Neutral Citation Number: [2023] EWHC 52 (KB)

Case No: QB-2021-003782

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 January 2023

Before :

THE HONOURABLE MRS JUSTICE HEATHER WILLIAMS DBE

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Between :

DR THEODORE PIEPENBROCK	**Claimant**
- and -	
(1) LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE **(2) NEMAT SHAFIK** **(3) CRAIG CALHOUN** **(4) SUSAN LIAUTAUD** **(5) ALAN ELIAS** **(6) JOANNE HAY** **(7) SAUL ESTRIN** **(8) GWYN BEVAN** **(9) HPN** **(10) ASSOCIATED NEWSPAPERS LIMITED** **(11) JONATHAN HARMSWORTH** **(12) GEORDIE GREIG** **(13) TOBYN ANDREAE** **(14) ANTONIA HOYLE** **(15) MARK DUELL**	**Defendants**

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Garry Piepenbrock, addressing the Court as McKenzie Friend for the **Claimant**
Angus Piper (instructed by **Weightmans LLP**) for the **Ninth Defendant**

Hearing date: 24 November 2022

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Approved Judgment

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Mrs Justice Heather Williams:

Introduction

1. The Claimant was employed as a Teaching Fellow by the London School of Economics and Political Science ("LSE") between September 2011 and September 2014. After the termination of this employment he commenced High Court proceedings against the LSE in negligence, breach of contract and under the Protection from Harassment Act 1997 ("PHA 1997"). In a judgment handed down on 5 October 2018, [2018] EWHC 2572 (QB), Nicola Davies J (as she then was) rejected the PHA 1997 claim and accepted some of the allegations of negligence and breach of contract, but dismissed those causes of action as the psychiatric illness upon which the Claimant relied had not been reasonably foreseeable. I refer to this as "the 2018 Judgment". Following this, articles about the Claimant's case were published in the *MailOnline* on 10 and 12 October 2018 and in the *Daily Mail* on 13 October 2018. The Claimant began QB-2019-003622, a claim for defamation against Associated Newspapers Limited ("ANL"), as the publishers of the articles; and against the LSE and an employee, Joanne Hay, on the basis that she was the anonymous source referred to in two of the articles ("the 2020 Claim"). On 1 July 2020, Nicklin J declared that the Claim Form was not served during its period of validity and consequently the court had no jurisdiction over the claim: [2020] EWHC 1708 (QB) ("the 2020 Judgment").

2. On 7 October 2021 the Claimant commenced the current action, relying on claims in negligence and under the PHA 1997, the Equality Act 2010 ("EQA 2010"), the Human Rights Act 1998 ("HRA 1998"), the Data Protection Act 2018 ("DPA 2018") and the General Data Protection Regulations 2018 ("GDPR 2018"). The Second to Eighth Defendants were sued on the basis of their relationship to the LSE. The Ninth Defendant, HPN ("D9") was formerly a graduate teaching assistant ("GTA") at the LSE. The Eleventh to Fifteenth Defendants were sued on the basis of their relationship to ANL.

3. I determined the strike out and summary judgment applications brought by the LSE Defendants and the ANL Defendants in a judgment handed down on 30 September 2022 ("the September 2022 Judgment"). In short, all the claims were struck out as bound to fail, other than a part of the subject access request ("SAR") aspect of the data protection claim which was stayed pending payment of costs that the Claimant had been ordered to pay in the 2020 Claim. I subsequently refused an application for permission to appeal.

4. D9 was not involved in those applications. The applications before me at this stage are:

    i) The Claimant's application dated 6 April 2022 for an extension of time for serving the Claim Form on D9. Although not expressly requested in the application notice, he also seeks permission to serve outside of the jurisdiction if I take the view that such permission is required. Dr Piepenbrock's primary position is that permission to serve out is not required. I will refer to this as "the Extension of Time Application";

ii) D9's application dated 25 April 2022 seeking a declaration that the court has no jurisdiction in relation to the claims against her, as the Claim Form had not been properly served during its period of validity ("the Jurisdiction Application"); and

iii) The Claimant's application dated 4 May 2022 seeking to set aside the anonymity and related orders made by Nicklin J on 27 April 2022 ("the Set-Aside Application").

5. D9's position is that whilst the Jurisdiction Application was made out of caution, if the court refuses the Extension of Time Application, then it follows in any event that the court should declare that it has no jurisdiction to determine the claim against D9, as the proceedings against her will not have been validly served. D9 also asks the court to certify that the Claimant's claim against her and his applications are totally without merit. She does not seek a civil restraint order at this stage.

6. The Extension of Time application is supported by a witness statement from the Claimant dated 6 April 2022. The Jurisdiction Application is supported by the first witness statement from Peter Wake (D9's solicitor), dated 25 April 2022. The Set-Aside application is supported by a witness statement from the Claimant dated 4 May 2022. Each of the applications are contested.

The course of the proceedings

7. The claim form, issued on 7 October 2021, described the causes of action as follows:

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

8. D9 has lived and worked in the United States for a number of years. It appears that she returned to live there after the events of November 2012 that I refer to below.

9. On 10 September 2021 Mr Piepenbrock (the Claimant's son) emailed what was described as a Pre-Action Protocol letter to D9. On 29 October 2021, Mr Walshaw of DAC Beachcroft emailed Mr Piepenbrock, confirming that he represented the LSE Defendants, but not D9. Mr Wake was instructed on behalf of D9 from 26 November 2021.

10. On 24 January 2022 Mr Piepenbrock emailed Mr Walshaw asking him to accept service of the Claim Form on behalf of D9, as well as on behalf of the LSE Defendants. Mr Walshaw replied on 28 January 2022 listing the defendants who he acted for (the LSE Defendants) and agreeing to accept service by email on their behalf.

11. On 4 February 2022 the Claimant emailed D9 (amongst others) attaching the Claim Form, Particulars of Claim and other documents from the claim pack by way of purported service. The Claimant also sent hard copies of the documents to the Claimant's home address, to her parent's address and to her employer's address. There was no indication in the documents sent that the Claimant was asserting a right to serve proceedings out of the jurisdiction without permission (or that permission to do so had been granted). On instructions, Mr Wake did not respond.

12. On 6 April 2022, the last day before the end of the six months period from the date of issue of the Claim Form, the Claimant emailed D9 enclosing an unissued version of the Extension of Time Application notice, along with the supporting witness statement and a draft order.

13. D9's name was used on the Claim Form and the Particulars of Claim. By application notice dated 25 April 2022 she applied for orders anonymising her, imposing reporting restrictions and restricting third-party access to documents on the court file that identified her. By order dated 27 April 2022 ("the April 2022 Anonymity Order") Nicklin J ordered:

> "1. Pursuant to CPR 39.2(4) the name and address of the Ninth Defendant is to be withheld from the public and are not to be disclosed and there shall be substituted for all purposes in these proceedings in place of references to the Ninth Defendant by name, and whether orally or in writing, references to 'HPN'. The name of the Ninth Defendant will be anonymised in accordance with this paragraph on the CE-File.
>
> 2. The address of the Ninth Defendant be stated in all statements of case and other documents to be filed or served in the proceedings as the address of the solicitors acting for the Ninth Defendant.
>
> 3. No non-party may inspect or obtain a copy of any document on or from the Court file (other than this order duly anonymised as directed) without the permission of a Master or Judge. Any application for such permission must be made on notice to the Ninth Defendant.
>
> 4. Pursuant to s.11 Contempt of Court Act 1981, there shall be no publication in any report of, or otherwise in connection with, these proceedings, of the identity of the Ninth Defendant or of any matter likely to lead to her identification in connection with these proceedings.
>
> 5…
>
> 6….
>
> 7. Any non-party affected by this Order may apply to vary or discharge by making an Application by Application Notice giving the Ninth Defendant not less than 72 hours' notice."

14. In the Reasons section of this order, Nicklin J said:

> "The Ninth Defendant has been anonymised by orders of the Court made in previous proceedings (Order of 4 October 2018 in HQ15P0511 and Order of 1 July 2020 in QB-2019-003622). If an anonymity order is not made in these proceedings, then the order made in the earlier proceedings risks being undermined/defeated. I have therefore imposed orders anonymising the Ninth Defendant in these proceedings, imposed a reporting restriction enforcing the same and restricted non-party access to any documents in the proceedings that name or identify the Ninth Defendant…"

15. The Claimant was ordered to file an Amended Claim Form, replacing D9's name and address, which was duly done.

16. The order directed that the Jurisdiction Application was to be heard in the period 3 October - 25 November 2022. Mr Justice Nicklin noted that this application referred to an application by the Claimant regarding service of the Claim Form, but that no such application was currently before the court. He observed that permission to serve the Claim Form on D9 was required, that it did not appear to have been obtained and that the time for serving the Claim Form appeared to have expired. He directed that if the Claimant intended to make an application concerning service of the Claim Form on D9, it must be issued and filed and served, with supporting evidence by 4.30pm on 18 May 2022.

17. Mr Justice Nicklin also laid down a timetable of further preparatory steps for the hearing of the Jurisdiction Application. D9 was to file and serve a skeleton argument by 10am seven working days before the hearing, together with copies of any authorities relied upon. The Claimant was to file and serve a skeleton argument by 10am four working days before the hearing, together with copies of any authorities relied upon.

18. By order dated 5 May 2022, Nicklin J directed that the Set-Aside Application be heard with the Jurisdiction Application and that the directions given in the earlier order regarding documents and skeleton arguments applied equally to this application.

19. By order originally dated 23 May 2022 and amended on 25 May 2022, Nicklin J directed that the Extension of Time Application was also to be heard with the Jurisdiction Application.

20. In the run-up to the hearing of the applications brought by the LSE Defendants and the ANL Defendants, I made an order dated 21 June 2021 addressing the various adjustments that the Claimant had requested in relation to that hearing. This is described at paras 16 – 18 of the September 2022 Judgment. In short, I permitted the hearing to take place remotely, Mr Piepenbrock to act as his father's McKenzie friend at the hearing, including by making submissions to the court and for there to be breaks during the hearing. My order made clear that Mr Piepenbrock was only granted rights of audience for this purpose and that I was not giving authority for him to conduct litigation on the Claimant's behalf.

21. In the event, Mr Piper's skeleton argument on behalf of D9 was not filed and served in accordance with the timetable that Nicklin J had imposed. It was served just before 10am on Friday 18 November 2022; as the hearing was on 24 November 2022, it should have been served by 10am on Monday 14 November 2022. There was no application for an extension of time. In light of this and the fact that no application had thus far been made for Mr Piepenbrock to act as his father's McKenzie Friend at the forthcoming hearing, I caused an email to be sent on the morning of Monday 21 November 2022, indicating that in the circumstances I was minded to extend time for provision of the Claimant's skeleton argument to 23 November 2022 and inquiring whether permission was sought for Mr Piepenbrock to address the court on 24 November 2022. An emailed response from Mr Piepenbrock confirmed the latter and contended that in light of D9's delay in relation to the skeleton argument, I should issue judgment in default against D9 or treat the applications as determined in the Claimant's favour and progress the matter to trial. Mr Wake submitted a witness statement dated 21 November 2022 in response.

22. By order dated 22 November 2022, I permitted Mr Piepenbrock to act as the Claimant's McKenzie Friend at the 24 November 2022 hearing, including by making submissions to the court. D9 had raised no objection to this and my reasons were essentially the same as those identified at para 17(ii) of the September 2022 Judgment. I also extended time for the Claimant to file and serve a skeleton argument to 4.30pm on 23 November 2022. In the accompanying Reasons I indicated that whilst the explanation for late service of the skeleton argument was unsatisfactory, it would be wholly disproportionate to enter judgment in default or to determine the applications before the court in the Claimant's favour simply because of this delay. I also explained why I did not consider that the Claimant would be prejudiced by the late service. My reasons included: the additional time that I would allow the Claimant to finalise his skeleton; that Mr Piper's skeleton argument was short and his arguments had largely been set out already in Mr Wake's first statement; and the Claimant and Mr Piepenbrock had been involved in a recent hearing before the Employment Appeal Tribunal ("EAT") contesting whether D9 should be granted anonymity at which similar issues were raised. I also indicated that if there was any new point that could not be adequately addressed in the time available, the Claimant's skeleton should cover the other matters and this could be further considered at the hearing. In the event, the Claimant did not suggest that this was the case and Mr Piepenbrock submitted the skeleton argument on the morning of 23 November 2022.

The 24 November 2022 hearing

23. In accordance with the Claimant's preference, the hearing took place remotely via MS Teams. There were no audibility issues. Mr Piepenbrock is currently based on the west coast of the United States. The Claimant was with him during the hearing. Because of the time difference, they were understandably keen to keep the hearing short. Both parties made concise submissions and the hearing concluded in just under 1 hour and 30 minutes. I gave Mr Piepenbrock the option and he chose to make his submissions first (with a right of reply).

24. During the hearing:

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

ii) I explained various matters of law and procedure, in particular setting out the tests that I would need to consider in relation to both service out and anonymity. I also asked Mr Wake to email CPR 6.37 and PD B6 to Mr Piepenbrock and I paused the hearing for 20 minutes whilst he considered these materials with his father;

iii) I did not prevent Dr Piepenbrock from interjecting his own remarks, which he did quite extensively.

25. If the hearing had taken longer, I would also have permitted regular breaks, as indicated in the 22 November 2022 order. As I did in the September 2022 Judgment (at para 19), I pay tribute to the clear and courteous way in which Mr Piepenbrock made his oral submissions. No difficulties arose during the hearing and at the end Dr Piepenbrock thanked Mr Piper and also thanked me for conducting the hearing "very well".

The material facts and circumstances

26. I set out the relevant background at paras 30 – 59 of the September 2022 Judgment, including the conclusions arrived at in the 2018 Judgment and the 2020 Judgment. At this stage I will simply highlight the features that particularly bear on the position of D9:

i) In November 2012 the Claimant undertook a lecture tour in the US. The Claimant and D9 were in Boston on 12 November and then in Seattle on 13 – 14 November. On 18 November 2012 D9 sent an email to the LSE resigning her position. The Claimant's position is that on 12 November 2012 D9 greeted him in a state of partial undress at the door of her hotel room (having been infatuated with him for some time). He contends that he spurned her advances and that she was very unhappy about this. For her part, D9 denies that any such incident occurred. Both the Claimant and D9 agree that there were extensive conversations in a park in Boston and subsequently in the hotel in Seattle between 12 November and when D9 left in the early hours on 14 November (September 2022 Judgment, para 31);

ii) D9 gave an account of events to LSE personnel in an email sent on 18 November 2012. She said that on the first night in Boston, Dr Piepenbrock had tried to make her admit that she had feelings for him and he had said she had a beautiful body. She said that when she had not responded he had described her as "damaged" and "destructive". After arriving in Seattle at about 11pm they had been met by Mike Wargel (a former colleague of Dr Piepenbrock); and although it was late, the Claimant had insisted that the three of them went to his hotel room to have a discussion about self-growth. She said that she felt pressured to discuss things that she did not wish to talk about and that the Claimant had referred to her as "unstable" and "unpredictable". Subsequently D9 made a formal complaint of harassment dated 10 December 2012 (September 2022 Judgment, para 32);

iii) D9 did not give evidence in the first High Court claim. The findings made by Nicola Davies J included:

a) In all likelihood D9 had developed an infatuation with the Claimant. This should have alerted him to the need for professional boundaries with her when he embarked on the American trip (2018 Judgment, paras 205 - 206);

b) D9's conduct in Boston caused the Claimant considerable concern (para 208). D9's contemporaneous messages indicated that the Claimant had not made his concerns clear to her during their conversation in the Boston park. It was inappropriate and unnecessary for him to have embarked on a further two-hour conversation with her on the same day (para 209);

c) In Seattle, the conversation began at 12.30am. To embark upon another conversation in the early hours of the morning in a hotel room with a young woman in her twenties and two older men went beyond inappropriate; it was unprofessional and wrong. The Claimant told D9 that he was going to have to end their working relationship and she became very upset (para 211);

d) There was no sensible justification for the Claimant's conduct in the hotel room in Seattle. There was nothing sexual in the Claimant's persistence in requesting these conversations; it was an inability to recognise boundaries and a lack of insight (paras 212 and 213);

e) By 22 November 2012 it was known that D9 was communicating her concerns to fellow students and subsequently to members of the faculty. No steps were taken to stop this until she was spoken to on 29 November 2012. No adequate explanation for this delay had been given by the LSE (para 219);

f) It was not difficult to understand why D9 sent her email of 18 November 2012 setting out her complaint. It was substantially based on the events in Seattle which (unlike those in Boston) were undisputed. It showed a course of conduct by the Claimant which, whilst well intentioned on his part, was inappropriate and unprofessional. It was a legitimate complaint and it was not made maliciously. She should not have disseminated the complaint, but no one had told her not to and she stopped when they did do so (paras 229 - 230). Accordingly, D9's conduct did not amount to harassment within the meaning of the PHA 1997 (para 230);

iv) Mrs Justice Nicola Davies therefore dismissed the PHA 1997 claim. In her carefully worded judgment she did not make a specific finding, one way or the other, as to whether D9 had behaved as the Claimant alleged in her hotel room in Boston on 12 November 2012. By way of example, she said: "if Miss D did behave in a provocative, even sexually provocative manner…" (para 207); "if Miss D did behave in the manner alleged…" (para 208); "…on his account, it manifested itself in sexually provocative behaviour…" (para 214); and "whatever it is Miss D did when she opened the hotel door to the Claimant in Boston…" (para 227);

v) In October 2018 articles were published in the *MailOnline* and in the *Daily Mail* print edition which referred to the case and to the 2018 Judgment. The detail appears in the September 2022 Judgment at paras 40 – 46;

vi) On 11 October 2019 the Claimant issued the Claim Form in QB-2019-003622 against the ANL, the LSE and D6. It was described as a claim in defamation for slander and libel and for malicious falsehood (the September 2022 Judgment, para 47). D9 was not sued in those proceedings. Mr Justice Nicklin determined that the Claim Form was not served within its period of validity. His reasoning is summarised at paras 48 – 53 of the September 2022 Judgment; and

vii) The Claimant also brought proceedings in the Employment Tribunal ("ET") for unfair dismissal, discrimination arising from disability and for victimisation. This litigation and the outcome is summarised at paras 57 – 59 of the September 2022 Judgment. All of the claims were dismissed.

D9's witness statement in the ET's proceedings

27. D9 was not a party to the ET proceedings. The Claimant's application to join her as a Respondent was refused. However, she made a witness statement dated 11 October 2020 which was relied upon by the LSE. It was not before me at the hearing of the LSE Defendants and the ANL Defendants' applications, but it is exhibited to Mr Wake's first witness statement.

28. In her statement D9 said that the Claimant's account of her exposing herself to him whilst they were in Boston in November 2012 was untrue. She summarised matters from her perspective (at para 4) as follows:

> "…the Claimant has continued through various mechanisms to harass me both directly and indirectly by submitting lawsuits alleging a twisted version of events with complete fabrications, creating a public harassment website, and reaching out to my employer and to my company's clients with the intent to damage my reputation and career. Immediately after I made my complaint in 2012, the Claimant falsely claimed to other students and staff at the LSE that I was lying and that I was unstable and had acted inappropriately. Since that time, he has further embellished the story to allege I was obsessed with him, stalked him and sexually harassed him. He has engaged in repeated attempts to contact me, my family and my employers with these and other defamatory accusations about my conduct and professionalism, he has sought to position himself as the victim of a false and malicious #metoo complaint by me, caused the publication of stories alleging dishonesty on my part, published online private photographs of me with outrageous and defamatory statements about me in relation to the various proceedings he has been involved in with the LSE, and used my name in breach of a reporting restrictions order. This information has been shared online and on social media posts including with my employer and my clients. His conduct has caused me

immense emotional upset, anxiety and trauma over the past eight years."

29. D9 explained that she did not propose to appear as a witness at the ET proceedings given her traumatic experiences with the Claimant and given that he was self-representing. Dr Piepenbrock objected to the admission of this statement, but the ET declined to exclude it for the reasons identified at paras 4.161 – 4.178 of its Reasons.

30. In her statement, D9 denied being infatuated with Dr Piepenbrock. She gave an account of the conversations with the Claimant in the Boston park and in the Seattle hotel room that were in line with her earlier complaint. She said that his version of events in the Boston hotel room was "pure fiction". She explained that she had not wanted to be a witness in the earlier High Court claim against the LSE, as she felt her life had already been disturbed too much by the Claimant and she did not wish to re-visit these matters. She expressed concern that he had used documents from those proceedings and the 2018 Judgment to cause the publication of a story in *The Times* on 10 October 2018 bearing the headline "Spurned seductress was allowed to ruin my life, claims academic". She also referred to the first of the *MailOnline* articles.

31. D9 expanded upon the summary she had given in para 4 of her statement. She said that the Claimant had obtained private photographs of her which he had published "alongside his distorted version of events, selectively quoting from the High Court judgment in ways that twisted the meaning of what was said by the judge". She said that in 2019 she discovered that the Claimant had created "a public smear site about me", which, whilst purporting to be a professional website run by an organisation, published false and defamatory accusations about her and used photographs from her non-public deactivated Facebook profile. Examples of the way in which she was described on this website included: "obsessed sex stalker" and "unethical and unstable stalker". She said that in early 2020 her employers had received an anonymous letter from the UK purporting to be from someone familiar with their work, who thought that the employer would "want to know" about the matters it contained. The letter provided the URL of the website and claimed that: "according to UK High Court records, your employee, while previously working in the UK, apparently became obsessed with the digital ecosystems expert, sexually harassed and exposed herself to him, before he sacked/fired her".

32. D9 said that hard copies of the 2020 Claim, including the lengthy Particulars of Claim, were sent to her home address, her work address and her parents' address, although she was not a party to those proceedings. She said that the Claimant had sent a Tweet, tagging her employers and companies she had been associated with, which linked to the website and read: "Dangerous sex stalker…was fired for sexually harassing and exposing herself to top LSE professor. Her lies were then exposed in the High Court and global media…Two separate million $ lawsuits…will be heard in 2020".

The ET's conclusions

33. In light of the issues raised by the applications currently before me, I will refer to the ET's Reasons dated 8 June 2022 in a little more detail.

34. The ET determined what occurred at the door of D9's hotel room in Boston on 12 November 2012, recording that both parties had contended that the tribunal should

make findings of fact in relation to this (paras 5.204 – 5.205). The ET accepted D9's account concluding that: "in no sense whatsoever was she acting in an unwanted sexually provocative manner" (para 5.223) and that the alleged sexual advances described by the Claimant did not occur (para 5.224).

35. The ET agreed with Nicola Davies J's assessment of the Claimant's conduct towards D9 in Boston and in Seattle, which it described as "entirely inappropriate, wrong and unprofessional" (para 5.205). The ET found that the Claimant had first raised the allegation that D9 had made sexual advances to him in the Boston hotel room in June 2013, when there was no good reason for him failing to do so at an earlier stage, if this had occurred (paras 5.206, 5.207 and 5.216). The ET referred to the Employment Judge's observation at the March 2020 hearing that the Claimant's "vilification" of D9 on the website "should be properly described as malicious" (paras 5.208 – 5.211). At para 5.216 the ET said that the Claimant's website "demonstrates his willingness to seek to destroy her reputation". The ET was also satisfied that the Claimant's treatment of D9 had inhibited her willingness to give evidence (5.221).

36. When discussing the Claimant's credibility, the ET said that his "propensity for malicious allegation is most clearly illustrated by his behaviour towards" D9. His antipathy towards her was said to be "obsessive and destructive" (para 7.34). His behaviour in relation to the website was said to be "extreme and indefensible" (para 7.34). The ET went on to find that the Claimant's allegations about D9 were made in bad faith and, as such, the communications he relied upon could not constitute a protected act for the purposes of his victimisation claim (paras 7.57 – 7.60).

37. Mr Piepenbrock indicated that the Claimant was seeking to appeal the ET's decision. He said there was a hearing pursuant to rule 3(10) of the Employment Appeal Tribunal Rules 1993 listed in early 2023. It therefore follows that at the sift stage a judge of the EAT determined that the notice of appeal disclosed no reasonable grounds for bringing the appeal, pursuant to rule 3(7).

The Claimant's statements

38. In his witness statement supporting the Extension of Time Application, the Claimant asks the court to take account of his disabilities of autism and chronic depression and anxiety. The ET found that the Dr Piepenbrock was disabled within the meaning of the EA 2010 on the basis of his anxiety and depression (para 7.15). It did not decide whether he is autistic (para 7.11). In the September 2022 Judgment I indicated that I was not in a position to determine whether the Claimant is autistic, but that in terms of adjustments to be made for the hearing I was willing to proceed on the basis of Dr Pearson's report (September 2022 Judgment, paras 16 and 18). This remains the position.

39. The Claimant's statement also explains that he was told by the Foreign Process Service in an email sent on 4 April 2022 that in order for them to process any service outside of the jurisdiction, there must be more than three months validity left in respect of the Claim Form. This documentation is included in the bundle.

40. In his witness statement in support of the Set-Aside Application, the Claimant refers to D9 as "the stalker", as he had tended to do in earlier materials. He says that she "sexually harassed and exposed herself" to him on 12 November 2012 and that in the 2018 Judgment Nicola Davies J "issued damning findings against the LSE and the

stalker". The proposition that the 2018 Judgment included "damning findings" against D9 is repeated several times in this statement. The Claimant includes several short extracts from the 2018 Judgment. For example, he quotes from para 206 that D9 "had developed something of an infatuation for the Claimant" but omits the sentence that followed shortly afterwards: "This alone, should have alerted the Claimant, as the senior colleague, to the need to observe professional boundaries with Miss D, particularly when he embarked upon the American trip". He takes the following wording from para 207: "Miss D did behave in a provocative, even sexually provocative manner towards the Claimant", which is materially misleading as he fails to include the highly significant word "if" which immediately preceded these words.

41. The Claimant says it was surprising that in light of her "damning findings" Nicola Davies J granted anonymity to D9 (para 43 below) whilst "naming the victim of her sexual harassment/misconduct, Dr Piepenbrock". He also suggests that D9 undermined her own ability to secure anonymity by widely circulating her "false, malicious and discredited allegations against the innocent Dr Piepenbrock which Mrs Justice Davies condemned in her judgment of the stalker".

42. This witness statement pre-dates the ET's decision, but it is apparent from the Claimant's skeleton argument and from the oral submissions made at the hearing that he maintains this position.

The earlier anonymity orders

43. An anonymity order dated 4 October 2018 was made by Nicola Davies J the day before she handed down the 2018 Judgment ("the 2018 Anonymity Order"). The Claimant was represented by leading counsel at the time. The recitals to this order record that it appeared to the court that the case was likely to attract publicity and "revealing the identity of the person referred to in the Statements of Case as Ms D is likely to damage the interests of Ms D and that accordingly publication of details revealing the identity of the individual ought to be prohibited". The recitals then referred to s.11 of the Contempt of Court Act 1981 ("CCA 1981"), common law principles of fairness, CPR 5.4A – 5.4D and Articles 8 and 10 of the European Convention on Human Rights ("ECHR"). The order provided for D9 to be anonymised and referred to as Ms D; reporting and disclosure of her identity or of any information that may lead to her identification was prohibited; and non-parties' access to documents on the court's file was prevented without the permission of the court.

44. An anonymity order dated 1 July 2020 was made by Nicklin J in the 2020 Claim ("the 2020 Anonymity Order"). Its terms mirrored those in the 2018 Anonymity Order. In his accompanying Reasons, Nicklin J said that without imposing a similar order, the Order of Nicola Davies J was likely to be frustrated.

45. Unsuccessful applications were made for permission to appeal in respect of the substantive orders made by Nicola Davies J and Nicklin J. It does not appear that permission was sought to appeal the anonymity orders (or, if it was, it was not granted).

46. On 21 December 2021 the EAT (HHJ Shanks) dismissed an appeal by the Claimant against the ET's refusal to allow him to amend his claim to add new causes of action (para 58, September 2022 Judgment). The LSE sought an order preventing the disclosure of D9's identity in relation to that appeal, which the Claimant opposed. HHJ

Shanks held a separate hearing on the anonymity issue on 28 June 2022 and handed down a reserved judgment granting the LSE's application on 12 August 2022 ("the August 2022 EAT Judgment"). His order directed that D9 would remain anonymised in the 21 December 2021 judgment (where she is referred to as Ms D) and that there was to be no publication or other disclosure of her identity or of any information which might lead to her identification. Restrictions on non-party access to documents on the EAT's file was also imposed. The order was to "remain in force indefinitely and can only be revoked or varied by a Judge of the EAT on application by a party or other person with a legitimate interest after all parties and anyone else the EAT considers appropriate has been given an opportunity to make representations".

47. After referring to the documents submitted by the Claimant for the purposes of the 12 August 2022 hearing, HHJ Shanks said at para 16 of the August 2022 EAT Judgment:

> "…I am quite satisfied that, whatever his precise subjective motivation, Dr Piepenbrock continues to bear a very strong animus against Ms D and that, if I were to name her in my judgment or to make no order preventing him from naming her and identifying her to others, he is very likely to use any document associated with this appeal (including the judgment) in an attempt to 'name and shame', vilify and harass her and that he will not stop doing so voluntarily."

48. HHJ Shanks said that he had no reason to doubt the truth of D9's 11 October 2020 statement and that he accepted she had suffered very considerable distress as a consequence of the events and that she would continue to do so if her identity was published (para 20). HHJ Shanks noted that the LSE's counsel had not addressed him in detail on Dr Piepenbrock's contention that as D9 was based in the US she could not rely upon Article 8 ECHR as protecting her reputation,. He then observed:

> "25. …I would be surprised and troubled if it was indeed the case that Ms D's citizenship and/or whereabouts prevented me from making an order if I would otherwise consider it appropriate to protect her privacy or reputation and I am content to proceed on the basis that section 6 of the Human Rights Act would require me to make an order in those circumstances regardless of her whereabouts.
>
> 26. Further, it seems to me…that it can be said that Dr Piepenbrock is in effect threatening to abuse the justice system and therefore act contrary to the interests of justice; this provides a separate basis for exercising the jurisdiction to protect Ms D's identity and it seems to me that it would be quite legitimate to consider the effects on her of not making an order in deciding whether to exercise the jurisdiction on this basis…"

49. HHJ Shanks returned to this point at para 33 of his judgment, where he indicated that he was satisfied that unless he made an order, there was a substantial risk that Dr Piepenbrock "will use the court process, including the EAT judgment and other documents, in a way that is an abuse of the system and contrary to the interests of justice and that would have a serious detrimental effect on Ms D". He said that the seriousness

of the effect was increased by her relative youth and vulnerability, by the fact that the central allegations being made by Dr Piepenbrock had been found to be untrue, by the length of time the dispute had gone on for and given the Claimant's previous actions, particularly in relation to the website (para 34). Weighing these matters against the open justice principle, he concluded that the balance came down in favour of making an order to protect Ms D's identity from becoming public (para 38).

The Particulars of Claim

50. The September 2022 Judgment contained a detailed description of the 250 page Particulars of Claim (paras 63 – 118). For present purposes I simply focus on the pleaded allegations concerning D9.

51. In the early section of the document where the parties are introduced, D9 is said to have "sexually harassed, exposed herself to and defamed the Claimant" (para 6). The same paragraph says that in the 2018 Judgment the High Court ruled that D9 was "infatuated" with the Claimant and behaved in a "sexually provocative manner" towards him. The latter quotation is from para 207 of the judgment with the qualifying "if" removed, as in the Claimant's witness statement (para 40 above).

52. The causes of action are listed in paras 12 and 15. They are in line with those described on the Claim Form (para 7 above).

53. In the "Background / Context" part of the pleading, which comprises paras 19 – 66, there is a section concerning D9 headed "Sexual Harassment by LSE Stalker". The Claimant's version of the 2012 events is then set out. It is said that D9 "sexually abused and ultimately exposed herself to the Claimant in a research meeting" (para 39). A photograph of D9 is included with a gratuitously offensive caption. The pleading goes on to assert that D9 filed "a false and malicious grievance against the innocent Claimant" (para 45). Reference is then made to D9 circulating her "false and malicious allegations against the innocent Claimant to LSE faculty and students" (para 49).

54. The next section of "Background / Context" at paras 54 – 60 contains a purported account of the 2018 Judgment. It repeats the "sexually provocative manner" partial quote from para 207 of the judgment (para 40 above). It is said that an award of damages was not made in favour of the Claimant because D9's "gross sexual misconduct and subsequent international defamation campaign against the innocent Claimant did not constitute 'oppressive and unacceptable' behaviour in accordance with" the PHA 1997 (para 60).

55. As I described in the September 2022 Judgment, the claim in negligence is set out from para 67 onwards under the heading "Particulars of Personal Injury". It is said that the LSE and the ANL owed a duty of care towards the Claimant "as the subject of their journalism, not to destroy his life and career (with false and malicious career-ending allegations and false and defamatory statements) and not to foreseeably cause a further personal psychiatric injury" (para 72). There is no pleaded duty of care in respect of D9.

56. As I explained at para 77 of the September 2022 Judgment, the pleading then includes a very lengthy section setting out why the articles published by ANL were defamatory. This largely replicates the contents of the draft Particulars of Claim in the 2020 Claim,

but in the present pleading it is introduced as supporting the claim in negligence rather than as a free-standing claim in defamation (which would in any event be statute-barred). The significance, for present purposes, is the material relating to D9 that is included. The non-exhaustive list that I will now set out is by way of example:

i) There are multiple references to D9's "gross sexual misconduct" and use of similar phrases, including at paras 137, 146, 390, 391, 395, 398, 406, 456, 467, 475, 486, 493, 526, 527 and 531; and to her having "sexually exposed" herself to the Claimant (para 324) and having "sexually harassed" him (para 425);

ii) There are also multiple references to D9's "false and malicious allegations" against the Claimant and use of similar phrases, including at paras 165, 168, 192, 223, 262, 263, 332, 383, 401, 402, 411, 422, 423, 425, 469, 501, 502, 503, 510, 517, 528 and 530. Her complaints are also referred to as "a campaign of defamatory lies" (para 475) and as "venomous threats with a vengeance" (para 480);

iii) At para 206 it is said that the High Court judge "did in fact declare that the Claimant was the victim of [D9's] unwanted sexual advances";

iv) D9 is referred to as "the unstable stalker" (para 263) and as "the unstable and vengeful stalker" (para 494);

v) As regards the criticisms of the Claimant in the 2018 Judgment, para 300 says that the High Court judge "merely seemed to criticise the autistic man over his sacking of the stalker who has sexually harassed him" and para 341 is to similar effect;

vi) At para 331 it is said that "the High Court judge ruled that [D9's] unwanted sexual advances, including exposing herself to the Claimant, caused him considerable concern";

vii) At para 386 it is said that "the High Court records clearly and consistently state, [D9] appeared before the Claimant in a state of undress at approximately 10:30 am on Monday 12 November 2012 in Boston";

viii) At para 434 it is said that the High Court's judgment demonstrated that D9 had "fabricated false and malicious allegations against the innocent Claimant in order to cover-up her gross misconduct";

ix) Para 443 includes two further photographs of D9 with a gratuitously offensive description of the way in which she is dressed; and

x) At para 498 it is said that "the High Court Judge clearly criticised [D9] for defaming the innocent Claimant".

57. Towards the end of this lengthy section, paras 566 – 567 appear under the subheading: "[D9's] Contribution to Defamation in Articles 2A/2B". Therein it is said that D9 was the "originator of the false and malicious defamatory statements…whose actions the High Court Judge condemned in 2018"; and that she acted to "disseminate her false and malicious defamation as far and as wide as she was able". No specific actions are

referred to in this context, but it appears to be a reference to the complaints made by D9 in November and December 2012 and the circulation to some LSE staff and students. It is not said, for example, that D9 was a source for Articles 2A and/or 2B, as is the case in relation to D6 (at paras 189 – 222).

58. As I described in the September 2022 Judgment, the claim under the PHA 1997 is set out from para 574 onwards and, within that section, the claim against D9 is articulated at paras 584 – 587. Five acts of alleged harassment are relied upon, namely:

    i) Stalking and exposing herself to the Claimant during the course of her employment with the LSE on 12 November 2012 in Boston;

    ii) Calling security guards on the Claimant and falsely and maliciously alleging that she was in physical danger when she locked herself in his suite on 15 November 2012 at the Seattle hotel;

    iii) Contributing to the defamation and libel of the Claimant in Article 2A;

    iv) Contributing to the defamation and libel of the Claimant in Article 2B; and

    v) Filing a false, malicious, harassing and defamatory witness statement in the ET proceedings, designed to continue to stalk and harass the Claimant.

59. The pleading goes on to allege that each of these acts were "vengeance stalking" aimed at destroying "the health and career of an innocent man" because the Claimant had spurned D9's unwanted sexual advances in 2012; and that she knew her actions would cause foreseeable harm to him (para 587). The Claimant also pleads that the LSE is vicariously liable for these actions as some of them were carried out by D9 whilst she was in the LSE's employment and that after she resigned her actions were still tied to this employment (para 586).

60. I also described the pleaded claims under the EA 2010 in the September 2022 Judgment. This section of the Particulars of Claim begins at para 600. The only allegation that is made against D9 is one of harassment in the form of unwanted conduct of a sexual nature (at para 606). The pleading is brief and vague, but this appears to be a reference to the 12 November 2012 alleged events in Boston.

61. My reasons for concluding that each of the pleaded claims against the LSE and the ANL Defendants, save for part of the SAR claims, were bound to fail were set out in detail in the September 2022 Judgment. I refer to material aspects of that reasoning when I set out my conclusions below.

The legal framework

Service outside the jurisdiction

62. CPR 7.5(2) provides that where the Claim Form is to be served out of the jurisdiction it must be served in accordance with Section IV of Part 6 within six months of the date of issue. Application may be made for an order extending the period for service, pursuant to CPR 7.6(1). The application should generally be made before this period has expired: CPR 7.6(2). If the application is made after the end of this period, the court may only grant an extension of time in the circumstances identified in CPR 7.6(3).

63. CPR 6.40 contains general provisions about the method of service of a Claim Form out of the jurisdiction. CPR 6.40(3) provides that where service is to be effected on a party out of the United Kingdom, it may be served by any method provided for in rules 6.42 and 6.44 or by any other method permitted by the law of the country in which it is to be served. CPR 6.42 addresses service through foreign governments, judicial authorities and British Consular authorities. CPR 6.44 is concerned with service on a State.

Service out where the court's permission is not required

64. The Claimant submits that the permission of the court is not required in this instance. Service of the Claim Form without permission is addressed by CPR 6.33. Dr Piepenbrock relies upon 6.33(2), 6.33(2B) and/or 6.33(3). The material parts are as follows:

> "(2) The claimant may serve the claim form on a defendant out of the United Kingdom where each claim made against the defendant to be served and included in the claim form is a claim which the court has power to determine under sections 15A to 15E of the 1982 Act and-
>
> (a) no proceedings between the parties concerning the same claim are pending in the courts of any other part of the United Kingdom and
>
> (b) …..
>
> (iii) the defendant is an employer and a party to a contract of employment within section 15C(1) of the 1982 Act
>
> (2B) The claimant may serve the claim form on the defendant outside of the United Kingdom where, for each claim made against the defendant to be served and included in the claim form-
>
> (a) ……
>
> (b) a contract contains a term to the effect that the court shall have jurisdiction to determine the claim.
>
> (3) The claimant may serve the claim form on a defendant out of the United Kingdom where each claim made against the defendant to be served and included in the claim form is a claim which the court has power to determine other than under the 2005 Hague Convention, or notwithstanding that-
>
> (a) the person against whom the claim is made is not within the jurisdiction; or
>
> (b) the facts giving rise to the claim did not occur within the jurisdiction."

65. References to the "the 1982 Act" in CPR 6.33(2) are to the Civil Jurisdiction and Judgments Act 1982 (CPR 6.31(b)). Sections 15A to 15E of that Act concern cases brought by or against United Kingdom domiciled consumers and cases brought by or against United Kingdom domiciled employees, or by employees working in the United Kingdom or engaged by a United Kingdom business.

66. As regards the CPR 6.33(2B) exception, it is not suggested that Dr Piepenbrock had a contract with D9; for these purposes he relies upon his employment contract with the LSE. The circumstances in which a jurisdiction clause in a contract will cover third parties were summarised by Andrew Burrows QC, sitting as a Deputy High Court Judge, in *Clearlake Shipping Pte Ltd v Xiang Da Marine Pte Ltd* [2019] EWHC 2284 (Comm). He said that it was a question of interpreting the particular clause by reference to the modern contextual and objective approach to contractual interpretation; so that the court must ask "what the clause, viewed in the light of the whole contract, would mean to a reasonable person having all the relevant background knowledge reasonably available to the parties at the time the contract was made" (para 23). However, the starting point when interpreting a jurisdiction clause was that only the parties to the contract were covered by it (para 24).

67. In relation to the CPR 6.33(3) limb, the key question is the meaning of "a claim which the court has power to determine". This is considered at para 6.33.5 of the White Book where the text explains:

> "This rule derives from RSC Ord.11 r.1(2)(b), which referred to a claim which by virtue of "any other enactment" the court had power to determine notwithstanding that neither the defendant nor the relevant conduct were within the jurisdiction. In *Orexim Trading Ltd v Mahavir Port and Terminal Private Ltd* [2018] EWCA Civ 1660; [2018] 1 W.L.R. 4847, the Court of Appeal noted that CPR 6.33(3) is in very similar terms to RSC Ord.11 r.1(2)(b) and that, although the power of the court under the current rule is not limited to claims brought under an enactment, it "seems unlikely that that omission was intended to change the scope of the rule": see Dicey, Morris & Collins, *The Conflict of Laws* (15th edn), para 11-136."

68. Where a claimant intends to serve a Claim Form under CPR 6.33, they must file a notice with the Claim Form stating the grounds relied upon for these purposes and serve a copy of that notice when the Claim Form is served on the defendant: CPR 6.34(1). If the notice is not filed, then the Claim Form may only be served once it has been filed or if the court permits this: CPR 6.34(2).

Service out with the court's permission

69. Where the circumstances do not come within CPR 6.33 (or CPR 6.32, which is not relied upon in this instance), the Claim Form may be served out of the jurisdiction if the court gives permission on the basis of the gateways set out in para 3.1 of Practice Direction 6B: CPR 6.36. An application for permission must set out which para 3.1 ground is relied upon; that the Claimant believes that the claim has a reasonable prospect of success; and the defendant's address, if known, or in what place they are likely to be found: CPR 6.37(1). Furthermore, the court will not give permission unless

satisfied that England and Wales is the proper place in which to bring the claim: CPR 6.37(3).

70. Dr Piepenbrock seeks to rely upon the following gateways in PD 6B, para 3.1:

> "(3) A claim is made against a person ('the defendant') on whom the claim form has been or will be served (otherwise than in reliance on this paragraph) and
>
> (a) there is between the claimant and the defendant a real issue which it is reasonable for the court to try; and
>
> (b) the claimant wishes to serve the claim form on another person who is a necessary or proper party to that claim.
>
> *Claims in tort*
>
> (9) A claim is made in tort where-
>
> (a) damage was sustained, or will be sustained, within the jurisdiction; or
>
> (b) damage which has been or will be sustained results from an act committed, or likely to be committed, within the jurisdiction.
>
> *Claims for breach of confidence or misuse of private information*
>
> (21) A claim is made for breach of confidence or misuse of private information where-
>
> (a) detriment was suffered, or will be suffered, within the jurisdiction; or
>
> (b) detriment which has been, or will be, suffered results from an act committed, or likely to be committed, within the jurisdiction."

71. As summarised at para 6.37.2 of the White Book, the application for permission under CPR 6.36 should be made on a Form N244 Application notice and include the additional information referred to in Form PF6A (which reflects the requirements of CPR 6.37). The form states that the claimant must set out, either in the application or in an accompanying witness statement, the matters referred to in CPR 6.37(1) and the facts relied on under CPR 6.37(3).

72. The criteria that the court must consider when determining an application for permission to serve out are set out at para 6.37.13 of the White Book as follows:

> "The general principles to be applied by the court, when hearing and determining an application under r.6.36, were summarised in *Altimo Holdings and Investment Ltd v Kyrgyz Mobile Tel Ltd* [2011] UKPC 7; [2012] 1 W.L.R. 1804, PC, at [71], [81] and [88] per Lord Collins, and in *VTB Capital Plc v Nutritek International Corp* [2012] EWCA Civ 808; [2012] 2 Lloyd's Rep. 313, CA at [99] to [101], in a joint judgment delivered by Lloyd Jones LJ. The claimant must satisfy the court:
>
> 1. That there is a good arguable case that the claim against the foreign defendant falls within one or more of the heads of jurisdiction for which leave to serve out of the jurisdiction may be given as set out in para 3.1 of PD 6B…
>
> 2. That, in relation to the foreign defendant to be served with the proceedings, there is a serious issue to be tried on the merits of the claim…
>
> 3. That in all the circumstances (a) England is clearly or distinctly the appropriate forum for the trial of the dispute (forum conveniens)…and (b) the court ought to exercise its discretion to permit service of the proceedings out of the jurisdiction…"

73. In this context "a good arguable case" requires more to be shown than that there is a serious issue to be tried or a real prospect of success, but less than success on a balance of probabilities: *Carvill America Inc v Camperdown UK Ltd* [2005] EWCA Civ 645, [2005] 2 Lloyd's Rep. 457, CA per Clarke LJ (as he then was) at para 45. In *Canada Trust v Stolzenberg (No. 2)* [1998] 1 W.L.R. 547 Waller LJ said at 555E that the requirement for "a good arguable case" reflects "that one side has a much better argument on the material available". In *Brownlie v Four Seasons Holding Inc* [2017] UKSC 80, [2018] 1 W.L.R. 192, Lord Sumption explained that having "a much better argument" meant: (1) that the Claimant must supply a plausible evidential basis for the application of a relevant jurisdictional gateway; (2) that if there is an issue of fact or some other reason for doubting that it applies, the court must take a view on the material available if it can reliably do so; but (3) the nature of the issue and the limitations of the material available at this stage may mean that no reliable assessment can be made, in which case there is a good arguable case for the application of the gateway if there is a plausible evidential basis for it.

74. The requirement that there be "a serious issue to be tried" in relation to the merits of the claim means that a claimant must show that the claim has a real, as opposed to a fanciful, prospect of success: *Altimo Holdings and Investment Ltd v Kyrgyz Mobile Tel Ltd* [2011] UKPC 7, [2012] 1 W.L.R. 1804 at para 71. As the authors of the White Book observe at para 6.37.15, the threshold under this test is the same as when a claimant resists an application by the defendant for summary judgment under CPR 24.2.

Anonymity

75. Dr Piepenbrock submits that the court has no power to grant anonymity to D9 because she is unable to rely upon Article 8 ECHR as she resides outside of the ECHR's

jurisdiction. Accordingly, it is important to recognise that the court's powers to grant anonymity are not confined to those that arise from the ECHR.

Common law powers

76. As Lord Reed JSC explained at para 27 in *A v British Broadcasting Corporation* [2014] UKSC 25, [2015] AC 588 ("*A v BBC*"), the principle of open justice is a constitutional principle found in the common law and the courts have an inherent jurisdiction to determine how the open justice principle should be applied pursuant to their common law powers.

77. The House of Lords in *Scott v Scott* [1912] AC 417 recognised that there are circumstances where it is necessary to depart from this principle of open justice. However, as Viscount Haldane LC emphasised (at pp 437 – 438):

> "As the paramount object must always be to do justice, the general rule as to publicity… must accordingly yield. But the burden lies on those seeking to displace its application in the particular case to make out that the ordinary rule must as of necessity be superseded by this paramount consideration."

78. One aspect of the court's inherent power is the ability to permit the identity of a party or a witness to be withheld from public disclosure where this is necessary in the interests of justice. Lord Reed discussed this power and examples of its use at paras 38 – 40 in *A v BBC*, noting that: "The court can therefore take steps in current proceedings in order to ensure that the interests of justice will not be defeated in the future". His summary of the common law position at para 41 included the following:

> "…I agree…that it would be in the interests of justice to protect a party to proceedings from the painful and humiliating disclosure of personal information about her where there was no public interest in its being publicised. Whether a departure from the principle of open justice was justified in any particular case would depend on the facts of the case. As Lord Toulson JSC observed in *Kennedy v Information Comr (Secretary of State for Justice intervening)* [2015] AC 455, 525, para 113, the court has to carry out a balancing exercise which will be fact-specific. Central to the court's evaluation will be the purpose of the open justice principle, the potential value of the information in question in advancing that purpose and, conversely, any risk of harm which its disclosure may cause to the maintenance of an effective judicial process or to the legitimate interests of others."

79. Having analysed the court's inherent powers at common law, Lord Reed went on to discuss the impact of ECHR standards. In relation to the Article 6.1 requirement for there to be a public hearing of the determination of a person's civil rights and obligations, Lord Reed observed that the qualifications broadly reflected the various exceptions to the open justice principle in domestic law (para 44). Between paras 46 – 54 he discussed the protection afforded by Article 8 in respect of private life and the Article 10 right to freedom of expression.

80. Having considered both the common law and the ECHR, Lord Reed rejected the submission that where the ECHR was engaged, the court's power to allow a party not to disclose their identity was to be found in these rights rather than in the common law (para 55 – 57). He concluded that: "the starting point in this context is the domestic principle of open justice, with its qualifications under both common law and statute" (para 57).

CPR 39.2(4)

81. The common law principles discussed by Lord Reed are reflected in CPR 39.2(4), which provides that:

> "The court must order that the identity of any person shall not be disclosed if, and only if, it considers non-disclosure necessary to secure the proper administration of justice and in order to protect the interests of that person."

82. As Dingemans LJ explained at para 19 in *XXX v Camden London Borough Council* [2020] EWCA Civ 1468, [2020] 4 WLR 165 ("*Camden*")

> "CPR r 39.4 recognises that orders for anonymity of parties and witnesses may be made. The common law has long recognised a duty of fairness towards parties and persons called to give evidence, see *In re Officer L* [2007] UKHL 36: [2007] 1 WLR 2135, and balanced that against the public interest in open justice cases. Under the common law test subjective fears, even if not based on facts, can be taken into account and balanced against the principle of open justice. This is particularly so if the fears have adverse impacts on health, see *In re Officer L* at para 22 and *Adebolajo v Ministry of Justice* [2017] EWHC 3568 (QB) at [30]."

83. In *R v Legal Aid Board Ex p. Kaim Todner* [1990] QB 966, L. Woolf MR made a number of observations about the general approach to be adopted to applications for anonymity, including that: interference for a limited period is less objectionable than a permanent restriction (point 6 at 978B); a distinction may be made between the person who initiates proceedings, as having accepted the normal incidences of the public nature of court proceedings and a defendant who has not chosen to do so (point 8 at 978E); and, in general, parties have to accept the embarrassment and damage to their reputation which can be inherent in litigation (point 8, 978F).

84. When Article 8 and Articles 10 rights are both in play, the court is required to undertake a balancing exercise, as identified by Lord Steyn at para 17 in *In re S (A Child)* [2004] UKHL 47, [2005] 1 AC 593:

> "First, neither article has as such precedence over the other. Second, 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…"

85. When the court considers an application for anonymity pursuant to CPR 39.2(4), a balancing exercise must be carried out of the relevant interests in order to "determine whether 'non-disclosure is necessary to secure the proper administration of justice and in order to protect the interests of that party or witness'" per Dingemans LJ at para 24 in *Camden*.

86. It is recognised that the power conferred by CPR 39.2(4) goes beyond the anonymising of court orders and judgments and includes the power to make orders restraining others from disclosing the identity of the relevant party or witness: *Re Guardian News and Media Ltd* [2010] UKSC 1, [2010] 2 WLR 325 per Lord Rodger at para 30.

<u>Section 11 Contempt of Court Act 1981</u>

87. A specific statutory power to prohibit publication is found in section 11 CCA 1981. It provides:

> "In any case where a court (having power to do so) allows a name or other matter to be withheld from the public in proceedings before the court, the court may give such directions prohibiting the publication of that name or matter in connection with the proceedings as appear to the court to be necessary for the purpose for which it was so withheld."

88. Lord Reed explained the way that section 11 operated at para 59 in *A v BBC*:

> "…section 11 does not itself confer any power on courts to allow 'a name or other matter to be withheld from the public in proceedings before the court', but it applies in circumstances where such a power has been exercised. The purpose of section 11 is to support the exercise of such a power by giving the court a statutory power to give ancillary directions prohibiting the publication, in connection with the proceedings, of the name or matter which has been withheld from the public in the proceedings themselves…The directions which the court is permitted to give are such as appear to it to be necessary for the purpose for which the name or matter was withheld."

89. Dr Piepenbrock points out that it is only in a handful of cases that the courts have granted lifelong anonymity to those who committed murder when a child. He says that this shows how restrictive the jurisdiction is and that it is wrong in principle for D9 to seek what is, in effect, a lifelong anonymity in respect of his allegations. A recent discussion of the principles applied in those sorts of cases appears at para 61 in *D v Persons Unknown* [2021] EWHC 157 (QB). I do not accept that any meaningful analogy can be drawn between D9's position and that of a person who seeks to avoid disclosure of their identity because they have been convicted of committing murder; the considerations involved are very different.

Territorial scope of the European Convention on Human Rights

90. In *Millicom Services UK Ltd v Clifford* [2022] EAT 74 ("*Millicom*") Eady J (President) considered the territorial scope of the ECHR in relation to the respondents' application to withhold public disclosure of certain information. The factual context was very different to the present case. The application, which relied on Articles 3, 5, 6 and 8 ECHR as well as the common law, was made on the basis of the alleged risks to the physical safety of some of the first respondent's employees if the non-disclosure order was not made. The employees were neither parties nor witnesses to the proceedings and were based in a country that was not an ECHR signatory state. The relevant power for the ET is rule 50 of the Employment Tribunal Rules of Procedure 2013 (rather than CPR 39.2(4)). Nonetheless, the EAT's analysis of the ECHR provisions is of valuable assistance.

91. Article 1 ECHR provides that: "The high contracting parties shall secure to everyone within their jurisdiction the rights and freedoms defined in section I of this Convention". As Eady J observed at para 46:

> "This is generally understood as meaning that rights under the ECHR are limited to the territories of the contracting states, with only exceptional circumstances capable of giving rise to the exercise of jurisdiction by a contracting state outside its own territorial boundaries: *Al-Skeini v United Kingdom* (2011) 53 EHRR 18 at paras 131 – 132, *Smith v Ministry of Defence* [2014] AC 52 at paras 42 – 55."

92. Accordingly, she held that the ET was correct in its understanding that rights under the ECHR were (save in exceptional circumstances that had no application) limited to the territories of the contracting states (paras 81 – 82).

93. Mrs Justice Eady also rejected an alternative argument that the ET had failed to comply with its own duty imposed by section 6 HRA to act compatibly with the ECHR, including in relation to the right to a fair trial guaranteed by Article 6 (paras 83 - 84). She observed at para 83 that:

> "The difficulty with this argument, as the claimant has observed, is that section 6 HRA imposes a duty upon the tribunal; it does not afford it additional powers to those provided under rule 50. Moreover, the duty under section 6 applies to rights under the ECHR: to the extent that the protection is sought in respect of individuals *outside* the territory of the ECHR, the duty is simply not engaged. Similarly, to the extent that rule 50(1) provides the tribunal with the power to make an order for the protection of the ECHR rights of any person, it thus provides a power to protect rights conferred under the ECHR, it does not serve to extend such rights to those who otherwise fall outside its ambit." (Emphasis in original text.)

94. However, this did not mean that the risk to those based in the non ECHR signatory country were irrelevant to the order sought. Under the terms of rule 50, the tribunal has the power to derogate from the open justice principle not only to protect ECHR rights,

but where it considers it necessary "in the interests of justice". Mrs Justice Eady J held that consideration of what was necessary for the administration of justice in that case could include the fact that evidence could not be given freely in the absence of the non-disclosure order sought, given the fears over the safety of those located in the non ECHR signatory country (para 85). She commented at para 86:

> "Not only is this approach consistent with how the interests of justice are thus protected at common law, it can be seen to be a necessary consequence of the employment tribunal's duty under section 6 HRA not to act incompatibly with the rights to a fair trial provided by article 6 ECHR. In that respect, the ECHR and domestic law 'walk in step' (to adopt the language of Lord Reed JSC at para 57 of [*A v BBC*]…)."

Access to court documents by non-parties

95. CPR 5.4C governs the supply of documents from the court's records to a non-party. The general position is that a non-party may obtain a judgment or order given in public and a statement of case, but not any documents attached to the statement of case or filed with it: CPR 5.4C(1). Other documents may only be obtained from the court's files with the court's permission: CPR 5.4C(3). However, the court may, on the application of a party, order that a non-party may not obtain a copy of a statement of case or that non-parties may only obtain a copy of a statement of case if it is edited in accordance with the directions of the court: CPR 5.4C(4).

Conclusions: Extension of Time Application and Jurisdiction Application

96. It is clear that the Claim Form has not been properly served on D9 thus far. Neither posting it to her in the US nor emailing it to a solicitor who was not instructed to act for her at the time (paras 10 – 11 above) are permissible methods of service under CPR 6.40 (para 63 above). Furthermore, the Claimant did not have permission to serve out of the jurisdiction and nor did he comply with CPR 6.34(1) (para 68 above), in so far as he contends that permission was not required.

97. The Claim Form was issued on 7 October 2021 and thus it is no longer valid against D9 unless an extension of time is granted. I will consider whether permission to serve the Claim Form is required and, if so, whether it should be given, before returning to the question of whether an extension should be granted.

Permission to serve out

98. No notice has been served by the Claimant indicating the grounds he relies upon for asserting that permission to serve out is not needed, as required by CPR 6.34(1) (para 68 above). The specific contentions that he now relies upon were first raised in the skeleton argument filed for the purposes of this hearing. Nonetheless, I will address the merits of Dr Piepenbrock's contention. As I have earlier indicated, he seeks to rely on CPR 6.33(2), 6.33(2B) and/or 6.33(3) (para 64 above). I will consider these grounds in turn.

99. In terms of employment related rather than consumer claims, CPR 6.33(2) applies where the claim is within sections 15A - 15E of the 1982 Act and the defendant is sued

as an employer pursuant to a contract of employment. I have summarised the scope of sections 15A – 15E at para 65 above. It is plain that the current claim does not come within the ambit of these provisions. Furthermore D9 is not sued as Dr Piepenbrock's employer (it is not suggested that she ever was his employer) and nor is she sued for breach of an employment contract. Mr Piepenbrock submitted that the provision applied as D9 was the agent / representative of the LSE for whom the LSE is vicariously liable. This argument is unsustainable. Firstly, even if there was merit in the vicarious liability point, it does not remove the twin difficulties that the claims against D9 are not for breaches of the employment contract between the Claimant and the LSE and nor could they come within sections 15A – 15E. Secondly, the claim against D9, as I have summarised earlier, is based on her personal (alleged) actions, rather than on acts that it is said she was undertaking as the LSE's representative. Thirdly, I have found at para 193 of the September 2022 Judgment that the proposition that the LSE was vicariously liable for her alleged acts of harassment was bound to fail and should be struck out.

100. CPR 6.33(2B) may apply where a contract contains a term to the effect that the court shall have jurisdiction to determine the claim (para 64 above). The Claimant accepted that he did not have a contract with D9, but Mr Piepenbrock submitted that his father's contract with the LSE contained a term to this effect. I have already noted that the claims against D9 concern alleged actions that she undertook in a personal capacity and that I struck out the vicarious liability claim against the LSE as bound to fail. Furthermore, the usual starting point is that a jurisdiction clause will only bind the parties to that contract (para 66 above). The Claimant has not produced the contract with the LSE in this instance, nor indicated the wording of the clause in question and thus he has provided no basis for displacing the usual starting point. In any event it is extremely unlikely that the clause would be interpreted as covering a claim for alleged harassment by a non-party to the contract undertaken, even on the Claimant's pleading, in a personal capacity rather than on behalf of the LSE and in relation to which the LSE is not vicariously liable.

101. I have explained why CPR 6.33(3) is limited to circumstances where by virtue of an enactment the court has power to determine the claim in question notwithstanding that neither the defendant nor the relevant conduct were within the jurisdiction. That is not the case here. As I have already explained the central claim against D9 is under the PHA 1997. There is nothing in that statute which confers such a power on the court. Indeed there is an indicator to the contrary in so far as section 14 confines the reach of the PHA 1997 to acts that have taken place in England and Wales, as explained at para 192 of the September 2022 Judgment and para 225 of the 2018 Judgment. The only other enactment that is relied upon in terms of the causes of action pleaded against D9 is the EA 2010 (para 60 above). There is nothing in this statute that I can see that assists the Claimant in this respect and no specific provision was identified by him.

102. Accordingly, I conclude that permission to serve out of the jurisdiction is required in this instance. The procedural requirements for seeking the court's permission contained in CPR 6.37(1) (para 69 above) have not been complied with. Dr Piepenbrock did not identify the PD 6 para 3.1 gateway/s that he relied upon until I raised this with him during the hearing itself. In this regard I note that the need to obtain the court's permission had been flagged by Nicklin J as long ago as the April 2022 Anonymity Order (para 16 above). In any event, it is unnecessary for me to resolve whether I would

have refused permission on that basis alone, since it is in any event clear that the substantive requirements for granting permission are not met in this instance.

103. I have set out the applicable criteria at para 72 above. Firstly, the applicant must show a good arguable case that the circumstances fall within one or more of the PD 6B para 6.1 gateways. Dr Piepenbrock relied upon three of the gateways (para 70 above). I will consider these in turn.

104. Paragraph 3.1(3) cannot apply to this situation. It requires that a claim has been served or will be served on another defendant other than in reliance on this paragraph, and that the person in question (D9 in this instance) is "a necessary and proper party to that claim". Whilst the proceedings were properly served on the LSE Defendants and the ANL Defendants, the claims against them have been struck out, save for a DPA 2018 claim relating to certain SARs. D9 is not "a necessary or proper party" to the DPA 2018 claim; there are no allegations made against her in the data protection part of the Particulars of Claim.

105. Paragraph 21 is equally unpromising from the Claimant's point of view. There is no cause of action in breach of confidence or misuse of private information in the lengthy Particulars of Claim.

106. Accordingly, the only conceivable gateway that could apply is para 9, which is relied upon on the basis that the claim is made in tort and the Claimant has sustained "damage" within the jurisdiction. I summarised Dr Piepenbrock's case as to the damage he has suffered at paras 114 – 118 of the September 2022 Judgment. At para 163(v) of that judgment I noted the absence of supporting medical report(s) and the difficulties that it appeared he faced in terms of obtaining such medical evidence. That remains the position. However, it is unclear whether distress, which can potentially lead to an award of damages under the PHA 1997 (without psychiatric injury having to be proved), amounts to "damage" for the purposes of para 9. In the event, it is unnecessary for me to resolve this point because to grant permission I must also be satisfied that there is a serious issue to be tried on the merits of the claim (paras 72 and 74 above) and I do not consider that any of the Claimant's pleaded claims against D9 give rise to a serious issue to be tried. They are all bound to fail.

107. As regards the five allegations made under the PHA 1997 (para 58 above):

i) The first two allegations relate to alleged events in November 2012 and, as such, they are statute barred as the limitation period has expired. A further, free-standing reason why these allegations do not give rise to a triable issue is that the alleged events occurred in the US and thus they fall outside of the jurisdictional reach of the statute (para 101 above). A third, independent reason why the allegations cannot be pursued in these proceedings is that they have already been rejected in earlier court judgments and are precluded by issue estoppel. The 2018 Judgment rejected the proposition that D9's allegations were false and malicious when finding against the Claimant on the PHA 1997 claim (para 26(iii)(f) above). The ET found that that the Claimant's allegation that D9 had exposed herself to him on 12 November 2022 was false (para 34 above). In so far as Dr Piepenbrock submits that the ET was wrong to address this matter, the parties agreed that the tribunal should do so (para 34 above) and it went directly to its determination of the victimisation claim (para 36 above). The

Claimant is also incorrect in his submission that the ET's finding in this regard was precluded by the 2018 Judgment; Nicola Davies J did not conclude that the alleged exposure had occurred (para 26(iv) above) and in suggesting the contrary, Dr Piepenbrock has quoted selectively from para 207 of that judgment (paras 40 and 51 above);

ii) The third and fourth allegations assert that D9 contributed to the defamation of the Claimant in Articles 2A and 2B. I have already summarised the limited way in which this is pleaded in the Particulars of Claim (para 57 above). It is not said that D9 was the source referred to in those articles; and the only acts that she is alleged to have undertaken relate back to the events of 2012, which, as I have already explained, are statute barred; precluded by issue estoppel; and, in so far as they took place in the US, beyond the reach of the PHA 1997. Furthermore, I have already found at paras 195 - 197 of the September 2022 Judgment that the contents of those article are incapable of amounting to harassment by publication; and

iii) The fifth allegation concerns the contents of D9's witness statement made for the ET proceedings and as such it is precluded by the doctrine of witness immunity. I explained this principle at para 186 of the September 2022 Judgment and held that it applied to this allegation at para 194. Furthermore, I note that the premise of this allegation is undermined by the findings of the ET, who essentially accepted D9's account of events on the 2012 US trip and rejected the Claimant's account as false (paras 34 – 35 above).

108. The EQA 2010 claim against D9 concerns the 2012 events (para 60 above). As such, it is statute barred and precluded by issue estoppel, as I have already explained in relation to the PHA 1997 claim. There is also the additional, free-standing fundamental difficulty for the Claimant that he cannot bring his pleaded claims within Part 3 of the EQA 2010, as I explained at paras 202 – 208 of the September 2022 Judgment.

109. There is no other cause of action brought against D9. The duty of care that was allegedly owed in negligence is not said to include her (para 55 above). Although passages have been transplanted from the 2020 Claim for defamation, no pleaded claim in defamation is made in the present proceedings (and it would be statute barred if Dr Piepenbrock attempted to include such a claim). Accordingly, paras 566 – 567 of the Particulars of Claim (para 57 above) do not articulate a cause of action against D9. Additionally, the only matters relied upon in that context are the 2012 allegations, which are statute barred and precluded by issue estoppel as I have just explained in relation to the PHA 1997.

Outcome

110. Accordingly, the Claimant is unable to satisfy the applicable tests for obtaining permission to serve out of the jurisdiction because none of his claims against D9 give rise to a serious issue to be tried and they are bound to fail. In the circumstances I have not gone on to address the third requirement (para 72 above).

111. In these circumstances there is no basis for granting an extension of time to serve the Claim Form. Whilst Dr Piepenbrock asks that the court takes account of his disability (para 38 above), at most this might assist him with his failure to comply with the

formalities of making an application to serve out, it does not alter the fact that the claims are bound to fail for the reasons I have identified.

112. It therefore follows that the Claim Form has not been validly served on D9 and the court has no jurisdiction to determine the claims pleaded against her. A declaration will be made to that effect.

Totally without merit

113. I am asked to certify that the claim made against D9 and the application to extend time for service of the Claim Form are totally without merit. I discussed the applicable test at paras 236 – 238 of the September 2022 Judgment. As I did then, I will proceed on the basis most favourable to the Claimant, namely that I should only conclude that the totally without merit threshold is met if I regard the claim and/or application to be hopeless.

114. I do conclude that the claims pleaded against D9 are hopeless. I have explained why they are bound to fail. None of those points involve nuance or an evaluative assessment; the position is clear-cut; and, as I have explained, in most instances there are at least two free-standing reasons why the cause of action is clearly bound to fail. I bear in mind that I did not certify the PHA 1997 claim against the LSE Defendants and the ANL Defendants as being totally without merit when I struck it out, in contrast to my certification of the claims in negligence and under the EQA 2018 and HRA 1998 (paras 238 – 239, September 2022 Judgment). This was because *some* of the PHA 1997 claims against those Defendants involved a degree of evaluative assessment, in particular in relation to the allegations against D6 that had not been brought previously and the alleged harassment by publication. The same cannot be said of the claims pleaded against D9. Furthermore in relation to D9 the Claimant has to meet the additional hurdle of obtaining permission to serve out of the jurisdiction, which he is unable to do. In the circumstances, I will treat the claims against D9 and the application for an extension of time as part and parcel of the same totally without merit certification.

Conclusions: Set-Aside Application

115. I will address some specific contentions raised by the Claimant, before turning to the assessment that I must undertake.

Making an anonymity order and a restricted reporting order

116. Mr Piepenbrock argued that it was wrong in principle to grant anonymity to D9 for the purposes of these proceedings and make a restricted reporting order in relation to her identity. This submission is misconceived. In many instances the objective of an anonymity order would be completely undermined if the party's identity could in any event be reported in relation to the allegations. The courts have recognised that the power under CPR 39.2(4) extends to restraining disclosure of a person's identity (para 86 above) and in any event section 11 CCA 1981 expressly permits a reporting restriction to be made where a person's name or other matter has been withheld from the public in the proceedings (paras 87 – 88 above). It is commonplace for courts to make orders that both grant anonymity and restrict reporting of the identity of the person in question. Mr Piepenbrock sought to derive support for this submission from a passage at para 24 of an ET decision, *AB v The Commissioner of Police of the*

*Metropoli*s Case No. 3303742/2019, where Employment Judge Bedeau discussed the ET's powers in relation to anonymity orders and restricted reporting orders. However, the Judge did not suggest that the two were mutually exclusive and in fact both an anonymity and a restricted reporting order were granted in that case.

The ordinary consequences of court proceedings

117. Mr Piepenbrock reminded me that anonymity should not be granted simply to spare a party from the embarrassment or humiliation that is inherent in litigation. I agree that this is the position, as I have set out at para 83 above. However, D9's application does not rest upon the ordinary consequences of litigation, she contends that she has been on the receiving end of a far-reaching malicious and sustained campaign by the Claimant to seriously damage her reputation and that he has misused litigation as one of the means of achieving this (paras 28 - 32 above). I return to this contention when I weigh up the merits of maintaining the current anonymity order. However, it is quite clear that her application for anonymity is not simply based upon the upset and embarrassment that it is to be expected as part and parcel of the ordinary incidences of court proceedings.

D9's own conduct

118. The Claimant submitted that D9 should not attract the protection of the court as she was "the architect of her own downfall" in choosing to circulate what he says was a false and malicious complaint about the Claimant to others at the LSE. Again the 2018 Judgment is referred to in inaccurate terms to suggest that it supports this proposition (para 41 above). The judgment did not "condemn" D9 for circulating her complaint; Nicola Davies J found at paras 229 – 230 of her judgment that the complaint was a legitimate one that was not made maliciously and that whilst D9 should not have disseminated her complaint, no one at the LSE had told her this and she stopped when they did so (para 26 (iii)(f) above). In the circumstances I do not consider that this feature carries any significant weight in the balancing exercise that I have to conduct. HHJ Shanks was of a similar view, as he indicated at para 30 of the August 2022 EAT Judgment.

The grant of anonymity for an unlimited period of time

119. Mr Piepenbrock objected to D9 seeking anonymity without a temporal limit being placed upon the court's order. He submitted that the anonymity orders that were made in the earlier proceedings had been limited in time and that any other interpretation involved a misreading of their terms. I do not accept this point. There is nothing in the 2018 Anonymity Order or the 2020 Anonymity Order which indicates that anonymity for D9 was granted for a limited period only. Furthermore, an indefinite order protecting D9's anonymity was expressly made by HHJ Shanks in August 2022 (para 46 above). In terms of Mr Piepenbrock's related point, I have already addressed the reliance on the restricted circumstances in which life-long anonymity is granted to children who are convicted of murder (para 89).

120. Mr Piepenbrock also submitted that in any event the court had no power to make an anonymity order that was unlimited in time. He relied upon an observation of Underhill J (President) (as he then was) at para 17 in *F v G* [2012] ICR 246 as supporting this proposition. However, in that case the EAT in fact upheld a permanent anonymity order

that had been granted by the ET. In para 17 Underhill J was referring to the power to make restricted reporting orders that was then contained in rule 50 of the Employment Tribunal Rules of Procedure 2004, which provided that such an order remained in force until liability and remedy was determined (rule 50(8)). No equivalent temporal limitation applies to the current power to make a restricted reporting order pursuant to rule 50 of the Employment Tribunal Rules of Procedure 2013 and in any event those rules do not apply to High Court proceedings. The power conferred in CPR 39.2(4) does not limit the period for which anonymity can be granted and orders are regularly made by the court that do not contain any temporal limitation.

121. Accordingly, whilst the length of time for which the order will apply is something for the court to weigh in the balance (para 83 above), it is not wrong in principle or inherently objectionable for anonymity to be sought for an unlimited period.

The application of the European Convention on Human Rights

122. The Claimant contends that D9 is unable to rely upon Article 8 ECHR because she resides in the US and thus is outside of the territorial jurisdiction of the Convention. In turn, he says that this means the court has no power to grant her application for anonymity.

123. It appears unlikely that D9 can rely upon Article 8 for the reasons identified by Eady J in *Millicom* (paras 90 – 93 above), albeit I did not have the benefit of detailed submissions on this point from Mr Piper. Furthermore, it may be arguable that this court is under a duty, pursuant to section 6 HRA 1998 and Article 6 ECHR, to ensure fairness as between the parties in relation to the hearing and determination of these proceedings, which, of course, takes place within the reach of the Convention.

124. Be that as it may, in any event, as I have explained at paras 76 – 81 above, the court has an inherent common law power to grant anonymity to a party to proceedings, which is, in turn, reflected in CPR 39.2(4). I will therefore proceed on the basis of these powers. Whilst open justice is a fundamental common law principle, the courts have recognised that in certain circumstances the interests of justice will necessitate a departure from this (paras 77 - 78 above). The circumstances where this can arise are not closed; the court will be concerned to ensure that the interests of justice are not defeated, that an effective judicial process and fairness is maintained and that the legitimate interests of others are given appropriate protection (para 78 above). As Lord Reed explained in a passage from *A v BBC* that I have already cited, where it is said that a departure from open justice is required, the court must undertake a fact-specific assessment, weighing the competing considerations (para 78 above).

125. I note that this approach is analogous to the jurisdictional basis identified by HHJ Shanks at paras 26 and 33 of the August 2022 EAT Judgment, where he said that as Dr Piepenbrock was, in effect, threatening to abuse the justice system and act contrary to the interests of justice, this provided a basis independent of the ECHR and HRA 1998 for making the anonymity order sought. Whilst rule 50 of the Employment Tribunal Rules of Procedure 2013 expressly permits an anonymity order to be made on the basis of the “interests of justice” (para 94 above); that power is broadly analogous to the High Court’s common law powers to act in the interests of justice that I have already described. As I explained earlier, *Millicom* is a further example of the interests of justice enabling consideration of matters that fell outside of the ECHR (para 94 above).

The interests of justice in the present case

126. For the avoidance of doubt, I proceed on the basis that the 2018 Judgment gives rise to an issue estoppel that precludes Dr Piepenbrock from asserting in these proceedings that D9's 2012 complaint to the LSE about his behaviour was false and malicious (para 26(iii)(f) above). I also proceed on the basis that the 2018 Judgment did not find that D9 exposed herself to the Claimant on 12 November 2012 (paras 26(iv) and 40 above) and that the ET has more recently found that his allegation to that effect is false (para 34 above). The ET's conclusion in this respect also gives rise to an issue estoppel (para 107(i) above). However, even if that were not the case, the fact remains that Dr Piepenbrock's account of D9's conduct in Boston in November 2012 was roundly disbelieved by the ET. Accordingly, there is no support for the Claimant's starting point for his objection to the grant of anonymity to D9, namely that he is the victim of a "sex crime" perpetrated by D9 (as he asserted in his supporting witness statement (para 40 above) and in the written and oral submissions made on his behalf (para 42 above).

127. To the contrary, and in common with conclusions reached by both the ET and HHJ Shanks in the August 2022 EAT Judgment (paras 35 - 36 and 47 - 48 above), it appears to me that Dr Piepenbrock has engaged in an obsessive, disproportionate and unrelenting campaign to vilify D9 and to damage her career and personal relationships and that he has persisted in this regardless of the unsuccessful outcome of his earlier litigation. I have already referred to the statement that D9 made for the ET proceedings (paras 27 – 32 above). In summary, the Claimant's actions have included: setting up a website to demean and insult D9; drawing this website to the attention of her employers under guise of a professed concern that they would "want to know" in a letter that also falsely indicated that the High Court had found that she had sexually harassed and exposed herself; sending the Particulars of Claim in the 2020 Claim to her work address and to her parents' address when she was not even a party to that claim; and tweeting false information about D9 (in particular, the 2018 Judgment did not find that she had lied).

128. The Claimant's deep antipathy towards D9 appears to be as strong as ever. During Mr Piepenbrock's reply to Mr Piper's submissions, Dr Piepenbrock interjected with the following speech:

> "[D9] is a dangerous woman…She has not apologised. She has not admitted it. People need to know, she is a danger to society. She will proposition for sex and when rejected she will cause career ending damage in retribution…She is mentally ill. She could ruin another family's life. It is not good enough for her to say that she made mistakes. She is a disgusting woman. Employers need to know that she is a dangerous woman and that she will cost them millions."

129. As I have already made clear, there is nothing in any of the findings made by the High Court, the ET or the EAT that could begin to warrant these hyperbolic statements and this kind of vilification and hostility. They confirm not only the Claimant's obsessive preoccupation with D9, but they make clear beyond any doubt that if the current anonymity order were lifted, Dr Piepenbrock would publicise D9's identity as widely as he could in relation to the meritless allegations that he has made about her in these

proceedings. A similar conclusion was reached by HHJ Shanks in the August 2022 EAT Judgment (para 47 above).

130. Moreover, there is a clear pattern of Dr Piepenbrock attempting to misuse litigation to vilify and oppress D9 and to further his agenda in relation to her. The current case is now the fourth proceedings in which he has made allegations about her conduct in November – December 2012. Allegations are recycled, irrespective of their age and the fact that they have already been rejected in earlier proceedings. By way of example, the very lengthy Particulars of Claim in these proceedings asserts on multiple occasions that D9 made "false and malicious allegations" against Dr Piepenbrock (paras 53, 56(ii) and 57 above) even though the 2018 Judgment had clearly rejected this allegation. Furthermore, the purpose of a pleading is subverted by the inclusion of irrelevant personal photographs of D9 and gratuitously insulting remarks about her (para 53 above). Throughout the lengthy Particulars of Claim D9's alleged conduct is described in unduly heightened terms such as "the unstable and vengeful stalker", which are unwarranted even on the basis of the actions that the Claimant pleads occurred in 2012.

131. In addition and of particular concern, the Claimant has sought to bolster his contentions about D9's behaviour by using the earlier 2018 Judgment in a misleading way. In the Particulars of Claim he repeatedly sets out a distorted and inaccurate version of what was found in that judgment, including by using partial quotes that do not in fact reflect the court's conclusions. There are multiple instances of this. I have listed examples at paras 51, 54, 56 (iii), (v), (vi), (vii), (viii), (x) and 57 above. In a similar vein, the Claimant quotes inaccurately from the 2018 Judgment in the statement that he made in support of the Set-Aside Application, as I have described at para 40 above. All this is done to such a degree that it is highly unlikely to be the product of innocent error or genuine misunderstanding. In addition, the Claimant has used his distorted version of the findings of the 2018 Judgment to further his campaign against D9 on the website, on social media and in his communication with D9's employers (paras 28 and 31 - 32 above).

132. In the circumstances I have no doubt that the Claimant has tried to abuse the justice system and that he will seek to continue to do so in a similar way in the future. His activities in this regard would increase very substantially if he were permitted to name D9 in relation to the allegations that he makes in these proceedings.

133. A further important consideration in terms of the interests of justice, is that the court should not take a course that would undermine the orders that have already been made to protect D9's identity in 2018, 2020 and August 2022 (paras 43 – 49 above). These orders remain in force and have not been successfully appealed. They concern proceedings where similar allegations to those pleaded in the current claim were made about D9's conduct. Accordingly, setting-aside the April 2022 Anonymity Order would substantially and directly undermine those earlier orders, when no good reason has been identified for doing so. The anonymity order made by Nicklin J in the present proceedings is consistent with and reinforces the approach that has already been taken in those earlier proceedings. And, if anything, the Claimant's position is now that much weaker following the damning findings made by the ET in June 2022, which involved a wholesale rejection of the allegations that Dr Piepenbrock relies upon in these proceedings against D9. Furthermore, I note that HHJ Shanks' order was granted as recently as August 2022 after a detailed hearing on the question of whether D9 should be granted anonymity.

134. Accordingly, in light of all of these circumstances, I am satisfied that there is a very strong basis for concluding that the grant of anonymity to D9 is a necessary step to take in the interests of justice and in fairness to her as a party to the proceedings. This assessment is further reinforced by: my conclusion that the claims made in these proceedings against D9 are bound to fail and are totally without merit; the length of time for which the Claimant's oppressive actions have already persisted; and the impact that they have had upon D9. As regards the latter, in her witness statement she referred to the consequential emotional upset, anxiety and trauma that she has experienced, and I have no reason to doubt this. She also explained that the traumatic impact of Dr Piepenbrock's behaviour towards her led her to decide not to appear as a witness in the ET proceedings (para 29 above).

135. In balancing the relevant factors, I have taken into account that the onus lies on D9, the fundamental importance of the open justice principle and the fact that anonymity is sought on a long-term basis. However, the judgments given in this and in the earlier proceedings are publicly available and are perfectly intelligible without the naming of D9. The April 2022 Anonymity Order has been in place since 27 April 2022 and it has not been opposed or challenged by any media organisation. Although the order is not limited in time; it would be open to the Claimant or to third parties to make an application to vary or revoke the order if there were to be a future material (and I stress material) change of circumstances. Moreover, in this particular instance, there are very strong features that outweigh the importance of open justice, as I have identified.

136. In all the circumstances I am quite satisfied that it is necessary in the interests of justice for D9's anonymity to be preserved, for there to be no publication in connection with these proceedings of her identity or of any matter likely to lead to her identification and for non-parties' access to the Court file to be restricted. Accordingly, I will dismiss the Set-Aside Application and the April 2022 Anonymity Order will be continued.

Conclusion

137. For the reasons that I have set out above:

i) I will dismiss the Extension of Time Application and make a declaration that the court has no jurisdiction in respect of the claim against D9 as the Claim Form has not been validly served. The Claimant requires the permission of the court to serve D9 as she is outside of the jurisdiction and I have refused permission to serve out because he has not shown that there is a triable issue, as the causes of action pleaded against her are bound to fail. I have also concluded that his claim against D9 and the Extension of Time application should be certified as totally without merit; and

ii) I will dismiss the Set-Aside Application and maintain the April 2022 Anonymity Order. In the circumstances that I have identified I am quite satisfied that this order is necessary in the interests of justice.

138. As the Claimant is not legally represented, I have not circulated a draft of this decision for typographical corrections to be identified. However, as I indicated at the conclusion of the hearing, I will give the parties an opportunity to make concise written submissions as to the terms of the order that I should grant to reflect this judgment and in relation to any consequential matters such as costs.