Neutral Citation Number: [2024] EWHC 544 (KB)

Case No: KB-2023-001023

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/03/2024

Before :

MRS JUSTICE TIPPLES DBE

- -

Between :

DR THEODORE PIEPENBROCK **Claimant**

- and -

(1) PAUL MICHELL **Defendants**
(2) THE LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE
(3) MARTIN MCLEISH
& 49 OTHER DEFENDANTS

- -
- -

Mr Garry Piepenbrock, addressing the Court as McKenzie Friend for **the Claimant** on 18 December 2023. **The Claimant** not appearing and not being represented on 19 December 2023.
Miss Kate Wilson (instructed by **Womble Bond Dickinson (UK) LLP**) for **the First and Third to Fifty-Second Defendants**
Miss Mariyam Kamil (instructed by **Pinsent Masons LLP**) for **the Second Defendant**

Hearing dates: 18 & 19 December 2023

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JUDGMENT

This judgment was handed down remotely at 10.30am on Wednesday 13 March 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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The Hon. Mrs Justice Tipples DBE:

Introduction

1. On 20 February 2023 the claimant, Dr Theodore Piepenbrock ("**Dr Piepenbrock**"), issued a Part 7 claim form against:

    a. the first defendant, Paul Michell ("**Mr Michell**"), a practising barrister and a member of the barristers' chambers known as "Cloisters", which are based in the Temple, London ("**Cloisters**");

    b. the second defendant, the London School of Economics and Political Science ("**the LSE**"); and

    c. fifty further defendants who are, or were, members of Cloisters ("**the Barrister Defendants**").

2. The claim form was amended in October 2023 in order to identify Dr Piepenbrock's address as being in Palo Alto, California, United States of America. The amended claim form was served on the defendants by email on 7 November 2023. The claim form identifies that Dr Piepenbrock is vulnerable as he is a mentally-disabled autistic person.

3. The brief details of claim are set out in the claim from in the following terms:

    > "The claimant claims compensation for personal (and psychiatric) injury, loss and damage arising from negligence and/or breach of statutory duty and/or intentional infliction and/or defamation (libel) in accordance with the Defamation Act 2013 and/or malicious falsehoods in accordance with the Defamation Act 1952, and/or harassment under the Protection from Harassment Act 1997 (including harassment by publication).
    >
    > These arise from (inter alia) defamatory statements and malicious falsehoods about the claimant, some originally made by the [LSE] and repeated by [Mr] Michell of Cloisters Chambers, an agent acting on behalf of the LSE for whom the LSE and Cloisters Chambers are therefore vicariously liable, and by Cloisters Chambers (its constituent members), the organisation which published Mr Michell's and the LSE's defamatory statements on their public website, noting that Cloisters Chambers owes a duty of care for the claimant as they represented him in ongoing litigation in the Employment Tribunal against the LSE, for whom Mr Michell is also acting".

4. The draft particulars of claim dated 1 May 2023 identifies the part of the website that Dr Piepenbrock complains about, which is a statement on the Cloisters' website profiling Mr Michell. The statement said:

"**DISCRIMINATION / WHISTLEBLOWING**.

- ***Piepenbrock v LSE*** **(2021) - Tribunal: EAT** - Paul represents the LSE in this disability discrimination claim, the liability hearing for which is scheduled over 7 weeks in 2022. The Claimant has already fought and lost a High Court personal injury claim in respect of many of the matters at issue, and his related defamation claim was recently struck out. He seeks over £10 million. For press coverage see here." [linking to the Mail Article]

5. I shall refer to this statement in this judgment as "**the Website Profile Entry**".

6. Dr Piepenbrock's case is that that the Website Profile Entry gives rise to six causes of action against not only Mr Michell, but also against the Barrister Defendants, and that he has been caused serious reputational harm by the publication of that statement. Dr Piepenbrock's case against the LSE is that it is responsible for the publication of the Website Profile Entry, as well as being liable for a failure to investigate a grievance he lodged many years ago in relation to allegations of sexual assault which Dr Piepenbrock maintains resulted in his career-ending disability. The value of the claim is stated to be more than £200,000.

Conclusion

7. This is a claim which is devoid of any merit whatsoever and is incapable of salvage by amendment. For reasons which are set out in detail below, the claim will be struck out, certified as totally without merit, and an Extended Civil Restraint Order will made against Dr Piepenbrock in these proceedings which will take effect from the date of this judgment and last for a period of three years.

Procedural history

8. On 1 March 2023 the claim was stayed by the court acting on its own initiative. This order was made by Master Gidden on the basis that the claim form and accompanying documents disclosed no reasonable grounds for bringing the claim and/or were an abuse of the court's process. The Master further ordered that:

> "[3.] The claimant shall by 4pm on 15 March 2023 make an application for permission to lift the stay. The application shall be supported by draft particulars of claim setting out the legal basis for the claim against each named defendant and identifying the cause of the loss and damage claimed and complying with the Civil Procedure Rules and the associated Practice Directions.
>
> [4.] If the Claimant fails to comply with paragraph 3 above the claim shall be struck out."

9. The time for Dr Piepenbrock to make his application to lift the stay was in due course extended until 2 May 2023 and, on 1 May 2023, Dr Piepenbrock made his application to lift the stay ("**the Claimant's Application**"). The Claimant's Application was supported by evidence in support in box 10 of the application form, a witness statement dated 1 May 2023, and draft particulars of claim dated 1 May 2023 and signed with a statement of truth by Dr Piepenbrock, and his son, Mr Garry Piepenbrock, acting as his McKenzie friend.

10. By September 2023 the Master had released the Claimant's Application to be heard by a Judge of the Media & Communications List and the date for the hearing of the Claimant's Application was fixed for 18 December 2023. Detailed directions were then given in relation to this hearing by Nicklin J, as the judge in charge of the Media & Communications List. These directions dealt with, amongst other things, the fact Dr Piepenbrock was acting in person, his application for the Claimant's Application to be dealt with at fully remote hearing and the reasonable adjustments necessary in the light of Dr Piepenbrock's disability.

11. In addition to that, on 19 September 2023 Nicklin J gave directions so that, if the defendants or any of them wished to make any application for summary judgment or to strike out all or part of Dr Piepenbrock's claim, they had to issue, file and serve an application notice, together with any evidence in support, by 4.30pm on 20 October 2023. That deadline was also extended in due course.

12. On 3 November 2023 Mr Michell and the Barrister Defendants issued an application seeking an order that the claim be struck out as disclosing no reasonable grounds for bringing the claim and/or that summary judgment be entered against Dr Piepenbrock on the ground that the claim against them has no real prospect of success and there are no compelling reasons why it should go to trial ("**the Barristers' Application**"). The detailed grounds relied upon were then set out in section 10 to the Barristers' Application, together with the witness statements of Mr Michell dated 2 November 2023 and the third defendant, Martyn McLeish ("**Mr McLeish**"), dated 3 November 2023 and the exhibits thereto.

13. Likewise on 3 November 2023 the LSE issued an application seeking an order that the claim be struck out and/or summary judgment be granted against Dr Piepenbrock as the claim has no real prospect of success and there are no compelling reasons why it should go to trial. Further, the LSE asks the court to make an extended civil restraint order against Dr Piepenbrock ("**the LSE's Application**"). The LSE's Application is supported by the witness statement of Bronwen Bracamonte dated 3 November 2023, and the exhibit thereto. There is also a further witness statement from Miss Bracamonte dated 30 November 2023.

14. Dr Piepenbrock filed a written response to the Barristers' Application and the LSE's Application on 17 November 2023, and that response was signed with a statement of truth, and prepared with the assistance of his son and McKenzie friend.

15. At the hearing Mr Michell and the Barrister Defendants were represented by Miss Kate Wilson of counsel. The LSE were represented by Miss Mariyam Kamil of counsel. Dr Piepenbrock was in person on the first day of the hearing, assisted by his son Mr Garry Piepenbrock, acting as his McKenzie friend. Dr Piepenbrock did not appear, and was not represented on the second day of the hearing, for reasons I shall briefly explain below.

16. The parties all served skeleton arguments in readiness for the hearing. The defendants' skeleton arguments were served by 8 December 2023, so that Dr Piepenbrock had the opportunity to consider them and respond. Dr Piepenbrock's skeleton argument was served on 13 December 2023 (which, as far as I can tell, was in identical terms to his written response dated 17 November 2023).

The hearing: 18 and 19 December 2023

17. In accordance with the case management directions made by Nicklin J the hearing on 18 December 2023 took place as a hybrid hearing, with Dr Piepenbrock and his son attending remotely from California. The hearing started at 10.30am and then proceeded with scheduled breaks, so that the court sat for 50 minutes, and then had a break for 10 minutes, and then resumed.

18. Miss Wilson completed her submissions for Mr Michell and the Barrister Defendants at 3.05pm that day. Miss Kamil then commenced her submissions for the LSE. Shortly before 3.45pm Miss Kamil referred the court to certain paragraphs in *Piepenbrock v The London School of Economics and Political Science* [2018] EWHC 2572 (QB), Nicola Davies J at paragraphs [2], [230], [231] and [250]. She did so in an entirely appropriate way. Nevertheless, as she was doing so Dr Piepenbrock turned his microphone on and made a number of statements in relation to this case, and he could then be seen on the screen getting up. He then left the hearing. The court then took a short break at the end of which Mr Garry Piepenbrock informed the court his father had had an autistic meltdown, and the hearing would not be able to continue that day as he needed to look after his father. By this time it was around 4pm, and I adjourned the hearing until 10am on 19 December 2023. Mr Garry Piepenbrock agreed to that and informed the court that he was confident that the hearing would be completed on 19 December 2023 which was, of course, the following day. The Court understood that, by adjourning the hearing on 18 December 2023, Dr Piepenbrock and Mr Garry Piepenbrock would be able to participate in hearing the next day, and it was not suggested that any longer period of adjournment was required or necessary.

19. At 8am on 19 December 2023 Mr Garry Piepenbrock emailed the court to say that his father "suffered another easily preventable and highly foreseeable debilitating autistic meltdown at the end of the hearing yesterday (18 December 2023)" and that:

> "the past 16 hours have been very difficult for my father and me, and I regret to inform you, that just like the previous occasions when my father was caused to suffer a

> debilitating autistic meltdown, his health has worsened and he is unable to continue and is awaiting a doctor's visit. My priority is to take care of my disabled father (as well as my own mental health, as I also am believed to suffer from autism). My priority therefore remains my father's health, and I will therefore also not be able to be present at the hearing. My disabled father will be medicated and asleep at 10am UK time today (2am in the US) and as we live in a small one room studio, I will not be able to attend the hearing. In addition, based on my experience of my father's previous autistic meltdowns/shutdowns, he will not be able to attend the session tomorrow (Wednesday), and I have prior work deliverables due by Wednesday, as I had planned for the hearing to finish by today. Although I will not be able to dial into the hearing today, I will check my emails to answer any questions that you may have. My father hopes that (Just like in the High Court and EAT had done when he was caused to suffer debilitating autistic meltdowns/shutdowns) we are able to reschedule, so that we get a chance to present our arguments orally to you, as the defendants have done. In the future, we ask the barristers to respect my father's autism and disability which was caused by the actions of the defendants and to make reasonable adjustments so that a fair hearing can occur. Thank you for your consideration."

20. In the light of this email, I invited submissions from Miss Wilson and Miss Kamil, as counsel representing the defendants, as to the appropriate way forward. Miss Wilson invited me to treat the email as an application for an adjournment, which Mr Michell and the Barrister Defendants opposed because it was based on assertion, and there was no medical evidence to support Mr Garry Piepenbrock's contention that his father was unable to attend and participate in the hearing. Miss Wilson referred me to the relevant principles and authorities in *Civil Procedure 2023* (Volume 1), and also took me to the earlier decisions which Mr Garry Piepenbrock had referred to in his email. The LSE also opposed the application, and Miss Kamil adopted Miss Wilson's submissions.

21. Having heard submissions from counsel I indicated that I intended to refuse Dr Piepenbrock's application for an adjournment and the hearing would resume at 11.45am, when I would give a judgment explaining my reasons for this decision. The court clerk emailed Mr Garry Piepenbrock to inform him that this was the position, and the CVP link remained open. I returned to Court shortly before 12 noon and then gave a judgment explaining my reasons as to why I had refused Dr Piepenbrock's application for an adjournment. In short this was because there was no medical evidence before the court to support an adjournment (nor was there any evidence showing what steps were being taken to obtain any such medical evidence) and Dr Piepenbrock, and his son, are well-versed in litigation and know that adjournments for health reasons require medical evidence. Further, Miss Kamil, as counsel for the LSE, had been presenting her client's case in an appropriate way (which was calm and measured) and was simply referring to the judgment of Nicola Davies J, when the incident Dr Piepenbrock referred to happened.

22. Having refused the application to adjourn, and given my reasons, the hearing then resumed about 12.30pm on Tuesday 19 December 2023, with the CVP link open so that Dr

Piepenbrock or his son could have attended from California if they had wished to do so. Neither of them attended any part of the hearing on 19 December 2023.

The draft particulars of claim dated 1 May 2023

23. The particulars of claim are marked draft and are dated 1 May 2023. Although they are marked draft, I shall refer to them as the particulars of claim in this judgment. Page 1 identifies that the three topics: brief details of claim (p. 2); factual background (p. 3); defamation/harassment/discrimination (p. 7). The statement of truth is then at page 14. For the purposes of the applications I have to determine, certain parts of the particulars of claim are set out below.

Topic 1: Brief details of claim (paragraphs 1 to 3)

24. Paragraph 1 identifies the six alleged causes of action that Dr Piepenbrock relies on in support of his claim for compensation for personal (and psychiatric) injury, loss and damage, namely "negligence and/or breach of statutory duty and/or intentional infliction and/or defamation (libel) in accordance with the Defamation Act 2013 and/or malicious falsehoods in accordance with the Defamation Act 1952 and/or harassment under the Protection from Harassment Act 1997 (including harassment by publication)" (paragraph 1).

25. Paragraph 2 alleges that:

> "[2.] These arise from (inter alia) defamatory statements and malicious falsehoods about the Claimant, some originally made by the London School of Economics and Political Science (LSE) in 2018 and repeated by Paul Michell of *Cloisters* Chambers, an agent acting on behalf of the LSE for whom the LSE and *Cloisters* Chambers are therefore vicariously liable, and by *Cloisters* Chambers (its constituent members), the organisation which published Mr Michell's and the LSE's defamatory statements on their public website (www.cloisters.com), noting that *Cloisters* Chambers owes a duty of care for the Claimant as they represented him in his ongoing litigation in the Employment Tribunal against the LSE, for whom Mr Michell is also acting…
>
> [3.] Dr Piepenbrock will be seeking damages for the Defendants' cause and/or contributory role in his disability and lost academic and/or residual career, valued at approximately £4 million after tax…"

Topic 2: Factual Background (paragraphs 4 to 11)

26. Paragraph 4 alleges that Dr Piepenbrock was an award-winning disabled autistic LSE academic and that "while working at the LSE, he was sexually harassed by two unstable women". He then sets out his allegations in relation to these women. The first woman he identifies as Joanne Hay, refers to her role at the LSE, and describes her as "a notorious

bully, who sexually assaulted the happily married father while she was highly-intoxicated at work". The second women he identifies as "Miss D" and alleges that she was an "obsessed stalker … who committed an act of indecent exposure against Dr Piepenbrock in the workplace" (paragraph 6).

27. Dr Piepenbrock alleges that he filed grievances against both these women for their "gross sexual misconduct (in accordance with LSE procedures) and the LSE (in violation of its procedures) refused to investigate either of them" (paragraph 8).

28. Dr Piepenbrock then alleges that "nearly a year after the LSE caused Dr Piepenbrock's career-ending disability, the LSE's internal investigation of Miss D false and malicious allegations revealed that they were not proven and the LSE's Chairman, Alan Elias, forced the LSE's Director, Craig Calhoun, to issue a formal apology to the innocent Dr Piepenbrock …" (paragraph 9).

Topic 3: Defamation/Harassment/Discrimination (paragraphs 12 to 23)

29. In paragraph 12 Dr Piepenbrock alleges that Mr Michell's online CV on Cloisters Chambers' professional website contains "patently false, defamatory and harassing information, which foreseeably caused/exacerbated Dr Piepenbrock's personal injury…". The Website Profile Entry is then set out.

30. The bases of Dr Piepenbrock's complaints are then set out, and he makes the following allegations:

    a. "**First**, Mr Michell knowingly made a false statement that Dr Piepenbrock "seeks over £10 million" for his ET claim. This is completely false and Mr Michell knows that it is entirely false" (paragraph 13). The details of this allegation are set out further at paragraphs 13 to 15.

    b. "**Second**, Mr Michell knowingly and recklessly attempted to mislead his current and future clients (as well as the general public at large), when he lied that Dr Piepenbrock's 2022 ET disability discrimination claim covered "many of the matters at issue" in Dr Piepenbrock's 2018 High Court personal injury lawsuit" (paragraph 16). Dr Piepenbrock further alleges: "… Mr Michell's knowingly false, harassing and defamatory information critically contributed to foreseeably causing Dr Piepenbrock's subsequent autistic meltdown in Dr Piepenbrock's ET trial just a few days later (as Dr Piepenbrock is an autistic person, who focuses on truth and justice). Mr Michell's purposeful deception led to Dr Piepenbrock's autistic meltdown/shutdown which prevented Dr Piepenbrock from attending the majority of his five-week ET trial, putting a fair trial in jeopardy" (paragraph 17).

    c. "**Third**, Mr Michell appears to be taking credit on his CV for cases which he had absolutely nothing whatsoever to do with, when he stated: "The Claimant has

already fought and lost a High Court personal injury claim … and his related defamation claim was recently struck out"" (paragraph 18). The details of this allegation are set out further in paragraphs 18 and 19.

d. "**Fourth**, there is no legitimate reason for Mr Michell to describe Dr Piepenbrock's previous unrelated litigation history (e.g. "The Claimant has already fought and lost a High Court personal injury claim … and his related defamation claim was recently struck out."), especially when Mr Michell had absolutely no bearing on these outcomes" (paragraph 20). The details of this allegation are set out further in paragraphs 20 and 21.

e. "**Finally**, Mr Michell ends his defamatory, harassing and victimising online CV entry on the Cloisters' website not with any link to press coverage of the ET case with which he is associated …, but instead he provides a link to a case with which he had absolutely no involvement, namely Dr Piepenbrock's 2018 High Court Personal Injury trial in which Mr Michell's barrister set, Cloisters won critical findings for Dr Piepenbrock which were binding for his subsequent landmark ET trial" (paragraph 22). The details of this allegation are set out further in paragraphs 22 and 23.

31. The signed statement of truth is a page 14 of the particulars of claim, and has been signed by Dr Piepenbrock, with the assistance of Garry Piepenbrock, his son and McKenzie Friend.

Relevant law: strike out and summary judgment

32. The relevant principles under CPR Parts 3.4(2) and 24.3 are well-established and not in dispute, and I can take them from Miss Wilson's skeleton argument, where they are conveniently summarised (at paragraphs 27 to 35).

33. CPR 3.4(2)(a) allows the court to strike out a statement of case "if it appears to the court - that the statement of case discloses no reasonable grounds for bringing … the claim". CPR 3.4(2)(b) permits striking out a statement of case that is "an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings". Grounds (a) and (b) cover statements of case which are "unreasonably vague, incoherent, vexatious, scurrilous or obviously ill-founded and other cases which do not amount to a legally recognisable claim or defence": *Civil Procedure 2023* (Vol 1; *The White Book*) at 3.4.1. Unless an applicant is relying on external matters in support of an abuse argument, an application to strike out requires the Court to consider only the statement of case. That is inherent in the test in ground (a). Abuse, within ground (b), may apply to claims which are a collateral attack on an earlier decision of a court of competent jurisdiction. This includes earlier decisions in civil proceedings, although the ambit of such collateral attack abuse is limited. The touchstone of this type of abuse is whether the second action is manifestly unfair to a party to the litigation or would otherwise bring the administration of justice into disrepute:

Allsop v Banner Jones Ltd [2021] EWCA Civ 7; [2022] Ch 55; and *HRH The Duchess of Sussex v Associated Newspapers Ltd* [2020] EMLR 21 at [33] (and see *Civil Procedure 2023* (Vol 1) at paragraph 3.4.12). A court may also strike out a claim as abusive where there is no real and substantial tort, such that the litigation is pointless and the costs of the litigation are out of all proportion to any relief which could be obtained: *Jameel v Dow Jones & Co* [2005] EWCA Civ 75; [2005] QB 946 (and see *Civil Procedure 2023* (Vol 1) at paragraph 3.4.14). Striking out a claim is a draconian measure, and the Court must consider whether that sanction is proportionate. Where a statement of case is defective, the Court should consider whether the defect is capable of remedy or whether the party should be given an opportunity to remedy it (see *Civil Procedure 2023* (Vol 1) at paragraph 3.4.2).

34. Pursuant to CPR 24.3 the Court may give summary judgment against a claimant if it considers that the claimant has "no real prospect of succeeding on the claim… or issue" and there is no other compelling reason for the case or issue to be disposed of at trial. The principles governing summary judgment were summarised by Lewison J in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15] and approved by the Court of Appeal in *AC Ward & Sons Ltd v Catlin (Five) Ltd* [2009] EWCA Civ 1098. Those principles are set out in *Civil Procedure 2023* (Vol 1) at 24.3.2.

35. Miss Kamil, in her skeleton argument for the LSE, also makes the point that there is no material difference between the principles that govern applications under CPR 3.4(2)(a) and those under CPR 24.3, save that CPR 3.4(2)(a) focusses on whether the relevant statement of case (without reference to evidence) discloses reasonable grounds for bringing the claim whereas in an application under CPR 24.3 the applicant may rely on extrinsic evidence to establish that the claim has no real prospect of success: *Kryvenko v Renault Sport Racing Limited* [2016] EWHC 2284 (Comm) at [54]; *Saeed v Ibrahim* [2018] EWHC 3 (Ch) at [44].

36. I now turn to the various applications before me: (1) the Barristers' Application; (2) the LSE's Application: strike out or summary judgment; (3) the Claimant's Application; and (4) The LSE's Application: extended civil restraint order.

(1) The Barristers' Application

37. The Barristers' Application that the claim against them should be struck out or that summary judgment be entered in their favour is divided into two parts:

    a. First, the ground relied on by the Barrister Defendants. This is that the particulars of claim fails to identify any basis on which responsibility for publication of Mr Michell's website profile could be attributed to the Barrister Defendants and, as they are not the publishers of the Mr Michell's website profile, they cannot be liable in defamation and/or harassment or any other tort based upon a publication to the world at large. Likewise, the particulars of claim fails to identify any basis on which the Barrister Defendants could be vicariously liable for Mr Michell for publishing

his website profile. The Barrister Defendants rely on the witness statements of Mr Michell and Mr McLeish.

b. Second, the grounds relied on by Mr Michell and the Barrister Defendants, namely the particulars of claim fails to identify any claim in defamation, harassment, breach of statutory duty and/or discrimination, malicious falsehood, negligence, intentional infliction of psychiatric harm or personal injury. Further, Mr Michell and the Barrister Defendants maintain that the entire claim is an abuse of process and is a collateral attack on the decision of the Employment Tribunal on 8 June 2022.

38. Mr Michell and the Barrister Defendants maintain that the Website Profile Entry does not give rise to any of the causes of action advanced by Dr Piepenbrock in the particulars of claim. This is because these causes of action are defective in one or more ways, the statement of case cannot be rectified by any amendment, there are legal defences which do not turn on disputes of fact and the claim is, in short, fanciful and legally incoherent.

39. In addition to that, the evidence filed by the Barrister Defendants explains the following. Mr Michell, in his witness statement dated 2 November 2023, explains that he is a self-employed barrister practising from Cloisters, specialising in employment law, including complex discrimination claims. He was called to the bar in 1991. He explains that he represented the LSE in the Employment Tribunal proceedings brought against it by Dr Piepenbrock (February to April 2022), and various appeals relating to these proceedings in the Employment Tribunal. Mr Michell also explains about the other claims issued by Dr Piepenbrock, and the outcome of those claims, which I have referred to above.

40. Mr Michell then explains that the statement which I have called the Website Profile Entry was added to his profile on his chambers' website on 7 August 2021. Mr Michell up-dated his own profile and he provided the up-dated profile to the chambers' marketing officer. Over six months later on 25 February 2022, which was a Friday, Dr Piepenbrock's son, Garry, emailed Mr Michell complaining about the Website Profile Entry and attaching what was described as a Pre-action Protocol letter. In response to that email, Mr Michell deleted the words which stated that Dr Piepenbrock sought more than £10m (which Mr Michell accepts was incorrect), and Mr Michell changed the description of the claim to "a multi-million pound" claim. That change was made to Mr Michell's profile on the chambers' website on Monday 28 February 2022, which was the next working day after receipt of the complaint from Mr Garry Piepenbrock.

41. Mr McLeish is the third defendant in these proceedings, and one of the Barrister Defendants. His witness statement is dated 3 November 2023 and he is the head of chambers at Cloisters. He explains in his witness statement that the organisation and administration of Cloisters is similar to most barristers' chambers. He produced a copy of the constitution and explained that Cloisters is not a legal entity. Rather, he says that the name Cloisters is a banner under which a number of self-employed barristers in independent practice operate, sharing the expense and administrative burden of premises

and staff. Further, the constitution provides at paragraph 40 that a person is eligible for membership of chambers only if they intend to supply legal services "as a barrister in independent practice within the meaning of the Code of Conduct" (which is subject to exceptions in relation to door tenants, academic members, and persons admitted to membership as associate tenants). Mr McLeish's evidence is that this was explained to Mr Garry Piepenbrock on 20 January 2023 and, in particular, that Dr Piepenbrock was "never a client of "Cloisters Chambers"".

42. Mr McLeish also explains, amongst other things, that:

    a. The forty-second defendant provided some work for Dr Piepenbrock in July 2018. Aside from that, none of the third to fifty second defendants have acted for Dr Piepenbrock at any time.

    b. Two members of chambers have acted for Dr Piepenbrock in the past, but they are not named as defendants to the claim.

    c. The twenty-first defendant was appointed to the Circuit Bench, and ceased to be a member of Cloisters on or before 6 November 2023.

    d. Four of the barristers named as defendants to the claim were not members of Cloisters during the period 7 August 2021 to on or around 28 February 2022 when the Website Profile Entry was published on the Cloisters' website.

    e. There are some members of Cloisters who are not named as defendants to the claim.

43. Mr McLeish goes on to explain that the purpose of the chambers' website is to inform the public about the practices of members of Cloisters, and it also includes details required by the Bar Standards Board. Mr McLeish says that each member of chambers has a profile on the website outlining their experience, specialisms and details are provided of highlighted cases in which they have acted. He says that each member of chambers is responsible for the content of his or her own profile. Further, Mr McLeish explains that he did not read or review the Website Profile Entry, and the first time he was aware of it was when he received a copy of the pre-action protocol letter sent by email by Mr Garry Piepenbrock.

44. This evidence is not disputed by Dr Piepenbrock in his response dated 17 November 2023 to the defendants' applications, which includes the Barristers' Application. Rather, what Dr Piepenbrock disputes is the legal consequences of these facts, or the inferences which can be drawn from them. For example, he disputes that the correction made by Mr Michell to the Website Profile Entry was not done urgently or promptly.

45. I shall deal with each of the grounds identified in the Barristers' Application in turn. I shall consider the position with respect to the Barrister Defendants first, and then the position in relation to Mr Michell.

Barrister Defendants (third to fifty-second defendants)

46. The allegation made by Dr Piepenbrock in paragraph 2 of the particulars of claim is that the members of Cloisters are responsible for the publication of Mr Michell's profile on the chambers' website because they are vicariously liable for the content of the profile, or Cloisters is the organisation which published Mr Michell's profile.

47. The relevant legal principles can be shortly stated (and they are not disputed by Dr Piepenbrock in his skeleton argument dated 13 December 2023).

48. First, in order to impose vicarious liability two elements are necessary: (i) the relationship between the parties must be such that the law makes one pay for the acts of the another; and (ii) there must be a connection between that relationship and the wrong doing (see *Various Claimants v Barclays Bank Plc* [2020] AC 973, SC at [27]).

49. Second, as explained *Hourani v Thomson* [2017] EWHC (QB), per Warby J at [94]:

> "Liability for publication arises from participation in, or authorisation of, the publication complained of: *Watts v Times Newspapers Ltd* [1997] QB 650, 670. Someone who is a joint author of an article is liable, as is a person who reads and edits text for publication. It may not be necessary for the defendant to know the specific words to be used, but it is necessary to show some knowing and active involvement in the process of publication of the words or message complained of; a "passive instrumental role" in that process is insufficient: *Bunt v Tilley* [2007] 1 WLR 1243 [23]. It is certainly not enough to be aware of a defamatory publication and to fail to take steps to prevent it: *Underhill v Corser* [2010] EWHC 1195 (QB)."

50. Dr Piepenbrock's claim alleges harassment arising out of the Website Profile Entry and goes further than the publication of this statement. In these circumstances, Miss Wilson submits that the same principles identified in *Hourani* are applicable to any alleged tort founded on a publication (and malicious falsehood cases proceed on this basis). This is because Article 10 of the Convention is engaged and applying the same principles is required in order for this area of the law to be coherent. She points to *Bunt v Tilley* [2007] 1 WLR 1243 in which Eady J put the principle in the following terms: "to impose legal responsibility upon anyone *under the common law for publication of words* it is essential to demonstrate a degree of awareness or at least an assumption of general responsibility …" (*emphasis* added; cited in *Monir v Wood* [2018] EWHC 3525 (QB) at [179]). For my part, I agree with Miss Wilson's submissions and do not seen any reason why a different test for liability should applied to any alleged tort founded on publication: active involvement or authorisation is still required.

51. Miss Wilson submits the particulars of claim do not allege any facts or matters which could give rise to any relationship between the parties in which the law would impose vicarious

liability. Further, it is plain on the evidence that the Barrister Defendants are in independent practice (except for those who are associate tenants or who have left chambers).

52. Likewise, Miss Wilson submits that particulars of claim fails to allege that the Barrister Defendants (or any of them) were publishers of the Website Profile Entry. This is because there is no allegation that the Barrister Defendants participated in publication or had any relevant knowledge of the Website Profile Entry so that, as a result, they could be potentially responsible for it. Further, on the evidence it is the responsibility of each member of Cloisters to maintain the content of his or her profile on the website and, in this case, that was the responsibility of Mr Michell, who up-dated his own profile with the Website Profile Entry on 7 August 2021.

53. Dr Piepenbrock's case is that Cloisters is, or ostensibly is, a legal entity and is therefore responsible for the Website Profile Entry published by Mr Michell. He maintains that Mr McLeish's statement that Cloisters is not a legal entity is "patently false", but has failed to adduce any evidence himself to support this assertion. In his skeleton argument Dr Piepenbrock submitted that:

> "[31.] *Cloisters* Chambers, which is managed by Martin McLeish as Head of Chambers, has a case to answer for in the High Court for ostensibly being the legal entity which publishes and provides the platform for its barristers like Mr Michell to post harassing and defamatory information on *Cloisters'* website. By way of analogy, Mr Michell is like a journalist who wrote a defamatory article, and *Cloisters* is like the publisher who is responsible for the content of all of its journalists.
>
> …
>
> [35.] If Mr McLeish and Mr Michell would concede that *Cloisters* is in fact a legal entity which can be held responsible for any unlawful actions, then there would have been on reason for Dr Piepenbrock to have had to list individual members of *Cloisters* as individual Defendants…"

54. The particulars of claim do not allege any basis on which Cloisters as a set of barristers' chambers is, or could possibly be, a legal entity. Further, the evidence served on behalf of the Barrister Defendants makes it quite clear that Cloisters is not, and never has been, a separate legal person. Rather, Cloisters is the name of a set of barristers' chambers. This is a group of individual self-employed barristers in independent practice, who share the expense and administrative burden of premises and staff.

55. The particulars of claim fails to allege any basis on which any of the Barrister Defendants could be vicariously liable for the acts of Mr Michell in relation to the Website Profile Entry or legally responsible for the publication by Mr Michell of the Website Profile Entry or any alleged harassment arising therefrom.

56. Further, the evidence makes it clear that Mr Michell created the content of the Website Profile Entry and was responsible, though the marketing officer, for that statement being up-loaded to the Cloisters website. None of the Barrister Defendants, or indeed no other member of chambers, was involved in any way. Dr Piepenbrock has not filed any evidence disputing this. Likewise, it is plain on the evidence that none of the Barrister Defendants falls within the definition of author, editor or publisher and, as a result, cannot be sued for defamation: section 10(1) of the Defamation Act 2013.

57. In these circumstances there is no basis on which Dr Piepenbrock has or could have any claim against any of the Barrister Defendants arising out of the Website Profile Entry and the allegations made failed to disclose any cause of action against them. Further, having considered all the material placed before the court there is no basis on which any of these allegations against the Barrister Defendants could be saved by amendment.

Mr Michell (first defendant)

58. Defamation: The limitation period for a defamation claim is one year from date of first publication: see section 4A of the Limitation Act 1980 and section 8(3) of the Defamation Act 2013. The Website Profile Entry was published on 7 August 2021: paragraph 12 of Mr Michell's witness statement dated 2 November 2023. The claim form was issued on 20 February 2023. The claim form was therefore issued over six months outside the limitation period, and any claim for defamation is time-barred by reason of section 4A of the Limitation Act 1980 and section 8(3) of the Defamation Act 1980.

59. Dr Piepenbrock has argued that Mr Michell:

> "defiantly asserted that the harassing and defamatory articles by the Daily Mail of 12/13 October 2018 are not defamatory. Mr Michell should therefore get the chance to prove this critical point in the High Court, as he re-started the statute of limitations when he cited this clearly defamatory article on his CV on Cloisters' public website, which was viewed by Dr Piepenbrock for the first time in early 2022"

(see paragraph 29 of Dr Piepenbrock's response dated 17 November 2023).

60. The Website Profile Entry was up-loaded on 7 August 2021 and contained a hyperlink to the MailOnline's website, ie the original publication of the articles by the Daily Mail referred to. Dr Piepenbrock's argument does not therefore alter the fact that time started running in respect of the Website Profile Entry on 7 August 2021, and his claim form for defamation was issued many months out of time. Further, Dr Piepenbrock has not made any application under section 32A of the Limitation Act 1980 to disapply the limitation period. However, even if he had made such an application, Dr Piepenbrock had known about the Website Profile Entry by 25 February 2022 (at the latest) and there is no evidence at all to explain why he could not have issued his claim before 7 August 2022. There is

therefore no basis to disapply the limitation period: see *Bewry v Reed Elsevier* [2014] EWCA Civ 1411 at [5]-[8].

61. Miss Wilson also made a number of submissions in relation to the substance of Dr Piepenbrock's proposed claim for defamation in respect of the Website Profile Entry. I do not need to deal with these points in detail, as the claim is time-barred. However, I agree with Miss Wilson that the particulars of claim do not any disclose reasonable grounds for bring a claim in defamation. This is because they do not:

    a. complain of anything which is a defamatory imputation about Dr Piepenbrock;

    b. refer to any facts and matters which could underpin a plea capable of satisfying the serious harm threshold; and

    c. comply with paragraph 4.2 of Practice Direction 53B.

62. Harassment: The relevant law is contained in section 1 of the Protection from Harassment Act 1997 ("**PHA 1997**") which, so far as material, provides:

> "(1) A person must not pursue a course of conduct - (a) which amounts to harassment of another, and (b) which he knows or ought to know amounts to harassment of the other.
>
> (2) For the purposes of this section…, the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amount to harassment of the other."

63. Section 7(2) of the PHA 1997 provides that harassment includes "alarming the person or causing the person distress"; section 7(3) provides that a course of conduct requires "conduct on at least two occasions in relation to that person"; and section 7(4) provides that conduct "includes speech". Further, CPR PD53B paras 10.1 and 10.3 require a claim for harassment by online publications to specify the communications which constitute the harassing course of conduct.

64. 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: see *Thomas v News Group Newspapers Ltd* [2002] EMLR 78, para 30 (Lord Phillips of Worth Matravers MR) ... the Act is capable of applying to any form of harassment": see *Hayes v Willoughby* [2013] [2013] 1 WLR 935, SC at [1]. The relevant principles in relation to a claim for harassment were recently brought together in *Hayden v Dickenson* [2020] EWHC 3291 (QB) at [44], per Nicklin J. These principles are not disputed by Dr Piepenbrock in his skeleton argument.

65. The particulars of claim do not plead any claim under the PHA 1997. The Website Profile Entry was about Mr Michell and his practice as a barrister. It can in no way be described as a "persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person". Further, the particulars of claim do not contain any allegations that could possibly amount to harassment, nor is there any allegation of "conduct on at least two occasions" by Mr Michell in relation to Dr Piepenbrock. Furthermore, how Dr Piepenbrock may feel, or understand, about the Website Profile Entry is neither here nor there. This is because the test of whether the person whose course of conduct is in question out to know that it amounts to or involves harassment is objective: see section 7(2) of the PHA 1997.

66. Breach of statutory duty or discrimination: The particulars of claim fails to allege any statutory duty owed by Mr Michell or the Barrister Defendants to Dr Piepenbrock. There is therefore no pleaded cause of action on this basis. The only basis Dr Piepenbrock could allege unlawful discrimination would be under the Equality Act 2010. However, this is not alleged in the particulars of claim, does not apply to statements published to the public at large in he press or online (see *Sube v Express Newspapers Ltd* [2018] EWHC 1234 (QB), per Warby J at [82]), and jurisdiction in relation to any such claims is limited to the County Court (section 118 of the Equality Act 2010).

67. Malicious falsehood: Again the legal principles are not in dispute, which I can take from Miss Wilson's skeleton argument. The four elements of the cause of action for malicious falsehood are that the claimant must show that the defendant has [1] published about the claimant, his property or business [2] words which are false, [3] that they were published maliciously [4] that special damage has followed as the direct and natural result of their publication. As to special damage, the effect of section 3(1) of the Defamation Act 1952 is that it is sufficient if the words published in writing are calculated to cause pecuniary damage to the claimant. A plea of malice will only be permitted to go forward where the pleaded case is more consistent with the existence of malice than its absence: see summary in *Gatley on Libel & Slander* (13th Edition; 2022) ("***Gatley***") at §22-019. A claimant relying upon section 3 to complete his cause of action (i.e. the Defamation Act 1952) must show that the false and malicious words were "calculated to cause pecuniary damage" i.e. were more likely than not to do so (see *Gatley* at §22-025).

68. Miss Wilson submits that Dr Piepenbrock faces two fundamental problems with his claim for malicious falsehood. First, it is time-barred by dint of section 4A of the Limitation Act 1980. Second, the particulars of claim fails to plead an arguable claim of malicious falsehood as there is no plea of damage and there is no allegation in the particulars of claim which would pass the threshold for malice, which is a very serious allegation akin to fraud (see *Gatley* at p. 885). Further, Dr Piepenbrock does not allege any claim in respect of section 3 of the 1952 Act and, in any event, Miss Wilson submits that it is impossible to see how financial loss to Dr Piepenbrock could be the "inherently probable consequence" of the words of the Website Profile Entry being posted on Cloisters' website (see *George v Cannell* [2023] Q.B. 117, CA at [27]).

69. An action for malicious falsehood shall not be brought after the expiration of one year from the date on which the cause of action accrued: section 4A of the Limitation Act 1980. The cause of action arises when the words are read which, in this case, first happened on 7 August 2021 when the Website Profile Entry was uploaded and published. The particulars of claim do not contain any allegation that the Website Profile Entry was published or read on any date after that. The consequence of this is that any allegation of malicious falsehood in relation to publications of the Website Profile Entry between 7 August 2021 and a year before the claim was issued are time-barred. Time in relation to a claim for malicious falsehood time can start running again when the statement is read again. However, the particulars of claim do not advance a case on publication and do not contain any allegation that any third party read the Website Profile Entry on or after 20 February 2022 and before it was amended on 28 February 2022. There is therefore no cause of action in malicious falsehood pleaded which is not time-barred. On top of that, I agree with Miss Wilson that the particulars of claim fails to plead the ingredients of a claim in malicious prosecution in any event. Accordingly, Dr Piepenbrock has failed to allege a cause of action in malicious falsehood against Mr Michell or the Barrister Defendants.

70. Negligence: Dr Piepenbrock has alleged that "*Cloisters* Chambers owes a duty of care for the Claimant as they represented him in his ongoing litigation in the Employment Tribunal against the LSE, for whom Mr Michell is also acting" (paragraph 2 of the particulars of claim). This is clear from the undisputed evidence that this is factually wrong and, in any event, given that Cloisters is not a legal person this is not a situation which could or should give rise to a duty of care (see *Robinson v Chief Constable of West Yorkshire Police* [2018] AC 736, SC at [21]-[29] per Lord Reed SCJ; see also *Piepenbrock v London School of Economics and Political Science and others* [2022] EWHC 2421 (KB), per Heather Wiliams J, at [139]-[151]). The particulars of claim do not allege any claim in negligence recognisable in law against Mr Michell or the Barrister Defendants.

71. Intentional infliction of physical or psychiatric harm: In *O (A Child) v Rhodes* [2016] AC 219 the ingredients of the tort of intentionally causing physical or psychological harm were clarified by the Supreme Court, who described the tort as having three elements: a conduct element, a mental element and a consequence element. As regards the latter, physical harm or recognised psychiatric illness is required. The conduct element entails the claimant proving the words or conduct were directed towards them and that there was no justification or reasonable excuse (see *Piepenbrock v London School of Economics and Political Science and others* [2022] EWHC 2421 (KB), Heather Wiliams J, at [152]-[157]. The particulars of claim fails to plead any of the elements of a claim for the intentional infliction of physical or psychiatric injury.

Conclusion on the Barristers' Application

72. In these circumstances I have reached the clear view that the particulars of claim discloses no reasonable grounds for bringing the claim against Mr Michell or the Barrister Defendants and should be struck out under CPR Part 3.4(2). The claim against all of these defendants is also totally without merit.

73. The Barristers' Application has also been made on the alternative basis under CPR Part 24.2(a)(i) and, for that reason, I have referred to the evidence which was placed before the court. I do not need to determine the Barristers' Application on this basis but, if the conclusion I have reached under CPR Part 3.4(2) is wrong, then I am quite satisfied that Dr Piepenbrock has no real prospect on succeeding on the claim against Mr Michell or any of the Barrister Defendants; there is no other compelling reason why the case should be disposed of at a trial; there should be judgment for Mr Michell and the Barrister Defendants; and Dr Piepenbrock's claim against them should be dismissed.

(2) The LSE's Application: strike out and summary judgment

74. The LSE maintains that the crux of Dr Piepenbrock's claim is a complaint about a publication (or the Website Profile Entry) on Mr Michell's chambers' website. The LSE was represented by Mr Michell in the proceedings brought by Dr Piepenbrock in the Employment Tribunal, but the LSE has no legal responsibility for any publication by Mr Michell on his chambers' website, and none is identified in the particulars of claim. On top of that, the LSE points out that a number of Dr Piepenbrock's complaints have been subject to prior judicial determination in proceedings to which Dr Piepenbrock and the LSE were both parties; several aspects of the claim are time-barred; and the particulars of claim suffers from numerous deficiencies.

75. In short, Dr Piepenbrock has made two broad categories of allegations against the LSE. First, based on the publication of the Website Profile Entry by Mr Michell (paragraphs 12 to 23 of the particulars of claim). Second, complaints in relation to certain grievances against the LSE (paragraphs 1 to 11 of the particulars of claim). I take these broad categories in turn below.

First category: allegations based on publication of the Website Profile Entry

76. Dr Piepenbrock in his skeleton argument dated 13 December 2023 maintains at paragraph 4 that:

> "at the time that Mr Michell harassed and defamed Dr Piepenbrock on the Cloisters' website, Mr Michell was actively acting for the LSE and the LSE is therefore vicariously liable for his actions, including describing online his duties in representing the LSE during a live and active trial".

77. It is plain that this aspect of Dr Piepenbrock's claim against the LSE is founded on his claim against Mr Michell arising out of the Website Profile Entry. The claim is entirely parasitic on the claim against Mr Michell which means that, if the claim against Mr Michell fails (which I have found it does), then the claim against the LSE is also doomed to fail and should be struck out.

78. There are further points as to why Dr Piepenbrock's claim against the LSE based on the publication of the Website Profile Entry should be struck out:

    a. First, in order for the LSE to be liable for the Website Profile Entry it must have had a knowing and active involvement in the publication (see the case law cited at paragraph 50 above). However, it is not alleged by Dr Piepenbrock in the particulars of claim the LSE had any involvement in the publication which could possibly attract any liability on their part.

    b. Second, in order for the LSE to be vicariously liable for Mr Michell's publication, there must be an employer-employee relationship (or "something akin to" that relationship) between the LSE and Mr Michell: see *Various Claimants v Barclays Bank* [2020] AC 973 at [1], [15], [24] and [27]. Dr Piepenbrock has failed to plead that there was such a relationship between the LSE and Dr Michell. Any claim based on vicarious liability is therefore bound to fail.

    c. Third, the LSE is not, and is not alleged to be, the author, editor or publisher of the Website Profile Entry. There is therefore no jurisdiction for the court to hear the defamation claim against the LSE: section 10 of the Defamation Act 2013.

79. In these circumstances, I am of the clear view that paragraphs 12 to 23 of the particulars of claim do not disclose any reasonable grounds for bringing a claim against the LSE in relation to the publication by Mr Michell of the Website Profile Entry. These paragraphs should be struck out under CPR Part 3.4(2).

80. The evidence filed by Bronwen Bracamonte dated 3 November 2023 explained that the LSE had no involvement in the publication by Mr Michell of the Website Profile Entry. The evidence filed in answer to that by Dr Piepenbrock dated 17 November 2023 does not contain any evidence to show that the LSE was in some way involved in this publication by Mr Michell. Therefore, if it had been necessary consider the summary judgment limb of the LSE's Application, I would have granted summary judgment under CPR Part 24.3(a)(i) against Dr Piepenbrock in respect of his claim based on publication as this claim has no reasonable prospect of success, and there is no compelling reason for a trial.

Second category: allegations relating to complaints or grievances against the LSE

81. The main allegations made by Dr Piepenbrock in paragraphs 1 to 11 of the particulars of claim are as follows:

a. While Dr Piepenbrock worked at the LSE, Ms Hay (the LSE's Deputy Chief Operating Officer) "sexually assaulted [Dr Piepenbrock] while she was highly intoxicated at work": paragraph 4.

b. Ms D, another LSE employee, "committed an act of indecent exposure against [Dr Piepenbrock] in the workplace": paragraph 6.

c. Dr Piepenbrock "filed grievances against both Ms Hay and Ms D for their gross sexual misconduct (in accordance with LSE procedures) and the LSE (in violation of its procedures) refused to investigate either of them": paragraph 8.

d. In this way, "LSE caused [Dr Piepenbrock's] career-ending disability": paragraph 9.

e. Therefore, the LSE is liable for negligence, breach of statutory duty, intentional infliction, defamation, malicious falsehood and/or harassment: paragraph 1.

f. Dr Piepenbrock seeks damages from the LSE for the "cause and/or contributory role" that the LSE played in his "disability, personal injury, lost academic and/or residual career, valued at approximately £4 million after tax": paragraph 3.

g. More recently, Dr Piepenbrock has alleged that the LSE "originated and propagated" a defamatory article against Dr Piepenbrock which was published in the Daily Mail/Mail Online on 12 and 13 October 2018 (see Dr Piepenbrock's witness statement dated 17 November 2023 at paragraphs 6 to 8). Dr Piepenbrock alleges that the LSE is liable for defamation and harassment since Mr Michell republished a link to this article on his Chambers' website.

82. The LSE maintains that it is not entirely clear what is being alleged but, in essence, Dr Piepenbrock's claim is that he filed a grievance with the LSE against two women who he alleged sexually assaulted him; the LSE failed to investigate the claim properly and that is what caused Dr Piepenbrock's career-ending disability.

83. The LSE maintains that these allegations have been the subject of prior judicial determination in proceedings to which both Dr Piepenbrock and the LSE were parties. Miss Kamil for the LSE submits that, as a result, Dr Piepenbrock is precluded by the principles of cause of action estoppel, issue estoppel and/or abuse of process from relitigating those allegations in these proceedings.

84. Relevant law: The principles are well-established and are drawn together in Miss Kamil's skeleton argument, and are not disputed by Dr Piepenbrock in his skeleton argument.

85. In *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd* [2014] AC 160 at [17] Lord Sumption explained that res judicata is a "portmanteau term" that has been used to describe a number of different legal principles. The relevant ones for present purposes are cause of action estoppel (which prohibits re-litigation of a cause of action whose existence has been determined in previous proceedings), issue estoppel (which precludes re-litigation of an issue that was determined in previous proceedings) and abuse of process (which prevents parties from raising matters that could, and should, have been raised in previous proceedings).

86. Cause of action estoppel "arises where the cause of action in the later proceedings is identical to that in the earlier proceedings the latter having been between the same parties or their privies and having involved the same subject matter. In such a case, the bar is absolute in relation to all points decided unless fraud or collusion is alleged, such as to justify setting aside the earlier judgment": *Arnold v National Westminster Bank* [1991] 2 AC 93 at 104D-E.

87. Issue estoppel is the principle that even when there are no common causes of action between two proceedings, an "issue which is necessarily common to both [and] was decided on the earlier occasion… is binding on the parties": *Virgin Atlantic* at [17]. It arises when "a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties… to which the same issue is relevant one of the parties seeks to re-open that issue": *Arnold* at 105D-E.

88. The abuse of process principle prevents parties from raising in subsequent proceedings matters which were not, but could and should have been, raised in earlier proceedings: Virgin Atlantic at [17] (Lord Sumption); Henderson v Henderson (1843) 3 Hare 100 at 115, per Wigram V-C.

89. The public interest underlying cause of action estoppel, issue estoppel and abuse of process is the same: "there should be finality in litigation and… a party should not be twice vexed in the same matter": *Johnson v Gore Wood & Co* [2002] 2 AC 1 at 31A–B (Lord Bingham). In deciding whether a claim constitutes an abuse of process, the court will adopt "a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case": *Johnson* at 31D–E (Lord Bingham).

90. Four sets of previous proceedings to which Dr Piepenbrock and the LSE were parties: There have been four sets of previous proceedings, and I can take the summary of these proceedings from paragraphs 25 to 31 of Miss Kamil's skeleton argument. First, in December 2015, Dr Piepenbrock brought proceedings against the LSE in the High Court (Queen's Bench Division) by Case No TLQ17/0577. Dr Piepenbrock's claim was that:

    a. the LSE is vicariously liable for the conduct of Ms D who (allegedly) harassed Dr Piepenbrock;

b. the LSE failed to follow its harassment policy; and

c. the LSE's handling of Ms D's complaint against Dr Piepenbrock was negligent.

91. On 5 October 2018, Nicola Davies J dismissed the Claimant's claim and handed down judgment in favour of the LSE: see [2018] EWHC 2572 (QB) at [250]. Nicola Davies J found that:

a. Ms D's complaint against Dr Piepenbrock was a "legitimate complaint". She was not acting in a malicious, oppressive or unacceptable manner. Therefore, her conduct did not constitute harassment of Dr Piepenbrock: [230].

b. Although the LSE breached its duty of care to Dr Piepenbrock (at [231]), the development of Dr Piepenbrock's depressive illness could not have been reasonably foreseen by the LSE. The LSE "had no relevant information as to [Dr Piepenbrock's] personality or past medical history which would have rendered the development of the claimant's illness reasonably foreseeable". Therefore, the claim failed: [250].

92. Dr Piepenbrock sought permission to appeal the decision of Nicola Davies J, but this was refused by the Order of Hamblen LJ (as he then was) dated 14 February 2019. Dr Piepenbrock then applied to reopen the appeal pursuant to CPR Part 52.30, and that application was refused by Hamblen LJ by an order dated 16 December 2019.

93. Second, on 26 January 2015, Dr Piepenbrock brought proceedings before the London Central Employment Tribunal against the LSE by Case No 2200239/2015. The claims were for unfair dismissal, disability discrimination and victimisation. As part of this claim, Dr Piepenbrock had alleged that:

a. Ms D's complaints had caused a rapid collapse of his mental health: [1.7];

b. the actions of the LSE caused Dr Piepenbrock personal injury by causing depression: [1.8];

c. the LSE "acted as a harassment machine, consistently victimised [Dr Piepenbrock] and dismissed him as an act of victimisation": [1.9]; and

d. the LSE had failed "to investigate, or investigate timely and/or properly, the complaints/grievances made by [Dr Piepenbrock], either directly or through his wife… between 11 March 2013 and November 2014": [2.19].

94. By a judgment dated 8 June 2022, the Tribunal rejected Dr Piepenbrock's claim. In doing so, the Tribunal made the following findings in their judgment (which ran to 163 pages):

a. Dr Piepenbrock "suffered a depressive episode in 2010, following his involvement with MIT": [7.16]. After that episode of depression, "it was likely there would be further episodes". Accordingly, the Tribunal found that "[Dr Piepenbrock] was disabled by reason of impairment, which manifested itself as depression and anxiety, before he became an employee of LSE": [7.18].

b. The LSE's dismissal of Dr Piepenbrock was fair since Dr Piepenbrock had come to the end of his fixed term employment, Dr Piepenbrock "demonstrated no prospect of returning to work" and "behaved in a way which demonstrated he fundamentally had no respect for, or trust and confidence in" the LSE: [7.102].

c. The Tribunal found that Dr Piepenbrock was not discriminated against based on his disability. The Tribunal explained that "[t]he claimant's inability to engage reasonably and professionally, and his inability to accept legitimate instructions would, of itself, have justified his dismissal… the dismissal was not an act of discrimination": [7.133]-[7.134].

d. The Tribunal found that there was no merit in Dr Piepenbrock's allegations of victimisation: [7.220].

95. Dr Piepenbrock sought to appeal the Tribunal's decision to the Employment Appeals Tribunal, but permission was refused by an order dated 6 September 2022.

96. Third, following the judgment of Nicola Davies J dated 5 October 2018, articles about that decision were published in the MailOnline (10 and 12 October 2018) and the Daily Mail (13 October 2018). Based on these articles, Dr Piepenbrock brought the proceedings in Case No QB-2019-003622. The proceedings alleged defamation and malicious falsehood against Associated Newspapers Limited ("**ANL**"), the LSE and Ms Hay. Although Dr Piepenbrock issued the claim form in Case No QB-2019-003622, he did not serve it within time. By a judgment dated 1 July 2020, Nicklin J declared that the claim form had not been served within its period of validity and therefore the court had no jurisdiction in respect of the claim: [2020] EWHC 1708 (QB).

97. Fourth, on 7 October 2021, Dr Piepenbrock commenced proceedings by Case No QB-2021-003782 against 15 Defendants including the LSE, Ms Hay and ANL. On this occasion, Dr Piepenbrock alleged negligence, harassment, breaches of the Equality Act 2010, the Human Rights Act 1998 and the Data Protection Act 2018 against the Defendants. As part of this claim, Dr Piepenbrock had alleged that Ms Hay sexually assaulted him at the LSE in September 2011 and that Ms Hay had refused to investigate "the serious grievance of gross misconduct made by Ms D in November 2012": [84]. By a judgment dated 30 September 2022, Heather Williams J struck out Dr Piepenbrock's claims: [2022] EWHC 2421 (KB). In doing so, she made the following findings in her judgment:

a. The LSE is not vicariously liable for Ms Hay's conduct that Dr Piepenbrock complained of: [166].

b. The claim that Ms Hay harassed Dr Piepenbrock was time-barred and/or constituted an abuse of process because "if it was to be made, it could and should have been raised in the earlier High Court claim that was tried in 2018": [183]-[184].

c. The claims based on negligence, Equality Act 2010 and the Human Rights Act 1998 were totally without merit: [236]-[240], [248(xiv)].

98. Dr Piepenbrock sought permission to appeal and that application was refused by the order of Warby LJ dated 28 April 2023 (who found that three of the grounds of appeal were totally without merit).

99. The Miss Kamil for the LSE submits that the relevance of this fourth judgment is that Heather Williams J considered the allegations that Ms Hay harassed Dr Piepenbrock, together with the allegation that the LSE was vicariously liable for the conduct of Miss Hay, and determined that they should be struck out. Dr Piepenbrock should not therefore be permitted to raise those very same allegations again.

100. Dr Piepenbrock's claims against Ms D in Case No QB-2021-003782 were not considered in [2022] EWHC 2421 (KB), Heather Williams J. That issue was addressed in Heather Williams J's subsequent judgment dated 17 January 2023: [2023] EWHC 52 (KB). In that judgment, she found that:

a. Dr Piepenbrock should not be permitted to serve the claim form outside jurisdiction on Ms D since "none of his claims… give rise to a serious issue to be tried and they are bound to fail": [110], [137(i)]; and

b. "the claims pleaded against [Ms D] are hopeless" and those claims (and Dr Piepenbrock's application for an extension of time in respect of the claims) were totally without merit: [2023] EWHC 52 (KB), [114], [137(i)].

101. Likewise, the Miss Kamil submits that this judgment is relevant as Dr Piepenbrock alleges that he was sexually assaulted by D, and that the LSE were vicariously liable for this. Those allegations have all been the subject of prior litigation, and were determined by Heather Williams J in her judgment dated 30 September 2022.

102. Conclusion: The second category of allegations that Dr Piepenbrock makes against the LSE are founded on his complaints that he was subject to gross sexual misconduct by Ms Hay and Ms D, which he says resulted in his career ending disability for which he says the LSE is responsible because it failed to investigate his grievance properly. The allegations he has made relate to events over 10 years ago and were determined by the High Court in [2018] EWHC 2572 (QB), Nicola Davies J and by the Employment Tribunal in its decision

dated 8 June 2022. Further, the High Court has also determined that the LSE is not vicariously liable for any conduct by Ms Hay that Dr Piepenbrock complained of, and allegations of harassment are time-barred or an abuse of process ([2022] EWHC 2421 (KB), Heather Williams J) and claims pleaded against Miss D were hopeless ([2023] EWHC 52 (KB)). In these circumstances, Dr Piepenbrock cannot seek to re-litigate any of these matters, or seek to bring further any further claims arising out them. It is plain that the five judgments, taken together, preclude Dr Piepenbrock from raising any of the allegations set out in paragraphs 1 to 11 of the particulars of claim against the LSE. This is because these allegations have already been determined by the High Court or the Employment Tribunal and, to the extent any allegations have not already been determined, they should have been raised in the earlier proceedings. Dr Piepenbock is therefore precluded from pursing any of this second category of allegations on the basis of cause of action estoppel, issue estoppel or abuse of process. Paragraphs 1 to 11 of the particulars of claim do not disclose any reasonable grounds for bringing a claim against the LSE and should be struck out under CPR Part 3.4(2).

Pleading defects in the particulars of claim

103. In the light of the conclusions reached above, I do not need to go on and consider the deficiencies in the particulars of claim. They are numerous and, if I had been required to consider then, I am satisfied they would have provided an additional basis for striking out the particulars of claim against the LSE.

104. On top of that many of Dr Piepenbrock's allegations against the LSE are time-barred. The defamation claim is out of time, as the limitation period is one year from the date of first publication: see section 4A of the Limitation Act 1980 (see also paragraph 62 above). Further, the allegations in paragraphs 1 to 11 of the particulars of claim are based on events of a historic nature in 2011 and 2012 and the allegations relate to negligence, breach of statutory duty, intentional infliction and harassment, all of which have a limitation period of six years from when the date of the cause of action accrued. Dr Piepenbrock issued this claim in February 2023, which was many years after the limitation period had expired in respect of the allegations made.

Conclusion on the LSE's Application: strike out or summary judgment

105. Dr Piepenbrock's claim fails to disclose any reasonable grounds for bringing a claim against the LSE. The allegations are hopeless, cannot be rescued by amendment and are an abuse of the court's process. The claim against the LSE shall be struck out under CPR Part 3.4(2) and certified as totally without merit.

106. The LSE's Application has also been made on the alternative basis under CPR Part 24.2(a)(i). For the reasons I have explained above, I do not need to determine the LSE's Application on this basis. However, if the conclusion I have reached under CPR Part 3.4(2) is wrong, then I am quite satisfied that Dr Piepenbrock has no real prospect on succeeding

on the claim against the LSE (as I have already explained on the first category of allegations: paragraph 80 above); there is no other compelling reason why the case should be disposed of at a trial; there should be judgment for the LSE; and Dr Piepenbrock's claim against them should be dismissed.

(3) The Claimant's Application

107. The Claimant's Application was to lift the stay imposed by Master Gidden's Order dated 3 March 2023. In the light of the clear conclusions I have reached on the Barristers' Application and the LSE's Application (strike out or summary judgment), the Claimant's Application must be dismissed. Further, as the claim is totally without merit, this application to lift the stay in relation to the claim is also devoid of merit, and was bound to fail. The Claimant's Application will be certified totally without merit.

(4) The LSE's Application: extended civil restraint order

108. The LSE has applied for the court to grant an Extended Civil Restraint Order ("**ECRO**") against Dr Piepenbrock. This is because it says that this is the fifth set of proceedings that Dr Piepenbrock has commenced against the LSE in the last eight years. The previous claims all relate to the same, or similar factual matrix, and the earlier claims were either stuck out or dismissed, and three "totally without merit" orders were made against Dr Piepenbrock in the course of those proceedings.

109. The LSE's Application includes the application for the ECRO and is supported by the witness statement of Bronwen Bracamonte dated 3 November 2023, and the exhibit thereto. Dr Piepenbrock maintains that this application for an ECRO is "yet another unfair example of the LSE's attempt to manipulate the courts" (paragraph 15 of his skeleton argument).

110. Dr Piepenbrock says that it is wrong and unfair to say that he has made claims without merit and, at paragraph 14 of his skeleton argument, he explains that he:

> "… has sought justice in the courts not for the money, as he has always pledged the majority of any damages to charity. He has simply sought justice in the courts, so that no other innocent people would be harmed by the LSE. All those countless staff members who have taken settlements have only allowed the LSE to institutionalise its unethical and unlawful behaviour. Dr Piepenbrock has a responsibility to ensure that no other innocent lives will be destroyed by the LSE."

111. The relevant legal principles in relation to the grant of civil restraint orders are well established and were summarised in Miss Kamil's skeleton argument (paragraphs 43 and 44), and were not disputed by Dr Piepenbrock in his skeleton argument. The principles are:

a. CPR 3.4(6) provides that if the court strikes out a statement of case and considers that the claim is totally without merit: (i) it must record that fact; and (ii) consider whether it is appropriate to make a civil restraint order. A claim or application is totally without merit if "it is bound to fail in the sense that there is no rational basis on which it could succeed": *Sartipy v Tigris Industries* [2019] 1 WLR 5892, CA at [27].

b. An ECRO made by the High Court will restrain a person from issuing claims or making applications in the High Court or the County Court "concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made without first obtaining the permission of a judge identified in the order": PD3C at [3.2].

c. The test that the court will apply in deciding whether an ECRO should be made is whether "a party has persistently issued claims or made applications which are totally without merit": PD3C at [3.1]. Guidance as to what constitutes "persistence" was provided in *AG v Barker* [2000] 1 FLR 759 at 764. In that case, Lord Bingham explained in the context of section 42 of the Supreme Court Act 1981 that:

> "From extensive experience of deal with applications under s. 42 the court has become familiar with the hallmark of persistent and habitual litigious activity. The hallmark usually is that the plaintiff sues the same party repeatedly in reliance on essentially the same cause of action, perhaps with minor variations, after it has been ruled upon, thereby imposing on defendants the burden of resisting claim after claim; that the claimant relies on essentially the same cause of action, perhaps with minor variations, after it has been ruled upon, in actions against successive parties who if they were to be sued at all should have been joined in the same action; that the claimant automatically challenges every adverse decision on appeal; and that the claimant refuses to take any notice of or give any effect to orders of the court. The essential vice of habitual and persistent litigation is keeping on and on litigating when earlier litigation has been unsuccessful and when on any rational and objective assessment the time has come to stop".

d. More recently, the Court of Appeal considered this issue in *Sartipy* and explained that "persistence" required at least three claims or applications that are totally without merit: [28]. The court also held that in deciding whether a claimant had acted "persistently" it was necessary to carry out an evaluation of the party's overall conduct. Thus, "[i]t may be easier to conclude that a party is persistently issuing claims or applications which are totally without merit if it seeks repeatedly to re-litigate issues which have been decided than if there are three or more unrelated applications many years apart. The latter situation would not necessarily constitute persistence": [30].

e. The court has a discretion in deciding whether to make an ECRO. In exercising that discretion, the court will consider "the risk that the individual litigant will, unless restrained, make further applications or claims which are totally without merit": *Society of Lloyds v Noel* [2015] 1 WLR 4393 at [47].

112. There is no doubt Dr Piepenbrock's pursuit of litigation against the LSE has all the hallmarks of persistence. He has repeatedly sued the LSE in relation to allegations arising out of the alleged conduct of Ms D and Ms Hay and, when those allegations have failed, he has sought to appeal the decisions of the court or Tribunal against him. He has, notwithstanding that, continued to pursue his claims against the LSE, Ms D and Ms Hay. Further, as I have explained above, the court has made findings that the claims against those individuals, an application for an extension of time, and the grounds of an application for permission to appeal, were all totally without merit. In addition to that, I have determined that the claim in this case is totally without merit, as is the Claimant's Application. On the basis of that evidence I am quite satisfied that Dr Piepenbrock has persistently issued claims or made applications which are totally without merit.

113. I am also quite satisfied that, on the evidence before me, Dr Piepenbrock will, unless restrained by the court, make further applications or claims which are totally without merit against the LSE and others in relation to the matters alleged in these proceedings. This is because, as Miss Bracamonte explained in her witness statement (paragraph 47), Dr Piepenbrock has already threatened the LSE and its legal representatives with further litigation:

a. Dr Piepenbrock wrote to the incoming President and Vice Chancellor of the LSE on 6 September 2023 informing him that: "they have now given me no choice but to file yet another High Court lawsuit against the LSE for Harassment, which will unfortunately name whoever is the President and Vice-Chancellor as an individual defendant when I file before the statute of limitations runs out in the coming years".

b. Dr Piepenbrock emailed Gemma Kaplan (a Partner at Pinsent Masons LLP) and Stephen Cope (an Associate at Pinsent Masons LLP) on 10 September 2023 in the following terms: "because of the course of conduct of harassment by the LSE and Pinsent Masons (for whom the LSE is vicariously liable), I will be forced to file a High Court lawsuit against the Pinsent Masons (and responsible individual defendants) and the LSE (and responsible individual defendants) for harassment…".

114. On top of that in paragraph 14 of his skeleton argument he maintains that he has "simply sought justice in the courts, so that no other innocent people would be harmed by the LSE", and written of his "responsibility" in this regard.

115. This is therefore a case that, unless prevented by an extended civil restraint order, there is a very real and significant risk that Dr Piepenbrock will keep on and on litigating against

the LSE and others in relation to the matters which arise from the very many allegations made in these proceedings and, on any rational and objective assessment, the time has now come for the pursuit of these allegations to cease.

116. I have also considered the length of time that the extended civil restraint order should remain in place and, given the circumstances and history of this case, together with the risk presented by Dr Piepenbrock in relation to the issue of further claims or applications, I have determined that it should last for a period of three years from the date of this judgment.

Conclusion: Orders to be made

117. There is a consequentials hearing fixed with the agreement of all parties on Monday 25 March 2023. The orders made on the applications before me on 18 and 19 December 2023 are therefore:

a. the claim be struck out;

b. the claim be certificated as totally without merit;

c. the Claimant's Application (to lift the stay dated 1 May 2023) be dismissed and certified as totally without merit;

d. an extended civil restraint order be made against Dr Piepenbrock which will

i. restrain Dr Piepenbrock from issuing any claims or making any applications in the High Court or any County Court concerning any matter involving or relating to or touching upon or leading to the proceedings in which this order is made without first obtaining my permission or, if I am not available, another High Court Judge;

ii. be made for a period of three years from today's date, expiring on 12 March 2027; and

iii. be made on the standard form N19A.

e. all applications in relation to costs and any other matters consequential upon this judgment shall be determined on 25 March 2024 (parties to file a draft Order and any short written submissions by 12 noon on 22 March 2024).