



Neutral Citation Number: [2020] EWHC 1349 (QB)

Case No: QB-2018-000787

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 27/05/2020

**Before :**

**HIS HONOUR JUDGE LEWIS**  
**(Sitting as a Judge of the High Court)**

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**Between :**

**JQL**  
**- and -**  
**NTP**

**Claimant**

**Defendant**

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**Gervase de Wilde** (instructed by **Brett Wilson LLP**) for the **Claimant**  
**David Hirst** (instructed by direct access) for the **Defendant**

Hearing dates: 17 – 20 March 2020

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HIS HONOUR JUDGE LEWIS

**HIS HONOUR JUDGE LEWIS:**

1. In this case JQL seeks damages and an injunction against NTP for misuse of private information and breach of confidence.
2. The claim arises out of a post on Facebook by NTP on 19 July 2018 (“the NTP Post”). JQL says this disclosed that she had received treatment for her mental health and had self-harmed, things she says she has always kept private.
3. On issue, Master Eastman ordered that the parties be referred to by ciphers. At trial, on notice to the media, I continued reporting restrictions and made orders in respect of the identification of witnesses and access to court documents.

**The Family**

4. This case arises out an acrimonious family dispute. JQL is NTP’s niece. The parties have agreed a naming convention for the family.
5. JQL is 24, a graduate hoping to train as a lawyer. She has five siblings: “the First Brother” (now 31); “the Second Brother” (now 29); “the Third Brother” (now 27); “the Fourth Brother” (now 26); and “the Sister” (a child, now 17). The Second Brother’s fiancé is the “Sister-in-Law”.
6. “the Mother” is JQL’s mother and NTP’s sister. She is the oldest of four siblings, the next oldest being NTP, then twins, “the Aunt” and “the Uncle”. The Aunt’s partner is “the Aunt’s Partner” and her children include “Cousin One” (now 18) and “Cousin Two” (now 15).
7. “the Grandmother” was the mother of NTP, the Uncle, the Aunt and the Mother. She died in December 2018. The Grandmother’s sister is “the Great Aunt”.
8. A feature of this family is the extent to which they fall out, with some disputes lasting years. One of the more significant feuds started in June 2015 at a family meal in a restaurant, when an argument between the Mother and the Uncle became physical. JQL intervened to support the Mother. Precisely what happened is disputed, but is not particularly relevant to this case.
9. Up until then, the Mother and the Grandmother had been very close. The Grandmother was often at the Mother’s home, and the Mother said she was her closest confidant. The Mother and NTP were also close. NTP refers in his statement to all the support he provided to the Mother over the years and how he had been fully involved with her family.
10. Since the meal, the Mother and the Uncle have not spoken. The Mother has only spoken to NTP once, when he was seriously ill in April 2016. They did not even speak at the First Brother’s wedding in May 2016, nor when the Grandmother died. JQL, and some of her siblings, have also stopped speaking to their uncles.
11. The Grandmother apparently took the ‘side’ of the Uncle, which affected her relationship with the Mother. In around October 2017, it is said that the Grandmother

made disparaging comments to the Mother. This proved to be the end of their relationship. On seeing how upset the Mother was, JQL sent the Grandmother an abusive and vicious message. She sent a further offensive message to the Grandmother in November 2017.

12. The First Brother was estranged from the Mother from 2017 until 2019. He says this was because he was disgusted at the way JQL and the Mother were treating the Grandmother, with whom he had lived for a period after being asked to move out of the family home aged 18.

### **The Facebook Publication**

13. On 18 July 2018, JQL, the Mother, the Aunt, the Sister, the Sister-in-Law and Cousin Two had an afternoon and evening out to see the X-Factor auditions.
14. At 15.13, the Aunt posted onto her Facebook account a photo of herself and Cousin Two and said they were going with the Mother and the Sister to see the X-Factor. The post received eight 'likes'. Comments were posted by a few of the Aunt's friends and Cousin One.
15. The Grandmother posted the response "have a nice day". Her post was seen by JQL, who posted a reply, "thank you". The Grandmother then deleted her post. It is agreed she would have done this upon realising that JQL was also present, given the acrimony between them.
16. The Mother then published a series of comments sniping about the Grandmother, all of which appear to have been sent from the X-Factor arena. JQL then added the following: "[the Grandmother – full name] I forgive you for being a terrible grandmother and forgetting all of us. But I love you and forgive you for your behaviour. You're old and don't mean it. I'm sure you'll regret it one day. I hope your well even though you don't care about us. Love you, even though I don't understand why you can't love me too". JQL said in evidence that her message was intended to be an "olive branch", but it is difficult to see how this could be so, particularly given that JQL posted her comment knowing others would see it.
17. The Mother then added: "[JQL – full name] she does not like girls never has never will poor [name of a great granddaughter] has never had a chance can't imagine having three great grand-children who don't have a clue who you even are [Grandmother – full name]".
18. The next day, in response to this goading, the Grandmother posted the following comment at 19.13: "Below is one of the messages this evil little troll [JQL – full name] sent that I have taken to the police asking Them to stop her, see her true colours... ". The Grandmother had not, in fact, gone to the police at this point. The Grandmother then included the text of the message sent to her by JQL in November 2017 (referred to above): "You toxic bitch. Stay away from [Second Brother's children]. You don't give two fucks about them and trying to get into their lives to piss off mum shows how fucked in the head you really are. Fuck off out of all our lives. You don't give a shit about [Second Brother] so fuck off you stupid bitch. Stop trying to affect my mother's life. You're dead to her so stay that way and pipe down".

19. NTP says the Grandmother had not seemed herself that day, so he called her to check she was okay. She told him about the comments and her response. NTP then looked at Facebook. He tried calling the Grandmother back, without success, so instead he posted his own response, the NTP Post, at 19.47, just 34 minutes after the Grandmother. Eleven minutes later, he re-posted having made some typographical corrections (amendments shown):

“On my God, can’t believe ~~you~~ you’re getting sucked in to [the Mother] and [JQL]’s sick world, I know it’s not easy when they’ve been sending sick texts and the endless abusive calls and online abuse – don’t put any more online, you unlike them have ~~you~~ your dignity, all ~~you~~ your kids are from one man and you’ve never had treatment for mental health and self harm – leave them to the police – what’s going on with getting the injunction against the 2 ~~suck~~ sick bitches”

20. The focus of this claim is on the words “treatment for mental health and self harm”, which for convenience I will refer to as the words complained of, although JQL does, in fact, rely on the entirety of the NTP Post.
21. At around 20.00 JQL submitted a take-down request to Facebook, on grounds of hate speech, in respect of the posts of both the Grandmother and NTP. The NTP Post was removed by Facebook at 22.53 the same day for violation of its community standards, approximately three hours after it was posted. Facebook refused to remove the Grandmother’s post.
22. The next day, the Great Aunt posted at 10.34: “I can’t believe what I’ve just read, horrific abuse, I am so shocked. No wonder your mums been so ill”. The Great Aunt clarified that she meant to say “grandmother”, as her message was directed at JQL. I accept that she did not see the NTP Post, which we know had been removed the day before.

### **Legal proceedings**

23. A letter of claim was sent on 7 August 2018, threatening to bring proceedings not only for misuse of private information and breach of confidence, but for libel and breach of GDPR. JQL sought (i) an “irrevocable apology” in terms that included acceptance that what was said was “unlawful and indefensible” and an apology; (ii) an undertaking in respect of not saying anything further about her mental health or self-harming; (iii) damages, to be assessed by the court if not agreed; and (iv) legal costs of just short of £2,000.
24. NTP sent three responses to the letter of claim, the first two of which were in defiant terms, refusing to apologise. The first he wrote himself on 17 August 2018. I note that four days later, the Grandmother went to the police for the first time about JQL’s two messages. NTP’s second response was sent through solicitors on 29 August 2018. His third response was sent on 25 September 2018, having obtained specialist advice. He offered an apology and undertakings and suggested, quite sensibly, that the parties attend mediation, or use ADR.

## Reference and Meaning

25. There is a dispute about whether the NTP Post identified JQL in respect of the words complained of and, if so, what information it disclosed about her, if any.
26. The approach to be taken is addressed in *Tugendhat and Christie, The Law of Privacy and the Media, Third Edition*, at 5.30: “Case law indicates that where, despite its accuracy, a publication could nevertheless be interpreted in different ways, the court will determine its meaning for the purposes of misuse of private information claim.”. It was agreed that I should take into account the principles applied to defamation claims, which were re-stated by Nicklin J in *Koutsogiannis v The Random House Group Ltd [2019] EWHC 48 (QB)* [11-12]. It was agreed that the test is objective, and that the issue of reference should be decided on the same principles as those which govern the question of meaning.
27. The Supreme Court has recently considered the approach to be taken when determining the meaning of material published on social media. In *Stocker v Stocker [2019] UKSC 17*, Lord Kerr said:

“The fact that this was a Facebook post is critical. The advent of the 21<sup>st</sup> century has brought with it a new class of reader: the social media user. The judges tasked with deciding how a Facebook post or a tweet on Twitter would be interpreted by social media user must keep in mind the way in which such postings and tweets are made and read.”. Later in the judgment, Lord Kerr said: “... it is likewise unwise to parse a Facebook posting for its theoretically or logically deducible meaning. The imperative is to ascertain how a typical (ie an ordinary reasonable) reader would interpret the message. That search should reflect the circumstance that this is a casual medium; it is in the nature of conversation rather than carefully chosen expression; and that it is pre-eminently one in which the reader reads and passes on...”. In respect of Facebook, Lord Kerr then said: “People scroll through it quickly. They do not pause and reflect. They do not ponder on what meaning the statement might possibly bear. Their reaction to the post is impressionistic and fleeting”.

28. JQL’s pleaded case is that the NTP Post conveyed the following: (i) that JQL had suffered from mental health problems which had required medical treatment and intervention and (ii) as a result of her mental health problems she had self-harmed. I note that JQL’s pleaded meaning does not link the self-harm to treatment, although this was advanced in closing submissions.
29. NTP’s case is less clear. He admits that the text of the NTP Post contained the “2014 mental health information”, which he defines as information about JQL’s mental health issues in 2014. He denies that the NTP Post contained the information that any person had self-harmed, pleading that the reference was to “mental health and-self harm”. He also denies that the words complained of would have been reasonably understood to be a disclosure about JQL. He denies that he had knowledge of self-harm through cutting, and says that the NTP Post could not, therefore, entail a disclosure of it, although NTP’s knowledge or intention are not relevant when determining the objective meaning of the words.

30. JQL says the words complained of would have been understood to refer to JQL because she was the subject of the comment from the Grandmother to which NTP was responding. Alternatively, it is said that the words complained of could be understood to be referring to both the Mother and JQL. Both parties also rely upon additional information that they say would be known to the reader of the NTP Post. NTP's pleaded case is that the words complained of must be read with the words preceding them, namely about having children by more than one man. NTP says that JQL is known not to have any children and so the entire sentence could not be understood to be referring to her. JQL says the opposite: that the reader could only understand the reference to multiple fathers as being to the Mother, who has children, leaving the reader to infer that the reference to treatment for mental health and self-harm concerns JQL. JQL also says that even where the person reading did not know the family situation, the context would be apparent from the preceding thread, including the fact that JQL was a grand-daughter.
31. The NTP Post must be read in context. It was posted by NTP on social media as part of a thread in which various members of his family had started a slanging match. It reads as a message sent by NTP to the Grandmother, asking her to stop engaging with JQL and the Mother on the thread, and instead to pursue formal channels.
32. The NTP Post was sent in response to the Grandmother's message, which was all about JQL. That message was itself provoked by JQL's "olive branch" post and a reply from the Mother. Both JQL and the Mother were named in the NTP Post, and were the joint focus of it. Their full names were displayed earlier in the thread. NTP referred to mental health/self-harm, and multiple fathers, as insults. The impression that would be given to the ordinary, reasonable reader is that these insults are directed at the two people this post is about, with one referring to JQL, and the other to the Mother. Both parties rely on the fact that readers would know that the Mother has children and JQL does not. I am satisfied that the words "you've never had treatment for mental health and self harm" would reasonably be understood to refer to JQL.
33. There is also a dispute about what the words "treatment for mental health and self harm" mean, in particular the words "self-harm". JQL says "self-harm" would be understood to mean when someone intentionally damages or injures their body. NTP now accepts this is a secondary meaning of the words, but says the term has a more general meaning that also includes other activity that a person would know to be harmful, in particular he says the use of recreational drugs and the misuse of alcohol.
34. It is important to avoid over-elaborate analysis, particularly when considering a social media message usually read quickly. "Self-harm" is a well-known term, used to describe deliberate acts of harm that someone does to themselves, typically things like cutting, biting or taking an overdose. It is not generally used to describe things that people happen to do in life that they know to be harmful, otherwise the term would logically also extend to things like smoking, eating fatty food and so forth.
35. I think to a reasonable reader these words would be self-explanatory and would be understood to mean that: (i) JQL has had mental health difficulties; (ii) JQL has "self-harmed", meaning she has injured or harmed herself on purpose; and (iii) JQL's mental difficulties and self-harm necessitated her receiving professional treatment.

## The evidence

36. I heard oral evidence from both parties and all their respective siblings, as well as from the Great Aunt. The division of witnesses matched the ‘side’ each has taken in the family feud, with the Mother and four of JQL’s siblings giving evidence for JQL, and the Aunt, the Uncle, the Great Aunt and the First Brother giving evidence for NTP. The parties also rely on unchallenged statements from the Sister-in Law and “the Family Friend” on behalf of JQL and from the Aunt’s Partner, Cousin One and Cousin Two on behalf of NTP.

37. Where witness credibility is in issue, the approach the court should take was outlined by Goff LJ in *Armagas Ltd v. Mundogas S.A. (The Ocean Frost)* [1985] 1 Lloyd’s Rep 1 at [57]:

“Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses’ motives, and to the overall probabilities, can be of very great assistance to a Judge in ascertaining the truth.”

38. In evaluating the witness evidence, I am aware that family pressure may well have been placed on witnesses for both sides to give evidence in a certain way. This might be direct pressure, but is as likely to be indirect, with witnesses feeling that they need to be loyal to their ‘side’. The polarised accounts given in evidence is a concern. I note too that, given the feud, some witnesses may have been motivated to give evidence to cause harm to either JQL or NTP. I remind myself that just because someone has lied about one thing, it does not mean that they are lying about something else, and witnesses lie for all sorts of reasons. Some of the disputed events are said to have taken place nearly a decade ago, and this needs to be factored in when assessing the ability of a witness to recall, or not recall, specific events and conversations.

39. There was an unusually stark contrast between the quality of oral evidence given on behalf of each party, in terms of the substance of that evidence rather than demeanour.

40. The evidence of the claimant and her witnesses seemed credible. Each witness appeared to keep to matters within their own knowledge and what they said was broadly in line with their statements. They answered questions well, and could expand upon things when asked. With JQL and the Mother, their evidence was consistent with the contemporaneous documentation. Despite the deeply personal issues being explored, both remained controlled and courteous. The Second, Third and Fourth Brothers did not have to give evidence for long, but did so in a straightforward manner and were clear with their answers.

41. The Sister did well, given her age. Special measures were in place and the guidance from the Advocate’s Gateway on vulnerable witnesses in civil proceedings was

followed. The Great Aunt said that the Sister is a shy and quite sensitive child, and she came across as such. There were some inconsistencies with her evidence but I got the impression that she was genuine and answering questions to the best of her ability.

42. With NTP's witnesses, the Great Aunt gave evidence by laptop from home as she was shielding from coronavirus. She came across well, although it became clear that she did not, in fact, have direct knowledge of the things she says about JQL. This all appears to have come from the Grandmother, who did not have direct knowledge of the matters either. The Great Aunt and the Grandmother did not speak for years and only resumed their relationship in 2015/2016. This means the accounts given by the Grandmother to the Great Aunt would not have been contemporaneous, and were given at a time when there was already acrimony between the Grandmother, the Mother and JQL.
43. The Aunt could give direct evidence about the X-Factor and the Facebook posts, albeit she was quite vague at times, but was unable to give much direct evidence about JQL. This is because she too had not spoken to the Grandmother, or really been in touch with her maternal family, between 2010 and March 2015, only starting to see the Grandmother more regularly in 2017. As with the Great Aunt, it transpired that the Aunt's primary source of information was the Grandmother, with all the same problems just identified.
44. The written and oral evidence of the Uncle was particularly unsatisfactory. His witness statement was full of vitriol, and was unnecessarily insulting about aspects of JQL's life and personality. He clearly despises everything about her, and has done so for years. Parts of his statement come across as exaggerated, light on specifics and making sweeping generalisations. Much of what he says is also hearsay. Some of it is clearly wrong: for example, his factual assertion that the Mother had JQL "sectioned" against her will, or when he says that JQL "collapsed" at the First Brother's wedding needing treatment for the "self-harm inflicted on herself" (emphasis added). In fact, I accept that JQL wore impractical shoes, tripped on the edge of the dance floor and needed some stitches on her hand. The Uncle was not actually present when this all happened.
45. The First Brother's evidence was troubling. Whilst I take little from his demeanour, I note he was extremely agitated and hostile. Some of this might have been understandable nerves and worry, giving evidence against his immediate family. I was also told that he was worried about having to travel such a distance to give evidence the week before the pandemic "lockdown", for reasons given by NTP's counsel. In evidence, he showed real hatred towards JQL, even sneering when referring to her degree. He said he has not got on with her for about seven years, denied that he was jealous because she received financial help with her education and said he could not care less if she was to get hit by a bus, or win millions.
46. More significantly, the First Brother was unable to really go beyond what was in his statement. For example, when he was asked why the only examples of drug taking he has given are identical to those set out by NTP, all he could say was that "all I know is in the witness statement", an answer that he later repeated in a different context. At one point, when challenged about inadequacies with his evidence, all he could say was "no comment".



47. Again, it transpired that some of the information in the First Brother's statement had come from the Grandmother. As with the Uncle, some things in his statement were simply untrue. For example, he referred to JQL's 16<sup>th</sup> birthday party as an example of an occasion when all the siblings were together, and describes how JQL presented. In fact, he was not there. It transpired that the extreme account he gave - "a drunken mess and clearly high on some drug" - was apparently based on his interpretation of photos on Facebook. There are other examples, some of which are identified later. I note in passing that four of NTP's witnesses mention the 16<sup>th</sup> birthday party, even though none were present.
48. NTP himself came across as a confident witness, robust and unapologetic. He could answer most questions. He conceded quite a bit in the witness box, which is to his credit and suggests that he was doing his best to answer questions honestly. As with his other witnesses, it transpired that he was unable to give direct evidence on some of the more prejudicial things that he says about JQL, and he could not provide further detail or examples. The main difficulties with NTP's evidence came about when he was seeking to make somewhat strained and artificial links between JQL's mental health and self-harm with other things that have happened in her life.

#### **Alleged attempts to interfere with the First Brother's evidence**

49. The First Brother says that last year the Mother resumed contact and made numerous long-distance trips to see him. He says that each time, she tried to get him to agree not to give evidence, or to change what he would say. He has disclosed messages that show the Mother threatening to have no more to do with him. The Mother accepts that she tried to dissuade the First Brother from giving evidence because she did not want him to perjure himself. I accept the Mother's motivation was to get the First Brother to tell the truth, although what she did was misjudged. The First Brother confirmed that this did not affect the evidence that he has given, but I have kept what happened in mind when evaluating the evidence of the other siblings.
50. At trial, the First Brother claimed that he had recently been offered a cut of JQL's damages. He said his siblings were "greedy little pigs" for having agreed to split what he later called the "blood money". It seems implausible, however, that JQL, the Mother and four siblings, would collude in this way to commit what would be a serious criminal offence and a contempt. The Mother is married to a former policeman. JQL is training to be a lawyer. The Sister is a child. The Third Brother is pursuing a career as a scientist. This is a claim where capped damages are sought. The financial reward for each would be minimal – the First Brother seemed to think the money would be spent on a large family holiday to Florida - and the consequences if caught could be life-changing. Looked at in the context of the First Brother's other evidence, I do not consider this allegation to be made out.

#### **JQL's mental health**

51. JQL experienced poor mental health between 2010 and 2014/15, with regular self-harming, mostly cutting. In March 2014 she was admitted briefly to a psychiatric ward, at her request.

52. The Claimant has disclosed her medical records, redacted in places by the GP practice. At trial, I refused NTP's late application against the GP practice seeking the unredacted notes.
53. Although JQL has had to disclose a significant amount of deeply personal medical information in this case, she was careful to limit what she shared with her own witnesses. To respect this, I have not included some of the more intrusive detail in this judgment, conscious that this means that it does not quite convey the full extent of JQL's difficulties. I am satisfied, however, that it gives a sufficient basis to understand the decisions made. In this section, I refer to "self-harm" where that term has been used by medical staff or a witness.
54. The pleadings in this case separate JQL's mental health into two periods, the first starting in 2010 when she was 14, the second starting in 2014 when she was 18. The documents show that this was, in fact, a single, continuous period of poor mental health.

**The first period, starting 2010 (age 14).**

55. In September 2011, the Mother took JQL to the GP, having been concerned about JQL's presentation for about a year. JQL saw the GP alone and talked about self-harming by cutting and starving herself. JQL would not tell the Mother what she had told her GP, so the Mother tricked the information out of her by claiming that the GP had already told her. JQL then told the Mother that she sometimes felt anxious or depressed and was cutting herself.
56. The GP referred JQL to a psychiatrist, who also noted deliberate self-harm by cutting. The Mother said during the appointment she was convinced that JQL's behaviour was "attention seeking", something she now deeply regrets saying.
57. JQL says she continued having problems and cutting herself during 2012 and 2013, although was careful to do this in ways her parents would not see. In October 2012, JQL was referred to counselling, following further self-harm, the nature of which is identified in the papers. There were some A&E visits: JQL confirmed in evidence that these visits were never a result of drugs or alcohol, a position which is consistent with the medical records.
58. JQL says that by late 2013, early 2014 her mental health had deteriorated significantly. One day in September 2013, JQL's best friend saw a fresh cut on JQL's arm and told a teacher, who notified her parents. JQL saw her GP in October 2013 about her mental health and cutting. She was referred again to specialists, but missed her appointment because she did not want to talk about her difficulties. JQL refused to tell the Mother what was happening, so the Mother opened JQL's post and read the hospital's letter, then making JQL re-book an appointment.
59. The medical evidence for this period shows a consistent pattern of mental health difficulties and self-harming, mostly cutting. There is no indication that any of JQL's mental health difficulties are linked to alcohol or drugs. JQL appears to have done what she can to keep information private, spending time with the specialists and GP alone, and only providing information to the Mother when tricked into doing so.

**The second period, starting 2014 (age 18):**

60. On 8 January 2014, JQL met with a consultant psychiatrist. They discussed the self-harming by cutting and JQL also reported other matters, which she had told a friend about but not the Mother. JQL specifically asked that post from her psychiatrist was not sent to her home address, presumably to stop the Mother opening it again. When taking JQL's history, the psychiatrist noted that JQL was binge drinking at weekends, to the point of passing out and vomiting and had been excluded from school in 2012 (age 16) after being found drunk. JQL reported having tried cannabis, MDMA on one occasion and [redacted] twice. Nobody is sure what [redacted] is. There is nothing in the consultant's letter to suggest that they were concerned by JQL's disclosed drug and alcohol use, that it merited further clinical consideration, or that it was considered to be "self-harm".
61. On 5 March 2014, JQL presented at A&E, and was referred to the psychiatric liaison team. When the Mother was in the room with the doctor, JQL gave one-word answers and was withdrawn, but once on her own she engaged much more readily. She is recorded as having told the doctor that she did not want her parents to be informed of any details of the interview.
62. The notes record that on that day, JQL had been out drinking with a friend, who had called the Mother for help when JQL was "lying in a gutter". On the way home with the Mother, JQL got out of the car and went to a friend's house where she self-harmed with a knife. She was taken to A&E. JQL confirmed in evidence that she was drunk, but it was a distortion to attempt to link this with her subsequent self-harming. JQL acknowledged to the doctor that she was cutting herself when feeling "particularly low, most often when under the influence of alcohol". The doctor noted that JQL would be more vulnerable to harm if she had been drinking. The doctor does not, however, record any comment on the levels of JQL's alcohol or drug use.
63. On 15 March 2014 JQL presented again at A&E with two friends. She did not want her parents contacted. She was noted as having been self-harming (cutting) more over the previous week. She had cut herself that morning, then gone to see a friend and explained that she was not doing too well, and they suggested she went to hospital. JQL told the doctor that she knew that she was more likely to do something – meaning self-harm - under the influence of alcohol or drugs, "but not always". She confirmed increased drug and alcohol use over the previous two weeks, with binge drinking at weekends, occasional cannabis, and having used MDMA three times. JQL was assessed as having a medium risk of harm, referring to superficial cutting and something else, and said to be vulnerable to others when having taken drugs or alcohol.
64. JQL was voluntarily admitted to a psychiatric ward at her request. She stayed for around 72 hours. It was not considered that she was suffering a major mental health illness. The discharge report records various diagnoses. JQL was offered psychotherapy.
65. JQL says she did not tell the friends who dropped her off that she had been admitted, and instead said she had gone home with her mother for rest. On 16 March 2014, to cover for JQL's absence, the Mother posted false information on Facebook to make

people think that she had spent the day with JQL in a park. This was untrue: JQL was in hospital at the time.

66. JQL had a psychological wellbeing conversation on 8 April 2014. She told the practitioner about “self-harm in the form of cutting, burning and bruising the skin”. JQL had a psychotherapy assessment on 24 April 2014. The consultant’s letter records that JQL has “significant difficulties with mood instability, and attempts to manage this with impulses to self-harm, drugs and alcohol and binge eating and purging”.
67. JQL says that the experience of being on the psychiatric ward made her realise that she needed to take steps to address her issues. She met her long-term partner the next year. There is no evidence of any mental health related incidents or diagnosis after March 2014, nor of any cutting or similar deliberate, self-inflicted injury.
68. The medical evidence for this period also shows a consistent pattern of mental health difficulties and self-harming, a term used mainly to mean cutting. JQL appears to have done what she can to keep information private, including repeatedly asking professionals not to inform her parents about anything, or send post home.
69. There is no suggestion at any point that JQL required specific treatment in respect of her alcohol intake or drug use, or that this was the primary issue. As noted above, it was considered that JQL was more vulnerable when she had been using alcohol, and more likely to self-harm. JQL accepts in her evidence that in the early part of 2014 she was drinking regularly and to excess, and she explains that she felt that alcohol and drugs would distract her from her concerns and improve her feelings of worthlessness and despair. It does appear, therefore, that for these few months at the start of 2014 at least, the evidence shows that there was some sort of a connection between JQL’s use of alcohol and, to a much lesser extent drugs, and her mental health.

### **The Prom**

70. JQL’s school Prom was in late June 2014 (“the Prom”). She was 18. She took MDMA and suffered a severe allergic reaction, possibly due to an impurity, causing her to collapse. She required emergency medical treatment and hospitalisation, and the medical staff confirmed to the Mother that JQL had been minutes from dying.
71. There is a dispute in this case about the relevance of the Prom and the extent to which the events at the Prom were known by others, including those at the Prom and JQL’s family.
72. It is important to note that there is no evidence connecting the Prom to JQL’s mental health; there is no evidence that JQL took the drug for anything other than recreational purposes; and there is no evidence that JQL took the drug to deliberately inflict harm on herself.
73. The Mother’s evidence is that she received a calm call from JQL’s then boyfriend as the Prom was ending asking her to collect JQL because she was too drunk to be allowed on the bus taking students home. The Mother arrived and found JQL on the floor by a table surrounded by paramedics. She says fifteen or so people were present – including teachers and a few remaining students. I accept this account.

74. JQL was unconscious and so does not know who saw her. She knows that her best friends were not there, having left earlier to go clubbing. She explained that she did not tell them afterwards what had happened. To try and present a normal picture, after the Prom JQL posted on Facebook a picture in her prom outfit and said she was with her “amazing mother”.
75. NTP, the Uncle and even the Great Aunt have given similar accounts of what happened at the Prom, although none of them were present. All describe it, incorrectly, as an overdose rather than an allergic reaction. All suggest that the Prom had to finish early, with two of them stating that JQL collapsed on the dance floor. The Great Aunt and NTP claim that JQL was subsequently admitted to hospital for psychiatric treatment, the Great Aunt and Uncle even saying the Mother tried to get her sectioned. NTP and the Uncle both include gratuitous detail about JQL exposing parts of her body. I am satisfied that none of this is true.
76. The First Brother also gave a similarly extreme account of what happened, referring to the family all being very shocked that JQL had “overdosed” and stating that she was hospitalised because of her “uncontrolled misuse of drink and drugs”. He says everything happened in front of the “hundreds of school friends who attended and the public who were also around”. He also says that a named headteacher had to become involved, but the person he names was not in post at the time. The First Brother acknowledges that he discussed what happened at length with the Grandmother. He could not explain some of the inaccuracies. The Aunt and Cousin One also say that the Grandmother told them that JQL had taken an overdose.
77. In oral evidence, NTP accepted that JQL was seen by no more than 15 people, that she suffered an allergic reaction not an overdose and that what happened would have been hugely traumatic for a parent to witness. He accepted that there is no connection between the Prom and the psychiatric hospital admission. He also accepted that apart from the MDMA, there was no other evidence of JQL taking drugs at the Prom and that at the time he was not aware that JQL was using drugs regularly.

**The BBQ: 26 July 2014.**

78. This was hosted by the Mother at her home to say goodbye to the Third Brother before he went travelling. It was a relatively small event, with fewer than 20 guests, all of whom were family members except the Family Friend and her husband. From witness accounts, and photographs, it appears that most of the time people were in the garden, often sitting in a large circle together, but certainly close to one another.
79. NTP says that at the BBQ the Family Friend’s husband “taunted” JQL by singing the chorus of the song “Ebenezer Goode” by The Shamen<sup>1</sup>, and “pulling faces like he was on drugs”. The Defence says that the friend put to JQL “in front of a large number of guests, that her well-being, mental health and drug taking were causing... the family consternation”. NTP’s evidence is that the family friend’s husband went on to ask JQL “what the hell she thought she was playing at (or words to that effect), by reference to the drug taking and overdose and ending up in hospital”. He says JQL shrugged this

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<sup>1</sup> The words of the chorus are “’Eezer Goode ’Eezer Goode He's Ebenezer Goode”, the first four words of which sound like, “Es are good, Es are good”, “Es” being a reference to the drug, ecstasy.

off and did not object to it being discussed by the family at this event and that when asked what people were going to think, JQL said she did not care what people thought or how it made the Mother feel. In oral evidence, NTP said that JQL was nonchalant and shrugged her shoulders. He said she didn't care.

80. In his witness statement, the Uncle says that when the Family Friend's husband started singing the Shamen song chorus, "everybody" at the BBQ laughed and it was "cringeworthy". The Uncle says that the singing was "clearly targeted" at JQL and "no one could have been in any doubt about who was being mocked". The Uncle says that he recalls JQL acknowledged what was said and "soaked up the attention". The Uncle says that it appeared to him that JQL was proud of her near-death experience. Yet the Uncle sent an email to his brother early last year in which he said that JQL was "suitably ashamed" when everybody laughed at the song. In cross-examination, he sought to explain this discrepancy by saying her presentation was different depending on who she was speaking to, but this seems implausible.
81. JQL denies that there was any mention of the events at the Prom, or alcohol or drugs or her mental health. None of JQL's immediate family seemed to know of the Shamen song, which is not really a surprise given the ages of JQL and her siblings. The Mother, the Sister, the Second Brother and the Fourth Brother were present all day. They confirmed that there was no such conversation, nor was there any discussion about drugs or mental health. The Sister pointed out that the focus was very much on the Third Brother. The Fourth Brother explained that if these sorts of issues had been raised it would have been a shock to him. The First Brother was at the BBQ but did not refer to it in his statement.
82. The Third Brother said that NTP stayed for a few hours and left before dark. He explained that there was no such conversation and if there had been, it would have drastically lowered the tone of his party and he would have been confused about what the Family Friend's husband meant. He explained that he was the centre of attention at the BBQ, not JQL.
83. The Family Friend is a close friend of the Mother, has known JQL all her life and used to holiday on occasion with the family. She denies saying anything at the BBQ, nor did she witness any of the other attendees (or her husband) having such a conversation about JQL. During the time she was at the party, she says the conversation did not take place. Her evidence was not challenged.
84. I am satisfied that nothing was said at the BBQ about JQL's mental health, her use of drink or drugs, the Prom or her well-being. It seems unlikely that the husband of the Mother's closest friend would decide to mock an 18-year-old in such a cruel way, or start challenging JQL in front of her entire family, particularly about an event at which she nearly died. It seems unlikely that everybody would laugh if he did. The BBQ forms a key part of NTP's case, yet he only mentioned it in his third response to the claim. The inconsistency in the Uncle's evidence about JQL's alleged reaction is also in my view an unlikely detail to mix up. I also note that of ten witnesses who were present, only two confirm NTP's version of events.

## **Alcohol and drugs**

85. As part of his case in respect of “self-harm”, NTP has sought to rely on a number of incidents when he says JQL behaved badly when drunk: for example, at the restaurant meal in 2015, JQL’s 16<sup>th</sup> birthday (2012), the First Brother’s wedding, on a holiday in 2015 and on the evening of the X-Factor itself, when it is said she drank a cocktail, a pint and some cans of Gin & Tonic. He says that as a teenager JQL was detained by the police for drunkenness, which is denied, but he cannot give any detail.
86. Without making any findings, I acknowledge that it may well be that JQL was drunk or tipsy at some of these events, and consequently may not have behaved entirely appropriately, although she denies this. I am not, however, satisfied that NTP’s vague and unsubstantiated accounts of teenage drinking really take matters forward. The evidence linking JQL’s use of alcohol and drugs with her mental health in early 2014, such as it is, is set out above. Even if NTP could prove what he says about these events, given the dates and what he says happened, it is far from clear that there is any connection between them and JQL’s mental health. Furthermore, whilst in some circumstances I accept someone can self-harm through alcohol abuse – deliberately causing harm to themselves – the evidence does not support that this is what JQL was doing.

## **Who knew about JQL’s mental health and self-harming?**

87. This is a significant area of dispute between the parties. JQL says that she kept information about her mental health and self-harming private, even from her siblings and wider family, and that NTP was told about it by the Mother in confidence.
88. JQL’s siblings all gave evidence about when they found out about JQL’s mental health difficulties and self-harming. JQL’s letter of claim acknowledged that her siblings “might have become aware through intuition [about what was happening to her], but it was certainly not discussed directly or openly with them”. JQL says that since then, her solicitors have obtained statements from most of her siblings, and she knows that they had not, in fact, become aware through intuition.
- a. The Sister was clear that the Mother did not tell her at any point before the NTP Post about JQL’s mental health or self-harming. She was just 7 in 2010 and 11 in 2014. When JQL stayed at a hospital in March 2014, the Mother told her JQL was staying with a friend, and after the Prom, the Mother said JQL had been drunk and so stayed with a friend.
  - b. The Second Brother was clear that he was not told and was unaware prior to the NTP Post that JQL had mental health difficulties causing her to self-harm or requiring hospital admission. He does not believe that the Mother told any of the siblings before this point, because they would have told him. He was not aware of what happened at the Prom. He was not aware of any drug taking or abuse of alcohol.
  - c. The Third Brother was clear he did not know about mental health or self-harming. He had not observed any issues with drugs or alcohol, or been told of any. He was unaware of the Prom incident.

- d. The Fourth Brother, closest in age, was equally clear that he did not know about any mental health difficulties or self-harming. He did not know that JQL had been admitted to a psychiatric ward. He was not aware of what NTP says was JQL's problem with drugs or alcohol, or even that JQL had taken drugs. His evidence was that he was told after the Prom that JQL had been drunk and stayed with a friend.
  - e. The Sister-in-Law's evidence is that at the time she had been close to JQL for a couple of years, speaking at least weekly and messaging. She had no idea that JQL might have had current or historic mental health difficulties, or about self-harming. The first she knew of them was from the NTP Post. She was unaware of the Prom incident. She had not witnessed nor heard anything to suggest JQL had problems with alcohol or drugs.
  - f. The First Brother says that he and all his siblings knew about JQL's difficulties at the time that they arose, and he says that as far back as 2010 JQL had difficulties with her mental health, self-harming by cutting, drinking and drug taking. He can, however, recall just one occasion when JQL's self-harm (cutting) was discussed within the family, although could not give any detail. He says the Sister would tease JQL "about the self-harm and mental health issues the claimant had". He says that all the siblings were asked to keep an eye on JQL so she did not kill herself, even the Sister, despite her age at the time (10 or 11).
89. The Mother was clear that she did not share this information with the siblings. She was asked what steps she took to ensure that JQL was safe at home when she was at work. I accept the Mother's evidence that the parents managed their work shifts, and the Grandmother also spent time at their home when JQL was there. I also accept the Mother's evidence that she did not ask her boys to undertake such a protective role. She explained she felt an adult needed to be around, the boys were older and had their own priorities. The gist of her evidence was that she could not rely on them. It also seems clear from her evidence that she appreciated that JQL did not want the information to be shared with the siblings, or indeed anybody.
90. The Family Friend was not aware of mental health difficulties leading to self-harm, nor did she observe anything herself.
91. Cousin Two did not know about mental health, hospital admission or self-harming and says all she knew was that JQL drinks a lot. Cousin One did not know about mental health issues or self-harm, but knew of the Prom, from the Grandmother. The Aunt confirmed in evidence that she did not know that JQL had received treatment for mental health issues and self-harm either.
92. NTP says that the Mother is a very indiscreet person, and his knowledge of how JQL had become troubled comes largely from her, sometimes with the Uncle or Grandmother present. His third letter said that the Mother routinely communicated information about the most private and sensitive matters including about JQL's mental health. He says that there was a period when the Mother "frequently discussed [JQL's] behaviour with us, around the time she was a young teenager", complaining about all



the aggravation JQL was causing her. He explains how this did not go away as JQL grew up, giving examples from the later period 2012-2015.

93. In respect of the first tranche/2010 information, JQL says the Mother disclosed this information without her knowledge to the Grandmother, and then to NTP. The Mother says that in 2011/2, she was at the Grandmother's house, upset and discussing JQL's difficulties, when NTP stopped by. The Grandmother persuaded her to tell NTP, encouraged by NTP. The Mother then explained about JQL's mental health and self-harm by cutting and accepts that she may have called it "attention seeking". The Mother says that her husband was later very unhappy with her breaching JQL's confidence in this way.
94. NTP denies that the "2010 information" – namely that between 2010 – 2012 JQL experienced mental health difficulties, leading to self-harm - was confided in him. He says that he did not know anything of this information until receipt of the letter of claim. NTP's pleaded case is that the Mother disclosed this information to JQL's siblings, and it was also disclosed to the Great Aunt. In cross-examination, NTP accepted that the Mother did share some information about JQL with him in 2011 or 2012 because she wanted his input, although he denied that he was told then about cutting or depression. He said it was more to do with JQL "going a bit off the rails", drinking and attention seeking.
95. The pleaded second tranche is about JQL's mental health difficulties and treatment in 2014. NTP admits that he has known about the psychiatric admission since 2014. He denies the 2014 information was kept secret or under control. He says he was told the information in June 2014 at the time of the Proms incident, and that it was known to most of the members of the wider family. He denies, however, knowing about any self-harm through cutting until receipt of the letter of claim.
96. In respect of the March hospital admission, the Mother says that she called the Grandmother at the time, assuming she would keep it private. She says the Grandmother told NTP, who called the Mother that morning. The Mother says she specifically said to NTP that she did not want anyone to know what had happened, recollecting how annoyed her husband had been previously. NTP denies calling the Mother, and says he thinks the Mother told him about this, not the Grandmother, but some months later at the time of the Prom incident.
97. On the evening of the Prom, the Mother says she called the Grandmother from the hospital, and shortly after that NTP called her. She says she explained how distressed she was, and she recalls how NTP corrected her on the name of the drug involved. She says that NTP called a second time later in the morning when she said she did not want people knowing and specifically said he could not tell the Uncle. She denies referring to JQL as attention seeking, saying NTP could tell whoever he wants, or speaking with the Uncle.
98. NTP's evidence is that he was called by the Grandmother in the early hours of the morning. She was at the Mother's home, looking after the Sister, whilst her parents were at the hospital. NTP says he went to the property, and when the Mother got home he remembers her anger. He says she referred to the taking of drugs and alcohol as "self-harm" and called it "attention seeking". NTP says she said he could tell who he

wanted, as “the whole fucking world knows anyway”. NTP’s recollection now of what happened was a little unclear. He accepted in oral evidence that the Mother called the Maternal Grandmother about the Prom but he was inconsistent on whether he spoke to the Mother on the phone. He could no longer recall if she used the words self-harm.

99. The Uncle’s statement confirms that he did not know about the cutting until these proceedings. He says that he did know that JQL had mental health difficulties around 2014 and about the Prom.
100. I am satisfied that the following has been established:
  - a. JQL kept information about her mental health and self-harming (cutting and similar) private. She repeatedly requested that doctors did not provide information to her parents. The evidence does not support the view that she discussed these matters with anybody within the family beyond the Mother.
  - b. NTP was told about JQL’s mental health and self-harming through cutting by the Mother in 2011 or 2012. He admits there was a conversation about JQL, and even that at some point the term self-harm was used by both the Mother and the Grandmother. We know from the medical records that by 2011 JQL was cutting herself, she had seen a psychiatrist and the Mother felt this was attention seeking – something NTP recalls the Mother saying to him at some stage. Given how close the Mother was to NTP and the Grandmother, it seems improbable that she would have talked about JQL’s difficulties in general and not told them about the psychiatrist, JQL’s mental health difficulties and JQL’s self-harm through cutting. NTP’s position - that the Mother was indiscrete and JQL’s siblings all knew but he did not – seems implausible. I accept the Mother’s evidence of how she came to disclose the information to NTP, and am satisfied that NTP understood it to be provided to him on a confidential basis.
  - c. NTP accepts he was told about the psychiatric ward admission, and so it seems likely he was told about it when it happened in March 2014. As with the other information about JQL’s mental health and cutting, he was told to keep the information confidential.
  - d. NTP was told about the Prom at the time it happened. Given what we know about the Mother’s personality, and the shock of what had happened, it seems likely that she spoke in an animated and distressed state, and may not have given a comprehensive summary. NTP was told that JQL was receiving treatment in hospital following her respiratory arrest. He was not told that she was on a psychiatric ward (which would have been untrue) and the Mother did not say it was “self harm”.
  - e. The siblings did not know that JQL had received treatment for mental health difficulties, that she had been admitted to a psychiatric ward, that she had nearly died at the Prom, had been admitted to hospital, or treated in respect of the MDMA that she had taken. I accept the siblings are likely to have seen their sister acting differently whilst a teenager, and those still at home would have been aware as she got older that she was going out and drinking with friends, sometimes to excess. The brothers are, however, older than JQL and had their

own lives. No doubt they sometimes went out drinking with friends too. To the extent that they noticed much about their sister at all, I do not accept that they are likely to have seen scars on a secretive teenage girl's arms, given much thought to her drinking or realised quite what she was going through.

- f. I note at this point the criticisms made of the Second, Third and Fourth brothers giving "identikit evidence", and the concerns about whether the Mother has put any pressure on them. There was a degree of similarity in what these three brothers had to say, but this reflects that NTP and his witnesses do not really distinguish between the three of them in their evidence. There are no examples given of specific conversations with named brothers about the issues in dispute, or things that particular brothers might have said or done to indicate to NTP (or his witnesses) that they were aware of JQL's difficulties. The gist of the three brothers' evidence is that they were unaware of certain matters, and so it is unsurprising that their evidence covered the same sorts of things.
- g. There was a limited amount of information known to some of JQL's friends about JQL's mental health and self-harming. JQL was realistic about this in her evidence. She accepted that her two or three closest friends may have been aware that she had difficulties, and had self-harmed. She accepted that she was very close with her best friend and they would openly discuss things with each other. The evidence suggests these friends might have known about specific incidents, but not necessarily the full detail or outcomes, or the wider picture. An ex-boyfriend will also have known certain information, including about cutting, as did the school.

### **Extent of disclosure/publication.**

101. There is a dispute about the extent of publication.
102. In an online publication claim, including privacy, a claimant must show that there has been a substantial disclosure online, which is more than de minimis. The relevant principles were set out in *ZAM v CFW* [2013] EMLR 27 at [108] by Tugendhat J:
  - a. "So the extent of publication through the internet must be proved by a claimant. He cannot rely on a presumption, as he can if the words complained of are published in a national newspaper. Publication of words from the internet can be proved by establishing a platform of facts from which the tribunal can properly infer that substantial publication within the jurisdiction has taken place: *Al-Amoudi v Brisard* [2006] EWHC 1062 (QB); [2007] 1 WLR 113 para [33]. In some cases a claimant will adduce expert evidence, but that is not the only form of proof, and the Claimant has not adopted that form in this case. But if a claimant proves that there were a significant number of readers, the court must always have in mind the likelihood of republications by the original readers, however difficult it is to put a figure on these."
103. An inference is a conclusion reached on the basis of evidence and reasoning - it is not a matter of guesswork: *Brady v Norman* [2008] EWHC 2481, in which HHJ Parkes QC (sitting as a Deputy Judge of the High Court) declined to make a finding of inferential

publication in respect of persons who would have lacked a proper interest in reading the article, absent some evidence to justify the inference.

104. There is direct evidence in this case of publication to six members of JQL's family.
105. The Sister-in-law's evidence is unchallenged. She received a notification about the NTP Post. She was shocked and confused to read what was said about JQL, and told the Second Brother. He had also been unaware of the issues, and questioned whether it was true.
106. The Sister-in-law called JQL, who said she had not seen the NTP Post, and sounded upset and shocked on hearing the news. JQL did not confirm whether it was true and appeared unwilling to discuss the matter. The Second Brother confirmed that given JQL's response to his fiancé, he did not ask JQL himself. He later asked the Mother about it, and she confirmed to him two weeks later that there had been difficulties, but did not give detail.
107. The Sister's evidence was that she received a notification on the evening of 19 July 2018. She was really worried and upset to read what was said about JQL. She showed the post to the Mother, who would not confirm if it was true. JQL then joined them, having finished her call with the Sister-in-Law. JQL told the Sister to forget about it and seemed upset and frustrated. In the days that followed, the Sister kept asking the Mother if what was said was true, and eventually the Mother provided some limited confirmation.
108. The Fourth Brother was in the house with the Mother, JQL and the Sister when the NTP Post was published. He overheard the discussion and then looked at his Facebook account. He felt the allegation about his sister's mental health and self-harming seemed implausible, but was too uncomfortable to discuss the matter with either JQL or the Mother.
109. The Third Brother read the NTP Post that evening. He did not believe it was true at first and assumed it had been made up maliciously. Two weeks later he visited his parents. JQL seemed low but said she was fine and did not want to talk. He asked the Mother who confirmed things in general terms. The Third Brother was upset by this and cried.
110. The Aunt confirmed in evidence that she received a notification. She said she skimmed the NTP Post, because she was at work, but when she went back to look at it again it was gone. She said that initially she thought it was about her, as she has children by different fathers and has a child with mental health difficulties. The Aunt's statement gives a slightly different account. She does not say she only skimmed the NTP Post, indeed she sets out her quite detailed understanding of the message at the time. She also says in her statement that she re-read the material that same day. The Aunt's apparent confusion seems implausible, and it seems more likely that she simply read the post when it came in. It also seems unlikely that the Aunt would think NTP was directing his criticisms at her: the NTP Post was clearly about the Mother and JQL, the Aunt would have known that she had not done anything to warrant such a tirade, and also would have known that she was not the subject of a police investigation.

111. The Uncle and the First Brother were unaware of the X-Factor thread. The Aunt's Partner, Cousin One, Cousin Two had been reading some of the thread posts, but say they did not read the NTP Post.
112. JQL also pursues an inferential case. It is said that because of the settings in place at the time, the NTP Post was available to the Aunt's friends but also friends of Cousin Two, the Mother and the Sister who were all initially tagged. It is said that this is over five hundred people in total (the Mother: 364; the Sister: 48; the Aunt: 116; Cousin Two: unknown). JQL believes that the original post and the comments were likely to be prominently featured in the news feeds of many of this pool. She also believes quite a few would have been reading the thread, and the NTP post, being interested in the family spat. JQL suggests approximately 10-20% of the pool would have seen the post, closer to 20% if considering the "grapevine" effect.
113. NTP says any suggestion of wider publication is speculative and not the subject of any reliable evidence. He says there is no evidence that anyone saw the NTP Post outside the family, and those who interacted with the Aunt's original post did not know the Claimant.
114. JQL confirmed in evidence that she has not identified anybody who saw the NTP Post beyond those family members identified in the evidence. She accepted that once the NTP Post had been removed, people would not have been able to see it. She also accepted that nobody who is a friend of the Aunt or Cousin Two would know who she is, save for family. JQL said in evidence that she will never know who, in fact, read it. Understandably, she has not contacted each of the possible recipients to check whether they had read things about her mental health and self-harming in the NTP Post. Neither the Sister nor the Mother give evidence of any of their 'friends' outside of the family having seen the NTP Post. The Aunt confirmed that she is not aware of any of her 'friends' having seen it.
115. There is no expert evidence about how many people would have been able to see the NTP Post, or been notified of it, or the prioritisation of posts within news feeds. Nor is there much factual evidence about what happened, save for a handful of screen grabs taken some months later for the purposes of these proceedings.
116. JQL's statement does, however, exhibit material from Facebook. This confirms that when someone is tagged in a post, it will be visible to (i) the audience selected by the person who made the post; and (ii) the audience selected by the tagged person in their timeline and tagging settings. It warns that a default setting to "Friends" means that when a person is tagged in a post, that person and their friends can see the post, even if they were not in the original audience. It also notes that this setting can be turned off *for each post when posted*, but there is no suggestion that this is what happened in this case. NTP now accepts that the NTP Post would have been accessible to any friends of the people who were tagged by the Aunt, until those tags were removed.
117. There is a dispute about who was tagged in the Aunt's original post. There is agreement that Cousin Two was tagged. JQL's case is that the Sister and the Mother were also tagged, and that they removed their tags sometime after the NTP Post. NTP's case had been that neither the Sister nor the Mother were tagged, but he now concedes that the Mother was tagged following the Aunt's evidence on this point.

118. The Aunt is unsure whether she tagged the Sister. In her statement, she says that she did not do so, and explained that she could not even recall ever having been ‘friends’ with her. In her oral evidence, however, she was less certain, she explained how she remembered that she had been unfriended by the Sister two days after her original post. This is, in fact, when the Sister says that she removed her tag. The Sister’s evidence on this was very clear. I am satisfied that she was tagged.
119. The next question is when the Mother and Sister de-tagged.
120. During the trial, NTP was suggesting that this might have happened before the NTP Post was published, although the evidence relied upon in support was somewhat speculative and inconclusive. Following concessions made by NTP in evidence, this position was not pursued. At closing, NTP invited an inference that the de-tagging took place at around the time the takedown request was submitted (20.00). Some screen grabs were produced during closing submissions, which are not in evidence, which appear to show that when someone makes a take-down request, they might also be told about de-tagging.
121. The Mother’s oral evidence was that she de-tagged when she saw the NTP Post, so her friends would not see what NTP had said. Logically, this must have been before the NTP Post was taken down. The Sister confirmed in oral evidence that she was certain that she de-tagged that evening, but did not give a time. Her witness statement says she did this the following day, but given her certainty in the witness box I am satisfied that she de-tagged on the day.
122. Bringing this together:
  - a. There no evidence on which to draw an inference that someone who does not know JQL, or know of her, would have read the NTP Post or paid any attention to it.
  - b. It follows that the potential pool of people who might have seen the NTP Post is limited to (i) ‘friends’ of the Aunt and Cousin Two from within the wider family, or who know of JQL; and (ii) the ‘friends’ of the Mother and the Sister.
  - c. The NTP Post was only available for a limited period of time (3 hours) and, in respect of the Mother’s ‘friends’, for an even shorter period. Given the Mother’s evidence about wanting to stop others seeing the NTP Post when she saw it, it would seem likely that she removed her tag sooner rather than later.
  - d. The evidence suggests that most of the engagement with the overall thread had been the day before, when 15 of the 17 comments were posted and nearly all of the ‘likes’ were added. That said, the NTP Post was published very shortly after the Grandmother’s message, and the fiery and revelatory nature of both comments would no doubt have stirred the curiosity of those readers who know, or know of, the people involved.

- e. It seems likely that there would have been some re-publication from those who did see it, particularly within the family, for example people telling partners or close friends.
- f. The lack of any direct evidence from people outside of the family who saw the NTP Post is relevant. If a significant number of such people had seen the NTP Post, it is likely that there would be evidence of them saying something to someone.

123. I am satisfied that there is sufficient evidence to infer that a small number of additional people would have seen the NTP Post. It is impossible to arrive with any precision on a figure, but considering the factors above, I would suggest a figure in the order of only 20-35.

### **Real and substantial tort?**

124. NTP says that the claim does not amount to a real and substantial tort and does not surmount the threshold of seriousness for an Article 8 claim.
125. In any claim based on Article 8 any interference must attain 'a certain level of seriousness' in order to engage the Article (*R (Wood) v Commissioner of Police for the Metropolis* [2010] 1 WLR 123 at [22]). See also *Lloyd v Google* [2019] EWCA Civ 1599 at [55] and [43].
126. The position with social media publications was considered, albeit in the context of defamation, by the European Court of Human Rights in *Tamiz v United Kingdom* [2018] EMLR 6 at [80]:

“in considering the gravity of the interference with the applicant’s Article 8 rights, the court recalls that an attack on personal honour and reputation must attain a certain level of seriousness and must have been carried out in a manner causing prejudice to the personal enjoyment of the right to respect for private life... This threshold test is important: ... the reality is that millions of Internet users post comments online every day and many of these users express themselves in ways that might be regarded as offensive or even defamatory. However, the majority of comments are likely to be too trivial in character, and/or the extent of their publication is likely to be too limited, for them to cause any significant damage to another person’s reputation”

127. The Court has jurisdiction to stay or strike out a claim where no real or substantial wrong has been committed: *Jameel v Dow Jones & Co Inc* [2005] EWCA Civ 75 [69] - [70]. *Jameel* was applied to privacy and data protection claims in *Harlow Higinbotham (formerly BWK) v Wipaporn Teekhungam* [2018] EWHC 1880 (QB). NTP relies on this case, although the facts were very different. Nicklin J considered the claimant to have a fanciful claim in respect of what he found was an anodyne and inoffensive Facebook profile. The only evidence of publication was to the claimant’s four own lawyers, who all knew the information already. There was no evidence that the material had been seen by anyone else and, in particular, anyone who knew the claimant. The claimant had also completely lost control of the information.

128. NTP says that the NTP Post does not surmount the threshold of seriousness applicable to claims for misuse of private information/breach of confidence for a number of reasons: (i) the claim for injunctive relief is academic; (ii) the claim is worth very little, a nominal sum; (iii) there had been limited publication in terms of the number of readers and the time the post was available; and (iv) the information was not kept private.
129. I am satisfied that this claim crosses the required threshold of seriousness. The question of whether there has been a real and substantial tort cannot depend upon a numbers game: *Marsas v New York Times Company* [2008] EWHC 3135 per Eady J. This claim relates to very sensitive, confidential medical information, the disclosure of which is said to have caused significant prejudice to JQL's enjoyment of the right to respect for her private life. It cannot be characterised as trivial. There is evidence of publication to JQL's closest family members. Whilst it is undesirable for family disputes of this sort to be aired in court, JQL has put forward evidence of the harm this disclosure has caused her. If she is successful, this is not a case where the remedy would be nominal.

### **Intentional Tort: breach of confidence and misuse of private information**

130. NTP says that breach of confidence and misuse of private information are ultimately torts of deliberate intent where liability rests on the knowledge and conscience being affected. JQL says that they are torts of strict liability, relying on *W v Westminster City Council* [2005] EWHC 102; *NT1 v Google LLC* [2018] EWHC 799; and *TLT & Others v The Secretary of State for the Home Office and another* [2016] EWHC 2217.
131. NTP has put forward a range of inconsistent and at times strained explanations for what he intended when publishing the NTP Post.
- a. In his first letter, NTP gave an absurd explanation: (i) he was reminding JQL that the Grandmother had "never had pupils dilated and had to be revived in public from self-harm that was inflicted from illegal drugs and alcohol abuse" (ii) he had understood JQL's use of the phrase "shows how fucked in the head you really are" as suggesting that the Grandmother had mental health issues, which is why he wished to remind and reassure his Grandmother in the NTP Post that she had never had treatment for mental health; (iii) that his reference to self-harm was a message to the Grandmother to stop her from "self-harming" by blaming herself for what was happening, or feeling "irrational feelings of guilt", claiming that such feelings as are often described symptoms of self-harm.
  - b. In his second response to the letter of claim, NTP said that it was "solely" in the context of the Prom that led him in the NTP Post to refer to treatment for mental health issues and self-harm. Of course, the Prom was an example of neither.
  - c. In his third response to the letter of claim, he says that the words complained of were about the time JQL had spent on a psychiatric ward and his recollection of the Prom incident.



- d. In his Defence, NTP says that he regarded the combination of JQL's mental health difficulties in 2014, his knowledge of the Prom incident and his knowledge of JQL's misuse of drink and drugs as evidence of the treatment of JQL for mental health and self-harm.
  - e. NTP's statement says that the reference to children not being from the same man was about the Mother. He explains that the words complained of were indeed about JQL, but "it was what had happened at [the Prom] that I intended to refer to in my post, along with [JQL] spending time on a psychiatric ward in connection with that event". In other words, NTP intended to publish information about JQL's treatment for mental health difficulties.
  - f. In oral evidence, NTP accepted that what happened to JQL when she was younger was horrible, and he says if he had known he would not have used the same language.
132. The explanations NTP has given within these proceedings about what he was saying have lacked credibility, dancing around definitions of "self-harm", and desperately trying to find ways of broadening out matters to include the Prom, and JQL's alcohol and drug use. I am satisfied that NTP knew what he was saying when he posted his comment. He knew that JQL had received long-term help for her mental health and self-harm, and this is what he was revealing. If he had wanted to simply say that she was out of control with her drinking, and took drugs, he would have done so.
133. Given that I am satisfied that NTP intended to publish the words complained of, and was aware that in doing so he was disclosing the fact of JQL's mental health and self-harm, and her treatment for it, it is not necessary for me to consider further whether these torts are in fact ones of strict liability.

### **The Privacy Claims**

134. An overview of the general principles which relate to claims for misuse of private information was set out by Nicklin J in *ZXC v Bloomberg LLP* [2019] EWHC 970 (QB), at [110]:

"There is a large degree of agreement as to the legal principles to be applied:

- (i) liability for misuse of information is determined applying a two-stage test: (1) does the claimant have a reasonable expectation of privacy in the relevant information; and (2) if yes, is that outweighed by countervailing interests, typically freedom of expression under Article 10: *McKennit -v- Ash* [2008] QB 73 [11];
- (ii) stage one – expectation of privacy – is an objective assessment; what a reasonable person of ordinary sensibilities would feel if s/he were placed in the same position as the claimant and faced with the same publicity: *Murray* [35]; *In re JR 38* [2016] AC 1131 [88];
- (iii) the Court will consider all the circumstances, but particular matters may include (*Murray* [36]; *In re JR 38* [60]):
  - a. the attributes of the claimant;

- b. the nature of the activity in which the claimant was engaged;
  - c. the place at which it was happening;
  - d. the nature and purpose of the intrusion;
  - e. the absence of consent and whether it was known or could be inferred;
  - f. the effect on the claimant; and
  - g. the circumstances in which and the purposes for which the information came into the hands of the publisher.
- (iv) whether the availability in the public domain of the same or similar information leads to the conclusion that the claimant cannot have a reasonable expectation of privacy is a matter of fact and degree, to be assessed in the individual case: the question is not whether the information was generally accessible, but rather whether the remedy of injunction would serve a useful purpose: *PJS -v- News Group Newspapers Ltd* [2016] AC 1081 [26], [32];
- (v) at stage two – the balancing exercise – neither Article 8 nor Article 10 has precedence over the other; where their values are in conflict, what is necessary is an intense focus on the comparative importance of the rights being claimed in the individual case; the justifications for interfering with or restricting each right must be taken into account; and the proportionality test must be applied, the so-called ultimate balance: see *PJS* [20]; *In re S* [2005] 1 AC 593 [17];
- (vi) courts need to be on guard against bringing into account at stage one considerations which should more properly be considered at stage two: *Campbell -v- MGN Ltd* [2004] 2 AC 457 [21];
- (vii) the "decisive factor" at stage two is an assessment of the contribution which the publication of the relevant information would make to a debate of general interest: *Von Hannover -v- Germany* [2004] EMLR 21 [76]; *Ntuli -v- Donald* [2011] 1 WLR 294 [20]; *K -v- News Group Newspapers Ltd* [2011] 1 WLR 1827 [10(5)]
- (viii) the ECtHR has given some broad guidance on factors relevant to the balancing exercise in *Axel Springer -v- Germany* [2012] EMLR 15 [79]:
- a. whether the publication contributes to a debate of general interest;
  - b. how well-known is the person concerned and what is the subject of the publication;
  - c. the prior conduct of the person concerned;
  - d. the method of obtaining the information and its veracity; and
  - e. severity of the sanction imposed: the proportionality of the interference with the exercise of the freedom of expression.”

135. The tort of misuse of private information protects a claimant against intrusion. In ***PJS v News Group Newspapers Ltd*** [2016] UKSC 26; [2016] AC 1081 the Supreme Court considered the principles relating to the tort of misuse of private information. Having reviewed those, the Court (Lord Mance) at [32], held that, in relation to the disclosure or publication of purely private sexual encounters: “...(ii) any such disclosure or publication will on the face of it constitute the tort of invasion of privacy, (iii) repetition of such a disclosure or publication on further occasions is capable of constituting a further tort of invasion of privacy, even in relation to persons to whom

disclosure or publication was previously made—especially if it occurs in a different medium...”

### **Stage One**

136. I am satisfied that a reasonable person of ordinary sensibilities, placed in the same position as JQL, would consider that he or she had a reasonable expectation of privacy in the information that is the subject of this claim, namely treatment for mental health and self-harm.
137. JQL had a tough time as a teenager. She was incredibly vulnerable, with poor mental health, subjecting herself regularly to self-harming behaviour. She had numerous medical appointments, and things got so bad that she asked to be admitted to hospital herself. Information about someone’s medical treatment, and their mental health, is deeply personal and recognised widely as being inherently private. Information about mental health can be particularly sensitive. Whilst nobody should be embarrassed about their mental health difficulties, the reality is that many people choose to keep them secret, not wishing to be labelled or judged, discriminated against or just treated differently.
138. The evidence in this case shows that JQL did not do anything to bring this information to wider attention, and went to some lengths to ensure that she controlled who knew about what was happening to her. This was important to her. It would have been clear to NTP that she would not want information about her mental health and self-harming to be made public, and that she would not consent to this course of action.
139. NTP received the information in confidence, being trusted because of his status as a member of the family, and in particular being the Mother’s brother. It would have been clear to NTP – or indeed anyone - that publishing the information would be an intrusive and distressing interference with her right to control her personal medical information. Indeed, in cross-examination, NTP accepted that as recipient of private information about JQL’s psychiatric hospital admission, it is to be expected that it is not passed on or disclosed, although he denied the Mother specifically telling him not to. It is of note that there is no evidence of NTP having disclosed this information prior to the NTP Post, suggesting that he understood that it was not for wider dissemination.
140. JQL has explained how she was affected by the disclosure of the information. This was one of her deepest secrets. JQL’s evidence is that it set back her recovery. She felt overwhelmed at the return of “ghosts from her past”. She was distressed and embarrassed. She was scared that she had lost control of her private information, concerned how far it would travel and that family and strangers would be reading about it. It forced her to have conversations about her mental health with people she had not yet chosen to tell, including her long-term partner. She says it has made her anxious and paranoid, and has changed the nature of her relationship with her family, with them awkwardly “walking on egg shells” around her.

### **Stage 2**

141. NTP does not suggest that there was a public interest in the disclosure of the fact that JQL had received treatment for mental health and self-harm. I do not see how he could.

He does, however, say that he was exercising his Article 10 rights in publishing the NTP Post, and that what he said was proportionate in all the circumstances.

142. NTP says that the subject of the publication was to address a family argument taking place online, but which had been precipitated by the Claimant's mocking and statements of phony affection to the Grandmother. He says he exercised his Article 10 rights to support his vulnerable mother against the Claimant's trolling (as the Grandmother called it).
143. NTP was asked a lot in evidence about why he sent the NTP Post. He said that the Grandmother was distraught and that is why "she needed to be backed up". He said that the NTP Post was directed to the Grandmother, telling her not to get involved with JQL and the Mother and to leave the matter to the police. He denied that he sent the message for the benefit of others or because it would have a wider, public audience. He denied that he had sent it in revenge for what he saw as mistreatment. He accepted that at the time of posting he was angry and upset.
144. I accept that one purpose of the NTP Post was to send a message to the Grandmother to stop engaging with JQL and the Mother online. Given all that had been going on, this objective is understandable. I accept too that the NTP Post was initially written quickly, and sent on an impulse, albeit he went back and tweaked it a few minutes later.
145. NTP relies on JQL's behaviour prior to the sending of the NTP Post, not in terms of breaking the chain of causation, but more to justify the proportionality of his response. Certainly, the messages JQL sent to the Grandmother were appalling. The Grandmother only reported two messages to the police. JQL says that is all there is, but we will never know. Given the scale of the dispute, it seems unlikely. It is of course also true that JQL is partly-responsible for the row that developed on Facebook. She had sent the provocative "olive branch" message the day before. NTP now had sight of one of the abusive messages JQL had sent the year before, accusing her own grandmother of being "fucked in the head". I do not think anyone would think it unreasonable for NTP to send a robust response, making clear to JQL that her behaviour was abusive and unacceptable.
146. I am, however, satisfied that the NTP Post went much further. It was not just a rebuke, it was an attack. NTP referred to JQL in vulgar and abusive terms. He included detail about the police, when no complaint had yet been made. Most significantly, he chose to reveal deeply personal information that any person would have appreciated would wound. His response was way outside of the range of responses that could reasonably be described as proportionate.
147. I am satisfied that considering the competing rights under Article 8 and Article 10, the rights of JQL in protecting her private medical information far outweigh the rights of NTP. The extent of the interference with NTP's Article 10 rights is limited, and does not prevent him from being able to express his views about JQL or her behaviour, or take steps to protect his family. I am satisfied that this interference is necessary to secure a legitimate aim, namely the continued protection of JQL's private information, and that it is proportionate to that aim.

148. For these reasons, I find that JQL's claim for misuse of her private information and intrusion into her rights of privacy succeeds.

### **Breach of Confidence**

149. The elements required to establish a cause of action for breach of confidence are derived from *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41, at 47: (1) that the information has the necessary quality of confidence about it; (2) that the information has been imparted in circumstances importing an obligation of confidence; and (3) that there has been an unauthorized use of the information.

150. This is not a case where there was an express relationship of confidentiality between claimant and defendant. In *Mionis -v- Democratic Press SA* [2018] QB 662, [71], Sharp LJ explained the basis of the duty of confidence:

"... [T]he underlying point in relation to confidence, as the passage referred to in the judgment of Bingham LJ in *Attorney General -v- Guardian Newspapers Ltd (No.2)* [1990] 1 AC 109, 215 ["Spycatcher"] makes clear, is that: 'the duty of confidence does not depend on any contract, express or implied, between the parties. If it did, it would follow on ordinary principles that strangers to the contract would not be bound. But the duty 'depends on the broad principle of equity that he who has received information in confidence shall not take unfair advantage of it': *Seager -v- Copydex Ltd* [1967] 1 WLR 923, 931 per Lord Denning MR. 'The jurisdiction is based, not so much on property or contract, but rather on the duty to be of good faith': *Fraser -v- Evans* [1969] 1 QB 349, 361 per Lord Denning MR".

151. Taking into account the findings made above, I am satisfied that:

- a. JQL has established that information about her treatment for mental health and self-harm had the necessary quality of confidence, in that it was inherently confidential and she had taken steps to ensure that, in practice, it remained so. The fact that her closest friends were privy to some of the self-harm incidents, or that they took place in public places, is not sufficient on the facts of this case to destroy the cloak of confidentiality.
- b. I have also found as a fact that JQL had maintained control over the privacy and confidentiality of the information, including keeping it from her family.
- c. JQL has established that the information about her treatment for mental health and self-harm was imparted by the Mother to NTP in circumstances where he was aware that the information had been provided to him under an obligation of confidence. This happened not only around 2011 but also in March 2014 around the time of the hospital admission. Not only did the Mother state expressly that the matters were confidential, it would have been apparent to NTP that this was the position given the circumstances, namely a sensitive conversation between siblings about serious concerns about one of their children.

- d. In light of my determination on meaning, the NTP Post was an unauthorised use of the information, namely that JQL had experienced difficulties with her mental health and self-harming, and had received treatment for this.
- e. To the extent that it is suggested that the NTP Post disclosed confidential medical information about the Prom, this is not established. Whilst JQL received medical treatment at the Prom, this was not treatment for her mental health, nor for self-harm, and so was outside the terms of the NTP Post.

152. In the circumstances, I am satisfied that it is equitable to grant relief in respect of the breach of confidence.

### **Damages**

153. JQL seeks general and aggravated damages up to £20,000, which she acknowledges is the level capped on her Claim Form. She says that general damages should be in the range of £15-20,000, for the immediate and subsequent distress she suffered, and for the loss both of autonomy and of control over the information. She seeks a separate award for the extreme aggravation which has arisen from NTP's approach to her complaint and this litigation, in the range of £5,000-£7,500.

154. The current approach to damages in privacy claims was summarised by Warby J succinctly in *Reid v Price* [2020] EWHC 594 (QB) at [50] – [51]:

“Compensation for the tortious disclosure of personal information should aim to restore the claimant to the position he would have occupied but for the tort... principles identified in *Mosley v News Group Newspapers Ltd* [2008] EWHC 1777 (QB) [2008] EMLR 20 include the following: damages may include compensation for distress, hurt feelings and loss of dignity; it may also be appropriate to take into account any aggravating conduct by the defendant which increases the hurt to the claimant's feelings; damages should be proportionate, they should not be open to criticism for arbitrariness; but they must be adequate to mark the wrong and provide a measure of solatium; it will be legitimate to pay some attention to the current level of personal injury awards; and the court should have in mind the tariff applied so far as defamation awards are concerned (though the analogy with defamation can only be pressed so far).”

After identifying recent cases, including *Gulati v MGN Limited* [2015] EWHC 1482, Warby J continued: “I do not think it necessary or appropriate to indulge in any detailed analysis of these authorities. It is enough to say that among the points they add to the principles identified above are the following: if damages are to be an effective remedy, they must not be subject to too severe a limitation; although vindictory damages are not recoverable in this context, in misuse of private information and data protection claims, damages may be awarded for loss of autonomy or loss of control; the nature of the information disclosed and the degree of loss of control should bear on this aspect of the court's assessment of damages – the more intimate the information and the more extensive the disclosure, the greater the award.”

155. In respect of medical information, in *Gulati*, supra, Mann J said at [229] that:

“medical information is more likely to be high in the ranks of information which is expected to be private, so its interception and disclosure is likely to attract a higher, rather than a lower, figure. That information can relate to matters of mental health as well as physical health (if that is an appropriate description of non-mental health issues). However, even that kind of information has a range—not all medical-related disclosures will be treated equally seriously. It depends on the nature of the information.”

156. JQL also seeks to rely upon the “egg shell skull” principle. The relevance of the egg-shell skull principle to privacy cases was identified by Mann J in *Gualti*, supra, and approved by the Court of Appeal in that same case.

“The extent of the damage may be claimant-specific. A thinner-skinned individual may be caused more upset, and therefore receive more compensation, than a thicker-skinned individual who is the subject of the same intrusion. [Counsel for the Defendant] accepted that, in relation to distress, the “egg-shell skull” principle applied” ”

157. JQL says the information disclosed concerned a vulnerability which itself made her particularly susceptible to harm arising from exactly the kind of disclosure for which NTP was responsible. Her evidence is that publication of the NTP Post set her back considerably in her recovery from her mental health problems, forcing her to revisit an unhappy time in her life. She says she has been more anxious and paranoid. Thankfully, she does not say that she has needed further medical treatment as a result of the disclosure, or that she has resumed self-harming or that she has clinical anxiety, although I accept she has felt anxious. The evidence suggests she has reacted in much the same way as many people would if subjected to the same intrusion, which should be taken into account anyway when assessing damages.

158. I have been referred to four recent decisions, although note the limitations on comparison given that each case is fact sensitive:

- a. ***Bull v Desporte* [2019] EWHC 1650 (QB)**. Julian Knowles J. This case involved the disclosure of significant private information in a book. The judge decided that readership was in the “tens of copies”, perhaps reaching over a hundred if publication in the US was also included. The claimant was awarded £10,000 for the misuse of his private information for distress and injury and the victim’s loss of privacy or autonomy, and £2,500 in aggravated damages.
- b. ***Burrell v Clifford* [2016] EWHC 294 (Ch)**. Richard Spearman QC. This case involved the disclosure of information to a national newspaper group, but which was not published. The content was said to be saccharine, and not the claimant’s inner most secrets. The claimant only discovered the disclosure nine years later, and subsequently published the information himself. He received £5,000.
- c. ***Ali v Channel 5 Broadcast Limited* [2018] EMLR 17 (Ch)**. Arnold J. TV broadcast of a bailiff eviction in a reality show. General damages for distress of £10,000 were awarded to each claimant.

- d. *Reid v Price*, supra. Warby J. This claim was about sexual information, including videos of the claimant engaging in sexual activity. There was evidence of repeated publication to named individuals, and considerable aggravating features. The claim was capped at £25,000 and Warby J awarded this amount including for loss of personal dignity and harm to his self-esteem.

159. In assessing damages, I take into account in particular the following:

- a. The nature of the private information involved is towards the top end of the scale in terms of the protection to be afforded to it. In this case, the information included not just the fact that JQL had experienced mental health difficulties and self-harmed, but that she had needed to receive treatment for it.
- b. The evidence of JQL about the distress and hurt the publication has caused her, not only in terms of her initial reaction, but the longer-lasting distress.
- c. The evidence of JQL in terms of how publication has set her back, opening up matters she felt she had moved on from.
- d. The fact that the NTP Post was seen by very few people who would have known who JQL is, although some of these people were JQL's closest family;
- e. The fact that this information was being revealed for the first time;
- f. The impact that it has had on JQL's family relationships, accepting her evidence that this has created an enduring sense of anxiety and paranoia and led to her being treated differently. I note the family members cannot forget what they have been told, so this may well be a long-term issue.
- g. The consequences for JQL's right of autonomy and control in respect of this information. The evidence establishes that JQL has sought to control this information carefully, not even telling her partner so she could inform him on "her own terms", if at all.
- h. The manner in which the material was published, combined with significant abuse, enhancing the distress and hurt caused.
- i. The absence of any significant mitigating factors, publication having been deliberate and without justification, whilst noting JQL's role in stoking the Facebook row;

160. In respect of the claim for aggravated damages:

161. Firstly, there is NTP's first response to the letter of claim, sent without legal advice. In fairness to NTP, he does say that he wants nothing more than for JQL and the Mother to leave him and the Grandmother alone, suggesting that he does not intend to perpetuate the dispute. That said, in the letter he makes serious threats to dissuade JQL from pursuing her claim:

- a. NTP stated that if the claim is pursued, he will "make sure their [JQL and the Mother's] reputations are shown for what they are and I will drag them 'from the gutter and through mud' so everyone; public, family and their work colleagues and partners can judge them for their actions and then they can 'crawl back'. I dare say that will be the end of any aspirations your client has of entering the legal profession. Trust me, I have only just scratched the surface of the dossier of evidence I can produce to show this is a vexatious claim". The letter ends by saying that if the claim is pursued "I warn them it will be distasteful but honest,



costly and damaging for both their lives and their careers and there will be no going back, ever”

- b. NTP threatened to make public what happened on the Prom night and set out in detail what steps he would take if the claim is pursued to ensure that JQL cannot pursue a legal career; and
- c. NTP threatened to exercise his “right” to compel the Sister to give evidence. She was sixteen at the time. He said: “if her parents want to put her through that and in anyway encourage her to lie or not tell the complete truth under oath then that is their choice and something they will have to live with”.

162. Second, there is the way in which NTP has defended the litigation. This includes:

- a. The intrusive and unnecessary way in which he has sought to examine JQL’s history of mental health, with a detailed examination of JQL’s sensitive medical history. As a result, all JQL’s siblings have had to be told about aspects of her past and medical history to respond to NTP’s pleaded case. JQL was also put through intrusive cross examination on aspects of her medical history.
- b. Regrettably, some particularly sensitive information was disclosed on behalf of the Defendant during cross-examination of the Mother when it had been made clear in advance that this had not been shared with family members. There was no need for this information to be raised. The Mother had clearly been unaware of it before and was extremely upset, as was the Claimant.
- c. The way in which NTP has persisted in seeking to turn a case about JQL’s mental health and self-harm into one about alcohol abuse and drugs, with particular focus on an unrelated medical event in JQL’s life, at the Prom. This has necessitated the disclosure of further, intrusive medical information from JQL and caused her humiliation and hurt.

163. I am satisfied that NTP has aggravated the harm caused to JQL through these matters, increasing her hurt feelings and her distress.

164. Considering all the evidence before me, I consider an award of £15,000 to be appropriate, to include (i) general damages in respect of distress, hurt, feelings of anxiety and embarrassment as well as JQL’s loss of control and autonomy; and (ii) significant aggravated damages. I am satisfied that this is sufficient to compensate JQL, as well as to mark the wrong and provide a measure of solatium. This was a serious intrusion into JQL’s privacy and an infringement of her autonomy, made considerably worse through this litigation. Notwithstanding the relatively small number of recipients of the information, I am satisfied that this is a proportionate award.

### **Injunction**

165. JQL did not include a claim for an injunction in her claim form, but has threatened to make an application for one in correspondence during the proceedings, for example in a letter to NTP from her solicitors dated 21 January 2020. She has been concerned that

NTP will misuse her private information. NTP says that the claim for injunctive relief is academic, and that there is no evidence that the Defendant has any intention of repeating the publication.

166. It is pointed out that on 4 January 2019, NTP gave a written undertaking. He has since offered an undertaking to the court in the same terms. However, on 20 February 2019, the Uncle sent an email to the coroner and other third parties, attaching a document in which he disclosed JQL's status as a claimant in these proceedings. The Uncle confirmed at the time that the email and attachment had been approved by NTP. Both men now deny this, but it seems unlikely that the Uncle would make such a clear representation to the coroner's office if it was false.
167. It seems to me that JQL is entitled to an injunction to protect her in the future. First, it is the remedy that naturally flows from this court's decision that the information should not be published. Second, whilst NTP offered undertakings at the start, I am concerned about the disclosure to the coroner. Third, NTP has been far from straightforward in these proceedings about what he did and did not say, making it appropriate for a clear restriction to be put in place. Fourth, there is a family feud and JQL is worried that this information will be deployed again in similar circumstances. Fifth, it will help to curb the on-going harm JQL says she has been caused, by giving comfort that she can take back control of her information, to the extent this remains possible. The injunction should be in usual terms, covering any information about (i) JQL's mental health, including but not limited to her admission to a psychiatric ward and any diagnosis; and (ii) JQL's deliberate self-harm, by which I mean things like her cutting, burning or starving herself.