR 24.2, as these claims have no reasonable prospect of succeeding and there is no other compelling reason why the case should be disposed of at trial;
 - iv) Alternatively and in so far as any claims remain, they should be stayed pursuant to CPR 3.4(4) as the Claimant has not paid the costs he was ordered to pay following the 2020 Judgment and the current proceedings arise out of the same or substantially the same facts;
 - v) In the further alternative, the Particulars of Claim should be struck out and “unless orders” made directing that the claim will be automatically struck out unless a properly pleaded Particulars of Claim compliant with CPR Part 16 is provided; a CPR compliant medico-legal report in support of the claim for psychiatric injuries is served; and the outstanding costs are paid by a stipulated deadline.
5. In so far as the strike out and/or summary judgment applications are granted, the LSE Defendants invite the Court to certify that the claim or the relevant part of it is totally without merit. Further, the LSE Defendants ask the Court to: (a) order that the Claimant must correspond solely with their legal representative in relation to this claim and not email or contact the LSE Defendants directly; and (b) give case management directions as appropriate, including that the Claimant’s son, Garry Piepenbrock, is not authorised to act on his behalf.

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6. The ANL Defendants' application is based on equivalent contentions, save in two respects: (a) they also submit that the Particulars of Claim should be struck out pursuant to CPR 3.4(2)(c) because there has been a failure to comply with a rule, practice direction or order; and (b) the second form of abuse of process referred to in para 4 (ii) above is not relied upon.
7. The LSE Defendants' application is supported by a witness statement from Tom Walshaw, solicitor at DAC Beachcroft LLP dated 2 March 2022. The ANL Defendants' application is supported by a statement dated 7 March 2022 from Susan Aslan, a partner at ACK Media Law LLP.
8. The Claimant resists the applications. He filed a witness statement dated 3 May 2022 in support of his position. He submits that the pleaded Particulars of Claim do disclose claims with reasonable prospects of success. He emphasises that he is a litigant in person and that in so far as there are any deficiencies in the pleading, the proportionate approach is to permit him an opportunity to rectify this by amendment. He also suggests that strike out or summary judgment would be premature; the evidence should be heard and evaluated at trial. He disputes that there has been any abuse of process, contending that this claim has been carefully tailored to avoid raising issues which have already been litigated. He says that the 2020 Judgment did not strike out the 2020 Claim and nor was there a finding of abuse of process or inexcusable procedural failure. He submits that it would be an infringement of his rights under Article 6, European Convention on Human Rights ("ECHR") to stay this claim until he has paid the costs ordered against him in the 2020 Claim. Whilst indicating a willingness to amend the claim, he resists the imposition of unless orders. He also takes issue with the ancillary orders sought by the Defendants.
9. In relation to his own application, the Claimant submits that it would be more appropriate for this case to be heard in the King's Bench Division's general list, given the central importance of the claim for psychiatric injury. The ANL Defendants maintain that the case should remain in the MAC list and D9 has filed written submission in support of that position. The LSE Defendants are neutral on this issue.
10. Helpful skeleton arguments were prepared by the Claimant and on behalf of the LSE Defendants and the ANL Defendants in advance of the hearing. By Order dated 8 March 2022, Nicklin J had directed that the Defendants' skeleton arguments be filed and served at least seven working days before the hearing, so that the Claimant had an adequate opportunity to consider the points raised.

Orders made in the proceedings

11. As I have already indicated, by an Order dated 9 March 2022 Nicklin J directed that the claim be transferred to the MAC List. In his accompanying reasons he explained that this was because the Particulars of Claim contained claims falling within the MAC List's jurisdiction. As the Order had been made without a hearing, he indicated the parties could apply to vary or discharge this direction. He also directed that until the applications of the LSE Defendants and the ANL Defendants had been determined, any non-party wishing to inspect or obtain a copy of the Particulars of Claim must apply to the Court on notice to the parties.

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12. Following an application made by D9, by Order dated 27 April 2022, Nicklin J directed pursuant to CPR 39.2(4) that her name and address was to be withheld from the public and not to be disclosed and that in these proceedings she was to be referred to as “HPN” (and any references to her address were to be substituted with references to her solicitor’s address). He also directed that no non-party could inspect or obtain a copy of any document on the Court file, without the permission of a Master or Judge; and that pursuant to s.11 Contempt of Court Act 1981 (“CCA 1981”), there was to be no publication in any report, or otherwise in connection with these proceedings, of the identity of D9 or of any matter likely to lead to her identification.
13. In the same Order of 27 April 2022, Nicklin J directed that D9’s application for a declaration that the Court has no jurisdiction over the claim against her was to be heard by a Judge of the MAC List in the period 3 October – 25 November 2022. Accordingly, I am not concerned with that application at this stage.
14. By application notice dated 4 May 2022, the Claimant applied to set aside the anonymity provisions in the Order of 27 April 2022. On 5 May 2022, Nicklin J directed that the set aside application would be heard at the same time as D9’s jurisdiction application.
15. By an Order amended on 25 May 2022, Nicklin J directed that the Claimant’s application to vary or discharge his order transferring the case to the MAC List would be heard with the Defendants’ strike out and summary judgment applications, (which by then had been listed for hearing on 23 – 24 June 2022). The Judge also directed that the parties were to co-operate in drawing up a timetable for submissions at this hearing, including making provision for regular scheduled breaks, if requested by the Claimant.
16. By application notice dated 15 June 2022, the Claimant applied for three adjustments in respect of the forthcoming hearing. He relied upon the report of Dr Martin Pearson, Chartered Clinical Psychologist, dated 26 June 2019, which diagnosed him as having Asperger’s Syndrome and Autistic Spectrum Disorder without intellectual or language impairment. The Claimant emphasised the importance for him of having a clear and predictable structure for the hearing and the risks of him experiencing sensory overload. He also referred to his health problems concerning long-term anxiety and depression.
17. By Order dated 21 June 2022 I granted the adjustments sought as follows:
 - i) I permitted the hearing to be held remotely via MS Teams. None of the Defendants objected to this and the Claimant indicated it would assist him in managing his stress levels;
 - ii) I permitted the Claimant’s son, Garry Piepenbrock, to act as his McKenzie Friend at the hearing, including by making submissions to the Court. I emphasised that he was granted rights of audience for this purpose only and that this was not an authority to conduct litigation on the Claimant’s behalf. The other parties did not object and I was satisfied that there was good reason to grant the application. Mr Piepenbrock had assisted his father in several previous hearings before Courts and Tribunals and was familiar with the matter. He had acted as his father’s representative at the recent merits hearing before the Employment Tribunal (“ET”). The ET’s judgment, promulgated on 8 June 2022, indicated that Dr Piepenbrock had not attended parts of this (remote) hearing

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after experiencing what he characterised as autistic meltdowns. It appeared from the judgment that Garry Piepenbrock's representation had been of assistance all round. I accepted that the Claimant would experience difficulties representing himself and that to require him to do so would likely lead to the hearing being disrupted unnecessarily and disproportionately prolonged;

iii) I set out a timetable for the hearing that would apply in default of the parties' agreement (as they had not been able to agree on one thus far). The Defendants were to have the first day to make their submissions and the Claimant the second day to respond. There would be a scheduled ten minute break after every 50 minutes of the hearing and unscheduled breaks would be accommodated if the need arose.

18. I was aware that the ET had expressed concerns about aspects of Dr Pearson's report at paras 7.5 – 7.7 of its judgment. I was not in a position to make and have not made specific findings about the extent of any disabilities that the Claimant has. However, I was willing to proceed on the basis of Dr Pearson's report for the purposes of considering what, if any, adjustments to make for the hearing and for the purposes of considering the substantive applications that were before me (and the Defendants did not suggest otherwise).

The course of the hearing

19. The hearing took place via MS Teams. Scheduled ten minute breaks were permitted after each 50 minutes of Court time, with some flexibility applied where Mr Piepenbrock asked to take a break a little early. On three occasions I allowed the Claimant to have an unscheduled break in the circumstances I explain below. Dr Piepenbrock sat next to his son during the majority of the hearing and was able to provide him with instructions as matters progressed. I pay tribute to the calm, measured, courteous and clear way in which Mr Piepenbrock (who is only 19 years old) conducted himself and presented the submissions on behalf of his father. I am quite satisfied that all parties had a fair and reasonable opportunity to present their submissions.

20. In addition to the adjustments I had directed in advance, during the hearing:

i) I allowed Mr Piepenbrock to pause his submissions and mute his microphone to take instructions from his father when he asked to do so;

ii) I explained various matters of law and procedure and checked that Mr Piepenbrock did not require further clarification;

iii) I made it clear to Mr Piepenbrock that he should feel able to check with me if he was unsure about anything and he did so on various occasions;

iv) At Mr Piepenbrock's request, I permitted the hearing to finish earlier than scheduled on the second day (at around 3.45 pm) as he was clearly tiring; and

v) I did not prevent Dr Piepenbrock from interjecting his own remarks on occasions, albeit I suggested that it would probably be easier for Mr Piepenbrock to maintain his focus and the flow of his submissions if these interjections were avoided as much as possible.

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21. On the first day of the hearing matters proceeded smoothly until shortly before 3pm. Ms Johnson had completed her submissions and Ms Marzec was in the process of making her submissions. As she was reading from the 10 October 2018 *MailOnline* article, Dr Piepenbrock became visibly agitated, making rapid thumbs up gestures. Ms Marzec commented that it appeared he liked the article. In response the Claimant became very upset, saying that Ms Marzec should show him respect as an autistic person rather than mocking him. Dr Piepenbrock then left the video call abruptly. Mr Piepenbrock asked for a break so that he could check on his father, which I granted. I asked him to provide an update on the position in ten minutes. I also made clear that it was not helpful for any party to comment upon gestures being made by another party and that this should not happen again. After ten minutes, Mr Piepenbrock reported that his father had undergone an autistic meltdown and was not able to continue that day. He asked for the case to be adjourned until the following day as his first concern was to attend to his father. Neither Ms Johnson nor Ms Marzec objected to this request, which I granted. Mr Piepenbrock was evidently distracted by what had occurred and it would not have been fair to require him to continue in these circumstances and without his father available to hear the submissions and give instructions.
22. As a result of the early finish, hearing time was lost. I indicated before adjourning for the day that as Ms Marzec had yet to make a substantial part of her submissions, I would not require Mr Piepenbrock to complete his submissions the next day if he felt unable to do so and that if necessary we would adjourn part heard.
23. The hearing began as scheduled on the second day. Mr Piepenbrock thanked me for granting the adjournment. Dr Piepenbrock was present; he said that it should be appreciated that his gestures were a part of managing his stress levels and he reiterated his upset with Ms Marzec's comment. I reminded the parties of the observations I had made at the end of the previous day. I said I understood why the events had been upsetting for Dr Piepenbrock, but I did not consider that Ms Marzec had intended to mock him. I indicated that I did not agree with his characterisation that I had "reprimanded" Ms Marzec the previous day.
24. Ms Marzec began her submissions by returning to the point she had been making at the end of the first day (that the Claimant had not appeared to be upset by the 10 October 2018 *MailOnline* article at the time). Dr Piepenbrock immediately became agitated. I considered it unnecessary for this point to be reiterated and asked Ms Marzec to move on.
25. The hearing proceeded relatively smoothly for the remainder of the second day. At one point whilst Mr Piepenbrock was making his submissions, Dr Piepenbrock intervened and became tearful. I granted a short unscheduled break and after this both father and son indicated that they felt able to resume. It was apparent that submissions could not be concluded that day and I granted Mr Piepenbrock's request to rise a little earlier than usual. The hearing was then adjourned to a further half day on 14 July 2022.
26. The third day proceeded smoothly until almost the end of the hearing, when Ms Marzec was making her submissions in reply. She made an observation about the Claimant's family finances which Dr Piepenbrock found upsetting and insulting. He interrupted to remonstrate with her and then abruptly left the call. I agreed to a short adjournment to enable Mr Piepenbrock to check on his father and to see if he could re-attend. He provided an update a few minutes later. He said that his father had suffered a meltdown

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and would not be able to continue that day. He proposed that the outstanding matters were dealt with by way of written submissions. Ms Marzec indicated that she only had one point left to make which would take no more than two minutes. In the circumstances I ruled that the hearing should proceed, as no prejudice would result to the Claimant from this course. Mr Piepenbrock had already made his submissions and did not have a further right of reply and thus he did not need to be able to take instructions at this juncture and the submissions in reply were very close to finishing. (Ms Johnson had already given her reply.)

27. Ms Marzec duly concluded her submissions in two minutes or less, simply making the point that whilst the Claimant had submitted he should be allowed to amend his claim to add a cause of action for intentional infliction of psychiatric injury (if I decided this was not already pleaded), the appropriate course was to strike out the current claim and to address any new claim, including any abuse of process arguments, if and when it was brought.
28. However, Ms Marzec then sought to re-visit the events that had led to Dr Piepenbrock leaving the call. Whilst I understood that she wanted to respond, given she had been criticised in trenchant terms by both the Claimant and Mr Piepenbrock, I was not willing to permit this. The point she had made which had caused the upset was not helpful to me in terms of the issues that I had to resolve at this stage and it had plainly had an inflammatory effect on the Claimant and was likely to cause further difficulties if the matter was re-visited at this juncture. In declining to permit Ms Marzec to address me on this, I did indicate that I did not consider that she had intentionally caused upset. I then brought the hearing to a conclusion. At the end Mr Piepenbrock thanked me for the fair way in which I had conducted the hearing.

The material facts and circumstances

29. I stress that it is not my role to resolve any factual disputes at this stage of the proceedings. I will provide a neutral chronology of the events necessary to understand the pleaded claim and the rival submissions made by the parties, including a summary of earlier judgments, where relevant.

Events 2011 - 2014

30. From 1 September 2011 the Claimant was employed as a Teaching Fellow in the LSE's Department of Management on the Executive Global Master's in Management ("GMiM") programme. His contract was initially for a year and was subsequently extended to a three year period. On 1 September 2012 he was also appointed to the role of Deputy Academic Dean in the GMiM programme. In September 2012, D9, one of his former students, was appointed as his GTA.
31. In November 2012 the Claimant undertook a lecture tour in the United States. The Claimant and D9 were in Boston on 12 November and then in Seattle on 13 – 14 November. On 18 November 2012 D9 sent an email to the LSE resigning her position. The events in Boston and Seattle were considered in the 2018 Judgement and by the ET, as I will come on to. In summary, the Claimant said that on 12 November 2012 D9 invited him to her hotel room and greeted him in a state of partial undress (having been infatuated with him for some time). He said that he spurned her advances and she was very unhappy about this. Although some of the content was disputed, it was agreed that

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extensive conversations took place between the Claimant and D9, firstly in a park in Boston and secondly in a hotel room in Seattle. The LSE, who had been contacted by or on behalf of D9, paid for her to fly out of Seattle in the early hours of 14 November 2012.

32. D9 gave her account of events in an email sent to D7 and D6 on 18 November 2012. She said that on the first night in Boston, Dr Piepenbrock had tried to make her admit that she had feelings for him and had said she had a beautiful body. She said that when she had not responded he had described her as “damaged” and “destructive”. After arriving in Seattle at about 11pm they had been met by Mike Wargel (a former colleague of Dr Piepenbrock); and although it was late, the Claimant had insisted that the three of them went to his hotel room to have a discussion about self-growth. She said that she felt pressured to discuss things that she did not wish to talk about and that the Claimant had referred to her as “unstable” and “unpredictable”. She said he had threatened to ruin her reputation; and that whilst she had spoken to her family, who had helped her to book a flight, Dr Piepenbrock and Mr Wargel had waited outside her door. The full email account appears at Appendix 1 to the 2018 Judgment. Subsequently D9 made a formal complaint of harassment dated 10 December 2012, which is set out at Appendix 2 to the 2018 Judgment.
33. On 12 December 2012 the Claimant was told of the fact of the formal complaint. He was not given the details at this stage. He commenced a period of sickness absence and did not return to work at the LSE at any stage thereafter. He did not attend meetings that were arranged to discuss his absence.
34. On 10 January 2013 the Claimant was sent a redacted version of D9’s complaint. He did not receive an unredacted version until 17 April 2013. On 19 June 2013 a finding was made that D9’s grievance was “not proven”. The Claimant submitted numerous complaints and grievances about various LSE employees. Some of these grievances were upheld, others were rejected. His contract was not renewed when the three year fixed term came to an end.

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35. Dr Piepenbrock was represented by leading and junior counsel at the July 2018 hearing. His claim under the PHA 1997 was based on the proposition that the LSE was vicariously liable for the actions of D9 (known as “Miss D” in those proceedings) who he alleged had made false and malicious allegations against him. The breach of contract claim was based on failure to follow the LSE’s Harassment Policy, which was incorporated into the Claimant’s contract. The alleged negligence related to the LSE’s handling of D9’s complaint. The Claimant alleged that he had sustained consequential psychiatric injury and he claimed substantial past and future loss of earnings on the basis that his psychiatric injury had rendered him unable to continue with his chosen career.
36. As material to the current claim and the issues before me, Nicola Davies J found:
 - i) In all likelihood D9 had developed an infatuation with the Claimant. This should have alerted him to the need for professional boundaries with her when he embarked on the American trip (paras 205 - 206);

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- ii) D9's conduct in Boston caused the Claimant considerable concern (para 208);
- iii) D9's contemporaneous Skype messages indicated that the Claimant had not made his concerns clear to her during their conversation in the Boston park. It was inappropriate and unnecessary for him to have embarked on a further two-hour conversation with her on the same day (para 209);
- iv) In Seattle, the conversation began at 12.30 am. To embark upon yet another conversation in the early hours of the morning in a hotel room with a young woman in her twenties and two older men went beyond inappropriate; it was unprofessional and wrong. The Claimant told D9 that he was going to have to end their working relationship and she became very upset (para 211);
- v) There was no sensible justification for the Claimant's conduct in the hotel room in Seattle. There was nothing sexual in the Claimant's persistence in requesting these conversations; it was an inability to recognise boundaries and a lack of insight (paras 212 and 213);
- vi) In the circumstances, it was not difficult to understand why D9 felt she had a legitimate cause to complain to the LSE about his conduct;
- vii) By 22 November 2012 it was known that D9 was communicating her concerns to fellow students and subsequently to members of the faculty. No steps were taken to stop this until she was spoken to on 29 November 2012. No good or adequate explanation for this delay had been given (para 219);
- viii) Once D9 filed her formal complaint on 10 December 2012 it was incumbent on the LSE to proceed expeditiously in accordance with the Harassment Policy, but it was not until the Claimant's wife chased the matter that a redacted version of the complaint was supplied on 13 January 2013. The redacted text concerned the account of Mr Wargel (para 220). The unredacted version of the complaint was not supplied until April 2013 (para 221);
- ix) It was not difficult to understand why D9 sent her email of 18 November 2012. It was substantially based on the events in Seattle which (unlike those in Boston) were undisputed. It showed a course of conduct by the Claimant which, whilst well intentioned on his part, was inappropriate and unprofessional. It was a legitimate complaint and it was not made maliciously. She should not have disseminated the complaint, but no one told her not to and she stopped when they did do so (paras 229 - 230). Accordingly, D9's conduct did not amount to harassment within the meaning of the PHA 1997 (para 230);
- x) There were a series of failures by the LSE that represented a breach of the duty of care owed to the Claimant as an employee. The process was unnecessarily protracted. Within two working days of 19 November 2012 the LSE should have attempted to ascertain whether D9 wished to pursue a formal complaint. There was a failure to take steps to prevent her from disseminating her email to staff and students at a time when the Claimant was unaware of it. Once the formal complaint was received it should have been disclosed to the Claimant within days and the redactions were unnecessary. The entirety of the complaint should have been disclosed no later than 19 December 2012 (paras 231 – 232);

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- xi) The following allegations did not breach the duty of care owed to the Claimant: not disclosing the 18 November 2012 email to him; not asking him about that account; not permitting him to recruit another GTA from the student cohort that had included D9; instructing him not to attend the student graduation and party; and not promoting him to Professor of Practice (para 234);
 - xii) Refusing to allow the Claimant's wife to act as his "friend" was in breach of the Harassment Policy and thus a breach of contract (para 236); and
 - xiii) It had emerged during his cross-examination that whilst the Claimant was on sickness absence from the LSE he had visited India where he had given talks and/or lectures. This was at a time when his wife had been informing the LSE that he was too ill to attend an interview and he had not responded to requests to attend an occupational health assessment. The Claimant's omission to mention this earlier did not wholly undermine his evidence, but it did call into question how much he was able to do in the early months of 2013 and whether he could have responded more positively to the LSE's attempts to communicate with him during this time (para 204).
37. Mrs Justice Nicola Davies dismissed the PHA 1997 claim on the basis that I indicated at para 36(ix) above. In her carefully worded judgment she did not make a specific finding, one way or the other, as to whether D9 had behaved as the Claimant alleged in her hotel room doorway in Boston on 12 November 2012. By way of example: "if Miss D did behave in a provocative, even sexually provocative manner..." (para 207); "if Miss D did behave in the manner alleged..." (para 208); "...on his account, it manifested itself in sexually provocative behaviour..."(para 214); and "whatever it is Miss D did when she opened the hotel door to the claimant in Boston..." (para 227). The Claimant is not correct in asserting that the 2018 Judgment found that D9 had behaved in the hotel doorway as he alleged.
38. Having found breaches of contract and the duty of care, Nicola Davies J went on to consider whether the LSE's acts or omissions had created a foreseeable risk of injury to the Claimant against which it should have protected him (para 242). She noted that on his undisputed account, it was the events of 12 December 2012 when he was notified of D9's complaint that triggered the development of his psychiatric illness (para 243). She observed: "The subsequent delay [by the LSE] and the failure to allow the claimant's wife to act as his 'friend' would aggravate the illness, on the claimant's case, it was not causative of it" (para 243). She found the Claimant had suffered from a depressive illness from 12 December 2012, preferring the Claimant's medical evidence from Professor Fahy "as to the illness suffered by the claimant" to that of the Defendant's expert, Professor Maden (paras 247 – 249). However, she did not consider that this illness have been reasonably foreseen by the LSE. There had been nothing to put them on notice of a prior vulnerability; and it was foreseeable that notification of the complaint would cause stress, but not that it would cause psychiatric illness; the severity of the Claimant's reaction was a reflection of his own personality (para 250).
39. The Claimant was refused permission to appeal the 2018 Judgment.

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40. On 10 October 2018, five days after the 2018 Judgment was handed down, ANL published an article in the *MailOnline* written by D15 (“Article 1”). It was headlined: *“We must protect MEN in #MeToo era: Academic, 52, loses £4m claim against London School of Economics after an assistant, in her 20s, ‘ruined his life’ with false claims when he rejected her”*. The body of the article referred to the Claimant’s allegations concerning D9’s behaviour and to Nicola Davies J’s ruling that she did not harass him. It included quotes from the Claimant urging balance in the need to protect both men and women in the context of a rising number of complaints of sexual harassment.
41. Two days later on 12 October 2018 a second article appeared in the *MailOnline*, written this time by D14 (“Article 2A”). It was headlined: *“He’s a master manipulator’: Professor who put himself forward as a MeToo martyr after being accused of impropriety by spurned assistant is not what he seems, associate claims”*. The text included reference to the Claimant’s allegations, the development of his depression from December 2012, the LSE’s finding that D9’s complaint was “not proven” and aspects of the 2018 Judgment. The article said that whilst the Claimant had been cleared of impropriety, Nicola Davies J had “delivered a scathing verdict on his conduct in respect to his assistant’s actions” and she had not accepted that D9’s complaint was oppressive or unacceptable. The Claimant was described as: “intent on putting himself forward as a spokesperson for men who have faced unfounded allegations of sexual harassment”.
42. Of particular concern to the Claimant, the text said: “Speaking to the Mail this week, one former associate of Ted and Miss D claimed that Ted was a ‘really good manipulator’ who sought to promote his own version of events. ‘I know the student’ they said. ‘He was the teacher. He had power over her. The onus was on him to check his own behaviour’”.
43. The article went on to say that “the source who the Mail spoke to” knew D9 and thought the characterisation of her in the High Court trial (in which she did not give evidence) as dressing inappropriately and craving attention “simply wasn’t true”. The writer of the article commented that it “hardly seems sensible” for the Claimant to have invited D9 on the American trip given he believed her to have developed a crush on him. The events in Boston and Seattle were referenced, including the Claimant’s allegation concerning D9 opening her door in a state of undress. In relation to that, D14 said: “Two conflicting versions of events, then, yet regardless of whether she had exposed herself to Ted or not, it is easy to see how the young woman would be intimidated by an overnight altercation in a hotel room with two middle-aged men her professional seniors”. It was said that after the return to London the Claimant was told of the complaint but not of its contents and: “Ted’s paranoia, perhaps understandably went into overdrive”.
44. In relation to D9’s dissemination of her complaint, the text said that “the Mail’s source...believes her actions were understandable”. Reference was made to the Claimant having travelled to India to give lectures whilst on sick leave and to the Judge’s observations as to his non-engagement with the LSE during this period. The “former associate” was quoted as saying: “refusing to co-operate, that makes me angry. I think he’s a master manipulator”.

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45. D14 wrote that: “Despite repeated requests from the Mail, Dr Piepenbrock has not responded to the allegations against him”. The article included a further quotation from the “former associate” that: “He was in a position of power, she looked up to him, and it got to the point where she felt unsafe”. The author concluded: “Put like that, many might wonder whether he is quite the martyr he claims to be”.
46. The article that was published on 13 October 2018 in the print edition of the *Daily Mail* (“Article 2B”) had essentially the same contents as Article 2A, but a different headline: “MeToo martyr or ‘manipulator’?”.

The 2020 Judgment

47. On 11 October 2019 the Claimant issued the Claim Form in Case No. QB-2019-003622 against ANL, the LSE and D6. The claim was described as follows:

“The Claimant claims compensation for damages arising from defamation (slander and libel) in accordance with the Defamation Act 2013 and arising from malicious falsehoods in accordance with the Defamation Act 1952.

These arise from defamatory articles about the Claimant published in the MailOnline on 12 October 2018 and the Daily Mail on 13 October 2018 and which contain defamatory statements and malicious falsehoods made by Associated Newspapers Ltd and Ms Joanne Hay, the Deputy Chief Operating Officer of the [LSE], while acting in the course of her employment with the LSE.”

48. The Claimant elected to serve the Claim Form himself. There was some correspondence between the parties in the period 11 October – late November 2019 (described at paras 13 – 17 of Nicklin J’s judgment). After that there were no communications from the Claimant until 10 February 2020 when emails were sent to various individuals at ANL and at the LSE (copying in the Defendants’ solicitors) purporting to serve the Claim Form along with Particulars of Claim. The latter ran to 300 pages with appendices and included claims, outside the terms of the Claim Form, under the PHA 1997, the EQA 2010, the HRA 1998 and the DPA 2018. The Defendants did not accept that the Claim Form had been validly served. After receiving a communication to that effect from ANL’s solicitors on 13 February 2020, the Claimant re-sent the Claim Form and the Particulars of Claim by post. It was agreed that this was after the four month time limit for service of the Claim Form had expired at midnight on 11 February 2020.
49. Mr Justice Nicklin ruled that the Claim Form had not been validly served. Service on the solicitors had been ineffective because: (a) the requirements of CPR 6.7 were not met as the Defendants had not provided their solicitors’ addresses as addresses at which the Claim Form could be served and the solicitors had not stated that they were instructed to accept service; and (b) they had not previously indicated in writing that they were willing to accept service by email, as required by Practice Direction 6A, para 4.1. Furthermore, service on the Defendants was ineffective as none of them had indicated in writing that they were willing to accept service by email (para 37). The Judge took into account the fact that both solicitors firms had previously told the Claimant that he should correspond with them rather than their clients; however, this

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did not alter the requirements for valid service of a Claim Form and the relevant provisions of the CPR and Practice Direction 6A were perfectly clear (para 38).

50. Mr Justice Nicklin refused the Claimant's application under CPR 7.6(3) for a retrospective extension of time for serving the Claim Form as he had not taken all reasonable steps to serve it within its period of validity (para 46). He did not have a good reason for failing to attempt service at an earlier stage; he had been able to prepare the 300 page Particulars of Claim during this period (para 47). Further, he had not responded to the Defendants' offer of a standstill agreement, which would have suspended the operation of the one year limitation period for up to four months (paras 48 – 49).
51. The Judge also rejected the Claimant's application under CPR 6.15 to permit service of the Claim Form by the alternative means employed (para 67). In so doing he rejected the proposition that the Claimant had been misled by the solicitors' earlier correspondence asking him to correspond with them rather than their clients; he had also sent the Claim Form to the individual Defendants and his principal error had been the unrelated one of thinking that email was an acceptable form of service (paras 61 - 62). The Claimant had relied upon a letter from his doctor, Dr Andrew Iles, noting that he had symptoms of depression and met the diagnostic criteria for Asperger's syndrome without intellectual or language impairment. The Judge did not accept that his disabilities had significantly contributed to the failure to serve the Claim Form in time, given that Dr Piepenbrock said he had considered the terms of CPR and he had the assistance of his wife (paras 61 - 62). The damage was self-inflicted by leaving service of the Claim Form to the last minute and there was no "good reason" within the meaning of CPR 16.5(2) (paras 63, 65 and 67).
52. For similar reasons, the Judge rejected the Claimant's applications: to dispense with service of the Claim Form pursuant to CPR 16.6 (para 70); for relief from sanctions pursuant to CPR 3.9; and for rectification of an error of procedure under CPR 3.10 (paras 72, 82 and 83).
53. Accordingly, by his Order dated 1 July 2020, Nicklin J granted a declaration that the Claim Form was not served during its period of validity. He ordered the Claimant to pay the Defendants' costs of the action and their costs of a contested anonymity application in respect of D9, to be subject to detailed assessment if not agreed. The Claimant was directed to pay the following sums on account of costs by 4.30 pm on 31 July 2020: £30,000 to ANL and £25,000 to the LSE and D6. He also refused the Claimant's application for permission to appeal. In his accompanying reasons, the Judge noted that the Claimant had referred to his dire financial position, but had not provided any real evidence of this and that in any event it was not relevant to the Defendants' costs entitlement. By Orders dated 18 November 2020 and 5 February 2021, Lewison LJ refused the Claimant's applications for permission to appeal.

Subsequent correspondence regarding costs

54. It is agreed that the Claimant has not made the payments on account of costs ordered by Nicklin J. Detailed assessment of costs has yet to take place.
55. On 2 October 2021, ANL's solicitors wrote to the Claimant requesting payment. On the same day the Claimant's wife (Professor Sophie Marnette-Piepenbrock) emailed D12

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and D13 responding on his behalf, accusing them and their solicitors of causing or exacerbating his psychiatric injury and threatening to bring harassment proceedings for foreseeably causing psychiatric injury.

56. By letter dated 26 April 2021, ANL’s solicitors wrote to the Claimant again about the outstanding costs, pointing out that with accrued interest the sum due was now £31,966.03. The Claimant was asked to respond with payment proposals by 4.30 pm on 3 May 2021. Professor Marnette-Piepenbrock replied by email sent on 3 May 2021 in similar terms to her previous communication. A further letter dated 2 February 2022 requesting payment was sent to the Claimant.

The ET Claim

57. The Claimant brought claims in the ET for unfair dismissal, for discrimination arising from disability under s.15 EQA 2010 and for victimisation pursuant to s.27 EQA 2010. The proceedings were stayed pending resolution of the High Court claim. The disability discrimination allegations are listed in para 2.10 of the ET’s judgment. Broadly they related to the contents of various internal emails sent between LSE personnel; the non-renewal of the Claimant’s employment contract; and the non-renewal of his Deputy Academic Dean contract. The 19 allegations of victimisation are listed at para 2.19. They concerned the LSE’s response to grievances raised by the Claimant; the contents of internal emails passing between LSE personnel; the means of communications with the Claimant when he was off sick; and failing to renew his fixed-term contract.
58. In April 2020 the ET refused the Claimant’s out of time application to amend his claim to add new causes of action for discrimination and harassment based on sex, disability, race and religion and to add 13 new Respondents. The Claimant appealed this refusal to the Employment Appeal Tribunal (“EAT”). One aspect was permitted to proceed to a full appeal hearing. This concerned allegations of sex discrimination and harassment in respect of a grievance the Claimant said he had raised on 19 November 2012. Following a hearing on 30 November 2021, the judgment of HHJ Shanks was handed down on 21 December 2021 dismissing the appeal. He found that the Employment Judge (“EJ”) had been wrong to conclude that the new claim added little or nothing to the existing claims, but that even if this error had not been made, the EJ would properly have reached the same outcome, given his other findings, including that the new claims could and should have been brought at the outset.
59. The ET dismissed each of the claims. It considered that it was bound by the findings made in the 2018 Judgment. The ET concluded that the Claimant was fairly dismissed for the reasons it identified in paras 7.90 – 7.102. The ET accepted that the Claimant was disabled on the basis of his anxiety and depression which had developed from December 2012 (paras 7.12 – 7.15, 7.18). No findings were made as to whether the Claimant was autistic (para 7.11). As regards the discrimination arising from disability claim, his dismissal was found to be a proportionate means of achieving a legitimate aim (para 7.134) and the other allegations were rejected on the basis that they did not constitute unfavourable treatment and/or were justified (paras 7.135 – 7.148). The victimisation claim was rejected on the basis that the Claimant had not satisfied the s.27 requirement of having undertaken a “protected act” because the communications he relied upon had not been made in good faith (paras 7.53 – 7.60). This was because the Claimant’s allegations concerning D9’s sexual advances on 12 November 2012 in Boston were false (paras 5.204 – 5.224, 7.34 and 7.60).

The claims made in these proceedings**The Defendants**

60. The individual LSE Defendants are as follows:

- i) Nemat Shafik, D2, has served as Director of the LSE since September 2017. She was not personally involved in any of the matters in issue;
- ii) Craig Calhoun, D3, was the Director of the LSE between 2012 and 2016. Although in post during some of the pleaded events, the Claimant does not suggest that he was involved in any of the matters in issue;
- iii) Susan Liautaud, D4, is an independent member of the LSE's Council. She has been Chair of Council since August 2020. She was Vice-Chair of the Court of Governors between 1 August 2015 and 31 July 2016 and again between 1 August 2018 and 6 January 2019. The Claimant does not suggest that she was personally involved in any of the matters in issue;
- iv) Alan Elias, D5, was a Member of the Court of Governors and Council between 1 August 2011 and 31 July 2014 (his second term). He was Vice-Chair of the Governors between 1 August 2014 and 20 March 2016. He was Interim Chair of the Court of Governors between 21 March 2017 and 31 July 2017. The Claimant does not suggest that he was personally involved in any of the matters in issue;
- v) Joanne Hay, D6, was the Manager of the Department of Management during the Claimant's employment at the LSE. More recently she has become the Deputy Chief Operating Officer. She was a witness at the 2018 High Court trial. Along with D9, she is the focus of many of the Claimant's allegations in the current proceedings;
- vi) Saul Estrin, D7, is an Emeritus Professor of Management Economics and Strategy at the LSE. He was also the founding Head of the Department of Management. He was a witness at the 2018 trial; and
- vii) Gwyn Bevan, D8, is an Emeritus Professor of Policy Analysis at the LSE and was previously Head of the Department of Management. He was a witness at the 2018 trial.

61. As I have already indicated, D10 is the publisher of the *Daily Mail*, *Mail On Sunday* and *MailOnline*. The other five ANL Defendants are as follows:

- i) Jonathan Harmsworth, D11, is Lord Rothermere, Chairman of Daily Mail General Trust plc, which wholly owns ANL;
- ii) Geordie Greig, D12, was the editor of the *Daily Mail* at the time when the articles were published;
- iii) Toby Andreae, D13, is the deputy editor of the *Daily Mail*;
- iv) Antonia Hoyle, D14, authored Articles 2A and 2B; and

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- v) Mark Duell, D15, authored Article 1.

The Claim Form

62. The “Brief details of claim” section of the Claim Form says:

“The Claimant claims compensation for personal injury, loss and damage arising from psychiatric injury caused by negligence and /or breach of statutory duty and/or harassment under the Protection from Harassment Act 1997 (including Harassment by Publication) and/or discrimination under the Equality Act 2010 (including sex and disability discrimination) and/or violation of the Human Rights Act 1998 (Articles 8 and 10) and/or the Data Protection Act 2018 and/or the General Data Protection Regulations 2018, by the Defendants, and/or their employees, and/or their owners, and/or their agents.

These arise from matters including, but not limited to, defamatory articles about the Claimant published in the MailOnline on 10 October 2018 and 12 October 2018, and the Daily Mail on 13 October 2018, which contain false and defamatory statements made and enabled by Associated Newspapers Ltd (and their owners and agents) and the London School of Economics and Political Science (and their agents). Since these articles remain public, they constitute ongoing and continuing acts.”

The Particulars of ClaimIntroductory sections

63. The Particulars of Claim dated 4 February 2022 are 250 pages long (minus the appended articles). Paragraphs 1 – 10 introduce the parties. Paragraphs 11 – 15 set out “Brief Details of a Claim”, reproducing the text I have quoted from the Claim Form and adding that the “defamatory anonymous source of Ms Hoyle’s articles is believed to be originated by Joanne Hay...while acting in the course of her employment with the LSE” (para 14). The next paragraph lists the causes of action relied upon, namely: “personal (psychiatric) injury”; harassment under the PHA 1997; discrimination under the EA 2010; violation of the HRA 1998 and ECHR articles 8 and 10; and violation of the DPA 2018 and the GDPR 2018.
64. The value of the claim is summarised in para 16 as follows:

“As the High Court ruled in 2018 that the LSE was found to have caused the Claimant’s career-ending disability and personal injury (albeit not foreseeably so at the time), the disabled autistic Claimant seeks damages including for his lost ‘residual earnings’, which is calculated to be in excess of £1 million as shown later in the Particulars of Damages.”

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65. This passage does not reflect the 2018 Judgment. Mrs Justice Nicola Davies found that the Claimant's psychiatric illness was triggered by him learning of D9's formal complaint in December 2012 (para 38 above). However, in light of her conclusion on foreseeability it appears that she did not make specific findings as to legal causation, albeit her observation in para 243 (para 38 above) indicates that she viewed the LSE's failings as, at best, aggravating the condition caused by him learning of D9's complaint. No findings were made as to whether his illness was career ending.
66. Paragraph 18 sets out a table indicating the causes of action that arise from the articles. It is headed "Summary of Defamatory Articles".

Background / context

67. Paragraphs 19 – 66 encompass a number of topics. After a passage referring to Lord Woolf's 2011 report concerning the LSE's links with Libya (which has no factual relationship to the claims raised), paras 23 – 35 set out a number of allegations against D6. Reference is made to her operating "a harassment machine" against various named former LSE employees and to an incident in September / October 2011 when she is said to have made sexual advances towards the Claimant which he rejected, thereby triggering "a multi-year campaign of vengeance" against him. Between paras 36 – 53 the Claimant focuses upon D9, reiterating the allegation that she sexually harassed and exposed herself to him in Boston in November 2012. He also says that the LSE failed to investigate the grievance he brought against her which D6 "unethically buried" and that D6 co-ordinated with D9 to "file a false and malicious formal grievance" against him. The Claimant refers to D9's subsequent circulation of her grievance within the LSE, to the LSE's delay in supplying him with the details and to the LSE illegally terminating his employment based on the disability that it had caused.
68. It will be apparent from my earlier summary that the 2018 Judgment rejected the proposition that D9's complaint was false and malicious (para 36(ix) above); and that the ET found both that the Claimant's account of D9 exposing herself to him in November 2012 was false and that his dismissal was lawful (para 59 above).
69. The pleading then refers rather selectively to aspects of the 2018 Judgment, alleging that this gave the LSE and D6 ample reason to feel ashamed and humiliated (paras 54 – 60). The Claimant refers to articles in the media published by the *Evening Standard* and *The Times* which he says compounded their humiliation (paras 61 – 66).

Claim in negligence

70. The claim in negligence is set out from para 67 under the heading "Particulars of Personal Injury". The pleading says that the LSE and ANL are vicariously liable for the acts of the responsible individuals (para 67).
71. The Claimant says that after he was "unequivocally and publicly cleared of sexual misconduct" by the 2018 Judgment he was finally in a position to begin NHS treatment for his depression, but then the publication of the ANL articles re-opened the wounds, causing an autistic meltdown/shutdown which deepened his chronic depression (para 68). He pleads that in light of matters documented in the 2018 Judgment, the LSE and the ANL were well aware of his vulnerability and disability, so that it was "clearly

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foreseeable to...[them] that publishing false and defamatory articles would cause the Claimant a new/worsened personal psychiatric injury” (para 71).

72. As regards the existence of a duty of care, he says at para 72:

“The *LSE* and *ANL* had a duty of care towards Dr Piepenbrock as the subject of their journalism, not to destroy his life and career (with false and malicious career-ending allegations and false and defamatory statements) and not to foreseeably cause a further personal psychiatric injury on the basis of their defamation, harassment and discrimination. They equally have a duty of care to the public, as providers of ‘information’ as publishers and ‘sources’, not to lie and mislead them with false material about Dr Piepenbrock. The Defendant’s acted negligently and breached the statutory duty of care that they owed to the Claimant.”

73. The next few paragraphs proceed on the basis that in *Caparo Industries v Dickman* [1990] UKHL 2, [1990] 2 AC 605 (“*Caparo*”) the House of Lords established three principles to determine if a duty of care exists, namely: whether there is a relationship of proximity between the parties; whether injury to the claimant was foreseeable; and whether it is fair, just and reasonable to impose a duty. The Claimant addresses those points in para 74:

“First, as the Claimant is a former employee of the *LSE* and the subject of their statements as a ‘source’, there is a clear relationship of proximity between the Claimant and the *LSE*, and as the Claimant is the subject of *ANL*’s three articles, there is a clear relationship of proximity between the Claimant and the *ANL*. Second, as detailed above, the Claimant’s injury was highly foreseeable to the *LSE* and *ANL*. Third it is fair, just and reasonable to impose a duty on the *LSE* and *ANL* for the reasons given above and because they grossly violated his HRA and ECHR rights (which will be detailed later) which they had a duty to respect, and they have duties to the subjects and recipients of their journalism in line with their professional obligations (see for example the ‘Editor’s Code of Practice’ detailed later in this section). Just as common carriers, (e.g. bus drivers, train drivers and airplane pilots) have an established duty of care to passengers, the press and its sources have a duty of care to the subjects or ‘suppliers’ of their journalism and to their readers or ‘customers’.”

74. The pleading goes on to draw a parallel with a negligent misstatement case, saying that: “the Claimant must foreseeably rely on what is said about him in the press because it inevitably forms the basis of his reputation” (para 76).

75. The Claimant addresses medical evidence in para 77. He indicates that he will rely on the medical evidence produced in the previous High Court claim and in the ET Claim. He continues:

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“In addition, the Claimant will produce medical documentation during the discovery phase of this litigation chronicling his autism and chronic depression since the defamatory publications...As the Claimant is disabled and unemployed due to the actions of the Defendants, he cannot afford to hire a new medical expert to produce a new report for the court in this litigation.”

76. The pleading states that the “main cause” of the Claimant’s “new/worsened psychiatric injury” was the “Defendant’s widespread defamation of him in the international media” in Articles 1, 2A and 2B (para 79). He says that as he is autistic he cannot handle lies and false accusations, which bring about an autistic meltdown/shutdown (para 80).
77. There is no pleading that the duty of care has been breached and nor are particulars given. Instead there follows a very lengthy section setting out why the articles were defamatory. It is introduced in para 81 as follows:

“As a Litigant in Person, the Claimant does not know whether or not he is required to prove that the statements that cause his new/worsened personal psychiatric injury were legally defamatory and/or malicious falsehoods. Therefore, erring on the side of caution in this regard, the Claimant will show that these statements were defamatory and/or malicious falsehoods, and if this is not required then this analysis will in any event be helpful to show how and why the statements caused serious harm and psychiatric injury to the Claimant.”

78. I can summarise this next section quite briefly:
- i) Paragraphs 82 – 115 set out why Article 1 is said to be defamatory. The Claimant addresses the meaning of the words used, the serious harm threshold required by s.1 Defamation Act 2013 (“DA 2013”) and why a public interest defence would not succeed. In terms of injury, he pleads that the serious harm caused to his reputation foreseeably deepened his ongoing psychiatric injury and disability and seriously harmed his reputation in the workplace, resulting in the loss of his ability to try and establish a residual earning capacity after the LSE had previously caused his career-ending illness;
 - ii) Paragraphs 116 – 372 set out why Articles 2A and 2B are said to be defamatory. The Claimant addresses the identity of the anonymous source, the meaning of the words used, satisfaction of the serious harm threshold and the unavailability of an honest opinion or public interest defence;
 - iii) Paragraphs 377 – 536 set out why Articles 2A and 2B are said to contain malicious falsehoods. Thirty statements are identified, with an explanation given in relation to each as to why it is said that it was false and made maliciously. The pleading states that the articles were likely to cause pecuniary damage and foreseeably deepened the Claimant’s ongoing psychiatric injury and disability and seriously harmed his reputation in the workplace, resulting in the loss of his ability to try and establish a residual earning capacity;

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- iv) Paragraphs 537 – 555 contain a section on “Discourse Analysis” which is said to show D14’s bias against the Claimant; and
 - v) Paragraphs 556 – 567 address “Journalistic Malpractice”, specifically that D14 used a single anonymous source and failed to corroborate the allegations made.
79. As regards the identity of the anonymous source referred to in Articles 2A and 2B, at paras 189 – 191 the Claimant lists the six people who gave evidence for the LSE at the 2018 High Court trial, observing that only three of them knew both him and D9. He goes on to say that only one of these three, D6, had a clear motive to “break ranks with the LSE’s directive to not speak with the media” due to the Claimant spurning her sexual assault in 2011 and her being personally humiliated at the 2018 trial (paras 192 – 194). He goes on to say that if it was not D6 herself, she likely used one of her closest confidantes in the LSE’s “harassment machine” as a proxy (para 197). The pleading then analyses: (a) the information given in the articles about the source and sets out how this is said to link to D6 (paras 201 – 222); and (b) alleged similarities between terminology that has been used by D6 and the language used in the quotes from the source (paras 228 – 232). The Claimant says that the identity of the source will be sought during discovery, relying on s.10 CCA 1981 and / or the *Norwich Pharmacal* jurisdiction (paras 235 – 240).

Claims under the PHA 1997

80. The Claimant says that if any of the acts mentioned are the same or similar to previous claims and in the interests of avoiding any estoppel issues, he reserves the right to remove / amend any such elements (para 574).
81. In the next paragraph he summarises this part of his claim saying:
- “Under the PHA 1997, the Defendants behaved in an oppressive and unacceptable manner, with their actions constituting a clear course of conduct of harassment. Furthermore, the Defendants are guilty of Harassment by Publication, as was the case in Thomas v News Group Newspapers Ltd...”
82. The pleading then quotes from paras 49 – 51 of the Court of Appeal’s judgment in *Thomas v News Group Newspapers Ltd* [2001] EWCA Civ 1233 (“*Thomas*”) contending that in the Claimant’s case replacement of the word “racist” with “sexist” would result in the same legal outcome (para 575).
83. The Claimant says that three main individuals have conducted “a clear oppressive and unacceptable course of conduct of harassment against” him, for which the LSE and ANL are vicariously liable (para 576). These individuals are identified as D6, D9 and D14 and he then identifies the actions relied upon in relation to each of them.
84. As regards D6, her “oppressive and unacceptable course of conduct of harassment” is said to include:
- i) Sexually assaulting the Claimant at the LSE in September 2011;

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- ii) Refusing to investigate the serious grievance of gross sexual misconduct made by D9 made in November 2012;
 - iii) Lying in March 2016 that documentary evidence of his serious grievance against D9 never existed;
 - iv) Committing perjury on oath in the High Court in July 2018, designed to rob him of justice and damages;
 - v) Defamation and slander of the Claimant in Article 2A;
 - vi) Defamation and slander of the Claimant in Article 2B; and
 - vii) Sending herself a harassing email on 7 November 2019 at 22:39 hours and then trying to blame the Claimant's wife for sending it and subsequently trying to get her sacked from her job as a Professor at Oxford University (as further detailed in para 580).
85. The Claimant pleads that D2 – D5, D7 and D8 allowed and enabled these acts which “constitutes an oppressive and unacceptable course of conduct of harassment by these individuals as well” (para 578). Vicarious liability is pleaded on the basis that D6 carried out each of the acts in the course of her employment with the LSE (para 579) and that the LSE have “openly supported and defended Ms Hay throughout her campaign of oppressive and unacceptable harassment”.
86. The Claimant concludes this part by referring to D6 actions as “vengeance stalking ... designed to destroy the health and career of an innocent man, and which all started because [the Claimant] spurned her unwanted sexual advances in 2011”. He pleads that D6 knew or ought to have known that her actions would cause foreseeable harm to him (para 583).
87. As I am not considering an application from D9, the details of her alleged actions are only relevant to the vicariously liability claim against the LSE. Her alleged acts of harassment are listed in para 584 as follows:
- i) Stalking and exposing herself to the Claimant on 12 November 2012 in Boston during the course of her employment with the LSE;
 - ii) Calling security guards on the Claimant at the hotel in Seattle, falsely and maliciously alleging that she was in physical danger;
 - iii) Contributing to the defamation of the Claimant in Article 2A;
 - iv) Contributing to the defamation of the Claimant in Article 2B; and
 - v) Filing a false, malicious, harassing and defamatory witness statement in the ET proceedings.
88. Paragraph 585 pleads that D2 – D5, D7 and D8 allowed and enabled these acts and paragraph 586 addresses vicarious liability, stating:

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“Some of these acts were carried out by [D9] while she was acting in the course of her employment at the LSE. After Dr Piepenbrock terminated [her] employment with him on 15 November 2012 and she subsequently resigned from the LSE on 18 November 2012, the LSE was still vicariously liable for her actions as an alumni of the LSE and as a former employee of the LSE, which were tied to her employment at the LSE.”

89. The Claimant says that D9’s actions were “vengeance stalking ... designed to destroy the health and career of an innocent man and which all started because [the Claimant] spurned her unwanted sexual advances in 2012” and that she knew or ought to have known that her actions would cause him foreseeable harm (para 587).
90. The actions relied upon in respect of D14 are “Defamation (libel) of the innocent Dr Piepenbrock by writing and publishing” Articles 2A and 2B (para 588). Vicarious liability is asserted on the basis that D14 was acting in the course of her employment as an agent of ANL (para 590). It is also said that D11 – D13 “allowed and enabled” her acts by publishing the defamatory articles, despite multiple emails warning of their defamatory contents (para 589).
91. D14’s actions are described as “vengeance stalking...designed to destroy the health and career of an innocent man, and which all started because ANL had published a defamatory article... [Article 1]...which drew the attention and anger of the radical feminist author, Ms Hoyle”.
92. Lastly, the Claimant relies upon harassment by the LSE and ANL, which he describes in paras 592 – 594:

“592. The LSE and ANL have also harassed the Claimant as Defendants themselves, which adds to their course of oppressive and unacceptable conduct through their individual actors. The LSE and ANL have been harassing the disabled autistic Dr Piepenbrock over costs for which they unequivocally know that there is no prospect of success of recovering. The LSE caused Dr Piepenbrock to be disabled, unemployed and facing bankruptcy for the past nearly decade, making him a ‘Man of Straw’ with no income or assets and only considerable liabilities, which the Defendants clearly know through the 2018 High Court proceedings, countless medical reports and countless correspondence from the Claimant and his representatives informing them that this is the case. In fact, the LSE even admit that they cannot get secure any costs from Dr Piepenbrock when they unequivocally stated in their second failed application to Strike Out Dr Piepenbrock’s meritorious ET claim:

‘...the Claimant routinely describes himself as ‘bankrupt’ in correspondence...the Claimant was ordered to pay the Respondent £25,000 on account by 31 July 2020 but to date he had not done so. There is undoubtedly little prospect of the Respondent being able to enforce an order for costs against the Claimant in these circumstances.’

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593. Although the LSE clearly acknowledges that Dr Piepenbrock is a ‘Man of Straw’ with no income or assets and only considerable liabilities, they continue to maliciously and vexatiously pursue him for costs, threatening further legal actions against him. [Reference is then made to a 21 October 2021 letter from Pinsent Masons, the LSE’s former solicitors]

594. The only plausible reason that the LSE would go after a disabled ‘Man of Straw’ whom they have known for years cannot pay any costs, is to harass him and cause as much fear and distress to the innocent disabled autistic man as possible so that he gives up his pursuit of justice against the Defendants.” (Emphasis in the text.)

93. The Claimant goes on to allege that the harassment was made explicit in the letter dated 29 September 2021 from ANL’s solicitors, where they threatened to bring costs proceedings for the outstanding costs if he pursued this claim (para 595). He also refers to an email from ANL’s solicitors sent on 2 February 2022 in which they threatened him with a Bill of Costs.
94. The Claimant concludes this section of the pleading by saying that the earlier High Court proceedings covered the LSE’s torts up until March 2013 and that he is justified in now relying on a course of conduct after March 2013 and acts that were not argued in that earlier action (para 598).

Claims under the EQA 2010

95. The section commences with an equivalent passage to that which began the section on the PHA 1997 claim (para 80 above). The Claimant then says that he relies upon the protected characteristics of sex and disability (pleading, para 601).
96. The Claimant address the sex discrimination claim from para 602, where he indicates that he relies upon direct sex discrimination, harassment relating to sex and victimisation. The direct sex discrimination is described in para 603 as having:
- “...occurred when, because of his sex, the Defendants treated him worse than someone of the opposite sex who is in a similar situation, which began when the Claimant was an employee at the LSE and continued when the Defendants defamed and harassed the Claimant in the media in October 2018, prejudging him as guilty on the basis of his sex.”
97. The Claimant refers to “Examples of direct sex discrimination, which were revealed during the High Court trial” as including D7’s “declaration of the Claimant’s guilt of sexual misconduct immediately after receiving [D9’s] false and malicious allegation of sexual misconduct which had yet to be investigated”. Quotes from an email sent by D7 on 18 November 2012 and excerpts from witness statements for the 2018 High Court trial are then set out. No other allegations of sex discrimination are identified.
98. The pleading then says that the Claimant relies upon three types of harassment related to sex:

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- i) When the Defendants made him feel humiliated, offended or degraded “e.g. via the publishing of harassing and defamatory materials regarding his sex”;
 - ii) When the Defendants treated him unfairly because he refused to put up with sexual harassment whether by D6 or D9, resulting in the publishing of harassing and defamatory materials; and
 - iii) When the Defendants made him feel humiliated, offended or degraded by treating him in a sexual way as D6 and D9 had done.
99. No further particulars are given of the harassment related to sex claim. The victimisation claim is then briefly addressed at para 607:

“The Claimant was treated badly (e.g. defamed in the international media) by the Defendants because he made complaints of sexual assault, harassment, gross sexual misconduct, and sex discrimination against the LSE.”

The respects in which the Claimant was treated badly are not specified.

100. The pleading contends that no limitation issues arise as the discrimination has been continuing, in terms of the Defendants’ ongoing failures to deal with the defamatory articles generated by the LSE and published by ANL, which remain available online (para 608).
101. Paragraphs 610 and 611 address estoppel issues. The Claimant says that his ET claim relates to disability discrimination and unfair dismissal, but if he is permitted to add a claim for sex discrimination by the Court of Appeal (if his ongoing appeal from the EAT’s decision succeeds), “this would preclude litigating Sex Discrimination which occurred from 2011 – 2014 in these proceedings”. However, he says his claim for sex discrimination arising from acts after he left the LSE has not been litigated elsewhere.
102. The Claimant refers to his depression and anxiety when identifying his disability (para 612). He says that D14 was aware of this (para 616). It may be that his intention is also to rely upon autism as a disability; he refers to this in para 613 but does not say so in terms. He then indicates that he relies upon five forms of disability discrimination: indirect discrimination; a failure to make reasonable adjustments; discrimination arising from disability; harassment relating to disability; and victimisation (para 617).
103. The indirect discrimination against ANL is contained in para 618. It relates to the time frame that he was given to respond to D14 before Article 2A was published. The Claimant says:

“...expecting a person like the Claimant, with a known, serious long-term mental health illness and disability to have to answer false and malicious allegations from a known stalker on a path of malicious vengeance like Ms Hay, in an incredibly short time frame (shorter than one would expect someone who does not have such a mental disability) is indirect disability discrimination. This especially the case for autistics such as the Claimant who (because of their obsession with truth and justice)

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find it extremely difficult to deal with lies and false accusations, which will likely lead to autistic meltdowns/shutdowns. This is what happened in the Claimant's case.”

104. The alleged breach of a duty to make reasonable adjustments raises a similar point, contending that D14 should have asked the Claimant when he would be able to speak with her and adjusted her editorial schedule accordingly (para 621). The claim for discrimination arising from disability raises a similar point at para 624.
105. Thus far the pleaded disability discrimination claim has only related to the ANL Defendants. However, the alleged harassment relating to disability appears to concern the LSE too, as it is said that both D6 and D14 made the Claimant feel humiliated, offended and degraded by the publishing of harassing and defamatory materials regarding his disability, which was disbelieved and downplayed (paras 626 - 627). Paragraph 629 also says that the harassment took the form of “defamation of an innocent disabled man”.
106. The victimisation claim relies on the acts of both D6 and D14. It is said that they treated him badly because he had complained about his treatment by the LSE in regard to his psychiatric illness in the earlier High Court claim. He says that they victimised him by questioning his disability and implying that he had caused it himself through being a “martyr” (paras 630 – 631). He also refers to the treatment that he says was received by a Dr Paul Thornbury, the LSE's Head of Security, who was asked to attend a grievance meeting after he sought to provide a witness statement for the Claimant in the ET claim (para 632).
107. At paras 633 – 634 the Claimant makes the same point about time limits as he raised in the sex discrimination claim. As regards estoppel issues, he acknowledges that disability discrimination is a cause of action in the ET Claim but says that the present claim concerns discriminatory treatment after the end of his High Court trial in 2018 (paras 637 – 638).

Claims under the HRA 1998

108. At paragraphs 639 – 645 the Claimant indicates that he relies upon violations of Articles 8 and 10, ECHR. He says that the three defamatory articles violated his Article 8 right to a private life and that the same publications violated the Article 10 “duties and responsibilities for the protection of the reputation and rights of the Claimant by making false and defamatory statements about him in the international media”.

Claims under the DPA 2018 / GDPR 2018

109. Paragraphs 647 – 648 contain an allegation that the LSE failed to notify the Information Commissioner's Office (“ICO”) of a data breach that D2 was advised of by the Claimant in an email sent on 15 October 2018, as required by s.67 DPA 2018. Paragraphs 649 – 650 refer to the criminal offence of obtaining or disclosing personal data or procuring the disclosure of personal data to another person without the consent of the controller. No specific allegation is made, but there is a quote from the ICO's document “*Data Protection and Journalism: A guide for the Media*” concerning sources leaking information to journalists without their own organisation's knowledge.

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Next it is said that s.198 DPA 2018 and GDPR 2018 establishes the vicarious liability of the LSE for the actions of D6 and ANL for the actions of D14 and D15 (para 651).

110. In the next section headed “Flagrant violations of Data Laws by destroying critical evidence” allegations are made that the LSE destroyed the email accounts of critical witnesses in relation to the earlier High Court claim and the ET Claim (paras 652 – 658).
111. Under the heading “LSE’s refusal to comply with GDPR SARs”, the Claimant pleads that the LSE illegally withheld evidence critical to the earlier High Court Claim and failed to comply with multiple subject access requests (“SARs”) (paras 659 - 683). The SARs that are relied upon are listed in paras 660 – 661. There are 12 of them, spanning the period 4 February 2013 – 30 September 2021. The last three post-date the handing down of the 2018 Judgment. It is said that the LSE has refused to hand over “a significant amount of critical DPA SAR information”. The missing data is said to include the six items listed in para 664. From the contents of paras 665 – 667, it appears that these are largely, if not entirely, items of correspondence between LSE employees and D9 in the period November 2012 – January 2014. Paragraphs 678 – 681 concern the three more recent SARs. It is alleged that “the LSE refused to hand over any correspondence regarding the investigation of the leak to the *Daily Mail/MailOnline*”. The Court is asked to require the LSE to hand over this documentation. The remainder of this section queries the ability of the LSE to rely upon the legal professional privilege exemption in Schedule 2 DPA 2018. Reference is also made to an alleged failure to comply with an SAR relating to Mr Piepenbrock (para 682); and to the Claimant and his son having complained to the ICO about the LSE’s failure to disclose the data sought (para 683).
112. The Claimant then alleges that ANL has failed to comply with SARs (paras 684 - 686). He identifies a number of requests that were made on his behalf by his wife, including for ANL’s internal correspondence concerning him in the period 10 – 13 October 2018. He notes a response of 20 December 2019 that personal data had been withheld as it was third party data that ANL did not have consent to disclose; and a further response on January 2020 confirming that it was not being said that there was no personal data held, rather that data that was held was not disclosable. The basis for challenging this position is not set out.
113. The next section sets out the power of the Information Commissioner to impose monetary penalties and in this context reference is made to the LSE’s “unauthorised leak of false and defamatory information about the Claimant” to ANL (para 689). Paragraphs 691 – 694 discuss why the DPA 2018 exemption for journalistic purposes would not apply.

Particulars of damages

114. The last section of the pleading (from para 695) addresses the damages claimed. Under the first sub-heading “General Damages” the Claimant refers to the very good name that he had throughout his professional and personal life, to the extensive readership of the *Daily Mail* and the *MailOnline* and to the “defamatory article” being easily found via a *Google* search (paras 697 – 700). He says that the distress and humiliation caused to him and his family has been profound (para 701). He makes reference to various awards made in defamation cases, before indicating that he seeks general damages “in

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the region of £100,000”. No specific claim is made for damages for pain and suffering and loss of amenity, consequent upon psychiatric injury.

115. The next section contains a claim for aggravated damages. Specific reference is made to alleged malicious and unethical actions by D6, which appear to largely concern the Claimant’s wife (paras 705 – 709). The Claimant says that he seeks aggravated damages “in the region of £100,000”.
116. The section that follows is headed “Special / Exemplary Damages”. It mainly concerns a claim for loss of residual career earnings. This claim is summarised in para 712:

“The *Daily Mail / Mail Online*’s defamatory articles of 10 – 13 October 2018, have caused ‘serious harm’ and immense damage to the Claimant’s health and career. He will therefore never work again, and he had not worked since the defamatory articles were published. He will therefore lose the ‘residual’ income that it was believed that he could have earned after the High Court lawsuit ended, were it not for the malicious and/or negligent actions of the Defendants in this case. The Defendants’ actions were career ending for this extraordinary man, who formerly earned \$10,000 per hour for his lectures and whose successful and lucrative career was valued at £4 million for his 2018 High Court trial.”

117. The Claimant says that in light of the defamatory articles no right minded employer would hire him as a professor (para 713). He says that the LSE’s breaches of the duty of care and breach of contract identified in the 2018 Judgment “caused the Claimant’s career-ending disability” (para 715) and that in the present case he is arguing for loss of his “residual” career “that could reasonably have been expected” after the LSE caused the loss of his original career (para 716). He explains this as follows:

“In principle, the Claimant could have begun his ‘residual’ career after a successful High Court judgement in October 2018. Instead, as a result of the Defendant’s malicious and/or negligent actions described in these particulars of claim, the Claimant will have no ‘residual’ earning capacity in the future, as he has not worked since the Defendant’s defamation due to the deepened psychiatric illness foreseeably caused by the Defendants as well as due to the greatly reduced/tarnished reputation that the Claimant now has, especially in the ‘business management guru’ marketplace, which he previous enjoyed.”

118. The Claimant goes on to say that his residual earning capacity is illustrated by his 2013 consulting work in India, his 2014 employment with Ashridge Business School and an international one-hour lecture he gave charged at \$10,000 (paras 717 – 721). A residual earning capacity is calculated on the basis that, absent the matters complained of, he would have been able to give ten one hour lectures a year at a rate of £7,500 each, thereby giving an annual figure of £75,000; increasing after treatment to a figure of £150,000 per year. He takes an average of £100,000 and a retirement age of 67, to produce a total of “approximately £1,300,000” (paras 722 – 723). He also claims for the costs of ten years of therapy, totalling £100,000 (para 725).

The 2020 Claim

119. In light of the Defendants' submissions it is also necessary to refer to the Particulars of Claim (dated 10 February 2020) that were prepared in the 2020 Claim. In summary:

- i) An introductory section between paras 1 – 17 reflected the text on the Claim Form (para 47 above) and indicated that, in addition, the Claimant claimed compensation for damages arising from violations of the DPA 2018 and GDPR 2018, the PHA 1997, the EQA 2010 and “for personal (psychiatric) injury” against the LSE and ANL (paras 11 – 14);
- ii) A “Background / Context” section between paras 18 – 61 was almost the same as paras 19 – 67 of the current Particulars of Claim, save that the allegations concerning D6 are expanded upon in the current pleading;
- iii) The document then addressed “Particulars of Defamation / Malicious Falsehood” between paras 62 - 643. The content is very similar to paras 82 – 573 of the current pleading, save that some additional matters were addressed, including D9’s liability under the DA 2013 and the single publication rule. It was not preceded by the section on personal injury that appears at paras 67 – 81 of the present Particulars of Claim;
- iv) Paragraphs 644 – 660 concerned “Particulars of Data Protection Act violations” alleged against the LSE and ANL. It contained allegations that the LSE had breached a requirement to notify the ICO and a section on criminal offences, equivalent to paras 647 – 650 of the current pleading. Paragraph 650 said that the LSE had refused to comply with an SAR made on 18 November 2019 in not handing over correspondence regarding the investigation of the leak to the *Daily Mail / MailOnline*. Sections on monetary penalties and on the unavailability of the exemption for journalistic purposes followed at paras 651 – 660;
- v) Paragraphs 661 – 706 concerned claims for sex discrimination and disability discrimination under the EQA 2010. Much of the text is identical to that contained in paras 600 – 638 of the current pleading, although there are some small differences of expression;
- vi) Paragraphs 707 – 718 set out a claim under the PHA 1997. At this stage the claim only concerned the alleged actions of D6, which appeared in a list at para 714 and were similar, although not identical, to the list at para 577 of the current Particulars of Claim (para 84 above);
- vii) The section between paras 719 – 730 was headed “Particulars of Personal Injury”. It indicated that the Claimant claimed compensation for psychiatric injury caused by the LSE and its employees and agents (not limited to D6) and by ANL (including the actions of D14). The basis of the claim was said to be that after being cleared of sexual misconduct by the 2018 Judgment the Claimant was in a position to begin treatment for his anxiety and depression, but then the defamatory articles and the LSE’s actions in relation to them had caused his psychiatric injury to start all over again. The Claimant said that both the LSE and ANL owed him “a professional duty of care, not to harass and defame an innocent man” and that was precisely what they had done; and

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- viii) Paragraph 731 set out the damages claim. General damages for distress and humiliation were claimed “in the region of £50,000”. The basis of this appeared in paras 733 – 738, which is reflected in paras 697 – 702 of the current pleading. The next section on aggravated damages was in very similar terms to paras 704 – 709 of the current pleading (para 115 above). A figure “in the region of £50,000” was claimed. The section on “Special / Exemplary Damages” advanced a claim for loss of residual career earnings calculated on the basis of a loss of £100,000 a year. The defamatory articles were said to have caused serious harm and immense damage to the Claimant’s health and career, such that he would never be able to work again as the actions complained of had deepened his psychiatric illness and greatly reduced his reputation (paras 752 - 756).

Strike out and summary judgment: the legal framework

120. CPR 3.4(1) states that for the purposes of this rule, reference to a statement of case includes reference to part of a statement of case. CPR 3.4(2) provides:

“(2) 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 or defending the claim;
- (b) that the statement of case is an abuse of the court’s process or is otherwise likely to obstruct the just disposal of the proceedings; or
- (c) that there has been a failure to comply with a rule, practice direction or court order.”

121. When the court strikes out a statement of case it may make any consequential order it consider appropriate (CPR 3.4(3)).

122. CPR 3.4(4) provides:

“(4) Where-

- (a) the court has struck out a claimant’s case;
- (b) the claimant has been ordered to pay costs to the defendant; and
- (c) before the claimant pays those costs, the claimant starts another claim against the same defendant, arising out of facts which are the same or substantially the same as those relating to the claim in which the statement of case was struck out,

the court may, on the application of the defendant, stay that other claim until the costs of the first claim have been paid.”

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123. If the Court strikes out a statement of case and it considers that the claim is totally without merit, the Court must record that fact and must consider at the same time whether it is appropriate to make a civil restraint order (CPR 3.4(6)).
124. CPR 24.2 provides that the Court may give summary judgment against a claimant on the whole of a claim or on a particular issue if “the claimant has no real prospect of succeeding on the claim or issue” and there is “no other compelling reason” why the case should be disposed of at trial.
125. When applications are made to strike out Particulars of Claim pursuant to CPR 3.4(2)(a) as disclosing “no reasonable grounds” for bringing the claim and, in the alternative for summary judgment in the defendant’s favour, there is no difference between the tests to be applied by the Court under the two rules: *Begum v Maran (UK) Limited* [2021] EWCA Civ 326 (“*Begum*”) per Coulson LJ at paras 20 – 21. In para 22(a) he described the applicable test as follows:
- “The court must consider whether the claimant has a ‘realistic’ as opposed to a ‘fanciful’ prospect of success: *Swain v Hillman* [2001] 1 All ER 91. A realistic claim is one that carries some degree of conviction: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472. But that should not be carried too far: in essence, the court is determining whether or not the claim is ‘bound to fail’: *Altimo Holdings v Kyrgyz Mobil Tel Ltd* [2012] 1 WLR 1804 at [80] and [82].”
126. The parties were agreed that the onus lies on the Defendants to establish that this test is made out.
127. The extent to which it is appropriate for the Court to consider the evidential position when applying the test was summarised in *Easyair Ltd v Opal Telecom* [2009] EWHC 339 (Ch) as follows:
- “iii) In reaching its conclusion the court must not conduct a ‘mini-trial’: *Swain v Hillman*;
- iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10];
- v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550;
- vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or

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permissible on summary judgment. Thus the court should hesitate about making a final decision...where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to the trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63;

vii) ...if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it...If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725.”

128. It is well-recognised that it is not generally appropriate to strike out a claim on assumed facts in a developing area of jurisprudence. At para 23 in *Begum*, Coulson LJ cited the earlier observations of Lord Browne-Wilkinson at 557e-g in *Barrett v Enfield DC* [2001] 2 AC 550:

“In my speech in the *Bedfordshire* case [1995] 2 AC 633, 740 – 741 with which the other members of the House agreed, I pointed out that unless it was possible to give a certain answer to the question whether the plaintiff’s claim would succeed, the case was inappropriate for striking out. I further said that in an area of law that was uncertain and developing (such as the circumstances in which a person can be held liable in negligence for the exercise of a statutory duty or power) it is not normally appropriate to strike out. In my judgment it is of great importance that such developments should be on the basis of actual facts found at trial not on hypothetical facts assumed (possibly wrongly) to be true for the purposes of the strike-out.”

129. Where a statement of case is found to be defective, the Court should consider whether the defect might be cured by amendment and, if it might be, the Court should give the party concerned an opportunity to amend: White Book, para 3.4.2 citing *In Soo Kim v Young* [2011] EWHC 1781 (QB). When the Court strikes out Particulars of Claim, it will often be appropriate to make an order dismissing the claim or giving judgment upon it, but the Court may instead give further directions. For example in *Brown v AB* [2018] EWHC 623 (QB) Pepperall J struck out an unwieldy and unnecessarily complex defence but directed the defendant to file a fresh pleading complying with limitations as to its length, as he considered that the defence was arguable (as discussed at para 3.4.22 of the White Book).

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130. I address the principles relating to the CPR 3.4(4) power to stay a claim at paras 224 – 230 below.

Abuse of process and issue estoppel: the legal framework

131. In *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd* [2013] UKSC 46, [2014] AC 160 at para 17, Lord Sumption JSC summarised six different legal principles with different juridical origins under the heading “Res judicata: general principles”. This summary included:

“The first principle is that once a cause of action has been held to exist or not exist, that outcome may not be challenged by either party in subsequent proceedings. This is ‘cause of action estoppel’. It is properly described as a form of estoppel precluding a party from challenging the same cause of action in subsequent proceedings.....Fourth, there is the principle that even where the cause of action is not the same in the later action as it was in the earlier one, some issue which is necessarily common to both was decided on the other earlier occasion and is binding of the parties... ‘Issue estoppel’ was the expression devised to describe this principle by Higgins J in *Hoysted v Federal Commissioner of Taxation* (1921) 29 CLR 537, 561 and adopted by Diplock LJ in *Thoday v Thoday* [1964] P 181, 197 – 198. Fifth, there is the principle first formulated by Wigram V-C in *Henderson v Henderson* (1843) 3 Hare 100, 115, which precludes a party from raising in subsequent proceedings matters which were not, but could and should have been raised in the earlier ones. Finally, there is the more general procedural rule against abusive proceedings, which may be regarded as the policy underlying all of the above principles with the possible exception of the doctrine of merger.”

132. The classic statement of when an abuse of process arises because the relevant matters could and should have been raised in earlier proceedings appears in Lord Bingham’s speech in *Johnson v Gore Wood & Co* [2002] 2 AC 1 at 31B-D where he said:

“The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some other dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach

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to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before. As one cannot comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not.”

133. In *Dexter Limited (In Administrative Receivership) v Vlieland-Boddy* [2013] EWCA Civ 14 at para 49, Clarke LJ (as he was then) summarised the principles to be derived from the authorities as follows:

“i) Where A has brought an action against B, a later action against B or C may be struck out where the second action is an abuse of process.

ii) A later action against B is much more likely to be held to be an abuse of process than a later action against C.

iii) The burden of establishing abuse of process is on B or C as the case may be.

iv) It is wrong to hold that because a matter could have been raised in the earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive.

v) The question in every case is whether applying a broad merits based approach, A’s conduct is in all the circumstances an abuse of process.

vi) The court will rarely find that the later action is an abuse of process unless the later action involves unjust harassment or oppression of B or C.”

134. A further form of abuse may arise where a party brings a second action covering the same subject matter as was raised in a first action that was struck out for a wholesale failure to comply with procedural grounds. The circumstances in which this form of abuse can arise were summarised by Newey LJ in *The Commissioners for Her Majesty’s Revenue and Customs v Kishore* [2021] EWCA Civ 1565 at paras 20 – 27 (“*Kishore*”). It applies where the first action was struck out as an abuse of process and where the conduct of that first action was inexcusable and involved wholesale disregard of court rules: Newey LJ at para 24, citing para 52 of Morris J’s judgment in *Davies v Carillion Energy Services Ltd* [2017] EWHC 3206 (QB), [2018] 1 WLR 1734. By contrast, a mere negligent failure to serve a Claim Form in time is insufficient to engage this principle: Newey LJ at para 23, citing *Aktas v Adepta* [2010] EWCA Civ 1170, [2011] QB 894 at para 90.

Approved Judgment**The pleaded claim in negligence**

135. I have already set out the way in which the claim in negligence is pleaded (paras 70 – 78 above). The Defendants submit that the pleaded claim is bound to fail because it does not disclose an arguable duty of care and it constitutes an abuse of process in attempting to circumvent the law on defamation. They also contend that the factual basis of the claim for consequential psychiatric injury has no realistic prospect of success and that it is fatally undermined by the absence of supporting medical evidence. In addition, the LSE Defendants submit that the Claimant’s case as to the identity of the anonymous source referred to in Articles 2A and 2B is inherently weak and the evidential position will not be improved if the claim proceeds.

Duty of care

136. I will focus firstly on whether the Particulars of Claim disclose an arguable claim in law. I emphasise that *for these purposes*, and in accordance with established principles, I proceed on the basis of the *assumed facts* as pleaded in the Particulars of Claim (save where they are contrary to binding findings made in earlier judgments). Accordingly, and by way of example only, I proceed on the *assumed* basis that the published articles contained false and defamatory material as alleged and that the Claimant would be able to link the anonymous source to the LSE. For the avoidance of doubt, in so doing I am not making any assessment of the prospects of proving these matters were the action to proceed to trial.

137. The essence of the Claimant’s argument is that the ANL Defendants owed him a duty of care when writing and publishing the articles and that the LSE Defendants owed him a duty of care when purported information was provided via the source. For the purposes of considering the duty of care issue I will not distinguish between the role of particular Defendants within these two cohorts (a topic which I address subsequently at paras 164 - 167 below).

138. Dr Piepenbrock submits that the three stage criteria of the *Caparo* test are met and that there is a very strong case for showing a duty of care here. He also says that in so far as this is a novel situation not covered by existing case law, the claim should be allowed to proceed to trial and the issue decided upon the facts that are then found. Although there was a claim in defamation, this does not preclude an action in negligence; multiple causes of action can arise from the same events. Furthermore, this claim is not simply about damage to reputation, it concerns a duty to protect from psychiatric injury. He says that in so far as there is any deficiency or lacuna in the pleading, he should be given the opportunity to amend the claim, rather than it being struck out, given that he is a litigant in person and given the difficulties he faces with his anxiety and depression and autism. A specific submission was advanced by reference to the tort of intentionally causing psychological harm identified in *Wilkinson v Downton* [1897] 2 QB 57 (“*Wilkinson*”).

The caselaw*The correct approach*

139. The correct approach to determining whether a duty of care in negligence arises in a situation that has not previously been the subject of judicial consideration was

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explained by Lord Reed JSC in *Robinson v Chief Constable of West Yorkshire Police* [2018] UKSC 4, [2018] AC 736 (“*Robinson*”) at paras 21 – 29. He identified how Lord Bridge’s speech in *Caparo* had been misunderstood in subsequent authorities; far from laying down a single tripartite test for whether a duty of care arose, Lord Bridge had emphasised that the common law would proceed on the basis of precedent and the incremental development of the law by analogy with established authorities. Lord Reed indicated that the “drawing of an analogy depends on identifying the legally significant features of the situations with which earlier authorities were concerned” (para 27). He summarised the position in para 29 as follows:

“In the ordinary run of cases, courts consider what has been decided previously and follow the precedents (unless it is necessary to consider whether the precedents should be departed from). In cases where the question whether a duty of care arises has not previously been decided, the courts will consider the closest analogies in the existing law, with a view to maintaining the coherence of the law and the avoidance of inappropriate distinctions. They will weigh up the reasons for and against imposing liability, in order to decide whether the existence of a duty of care would be just and reasonable.”

Negligence and protection of reputation

140. In *James-Bowen v Commissioner of Police of the Metropolis* [2018] UKSC 40, [2018] 1 WLR 4021 (“*James-Bowen*”) the Supreme Court rejected the proposition that the Commissioner owed a duty to officers in his force to take reasonable care to safeguard their welfare and reputational interests when conducting litigation. The action arose from the basis upon which the Commissioner had settled a tortious claim for damages brought by an individual who the officers had arrested and detained. Whilst this was not the only reason for rejecting the alleged duty of care, the Court noted that the common law did not generally recognise a duty of care in negligence to protect reputation. Giving the leading judgment (with which the other members of the Court agreed), Lord Lloyd-Jones JSC summarised the position in para 24:

“The law protects reputation in a variety of ways in different circumstances. Causes of action such as libel, slander, malicious falsehood and passing off are designed to protect reputation. Moreover, a variety of other causes of action, including breach of confidence, misuse of private information and causes of action in relation to data protection and intellectual property, may often indirectly achieve this result. The common law does not usually recognise a duty of care in the tort of negligence to protect reputational interests. However, there are exceptions. In *Spring v Guardian Assurance plc* [1995] 2 AC 296 a majority of the House of Lords held that an employer who gave a reference in respect of a former employee owed that employee a duty to take reasonable care in its preparation and would be liable to him in negligence for breach of duty which caused him economic loss. Lord Lowry, Lord Slynn and Lord Woolf reached this conclusion on the basis of the three ingredients identified by Lord Bridge in *Caparo*. Lord Goff concluded at p 316E-F, that a

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duty of care was owed to the former employee on a narrower ground. In his view the source of the duty of care was the principle in *Hedley Byrne & Co v Heller & Partners Ltd* [1964] AC 465, i.e. an assumption of responsibility by the authors of the reference to the plaintiff in respect of the reference, and reliance by the plaintiff upon the exercise by them of due care and skill in respect of its preparation. This case was essentially concerned with negligent misstatement and it may be that assumption of responsibility is the better rationalisation of the recognition of a duty in these circumstances.”

141. I have included Lord Lloyd-Jones’ discussion of *Hedley Byrne & Co v Heller & Partners Ltd* (“*Hedley Byrne*”) and *Spring v Guardian Assurance plc* (“*Spring*”) because the Claimant submits that the current claim is analogous. Before I assess that proposition, I will consider whether and to what extent the present situation has been the subject of examination in earlier cases.

Media defendants and negligence

142. The Defendants assert, and the Claimant has not disputed, that there is no decided case which has found that a publisher of an article owed a duty to the subject to take reasonable care as to its contents. Similarly, no duty of care has been found to be owed by a source quoted in a published article in respect of the comments they made.
143. Ms Marzec drew attention to two cases where a duty of care was found not to arise that are discussed at para 23.6 in *Gatley on Libel and Slander* (12th ed) (“*Gatley*”) under the heading “Media defendants and negligence”.
144. The first case, *Midland Metals Overseas Pte Ltd v Christchurch Press Co. Ltd* [2001] NZCA 321, [2002] N.Z.L.R. 289 (“*Midlands Metals*”), concerned a claim in negligence for damage to reputation brought by a company who supplied underground cables to a subsidiary of the second defendant. It arose out of remarks to the press made by employees of the second defendant about the poor quality of these cables. The remarks were reported by the first defendant and other newspapers. The New Zealand Court of Appeal held that the claim had been properly struck out, rejecting the proposition that the source of the article and/or its media publishers owed a duty to take reasonable care to investigate the subject matter before publication. The authors of *Gatley* summarise the reasoning of the combined judgment of Gault, Keith and McGrath JJ as being that the plaintiff’s argument would “produce a number of fundamental changes in the balance of the law; it would render the notion of a duty of care based on proximity largely otiose; it would in effect create a liability akin to that for malicious falsehood but based on negligence rather than malice and it would bypass the law of defamation with its specific defences crafted to produce a balance between freedom of speech and the protection of reputation”. The authors also cite from para 54 of the judgment of Blanchard J:

“...to permit [the plaintiffs] to sue the defendants for damage caused by breach of alleged duties of care, namely, in the case of the newspapers, to adequately investigate...It would appear that these duties would apply in the case of any media defendant. It seems also that any person being interviewed by a journalist in

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connection with a forthcoming story would be under a duty to refer the journalist to any person potentially affected by it. So, where there was to be a statement about goods in the story, the person being interviewed would be under a duty to refer the journalist to the supplier of the goods. These would be far reaching duties which a newspaper, its reporters and their interviewees would have to fulfil many times every day.”

145. The second case, *Shtaif v Toronto Life Publishing Co Ltd* (2013) ONCA 405 (“*Shtaif*”), concerned a claim in negligence and in defamation brought against the publishers of an internet article about a Canadian businessman. The article included reference to his business dispute with the plaintiffs. The Ontario Court of Appeal rejected the alleged duty of care in negligence. The authors of *Gatley* summarise the Court’s reasoning as follows:

“On the facts, however, a sufficiently close relationship of proximity was not made out. There were only two telephone interviews between the plaintiffs and the defendants, and no other pre-existing relationship between the parties. While in a general sense the media has, or should have, an obligation to adequately investigate a story to ensure the accuracy of the facts about any person referred to in the story, and to obtain that person’s side of the story, to say that these contacts by themselves gave rise to a duty of care would mean that in virtually every case a plaintiff could proceed with a negligence claim as well as a defamation claim.”

Cases relied upon by the Claimant

146. I turn next to the Claimant’s reliance upon allegedly analogous cases. In *Hedley Byrne* the House of Lords decided that a duty of care arose when a party seeking information from another party possessed of a special skill, trusts him or her to exercise due care and that other party knew or ought to have known that this reliance was being placed on their skill and judgment. Mr Piepenbrock submitted that the present case should be viewed as akin to a negligent misstatement case. He emphasised the statements that the source had made to D14 and he reminded me of para 76 of the Particulars of Claim (para 74 above).
147. In my judgment the *Hedley Byrne* negligent misstatement situation is quite distinct from the pleaded circumstances. The duty of care in such circumstances rests on the fact that: (a) the claimant has sought information from a person who holds themselves out as having a particular skill in that regard; (b) the claimant relies on the information that is thereby provided; and (c) the other party knew or ought to have known of this reliance. None of those elements apply in this instance. On any view the ANL articles were not information sought by the Claimant from the Defendants; they were not provided to him by the Defendants in that capacity; Dr Piepenbrock did not rely upon the Defendants’ particular expertise; and nor did he sustain loss or damage by placing reliance upon the accuracy of the articles. To the contrary, the allegedly defamatory content was published to the world at large and the Claimant has disputed, rather than relied upon, its accuracy.

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148. I have already cited Lord Lloyd-Jones' summary of the House of Lords' decision in *Spring* (para 140 above). A majority of their Lordships (Lords Goff, Lowry, Slynn and Woolf) rejected the proposition that defamation and malicious falsehood provided an exclusive legal regime that did not allow for the introduction of liability in negligence *where the circumstances otherwise indicated the existence of a duty of care*: Lord Goff at 324D-E, Lord Lowry at 325E-F, Lord Slynn at 334E-H and Lord Woolf at 350B-351D.
149. However, I do not consider that the basis upon which a duty of care was found to exist in *Spring* assists Dr Piepenbrock. Lord Goff considered that a duty of care arose through the application of the *Hedley Byrne* principle (319H). He held that when an employer provides a reference in respect of an employee to a prospective future employer, a duty of care would ordinarily be owed in relation to the preparation of that reference because the employer was possessed of special knowledge and it was plain that the employee relied upon him / her to exercise due skill and care in its preparation (319E-H). He also emphasised the closeness of the relationship between the parties as employer – employee (320A). He regarded the position as distinct from one where an employee sought a reference from a third party, where absent an assumption of responsibility there would be “great difficulty” in holding that any greater duty was imposed than that arising under the law of defamation (322F).
150. Lord Slynn also emphasised the employment context (335A). He considered it would be unsatisfactory if the recipient of a reference who relied upon its accuracy could sue on the basis of the *Hedley Byrne* principle, but the employee who was the subject of the carelessly given reference had no recourse against the employer (335E). Both Lord Slynn and Lord Woolf noted that it did not follow from liability being imposed on an employer, that the same would apply to a non-contractual situation (336F-G and 345B-C). Lord Woolf emphasised that a person who suffered loss and damage as a result of a careless reference was inadequately protected by the law of defamation, as the qualified privilege defence meant that they would have to establish malice to succeed in a claim for libel (346C-E). He also emphasised that there was likely to be limited publication of a reference and that if there was any re-publication the re-publisher would not owe a duty of care to the subject of the reference (349F-G).
151. Accordingly, there are a number of significant distinctions between the *Spring* context and the pleaded circumstances in the present case. Firstly, as I have already identified, the situation is not analogous to a *Hedley Byrne* negligent misstatement situation. Secondly, there was no employment or equivalent relationship between the Claimant and the ANL Defendants. Whilst the Claimant had been employed by the LSE, this relationship had come to an end four years earlier and it cannot be suggested that the acts complained of (vengeful communication of inaccurate and malicious material to a media organisation) were done in the LSE's capacity as his former employer. Thirdly, on any view publication was not on a limited scale. Fourthly, unlike the position in *Spring*, Dr Piepenbrock does not suggest that he did not have a remedy in defamation; rather he is unable to pursue that cause of action because he did not serve the Claim Form in the 2020 Claim in time and the expiry of the one-year limitation period prevents him from bringing a further claim. I appreciate that the claim in *Spring* was for economic loss, rather than for psychiatric injury, but I do not consider that this assists the Claimant in light of the substantial differences that I have discussed. It is clear from

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the speeches in *Spring*, that their Lordships did not consider that they had gone further than identifying a closely defined scenario in which a duty of care could arise.

Intentional infliction of harm

152. I have also considered the *Wilkinson* line of authorities. Dr Piepenbrock relies upon these cases as illustrating that liability can be imposed for statements that cause psychiatric injury. He submits that this bolsters his duty of care argument. Furthermore, as I clarified during oral submissions, if his pleading does not currently include a claim in the tort of intentional infliction of injury, permission to amend is sought to add such a claim.
153. The ingredients of the tort of intentionally causing physical or psychological harm were clarified by the Supreme Court in *O (A Child) v Rhodes* [2015] UKSC 32, [2016] AC 219 (“*Rhodes*”). The leading judgment was given by Baroness Hale DPSC and Lord Toulson JSC (with whom Lord Clarke and Lord Wilson JJSC agreed). They described the tort as having three elements: a conduct element, a mental element and a consequence element. As regards the latter, physical harm or recognised psychiatric illness is required (para 73). The conduct element entails the claimant proving that the words or conduct were directed towards them and that there is no justification or reasonable excuse (para 74). Baroness Hale and Lord Toulson observed that the tort involves the curtailment of freedom of speech “which gives rise to its own particular considerations”; and that the tort was “confined to those towards whom the relevant words or conduct were directed, but they may be a group” (para 74). They noted at para 77:
- “Freedom to report the truth is a basic right to which the law gives a very high level of protection...It is difficult to envisage any circumstances in which speech which is not deceptive, threatening or possibly abusive, could give rise to liability in tort for wilful infringement of another’s right to personal safety. The right to report the truth is justification in itself...there is no general law prohibiting the publication of facts which cause distress to another, even if that is the person’s intention...”
154. As the Court found that the conduct element was not established, the mental element of the tort did not arise in *Rhodes*. However, having heard argument on the issue, Baroness Hale and Lord Toulson addressed what was required. They concluded that the concept of imputed intent should no longer apply to the tort (paras 81 – 82); and that the mental element involved an intention to cause physical harm or severe mental and emotional distress (paras 87 - 88). They observed that the need to show a deliberate intention to inflict (at least) severe distress “should not be understated”.
155. Lord Neuberger PSC, agreed with their reasoning and added some remarks of his own. He emphasised that “given the importance of freedom of expression...it is vital that the boundaries of the cause of action are relatively narrow” (para 104).
156. In my judgment *Rhodes* does not assist the Claimant’s claim in negligence. To the contrary, the reasoning of the Supreme Court underscores that the circumstances in which tortious liability will result from words or conduct which cause psychiatric injury are limited and that the parameters have been carefully identified to ensure an

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appropriate balance with freedom of expression rights. *Rhodes* does not suggest that the Courts should adopt an expansionist approach to the circumstances in which a duty of care will arise in negligence where psychiatric injury results from words used.

157. The Claimant pleads that the Defendants were responsible for false and defamatory articles which foreseeably caused him psychiatric injury (para 72 above). The requisite elements of a claim for intentional infliction of psychiatric injury are not pleaded. In particular, it is not alleged that the words complained of were directed at the Claimant or that the Defendants *intended* to cause him psychiatric injury or (at least) severe mental distress. I return to the question of whether the Claimant should be allowed an opportunity to amend his pleadings to add a claim in this distinct tort after my consideration of the negligence claim (para s 168 – 173 below).

Application to the pleaded circumstances

158. The negligence claim is founded upon the publication of the articles which are alleged to be false and defamatory (paras 72, 73 and 76 above). The duty of care is said to be owed to the Claimant by the LSE and ANL “as the subject of their journalism” (para 72 above). In both the section headed “Particulars of Personal Injury” and the later section addressing his damages claim, Dr Piepenbrock alleges that it was the defamatory contents that damaged his reputation and caused him psychiatric injury.
159. As I have indicated, I am not aware of any case that has accepted the proposition that a publisher owes a duty to its subject to take reasonable care in respect of the accuracy of the published text or in the pre-publication investigations into the material that is used. If a Court were to conclude that a duty of care existed in such circumstances it would represent a very substantial expansion of the current position that would go far beyond proceeding by incrementalism or by analogy with cases where a duty of care has been found to arise (paras 139 – 151 above). The ambit and consequences of such a duty of care would be vast; potentially it would be owed to the subjects of every publication, or at least in every instance where there was a basis for foreseeing that the contents were such that psychiatric injury could result. The law of negligence does not usually recognise a duty of care to protect reputational interests (para 140 above). In the only examples from comparative jurisdictions that have been drawn to my attention, the Courts have rejected the proposition that a duty of care was owed to the subject of the publication (paras 142 – 145 above). Accordingly, the existing caselaw points very strongly against the arguable existence of a duty of care.
160. I have also considered the particular features that are relied upon in the Particulars of Claim. I do not accept that there is an arguably sufficient relationship of proximity. Dr Piepenbrock highlights that he was the subject of the three articles (paras 72 - 73 above). However, this is plainly insufficient to indicate proximity; it would apply to all who were written about. Although the case is not pleaded in this way, in the interests of completeness I add that the fact that there was some communication between the Claimant and ANL before publication (which he criticises as insufficient) does not alter this position; again this is an entirely commonplace feature. Similarly, the sheer fact that the source spoke to D14 about the Claimant does not give rise to an arguable duty of care on the part of the source any more than it did in *Midland Metals*.
161. I am also quite satisfied that it would not be fair, just and reasonable to impose a duty of care in the pleaded circumstances and that the contrary is unarguable. I have already

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referred to a number of the relevant considerations, but I will collate the points that are particularly significant at this stage:

- i) The current state of the law did not preclude the Claimant from bringing a claim in libel in respect of the articles which he says were false and defamatory. Furthermore, he seeks to recover essentially the same heads of damage in both proceedings. As is shown by my earlier summary of the respective Particulars of Claim, the central claim in both instances is for loss of a residual earning capacity caused by an inability to work due to a combination of consequential damage to reputation and consequential psychiatric injury. The Claimant's inability to sue in defamation does not arise from a lacuna in the law (as was the case in *Spring*), but because Dr Piepenbrock did not serve his Claim Form on time;
 - ii) As my comparison of the two Particulars of Claim shows, that the 2020 Claim has simply been slightly re-packaged in the present pleading. The *substance* of the respective claims advanced are essentially the same;
 - iii) As I have discussed, a duty of care has not been recognised in any analogous circumstances and to find a duty of care in the present circumstances would present a very substantial extension of the law with wide-sweeping consequences;
 - iv) The Courts have recognised the importance of balancing the interests of those seeking compensation against the fundamental right to freedom of expression and incursions upon that area have been specific and carefully calibrated (paras 153 and 155 above);
 - v) A claim in defamation would have a number of safeguards or control mechanisms that would not apply to a claim in negligence, including the one-year limitation period pursuant to s.4A Limitation Act 1980 ("LA 1980") and the single publication rule imposed by s.8 DA 2013; the need to show a defamatory meaning; and the threshold requirement imposed by s.1 DA 2013 to show that the publication has caused or is likely to cause "serious harm" to the claimant's reputation. Additionally, the defences of honest opinion and publication on a matter of public interest available to a defendant in a libel claim would not apply; and
 - vi) No good policy reason has been identified for extending the duty of care to the current circumstances.
162. I do not consider that this is an area of uncertain or developing law such as could warrant the Court deciding to permit the negligence action to proceed to trial to enable the question to be resolved on established, rather than assumed, facts. The legal position is clear at this stage. For the reasons that I have identified, the negligence claim has no realistic prospect of success and is bound to fail. For the avoidance of doubt, this conclusion has not involved evidential assessments or factual determinations. I have reached it on the basis of the Claimant's pleaded case. The position would not be improved by giving Dr Piepenbrock an opportunity to re-plead his case in negligence – the essence of the claim is apparent and it is equally apparent that it does not arguably

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give rise to a relevant duty of care. Accordingly, the pleaded claim in negligence will be struck out.

The Defendants' other contentions

163. As I summarised earlier, the Defendants raise a number of additional or alternative reasons why the negligence claim should be struck out or dismissed. As I have concluded that the pleaded duty of care has no realistic prospect of success and is bound to fail against all of the LSE Defendants and the ANL Defendants, it is unnecessary for me to resolve those contentions. In particular:
- i) I have not determined the Defendants' alternative (but related) contention that the claim in negligence is an abuse of process because it is a thinly disguised defamation claim that attempts to circumvent the limitation difficulties with such an action;
 - ii) I have not determined the LSE Defendants' argument based on the *Kishore* form of abuse of process (para 134 above). However, it seems unlikely that they would be able to show that the 2020 Judgment established that the Claimant's conduct amounted to a wholesale *disregard* of the Court rules as opposed to carelessness (paras 49 – 52 above);
 - iii) I have not determined the LSE Defendants' contention that as a matter of evidence the claim against them would be bound to fail as the Claimant would not be able to establish that the source referred to in Articles 2A and 2B was an LSE employee. To do so would involve a consideration of the disputed evidential position and s.10 CCA 1981 and the *Norwich Pharmacal* jurisdiction, I do not consider that it is necessary or proportionate to do so in circumstances where the claim in negligence is in any event bound to fail;
 - iv) I have not determined the ANL Defendants' contention that the Particulars of Claim should be struck out pursuant to CPR 3.4(2)(c) as there has been a failure to comply with a rule, practice direction or order;
 - v) Whilst I do not strike out the claim on this basis, I note that the absence of expert medical evidence presents a real difficulty for the Claimant. Actionable damage must be shown for a cause of action in negligence to exist. Damage to reputation is not usually recoverable in a negligence claim as I have discussed. As matters stand, no medical evidence has been served in support of the claimed psychiatric injury. The claim cannot be established without supporting medical evidence. Paragraph 4.3 of Practice Direction 16 requires a claimant who relies on the evidence of a medical practitioner to serve their report with the Particulars of Claim. The Claimant's pleading indicates that he will rely on the medical evidence produced in the earlier claims (para 75 above). However, that evidence was focused upon the consequences of the actions of the LSE during the Claimant's employment; whereas the present claim concerns an alleged exacerbation of his condition several years later after the publication of the articles. Mr Piepenbrock suggested that the Claimant could submit to examination by a medical expert instructed by the Defendant or the Court could order the evidence to be given by a jointly instructed expert pursuant to CPR 35.7. However, there is generally no need for a defendant to instruct an expert

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unless it takes issue with the claimant's expert evidence. The costs of a jointly instructed expert are normally shared between the parties, whereas the Claimant says at para 77 of the Particulars of Claim that he is unable to finance the preparation of expert evidence.

The position of specific Defendants

164. In light of my conclusion in respect of the duty of care it is also unnecessary for me to address the position of individual Defendants in any detail. However, I will summarise the position, as it is quite plain that some of the Defendants could not be liable in negligence even if the alleged duty of care were owed.
165. Whilst there is no clear pleading of the alleged *breach* of duty, paras 68 – 80 of the Particulars of Claim indicate that the alleged negligence lies in the *contents* of the articles, which are said to be false and defamatory. As regards the individual LSE Defendants, only D6 is alleged to have played a specific role in relation to this, as the presumed anonymous source. Paragraph 195 of the Claimant's pleading says that D7 and D8 "were likely to have assisted Ms Hay in carrying out the defamation" but no specifics whatsoever are identified in the very lengthy document. Furthermore, in so far as it is suggested that D2 – D4 have some responsibility in law for the actions of an LSE employee, the proposition is misconceived. Accordingly, I can see no basis at all for the claim in negligence against D2, D3, D4, D5, D7 and D8. The pleaded negligence claims against those Defendants have no realistic prospect of success and are bound to fail.
166. An employer is vicariously liable for the wrongful conduct of its employee where their wrongful conduct was so closely connected with the acts that they were authorised to do in their employment that it could fairly and properly be regarded as having been done by that employee while acting in the ordinary course of their employment: *Various Claimants v Wm Morrison Supermarkets plc* [2020] UKSC 12, [2020] AC 989 at paras 23 – 24. The pleaded case against D6 as the alleged anonymous source is that she acted for personal motives of revenge (paras 67 above) and that she was motivated to "break ranks with the LSE's directive not to speak to the media" (para 79 above). Accordingly, even if it could be established that she was the source (which, as I have indicated, I am not determining at this stage), I cannot see any basis upon which such actions could be regarded as part of the ordinary course of her employment. Consequently, the pleaded negligence claim against D1 has no realistic prospect of success and is bound to fail.
167. As regards the ANL Defendants, D11 is the Chairman of DMGT, which does not publish the *Daily Mail* or the *MailOnline*. Furthermore, no individualised allegations have been made in relation to him. In the circumstances, even if a duty of care was owed in respect of the articles, the claim against him would have no realistic prospect of success and would be bound to fail.

Amendment to add a claim for intentional infliction of psychiatric injury

168. Mr Piepenbrock submitted that the Claimant, as an autistic litigant in person, should have the opportunity to amend the Particulars of Claim to add a claim for intentional infliction of psychiatric injury if (as I have done earlier) I concluded that such a claim was not already pleaded and that the pleaded claim in negligence should be struck out. However, for the reasons that I go on to identify, I do not consider that permitting this

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opportunity to amend would be in the interests of justice or in accordance with the overriding objective.

169. Firstly, this amendment would involve the introduction of an entirely new claim, not currently referred to explicitly or in substance in either the Claim Form or the lengthy Particulars of Claim (para 157 above). Secondly, no formal application to amend has been made or, more importantly, no formulated amendment has been provided. It would not be appropriate to give permission to amend in the abstract. Further, I am not prepared to grant time to submit a proposed amendment to this effect, given that no arguable basis for this claim has been identified and the Claimant is effectively seeking an opportunity to completely re-cast his claim and to do so without commencing new proceedings.
170. Thirdly, I cannot see any realistic basis that could support an assertion that the Defendants *intended* to cause the Claimant psychiatric injury or serious mental distress. Mr Piepenbrock relied on the proposition that this was the foreseeable consequences of their deliberate actions, but this line of argument is precluded by *Rhodes*, where the Supreme Court held that the doctrine of imputed intent no longer applies (para 154 above). The ANL Defendants had very limited contact with the Claimant prior to publication, the proposition that any of them published the articles with the specific intention of causing him serious mental distress or psychiatric harm is fanciful. As regards the LSE Defendants, I have already noted that only D6 is identified in the Particulars of Claim as having been the source, or the figure behind the source, and in so far as it is said that she acted for personal revenge, the LSE could not be vicariously liable for the same (para 166 above). Accordingly, a claim against anyone other than D6 would be hopeless even on the Claimant's articulation of his case; and thus, in turn, a very different proposition from the current pleading.
171. Fourthly, in considering whether to permit an amendment, it is legitimate to consider whether the proposed allegation appears to give rise to a real prospect of success (para 17.3.6 of the White Book). In this regard I am not confined to the assumed facts. I note that in the earlier High Court claim (where he was represented by a very experienced legal team), the Claimant made no equivalent allegations that D6 acted out of a desire to gain personal revenge because he had spurned her advances in 2011. In contrast, it is now pleaded that she was motivated by this desire for revenge throughout the material period from 2012 onwards. In so far as it may be said that it was the 2018 Judgment that tipped the balance in terms of D6's state of mind, it is apparent from my earlier summary (paras 36 – 39 above) that this was not an unequivocal victory for the Claimant, as he suggests.
172. Fifthly, as I have explained at para 153 above, a claim in this tort requires the Claimant to show psychiatric injury as an essential constituent element. There is likely to be a real difficulty with him doing so for the reasons I have identified at para 163 (v) above.
173. Mr Piepenbrock submitted that I should make allowance for the fact that Dr Piepenbrock is a disabled litigant in person. I have taken this into account. However, even if a pleaded case in this tort was prepared, it would not overcome the fundamental difficulties that I have identified.

The pleaded claim under the PHA 1997

174. I have summarised the pleaded claim under the PHA 1997 at paras 80 - 93 above. The Defendants advance a number of reasons why they say that summary judgment or strike-out should be ordered. I consider them after addressing the statutory provisions and caselaw.

The legal framework

175. The relevant provisions of the PHA 1997 are as follows:

“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.

.....

(2) For the purposes of this section...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 harassment of the other.

(3) Subsection (1)...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.

3. Civil remedy

(1) An actual or apprehended breach of section 1(1) may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question.

(2) On such a claim damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment.

.....

7. Interpretation of this group of sections

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- (1) This section applies for the interpretation of sections 1 to 5A.
- (2) References to harassing a person include alarming that 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 (section 1(1)), conduct on at least two occasions in relation to that person,
-
- (4) Conduct includes speech. ”

176. In *Canada Goose UK Retail Limited & Ors v Persons Unknown* [2019] EWHC 2459 (“*Canada Goose*”) at para 51, Nicklin J identified what amounts to harassment for these purposes by reference to Warby J’s (as he then was) summary of the authorities in *Hourani v Thomson* [2017] EWHC 432 (QB) at paras 138 – 146. He said:

“i) Reference in the PfHA to harassment including alarming the person or causing the person distress is not definitive of the tort; it is merely guidance as to one element of it: [138]. Nor is it an exhaustive statement of the consequences that harassment may involve. Harassment is a persistent and deliberate course of unreasonable and oppressive conduct [139], which is calculated to, and does, cause that person alarm, fear or distress: *Hayes v Willoughby* [2013] 1 WLR 935 [1] per Lord Sumption.

ii) The behaviour must reach a level of seriousness before it amounts to harassment within the scope of s.1 PfHA; not least because the Act creates both a tort and, by s.2 a crime of harassment: [139]. The authoritative exposition of this point is that of Lord Nicholls in *Majrowski v Guy’s and St Thomas’s NHS Trust* [2007] 1 AC 224 [30]:

‘[Where] the quality of the conduct said to constitute harassment is being examined, courts will have in mind that irritations, annoyance, even a measure of upset, arise at times in everybody’s day-to-day dealings with other people. Courts are well able to recognise the boundary between conduct which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the boundary from the regrettable to the unacceptable the gravity of the misconduct must be of an order which would sustain criminal liability under section 2.’

iii) There must be conduct, on at least two occasions, which is, from an objective standpoint, calculated to cause alarm or distress and oppressive, and unacceptable to such a degree that would sustain criminal liability [140] and *Dowson v Chief*

Constable of Northumbria Police [2010] EWHC 2612 (QB) [142] per Simon J.

iv) The objective nature of the assessment of harassment is particularly important where the complaint is of harassment by publication. In any such case, the claim engages Article 10 of the Convention and, as a result, the Court's duties under ss. 2, 3, 6 and 12 Human Rights Act 1988. *'It would be a serious interference with the freedom of expression if those wishing to express their own views could be silenced or threatened with, claims for harassment based on subjective claims by individuals that they feel offended or insulted'*: *Trimingham v Associated Newspapers Ltd* [2012] EWHC 1296 (QB) [267] per Tugendhat J (emphasis added)."

177. Harassment by publication was considered in *Thomas*, where the Court of Appeal upheld a refusal to strike out a PHA 1997 claim on the basis it disclosed an arguable claim. Dr Piepenbrock relies upon this outcome (paras 81 – 82 above). The first defendant was the publisher of an article in *The Sun* newspaper about two police sergeants who had been demoted over a remark made about an asylum-seeker. The article said that "a black clerk at their station", Esther Thomas, had complained that the officers had made racist jokes. The article was sympathetic to the demoted officers. A few days later the newspaper published letters from "furious" readers criticising the way the officers had been treated and the clerk for having reported them. A third article referred to the officers having been hauled in front of a disciplinary tribunal "after a black civilian clerk complained about a series of exchanges". Ms Thomas pleaded that the articles had caused her distress and anxiety and caused her to be fearful to go to work. She had received race hate mail at her work place. She said that it was unnecessary for the articles to have referred to the fact that she was black and to have given her name and place of work.
178. Lord Phillips, MR (as he then was), considered the defendants were correct to concede that a press article *could* amount to harassment (para 14). He noted that s.3 HRA 1998 required the Court, so far as it was possible to do so, to interpret and give effect to the PHA 1997 in a manner that was compatible with ECHR rights and that accordingly harassment "must not be given an interpretation which restricts the right to freedom of expression, save in so far as this is necessary in order to achieve a legitimate aim" (para 24). He described the duty to give effect to Article 10 as "an important consideration to any court when considering whether...a civil tort has been committed contrary to the 1997 Act" (para 26). He provided the following guidance:

"32. Whether conduct is reasonable will depend upon the circumstances of the particular case. When considering whether the conduct of the press in publishing articles is reasonable for the purposes of 1997 Act, the answer does not turn upon whether opinions expressed in the article are reasonably held. The question must be answered by reference to the right of the press to freedom of expression which has been so emphatically recognised by the jurisprudence both of Strasbourg and this country.

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33. ...Protection of reputation is a legitimate reason to restrict freedom of expression. Subject to the law of defamation, the press was entitled to publish an article, or series of articles, about an individual, notwithstanding that it could be foreseen that such conduct was likely to cause distress to the subject of the article.

34. The 1997 Act has not rendered such conduct unlawful. In general press criticism, even if robust, does not constitute unreasonable conduct and does not fall within the natural meaning of harassment. A pleading, which does no more than allege that the defendant newspaper has published a series of articles that have foreseeably caused distress to an individual, will be susceptible to a strike-out on the ground that it discloses no arguable case of harassment.

35. It is common ground between the parties to this appeal, and properly so, that before press publications are capable of constituting harassment, they must be attended by some exceptional circumstance which justifies sanctions and restriction on the freedom of expression that they involve. It is also common ground that such circumstances will be rare.

.....

37. ...the parties are agreed that the publication of press articles calculated to incite racial hatred of an individual provides an example of conduct which is capable of amounting to harassment under the 1997 Act...Mr Browne recognises that the Convention right of freedom of expression does not extend to protect remarks directly against the Convention's underlying values...

.....

50.On my analysis, the test requires the publisher to consider whether a proposed series of articles, which is likely to cause distress to an individual, will constitute an abuse of the freedom of the press which the pressing social needs of a democratic society required should be curbed." (Emphasis added)

179. Accordingly, it is clear that publishing robust criticism of an individual that will foreseeably cause them distress is insufficient in itself to amount to harassment for the purposes of the PHA 1997; something exceptional amounting to an abuse of the freedom of the press is required.
180. As regards the circumstances in *Thomas*, Lord Phillips said that in light of the parties' agreement regarding incitement to racial hatred, the issue was a narrow one and when the three articles were considered together there was an arguable case that the claimant

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had been harassed by racist criticism which was foreseeably likely to stimulate a racist reaction on the part of the readership and cause her distress (paras 38 and 47 – 48).

181. Lord Phillips’ judgment in *Thomas* was cited by Tugendhat J in *Trimingham v Associated Newspapers Limited* [2012] EWHC 1296 (QB), [2012] 4 All E.R. 717 (“*Trimingham*”) at para 267 before the passage cited at para 176 (iv) above. In that case the claimant was unsuccessful in establishing harassment in relation to a series of 65 published articles that made pejorative references to her sexual orientation (in the context of reporting her affair with a cabinet minister).
182. Lord Phillips’ judgment was also cited in an unsuccessful claim for harassment by publication by Warby J in *Sube v News Group Newspapers Ltd* [2020] EWHC 1125 (QB), [2020] E.M.L.R 25 (“*Sube*”). At para 68 he summarised the points that emerged from the authorities. With the citations from *Thomas* and from *Trimingham* that I have already set out omitted, he said:

“(1) It is for the claimant to demonstrate that the conduct complained of is unreasonable, to the degree required...it is not a question of assessing the reasonableness of any opinions expressed in the publications complained of... [part of para 32, *Thomas* was cited].

(2) The Court must test the ‘*necessity*’ of any interference with freedom of expression by using the well-known three part test:

‘The test of ‘*necessity* in a democratic society’ requires the Court to determine whether the ‘*interference*’ corresponded to a ‘*pressing social need*’, whether it was proportionate to the legitimate aim pursued and whether the reasons given...to justify it are relevant and sufficient’

Nilsen and Johnsen v Norway (1999) 30 E.H.R.R. 878 [43].

(3) In general, techniques of reporting, including the tone and editorial decisions about content, are matters for the media and not the Court to determine, see for instance *Jersild v Denmark* (1995) 19 E.H.R.R 1 [31]...*Trimingham v Associated Newspapers Ltd* [2012] EWHC 1296 (QB) [85] (Tugendhat J).

(4) 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... [para of para 267, *Trimingham* was cited].

(5) Applied to the tort of harassment, these principles mean that nothing short of a conscious or negligent abuse of media freedom will justify a finding of harassment... [part of para 50, *Thomas* was cited].

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(6) It will be a rare or exceptional case in which these criteria are satisfied, in relation to media publication... [part of paras 34 – 35, *Thomas* was cited].”

The pleaded case against the LSE Defendants

The allegations concerning D6

183. As I have summarised in para 84 above, Dr Piepenbrock pleads that he was harassed by D6 in six respects. The first two allegations concern conduct in September 2011 (the sexual assault by D6) and November 2012 (refusal to investigate his grievance against D9). They are plainly out of time, as a six year limitation period applies by virtue of ss 2 and 11(1A) LA 1980. Whilst that is a conclusive answer, I also conclude that the pursuit of these allegations would amount to an abuse of process for the reasons I discuss in relation to the third allegation.
184. The third allegation is that in March 2016 D6 lied in saying that there never existed evidence of Dr Piepenbrock instituting a grievance against D9 in November 2012. This allegation (and the second allegation) refers back to matters set out in paras 151 – 162 and 203 – 204 of the Particulars of Claim. I accept Ms Johnson’s submission that the pursuit of this allegation is an abuse of process as if it was to be made, it could and should have been raised in the earlier High Court claim that was tried in 2018.
185. In accordance with Lord Bingham’s guidance in *Johnson v Gore-Wood* (para 132 above), I have approached this question on the basis that the failure to raise this allegation in the earlier proceedings does not in and of itself amount to an abuse and that I must make a broad merits-based judgment taking into account all of the facts of the case and focusing upon whether the Claimant is misusing the processes of the Court by seeking to raise the issue at this stage. I am influenced by the following in particular:
- i) The High Court claim that was tried in 2018 concerned the November 2012 US trip, D9’s subsequent complaint and the way the LSE handled this. D6 was a central witness for the LSE in those proceedings, given her role as the Department Manager. Indeed, the Claimant describes her as the LSE’s “key witness” at para 203 of his Particulars of Claim. Her involvement in the events is summarised in paras 90 – 102 of the 2018 Judgment. Her conduct was heavily criticised by the Claimant in the allegations of negligence that were advanced. He was represented by a highly experienced legal team. Nonetheless he did not assert in those proceedings that D6 (as opposed to D9) was responsible for conduct that amounted to harassment under the PHA 1997 and the particulars of negligence and / or breach of contract did not allege that she (or other members of the LSE staff) had failed to investigate a grievance that he had instituted in November 2012 against D9 or that D6 had subsequently lied about this. (His evidence is summarised in detail at paras 6 – 48 of the 2018 Judgment.) This would have been the obvious time to raise allegations (if pursued) that D6’s alleged failings were the product of a “multi-year campaign of vengeance” on her part (para 35, current Particulars of Claim) and /or that the Claimant’s own grievance about D9’s conduct had been suppressed. No sufficient explanation for these omissions has been advanced by the Claimant;

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- ii) The trial in 2018 occupied nine days of Court time. Accordingly, a considerable proportion of the Court's resources were devoted to the matter at that stage;
- iii) In support of his current allegation that D6 lied about the existence of documents confirming that he raised a grievance in November 2012, the Claimant relies on statements made and disclosure given in those earlier proceedings, see paras 153 – 156 of the Particulars of Claim. This underscores the point that, if these matters were worthy of exploration, the time and place for that to be done was within the earlier High Court claim;
- iv) The current Particulars of Claim disparage D6 in a gratuitous and unnecessary way (even allowing for the specific harassment allegations that the Claimant makes). By way of example, scattergun allegations are made including: that she has been a bully to others; that she drinks alcohol to excess (and a superfluous photograph of her holding what appears to be a glass of wine is included in the pleading); and that she has run a "harassment machine" against named others (paras 23 – 29). Her alleged harassment is compositely described as "vengeance stalking" although the six individual allegations, even if taken at face value, do not warrant this description;
- v) The alleged conduct in March 2016 (the third allegation) would need to be considered in the context of the second allegation, which, as I have indicated, is statute barred. Pursuit of this aspect of the claim would involve the Court considering heavily disputed events that occurred many years ago. Furthermore, the Claimant appears to accept in para 598 of his current pleading that the previous High Court claim covered the LSE's torts up to March 2013, which would include an alleged failure to address a grievance submitted in November 2012;
- vi) Although it is not suggested that an issue estoppel arises in relation to this aspect (as the ET claim contained no pleaded allegations against her), the ET's conclusions in relation to D6 are relevant to the broad merits-based assessment. Dr Piepenbrock filed a witness statement in those proceedings which made a series of allegations about D6 that are similar to those made in the current proceedings. The ET concluded that no rational explanation had been provided for his failure to include these allegations when the claim was pleaded in 2015, particularly as he now describes her as the central player in the alleged harassment he received (para 4.148). The ET rejected the explanation that he had not done so earlier because he was scared of her as "fanciful" (para 7.32). The ET also found on the balance of probabilities that D6 had become a focus of Dr Piepenbrock's allegations because he believed that she was the source of the ANL published articles and that his actions were "essentially retaliatory" for this (paras 4.149 and 7.32). Furthermore, in its factual findings, the ET rejected in terms the proposition that the Claimant had raised a grievance against D9 in November 2012 (paras 5.69, 5.70, 5.76 and 5.84 – 5.88). Accordingly, the ET rejected the factual proposition upon which the second and third allegations of harassment by D6 are founded;
- vii) The ET hearing spanned 28 days (excluding the days spent deliberating in chambers) and 16 witnesses gave oral evidence;

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- viii) The Claimant now seeks to raise issues in a third set of proceedings that were either not raised in these earlier multi-day proceedings when they could have been or which (in the case of the ET claim) have now been the subject of adverse findings in a number of respects. To allow these matters to proceed now would be oppressive and an abuse of the Court's processes.
186. The fourth allegation of harassment by D6 relates to evidence that she gave at the High Court trial in 2018. As such, this is covered by the very well-established principle of witness immunity which includes anything said or done in the ordinary course of Court proceedings including by witnesses: *Darker & Ors. v Chief Constable of the West Midlands Police* [2001] 1 AC 435 per Lord Hope at 446A-B. Certain torts are recognised exceptions to the witness immunity rule, but a civil claim under the PHA 1997 is not one of them.
187. The fifth and sixth allegations made against D6 relate to her alleged role as the source referred to in Articles 2A and 2B. As I have already indicated in respect of the negligence claim, I do not consider it appropriate to strike out and/or give summary judgment at this stage on the basis that the allegation that she is the anonymous source is bound to fail (para 163 (iii) above). Nonetheless, there are two free-standing reasons why this aspect of the harassment claim is bound to fail.
188. Firstly, harassment under the PHA 1997 can only arise where there is a "course of conduct" involving at least two occasions (paras 175 above). An essential element of "harassment" is that the conduct is "persistent" (para 176 above). However, Articles 2A and 2B both contain the same material from the source and accordingly both relate to the same act of communication/s between the source and D14. The fact that the same act of alleged harassment is subsequently documented on more than one occasion does not change the character of the act itself if that is a single act. Accordingly, the fifth and sixth allegations concern the same alleged conduct by D6. As the other pleaded allegations against her fall to be struck out, there is no other conduct that is capable of constituting the course of conduct.
189. Secondly, as I do not consider it arguable that the articles amounted to harassment by publication (paras 195 – 197 below), it follows that the source's provision of material contained within Articles 2A and 2B is likewise incapable of amounting to harassment.
190. The seventh pleaded allegation of harassment involves action that is said to have been directed at the Claimant's wife, Professor Marnette-Piepenbrock (para 84 (vii) above). As clarified in oral submissions, the pleaded actions of D6 are said to have generated a threatening and harassing email sent by Pinsent Masons to the Claimant's wife (see also para 580). As such, the complaint relates to action directed towards a third party and it does not appear to me to be capable of founding a claim for harassment brought by *the Claimant* and therefore it is also bound to fail.
191. I note for completeness, that even if there were any allegations of harassment by D6 that survived this evaluation, there is plainly no basis for a claim to be made against any of the other LSE Defendants, essentially for analogous reasons to those that I have identified in respect of the negligence claim (paras 165 and 166 above).

Approved JudgmentThe allegations concerning vicarious liability for D9

192. I have summarised the five allegations for which it is said that the LSE are vicariously liable (para 87 above). The first two allegations relate to alleged events in November 2012 and as such they are statute-barred as the limitation period has expired. Whilst the claim against the LSE falls to be struck out on that basis, I also note that the first allegation is outside the jurisdictional reach of the provisions of the PHA 1997, which apply to England and Wales only: see s.14 of the Act and para 225 of the 2018 Judgment. Furthermore, both allegations have already been rejected in earlier judgments and therefore would be precluded by issue estoppel. The ET found that the Claimant's allegation that D9 had exposed herself on 12 November 2012 was false (para 59 above), addressing this issue because it went directly to the question of whether the alleged protected acts had been undertaken in good faith (para 59 above). Furthermore the 2018 Judgment rejected the proposition that D9's allegations were false and malicious (para 36 (vi) and (ix) above).
193. The conduct that comprises the third and fourth allegations (contributing to the false and defamatory Articles 2A and 2B) occurred many years after the cessation of D9's employment with the LSE in 2012. This is also the position with the fifth allegation (filing a false and malicious statement in the ET Claim). In the circumstances no arguable basis has been pleaded or otherwise identified to support the proposition that the LSE was liable for this conduct. The case against the LSE is bound to fail.
194. I also note for completeness that the premise of the fifth allegation is undermined by the findings made by the ET, who essentially accepted D9's account of events on the US trip in November 2012 and rejected the Claimant's account as false (para 59 above). The ET described Dr Piepenbrock's behaviour towards D9 as "obsessive and destructive" and his conduct as "extreme and indefensible", including vilifying her on a website. Furthermore, witness immunity extends to the contents of a witness statement submitted in legal proceedings.

The claim against the ANL Defendants

195. The Particulars of Claim rely on the alleged defamation of Dr Piepenbrock in Articles 2A and 2B as constituting the harassment. There are two free-standing reasons why I conclude that this part of the claim has no realistic prospect of success and is bound to fail. The first is that the two articles are essentially the same article published in two different media. The only difference is that the print edition (Article 2B) had a more equivocal headline (para 46 above). As I have discussed when considering the allegations against D6, harassment requires a course of conduct entailing persistent oppressive or unacceptable behaviour on at least two occasions (para 188 above). I do not consider it arguable that publishing these two versions of the article constituted a course of conduct.
196. Secondly, I conclude that the allegation that the articles constituted publication by harassment has no realistic prospect of success and is bound to fail for the following reasons:
- i) Harassment entails conduct which is oppressive and or unacceptable to such a degree that it would sustain criminal liability (para 176 above);

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- ii) As I have set out in paras 177 – 182 above, the threshold is a high one in alleged harassment by publication cases and it will only be met in exceptional cases; nothing short of a conscious or negligent abuse of media freedom is required;
- iii) The contents of these articles were not all one way. They included material that was favourable to the Claimant, as well as comments that were highly critical of him. By way of example, the articles contained a summary of the 2018 Judgment, including findings in the Claimant’s favour; references to his illness; the LSE’s finding that D9’s complaint was non proven; and the rival versions of D9’s conduct in Boston were summarised (paras 41 – 43 above). Further, I note that some of the comments attributed to the source were in line with conclusions that were expressed in the 2018 Judgment, for example regarding the inappropriateness of the Claimant’s conduct in Seattle;
- iv) The likely impact is to be evaluated objectively, rather than by reference to the Claimant’s description of the effect that the articles had upon him (paras 176 and 182 above);
- v) The parallel that the Claimant seeks to draw with *Thomas* is not well-founded. In that case it was arguable that wholly gratuitous reference had been made to Ms Thomas’ race with the foreseeable effect of stirring up racial hatred; and, in turn, *The Sun* had published the letters that this then generated. There is nothing equivalent in Articles 2A and 2B;
- vi) The fact that an article may foreseeably cause distress is insufficient (para 178 above). If the proposition that D14 wrote an article that she knew would upset him was a sufficient basis for a harassment claim, the cause of action would be available in respect of a very extensive number of stories published every day by the media;
- vii) As I have discussed in respect of the negligence claim, on his pleaded case, the Claimant had a potential remedy in defamation in respect of the articles, if he had served his earlier Claim Form in accordance with the rules. It is neither a necessary nor a proportionate interference with freedom of expression rights to permit him to sue under the PHA 1997 in respect of the same matters; and
- viii) There is nothing rare or exceptional about the pleaded circumstances and this is plainly not a case involving abuse of the freedom of the press, even if the Claimant was only given a limited opportunity pre-publication to comment on the article that D14 was writing, as he alleges.

197. I do not consider that the prospects of success in respect of these allegations would be likely to improve if the claim were permitted to proceed to trial, given my assessment is based on the contents of the published articles and the assumed facts.

Further alleged harassment by the LSE and ANL

198. This part of the PHA 1997 claim is pleaded at paras 592 – 597 of the Particulars of Claim (paras 92 above). The Claimant contends that the harassment lies in threatening to pursue him for costs that the Defendants know he has no means to pay. I have summarised the costs correspondence shown to me at paras 54 – 56 above. I do not

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consider that the pleaded allegation is capable of amounting to harassment; in my judgment it has no realistic prospect of success and is bound to fail for the following reasons:

- i) The high threshold test which I have already identified;
- ii) The Defendants were awarded their costs following the 2020 Judgment (para 53 above). On the face of it, they are entitled to seek to enforce that Court order by the lawful means available to them. It is agreed that nothing has been paid so far and it not suggested that the Claimant has made any proposals to pay the costs;
- iii) The relevant correspondence from the Defendants' respective solicitors is expressed in moderate terms. There is nothing abusive or oppressive in the language used. The means of enforcing the costs order referred to, such as preparing a Bill of Costs and proceeding to detailed assessment, are legitimate ways for a receiving party to progress recovery of costs pursuant to an order for costs made in their favour;
- iv) The claim is predicated on the basis that the Defendants know that the Claimant is a "man of straw". However, the material in the Claimant's pleading does not provide the support that he asserts it does. The letter from the ET proceedings that is quoted at para 592 simply refers to Dr Piepenbrock describing himself as bankrupt, it does not say that this proposition is accepted. The text goes on to say that the Respondent does not expect to succeed in enforcing the costs order made in the 2020 Claim in circumstances where that is Dr Piepenbrock's position and he has paid nothing towards the order so far. The letter does not say that the Defendants know or accept that the Claimant is without means;
- v) Although knowing that this part of his pleading was challenged as bound to fail, the Claimant has filed no evidence detailing his financial position in the present proceedings;
- vi) The reasoning at para 594 of the Particulars of Claim is manifestly flawed. Self-evidently there are financial and deterrence reasons why a party will seek the payment of costs that they are owed; it does not follow that "the only plausible reason" for doing so was to "harass him and cause as much fear and distress... as possible".

199. For the reasons set out above, I conclude that the entirety of the pleaded PHA 1997 claim against the LSE Defendants and the ANL Defendants should be struck out.

The pleaded claim under the EQA 2010

200. I have summarised the claims brought under the EQA 2010 at paras 95 – 107 above. There are fundamental difficulties with the claim.

201. Firstly, there is a jurisdictional issue. If and in so far as the complaint relates to the Claimant's employment (Part 5 of the Act), the claim would come within the ET's jurisdiction by virtue of s.120(1) EQA 2010. If and in so far as the complaint relates to services and public functions (Part 3 of the Act) it is the County Court that has jurisdiction by virtue of s.114. The High Court has a power to transfer proceedings to

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the County Court if it is satisfied that they are required by an enactment to be in that court: s.40(1) County Court Act 1984. It is not suggested that transfer is precluded by s.40(1)(b); I accept that the Claimant was not aware of the jurisdictional position in relation to non-employment claims.

202. Nonetheless, in order to ascertain whether there is a recognisable claim that can be transferred, it is necessary to consider whether the pleaded claim is one that comes within, or at least could come within, Part 3 of the Act. None of the other Parts of the EQA 2010 could conceivably apply. For present purposes I will use the term “discrimination” as a shorthand to refer collectively to discrimination, harassment and victimisation. The Particulars of Claim allege various forms of discrimination without identifying which Part of the Act the conduct in question falls under. I accept that the Claimant did not appreciate that it is insufficient to rely on one or more of the forms of discrimination defined in ss.14 – 27 EQA 2010 and that they do not give rise to free-standing causes of action. The conduct complained of is only unlawful if it occurred in one of the contexts where discrimination is outlawed by the EQA 2010. These include work, education and transport. As the Claimant is a litigant in person, I would not strike the claim out on the basis of this omission if there was reason to believe that the position could be improved by amendment, but I do not consider that it can be.
203. Section 29(1) – (2) EQA 2010 provides that a “service-provider...concerned with the provision of services to the public or a section of the public...must not discriminate against a person requiring the service” in not providing the service or in the terms upon which it is provided. Subsections (3) – (5) afford equivalent protection from harassment or victimisation of a person requiring a service from a service-provider. Section 31(6) states that: “A reference to a person requiring a service including a reference to a person who is seeking to obtain or use the service”.
204. As regards public functions, s.29(6) EQA 2010 provides that a person must not “in the exercise of a public function that is not the provision of a service to the public or a section of the public, do anything that constitutes discrimination, harassment or victimisation”. Section 31(4) says that a public function is one that is a function of a public nature for the purposes of the HRA 1998. It is therefore necessary to refer to s.6(3)(b) HRA 1998 which provides that a “public authority” is “any person certain of whose functions are functions of a public nature”. However, this is qualified by subsection (5) which says: “In relation to a particular act, a person is not a public authority by virtue only of subsection (3)(b) if the nature of the act is private”.
205. These concepts were explained by Baroness Hale in *YL v Birmingham City Council & Ors*. [2007] UKHL 27, [2008] 1 AC 95 (“YL”). It is the nature of the function being performed, rather than the nature of the body performing it, which matters for the purposes of s.6(3)(b) (para 61). She continued at para 62:

“The contrast is drawn in the Act between ‘public’ functions and ‘private’ acts. This cannot refer to whether or not the acts are performed in public or in private. There are many acts performed in public (such as singing in the street) which have nothing to do with public functions. And there are many acts performed in private which are nevertheless in the exercise of public functions (such as care or prisoners or compulsory psychiatric patients). The contrast is between what is ‘public’ in the sense of it being

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done for or by or on behalf of the people as a whole and what is ‘private’ in the sense of being done for one’s own purposes.”

206. Between paras 65 – 71 Baroness Hale identified a number of factors that were likely to indicate that the act was a public function, including: if the state had assumed responsibility for seeing that the task in question was performed; if there was a public interest in having the task undertaken; if there was provision of public funding in respect of it; and if statutory coercive powers were involved.
207. As regards the claim made in respect of the LSE Defendants:
- i) The allegations of discrimination because of sex and sex related harassment, concern the Claimant’s treatment as an employee and the actions of the source in communicating material to D14 (paras 96 - 98 above). The former is within the ET’s jurisdiction. As regards the latter, it is plain that providing unflattering material to a journalist about the Claimant’s character or conduct does not involve the exercise of a public function and does not entail the provision of a service to him. The contrary is unarguable;
 - ii) No specific acts are identified in relation to the victimisation claim at para 607 of the pleading (para 99 above). In any event, there is no reason to suppose that such acts, if identified, could escape the difficulties that I have identified in sub-paragraph (i);
 - iii) As I have noted earlier, the disability discrimination claim is primarily articulated in respect of the ANL Defendants. In so far as the alleged harassment relating to disability also relies on the actions of the source, this could not fall within the EQA 2010 for the reasons I have identified in sub-paragraph (i);
 - iv) The victimisation claim that is pleaded in respect of disability relies on the contention that I have already addressed in sub-paragraph (i), namely the actions of D6 as the alleged source.
208. Accordingly, it is quite clear that the discrimination claim against the LSE Defendants is bound to fail because the allegations in question are not capable of coming within the services and public functions provisions of the EQA 2010 and in so far as they concern the Claimant’s previous employment with the LSE they could only be considered by the ET.
209. As regards the allegations made in respect of the ANL Defendants:
- i) The only pleaded allegations in respect of sex discrimination and/or harassment related to sex, concern the publication of the allegedly defamatory articles (paras 96 and 98 above). It is quite clear that the publication of a print newspaper or online article by a media organisation does not involve the exercise of a public function. It is an activity undertaken for profit for the benefit of the publisher and it has none of the hallmarks of a public function that I have already discussed. I have explained by reference to Baroness Hale’s judgment in *YL* why the sheer fact that this was done in the public eye does not make it a public function (as the Claimant suggests). Equally it cannot be said that publishing the unflattering articles about the Claimant involved provision of a service to him.

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There is no caselaw that suggests that these activities would come within the s.29 concept of a service-provider. In *Trimingham*, Tugendhat J referred to the claimant's counsel "rightly making clear that the anti-discrimination legislation does not apply to statements published to the public at large in the press or online";

- ii) The pleaded allegations of disability discrimination and harassment either concern the publication of the articles or the steps leading up to this, in particular the extent to which the Claimant was afforded an opportunity to respond (paras 103 - 105 above). Accordingly, these allegations are not capable of coming within the EQA 2010 for the same reasons as I have explained in sub-paragraph (i); and
 - iii) In so far as allegations of victimisation are made against these Defendants, the same analysis applies.
210. In the circumstances there is nothing to transfer to the County Court as the Claimant has not pleaded a claim that is capable of coming within the EQA 2010 services and public functions provisions. For the reasons I have explained, the matter could not be improved by permitting time for amendment. The discrimination claims against the LSE Defendants and the ANL Defendants have no realistic prospect of success and are bound to fail. Accordingly, the pleaded claims under the EQA will be struck out.
211. In these circumstances it is unnecessary for me to deal in detail with the other objections to the EQA 2010 claim raised by the Defendants. I merely indicate for completeness that:
- i) There would likely be substantial difficulties with time limits, given that the primary time limit is one of six months;
 - ii) Some of the allegations would be precluded by issue estoppel as the ET has now determined that D9 did not behave as alleged by the Claimant on 12 November 2012 (para 59 above); and the High Court has already determined in the 2018 Judgment that her grievance was not false and malicious (para 36 (ix) above). In so far as the allegations relate to the Claimant's employment with the LSE, his failure to litigate them in the earlier proceedings would give rise to the *Johnson v Gore-Wood* type of abuse of process for reasons similar to those that I have identified at para 185 above; and
 - iii) In the circumstances I do not consider it necessary to address the Defendants' various criticisms regarding the vague way in which the discrimination claim has been pleaded.

The pleaded claim under the HRA 1998

212. I can deal with this claim very shortly. Section 6(1) HRA 1998 provides that it is unlawful for a public authority to act in a way which is incompatible with a Convention right. Proceedings may be brought under the Act where a person claims that a public authority has acted, or proposes to act, in a way which is made unlawful by s.6(1). Accordingly, claims under the HRA 1998 can only be brought in relation to the acts of public authorities. For reasons that I explained in relation to the EQA 2010 claims, the

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Claimant will be unable to establish that the matters complained of in these proceedings were the acts of public authorities. Accordingly, the pleaded claims under the HRA 1998 against the LSE Defendants and the ANL Defendants have no realistic prospect of success. As they are bound to fail they will be struck out.

The Data Protection pleaded claims

213. It is readily apparent that part of the pleading refers to matters that could not in themselves give rise to a civil liability for damages, specifically: failing to notify the ICO (para 109 above); the alleged commission of criminal offences (para 109 above); and the Information Commissioner's powers to impose monetary penalties (para 113 above). Accordingly, these aspects of the pleading disclose no arguable claim that has a realistic prospect of success. They are bound to fail and will be struck out. This leaves the complaints that the LSE destroyed data and that both sets of Defendants failed to comply with SARs (paras 110 – 112 above).

Claims against the LSE Defendants

214. The claim pleaded at paras 652 – 658 of the Particulars of Claim alleges that the LSE failed to comply with its disclosure obligations in the High Court action that was tried in 2018 (para 110 above). I understand that there were a number of allegations made regarding the adequacy of disclosure during the course of those proceedings. I was told by counsel that they were either dealt with as matters of case management at the time or, in relation to alleged destruction of evidence, allegations were initially raised that were not pursued. It would plainly be an oppressive act and an abuse of the Court's processes to permit the Claimant to now resurrect those matters in these subsequent proceedings when the time for pursuing them (if there was merit in their pursuit) was within that earlier litigation. I will therefore strike out this part of the pleading.
215. Much of the pleaded complaint about the LSE's response to the Claimant's SARs also relates to the alleged withholding of material in the earlier High Court litigation (para 111 above). Thus, the conclusion that I have set out in the preceding paragraph regarding abuse of process also applies to this aspect.
216. My conclusion that the allegations are an abuse is reinforced by the fact that they are premised on allegations that have now been rejected by the ET. The Claimant pleads that evidence was withheld by the LSE in order to conceal the fact that he had raised a grievance against D9 in November 2012. (There is an inadvertent error in para 659 of the Particulars of Claim where the month is stated to be October, rather than November 2012, but it is clear that the Claimant is referring to the aftermath of the US trip, not to matters prior to it.). However, the ET found that no such grievance complaint was made (para 185 (vi) above) and it further found at para 5.126 of its judgment that the first time that Dr Piepenbrock complained about D9 making a sexual advance to him in Boston, was on 10 June 2013. Even if these findings do not give rise to an issue estoppel, they support the conclusion that pursuing the allegations in the present proceedings would amount to an abuse of process.
217. There then remains the three more recent SARs listed in para 661 of the Particulars of Claim, which were sent on 18 November 2019, 19 August 2020 and 30 September 2021. The only specifics that are provided appear at paras 678 – 681 of the Particulars of Claim. Reference is made to the LSE's refusal to hand over correspondence relating

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to an investigation into the actions of the source for the ANL articles. Ms Johnson submits that the pleading of this aspect of the claim is wholly inadequate and in breach of the requirements of the CPR.

218. CPR 16.4(1) requires a Particulars of Claim to include “a concise statement of the facts upon which the claimant relies”. In a similar vein, the Practice Direction to CPR 53 provides that 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. Such information should be set out concisely and in a manner proportionate to the subject matter of the claim” (para 2.1). In a claim for breach of data protection legislation, the Particulars of Claim must specify: (1) the legislation and provision that the claimant alleges was breached; (2) any specific data or acts of processing to which the claim relates; (3) the specific acts or omissions said to amount to such a breach and the grounds for that allegation; and (4) the remedies which are sought (PD 53, para 9).
219. The Particulars of Claim are very far from concise and they contain a great deal of extraneous material. More specifically, in relation to the LSE’s alleged failure to comply with the three more recent SARs:
- i) The SARs are said to have been “partially fulfilled” (para 661). Reference is made to a refusal to handover correspondence regarding the investigation into the actions of the source (para 678). However, it is unclear: (a) why the Claimant says that this material exists; (b) more specifically, what material is believed to exist that has not already been provided; (c) the extent to which it constitutes personal data in respect of the Claimant; and (d) whether this is the only failure alleged in relation to these three SARs;
 - ii) The pleading does not specify the legislative provisions that are said to have been breached or why this is said to be the case; and
 - iii) No specific remedies are sought in relation to the data protection claim, in circumstances where it is not pleaded that the failure to provide this material was itself causative of psychiatric injury or destructive of residual career earnings.
220. After the hearing the Claimant provided me with a letter to the LSE from the ICO to the LSE dated 12 August 2022. The letter refers to Mr Piepenbrock’s concern that a SAR on behalf of his father has not received an appropriate response and the author says that based on what Mr Piepenbrock has provided, it appears that the LSE had not responded to his concerns. It is not clear from this letter: which SAR is being referred to; the account that the ICO was given by Mr Piepenbrock; nor the respects in which it is said that there has been a failure by the LSE to respond. Accordingly, this letter does not improve the state of affairs that I have described.
221. In the circumstances, I am unable to determine whether or not an arguable claim *could* exist in respect of this very limited aspect of the data protection claim if a revised CPR-compliant pleading was provided. Given the deficiencies in the pleading, no arguable claim is identified at present. Furthermore, only the LSE and D6 are named in the pleading of the data protection claim; so that, in any event, it can be seen at this stage that any claim against the other LSE Defendants is bound to fail. If an arguable claim were properly pleaded in relation to D1 and/or D6 it would be a very modest claim

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indeed in comparison to that set out in the current pleading, both in terms of its scale and its value. However, a very substantially revised pleading would be required. In any event, it is necessary to first consider the CPR 3.4(4) application, which I turn to after addressing the data protection claims brought against the ANL Defendants.

Claims against the ANL Defendants

222. This is addressed briefly in paras 684 – 686 of the Particulars of Claim (para 112 above). The gist of what is said is that ANL have failed to provide the Claimant’s data in response to a series of requests that are listed in para 684. It is said that ANL declined to do so on the grounds that third party data is involved. I agree with Ms Marzec’s submission that as currently pleaded this is not a coherent claim, in particular:
- i) The correspondence indicates that some data was provided and the Claimant has not identified the data which has not been provided in breach of ANL’s obligations. The requests themselves appear to have been made in wide terms, for example: “for all the personal information you hold on [Dr Piepenbrock] from 5 October 2018 to present”;
 - ii) The Claimant has not identified why ANL’s reliance upon the information constituting third party personal data is inapplicable or incorrect;
 - iii) The pleading does not specify the legislative provisions that are said to have been breached or why this is said to be the case; and
 - iv) No specific remedies are sought in relation to the data protection claim, in circumstances where it is not pleaded that the failure to provide this material was itself causative of psychiatric injury or destructive of residual career earnings.
223. Absent a coherent pleading it is not possible to determine whether an arguable claim could exist. Given the extremely vague nature of what is alleged here, no arguable claim is identified at present. Furthermore, only ANL, D14 and D15 are named in the pleading of the data protection claim; so that, in any event, it can be seen at this stage that any claim against the other ANL Defendants is bound to fail. However, as the Claimant is a litigant in person who seeks an opportunity to amend his pleading to take account of guidance provided by the Court, were it not for the CPR 3.4(4) issue I would be inclined to give him an opportunity to do so, albeit, as I have observed in relation to the LSE Defendants, if such a claim could be identified, it would be a very modest one in comparison to the current pleading and a very substantially revised pleading would be required.

The CPR 3.4(4) applications

224. I have set out CPR 3.4(4) at para 122 above. The Claimant challenges the proposition that the 2020 Claim was “struck out” so as to engage this provision. The Glossary at Section E of the White Book describes a strike out as: “the court ordering written material to be deleted so that it may no longer be relied upon”. The 1 July 2020 Order determined that the Claim Form was invalid, consequently the Claimant was unable to rely upon his Claim Form and Particulars of Claim in those proceedings. In my judgment the concept of striking out in this context looks to the substance of what

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occurred. It is broad enough to include circumstances where a Court orders that a claim cannot proceed as a result of the Claimant's acts or omissions (as Nicklin J found); and it is not confined to those instances where the phrase "struck out" appears in the Court's Order. Where costs awarded in the first proceedings then remain unpaid, the institution of second proceedings engages this form of abuse of process and its rationale, as described in the citations I have quoted at paras 228 and 230 below. I indicate for completeness, that if I am wrong about this, for the reasons identified in this section of the judgment, the grant of a stay would in any event be appropriate pursuant to the Court's more general power under CPR 3.1(2)(f), exercised by reference to the overriding objective.

225. There is no doubt that criterion 3.4(4)(b) is satisfied in light of the costs awarded by Nicklin J in his 1 July 2020 Order. As regards the requirement at 3.4(4)(c), it is not in dispute that the costs have not been paid and that this claim includes the same Defendants. The next question is whether the current claim arises out of facts "which are the same or substantially the same as those relating to the claim in which the statement of case was struck out". That test is plainly satisfied in relation to the respective claims looked at as a whole, as is apparent from my earlier summary of the two sets of pleadings.
226. Furthermore, the test is still met if the focus is upon the claims that I have indicated I am not going to strike out as bound to fail or an abuse of process at this stage. The remaining claims are limited to the data protection SAR allegations that I have discussed in paras 221 and 223 above. As regards the LSE, para 650 of the Particulars of Claim in the 2020 Claim alleged in terms that there had been a failure to provide correspondence from its investigation into ANL's source in response to the 18 November 2019 SAR (para 119 (iv) above). This is directly comparable to the complaint that is made in the present pleading (para 111 above), which includes reliance on the same factual allegations. As regards ANL, the allegations made in the earlier Particulars of Claim are extremely vague – see para 644 and 649 - but on the face of it they are wide enough to encompass the SARs claim that is made in the current Particulars of Claim (para 112 above) and, more particularly, the central underlying facts that are relied upon are common to both cases, namely an alleged failure to provide the Claimant's personal data in respect of internal communications during the period when the articles were in preparation.
227. Dr Piepenbrock submits that as he is a "man of straw" unable to pay the costs ordered against him in 2020, it would be unfair, disproportionate and a breach of his article 6 ECHR rights to stay the present proceedings until those costs are paid. I will return to this submission after summarising the relevant caselaw.
228. The nature of this form of abuse was explained by Briggs J in *Wahab v Khan & Ors*. [2011] EWHC 908 (Ch) ("*Wahab*") at para 19:

"Where the first claim has neither been adjudicated upon nor compromised, but merely struck out for specific procedural default or more generally for want of prosecution, then different types of potential abuse may arise. The first is where the claimant brings the second claimant without complying with any relevant order for costs made against him in the first. In such a case the potential for abuse lies in the unfairness of putting the defendant

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to the expenses of fresh proceedings whilst his costs of the previous proceedings remain unpaid...It has been recognised since the mid-nineteenth century that the normal response of the court to such a case is to stay the second claim until the costs ordered in the first claim have been paid.”

229. In the same paragraph, Briggs J went on to note that the “jurisdiction to stay is discretionary and depends upon a consideration of all the circumstances”. He also observed that it “may be appropriate to provide, in addition to a stay, for a striking out of the second claim if the costs of the first claim are not paid by a certain date”. In the case before him, Briggs J ordered that the sum due on an interim costs order be paid within 14 days and, if that was paid and an application for detailed assessment lodged within a stipulated period, the claim was to remain stayed until after detailed assessment of the costs owed and payment of those costs (para 40).
230. In *Stevens Associates v The Aviary Estate* 2000 WL 33122440 Pumfrey J refused a renewed application for permission to apply for judicial review of a Master’s decision pursuant to CPR 3.4(4) to stay the second proceedings until the claimant had met his outstanding costs liability in respect of earlier proceedings. One of the grounds advanced was that to stay the proceedings without a trial of the allegations infringed the claimant’s article 6 ECHR rights as he would not be able to pay the outstanding costs. In explaining his reasons for dismissing this point, Pumfrey J said:

“I am satisfied that the answer to this point is entirely clear. In my judgment it is absolutely correct that every person is entitled to a fair and public hearing in respect of the determination of his civil rights and obligations. However, that provision is not a licence to attempt to litigate that determination more than once. Once an action has been commenced and has been struck out, it seems to me to be a proper exercise of the court’s powers to regulate its procedure to prevent further litigation over the same areas until the costs occasioned by the original unsuccessful attempt have been paid. It does not seem to me that can in any way be thought to be inconsistent with the right to a fair and public hearing of the determination of the claimant’s legal rights.

In my judgment, to put the matter shortly, the claimant can indeed pursue the defendant once but if he fails, and in particular if the action is struck out then he may not pursue it again until he has put the defendant back in the position he was before the original action started by paying his costs.”

231. As I have noted when considering the harassment allegations, the Claimant has not advanced any evidence as to his means (para 198 (v) above) and therefore there is no evidential basis before me to support the proposition that he is unable to satisfy the costs order. In any event, I agree with Pumfrey J’s reasoning that there is no violation of Article 6 in circumstances where the Claimant has already brought a claim on the basis of the same or similar facts, which did not proceed because of his failure to adhere to the CPR and where the other parties were occasioned costs in those proceedings which remain unpaid. Article 6 does not require litigants to be given unfiltered access to the Courts; by way of example, it is well-established that the application of limitation

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periods, the abuse of process jurisdiction and the power to strike out where there are no reasonable grounds of claim, do not in themselves violate Article 6.

232. Some of Mr Piepenbrock's submissions sought to re-argue points that had been rejected in the 2020 Judgment. This included the contention that the Claimant had been misled by earlier correspondence from the Defendants' solicitors and that his disabilities had significantly contributed to his failure to serve the Claim Form on a timely basis. Mr Justice Nicklin rejected these points, concluding that the position in which Dr Piepenbrock found himself was self-inflicted (para 51 above). There is no basis for re-opening these findings.
233. In my judgment, having regard to all the circumstances, it is appropriate and proportionate to impose a stay in relation to the surviving data protection claims, in particular as:
- i) Nothing has been paid towards the earlier costs order made in the 2020 Claim and the Claimant has advanced no proposals to do so;
 - ii) The substance of the pleaded claims in the present proceedings are very similar to those in the 2020 Claim;
 - iii) The Claimant has adduced no evidence as to his means;
 - iv) As a result of the decisions that I have set out earlier in this judgment, the vast majority of the currently pleaded claim against the LSE Defendants and the ANL Defendants will be struck out and will not proceed in any event. The question of whether to impose a stay only concerns a portion of the data protection claims, in relation to which it is not clear, as matters stand, that they are in fact viable claims and in any event any compensation awarded if such claims succeeded would be far more modest than the currently pleaded claim for damages;
 - v) It follows from the decisions that I have set out earlier in this judgment that the Claimant has pursued multiple claims in these proceedings which are bound to fail and /or which are abusive and these will have occasioned very significant additional costs for the LSE and ANL Defendants; and
 - vi) Given the unfocused manner in which this litigation has so far been conducted by the Claimant, it appears likely that considerable further costs will be occasioned, even if I were to direct provision of a concise CPR-compliant pleading of the surviving data protection claims at this stage.
234. Dr Piepenbrock also submitted that it would be disproportionate to order a stay as the Defendants were responsible for his current impecunious state, as it was their actions that had damaged his reputation and caused him psychiatric injury. However, that proposition not only assumes that his impecuniosity has been established, but it assumes the success of the claims made in these proceedings, which I have concluded are bound to fail and/or are an abuse of process.
235. Accordingly, I am persuaded that it is appropriate to stay the pleaded allegations against the LSE Defendants and the ANL Defendants (in so far as they are not struck out) until

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the Claimant has paid the costs that he was directed to pay at para 6 of the 1 July 2020 Order made in the 2020 Claim. I propose to limit the stay to payment of the costs that the Claimant was ordered to pay on account (which total £55,000). However, I propose to provide that payment is to be made within a specified period of time (for which I will allow months rather than weeks), so that a balance is struck in terms of affording fairness to all parties.

Totally without merit

236. Both the LSE Defendants and the ANL Defendants submit that the claims are totally without merit. The meaning of “totally without merit” is “bound to fail”: *R (Grace) v Secretary of State for the Home Department* [2014] EWCA Civ 1091, [2014] 1 WLR 342 at para 13. In *R (Wasif) v Secretary of State for the Home Department* [2016] EWCA Civ 82, [2016] 1 WLR 2793 (“*Wasif*”) the Court of Appeal distinguished between circumstances where: (i) a claim was “not arguable” or had no “realistic prospect of success” because the Judge was convinced that although a rational argument had been advanced it was wrong (not totally without merit); and (ii) a claim that was “bound to fail” in the sense that it was “hopeless” or had “no rational basis upon which the claim could succeed” (totally without merit) (paras 13 and 15). Lord Justice Underhill also observed that the distinction was not “black-and-white”, but “nevertheless real”; that the terms used were necessarily imprecise; and that it was a matter for the assessment of the Judge in each case (paras 15 and 17).
237. In light of that analysis (given in the context of refusal of permission to apply for judicial review: but cited at para 3.4.25 of the White Book as of more general application) it may be that there is some difference of emphasis between the use of “bound to fail” in the totally without merit test and in relation to whether a claim should be struck out as disclosing no reasonable grounds for bringing it: see *Begum* (at para 125 above), where “bound to fail” is equated to an absence of a “realistic prospect of success”.
238. In these circumstances, (rather than seeking to resolve this potential tension) I will take the most favourable approach to the Claimant that is reasonably possible, applying the distinction discussed by Underhill LJ. However, even on this basis the claims that have been brought in negligence, under the EQA 2010 and the HRA 1998 are undoubtedly hopeless. I refer back to my full reasoning in respect of those claims, but, in summary: (i) there is no conceivable basis upon which the Claimant will establish the pleaded duty of care, to do so would involve an extremely substantial extension of existing case law in circumstances where the Courts proceed incrementally and where no good reason has been shown for such an extension; (ii) there is no basis upon which the pleaded claims of discrimination could come within Part 3 of the EQA 2010, as it is beyond rational argument that the LSE and ANL were not exercising public functions or providing services to the Claimant in respect of the acts complained of; and (iii) there is no basis upon which the Claimant could conceivably show that the LSE or ANL are public authorities within the meaning of the HRA 1998 for the purposes of the actions he relies upon. Thus, I will certify that the pleaded claims in negligence, under the EQA 2010 and under the HRA 1998 are totally without merit.
239. Whilst I have no doubt that all of the claims under the PHA 1997 meet the test for strike out, the position here may be said to be less clear-cut, given that there are a range of reasons why I have concluded that the claims will fail (depending on the particular

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allegation), some of which involve an evaluation of the circumstances, rather than simply the claim being precluded by the application of a clear provision or principle. Overall, I consider the position to be a borderline one, in terms of the application of the *Wasif* approach and thus I have decided that the fairer course is not to certify this claim. I will not certify the data protection claim given I have not ruled at this stage that it is bound to fail in its entirety.

240. The terms of CPR 3.4 plainly allow for the striking out and (where appropriate) the certification of particular claims as totally without merit. However, for the avoidance of doubt, the certification in this instance is to be treated as one certification for the purposes of Practice Direction 3C. Accordingly, although CPR 3.4(6) requires me to consider making a civil restraint order (in accordance with the PD 3C criteria), no basis for doing so arises at this stage; and it has not been suggested to me that any earlier claim or application brought by the Claimant has been certified as totally without merit.

The MAC List application

241. CPR 5.3.1(3) is expressed in unequivocal terms:

“A High Court claim must be issued in the [MAC] List if it is or includes a claim for defamation, or is or includes-

- (a) A claim for misuse of private information;
- (b) A claim in data protection law; or
- (c) A claim for harassment by publication.”

242. Practice Direction 53A, para 5 provides that a MAC List Judge deciding whether to transfer a claim to or from the MAC List will consider whether the claim or any part of it “falls within the scope of the list but would more conveniently be dealt with in another court or list”.
243. As the Particulars of Claim include both a claim in data protection and a claim for harassment by publication, the claim was rightly transferred to the MAC List. Furthermore, the claim in negligence involved consideration of the interface with claims in defamation, as my earlier analysis shows.
244. In light of the conclusions expressed in this judgment as regards the LSE Defendants and ANL Defendants, only limited claims against them for alleged breach of data protection obligations survive the strike out applications (which will be stayed for the reasons that I have explained). The subject matter of the stayed claim will come within the scope of the MAC List and in my judgment no good reason to transfer the case to the general King’s Bench Division list has been shown. The Claimant’s application largely emphasised the psychiatric injury component of the claim. In light of my judgment that is no longer a live claim so far as the LSE Defendants and the ANL Defendants are concerned. Accordingly, as matters stand the case should remain in the MAC List.

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245. Although the LSE Defendants and the ANL Defendants have solicitors on the record, the Claimant (via Mr Piepenbrock) has corresponded with individual Defendants, despite being repeatedly asked not to do so by the Defendants' legal representatives (examples appear in exhibit TW10 to Mr Walshaw's witness statement). There is no good reason for this to occur. The only reason that has been advanced, is that the Claimant was misled by the Defendants' solicitors into failing to serve the Claim Form in the 2020 Claim. As I have already indicated, this proposition was rejected in the 2020 Judgment (paras 49 – 51 above). As Mr Walshaw explains in his statement, sending correspondence to individual Defendants escalates costs and occasions unnecessary stress for some of them.
246. As the Claimant and/or those assisting him have not complied with the requests made in correspondence to communicate only with the solicitors who are on record, regrettably it does appear necessary for me to make an order prohibiting the Claimant or anyone purporting to represent him or assist him from directly contacting any of the Defendants from whom there is a solicitor on record. My understanding is that is the case for all of the Defendants.
247. The other ancillary matter that was raised by the Defendants concerns the role of Mr Piepenbrock. I addressed this in the 21 June 2022 Order. Whilst I permitted him to act as his father's McKenzie friend in relation to the hearing of the applications before me, he does not have authority to conduct litigation on the Claimant's behalf (para 17 (ii) above). If the Defendants seek a more specific order than this, the terms can be addressed in the written submissions that I will give the parties a chance to file.

Conclusion and consequential orders

248. By way of re-cap and for the reasons that I have explained when considering each of the issues, the decisions I have made are as follows:
- i) The pleaded duty of care has no realistic prospect of success and, in consequence, the pleaded claims in negligence against the LSE Defendants and the ANL Defendants are bound to fail and are to be struck out (para 162 above);
 - ii) The pleaded claims in negligence are in any event bound to fail in respect of D1 – D5, D7, D8 and D11 (paras 165 – 167 above);
 - iii) No sufficient basis has been shown for permitting the Claimant an opportunity to amend the claim to add a cause of action for the intentional infliction of psychiatric injury (para 168 above);
 - iv) The pleaded claim under the PHA 1997 in respect of D6 is bound to fail and/or is an abuse of process and is to be struck out (paras 183 – 190 above);
 - v) In any event there is no basis for a claim under the PHA 1997 in respect of the other LSE Defendants (para 191 above);
 - vi) The vicarious liability case in respect of the pleaded actions of D9 under the PHA 1997 is also bound to fail and is to be struck out (para 193);

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- vii) The pleaded claim of harassment by publication is bound to fail in relation to all of the ANL Defendants and is to be struck out (paras 195 – 196 above);
 - viii) The pleaded claim under the PHA 1997 in relation to the pursuit of costs is bound to fail and is to be struck out (para 198 above);
 - ix) All the pleaded claims under the EQA 2010 in respect of the LSE Defendants and the ANL Defendants are to be struck out as they are bound to fail as the conduct relied upon is not capable of coming within Part 3 of the Act (paras 208 – 210 above);
 - x) All the pleaded claims under the HRA 1998 in respect of the LSE Defendants and the ANL Defendants are to be struck out as they are bound to fail as there is no realistic prospect of showing that they are public authorities (para 212 above);
 - xi) The data protection pleaded claims are in part bound to fail or constitute an abuse of process. These claims are to be struck out (paras 213 – 216 above);
 - xii) I am unable to conclude from the non CPR compliant Particulars of Claim whether there are claims with a realistic prospect of success in relation to alleged failings concerning the three most recent SARs pleaded in respect of the LSE and the SARs pleaded in respect of ANL. In any event there is no basis for a data protection claim in respect of D2 – D5, D7, D8 and D10 – D13 (paras 221 and 223 above);
 - xiii) A stay of the proceedings will be granted in respect of those claims that are not struck out (as bound to fail or an abuse of process) pending payment by the Claimant of the costs he was ordered to pay at para 6 of the 1 July 2020 Order made in the 2020 Claim (para 235 above);
 - xiv) The claims brought in negligence, under the EQA 2010 and under the HRA 1998 are totally without merit (para 238 above);
 - xv) As matters stand, the case will remain in the MAC List (para 244 above);
 - xvi) I will direct that where a solicitors' firm is on record, the Claimant is to correspond solely with the Defendants' solicitors in relation to this claim and must not email or contact the LSE Defendants or the ANL Defendants in relation to it (para 246 above).
249. For the avoidance of doubt and as I have explained when considering each of the causes of action relied upon, in determining that claims are to be struck out as bound to fail or are an abuse of process, I have considered and rejected the possibility of the position being materially altered if the Claimant was given the opportunity to amend his claim. Accordingly, those claims will be dismissed.
250. For the further avoidance of doubt: (i) the decisions I have made at this stage do not affect the claims brought against D9, as the applications made on her behalf were not before me; and (ii) pursuant to the terms of the 27 April 2022 Order, the directions that

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were made in respect of anonymity, reporting restrictions and third party access to the Court file remain in place.

251. As I indicated at the conclusion of the hearing, as not all parties are legally represented I have not circulated a draft of this judgment for the submission of typographical corrections. I will, however, give the parties an opportunity to make concise written submissions on consequential orders and any applications for permission to appeal (as I have set out in the Order accompanying the hand down of this judgment). As regards the former, the written submissions are only to address the terms of consequential orders that follow from the decisions set out in this judgment or the ancillary matter raised in para 247 above; this is not an opportunity to re-open matters that have been determined or to raise new matters that were not before me at the hearing. I have allowed an extended period for these written submissions in keeping with earlier adjustments that have been made for the Claimant. Whilst I have not specifically directed sequential submissions, I will expect the LSE Defendants and the ANL Defendants to provide the Claimant with the terms of their proposed Order/s as soon as they can and in any event in sufficient time to enable him to have a reasonable opportunity to consider and respond.