Neutral Citation Number: [2023] EWHC 2428 (KB)

Case No: QB-2022-002740

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3 October 2023

Before :

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

- -

Between :

FARID ALIZADEH GHENAVAT **ANDREW DAVID RAHAMIM** **MICHAEL MINASHI REHAMIM**	**Claimants**
- and -	
SIMON HENRY LYONS	**Defendant**

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- -

John Stables (instructed by **Goodwin Procter (UK) LLP**) for the Claimants
The defendant in person

Hearing dates: 22 – 26 May 2023

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JUDGMENT

HIS HONOUR JUDGE LEWIS:

1. This is a claim for permanent injunctive relief under s.3A of the Protection from Harassment Act 1997 ("the Act").

2. The first claimant and the defendant were friends. In 2004 they went into business together and set up Enstar Capital Limited ("ECL"), a property management, development and investment business. They were the sole directors of the company, with each owning 50% of the shares.

3. In 2012, the second claimant joined ECL as an employee. He became a director in May 2017. In 2019 he purchased 20% of the shares in the company, with the first claimant and the defendant retaining 40% each.

4. These proceedings arise out of an acrimonious breakdown in the relationship between the defendant and his co-directors. The third claimant is the second claimant's father.

5. The claimants say that between March 2021 and September 2022 the defendant pursued a course of conduct against them which amounted to harassment.

6. There are well over four hundred specific events complained of. Nearly all of them are communications sent by the defendant either to the claimants themselves, or to a wide range of third parties, including family members, friends, clients, banks, professional advisers, schools, religious leaders, community groups and the media.

7. It is also alleged that the defendant was responsible for threatening phone calls, taking out a loan in the name of the first claimant, and using Amazon to send unwanted items to the offices of Brecher LLP ("Brecher"), solicitors – who had acted for the first claimant's family trust (and one of ECL's clients) on a deal in 2020. The claimants also say that the defendant set up bogus email accounts or domains purporting to relate to the business of ECL, the first and second claimants' new business (Northstar) and the second claimant's separate family consultancy.

8. The defendant accepts sending most the communications complained of. In evidence, he tried to distance himself from some of the more unpleasant messages, claiming to have no recollection of sending them. His evidence on this was unconvincing, and when the messages are looked at it in context it is very clear that the defendant sent them all. The defendant accepts setting up the various email accounts and domains and using some of them to send messages to third parties. He denies any involvement with the threatening calls, the loan or the Amazon orders.

9. The defendant says that none of the communications when placed in proper context were sufficiently grave, oppressive or unacceptable to constitute harassment, or were subjectively or objectively calculated to cause alarm or distress. It is said that the defendant neither knew, nor should have known, that the communications placed in context amounted to harassment. The defendant says that even if his conduct

amounted to harassment, his behaviour was reasonable given the brutal – and he says unlawful - way in which he believes the first and second claimants pushed him out of the business, transferred ECL's business to their own companies and failed to account to him as a shareholder for money owed.

Trial

10. This judgment is given following a five-day trial, at which all the parties gave evidence. I also heard evidence from a solicitor representing the claimants. There is also a seven-volume bundle of documents which I have considered carefully.

11. Whilst the defendant represented himself during trial, he had professional assistance at the start of the case, and with the drafting of some pleadings. At trial, the defendant was articulate and put his case well. His cross-examination was prepared carefully and was focussed on the main issues.

12. At the start of the hearing, I considered whether any special measures were needed, having regard to PD 1A of the Civil Procedure Rules.

    a. The defendant has a hearing issue and so relies in part on lip-reading. Adjustments were made, including with the seating in court, to ensure that he could participate properly. Some other matters raised by the defendant were also addressed.

    b. I checked whether the claimants needed any special measures in place for cross-examination, conscious that they faced the prospect of being cross-examined by the man they say has been harassing them. The claimants did not want any special measures in place. The defendant conducted his questioning of the claimants entirely appropriately. I did, however, notice that the second claimant found the process of giving evidence quite difficult – I assume because he found the subject matter distressing, not because of the way he was being asked questions. He was obviously upset at times, and at one point said that he had not taken certain steps in the past because he is scared of the defendant. Some adjustments were made, including making sure that the second claimant directed his responses to the bench, rather than face the defendant.

13. The defendant has brought an unfair prejudice petition in the Chancery Division against the first and second claimants and ECL. Many of the issues between the parties around the management of ECL will be determined within those proceedings at a trial listed in 2024.

14. In the petition the defendant says that the first and second claimants have conducted and continue to conduct the affairs of the company other than with the consent of the defendant, in a manner unfairly prejudicial to his interests as a shareholder and in breach of the terms of the shareholders' agreement and the duties they owe as directors. Specific pleaded examples include that the first and second claimant

wrongfully excluded the defendant from participation in the conduct of the business and affairs of the company; diverted fees payable to the company by its clients; set up companies to act in competition with the company; diverted business opportunities that the company would have enjoyed to companies in which the defendant had no direct interest; procured the making of loans to persons or companies in which the defendant had no direct interest; used funds belonging to the company to meet their own personal costs of this litigation; threatened to wind up the company; and filed inaccurate and unapproved accounts.

15. The first and second claimants deny much of what is alleged. They accept that they have had to exclude the defendant from the operation of the business but say that the defendant's own behaviour meant that they had no choice. They rely on examples of the defendant being rude and unprofessional to staff and clients, and say he was using skunk in the office. They say that the defendant also failed to engage constructively with the management of the company, including refusing to authorise payments of staff wages and tax owed. They say the defendant repeatedly breached his own duties as a director, breached the shareholder agreement, fundamentally undermined and broke the trust and confidence between shareholders and caused the company to become deadlocked.

Background – overview

16. As well as the parties, reference will be made to two other persons who were involved at various times in trying to assist the parties to reach a resolution: Mr H Weisberg (a former friend of the defendant and a sometime adviser to ECL) and Mr Garvin (a retired lawyer who helped to negotiate on the defendant's behalf). I considered Mr Garvin's written evidence for the court.

17. The directors of ECL had different strengths. The defendant focussed on business development and client management and was responsible for introducing contacts and generating most of ECL's work. The first and second claimants' focus was more on the day-to-day management of the company.

18. In his evidence, the first claimant explained that each time ECL started a new project, it would set up a company, known as a Special Purpose Vehicle (SPV). The SPV would usually then contract with joint venture partners to carry out the project. On completion, the SPV would then pay ECL a fee, less costs, and the SPV would be wound down. The first claimant says that the fee received by ECL would then usually be divided between ECL's shareholders by way of dividends.

19. The first claimant says that the defendant's behaviour started to become problematic around 2017, with him being rude and abusive not just to him, but to staff, clients and other professionals working in the same sector. In May 2018 the defendant was convicted of assaulting a well-known property developer. The claimants say he was preoccupied by personal issues, unable to focus on his ECL work and was often out of the office or on holiday. The defendant denies this. He says during this time he was

generating significant volumes of work, was fully engaged, and nobody suggested to him that there was any problem.

20. By early 2021, the evidence suggests that the relationship between the defendant and his co-directors was extremely poor. Discussions started around the first and second claimants buying the defendant out, or mediation, none of which came to anything.

21. A snapshot of the defendant's presentation can be found in a message sent by Mr H Weisberg to the defendant's mother on 28 April 2021. He asked her to help the defendant to address what everyone considered to be an addiction issue "that is encroaching on the business and is visible to members of staff and consultants. There is a consensus that he has to have some kind of rehab as he is in denial. He is belligerent and without focus". The defendant denies he had a drug issue and says few people were in the office at this time because of the pandemic.

22. By 4 May 2021, the business relationship had completely broken down. As we will see, the defendant sent a considerable number of angry, abusive and aggressive messages on this day. The claimants say that the defendant's conduct was so bad that it was harming ECL, and they needed to take steps to protect the business.

23. During the week commencing 17 May 2021 there were further discussions around buying the defendant out of the business.

24. On Thursday of that week, 20 May 2021, the first and second claimants incorporated at least five new companies in which they were the sole directors and shareholders. The first claimant confirmed in evidence that the defendant would usually be director of the SPVs. He said they set up the companies because they had been having problems with the defendant since January, and they needed the new companies to manage ECL's live transactions. The second claimant said in evidence that the companies were set up for "potential projects".

25. The first and second claimants say that by May 2021, the defendant had started to undermine them. The limited evidence that they have produced to support this includes an email sent by the defendant to a third party on 20 May 2021, in which the defendant said he did not agree with the first claimant in respect of a business dispute with a client. At around 0920 on 21 May 2021, the defendant then told a third-party adviser that he was "the financial director that ECL always needed and wanted", which the claimants say is an example of the defendant undermining the second claimant.

26. A few hours later, on the morning of 21 May 2021, the first and second claimants unilaterally suspended the defendant's ECL email account. In response, the defendant went to ECL's offices, locked company equipment, computers and furniture in the boardroom, and then left with the only key. The defendant says he did this to keep the business assets safe, and he believed there was a spare key. He says he took his ECL computer to protect the company's database, and the company's assets that belonged primarily to him.

27. On Wednesday 26 May 2021, solicitors for ECL wrote to the defendant to inform him that he was suspended as an employee and that there would be an investigation "following a series of incidents involving unreasonable, irrational and abusive behaviour".

28. There was then correspondence between ECL's solicitors and the defendant's legal representatives. ECL's lawyers ceased to act after the defendant accused them of professional misconduct and threatened to sue them.

29. Negotiations continued in respect of ECL. On 10 June 2021, the first and second claimants offered to buy the defendant out or wind-up the company. There was no question of them remaining in business with the defendant. Mr H Weisberg wrote to the defendant: "A sabbatical was offered but you refused. Mediation was offered but you refused. Your aggressive behaviour over months and more recent threatening emails have gone much too far to revert back to [previous offers]".

30. On 10 June 2021 the defendant said to the first and second claimants that he had no alternative but to use every means to defend himself and if they cannot resolve matters "the consequences are very bleak and destructive for you both". He told Mr H Weisberg the same day that he will sue the first and second claimants.

31. On 5 July 2021, the defendant's solicitors wrote to the first and second claimants setting out the basis of the proposed Chancery claim for unfair prejudice. Correspondence then passed between solicitors in respect of this.

32. On 29 July 2021, ECL held a disciplinary meeting. The first and second claimants confirmed in evidence that they did not obtain legal advice in respect of the process followed, the first claimant explaining that this was not necessary.

33. The defendant chose not to participate in the disciplinary process. He says he was never an employee of the company and so ECL was not entitled to proceed in this manner. He also disputes the grounds for dismissal. In the defendant's absence, the company terminated the defendant's employment for gross misconduct, although he remained a company director. The main grounds for dismissal included sending an abusive message to one of ECL's partners; making "defamatory and untrue" allegations and threats to third parties, resulting in a client terminating their contract with ECL; overclaiming travel expenses; removing and hiding company IT equipment; threatening and bullying members of staff; and persistent and daily consumption of illegal drugs in the office in full view of staff and consultants.

34. During the autumn, discussions continued to try and reach agreement of the dispute. The discussions now took place through third parties, namely the third claimant and Mr Garvin. Negotiations did not get anywhere. The defendant was clear that he needed to be provided with proper financial information about the state of ECL, and what was happening with the business. This is confirmed in Mr Garvin's statement.

35. ECL was deadlocked. The defendant's consent was needed before ECL could pay creditors, such as staff, HMRC and accountants. The defendant refused to give consent, meaning that ECL was unable to discharge its debts from company funds.

36. On 12 November 2021, the first claimant reported the defendant to the police because of harassing emails.

37. On 3 December 2021, the first and second claimants notified the defendant that they were going to wind down ECL because it was deadlocked. They said they would continue to run the three SPVs through their own company, Northstar, and any assets would be split after debts in accordance with the shareholder agreement.

38. There was then an escalation of hostilities in the days immediately after Christmas 2021. As we will see, the defendant started claiming – falsely - that the first and second claimants had resigned as directors of ECL. He started sending them follow-up paperwork and even notified advisers and ECL's bank. In retaliation, the first claimant started telling people that the defendant had been forging signatures, and that he had significant personal debts.

39. On 29 December 2021, the first and second claimants set up a new company, Northstar Capital Limited, through which they planned to continue their careers in commercial property management and development. They launched the new company at the start of 2022.

<u>The course of conduct</u>

40. The claimants rely on what they say was a prolonged course of conduct by the defendant. It is not necessary, or proportionate, for me to identify each instance relied upon, although I do need to set out sufficient detail to explain what the defendant was doing and why it is said this amounted to harassment.

41. Many of the communications complained of within these proceedings make allegations of financial impropriety on the part of the claimants. Whilst this judgment needs to refer to some of the things said by the defendant about the claimants and their families, it is important to note that these are not matters that the defendant has been able to prove within these proceedings, and nothing in this judgment should be taken as suggesting that the allegations are true. At the start of the trial, those parts of the defence that suggested there had been fraud were struck out because there was insufficient evidence to support the making of such serious allegations.

42. There are two allegations that have been raised repeatedly by the defendant in many of the messages complained of.

<u>Allegation 1 –that the first and second claimants have failed to account for £600,000 of ECL's money</u>

43. The defendant says that ECL had been due to receive £600,000 (£500,000 plus VAT) in June 2021 on completion of a project. In many of the communications complained of, the defendant claimed that the first and second claimants had diverted this money to their own company account and failed to account to the first claimant for it.

44. There was communication about this between Trowers & Hamlins ("T&H") (for the defendant) and Goodwin Proctor ("Goodwin") (solicitors then for the first and second claimants, and later also for the third claimant). On 20 July 2021, T&H sent a letter to Goodwin in which they stated - as a fact - that the first and second claimants had "stolen" the money. It is unclear on what basis the firm made this unqualified statement. The firm also placed Goodwin on notice that they must not accept such funds in respect of their fees. This letter is significant because the defendant later sent copies of it to third parties.

45. On 21 July 2021, Goodwin confirmed to T&H that the money had not yet been received. They confirmed that on receipt the funds would be paid into "the bank account set up for the purpose of receiving it" and the entire amount used to pay down the debt of ECL. Goodwin confirmed that no part of the payment would be paid to the first and second claimants.

46. On 2 August 2021, Goodwin re-confirmed to T&H that when the money was received, it would only be used to pay down ECL company debt, including sums owed to employees and to HMRC, and no portion would be paid to the first and second claimants.

47. On 9 August 2021, Goodwin explained to T&H that a number of payments from ECL needed to be authorised urgently, and that if the defendant did not give his consent, they would take action. On 24 August 2021, Goodwin wrote again to confirm that the company was deadlocked and if the defendant did not authorise payment, proceedings would be brought.

48. On 14 September 2021, Goodwin confirmed to the defendant's solicitors that funds had been received on 17 and 18 August 2021, and that £100,300 plus VAT had been paid to ECL and £401,200 plus VAT had been paid to the relevant SPV's bank account. The letter recorded that the defendant had refused to authorise payments from the ECL account, or to add the second claimant as a signatory. As a result, Goodwin confirmed that ECL was retaining the £401,200 plus VAT (£481,440) in the SPV account, "to be held on trust for ECL", so that ECL could make the payments it was required to make to creditors.

49. On 23 June 2022, Goodwin confirmed to the defendant's new advisers that £481,000 of the money had been ringfenced to pay ECL's debts and that the remainder of the £600k fee had been paid into ECL's accounts. A detailed breakdown of all debts paid with the money was provided, with commentary. The sum of £32,084.44 remained, and Goodwin confirmed it would be held to ensure that ECL debts can be paid. On 13 July 2022, the defendant's advisers replied, making clear that it considered this

diversion of funds to be a "clear breach of duty" supporting the defendant's view that these funds were "improperly diverted".

50. In evidence the first claimant confirmed that he and the second claimant had not received the money personally, that the accountants have provided a breakdown of how it has been used, and that the balance remains with the SPV to pay ECL's bills. He said that they told the SPV's bank that the money was held on trust. The first claimant confirmed that he did not get legal advice on his decision to pay ECL's money into the SPV's bank account, and that the authority for doing so came from him and the second claimant and what he called "the law of self-help".

51. The second claimant confirmed in evidence that he believed that the £600,000 was accounted for in the ECL end of year accounts, although this is disputed by defendant. The accounts were not in evidence.

52. The defendant was asked in evidence why he thought it appropriate to allege fraud and criminality in respect of this money. The defendant says that he believed that the money was missing, and the claimants were not coming back with a proper explanation, and so it was reasonable for him to assume that it had been stolen. I do not accept this. The defendant was given assurances by Goodwin in July, August and September 2021 that the money would be used to discharge ECL's debts, so he was aware it was not being misappropriated. He was later told how the money had been used, and why it had been necessary to pay the money into the SPV's account.

53. I understand that the Chancery proceedings will consider what happened to this money and whether, as a matter of company law, it was appropriate for the first and second claimants to pay the funds into a third-party account.

<u>Allegation 2: that the first and second claimants acted so as to deprive Lloyds Bank of security</u>

54. The first claimant is the beneficiary of a family trust ("the Family Trust"). The Family Trust owns a property in Arundel Street through a company called Ohana Investments. ECL managed this property, on which there was a charge to Lloyds Bank.

55. The tenant of the property went into liquidation and defaulted on the rent. The Family Trust looked to the Italian guarantor under the lease for payment of the arrears, but it transpired that the guarantor was also in liquidation.

56. Brecher acted for Ohana Investments. They have explained that Ohana had a claim against the guarantor's liquidators for failing to notify Ohana of the guarantor's liquidation. This claim was settled between Ohana and the guarantor for £440,000. Separately, ECL negotiated a surrender of the lease with the liquidators of the tenant. Lloyds gave its consent to the surrender. The deal reached with the tenant included being able to claim in the tenant's liquidation for a sum of £93,553. Brecher advised Ohana that it will need to agree with Lloyds whether any part of this sum would be

payable under the terms of its security. Brecher confirmed that the sum of £440,000 from the settlement of the claim against the guarantor's liquidators was not paid in consideration for the tenant's surrender of the lease, nor in agreement with the tenant. It was not therefore payable to Lloyds under the terms of the security and Lloyds' consent to that settlement was not required.

57. ECL was involved in both transactions, namely the surrender of the lease and the settlement with the guarantor's liquidators. On 30 November 2020, the defendant himself chased Brecher, asking if they were ready to complete. The solicitor replied that some formalities were still needed, including Lloyds consenting to the surrender. Once the deal was completed, the defendant emailed the solicitors "Very very WELL DONE xxxxxxx".

58. The defendant's pleaded case is that in July 2020, the first and second claimants failed and refused to disclose to Lloyds the payment that had been received by Ohana (the £440,000), and that such a sum should have been paid to Lloyds. The claimants' pleaded case is that Lloyds was aware of the surrender of the lease, that the payment of £440,000 did not breach the terms of the security, and even if it had, bona fide legal advice had been obtained at the time that it did not.

59. There is evidence that Lloyds Bank provided consent to the surrender of the lease. It is not apparent whether Lloyds was also made aware at the same time of the separate agreement between Ohana and the guarantor's liquidators. As noted, the legal advice provided at the time to Family Trust was that the payment of £440,000 was not something that had to be notified or paid to Lloyds.

60. The defendant raised this issue directly with the Family Trust on 26 May 2021, and later through his then solicitors on 5 July 2021. The Family Trust asked for Brecher to confirm the position. In a detailed letter of 1 June 2021, Brecher confirmed that the sum of £440,000 was not payable to Lloyds under the terms of the security, nor was it something on which Lloyds consent would be needed. Brecher recommended that thought should be given to notifying Lloyds when payment is received from the tenant's liquidators of any sums payable from the tenant's liquidation. This letter was not sent to the defendant directly, but it appears he had it by the end of July 2021.

61. On 2 August 2021, Goodwin explained to T&H about the two separate transactions and that the settlement with the liquidator was not required to be disclosed to Lloyds bank because it is not caught by, or in any way relevant to, the security. Goodwin confirmed that Lloyds would be notified of any payment by the tenant's liquidator for good measure.

62. In August 2022, the first claimant spoke to Lloyds about this, in response to the defendant's allegations. He has disclosed the script for his call, which had been prepared by his lawyer. Lloyds confirmed to the first claimant that the defendant had lodged a complaint with the bank's fraud team, which the bank was not taking further. The first claimant followed up on his call with an email to the bank sent on 8 August 2022, recording that as far as Lloyds are concerned there is nothing further to discuss

or investigate. There is then an email from Lloyds in response, thanking the first claimant for the call and the email update.

63. It was clear from the defendant's oral evidence that whilst he understands that there were two separate transactions, he has misunderstood the role played by Lloyds. The defendant relies upon the recommendation made by Brecher in its letter that the Trust speaks to Lloyds about a payment due from a liquidator to agree whether all or part of it is payable to Lloyds. On a proper reading of this letter, however, it is apparent that this is a reference to the £91k to be claimed in the liquidation of the tenant, and not the £440,000 payable by the liquidator of the guarantor.

64. This court has not been provided with the evidence needed to reach a factual determination on this issue, for example the transaction paperwork and a copy of the Lloyds security. The evidence that has been provided does not support the defendant's concerns about the transaction. Two law firms have explained why the guarantor payment fell outside the scope of the Lloyds security. Lloyds has not raised any concerns or taken any action. The defendant has also lodged complaints about this with various authorities and regulators, none of which have found any wrongdoing. It is significant that the first time that the defendant appears to have raised concerns about this transaction was when his relationship with his co-directors had all but broken down. Before then, the evidence we have shows the defendant himself pushing solicitors to complete the deals, giving no indication that he (or anybody else) considered that there were any problems in doing so.

Alleged course of conduct: Period 1 – up to 21 May 2021

65. This is the period during which the relationship between the defendant and the first and second claimants broke down. As noted already, things became increasingly acrimonious as the parties were unable to reach agreement on how to part ways.

66. The first instance of a course of conduct relied upon by the claimants is not, in fact, a particularly good one. Complaint is made that on 11 March 2021, the defendant sent abusive emails to a business partner of ECL (and others) accusing this partner "without any basis" of being a thief and a crook because of a minor dispute over unpaid fees.

67. In fact, the underlying documents paint a different picture. There was a significant dispute between ECL and this business partner. It appears that the first claimant decided that the defendant was best placed to sort these issues out, and he wrote to the business partner explaining this. The partner replied to the first claimant on 3 March that they were not prepared to deal with the defendant because of his rudeness, threats and lies. The next day, the first claimant wrote to say that he did not think there was a way forward, as the business partner had breached trust. The first claimant also emailed the defendant and said that the business partner was a "compulsive liar" and "so fucking greedy". It was agreed that the defendant would go in "hard and fast", and the first claimant said "lets see if the thief responds". Following this, the

defendant followed through with the agreed approach, and accused the business partner of being a thief, crook and liar.

68. This was one of the instances relied upon by ECL when seeking to dismiss the defendant as an employee. The disciplinary letter said "It is unsurprising that he [the business partner] refused to have any further dealings with you [the defendant]. This was detrimental to the company, as it resulted in the acrimonious termination of a relationship with a potential investment partner, and it damaged the company's reputation." In fact, it appears that relations with the third party broke down because of a loss of trust, and the shared belief of the first claimant and the defendant that this person was a thief and a liar who they could not do business with. I do not consider this forms part of any course of conduct.

69. On 4 May 2021, the defendant sent a series of messages to Mr H Weisberg, copied to the second claimant. Although abusive, I think a sample of the messages needs to be set out, to get a sense of how the defendant was engaging at the time, his style of communication, his approach to the claimants and the timing of him first raising the Lloyds issue:

    a. 13.25: "Farid [first claimant] walks in with his lunch at 1:22 having been wanking all morning and doing ZERO to generate any business whatsoever for us. I could smoke joints for next thousand years and I'd still be more effective than this clown. Andrew [the second claimant], can I please have an opinion from you, or is that beyond your remit.? You want me to share my profits with you two? You cant even be bothered to respond to emails concerning Farid but you are full of opinions about me."
    b. 13.28: The defendant noted that the first claimant had asked for the number to obtain marijuana and remarked that this was the pot calling the kettle black. Mr H Weisberg replied, pointing out that any drug taking in the workplace is unacceptable and illegal, and told the defendant that there was concern that his own use of drugs was getting beyond recreational into amounts which are deeply bad for him. The defendant replied "what about Farid? Why don't you take him to task as well. ... and while you are at it why am I still more effective than the rest of these guys put together … I could be on heroin and I would still bring in more business".
    c. Mr H Weisberg replied at 1400 to say he is worried about the defendant. He said "no one has ever told me Farid is smoking in the office and that he has not been in a fit state to conduct a meeting".
    d. 13.50: The defendant messaged: "my farts are more value than this guy !! waste of fucking space!! why's he not out looking for deals and investors?... Andrew??? Any ideas ???? Or your opinion only extends to me and nobody else. Nothing worse than a man with no spine let alone bollox !!!"
    e. 14.14: The defendant explained how he considers the first and second claimants' performance to be non-existent and calls them a pair of clowns "I don't need them or their shit, I want a price for my shares or I want a price from them but they should go off and bunk up together".

f. 14.17: The defendant sent his first email to Mr H Weisberg about the "Lloyds issue" (see above), copied to the second claimant "Talking about illegal make sure Lloyds don't find out about how Farid defrauded them over the surrender money from the strand!!"
g. 14.52: Mr H Weisberg suggested mediation to get things back on track.
h. 15.01: The second claimant replied to say that mediation is a good idea. The defendant replied that he would rather commit suicide.
i. 15.17: The defendant sent an email to the second claimant suggesting that him siding with the first claimant had been the straw that broke camel's back.
j. 16.39: Mr H Weisberg jumps in and tells the defendant that that the second claimant cannot take sides, and the defendant and first claimant need to mediate to sort out issues around conflicts, reward structures etc.
k. 18.08: the defendant responded "Farid isn't conflicted. He's just interested in himself and what suits him. That's why he couldn't be bothered to even try to explain the situation. If it wasn't the case he would have defended me on the contract with the Trust as a point of principle rather than endorsing his crooked father and his antics. I'm afraid that was the turning point when I thought things are simply not equitable. It's not what i need in my life…. For the record he doesn't give a shit about Andrew or anybody else. He pretends to suddenly want to be in the office now because everybody knows he's a dishonest cunt and he's not worth a red cent to anybody without the Trust and now that's not on the table either he's about as useful as a pair of stale knickers. Andrew and him can have my shares and whatever else they want including the shirt off my back for I fucking care. Then there is no longer any need for these stupid fucking arguments. They cannot however have my contact book. Every contact is mine and mine alone and that includes the Covent Garden deal! This doesn't belong to him. He was on his fat Iranian ass in the summer…".

70. On 5 May 2021 at 14.34 the defendant sent an email to Mr H Weisberg, copied to the second claimant, with the subject "Farid… sums him up!". Attached to the email was a meme which said "Everybody is wanking from home… and I'm just here wanking at work".

71. On 26 May 2021, the day the first and second claimants purported to suspend the defendant as an employee, the defendant wrote to the Family Trust directly. As well as flagging his concerns that funds had bypassed Lloyds, he went much further and informed the Trust that he was taking steps to remove the first claimant as director of ECL immediately pending an investigation and made further allegations including about the illegal furloughing of staff.

<u>Period 2: post-suspension - September 2021</u>

72. Although locked out of his ECL email account, the defendant continued to send emails as "Joint Chief Executive of ECL", albeit from a personal icloud account.

73. By 9 August 2021, the defendant turned the focus of some of his anger on the third claimant. We can see this from messages that he sent to Mr H Weisberg by WhatsApp. By this time, it appears that the defendant and Mr H Weisberg had fallen out. Given what the defendant says in the messages, it seems likely that he was intending for the gist of his remarks to be relayed to the third claimant, and he would have known that they were likely to be passed to the other claimants as well.

74. Within these messages the defendant told Mr H Weisberg he would "love to punch you in the face and choke you on those words you fucking thick moron" and that he should "stick his head down the bogs and drown". He then noted that the first and second claimant were relying on the third claimant to pay legal fees. He called the thirds claimant a crook, and that he was "gonna have a bit of fun with Michael [the third claimant]. I understand he lives abroad for tax, wonder how he's getting the money to Andrew". He goes on to request that Mr Weisberg "tell Michael Rahamim he better have deep fucking pockets and a good PR man on standby because I'm going to bulldoze those Iraqi peasants". He continued, "now we know Michael is in background shouldn't be too diff to cut off money supply." and "Michael Rahamim, is going to get burnt you better warn him". The defendant was asked if these were horrible messages, and he said it depends on the context.

75. In August 2021, the defendant wrote from his icloud email account to an ECL contractor, accusing them of sending out misleading communications in the name of ECL, and purporting to ban them from using ECL letterhead and email addresses at any time. The email was signed off as Joint Chief Executive of Enstar.

76. On 11 and 13 September 2021, the defendant wrote to Druces LLP ("Druces") from a gmail account, signing off as Joint CEO of Enstar. He copied the first and second claimants, and others. He threatened the firm if they continued to act for ECL. He was also abusive, for example telling the partner at Druces that "surely even someone of your limited intelligence will understand that there is a conflict of interest". He said that Druces were not to act for Enstar under any circumstances.

<u>Period 3: October – November 2021</u>

77. Matters escalated further in October 2021. The defendant set up a new internet domain, "enstarcapital.co.uk" and started to use an enstarcapital.co.uk email address, signing himself off as either "Chief Executive Officer" or "Joint Chief Executive". The defendant said in evidence that he had no choice in setting this up, because his own account had been frozen. He used this new account to send emails in the name of the company to third parties. He would have known that ECL was still in business, and that it was being managed on a day-to-day basis by the first and second claimants. The defendant was, though, still a director of the company, and he appears to have taken the view that the first and second claimants could not simply push him out, and he was entitled to communicate with third parties on the company's behalf.

78. On 13 October 2021, the defendant emailed the third claimant from his new email account, copied to Mr H Weisberg and the second claimant, alleging that the second

claimant owes money to ECL, and has "misappropriated and stolen from the company" and asking for the third claimant's proposals for repayment. The email also noted that the third claimant is "non-resident" and so asked for information about the source and proof of funds.

79. On 15 October 2021, the defendant started providing his new email address ("the co.uk address") to third parties, for example ECL's bankers. He also sought to dismiss ECL's lawyers. He wrote to the law firm Druces, copying the first and second claimants, in the following terms: "Now I'm back at Enstar and in control of the company I hope you can take my words I wrote below literally. Druces are no longer to come anywhere near Enstar Capital or any of its associated companies … we will be in touch soon with next steps as to how we will be progressing matters against you and your firm to recoup any monies that you may have billed".

80. On 15 October 2021, ECL's accountant asked the defendant to approve some bills for payment, as a director of the company. On 17 October, the defendant replied from his co.uk address "Mate would love to but what about all the money that Farid [first claimant] and his father have stolen. By next week we we'll have it sorted and once Farid has been exited we'll settle this." On 29 October 2021 the defendant sent a follow up as Joint Chief Executive: "More money was nicked that we originally thought by Farid and Andrew with the assistance of Michael Rahamim".

81. On 27 October 2021 the claimants put forward settlement proposals which the defendant rejected outright. On 28 October 2021, the defendant sent two emails to the claimants and some of the advisers involved in discussions, from his co.uk address. In the first he said (of the first claimant) "Not good enough he commits a bank fraud on Lloyds bank by misdiverting money but now he's trying to defraud everyone else…". In the second he said "The thing is when everybody knows you are a thief nobody trusts you and one thing for sure is Farid is absolutely brassic. He is the only guy who hasn't and cant pay his way out of any of this. This is why he steals money from me, Lloyds, misdiverts company cash… as Mr H Weisberg said, crooked to the core… You lot are pathetic and Michael Rahamim you are hopeless and your son is an accomplice to fraud…".

82. On 29 October 2021, the defendant sent an email from his co.uk address to the third claimant, copied to the other claimants and professional advisers, simply with the subject "thief".

83. The same day he sent an email to the third claimant with the subject "kind of sums up Rahamims", copied to advisers, attaching a picture of the second claimant to which he had added a speech bubble saying "Dad how do you say thief in Iraq? Also is it stealing if Farid says its ok?". The defendant said in evidence he would not have sent this to a nice man, but "these are not nice people and they were stealing". He also emailed the second and third claimants, and various advisers with the subject heading "kind of makes sense", attaching a picture of the first claimant to which he had added a speech bubble saying "In Iran I'd get my hands chopped off for stealing".

84. On 29 October 2021 the defendant set up a domain "rahamimconsultants.com" which is the name of the consultancy company run by the second claimant and his wife. He sent confirmation of this to the three claimants (and others), so they were aware of what he had done. He did the same in respect of domain registration for West London Property Services, which was a company name being used by the business. The defendant denied in evidence that he told the first and second claimants about the new domains to make them fearful, and says he set them up because he felt he was being robbed and wanted the claimants to return the misappropriated money.

85. On 2 November 2021, the defendant sent three emails from his co.uk address, signing off as Joint Chief Executive of Enstar, to various creditors of ECL, falsely stating that the third claimant had taken over the day-to-day bills for the first and second claimants and asking them to reissue their invoice to be addressed to the third claimant. He also emailed an ECL employee who had asked the defendant to approve payment of an invoice, directing them to the third claimant.

86. On 12 November 2021 the defendant sent the third claimant an email, copied to the second claimant, an Enstar employee and some consultants. The email contained a picture of the first and second claimants, to which the defendant added speech bubbles, with the second claimant saying "my dad is so rich he lives off my mum" and the first claimant replying "has he no shame??? He should just steal it…".

87. On 14 November 2021, the defendant emailed the third claimant, copying advisers and the second claimant, simply saying "Michael you have your version of the story and I have mine. Mine is your son is a thief and you are a clown".

88. On 16 November 2021, the defendant emailed the second and third claimants, copied to advisers, a picture of himself and a third party in St Paul's Cathedral, captioned "Our CEO with the great DP". The email said: "I don't see Andrew Rahamim anywhere do you in this pic? That's cause he's a loser, always a loser and always will be. He's so retarded that we had to bring Jak Serr in to do his job on Acton because Andrew was too busy trying to knock up his wife for a dowry. Hes following in the footsteps of his dad and staying at home poncing off his wife. The Rahamim's are Iraqi toilet bowl fishers".

89. There are emails sent by the defendant on 18 November 2021 to the claimants, Bloomberg, professional advisers, and the Family Trust with the subject "Letter regarding the theft of money from Enstar by Farid and Andrew". Attached was a copy of the T&H letter of 20 July accusing the first and second claimants of theft. A couple of hours later, the defendant emailed the first claimant, copied to most but not all of the recipients of his earlier emails. He suggested that the first claimant write an email as follows: "Dear Will. My name is Farid and I am a thief. I stole money from Lloyds and Enstar. I should resign now and turn myself in to the police. Best wishes. Farid".

90. On 23 November 2021, the defendant emailed the bank for the four SPVs, using his co.uk address and signing off as Joint CEO. He informed them, in the name of ECL, that they [the company] suspect fraud is being undertaken through the companies and asked if sufficient KYC and due diligence had been carried out.

Period 4 - December 2021

91. On 23 December 2021, the defendant wrote to the claimants' lawyers and invited them to mediation, or to resign from Enstar. He said "In order to mitigate any further damage, we will be informing all concerned that they will be departing immediately although we are happy to work on a joint statement leaving out the real reasons".

92. The same day he wrote to the first claimant, copying the other claimants, some employees and advisers: "I'm drafting your and Andrew's resignation letters for Enstar Capital…. Please confirm that your last day will be 2 January 2022… after that all the domain and intellectual property will revert to enstarcapital.co.uk and this will be reported to everyone concerned. We will forgo any disciplinary action against you for the misappropriation of monies and other such criminal offences… any attempt to misdivert business will not bode well for you. I sincerely wish you and Andrew the very best in the future with your new company".

93. The same day, he emailed ECL's bank asking them to disregard financial instructions given by the first claimant.

94. On 24 December 2021, the defendant wrote to the first claimant, copied to the other claimants and advisers, gaslighting him about his mental health: "I think you need to go and seek some deep counselling and therapy as you are clearly losing your mind. The stealing is criminal but the lying leaves me with believing that there are some deep underlying issues within you that may be causing some stress. We are worried about you.".

95. The defendant then sent an email on 25 December 2021 from his co.uk email to Mr H Weisberg, copied to the second and third claimants. The subject was "Um um um Mr H Weisberg's Christmas Message um um um" with a picture of Mr H Weisberg and a speech bubble "Seasons Greetings to Farid the Thief um um um". The next day, another email was sent from the same account to Mr H Weisberg, copied to the second and third claimants, containing a series of abusive statements about the first claimant and third claimant.

96. On 27 December 2021 the defendant circulated to the claimants and others a topless picture of the first claimant – which appears to be a personal holiday photo – adding the speech bubble: "The Definition of "winding down a company". A term invented by the Rahamim's and I. Its when you realise your broke, you've stolen money and your plan has failed because your not going to be able to nick the company".

97. On 27 December, the defendant also sent emails purporting to come from the company, accepting the first and second claimant's resignations, even though they

had not resigned. He attached letters on company letterhead, which he signed as Chief Executive. He copied these to the other claimants, company staff and others. The defendant forwarded them to more people the next day and wrote to advisers informing them of the resignation and that the first claimant no longer has authority in respect of ECL.

98. The same day, the defendant sent an abusive email to the three claimants, copied to others, with the subject "what Andrew learnt from his genius father". There was then a picture of the first and second claimants, with the second claimant saying "if we steal the deals and the management fees from Enstar and set up a new company then return on my investment when I became a director two years ago would be tremendous Farid!".

99. The same day the defendant emailed the third claimant, copied to the other claimants and some advisers, making allegations about the first and second claimant's lifestyle, accompanied by another annotated photo of the first claimant.

100. On 27 December 2021, the defendant sent an email as "Chief Executive" from his co.uk account. He blind-copied recipients including the first claimant, and it seems likely that the message was sent to many of his contacts, or was at least designed to give the claimants the impression that he was doing so. In the message he said: "we are writing to let you know that we have been made aware of communications being sent to contacts of ECL from the email [C1's email address] and is purporting to act for ECL. The domain address for all ECL matters is @enstarcapital.co.uk (not .com) and the person writing from this address is not a director of ECL. We are taking formal legal steps to deal with this matter, but in the meantimne please would you disregard any communications from this email and delete them.". The defendant said in evidence that he did this because the claimants were pretending they were still ECL, but trading through Northstar.

101. On 28 December 2021 at 10.05 the first claimant sent a global email to the firm's contacts as Chief Executive of ECL: "We are writing to that we have been made aware of communications being sent to contacts of ECL from the email address [defendant's co.uk email address]. The domain address for all ECL matters is @enstarcapital.com (not .co.uk) and the person writing from this address is not an employee of ECL. We are taking steps to deal with this matter, but in the meantimne please would you disregard any communications from this email address and delete them".

102. The defendant replied to the first claimant, copying the Family Trust, various advisers and the second claimant, stating "Nonsense. You have resigned. You are not a director and we're never Chief Executive nor by vote or any other means. This is a lie. Your email should be disregarded just as SG Hamros are disregarding your instructions. You have no authority whatsoever. Your new company is called NorthStar and Duces are aware you don't own Enstar. Cease lying and stealing. You are finished".

103. Also that day, the defendant wrote to the Family Trust, copied to the claimants and other advisers, suggesting that unless they wish to become "immersed in any possible criminal action reprisals" they should get a formal letter from Lloyds confirming that there are no issues with the transaction. The defendant said that if they do not do so, ECL will need to make its own enquiries "to protect Enstar from Farid's criminal behaviour". This email was sent from the defendant's co.uk account as ECL's "Chief Executive".

104. On 28 December 2021, the first claimant opened the defendant's private post from HMRC and wrote to third parties about the defendant's tax affairs. An hour later, he wrote to an adviser to the defendant, copied to others, with an email headed "Simon Lyons Fraud", in which he said the defendant was soon to be made bankrupt and advising her to obtain a big retainer from the defendant. The defendant was copied into these emails.

105. When giving evidence, the first claimant could not really explain why he opened the defendant's post. At one point he said that he felt he should pass on the letter to the defendant's advisers and that in doing so he was being friendly, nice and kind. He was asked why he would send out tax documents if he was terrified of the defendant, and he replied "perhaps I am a nice guy". He was then asked about the "fraud" email sent an hour and two minutes later. The first claimant said he regretted sending this. He said there had been a build-up of the harassment that week, and he "cracked" from this persistent abuse.

106. On 29 December 2021, the defendant wrote to the second claimant, copying the first claimant and professional advisers. The email was sent from his co.uk account, as "Chief Executive" of Enstar: "Dear Andrew, Directors Loan Balance. I attach a letter on behalf of Enstar Capital Limited and its group companies as both a director and majority shareholder as well as executive officer…. Wishing you and your family a very happy 2022 and best wishes to you". The attachment is a letter from Enstar signed by the defendant requesting repayment of director loans within 28 days.

107. On 30 December 2021, the defendant emailed the Family Trust, copying external advisers, the claimants and others. The email was sent from his co.uk address and was signed off as "Chief Executive". The defendant informed the Trust, falsely, that the first and second claimants had left Enstar, and said that ECL wanted to have nothing more to do with the Trust, believing it to be "defrauding HMRC as well as committing other criminal offences". He threatened to bring proceedings against the Trust for unpaid fees.

108. The same day he emailed ECL's bankers to inform them that by 26 January the first and second claimants will be clearing their director loans in the sum of £212,000 and £96,345, "prior to formal handover". This was untrue.

109. The same day, the defendant emailed the first and second claimants in respect of the consequences of their "resignation", stating that he will be informing all trade suppliers and company associates about their departure.

Period 5: Spring 2022

110. On 4 February 2022 at 11.42, the first claimant sent a global email, with addresses on bcc, providing his network with contact details for the newly launched North Star Capital Partners.

111. Just over an hour later, the defendant sent a global email, with addresses on bcc: "We are writing to let you know that we have been made aware of communications being sent to contacts of NorthStar Capital Partners from the email address [C1's email] and is purporting to act for a new company called NorthStar Capital against the business of Enstar Capital. Farid Alizadseh has been dismissed from Enstrar Capital and therefore please disregard all emails received from this address as he has no legal authority to transfer any assets or business without the consent of all existing directors. Companies House and legal authorities have been notified. We are taking formal legal steps to deal with this matter, but in the meantime please would you disregard any communications from this email address and delete them".

112. On 6 February 2022, the first claimant was having lunch at a well known restaurant, and the defendant happened to be there at the same time. Shortly after the defendant left the restaurant, with his daughter, the first claimant received two anonymous phone calls from a man with an Irish accent who said he had been asked by the defendant to call him because he owed the defendant a lot of money. He says the man told him that he had better pay because the defendant knows where the first claimant lives.

113. On or around 9 February 2022, the defendant created an email address simon@northstarcapitalpartners.co.uk, using the name of the first and second claimants' new business. He originally denied sending messages from this account, but accepted in evidence that he had done so, saying that he was entitled to do this to try and ensure that the claimants were not misleading people in the markets.

114. The defendant then sent emails from this account to the first and second claimants around practicalities for the break-up of the business, presumably so they could see that he had set up a new email address purporting to come from their new company. He then chased for responses, again using the same email, and later the same day used it to message the second and third claimants, and Mr H Weisberg with the heading "Um um um um Northstar um um um um", with a signature block stating "Simon H Lyons, Chief Executive, NorthStar Capital Partners Ltd, a subsidiary of ECL".

115. On 11 February 2022, the first claimant received another anonymous call, which he did not answer. Shortly afterwards, Northstar's Executive Assistant took a call from someone calling himself Ian West. She told the first claimant that "he said that you don't know who he is but its about a phone call you received last week, and you

did nothing about it and that he will come to the office, and it will not be pleasant. He did not leave a number but he said "he knows how to contact you". On 28 February 2022, the Executive Assistant took another call, she thinks from the same person as last time: "He said that you must call Simon immediately, there is no other message". The police were notified.

116. On 30 May 2022, the first claimant received confirmation that he had been accepted for a loan, that he did not apply for. The first claimant believes this was the defendant, although there is no evidence to support this.

Period 6: June – August 2022

117. Around this time, the defendant set up another email account, this time northstarcapitaluk@outlook.com. He then used this to send emails to third parties. None of these emails were sent out in the defendant's name, and some were signed with the company name North Star Capital Partners Limited. The defendant admits creating and using this email account, and that he had no entitlement to hold himself out as representing Northstar. He says he set up the account to stop money being taken from ECL. He denied that he was impersonating Northstar when he sent emails without including his name, saying that he was really dealing with ECL business. He explained in evidence that Northstar was not a bone fide company, and what he was saying was true, so he could not accept that he was being deceptive.

118. On 16 June 2022, the defendant contacted the Economic Crime Prevention at Lloyds Bank, copying correspondence to ECL advisers. He wrote from his co.uk account and signed off as the company's Chief Executive, so this would have appeared to be a formal communication from ECL. The email suggested that the £440,000 payment received had been for the surrender of the lease (which is not correct) and the defendant said that his view, and that of his advisers at the time, was that this was potentially fraudulent. He said that the first claimant had refused to notify the bank and that ECL had taken steps to sever ties with the first claimant and was now taking action against him with the police and two major financial institutions for misappropriation of company assets. He noted that the first claimant continued to pose as a legitimate and reputable property investor.

119. The defendant sent a similar letter to the second claimant's father in law on 30 June 2022, from his Northstar Outlook account. The father-in-law replied and asked him to stop messaging him "I find the contents of your messages a form of harassment, which is causing me stress and anxiety. These emails have been forwarded to the Metropolitan Police".

120. Matters then escalated considerably.

121. On 24 June 2022, the defendant lodged reports with the serious fraud office and HMRC. He received confirmation of this and forwarded the confirmation emails to the second claimant's father in law and his wife on 3 July 2022, together with confirmation from the Met's specialist crime team that it was investigating fraud. He

also sent a further email to the father in law confirming that he has also reported the second claimant to the Insolvency Service. The emails that he sent did not include his name and were sent from Northstarcapitaluk@outlook.com.

122. On 6 July 2022, the defendant contacted the second claimant to ask if ECL funds had flowed through his bank account. He also told the second claimant that he had got a business turnaround specialist to identify the second claimant's personal bank account details "which we believe must be the account that will flow funds between the Northstar account and his personal account and which the management fees from Enstar have been diverted to".

123. On 8 July 2022, the defendant wrote to the compliance team for the solicitors who handled the Lloyds deal and sent a series of letters to a partner at the firm.

124. The defendant's statement confirms that on 18 July 2022 he:
    a. Reported the claimants to the SFO for fraud and money laundering
    b. Reported the claimants to action fraud for the misappropriation of company property and the attempt to submit fraudulent and misleading accounts to HMRC
    c. Reported the claimants to HMRC for tax evasion.

125. There is no evidence before the court that any of these complaints have resulted in any action being taken by the organisations in question against the claimants.

126. On 18 July 2022, the defendant sent further details of the report he had made to HMRC (about the Lloyds matter) to the second claimant's father-in-law.

127. On 23 July 2022, the defendant's old Enstarcapital.com email account – from when he worked at the company – received an email from Amazon. This confirmed that the defendant had purchased a "digging shovel", a "digging spade" and play money for a children's bank - which he had arranged to be delivered to Brecher. Brecher have confirmed that they received two shovels, fake money, farm manure and handcuffs, and that they reported this to the police.

128. The defendant denies that he ordered these items but was unable to provide a convincing explanation about how his personal Amazon account came to be used. Looked at in the context of the wider dispute, and the allegations being made by the defendant at the time about the firm, I am satisfied that he sent them. He would also have known that this would be reported back to the Family Trust and the first claimant.

129. On 23 July 2022, the defendant started circulating copies of his complaint to HMRC about Lloyds more widely. He sent this anonymously from his Northstar outlook account to a number of the claimants' customers (copying lawyers), and the third claimant.

130. On 3 August 2022, the defendant sent the HMRC complaint to the Family Trust, again from his anonymous Northstar Outlook account. He also sent the complaint to Property Week, copied to solicitors, as well as The Sun, the SRA and the Legal Ombudsman.

131. The second claimant confirmed that between 4 and 16 August 2022, the defendant sent over 40 emails to at least 42 different recipients claiming that the second claimant and his wife were being investigated for misappropriating money from a number of companies and depositing money into personal bank accounts. He also accused them of possible money laundering and tax fraud, with some emails containing screenshots of complaints he had made to the police. The defendant wrote to the wife at her work address, and solicitors needed to assist to reassure her employer. On 16 August, the defendant contacted the second claimant's wife again, despite being asked to stop. The defendant also sent or copied around 40 emails to the second claimant's father in law making similar allegations, and to lenders to the father in law's business. Of these communications, the following are of note:

132. On 4 August 2022, the defendant wrote to Jewish Care from his Northstar outlook account (with a Northstar signature block) accusing the second claimant and his wife of misappropriating funds and urging caution when dealing with them or accepting money from them. He sent similar messages to the local Synagogue, copied to the third claimant, and further emails alleging money laundering and tax fraud. He also sent emails to Lloyds and wrote to the law firm's insurers.

133. On 5 August, the defendant sent fifteen similar emails, this time also making allegations against the third claimant. These were sent to a variety of professionals, a synagogue, Jewish News, and were copied to the second claimant's father in law and the third claimant. The emails also included allegations about the second claimant's father in law. One of the examples was headed with the names of the second claimant and his wife and then continued "The above two individuals are directors of Rahamim consultants. It has been alleged and is currently being fully investigated that money has been misappropriated without authority from a number of companies and has been deposited into their personal bank accounts. There are also concerns around possible money laundering and false accountancy as well as tax fraud. Some of the money has potentially been rerouted through the account of Michael Rahamim, a known Jewish businessman from st johns wood as well as [the second claimant's father in law], a low ranking non-descript property developer of [company name] whos daughter is the recipient of some of the stolen money. We will shortly be announcing a formal response to these allegations including a judgement on these individuals. In the meantime please exercise all caution in dealing with both these individuals."

134. It is of note that the defendant made the communication look as if it was coming from Northstar, even using language to suggest (falsely) that it was the company that was conducting the investigation.

135. The next day, 6 August, the defendant continued to send out messages, including to the Mirror, the Variety Club, and various businesses. On 7 August there was a new

complaint to the national crime agency, alleging fraud against the second claimant and his wife: "He is a very dangerous conman and comes from a family of tax cheats". He then sent copies of his complaint from the bogus Northstar outlook account to Lloyds, the Family Trust, and others. This then carried on, with fifteen emails sent on 8 August to various third parties, and twenty three emails sent on 9 August, including to the BBC, Channel 4, various banks, professional advisers and clients. These were all sent from the defendant's anonymous Northstar account.

136. After a short pause, the defendant resumed his email activity on 16 August 2022. He sent sixteen emails, many from his anonymous Northstar account. These included emails circulating his SFO complaint about the second claimant and his wife to family and others including the media and the second claimant's wife (and family). He sent his HMRC complaint about the tax status of the Family Trust to lawyers and Trust staff, and sent his HMRC complaint about the third claimant's tax status to Retail Week, Towerbrook (his employer), and the second claimant's in-laws.

137. The claimants' solicitors, Goodwin, wrote a letter of claim to the defendant on 16 August 2022. This was sent because the claimants believed that the harassment was getting worse, with evidence that the defendant was also involving the claimants' families, friends, employees, advisers and business associates. The first claimant's evidence explains that the actions of the defendant had reached an intolerable level, which he did not believe would cease without a court order.

138. The letter made no difference. On 17 August, the defendant sent a further twenty-two emails, and on 18 August, a further twenty-three. Further emails were sent in the following days, escalating to thirty-one emails being sent on 22 August, and fifty-five on 23 August. These included the defendant forwarding to various media and third parties the T&H "stolen" letter. He also sent a faked 'out of office' pretending to be from first claimant "I am currently on leave and will be checking my emails via a burner phone. I will probably will never be returning. If the matter is urgent please contact the police". He also sent a number of emails to the claimants themselves including to the third claimant alleging fraud by all three claimants and suggesting the first and second claimants were going to prison.

139. Within the messages sent on 23 August, were a number addressed to the third claimant. One of them contained a serious threat: "According to my advisers you own 266,300 shares in [company X] (Us listed retailer) which has a market value of USD 4,524,437 at current price. I am sure these shares could be sold immediately so they can cover some of the money that Andrew has stolen from ECL. We also understand that [address] is owned by your wife… Please can you provide us with an up to date market value and what level of mortgage you hold on the property…. Should we not receive the money that has been stolen by your son back in the ECL account by 5pm this Friday then we will have to inform the US stock exchange that we suspect the share purchases you made were using ECL monies". I note there is no factual basis for suggesting that the third claimant had received ECL money, nor used it to purchase shares.

140. Proceedings were issued on 23 August 2022. The defendant's then solicitors replied on 14 September 2022. They pointed out that it appeared that the claimants' real complaint was one of defamation, that interim relief would not therefore be available, and that the claimants were seeking interim relief to silence the defendant without any proper or detailed examination of the merits.

141. On 16 September 2022, the defendant gave interim undertakings to the court in respect of his conduct until trial, without admission of liability.

Goodwin

142. The defendant has also focussed attention on the claimants' lawyers in these proceedings.

143. On 19 August 2022, he reported the partner at Goodwin to the police for "perverting the course of justice by attempting to smoke screen his clients' criminal activities", and for seeking an interim injunction preventing the disclosure of issues. Needless to say, this unmeritorious complaint did not get anywhere.

144. On 20 October 2022, ECL's bank contacted the defendant about a small overdraft on ECL's bank account. The defendant replied the same day and directed the bank to Goodwin and said that they would be arranging for the transfer of funds. The defendant would have known this to be untrue.

145. Goodwin replied to this message on 9 November 2022. An associate at the firm wrote to the bank on behalf of the first and second claimants. She explained that the defendant's communications were part of a campaign, and his most recent email from him, "yet another attempt to air his grievances in an inappropriate forum". The lawyer explained that the overdraft was the responsibility of the defendant.

146. On 9 November 2022, the defendant reported the Goodwin associate to the Solicitors Regulatory Authority. He claimed that she had "tried to instruct and mislead the bank into believing that they had authority to give instruction". He also said to the SRA that Goodwin was "impersonating the company" and misrepresented matters that it knew not to be true. This correspondence was sent from his co.uk email address and signed "Chief Executive Enstar Capital Limited", and so it would have given the SRA the false impression that this was a complaint by a company about its own lawyer.

147. On 5 January 2023 – so in the midst of this litigation – the defendant wrote to the Goodwin associate directly stating that to email a bank pretending to be speaking for a company is "misrepresentation with intent to commit fraud". He threatened the firm by stating that the SRA investigation could affect the named associate's career and suggested that she should be honest and transparent. He told the associate that the SRA will want her files, and as he has made a complaint she was now conflicted from being involved in the litigation. The defendant then stopped copying the associate

into emails to Goodwin about the case, even though he was fully aware that she was the lawyer handling matters on a day to say basis. He later said to the partner at Goodwin that the SRA were investigating the associate "for serious offences".

148. There is nothing in the documents that I have seen that would have justified this attack, the complaint to the SRA, the claim of conflict, or the threats of repercussions.

The effect of communications

149. The first claimant's statement explains how the defendant's actions have had a serious effect on him, affecting his sleep, and making him scared that the defendant would move on to target his wife and children. He arranged for security to look out for the defendant and had to spend a significant amount of time writing to people about false assertions.

150. The first claimant explained in evidence that the day he really started experiencing fear was when the defendant "smashed the office up" and they had to change the locks. He did not issue proceedings straightaway because he thought the defendant's behaviour would stop.

151. The first claimant comes across in the documents as being a robust individual. We have already seen how he discussed one of the firm's clients with the defendant. On another occasion, on 30 April 2019, he discussed a squatter with the defendant, and then asked him "Shall I arrange some heavies to deal with this CUNT?". He took robust decisions to remove the defendant from the business, in full knowledge of the defendant's character and likely reaction. Having studied law at college, he felt confident enough to embark on the disciplinary process without professional advice, and to take decisions about the payment of ECL funds to the SPV. He even sent the defendant a LinkedIn connection request during autumn 2021, claiming in evidence that his finger slipped. He was unable to give a truthful explanation for this, nor for why he told third parties about the defendant's tax affairs.

152. The first claimant also came across as rather over-confident in the witness box, which I acknowledge might in fact be nerves. He was deliberately provocative at times. At one point the first claimant told the defendant that he thought he would "change [his] wicked ways" and said that after receiving the letter of 16 August "a normal human being would have stopped".

153. The second claimant presented very differently. In messages and other communications, he comes across as polite and professional. He also came across well in the witness box, answering questions in a straightforward, unassuming manner. In his evidence he explained how he started to dread emails and stopped being able to sleep. He was particularly affected by the impact of the defendant's behaviour on his wider family. He looked visibly upset in the witness box, and said he too started feeling scared and terrified when the defendant smashed up the office.

154. The third claimant says he found what was happening disturbing. He explained that he felt harassed, stressed and distressed from the harassment, and also fearful. He explained how the defendant had targeted a business that he was involved in, a charity and personal friends. The defendant had also sent emails to the New York Stock Exchange making allegations of serious criminality. For one company that he chaired, the third defendant had to get lawyers and provide bank statements in response to allegations. The third claimant said that he was not able to do his job whilst matters were looked into. He described the fear of the loss of his job, and his reputation. He was also worried because his other son had also been targeted.

155. I accept the evidence that the second and third claimants have given on the effect of the defendant's actions on them. I am satisfied that they both suffered harm, including alarm and significant distress.

156. The second claimant appears to have experienced the greatest harm – he was targeted early on by the defendant and subjected to insulting, belittling, and bullying behaviour. He was then the focus – with his wife – of a great many of the communications. The defendant also targeted the second claimant's wife on her own account, then his father, his father-in-law and even his mother-in-law.

157. In respect of the first claimant, I have noted some issues with his evidence, and I remind myself that just because he was untruthful in evidence on some matters, it does not follow that was lying on others. The lies that he told were about the way in which he communicated with the defendant during the period in question. Some of the things the first claimant did might suggest that he was not, in fact scared of the defendant, or wary of him, to the extent that he has claimed. The first claimant appeared unable when giving evidence to just admit that at times he was able to stand up for himself and fight back.

158. I recognise that the first claimant is a businessman. I rather got the sense that the sector in which he operates can be quite challenging at times, requiring a degree of robustness and strength of character, which I am sure sometimes spills over into the way that he comes across. Whilst I do not think he has been affected to the same extent as the second, or even the third claimants, I am still satisfied that he found the harassment distressing, that he feared for the safety of his family, and that he suffered harm as a result.

Harassment

159. The relevant statutory provisions are found in the Prevention of Harassment Act 1997 ("the Act"):

a. A person must not pursue a course of conduct which amounts to harassment of another, and which he knows or ought to know amounts to harassment of the other: s.1(1).

b. A course of conduct in relation to a person must involve conduct on at least two occasions in relation to that person: s.7(1). "Conduct" includes speech: s.7(4).
c. References to harassing a person include alarming the person or causing the person distress: s.7(2)
d. The person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to or involved harassment of the other: s.1(2)
e. A course of conduct is not unlawful 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: s.1(3).

Defamation?

160. The defendant says that the claimants should have sued him for defamation, not harassment, and that they have done this to avoid consideration of the merits of the allegations that he has made. It is certainly the case that the first and third claimants recognised in evidence that the allegations being made were harmful to their reputation. It is of course the case that many harassment claims relating to campaigns of vilification will involve defamatory statements.

161. In ***Khan v Khan*** **[2018] EWHC 241 (QB)** Nicklin J said at [69]: "…If the applicant has a complaint about what has been said, then it is to the law of defamation (for example) that s/he must turn. For harassment, the harassing conduct must come more from the manner in which the words are published than their content."

162. I am satisfied that these proceedings were properly brought in harassment, rather than defamation. The main problem with the defendant's conduct was the relentless and escalating campaign that he was waging against the claimants. The claimants did not know what the defendant would do next, or who he would contact. The complaint is very much about the manner in which the words were published, and the impact of the entire course of conduct on the claimants, rather than harm caused by the content of specific messages. Many of the acts complained of would not, in any event, give rise to a claim for libel. Some are not acts of publication, for example the setting up of false internet domains. Quite a number would not be actionable because they are abusive rather than defamatory.

Did the defendant engage in a course of conduct?

163. In this case, the claimants rely on a series of communications. Some of these were sent to one or more of the claimants directly, but many were not sent to the claimants at all or were sent to just one or two of them. It is also apparent that some

of the recipients of these communications, for example the partner at Brecher, were also being targeted by the defendant for their alleged role in perceived wrongdoing.

164. It is not necessary for the course of conduct complained of by each claimant to be limited to conduct that is specifically targeted at them. Provided the conduct is targeted at someone, then the claimants can rely on it providing it was foreseeably likely that they would be directly harmed by the course of conduct, to the extent that they can properly be described as victims of it. Harm in this context includes, but is not limited to, alarm and distress. See ***Levi v Bates*** **[2015] EWCA Civ 206** at [27] – [34] per Briggs LJ.

165. I am satisfied that the defendant pursued a course of conduct in respect of all three of the claimants:

a. Each of them was the recipient of a series of abusive, threatening and at times menacing messages, many written using aggressive and exaggerated language or alleging that they had committed criminal offences.

b. Each of them was copied in on messages to third parties, in which the defendant made serious allegations about them, suggesting that these matters merited investigation by the authorities, or that they should be avoided.

c. Where these messages were not copied to the claimants directly, they were usually copied to advisers associated with the claimants. I am satisfied that the defendant would have appreciated that it was foreseeably likely that the claimants would be told about these messages, either by the advisers or the recipients of the messages, and that it would cause them alarm and distress.

d. The defendant created bogus email accounts in the name of Northstar, a company that had nothing to do with him. He then sent messages purporting to come from the company. Again, he copied these to either the claimants, or the advisers and family, and would have known that the messages would have come to their attention and caused them alarm and distress.

e. The defendant sent messages to the claimants and third parties in the name of ECL, deliberately seeking to disrupt the company's business. He sent false letters to the first and second claimants accepting their resignation, and false and misleading communications to the company's bankers and clients, making sure that the claimants knew what he was doing.

f. At times, the defendant sent messages to the first and second claimants to ensure that they were aware of communications he was having with third parties. For example, he (i) sent them confirmation of registering internet domains; (ii) sent them emails from the bogus Northstar accounts; and (iii) explained that he was going to provide their contacts and business connections with false information (eg 23 and 30 December 2021).

g. The defendant told the second and third claimants that he had been researching their private finances, even using the services of a third party agency.

h. The defendant attacked the second claimant's wider family, targeting the second claimant's wife and father-in-law. It was foreseeably likely that the second claimant would find out about the messages, and that this would have an effect on relationships within the family and cause the second claimant significant distress. To a much lesser extent, the defendant also attacked the first claimant's wider family, in particular the Family Trust and the first claimant's father.

i. The defendant repeatedly attacked the professional advisers working with the claimants, or the Family Trust, threatening to sue one firm, reporting two firms to the SRA and purporting to sack advisers on behalf of ECL when he had no power to do so. He also sent offensive gifts to the firm who had acted for the Family Trust on the Lloyds transaction. There are also the attempts to threaten and pressurise Goodwin during the course of this litigation, which I am satisfied the defendant has done to try and get them to stop acting. Again, whilst these are examples of the defendant targeting named lawyers in law firms, it would have been foreseeably likely that these complaints would have been brought to the claimants' attention, and that this would cause them alarm and distress.

Did the course of conduct amount to harassment?

166. The Supreme Court has considered what constitutes harassment:

a. *In* ***Hayes v Willoughby*** **[2013] UKSC 17**, Lord Sumption said that harassment is "… an ordinary English word with a well understood meaning. Harassment is a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress."

b. In ***Majrowski v Guy's and St Thomas's NHS Trust*** **[2007] 1 AC**, Lady Hale said at [66]: "All sorts of conduct may amount to harassment. It includes alarming a person or causing her distress: section 7(2). But conduct might be harassment even if no alarm or distress were in fact caused. A great deal is left to the wisdom of the courts to draw sensible lines between the ordinary banter and badinage of life and genuinely offensive and unacceptable behaviour."

c. Also in ***Majrowski***, Lord Nicholls said at [30]: "[Where] the quality of the conduct said to constitute harassment is being examined, courts will have in mind that irritations, annoyances, 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…".

167. It is the course of conduct, taken as a whole, that must have the quality of amounting to harassment, rather than individual instances of conduct. The course of conduct cannot be reduced to, or deconstructed into, the individual acts, taken solely one by one: ***Iqbal v Dean Manson Solicitors*** **[2011] EWCA Civ 123** at [45].

168. Whether a course of conduct is oppressive and unacceptable is to be objectively judged, ***Dowson v Chief Constable of Northumbria Police*** **[2010] EWHC 2612 (QB) at [142]**. In ***Hourani v Thomson*** **[2017] EWHC 432**, Warby J (as he then was) noted at [141] that the need to consider matters from an "objective standpoint" is important, not least when it comes to cases where the complaint is of harassment by publication, which engages Article 10. The judge noted the observation of Tugendhat J in ***Trimingham v Associated Newspaper*****s [2012] EWHC 1296** at [267] that "[i]t would be a serious interference with freedom of expression if those wishing to express their own views could be silenced by, or threatened with, claims for harassment based on **subjective** claims by individuals that they feel offended or insulted" (emphasis added).

169. Where conduct complained of consists of, or includes, speech or published material, it is necessary to consider what are often competing rights to respect of private and family life (Article 8) and freedom of expression (Article 10). Both are qualified rights. The approach to be taken by the court was set out in ***Re S (A Child)*** **[2004] UKHL 47** per Lord Steyn at [17]: "First, neither article has as such precedence over the other. Secondly, where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience I will call this the ultimate balancing test."

170. Some of the messages complained of, looked at in isolation, are unremarkable, evidencing business disagreements, robust negotiations and posturing over settlement, with some vulgar and unsavoury language. However, when the entire course of conduct is looked at, it is apparent that this was a prolonged attack on the claimants lasting over a year. It was wide ranging, covering not just the claimants' professional lives, and the claimants' abilities, but also matters relating to the private sphere of their lives – their relationships with spouses and wider family, their personal characteristics, background and cultural identity, their private financial affairs, the first claimant's social activities, their integrity, and the first and second claimants' image. It also extended to those providing professional support to the claimants, including their lawyers and clients, indeed anybody who came into the defendant's orbit. The attack contained extreme and exaggerated language and escalated over time with significant repetition. We can see how the defendant also tried to gaslight the first claimant about his mental health and sought to demean and humiliate the second claimant.

171. There is a defence to the claim if the defendant can prove that in the particular circumstances the course of conduct was reasonable: s.1(3)(c) of the Act. This is an objective requirement, ***R v C (Sean Peter)*** **[2001] EWCA Crim 12151** at [21] and ***Hayes v Willoughby*** **[2013] UKSC 17** at [11], [24] and [26].

172. Reasonableness is be assessed by reference to the particular circumstances that prevailed at the time the course of conduct was pursued. It must be interpreted and applied in such a way as to strike an appropriate balance, giving due weight to the competing convention rights. The exercise of freedom of speech should only be found to involve unacceptable harassment if certain stringent conditions are clearly satisfied, although the burden of proof for any defence lies on the defendant ***Hourani*** (supra) at [208], [213] and [185].

173. In ***Hourani***, Warby J also considered the relevance of truth when considering a defence under s.1(3)(c):

> "187. In many cases of alleged harassment by publication the truth or falsity of what is said may not be of great consequence. It did not matter in Thomas that it was true to say of the claimant that she was black. Her complaint was of harassment by reference to her race. Nor did it matter in Law Society v Kordowski [2011] EWHC 3185 (QB) [2014] EMLR 2 where Tugendhat J was able to say, at [133], that "Even if there were evidence that the allegations were true, the conduct of the Defendant could still not even arguably be brought within any of the defences recognised by the [1997 Act]. No individual is entitled to impose on any other person an unlimited punishment by public humiliation such as the Defendant has done, and claims the right to do. His conduct is a gross interference with the rights of the individuals he names".
>
> 188. Truth is not a defence to harassment. But "the falsity or inaccuracy of the words (the course of conduct complained of) is not irrelevant...": Kordowski [164]. Mr Hudson is right to submit that in this case proof of truth would be relevant to a defence under s 1(3)(c), though it would not necessarily be sufficient to sustain such a defence. The question of whether, or to what extent, the allegations made are true is a factor going to the "comparative importance" of the specific rights being claimed by the defendants. It is capable of being a significant factor…"

174. The Chancery Division will be looking at the truth of many of the defendant's other grievances against the first and second claimants. The case before me has not been presented in a way that would allow me to make findings on the truth of each of the matters alleged by the defendant: there has not been disclosure of documents, and the witness statements understandably did not deal with the detail of the wider commercial dispute.

175. As noted above, on the material before me, there is nothing to suggest that there was any issue in respect of Lloyds Bank, nor that the claimants had "stolen" £600,000 of ECL's money. Some of the other matters raised by the defendant are much less

clear, for example whether it was appropriate for him to be ejected from the business in the way that he was, the timing of the first and second claimants setting up new companies, the way in which the first and second claimants transferred their business operations to another corporate entity, the decision to pay ECL funds into the SPV's bank account, and the way in which the claimants have accounted for the £600,000. It may be that the defendant's complaints are groundless, or there is something in them. The claimants say that even if the defendant's complaints are true (which they do not accept), then what he did still amounts to harassment. I will, therefore, proceed for the purposes of this judgment on the basis that the defendant has a legitimate grievance about the business issues that he has identified, whilst recognising this is a matter for the Chancery proceedings.

176. In these circumstances, I consider it would have been objectively reasonable for the defendant to respond robustly to the first and second claimants' actions. Recognising the defendant's article 10 rights, this would include him using a degree of vulgar and unmoderated language, and showing a degree of anger at what had happened. Subject to any duties under company law, it would also have been objectively reasonable for the defendant to contact third parties – advisers, clients, bankers, and others – and explain what has happened, to protect his business interests, and indeed the interests of his clients.

177. This is not, however, what the defendant did.

178. It is significant that most of the recipients of the defendant's messages had nothing to do with the wider dispute over the future of ECL, or the way in which the defendant had been pushed out of the company. The defendant's messages said little about the wider business dispute. Many of the messages were simply attacks on the characters of the two people he had been happy to be in business with for many years, or on their wider families, including the third claimant.

179. The scale of the attack is also significant – not just in terms of the duration and the volume of communication, but the way the defendant broadened his attack to cover the claimants' family and professional network, and then extended to cover a range of third parties.

180. The course of conduct also included the deception of third parties, for example telling others about the first and second claimants supposedly resigning from ECL, which was simply untrue, or sending emails in the name of Northstar, to trick recipients into believing that the message was genuine.

181. Stepping back, and looking at matters objectively, there has been a significant interference with the Article 8 rights of each claimant. They have each been the subject of a sustained attack in respect of the personal and professional lives. Whilst recognising the defendant's rights of freedom of expression, I am satisfied that the course of conduct in this case, in respect of each claimant, was oppressive and unacceptable and went way beyond that which could be objectively considered

reasonable. Each course of conduct was objectively likely to cause each claimant alarm and considerable distress and did in fact cause such harm to each of them.

182. I am also satisfied that the defendant knew that his conduct would have a harassing effect on each claimant, indeed I am satisfied that this is what he intended.

a. The evidence suggests that once removed from the company, the defendant did anything he could to cause harm to the claimants. We can see from the evidence that at times the defendant actually acknowledged that this is what he intended doing – see for example 10 June 2021 and 9 August 2021.

b. He then persisted in making a series of increasingly lurid allegations against them to an array of third parties, in my view intending to cause as much disruption and harm to the claimants as he could. He attacked their professional advisers, no doubt to make them less likely to continue to act for them. He would also have known that the messages would disrupt the claimants' businesses, and that this was one of the reasons that he sent them.

c. When the defendant was warned by solicitors on 16 August 2022 that what he was doing constituted harassment he kept on going – indeed he stepped up what was by then a relentless campaign.

d. He persisted in making allegations, even when he would have known that they were untrue, which again suggests that his intention was to cause harm to the claimants. We see this with the Lloyds issue – I also do not believe that the defendant's concerns were genuine, or that he misunderstood the difference between the two transactions. Even when the correct position was set out for him, he continued to raise this issue repeatedly, alleging serious criminality and using ever more dramatic or serious language. Similarly with the payment of £600,000, the defendant continued to make serious allegations, even once informed by solicitors what was happening with the money.

183. Even if I had not reached this conclusion, I would have found that, assessed objectively, no reasonable person in the defendant's position could have been in any doubt that the steps being taken were harassing the claimants and going to cause them significant alarm and distress.

<u>Relief</u>

184. The undertakings given by the defendant in September were drafted broadly. They made no reference whatsoever to harassment, and simply sought to impose a ban on the defendant communicating with certain persons, namely:

a. The claimants, except by way of "bona fide" communications to their solicitors.
b. The claimant's relatives and a list of thirteen persons, "in relation to the claimants (including for the avoidance of doubt, in relation to the claimants

personally and in relation to their professional, business and charitable dealings) except by way of bona fide solicitors retained by the defendant".

c. A list of 107 companies and organisations, or any parent, subsidiary or affiliated company of those organisations "in relation to the claimants (including for the avoidance of doubt, in relation to the claimants personally and in relation to their professional, business and charitable dealings) except by way of bona fide solicitors retained by the defendant". The list of companies and organisations is extensive, including a number of law firms, business associates, contacts and clients of ECL and/or the parties, charities, community and religious organisations (including named synagogues), media organisations, a golf club, a college and other companies and individuals.

185. The undertakings also prevented the defendant from threatening violence against the claimants, their relatives and the thirteen named individuals.

186. The undertaking did not prevent the defendant making disclosures to law enforcement agencies and regulators, or making any disclosure required by law.

187. The claimants now seek an injunction in the same terms, save for the addition of an express prohibition on the defendant harassing the claimants (or named individuals), or procuring etc another person to do so.

188. The claimants are clearly entitled to some form of injunction, having been successful at trial and established that they were caused harm by the defendant's harassment of them. I am very clear that if the defendant had not given undertakings last year, he would have continued his campaign against the claimants, and if the restrictions are lifted, he is likely to resume that campaign.

189. The undertakings have worked because they impose a clear, unambiguous prohibition on the defendant referring to the claimants in any way when communicating with the claimants' family and the named people and organisations.

190. The terms of any order do, however, need to be proportionate and give due weight to the competing convention rights. The restrictions sought primarily restrict the defendant's freedom of expression, limiting the way in which he can communicate not only with the claimants, but also their families and a long list of other persons and organisations.

191. There are two issues, in particular, that are relevant when considering the scope of any injunction to protect the first and second claimants.

192. Firstly, it needs to be recognised that there is a business dispute between the defendant and the first and second claimants. They are now competitors. The defendant says the list of people and organisations include a great many of his business contacts. Whilst the restrictions do not prevent him from contacting them, he would be very limited in what he could say about what happened to ECL. He would also not be able to explain to contacts why, for example, they should continue

to do business with him, rather than the first and second claimants. In other words, it might affect his ability to compete fairly for business.

193. Secondly, we also have the forthcoming Chancery trial. If the court finds that there has been any wrongdoing by the first and second claimants, then again this is something that the defendant might want, or need, to be able to follow up himself with any professionals who had been involved with ECL that are named on the list. He also needs to be able to obtain evidence for use in those proceedings.

194. The proposed order does, however, also seek to narrow the restrictions in two important respects.

195. Firstly, the proposed injunction does not seek to regulate how the defendant communicates with the world at large, beyond the general prohibition on harassing the claimants. The restrictions only relate to the defendant's communications with the defined list of named organisations and family members, and then only to the extent that he refers to the claimants.

196. Secondly, in respect of that defined group, the defendant can still say things about the claimants, however he must do so through solicitors. So it would, for example, be permissible for him to ask lawyers to write to contacts and customers, and refer to the claimants in that letter, providing the letter itself did not constitute harassment of the claimants. This does, however, mean that if the defendant cannot afford a solicitor - or cannot find one who is prepared to say the things he wants - then he will not be able to communicate with the named people and organisations about the claimants, even if there are legitimate things he wants to say.

197. An alternative might be for an injunction to seek to identify the matters which the defendant is not permitted to say about the claimants, but I think this is problematic. This is not a defamation action about what the defendant has been saying about the claimants. It is a harassment action about the defendant's behaviour towards them, and any relief granted by the court should therefore be targeted at this behaviour. Seeking to define what the defendant can and cannot say would arguably be a more significant interference with his Article 10 rights than imposing the restrictions sought by the claimants.

198. Having considered the form of the injunction carefully, I am satisfied that the claimants' proposals are probably the most proportionate way of respecting the competing rights of the parties. They provide protection for the claimants against being caused further harm, not only through the specific restrictions, but through the wider catchall preventing any harassment. They allow the defendant to communicate with the named people and organisations in any way he likes, providing he does not talk about the claimants, and even then he can do this through solicitors. It also allows him to speak to anyone else about anything he wants, providing it does not constitute harassment of the claimants. Whilst I acknowledge this might make it difficult for the defendant to explain to his contacts what has happened with the first and second claimants, it needs to be recognised that he orchestrated a significant

campaign of harassment against them, and the claimants have demonstrated that it is necessary for restrictions to be put in place for their protection.

199. I am going to change the list of protected organisations and individuals. I cannot see any basis for law firms and accountancy firms to be included in the list. There may be good reason why the defendant needs to be in contact with them, particularly if they have acted in the past for ECL or done business with the defendant. These firms operate in professional, regulated environments. They have regulatory processes for handling complaints and will know when they are permitted to close-down correspondence. If staff at the firms themselves consider that they are being harassed, they can of course take their own protective measures.

200. I do also need to invite parties to find a way of ensuring that the defendant can prepare properly for his Chancery proceedings in the event that he is not represented by lawyers.

Mediation

201. There is still an unresolved business dispute between the first and second claimants, and the defendant. It needs to be resolved as soon as possible to allow the affairs of ECL to be settled, and the parties to go their separate ways. The case is crying out for mediation. Most commercial litigation lawyers will know of cases which they considered to be incapable of settlement, but which have been resolved through the skill and perseverance of an experienced commercial mediator. I hope all parties will reflect on their position and get professional assistance – from a mediator or through another form of ADR – to resolve the wider dispute between them.